

Overview & Scrutiny Committee
21 September 2021

Title: HMO Licensing & Planning Permission Policy Effectiveness Review

Lead Officer: Paul Hughes, 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: N/A

Included within the Forward Plan: Yes – Ref 1,179

Equality Impact Assessment Undertaken: N/A

Consultation & Community Engagement: N/A

Final Decision: N/A

Accessibility checked: Yes

Officer/Councillor Approval

Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive	13/9/21	Chris Elliott
Head of Service	24/8/21	Lisa Barker
CMT	13/9/21	Chris Elliot
Monitoring Officer	13/9/21	Phil Grafton
Finance	25/8/21	Victoria Bamber
Portfolio Holder(s)	13/9/21	Councillor Jan Matecki

1. Summary

- 1.1. A new policy linking HMO Licensing with Planning Permission was introduced on 1st April 2021.
- 1.2. The policy aims to ensure that landlords of licensable HMO's who require planning permission for HMO use, apply for and obtain planning permission before they are granted a licence:
 - Landlords making an HMO licence application for the first time where there are no current residents will be 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 to be given two months to submit a valid planning application before enforcement action is taken.
 - 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 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.

2. Recommendation

- 2.1. It is recommended that this report is noted.

3. Reasons for the Recommendation

- 3.1. To enable the effectiveness of the new policy to be considered.
- 3.2. The new HMO licensing and Planning Permission Policy has only been in place for less than 6 months. It has not been necessary to take enforcement action in respect of any of the licence applications which have been submitted since 1st April 2021.
- 3.3. Early indications suggest there is strong awareness of the new policy amongst landlords, and it is encouraging to note that no HMO licence applications have been received since 1st April where the HMO does not have the required planning permission or established use.
- 3.4. Since 1st April 2021, there have been 13 applications for HMO licences, comprising 8 new applications and 5 renewals.
- 3.5. Of the 13 HMO's concerned, 10 of these are in Leamington Spa, 8 of which would qualify for Lawful Development Certificates. The other 2 in Leamington Spa were invalid licence applications because they did not require an HMO licence.

- 3.6. The remaining 3 are in Warwick and Kenilworth and do not require planning permission as they fall under permitted development (C4 use class and not within the Article 4 Direction area).
- 3.7. There are no non-compliant HMO's due for re-licensing until September 2023.
- 3.8. Some landlords who may otherwise have created new licensed HMOs may be deterred from doing so because the policy is now in place.
- 3.9. 9 licensed HMO's have been identified by Planning Enforcement as not having planning permission and would not qualify for a Lawful Development Certificate.
- 3.10. The Planning Officer is writing to all these licensable HMO landlords in advance of their HMO licence expiry dates. One Planning Enforcement Notice has been served to date in respect of one of the HMOs listed.

4. Policy Framework

4.1. Fit for the Future (FFF)

- 4.1.1. 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.
- 4.1.2. 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.
- 4.1.3. Under each heading below, you should use auto-numbering for your paragraphs, and they should look like below (4.2.1, 4.2.2 etc.)

4.2. FFF Strands

4.2.1 External impacts of proposal(s)

People - Health, Homes, Communities – Helping ensure that licensed HMOs 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

4.3. Supporting Strategies

- 4.3.1. 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.

4.4. Changes to Existing Policies

- 4.4.1. This is a new policy that links HMO licensing with the Council's existing Article 4 Direction and Section H6 of the Warwick District Local Plan.

4.5. Impact Assessments

- 4.5.1. The HMO Licensing & Planning Permission Policy helps to enforce existing Council planning policies, so no impact assessment has been undertaken.

5. Budgetary Framework

- 5.1. There are 9 licensed HMOs that will no longer be able to operate at licence expiry if they are unable to obtain the relevant planning permission.
- 5.2. HMO Fees for new applications and renewals range from £665 to £1,339 depending on the number of occupants, in a worst-case scenario a reduction of 9 HMOs for new application fees at the highest level of £1,339 would equate to an income loss of £12,051 over a 5-year term.
- 5.3. Considering a realistic position, the fee income reduction arising from the new policy is not likely to result in a loss as per the reasons noted in paragraph 9.2 below stating that no HMO licence applications have been received since 1st April where the HMO does not have the required planning permission or established use.

6. Risks

- 6.1. This report only seeks to review the effectiveness of the policy since implementation, hence there are no risks as such.

7. Alternative Option(s) considered

- 7.1. Not reviewing the effectiveness of the policy would seem perverse, since it is important to know whether the new policy is effective in achieving its objective.

8. Background

- 8.1. An HMO licence is required where an HMO is occupied by 5 or more unrelated people, typically sharing kitchen or bathroom facilities. Planning permission is required when a new HMO is created where there are 3 or more people living as 2 or more households in the Leamington Spa wards,

or 7 or more people living as 2 or more households elsewhere in the district.

- 8.2. HMO Licensing and planning permission have always been two separate processes, each subject to separate legal enforcement. An HMO licence application would be approved if it satisfied all the criteria under Part 2 Housing Act 2004, even if it did not have the benefit of planning permission.
- 8.3. The Council has an Article 4 Direction and H6 planning policy so there has been criticism that the Council did not have a joined-up approach between departments, when issuing HMO licences.
- 8.4. A consultation exercise with key stakeholders over a policy change was undertaken between November 2020 and January 2021.
- 8.5. The combination of Government guidance, case law and specialist Counsel opinion led to the Council to adopt a new policy from April 1st, 2021.
- 8.6. The new policy intends to ensure that landlords obtain planning permission before they are granted an HMO licence. Landlords applying for an HMO licence for the first time are given two months in which to submit a valid planning application if the property is occupied. Landlords needing to renew HMO licences must submit a valid planning application before their HMO licence expires.
- 8.7. Landlords who fail to make valid planning applications within the appropriate timescales will not have their HMO licence applications processed. They will not be considered as 'duly made' and they will be subject to prosecution or civil penalty under Part 2 Housing Act 2004.
- 8.8. HMO licence applications will not be considered for approval until such time as any planning applications have been determined. In the event of planning permission being refused by the Council or on appeal, enforcement action will be led by Planning Enforcement.