

Title: HMO Licensing & Planning Permission Policy
Lead Officer: Paul Hughes (01926 456729)
Portfolio Holder: Councillor Jan Matecki
Wards of the District directly affected: All

Summary

This is a report to enable a minor amendment of the HMO Licensing & Planning Permission Policy approved in April 2021.

This is required to enable well established houses in multiple occupation with sufficient evidence of historic use to continue to receive HMO licences upon receipt of duly made licence applications.

Recommendation

- To approve the amended HMO Licensing & Planning Permission Policy which appears in Appendix 2.
-

1 Background/Information

Executive approved a new policy of linking HMO Licensing & Planning Permission in April 2021, to ensure that applicants for HMO Licences were also in receipt of planning permission where it is required. Previously, the requirements for planning permission and HMO licensing were considered separately.

The policy specifies that references to planning permission include a certificate of lawful development, hence there is now a requirement for either planning permission or a certificate of lawful development to operate a licensed HMO.

Members may also be aware that the Council's Planning Enforcement team is leading on a project which seeks to bring under control all existing HMOs within Leamington Spa and take enforcement action to eliminate those which are unacceptable in planning terms.

To date, over 1200 HMOs which are situated in the District's Article 4 implementation area have been verified in regard to planning compliance for HMO use. The verification process has highlighted 8 licensed HMOs to have planning issues and a further 86 unlicensed HMOs have also been identified for non-compliance with planning for HMO use.

1.1 Policy requirements

The policy requires that where planning permission is needed, the landlord is required to apply within the following times scales:

- Landlords making an HMO licence application for the first time where there are no current residents are advised to obtain planning permission before their licence can be issued
- Landlords making an HMO licence application for the first time where residents are currently in occupation are given two months to submit a valid planning application before enforcement action is considered.
- Landlords making an HMO licence application who submit a planning application within the required time but then who fail to provide any required documentation within a two-month period will be subject to the consideration of enforcement action.
- Landlords of properties where an HMO licence needs to be renewed, must submit a valid planning application in time for this to be considered before the current licence expires. A new licence will not be issued without planning permission being in place.

1.1.1 The policy indicates that references to planning permission includes a certificate of lawful development. Such a certificate would be granted under planning legislation where, by way of the requisite application, sufficient evidence is produced to demonstrate that the property has been operating continuously as an HMO for a period of 10 years.

1.1.2 It is however recognised that there are instances in which, whilst the historic use of a property is known and recognised, it is not possible for a new owner for example, to produce sufficient historic evidence of that to enable a Certificate of Lawful development to be issued.

1.1.3 It is circumstances such as this that this report seeks to address by proposing that the policy be revised to include an element of increased flexibility.

1.2 **Operation of Policy since implementation**

1.2.1 There are currently 601 licensed HMOs in the district. Since April 2021, there have been 80 applications for HMO licences. None of these HMO's have been found to be in breach of planning legislation because they did not have a valid planning permission. This is encouraging because it suggests that landlords are aware of the policy requirements.

1.2.2 The vast majority of the licensed HMO's are well established, operating continuously since at least 2012. In the circumstances where such properties have been in operation for in excess of 10 years, it is not possible for planning enforcement action to be taken in respect of that use.

1.2.3 As part of the HMO project referred to above, a number of HMO's already operating with HMO licences have been identified as doing so without the required planning permission and are therefore the subject of ongoing investigations and potential enforcement action. It is intended that those cases be brought to a conclusion before each licence comes up for renewal.

1.2.4 In the circumstances where there is intelligence that properties have been in operation for over 10 years, Landlords have been invited to apply for Lawful Development Certificates to seek to regularise the planning status of their HMO's, however planning legislation does not enable Local Planning Authorities to insist that such an application is made.

1.2.5 A number of landlords have applied for and obtained Lawful Development

Certificates for HMO use, but there have been recent cases where applications have been unsuccessful because the documentation submitted was insufficient. In one case, over the course of the last 10 years, although still operating continuously as an HMO, for a short period, the number of student occupiers accommodated fell below the usual 7 breaking the continuous use for that number resulting in an application for a Certificate of lawfulness for that number being refused, despite intelligence of the historic use.

- 1.2.6 In line with the policy, the Private Sector Housing team are not currently issuing HMO licences where neither planning permission for change of use or a Certificate of Lawful Development is not in place. The team are due to receive 165 applications for licence renewals between June and September 2022. The vast majority of these are very well established but do not have the documentation required to satisfy the policy requirements.
- 1.2.7 Given the absolute requirement in the existing policy to obtain either planning permission or a certificate of lawful development, and the need for enforcement action if either was not in place, Private Sector Housing took further legal advice in May 2022.
- 1.2.8 The legal advice acknowledged the complex nature and difficulty in proceeding with prosecutions and issuing licence refusals for well-established HMOs which in all other respects operate satisfactorily and have been issued with HMO licences since as far back as 2007. There is an acknowledgement that there is a high chance of appeals to the First Tier Tribunal and the prospects of successful prosecutions based upon satisfying the Code for Crown Prosecutors is uncertain, given there are no specific legislative controls dealing with this issue or any test cases that we are aware of.
- 1.2.9 The legal advice indicated that we might consider the approach taken by Oxford City Council who operate a similar policy but have given discretion to Officers to determine which HMOs are suitable for enforcement action. To obtain a licence, landlords are advised that there must be planning permission granted (change of use or certificate of lawful use) **or** clear historic use.

2 Alternative Options available to Cabinet

- 2.1 An alternative option would be to leave the policy wording as existing. Officers would then have no choice other than to attempt to take enforcement action against all HMO landlords who were not in possession of planning permission or a Certificate of lawful development. This would create the difficulties discussed in 1.2.8 above.
- 2.2 The policy could be revoked, but its overall aim of ensuring HMO licencing and planning permission are considered together is credible and evidence to date suggests there is acknowledgment and compliance by landlords who have submitted licence applications since the policy came into effect.

3 Consultation and Member's comments

- 3.1 Members of SOLAR and the Landlord Steering Group have been consulted in respect of these proposals.

4 Implications of the proposal

- 4.1 **Legal/Human Rights Implications**

4.1.1 The proposal would give the Council the discretion it seeks to consider enforcement on a case-by-case basis. From a legal perspective, this would be positive and accord with the Council's Enforcement Policy.

4.2 Financial

4.2.1 Potentially, fee income from HMO Licensing would be secured if large numbers of established HMOs were not threatened with licences being refused. It is noted in paragraph 1.2.1 that of the HMO applications since April 2021 that all applications were in line with the new proposed planning policy so using this precedent as a base, this change should not result in significant loss of income from HMO fees. This supports the Council's resources and future ability to deliver the HMO licensing function.

4.2.2 Income budgets will be monitored closely during this transitional period.

4.3 Council Plan

4.4 External impacts of proposal(s)

4.5 People - Health, Homes, Communities – Helping ensure that licensed HMOs are compliant with planning policy and meet minimum standards

4.6 Services - Green, Clean, Safe - None

4.7 Money- Infrastructure, Enterprise, Employment – maintaining the number of student HMOs in Leamington Spa helps to support the local economy

4.8 Environmental/Climate Change Implications

4.8.1 There are no Environmental/Climate Change implications as part of this report.

4.9 Analysis of the effects on Equality

4.9.1 There are no equality implications to be considered as part of this report.

4.10 Data Protection

4.10.1 There are no data protection implications to be considered as part of this report.

4.11 Health and Wellbeing

4.11.1 The HMO Licensing regime and Planning controls collectively aim to ensure that residents can live in safe and healthy homes and environmental issues are suitably addressed.

5 Risk Assessment

5.1 Legal advice has confirmed that there are significant risks involved in attempting to take enforcement action against licensed HMO landlords who have operated for many years and otherwise in compliance with housing standards. The Council is effectively forced to take enforcement action against landlords because of the wording in the policy and have no discretion. This potentially conflicts with the Council's Enforcement Policy and the Government's Code for Crown Prosecutors.

5.2 Amending the policy wording to enable assessment of cases on their individual merits significantly reduces the risk of appeals to the First Tier Tribunal and legal claims given there are no specific legislative powers which link HMO licensing and planning permission.

5.3 The possible consequences of successful legal claims and tribunal rulings could result in costs claims for loss of rental income or capital value if properties have been prevented from operating as an HMO, as well as reputational damage to

the Council.

- 5.4 Giving Council Officers discretion to select cases for enforcement action will enable them to prioritise and make best use of resources.

6 Conclusion/Reasons for the Recommendation

- 6.1.1 Making a small change to the wording in the Council's policy would provide Officers with the discretion they need to ensure that the policy can be used effectively.
- 6.1.2 It is proposed that the policy wording is amended from that shown in Appendix 1 to that shown in Appendix 2.

Background papers:

Appendix 1 HMO Licensing & Planning Permission Policy April 2021

Appendix 2 HMO Licensing & Planning Permission Policy May 2022 (as amended)

Supporting documents:

Executive Report March 2021 'HMO Licensing & Planning Permission Policy'

Two email responses from members of the public (names redacted)

Report Information Sheet

Please complete and submit to Democratic Services with draft report

Committee/Date	Cabinet 6 th July 2022	
Title of report	HMO Licensing & Planning Permission Policy	
Consultations undertaken		
Consultee *required	Date	Details of consultation /comments received
Ward Member(s)		
Portfolio Holder *	8.6.22	Councillor Matecki
Financial Services *	7.6.22	Victoria Bamber
Legal Services *	7.6.22	Sue Mullins
Other Services		
Chief Executive(s)	1.6.22	Andrew Jones
Head of Service(s)	31.5.22	Lisa Barker
Section 151 Officer		
Monitoring Officer	1.6.22	Andrew Jones
CMT (WDC)	20.6.22	Chris Elliot Andrew Jones Dave Barber
Leadership Co-ordination Group (WDC)		
Other organisations		
Final decision by this Committee or rec to another Ctte/Council?		Recommendation to :Cabinet / CouncilCommittee
Contrary to Policy/Budget framework		No/Yes
Does this report contain exempt info/Confidential? If so, which paragraph(s)?		No/Yes, Paragraphs :
Does this report relate to a key decision (referred to in the Cabinet Forward Plan)?		No/Yes, Forward Plan item – scheduled for (date)
Accessibility Checked?		File/Info/Inspect Document/Check Accessibility