

Report to: Scrutiny Committee

Date: 15 July 2024

Title: Houses in Multiple Occupation (HMOs) – Options for Interventions

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

Cabinet member: Councillor Peter Diplock, Cabinet member for housing and homelessness

Ward(s): All

Purpose of report: To update Members on the findings of the Eastbourne HMO Study and consider options to address impacts relating to Houses in Multiple Occupation (HMOs)

Decision type: Key

Recommendations to the Scrutiny Committee Officer recommendations to the Cabinet:

- (1) To note the report.
- (1) That an HMO Development Plan Document be prepared to provide new planning policy relating to HMOs
- (2) That Article 4 Direction be introduced through Planning Committee to remove permitted development rights relating to HMOs
- (3) That proactive investigation into quantity and location of small HMOs be undertaken, including a pilot scheme to target private rented properties within a geographical area, particularly those HMOs that fall below the threshold for mandatory licensing
- (4) That the Regulatory Services Enforcement Policy and the ‘Prescribed Standards for Houses in Multiple Occupation’ documents are reviewed and updated where necessary
- (5) That all complaints regarding HMOs are captured and reporting procedures in relation to HMOs be updated

Reasons for recommendations: To enable appropriate intervention to take place to mitigate the negative impacts of HMOs on residents and local communities.

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1 Introduction

1.1 At its meeting on the 13 July 2022, Cabinet considered a review of planning policy and licensing for Houses in Multiple Occupations (HMOs), which provided a summary of potential planning and licensing actions that could be taken, to address Members concerns regarding the proliferation and impact of HMOs in the town. The report recommended commissioning of evidence to understand the extent of the issue and any adverse impacts of HMOs on local communities, as well as providing justification for any future action to address the impacts.

1.2 As a result of Cabinet agreeing the recommendations, consultants were commissioned to prepare an Eastbourne HMO Study, which commenced in November 2022 and was finalised in February 2024.

1.3 At the Full Council meeting on 28 February 2024, Members passed a motion that:

“This Council welcomes the issuing of the updated report by Aecom entitled ‘Eastbourne Houses in Multiple Occupation (HMO) Study’, a draft of which was produced in June 2023, subject to Aecom having all required information. With this additional information, it will allow the Council, as a matter of urgency to bring forward and consider through a future committee report the intervention options that might be proposed in the final report.

It is important that the Council looks at this particular area of housing, as it supports those with specific needs, with the housing crisis that we are facing and fills in some of the gaps that are being left by the traditional housing supply chain. It is important that the Council addresses these issues to support those most in need, whilst ensuring that the local community has a mixed tenure of

housing in its area. The report will guide the Council in delivering options to deal with HMO's including, but not limited to, Article 4 intervention."

- 1.4 This report summarises the findings of the HMO Study, considers the options for intervention, and recommends further actions for the Council to take to address the HMO issue.

2 Context

- 2.1 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.
- 2.2 Eastbourne Borough Council is a local housing authority under the Housing Act 2004. Where HMOs are occupied by five or more people forming two or more separate households and sharing basic facilities and meet certain statutory criteria, the Housing Act 2004 requires that these are licensed. 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. This is known as mandatory licensing. An HMO licence is valid for a period of five years, at which point it must be renewed.
- 2.3 However, not all HMOs require a licence. HMOs that fall below the mandatory threshold (those occupied by three or four people forming two or more separate households) are not subject to mandatory licensing. There are also some other types of large HMOs that are exempt from mandatory licensing under Schedule 14 of the Housing Act 2004. Furthermore, the Housing Act includes blocks of self-contained flats where the building has been converted from a previous use as a type of HMO, provided that the conversion did not comply with the appropriate building standards and still does not comply, and less than two-thirds of the self-contained flats are owner occupied. These are known as Section 257 HMOs and are also not subject to mandatory licensing.
- 2.4 The definitions of HMOs in planning legislation differ from those in housing legislation.

- 2.5 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). 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.
- 2.6 Therefore, an HMO that falls below the threshold for mandatory licensing 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.
- 2.7 Generally, planning would determine, in principle, whether or not a property should be used as an HMO, whilst licensing is broadly concerned with the occupation and standard of accommodation of the HMO, particularly with respect to health and safety.
- 2.8 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.
- 2.9 However, HMOs have the potential to negatively impact 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. Additionally, unkempt properties that are not properly maintained impact on the amenity of an area and can adversely impact community cohesion.

3 Eastbourne HMO Study

- 3.1 Consultancy AECOM was commissioned to prepare the Eastbourne HMO Study, which was finalised in February 2024. The study analysed the current supply of HMOs, examined the physical conditions of HMOs through a series of

external inspections on a sample of HMOs, assessed the impacts of HMOs drawing on surveys of local residents, and considered the role that HMOs play in the local housing market in terms of occupant groups, affordability, size and tenure. It then drew on this data, in comparison with approaches from other local authorities, to evaluate the evidence gathered in relation to the potential interventions open to the Council to control the quality and spread of HMOs.

- 3.2 The HMO Study confirmed there were 318 licensed HMOs recorded on the Council's register, with indications that the number of licensed HMOs in Eastbourne is broadly increasing over time. However, the study suggests that the actual rate of growth is likely to be significantly lower than the perception created by headline statistics, due to planning enforcement actions that lead to greater visibility of HMOs that may have been operating for some time. The study also recognises serious limitations with estimating the number of HMOs that fall outside of mandatory licensing thresholds, which is relevant to the options for intervention arising, as considered further on in the report.
- 3.3 The Study found that there is clear evidence of the valuable role that HMOs provide in the housing market by providing low-cost accommodation that people on lower incomes, key workers, and vulnerable groups rely on, and there could be significant adverse consequences from overly restricting the current provision or future supply of HMOs. Therefore, the study suggests that interventions that mitigate impacts and improve standards for residents, rather than aiming primarily to control HMO numbers, may be more prudent.
- 3.4 The Study does identify that there are impacts caused by HMOs. On the whole, it is considered that these impacts arise not from individual HMO properties themselves (with some notable exceptions), but from their concentration.
- 3.5 The most significant impacts identified by the study are the loss of relatively scarce family housing through conversion of existing single-household housing to HMO, and the impact on occupants and communities from anti-social behaviour in areas of high concentration. Secondary impacts with less conclusive evidence relate to condition of properties and standards for occupants, the impact on parking and waste collection amenities, and impacts on the wider economy.

4 Options for Intervention

- 4.1 The HMO Study confirms that the justification for intervention in Eastbourne appears to meet the standard of relevant precedents. It presents a menu of options for intervention and provides a summary of considerations for the Council to review in the context of its resourcing and other implications, with consideration to the value provided by HMOs.

4.2 The Intervention options identified in the study are:

- New planning policy that provides more extensive criteria for applications for HMOs to be assessed against.
- Article 4 Direction to remove permitted development rights from small HMOs.
- Additional licensing scheme and enforcement to require HMOs that currently fall below the threshold for mandatory licensing to be subject to licensing and inspection regime.
- Selective licensing scheme to require that all private-rented housing (including HMOs) within a defined area would be subject to licensing and inspection regime.
- Other measures, such as multi-agency intervention, incentives for landlords practicing good management, continued data gathering and tracking HMO impacts, establishing an HMO Forum, measures to mitigate wider parking issues, and information campaigns to address perceptions.

4.3 The options identified in the HMO Study are examined in the following paragraphs to determine whether they are appropriate and feasible, with recommendations made on this basis.

4.4 New Planning Policy

4.4.1 Any change of use to a large HMO in Sui Generis use requires planning permission, and planning applications should be determined in accordance with Local Plan policies and other material planning considerations.

4.4.2 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. However, the policy is otherwise generally permissive of HMOs outside the Tourist Accommodation Area, provided they comply with residential, visual and environmental amenity considerations.

4.4.3 New planning policy relating to HMOs could introduce additional requirements that would need to be considered in the determination of planning applications related to HMOs. This could include requirements for new or converted HMOs to provide additional amenities, demonstrate limited impact on existing amenities or avoid levels of geographical concentration.

4.4.4 This planning policy position can only be changed through the adoption of a new Local Plan. The Eastbourne Local Plan is currently being prepared, but uncertainty around planning reforms being implemented alongside the Levelling

Up and Regeneration Act means that the timing for adoption of the local plan is currently uncertain.

- 4.4.5 In order to bring forward new planning policy relating to HMOs as soon as possible, it is recommended that the Council prepare a specific Development Plan Document (DPD) in advance of the new local plan that provides new planning policy relating only to HMOs and replaces the existing policy. A DPD is a local development document that has development plan status, and once it has been adopted by the local planning authority, development control decisions must be made in accordance with them unless material considerations indicate otherwise.
- 4.4.6 The HMO DPD would need to be prepared in accordance with national planning legislation and policy. DPDs require community involvement, consultation procedures and independent assessment. They are officially adopted after a binding report is produced by an independent planning inspector following an independent examination of the DPD and any representations made in respect of it. It is anticipated that this process will take a minimum of 18 months for an HMO DPD.
- 4.4.7 In order to ensure that the deadline of June 2025 for submitting the HMO DPD under the existing national planning framework is met, initial consultation on the HMO DPD would need to take place over the summer and it is anticipated that this could be approved through a Lead Member decision.
- 4.5 Article 4 Direction
- 4.5.1 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.
- 4.5.2 In order for any new planning 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 changes of use between a single private residence (Class C3) to a small HMO (Class C4), where it wouldn't normally be needed.
- 4.5.3 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.

4.5.4 It is recommended that an Article 4 Direction that removes permitted development rights for changes of use between a single private residence (Class C3) to a small HMO (Class C4) be put in place, to come into effect alongside new planning policy in the HMO DPD. This would mean that changes of use involving small HMOs would also be subject to the new planning policy.

4.5.5 The creation of an Article 4 Direction 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. Part 3 of the Eastbourne Borough Council Constitution (Section B, Responsibilities for Functions – Full Council and its committees) confirms that the authorisation of the Article 4 Direction is a function of Planning Committee.

4.6 Additional Licensing

4.6.1 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.

4.6.2 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.

4.6.3 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. It is considered that the overall preparation time required to implement an additional licensing scheme would be approximately one year, based on examples where other local authorities have introduced such a scheme.

4.6.4 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.

- 4.6.5 The HMO Study identifies that additional licensing would bring more HMO properties within the Council's purview, with the option to refuse or revoke licences for inappropriate and poorly managed HMOs, which would also enable closer tracking of HMO numbers and concentrations.
- 4.6.6 However, the HMO Study also identifies potential negative impacts including:
- Resource implications on consultation process, responding to potential legal challenge, and enforcement costs.
 - Risks that landlords pass on costs (e.g. licensing fee, renovations) to tenants, lowering affordability.
 - Potential to disincentivise otherwise cooperative landlords, effectively 'lumping together' well and poorly managed HMOs.
 - Revocation of licences can have adverse consequences for occupants and Council resources.
- 4.6.7 There will also be resource implications relating to additional staff resource required to administer the scheme, undertake inspections and deal with complaints arising from additional HMO properties being subject to the licensing regime. In addition to staff costs, there would also be costs associated with publicising and advertising to ensure that HMO landlords and occupiers are aware of the scheme.
- 4.6.8 Licensing fees can be charged for additional licences. However, the fees generated by the additional HMO licensing scheme can only be used to cover the administration of the scheme. The Council cannot make a profit on the scheme.
- 4.6.9 The types of HMO that are most likely to be subject to additional licensing would be the small HMO that fall under the threshold for mandatory licensing. However, as identified in the HMO Study, there are significant challenges in identifying the number and location of these small HMOs. The HMO Study used several indicators to suggest that a property falls within this category across various datasets, but the study confirmed that, on their own, these indicators are not sufficiently robust to identify an HMO with any degree of certainty. The approach taken in the study results in the identification of 72 small HMOs that fall below the mandatory licensing threshold, but notes that this is likely to be an underestimate.

- 4.6.10 On average, around five private housing complaints are received by the Council each week relating to properties in the private rented sector (excluding licensed HMOs). This equates to around 260 complaints per year. The 2021 census indicated that there are 12,118 properties are privately rented in Eastbourne (26.6% of the total properties in the Borough). The relatively low level of complaints compared to the total private rented stock could indicate that generally, the standards within non-licensable HMOs are not a significant problem.
- 4.6.11 Without a clear indication of the number of small HMOs that an additional licensing scheme would cover, it would be difficult to justify the implementation of such a scheme. There would also be difficulties in understanding the additional staff resource required to implement the scheme, or the income that could be generated from additional licensing fees to support the scheme. Furthermore, the Council has recently experienced difficulties in recruiting suitably qualified staff to undertake HMO inspections.
- 4.6.12 Before a decision is made on whether to implement an additional licensing scheme, it is recommended that further activity be undertaken in relation to quantifying and understanding the number of small HMOs that could be subject to an additional licensing scheme. This would need to be done through proactive investigation (including 'door-knocking') within targeted areas.
- 4.6.13 It is recommended that a scheme could be brought forward within a targeted geographical area to proactively identify low standard homes in the private rented sector, particularly those HMOs that fall below the threshold for mandatory licensing. This would help inform quantity and quality of HMOs that could be subject to additional licensing and provide further justification for whether additional licensing is necessary. However, these proactive measures would have a resource implication that would need to be provided.
- 4.6.14 Once these actions have been completed, Cabinet will have more extensive information to reconsider the case for the implementation of additional HMO licensing.

4.7 Enforcement

- 4.7.1 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.

- 4.7.2 The Council has published its 'Prescribed 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.
- 4.7.3 The HMO Study notes that expanded enforcement could identify and target the small number of problem properties and create a reputational effect, making all landlords more compliant.
- 4.7.4 The Council is committed to fair and effective enforcement, which protects both the economic interest and the health and safety of the public, businesses and the environment. To ensure that we fulfil this commitment, the Regulatory Services Enforcement Policy was adopted in 2016. This should be reviewed with consideration for Fixed Penalty Notices being more widely used for fast effective enforcement.
- 4.7.5 It is recommended that the Enforcement Policy and the 'Prescribed Standards for Houses in Multiple Occupation' documents are reviewed and updated to tighten prescribed standards and enable greater enforcement efforts in relation existing HMO licenced under the mandatory scheme, which will assist in addressing some of the impacts in relation to impact on occupants and communities from anti-social behaviour, and the condition of properties and standards for occupants.
- 4.7.6 In addition, it is recommended that the complaints and reporting system be reviewed to enable all complaints regarding HMOs to be captured in one place. The findings of inspections and enforcement actions could be compiled on a centralised database, alongside a system of logging reports of issues with waste, safety, ASB and other matters related to HMOs. This would enable a more accurate identification of problem properties and streets.
- 4.7.7 Furthermore, the pro-active scheme referenced in para 4.6.13 would enable targeted enforcement actions take place within areas where there are known issues.
- 4.8 Selective Licensing

4.8.1 The Housing Act 2004 allows local authorities the discretion to introduce selective licensing applies to all private rented properties within a designated area, if the local authority is satisfied that 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.

4.8.2 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.

4.8.3 The HMO Study suggests that there is limited cause to expand any licensing beyond HMOs into wider Private Rented Sector at present. Therefore, it is recommended that a Selective Licensing Scheme is not progressed at the current time.

4.9 Other Measures

4.9.1 The HMO Study identifies a number of 'other measures' that could be implemented to address the impacts associated with HMOs. The majority of these measures are already available to the Council, such as Special Interim Management Orders, and can be used if and when appropriate.

4.9.2 Furthermore, a number of the 'other measures' are aimed at the wider need for HMO accommodation, rather than addressing impacts of HMOs. The Study particularly notes that producing and implementing strategies that address the reasons people rely on HMO accommodation in the first place, such as the delivery of affordable rented housing and support for vulnerable people, could bring benefits that apply beyond the mitigation of the specific impacts. These issues are already considered through the Corporate Plan and Housing Strategy.

4.9.3 The Council currently places people in need of temporary / emergency accommodation within HMOs, including within areas of the town where there are high concentrations of HMOs. The Council already works with a range of temporary accommodation providers who operate accommodation in many other

areas of the town. However, it remains the case that for single persons in particular, this type of housing stock provides the lower cost option for meeting temporary housing need in the town. At a time when council budgets are under severe financial pressure the costs involved are a key consideration.

4.9.4 In addition, the Council routinely keep track placements in Eastbourne from of outside of borough and work with local authorities across Sussex and beyond to try and ensure that they follow the correct protocols and advice the Housing Needs and Wellbeing team when placements are made within the Borough. The Council keeps a register of placements and take pro-active action to address any increases that cause concerns, but do not see any practical advantages of routinely publishing this information.

4.9.5 Proactive interventions to education and support for both landlords, letting agents and tenants can have a positive impact of HMO standard and practices. Such interventions include:

- HMO forum to build relationships and profile best practice
- Information campaigns to address perceptions (e.g. around safety)
- Newsletter for Letting Agents

4.9.6 The HMO Study also identifies a need for further and on-going data gathering and ongoing tracking of HMOs numbers, distribution and impacts. The recommendations identified in this report will assist with this.

5 Consultation

5.1 Potential actions in relation to changes to planning policy, the implementation of an Article 4 Direction and/or introduction of an additional / selective licensing schemes would be required to undergo public consultation before they are put in place.

6 Corporate plan and council policies

6.1 The Corporate Plan 2024-2028 identifies that the cost of living crisis has taken its toll on communities, and the Council is committed to continuing to play its part to support residents most badly affected and ensure adequate support networks are in place. The Corporate Plan also recognises that many people in the town are finding it hard to find suitable accommodation for their needs, and the Council will continue to help support those who are at risk of homelessness or in housing need, along with looking to enable and develop new housing in the town.

- 6.2 The Corporate Plan identifies key areas of focus relevant to this report as being:
- Support those on lowest incomes through housing benefit, council tax reductions and other assistance schemes
 - Reduce the reliance on temporary and emergency accommodation and improve prevention measures for those experiencing homelessness
 - Develop a pipeline of directly delivered homes by the council to support priority housing objectives
- 6.3 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.
- 6.4 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. This links to the pro-active investigation that is referred in para 4.6.13.
- 6.5 The Housing Strategy also recognises the importance and seeks increase direct provision of affordable and low-cost housing options. It identifies that the Council will focus provision on meeting the needs of residents who face barriers to accessing suitable housing in the private sector, including young people, families, older people, those with complex disabilities, those with long term-health conditions, local key workers and those facing harassment and discrimination. This will help serve the accommodation needs of the people who often rely on accommodation within HMOs.

7 Financial appraisal

- 7.1 The recommendations relating to HMO licensing, including taking pro-active investigation and undertaking pilot schemes to further understand the number and conditions of HMOs that are not subject to mandatory licensing (Sections 4.6 and 4.7) would be expected to have implications for staffing resources. It is anticipated that these actions would require additional resource in Regulatory Services of one additional Specialist and one additional Case Worker.

- 7.2 The implementation of an additional licensing scheme would require significantly increased staff resource. Licensing fees can be charged for additional licences, however the fees generated by the additional HMO licensing scheme can only be used to cover the administration of the scheme. The fees cannot cover costs of enforcement if issues are found during inspections of properties that fall under any additional licensing scheme. Therefore, the implications for implementing additional licensing are unknown until the number of HMOs that are not subject to mandatory licensing, and therefore the extent of any additional licensing scheme, is understood.
- 7.3 It is anticipated that the preparation of the HMO DPD and Article 4 Direction can be resourced from existing budgets. However, the HMO DPD will be required to be subject to independent examination, and it is estimated that the cost associated with this could be around £50,000 and would be required within the 2025/26 financial year.

8 Legal implications

- 8.1 Section 56 Housing Act 2004, designation of areas subject to additional licensing, states that in order to designate certain HMO 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.
- 8.2 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 Housing Act 2004.
- 8.3 Part 3 of the Housing Act 2004 allows for selective licensing of other residential accommodation which are not HMO. 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.

- 8.4 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.
- 8.5 From a planning perspective, the Town and Country Planning (Local Planning) (England) Regulations 2012 governs the preparation and adoption of a local development document which contains the local planning authority's policies in relation to the area. Once adopted, a DPD becomes part of the council's local plan and planning decisions must be made in accordance with the new policy unless material considerations indicate otherwise. In addition, Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 provides for the removal of Permitted Development Rights 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.

Legal Advice given JCS 23.04.24 MW 01.05.24 IKEN ref 12894 EBC-MW-JCS

9 Risk management implications

- 9.1 A risk assessment has been completed following the Council's guidance. No risks will arise if the recommendations are implemented. If recommendations are not taken up, there is a risk that the impacts associated with HMOs, particularly in concentration, are exacerbated and there are increasingly negatively impacts on communities.

10 Equality analysis

- 10.1 It is anticipated that overall, the proposed interventions will have a positive impact on residents, especially around age and disability as the recommendations are looking to improve living standards for residents.
- 10.2 A full Equality and Fairness Analysis will need to be undertaken once the recommendations are agreed by Cabinet. Due regard will be given to the general equalities duties and to the likely impact of proposed policy changes on people with protected characteristics, as set out in the Equality Act 2010.
- 10.3 It is anticipated that equalities monitoring and a more detailed analysis of the numbers of residents in HMOs with protected characteristics will be required. When designing pilot projects and policy changes, actions will be identified to remove barriers and better promote equality.

10.4 Once public consultation has taken place, the results will be added to the equalities analysis and any mitigating actions around any possible impact of recommendations added.

11 Environmental sustainability implications

11.1 The HMO Study identifies that the average HMO in Eastbourne tends to have a lower energy performance rating than the average non-HMO. Greater control over the management and maintenance of the buildings through more effective enforcement could result in less energy use in terms of heating. In addition, new planning policy that places greater restrictions on changes of use or conversion to HMO may result in the housing 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.

12 Conclusion

12.1 Houses in Multiple Occupation (HMOs) are a necessary form of accommodation and play an important role in providing a mix of housing within the town. However, evidence indicates that there are adverse impacts associated with HMOs, particularly where there is a high concentration within a localised area. The actions proposed to mitigate these impacts are:

- Prepare an HMO Development Plan Document that contains new planning policy to provide greater and more up-to-date requirements for the creation of new HMOs
- Introduce an Article 4 Direction that would mean that proposals for all new HMOs would be subject to planning applications determined through new planning policy
- Undertake proactive investigation and a potential pilot scheme to gather further evidence on the number and locations of small HMOs to inform a future decision on the implementation of additional licensing scheme. Resourcing will be required for this.
- Review and update the Enforcement Policy and the 'Prescribed Standards for Houses in Multiple Occupation' documents to enable greater enforcement to address issues within HMOs that are currently subject to mandatory licensing.
- Improving complaints and reporting procedures to identify and track problem areas and HMOs where targeted action should take place

13 Background papers

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 \(2023\)](#)
- [Planning Practice Guidance: When is permission required?](#)
- [Eastbourne Borough Plan 2001-2011 \(Adopted 2003\)](#)
- [Eastbourne Core Strategy 2006-2027 \(Adopted 2013\)](#)
- [Eastbourne Borough Council, Regulatory Services Enforcement Policy](#)
- [Eastbourne Borough Council HMO Register](#)
- [Eastbourne HMO Prescribed Standards](#)
- [AECOM, Eastbourne HMO Study \(2024\) – Main Report](#)
- [AECOM, Eastbourne HMO Study \(2024\) – Appendices](#)