

CABINET MEETING: 11 JULY 2019

HMO LICENSING RENEWAL

HOUSING & COMMUNITIES (COUNCILLOR LYNDA THORNE)

AGENDA ITEM: 12

Reason for this Report

1. The additional licensing scheme for Houses in Multiple Occupation (HMO) in Plasnewydd is due to expire in November 2019. This report seeks authorisation from Cabinet to carry out the required statutory consultation before returning to Cabinet for consideration of a re-declaration of the Scheme.
2. The report also briefs Cabinet on:
 - Changes in England currently being considered in Wales which would have significant positive impacts on the HMO licensing function in Cardiff if replicated in Wales.
 - The sharp rise in enforcement activity required on “poorly converted buildings” where tenants are being placed at risk.

Background

3. There are two forms of HMO licensing in Wales, Additional Licensing and mandatory licensing. Additional licensing applies to any form of HMO specified in a designation made by the Council. An Additional Licensing designation may be made where a significant portion of the HMOs in a given geographical area are being managed ineffectively and that poor management is affecting the occupiers or the public. The Council must consult those affected and consider their representations.
4. The additional licensing designation lasts for a maximum of 5 years. If the Council wishes to re-declare, it must consult and once again prove its case. This process is time consuming; any weaknesses will provide grounds for judicial review.
5. The initial Cathays additional licensing scheme ran from 2010 to 2015 and the current scheme runs from 2016 to 2021. The Plasnewydd scheme started in 2014 and expires in November 2019.

6. The total number of licensed HMOs in Cardiff is approximately 3,550, consisting of approximately 1800 licensed HMO in Cathays and 830 licensed in Plasnewydd respectively under additional licensing schemes.
7. If Cabinet is minded to re-declare the additional licensing scheme in Plasnewydd for a further 5 years, it will need to consider a report justifying the case for re-declaration. The Council will need to carry out a consultation exercise with all persons likely to be affected by the designation and include the results in that declaration report.

Mandatory Licensing

8. In Wales, mandatory licensing currently applies to three storey HMOs with five or more occupiers. Mandatory licensing was introduced in 2006 and approximately 920 HMO across the City are licensed under these provisions.
9. In England, the three storey requirement for mandatory licensing has been removed, the only pre-condition being that the property has five occupiers. This has significantly increased the number of properties licensable, representing a two to threefold increase.
10. Welsh Government is considering whether there is a case for extension of mandatory licensing across Wales, as in England, and is hearing evidence from the six Councils, including Cardiff, which have significant HMO issues. They also have a current focus on the impact of large student populations on communities, as well as scrutiny of performance on returning empty properties to beneficial use.
11. English and Welsh Housing Law is beginning to show other areas of divergence. For example, Wales has the Rentsmart scheme requiring owners to obtain registration and ensure that a licensed landlord is in place. England has not introduced a similar scheme, but has instead produced a system of banning orders for rogue landlords and civil penalties which can be levied by the local authority, in lieu of prosecution, with income retained by the authority. The Cabinet member will be apprised of these changes as required.

Issues

Re-declaring the Plasnewydd Additional Licensing Scheme

12. The Plasnewydd Additional Licensing Scheme expires on 2 November 2019. There has been much activity during the first 5 years of the scheme but still much that needs to be achieved in order to secure all of the improvements that are needed. 1092 HMOs have been inspected and 77% were found not to be compliant with licensing standards, and although the extent of non-compliance will vary greatly from minor improvement to major non conformity, it represents a major undertaking to revisit each property and ensure standards are met.

13. It is important to note that not all costs can be recovered through the licensing fee, particularly those costs associated with health and safety inspections and subsequent enforcement. The use of additional licensing in both Plasnewydd and Cathays has shown that some difficult cases or problematic rogue landlords may fully occupy the time of one or two officers, reducing their ability to focus on routine licensing work.
14. Improvements have been made at over 200 HMOs, but 58% of properties licensed in Plasnewydd are yet to be confirmed as being up to standard due to lack of resource. A further designation for 5 years will be required if the scheme is to deliver the required improvements along with additional funding to augment the team by the recruitment of three additional officers at a cost of £160,000 per annum.
15. If Cabinet wishes to re-declare the additional licensing scheme for Plasnewydd, a further consultation exercise will be required with persons likely to be affected by the re-designation. Thereafter, Cabinet must consider a further report prior to declaration.

Existing resources

16. The Cardiff Housing Enforcement Team within the Shared Regulatory Service has 12.8 full time equivalent officers. These officers are Environmental Health Officers or Housing Surveyors and they carry out all of the functions relating to housing standards in the private rented sector, including approximately 1000 complaints a year. They also inspect all licensable HMOs and draft licences. They deal with filthy and verminous premises, and properties causing a statutory nuisance. Two of the officers are engaged primarily in work to return empty private sector properties to use, and managing the nuisance issues that arise. In addition, there are 3 Licensing Support Officers who handle the administrative work and monitor outstanding licence applications.
17. The Housing Enforcement team is currently facing significant challenges caused by the expansion of the private rented sector and the demand for quality accommodation. The team is seeing an upsurge in the number of dangerous property conversions being undertaken by rogue landlords, often with disregard for Planning and Building Regulations requirements. During 2018-19 the team closed 40 properties either because dangerous conversions had been carried out or properties were in serious disrepair. In comparison with figures over the last decade, this represents a significant increase in the number of emergency interventions to safeguard the public and is a worrying trend. Additional work loads flowing from the need to remove unsafe cladding from high rise buildings and the implication of the Renting Homes Act place an additional strain upon resources.
18. Additionally, the Rentsmart Wales Scheme has created a focus on landlords who are not fit and proper, and the investigations are resource intensive. Some landlords are acting in a vexatious manner, using appeals to tribunals and freedom of information requests to hamper the enforcement process. In the last 5 years, the Team has taken 53

prosecutions for a variety of offences relating to poor management standards, failure to obtain a HMO or Rentsmart licence or a failure to comply with notices requiring works or Prohibition Orders. Fines have totalled over £245,000.

The extension of mandatory licensing

19. If the Welsh Government choose to extend mandatory licensing to all HMOs having 5 or more occupiers, irrespective of the number of storeys, the City would see significant benefits. Licensing is an essential ingredient of any proactive inspection programme for HMOs. It places a duty on the landlord to make an application, which facilitates identification and inspection, and a fee is payable which provides some valuable funding towards this proactive work. Health and safety assessments are made on all properties and agreed licensing standards are applied. Licence conditions are applied which control ongoing management practices and an occupancy limit is applied.
20. Importantly, if introduced, it would put licensing on a sustainable footing. It would provide more equitable City-Wide coverage in a manner appropriate to risk and it would avoid the requirement to consult and renew every 5 years.
21. There is no comprehensive database of HMOs and their status can easily change. Housing Enforcement have records of 6,283 HMOs but Council Tax records, although not definitive, show that the number could exceed 7,000.
22. If mandatory licensing were extended as in England to cover HMOs having 5 occupiers regardless of the number of storeys, it could increase the number licensable by a factor of two to three times. If the Council's two additional licensing schemes were also retained this would likely provide licensing coverage to 5,000 or more of the City's 7000 HMOs, although this is an approximation.
23. Cabinet is asked to consider lobbying Welsh Government to make a change in the law and support this proposal. It may be worthwhile for Wales to go a little further than the English model and to include HMOs which consist of self-contained flats which do not comply with appropriate Building Regulation standards, otherwise known as poorly converted buildings.
24. However, the consequences of such a change would require additional resource in order to meet the subsequent challenges particularly in relation to rogue landlords. Further discussion will be needed on the additional resources required to successfully implement any mandatory licensing changes and to meet the challenges facing the service.
25. The additional staffing costs would be in the region of £475,000 per annum with an estimated £200,000 recoverable from licence fee income. Whilst the above represents a significant investment in resource, the benefits in improved housing standards in the Capital city would be

widespread and would be aimed at the housing sector which is used by the most vulnerable members of society. The income from an extended licensing scheme would offset some of the investment required and fees may be amended in accordance with recognised accounting procedures to ensure that recoverable costs are included.

Local Member consultation

26. Plasnewydd Members have been consulted and supportive comments have been received on the proposal to extend the additional licensing scheme for a further 5 years.

Reason for Recommendations

27. A further designation of the Council's Plasnewydd Additional Licensing Scheme alongside a possible expansion of mandatory licensing provisions would allow the Council to target areas of high HMO concentration.
28. Extending HMO licensing to more properties across the City in a proportionate manner has the potential to improve significantly the quality private rented properties.
29. Current pressures and expectations on the Housing Enforcement Service along with the possible expansion of mandatory provisions mean that a review of the resourcing of the team is necessary.

Financial Implications

30. Although there will be financial implications from undertaking the statutory consultation these are not expected to be significant and will be funded from within existing resources. If the Plasnewydd Additional Licensing Scheme is re-declared then the future report to Council will need to consider the options for funding the additional Licencing expenditure that are expected to be required after deducting HMO licence fee income.

Legal Implications

31. The legal advice and legal implications for Additional Licensing Schemes are as follows.
32. The protection of the public, in particular to private sector tenants of residential properties, is a key statutory duty incumbent on local authorities. Those duties include the protection of private sector tenants from poor quality housing, hazards and rogue landlords.
33. The enforcement of these standards is a general duty without specific funding. The additional licensing scheme does allow for a licence fee to be charged for every HMO in the additional Licensing Scheme area but this is ring fenced for licensing activities only. The enforcement of the breaches of the licence scheme should not be funded through the licence

fee. Any enforcement through the criminal courts would be expected to be able to apply to recover the costs of the case.

34. It is surmised that an increase in the number of designated HMO licences would increase the burden upon the private housing sector of the authority to prosecute breaches of those additional licences.
35. It should furthermore be considered that all decisions taken by or on behalf of the Council must :
 - (a) be within the legal powers of the Council;
 - (b) comply with any procedural requirement imposed by law;
 - (c) be within the powers of the body or person exercising powers on behalf of the Council;
 - (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. standing orders and financial regulations;
 - (e) be fully and properly informed;
 - (f) be properly motivated;
 - (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and
 - (h) be reasonable and proper in all the circumstances.

Well Being of Future Generations (Wales) Act 2015

36. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible. The Council have taken into account the impact of the report recommendations on people living their lives in Wales in the future, having regard to:
 - Looking to the long term
 - Focusing on prevention by understanding the root causes of problems
 - Delivering an integrated approach to achieving the 7 national well-being goals
 - Working in collaboration with others to find shared sustainable solutions
 - Involving people from all sections of the community in the decisions which affect them
37. The Council is satisfied that the proposed recommendations accord with the above principles.

HR Implications

38. Any additional posts deemed necessary as indicated in Para 14 of this report would be advertised and recruited under the terms of the Shared Regulatory Services agreement and progressed on the terms and

conditions of employment of the host authority (Vale of Glamorgan Council).

RECOMMENDATIONS

Cabinet is recommended to:

1. authorise the Shared Regulatory Service to undertake the required statutory consultation for the re-declaration of the Plasnewydd Additional Licensing Scheme.
2. Authorise Officers to inform Welsh Government of the Council's support for the proposed expansion of Mandatory HMO licensing, as in England but to also include "poorly converted buildings".
3. note that such an expansion will have resourcing implications, only some of which will be recoverable from HMO licence fee income.

SENIOR RESPONSIBLE OFFICER	SARAH MCGILL Corporate Director People & Communities
	5 July 2019