



INTERNAL AUDIT REPORT

FROM: Audit and Risk Manager **SUBJECT:** Houses in Multiple Occupation

TO: Head of Housing **DATE:** 16 April 2024

C.C. Chief Executive
Deputy Chief Executive
Housing Needs Manager
Private Sector Housing Manager
Head of Finance
Portfolio Holder (Cllr Wightman)

1 Introduction

- 1.1 In accordance with the Audit Plan for 2023/24, an examination of the above subject area has recently been completed by Ben Kerr, Internal Auditor, and this report presents the findings and conclusions for information and, where appropriate, action.
- 1.2 Wherever possible, findings have been discussed with the staff involved in the procedures examined and their views are incorporated, where appropriate, into the report. My thanks are extended to all concerned for the help and cooperation received during the audit.

2 Background

- 2.1 A House in Multiple Occupation (HMO) is a dwelling containing three or more persons from two or more separate households. A household can be a family, a couple, or a single person. It nearly always involves sharing of facilities but not always. The exception is a 'converted building' that may contain a number of flats which are not all self-contained, i.e. not all amenities are located behind the front door of each flat.
- 2.2 HMOs that accommodate five or more people, from two or more households, must have a mandatory licence to operate legally. There are currently in the region of 1300 known HMOs within the district of which roughly 600 require a mandatory licence.
- 2.3 Warwick District Council began recently to operate an additional licensing scheme. This is a local designation requiring previously non-licensable HMOs to become licensed. HMOs accommodating three or more persons from two separate households now require an additional licence to operate legally within the district. A further 700 HMOs could potentially become licensed through the additional licensing scheme.

3 **Objectives of the Audit and Coverage of Risks**

- 3.1 The management and financial controls in place have been assessed to provide assurance that the risks are being managed effectively. It should be noted that the risks stated in the report do not represent audit findings in themselves, but rather express the potential for a particular risk to occur. The findings detailed in each section following the stated risk confirm whether the risk is being controlled appropriately or whether there have been issues identified that need to be addressed.
- 3.2 In terms of scope, the audit covered the following risks:
1. Licensing fees are insufficient to cover the associated work.
 2. Fees and charges are incorrectly published and / or charged.
 3. Fees and charges are challenged by applicants or lobbying organisation e.g. NRLA.
 4. Failure to comply with applicable legislation (specifically the Housing Act 2004).
 5. The Council is not seen to be dealing with private landlords that are acting unlawfully.
 6. The Council is being inconsistent in its approach to enforcing standards.
 7. Officers may be approached to not report breaches of legislation.
 8. Staff undertaking inspections and / or site visits are at risk of physical and verbal attacks or could be exposed to harmful substances.
 9. Poor systems and / or record management.
 10. Recruitment / remuneration issues resulting in insufficient resources available.
- 3.3 Potential risks were identified during discussion between the Internal Auditor and the key contacts for the audit. They were also identified within the Significant Business Risk Register and the departmental Risk Register.
- 3.4 These risks, if realised, would be detrimental to the Council with regards to meeting the following corporate objectives, as set out in the Corporate Strategy Warwick District 2030:
- Priority 3 (Creating vibrant, safe and healthy communities of the future). Specifically, 3.2.5 - Protect existing community identities through the regulation of HMOs.
 - Also, 3.4.2 - supporting those from more deprived socio-economic or isolated backgrounds to secure affordable housing.

4 **Findings**

4.1 **Recommendations from Previous Reports**

- 4.1.1 There were no recommendations arising from the previous report.

4.2 **Financial Risk**

4.2.1 **Potential Risk: Licensing fees are insufficient to cover the associated work.**

HMO licences fees were first set in 2006, when licensing was originally introduced. Fees were set against the cost of completing each element of the licensing process. Officer time and involvement was considered and benchmarking against other authorities took place. There has been minimal change in the time needed to complete HMO licensing processes since fees were first set, with costing calculations staying the same. Increases to licensing fees have been requested by Finance, to keep in line with the rate of inflation.

Fees are agreed annually at Cabinet and are included within the fees and charges review. The last review took place on 02 November 2023. It was agreed that fees will not be increased for the next twelve-month period. Part of the reviewing process includes checking fees against the associated cost of providing HMO services with the intention for the service to be cost neutral.

Additional licensing fees have been set to match those for mandatory licences. However, from 18 January 2024 until 14 March 2024, an 'Early Bird' discounted fee was offered to landlords affected by the introduction of the additional licensing scheme. An application was required to be 'duly made' within this timeframe to be eligible for the discount, with a definition of what is meant by duly made being set. It was determined that, based on a five-year projection, the Council could offer the discounted fees to encourage landlords to engage with the application process, without the HMO service making a loss.

The introduction of the additional licensing scheme resulted in additional staff being recruited to meet increased service demand. This recruitment included the hiring of Two Housing Standards Officers on fixed-term contracts. Using this type of contract provides WDC with the flexibility to terminate or extend them depending on the level of income received through the payment of licence fees.

4.2.2 **Potential Risk: Fees and charges are incorrectly published and / or charged.**

The Council publishes HMO fees on its website along with a list of other miscellaneous charges. The fees / charges published, match those agreed at committee.

Applicants pay via an online payments system. When a payment is completed, an email is received by the Private Sector Housing (PSH) Team into an inbox specifically for HMO services. The Team manually cross check the amount paid against the application / renewal to ensure that it is correct. In line with EU Directives, the Council introduced a new payments structure on 01 January 2024. Applicants now pay a stage 1 fee when they first apply. If their application is successful, they pay a stage 2 fee before their HMO licence is granted.

A sample of five new mandatory HMO licences and five applications to renew existing licences were checked. In all ten cases, the correct fee had been paid.

A sample of twenty-one additional licence applications were checked. One application was looked at as an exceptional case as the HMO in question had previously been subject to mandatory licensing. One bedroom was found to not meet minimum size requirements, so the landlord had opted to let to one less tenant than they had previously. This landlord paid the relevant renewal fee, rather than the Early Bird fee, and was granted a new additional licence, and not a renewed mandatory one.

Of the twenty completely new additional licence applications checked, sixteen fees had been paid correctly. Four had been paid incorrectly, which was down to errors having been made by the applicants. These four landlords had been contacted to discuss a resolution. Two of them had paid their stage 2 fee in advance of their application having been accepted. In both instances, they opted for Council to retain the funds until the outcome of their application was known. If they were unsuccessful, the stage 2 fee was to be refunded. In the other two cases, the landlord had erroneously paid the full fee instead of the Early Bird fee. A refund was in the process of being raised for one applicant. In the other instance, the Council was retaining the overpaid funds, with the applicant opting to pay less at stage 2 if their application was successful or receive a refund if unsuccessful.

Records of all correspondence between the PSH Team and applicants are saved, as are payment confirmation emails.

Some applicants are selecting the option to pay for a mandatory licence when they are attempting to pay for an additional licence application. This results in the funds going into the 'wrong pot'. The team identify this during cross-checking when they receive payment confirmation. They send an email to Finance (usually directly to an Assistant Accountant) to amend the fee code. As this happens fairly frequently, they are sent in a batch twice a week.

Advisory

Consideration should be given to reviewing the website for an opportunity to include a prompt to ask landlords to consider whether they are paying for the type of licence that they require.

4.2.3 Potential Risk: Fees and charges are challenged by applicants or lobbying organisation e.g. NRLA.

Authorities set their own HMO licensing fees, with Government guidelines stating that they should do so based on the cost of carrying out their function under section 63 (3 and 7) of the Housing Act 2004. This means that fees vary throughout the country. WDC benchmarks against neighbouring authorities, particularly those with which it shares a border. The Council's current HMO licensing fees were compared to those set by six neighbouring authorities: Stratford-on-Avon District Council, Solihull Borough Council, North Warwickshire Borough Council, Coventry City Council, Rugby Borough Council and Nuneaton & Bedworth Borough Council. It was noted that, while WDC's fees are among the highest, they remain competitive. Fees and charges are increased, at the request of Finance, to factor in inflation, as mentioned in point 4.2.1. There has

been pressure to increase licensing fees beyond the rate of inflation, but this has generally been resisted to avoid WDC being challenged.

The Council does not have procedures in place to defend against challenges to the cost of HMO licensing fees, but this is not of significant concern due to the risk of challenge being minimal with the fees remaining competitive and not being subject to large increases.

When WDC first proposed introducing an additional licensing scheme, a Feasibility Study was completed and published in October 2022. The study brought together an assessment of the advantages and disadvantages of such a scheme and concluded that proceeding with implementing additional licensing was the best course of action. The Feasibility Study was considered at Cabinet and is referenced in the subsequent Cabinet Report as a determining factor. It was also considered during the fee-setting review. If a challenge were to be made specifically to the additional licensing fees, the Council's response would be based on the Feasibility Report.

4.3 **Legal and Regulatory Risks**

4.3.1 **Potential Risk: Failure to comply with applicable legislation (specifically the Housing Act 2004).**

The Council has an HMO Licensing and Planning Permission Policy and this is published on its website. The policy came into force on 01 April 2021 and was amended in May 2022. The policy has been unaffected by the introduction of the additional licensing scheme.

The WDC website contains a guide to HMOs, including the legal definition, licensing and planning permission requirements, enforcement powers, and provides contact information for the PSH Team for queries. The website references the Housing Act 2004, in particular, sections 254(4), 56, 66, 30, 72, 95, 138(7), and 234. The website also references Article 4 planning rules, The Management of Houses in Multiple Occupation (England) Regulations 2006, LACORS Fire Safety Standards, The Regulatory Reform (Fire Safety) Order 2005, and Civil Penalty Notices under the Housing and Planning Act 2016.

The Council's website also features a comprehensive set of guides for HMO landlords. This includes a Landlords Guide to HMOs in Warwick District, a Landlord's Guide to Communal Space Requirements for HMOs, and a Guide for Landlords and Managing Agents Tackling Anti-Social Behaviour in HMO Properties. These guides reference the Management of Houses in Multiple Occupation (England) Regulations 2006, Housing Act 2004, LACORS Fire Safety Standards, The Regulatory Reform (Fire Safety) Order 2005, and Warwick District Council Space & Amenity Standards.

Licence conditions for HMO licences granted after 01 December 2018 and after 01 August 2022 are available on the WDC website. The relevant legislation is referenced within the conditions so that landlords are made aware of regulatory requirements. When a landlord renews an existing licence, the updated conditions are applied.

Failure to respond to new legislation is identified as a risk in the most recent Risk Register taken from the Housing Services Service Plan 2022-23. Actions are in place to reduce the risk and a nominated Officer has been identified as being responsible for those actions.

The PSH Team are currently reviewing the terms included within the standard HMO licence conditions issued to landlords. This is to ensure that they remain up-to-date and outline the responsibilities of the licence holder as clearly as possible.

4.4 **Reputational Risks**

4.4.1 **Potential Risk: The Council is not seen to be dealing with private landlords that are acting unlawfully.**

The Council maintains registers of licenced and non-licensable HMOs which is published on its website. This is usually updated every six months. The most recent update was published in August 2023, and another will replace it soon. It should be noted that the term 'non-licensable' is no longer applicable due to the introduction of the additional licensing scheme. However, in the short-term, this list will continue to be published on the Council's website.

HMOs that may require a licence but do not currently hold one are identified through communication with other Council services such as Planning, Building Control, Council Tax, and Benefits. Council Tax provide an annual list of exemptions from Council Tax liability which helps to identify student properties. This is one of the most successful ways that the PSH Team identify HMOs. Benefits can provide information on multiple claimants living at the same address. External agencies such as the Police, Fire Services, occupiers of HMOs, residents living near to suspected HMOs, proactive landlords, and deposit protection providers also provide useful information.

The PSH Team complete inspections of HMOs at application stage, mid-term (usually after 2½ years), and at renewal. Inspections also take place, when necessary, in response to information received from other Council services, private landlords, tenants, residents, and third sector organisations. If necessary, enforcement action is taken following an inspection when assessments have been made.

The Council has formally adopted a Civil Penalties Policy in line with Civil Penalty Notices under the Housing and Planning Act 2016. The current Policy has been in place since 2018 and is based on Government guidelines. The policy incorporates a schedule of penalties for various offences relating to HMOs. The maximum penalty that can be levied is £30,000. A list of example offences is available on the WDC website, and a copy of the Council's Enforcement Policy is also published there. The most recent version of the policy was published in August 2022.

Banning orders were introduced by the Housing and Planning Act 2016 as a means of formally preventing a landlord / agent from letting housing in England or engaging in English letting agency or property management work. The Government has provided guidance in this area. In line with this guidance, the

Council is required to have its own banning order policy in place, helping to dictate when to pursue a banning order and to assist with determining which enforcement option to pursue on a case-by-case basis. WDC's most recent Banning Order Policy and Procedure have been in place since February 2023. The policy takes account of the non-statutory guidance issued by the Government which makes clear that banning orders are aimed at rogue landlords who flout their legal obligations and rent out accommodation which is substandard. The guidance also confirms that the expectation is that banning orders will be used for the most serious offenders.

4.4.2 **Potential Risk: The Council is being inconsistent in its approach to enforcing standards.**

The PSH Team have made a concerted effort to foster positive working relationships with local landlords and letting agents. Collaborative working means that instances where enforcement action becomes necessary is not frequent relative to the number of HMOs operating within the district. However, the Council has recently been involved in a high-profile case against a rogue landlord which was published in local news media and by some national news outlets. When tackling the landlord in question, WDC first followed its Enforcement Policy, followed by its Banning Order Policy. Both policies were followed consistently throughout proceedings.

The landlord first came to the attention of WDC in 2013, but tenants were unwilling to submit formal complaints due to their fears of retribution. Issues the Council had been made aware of included unlawful evictions, threats / harassment, violence being used to secure entry, fire safety offences, mismanagement of tenancies, overcrowding, and unsanitary / unsafe living conditions. Action was taken relating to an HMO being operated by the landlord which was occupied by eight tenants from six separate households. The HMO was not licensed, as required. The Council followed its Enforcement Policy following a complaint made by one of the tenants in January 2022 and a subsequent inspection which was carried out in February 2022. The landlord was non-compliant with the enforcement action taken by WDC. In September 2022, this resulted in them being convicted by a District Judge at Coventry Magistrates Court of having control or managing a HMO which was required to be licensed under part 2 of the Housing Act 2004 but was not licensed (section 27(1)), failure to comply with the Management of Houses in Multiple Occupancy Regulations 2006 (section 23493)), and failure to comply with an operative improvement notice (section 30(1)). These are all banning order offences for which the landlord received three £10,000 fines.

Following these convictions, WDC applied to a First-Tier Tribunal (Property Chamber) for a banning order in March 2023. A hearing took place in November 2023 and a banning order was successfully granted in December 2023. A press release was made following this. In tackling this rogue landlord, WDC sent a message to other landlords, showing that the Council takes its role in protecting tenants and upholding standards seriously. This will in turn provide reassurance to tenants living in HMOs.

4.5 **Fraud Risks**

4.5.1 **Potential Risk: Officers may be approached to not report breaches of legislation.**

Information relating to all licensed, unlicensed, and suspected HMOs is saved on the I Drive and is recorded on CIVICA. This information is accessible to all members of the PSH Team. Spreadsheets for each type of licence / HMO are also maintained for every twelve-month period to further aid with the tracking of workload. The recording of information in these ways creates accountability as failure to follow policy or processes and / or breaches of legislation would be easy to identify.

HMO inspections are carried out at application stage, mid-term (usually 2.5 years), and at renewal. CIVICA contains an 'action diary' which is used as a checklist when processing a licence application or renewal. This includes inspections, and several checks to be completed on a landlord and their property. If any issues are identified during an inspection, a landlord is usually provided with an informal notice to complete any remedial actions by an agreed date. A landlord failing to comply with informal notices results in the PSH Team escalating to follow formal compliance processes. Continued failure to comply beyond this leads to enforcement consequences. This information is recorded on CIVICA and on the relevant spreadsheet, with any accompanying documentation being saved to the I Drive. This makes it simple for the PSH Team to monitor any non-compliant landlords and / or properties.

The Private Sector Housing Manager runs a monthly licensing report through CIVICA which shows the start and end date of each HMO licence. This is used to identify licences nearing their mid-term point. Inspections are arranged as and when they can be accommodated depending on workload. Where possible, the same Officer tends to complete inspections on a property for consistency and to help maintain a relationship with the landlord or agent. The highest priority for inspections is given to properties that are considered more likely to be of concern. This is generally based on information such as whether any issues were identified previously, and the track record of the landlord.

A programme specific to the completion of inspections is not in place as Officers responsible for completing them are trained and qualified in this area. They therefore do not require instructions or prompting. Landlords must submit a floorplan of their HMO prior to an inspection at application or renewal stage. The attending Officer takes a physical copy of this plan with them when they complete an inspection and marks down any key information such as measurements of rooms and the location of smoke detectors on the plan. The annotated plan is then saved on the I Drive and uploaded onto CIVICA; this is when any follow-up actions are also recorded. A new or renewed licence is only granted when inspections and any follow-up has been completed.

A wide range of material relating to the inspections of HMOs is available in a folder saved on the I Drive for Officers to refer to, should they require guidance.

4.6 **Health, Safety & Wellbeing Risks**

4.6.1 **Potential Risk: Staff undertaking inspections of HMOs are at risk of physical and verbal attacks or could be exposed to harmful substances.**

'Triggers' relevant to the PSH Team have been identified in the most recent Risk Register, taken from the Housing Services Service Plan 2022-23. These include lone working, potential violent customers, hazardous premises, severe weather, heavy workloads, tiredness, and driving. Risks associated with these triggers have been identified as death, injury, ill-health, increase in sickness absence, loss of confidence, deterioration in staff morale, increase in compensation claims from staff, reputational damage, and impact on service delivery.

Countermeasures include adherence to the Lone Worker Policy, operating the Staff Alert List, partnership links such as those with the Police and MAPPA, and mobile phones and lone worker devices being issued to staff.

Members of the PSH Team are aware of the Lone Worker Policy and Staff Alert List. The team recently met with the Health & Safety and Premises Manager to discuss improvements to the Staff Alert List and to reiterate the importance of following the Lone Worker Policy.

The PSH Team generally complete joint visits when attending an HMO, especially if it is a first visit to a premises. This is for safety reasons and for practicality, depending on the reason for the visit.

4.7 **Other Risks**

4.7.1 **Potential Risk: Poor systems and / or record management.**

Clear processes are in place for the PSH Team to follow when handling new HMO licence applications and the renewals of existing licences. The EHealth folder on the I Drive has a folder called 'housing' within it which is only accessible to the team. Mandatory, extended, and additional licence applications have their own folders, with each individual property having its own folder within them. Completed application forms, documents, payment confirmation, emails and letters sent and received by WDC are clearly labelled and saved into the relevant property folder. Some properties have been licensed multiple times, and by different people. In these instances, all information for each individual licence application is kept separate for clarity and to maintain historical records.

CIVICA is used to process an HMO licence application or renewal at each stage, with supporting information uploaded from the relevant property folder to create a paper trail. The CIVICA action diary acts as a checklist and can be filtered to make the identification of outstanding actions simple. There is an option to schedule an action within an application and allocate it to a specific Officer, with a target completion date included. This helps Officers to track outstanding actions. CIVICA can also be used to generate letters to be posted or emailed to applicants based on the information entered into the system.

Guidance material has been produced for staff to follow. There is an HMO Protocol document and a separate process map which can both be utilised.

Staff are trained on how to use CIVICA when they first start to process HMO licence applications. A user guide has been created that includes screenshots of the system and instructions confirming which options to select when inputting a new application. This is one of the more complicated / time consuming processes to follow. Using CIVICA to input data relating to an HMO already recorded on the system is straightforward and does not require guidance notes after an initial explanation. The icons displayed make their functions self-explanatory.

When processing a new licence application or a renewal, a hard copy of a checklist is printed and completed to ensure that all steps have been followed. A completed checklist is scanned and saved to the I Drive in the relevant property folder.

4.7.2 **Potential Risk: Recruitment / remuneration issues resulting in insufficient resources available.**

There are currently seven new mandatory HMO licence application in progress and forty-eight licences either being processed for renewal or due for renewal before the end of 2024. The new additional licensing scheme is expected to mean around 700 additional licence applications will be submitted. Around 200 such licence applications have been received so far. It is anticipated that between thirty and forty applicants will 'drop out' due to their properties being unable to obtain the required planning permission. Each applicant receives acknowledgment of their application, but the PSH Team are not offering a timescale for completion due to the high number of applications being received, to help manage expectations.

Staffing levels were increased to meet the increasing demand on the PSH Team caused by the additional licencing scheme. An Additional Licensing Project Lead Officer, two Housing Standards Officers, and an Additional Licensing Housing Assistant were appointed. An Indicative Costs Appraisal was made prior to the new staff being hired which determined that the additional licensing scheme would cover all its costs.

A performance indicator for the PSH Team is to have HMO licence applications completed within 180 days. The progress of mandatory and additional licences is recorded on their respective spreadsheets, as mentioned in point 4.5.1. As the additional licensing scheme was only launched on 18 January 2024, it is difficult to gauge progress at this stage. However, based on the status of the applications received, it can be expected that the target of 180 days for completion will be met. New applications are dealt with in order of date received, with oldest being processed first. The PSH Team are in a comfortable position regarding the completion of new mandatory licences and the renewals of exiting licences.

The additional post of Licensing Project Lead Officer is a new position and therefore went through HAY approval. The additional Housing Standards Officers have been hired on fixed-term contracts, meaning that, if necessary, staffing levels can be reduced more easily if budgetary constraints make it necessary, as mentioned in point 4.2.1.

5 **Conclusions**

5.1 Following our review, in overall terms we can give a SUBSTANTIAL degree of assurance that the systems and controls in place in respect of Houses in Multiple Occupation are appropriate and are working effectively to help mitigate and control the identified risks.

5.2 The assurance bands are shown below:

Level of Assurance	Definition
Substantial Assurance	There is a sound system of control in place and compliance with the key controls.
Moderate Assurance	Whilst the system of control is broadly satisfactory, some controls are weak or non-existent and there is non-compliance with several controls.
Limited Assurance	The system of control is generally weak and there is non-compliance with controls that do exist.

5.3 There are no recommendations arising from the review and therefore no action plan is included with this report.

5.4 One advisory note has been reported but no formal recommendation is warranted as there are no significant risks attached to the action not being taken.

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