

Executive
18 March 2021

Title: HMO Licensing and Planning Permission
Lead Officer: Mark Lingard, Private Sector Housing Manager
Portfolio Holder: Jan Matecki
Public report / Confidential report: Public
Wards of the District directly affected: All

Contrary to the policy framework: No
 Contrary to the budgetary framework: No
 Key Decision: Yes
 Included within the Forward Plan: Yes
 Equality Impact Assessment Undertaken: No
 Consultation & Community Engagement: Yes
 Final Decision: Yes
 Accessibility checked: Yes

Officer/Councillor Approval

Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive	01/03/21	Bill Hunt
Head of Service	15/02/21	Lisa Barker
CMT	01/03/21	Chris Elliott
Section 151 Officer	01/03/21	Mike Snow
Monitoring Officer	01/03/21	Andrew Jones
Finance	15/02/21	Andrew Rollins/Victoria Bamber
Legal	29/10/20	Max Howarth
Portfolio Holder(s)	22/02/21	Councillor Jan Matecki

1. Summary

- 1.1 This report proposes a policy which links the granting of licenses for houses in multiple occupation (HMO) with the need to have planning permission for HMO's within Leamington Spa, and for larger HMO's within Warwick district (7 or more occupants).
- 1.2 References to planning permission in this report include a certificate of lawful development. This would be granted by the Planning Enforcement Team if a property had been operating continuously as an HMO from before 1 April 2012, or for a period of 10 years for larger HMO's.

2. Recommendations

It is recommended that Executive:

- 2.1 Approve the policy contained at Appendix A (not to process relevant HMO license applications unless planning permission has been obtained) and for it to come into force on 1 April 2021.
- 2.2 Note the outcome of the HMO license and planning permission consultation.
- 2.3 Note that landlords of relevant properties that require an HMO license and do not have planning permission will face enforcement action if they do not apply for permission.
- 2.4 Approves delegated authority to the Head of Housing Services to take action under the Council's Enforcement Policy to ensure compliance with the requirement to obtain planning permission.

3. Reasons for the Recommendations

- 3.1 HMO licensing and planning permission have legally been two separate pieces of legislation and one could not be used to enforce the other. The Government have subsequently given guidance to help resolve this issue and together with case law and specialist Counsel's opinion means that the proposed policy is now available to resolve the conflict between HMO licensing and planning permission.

- 3.2 Consultation was carried out on the following options to link HMO licensing and planning permission. 180 responses were received:

Option 1 - HMO license applications will not be processed until planning permission has been obtained for the property – 86.6% in favour of this option.

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 13.4% in favour of this option.

Appendix B is a summary of the consultation responses.

- 3.3 For the new policy to be effective enforcement action has to be available, for landlords of HMO's that require a license and continue to operate without applying for planning permission.
- 3.4 So that the policy can be applied quickly and efficiently, once adopted, it is proposed that the Head of Housing Services should be granted the authority to decide on the most appropriate enforcement action.

4. Policy Framework

- 4.1 Fit for the Future (FFF)

The Council's FFF Strategy is designed to deliver the Vision for the District of making it a Great Place to Live, Work and Visit. To that end amongst other things the FFF Strategy contains several key projects.

The FFF Strategy has 3 strands – People, Services and Money and each has an external and internal element to it. The table below illustrates the impact of this proposal if any in relation to the Council's FFF Strategy.

4.2.1 External impacts of proposal(s)

People - Health, Homes, Communities – Helping ensure that licensed HMO's are compliant with planning policy

Services - Green, Clean, Safe – None

Money- Infrastructure, Enterprise, Employment – None

4.2.2. Internal impacts of the proposal(s)

People - Effective Staff – None

Services - Maintain or Improve Services – Taking the opportunity to link HMO licensing and planning permission.

Money - Firm Financial Footing over the Longer Term - None

4.2 Supporting Strategies

Each strand of the FFF Strategy has several supporting strategies. Improving housing standards in residents' homes directly and positively contributes to the Housing and Health-and-Wellbeing priorities. It also contributes to the Housing and Homelessness Strategy objective of improving the management and maintenance of existing housing.

4.3 Changes to Existing Policies

This is a new policy that will link HMO licensing with the Council's existing Article 4 directive and Section H6 of the Warwick District Local Plan.

4.4 Impact Assessments

The proposed HMO licensing policy helps to enforce existing Council planning policies, so no impact assessment has been carried out.

5. Budgetary Framework

- 5.1 There are likely to be some licensed HMO's that will no longer be able to operate when the license for the property has to be renewed, as they will not be able to obtain planning permission due to the Article 4 directive and H6 planning policy.

- 5.2 The new policy, if approved, linking HMO licensing and planning permission will not affect HMO license fee income during the 2021- 2022 financial year. There are no HMO's due to be relicensed during this period that will not comply.
- 5.3 There is likely to be a potential reduction in license fee income in the following financial years 2022-23 and 2023-24, when more HMO's will need relicensing. It is not possible to establish how many properties will not receive planning permission and to what extent this loss of license income will be offset by new HMO's requiring licenses that would either obtain planning permission or be in areas of the district not covered by Article 4 and H6 planning policy.
- 5.4 The income will be monitored with more scrutiny applicable from April 2022 onwards to identify emerging trends in relation to income reductions. Budgets will be adjusted accordingly mid-year to reflect the likely outturn position if the income decrease is of a material nature.

6. Risks

- 6.1 There is a risk of a legal challenge if we do not respond to the Government guidance, the case law and the specialist Counsel's opinion on this issue. It would be difficult for the Council to justify not responding to this information.
- 6.2 There is a significant reputational risk if we do not act to help support the Council's existing Article 4 Directive and H6 Planning Policy for HMO's.
- 6.3 There is the risk of a potential legal challenge to the new policy as it has not been tested in the courts. However, this has been mitigated by the Government guidance, relevant case law and obtaining specialist Counsel's opinion on this issue.
- 6.4 Any potential net loss of license fee income would be spread over two financial years and is not anticipated from the information provided by the Planning Enforcement Team to be significant, but this will need to be closely monitored.
- 6.5 The anticipated level of enforcement activity required each year, to ensure landlords of licensed HMO's that require planning permission apply for planning permission, can be met within the existing resources of the Private Sector Housing Team. However, if the level of enforcement activity needed is higher than expected the enforcement capacity within the Team could be exceeded.

7. Alternative Option(s) considered

- 7.1 To not take the opportunity, that is now available, to resolve the previous long standing conflict between HMO licensing and planning permission. Given the reasons set out in 6, this is not a viable option.

8. Background

- 8.1 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 a license would have to be issued even where planning permission had not been obtained, which is contrary to the Council's own Article 4 directive and H6 planning policy.
- 8.2 This situation can only arise where an HMO requires a license and planning permission:
- HMO's with 5 or more occupants in Leamington Spa
 - HMO's with 7 or more occupants elsewhere in Warwick district
- 8.3 Over a number of years this has led to understandable criticism that the Council does not have a joined up approach with different departments not communicating and working together with each other.
- 8.4 The combination of Government guidance, case law and specialist Counsel's advice means that two options have now become available to resolve this conflict.
- 8.5 Both options are significant policy changes so, following legal advice, widespread consultation was carried out between 18 November 2020 and 8 January 2021.
- 8.6 The following key stakeholders were consulted:
- All District Councillors
Town Councils (Leamington, Warwick, Kenilworth and Whitnash)
Landlord Steering Group
Local Lettings Agents and landlords email list
SoLAR (South of Leamington Area Residents) and AR2RA (Avenue Road-Adelaide Road Residents Association)
University of Warwick
University of Warwick Students Union
Landlords of licensed HMO's
- 8.7 The consultation was also available to all on line (with a link on the first page of the Private Sector Housing web pages and on the Council's consultations webpage). A tweet was sent out by the Media Team about the consultation with a link to the web page.
- 8.8 180 responses were received via the online survey. In addition, we received separate email responses from SoLAR, AR2RA and the Labour Group.
- 8.9 Appendix B contains the text of the survey and a summary of the online survey responses.
- 8.10 Appendix C contains the email responses from SoLAR, AR2RA and the Labour Group (amended to only include survey question responses).

- 8.11 Separately from the on line survey, colleagues in the relevant planning teams were consulted about the two options. The responses received were all in favour of Option 1 - HMO license applications will not be processed until planning permission has been obtained for the property.
- 8.12 The consultation included a question about how long landlords should be given to apply for planning permission. For landlords making an HMO license application for the first time a two month period to complete all the documentation to make a valid application for planning permission appears reasonable. The highest number of consultation responses were in favour of this time period 36.7%.
- 8.13 The situation for HMO license renewals is different. From 1 April 2021 to 31 March 2022 Planning Enforcement colleagues have confirmed that none of the HMO's that need relicensing during this period would be affected by the proposed policy.
- 8.14 In the following two financial years there are greater numbers of HMO's that need relicensing, so more properties are likely to be affected by the proposed policy. However, there is a 12 month 'window' in which to widely publicise the policy. Which will give ample time for landlords to have applied for planning permission in advance of the HMO license expiring.
- 8.15 Landlords of HMO's that require a license and need to apply for planning permission will be strongly advised to apply as early as possible and to get pre application advice. This being particularly so as there are some areas of Leamington Spa where the existing concentration of HMO's is so high that they are very unlikely to be given planning permission.
- 8.16 Landlords who do not apply for planning permission within the timescales set out in the proposed policy will face enforcement action.
- 8.17 Whilst the individual circumstances and the range of enforcement options must be considered on a case by case basis, it is likely that civil penalties will be used in most cases to ensure compliance.
- 8.18 The applicable civil penalty would be up to £30,000.
- 8.19 If planning permission is refused the Planning Enforcement Team would lead on the appropriate action to ensure the property ceases to be used as an HMO.