

Title: Proposal to adopt an Additional Licensing Scheme
Lead Officer: Paul Hughes (01926 456729)
Portfolio Holder: Councillor Matecki
Wards of the District directly affected: All

Summary

This report makes the case for the introduction of an Additional Licensing Scheme in Warwick district. Additional Licensing is a discretionary form of House in Multiple Occupation (HMO) Licensing which can be applied in respect of 3 and 4 person HMOs.

There are known to be at least 1409 HMO's operating in total in the district. There are currently 604 (43%) HMOs which are already subject to Mandatory HMO Licensing and 805 (57%) which are currently non- licensable. Designating an area as subject to an Additional Licensing Scheme would bring 3- and 4-person non-licensable HMOs in the designated area into scope enabling the Council to better regulate property standards and management.

Recommendation(s)

- (1) That Cabinet considers a feasibility study (Appendix 1) on the introduction of a proposed Additional Licensing scheme**
 - (2) That Cabinet approves a statutory public consultation exercise to take place between 9th January and 20th March 2023.**
 - (3) That Cabinet receives a further report following the above consultation exercise to determine whether to proceed and if so, to agree the scheme arrangements and to issue the formal Additional Licensing scheme designation.**
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1 Background/Information

- 1.1 Mandatory HMO Licensing was introduced in 2006 and applied to HMOs with 5 or more persons living as 2 or more households in properties containing 3 or more storeys.
- 1.2 In 2018, Mandatory Licensing was extended to cover all HMOs with 5 or more persons living as 2 or more households, irrespective of the number of storeys, with the exception of certain purpose-built blocks of flats. In Warwick District there are currently 604 such licensed HMOs.
- 1.3 HMO Licensing requires landlords to meet minimum property standards and comply with a set of standard conditions designed to ensure they are maintained in good order. The application process requires landlords to submit a range of certificates to demonstrate that appropriate safety standards are in place and maintained. Landlords are also required to pass a 'fit and proper person test' as part of the application process. Every HMO which is the subject of an application is inspected before a licence is issued and inspections

throughout the term of the licence can also be undertaken. Each licence places a limit on the number of permitted occupiers to prevent overcrowding.

- 1.4 Mandatory licensing has proved to be instrumental in improving standards in HMOs with 5 or more persons. Prospective tenants can have confidence that a licensed HMO will meet minimum standards and will often engage with the Council if they identify any issues concerning repairs or management.
- 1.5 Many landlords of licensed HMOs have established good working relationships with the Council through the licensing process and are keen to ensure they remain compliant. A better understanding of their responsibilities also often promotes a better relationship with their tenants.
- 1.6 A number of prosecutions have taken place against landlords who have failed to licence their HMOs, and these have been given publicity to reinforce the requirement for landlords to operate within the legal framework.

1.7 **Non-Licensable HMOs**

- 1.7.1 In Warwick district, there are understood to be 805 non-licensable HMOs. Apart from some contained in Purpose Built Student Accommodation (PBSA), these will contain 3 or 4 persons living in 2 or more households. This represents 57% of the HMO stock. This is likely to be an under-estimate because there will be more HMOs in operation that the Council are unaware of, and due to their relatively small size, it can be expected that some will switch between letting to a family/couple to HMO as tenancies come to an end.
- 1.7.2 The Council will respond to requests for service from occupiers of non-licensable HMOs but does not have the resources to embark on a full-scale inspection programme to ensure they are all brought to standard within a defined timescale. Furthermore, statutory powers are limited to dealing with the more serious hazards under the Housing Health & Safety Rating System (HHSRS) and compliance with the HMO Management Regulations. Unlike licensed landlords, they are not required to pass a fit and proper person check or submit regular safety documentation to the Council and neither are they subject to the same controls requiring them to deal with matters concerning their tenant's noise or waste issues which may affect neighbouring residents.

1.8 **Additional Licensing**

- 1.8.1 Additional Licensing is a discretionary form of HMO licensing for 3 and 4 person HMOs which are outside the scope of Mandatory Licensing. Section 56 and 57 Housing Act 2004 set the criteria required for such schemes.
- 1.8.2 The Council is able to designate the area (i.e., the whole) or an area (i.e., a part) of its district as subject to additional licensing subject to certain conditions. It must be satisfied that a significant proportion of the HMOs of that description are being managed ineffectively as to give rise or be likely to give rise to one or more particular problems either for those occupying the HMOs or for members of the public.
- 1.8.3 Before making a designation, the Council must take reasonable steps to consult persons who are likely to be affected by the designation and consider any representations made in accordance with the consultation and not withdrawn.
- 1.8.4 Section 57 Housing Act 2004 requires the Council to also take the following considerations into account when exercising its power under Section 56 to designate Additional Licensing areas. The Council must ensure that any exercise of the power is consistent with the Council's overall housing strategy, and it must seek to adopt a co-ordinated approach in dealing with homelessness,

empty properties and anti-social behaviour affecting the private rented sector as regards combining licensing with other courses of action available to the Council and as regards combining licensing with measures taken by others.

1.8.5 The Council must not make a designation under Section 56 unless it has considered whether there are other courses of action available to it that might provide an effective method of dealing with the problem(s) and it considers making the designation will significantly assist in dealing with the problem(s), whether or not they take any other course of action as well.

1.8.6 The issues in 1.8.4 and 1.8.5 are addressed in the Feasibility Study (Appendix 1).

1.9 **Feasibility Study**

1.9.1 The Feasibility Study has been prepared to examine the case for introducing Additional Licensing. The report considers the background and legal context before considering the evidence base, drawing on a number of data sources. It then considers the advantages and disadvantages a scheme might offer, alternative options with some analysis and conclusions.

1.9.2 The Feasibility Study demonstrates that 88% of non-licensable HMOs are located in Leamington Spa/Whitnash (CV31 and CV32) postcode areas. 65% of all non-licensable HMOs are houses and flats occupied by university students. Warwick (CV34) and Kenilworth (CV8) post code areas each account for only 6% of the known non-licensable HMO stock, i.e., 12% in total. It is not surprising therefore that service requests linked with non-licensable HMOs across the Private Sector Housing, Environmental Protection and Contract Services teams are mainly centred on Leamington Spa wards.

1.9.3 Although the focus of HMO Licensing is on ensuring the health, safety, and welfare of the occupiers, it is important to note that the service requests data in the Feasibility Study shows a significant number of requests associated with noise nuisance and various waste management issues in both licensed and non-licensable HMOs. This is evidence to support the claim that a significant proportion of non-licensable HMOs have a management issue or particular problem for the occupiers or members of the public. These issues could be addressed through Additional Licensing by placing the same licence conditions on HMO landlords which are not currently subject to licensing controls so that they have a level of accountability for their tenants' behaviours.

1.9.4 The extension of Mandatory HMO Licensing in 2018 enabled the Feasibility Study to focus on the inspection findings of all of the 5-person (1 and 2 storey) HMOs which have since been licensed. These were considered to be of similar character and size to the 3 and 4 person HMOs and enabled some interesting analysis. Of 127 of these HMOs, 115 (91%) were found to be deficient in fire safety measures and many had multiple defects.

1.9.5 There are a number of case studies in the Feasibility Study which highlight some of the more serious issues which can be found in 3 and 4 person HMOs arising from service requests such as absence of heating and hot water, flooding, fire safety and overcrowding. These cases have involved tenants who were some of the more vulnerable members of society and have included the need for formal action such as service of Improvement Notice, Prohibition Order, and prosecution.

1.9.6 Since the introduction of the Council's HMO Licensing and Planning Permission Policy in April 2021, we can be certain that landlords submitting licence applications will be required to obtain planning consent for HMO use before they

are granted an HMO Licence. Under an Additional Licensing Scheme, 3 and 4 person HMOs would similarly be forced to ensure they have the relevant planning consent when applying for HMO Licences. There are currently 74 cases of non-licensable HMOs requiring planning enforcement investigation.

- 1.9.7 The Feasibility Study concludes by supporting a consultation on a district-wide Additional Licensing Scheme. Whilst the evidence base clearly highlights particular issues in Leamington Spas wards, there are benefits of having a level playing field for landlords and tenants alike, irrespective of HMO location. Restricting a scheme to apply only in Leamington Spa could encourage development outside of the Leamington ward boundaries. Although much of the data is focused on Leamington Spa, it does not follow that property standards are necessarily lower than those found in non-licensable HMOs in Warwick or Kenilworth for example. It would be prudent for Members to consider the results of the public consultation exercise before taking a final decision on whether to designate any scheme on a district-wide basis.

2 Alternative Options available to Cabinet

- 2.1 The Council could choose not to proceed with Additional Licensing and instead continue to deal with non-licensable 3 and 4 HMOs on a case-by-case basis as and when service requests are received. However, this is not considered to be a strategic approach and will not deal most effectively with the issues highlighted in the Feasibility Study.
- 2.2 The Feasibility Study refers to a range of alternative options that the Council could follow instead of adopting an Additional Licensing scheme. Each is considered in turn. However, none of the options has the potential to effectively address the range of issues encountered in an appropriate timeframe and suitably resourced.

3 Consultation and Member's comments

- 3.1 The Leader of the Council supports the proposal to investigate the adoption of an Additional Licensing scheme.
- 3.2 There is a statutory public consultation period of 10 weeks on any proposals to designate an area as subject to Additional Licensing. It is recommended that this is approved to take place between 9th January and 20th March 2023. Cabinet would then consider the results of the consultation in July 2023 and take a decision on whether to proceed with an Additional Licensing scheme. If the decision is to proceed, at the same time, Cabinet would approve the scope of the scheme and formal designation of the area subject to Additional Licensing would then follow.
- 3.3 The public consultation will consult as widely as possible to incorporate the views of all of those who may be affected by the designation. A consultation Plan setting out the details of how the consultation will be conducted is shown in Appendix 2.

4 Implications of the proposal

4.1 Legal/Human Rights Implications

- 4.1.1 The Council is duty bound to follow the steps set out in Section 56 and 57 Housing Act 2004 in order to implement Additional Licensing. There are no specific human rights implications of the proposal.

4.2 **Financial**

- 4.2.1 HMO Licence fees are controlled under Section 63 Housing Act 2004. The Council can require applications to be accompanied by a fee fixed. When fixing fees, the Council may consider all costs incurred in carrying out their HMO licensing functions. This will include all necessary staffing and support costs required in operating a scheme. The fee levels should aim to be cost neutral and will need to be subject to separate approval before the scheme is formally launched.
- 4.2.2 There is a need to ensure that fees for any proposed Additional Licensing scheme are proportionate to the Council's fees for Mandatory Licensing.

4.3 **Council Plan**

- 4.3.1 People - Health, Homes, Communities. An Additional Licensing scheme would have benefits in each of these areas by improving housing conditions. The links between housing and health are well established. Communities would also benefit from enhanced environmental conditions.
- 4.3.2 Money- Infrastructure, Enterprise, Employment. Additional Licensing will generate funding to create new posts within the Private Sector Housing team. Bringing HMOs up to standard will support the building trade.
- 4.3.3 People - Effective Staff. New posts will attract staff with the right skills to be effective
- 4.3.4 Services - Maintain or Improve Services. Additional staff will provide resilience and provide strength in depth to deal with a greater workload
- 4.3.5 Money - Firm Financial Footing over the Longer Term. The rationale for HMO Licensing is to be self-financing so that licence fees cover the cost of the service.

4.4 **Environmental/Climate Change Implications**

- 4.4.1 Additional Licensing can only have a positive environmental impact. HMO inspections will highlight thermal efficiency and excess cold issues. Licence conditions will provide controls over anti-social behaviour and waste issues.

4.5 **Analysis of the effects on Equality**

- 4.5.1 There are no direct impacts of the proposal on equality.

4.6 **Data Protection**

- 4.6.1 There are no specific data protection issues arising.

4.7 **Health and Wellbeing**

- 4.7.1 HMOs will be required to meet minimum standards in regard to health safety and welfare. This will relate to all aspects of human habitation and help to drive standards up.

5 **Risk Assessment**

- 5.1 Additional Licensing requires the Council to follow the statutory process set out in Section 56 and Section 57 Housing Act 2004. This includes statutory public consultation and making a formal designation once there is agreement to proceed. Following due legal process will minimise the risk of legal challenge.

6 Conclusion/Reasons for the Recommendation

- 6.1 The Feasibility Study conclusions accept that non-licensable HMOs do generate a lot of service requests from residents concerning refuse and noise issues, whilst matters concerning the condition and management of the properties are being raised by occupying tenants because they have not been resolved informally with their respective landlords.
- 6.2 Requiring such HMOs to become licensed would address many of the issues in a systematic way and would improve the conditions to ensure better health, safety and welfare for tenants and provide improvements which benefit the surrounding communities.
- 6.3 In terms of scheme coverage, the study recognises that although the data suggests the majority of known HMOs are in Leamington Spa, unknown HMOs may be more widely distributed, particularly those providing bedsits and accommodation for professional sharers.
- 6.4 When considering consistency of standards, identification of 'unknown' HMOs and discouraging growth of HMOs in other parts of the district to avoid licensing, Officers are minded to recommend consultation on a whole-district scheme rather than specifically targeting the wards of Leamington Spa.
- 6.5 A timetable for implementation of the proposed Additional Licensing Scheme is shown at Appendix 3.

Background papers:

Appendix 1 – Feasibility Study

Appendix 2 - Public Consultation Plan

Appendix 3 - Timetable for Implementation

Report Information Sheet

Please complete and submit to Democratic Services with draft report

Committee/Date	Cabinet - 7 December 2022	
Title of report	Proposal to adopt an Additional Licensing Scheme	
Consultations undertaken		
Consultee *required	Date	Details of consultation /comments received
Ward Member(s)		
Portfolio Holder	1/11/22	Councillor Matecki
Financial Services *	3/11/22	Andrew Rollins
Legal Services *	8/11/22	Sue Mullins
Other Services		
Chief Executive(s)	7/11/22	Chris Elliott
Head of Service(s)	1/11/22	Lisa Barker
Section 151 Officer		
Monitoring Officer	7/11/22	Andrew Jones
CMT (WDC)		
Leadership Co-ordination Group (WDC)		
Other organisations		
Final decision by this Committee or rec to another Ctte/Council?		Yes
Contrary to Policy/Budget framework		No
Does this report contain exempt info/Confidential? If so, which paragraph(s)?		No
Does this report relate to a key decision (referred to in the Cabinet Forward Plan)?		Yes, Forward Plan item – 1,334
Accessibility Checked?	16/11/22	Yes