

## Agenda Item 6

<b>Cabinet Member</b>	Councillor Patricia Wiltshire
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<b>Date</b>	25 September 2018
<b>Ward (s) affected</b>	All
<b>Key Decision</b>	No

<b>Subject</b>	Mandatory Licensing of Houses in Multiple Occupation
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. Cabinet notes that the prescribed definition of houses in multiple occupation (HMOs) that are required to be licensed by a Local Housing Authority has been broadened to include certain HMOs of less than three storeys</li> <li>2. Cabinet approves and adopts the revised scheme of licence fees for the mandatory HMO Licensing Scheme, which will come into effect from 1<sup>st</sup> October 2018.</li> </ol>

<b>Executive Summary</b>
<p>The Government has extended the scope of mandatory HMO licensing. From 1<sup>st</sup> October 2018, all HMOs that contain five or more occupants, who form two or more households and share facilities, must be licensed by the Council.</p> <p>This report informs the Cabinet about the extension to the licensing scheme and seeks approval for the proposed licence fee to be charged.</p> <p>The Housing Act 2004 introduced a requirement for the largest HMOs to be inspected and licensed by the local housing authority. These were specifically HMOs that were three storeys or more, with five or more tenants, forming two or more households and sharing facilities. The Council implemented the mandatory licensing scheme, in accordance with government guidance, and there are currently only two licensed HMOs operating within MVDC district.</p> <p>The extension of the scheme will increase the number of properties requiring a licence to operate in the district. In order to ensure the costs of operating the scheme are recovered, the current licence fee of £501 has been reviewed and a new fee of £687 is proposed. This has been reached using a structured fee calculation which takes into account the officer time spent in administering the licensing scheme and ensuring compliance with licence conditions. The new fee is comparable with HMO licence fees charged, or expected to be charged, by the other Surrey district and borough councils.</p>

## **Corporate Priority**

### **Environment**

#### **A highly attractive area with housing that meets local need**

- Protect and enhance the natural and built environment and ensure our areas of natural beauty are well looked-after
- Pursue policies that encourage the creation of affordable housing

The inspection and licensing of HMOs ensures that local accommodation meets housing standards and is well maintained. HMOs provide an opportunity for local residents to access lower cost, affordable housing and it is essential that standards are monitored and maintained.

### **Community Wellbeing**

#### **Active communities and support for those who need it**

- Improve opportunities for residents to live safe and healthy lives

The provision and maintenance of good quality and well managed housing is essential for local residents to live safe and healthy lives.

### **The Cabinet has the authority to determine the Recommendations**

As set out in Part 3 of the Council's Constitution

## **1.0 Background Information**

- 1.1 A House in Multiple Occupation (HMO) is defined in the Housing Act 2004. It is a building which is rented to three or more persons who form two or more households, and where those households share amenities such as a bathroom, toilet or cooking facilities. A household is defined as a single person, a family, or a cohabiting couple.
- 1.2 HMOs provide a form of lower cost accommodation. However, the style of occupation can create pressure on basic amenities, a higher risk of fire, and sometimes presents management challenges. Recognising the particular issues that HMOs may create, successive governments have legislated to provide, and later refine, discretionary powers for councils to impose basic standards for space, amenity, means of escape in case of fire, and other fire precautions, as well as management requirements for HMOs.
- 1.3 In the Housing Act 2004, the government introduced a requirement for the largest HMOs, specifically those that were three storeys or more, with five or more tenants, to be inspected and licensed by the local housing authority.
- 1.4 The Council implemented the mandatory licensing scheme, in accordance with government guidance. However, relatively few rental properties in Mole Valley are of three storeys or more, and currently there are only two licensed HMOs operating within the district.
- 1.5 Prospective licence holders are required to submit an application form, supply various certificates for gas and electrical safety, a fire alarm servicing certificate and pay the licensing fee. Where possible an Environmental Health Officer will normally undertake an inspection of the property as part of the application process, but this can happen at any time during the licensing period. The licence is issued for a period of five years, with mandatory conditions attached to the licence, which will include the maximum number of occupants and households that can occupy the HMO.
- 1.6 The property is inspected at least once in the licence period. The officer will assess the room sizes and associated occupancy limits, numbers and condition of amenities such as kitchens, cookers, wash areas, bathrooms and toilets, and also the location and condition of fire detection devices, as well as protected fire escape routes. Where standards fall

short of mandatory licence conditions, or the property is not being managed in accordance with the HMO Management Regulations, the Council will take enforcement action to improve standards. This may be done informally or through the service of notices.

- 1.7 If on inspection, an HMO does not comply with licence conditions and the officer deems that the state of the property is such that it presents a risk to the health and safety of the occupants, a full assessment will be carried using the Housing, Health and Safety Rating System to determine the hazards that exist in the property. Using the results of the assessment the officer would consider whether the property can be made safe by requiring the landlord to arrange emergency works. If the repair works required are of a nature that is not feasible for them to be carried out, the officer will consider the service of a Prohibition Order under the Housing Act 2004. The Order would require that the occupants move out of the property for their own safety. In this situation, if the landlord does not have suitable alternative accommodation for the occupants to move to, the officer would first liaise with the Council's Housing Options team to find temporary accommodation, who would then assist them to find a new permanent residence.
- 1.8 To be able to hold an HMO licence a person has to be considered to be "fit and proper". As part of the licence application process each applicant will be asked details of:
  - Any unspent convictions for offences involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003.
  - Any unlawful discrimination on grounds of sex, colour, race, ethnic or national origins, or in connection with the carrying on of a business.
  - Any contravention of any provision of the law relating to housing or of landlord and tenant law (including any civil proceedings that resulted in a judgement against the landlord).

Where an applicant is deemed not to be 'fit and proper' to hold a licence, an alternative licence holder must be nominated and assessed. If there is no suitable nominated licence holder this is not a reason to refuse a licence. In this situation the Council becomes responsible for the management of the HMO or they may arrange for the property to be managed by a suitable arms length organisation.

## **2.0 Extension of the Mandatory Scheme**

- 2.1 The Government has extended the scope of mandatory HMO licensing through the 'Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018'. From 1<sup>st</sup> October 2018, all HMOs that contain five or more occupants, who form two or more households and share facilities, must be licensed by the Council. The properties no longer need to consist of three storeys or more. This extension will now include any rental property which meets the criteria, even if the accommodation is all situated on one level.
- 2.2 For HMOs that require a licence under the extended scheme additional conditions will apply. The Mandatory Conditions Regulations 2018 introduce minimum sleeping room sizes and waste disposal requirements for newly licensed HMOs. These new conditions will only apply to the two HMOs that are already licensed with Mole Valley when their licences are due for renewal.
- 2.3 There is little data available on which to assess the likely number of HMOs that will require a licence in Mole Valley from 1<sup>st</sup> October. An estimate is that there may be around 30 properties in the district. Once the scheme comes into effect, and there is clearer information about the likely number of properties to be licensed, a more detailed assessment can be made of the impact on Environmental Health resources.
- 2.4 The current HMO licensing fee is £501. This was calculated some years ago when HMO licensing was first introduced and as detailed below, has now been reviewed. The revised fee is proposed to be set at £687. It is a standard fee which will apply to any licensable HMO, regardless of its size or number of occupants. The licence period is for 5 years and during that time the landlord must ensure the property meets both the mandatory licence

conditions and also any additional conditions that the authority may include. The two existing HMOs will be required to pay this new fee when their licence is due for renewal.

- 2.5 A landlord of a licensable HMO is required by law to submit an application to the Council. Failure to licence such a property is an offence under the Housing Act 2004 for which the landlord may be prosecuted in a Magistrates Court. If convicted, the court may award a fine of up to £20,000. In making the decision to take formal action, the legal team will be consulted and each case will be considered on its merits. The Mole Valley approach is to work with landlords wherever possible, to ensure that the housing provided for residents meets the required standards. Landlords who fail to submit a licence application are often unaware of their responsibilities and once they understand the requirements of the law and have submitted an application, they often work well with officers to raise standards in their property and ensure it complies with mandatory conditions.
- 2.6 If Officers find HMOs that are poorly managed and deficient of adequate fire safety measures, they will notify Surrey Fire & Rescue who can take immediate action i.e. fit smoke detection or prohibit use of the HMO.
- 2.7 Where a landlord does not submit an application and the property is subsequently identified by the Council as one which is required to be licensed, it is proposed that the licence issued will be for a shorter period of one year. The fee for this shorter period will be the same as a standard fee. These properties and their landlords require additional officer resource in terms of advice, property inspections and possible enforcement action, to ensure they meet the required standards and provide a safe living environment for the tenants. The proposal of an initial one-year licence enables the Council to be confident in the landlord before the five-year licence is issued.

### **3.0 Review of the Licensing Fees**

- 3.1. The fee structure has been reviewed and updated to take into account current costs. It is proposed that the fee for a new HMO licence, from 1<sup>st</sup> October is £687. This will be reviewed annually in line with the Council's fees and charges principles. The new fee has been reached using a structured fee calculation which takes into account the officer time spent administering the licensing scheme and ensuring compliance with licence conditions. The new fee is comparable with HMO licence fees charged by the other Surrey district and borough councils who have recently reviewed their fees. A table showing the results of a fee benchmarking exercise carried out in September is set out in Appendix 1.
- 3.2 Landlords who are members of a recognised landlord association are generally more informed about their management responsibilities and of the standards required in HMO properties. On the whole, councils find they need to spend less time with these landlords. For this reason it is proposed that there will be a reduction of £50 on the licence fee for landlords who are members of one of the nationally recognized associations, such as the National Landlords Association (NLA), the Residential Landlords Association (RLA) and the Guild of Residential Landlords.

### **4.0 Financial Implications**

- 4.1 There is no capital implication associated with this scheme.
- 4.2 The HMO licensing fees are set at a level to cover the costs of providing the service. These are based on officer time and associated costs involved in verification, processing applications, property inspections, monitoring, and enforcement, as well as relevant overheads. The proposed fee is £687.
- 4.3 The fee charged is used to cover the costs associated with administering the mandatory HMO licensing scheme. The Council is not permitted to make financial gain from the fee income.

### **5.0 Revenue Implications**

- 5.1 There is very limited information available about the likely number of HMOs in the district needing to be licensed under the scheme. If the numbers are low, there is potential for the

scheme to be delivered within existing staff resources. Those properties which do not meet licence conditions at the time of application will require closer supervision and where necessary, enforcement action to ensure conditions are improved.

- 5.2 Once more information is known about the number of licensable properties within the district, the resources required to administer and operate the scheme can be better assessed. The impact on the delivery of the other statutory functions carried out by the Residential and Environment Team will be closely monitored, and a review will be carried out after the first six months of operating the scheme. It will be necessary to assess if additional staff resources are required so that continued delivery of all the statutory functions of the team are ensured. Based on the assumption of 30 properties that will be required to be licensed, there will be an estimated income of £20,610 over the 5 year period.

## **6.0 Legal Implications**

- 6.1 The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 revokes and replaces the previous order by prescribing a broader description of HMO. Its effect is that mandatory licensing will apply to HMOs that are below three storeys (if they are occupied by five or more persons in two or more separate households) as well as to those of three or more storeys. The Mandatory Conditions Regulations 2018 amend the current mandatory conditions to include minimum sleeping room sizes and suitable provision for waste disposal for the property.
- 6.2 The scheme is mandatory and is a statutory function of the Council.

### **Options**

There are three options the Cabinet is asked to consider:

Option 1 – Cabinet notes the changes to legislation and the extension of the HMO licensing scheme, and approves the revised licence fee.

Option 2 – Cabinet notes the changes to legislation and the extension of the HMO licensing scheme, and does not approve the revised licence fee but instead proposes that a higher fee is charged.

Option 3 – Cabinet notes the changes to legislation and the extension of the HMO licensing scheme, and does not approve the revised licence fee but instead proposes that a lower fee is charged.

### **Corporate Implications**

#### **Monitoring Officer commentary**

The Monitoring Officer confirms that all relevant legal implications have been taken into account.

#### **S151 Officer commentary**

The Section 151 Officer confirms that all relevant financial risks and implications have been considered in this report.

### **Risk Implications**

**Option 1** – *Cabinet notes the changes to legislation and the extension of the HMO licensing scheme and approves the revised licence fee.*

The Council has a statutory duty to operate a licensing scheme for the mandatory licensing of the HMOs within its area. The fee charged covers the costs associated with administering the HMO licensing scheme.

**Option 2** – *Cabinet notes the changes to legislation and the extension of the HMO licensing scheme and does not approve the revised licence fee but instead proposes a higher fee is charged*

If the Council does not approve the revised fee, and proposes that a higher fee is charged, the Council could be challenged for charging a fee which exceeds the cost of administration and delivery of the scheme.

**Option 3** – *Cabinet notes the changes to legislation and the extension of the HMO licensing scheme and does not approve the revised licence fee but instead proposes a lower fee is charged*

If the Council does not approve the revised fee, and proposes that a lower fee is charged, Environmental Health will not be able to recover the cost of delivering the service. Reduced resources would result in some essential services not being delivered for the community.

### **Equalities Implications**

There are no equalities implications to this report.

### **Employment Issues**

There are no employment issues associated with this report.

### **Sustainability Issues**

There are no sustainability issues to this report.

### **Consultation**

The Government consulted extensively on the changes introduced through two consultation papers. There was broad support for the extension of scope of mandatory HMO licensing. There is no requirement for any local consultation.

### **Communications**

Landlords and Agents who are known to the Council have been sent an email informing them of the changes to the legislation. This is also on the agenda for the next MVDC Landlords Forum. The changes to the definition of an HMO and the requirement to licence properties has also been publicised through a number of different media streams, including the Council's Facebook and Twitter accounts, in order to reach the general public, tenants and other landlords and agents who may not be aware of the changes. The website information has also been updated to reflect the changes and includes information on how landlords may apply for a licence. Landlords will have the option to apply online or request a printed application pack from Environmental Health.

Appendix 2 provides further detail of the communications timeline and the media streams through which information is being publicised.

Once the initial new licensing period has passed and should resources permit, the Environmental Health Team will look to implement targeted surveys of areas/addresses where they suspect there to be unknown licensable HMOs. This will involve a coordinated approach of information gathering with internal departments. The Environmental Health Team will also investigate all complaints relating to properties that may require a licence or relate to the standard of accommodation in the private rented sector.

## Appendices

### Appendix 1 – Table of HMO Licence Fees across Surrey

COUNCIL	HMO Licence Fee (£)	NOTES
Elmbridge	600.00	
Surrey Heath	675.00	
Woking	610.00	
Waverley	575.00	
Tandridge	450.00	Currently under review - increase anticipated
Runnymede	650.00	
Reigate and Banstead	550.00	Currently under review - increase anticipated
Epsom and Ewell	610.00	Additional £122 for every additional let over 5
Guildford	608.00	
Spelthorne	671.50 – 1,022.50	Dependant on number of occupants
Mole Valley	687.00	Proposed

## Appendix 2 Communications Timeline

Activity - w/c	20-Aug	27-Aug	03-Sep	10-Sep	17-Sep	24-Sep	01-Oct
<b>Council Offices</b>							
Reception screen carousel							
<b>Website</b>							
On front page carousel							
Update HMO bespoke webpage							
<b>E-newsletter</b>							
MV-enews							
<b>Internal</b>							
Molly update for Staff							
MOSS update for Members							
<b>External</b>							
Text to PC's and RA's for inclusion in newsletters / websites							
<b>Social Media</b>							
Twitter							
Facebook							

### Background Papers

Licensing of Houses in Multiple Occupation (Prescribed Description)  
(England) Order 201