



Individual Cabinet Member Key Executive Decision Report

Author/Lead Officer of Report: Paul Rotherham,
Legal and Policy Officer

Tel: 34460

Report to: *Councillor Jayne Dunn*

Date of Decision: *20 February 2017*

Subject: *Approval of new HMO Licensing standards*

Which Cabinet Member Portfolio does this relate to? *Housing*

Which Scrutiny and Policy Development Committee does this relate to? *Housing*

Has an Equality Impact Assessment (EIA) been undertaken? Yes ☒ No ☐

If YES, what EIA reference number has it been given? *959*

Does the report contain confidential or exempt information? Yes ☐ No ☒

If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-

"The (report/appendix) is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended)."

Purpose of Report:

To seek approval of revised House in Multiple Occupation (HMO) licensing standards.

To seek authorisation for the Director of Housing and Neighbourhoods Service to approve future amendments to licensing standards

Recommendations:

To approve the revised HMO Licensing Standards as set out in Appendix A to this report, to come into effect on 6 April 2017.

That the Director of Housing and Neighbourhoods Service to authorised to approve amendments to the HMO Licensing Standards

Background Papers:

Existing HMO Standards set out on the Councils website at <https://www.sheffield.gov.uk/dms/scc/management/corporate-communications/documents/housing/renting-hmo-landlords/hmo/HMO-Standards--approved-July-2009--Pdf--4424kb-.pdf>

Existing Selective Licensing standards set out on the Councils website at <https://www.sheffield.gov.uk/dms/scc/management/corporate-communications/documents/housing/renting-hmo-landlords/selective-licensing/Selective-Licensing-Property-Standards--15-4-2014-/Selective%20Licensing%20Property%20Standards%20%2815-4-2014%29.doc>

Residential Property Tribunal decision

<http://www.residential-property.judiciary.gov.uk/Files/2008/June/00001FLR.htm>

Landlords Guild guidance on the upper tier tribunal decision in Clarke V Manchester at <http://www.landlordsguild.com/council-hmo-guidance-is-not-the-law-warns-tribunal/> (the full case can be downloaded from this link but the principles are well explained in the article)

| Lead Officer to complete:- | | |
|----------------------------|--|--|
| 1 | I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required. | Finance: <i>Karen Jones</i> |
| | | Legal: <i>Brendan Twomey</i> |
| | | Equalities: <i>Liz Took</i> |
| | <i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i> | |
| 2 | Lead Officer Name: <i>Paul Rotherham</i> | Job Title: <i>Legal and Policy Officer</i> |
| | Date: 11 January 2017 | |

1. **PROPOSAL**

(Explain the proposal, current position and need for change, including any evidence considered, and indicate whether this is something the Council is legally required to do, or whether it is something it is choosing to do)

- 1.1 Under the Housing Act 2004, houses in multiple occupation (HMO) falling within the statutory definition, must be licensed. The Act further provides that local authorities are required to administer the mandatory licensing scheme within their district. The Council is therefore required to administer the mandatory HMO licensing scheme in respect of Sheffield. This duty includes the grant of HMO licences to successful applicants, including imposing conditions on the licence. In addition, when deciding whether to grant a licence the Council must be satisfied that the HMO is reasonably suitable for occupation by the maximum permitted number of households or persons. When deciding these issues, the Council has regard to the Council approved HMO Licensing Standards (the Standards).
- 1.2 The Standards were approved in 2005 and varied in 2009. The Standards comprise the national mandatory minimum standards, and additional standards, designed by the Council to meet identified local housing needs. Largely these standards have stood the test of time. However, to ensure that the Standards remain relevant and continue to meet local need, the Council has carried out a review of the Standards. That review identified a number of ways the Standards could be improved for example by the addition of flexibility in the application of standards; inclusion of handrails for staircases and steps; inclusion of CO Detectors for all areas with gas appliances, rewording areas for clarity; and a revision of the heating section to bring it in-line with other standards and advice issued after the original standards were devised. The proposed amended Standards, which are set out in appendix A, to this report and for which this report seek approval, reflect the findings of the review.
- 1.3 Within the Page Hall area of the city, the Council in 2014 designated an area for selective licensing, the Page Hall Selective Licensing area, including an approved set of standards, to which the Council has regard, when imposing conditions on licenses. An additional purpose of the review, was to consider, where appropriate, the Standards should be revised to bring it in line with the Selective Licensing standards, increasing conformity between the two standards.
- 1.4 It was noted, as part of the review, the impact poor insulation has on fuel poverty and the health and wellbeing of the occupants, with wider impacts on care and health services, society and the wider economy. Therefore, a proposed amendment to the Standards is the inclusion of an insulation standard. Its inclusion is of information purposes, not to be imposed as a licence condition. It is important that licence holders are aware of the standard in respect of insulation they are expected to meet. This has particular importance, given that if the standard is not met, the Council may take enforcement action under the Housing Act 2004. In addition, the Council will have regard to the insulation standard, when deciding whether a licensed HMO meets the standard and whether to

take enforcement action.

- 1.5. An outcome of the review, was that it would be helpful , when the Council assesses whether a non-licensable HMO is overcrowded, requiring the service of an Overcrowding Notice, under the Housing Act 2004,there are a set of standards, that it may have regard to. It is considered that the Space Standards for Rooms section of the Standards, could appropriately carry out that role. It is therefore proposed that when the Council carries out that function, regard is had to this part of the Standards
- 1.6 The intention is to keep the Standards under review, to ensure that it remains relevant, properly reflects local need and changes in the law. To enable amendments to be made to the Standards, arising from a review, it is proposed that the Director of Housing and Neighbourhoods Service, be authorised to amend the Standards.

2. HOW DOES THIS DECISION CONTRIBUTE ?

(Explain how this proposal will contribute to the ambitions within the Corporate Plan and what it will mean for people who live, work, learn in or visit the City. For example, does it increase or reduce inequalities and is the decision inclusive?; does it have an impact on climate change?; does it improve the customer experience?; is there an economic impact?)

- 2.1 The revised Standards, which will be implemented through licence conditions, will improve housing condition, will improve the health and safety of the occupants of HMOs. For example the revised Standards include, new standards requiring handrails in appropriate locations, and Carbon Monoxide detection to all rooms containing a gas or solid fuel appliance. This is in keeping with the Council Corporate plan to improve the health of people living in Sheffield.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 There is no statutory duty to consult on the proposed revision of the Standards. However, it was considered that to ensure that the Standards remain effective, it was essential to consult with those most affected by the proposed revisions to the Standards. Given the purpose of the Standards, we consulted with local landlord organisations, including Sheffield Student Landlord Association, Sheffield and District Landlords Association and the local representative of the National Landlords Association. We also consulted with other relevant organisations, including with G4S and Live Management Group, who manage accommodation for asylum seekers
- 3.2 Throughout the consultation process, we endeavoured to engage with landlords on the proposed Standards as they developed, providing details of the proposed changes and attending a meeting with landlord organisations, where the proposals were discussed. Through this process, we were able to explain the proposed changes and listen to responses and suggestions. A consequence of this process of engagement is that some comments have informed the proposed revisions to the Standards. For example, the frequency of landlords checks to CO detectors were reduced, and the wording around the provision of handrails and balustrades to staircases was revised for clarity. Therefore, although landlords may not be in complete agreement

with the proposed revised Standards, they have a good understanding of the proposals and know that proper regard was given to their comments. Feedback from landlords, is that they generally accept the proposed standards

3.3 In addition, the Council received a petition from South Yorkshire Migration and Asylum Action Group SYMAAG, raising concerns about forced sharing of rooms by asylum seekers. The Council had regard to the issues raised, when developing the revised Standards. To address the issue, a proposed revision to the standards is that all single persons sharing rooms have to agree to share in writing. In addition, the floor space standards for these rooms have been increased to double size of a single bedroom

3.4 We also consulted with South Yorkshire Fire on the standards, with particular reference to those parts of the standards that deal with fire standards.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

4.1.1 As a Public Authority, we have legal requirements under Section 149 of the Equality Act 2010. These are often collectively referred to as the 'general duties to promote equality'. To help us meet the general equality duties, we also have specific duties, as set out in the Equality Act 2010 (Specific Duties) Regulations 2011. We have considered our obligations under this Duty in this report and the proposed revisions to the Standards and consider that there are no specific equality impacts in line with these duties. The proposals are equality neutral, affecting all relevant landlords and most tenants, equally regardless of age, sex, race, faith, disability, sexuality, etc. However it is noted that the practice of singles sharing a room mainly occurs in asylum seeker accommodation and amongst the Chinese student community. Therefore the proposed amendments to the standards that increase the floor space standard for singles sharing a room and require that singles must agree to share, will have a bigger impact on these groups. However these changes only take effect when the existing occupation ends and therefore will not lead to eviction. Further, these changes will have a positive impact, improving the living conditions experienced by tenants.

An Equality Impact Assessment has been completed and approved. The Sharepoint reference number for the Assessment is 959 . A copy of the Equality Impact Assessment can be provided to the public on request.

4.2 Financial and Commercial Implications

4.2.1 The proposed revision to the Standards should have little effect upon finances. Landlords will continue to be required to pay the licence fee in respect of the licensing of their properties, which is calculated to take account of all licensing costs. These proposals do not deal with amendments to the licence fees, which are set for a 5 year licensing period.

4.2.2 However, the proposed revisions to the Standards, include for the first time handrails and insulation standards, ensuring landlords are fully aware of their obligations in respect of these areas , which it is hoped will

reduce the need for the Council to take costly enforcement action.

4.3 **Legal Implications**

- 4.3.1 Under Part 2 of the Housing Act 2004, the Council is required to administer the mandatory HMO licensing scheme in respect of Sheffield. This duty includes the grant of HMO licences to successful applicants. The Council is empowered to include in the licence conditions relating to housing and management standards. Further, when deciding whether to grant a licence the Council must be satisfied that the HMO is reasonably suitable for occupation by the maximum permitted number of households or persons. The Standards, which this report seeks approval to amend, sets out the housing and management standards, which the Council has regard, when determining these issues, in respect of individual licences. Generally the conditions will be imposed, by reference to the Standards. A number of standards relate to conditions, that under the Act must be imposed as licence conditions. However most are at the discretion of the Council. Each decision will be decided on the individual circumstances of the case, and the Standards will only be applied where it is considered appropriate. However where a standard relates to a mandatory condition, these will be applied. Therefore, in line with the statutory duties referred to above, the Council is empowered to maintain and revise the Standards.
- 4.3.2 Under part 1 of the Housing Act 2004, the Council has a duty to review housing standards within Sheffield. It also provides a system for assessing housing conditions, through the reference to category 1 and category 2 hazards. Where the property is assessed as having a category 1 hazard, the Council has a duty to take enforcement action and in respect of a category 2 hazards, the power. The Act indicates that in general, category 1 and 2 hazards should be tackled by use of part 1 powers and not by imposing licensing conditions. It is therefore not appropriate, that the standard relating to insulation, be imposed as a license condition. The purpose of its inclusion in the Standards, is to inform license holders of the insulation standard the Council expects properties to meet, to which the Council will have regard, when deciding, in an individual case, whether a hazard exists and whether to take enforcement action. In line with these statutory powers, the Council is empowered to include and have regard to the insulation standard, in the Standards.
- 4.3.3 Under Part 4 of the Housing Act 2004 , where it considers that an excessive number of persons are or are likely to be accommodated in a non-licensable HMO, resulting in overcrowding, the Council is empowered to serve an Overcrowding Notice. The Council intends to have regard to the room space standards in the Standards, when determining whether a particular property is overcrowded. Each decision will be made on the individual circumstances of the case, and the Standards applied, where to Council considers it appropriate. In line with the statutory power, the Council is empowered to have regard to the Standards, for the purpose of determining whether a property is overcrowded, necessitating the service of an Overcrowding Notice.

5. ALTERNATIVE OPTIONS CONSIDERED

5.1 Option 1 – Do Nothing

- 5.1.1 Given the findings of the review, which identified that amendments are required to the Standards, to ensure that they remain relevant and reflects local need, this option is not considered appropriate. The concern is, with the passage of time, the Standards will increasingly become out dated and not be fit for purpose, impacting on the housing and management standards in licensable HMOs.

5.2 Option 2 – Revoke Standards

- 5.2.1 The Standards enable a transparent, consistence approach, to including conditions on licenses. It is an essential tool to officers, enabling sensible, informed decision making, relating to licensing conditions. They also enable Landlords to understand the standards they are expected to meet, aiding any licensing application. This is therefore not considered to be an appropriate option.

5.3 Option 3 – Revise the Standards (the Proposal)

- 5.3.1 The proposed revisions to the Standards, which reflect to review findings, with regard to the consultation responses, will ensure they remain relevant and meet local need. This will ensure that the Standards remain an effective tool to maintain good housing and management standards in HMO licensed accommodation. In addition, the inclusion of the insulation standard, informs licence holders of the standard they are expected to meet, and against which their property will be assessed, when the Council considers whether there are insulation related hazards and what enforcement action to take. Further, regard will be given to the Standards when deciding whether there is overcrowding, in none licensed HMOs. For these reasons, this is the preferred option.

6. REASONS FOR RECOMMENDATIONS

- 6.1 The proposed revisions to the Standards, which reflect the review findings, ensure that they remain relevant and reflect need. They will ensure that the Standards, which deal with management and housing issues, will continue to ensure that licensed HMO accommodation meets good management and housing standards. In addition, The Standard will assist in the making overcrowding decisions in respect of none licensable HMOs and inform licence holders of the standards expected in respect of insulation.
- 6.2 To enable the Standards to be revised, to reflect the findings of future reviews, ensuring they remain relevant and reflect local need, it is proposed that the Director of Housing and Neighbourhoods Service, be authorised to approve amendments to the Scheme.