

# HMO Licensing and Planning Permission Consultation

## Current Position

HMO licensing and planning permission have legally been two separate pieces of legislation and one could not be used to enforce the other. This created a perverse situation where if an HMO license application was correctly made an HMO license would have to be issued, even where planning permission had not been obtained. Which is contrary to the Council's own Article 4 planning policy. The Planning Enforcement Team would then need to take action where planning permission had not been obtained.

## What's Changed

The Government have given guidance on this issue and this along with case law and specialist Counsel's opinion means that we now feel that there are now two options for resolving the conflict between HMO Licensing and planning permission.

Both options are significant policy changes and so we want to consult widely and would welcome your feedback by completing this consultation survey.

## Notes

- We are seeking views strictly on linking HMO licenses and planning permission and the options available. Responses on other matters will not be collated.
- We do not collect your personal data as part of this consultation. The information you include on this form may become public information so please take care not to include anything in your comments which could identify you personally.
- If the Planning Department are satisfied that the property has been operating as an HMO continuously since before 1 April 2012 planning permission is not required.

## Consultation Survey

Are you responding to this consultation as a: -tick boxes for

- ☐ Landlord
- ☐ Letting Agent/Property Manager
- ☐ Warwick District Resident
- ☐ HMO Tenant
- ☐ University body
- ☐ Residents Group
- ☐ Other, please specify

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#### Option 1 – Freezing the HMO license application

This option would mean that if a HMO license application is submitted it would not be processed until the landlord had the appropriate planning permissions in place. Where the property is occupied the landlord would be required to submit a planning application within an agreed time period (see questions below) or face enforcement action. Where the landlord has submitted an application for planning permission the HMO license application and the decision on possible enforcement action would be frozen until the outcome of the planning application is known.

#### Option 2- Issuing a 1 year HMO license to allow time for a planning permission decision

This option would mean that we would process the HMO license application and issue a 1 year HMO license, to allow the landlord time to apply for planning permission and for a decision to be made on the application.

If for whatever reason the planning permission/appeals process was not completed within the 1 year period a second 1 year HMO license would need to be issued.

#### **Which option do you prefer? - tick boxes for**

Option 1 - HMO license applications will not be processed until planning permission has been obtained for the property

Option 2 - HMO licenses will be granted for 1 year to allow time for planning permission to be applied for and a decision made on the application.

Why do you prefer this option – free text box

#### **How long should a landlord be given to make a planning permission application (after they have applied for an HMO license) - tick boxes for**

2 months

3 months

4 months

Other, please specify .....

Why do you think it should be for the period of time that you have chosen - free text box

#### **For Option 2 what should be the cost of a 1 year HMO license? (licenses are normally issued for 5 years)**

Tick boxes for

50% of the 5 year HMO license fee

75% of the 5 year HMO license fee

100% of the 5 year HMO license fee

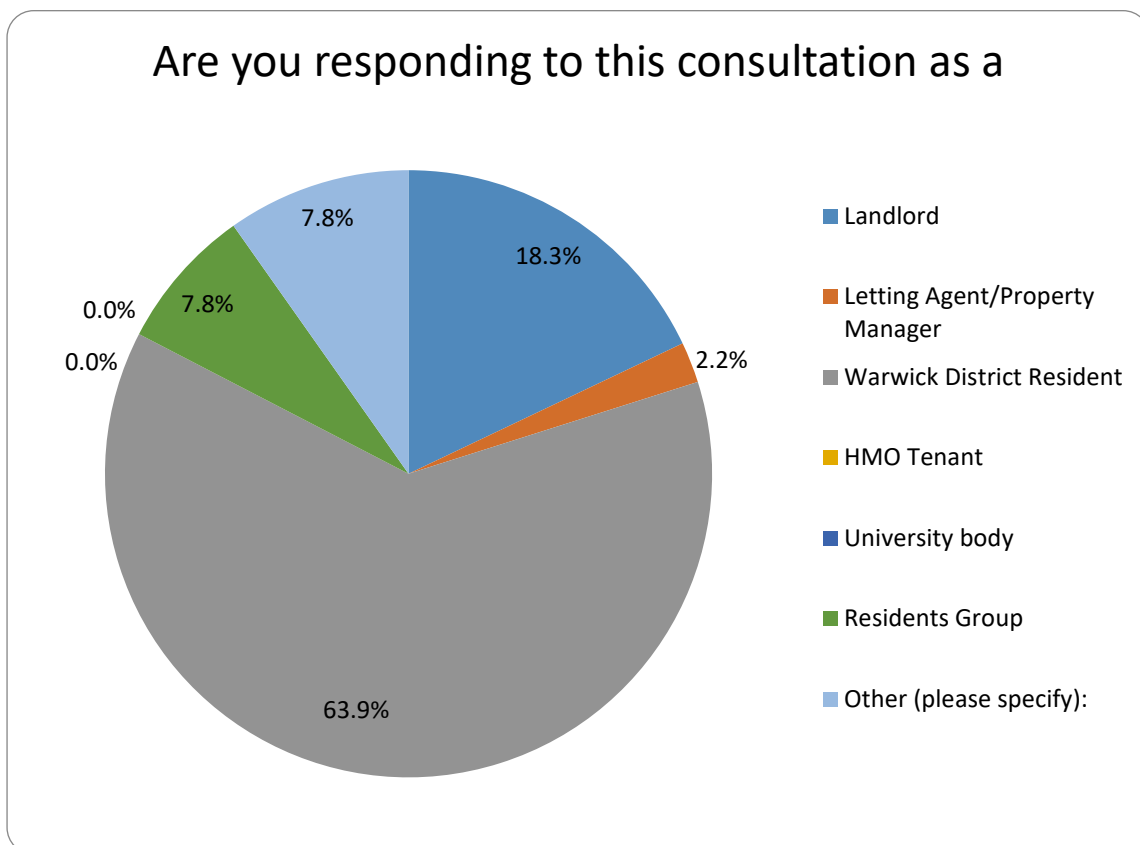
Other, please specify .....

Why do you think it should be the level of fee that you have chosen – free text box

## HMO Licensing and Planning Consultation 2020

### Respondents by Category

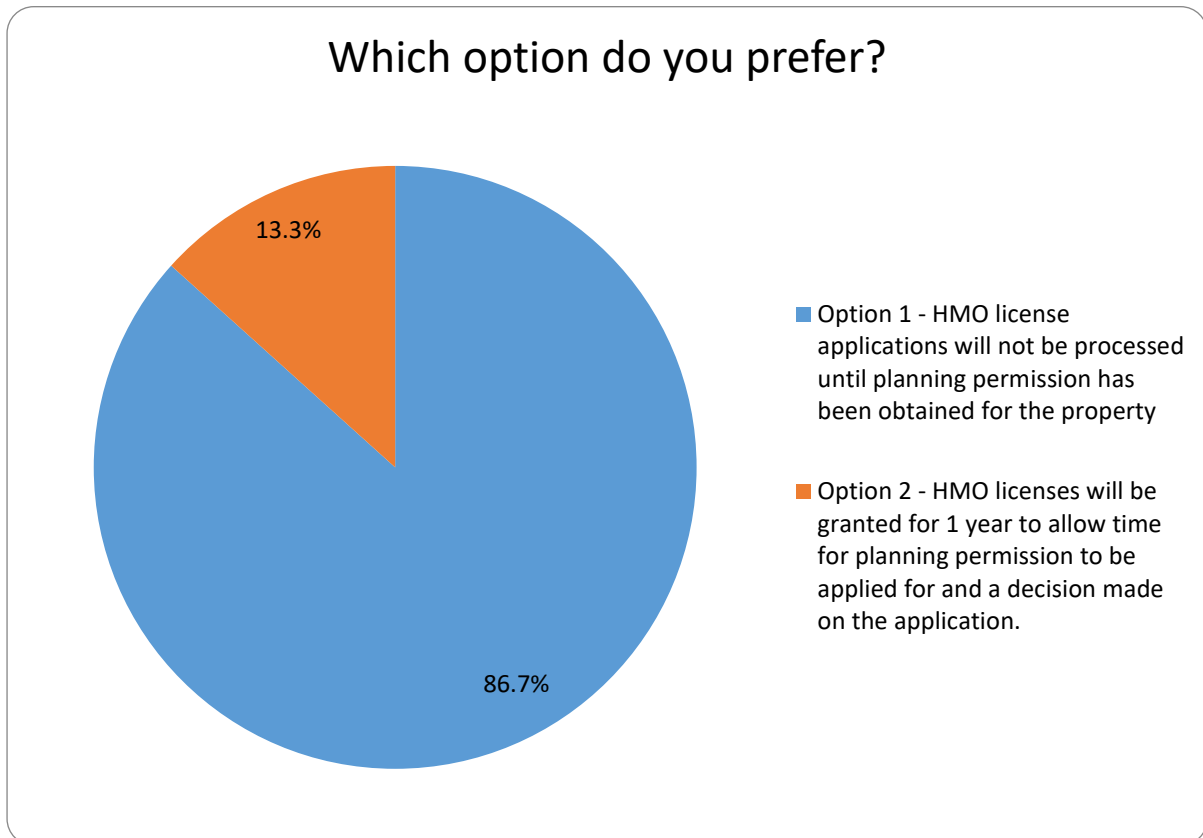
Are you responding to this consultation as a			
Answer Choice		Response Percent	Response Total
1	Landlord	18.3%	33
2	Letting Agent/Property Manager	2.2%	4
3	Warwick District Resident	63.9%	115
4	HMO Tenant	0.0%	0
5	University body	0.0%	0
6	Residents Group	7.8%	14
7	Other (please specify):	7.8%	14
<b>answered</b>			<b>180</b>
<b>skipped</b>			<b>0</b>



### Respondents who identified as 'other'

- Of the 14 respondents who chose 'other', 5 were Councilors or from a political party, 2 members of the Leamington Society and the 7 remaining identified themselves as residents or private citizens.
- The respondents were mainly residents, with landlords and those in the lettings sector only representing 20.5% of the responses.

#### Respondents Preference for Option 1 or Option 2



Which option do you prefer?			
Answer Choice		Response Percent	Response Total
1	Option 1 - HMO license applications will not be processed until planning permission has been obtained for the property	86.7%	156
2	Option 2 - HMO licenses will be granted for 1 year to allow time for planning permission to be applied for and a decision made on the application.	13.3%	24
Why do you prefer this option?			134
			<b>answered 180</b>
			<b>skipped 0</b>

### **Option 1 - HMO license applications will not be processed until planning permission has been obtained for the property**

Option 1 was clearly the preferred choice with 86% of respondents favouring this option.

Of the 156 who preferred this option, 134 made individual comments. There was a wide variety of qualitative responses and reasoning for selecting this option, there were some re-occurring themes as seen below.

#### **Most straightforward process to rectify housing and planning legislation anomaly – mentioned 54 times**

##### **Views included**

- Easiest to enforce
- Most logical
- Aligned with Government guidance
- Easiest to understand
- Harder to abuse this system
- Efficient – best use of officer time
- Adequately addresses the problem outlined
- Saves the landlord wasting money on fees if the planning permission is not approved

#### **Encourages compliance with planning permission – mentioned 60 times**

##### **Views included**

- Landlords should be compliant from the start of the process
- Upholds mandatory requirement to obtain planning permission
- No HMO should be operating without planning permission
- Ensures residents are consulted before a (\*Article 4 area/ Sui Generis) HMO is operational
- Avoids landlords than having to apply retrospectively
- Landlords unable to claim they were not aware of requirement for planning permission because they hold a licence
- Allows time for proper consideration of the property operating as a HMO in the wider community setting before it is let
- Upholds the Local Plan by allowing due regard to policy H6.
- Feels there has historically been a culture of landlords operating without permission and this addresses that
- Sends the message that equal weight is given to licensing and planning permission

#### **Better Controls of HMO development through Article 4 – mentioned 40 times**

##### **Views included**

- More control over unsuitable development
- More control over the application process

- Properties without planning permission cannot be accounted for in concentration calculations, therefore properties with planning permission mean more accurate Article 4 rulings.
- Residents are less likely to be affected by over concentration of HMOs or unsuitable HMOs
- Beneficial for detecting properties requiring planning permission

#### **Housing Standards Concerns – mentioned 19 times**

##### **Views included**

- Ensures property standards are met before it is let
- Felt that a property without planning permission could present a risk to the tenants
- Concerns for tenants whose landlords are not compliant
- Concerns about room sizes in properties without planning permission
- Concerns about housing standards for neighbors of unlawful HMO

#### **Letting & Tenancy Issues – mentioned 11 times**

##### **Views included**

- Felt that it would be harder to advertise & let the property and this offers protection to tenants who may have a property offer withdrawn
- Compliance before letting removes the need for eviction of tenants in order to revert the use back to a family let
- Felt that considering eviction of the tenants a factor for decision makers considering retrospective planning applications
- Agent letting a property would like to know if the property is compliant with planning and licensing before they take it on

#### **Dislikes Option 2 – mentioned 38 times**

##### **Views included**

- The most frequently cited was that respondents felt option 2 was open to abuse (22 times)
- Complicated and lengthy enforcement process
- A temporary period to operate allows landlord to benefit financially from non-compliance which goes against enforcement stance
- Allows HMO to operate without consultation with the wider community who may be affected.
- Allows a HMO to operate in breach of Article 4 and Policy H6, a direct contravention of WDCs' own policies
- Sends the message that WDC will still permit non-compliant behavior
- Not practical to allow a business to run for one year then shut it down
- Wastes officers time in procession and issuing a licence that may be withdrawn later
- Concern that planning and any appeals is a long process and may result in multiple temporary licenses being issued before use is brought to an end.

- A property could be temporarily operating in an area of high concentration and causing a detriment to the amenity of residents
- Does not sufficiently rectify the current problem in issuing a licence where the landlord does not have planning permission
- Does not follow the spirit of the Government guidance
- Can foresee issues with temporary licenses unless there is a cap on number of times it can be offered/renewed. A landlord could renew a temporary licence repeatedly if a planning appeal takes a long time

**Option 2 - HMO licenses will be granted for 1 year to allow time for planning permission to be applied for and a decision made on the application.**

Option 2 was not the preferred option with only 13.3% and 24 respondents selecting this option and a small number of qualitative responses.

- Allows a landlord to make a rental income
- Option 1 means a landlord could lose a years' income.
- Allows a landlord time to get documentation together for a planning application. This can involve contacting the old owners to obtain documents for established use.
- Better flexibility for landlords
- Under option 1 a landlord is penalised if the planning process is lengthy
- Option 1 introduces red tape, regulation and stifles progression
- Option 2 avoids the requirement to evict tenants if the property is already let
- Takes an available home off the market
- Better to have a property licensed for a year than running without one

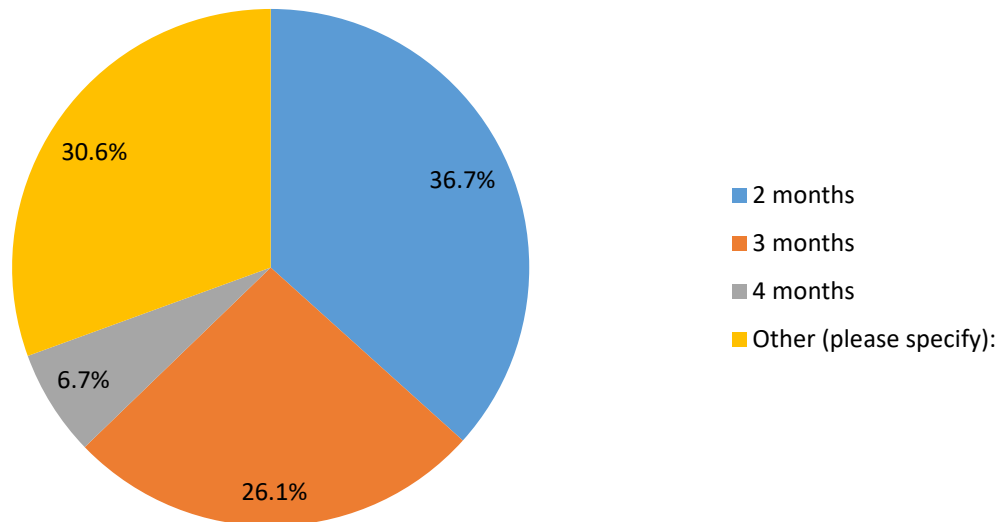
**Option 2 - How long should a landlord be given to make a planning permission application (after they have applied for an HMO licence)**

There was a high number of respondents to the time frame for option 2, however many of the comments made and options selected reflected that option 1 is the preference and if Option 2 were adopted, the shortest timeframe should be given

How long should a landlord be given to make a planning permission application (after they have applied for an HMO licence)			
Answer Choice		Response Percent	Response Total
1	2 months	36.7%	66
2	3 months	26.1%	47
3	4 months	6.7%	12
4	Other (please specify):	30.6%	55
Why do you think it should be for the period of time that you have chosen?			122
<b>answered</b>			<b>180</b>



How long should a landlord be given to make a planning permission application (after they have applied for an HMO license)



#### **Respondents who answered 'other'**

There were 55 respondents who selected other to specify a different time period than those proposed in the consultation. When the 55 are examined they can be grouped into the following responses.

**No Time – dislikes option 2 – 32 times**

**Shorter time – 1 month – 6 times**

**Longer time - 6 Months – 6 times**

**Longer time -12 months – 2 times**

#### **Option 2 - Why do you think it should be for the period of time that you have chosen?**

**2 Months**

Of the 66 respondents who selected 2 months as an appropriate timescale, 39 provided an explanation for their choice, their views were grouped into themes below.

#### **Views included**

- Landlords should know about legal requirements in advance therefore minimum time should be allowed.
- Minimum timeframe to prevent landlords profiting from non-compliance
- To minimize any impact on tenants due to substandard housing
- To minimize any impact on tenants because the property cannot be let to them
- So local residents are alerted as soon as possible to proposed new HMO
- Ideally they would obtain planning first, this is the second best option
- Longer periods will encourage appeals for more time
- Regularise use quickly so incoming tenants are not inconvenienced
- An adequate period of time to prepare and submit a planning application
- A shorter time will encourage compliance
- As short as possible to prevent new lets being agreed without permissions
- To reduce chances of applicants abusing the system

#### **3 Months**

Of the 47 respondents who selected 3 months as an appropriate timescale, 29 provided an explanation for their choice, their views were grouped into themes below.

#### **Views included**

- Long enough for the landlord to complete the applications, allowing for illness etc. and the landlord will be receiving rent.
- A Fair and reasonable time period
- Gives enough time to engage an Architect/Draughtsman to prepare the planning application
- Allows sufficient time if a landlord has undertaken prior research on requirements
- Gives ample time to complete any necessary works
- It would focus the process and stop retrospective planning applications on HMOs'
- To give the landlord sufficient time to bring the property up to the required standard, if necessary.
- I am in favour of shorter periods of time for local government decision making
- It is a reasonable time to get the paperwork together but not enough time to leave the site in limbo.
- To not waste the Councils time
- 3 Months is achievable for genuine applicants

#### **4 months**

Of the 12 respondents who selected 4 months as an appropriate timescale, 4 provided views on their choice.

#### **Views included**

- There could be unavoidable issues

- It would allow preparations of documents, drawing etc. to be prepared for planning
- More opportunities for all neighbors to consider the application
- Due to the timescale involved with planning applications

#### **Other – Dislikes Option 2 - No Additional Time –**

There were 55 respondents that selected 'other' as an option; of those 40 respondents indicated that no further time should be given as their preferred position was to obtain planning prior to licensing for the reasons set out under Option 1. To avoid duplicating the section, please refer to Option 1 responses. Unique views included under 'Other' listed below.

#### **Views included**

- The planning permission and licence should run and be decided concurrently
- If this option were to be adopted no licence should be issued until a planning application has been made and validated by WDC
- Landlords should research requirements beforehand and therefore no additional time should be given
- Option 2 does not adequately resolve the issue between planning and licensing which is the aim of the proposal
- Opting for any time allowance is inconsistent with preference for Option 1
- The question is either irrelevant to Option 1 or the underlying assumptions are not clarified. Are we to assume that after 8 years of Policy H6 there are HMOs operating without the necessary planning permission?

#### **Other – Less time -1 Month**

There were 55 respondents that selected 'other'; of those 5 respondents indicated that if option 2 were adopted, the minimum period of 1 month should be given.

#### **Views included**

- Minimum amount of time given to control short term letting
- Minimum amount of time to minimize landlords profiting from non-compliance
- By the time landlords apply for their licence, they have already considered how the property will be let and so minimal time to comply should be given
- There is no reason why there should be a delay between applying for a licence and applying for planning permission. If the planning application has not been made within a month, the licence application should be rejected.

#### **Other – Longer 6-12 months**

There were 55 respondents that selected 'other'; of those 9 respondents indicated that if option 2 were adopted, the minimum period of 1 month should be given.

#### **Views included**

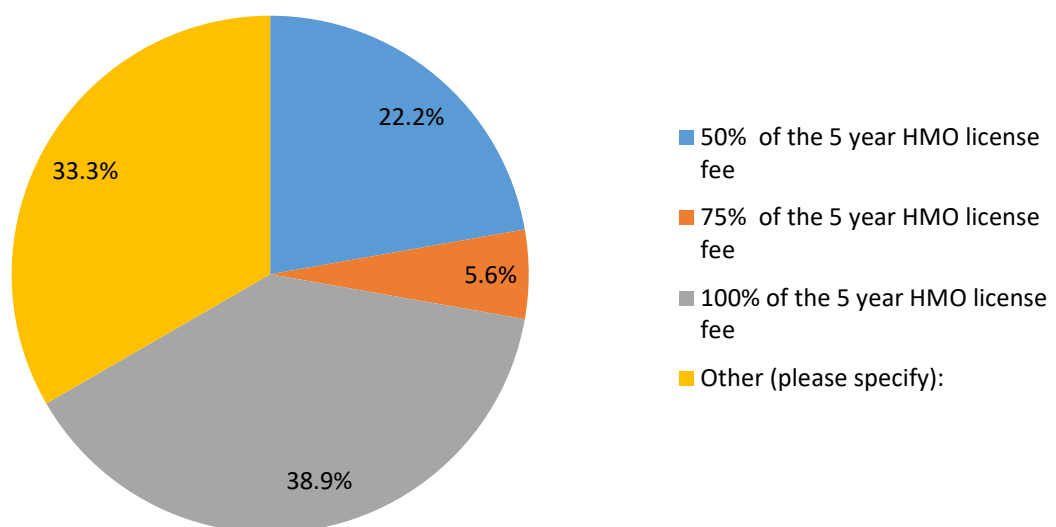
- Reasonable time to make the application
- Six months seems reasonable given the supporting documents may need to be renewed and re-submitted
- 12 months as planning process is slow

- As long as is required
- To allow for informal consultations with planning officers

**Option 2 - What should be the cost of a 1 year HMO license? (licences are normally issued for 5 years)**

For Option 2 what should be the cost of a 1 year HMO license? (licenses are normally issued for 5 years)			
Answer Choice		Response Percent	Response Total
1	50% of the 5 year HMO license fee	22.2%	40
2	75% of the 5 year HMO license fee	5.6%	10
3	100% of the 5 year HMO license fee	38.9%	70
4	Other (please specify):	33.3%	60
Why do you think it should be the level of fee that you have chosen?			111
<b>answered</b>			<b>180</b>
<b>skipped</b>			<b>0</b>

**For Option 2 what should be the cost of a 1 year HMO license? (licenses are normally issued for 5 years)**



**What should be the Cost – 'Other'**

There were 60 respondents who chose 'other'. Several selected other but did not opt for a figure.

**Alternate figures proposed were**

- 20% - mentioned 9 times
- 1 year pro rata plus additional admin costs - mentioned 2 times
- 1 year pro rata then top up if approved – mentioned 2 times
- 50% and pays the remaining 50% of 5 year licence fee if HMO is approved Disagree with this as an option – mentioned 35 times
- 200%
- 25% - mentioned 2 times
- Unsure – mentioned 3 times

**Option 2 - Why do you think it should be the level of fee that you have chosen?**

**50% of a 5 year licence**

There were 40 respondents indicated their preference to charge 50% of the usual licence fee.

**Views Included**

- Licence fee of 50% for initial period, then remaining 50% fee could be paid to extend to the 5 year licence if approved. – mentioned 2 times
- There should be some discount for a shorter licence, 50% is ok – mentioned 2 times
- Reasonable and fair- mentioned 6 times
- Licence fee must be based on actual costs, fee should be evidenced if Option 2 is adopted – mentioned 3 times
- Charge 50% for 1 year and then charge a reduced rate if a further 5 year licence is granted
- Charge 50% of the 5 year fee as a deterrent – mentioned 3 times
- Fees greater than 50% for a short licence are unfair – mentioned 2 times
- Recognises that officer time in preparing a 5 year licence is the same as a 1 year licence – mentioned 2 times

**75% of a 5 year licence**

There were 10 respondents indicated their preference to charge 75% of the usual licence fee. Of the 10 respondents, 4 did not provide an explanation or were unsure why they opted for 75% charge.

**Views Included**

- As a deterrent – mentioned 3 times
- Reasonable and fair – mentioned 2 times
- It demonstrates the landlord is committed to making the property compliant – mentioned 2 times
- Charging a full fee is unreasonable but this option takes into account costs of preparing a licence

### **100% of a 5 year licence**

There were 70 respondents indicated their preference to charge 100% of the usual licence fee.

#### **Views Included**

- Full fee charge as a deterrent to HMO development or non-compliance – mentioned 15 times
- Because Council Tax is not paid on most HMO, landlords should adequately contribute to WDC services – mentioned 10 times
- Encourage compliance in gaining planning permission first – mentioned 7 times
- Because a temporary licence costs the same to administer and there may be increased enforcements costs with temporary licenses – mentioned 7 times
- Landlords drawing profit from HMO – mentioned 4 times
- High fee as a penalty for non-compliance – mentioned 3 times
- Disagrees with any discount – mentioned 3 times
- Disagrees with option 2 – mentioned 2 times
- WDC undercharge for licenses – mentioned 1 time
- Discourages short Hmo lets – mentioned 1 time

### **Other**

There were 60 respondents indicated an alternate view on fees charged for a temporary licence under option 2. It was noted that an additional number of respondents left this field blank or wrote N/A due to previous selection of option 1 or prior objections to option 2.

#### **Views Included**

- Dislikes Option 2 – mentioned 24 times
- Charge 20% of 5 year licence fee (pro rata) – mentioned 11 times
- Charge whatever the actual cost of administering the licence is, it may be unlawful to do otherwise – mentioned 2 times
- Charge 30% as it is reasonable and fair – mentioned 2 times
- Issue a 5 year licence at full charge and revoke it if planning permission is not granted
- Charge 25% - mentioned 1 time
- Charge 200% as a deterrent – mentioned 1 time

### **Notes**

- There was some confusion by respondents about the ability of this change to prevent advertising the property for let without a licence or planning permission, we need to be careful to manage expectations around this.
- Some respondents viewed a property without planning to be of dangerous housing standards or conversely that a property with planning would automatically meet the

licensing standards. There was a lack of understanding that the standards are different and the role of inspections for licensing.

- There is confusion of who deems a HMO a HMO and when it technically becomes one.
- Respondents not aware that planning applications are dealt with on a statutory schedule.
- There were a small number of responses objecting to HMO altogether and a few that did not make sense in relation to the question/subject.
- There was confusion around the fee structure, however a number of respondents recognized that a 1 year licence and a 5 year licence would cost the same to administer/enforce.
- There were a number of respondents who expressed a desire to prevent any further HMO through higher fees and requirement to apply for planning permission. There was an assumption among many residents that planning applications were unlikely to be successful, we need to carefully manage expectations around this.