



DERBY CITY COUNCIL

COUNCIL CABINET
25 APRIL 2006

Cabinet Member for Housing and Social
Inclusion

ITEM 8

HOUSING ACT 2004: Houses in Multiple Occupation – HMO – Mandatory Licensing – Fee setting

SUMMARY

- 1.1 The Housing Act 2004 introduced mandatory licensing for certain types of Houses in Multiple Occupation – HMO – with effect from 6 April 2006.
- 1.2 It is estimated that there are approximately 400 HMO's in Derby, which will fall within the scope of mandatory licensing under the Act.
- 1.3 A proposed fee of £790 for a five year license has been calculated using the Government's financial toolkit designed for the purpose.
- 1.4 A license fee will be payable by the HMO owner at the time of application.
- 1.5 Subject to any issues raised at the meeting, I support the following recommendation.

RECOMMENDATION

- 2.1 Set a fee of £790 for mandatory licensing of a House in Multiple Occupation.
- 2.2 To note the recommendations of the Community Regeneration Commission and
 - a) agree to periodic reviews of the fee structure in the light of experience gained from the implementation of HMO licensing in the city
 - b) agree to develop a fee discount structure for those landlords participating in appropriate quality assurance schemes.

REASON FOR RECOMMENDATIONS

- 3.1 Rather than set a national fee structure the Government has instead given local authorities the opportunity to plan their own fee structures to reflect local circumstances. However, it has made clear that fees must cover only the costs that a local authority incurs in the setting up and delivery of HMO licensing, including dealing with the application and an assessment as to whether a landlord or property manager is a fit and proper person.
- 3.2 The Government has also pointed out that if authorities set licensing application fees at a level that does not cover the costs of delivering the licensing scheme, the shortfall in funding the scheme will need to come from another source, such as other general fund service budgets or from Council Tax, as there is no contribution toward costs from Government.



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Houses in Multiple Occupation – HMO – Mandatory Licensing –
Fee setting

SUPPORTING INFORMATION

- 1.1 Background detail on the Housing Act 2004 and its implications for Derby are contained in Appendix 2 to this report.
- 1.2 From recent research it is estimated that there are approximately 400 HMOs in Derby, which will fall within the scope of mandatory licensing under the Act.
- 1.3 In preparation for licensing, consultation has taken place with other Local Authorities across the East Midlands. Derby has also been one of the lead authorities in working with the Local Government Association, LGA, and IPF – IPF being the management support services company of the Chartered Institute of Public Finance and Accountancy, CIPFA – in their development of a national HMO licence fee 'Financial Toolkit'. However, whilst some consistency has been sought in arriving at a structure for fee calculation and at task times entered into that calculator, the final 'fee' does vary quite significantly across authorities. In the main, this can be explained by two significant variances:
 - the number of HMO's to be licensed acts as a divisor of the overall cost of HMO licensing, so a larger number of licensable HMO's tends to bring economies of scale, for example, where set-up costs can be spread over 3000 licences rather than 400 licences
 - some authorities have taken the decision to discount/disregard some cost elements in calculating a fee. Such a decision, if taken, means that those costs must be met from other revenue budgets.
- 1.4 The variances in licence fee are demonstrated locally in the following draft standard fee proposals. These fees are only draft proposals at this stage and may be subject to change:

Nottingham	£340
Leicester	£550
Sheffield	£560

Economies of scale apply particularly in Sheffield and Nottingham, and their greater existing, and historical, resource commitment to private rented sector housing standards has allowed some absorption of the licensing function and associated costs within existing staffing resources and revenue budgets. That is not the case in Derby.

- 1.5 By way of further comparison, other fee levels set elsewhere include:

Newcastle	£1,100
South Tyneside	£750

- 1.6 Most fee structures, including the Derby proposal, do allow for the addition of further costs where, for example, a particularly poor application is submitted and the landlord is uncooperative or obstructive throughout the licensing process, or for particularly large properties.
- 1.7 Most also allow for some 'discount' element, such as membership of an appropriate Landlord Association. This may be incorporated within the fee structure in Derby, subject to successful negotiation with Peartree and Normanton Landlord Association, East Midlands Property Owners and the umbrella bodies such as NFRL, RLA and NLA.
- 1.8 An initial draft fee structure, arriving at a similar fee level to that now proposed, has been widely distributed to landlords, agents, landlord associations and their national umbrella bodies for consultation. It has also been made available on Council and partner websites, again to encourage consultation and response. Only 11 responses have been received, but these primarily express concern that the proposed fee is too high.
- 1.9 As more information has become available on HMO licensing requirements and during our work with LGA and IPF in development of the national licence fee financial toolkit, we have reviewed that draft and have input those reviewed figures into the toolkit calculator. Whilst the fee output of £791.95 is slightly higher, it is not substantially different to the initial consulted draft. On this basis, it is proposed that the licence fee is set at £790.
- 1.10 Based on this charge, if 400 HMO's in Derby are to be licensed, this would generate an estimated income level of approximately £315,000 over five years. A licence remains valid for five years after which time it is renewable. Fees are payable at time of licence application by an HMO owner, so the spread of income cannot be controlled evenly across the five-year period. Licence fee income must only be spent on the HMO licensing function and this will be subject to audit. It is, therefore, particularly important that the income generated and costs charged to it are effectively ring-fenced and assessed across financial years. In order to fulfil the Council's duties under the Housing Act 2004 and achieve recommended inspection levels and targets set by the ODPM, additional staff will be required to undertake HMO licensing activities. These needs have been profiled at existing Scale 6 and PO1 officer levels. These costs will be met from licence fee income.
- 1.11 Failure by a landlord to licence a licensable HMO will, with effect from 3 July 2006, be a criminal offence. In specific circumstances, where there is no immediate prospect of being able to licence a licensable HMO, the Council have a duty to make a Management Order and take over management responsibilities for the HMO. To deliver this management role we are currently exploring options with Derby Homes and other housing management partners.
- 1.12 A £790 licence fee cost over a five-year period equates to £158 per annum. If a landlord has a rental income from five tenants, that equates to approximately £31 of his/her annual rental income received from each of those tenants. Given this breakdown of costs, it is not anticipated that this will have a major effect on the business of HMO landlords.
- 1.13 There is a likelihood that some landlords may choose to pass this fee onto their tenants through increased rents. If that £790 fee is expressed as a £158 cost per year, divided by five tenants and again by 12 monthly payments, it equates to £2.63 per tenant per month.

- 1.14 Since HMO Licensing will bring the Council's current HMO Registration to an end, new applications for Registration are no longer being accepted. Licensable HMOs which are registered under the current Registration Scheme will be passported into the new Licensing scheme for the remainder of their registration period, after which they will need to apply and pay for licensing in the usual way.
- 1.15 Since 6 April 2006, when the licensing provisions came into force, a pre-application process has been in operation. HMO landlords are being estimated to provide basic preliminary information, which helps to determine whether or not there is a need for them to license any of their properties. This saves both the Council and the landlord from fruitless time and effort in completing a full application when it may not be needed. Full application packs have been prepared for distribution to landlords once Cabinet has determined the license fee.

OTHER OPTIONS CONSIDERED

2. There is the option to subsidise the cost of HMO licensing from other revenue resources and thereby reduce the licence fee. However, such resources have not been identified.

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Background papers:	HMO Licence Fee 'Financial Calculator' Draft Initial License Fee Draft Initial License Fee – Consultation and Feedback - Confidential HMO Licensing Mandatory Licensing Application HMO Fee Calculation Summary
List of appendices:	Appendix 1 – Implications Appendix 2 – Background on Housing Act 2004

IMPLICATIONS

Financial

- 1.1 Based on a charge of £790, if 400 HMOs are licensed, an estimated income level of £315,000 over five years would be generated.
- 1.2 Licence fee income must only be spent on the HMO licensing function and this will be subject to audit, so it is particularly important that the income generated is effectively ring-fenced and assessed across financial years.
- 1.3 The resource costs identified in this report amount to £62,227 per annum and will be met from licence fee income.

Legal

- 2.1 The provisions relating to mandatory HMO licensing are contained within Parts 2 and 7 of the Housing Act 2004. Under these the local authority has a duty to license all eligible HMO's within a 'reasonable period' of valid application being made.
- 2.2 The authority then has a further duty to inspect a licensed property under the HHSRS, for Category 1 hazards, within five years of the licence application being received.
- 2.3 Although owners have a legal duty to come forward and apply for a licence, the authority also has a duty to be proactive in seeking out relevant properties to ensure that they are indeed licensed.

Personnel

3. The introduction of mandatory HMO licensing will require additional staffing resources as identified within this report.

Equalities impact

- 4.1 The standard of private rented housing in the City impacts upon the quality of life both for tenants and for those living in the neighbourhood, impacting most heavily on the more vulnerable sectors of Derby's community.
- 4.2 These new provisions target the higher risk HMO's, and the greater resources directed to this work area can greatly assist an existing team of officers in developing the City and improving performance in terms of the numbers of properties licensed, made safe, and otherwise improved; and will contribute toward meeting the Council's new duties under the Act and ongoing responsibilities toward its community.

Corporate objectives and priorities

- 5.1 This proposal will contribute to the Council's priority of working to improve the quality of life in Derby's neighbourhoods.
- 5.2 The standard of private rented housing in the city impacts upon the quality of life both for tenants and for those living in the neighbourhood, impacting most heavily on the more vulnerable sectors of Derby's community.
- 5.3 These new provisions target the higher risk HMOs, and the greater resources directed to this work area can greatly assist an existing team of officers in developing the city and improving performance in terms of the numbers of properties licensed, made safe, and otherwise improved; and will contribute toward meeting the Council's new duties under the Act and ongoing responsibilities toward its community.

Background on Housing Act 2004

The provisions of the Housing Act 2004 relating to the Housing Health and Safety Rating System, HHSRS, and to houses in multiple occupation, HMO's, come into force on the 6th April 2006. Those provisions can be summarised as follows:

Definition of an HMO – The definition within the Housing Act 1985 stated that a property was an HMO if it was occupied by 'persons who do not form a single household'. This led to much discussion and argument as to what or who constituted a single household. Properties occupied as single households did not for example have to provide the level of amenities or the level of fire precautions necessary in an HMO.

The Housing Act 2004 now makes it clear that, unless related, groups of people sharing properties should not be considered as single households. The principle impact of this ruling is that properties shared, by students for example, will now be regarded as HMOs and must, therefore, meet the appropriate management standards. This change in definition of HMO dramatically increases the number of properties that will be subject to inspection under HMO related legislation.

Licensing of HMOs – Under the new Act, each local authority has a duty to licence all eligible HMO's within a 'reasonable period' of valid application being made. Apart from Government specified exceptions, HMOs of at least three stories and occupied by five or more people will require a licence. Mandatory HMO Licensing will replace the existing HMO Registration Scheme in Derby.

From recent research, it is estimated that approximately 400 HMOs in the City will require a licence.

The Council then has a duty to inspect a licensed property under the HHSRS, for Category 1 hazards, within five years of the licence application being received.

Although owners have a legal duty to come forward and apply for a licence, the Council also has a duty to be proactive in seeking out relevant properties to ensure that they are indeed licensed.

The authority is required to set fee charges for HMO Licensing.

Housing Health and Safety Rating System, HHSRS – This rating system is designed to assess hazards and risks to safety in all accommodation, whether HMO or single household. It replaces the current fitness standard under s604 Housing Act 1985 as the main tool for determining what works are required in a dwelling to achieve a safe and satisfactory standard.

The scope of items covered under HHSRS has been designed to be much wider than under the existing 'fitness standard' and therefore more cases will be actionable and more service requests are anticipated.

Because the system is health and safety focussed now, it will enable officers to expand and change the ways in which they have previously been able to target area renewal activities in the city.

Enforcement legislation controlling private sector housing standards – The Housing Act 2004 introduces new provisions to enforce works found necessary to improve safety and conditions following an HHSRS assessment, replacing the enforcement tools of the Housing Act 1985.

Duties placed on the Council by the Housing Act 2004 - The Housing Act 2004 places a duty on the local authority to keep the housing conditions in their area under review with a view to identifying action to be taken by them to address category 1 and 2 hazards under HHSRS. If, as a result of carrying out that duty, the authority consider that it would be appropriate for any residential premises in their district to be inspected with a view to determining whether any category 1 or 2 hazard exists, the authority must arrange for such an inspection to be carried out. Where Category 1 hazards are found, a further duty is placed on the Council to take appropriate enforcement action. Cat 1 and 2 hazards are terms within the HHSRS and relate to a rating of health and safety risks and outcomes, Category 1 being the most severe.

Under the mandatory HMO Licensing provisions of the Act, the local authority has a duty to license all eligible HMO's within a 'reasonable period' of valid application being made.

The authority then has a further duty to inspect a licensed property under the HHSRS, for Category 1 hazards, within five years of the licence application being received.

Although owners have a legal duty to come forward and apply for a licence, the authority also has a duty to be proactive in seeking out relevant properties to ensure that they are indeed licensed.

IMPLICATIONS

Increase in number of HMOs – Based on recent research undertaken within the section, our assessment is that there will be at least 3,250 HMO's in the City requiring inspection on a periodic basis. A very significant proportion of these will not have previously been assessed as HMO's and we cannot therefore say with any certainty exactly what condition those properties are in. The only certain way of determining their condition is to undertake an inspection of each property. Private rented properties falling out of the NASS contract for asylum seekers are significant in number and it is known that a proportion of these and other 'hidden' properties are in use as HMO's housing refugees, failed asylum seekers and migrant workers. By their very nature, it is difficult to estimate numbers of HMO's used in this way, but anecdotal comment suggests they are significant in number.

Audit Commission guidance based on enforcement of the Housing Act 1985 estimated staffing resource needs to secure an improvement in approximately 30 HMO's during any one year. Whilst HHSRS is likely to slow down the inspection and improvement process, if we still accept that estimate as the best currently available, then with existing staffing resources, it would take a minimum of 21 years for all HMO's to be inspected and improved.

Licensing of HMOs – Our research indicates that approximately 400 HMO's are likely to require a licence. The Council will have a duty to license those within a 'reasonable period' of valid application being made and to inspect them under the HHSRS, taking appropriate enforcement action, within five years of that same date. There is a clear responsibility upon the Council to prioritise its programme of inspections during that period, to target the worst first.

Whilst there is no duty on the Council to inspect a property when a licence application is made, the authority must make a judgement as to whether the applicant is a 'fit and proper person' to be a manager and must take steps to prioritise its subsequent inspection programme under HHSRS. It is therefore considered that a property inspection will be a necessary part of that decision-making and prioritisation process.

In addition to inspection and enforcement pressures, new systems, procedures and paperwork must be developed to run, record and manage HMO licensing – very little in the way of model documentation or detailed procedural guidance has or will be issued by ODPM.

HHSRS and the new enforcement regime – These assessment and enforcement tools are to be used to measure and improve health and safety conditions in all dwelling types, whether HMO or single household.

We currently average approximately 550 service requests per year, primarily from occupants of single household private rented accommodation. Each of these will require an HHSRS assessment. However, the more comprehensive nature of the HHSRS and enforcement tools soon to be available does mean that service requests will increase as more cases will be actionable.

It is anticipated that the need for statutory action to be taken will double. The ODPM's Regulatory Impact Assessment on HHSRS, estimates that nationally...

"1.6 million dwellings have one or more health and safety hazards that would exceed the threshold triggering mandatory intervention by Local Housing Authorities. This compares with 880,000 estimated to be unfit under the current system - both figures are taken from the 2001 English House Condition Survey."

Whilst these tools do significantly improve the scope of the Council's powers to improve housing conditions, advice and training received to date indicates their use will slow down inspection rates and impact upon the caseload each officer can carry.

As stated above, the new Act does place a duty on the Council to inspect for Category 1 and 2 hazards and a further duty to take appropriate enforcement action in the case of Category 1 hazards found.

Officers are currently aware of a number of portfolio landlords operating in Derby where property condition and management is poor and where a significant majority of the properties in those portfolio's will have Category 1 hazards under HHSRS – those hazards posing a particularly high risk to the health and safety of the occupants.

Inadequate staff resources and the existing enforcement tools have not allowed us to tackle these portfolio landlords effectively. The introduction of HHSRS, the new enforcement tools and the duty placed on the Council under sections 3, 4 and 5 of the Housing Act 2004 mean we must prioritise and adequately resource an effective targeted proactive inspection and enforcement programme on these portfolio landlords

The majority of these properties are occupied by the most vulnerable members of Derby's community and that makes it particularly important that we specifically target and resource this work area.

Training – The move from the 'fitness standard' to HHSRS presents a major challenge to the way officers have traditionally surveyed properties, taken enforcement action and targeted area renewal programmes.

The Housing Standards Team, in particular, must be expert in HHSRS and the new enforcement regime, as their enforcement role must withstand scrutiny and challenge both in the new Residential Property Tribunals, RPTs, and in the courts. Whilst some staff with an enforcement role have attended the basic two-day training on HHSRS, and a further two days training on the new enforcement regime, it will be necessary to build in significantly more training time for remaining staff and to work with colleagues here and in neighbouring authorities to try to achieve intra-, and inter-, authority consistency in application of HHSRS, as will be expected by the RPTs and the courts.

The administrative bureaucracy of both HHSRS and HMO licensing is weighty and coincides with a Renewal and Grants move from the Norsk Uniform database system to that of Flare – again requiring new systems, procedures and staff training.

The administrative and training burdens of licensing and the move to Flare should ease as their introduction settles down over the first year, and that of HHSRS should also ease as staff become more familiar with the new system. However, the overall percentage of staff time spent on paperwork and procedures will greatly increase throughout the coming year, with a resulting loss of property inspection time.

Community

The standard of private rented housing in the city impacts upon the quality of life both for tenants and for those living in the neighbourhood, impacting most heavily on the more vulnerable sectors of Derby's community.

If these new provisions can be supported by greater resources directed to this work area, they can greatly assist an existing team of officers in developing the city and improving performance in terms of the numbers of properties licensed, made safe, and otherwise improved; and will contribute toward meeting the Council's new duties under the Act and ongoing responsibilities toward its community. An appropriately resourced Housing Standards Team can help Derby to achieve a major improvement in private sector housing conditions, by offering support and assistance to the better landlords, by working to raise the standard of other landlords and, for those that fail to engage positively with us, by working to remove the worst landlords from Derby's private rented housing sector.