

TITLE: Houses in Multiple Occupation: Mandatory Licensing Scheme

TO/ON: Executive, 9 July 2007

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 deals with the new Licensing arrangements for Houses in Multiple Occupation (HMO) and outlines the progress which has been made to date with respect to the introduction of Mandatory Licensing within Derwentside.
- 2.2 It also seeks Members' approval of the proposed prescribed accommodation standards, licensing conditions and a 'fit and proper person' test to be used by the authority in the determination of Mandatory licence applications for HMO's.

3. **BACKGROUND**

- 3.1 Members considered a previous report on the licensing arrangements for Houses in Multiple Occupation in April 2006.
- 3.2 That report highlighted the new powers available to the Local Authority under Part 2 of the Housing Act 2004. Specifically, two possible licensing schemes were considered:
- a national Mandatory licensing scheme for Houses in Multiple Occupation comprising of three or more storey's and occupied by 5 or more persons (comprising of at least two households);
 - an additional licensing scheme, which extends the HMO licensing to properties not covered by the national scheme.
- 3.3 The Council resolved to initially only licence those Houses in Multiple Occupation falling into the Mandatory category, and that the level of licensing fee would be reviewed on an annual basis.
- 3.4 In addition, it was also agreed that the scope of the licensing scheme should be reviewed on an annual basis, following the implementation of the Mandatory licensing scheme.

- 3.5 Following agreement of the new licensing arrangements, Section 61 of the Housing Act 2004 requires that the Local Authority take reasonable steps to ensure that all those properties requiring a licence are licensed.
- 3.6 The authority has undertaken a local publicity campaign, in addition to national publicity, which has involved:
- placing a promotional article in the local press for prospective licensees;
 - placing leaflets and posters in all Council buildings; the County Court and local Post Offices;
 - writing to all 112 members of the Derwentside Private Landlords Association (DPLA) advising them of the new licensing arrangements, together with a request to declare their properties where relevant; and
 - writing to all proprietors of properties which are 'known' to fall within the Mandatory licensing regime.
- 3.7 As a result six applications have been received by the Authority to date, from landlords seeking the Authority to approve a licence to operate a House in Multiple Occupation within the District.
- 3.8 The Division will continue to identify properties within the area which require a licence under the Mandatory regime through their work with the Derwentside Private Landlord's Association, other Divisions of the Council and neighbouring Authorities.

4. RELEVANT/MATERIAL CONSIDERATIONS

- 4.1 When an application in respect of a House in Multiple Occupation is made to the Local Authority, the Authority must either:
- grant a licence; or
 - refuse to grant a licence.
- 4.2 Licences must be granted if the Local Authority is satisfied that:
- the HMO is reasonably suitable for occupation by the number of persons permitted under the licence, having regard to "prescribed standards";
 - the licence holder is a fit and proper person;
 - the proposed licence holder is the most appropriate person to hold the licence;
 - the proposed manager, if not the licence holder, is fit and proper; and
 - the proposed management arrangements are satisfactory, including that the person involved in the management of the house is competent and that funding for management is suitable.

4.3 Prescribed Standards

4.3.1 Under Section 65 of the Housing Act 2004, the Local Authority cannot be satisfied that the house is reasonably suitable for occupation by a particular maximum number of households or persons if it fails to meet “prescribed standards” for occupation by that number of households or persons.

4.3.2 Prescribed national minimum standards have been defined in the Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) England Regulations 2006. Local Authorities are entitled to set their own local standards, however, to allow for the quantity, condition and diversity of the Houses in Multiple Occupation stock, as well as pressure on the rented market.

4.3.3 Appendix 2 details the prescribed accommodation standards which have been drafted for the purposes of Licensing Houses in Multiple Occupation under the Mandatory regime within Derwentside. Members’ approval of these standards is now sought, prior to the determination of any licence application, for a Mandatory House in Multiple Occupation by the Authority. In deciding whether or not to adopt these standards, Members may wish to consider:

- that in compiling these standards, discussions have taken place with neighbouring Authorities to ensure consistency of approach. Any amendments to these standards will therefore affect the maintenance of a consistent approach within County Durham. This will have afforded some degree of certainty for landlords whose properties extend to more than one Local Authority;
- consultation with the Fire Authority through the Durham Private Sector Housing Working Group and private sector landlords through the DPLA on the proposed standards and other relevant issues is ongoing. Any material matters arising from these consultations will be reported to Members;
- legal opinion has been sought to ensure the standards that have been drafted are flexible, proportionate and not inconsistent with national standards;
- it is the intention to review these standards periodically to ensure they remain appropriate to the type of multi-occupied housing within Derwentside and the needs of residents.

4.3.4 If arrangements within the HMO’s are unsatisfactory with regard to the Authority’s prescribed standards, then a licence can be approved for a lesser number of occupants, or a licence imposed requiring that specified works be carried out.

4.4 Fit and Proper Person

4.4.1 When determining a licence application the Council is also required to assess whether the applicant and any manager and any person associated with them, or formerly associated with them, are fit and proper persons to own or manage a House in Multiple Occupation.

4.4.2 In deciding whether the proposed licence holder, or manager of the property, is a fit and proper person, the Housing Act 2004 sets out, in section 66, defined criteria to which the Authority must have regard. This includes any evidence that they have:

- a) committed any offence including fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting “notification requirements”, including rape, incest, sexual offences involving minors, offences related to child pornography and paedophilia); or
- b) practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origin or disability in, or in connection with the carrying out of any business; or
- c) contravened any provision of the law relating to housing or of landlord and tenant law; or
- d) acted otherwise than in accordance with any approved code of practice under Section 233 of the Act.

4.4.3 Taking the above into consideration therefore, it is proposed that a person will be considered fit and proper if the Council is satisfied that:

- (i) they have no unspent convictions relating to offences involving fraud, dishonesty, violence, drugs or sexual offences;
- (ii) they have not practised unlawful discrimination on the grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;
- (iii) they have no unspent convictions relating to housing or landlord and tenant law;
- (iv) the person has *not* managed Houses in Multiple Occupation otherwise than in accordance with any approved code of practise;
- (v) the person has not been found by a competent Court to have contravened any provision of the law relating to housing or landlord an tenant law within the preceding [10] years (for example being found guilty of unlawful eviction or harassment of tenants).

4.4.4 The above list is not exhaustive and the Authority may take into account other factors, but only in so far as they are relevant to the fitness and propriety of the persons concerned.

4.4.5 In assisting with the fit and proper person assessment, it is recommended that the Council also considers whether the applicant has:

- been refused a Houses in Multiple Occupation licence or been convicted of breaching the condition of a licence;
- been in control of a property subject to a Houses in Multiple Occupation control order, an Interim Management Order (IMO) or Final Management Order (FMO);
- been convicted of Housing Benefit fraud or subject to legal proceedings by a Local Authority for breaches of planning, compulsory purchase, environmental protection legislation or other relevant legislation.

In considering the above criteria, Members may wish to note that:

- licence applicants will not automatically be required to carry out a Criminal Records Bureau (CRB) check and provide details of the results in support of their application. Instead, they will be required to sign a statement within the application form itself, with the proviso that the Council retain the right to ask for a CRB check to be undertaken if this is considered necessary. This approach has been agreed with neighbouring Authorities;
- an unspent conviction, or other failure, is not automatic grounds for refusing a licence; other circumstances (e.g. training undertaken by the landlord) will also be taken into account;
- it is not necessary when refusing to accept someone as a fit and proper person to demonstrate that a conviction has been obtained as the legislation requires evidence of an offence only;
- where there is evidence of a problem, applicants will be invited to give an explanation for their actions, to account for their failure to comply with legislation, and satisfy the Council that this will not recur.

4.5 Management Arrangements

4.5.1 In deciding whether proposed management arrangements for the property are satisfactory, the Local Authority must be satisfied that the person proposed to be responsible for the management of the house has sufficient competency to be involved, and that proposed management structures and funding arrangements are suitable.

4.5.2 The Council will therefore require that the management arrangements include:

- that the licence holder, will comply with the Management of Houses in Multiple Occupation (England) Regulations 2006, and any Approved Code of Practice issued under section 233 of the Housing Act 2004. These Regulations require Houses in Multiple Occupation to be kept in a reasonable state of repair, all installations and appliances (including those for fire safety) to be in good working order, and the common parts to be kept clean and in a reasonable state of decoration;
- that there is a system in place for tenants to report defects, including emergencies and such system includes provision of a 24 hour contact number;
- that information is provided to tenants regarding the action to be taken in the event of a fire, including details of its escape route;
- a signed declaration from the owner, where he/she is not the manager, that adequate funding and authority will be provided to the manager to deal with repairs, and to ensure compliance with any relevant standards and legislation;
- that steps are taken to prevent or reduce anti social behaviour by persons occupying or visiting the house.

4.6 Licence Conditions

4.6.1 A House in Multiple Occupation Licence will specify the maximum number of occupants who may occupy the House in Multiple Occupation. The occupancy number will depend on the number and size of rooms and bathroom facilities based on “prescribed standards” discussed in paragraph 4.3.

4.6.2 Schedule 4 of The Housing Act 2004 also imposes minimum Mandatory conditions on the licence holder, which must be included in the licence. These include the requirements to:

- produce gas safety certificates annually;
- keep electrical appliances and furniture in a safe condition and supply on demand to the Local Authority a declaration to that effect;
- ensure that smoke alarms are installed and kept in proper working order. Furthermore, to supply, on demand to the Local Authority, a declaration as to the condition and positioning of such alarms;
- supply the occupiers with a written statement of the terms on which they occupy it.

4.6.3 In addition to the Mandatory licensing conditions stipulated in 4.6.2 above, Section 67 of the Housing Act 2004 allows Local Authorities to include other conditions within their licences. Such ‘discretionary conditions’ must be considered appropriate by the Local Authority for regulating the management, use and occupation, condition or contents of the property.

4.6.4 Licence conditions may include:

- restrictions on the use or occupation of the property;
- reasonable steps to be taken to reduce anti social behaviour;
- conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed under Section 65 of the Housing Act;
- conditions requiring such facilities and equipment to be maintained in proper working order;
- conditions requiring the licence holder or the manager of the house to attend training courses on applicable codes of practice.

4.6.5 Appendix 3 details the licence conditions that have been drafted for the purposes of licensing Houses in Multiple Occupation under the Mandatory scheme within Derwentside. Members approval of these conditions is now sought prior to any licence being issued by the Local Authority. In deciding whether or not to adopt these conditions, Members may wish to consider:

- that within 5 years of the licence being granted a Council Officer will carry out a full inspection of the property in accordance with Part 1 of the Housing Act 2004 (The Health and Safety Rating System – HHSRS). In granting a licence subject to the conditions set out in the document, it will not insulate the property from any enforcement action under the HHSRS in the future.
- a licence may not include conditions which:
 - impose restrictions or obligations on any person other than the licence holder, without that persons consent;
 - require or intend to secure any alteration in the terms of any tenancy or licence under which the property is occupied;
- that conditions requiring works to be undertaken will be carried out within such period or periods as determined under the licence;
- that in compiling these conditions legal opinion has been sought to ensure they are appropriate, proportionate and fall within the terms of the Act;
- that it is the intention to review the conditions periodically to ensure that they remain appropriate to the type of multi-occupied housing within Derwentside and the needs;
- that all landlords who are members of the Derwentside Private Landlords Association have been given the opportunity to comment on the draft licensing conditions;
- that neighbouring Local Authorities have also been forwarded a copy of the draft conditions to ensure consistency of approach.

5. RESOURCE IMPLICATIONS

- 5.1 The resource implications of setting up a licensing scheme for Mandatory Houses in Multiple Occupation were previously considered in an earlier report to Members.
- 5.2 It was concluded that there would be no additional resources required to implement the legislation. This matter would need to be part of the annual review of the scheme.

6. CONCLUSIONS

- 6.1 This report will be presented to Environment and Health Scrutiny Panel on 5 July 2007, and any comments from that meeting, will be reported to the Executive on 9 July 2007.

7. RECOMMENDATIONS TO BE MADE TO THE EXECUTIVE

- 7.1 Members accept the proposals contained within this report.
- 7.2 The Licensing Standards for Houses in Multiple Occupation, set out in Appendix 2 to this report, be approved. Once adopted, they will be published to make this document freely available to the public.

- 7.3 The Licensing Conditions for Houses in Multiple Occupation, set out in Appendix 3 to this report, be approved.
- 7.4 That the Director of Environmental Services, in consultation with the Portfolio Member for Health, be authorised to revise the Licensing Conditions and Prescribed Standards detailed in this report, when, and if, appropriate.
- 7.5 The 'fit and proper person' assessment criteria set out in paragraph 4.4 be approved.
- 7.6 Members consider a further report within the next 12 months reviewing annual operational costs, licence fees and scope of the licensing scheme. This report should be considered in detail by the Environment and Health Scrutiny Panel within their annual work programme.

8. REASONS

- 8.1 The proposals set out within this Report are in line with the requirements of the Housing Act 2004, which came into force on 6 April 2006.
- 8.2 By approving the proposed Standards for Licensable Houses in Occupation, the suitability of the accommodation and facilities offered can be determined. Limits can then be set on the maximum number of persons/households allowed to occupy the property.
- 8.3 Adopting licensing conditions will also enable conditions to be adhered to over the period of the licence and enable enforcement action to be taken where necessary to maintain standards.
- 8.4 In accepting this report, it will also enable the Council to:
- ensure each person having control or managing is a fit and proper person;
 - ensure that the management arrangements are satisfactory;
 - refuse or vary a licence where it is not satisfied with the circumstances of the application, applicant or the property.

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