Housing Sub-Committee
2 November 2017

Additional HMO Licensing Scheme
Director of Place

Call-in deadline 16 November 2017 (ten working days after the meeting)

Purpose
To obtain approval to redesignate an Additional House in Multiple Occupation Licensing (AHMOL) Scheme (which has both financial and legal implications for the Council).

Recommendations of the Portfolio Holder for Adults Social Care and Health

To Resolve that -

1. the outcome of the consultation (ref paras. 23-32 and Annexes) on the redesignation of the Additional Houses in Multiple Occupation Scheme (AHMOs) (summarised in paragraphs 20-22) is noted;

2. the designation of an Additional HMO Licensing Scheme, which would cover all Houses in Multiple Occupation (HMOs) occupied by at least five people who do not form a single household, regardless of storey height, and all HMOs that are three or more storeys in height and occupied by three or more unrelated individuals, as set out in this report, is approved; and

3. the designation of the whole of the Royal Borough of Kingston upon Thames as being subject to the Additional HMO Licensing Scheme in accordance with the criteria set out in recommendation (2) above, is approved.

Key Points

A. The Royal Borough of Kingston’s Additional Houses in Multiple Occupation Licensing (AHMOL) Scheme ends in December 2017. It is proposed that the scheme is redesignated as is, which would cover all HMOs occupied by at least five people who do not form a single household, regardless of storey height, and all HMOs that are three or more storeys in height and occupied by three or more unrelated individuals.

B. The Council proposes to redesignate the current scheme to tackle the problems associated with poor management and inadequate conditions in smaller HMOs.

C. It is a legal requirement to carry out a consultation exercise before designating an area for additional licensing. The Council is confident it has complied with its statutory duty to consult and has acted in accordance with guidance issued by the Department for Communities and Local Government.

D. The results of the consultation are summarised within the report with full details found in Annexes 1-8 of the report.

E. Should an Additional HMO Licensing Scheme be agreed, the Housing Act 2004 states that the designated scheme must not come into force any earlier than three months following the designation of the Scheme. The target date for commencement of the Additional HMO Licensing Scheme would be 1 March 2018.

F. The redesignation of the AHMOL Scheme supports the aims of the Council’s Housing Strategy Priority to make the best use of existing stock within the borough.
1. A House in Multiple Occupation (HMO) is defined in section 254 of the Housing Act 2004. Broadly, it is a property which is rented, as their only or main residence, by three or more people from two or more families and where facilities such as kitchens and/or bathrooms are shared. It may include bedsit houses, shared houses and some self-contained flats.

2. An option for regulating standards in HMOs is HMO licensing. Part 2 of the Act introduced mandatory HMO licensing (MHMOL) to England and Wales. From 6 April 2006, there was a statutory duty on all landlords to license larger higher risk HMOs of three or more storeys housing five or more unrelated persons. These properties are seen as higher risk, both because of the nature and condition of the properties, and the vulnerability of their occupants.

3. HMOs generally provide a cheaper form of rented accommodation than renting a flat or a house as a single household. They are, therefore, one of the main forms of housing in the private rented sector for people on lower incomes or living on benefits. They are also often the only source of housing for certain groups, such as students, people on low income or foreign nationals. Tenants can be vulnerable because of their age, lifestyle, and nationality or immigration status.

4. Many landlords and agents do an excellent job in managing their HMOs to high professional standards, but that is far from universal. Failure to effectively manage HMOs properly can adversely affect the health and safety of tenants within the building and can have a wider impact on the local community in which the HMO is located. However, there are a number of landlords who do not simply fail to manage their HMOs properly, but positively exploit their tenants and often the public purse through housing benefit, by renting substandard and dangerous accommodation to vulnerable tenants, sometimes in overcrowded conditions.

5. Kingston has a large student population in the private rented sector and, with more families, foreign nationals, and vulnerable people living in the sector, it is an increasing priority to ensure smaller HMOs are adequately protected and properly managed.

6. Part 2 of the Act gives local authorities the discretion to introduce an additional HMO licensing (AHMOL) scheme. An AHMOL scheme can be viewed as an extension to cover smaller HMOs not in the MHMOL scheme, but the scheme can only be brought in to try to resolve problems that exist as a consequence of poor HMO management. In Kingston it was seen as a proportionate response to proactively improve property standards and management in this type of accommodation.

7. Before making an AHMOL designation for a particular type of HMO, or for a particular area, the Council must introduce it in line with the specific requirements in sections 56, 57 and 58 of the Act. Consultation must take place and the scheme must be consistent with the Council’s overall housing strategy.

8. Primarily, the Council must consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.

9. The Council reviewed the current scheme in 2016 and details of that review can be found in Annex 11.
10. The council consulted on the proposal to redesignate the existing AHMOL after it expires in December 2012 for a further 5 years. From the consultation 68% of respondents agreed that licensing improved standards in the private rented sector.

11. As of September 2017, the Council has licensed 224 HMO’s under the Additional licensing scheme and 234 HMO’s under the Mandatory licensing scheme. The average cost of an AHMOL is £800. The average cost of a MHMOL is £1,200.

12. HMO’s continue to remain a high priority for the Council. Since May 2016 the Council have received a total of 633 complaints regarding private sector housing of which 296 have been related to HMO’s (46%). Of the complaints received about HMO’s, 20 complaints relate to issues of anti-social behaviour from HMO’s, including complaints of excessive noise and an excess of refuse that is not being appropriately disposed of. 142 of the complaints about HMO’s related to complaints about disrepair and overcrowding. The Council received information concerning four fires in HMO’s in this time.

13. As a result of these complaints, the Council have served 32 Preliminary Improvement Notices under the Housing Act 2004 relating to 23 HMO’s. The enforcement action was to improve fire safety standards, reduce overcrowding, and to tackle poor management and disrepair. Of the HMO’s in which enforcement action was initiated, 20 were licensable HMO’s.

14. Kingston has a large student population of which about 7,000 live in the private rented sector in the borough.

15. In November 2015 the Government consulted on changing the criteria for Mandatory licensing and in the consultation document stated that it considered five or more residents in HMO’s the appropriate threshold for applying HMO licensing, supporting Kingston’s rationale for the AHMOL. The revision to mandatory licensing has been delayed by the changes to Government but remains in the current Government’s manifesto. As there is uncertainty around the changes to mandatory licensing, the Council has opted to propose continuing the AHMOL.

16. The Housing and Planning Act 2016 introduced the use of Civil Penalties for Housing Act offences. The Council adopted these powers in October 2017 as a further enforcement tool to tackle landlords that do not comply with their legislative obligations. Licensing is a proactive way to improve standards by working with landlords to ensure compliance rather than taking enforcement action when problems occur.

Proposal and Options

17. To ensure all landlords who operate HMOs in the borough are providing safe, healthy and well managed accommodation, the Council is seeking to use its powers to implement a borough wide Additional HMO Licensing Scheme.

18. The alternative options available to the Council include:
   • do nothing
   • do the minimum - intervention in the smaller HMO sector limited to a basic reactive ‘complaint response’ service
   • informal area action - setting up an action area as an impetus for action
   • targeted use of Interim Management Orders and Final Management Orders
   • Article 4 direction under Planning legislation to control the number of HMO’s
area based voluntary accreditation of landlords
• borough-wide accreditation scheme
• area based additional licensing scheme across the whole borough or limited to specific wards.

19. These options were considered in the Stage 2 report at Annex 9 and were presented to a panel of members in March 2017. The decision was taken to consult on redesignating the scheme as existing.

20. The Council proposes that any HMO subject to the criteria set out below within the Royal Borough of Kingston would require a licence under the Additional scheme:
   a) All HMOs occupied by five or more people living as two or more households, regardless of storey height;
   b) All HMOs that are three or more storeys in height (occupied by three or more unrelated individuals).

21. The main reasons that the Council has set out the criteria as outlined above are:
   a) There is concern that overcrowding of properties often starts when three bedroom dwellings are occupied by five or more people.
   b) The fire risk associated with three plus storey HMOs is far greater and therefore all these HMOs should be safety checked, regardless of the number of occupiers.

22. The Council proposes to reduce overcrowding by specifying permitted occupancy levels for each licensable property. The Council also proposes to include conditions on property and tenancy management in order to control anti-social behaviour and ensure that local landlords provide safe accommodation that is of a decent standard.

Consultations

23. On 15 June 2017 the Council began a 15 week consultation with residents and other stakeholders on the proposal to redesignate the AHMOL scheme on its expiry.

24. The Council wrote or emailed details of the proposal to 466 current HMO Licence holders and their agents, and 1073 landlords of student households and their agents.

25. A further 456 stakeholders were also notified of the proposal and invited to comment. These included the London Fire and Emergency Planning Association (LFEPA), Landlord bodies such as the NLA and RLA, neighbouring boroughs private sector housing leads, Kingston University and College, the Greater London Authority and Chartered Institute of Environmental Health.

26. The consultation was publicised on the Council’s website and was also a news item on Radio Jackie. The Council held an event on 17 July where all stakeholders were invited to discuss the proposal and comment. A presentation was also given at the Council’s Landlord Forum on 13 September.
27. The responses received are contained in Annexes 1-10 and summarised below.

28. The Council received 119 responses to its online survey. The composition of the survey respondents was as follows:

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<thead>
<tr>
<th></th>
<th>Number of responses</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Landlord</td>
<td>29</td>
<td>24%</td>
</tr>
<tr>
<td>HMO landlord</td>
<td>49</td>
<td>41%</td>
</tr>
<tr>
<td>Tenant</td>
<td>14</td>
<td>11%</td>
</tr>
<tr>
<td>Other stakeholder</td>
<td>26</td>
<td>21%</td>
</tr>
</tbody>
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29. Respondents were asked if they believed that three storeys and five occupiers was the right threshold for licensing and responded as below:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Yes</th>
<th>No</th>
</tr>
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<tbody>
<tr>
<td>3 storey or more</td>
<td>67%</td>
<td>49%</td>
</tr>
<tr>
<td>5 or more occupants</td>
<td>46%</td>
<td>54%</td>
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30. 68% of respondents felt that licensing improved standards in the private rented sector.

31. The Council also received extensive written responses from the National Landlords Association (NLA), the National Approved Letting Scheme (NALS), and the Residential Landlords Association (RLA) all of which opposed the scheme and these comments are enclosed as Annexes 3, 4 and 5 of the report.

32. Comments from respondents are varied but follow themes:

1. A number of stakeholders and tenants stated that licensing should be extended to all private rented properties as it improves standards and safety. It also helps to tackle anti-social behaviour of tenants.

2. All HMOs should be licensed in a student town such as Kingston to protect vulnerable young adults who are often exploited by unscrupulous landlords.

3. The Professional Landlord and Letting Agents representatives stated that licensing is not an effective tool to regulate the sector and that the council should use alternative enforcement powers. In Kingston the AHMOL has set a framework of expected standards to enable landlords to work in collaboration with the council to enable them to achieve compliance with legislation.

4. The cost of the scheme is ultimately passed onto the tenants driving up private rented costs or making it prohibitive for landlords to form HMO’s. The legislation allows the council to charge a fee. The cost of 5 year licence is approximately £800 per property which equates to under £3.50 per week. The Council issued 36 new AHMO licenses in 2016/7 as HMO’s were created to meet demand.

5. The Government proposes to extend mandatory licensing which will incorporate those HMO’s that fall into the AHMOL scheme. As yet no
announcement has been formally made concerning this, however subject to legislation the council proposes to passport any licenced properties into any revised government scheme.

6. There were mixed views on the number of occupants needed to licence the property. Some felt 5 was too many and others felt all property should be licensed regardless of occupation levels. 5 is the number considered appropriate for mandatory licensing.

**Timescale**

33. Should an Additional HMO Licensing Scheme be agreed, section 58 Housing Act 2004 states that the designated scheme must not come into force any earlier than three months following the designation of the Scheme. The target date for commencement of an Additional HMO Licensing Scheme would be 1st March 2018.

**Resource Implications**

34. The Additional HMO licensing scheme would be self-financing. The current fee structure is contained in **Annex 12** of the report.

**Legal Implications**

35. The Additional HMO Licensing scheme commenced on 21 December 2012 and can remain in force for a maximum of 5 years. It therefore ceases on 20 December 2017.

36. The Housing Act 2004 requires a review to take place to decide whether the scheme should continue, or if it has achieved its purpose be revoked. This took place in 2016.

37. The Act also requires a statutory consultation and an extensive consultation took place over a 15 week period in June 2017.

**Risk Assessment**

38. There is a risk to the Council in not introducing a Scheme that it does not comply with its general duties under the Housing Act 2004 to keep its housing conditions under review and to take action in respect to Category 1 hazards (under the Housing Health and Safety Rating System).

39. If the Council does introduce an Additional HMO Licensing Scheme, there is a risk it could be seen as over regulatory in a sector that is already highly regulated eg. Energy Performance Certificates, Tenancy Deposit Protection, annual Gas Safe checks. In turn, this could drive landlords out of the sector. However, the actual cost of a typical licence for a five room HMO is relatively low, and the cost can be offset against profit. The licence fee is not seen as a significant cost, especially in relation to increasing rents.

**Equalities Impact Assessment**

40. The redesignation of the AHMOL scheme is a continuation of a current scheme and therefore a Equalities Impact Assessment is not required.

**Background papers** - held by author of the report - Fiona Meads, Team Leader Residential Email: fiona.meads@sutton.gov.uk Telephone: 020 8770 5935

- None other than those referred to in this report