

**Report to: Cabinet 11<sup>th</sup> June 2013**

**Report of: Strategic Housing Service Manager**

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**Subject: THE LICENSING OF ALL PRIVATE RENTED SECTOR ACCOMMODATION USING THE POWERS CONTAINED IN THE HOUSING ACT 2004**

**1. Purpose of Report**

1.1 This report is for noting. The report will suggest options for consideration to enable improvement of private rented sector accommodation and provide information on the powers available to Worcester City Council within the Housing Act 2004 to license all private rented sector accommodation in the city, with appropriate enforcement.

**2. Background**

2.1 The Council received the following Notice of Motion at a meeting held on the 26<sup>th</sup> March 2013:

“Council agrees that all powers available in the Housing Act 2004 be used to ensure all private rented properties in Worcester are licensed, with appropriate enforcement”

2.2 The Notice of Motion was referred to Cabinet for determination.

2.3 This report will describe:

- i. the powers available to the authority to use within the Housing Act 2004 to license private rented sector accommodation,
- ii. other powers available under Housing Act 2004 to improve the standards and condition of private rented sector accommodation condition
- iii. the action currently undertaken by the Private Accommodation & Standards Team to make the best use of and improve the private sector housing stock,
- iv. What other work is required to fully utilise the powers within the Housing Act 2004

2.4 Worcester has a total housing stock of 42,470 dwellings of which 18.2% are private rented. Within this private rented sector there are approximately 1,000 houses in multiple occupation (HMO), but this is constantly increasing and equates to about 4% of the total housing stock which is significantly higher than the England average of 1.9%.

**3. The Powers available within the Housing Act 2004 to license private rented sector accommodation**

3.1 The Housing Act 2004 provides Worcester City Council with specific duties relating to houses in multiple occupation.

3.2 A House in Multiple Occupation (HMO) is defined as:

- An entire house or flat which is let to 3 or more tenants who form 2 or more households and who share a kitchen, bathroom or toilet.

- A house which has been converted entirely into bedsits or other non-self-contained accommodation and which is let to 3 or more tenants who form two or more households and who share kitchen, bathroom or toilet facilities.
- A converted house which contains one or more flats which are not wholly self contained (ie the flat does not contain within it a kitchen, bathroom and toilet) and which is occupied by 3 or more tenants who form two or more households.
- A building which is converted entirely into self-contained flats if the conversion did not meet the standards of the 1991 Building Regulations and more than one-third of the flats are let on short-term tenancies.

3.3 In order to be an HMO the property must be used as the tenants' only or main residence. Properties let to students and migrant workers will be treated as their only or main residence and the same will apply to properties which are used as domestic refuges.

#### **4. Mandatory Licensing**

4.1 Since 2006, higher risk HMOs (three storey and above, 5 persons, 2 or more households) have been subject to mandatory licensing. This involves procedures to make landlords aware of the requirement, receiving applications and the appropriate fees, assessing applications, inspecting the properties and then issuing licenses with appropriate conditions. A licence lasts for 5 years and during this period a check should be made to verify compliance with licence conditions.

#### **5. Discretionary Licensing**

5.1 An alternative approach to the potential control of HMO growth or of difficulties associated with high proportions of rented accommodation is the use of discretionary licensing powers by way of either the implementation of an additional licensing or selective licensing scheme.

5.2 Section 56 of the Housing Act 2004 gives powers to local authorities to designate specific areas, or the whole of their district, to be subject to **additional licensing** in respect of HMOs not already subject to mandatory licensing, provided that certain conditions are met. Additional licensing of HMOs can be used to require licensing of all HMOs outside the definition for mandatory licensing and can apply to all types or only to specified types of HMO (for example excluding s257 converted flats). It has been used where there are significant numbers of two storey accommodation targeted at students (for example in Oxford). The declaration of a scheme may reflect the fact that landlords have moved away from three storey properties because of mandatory licensing. It may cover a whole city (as in Oxford) or be confined to a geographic area (as for example with Cardiff).

5.3 The conditions applicable to additional licensing of HMOs are that:

- (a) A significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public;
- (b) The authority has regard to any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the area in question (code exists for student accommodation eg Unipol);

- (c) Consider whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question,
- (d) That making the designation will significantly assist them to deal with the problem or problems (whether or not they take any other course of action as well).

5.4 Section 80 of the Act gives powers to LHAs to designate areas, or the whole of the their district, to be subject to **selective licensing** in respect of privately rented accommodation, provided certain conditions are met.

5.5 Selective licensing can be used where a local authority has concerns over conditions in an area either through actual or potential low demand and/or significant and persistent anti social behaviour. When a scheme is put in place, all rented properties (except those owned by social landlords and HMOs where there are separate tenancy agreements) require a licence. Schemes are increasingly being adopted across the country.

5.6 The conditions applicable to selective licensing are that:

- (a) The area is one experiencing low housing demand (or is likely to become such an area) and the Local Housing Authority (LHA) is satisfied that making a designation will, when combined with other measures taken by the LHA, or by the LHA in conjunction with others, would contribute to an improvement in the social or economic conditions in the area; and/or
- (b) the area is experiencing a significant and persistent problem caused by anti-social behaviour and that some or all private sector landlords in the area are not taking appropriate action to combat the problem that it would be appropriate for them to take; and the making of a designation, when combined with other measures taken by the LHA, or by the LHA in conjunction with others, will lead to a reduction in, or elimination of, the problem.

5.7 Both additional and selective licensing schemes last for an initial five year period. Up until April 2010, consent of the Secretary of State was required. This is no longer necessary as a general consent regime now applies and this appears to have led to an increase in designations.

5.8 General conditions are applicable to both forms of discretionary licensing as follows:

- The authority must ensure that the exercise of the discretionary power is consistent with their overall housing strategy.
- The authority must seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector as regards combining licensing with other action taken by them or others

5.9 The piece of work undertaken found that there was insufficient evidence to support a requirement, as described in point 5.6, to use selective licensing within Worcester. The city does not suffer with low demand and there is no evidence of significant levels of anti social behaviour.

## **6. Housing, Health and Safety Rating System**

6.1 A fundamental power available to improve condition of all private sector housing stock is contained in Part One of the Housing Act 2004, the Housing, Health and Safety Rating System (HHSRS).

As well as addressing condition and disrepair this section provides enforcement powers as a means to tackle poor conditions. Undertaking enforcement action is governed by the Housing Act 2004, Worcester City Council's own Enforcement Policy (update to be undertaken this year), the enforcement concordat and the Code of Practice for Regulators.

- 6.2 The HHSRS is developed on the evaluation of both the likelihood of an occurrence that could cause harm, and the probable severity of the outcomes of such an occurrence. It concentrates on threats to health and safety and is not generally concerned with matters of quality, comfort and convenience.

## **7. Work currently undertaken by the Private Accommodation & Standards Team**

- 7.1 The Private Accommodation & Standards Team use a range of tools to improve conditions and maximise the use of the private sector housing stock.
- 7.2 At the current time there is a single officer carrying out a range of functions to ensure the authority is able to discharge its statutory functions but this means that the work undertaken is reactive and a pro-active approach is not possible. A second officer is currently being recruited to address this issue.
- 7.3 A HMO mandatory license scheme is operating and officers have licensed 140 properties. It is believed there are between 175 and 200 licensable HMO's in the city and this figure does increase year on year. Resources have been allocated for a specific piece of research is to be undertaken this year surveying the private sector stock condition and the number of HMO's.
- 7.4 The high proportion of HMO's, along with the continuing growth of such properties has a number of implications for the Council.
- HMO accommodation is frequently difficult to manage and accommodation not occupied by students often has a high turnover of tenants from a vulnerable background with implications for maintaining statutory standards;
  - Mandatory HMO licensing, whilst of considerable value, is very demanding of staff time;
  - HMO properties are more likely to be associated with anti social behaviour and high concentrations of HMOs may have a detrimental effect on the amenity of a neighbourhood;
  - High concentrations of HMOs may alter significantly the character of a neighbourhood and damage community cohesion and sense of identity.
- 7.5 Where HMO's have a category 1 hazard the Council has a duty to take some form of enforcement action eg. an improvement notice or prohibition order. However officers do not currently serve a notice if already working successfully with the landlord in licensing the property, unless there was reasonable cause to believe the work wouldn't be undertaken. This is primarily because enforcement action should be reasonable and appropriate and only be taken as a last resort. A mandatory license is not issued until the works required have been inspected.
- 7.6 The Enforcement Policy covers the process used for dealing with properties in poor repair or lacking amenities and appropriate fire safety precautions.

These factors are assessed under the Housing Health and Safety Rating System to determine whether there is a category 1 or 2 hazard. Where HMO's have a category 1 hazard the Council has a duty to take some sort of enforcement action eg enforcement notice or prohibition order. The policy is to be reviewed to be brought up to date against current case law and best practise, and to ensure all appropriate tools for improving the conditions of private rented sector accommodation are fully available.

- 7.7 Officers work with landlords to advise and support landlords to achieve compliance and therefore the use of enforcement action is limited. To date the service has served 13 improvement notices on HMO's prior to/ or after completion of the licensing process, 1 prohibition order, a Hazard Awareness Notice and Emergency Remedial Action has been taken on 8 occasions. These notices were served because we had not been able to reach a satisfactory agreement with the landlord to undertake the work, or in the case of the prohibition order because the landlord was incapacitated and couldn't organise the work.
- 7.8 The Council's enforcement role is intended as a last resort and the service carries out a range of activity to offer information, advice and specialist support as well as financial assistance using Home Repair Grants.
- 7.9 Engaging effectively with landlords is very important and the Council's accreditation scheme plays a valuable role in helping to drive up standards in private sector accommodation. There are currently 477 accredited properties in the city, but further increasing the number of accredited properties has the potential to significantly improve overall stock condition.
- 7.10 Currently financial support is available through Home Repair Grants to enable property owners to improve the condition of accommodation. Whilst this funding is currently actively allocated, the funding stream will no longer be supported in 2015. Consideration will be given to opportunities for a sustainable approach to grant support for the future.

## **8. What other work is required to fully utilise the powers within the Housing Act 2004**

- 8.1 It is important that an up to date private sector house condition survey is completed including the requirement to gather specific information on houses in multiple occupation. The Housing Act 2004 requires the authority to have reliable information on the condition of the local housing stock and housing market. This data will be used to develop a Worcester City Private Sector Housing Strategy setting out the priority areas for action offering advice, specialist support, financial assistance and for enforcing standards. The stock condition survey will be undertaken this year and the development of the strategy document will follow in 2014/15.
- 8.2 The stock condition survey and tenant complaint data is essential and will provide the evidence necessary to inform whether an additional license scheme is required. If a local authority does decide to proceed with additional licensing, it is most important that it does so, on the basis of sound information and full consultation (minimum ten week period) with all stakeholders who could be affected. The collection of this evidence will need to be collected over a realistic period of time to provide a robust evidence base to properly inform the decision to implement an additional licensing scheme. If such a scheme was implemented it would require additional staff resources to provide the service.

- 8.3 In house procedures also need to be improved to allow for the systematic recording of information relating to the numbers, types and locations of housing and other complaints received, response visits made, informal and formal action taken to rectify unsatisfactory housing conditions and make properties decent. The additional staff resource will be involved in the work to ensure these systems are established and used consistently.
- 8.4 The HHSRS and enforcement powers are a significant means to tackle poor conditions. . The additional staff resources will allow the service to take a more proactive approach to enforcement. The service will carry out enforcement action when required but will continue to work with the landlords to support and encourage compliance, as undertaking enforcement action is time consuming and costly. Further funding and capacity within the legal team would be required for both taking cases to court and, in the case of disrepair, undertaking work in default. The cost for both elements is unknown but could be considerable.
- 8.5 A mechanism to deal with the financial implications, identified above, is the power to charge s.49. Costs could be levied against the landlord in respect of expenses associated with Hazard Awareness or Improvement Notice and Prohibition Orders. This can include a cost for inspection but must be reasonable and capable of being substantiated. This will be considered when the update to the Enforcement Policy is undertaken later this year.

## **9. Conclusions**

- 9.1 The service currently uses a range of tools to improve the condition and maximise the use of the private rented sector stock.
- 9.2 There are a number of tools available in the Housing Act for improving condition which may be appropriate in Worcester City. Whilst conditions are not currently present in Worcester to implement selective licensing, additional licensing needs further investigation to establish viability. Outside of licensing, powers relating to the Housing Health and Safety Rating System provide opportunity to improve condition.
- 9.3 The service will undertake the further work required to investigate whether Worcester does meet the necessary requirements to implement an additional licensing scheme and will report back to Cabinet when this information is complete.
- 9.4 A private sector stock condition survey and improvements in the collection of private sector data are required. This data will then be used to inform the development of a Worcester City Private Sector Strategy.
- 9.5 A review and update of the Enforcement Policy is timely and appropriate to ensure all powers to improve private rented housing stock condition are utilised.
- 9.6 Further work is required to change from a re-active to a pro-active service both in terms of mandatory licensing and enforcement action, but any enforcement is required to be carried out in a way that is reasonable and appropriate.
- 9.7 Further promotion of the Accreditation scheme would provide benefits by enabling engagement with a wider number of landlords.

## **10. Equalities, Financial, Health and Safety, HR, Legal, Policy, and Risk Management Implications**

- 10.1 The Worcestershire Housing Strategy vision is to deliver:

“The right home, at the right time, in the right place”

This means that we want every household in Worcestershire to be able to access housing that suits their needs and circumstances when they need it. There are two specific goals in the strategy that address ways to both improve the condition of private sector accommodation and also ensure the authority is able to make the best use of it. This compliments the vision and actions within the Corporate Plan.

- 10.2 A private sector stock condition survey will be carried out this year and this will be used to inform the development of a Worcester City Private Sector Housing Strategy. This is a statutory requirement within the Regulatory Reform Order. A review of both the Housing Assistance Policy and the Enforcement Policy is due for this financial year.
- 10.3 Under the Housing Act 2004 the local authority has a number of specific duties relating to the licensing of private sector accommodation. There are gaps in the definition for both 'selective licensing' and additional licensing. This means that even if we were able to implement both types it would not be possible to license all private sector accommodation.
- 10.4 The financial implications for undertaking additional enforcement work are considerable but further work is required to both quantify and consider the appropriate mechanisms to reduce the cost of working in this way.
- 10.5 There is a risk of negative publicity/criticism for failing to take appropriate action against non compliant landlords.

## **11. THE STRATEGIC HOUSING SERVICE MANAGER RECOMMENDS:**

### **1. Cabinet note the contents of this report.**

**Ward(s):** All  
**Contact Officer:** Nina Warrington, Service Manager Strategic Housing  
01905 722494  
nina.warrington@worcester.gov.uk  
**Background Papers:** n/a