

# Gloucester City Council

<b>Meeting:</b>	<b>Cabinet</b>	<b>Date:</b>	<b>21<sup>st</sup> June 2017</b>
<b>Subject:</b>	<b>Policy options to improve the conditions in privately rented properties</b>		
<b>Report Of:</b>	<b>Cabinet Member for Housing and Planning</b>		
<b>Wards Affected:</b>	<b>All</b>		
<b>Key Decision:</b>	<b>No</b>	<b>Budget/Policy Framework:</b>	<b>No</b>
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<b>Appendices:</b>	<b>None</b>		

## FOR GENERAL RELEASE

### 1.0 Purpose of Report

- 1.1 To respond to the motion raised in the Council meeting of the 1/12/16, for Cabinet to consider introducing a Selective Licensing Scheme for landlords in parts of the city where the quality of private rented accommodation falls below an acceptable level
- 1.2 To explain the criteria and process required in implementing discretionary HMO licensing.
- 1.3 To review other policy options to ensure that landlords provide decent, safe and secure housing conditions for people to live in.
- 1.4 To recommend policy options for implementation of these other enforcement interventions.

### 2.0 Recommendations

2.1 Cabinet is asked to **RESOLVE** that:

- (1) A further report be brought to Cabinet towards the end of 2018 recommending whether or not additional HMO licensing should be implemented in Gloucester and recommending the implementation of other policy options detailed in this report.
- (2) A policy for the implementation of fixed penalty notices for housing act offences be developed within the next six months.
- (3) The investigation for the case for a discretionary licensing scheme is postponed until 2018 which will be after the extended mandatory HMO licensing scheme has been implemented.
- (4) A policy for the implementation of fixed penalty notices be agreed with the relevant Cabinet Member within the next six months.

### **3.0 Background and Key Issues**

#### **3.1 The policy and procedure for implementing a discretionary licensing scheme**

3.2 The Housing Act 2004 makes it a requirement for all Local Authorities to licence Houses in Multiple Occupation (HMO's) which are three storeys or above and accommodate five or more tenants. This mandatory scheme is the only scheme currently being operated in Gloucester and to date we have 211 licensed HMO's.

3.3 This legislation also gives Local Authorities the power to implement either additional or selective discretionary licensing schemes where the prescribed conditions exist to warrant such action:-

- Additional licensing. This enables the Local Authority to designate specific areas or the whole of their area to an HMO licensing scheme that goes beyond that of the mandatory scheme, where there is a significant proportion of the HMO's in that area that are being managed ineffectively.
- Selective licensing. This can be used for all private rented properties (not just HMO's) in an area where there is low housing demand and/or high levels of anti-social behaviour.

3.4 However, before either of these schemes can be implemented the Local Authority will have to be able to demonstrate that the designation in combination with other measures would lead to a reduction in or elimination of the problem that has given rise to the need to introduce the scheme.

3.5 Before making a decision to designate an area for discretionary licensing, the authority must consider whether there are alternative means of addressing the issues, for example, through the introduction of a voluntary accreditation scheme for landlords or by the use of the range of enforcement tools it has at its' disposal. It must also ensure that any proposed licensing scheme fits with its overall housing strategy and its policies on homelessness and empty dwellings.

3.6 The legislation allows Local Authorities to design a scheme according to their specific requirements and can be used to specify types of HMO's and/or the numbers of occupants. For example, Oxford City Council require all HMO's (regardless of size and number of occupants) to be licensed, whereas Brighton and Hove have designated a specific area in which HMO's of two or more storeys with 3 or more tenants have to be licensed.

3.7 Before a discretionary licensing scheme can be implemented, a minimum consultation period of 10 weeks is required and should include local residents; tenants; landlords; managing agents and other members of the community who live or operate businesses or services in the proposed designated area.

3.8 In the meantime, the Government has recently announced that they intend to extend mandatory licencing to all HMO's with five or more tenants (i.e. to include all two storey HMO's). They are suggesting at this stage that Local Authorities will have discretion as to whether they will apply across the whole of their area or to specific areas.

### 3.9 Review of other enforcement options

3.10 The Housing Act 2004 provides local authorities with enforcement tools to improve private rented properties that are based on the severity of risk that the property presents. These can be any one of the following interventions:-

- Hazard awareness notice, lowest level of intervention and merely raises the existence of a low risk hazard(s) to the Landlord.
- Improvement notice, requires the Landlord to carry out remedial work to address higher risk hazards.
- Prohibition Notice, this prohibits the further use of a property or part of a property from residential occupation when the risk cannot be mitigated.
- Emergency Remedial Action which is used to immediately remedy a hazard that is of imminent risk
- Breach of Management Regulations, this applies only to HMO's and gives the council ability to prosecute landlords who fail to adequately manage their properties.

3.11 Failure to comply with the above (apart from the hazard awareness notice) can result in further enforcement such as simple cautions, prosecutions and/or work in default.

3.12 More recently, the Housing and Planning Act 2016 has added the ability to issue fixed penalty notices for Housing Act 2004 offences with a maximum financial penalty of £30,000/offence. This act will also enable local authorities to issue Banning Orders for the very worst Landlords and also makes provision for local authorities to develop a Rogue Landlord database for sharing of information between local authorities.

### 3.13 The case for Gloucester

3.14 In December 2014, an Overview and Scrutiny Task And Finish Group initiated actions to improve housing conditions in the private rented sector. The Task and Finish group concluded with a report to Council recommending the continuation of the proactive HMO inspection and intervention work. This ongoing programme is discovering that the conditions for discretionary licencing may exist, particularly in certain areas of the city.

3.15 Quantifiable evidence would be needed to support the hypothesis that we do have areas where discretionary licensing would be beneficial, therefore an HMO condition survey would need to be carried out. The survey would examine:-

- Numbers and size of HMO's
- Numbers of tenants in the properties
- Condition and management of the properties
- Levels of anti-social behaviour in the area

3.16 Seven prosecutions have been brought against Landlords since the implementation of the proactive HMO inspection programme. Prosecutions are expensive and time intensive and whilst the costs are normally recovered, the fine is not received by the

local authority. The ability to use fixed penalty notices as an alternative to prosecution is welcomed, not only will they be less resource intensive, the fine will be an income to the local authority. Importantly, it will also motivate landlords to comply with their statutory responsibilities more expediently.

#### **4.0 Asset Based Community Development (ABCD) Considerations**

4.1 Communities benefit from well managed rented accommodation and the health benefits from good quality homes is well documented. Within the county, the link between health and housing is made in the Gloucestershire Health and Wellbeing Strategy 2012-2032 which tracks, county wide, the number of category 1 housing hazards that have been eliminated by the actions of local authority intervention. This, in turn, makes quantifiable savings to the NHS by preventing a hazard from resulting in ill health. Residents, businesses and landlords in an area also have a role in ensuring the improvements are sustained, if a discretionary licensing scheme is to be introduced in the future, the consultation process will be used to ask stakeholders their opinions as to how the community can help the council maintain standards.

#### **5.0 Alternative Options Considered**

5.1 Gloucester currently has a voluntary accreditation scheme for student accommodation. A scheme to cover all private rented properties, called Fit to Rent, was implemented in 2010 and although it was free to landlords, it did not attract many landlords and therefore an extension of the existing scheme as an option, can be discounted as an alternative to a licensing scheme.

5.2 The Council can choose not to implement the new provisions in the Housing and Planning Act 2016, however, it will then lose the opportunity to recover the income from fixed penalty notices and the ability to impose the additional restrictions on the very worst landlords. Therefore, this option is not recommended.

#### **6.0 Reasons for Recommendations**

6.1 As the Government are about to extend mandatory licensing, it is recommended that any plans to investigate the case for discretionary licensing scheme are postponed until the extended mandatory scheme has been implemented and we are clear on how the changes will affect Gloucester. The extended scheme may cover all the HMO's that are a cause for concern and consequently, the introduction of a discretionary scheme at this stage may result in unnecessary expense and work.

6.2 The ability to issue fixed penalty notices will provide an expedient method to ensure landlords comply with legislation relating to rented accommodation

#### **7.0 Future Work and Conclusions**

7.1 Gloucester city council has around 800 HMO's of which around 250 are licensable under the current mandatory licensing scheme. Government proposals to extend the mandatory scheme will encompass significantly more HMO's but will not include all HMO's for example, those with less than five tenants. There are areas of the city where the condition and management of HMO's falls below acceptable standards and it is possible that this extended scheme will not improve all of the HMO's in these areas.

- 7.2 The extended mandatory licensing scheme is expected to be implemented in the autumn of 2017. During the first year of the extended scheme, the effects on the management of the HMO stock in the city will be monitored and used to identify any areas or types of housing that would benefit from additional licensing provisions. The details will be included in a report to Cabinet towards the end of 2018.
- 7.3 The costs involved in implementing a discretionary licensing scheme will be investigated and included in the report to Cabinet in 2018.
- 7.4 The ability to serve fixed penalty notices for housing act offences, is already in force, however the government guidance on how local authorities should develop a policy for determining the appropriate level of penalty has only recently been published. This policy should now be developed within the next six months in consultation with the Senior Management Team and the Cabinet Member for Housing and Planning.
- 7.5 The regulations that will set out the framework for banning orders and a rogue landlord database is expected to be in force towards the end of 2017, however, guidance is expected to be issued prior to implantation and will provide the basis for a policy and/or procedure to be developed in the future.

## **8.0 Financial Implications**

- 8.1 The costs involved in implementing a discretionary licensing scheme relate to staffing and carrying out an HMO survey.
- 8.2 Cheltenham Borough Council recently researched the costs for an HMO survey and received quotations in the region of £100k. In addition to this cost, a temporary staff resource would be required to commission this HMO survey; analyse survey results; carry out a stakeholder consultation exercise and implement the licencing regime. It is estimated that a 0.5 FTE would be required for around one year at a cost of around £18,000. Therefore it is estimated that a budget of around £118,000 would be required to investigate and set up any discretionary licensing scheme.
- 8.3 The permanent staff resource that would be required to administer the licencing regime would be recovered from the licencing fee income.
- 8.4 A fixed penalty regime for failure to comply with Housing Act offences will bring in additional income to the Council.

(Financial Services have been consulted in the preparation this report.)

## **9.0 Legal Implications**

- 9.1 The discretionary licensing provisions are found in part 2 of the Housing Act 2004
- 9.2 The ability to issue fixed penalty notices; to introduce a rogue landlord database and implement banning orders are found in the Housing and Planning Act 2016

(One Legal have been consulted in the preparation this report.)

## **10.0 Risk & Opportunity Management Implications**

- 10.1 There are no key risks identified in the recommendations of this report.

## 11.0 People Impact Assessment (PIA):

11.1 The PIA Screening Stage was completed and did not identify any potential or actual negative impact, therefore a full PIA was not required.

## 12.0 Other Corporate Implications

### Community Safety

12.1 Anti-social behaviour is often linked to landlords and tenants of poorly managed and overcrowded HMO's. A licensing regime ensures the properties are regularly inspected and issues related to poor management can be addressed.

### Sustainability

12.2 Well maintained private rented properties help to support sustainable and cohesive communities.

### Staffing & Trade Union

12.3 None

Potential Media Interest – to be completed for SMT/Cabinet Briefing purposes. Remove prior to publication of report. Draft report to be sent [pressoff@gloucestershire.gov.uk](mailto:pressoff@gloucestershire.gov.uk).

**Background Documents:** Approval steps for additional and selective licensing designations in England.

<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/housing/pdf/154091.pdf>

Housing and Planning Act 2016

[http://www.legislation.gov.uk/ukpga/2016/22/pdfs/ukpga\\_20160022\\_en.pdf](http://www.legislation.gov.uk/ukpga/2016/22/pdfs/ukpga_20160022_en.pdf)