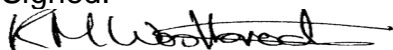


<b>LONDON BOROUGH OF CAMDEN</b>	<b>WARDS: ALL</b>
<b>REPORT TITLE:</b> Additional Houses in Multiple Occupation (HMO) Landlord Licensing (HASC/2015/13)	
<b>REPORT OF:</b> Director for Housing and Adult Social Care	
<b>FOR SUBMISSION TO:</b> Cabinet Member for Housing	<b>DATE:</b> 4 June 2015
<p><b>SUMMARY OF REPORT</b></p> <p>The Camden Plan aims to develop new solutions with partners to reduce inequality, and the Private Sector Housing Strategy 'Better Homes for Private Tenants' is a key contributor, including a commitment to consider licensing of the private rented sector. This report outlines an additional licensing scheme for landlords with HMO (houses in multiple occupation) properties, with the aim of raising standards. The report is coming to the Cabinet Member for Housing as, under statute, any introduction of licensing requires a formal designation to be made by the Local Housing Authority and on the 25th February 2015 Cabinet resolved that;</p> <p>(i) progress against the Private Rented Sector Strategy be noted; and</p> <p>(ii) as agreed by the Leader, authority be delegated to the Cabinet Member for Housing, following the close of additional consultation, to decide whether to introduce an additional licensing scheme for landlords with HMO properties in Camden, taking all necessary decisions flowing from that decision, including if appropriate, aligning the current mandatory conditions and minimum standards with the scheme.</p> <p><b>Local Government Act 1972 – Access to Information</b></p> <p>No documents required to be listed were used in the preparation of this report.</p> <p><b>Contact Officer:</b></p> <p>Rhys Makinson, Assistant Director, Needs and Resources, HASC  <a href="mailto:Rhys.Makinson@camden.gov.uk">Rhys.Makinson@camden.gov.uk</a> 020 7974 3518</p> <p><b>WHAT DECISIONS ARE BEING ASKED FOR?</b></p> <p>The Cabinet Member for Housing is asked to:</p> <ol style="list-style-type: none"> <li>i. On consideration of the results of the consultation and equality impact assessment, to agree to introduce an additional licensing scheme for landlords with HMO properties in Camden as outlined in this report, and align the current mandatory scheme conditions with those for the additional licensing scheme.</li> <li>ii. Agree to the fees and charges proposed in para 2.9 and Appendix 4 for the additional licensing scheme and the mandatory licensing scheme.</li> <li>iii. Agree to delegate authority to the Director of Housing and Adult Social Care to take all steps to implement the additional licensing scheme and to make any minor amendments to the fees, standards and conditions including amendments to the extent permitted or required by law.</li> <li>iv. Note that the Additional Licensing scheme will be reviewed annually. Any significant changes, including the withdrawal of a licensing designation, will be subject to further consultation and a decision by the Cabinet.</li> </ol>	

Signed:



Rosemary Westbrook, Director of Housing and Adult Social Care

Date: 2015

## **1. WHAT IS THIS REPORT ABOUT?**

1.1 This report outlines a proposed scheme for additional licensing for all HMO landlords in Camden. The definition of a HMO in the Housing Act 2004 is a house or flat occupied by three or more people who form more than one household. The current mandatory licensing scheme in operation in the borough includes only larger properties (five or more sharers and three or more stories). The definition of HMO includes:

- Buildings that consist of bedsit rooms where at least some of the facilities are shared (kitchen or bathroom)
- Buildings with multiple units of accommodation that all have their own exclusive facilities but which are not self-contained
- Buildings which contain a mixture of the above types of accommodation
- Shared houses
- Buildings converted into self-contained flats that don't comply with the Building Regulations 1991 and where less than two thirds of the flats are owner-occupied are known as section 257 HMOs (applicable in the proposed scheme to only those properties where half or more of the units are let and only those parts under the control of the proposed licensee or freeholder).

## **2. WHY IS THIS REPORT NECESSARY?**

- 2.1 In October 2013, Cabinet agreed a one year Private Sector Housing Strategy with three key objectives; to improve property standards; to support a stronger private tenant voice and to enable an increased supply of private sector homes. The first year of this strategy was reviewed by Cabinet in February 2015 and included an update on the consultation on a proposed licencing scheme. The decision was taken to delegate the final decision on designating any area for additional licensing to the Cabinet Member for Housing.
- 2.2 Following an evidence gathering process and a 22 week consultation (see section 8, Appendices 2 and 3), this report outlines a proposed additional licensing scheme covering all HMOs in the borough. Research detailed in Appendix 3 estimates there are between 5,000 and 8,000 HMOs in Camden.
- 2.3 This evidence suggests that HMOs are scattered across the whole borough, although certain problems may be more common in particular types of properties (e.g. excess cold in older homes). The evidence also demonstrates that conditions tend to be most problematic in HMO accommodation which is why the focus of this report is borough-wide additional licensing. There is currently insufficient evidence to satisfy the criteria for a "selective" licensing scheme that would cover all private rented property.
- 2.4 Between April 2014 and March 2015, the Council encouraged the improvement of 440 rented properties using informal communication highlighting issues with conditions which were addressed without having to resort to formal notices – of which 116 were HMOs (despite making up only 13% of PRS dwellings). Over 90% of the rented properties inspected under the mandatory licencing scheme were found to have the most serious health and safety hazards.

- 2.5 Good quality HMOs can provide a decent and affordable place to live. With rising rents, an increasing number of renters are having to share properties. This accommodation can be badly managed and the council has considered other courses of action to deal with these problems, including the current mandatory licensing scheme, or by using the other enforcement and regulatory measures available e.g. educating landlords through the Landlords' Forum (insufficient reach); continued reliance on reactive complaints (pressure on tenants). The council also hosts the London-wide Landlord Accreditation Scheme which provides training for landlords, with 13,000 landlord members, including over 700 in Camden. This scheme does nothing, however for poor standards in properties run by landlords who are not members. Licensing will reach all landlords.
- 2.7 The proposed scheme will help the council to work with landlords to ensure homes are safe and well managed. Currently, there is a reliance on complaints from tenants to identify any problems.
- 2.8 A fee would be charged for a licence and this has been calculated on the basis of the anticipated scheme costs. The fee is split into two parts, one to be paid on application and the other on receiving a licence. The initial 'application' fee would cover making the application, the costs of the authorisation procedures and formalities (including for example administration of the scheme through the IT system), and inspections. On the application being successful, a further fee to cover the costs of the running and enforcement of the licensing scheme will be levied. The main duties of licensing staff will include raising awareness of the scheme, processing licence applications, inspecting and re inspecting properties against licence conditions to determine compliance.
- 2.9 The full scheme and conditions are detailed in Appendices **1** and **6**. Landlords (or their agents) would have to apply online for a licence and pay the fee. It is proposed that the application fee will start at £300 with an extra cost of £30 per bedroom/unit to take into account the additional work around inspection. On the application being successful, a further licence fee of £150 and £15 per bedroom/unit will be levied to cover the costs of the running and enforcement of the licensing scheme. If a landlord is accredited by a London Rental Standard Scheme, there will be a discount of £95 to the application fee (taking into account likely compliance as a result of being accredited and so reduced costs of administration). For purpose built student accommodation a discount on unit costs will be offered (with the fee being £3 per unit for the application fee and £2 per unit for the licence fee -rather than £30 and £15 respectively) - taking into account ANUK/Unipol codes of practice, and the fact that this accommodation is generally new, standards of management are high, and the bulk repeated design layouts all reduced costs of administration. It is also proposed that the opportunity is taken to align the mandatory licence fees, standards and conditions with those proposed.
- 2.10 Properties will be expected to meet a set of minimum standards (**Appendix 6**) including the number and type of kitchen, bathroom and toilet facilities for the number of occupants, which must be complied with within a specified time. The licence will also specify the maximum number of people who may live in the HMO.

- 2.11 There will need to be suitable management arrangements in place and the licence holder be considered a 'fit and proper' person before a licence is issued. If any significant hazards are identified during the inspection, the matter will be referred to a housing enforcement team for further consideration.
- 2.12 An EIA was conducted (**Appendix 5**), and identified that younger people are more likely to live in PRS accommodation and that BME groups are slightly overrepresented compared to other tenures. The EIA showed no discrimination and positive impacts to these groups (notably improved property conditions and the corresponding impact on health and improved information about HMOs).

### **3. OPTIONS**

- 3.1 Option 1:** Introduce an additional licensing scheme for all HMO landlords in Camden as outlined above, including agreeing the proposed fee amounts and allowing a discount to these fees for accredited landlords and purpose built student accommodation in certain circumstances. This option is recommended.
- 3.2 Option 2:** Take no action and rely on accreditation and informal action to improve conditions in the private rented sector. This option would rely on landlords coming forward for accreditation and does not cover property conditions.

### **4. WHAT ARE THE REASONS FOR THE RECOMMENDED DECISIONS?**

#### **4.1 Poor conditions in many HMO properties**

The evidence arising from the consultation, evidence gathering and the property survey (see **Appendices 2+3**) shows there are problems with conditions in many Camden HMOs. Of properties inspected, 44% had at least one health and safety hazard. The overall management in 40% was rated as poor or very poor and 43% of the properties had only battery smoke alarms, while 27% had no fire or smoke detection system at all. 66% of private tenants responding to the evidence gathering survey felt their homes were poorly managed. These issues cannot be fully addressed through mandatory licensing (many smaller HMOs are in poor condition), voluntary landlord accreditation (which does not reach enough landlords), or other enforcement options available to local authorities (which rely on complaints).

#### **4.2 The potential for additional licensing to address these conditions**

Additional licensing creates a proactive system to address conditions in Camden HMOs. Compliance visits would no longer rely on complaints. A clear set of minimum standards would apply to all HMOs. The council would aim to inspect properties before the licence is issued. In the online survey on the proposed scheme, 74% of respondents felt that licensing would improve safety standards, rising to 86% for private tenants. In all, 70% of the responses were in favour of licensing. Whilst the council supports accreditation; it is voluntary and the majority of landlords are not members.

#### **4.3 The use of licensing as part of a co-ordinated suite of measures**

The council's Private Sector Housing Strategy sets out measures designed to improve the Private rented sector, Licensing is a key part of this strategy. The Cabinet report from February 2015 outlines in further detail how licensing fits in to the broader range of measures. The report is available [here](#) (under item 12).

## **5. WHAT ARE THE KEY IMPACTS / RISKS? HOW WILL THEY BE ADDRESSED?**

### **5.1 Improving conditions and management in the sector**

- 5.1.1 The worst conditions in the Private Rented Sector are in HMOs. Based on the evidence presented in Appendix 3, the authority considers that a significant proportion of the HMOs which will be subject to the scheme are being managed so ineffectively as to give rise, or to be likely to give rise, to problems either for the occupiers of the HMOs or for members of the public.
- 5.1.2 Licensing allows a strategic approach to raising the standard in a larger number of properties without the need for enforcement, except in those cases where landlords do not comply or do not come forward to license. For landlords, it will allow peace of mind through knowing that their property meets standards.
- 5.1.3 For small scale landlords (The National Landlords' Association 2014 research shows that 70% of landlords are 'part time' and do not make their main income through being a landlord), some of whom are 'accidental' landlords, it will ensure that they are aware of their responsibilities and property standards.

### **5.2 Reducing the risk of retaliatory eviction in HMOs**

- 5.2.1 In the current system, enforcement relies on tenant complaints. Through recent consultation with private tenants it is clear that retaliatory eviction occurs in Camden following complaints about conditions, and that some tenants are therefore frightened to complain for fear of repercussions, even with the recently introduced laws under the Deregulation Act 2015 affording a degree of protection. However, it is unrealistic to conclude that all tenants in the private rented sector can benefit from the protections in the new law. Licensing removes the need for a complaint for conditions to be addressed.

### **5.3 Increased data on landlords and the private rented sector in the borough**

- 5.3.1 The scheme will provide an overview of HMO stock, and contact details for all HMO landlords. As well as being able to better plan PRS policy, it will enable the council to support landlords in ensuring their properties are good quality homes. For example landlords will have better access to grants schemes for private sector housing where appropriate.

### **5.4 Key Risks and Mitigations.**

- 5.4.1 The key risks with the proposals are set out below:
- If a high proportion of landlords do not license their properties, it would be costly to enforce, and the scheme is less likely to cover its own costs. To mitigate, there will be good publicity for the scheme, and using HMO data to target landlords.
  - Application and licence fees could be passed on to tenants (this was a concern expressed through the survey). To mitigate, the proposed fee is set at as a low level as possible to minimise the impact on tenants (For an HMO with three units, the fee would equate to £117 a year, or £2.25 per week across both parts of the fee).

- Not enough staff can be recruited. To mitigate, a two stage recruitment process will take place with competitive salary packages. The current EHOs could be transferred from reactive work to licencing duties and agency staff can be used to boost numbers.
- New processes and forms not ready for implementation date. To mitigate any potential failure in the delivery of the new IT systems an alternative in-house form is being designed with minimal cost. This would not deliver the benefits of integrating back office functions but would serve the purpose for registering and payments. Strict milestones set into the IT contract and escalation methods have been agreed.
- As the Council aims to inspect properties prior to issuing the licence, there is a risk that the systems are overwhelmed through having underestimated the number of HMOs. To mitigate, project planning will rely on educated assessments of HMOs in Camden and a streamlined business process. Initially the time it takes to inspect properties may be lengthened to deal with any spikes in demand.

## **6. WHAT ACTIONS WILL BE TAKEN AND WHEN FOLLOWING THE DECISION HOW WILL THIS BE MONITORED?**

- 6.1 Following any decision to introduce the scheme, a notice of the designation must be published within seven days. All those consulted must be notified of the designation within two weeks. The scheme will come into force 8 December 2015 (which is more than three months following the designation) and last for a maximum of five years, ending 8 December 2020. If the council then wishes to extend the scheme a new designation must be made.
- 6.2 If the scheme is agreed and implemented, HMO landlords and tenants will be made aware of the new responsibility to license properties and from June 2015, an extensive communications plan will ensure that HMO landlords are aware of the minimum standards and that they will have to purchase a licence.
- 6.3 The scheme will be evaluated against the key desired impacts.

## **7. LINKS TO THE CAMDEN PLAN OBJECTIVES**

- 7.1 Additional licensing will help deliver better homes for private tenants as part of the Private Sector Housing Strategy, and links to the 'Developing new solutions with partners to reduce inequality' Camden Plan strategic objective. Through the proposed licensing scheme, it is hoped that standards in the private rented sector across Camden will improve.

## **8. CONSULTATION**

- 8.1 There was a two stage information gathering process, preliminary evidence gathering followed by a two stage consultation totalling 22 weeks. The preliminary evidence gathering looked at PRS conditions; this included an online survey, events engaging landlords and tenants and a physical survey of HMOs (The results of this evidence gathering appear at Appendix 3). The statutory consultation stage was conducted online and through focused street surveys. The initial twelve week period (Sept – Dec 2014) focused on the views of tenants, landlords and residents in Camden. The second ten week phase (February – May 2015), as required following the judgement in *Regas v. The London Borough of Enfield* [2014] EWHC 4173

(Admin), focused on the views of residents, businesses and other interested parties in neighbouring areas (The results of the entire consultation appear at Appendix 2). A report on the potential impact in neighbouring areas was also commissioned from the London School of Economics and is appended to the report (Appendix 7). This informed the methodology of the second consultation.

- 8.2 The Secretary of State's general approval to designate an area as subject to additional licensing is given where the local housing authority has consulted persons who are likely to be affected by it for not less than 10 weeks. The consultation methods were therefore devised with a view to coming to the attention of groups likely to be affected, specifically tenants and landlords but also businesses and individuals, and the media used was likely to be seen by those groups. A full list of all engagement methods is included in Appendix 2.
- 8.3 The consultation was planned with those out of borough who are likely to be affected by any designation in mind, including the deployment of researchers focused in neighbouring borough areas and ten weeks of additional focused online consultation. The neighbouring boroughs' housing/ environment departments were specifically invited to respond to the consultation (with four boroughs featuring the consultation on their websites). Groups such as Generation Rent and Shelter with cross-borough presence were involved in publicising the consultation as were national and local landlord groups.
- 8.4 The Evidence Gathering Process– outcomes**
- 8.4.1 Camden environmental health professionals found that 40% of the 391 HMOs visited appeared to be poorly or very poorly managed. They also found that two in five (44%) of properties had at least health and safety hazard. (See Appendix 3 'Evidence Base')
- 8.4.2 120 private renters responded to the preliminary survey. Less than half were satisfied with the quality of their home. A total of 66% felt that their homes were poorly managed. Three quarters agreed or strongly agreed that the Council should do more to improve standards. Even a majority (75%) of the small number of landlords who responded (12) agreed that the Council should do more to improve standards in privately rented homes.
- 8.5 Consultation on the HMO additional licensing scheme – outcomes**
- 8.5.1 Following an initial analysis of the evidence base for licensing, a twelve week consultation was held (4/09/14 – 28/11/14), via an online survey and using community researchers. In total, 1,010 responses were received, including 281 private tenants and 146 Camden landlords and representatives from adjoining Local Authorities. A further ten weeks of consultation (via an online survey and community researchers) were then conducted focused on the views of residents and businesses in neighbouring areas. In total 390 responses were received as part of this work. The figures below amalgamate the results of the total 22 weeks of consultation (Appendix 2).
- 8.5.2 Overall, 70% of the 1400 respondents were in favour of an additional licensing scheme, 22% not in favour and 8% didn't answer or weren't sure. Clear majorities felt that the scheme would improve safety standards (74%), improve how HMOs are

managed and maintained (71%), and improve the reputation of private renting in the borough (65%).

- 8.5.3 The most common constructive issues raised in the free text comments were around the cost being passed on to tenants, concern that the scheme was a revenue raising exercise for the council and questions about the impact the scheme would have. There were also a large number of positive comments (responses are outlined in Appendix 2).
- 8.5.4 A number of comments related to the providers of student accommodation who were signed up to the ANUK/Unipol codes of practice. In particular the fact that this accommodation was generally new, standards of management were high and the costs applied to these large properties would be extremely expensive.
- 8.5.5 A number of the comments and separately received consultation responses indicated the difficulty of licencing s257 HMOs (badly converted flats), where there are multiple leaseholders, many of whom are owner occupiers. Comments were also received on the administrative burden of some of the conditions.
- 8.5.6 As a result of the comments received as part of the consultation on these issues, the originally proposed scheme has been amended. In relation to s257 HMOs, the scheme will only include those parts of the property that are under the control of the freeholder / other person in control. For purpose built student accommodation a discount on unit costs will be offered (a £5 per unit rather than £45 in total across both parts of the fee, see para 2.9 above). A number of the standard conditions have also been amended, having taken into account responses received during consultation (see Appendices 1 and 6 for final scheme details following consultation).

## **9. LEGAL IMPLICATIONS (comments from the Borough Solicitor)**

- 9.1 Under the Housing Act 2004 ("the Act"), Local Authorities can adopt their own licensing scheme in addition to the mandatory regime. This additional licensing scheme is achieved by making a designation, and the power can be restricted to certain areas or to particular categories of HMO. Under section 57 of the Housing Act 2004 the Local Authority must ensure that any exercise of their power to require additional licensing is consistent with their overall housing strategy. The Authority must also adopt a co-ordinated approach in dealing with the overlapping issues of homelessness, empty properties and anti-social behaviour in the private sector.
- 9.2 To make a designation, under s.56(2) of the Act the authority must consider that a significant proportion of the HMOs which will be subject to the scheme are being managed so ineffectively as to give rise, or to be likely to give rise, to problems either for the occupiers of the HMOs or for members of the public. Before making a designation, under s.56(3), the authority must take reasonable steps to consult persons who are likely to be affected by it, and must consider any representations made in response. The Council has undertaken over two parts (12 weeks & 10 weeks) a total of 22 weeks of detailed consultation, meeting the requirement of 10 weeks of consultation as set out in The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015. The second period of the consultation additionally met the conditions as set out in the case of R (Regas) v LB Enfield [2014] EWHC



4173 (Admin), to consult persons who were likely to be affected outside of the proposed designated area.

- 9.3 A designation must be confirmed by the Secretary of State, and this confirmation may be by way of the 2015 general approval above for schemes of certain types, as is the case with the London Borough of Camden's proposed scheme. Following confirmation of the designation, the authority must take steps to publicise it, which are specified in the Housing Act 2004 and the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006/373.
- 9.4 Under s.60 of the Act a designation may last for a maximum of five years. The authority must periodically review its operation and may revoke it if they consider it appropriate to do so. If a designation is revoked, the authority must comply with certain prescribed publicity requirements.
- 9.5 The Legal position in respect of licensing fees obtained through additional licensing has now been clarified by the recent Supreme Court judgement in R (on the application of Hemming (t/a/ Simply Pleasure Ltd and others) v. Westminster City Council [2015] UKSC 25. In his judgement, Lord Mance confirmed as lawful applications for licenses made on terms that the applicant must pay;
  - i. On making the application, the costs of the authorisation procedures and formalities, and
  - ii. On the application being successful, a further fee to cover the costs of the running and enforcement of the licensing scheme.

The fee process outlined at paragraph 2.9 above and appendix 5 reflect this structure, and would therefore be in line with the requirements as set out in the Provision of Services Regulations 2009 which give effect to Directive 2006/123/EC on services in the internal market.

## **10. RESOURCE IMPLICATIONS (comments from the Director of Finance)**

- 10.1 As the exact level of income from fees will depend on the number of HMO properties, number of units within the HMOs and the number of discounts granted, all of which are not yet known, it is not possible to accurately predict the exact level of income that will be received from fees for the scheme.
- 10.2 The lower number of HMO properties estimated by the research carried out is 5,000 properties. If the average fee paid for each HMO is £500 the total income received would be £2.5million. This would mean that the resources to fund any administration costs associated with running the scheme would be £0.5million per annum for each of the five years of the scheme.
- 10.3 All expenditure associated with administration of the scheme will need to be funded from the fee income received. In order to ensure that all appropriate costs are met from fee income an annual budget will need to be set based on the latest income forecasts.

- 10.4 The level of income received from fees must be monitored closely and expenditure plans altered accordingly to ensure the scheme covers its administration costs.
- 10.5 It is recommended that the scheme is reviewed annually to ensure that plans are in place to for the scheme covers the cost of administration and the scheme remains cost effective for the Council and for licence holders. If the cost of administering the scheme is higher than the fee income received any additional costs will have to be met by the general fund.

## **11. APPENDICES**

Appendix 1: Additional Licensing Scheme Conditions (detailed scheme conditions for landlords to comply with. To agree)

Appendix 2: Additional Licensing Consultation Responses (residents', tenants' and landlords' views on the specific proposed scheme. To note)

Appendix 3: Evidence Base (Condition survey and views which influenced the design of the scheme. To note)

Appendix 4: Fees and Charges (to agree)

Appendix 5: EIA (to note)

Appendix 6: Additional Licensing Scheme (detailed minimum standards for landlords to comply with. To agree)

Appendix 7: London School of Economics report: Cross-boundary effects of additional landlord licensing in Camden (to note)

**REPORT ENDS**