

TITLE:	LICENSING OF HOUSES IN MULTIPLE OCCUPATION
TO/ON:	Executive 24 April 2006
BY:	Director of Environmental Services
PORTFOLIO:	Health
STATUS:	Report

1. STRATEGIC FACTOR CHECKLIST

- 1.1 The Council's Corporate Management Team has confirmed that the Strategic Factor Checklist has been applied to the development of this report and there are no key issues over and above those set out in the body of the report that need to be brought to Members' attention.

2. SUBJECT MATTER AND PURPOSE

- 2.1 This report outlines the new licensing arrangements for Homes in Multiple Occupations (HMO's). It asks Members to decide upon the extent to which the Council wishes to apply the new licensing powers; the degree to which it publicises the new legislative requirements; the way in which fees are to be calculated, and the resources required to implement the scheme.

3. BACKGROUND

- 3.1 Part 2 of the Housing Act 2004 introduces new powers to enable local housing authorities (LHA's) to licence houses in multiple occupation. Whilst these powers were originally intended for introduction in October 2005, the Office of the Deputy Prime Minister has recently announced that implementation has been delayed until April 2006. This gives authorities time to ensure that new systems are in place.
- 3.2 Licensing has been introduced to address concerns over sections of the private rented sector where conditions and standards of management are unsatisfactory. Licensing is seen as the appropriate vehicle for ensuring that landlords or their agents are fit and proper persons, that management standards are adequate, vulnerable tenants can be protected and that health and safety standards are adhered to.
- 3.3 A House in Multiple Occupation (HMO) is redefined in the Act by the application of a series of 'tests' which assess matters such as the number of units, whether the occupants form or do not form a single household, the payment of rents and the sharing of amenities such as toilet, personal washing facilities or cooking facilities.
- 3.4 The Act does however exempt certain buildings from constituting an HMO; these include those managed by a Local Housing Authority, a Registered Social Landlord or Health Authority, those occupied by students and managed by the educational establishment and buildings occupied by only two persons who do not form a single household. It is intended that others will be exempted by forthcoming regulations; these will include children's homes, care homes and approved bail hostels.

- 3.5 Not all Houses in Multiple Occupation are subject to licensing. The Act introduces mandatory licensing for a prescribed class of HMO's and gives LHA's the power to extend the scope of HMO licensing within their own Districts.
- 3.6 All HMO's comprising three or more storeys and occupied by 5 or more persons (comprising at least two households) in the LHA's district must be licensed. 'Storeys' include basements and attics if they are occupied or have been converted for occupation. Commercial premises on the ground or any upper floor are also included in the calculation.
- 3.7 LHA's are also given the power to designate HMO's in the whole or part of their District as subject to additional licensing. This allows LHA's to extend the licensing requirements to HMO's, which do not fall within the mandatory category outlined in Paragraph 2.6. To exercise this power, however, the local authority must demonstrate that there is a need to do so. Whilst, in addition the Secretary of States approval would be required, it is likely that LHA's classified as 'Excellent' or 'Good' in Comprehensive Performance Assessment would be exempt from this requirement. Any such additional licensing schemes remain in force for 5 years.
- 3.8 All HMO's are to be managed in accordance with management regulations and codes of practice.
- 3.9 The LHA is under a general duty to take all reasonable steps to secure that those whose properties fall within a licensing scheme apply to the LHA for a licence.
- 3.10 The Act sets out certain information which must be contained within a licence application, particularly in relation to names of landlords and agents, information about the property, the number of households and individuals, details of safety arrangements and any previous enforcement activity by the LHA. LHA's are, however, free to ask additional information provided it is necessary to carry out their licensing functions.
- 3.11 LHA's can charge a licence fee and in doing so may have regard to the costs in carrying out the administration of the licensing scheme. The government has not set a specific cap on fees although there is an expectation that LHA's will establish coherent and transparent fee structures.
- 3.12 There is no statutory limit on when applications must be processed by, however, Government, landlord associations and LHA's are currently holding discussions on this issue.
- 3.13 There is scope for a local authority to serve a Temporary Exemption Notice (TEN) where the person in control of a licensable HMO proposes to take steps to secure that the property is no longer required to be licensed. A TEN last for 3 months and a second TEN can be served in exceptional circumstances.
- 3.14 Appropriate registers of licences and TENs must be kept by the local authority.

- 3.15 Before granting an HMO licence the LHA must be satisfied that:
- (a) The property is reasonably suitable for occupation by the maximum number of households specified in the application or set by the LHA.
 - (b) The proposed licence holder and any proposed manager are fit and proper persons.
 - (c) The proposed management arrangements for the property are satisfactory.
- 3.16 Licences remain in force for no longer than 5 years and can be varied at any time during the life of the licence. Licences are not transferable and can be revoked with the agreement of the licence holder, or where there have been serious breaches of the licence conditions, or where the licence holder is considered to no longer be a fit and proper person.
- 3.17 The Act provides a number of sanctions to deal with unlicensed properties or houses in multiple occupation in breach of licence conditions. The Government propose to phase in the enforcement provisions over a period of 3 months from the introduction of the licensing regime. It will allow local authorities to apply to a Residential Property Tribunal for Interim and Final Management Orders, which will allow any authority to effectively take over the management of a property. The impact of these new enforcement provisions on the authority has yet to be determined and may be the subject of a further report to Members.

4. RELEVANT/MATERIAL CONSIDERATIONS

- 4.1 As can be seen in the background section of this report the authority is required to take a number of decisions before HMO licensing can proceed. These centre upon the following issues.
- (i) The extent to which the Council needs and wishes to apply HMO licensing powers.
 - (ii) The degree to which the authority publicises the new legislative requirements.
 - (iii) The level of the licensing fee.
 - (iv) The resources required to implement the legislation.
- 4.2 Houses in Multiple Occupation of the type which will fall under the new mandatory arrangements have been comparatively rare within Derwentside, primarily because the traditional method of construction has been limited to two storeys. In recent years, however, housing developers have moved towards the provision of higher density housing, and the number of dwellings with three or more storeys has increased. Currently we are aware of six HMO's, which will fall into this category, however this number may be underestimated.
- 4.3 The Authority does have powers to extend the licensing scheme to cover all other HMO's in the District and the use of such powers is exercisable by the authority without recourse to the Secretary of State because of its 'Good' Comprehensive Performance Assessment rating. However, there must be a clear need to include such HMO's and at this stage we have no empirical evidence to justify their inclusion.
- 4.4 It is also relevant that the system is new and it is advisable to adopt a cautious approach in its implementation before seeking, if the need arises, to extend the

scheme. A review should therefore be undertaken to identify the need to extend the current scope of the licensing scheme on an annual basis.

- 4.5 We do have a duty to take all reasonable steps to ensure that those properties which require a licence are licensed. The Government are to mount a national advertising campaign costing in the region of £1.5m but we will have to adopt our own strategy to augment this campaign. We have already begun the process of identifying the appropriate properties using information already with the Authority and from our work with the Derwentside Private Landlords' Association. We are also adopting a partnership approach with neighbouring authorities including Wear Valley, Durham and Sedgfield and will contribute to the placing of a promotional article within the local press aimed at prospective licensees within our areas. It is anticipated that this promotion will take place in April 2006.
- 4.6 The level of the license fee will probably prove the most controversial aspect of the scheme. Whilst the legislation gives an authority fairly free rein in deciding upon fee levels, in other areas of Environmental Health the use of cost accounting is being increasingly driven as a way of establishing coherent and transparent fees. Fees will need to be reviewed annually to take into consideration salary and overhead increases which, following review, will be applied to new applications.
- 4.7 Adopting this type of approach we have, in partnership with neighbouring authorities, drawn up a matrix which attempts to apply typical times to the various elements associated with dealing with a licence application. Indications are that using this type of approach we will be applying a fee for a typical HMO in the District of approximately £500.
- 4.8 It is expected that there will be significant workload in setting up the HMO licensing regime, including preparation of application forms, advisory leaflets and presentations, policy and procedures as well as inspection and enforcement of relevant legislation. In addition future needs within the area will need to be identified as part of the annual review of the scheme and may lead to the introduction of additional licensing. Arrangements are being drawn up to ensure that any property that may be identified as presenting a Category 1 hazard, will trigger notification to the Homelessness team, for them to be aware of the issues.
- 4.9 This work is seen as a natural extension to the work already undertaken by the Private Landlord Accreditation and Liaison Officer and as such it is felt at this stage that there will be no necessity to employ additional staff either on a permanent or temporary basis to undertake the work. In taking on these additional duties and responsibilities, it may be necessary to re-evaluate and re-grade the post, subject to consultation with Human Resources Division. It is expected that any associated costs will be met from income generated from collection of licence fees.
- 4.10 In addition, additional expenditure will be required to cover our contribution to the combined local authority promotional article within the local press. It is estimated that this contribution will be in the region of £500 although it is possible that this can be met from existing resources.
- 4.11 Once issued the licence will remain in force for 5 years, during which time the current charging regime should also be reviewed to determine whether there is a need to impose additional fees for matters relating to the licence e.g. variations, penalties for non submission of information.

5. RECOMMENDATIONS

- 5.1 Members accept the report.
- 5.2 At this stage the Council only agree to seek the licensing of those Houses in Multiple Occupation falling into the mandatory category as defined in the Act.
- 5.3 The Authority continues its local approach to publicising and promoting the new licensing regime.
- 5.4 That a cost accounting approach be adopted in relation to the setting of licensing fees.
- 5.5 That the post of Private Landlord Accreditation and Liaison Officer be re-evaluated and re-graded accordingly to reflect additional duties and responsibilities.
- 5.6 Agree a programme of annual reviews to determine;
 - (i) Annual operational costs and licence fees.
 - (ii) The need to extend scope of the licensing scheme.
- 5.7 To review the charging regime within the next 5 years to ascertain whether it is necessary to impose additional fees prior to renewal of licences.
- 5.8 That the legislation be implemented using existing resources.

6. REASONS

- 6.1 There is no evidence to suggest that the mandatory licensing scheme should be supplemented by an additional licensing scheme to cover all types of houses in multiple occupation within the District.
- 6.2 The proposed local publicity arrangements are a measured response to provide additionality to the proposed national publicity campaign.
- 6.3 The use of cost accounting in the calculation of fees is an accepted method of providing a coherent and transparent fee structure.
- 6.4 There is no need at present to apply additional resources to implement this legislation.

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NO/ALT 20.02.06