



Report of: **Executive Member for Housing and Development**

Meeting of:	Date	Ward(s)
Executive	12 03 15	Caledonian, Barnsbury, Holloway, St. Mary's, Highbury East, Highbury West, Finsbury Park, St. George's, Tollington, Junction

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SUBJECT: Designation of Areas for Additional Licensing of Houses in Multiple Occupation (HMOs)

1. Synopsis

- 1.1 The Council has a range of functions available to it to address poor housing conditions in the private rented sector, one of which is to introduce additional licensing schemes in respect of multi-occupied properties (HMOs).
- 1.2 The Council believes that this control will assist in securing improved housing where there are a significant number of HMOs in poor condition. The area comprising Caledonian and Holloway Roads has been identified as one where additional licensing could be appropriate and this report recommends that it be designated for this purpose.

2. Recommendations

- 2.1 To agree to designate Caledonian Road and Holloway Road as areas subject to additional licensing of the following types of HMOs:
 - Houses and flats occupied by three or more persons who are not members of the same household (family);
 - Buildings converted into two or more flats where the conversion works do not comply with appropriate building standards (those applied in 1991 or later) and less than two-thirds of the flats are owner occupied (these are known as section 257 HMOs).
- 2.2 To approve the proposed fee structure for 2015/16 in relation to both Additional licensing of HMOs and the existing mandatory HMO licensing scheme, attached at Appendix 3.
- 2.3 To agree that any additional costs of implementing the licensing scheme that cannot be met by the licensing fee or through existing resources will be monitored and as necessary, met from the Contingency fund.

- 2.4 To agree to implement the additional licensing scheme from 1st September 2015, to run for five years.
- 2.5 To authorise the Service Manager (Residential Environmental Health), Service Manager (Commercial EH, Licensing and Emergency Planning), Service Manager (ASB and Environmental Services) and Service Director (Public Protection) to agree licences and determine the period of time to be covered by each licence.

3. Background

3.1 History and Evidence from Street Surveys

Caledonian Road and Holloway Road are busy arterial routes that provide opportunities for commerce and housing for a large number of residents in the borough. Much of the housing provided in this busy, noisy environment, lacks outside space and is less attractive to families. As a result, accommodation in the two roads has historically been at the more affordable end of the market and better suited to single, often younger, people. This has created the right market conditions for large numbers of HMOs to develop to widely varying standards. Some of this accommodation has been converted to bedsits and flats without adequate planning consent and there has been increasing concern about management practices and poor accommodation standards.

The Council has a range of powers it can use to deal with poor standards in the private rented sector and this can include adoption of a scheme to licence a broader range of HMOs than is currently allowed by the statutory scheme. We have identified that the standard of HMOs in this area that we inspect is routinely poor and that additional licensing may be a useful enforcement tool to add. To test this view, we have carried out a street survey, sampling one in three properties, excluding Council rented and Housing Association properties. A street survey sample of these private sector properties was then drawn up on a one in three basis. This resulted in 638 surveys being undertaken, including 208 HMOs. Of these surveyed HMOs, more than two thirds were found to be poorly managed with problems – see Appendix 1.

These management failings are linked to a number of health and safety hazards, notably fire and electrical safety, excess cold and falls. The consequences of poor HMO management are very serious. As pressure in the housing market intensifies, the potential for poor, exploitative management practices increases and there is a growing need to consider alternative methods to safeguard minimum standards for management and property condition.

3.2 Improvement Options

Our current reliance on landlords and managing agents complying with legal requirements through a combination of self-regulation (including landlord accreditation schemes), and identification of problem properties using street surveys and responding to complaints from tenants is not working for HMOs in the two roads where 68% have been found to be suffering the consequences of poor management.

We have looked at the options to place more emphasis on self-regulation and more emphasis on enforcement in the two areas. The conclusion we have reached is that these options are unlikely to be effective in addressing the scale of the problem unless they are supported by an additional HMO licensing scheme.

3.3 Consultation

On 27 October 2014 proposals for a licensing scheme covering all HMOs in Caledonian Road and Holloway Road were published at www.islington.gov.uk/sharedlets. This was supported by a press release that then featured in newspapers and on websites. Over 300 landlords and letting agents operating in the area of the two roads were sent letters inviting them to view the proposals and complete an online questionnaire. More than 3000 leaflets were distributed to homes and businesses along the two roads and other organisations and representative groups such as Islington Private Tenants Group, the National Landlord Association (NLA) and the Residential Landlord Association (RLA) were asked for their views.

On 8 December 2014 the proposals for additional licensing were presented to a meeting of Islington Landlords Forum.

The consultation ended on 9 January 2014 and resulted in 94 responses via the online questionnaire. Full analysis of the responses and the amendments made in light of the consultation is given at Appendix 2.

3.4 **Proposed Scheme**

It is proposed that the Council designates Caledonian Road and Holloway Road as areas subject to additional HMO licensing. This will include all private sector HMOs with postal addresses on Caledonian Road and Holloway Road and 1 Kember Street. 'Private sector' to include properties with private freehold or leasehold including private leaseholders where the freeholder is the London Borough of Islington ('right to buy' properties) and to exclude socially rented properties and student housing blocks which are registered and managed so as to conform with approved codes of practice.

The proposed designation covers HMOs where three or more people who are not related share amenities and buildings converted into flats that do not meet suitable building standards and where less than two thirds of the flats are owner-occupied (these are known as section 257 HMOs).

The objectives of the scheme are:

- Improved management of HMOs
- Improved health, safety and wellbeing of tenants
- Consistent standards for landlords and managing agents
- Clearer identification of criminal landlords for targeting enforcement action
- Increased numbers of accredited landlords.

Following a minimum period of 3 months after any designation is made, HMO landlords operating within the area that is subject to additional licensing will be required to apply to the Council for a licence. Applications for licences will be subject to a fee (see Appendix 3) that reflects the Council's costs in administering the licence. These costs are higher than those indicated by the fees charged by other councils as they reflect the amount of work that will be required to significantly improve management in 68% of all HMOs in the proposed area. As a result they include the cost of administering a risk based inspection and monitoring programme. Overall the licence fee equates to £1 per unit of accommodation per week where a five year licence is granted

Recent case law and guidance indicate that the licence fee cannot be used to fund either the cost of enforcement against unlicensed operators or the cost associated with other housing act enforcement action that may be required. As a result dedicated resources will be required from the Council (in addition to income from licence fees) to ensure that licensing is effective in dealing with those landlords who try to operate HMOs illegally without a licence.

Landlords will be required to demonstrate through their licence application(s) that they, and anyone involved in the management of their HMO(s), meet fit and proper person criteria, and that the management arrangements are satisfactory. Their application must be supported by plans of the property and certificates covering fire, gas and electrical safety. The cost of providing a licence is lower in relation to landlords who have already made the effort to join a recognised accreditation scheme. This justifies the reduced fees proposed for accredited landlords.

A licence can be granted for up to five years. The period of time covered by each licence will, in practice be determined taking into account whether there is a history of non-compliance, poor property management and late/incomplete licence applications. Such concerns will result in the licence period being reduced so that the Council can monitor compliance more intensively. The landlord will then be required to renew the licence before it expires so that the HMO remains licensed throughout the operation of the licensing scheme. This policy of reduced term licences for non-compliant landlords will allow the Council to focus the licensing scheme on those that require more regulation.

Conditions will be attached to each licence. They must include mandatory conditions (listed at Schedule 4 Housing Act 2004) covering requirements to keep electrical items and furniture in a safe condition and smoke alarms in proper working order. Further conditions will be attached to licences where the property does not satisfy Islington's HMO standards which apply to both licensable and non-

licensable HMOs. The HMO standards (see Appendix 4) govern cover space requirements, kitchen and bathroom amenities and reasonable ratios for use of these amenities. They are designed to reflect the types of properties found in the borough and help to mitigate the problems experienced in shared accommodation of different types. The HMO standards were published as part of the information pack to support the public consultation.

The intention is that we will proactively find properties and where necessary enforce against them. We want to ensure that properties are improved and not simply licensed. Over the five years properties will be visited, we will be doing more than issuing Licences on the basis of desk top assessments.

Effective enforcement is vital to support the successful implementation of an additional licensing scheme. Activity has to be targeted towards any landlord, block freeholder or managing agent who seeks to avoid the requirement to licence. Where possible intelligence will be shared across Council services and with outside agencies to maximise compliance with licensing and highlight criminal activity.

Any additional costs of implementing the licensing scheme that cannot be met by the licensing fee or through existing resources will be monitored and as necessary, met from the Contingency fund. Prosecutions will need to be funded. In addition Rent Repayment Orders are a further sanction that can be used to recover Housing Benefit that has been paid in respect of any property that should have been licensed.

4. Implications

4.1 Financial implications:

As a result of recent case law, the licence fee cannot be used to fund either;

- The cost of enforcement against unlicensed operators
- The cost associated with other housing act enforcement action that may be required.

Therefore any additional costs of implementing this new additional HMO licensing scheme, that cannot be met by licensing fee income or through existing resources, will need to be met from other dedicated resources from the Council.

4.2 Legal Implications:

Under section 56 of the Housing Act 2004 the Council has the power to designate areas as subject to additional licensing in respect of some or all of the HMOs that are not already subject to mandatory licensing. In order to exercise this power the Council must consider that a significant proportion of these HMOs 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.

The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2010 provides the Council with the Secretary of State's general approval to designate an area as subject to additional licensing where the Council has consulted people likely to be affected by the scheme for a minimum of 10 weeks. In the recent case of R (on the application of Regas) v Enfield LBC 2014 the court found that as Enfield's formal consultation had only lasted for 8 weeks (the earlier period where it had held meetings did not count towards the 10 week requirement), the Council's additional licensing scheme was not lawfully designated.

The Council must also:

- ensure that the scheme is consistent with the Council's housing strategy
- seek to adopt a coordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector as regards combining licensing with other action taken by the Council
- consider whether there are any other courses of action available that might provide an effective method of dealing with the problem
- consider that the scheme will significantly assist in dealing with the problem.

If the Council decides to introduce an additional HMO licensing scheme it will come into force no earlier than 3 months after the date on which the designation is made.

4.3 **Environmental Implications:**

HMO additional licensing is focussed on improving the management of HMOs in the designated area. Improved management of these properties is likely to reduce their potential to adversely impact on the local area. The potential for displacement of HMOs to neighbouring areas has been considered in relation to this street focussed licensing scheme. This unlikely for the following reasons:

- the scheme is designed to promote good HMO management, there is no reason for this to affect the number of HMOs in the two roads
- the cost of compliance with HMO requirements will not be significantly higher within the proposed additional licensing area than in surrounding areas (see Appendices 2 and 3)
- the value of properties on the two roads relative to surrounding areas ensures that they will remain viable as well-managed HMOs. The majority of properties are over shops and so are not suitable as family homes further emphasising that the existing tenure is likely to continue.
- continued strong demand for HMO accommodation is predicted for the area (see Appendix 2)

4.4 **Resident Impact Assessment:**

The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (Section 149, Equality Act 2010). The Council has a duty to have due regard to the need to remove or minimise disadvantages, and to take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and to encourage people to participate in public life. The Council must have due regard to the need to tackle prejudice and promote understanding.

The Resident Impact Assessment (available on request) has identified that the scheme will have a greater potential impact on young adults, people living in poverty and migrant workers from various races and religions, because these groups are all more likely to occupy HMO accommodation.

The direct impacts of the scheme are assessed as positive with improved equality of access to safe, well managed HMO accommodation regardless of socio-economic background. However, there is also potential for landlords to add licensing/compliance costs to rents or leave the HMO rental market if they are not prepared to comply with legal requirements. This could adversely impact on these groups, particularly people living in poverty.

The Resident Impact Assessment identifies a number of important messages to disseminate to residents and landlords through targeted publicity in order to maximise the benefits of additional licensing and reduce the potential for any adverse impact. It also identifies the need to monitor the impact of the scheme.

5. **Conclusion and reasons for recommendations**

- 5.1 Significant problems with the management and condition of HMOs in Caledonian Road and Holloway Road have been directly evidenced through property surveys. Options to address these problems have been carefully considered and an HMO additional licensing scheme has been identified alongside existing measures as an important step to help bring about the widespread improvements required in these properties. Residents, landlords and a range of representatives have had the opportunity to comment and the majority of those who responded favour the Council introducing a scheme. All feedback received has been taken into account in the design of the proposed scheme and the implications for the area and for different groups have been carefully considered.
- 5.2 For the reasons given in this report, agreement to designate an additional HMO licensing scheme (as proposed) is recommended.

Appendices;

Appendix 1 – HMO Street Survey Report

Appendix 2 - Consultation with Residents, Landlords, Letting Agents and other Representatives

Appendix 3 - Proposed fees for HMO Additional Licensing

Appendix 4 – HMO Standards

Background papers: None

Final report clearance:

Signed by:



2 March 2015

Executive Member for Housing and Development

Date

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