

Delegated Decision

14 August 2024

Need for additional licensing for smaller Houses in Multiple Occupation (HMO's) in Durham City



Report of Corporate Management Team

**Alan Patrickson, Corporate Director of Neighbourhoods and
Climate Change**

**Councillor Mark Wilkes, Cabinet Portfolio Holder for
Neighbourhoods and Climate Change**

Electoral division(s) affected:

Durham City

Purpose of the Report

- 1 To undertake an evidence gathering study to consider whether there is a potential need to support the introduction of an additional licensing scheme for smaller Houses Multiple Occupation (HMOs) in Durham City.

Executive Summary

- 2 HMO's that accommodate 5 or more tenants are currently required under the Housing Act 2004 (the Act) to be licensed by the local authority. This is referred to as Mandatory Licensing of HMO's.
- 3 The Act enables local authorities to initiate additional licensing in accordance with their own circumstances which can allow for greater control over smaller HMO's that do not meet the definition of a mandatory licensable property ie; three or four residents.
- 4 Although it could be argued that the existing tools and powers provided by the Act are sufficient to enable officers to tackle sub-standard housing in the private rented sector, Durham University consider there to be a need for additional licensing for smaller student HMO's in Durham City as they believe that standards within these properties are poor.
- 5 An evidence gathering/feasibility study will provide officers with information on the condition of smaller HMO's and enable them to determine whether the implementation of an additional licensing scheme could be justified and withstand any legal challenge that may be raised.

Recommendation

- 8 NCC MT noted the contents of this report and the Corporate Director of Neighbourhoods and Climate Change agreed to the undertaking of the evidence gathering study, understand the possible outcomes and report the findings to members.

Background

- 9 An HMO is a property or part of a property where at least 3 tenants live, forming more than 1 household and who share toilet, bathroom, or kitchen facilities with other tenants.
- 10 An HMO with 5 or more tenants needs a licence from the local authority. Once licensed the owner/agent must comply with licensing conditions regarding the management of the premises, provision of facilities, safety of the occupants, together with taking reasonable steps to control the anti-social behaviour of tenants. The Act stipulates mandatory conditions that must be included in every licence granted and Councils can impose other specific property conditions that they consider necessary. A copy of the Durham County Council conditions is attached as Appendix 2.
- 11 The landlords/agents of non-licensable HMO's (ie those with less than 5 tenants) are still required to meet minimum standards regarding the management of the property, the provision of amenities and safety of tenants.
- 12 The Act has given local authorities the power to introduce additional licensing of those HMO's that fall outside mandatory licensing and allows greater control over these smaller HMO's. An Additional licensing scheme could cover a particular part or all the local authority area.
- 13 Before introducing an additional HMO licensing scheme, an authority needs to consider whether a significant proportion of HMOs of that description is being managed so ineffectively that problems arise for occupants or other members of the public. The Council would also be required to consult anybody that is likely to be affected by a designation and consider any representations made.
- 14 The intention of the evidence gathering study is to establish whether there is sufficient evidence to consider introducing an additional HMO licensing scheme in Durham City. The study will involve reviewing existing data, designing a survey methodology and analysing information from a survey of properties that are not currently subject to mandatory

licensing so would therefore not be subject to a regular inspection program.

- 15 Reports of damp and mould have been publicly highlighted with some tragic consequences of deaths due to the condition of certain rental properties.
- 16 Although no deaths have been reported in County Durham, the local authority were included as part of a £10m national Private Rental Sector Healthy Homes project administered by the formerly named Department for Levelling Up, Housing and Communities to be part of the “treatment phase” of the scheme. This meant an allocation of £130,000 to carry out activities around damp and mould in the private rental housing sector. This includes training for enforcement staff, improved web content and public information, equipment, and additional resource in enforcement teams. The scheme is to be delivered by 31st March 2025.
- 17 The scheme in DCC is being led by Planning and Housing in Regen but as the duties around enforcement of the private rented sector is split between Regen (Selective Licensing only) and Neighbourhoods and Climate Change (all other private rented properties including HMOs) there has been £35,000 aligned to the Community Protection Service for additional enforcement resource. This will allow a dedicated resource in to complement the existing Housing Action Team and will concentrate solely on evidence gathering and dealing with housing standards, predominantly in students properties.

Methodology

- 18 For several years, Durham University and its Students Union have championed the need for additional licensing in the city, mainly in and around the DH1 post code. This area of Durham has a high concentration of both licensed and unlicensed HMOs. The area was not in the scope of Selective Licensing when that scheme was being considered and implemented. As the DH1 post code is not part of the Selective Licensing areas in County Durham, the enforcement of housing standards will, and always has, fallen to the Community Protection service.
- 19 The University, the Student Union and its students have reported a problem with damp and mould in unlicensed HMOs, albeit the number of actual service requests received from residents of unlicensed HMOs is low and currently would not warrant the need for an additional licensing regime. Most of this information has been provided informally with either students reporting directly to the Student Union, who do not pass on the

information to the Housing Action Team or the University officers stating they have information from students alleging poor standards and also mismanagement of properties by landlords. They consider that an additional licensing regime in Durham City would improve this.

- 20 Due to the additional funding being received a project can be undertaken to now fully scope the scale of the problem of damp and mould, although when inspecting properties and dealing with service requests other risks and hazards will be identified which may give sufficient evidence to prove a widespread poor management practice in the private rental sector in houses of 3 and 4 residents.
- 21 There will also be consideration of whether any of the properties have actionable hazards under the Housing Health and Safety Rating System or management failures under specific HMO regulations.
- 22 It is difficult to know exactly how many HMO's there are in County Durham. Whilst a register of Licensed HMO's is maintained, smaller properties occupied by less than five people living as two or more households are more difficult to identify.
- 23 As there is no specific data source that identifies small HMO's, information will be compiled from various sources such as council tax records, planning approvals under Article 4, University data and our own records to identify the likely number and location of those HMO's that are currently not required to be licensed.
- 24 A representative sample of these properties will be surveyed between October 2024 and March 2025 to determine their condition with particular emphasis on damp and mould. It is envisaged that a 20% sample of HMO's identified as being occupied by 3 to 4 tenants will be surveyed. The sample size will be finalised once we are aware of the total number of smaller HMO's. Should it be possible to complete the inspection of the sample prior to the end of March the sample size will be increased.
- 25 The surveys will be undertaken by a Senior Environmental Health Officer with suitable experience and will rely on access being allowed to the premises as no power of entry will be available.
- 26 Efforts will be made in conjunction with Durham University and the Students Union to make occupants of the target population of properties aware that officers of the council will be undertaking these surveys in the hope that this will encourage occupants to allow entry to their accommodation. This may include information on the University website and letters/leaflets to student residents.

- 27 We do not intend to inform landlords/agents that we are undertaking the surveys so that we obtain an understanding of the conditions of the sample properties prior to the landlord/agent being informed of any defects. It is, however, our intention to follow the survey work with further work to educate those managing the properties about damp, mould and disrepair.
- 28 The Community Protection Service responds daily to requests from residents of the private rented sector who wish to complain about the condition of the property that they occupy. These requests for service are our priority and will be responded to within 5 working days.
- 29 The results of the surveys undertaken will be assessed in line with the extent to which any codes of practice have been complied with by persons managing the HMO's to indicate whether a significant proportion of smaller HMO's are being managed ineffectively.
- 30 Should the results of this study indicate that unlicensed HMO's in Durham are poorly managed there will follow an assessment of the options available to address this matter, one of which would be the introduction of an additional licencing scheme.
- 31 A report will then be prepared for Cabinet to consider what actions could be considered to address the matter. The various options available will be presented to Cabinet for a decision to be made on the next steps which may include further independent investigation or consultation on the introduction of an additional licensing scheme.
- 32 If the results do not indicate that unlicensed HMO's are poorly managed and an additional licensing scheme is not considered necessary, any issues in these premises will be addressed by responding to complaints and applying the tools and powers available under the Housing Act 2004 and associated regulations.

Background Papers:

None

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Appendix 1: Implications

Legal Implications

None- the officer will be appropriately authorised and will deal with issues of disrepair when they are found.

Finance

None

Consultation

None needed at this stage. Should a decision be made to consider an Additional Licensing scheme, a full consultation exercise would be needed.

Equality and Diversity / Public Sector Equality Duty

None

Climate Change

As part of the project, scoping as to the energy efficiency of each property will be carried out. Those with a lower rating will be targeted in the initial phase of the project

Human Rights

None

Crime and Disorder

None

Staffing

Existing staff will be used to undertake this work but specific funding has been received to allow the service to carry out the project.

Accommodation

None

Risk

There have been suggestions that an additional licensing scheme is needed in Durham City despite there being relatively low numbers of service requests being received. The reputational risk of not carrying out the project is that there will continue to be a belief that the scheme is needed but by carrying out

the it should confirm the conditions of the property definitively which could then form an evidence base for decision making

Procurement

None

Appendix 2 - Current DCC HMO licence conditions

Housing Act 2004 - Licensing of Houses in Multiple Occupation

Licence Conditions

General Conditions – applicable to all licensed Houses in Multiple Occupation (HMO's)

1. A copy of the licence shall be displayed within the common parts of the dwelling
2. The licence holder must supply to the occupiers of the house a written statement of the terms on which they occupy it.
3. The licence holder shall submit a copy of the tenancy agreement to Durham County Council within 14 days of the property becoming occupied.
4. The dwelling shall be occupied by no more than xxxx persons.
5. The dwelling is categorised as a [shared house] [bedsit] HMO. Any change in the style or nature of occupation shall be notified to Durham County Council in writing, including a copy of any revised tenancy agreement.
6. The dwelling shall comply with the prescribed standards and management practices for deciding the suitability for occupation of a house in multiple occupation, as set down in Schedule 3 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 SI No. 373, and the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) Regulations 2007 SI No. 1903.
7. The dwelling shall comply with the Durham County Council's adopted standards for [shared house] [bedsit] HMO's.
8. The licence holder must display, within the common parts of the house, his or her contact details together with those of any manager or agent appointed in connection with the running of the house. This must include their: - • Name • Address • Contact Telephone Number (and alternative contact number(s) if the licence holder and / or manager cannot be contacted within a 24 hour period by a tenant or relevant Durham County Council Officer).
9. The Licence holder shall provide a copy of the current gas safety certificate to Durham County Council within 14 days of its renewal. The certificate must be issued by a gas safe registered engineer confirming

that all appliances, flues and installation pipe work provided for use by the tenants are in a safe condition.

10. The Licence holder shall provide a copy of a Periodic Inspection Report (PIR) for the electrical installation to Durham County Council, confirming that the installation is safe for use, as specified in BS7671: 2008. The electrical certificate must be issued by a 'competent person' and be valid for a period of not less than 5 years from the date of inspection. The following installations, where applicable, shall be inspected and tested: • General electrical installation • Fire alarm system • Smoke / heat detection system • Emergency lighting system A 'competent person' means an approved electrical contractor who is a member of one of the following organisations, or registered with them as an authorised competent person: - NICEIC, BRE Certification Ltd, British Standard Institution, ELECSA Ltd, or NAPIT Certification Ltd. Similar schemes / organisations as approved by the Department of Communities and Local Government will also be acceptable. In exceptional circumstances, the Council may accept a PIR from an electrician who is not registered by one of the aforementioned organisations, upon consideration of the person's proof of qualifications.
11. The Licence holder shall provide a copy of the current annual Portable Electrical Appliances Test (PAT) Report for all such appliances provided by the landlord. The Report must be issued by a 'competent person' in accordance with the Institute of Electrical Engineers Code of Practice for In-Service Inspection of Testing of Electrical Equipment. A 'competent person' has the same meaning as that for clause 10.
12. The Licence holder must notify Durham County Council in writing prior to any transfer of ownership or management of the dwelling.
13. The Licence holder must seek and obtain written permission from Durham County Council before making any material changes to the layout, amenity provision, fire precautions or mode of occupation.
14. The Licence holder must notify the tenants and Durham County Council in writing immediately of any change of their circumstances in connection with the running of the dwelling. Such changes include home address and contact details or those of any manager or appointed agent.
15. The Licence holder shall ensure that at all times gardens, yards, and other areas within the curtilage of the dwelling are kept in a clean and tidy condition and free from infestations.

16. The Licence holder shall take all reasonable and practical steps to prevent, or where appropriate reduce, anti-social behaviour by persons occupying or visiting the dwelling. If requested, written notification of any such steps shall be given to Durham County Council within 10 working days from the date of the request.
17. The Licence holder shall provide a written Fire Risk Assessment (FRA) for the dwelling in accordance with the requirements of the Regulatory Reform (Fire Safety) Order 2005. The FRA shall contain, as a minimum, such information and instructions so as to record:
 - Any significant findings identified from carrying out the FRA
 - Identification of any fire hazards, including details of sources of ignition and sources of fuel
 - Persons at risk from any fire hazards
 - Measures required to evaluate, remove, reduce and protect from risk
 - Details of the person carrying out the FRA, the date the FRA was carried out and the date of the next review.A copy of the FRA shall be displayed at the premises and a further copy provided to Durham County Council. This assessment must be reviewed at least annually and updated to reflect any changes that may occur.
18. The Licence holder shall ensure that appropriate fire precautions are provided within the dwelling in accordance with statutory and/or local guidance and maintained in proper working order. The licence holder shall, on demand, submit a written declaration to Durham County Council as to the condition and positioning of all equipment, within 10 working days from the date of the request.
19. The Licence holder shall ensure that appropriate instruction and or training is given to each tenant at the beginning of their occupancy, regarding all fire precautions and equipment provided in the dwelling. This must include, but not limited to, understanding the alarm systems, the importance of the fire doors, and protecting the escape route, keeping the escape route free of obstructions and the use of fire fighting equipment.
20. The Licence holder and or his/her manager must not unreasonably cause or permit the gas or electrical supply that is used by any occupier at the dwelling to be interrupted.
21. The Licence holder and or his/her manager must not unreasonably cause or permit the water supply or drainage system that is used by any occupier at the dwelling to be interrupted.
22. The Licence holder must ensure that suitable refuse / recycling receptacles are provided for the storage of household refuse within the accommodation, and also, that there are adequate receptacles for the

storage of rubbish within the boundary of the dwelling. These receptacles must be made readily accessible to the refuse / recycling collection service on the day of collection and the empty containers returned within the boundary of the property as soon as practicable.

23. The Licence holder shall ensure that all 'relevant furniture' provided by the landlord meets the Furniture and Furnishings (Fire) (Safety) Regulations 1988 and shall, on demand, submit a written declaration to Durham County Council as to the condition of all 'relevant furniture', within 10 working days from the date of the request. 'Relevant furniture' means most items of furniture provided by the landlord including sofas, beds, mattresses, pillows and cushions. It does not include carpets, curtains or duvets. The Regulations apply to all furnishings within lettings commencing after 1st January 1997, but do not apply to furniture made before 1950 or to re-upholstered furniture made before that date. If confirmation cannot be ascertained that all relevant furniture meets the requirements of the Regulations, the Licence holder shall take all appropriate steps without delay to remove, or otherwise make safe, all non-compliant items.
24. The Licence holder shall ensure that deadlocks on final exit doors and any exit windows must be capable of being operated without the use of a key. Advisory: Final exit door(s) should be fitted with a five lever mortise deadlock conforming to BS EN 12209 Security Grade 3 (minimum) and cylinder conforming to BS EN 0130 Security Grade 3 (minimum), allowing escape from the building without use of a key e.g. thumb turn release.
25. The Licence holder shall ensure compliance with any requirement set down within Part B – Specific Conditions - as they may relate to the dwelling to which this licence is for the time being in force.
26. The Licence holder must, if required by the Council, attend training or otherwise demonstrate competence in relation to any Code of Practice appropriate under section 233 of the Housing Act 2004.
27. The licence holder must be resident in the UK.
28. The licence holder must inform Durham County Council in writing within 14 days of any 'relevant criminal convictions', including impending cases and those subject to appeal proceedings.

Relevant criminal conviction' means:-

- Any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003

- Practising of 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.
- A contravention of any provision of the law relating to housing, public health, environmental health, or of landlord and tenant law.
- Being refused a licence or had a licence revoked for any property in relation to HMO, additional or selective licensing under the Housing Act 2004
- Being the owner or manager of any property that has been the subject of an interim or final management order or a special management order under the Housing Act 2004.
- Demonstrating any conduct or business practices which are considered by Durham County Council to indicate unsuitability to be a licence holder or manager of a licensed property.

Footnote to Conditions: The above conditions do not over-ride other legislative responsibilities incumbent on persons in control of private rented properties. It follows that proceedings may be considered by a number of appropriate enforcing authorities for offences relating to housing conditions, tenancy conditions, fraud and other criminal matters

Appendix 3 – Methodology for the project

A Feasibility Study to consider if there is a need for Additional Licensing of smaller HMO's in County Durham

Scope of Work

A study to establish whether there is sufficient evidence to consider introducing an additional HMO licensing scheme in County Durham. The study will involve reviewing existing data, designing a survey methodology and analysing information from a survey of properties that are not currently subject to mandatory licensing.

Additional licensing provisions are provided in the Housing Act 2004 for local authorities to initiate in accordance with their own particular circumstances. It enables greater control over smaller HMOs that do not meet the definition of a mandatory licensable HMO.

Before introducing an Additional HMO Licensing scheme, an authority needs to consider whether a significant proportion of HMOs of that description is being managed so ineffectively that problems arise for occupants or other members of the public.

A local authority also needs to consider whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question, and that making the designation will significantly assist them to deal with the problem or problems.

Focus of the Survey

It is not the intention of the legislation that additional licensing should apply to all types of HMO across an entire local authority area but that it should be used to tackle specific problems in specific areas.

As Durham University and its students have reported a problem with damp and mould in unlicensed HMO's there will be a particular emphasis on this in the surveys undertaken and this will be used as an indicator of poor management of the property if significant problems exist. There will also be consideration of whether any of the properties have actionable hazards under the Housing Health and Safety Rating System or management failures under specific HMO regulations.

Methodology

It is difficult to know exactly how many HMO's there are in County Durham. Whilst a register of Licensed HMO's is maintained, smaller properties

occupied by less than five people living as two or more households are more difficult to identify.

There is no specific data source that identifies small HMO's. Information will be compiled from various sources such as council tax records, planning approvals under Article 4, University data and our own records to identify the likely number and location of those HMO's that are currently not required to be licensed.

A representative sample of these properties will be surveyed between October 2024 and March 2025 to determine their condition with particular emphasis on damp and mould. It is envisaged that a 20% sample of HMO's identified as being occupied by 3 to 4 tenants will be surveyed. The sample size will be finalised once we are aware of the total number of smaller HMO's. Should it be possible to complete the inspection of the sample prior to the end of March the sample size will be increased.

The surveys will be undertaken by a Senior Environmental Health Officer with suitable experience and will rely on access being allowed to the premises as no power of entry will be available.

Efforts will be made in conjunction with Durham University and the Students Union to make occupants of the target population of properties aware that officers of the council will be undertaking these surveys in the hope that this will encourage occupants to allow entry to their accommodation. This may include information on the University website and letters/leaflets to student residents.

We do not intend to inform landlords/agents that we are undertaking the surveys so that we obtain an understanding of the conditions of the sample properties prior to the landlord/agent being informed of any defects. It is, however, our intention to follow the survey work with further work to educate those managing the properties about damp, mould and disrepair.

Where entry is denied, the occupants will be asked if this is because there are no issues with disrepair, damp/mould, poor management, or lack of facilities that need addressing. Where this is the case, the data will be recorded as such within the results of the survey.

A calling card/letter will be left at any property where the officer is unable to speak to the occupants advising of the reason for the visit to the premises and a request that the occupants contact the officer to arrange a convenient time to revisit and inspect the property. The occupants will also be advised that if no contact is made with our officer there would be an assumption that the property does not have any issues that need assessing or addressing.

The Community Protection Service responds daily to requests from residents of the private rented sector who wish to complain about the condition of the property that they occupy. These requests for service are our priority and will be responded to within 5 working days. Any requests of this nature from non-licensed HMO's will be recorded but not included in the original representative sample of the survey.

The exception to this will be if there is a complaint about a premises that has previously been inspected due to the problem occurring at a later date within the survey timeframe. An example of this may be the emergence of damp and mould further into the occupant's tenancy.

Any problems identified that are category 1 or 2 hazards under the HHSRS will be reported by the surveying officer to the Housing Action Team for action.

A survey form for the purposes of the inspection will be created prior to the inspections being undertaken to ensure that there is a record kept for further analysis when compiling the survey results and conclusions.

Energy Performance Certificate rating information will be gathered for the houses surveyed to inform any indication of a correlation between poor energy efficiency and the presence of damp and mould.

Analysis and interpretation of the results

Before introducing an Additional HMO Licensing scheme, an authority needs to consider whether a significant proportion of HMOs of that description is being managed so ineffectively that problems arise for occupants or other members of the public.

The management duties required under the Management of HMO regulations are:

- The manager must prominently display name, address and telephone number within the HMO.
- Take safety measures which inc. structure, repair number of occupiers etc
- Maintain supply of water, electricity, drainage etc
- Maintain common parts in clean, safe condition
- Maintain living areas in repair etc
- Provide waste disposal

The results of the surveys undertaken will be assessed in line with the above parameters to determine whether there is an indication that the property may be ineffectively managed by the landlord/agent.

The results from individual properties will then be compiled to present an indication of whether the sample population and therefore the unlicensed HMO's as a whole are ineffectively managed and may benefit from the introduction of an additional licencing scheme.

Should the results of this study indicate that unlicensed HMO's in Durham are poorly managed there will follow an assessment of the options available to address this matter, one of which would be the introduction of an additional licencing scheme.

A report will then be prepared for Cabinet to consider what actions are needed to address the matter. The various options available will be presented to cabinet for a decision to be made on the next steps which may include further investigation or consultation on the introduction of an additional licensing scheme.

If the results do not indicate that unlicensed HMO's are poorly managed and an additional licensing scheme is not considered necessary, any issues in these premises will be addressed by responding to complaints and applying the tools and powers available under the Housing Act 2004 and associated regulations.