

Report to: Scrutiny

Date: 11 July 2022

Title: Review of Planning Policy and Licensing for Houses in Multiple Occupation

Report of: Ian Fitzpatrick, Deputy Chief Executive and Director of Regeneration and Planning

Cabinet member: Councillor Alan Shuttleworth, Cabinet member for direct assistance services and Councillor Colin Swansborough, Cabinet member for climate change, place services and special projects

Ward(s): All

Purpose of report: To provide an update on a review of planning policy and licensing for Houses in Multiple Occupation (HMOs)

Decision type: Non-key Decision

Officer recommendation(s) to the Cabinet:

(1) To note the issues and implications associated with the potential courses of action identified in this report relating to the review of planning policy and licensing for Houses in Multiple Occupation and selective licensing of other private sector residential properties

(2) To seek approval to commission robust evidence to fully underpin future strategies to manage and tackle Houses in Multiple Occupation and other private sector residential properties in the town and to allocate £25,000 to enable this to happen

Reasons for recommendations:

(1) To enable a full understanding of the current situation regarding HMOs and other private sector residential properties in the town, including future need and impacts on local communities

(2) To provide evidenced justification for any future decisions relating to local plan policy and additional or selective licensing schemes for HMOs and other private sector residential properties

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1 Introduction

- 1.1 Members of the Council have requested advice on the potential for introducing a new planning policy and Article 4 Direction for Houses in Multiple Occupation (HMOs) in Eastbourne, along with an additional and discretionary licensing scheme for generally smaller HMOs in the town, in order to address concerns about the adverse impacts of such housing in terms of anti-social behaviour, overcrowding and loss of amenities such as parking.
- 1.2 Houses in Multiple Occupation (HMOs) are legally defined in the Housing Act 2004 (under sections 254 to 259). A House in Multiple Occupation is generally considered to be a property that is occupied as a main residence by at least three people who are not part of the same household but share facilities like a kitchen and bathroom, where the building does not entirely consist of self-contained flats (although it may include some self-contained flats), and rents are payable (or some other form of consideration) for at least one person's occupation. However, there are legal exemptions for certain buildings that meet the definition for an HMO under the Housing Act 2004.
- 1.3 HMOs form an important part of the housing mix within an area as they increase the range and mix of accommodation, especially for people whose housing options are limited, such as young professionals, students and people on low incomes who are unable to afford or access their own self-contained accommodation. Demand for this type of smaller and cheaper accommodation is likely to be impacted by current circumstances in relation to rises in the cost of living and pressure on wages and benefits.
- 1.4 However, HMOs have the potential to cause negative impacts on communities in terms of the standard of living environment for local residents and businesses, particularly where there is a high concentration of HMOs in a specific area. In addition, it is acknowledged that there are contributory factors associated with a high turnover of HMO residents; the concentration of HMO residents facing economic hardship (amongst a wider community that faces hardship also); and the higher proportion of HMO residents living with mental health/complex needs. Together, these factors can result in detrimental effects on the character of local communities and neighbourhoods, and perceptions around increased levels of anti-social behaviour, petty crime and unkempt properties that are not properly maintained that impact on the amenity of an area and adversely impact community cohesion.

- 1.5 Eastbourne Borough Council is a local housing authority under the Housing Act 2004. Where HMOs meet certain statutory criteria, the landlord must apply to the local housing authority for a licence and the property must comply with certain standards and obligations for health and safety reasons, which the local authority enforces. However, not all HMOs require a licence.
- 1.6 This Cabinet report provides a brief summary of the situation regarding HMOs in Eastbourne and considerations for any future decision on how to respond to the issues from a planning policy and HMO licensing perspective.
- 1.7 Whilst the focus of this Report is on additional licensing of HMOs, Members may also wish to consider whether further consideration should be given to the introduction of a selective licensing scheme. The Housing Act 2004 does not restrict licensing to HMOs and a local authority may implement selective licensing that applies to all private rented properties (across the whole borough or an area of the borough). Other local authorities have taken this step including, but not limited to, many London Boroughs, Hastings and Oldham.

2 Definitions of HMOs – Planning and Licensing

- 2.1 Generally, planning would determine whether or not a property can be used as an HMO in principle, whilst licensing is broadly concerned with the occupation and standard of accommodation of the HMO, particularly with respect to health and safety.
- 2.2 There are slightly different legal definitions of an HMO in housing and planning legislation, particularly where an HMO requires a mandatory licence.
- 2.3 Under planning legislation, small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen and bathroom, fall under Use Class C4 (houses in multiple occupation) of the Town and Country Planning (Use Classes) Order 1987 (as amended).
- 2.4 Where there are more than six unrelated individuals sharing amenities, this is termed an HMO in Sui Generis use because it is not within any particular planning use class.
- 2.5 In the Housing Act 2004, the standard definition of an HMO, as identified in paragraph 1.2 of this report, as per section 254, is similar to the definition of an HMO under Use Class C4, in that it includes criteria relating to three or more people forming more than one household.

- 2.6 The Housing Act 2004 requires mandatory licensing for all HMOs that are occupied by five or more people forming two or more separate households and sharing basic facilities. An HMO licence is valid for a period of five years, at which point it must be renewed.
- 2.7 Therefore, an HMO that falls below the threshold for a mandatory licence would be in Class C4 use, however an HMO requiring a mandatory licence could be either in Class C4 use or Sui Generis depending on how many people the property is occupied by.
- 2.8 Local authorities have the power to introduce additional licensing schemes for generally smaller HMOs (three or more people forming more than one household) where the local authority believes that a significant proportion of HMOs are poorly managed and give rise to problems for those occupying the HMO or members of the public . Additional licensing is discretionary, and Eastbourne Borough Council does not currently operate an additional licensing scheme.

3 Houses in Multiple Occupation in Eastbourne

- 3.1 There are currently 305 licensed HMOs in Eastbourne (HMOs occupied by five or more people forming two or more separate households).
- 3.2 The majority of the HMOs are concentrated in and around the eastern part of the Town Centre in Devonshire Ward, particularly in Langney Road, Pevensey Road, Ceylon Place and Willowfield Road. There are also concentrations around Hyde Road, and Cavendish Avenue and the area off Whitley Road.
- 3.3 As Eastbourne does not run a 'discretionary' additional licensing scheme, there is no data for the number and location of HMOs that fall under the definition of three or more people forming more than one household.
- 3.4 305 licensed HMOs in Eastbourne equates to approximately 0.6% of all housing stock in the Borough. By way of comparison, Brighton & Hove has 3,074 HMOs (of which around 50% are subject to mandatory licensing and 50% are not), which equates to 2.4% of their housing stock. Portsmouth has 4,479 HMOs, which equates to 5% of their housing stock. The number of HMOs in Brighton & Hove and Portsmouth compared to Eastbourne is most likely due to the former locations being university cities and many of the HMOs comprising student accommodation.
- 3.5 It is understood that there is a current trend for upgrading and refurbishing HMOs to provide much better standards of accommodation. These are designed to appeal to working professionals, particularly young people at the start of their

careers, couples and single migrant workers. However, they also provide suitable accommodation for men and women in their mid-years who have had a relationship breakdown.

- 3.6 Alongside the concerns regarding the concentration of HMOs in Devonshire ward, there are also concerns that when the University of Brighton leaves the town, there is the potential for some re-alignment of the market and that many of the new occupants are likely to face economic and social issues which could lead to additional negative impacts for our communities.

4 Planning Policy

- 4.1 A change of use from Class C3 (Dwellinghouse) to Class C4 (House in multiple occupation), or vice versa, falls under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), and therefore does not require planning permission.
- 4.2 However, a change of use to an HMO in Sui Generis use does require planning permission and should be determined in accordance with Local Plan policies and other material planning considerations.
- 4.3 Eastbourne Borough Plan (2003) Policy HO14 currently restricts the granting of planning permission for Houses in Multiple Occupation (HMOs) only within the Tourist Accommodation Area (stretching along the seafront from the Grand Hotel to Treasure Island), and the policy is otherwise generally permissive of HMOs outside the Tourist Accommodation Area, provided they comply with residential, visual and environmental amenity considerations. This planning policy position can only be changed through the adoption of a new Local Plan, and in order to do so it would be necessary to evidence and justify to the Local Plan Inspector at Examination why it is an issue that needs to be addressed.
- 4.4 A blanket local plan policy restricting HMOs across the whole town is unlikely to be justified as HMOs can provide an important part of the housing mix. However, a local plan policy that restricts the granting of permission for new HMOs within a specified area could be considered if it could be demonstrated that the concentration of HMOs is creating a significant impact on the amenity of that area.
- 4.5 However, in order for a change in local plan policy to apply to small HMOs as well as large HMOs, it would be necessary for an Article 4 Direction to be implemented. Article 4 Directions remove existing permitted development rights so that planning permission would be required for development, in this case a change of use from a single private residence (Class C3) to a small HMO (Class C4), where it wouldn't normally be needed.

- 4.6 Guidance relating to Article 4 Directions states that local authorities should only consider making such directions in exceptional circumstances, where it is necessary to protect local amenity or the wellbeing of an area. In all cases, the direction should be based on robust evidence and apply to the smallest area possible. The local authority must inform the Secretary of State after confirming any new Article 4 Direction, and the Secretary of State does have the power to intervene in the making of the Article 4 Direction if there are clear reasons for doing so.
- 4.7 However, introducing an Article 4 Direction to remove permitted development rights for small HMOs and requiring changes of use from Class C3 residential to Class C4 HMO to apply for permission is unlikely to be an effective way of controlling the number of HMOs within an area without a new Local Plan. This is because any application submitted would currently be assessed against the policy in the current Local Plan, which is generally permissive of HMOs.

5 Licensing

- 5.1 HMO licensing on its own cannot be used to restrict the number of HMOs operating within an area, as licensing can only attach conditions to an HMO to ensure that the accommodation itself meets appropriate standards and is fit for purpose given the number of people or households in occupation, if it addresses any anti-social behaviour and prevents overcrowding. The Housing Act 2004 identifies mandatory conditions that must be attached to all HMO licences, which apply to managers/owners rather than occupiers. In addition to the mandatory conditions that must be attached to all HMO licences, local authorities can add discretionary conditions that relate to the management, use and occupation of the HMO and its condition and contents, if there is justification to do so.
- 5.2 The Council has published its 'Standards for Houses in Multiple Occupation', which are the standards for deciding the suitability for occupation of an HMO by a particular maximum number of households or individuals. This confirms that the Council requires that the licence holder should provide tenants with a written statement of their tenancy rights and obligations including a clause on anti-social behaviour. It also states that the licence holder should ultimately bear some responsibility for any continuing nuisance caused by tenants and should, undertake to discuss complaints from neighbours with tenants and, when asked to do so by the Council, should provide evidence to show that they are taking appropriate action to enforce tenancy conditions relating to nuisance prevention.
- 5.3 There are types of HMO that are not subject to mandatory licensing, and these tend to be smaller HMOs. There is currently no data held on HMOs that fall below the threshold for mandatory licensing, and therefore there is no evidence

for the number and location of these types of HMO, or the impacts that these smaller HMOs are having.

- 5.4 Local authorities have the discretion to introduce additional licensing for other types of HMO that are not subject to mandatory licensing. Additional licensing can be introduced where the local authority believes that a significant proportion of HMOs are poorly managed, and this is giving rise to problems for those occupying the HMOs or members of the public. The local authority must ensure that such action is consistent with the authority's overall housing strategy and it must also seek a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector.
- 5.5 The introduction of additional licensing into a designated area can be made without the Government's approval, provided there is a minimum 10-week consultation period, subsequent to a draft proposal identifying what is to be designated and its consequences being produced.
- 5.6 In deciding to introduce additional licensing for HMOs, the Housing Act 2004 requires local authorities to consider whether there are other courses of action available to them that might provide an effective method of dealing with the problem or problems in question and they consider that making the designation will significantly assist them to deal with the problem or problems.
- 5.7 It is considered that there is no one single solution to addressing issues relating to an over-concentration of HMOs in a particular area. Any new policy in the Local Plan that restricts the concentration of HMOs in a specified area is unlikely to be effective without an Article 4 Direction and without additional licensing. This is because evidence would be required to identify where the concentrations of generally small HMOs actually are, and this would be provided via an additional licensing scheme.

6 Evidence

- 6.1 In order to provide evidence to support and justify any future decisions on action regarding HMO planning policy or licensing, it would be necessary to commission a full assessment of the current situation including evidence of any adverse impacts of HMOs on local communities. The evidence would need to consider:
- The current supply and distribution of all types of HMOs, including small HMOs that are not subject to mandatory licensing.
 - The predicted need for this type of accommodation in the future.
 - An assessment of the condition of the existing HMO stock.

- A fully evidenced assessment of the actual impact that HMOs have on local communities and the character of an area.
- A review of local prescribed standards for HMOs, including the use of discretionary conditions on licences.
- Any other courses of action that could be used to deal with the problems arising.

7 Timescales

- 7.1 A new Eastbourne Local Plan is currently being prepared. There are a number of statutory requirements in Local Plan preparation, including consultation and examination by an independent Planning Inspector, and it is anticipated that the new Local Plan is unlikely to be adopted until 2024 at the earliest. Clear evidence will be required to justify the inclusion of an HMO policy in the Local Plan. A Local Housing Needs Assessment is currently being prepared by consultants to provide evidence for the Local Plan, and this will consider the levels of future need for HMO accommodation.
- 7.2 The creation of an Article 4 Direction to withdraw permitted development rights to change the use from Class C3 to Class C4 would usually be expected to take a minimum of one year due to the need to undergo an extensive consultation process. In addition, to avoid compensation payments a Local Planning Authority must confirm and publish its intention to make the Direction at least 12 months, and not more than 2 years, ahead of the Article 4 taking effect. As part of the justification of an Article 4 Direction, the potential harm that the Article 4 Direction is intending to address would need to be clearly identified and fully justified with evidence. It would be necessary to inform the Secretary of State, who has the power to modify or cancel the Article 4 Direction.
- 7.3 Similarly, the introduction of a new 'additional' licensing scheme would likely take approximately one year, based on examples where other local authorities have introduced such a scheme, due to the need for formal designations and a minimum 10-week consultation period before it is approved. Once approved, there are specific requirements to issue notices to publicise the scheme and ensure landlords are made aware, and a scheme cannot come into force any earlier than three months after it has been approved.
- 7.4 The implementation of an additional licensing scheme would also have resource implications in terms of potentially assessing and licensing a significant number of HMOs that would not previously have needed a licence. Any scheme would last for a maximum of five years before it would need to be renewed and its operation must be reviewed from time to time if the issue had not been resolved in that time.

8 Consultation

- 8.1 The matter has previously been discussed at Local Plan Steering Group (August 2019 and January 2022). Members were supportive of further investigations being undertaken into the options available to address the negative impacts on local communities associated with a high concentration of HMOs.
- 8.2 Potential actions in relation to changes to planning policy, the implementation of an Article 4 Direction and/or introduction of an additional licensing scheme would be required to undergo public consultation before they are put in place.

9 Corporate plan and council policies

- 9.1 It is acknowledged that HMOs form an important part of the housing mix within an area as they increase the range of accommodation available, especially for young professionals, students and people on low incomes who are unable to afford their own self-contained accommodation.
- 9.2 The Corporate Plan 2020-2024 states that Eastbourne in 2024 will be promoting homes that sustain health and wellbeing and residents will have good access to housing that meets modern standards and safe, well managed and decent homes.
- 9.3 The Housing Strategy 2020-2024 recognises that the challenges for Eastbourne include rising housing costs, a changing demographic, the expansion of the private rented sector, tackling poverty and inequality, and homelessness. It recognises a priority to shape a thriving, high standard, private rented sector by putting in place measures that promote a good quality private rented housing supply, encourage good quality management across the sector and balance the interests of landlords and tenants.
- 9.4 In relation to raising the standard of local private rented sector homes, the Housing Strategy identifies actions to pilot a scheme to proactively identify low standard homes and work with tenants and landlords to ensure that they are safe, secure and free from hazards; and consider the benefits of selectively licensing all private rented sector homes in designated geographical areas and evaluate the success of any pilot.

10 Financial appraisal

- 10.1 The review of planning policy and licensing for Houses in Multiple Occupation and implementation of an additional and selective HMO licensing scheme would have resource implications in terms of potentially assessing and licensing a significant number of HMOs that would not previously have needed a licence.

10.2 Therefore, commissioning of a robust evidence to fully underpin future strategies to manage and tackle Houses in Multiple Occupation in the town will cost approximately £25,000, which will need to be funded through existing services limited resources and/or corporate contingency budget.

11 Legal implications

11.1 The legal implications are set out in the body of the report, particularly at paragraph 7.3 which refers to the legal restrictions in making a non-immediate Article 4 Direction.

11.2 Section 56 of the Housing Act 2004 states that in order to designate certain HMOs in the area of the borough or a part of the borough, the local housing authority must consider that a significant proportion of HMOs, of that description, are being managed sufficiently ineffectively as to give rise, or be likely to give rise, to one or more particular problems for those occupying the HMOs or for members of the public.

11.3 If the decision is that there is such a need for additional licensing, for example of section 257 HMOs (converted blocks of flats), or all HMOs as defined by section 254 (standard definition), which are not subject to mandatory licensing and are not exempt, the local housing authority must comply with the statutory requirements set out under Part 2 of the Housing Act 2004 as outlined in the Report.

11.4 Part 3 of the Housing Act 2004 allows for selective licensing of other residential accommodation which are not HMOs. Section 80 gives a power to a local housing authority to designate the borough or part of the borough to be subject to selective licensing if it satisfied that the area is, or is likely to become, an area of low housing demand and that making a designation will, when combined with other measures, contribute to the improvement of the social or economic conditions in the area; or if satisfied that the area is experiencing a significant and persistent problem caused by anti-social behaviour, that some or all of the private sector landlords are failing to take action to combat the problem, and that making the designation, when combined with other measures, would lead to a reduction in or elimination of the problem.

11.5 The process of making a selective licensing designation is broadly similar to that involved in making an additional licensing designation, the process is outlined in Part 3 of the Act. One important distinction is that the General Approval given to all local housing authorities to make such a designation does not apply if the selective licensing designation would apply to more than 20% of the

geographical area of the borough or if it would affect more than 20% of private rented homes in the area.

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12 Risk management implications

- 12.1 If approval is not given to commission robust evidence to enable us to fully understand the current situation regarding HMOs in the town, it could result in an ongoing concentration of HMOs in certain areas and could potentially result in new or continued adverse impacts on neighbouring residents.

13 Equality analysis

- 13.1 Houses in Multiple Occupation have broad ranging impacts for both the people in need of their use and the local communities surrounding them. Subject to Cabinet's approval of the proposals, an Equality and Fairness Analysis will be completed factoring in new evidence once completed.

14 Environmental sustainability implications

- 14.1 It is recognised that at the lower end of the HMO market, the properties are often poorly maintained and require a significant amount of energy to heat. If there was greater control over the management and maintenance of the buildings, then there could be less energy use in terms of heating. In addition, if there was to be a limit on the number of HMOs in an area, this may result in the stock being retained as single family housing and or converted into self-contained flats where there is greater potential for insulation and renewable energy sources to be secured.

15 Conclusion

- 15.1 Houses in Multiple Occupation (HMOs) are a necessary form of accommodation and play an important role in the mix of housing within the town. However, it is perceived that there are adverse impacts associated with HMOs, particularly where there is a high concentration within a localised area. At the current time, local plan policy is generally permissive of the creation of new HMOs and only larger HMOs are subject to licensing under the mandatory regime, which means that the local authority has limited control over the number of HMOs within an area. There is also a lack of robust evidence of the actual impact that HMOs are having on communities, particularly as the number and distribution, and therefore the impact, of small HMOs is unknown.

15.2 It should be acknowledged that there is no one single, simple solution to resolving any issues associated with the distribution and management of HMOs. However, this report has identified some potential courses of action that could be taken through planning policy and HMO licensing to address any issues. However, it is recommended that any future decision on these actions is firstly informed by strong, robust evidence that documents the current and future need of such accommodation and scale of the impacts that HMOs may be having in the town.

16 Background papers

16.1 The background papers used in compiling this report were as follows:

- [Housing Act 2004](#)
- [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015 \(as amended\)](#)
- [National Planning Policy Framework \(2021\)](#)
- [Planning Practice Guidance: When is permission required?](#)
- [Eastbourne Borough Plan 2001-2011 \(Adopted 2003\)](#)
- [Eastbourne Core Strategy 2006-2027 \(Adopted 2013\)](#)
- [Eastbourne Borough Council, Standards for Houses in Multiple Occupation \(HMO\)](#)