

## Report of the Strategic Director of Place to the meeting of the Executive to be held on November 6<sup>th</sup> 2018

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### Subject:

Extension of the mandatory licensing scheme for Houses in Multiple Occupation (H.M.Os).

### Summary statement:

The purpose of this report is to inform members of the changes introduced to the mandatory licensing scheme for Houses in Multiple Occupation (HMOs) under the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 and Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 and to agree the approach that the Council will take relating to the fees and charges for licences under the scheme.

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### Portfolio:

Regeneration, Planning and Transport

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### Overview & Scrutiny Area:

Regeneration and Environment

## 1. SUMMARY

The purpose of this report is to inform members of the changes introduced to the mandatory licensing scheme for Houses in Multiple Occupation (HMOs) under the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 and Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences)(England) Regulations 2018 and to agree the approach that the Council will take relating to the fees and charges for licences under the scheme.

## 2. BACKGROUND

2.1 The importance of decent homes that people can afford to live in is one of the six key objectives within the Council Plan. Addressing poor housing conditions contributes not only to the housing objective within the Council Plan but also more widely as:-

- Good quality housing attracts companies and workers - leading to an economically prosperous district
- Good quality housing promotes community safety – leading to a safer place in which to live, work and play
- High quality, affordable, warm homes promote health and wellbeing – leading to a healthy district

2.2 The Housing Act 2004 placed a duty on the Council to administer a mandatory licensing scheme for certain categories of House in Multiple Occupation (HMOs) which were deemed to be of the highest risk. In line with this legislation the Council has been administering the current mandatory HMO licensing scheme since April 2006 for HMOs comprising 3 or more storeys and with 5 or more occupants, the occupants to comprise two or more households. There are currently 256 licensed HMOs in the district.

2.3 The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 has the effect of extending the scope of Section 55(2)(a) of the Housing Act 2004 so that mandatory licensing also applies to HMOs which are less than 3 storeys high from October 1<sup>st</sup> 2018.

The Order does not alter the occupation requirement so for mandatory licensing to apply the property must still be occupied by 5 or more occupants, the occupants to comprise two or more households.

2.4 Subject to the occupation criteria, the categories of HMO that will be subject to mandatory licensing are:

- HMOs that meet the standard test under section 254(2) of the Housing Act 2004, i.e. where at least 2 households share a basic amenity
- HMOs that meet the self-contained flat test under section 254(3) of the Housing Act 2004 but are not purpose built flats situated in a block comprising 3 or more self-contained flats. Purpose built is not defined in the Regulations and therefore takes its ordinary and natural meaning, i.e. the

building was designed and constructed for a particular use.

- HMOs that meet the converted building test under section 354(4) of the Housing Act 2004 and in which one or more of the units of living accommodation is not a self-contained flat.

The majority of the above types of HMO were always subject to mandatory licensing, albeit only for those of 3 storeys or more. One of the most significant changes is the inclusion of self-contained flats in multiple occupation that are not purpose built. Initial estimates suggest that there will be between 70 – 150 of this type of flat that will require a licence.

- 2.5 HMOs owned and managed by Registered Providers, the Health Authority and the Police Authority are excluded from the definition of what constitutes a House in Multiple Occupation and are therefore exempt from the requirement to licence.
- 2.6 Licences are normally issued for the maximum period of 5 years, although a licence can be issued for a shorter period in certain circumstances. It is an offence to operate a licensable HMO without a licence, the penalty for which can be a Civil Penalty Notice for up to £30,000 or prosecution.
- 2.7 In anticipation of the extension of the mandatory scheme, the Housing service has implemented a marketing and communications campaign to raise awareness amongst landlords and tenants. This has included:
  - Advisory letters sent to all landlords listed in departmental records who may own or manage HMOs
  - A series of updates using the Council's "Stay Connected" bulletins
  - Promoting the changes using social media, the local Press and the Council's website
- 2.8 The Housing service is also undertaking a number of physical surveys to identify potential properties that may be subject to licensing. To date surveys have been completed in BD1, BD5 and BD7 as these have traditionally been the wards with the highest number of HMOs. The survey is now being extended to cover other postcodes where the data has identified properties that may require a licence.
- 2.9 The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences)(England) Regulations 2018 require Councils to include additional conditions within all HMO licences issued after October 1<sup>st</sup> 2018. These additional conditions relate to minimum room sizes which may be occupied as sleeping accommodation in the HMO. A room smaller than the specified size must not be used as sleeping accommodation and communal space in other parts of the HMO cannot be used to compensate for rooms smaller than the prescribed minimum.

The minimum sleeping room sizes to be included as conditions are:

- 6.51m<sup>2</sup> for one person over 10 years of age
- 10.22m<sup>2</sup> for two persons over 10 years of age
- 4.64m<sup>2</sup> for one child under the age of 10 years

It will also be a mandatory condition that any room of less than 4.64m<sup>2</sup> may not be

used as sleeping accommodation.

The addition of this new condition will not form a significant change in Bradford as, with the exception of the new minimum size for rooms occupied by a child under the age of 10 years, the minimum standards already included in licences issued by Bradford were already consistent with these standards.

- 2.10 The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences)(England) Regulations 2018 also require Councils to include conditions within all HMO licences issued after October 1st 2018 relating to the disposal of domestic waste but, again, HMO licences issued by Bradford already included conditions requiring a licence holder to ensure facilities for waste disposal were provided for their tenants so this will not form a significant change.

### **3. OTHER CONSIDERATIONS**

- 3.1 Before issuing a licence, the Local Authority must be satisfied that:

The licence holder is a 'fit and proper' person. In deciding whether a person is fit and proper, officers must have regard to any previous convictions relating to fraud, violence, drugs or any housing offences.

The property is suitable for the number of persons for which the application is made.

That satisfactory management arrangements are in place.

- 3.2 There are mandatory conditions which must be attached to a licence such as good management practises but specific conditions relating to an individual property can also be attached requiring additional works to be carried out within a specific time period. Failure to comply with conditions is an offence which can result in a Civil Penalty Notice, the maximum fine for which is £30,000, or prosecution.
- 3.3 A licence can be revoked where the Authority believes the licence holder is no longer 'fit and proper', where there are serious breaches of the licence conditions or where conditions in the property are such that it is no longer licensable.
- 3.4 There is right of appeal against a decision to refuse a licence to the First Tier Tribunal.
- 3.5 If a Local Authority refuses a licence or if the person responsible refuses to apply for a licence then the Council must make an interim management order. This requires the Local Authority to take over the day to day management of the HMO. This can be very costly and in Bradford would necessitate the procurement of a managing agent to deliver the function.
- 3.6 Licensing schemes are to be self-funding. The Government advises that the cost of licensing, including setting up and implementing the scheme must be recovered

from licence fees if the scheme is to be run at nil cost to the Local Authority and that the scheme should not make a profit. The Government has not prescribed a maximum limit but Local Authorities must be able to demonstrate that charges are reasonable.

The licence fees charged are subject to an annual inflationary increase.

3.7 Local authorities have always been encouraged to introduce fee scales so as to reward good landlords. To reflect this, a number of discounts are already included in the Council's scale of charges for HMO licences giving discounts for:

- Full applications requiring less time to process and for applications for HMOs which are to standard requiring no additional advisory or enforcement visits by officers.
- Multiple applications by the same applicant where only one 'fit and proper' persons check is required.

It is proposed that a number of additional discounts are now included for any new eligible licence applications:

- A discount of 5% for licence holders who can evidence that they are members of the Unipol Code of Standards (Bradford) accreditation scheme for the property that is subject to the licence application
- A discount of 5% for properties owned and managed by registered charities

3.8 Officers have been reviewing the licence fees in preparation for the introduction of the new Regulations. There are however a number of ongoing legal proceedings nationally which have implications for the costs that can be included in licence fees and the way in which licence fees are administered.

It is therefore proposed that the implementation of any changes to the initial licence fees should be delayed and that delegated authority be given to the relevant Strategic Director in consultation with the Portfolio holder Regeneration, Planning and Transport to decide changes to the licence fees when there is more clarity regarding the legal position.

This would not affect the ability to implement the proposed additional discounts which, as with existing discounts, would be applied to the existing initial licence fees in the interim period.

3.9 The Housing Act 2004 does give the Council discretionary powers to extend licensing to other categories of HMO which are not subject to mandatory licensing. This is known as Additional Licensing. In order to introduce such a discretionary scheme the Council would need to develop a robust evidence base that a significant proportion of such properties were causing problems with poor management, etc. and would then need to undertake a consultation with those affected including neighbouring authorities. The Council may also require Secretary of State approval dependent on the size and/or scale of the scheme.

Given the recent extension to the mandatory scheme it is suggested that the

Council will closely monitor and, within three years, review the impact of these changes to determine whether there is a need to propose a local Additional Licensing scheme to extend the licensing of HMOs further.

#### **4. FINANCIAL & RESOURCE APPRAISAL**

- 4.1 Licensing schemes are to be self-funding. The Government advises that the cost of licensing, including setting up and implementing the scheme must be recovered from licence fees if the scheme is to be run at nil cost to the Local Authority and that the scheme should not make a profit. The Government has not prescribed a maximum limit but Local Authorities must be able to demonstrate that charges are reasonable.

The cost of implementing a licensing scheme is assessed over a 5 year period and are calculated to ensure that so far as is possible to predict, the scheme is run at nil cost to the Authority. Officers have been reviewing the fees to ensure that all relevant costs are included but it is recommended that implementation of these revised fees is delayed until there is more clarity regarding the legal position.

The licence fees charged are subject to an annual inflationary increase.

#### **5. RISK MANAGEMENT AND GOVERNANCE ISSUES**

- 5.1 There are a number of uncertainties regarding the charging of HMO fees which give rise to some difficulties in making decisions on the structure and appropriate fees at the present time.
- 5.2 Failure to ensure compliance with legislation and relevant standards may compromise the health, safety and welfare of the residents of and visitors to the Bradford Metropolitan District who access private sector residential properties and potentially inhibit the Council's ability to collect the income from any penalties imposed.

#### **6. LEGAL APPRAISAL**

- 6.1 The scheme is mandatory by Statute.

There is some recent case law which affects the lawfulness of the charges made in relation to the licensing of HMOs, including the amount of the charges and the structuring of the payments. It is not yet known whether there will be an appeal or further clarification, and accordingly there is some difficulty in making decisions at this point in time.

- 6.2 The Council is subject to the public sector equality duty pursuant to the Equality Act 2010. When making a decision in respect of this report the Council must have regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation; and

- advance equality of opportunity between those who share a relevant protected characteristic and those who don't; and
- foster good relations between those who share a relevant protected characteristic and those who don't.

For these purposes the relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In addition the Council also considers any disproportionate impact on persons on low income and low wage. An Equality Impact Assessment has been undertaken on the impact of the changes to the legislation governing the mandatory HMO licensing scheme. This is attached as Appendix 1 to this report.

## **7. OTHER IMPLICATIONS**

### **7.1 EQUALITY & DIVERSITY**

The improvement of housing conditions in the District will have a positive impact on those groups and individuals who suffer multiple disadvantages associated with poor quality and inadequate housing.

An Equality Impact Assessment has been undertaken on the impact of the changes to the legislation governing the mandatory HMO licensing scheme. This is attached as Appendix 1 to this report.

### **7.2 SUSTAINABILITY IMPLICATIONS**

Clarifying and enhancing the Council's approach to enforcement provides support to residents living in private rented accommodation. As part of governance for the District it seeks to indirectly support social and economic well-being, prosperity and resilience.

The practices and impact of landlords, lettings agents and property managers has a direct impact on people's quality of life and these arrangements are a key factor in this respect.

### **7.3 GREENHOUSE GAS EMISSIONS IMPACTS**

None.

### **7.4 COMMUNITY SAFETY IMPLICATIONS**

7.4.1 The presence of poor quality privately rented housing within communities can impact on community safety, the fear of crime and the feelings that residents have towards their neighbourhood. As a result, the success of the team in improving property conditions can have a significant impact on whole streets and neighbourhoods.

7.4.2 Poor quality privately rented housing can, in some cases, attract antisocial behaviour and criminal activity. Where necessary the team work with

neighbourhood wardens, Neighbourhood Services and the police to highlight and tackle problematic properties and criminal activity, ensuring that action can be taken where possible.

## **7.5 HUMAN RIGHTS ACT**

None.

## **7.6 TRADE UNION**

None.

## **7.7 WARD IMPLICATIONS**

Housing Standards work is largely reactive and covers the whole District.

All housing enforcement activity is taken in line with the Council's Private Sector Housing Enforcement Policy.

## **7.8 IMPLICATIONS FOR CORPORATE PARENTING**

None.

## **7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT**

A Privacy Impact Assessment has been completed. No significant issues have been identified.

## **8. NOT FOR PUBLICATION DOCUMENTS**

None.

## **9. OPTIONS**

9.1 Implementation of the mandatory licensing scheme for Houses in Multiple Occupation is a statutory requirement.

9.2 **Option 1 – to update the licence fees charged for new HMO licence and introduce additional discounts for properties owned and managed by registered charities and for licence holders who can evidence that they are members of the Unipol Code of Standards (Bradford) accreditation scheme for the property that is subject to the licence application.**

The outcome of ongoing legal proceedings nationally is highly likely to affect the costs that can legally be included in HMO license fees and the point at why they are charged. Amending the fees prior to the clarification of the legal position is very likely to mean that the fees and the method of administration of those fees would have to be reviewed again. This would pose significant difficulties in the



administration of the fees and in the communication of those fees to applicants and could expose the Council to legal challenge.

The Council could implement the proposed additional discounts as with existing discounts, these would be applied to the existing initial licence fees in the interim period.

Any changes to licence fees would only apply to applications made after October 1st 2018.

### 9.3 **Option 2 – to make no changes to the HMO licence fees**

The outcome of ongoing legal proceedings nationally is highly likely to affect the costs that can legally be included in HMO license fees. Failure to review the fees and the method of administration of those fees once the outcome of these legal proceedings are known could expose the Council to legal challenge.

### 9.4 **Option 3 – to await the outcome of the ongoing legal proceedings nationally prior to reviewing the initial HMO licence fees and their administration but to introduce additional discounts for properties owned and managed by registered charities and for licence holders who can evidence that they are members of the Unipol Code of Standards (Bradford) accreditation scheme for the property that is subject to the licence application.**

The outcome of ongoing legal proceedings nationally is highly likely to affect the costs that can legally be included in HMO license fees. Failure to review the fees or prematurely reviewing the fees and the method of administration of those fees prior to the clarification of the legal position could expose the Council to legal challenge.

The additional discounts are proposed on the basis that properties managed by such applicants tend to be well managed and, particularly in the case of those who are members of the Unipol Code of Standards (Bradford) are subject to additional Codes of Standard, which normally reduce the level of intervention required from the Council.

## 10. **RECOMMENDATIONS**

It is recommended that Option 3 be approved and:

- 10.1 That Mandatory HMO licensing is implemented in line with statutory requirements.
- 10.2 That any scale of charges are subject to an annual increase in line with inflation.
- 10.3 That the Executive delegates to the Strategic Director, Place in consultation with the Portfolio holder for Regeneration, Planning and Transport the authority to make decisions about any amendments to the Council's HMO license fees.

## **11. APPENDICES**

Appendix 1: Equality Impact Assessment on the impact of the changes introduced to the mandatory licensing scheme for Houses in Multiple Occupation (HMOs)

## **12. BACKGROUND DOCUMENTS**

Ministry of Housing, Communities and Local Government – Houses in Multiple Occupation and residential property licensing reform – Guidance for Local Housing Authorities.

# Appendix 1:

## Equality Impact Assessment Form

Reference –

|                       |                 |                        |          |
|-----------------------|-----------------|------------------------|----------|
| <b>Department</b>     | Place           | <b>Version no</b>      | 1        |
| <b>Assessed by</b>    | Julie Rhodes    | <b>Date created</b>    | 8.10.18  |
| <b>Approved by</b>    | Shelagh O'Neill | <b>Date approved</b>   | 16.10.18 |
| <b>Updated by</b>     |                 | <b>Date updated</b>    |          |
| <b>Final approval</b> |                 | <b>Date signed off</b> |          |

The Equality Act 2010 requires the Council to have due regard to the need to

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between different groups; and
- foster good relations between different groups

## Section 1: What is being assessed?

### 1.1 Name of proposal to be assessed.

The proposal to introduce additional discounts to the licence fee for the mandatory licensing scheme for Houses in Multiple Occupation and to review the current licence fees pending the outcome of ongoing legal action at a national level.

### 1.2 Describe the proposal under assessment and what change it would result in if implemented.

The Housing Act 2004 placed a duty on the Council to administer a mandatory licensing scheme for certain categories of House in Multiple Occupation (HMOs) which were deemed to be of the highest risk.

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 has the effect of extending the scope of Section 55(2)(a) of the Housing Act 2004 so that mandatory licensing also applies to HMOs which are less than 3 storeys high from October 1st 2018.

The Order does not alter the occupation requirement so for mandatory licensing to apply the property must still be occupied by 5 or more occupants, the occupants to comprise two or more households.

The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences)(England) Regulations 2018 require Councils to include additional

conditions within all HMO licences issued after October 1st 2018 relating to minimum room sizes and refuse disposal.

Licensing schemes are to be self-funding. The Government advises that the cost of licensing, including setting up and implementing the scheme must be recovered from licence fees if the scheme is to be run at nil cost to the Local Authority and that the scheme should not make a profit. The Government has not prescribed a maximum limit but Local Authorities must be able to demonstrate that charges are reasonable.

Local authorities have always been encouraged to introduce fee scales so as to reward good landlords. To reflect this, a number of discounts are already included in the Council's scale of charges for HMO licences. It is proposed that a number of additional discounts are now included for any new eligible licence applications:

- A discount of 5% for licence holders who can evidence that they are members of the Unipol Code of Standards (Bradford) accreditation scheme for the property that is subject to the licence application
- A discount of 5% for properties owned and managed by registered charities

Officers have been reviewing the licence fees in preparation for the introduction of the new Regulations. There are however a number of ongoing legal proceedings nationally which have implications for the costs that can be included in licence fees and the way in which licence fees are administered.

It is therefore proposed that the implementation of any changes to the initial licence fees should be delayed and that delegated authority be given to the relevant Strategic Director in consultation with the Portfolio holder Regeneration, Housing, Planning & Transport to decide changes to the licence fees when there is more clarity regarding the legal position.

## **Section 2: What the impact of the proposal is likely to be**

### **2.1 Will this proposal advance equality of opportunity for people who share a protected characteristic and/or foster good relations between people who share a protected characteristic and those that do not? If yes, please explain further.**

Poor quality housing in the private rented sector is often occupied by more vulnerable individuals. The proposed policy will enable the Council to offer a discount to those who are known to be members of organisations or associations who, from experience, have demonstrated higher standards of management.

The review of licence fees will ensure that the mandatory scheme is self-funding which is consistent with Government guidance. The licence fee framework ensures that licence fees are applied consistently.

Compliance with housing legislation will ensure that housing conditions are improved by removing hazards that are prejudicial to the health and safety of

tenants. This should indirectly improve opportunities available to those with protected characteristics.

**2.2 Will this proposal have a positive impact and help to eliminate discrimination and harassment against, or the victimisation of people who share a protected characteristic? If yes, please explain further.**

Poor quality housing in the private rented sector is often occupied by more vulnerable individuals. The proposed policy will enable the Council to offer a discount to those who are known to be members of organisations or associations who, from experience, have demonstrated higher standards of management.

The review of licence fees will ensure that the mandatory scheme is self-funding which is consistent with Government guidance. The licence fee framework ensures that licence fees are applied consistently.

Compliance with housing legislation will ensure that housing conditions are improved by removing hazards that are prejudicial to the health and safety of tenants. This should indirectly improve opportunities available to those with protected characteristics.

**2.3 Will this proposal potentially have a negative or disproportionate impact on people who share a protected characteristic? If yes, please explain further.**

The policy should advance equality of opportunity between tenants who share a protected characteristic and those who don't (please refer to 2.1).

The policy will have an equal impact on all licence holders. The review of licence fees will ensure that the mandatory scheme is self-funding which is consistent with Government guidance. The licence fee framework ensures that licence fees are applied consistently.

Extending the mandatory licensing scheme for Houses in Multiple Occupation is introduced by the Housing and Planning Act 2016. Prior to the introduction of this legislation the Ministry of Housing, Communities and Local Government (MHCLG) undertook an equality impact assessment of the proposed new powers. The MHCLG has also extensively publicised the new powers with landlord organisations and in the general media.

The changes to legislation have been publicised through the press, social media and the Council's website to raise awareness amongst landlords of their legal obligations and tenants of how the changes may affect their homes.

**2.4 Please indicate the level of negative impact on each of the protected characteristics?**

(Please indicate high (H), medium (M), low (L), no effect (N) for each)

| <b>Protected Characteristics:</b> | <b>Impact<br/>(H, M, L, N)</b> |
|-----------------------------------|--------------------------------|
| Age                               | L                              |
| Disability                        | L                              |
| Gender reassignment               | L                              |
| Race                              | L                              |
| Religion/Belief                   | L                              |
| Pregnancy and maternity           | L                              |
| Sexual Orientation                | L                              |
| Sex                               | L                              |
| Marriage and civil partnership    | L                              |
| <b>Additional Consideration:</b>  |                                |
| Low income/low wage               | N                              |

**2.5 How could the disproportionate negative impacts be mitigated or eliminated?**  
 (Note: Legislation and best practice require mitigations to be considered, but need only be put in place if it is possible.)

N/A

### **Section 3: Dependencies from other proposals**

**3.1 Please consider which other services would need to know about your proposal and the impacts you have identified. Identify below which services you have consulted, and any consequent additional equality impacts that have been identified.**

Legal, Finance (including Debt Recovery and Fraud).  
 No additional equality impacts identified.

### **Section 4: What evidence you have used?**

**4.1 What evidence do you hold to back up this assessment?**

MHCLG guidance  
 MHCLG consultation.  
 Performance data relating to Housing Operations service  
 Stock Condition Survey 2015 data.

#### **4.2 Do you need further evidence?**

No.

## **Section 5: Consultation Feedback**

#### **5.1 Results from any previous consultations prior to the proposal development.**

Extending the mandatory licensing scheme for Houses in Multiple Occupation is introduced by the Housing and Planning Act 2016. Prior to the introduction of this legislation the Ministry of Housing, Communities and Local Government (MHCLG) undertook an equality impact assessment of the proposed new powers. The MHCLG has also extensively publicised the new powers with landlord organisations and in the general media.

Housing officers have worked with colleagues across West Yorkshire to agree a consistent approach across the sub region with regard to proposed changes. This is important due to the fact that property owners often operate across local authority boundaries.

A number of other proposed new powers in The Housing and Planning Act 2016 are still to be introduced. Officers from the Housing service will continue to work with the other Authorities to ensure shared learning and a consistent approach.

#### **5.2 The departmental feedback you provided on the previous consultation (as at 5.1).**

The Council provided a response to the MHCLG consultation on the Housing and Planning Act 2016.

#### **5.3 Feedback from current consultation following the proposal development (e.g. following approval by Executive for budget consultation).**

N/A

#### **5.4 Your departmental response to the feedback on the current consultation (as at 5.3) – include any changes made to the proposal as a result of the feedback.**

N/A