

# Report to Cabinet

**19 June 2024**

<b>Subject:</b>	Houses in Multiple Occupation (HMOs) additional licensing designation – borough wide implementation
<b>Cabinet Member:</b>	Cabinet Member for Neighbourhoods & Community - Councillor Suzanne Hartwell
<b>Director:</b>	Executive Director – Place Alan Lunt
<b>Key Decision:</b>	Yes
<b>Contact Officer:</b>	Karl Robinson – Head of Housing Solutions <a href="mailto:Karl_robinson@sandwell.gov.uk">Karl_robinson@sandwell.gov.uk</a>

## 1 Recommendations

For the reasons set out in the report it is recommended that -

- 1.1 Cabinet notes and considers the outcome of the consultation in respect of the proposed Additional Licensing scheme for Houses in Multiple Occupation (HMOs);
- 1.2 Approval be given to progress a borough wide designation for Sandwell MBC as being as subject to Additional Licensing under Section 56(1)(a) of the Housing Act 2004 for all Houses in Multiple Occupation (HMOs), irrespective of the number of storeys, that contain three or four occupiers or as defined under section 257 of the Act in accordance with the proposal approved for consultation by Cabinet on 13 September 2023;
- 1.1 Delegated authority be granted to the Executive Director – Place in consultation with the relevant Cabinet Member(s) to take such steps as are necessary to promote and implement this decision on behalf of the Council including but not limited to -
  - 1.1.1 Publication of the notice of delegation and date for implementation within seven days of the decision of Cabinet;



- 1.1.2 Implement the above designation to come into force on the 1st October 2024 for a period of 5 years;
- 1.1.3 Undertake a promotional campaign, including timescale for implementation, to run from July 2024;
- 1.1.4 introduce a 3-month grace period for additional licensing from 1 October 2024 to 31 December 2024;
- 1.1.5 Commence enforcement activity for unlicensed premises from 1 January 2025;
- 1.1.6 Conclude the revocation of the “The Metropolitan Borough Council of Sandwell Designation for an Area for Additional Licensing of Houses in Multiple Occupation 2022” within the West Bromwich area under Section 60 of the Act on the 30 September 2024;
- 1.1.7 Adoption of the proposed fees structure as set out at Appendix 3 to the report submitted and to review those fees annually to ensure they remain reasonable and proportionate;
- 1.1.8 Adoption of the proposed license conditions as attached at Appendix 4 to the report submitted and review those conditions to ensure they remain reasonable and proportionate;
- 1.1.9 Adoption of the Sandwell Council Standards and Amenities Guide for Houses in Multiple Occupation (HMO) as set out at Appendix 5 to the report submitted.





## 2 Reasons for Recommendations

- 2.1 The borough has experienced a major increase in private rented accommodation in some areas, including Houses of Multiple Occupation (HMO) not subject to the Mandatory Licensing Scheme. This evidence base was set out in the Cabinet report proposing to enter consultation on Additional Licensing on 13 September 2023. The consultation evidence base can be found at Appendix 1.
- 2.2 It is recognised that some landlords and agents do not provide adequate accommodation or management of their properties.



- 2.3 The council had implemented a range of powers and approaches to seek to address these issues, but a new approach is considered necessary to address the specific concerns relating to HMO private rented properties within Sandwell which has been the subject of consultation for these proposals.
- 2.4 Consultation has now been carried out as per the Housing Act 2004. Part 2 of the Act provides discretionary power, subject to carrying out consultation, for Local Housing Authorities to licence all private landlords in a designated area with the intention of ensuring that HMOs meet a minimum standard of management.

### 3 How does this deliver objectives of the Corporate Plan?

 	<p>The Best Start in Life for Children and Young People</p> <p>People Live Well and Age Well</p> <p>Improved quality of accommodation actively contributes to improved health outcomes. Additional licensing will reduce the impact that poor quality housing has on vulnerable individuals.</p>
	<p>Strong Resilient Communities</p> <p>Additional licensing will contribute to reduced levels of anti-social behaviour.</p>
	<p>Quality Homes in Thriving Neighbourhoods</p> <p>The introduction of additional licensing will improve the condition of the private rented properties in the specific areas meaning the area is a more attractive place to live.</p>

### 4 Context and Key Issues

- 4.1 The private rented sector plays an important part in providing accommodation in the borough. The sector in Sandwell has grown from 5% in 2001 to 18.6% reported in the data from the 2021 census.
- 4.2 Whilst the 2021 census data suggests a private sector of 18.6% additional data from the Building Research Management limited - (BRE) report carried out on behalf of the council in 2018 estimated 34,386 properties in the sector, equating to 26%. This would suggest that the prevalence of PRS within Sandwell is greater than 18.6%.



- 4.3 The borough has faced a major increase in private rented accommodation in some areas and it is recognised that there are landlords and agents who do not provide adequate accommodation or management of their properties. This poor management of properties has a significant impact on people's lives and on council and partner resources in tackling issues such as anti-social behaviour, fly tipping of domestic waste, concerns about property condition and harassment and illegal eviction.
- 4.4 The council has implemented a range of powers and approaches to seek to address many of these issues including Additional Licensing within parts of West Bromwich, but the on-going pressures are such that an expansion of this approach is considered necessary. Many privately rented properties are Houses in Multiple Occupation (HMO), typically shared dwellings, or properties converted into flats. It is estimated that approximately 4200 privately rented homes are occupied by more than one household, and these multi occupied homes are found across the whole borough.
- 4.5 The Housing Act 2004 requires local housing authorities to mandatory licence Houses in Multiple Occupation (HMOs) if they accommodate more than five people who form two or more households. The Act also gives authorities the power to introduce an additional licensing scheme for other smaller HMOs. This power can be considered if the authority believes they are not being managed sufficiently which gives rise or are likely to give rise to problems for the occupants or residents of the area.
- 4.6 The Housing Act 2004, Part 2 provides discretionary power, subject to carrying out consultation, for Local Housing Authorities to licence all private landlords in a designated area with the intention of ensuring that HMOs meet a minimum standard of management..
- 4.7 Section 56 of the Housing Act 2004 places requirements on Local Authorities when considering a designation for Additional Licensing of HMOs in that the Council must:
- 4.8.1 Consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or likely to give rise, to one or more problems whether for those occupying the HMOs or for members of the public; and



- 4.8.2 Take reasonable steps to consult with persons who are likely to be affected and consider any representations made in accordance with the consultation.
- 4.8 On 13 September 2023 Cabinet considered the proposal to introduce Additional Licensing and authorised Officer's to proceed with a public consultation on the introduction of additional licensing, conditions and fees for private rented accommodation within Sandwell.
- 4.9 Government guidance provides examples of properties being managed "sufficiently ineffectively" including:
- 4.9.1 Those whose external condition and curtilage (including yards and gardens) adversely impact upon the general character and amenity of the area in which they are located;
  - 4.9.2 Those whose internal condition, such as poor amenities, overcrowding etc. adversely impact upon the health, safety and welfare of the occupiers and the landlords of these properties are failing to take appropriate steps to address the issues;
  - 4.9.3 Those where there is a significant and persistent problem of anti-social behaviour affecting other residents and/or the local community and the landlords of the HMOs are not taking reasonable and lawful steps to eliminate or reduce the problems; and
  - 4.9.4 Those where the lack of management or poor management skills or practices are otherwise adversely impacting upon the welfare, health and safety of resident and/or impacting upon the wider community.
- 4.10 Local councils can choose to require private landlords or their managing agents to have a licence to rent out their property. The licence conditions state that landlords must keep their property appropriately managed, safe and well maintained as well as deal with any problems associated with the property such as dumped rubbish, untidy gardens or anti-social behaviour.
- 4.11 Before making any decision, Sandwell Council commissioned M·E·L Research to gather the views of local people, in particular local landlords, private tenants, agents, residents, businesses and organisations across the borough.



- 4.12 The consultation commenced on the 8th January 2024 and ended on the 18th March 2024 (10 weeks in total). In total, 981 survey responses were received; 198 from the online response and 783 from the face-to-face survey. In total, 2 written responses were submitted via email, and 11 people attended public meetings. Public meetings were held across the borough, but each session had very little or no turn out.
- 4.13 The consultation also looked at the likely impact the scheme may have on respondents, and the degree to which respondents feel the proposed fees and licensing conditions for the scheme are reasonable or unreasonable. The consultation results and proposals for additional licensing within Sandwell are set out below.

### **Additional Licensing of Houses in Multiple Occupation**

- 4.14 Houses in multiple occupation (HMOs) are domestic properties containing three or more people forming two or more households where facilities (such as kitchens and bathrooms) are shared. Large HMOs (five or more people) require the landlord to obtain a license from the local authority. This is called mandatory licensing.
- 4.15 The Housing Act 2004 provides a power for Local Authorities to licence HMOs which are not covered by Mandatory Licensing. Part 2 of the Housing Act provides for Additional Licensing of HMOs, for example in a particular area or the whole borough for those not covered by Mandatory Licensing.
- 4.16 An Additional Licence scheme will cover all Houses in Multiple Occupation, irrespective of the number of stories that are occupied, by three or four persons and all Section 257 Houses in Multiple Occupation (buildings converted into self-contained flats) where the building is wholly occupied.

### **Consultation Response**

- 4.17 The full consultation report and appendices can be found at (Appendix 2). Headline results from the report and consultation are provided below.
- 4.17.1 Support for an Additional Licensing scheme is strong overall with over three quarters (89%) of respondents agreeing with the proposal. Only 6% disagreed.



- 4.17.2 Around 40% of respondents feel that the impact of Additional Licensing on them, would be positive if it were to be implemented. Only 4% feel it would have a negative impact on them.
- 4.17.3 Nearly two thirds of respondents (65%) agree that the proposed Additional Licence fees are reasonable. Just short of a quarter (22%) disagree.
- 4.17.4 Landlords/agents are least in favour of Additional Licensing, with just over half (53%) disagreeing with the proposal, and 47% agreeing. This is a significant improvement on the results from the previous West Bromwich only consultation.
- 4.17.5 Just over 90% of existing PRS tenants agree that the new proposed licensing conditions and standards and amenities set out are reasonable.
- 4.17.6 32% of landlords and agents feel it would have a negative impact on them, and 37% feel it would be positive;

### General comments

- 4.18 Comments show that the most common reasons provided by those who agree with the proposal (from 1163 comments from 828 respondents) included being *generally in support of the scheme* (409 comments), followed by the *scheme improving living conditions, standards and safety* (228 comments) and the *need for a scheme due to issues with HMOs in the area* (162 comments).
- 4.19 The most common comments are that *it will improve living conditions, standards and safety* (141 comments) and that *it will result in cleaner streets, local areas and gardens* (139 comments), followed by 48 comments in general support of the scheme
- 4.20 Those who disagree with the proposed Additional Licensing scheme were also asked to provide their reasons why. In total 105 comments were coded from 60 respondents. The most common reasons for disagreeing with the proposed scheme include it *being an additional cost and strain for landlords* (23 comments), *being against the scheme in general* (19 comments) and that *costs will be passed onto tenants and rents will increase* or it *being a money-making scheme by the Council* (11 comments each).



## Fees

- 4.21 The proposed fee structure can be found at (Appendix 3). Respondents were invited to provide any other comments they had around the proposed Additional Licence fees. Firstly, those who agreed that the fees are reasonable were asked to provide their comments. In total, 682 comments were provided which have been coded into common themes (from 577 respondents). The most frequent comments are that respondents *feel they are reasonable and will improve conditions and standards* (296 comments), whilst many felt that the *fees are too low and should be higher* (111 comments). There are clearly still some concerns about the fees, with 67 comments around the *costs being passed onto tenants and rents will increase*.
- 4.22 Those who disagree that the fees are reasonable were asked to provide their comments (271 comments from 206 respondents). The most frequent comments are that respondents *feel fees are too high and should be lower* (91 comments), whilst conversely some still feel that the *fees are too low and should be higher* (44 comments). This was followed by concerns that *costs will be passed onto tenants and rents will increase* (41 comments).

## Conditions

- 4.23 The proposed conditions can be found at (Appendix 4). Respondents were invited to provide any comments around the Additional Licencing conditions. In total, 1,013 comments were identified and coded into key themes (from 832 respondents). Themes which received fewer than 5 comments were grouped under 'other'.
- 4.24 The most common theme by far is that *the conditions are reasonable* (495 comments). This is followed by comments that *they will improve living conditions, standards and safety* (347 comments) and that *the conditions will help to protect tenants* (64 comments). There are also some concerns raised, such as *they will be an additional strain on landlords* (21 comments).





## Standards & Amenities guidance document

- 4.25 The proposed Standards & Amenities guidance can be found at (Appendix 5). The consultation also sought the views of respondents on a set of proposed standards and amenities for landlords to follow for the Additional Licensing scheme. Further details on the proposed standards and amenities were provided within the consultation documents.
- 4.26 Overall, just over nine in ten respondents (91%) agree that the proposed Additional Licence standards and amenities are reasonable, with 42% strongly agreeing. Only 5% disagree.

### Other relevant comments

- 4.27 The final question in the survey asked respondents to add any further comments they would like to make on the proposals or any alternatives that the Council could consider instead of Additional Licensing. In total, 431 comments have been identified and coded into themes (from 288 respondents).
- 4.28 Key themes are around respondents generally feeling *there are issues with HMOs, such as there are currently too many and that they can have a negative impact on an area* (108 comments), followed by generally being *supportive of the proposed scheme* (77 comments). This is followed by comments around the need to ensure that *regular monitoring, checks and inspections happen as a part of the scheme* (53 comments).

### Consultation Conclusion

- 4.29 There seems to be a general split in opinion, with landlord and agents being generally opposed to the scheme because they feel that although intervention is needed, they do not feel that they should pay for that intervention if they personally are not in breach of the law. Tenants seems to generally be in favour of the scheme, believing that it will have a positive impact on them and the condition of housing available to them in the proposed area. Whilst this is not in direct conflict to the results from the West Bromwich consultation in 2021, the level of resistance within landlords and agents has reduced quite significantly.
- 4.30 There is a generally strong support for the scheme with high levels of agreement that the scheme would be successful in achieving the



objectives, however the manner in which the schemes would be funded raises criticism from landlords and agents who would be subject to paying those fees.

## 5 Alternative Options

5.1 The options considered included several possible interventions for tackling substandard and 'problematic' smaller HMOs as set out below:

5.1.1 **Do nothing** - This option would involve the Council doing nothing to intervene in the small HMO sector this would leave the local housing market to be the driver for landlords carrying out improvements to their properties.

5.1.2 **Do the minimum (reactive inspection programme only)** - This option would mean that the Council intervention in the small HMO sector being limited to a basic complaint response service with action by other departments and agencies on a largely ad hoc basis.

5.1.3 **Informal action (Proactive inspection programme)** - This would be delivered through a non-statutory Action Area, considering parts of the borough where there was concentration of poorly managed or maintained properties.

5.1.4 **Voluntary Accreditation** - Accreditation schemes have a set of standards (or code) relating to the management or physical condition of different HMOs and recognise properties/landlords who achieve/exceed the requirements. This is a voluntary scheme which relies upon the co-operation of landlords and agents and as such it is unlikely to attract a large part of the sector.

5.1.5 **Targeted use of Interim Management Orders (IMOs) and Final Management Orders (FMOs)** - The Housing Act 2004 gives local authorities powers to use Management Orders for tackling comprehensive and serious management failures. These are powers are currently available for HMOs that are required to be licensed under the Mandatory HMO licensing scheme but not those HMOs that fall outside this national scheme.



5.2 In line with the previous Cabinet Report to approve consultation and evidence base set out, the preferred option remains the Approval of Additional Licensing within Sandwell.

## 6 Implications

<p><b>Resources:</b></p>	<p>The following strategic resource implications would be associated with the implementation of additional licensing as described in this report.</p> <ul style="list-style-type: none"> <li>An estimated 3000 private rented properties within the designated area would require licencing. The fee structure provides the five-year licensing cost. Before discounts are applied the following outline, fee levels are proposed.</li> </ul> <table border="1" data-bbox="386 779 1399 1525"> <thead> <tr> <th data-bbox="386 779 691 931">Type of Property</th> <th data-bbox="691 779 1399 931">Proposed Fee</th> </tr> </thead> <tbody> <tr> <td data-bbox="386 931 691 1525">           All HMO property types and sizes including each individual self-contained flat within a larger building operating as a HMO.         </td> <td data-bbox="691 931 1399 1525">           Initial licence fee: £1,001.00 in two payments             Stage 1 Fee – Payable at the time of making the application = £642.00             Stage 2 Fee – Payable once the Council has determined to Grant a Licence = £359.00         </td> </tr> </tbody> </table> <ul style="list-style-type: none"> <li>Income generated from the introduction of the scheme will cover the costs of operating the scheme.</li> <li>Additional staff will be required for the purposes of;             <ul style="list-style-type: none"> <li>Administering the licence application</li> <li>Enforcement against licence conditions</li> </ul> </li> </ul>	Type of Property	Proposed Fee	All HMO property types and sizes including each individual self-contained flat within a larger building operating as a HMO.	Initial licence fee: £1,001.00 in two payments  Stage 1 Fee – Payable at the time of making the application = £642.00  Stage 2 Fee – Payable once the Council has determined to Grant a Licence = £359.00
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	<ul style="list-style-type: none"> <li>Enforcement against the licensing conditions proposed in this report will result in the application of civil penalties for non-compliance. Such penalties will generate income for the Council.</li> </ul> <p>It is intended to secure 2 additional officers at the first phase of implementing Additional Licencing borough wide. It is intended to secure 1 Housing Needs Advisor (Grade D) and 1 Licensing Officer (Grade E) to support the existing two staff members.</p> <p>These staff will begin the work to identify potential HMOs and to process all new applications, support inspection programmes and provide advice to landlords. The service intends to begin with two additional staff as we determine the level of new demand and will review this position quarterly. This approach is being taken to ensure that the service does not over resource compared to the income generated and in turn, create a budget pressure.</p>
<p><b>Legal and Governance:</b></p>	<p>The Housing Act 2004 requires local housing authorities to mandatory licence HMOs if they accommodate more than five people who form two or more households. The Act also gives authorities the power to introduce an additional licensing scheme for other smaller HMOs.</p> <p>The Secretary of State for Communities and Local Government in exercise of powers under section 58(6) of the Housing Act 2004 gives to all local housing authorities in England the following general approval in relation to areas designated for additional licensing.</p> <p>Section 58 Housing Act 2004 states that a designation of an area as subject to additional licensing cannot come into force unless it has been confirmed by the appropriate national authority. However, on 1 April 2015, the Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licencing of Other Residential Accommodation (England) General Approval 2015 came into effect. The General Approval provides as follows:</p>



## **General Approval**

3. Subject to the condition contained in paragraph 5, every local housing authority in England that designates an area of their district or an area in their district as subject to additional licensing in relation to a description of HMOs specified in a designation made under section 56(1) of the Act has the Secretary of State's general approval of that designation for the purposes of section 58(1)(b) of the Act.

## **Conditions to be satisfied**

5. The general approval described in paragraphs 3 and 4 is not given in relation to a designation in respect of which the local housing authority has not consulted persons who are likely to be affected by it under section 56(3)(a) or section 80(9)(a) of the Act for not less than 10 weeks.

Should the recommendations be approved the timescale for implementing this decision is for the designation to commence on the 1 October 2024. This requirement is to provide the Council with sufficient time to conclude the reporting process and to comply with Section 58 of the Housing Act 2004 which states that a designation cannot come into force until three months after the date when the designation was made.

## **Revocation of the existing West Bromwich additional licensing area**

On 18 March 2022 a delegation was made for Additional Licensing in the area of West Bromwich cited as "The Metropolitan Borough Council of Sandwell Designation for an Area for Additional Licensing of Houses in Multiple Occupation 2022" which came into force on the 1 July 2022.

Should the recommendations be approved for the borough wide scheme revocation of the previous delegation will be required under Section 60 of the Housing Act 2004. If approved this will take effect on the 30th September 2024.

Arrangements will be made to passport the existing licences held under this delegation into the proposed new scheme.



<p><b>Risk:</b></p>	<p>There is a risk that should insufficient resources be allocated to the launch and provision of the expansion that the anticipated benefits will not be delivered. This will be mitigated through securing additional staff to carry out the licensing function in line with the expansion plan.</p> <p>If a scheme is implemented the main risk is that there is a low take up by landlords, as seen in the initial West Bromwich area, which would increase the cost of compliance and recovery of enforcement costs.</p> <p>There is a risk that landlords who disagree with the implementation of the scheme may take legal action to prevent its introduction.</p>
<p><b>Equality:</b></p>	<p>An Equality Impact Assessment has been completed as part of the final proposals and consultation; however, implementation will improve living conditions for vulnerable groups living in unlicensed HMOs.</p>
<p><b>Health and Wellbeing:</b></p>	<p>Additional licensing is designed to benefit the local community and ensure that all private rented property within a designated area is managed by the landlord to a satisfactory standard prior to a licence being granted. Robust enforcement action is taken if license holders fail to comply with the licensing conditions. The introduction of additional licensing can contribute to;</p> <ul style="list-style-type: none"> <li>• Better housing conditions</li> <li>• Reduction in crime and anti-social behaviour</li> <li>• Reduction in domestic waste accumulations</li> <li>• A reduction in overcrowding</li> <li>• Increased landlord engagement with the Council and partner organisations working in the area</li> <li>• A reduced ability for rogue/criminal landlords to enter the market</li> <li>• Increased ability to deal with rogue/criminal landlords</li> <li>• Improved relationships between landlords and tenants</li> <li>• Improved image and perception of the area making it a more desirable place for people to live.</li> </ul>
<p><b>Social Value:</b></p>	<p>Not applicable.</p>
<p><b>Climate Change:</b></p>	<p>The requirements for licensing will support improving standards within the sector which will also incorporate ensuring properties meet the minimum legal requirement for EPC ratings</p>



<b>Corporate Parenting:</b>	Licensing will help to ensure that HMO accommodation is suitable and safe for care leavers who enter this accommodation type. It will also provide increased assurance that properties are suitable when the council makes placements into them.
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## 7. Appendices

Appendix 1 – Consultation full evidence base

Appendix 2 - Consultation on additional licensing in Sandwell – Final Report

Appendix 3 – Proposed HMO License fees

Appendix 4 – Proposed License conditions

Appendix 5 – Proposed Standards & Amenities Guide

## 8. Background Papers

1. Housing Act 2004.  
<http://www.legislation.gov.uk/ukpga/2004/34/contents>
2. Additional and Selective Licensing in the Private Rented Sector - A Guide for Local Authorities published by the MHCLG in March 2015.  
<https://www.gov.uk/government/publications/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities>
3. English Housing Survey Private Rented Sector Report 2014-15  
<https://www.gov.uk/government/statistics/english-housing-survey-2014-to-2015-private-rented-sector-report>
4. General Approval April 2015  
<https://www.gov.uk/government/publications/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities/the-housing-act-2004-licensing-of-houses-in-multiple-occupation-and-selective-licensing-of-other-residential-accommodation-england-general-approval>



5. House of Commons publication, Housing, Communities and Local Government Committee. Private-Rented-Sector-17<sup>th</sup> April-2018. <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/440.pdf>
6. The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006. <https://www.legislation.gov.uk/uksi/2018/616/made>

