

**PROPOSAL TO ADOPT A SCHEME OF ADDITIONAL LICENSING FOR HOUSES IN
MULTIPLE OCCUPATION IN AYLESBURY VALE**

1 Purpose

- 1.1 To consider a proposal to adopt a scheme of additional licensing for houses in multiple occupation across Aylesbury Vale, taking account of views raised by consultees. The report will be considered by Cabinet on 17 June 2014.

2 Recommendations

- 2.1 That the scrutiny committee suggest any comments that they wish to be reported to Cabinet and the Cabinet Member for Environment and Health for consideration in finalising the licensing scheme.

3 Executive summary

- 3.1 This report, that will be submitted to Cabinet on 17 June 2014, seeks approval to extend the principles of the mandatory licensing scheme already in operation within the district, through the introduction of an additional licensing scheme as defined in the Housing Act 2004. The scheme will cover all of the district and require landlords of HMOs not covered by mandatory licensing provisions to apply for a licence for the property. This will ensure that such properties meet current national and local standards for management and fire safety.
- 3.2 Cabinet will be asked:

1. To consider the proposal for adoption of a scheme of additional licensing as outlined in Appendix A, and if satisfied approve the designation of an additional licensing scheme for HMOs in the whole of the Council's area.
2. To agree the proposed schedule of prices for HMO licence applications and administrative charges in Appendix C, which will be applied to both additional HMO licences and to mandatory HMO licences, replacing any existing schedules.
3. To agree that after the statutory 3 month period from designation to implementation, an additional 'amnesty' period of 9 months will be applied during which applications will be encouraged through a discounted fee.
4. To agree that the space, amenity and fire precautionary standards produced at Appendix D will be adopted with regards to HMO conditions and the additional licensing conditions applied to mandatory HMO licensing will be adopted for additional licensing.
5. To agree that the Environmental Health and Licensing Group Services Manager, in consultation with the Cabinet member for Environment and Health, be authorised to review the scheme, its implementation and resourcing and make amendments as necessary to ensure that the principles of the scheme are achieved.
6. To consider any comments made by the Environment and Living Scrutiny Committee at the meeting on 11 June 2014 in finalising the scheme.

- 3.3 Designation of a scheme of additional licensing is a discretionary power set out in Section 56 of the Housing Act 2004, which has been devolved from central government to local councils.
- 3.4 This report reproduces at Appendix 1 the consultation document, setting out the reasons for proposing the scheme and the details of the proposed scheme and at Appendix 2 the results and views obtained from the consultation exercise which took place between 27 January and 13 April 2014. A recommendation for a licence fee structure is provided at Appendix C and proposals for local space and amenity standards to be adopted for application to all HMOs is attached as Appendix D.
- 3.5 The scheme would come into force no earlier than three months after the date of designation to allow it to be publicised locally to meet legal requirements. It would then be an offence to operate a licensable HMO without a licence. It is proposed to allow a nine months 'amnesty' period for landlords of existing HMOs, during which applications for a licence will be encouraged through a discounted fee; enforcement action in respect of any licensing offences will be suspended, in order to ensure success of the scheme in meeting its' objectives.
- 3.6 The purpose of the proposal is to provide a framework to improve conditions in the HMO sector, to make such housing safe, comfortable and well managed for tenants and to improve management for the benefit of neighbouring occupiers. It is estimated that there are at least 600 relevant properties. The scheme would run for a maximum of five years during which it would be subject to review. If it achieved the objectives before the five years had expired, then the scheme would be ended. The licensing fee is intended to cover the cost of the licensing activity, but the scheme is not permitted to achieve a profit and both legislation and case law covers what activity may be included within the cost of the licence.

4.0 Supporting information

- 4.1 Permissive powers were introduced within the Housing Act 2004 for local authorities to adopt Additional Licensing provisions.
- 4.2 These provisions apply to houses in multiple occupation, which are residential properties including shared houses, flats, bed-sit type houses and hostels where there is an element of sharing. They give the power to designate areas or the whole of the local authority area where "a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or be likely to give rise, to one or more particular problems either for those occupying the HMO or for members of the public".
- 4.3 Whilst licensing itself does not constitute a guarantee of satisfactory conditions, it can be a useful tool to identify properties used as HMOs, with a fine of up to £20,000 for failure to register. There are estimated to be at least 600 HMOs in the district. HMOs generally are unknown to officers until complaints are received, either from occupants or neighbours. When inspected it is rare to find satisfactory conditions. It is a reasonable aim that all HMOs should be fit for their purpose and safe to live in.
- 4.4 The objective for introducing additional licensing is to provide a framework to improve the HMO sector within the district and to make such housing safe, comfortable and well managed for tenants and neighbours. Key aims are to ensure:-

- Landlords of HMOs are fit and proper people and/or employ managers who are to run their HMO
 - Each HMO is suitable for occupation, in relation to the rooms available and the number and condition of facilities, or that it can be made so,
 - HMOs are effectively managed to ensure that safety equipment, shared facilities and common areas are properly maintained,
 - Overcrowding is avoided and the number of people allowed under the licence is not exceeded,
 - Hazards are identified and higher risk HMOs targeted for improvement or, if necessary, enforcement action taken,
 - Vulnerable tenants can be protected,
 - Within the licensing regime, unlicensed HMOs can be proactively targeted and legal action taken, if appropriate.
- 4.5 In a similar way to the current mandatory licensing scheme, one of the requirements of an additional HMO licensing scheme is to issue a licence to all qualifying landowners/owners/management companies. By granting a licence the Council is agreeing that the property conforms to the definition of a relevant HMO and that it is suitable for occupation, subject to it meeting certain conditions and prescribed standards taken from national legislation and guidance. HMOs will be inspected during the licence period and checked to make sure the property is compliant with the minimum standards. The focus will be on fire safety, gas and electrical safety, management and practices, shared facilities and room standards and sizes.
- 4.6 A fee can be charged to cover the costs of the licensing activity. This will enable the necessary resources to be secured for carrying out the task of licensing all relevant HMOs. The scheme is not permitted to make a profit.
- 4.7 Some of the costs of taking enforcement action to secure satisfactory housing standards can already be recovered from the person in charge of the property. The expenses which may be charged for are those for determining whether to serve a notice or order, serving it and identifying any action to be specified in the plan. The process should be carried out through resources procured for the purpose and paid for out of the costs levied. The ability to charge for licensing and for enforcement makes the scheme attractive because it would enable adequate resources to be secured for the licensing and enforcement activities, paid for from the fees and costs.
- 4.8 A scheme of additional licensing has been developed which is attached as Appendix A. This was subject to wide consultation between 27th January and 13 April 2014, utilising our web site with articles in Aylesbury Vale Times, Aylesbury Matters, Buckingham Matters and the Bucks Herald, as well as specifically contacting those on the database from the Landlord's Forum and tenant welfare organisations. The intention was to canvas a wide spread of comments, from landlords and agents, tenants and neighbours and from tenant welfare organisations.
- 4.9 Analysis of the responses from the consultation is provided within Appendix B. These responses have been considered and incorporated within the proposals where appropriate.
- 4.10 There are a number of legal requirements within the process for designation of additional licensing. Local authorities have to:

- Consult those likely to be affected by the scheme for a minimum of 10 weeks
 - Respond in writing to consultees who raise substantive issues
 - Publish the notice of designation seven days after the designation is confirmed, in municipal buildings, on the internet and in the local press
 - Send copies of the designation to respondents and those who represent their interests within 2 weeks of the designation being confirmed
 - Provide a minimum of 3 months between deciding to adopt the scheme and implementation
- 4.11 In the event that a decision is taken to make a designation, there are a number of procedural matters to comply with. These include publicising the designation at set intervals and notifying people who responded to the consultation. The designation cannot come into force earlier than 3 months after the decision is made but to encourage licensing applications to be made, it is proposed to incorporate an additional period (an amnesty period) during which time a discount will be given for applications received. The operation of any designation made must be reviewed from time to time. The maximum duration of a designation is five years after which it will lapse if not cancelled previously following review. The designation has an aim, to improve conditions in HMOs and the review is the mechanism to determine if it is achieving that objective.
- 4.12 Following the consultation, the final proposal for adoption of the fee structure is attached as Appendix C, which has been set at a level that is reasonably expected will cover the costs of providing the service. This takes account of comments made by the Residential Landlords Association to the consultation document. The proposal incorporates a reduction of the appropriate fee of 30% for applications received during the first year of the scheme and for new HMOs where applications are received within 3 months of occupation. The purpose is to encourage as many landlords as possible to apply for a licence to make the best start we can and ensure the success of the scheme the objectives of which are to make HMOs safe, comfortable and well managed for occupiers and neighbours. There is a cost to the council in offering a discount but it is felt that the benefits of the successful implementation of the scheme will outweigh that cost. It is hoped that a reasonable proportion can be encouraged to come forwards- something like 20%. It is a requirement to publicise the scheme and so it is expected that after the first year, only the landlords of newly established HMOs will come forwards. Although we want to focus on improvements achieved through the scheme (which will be subject to periodic review), rather than enforcement activity, it is suspected that even with incentives, a substantial effort will be needed after the first year in identifying properties which should be licensed and are not and then taking the relevant enforcement action to recover the costs of investigation, improving conditions as necessary and licensing the property.
- 4.13 A schedule of space and amenity standards are proposed at Appendix D for adoption, to be used by officers when specifying relevant requirements for which there are no statutory standards, as a part of the drive to secure safe and satisfactory conditions for residents of HMOs in the district.
- 4.14 In addition to any mandatory licensing standards that might apply, it is proposed that the following additional conditions (which are already used for mandatory licensing) will be applied; the name address and telephone number of the licensee or manager, a copy of the licence and a copy of the

Gas Safety Certificate will be displayed conspicuously in the common parts, any anti-social behaviour arising in the HMO will be dealt with under the terms of the tenancy agreement and the property will be in compliance with the statutory Management Regulations.

5. Options considered

- 5.1 No options have been considered as an alternative to the adoption of additional licensing, but feedback from the consultation has been incorporated within the proposed scheme.

6. Reasons for Recommendation

- 6.1 Current resources struggle to match the demand through complaints about conditions in HMOs. Historically, some of the worst housing conditions can be found in this sector (but not all properties are in a bad condition). This sector is set to grow but it is unlikely that the council can increase resources in the current climate. Licensing and the charges that apply is a way to make the increased resourcing self-financing. Additional licensing is considered an appropriate mechanism to assist in the regulation of HMOs for the benefit of occupiers and neighbours.

7. Resource implications

- 7.1 The adoption of a scheme of additional licensing for HMOs within the district will have resource implications, mainly of manpower, involving the inspection and licensing of an estimated 600 properties over a five year period. The nature of licensing is that a fee is charged which is calculated to cover the costs of resourcing the activity. Under current legislation the emphasis is on covering costs and it is not permitted to make a profit.

Contact Officer
Background Documents

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Legislation, results of survey

Appendix A

Proposals for an Additional Licensing Scheme for Houses in Multiple Occupation



1. Introduction

Houses in multiple occupation or HMOs, as they're more widely known, include shared houses and flats, bedsit-type houses and hostels. They form a significant part of the private rented sector and are particularly important in providing accommodation for young professionals, key workers, students, low income households and those in receipt of benefits.

It provides background information on the issues presented by HMO accommodation, and the reasoning to improve housing standards in this sector through additional licensing.

The overall aim of the scheme is to improve the housing standards of HMO properties in the district to achieve, at the very least, the minimum standards of safety and management for tenants and to reduce any negative impact on their neighbours.

This document describes how the scheme could operate and provides the opportunity to get involved in the consultation process.

2. Background information

2.1 AVDC is the Local Housing Authority in this area and has the responsibility for enforcing the provisions of the Housing Act 2004 and associated regulations to uphold standards in HMOs. The full definition of an HMO is found in the Housing Act 2004, sections 254-260 and Schedule 14 – summarized in Appendix 1.

2.2 We hold information on several hundred known and possible HMOs. We respond to complaints relating to any HMOs received from tenants and neighbours, undertake inspections, and engage informally with landlords as required. On occasions we take enforcement action in order to remedy any serious hazards or failings in property management.

2.3 The key health, safety and housing conditions to be addressed within HMOs are:

- Fire safety
- Gas safety
- Electrical safety
- Disrepair
- Amenity provision
- Management
- Overcrowding

2.4 Mandatory HMO Licensing for larger, higher risk HMOs was introduced by the Government through the Housing Act 2004. From 6 April 2006 mandatory licensing applies to all HMOs that:

- comprise three or more storeys, (including basements and attics capable of occupation as well as properties which have shop premises beneath residential parts);

- are occupied by two or more households; and
- there are five or more people in occupation (or it is capable of housing that number).

Every HMO that fulfills all three of these criteria currently requires a licence. There are severe penalties for landlords who are found to be operating HMOs without a licence.

- 2.5 AVDC have been operating the mandatory HMO licensing scheme for more than seven years and over this period only a very small number, (currently 17), of HMOs have been found to meet the licensing criteria and been licensed.
- 2.6 AVDC introduced and promoted a voluntary Accreditation Scheme for the private rented sector four years ago but was unable to attract any significant interest from local landlords.
- 2.7 Currently, AVDC has adopted and supports the Landlord Accreditation Scheme operated by the National Landlords Association, however, this discretionary scheme may not significantly improve standards within the HMO sector.

3. The case for introducing additional licensing

- 3.1 The vast majority of HMOs in the district fall outside of the mandatory licensing scheme and most of these have not been subject to any enforcement or regulatory powers. As there is currently no requirement for the majority of HMO landlords to inform us about their properties, we often find out about HMOs after a complaint is received.
- 3.2 Of those HMOs inspected in the past five years, 89 % were found to be non-compliant. An additional licensing scheme could identify those properties outside the current mandatory scheme without having to rely on the receipt of complaints.
- 3.3 The process of licensing can provide motivation to improve standards and ensure non-compliant landlords either improve their properties or remove themselves from the sector. This would have the added benefit to the many landlords who strive to provide decent accommodation of creating a 'level playing field' in the HMO market.

4. AVDC's proposal for Additional Licensing of HMOs

We propose to apply an Additional Licensing scheme for almost all HMOs and cover the whole of the Aylesbury Vale District. It is anticipated that at least 600 HMOs, would be brought into the scheme and require their landlords to apply for an HMO licence.

- 4.1 HMOs would not be subject to Additional Licensing if they meet the criteria for mandatory HMO licensing or they are legally exempt from licensing under the Housing Act 2004, Schedule 14, (refer to Appendix 1).

4.2 Key aims of introducing Additional Licensing

- Landlords of HMOs are fit and proper people and / or employ managers who are to run their HMO.
- Each HMO is suitable for occupation, in relation to the rooms available and the number and condition of facilities, or that it can be made so.

- HMOs are effectively managed to ensure that safety equipment, shared facilities and common areas are properly maintained.
- Overcrowding is avoided and the number of people allowed under the licence is not exceeded.
- Hazards are identified and higher risk HMOs can be identified and targeted for improvement or, if necessary, enforcement action taken.
- Vulnerable tenants can be protected.
- Within the licensing regime, unlicensed HMOs can be proactively targeted and legal action taken, if appropriate.

The introduction of additional licensing would, therefore provide the framework to improve the HMO sector and make such housing safe, comfortable and well managed for tenants, now and in the future.

4.3 Recent changes to housing benefits and future changes, including Universal Credit, are likely to increase demand for shared and bedsit type accommodation. This is primarily due to the age limit for claiming self contained accommodation being raised to 35, ie more potential occupiers will only be entitled to claim the 'room rate' and live in HMO type accommodation.

5. Details for landlords to take particular note

5.1 The licence holder may be the owner, manager or agent, but must be the most appropriate person to hold the licence. They must be a 'fit and proper person' and the Government has decided that certain criminal convictions preclude a person from being considered 'fit and proper'. When considering this we must take into account any previous unspent convictions for the following matters

- violence, sex offences, fraud or drugs
- housing or landlord and tenant laws, or
- unlawful discrimination.

The applicant must demonstrate that they are a 'fit and proper person' and declare any relevant matters to AVDC. A Criminal Records Bureau check may be requested, if appropriate.

5.2 The applicant must demonstrate that satisfactory arrangements for the management of the property are in place. Previous failures of management which have resulted in enforcement action by us may preclude the applicant from holding a licence.

5.3 Licences are usually for five years and conditions may be attached to each licence. Typically, these relate to the safety of gas and electrical appliances and the inspection / testing of electrical installations and fire alarms although other conditions may be appropriate to individual HMOs.

5.4 Licences are not transferable. The change of ownership of a licensed HMO, means a new landlord would need to apply for a licence to allow a 'fit and proper person' assessment to be made.

5.5 A requirement to have a licence to operate an HMO would put the onus on landlords to inform AVDC of the location of an HMO, as they would not be able to set up or continue to operate one without applying for a licence first.

5.6 Penalties for not applying and any other non-compliance could incur fines of up to £20,000 on conviction and there's a possibility of a Rent Repayment Order being applied to the property. This measure requires landlords to repay rents and housing benefit received, for the time when the HMO should have been licensed.

6. Implementation

6.1 On approval of the scheme, we would be required to publish a 'Notice of Designation' within seven days of the date of the decision by displaying a notice at AVDC's Gateway offices in Aylesbury and notify those consulted within 2 weeks by posting on our website. The scheme would come into force no earlier than three months after the date of AVDC's decision.

6.2 It is proposed that there could be a nine months 'amnesty' period to allow landlords to submit complete HMO licence applications at a reduced (30% discount) fee. At the end of the 'amnesty' period all subsequent HMO licence applications received would be charged at the full fee level.

6.3 Where a new HMO property has only recently been created, or been operating for less than three months, the licence fee charged would be at a reduced (30% discount) fee.

6.4 Discounts would apply to landlords 'accredited' through schemes operated by the National Landlord's Association or the Residential Landlord's Association and for landlords of those HMOs known to be already compliant through recent inspection.

6.5 The fee structure for the proposed scheme is summarised in Appendix 2.

6.6 As with mandatory HMO Licensing, licences granted under an Additional Licensing scheme will be subject to the following requirements:

- Receipt of the completed application form, together with supporting documentation and the licence fee.
- The landlord or manager being a "fit and proper person".
- The landlord or manager demonstrating that proper arrangements are in place for the management of the house.

6.7 The house being reasonably suitable for the number of occupants or proposed number of occupants.

6.8 Introducing a chargeable Additional Licensing scheme could potentially self-finance the staffing resources needed to carry out the licensing function without imposing additional cost on council tax payers.

7. Summary

In summary, the aims of the proposed HMO additional licensing is to:

- Identify landlords whose management arrangements are inadequate or unsatisfactory and improve general standards.
- Reduce the risk of fire and other hazards in all HMOs.
- Improve the standard of facilities within HMOs.
- Create a fairer and more equitable situation where landlords of all HMOs achieve minimum standards.
- Improve the quality of housing to benefit both tenants and the wider community.
- Use improved powers to tackle the small number of 'rogue' landlords operating in the District.

The scheme period is five years – the maximum permitted by Government. At the end of this period, we would expect to know:

- where HMOs are operating in our area
- and be confident that they are well managed and offer safe accommodation.

The scheme would be subject to on-going and periodic review to ensure that we meet these objectives.

8. Taking part in the consultation

We invite landlords and letting agents, tenants, local residents and other stakeholders alike to respond to these proposals by completing an online consultation linked to this document.

The March 2014 issue of Aylesbury Vale Times, our council news magazine, will carry an article on the new proposals. This is distributed to all households in the district. The consultation questionnaire should be completed on-line at aylesburyvaledc.gov.uk/lhmoconsultation Alternatively, we can email you a copy, or if you don't have access to the internet, a paper copy can be collected from our Gateway offices in Aylesbury, by arrangement only. Please email us at envhealth@aylesburyvaledc.gov.uk or call the private housing team on 01296 585605.

The consultation process will run for a period of 11 weeks from 27 January to 13 April 2014.

Following the consultation period and analysis of all responses, a final report will be considered at an AVDC cabinet meeting in late spring / early summer. Thereafter a report including the final decision will be published on our website, aylesburyvaledc.gov.uk/haveyoursay

Appendix 1: Is my property an HMO?

This additional guidance is an interpretation of Part 7, Sections 254 to 260 and Schedule 14 of the Housing Act 2004.

The property will be an HMO if it fits one of the following cases:	Relevant section number
A house or building lived in by people who belong to more than one family* and who share one or more facilities**	S254(2) 'The standard test'
An individual flat lived in by people who belong to more than one family* and who share one or more facilities**	S254(3) 'The self contained flat test'
A house in bedsits lived in by people who belong to more than one family* and who share one or more facilities**	S254(4) 'The converted building test'
A building of self contained flats that do not meet 1991 Building Regulation standards and less than two-thirds of the flats are owner-occupied.	S257

* **By family we mean:** husband, wife, cohabitee, child, stepchild, foster-child, grandchild, parent, step-parent, foster-parent, grandparent, brother, half-brother, sister, half-sister, aunt, uncle, niece, nephew, and cousin.

** **By facilities we mean:** toilet, wash hand basin, shower, bath and kitchen facilities.

Exemptions (detailed in Schedule 14)	
If it is occupied by only 2 people	Paragraph 7
If it is occupied by the owner (and their family if any) and one or two lodgers	Paragraph 6 Paragraph 5
If it is occupied by a religious community	Paragraph 2
If the owner or manager is a public body	Paragraph 4
If the owner or manager is an educational institution	Paragraph 3
Buildings regulated otherwise than under the Housing Act 2004	

Appendix 2: Proposed Licence Fees

It is proposed that the fee for the Additional Licence will be £500 for an HMO having 5 bedrooms / letting units but reduced to £350 in the first year of the scheme.

The complete fee structure and exact terms of the new scheme will be determined following the analysis and outcome of the consultation and any views expressed will be taken into account.

Proposed fee structure:

HMO type	Licence Fee
5 bedroom/letting unit - 1 st year of scheme Years 2 - 5 of scheme	£350 (+ / - £25 for each extra / fewer bedroom/units) £500 (+ / - £25 for each extra / fewer bedroom/units)
s257 HMOs (3 - 5 flats) (Restricted to HMOs where the freeholder is in control of the whole property) 1 st year of scheme Years 2 - 5 of scheme	£350 (+ £25 for each extra flat) £500 (+ £25 for each extra flat)
s257 HMOs (2 flats) (Restricted to HMOs where the Freeholder is in control of the whole property) 1 st year of scheme Years 2 - 5 of scheme	£210 £300
Assistance in making an application	£50
Revocation of licence (at landlord request)	No charge
Variation of licence (change in the property; the licence holder remains the same)	No charge
Discounts For Accredited Landlords For known compliant HMOs (not requiring inspection) For HMOs where the Energy Performance Certificate (EPC) is graded A-C	£80 discount £80 discount £30 discount

Appendix B

Additional Licensing For HMOs; Consultation Responses

1. A consultation was undertaken between 27th January and 13th March 2014, on the scheme proposals as attached at Appendix 1.
2. To draw a wide field of consultees, details were posted on our web site, articles were published in Aylesbury Vale Times, Aylesbury Matters, Buckingham Matters and the Bucks Herald. We also made specific contact with those on our Landlords Forum database, who were either landlords or agents and with a range of organisations who could be categorised as tenant welfare organisations.
3. We received 54 responses to the Survey Monkey questionnaire as well as written responses from Buckingham Town Council, National Landlords Association and Residential Landlords Association.
4. The 54 respondents to the questionnaire were broken down into categories; HMO tenant, HMO landlord or letting agent, organisation with an interest in tenant welfare, resident living near an HMO and other. Those responding in the 'other' category include Residential Landlords Association, Aylesbury Town Council, Buckingham Town Council, local authority officer, Connection Floating Support, an organisation that offers benefits advice, resident, someone who works in Aylesbury, someone who is both a landlord and a resident who lives near an HMO, a landlord of non-HMO properties, a letting agent with no HMOs at present, Chair of Governors of a school where HMO issues affect students and their parents, a home owner who previously shared occupation.
5. The low number of responses inhibit drawing statistically valid conclusions from the responses but they do give the reactions of a wide cross section of interested persons and bodies. The responses and comments will have to be considered as giving general indications.

Landlords and Letting Agents

6. Of the landlords and letting agents who responded to the questionnaire, they all either supported or strongly supported our aims to improve the standards of HMO housing in the district. On the following question of whether licensing was a good way to improve the standards of substandard HMOs, 42% responded that it was very good or fairly good, 33% that it was fairly or very poor and 25% that it was neither good nor poor. Of those who responded 'fairly or very poor', the comments included, "...this should be down to landlords and agents to ensure the quality of living is provided to tenants", "...uneducated landlords won't be aware of the licensing and that unscrupulous landlords will not 'sign up' to it anyway", "Legislation already exists to prosecute bad landlords, who would not register anyway. Extra cost and bureaucracy will discourage private landlords and push up costs to

tenants.”, “The evidence from authorities where additional licensing has been introduced, is that the administration of the scheme takes all the resources generated by the fee. The people who apply for licenses are the compliant and well intentioned landlords...those with sub-standard stock stay “under the radar” by paying council tax in one or two names.”

7. The questions to landlords and letting agents tried to assess whether they thought that the proposed additional licensing scheme would improve conditions in a number of different areas. In every case, more agreed than disagreed, with the greatest agreement being that it would improve safety. The following question probed the fairness of extending licensing to improve housing standards in properties for people who live in shared houses or flats. Just under two-thirds of respondents thought it very fair or fair.
8. Even when assessing the fairness of charging landlords the costs of introducing and managing the service, slightly more said ‘yes’ than ‘no’. For those who thought it was not fair, a supplementary question was asked on who they thought should pay. The responses were open and included “The council should offer this for free, landlords already pay various taxes in running properties and often don’t make a profit. If they have to pay for more fees then really landlords might be forced to sell and there will be a shortfall of accommodation in the market”, “.combination of landlords, tenants, council tax payers”, “No new licensing. No-one pays. Please keep bureaucracy out of this sector...”, “If you charge the landlords , all the evidence points to the fact that it will be the tenants who will pay through increased rents...”
9. In terms of the likelihood that such a scheme of licensing would meet the a variety of objectives, slightly more than half thought it would ensure properties are properly managed and would help keep properties well maintained. Slightly under half thought it would help avoid noise nuisance, prevent rubbish build up, minimise noise nuisance in neighbourhoods, encourage energy efficiency or reduce overcrowding.

HMO Tenant

10. Unfortunately only one HMO tenant completed the questionnaire, although their responses were interesting- they were occasionally bothered by noise nuisance but rarely by anti-social behaviour and not at all by over crowding of rooms or by too many people sharing facilities. They responded that their landlord looked after their home neither well nor poorly and the property generally, poorly. They saw licensing as either very much so, or partially a way to help improve housing conditions across the board where they live.

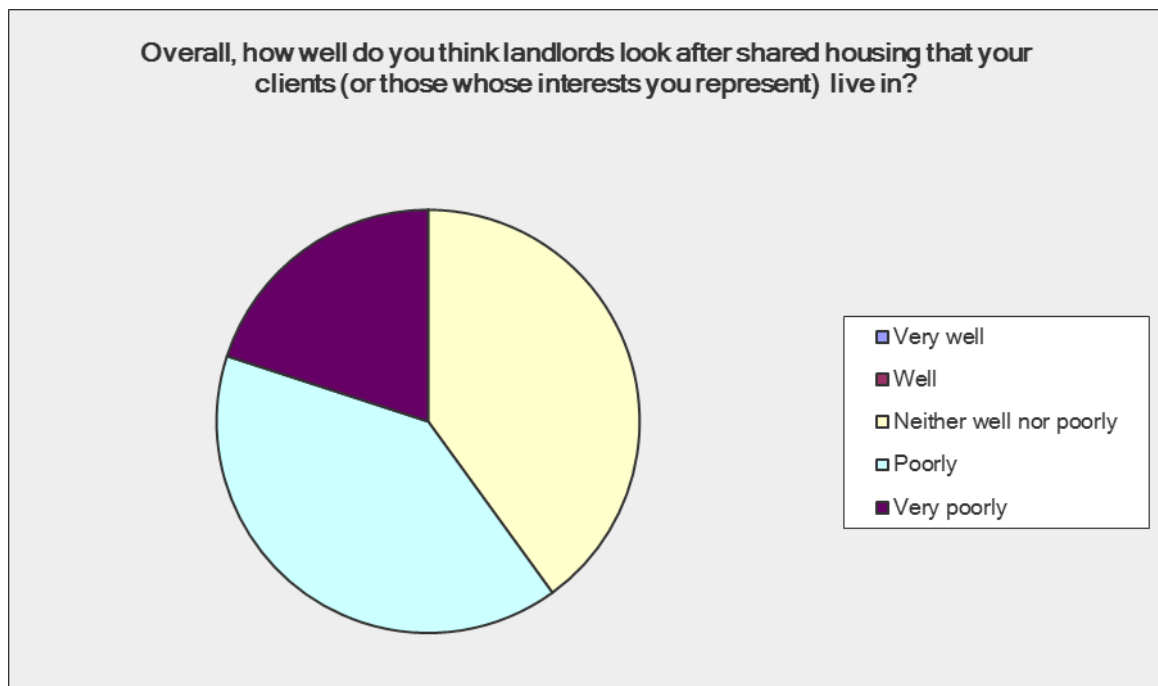
Tenant Welfare Organisations

11. Moving on to responses from tenant welfare organisations, those which responded were a statutory agency, Bucks Fire and Rescue, a gypsy and traveller support organisation, an organisation concerned with looked after

children and care leavers and one whose role was not clear. They had experienced a range of concerns about the shared houses where their clients might live. Within the last 3 months, concerns had been about fire safety, electrical safety, damp and mould, a lack of or poor repairs, cleanliness and repair of the common areas, security, heating and recycling and waste facilities. For over 6 months, their concerns had been all of the former and additionally gas safety and sharing facilities such as kitchens or bathrooms.

12. In terms of the wider issues that might affect tenants living in HMOs, they had varying concerns about noise nuisance, anti social behaviour, overcrowding of rooms and too many people sharing facilities.

13. Although it was a limited response, when asked how well they thought landlords looked after shared housing that their clients (or those whose interests they represent) occupy, none of the responses were 'very well' or 'well'. The responses all fell within the categories of 'neither well nor poorly', 'poorly' or 'very poorly', indicating an experience of generally poor conditions.



14. Opinion was canvassed on whether a licensing scheme would improve the housing conditions in a range of areas. In each case the view was 'very much so' or 'partially'.



15. This group was asked for one thing they would like HMO landlords to do that would improve living conditions in HMOs. This is one response:-
 “At present the law around unlicensed HMOs is vague and therefore this licensing scheme should improve standards. I have recently started monitoring some of the local private providers of accommodation to care leavers and have been disappointed with H&S standards and their failure to meet basic fire safety regulations and maintain good electrical and gas safety. We are currently putting action plans together for some of these providers to drive up standards and ensure that our vulnerable yp (*young persons*) are appropriately housed in safe, secure accommodation. In the last year we have seen an increase in the numbers of private providers opening this style of shared house supported accommodation in Bucks (this will be an increase from 1-3 in Ayl Vale with another 2 houses planning to open later this year) and so this is a growing issue for BCC.”
16. We sought any additional comments about our proposals from tenant welfare organisations. Ten responses were received and these are reproduced here.
 “On the whole, this is a good proposal, but I think the proposals should include a reference to landlord/agents responsibility for tenant nuisance by means of noise (especially at night) and rubbish disposal and the regular maintenance of garden area(s)”
 “The proposal for an additional licensing scheme is a sensible and well thought out proposal, which I support. I believe that a review should be carried out within a reasonable time period of the scheme’s introduction which considers expanding the scheme to all HMO’s and even all rented properties as per London Borough of Newham”
 “We support a number of people living in HMO’s and many are not anywhere near suitable for habitation. Anything that can be done to improve the quality of life has to be in the right direction. Regular inspections are vital to ensure

that standards are maintained, a five year licence should not mean that they will be left unchecked for 5 years. Where people have to pay extra for services, then there should be a separate metre for each unit where possible. "A fit and proper person" if I am reading this correctly could be a manager acting for a landlord who is not "fit and proper". In my opinion, the landlord should have to be fit and proper, as well as their manager".

"I would like to be involved/kept informed of any further work in this area if possible." (Childrens and Young Peoples Services, BCC)

"I think it's a positive document, the terms of which will hopefully be enforced improving housing conditions in the sector"

"The intentions as stated are admirable- all tenants regardless of their personal circumstances should be able to rely upon their Landlord to provide a clean, safe environment in which to live. I assume that the fees proposed are annual based upon the comment about the first year being reduced. If so they are outrageous and this would appear to be yet another income generation project rather than stated purpose to ensure the health and wellbeing of tenants. At the very least there should be some attempt to demonstrate that these costs are justified" (*Note:-The proposed fees for a licence are for up to five years*)

"I am strongly in favour. Housing conditions are key to providing the stability that children (especially at primary level;) need to flourish educationally. If they live in inadequate housing or are disturbed by others who live in inappropriate conditions, their education suffers"

"Concerned about the penalty for not having a licence to share my home with my friends (I did so for about 2 years 2008-2010?) I found the experience very enjoyable and believe this freedom is worth keeping free of control/interference from local government. Single occupancy allowance was not claimed during the share period. Shared homes can and do help communities to be more cohesive and interconnected"

People Who Live Near an HMO

17. The final group considered are those that live near an HMO. There were 20 people in this group who responded to the questionnaire. The shared house was either near to their home or to local restaurants or shops that they visit. Of the issues which affected them, the most frequently occurring was litter and overflowing communal bins. Fly tipping, late night noise and loud music were the next most significant. Parking on grass verges was least reported. We gave the option to report other matters and nine respondents completed this section. In no particular order, the matters reported were:-
Blocking people's driveway, garden overgrown, unwanted furniture left in front and back garden, property generally looking untidy, possible drug dealing, late night/early morning convoy of taxis dropping off and picking people up, couples/mothers with children are squeezed into unsuitable accommodation and charged unacceptable rents which are paid by housing benefit, parking problems blocking access, parking problems on the road, parking taxis in homeowner parking area.

18. The next question asked which of the problems they thought the scheme could successfully reduce. The highest response was in regards to litter and overflowing communal bins, with lesser responses for the other matters. This is probably realistic.

Residents were asked to specify the one thing that would improve the environment around the shared house where they lived. There were a mixture of responses with litter, rubbish and management as frequently occurring themes. Also mentioned were respect for residents, a designated manager responsible for maintenance and anti social behaviour issues with contact details clearly displayed, more checks on residents and a check on conditions before payment of housing benefit, a reduction in street parking or taxis in parking areas or gardens, banning loud and late night noise and “..moving them all out since these houses have been taken over by what seems to be a huge amount of people in each house. I and my family feel threatened.”

19. Information was collected on persons who had responded to the consultation. Geographical spread was almost wholly confined to Aylesbury and Buckingham towns. The respondent all fell into age groups of 35 years and over with the highest numbers from 45 to 54 years and 65 and over.

20. The last question allowed any other comments about shared houses or flats in relation to this survey. There were 16 responses to this section and the responses will be summarised:-

Often it is difficult to know how to tackle all kinds of antisocial activities when you don't know if the householder is a tenant or owner....the landlords must be made to take responsibility for their properties and for example a register should be available so that complaints get through to the person responsible for the building.

Landlords need to be more stringently monitored.

In some areas residents have lived there for quite a while and respect each other and their property.....

The HMO in ***** Close has brought many positives....

I do not think the mix of people in these houses is appropriate...

I am assuming HMOs designation also includes students. Buckingham University is growing fast...

I think you should consider that HMOs are not just suitable for tenants on benefits, but also represent affordable rented accommodation for single people...

They can be an eyesore as gardens etc are unkept...

Consideration should be made to the affect shabby shared property has on neighbourhood house prices....

They should be monitored on a regular basis and landlords brought to task when their tenants actions/behaviour impact on other neighbours....

Students should receive adequate instruction from their landlords on how to recycle their rubbish and which bins should be put out on which collection day.

These should be specially built and not conversions.

Private landlords are earning a fortune while people live in poor conditions....

Would be great to have some regulation and set standards that landlords have to adhere to

An excessive number of 'bedrooms' created over and above that for which the house was built, resulting in overcrowding problems

Individual Responses

21. Individual responses were received from Buckingham Town Council, a director of an estate management company who is also a representative of the National Landlords Association (NLA) Accreditation, and the Policy and Communications Officer of the Residential Landlords Association (RLA).
22. The response from Buckingham Town Council is as follows:-
Members of Buckingham Town Council Planning Committee made the following response at their last committee meeting
Minute 787.1 To consider and agree a response to the HMO consultation
Para. 5.1: Members thought that the criteria for a 'fit person' should include offences under the civil law, and persistent breaches of planning regulations.
Para. 6.1: Members felt that notice should be more widely disseminated, as the yellow Planning and blue Licensing applications were, not just at The Gateway and on the website. A notice should be posted outside the premises, and a copy sent to the appropriate Town/Parish Council for full consultation opportunities.
Para. 6.6: Members would like more detail of the 'supporting documentation' or reassurance that this included fire, gas and electrical safety/inspection certificates from appropriate statutory bodies.
23. The National Landlords Association (NLA) response was in part linked to a consultation on a review of property conditions in the private rented sector by the Department for Communities and Local Government (DCLG). The comments included :-
 - that a significant cause for complaint was the use of the term 'Rogue' Landlord and a request to avoid the term
 - all landlords with buildings in multiple occupation should be required to provide a Health Safety and Fire Risk Assessment that meets the regulatory standards laid down in current legislation and updated annually.
 - landlords electrical installations must have a valid 5 year Inspection test certificate issued by a qualified contractor
 - where furnished accommodation is provided, all electrical appliances must comply with portable appliance test
 - when gas central heating boilers are installed, Landlords must provide an annual safety certificate issued by GAS SAFE registered engineer
 - approved CO detectors should be fitted in all flats that have gas appliances.The suggestion was that those landlords who were members of a professional trade body, established for the purpose of maintaining acceptable standards, particularly those with Accreditation, should be deemed responsible and not subject to punitive measures, nor continuous collective identification with the negligent few.
It was however noted that HMO exemption was only intended to apply where compliance with the above conditions could be established, which included self contained accommodation for single families. Where facilities are shared, such as student accommodation, there may well be a case for routine inspection by a Licensing Authority to avoid hazards associated with the risk of overcrowding.

A supplementary letter reinforced the view that all let properties should comply with the specified requirements and any policy should target the tiny minority of Landlords that fail to conform to acceptable standards.

Response-we do promote landlords joining a relevant trade organisation and aspiring to accreditation standards. Unfortunately that course is only likely to be followed by better landlords and an alternative strategy has to be followed to resolve the issue of sub-standard accommodation.

23. The response from the RLA (attached) focussed on a number of areas. The first was to highlight that the fee structure and projected budget would need to take account of the European Services Directive (ESD) and ruling of the Hemming case (Hemming [t/a Simply Pleasure] Limited v Westminster City Council). That centred around what could legally be charged within a licensing scheme. Other key points were that additional licensing is ineffective at reducing incidents of anti-social behaviour, on the basis that landlords could not be held responsible for the behaviour of their tenants. There were a number of general concerns about mandatory licensing, around costs, misuse of funds by local authorities, costs being passed onto tenants, not targeting bad landlords, a lack of clear objectives from the scheme. These matters had been considered while developing proposals for the Aylesbury Vale Scheme. The critique of the consultation document raised comments made in paragraphs 3.1 and 3.2. In each case these were a matter of fact-that most HMOs that are the subject of a complaint do not comply with the HMO Management Regulations and usually lack fire safety provisions. It is for landlords to comply with their legal duties in respect of conditions irrespective of licensing, but licensing would inform officers of the locations of HMOs, to enable their inspection. There was no implied criticism of HMO landlords for failing to notify AVDC that they were operating an HMO as there is presently no requirement for them to do so. With regards to the comments about point 3.3, it is considered that the costs of the licensing fee would have a minimal impact on rents over the lifetime of the licence. It is further considered that the introduction of additional licensing would actually release staff resources to engage in proactive enforcement action against the highlighted targets. Whilst a number of schemes have sought to raise standards, including the Landlords Forum and support for accreditation, officers continue to find non-compliant properties and therefore need to employ other approaches. The proposed licensing fees can work out as low as 85 pence per room per week and reflect the costs of carrying out the licensing activity. The intention is to use licensing to release officer resources to proactively target non-compliant properties. Officers will continue to encourage higher standards.

By Email: envhealth@aylesburyvaledc.gov.uk



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Friday 11th April 2014

Dear Sir/Madam,

Aylesbury Vale – Proposals for an Additional Licensing Scheme for Houses in Multiple Occupation (HMOs).

I am writing on behalf of the Residential Landlords' Association (RLA), to make representations in response to the Council's proposal to designate an HMO additional licensing scheme in Aylesbury.

The RLA objects to the proposed designation, on the following basis:

1. The fee structure and the projected budget may be contrary to the European Services Directives and the ruling of the *Hemming (t/a Simply Pleasure) Limited v Westminster City Council* Court of Appeal case

The decision of the Court of Appeal in the Westminster Sex Shop Fees case (*Hemming (t/a Simply Pleasure) Limited v Westminster City Council*¹) has radically altered the landscape so far as fixing fees for regulatory authorisations such as for HMO and selective licensing is concerned.

The court case looked at the way in which the European Services Directive (ESD) operates to curtail the ways in which domestic UK legislation provides for fees to be charged by local authorities to landlords for such licences.

When setting licensing fees the following principles should now apply:

- The Council cannot include the costs of enforcing the licensing scheme against unlicensed landlords in the licence fee. This is prohibited by the ESD.

- A Council can only charge for HMO licensing for :
 - The actual and direct administrative costs of investigating the background and suitability of the landlord applicant; and,

 - The cost of monitoring the compliance by licensed landlords with the terms of their licences.

¹ <http://cases.iclr.co.uk/Subscr/search.aspx?path=WL.R%20Dailies/WL.RD%202011/Wlrd2013-203>

- Fees must be reasonable and proportionate.
- Under the ESD the fee must not exceed the cost of the authorisation procedures and formalities together with the monitoring costs (for licensed landlords).
- The Council can require an application to be accompanied by a fee fixed by the local authority. This is provided for under the Housing Act 2004 which stipulates that the Council, in fixing the fee, may take into account all costs incurred by the authority in carrying out their licensing functions. Importantly, however, the ESD curtails these powers.
- Surpluses and deficits for previous years in relation to permitted elements for which a fee can legitimately be charged can be carried forward, although this is questionable in the case of a standalone scheme, i.e. for discretionary licensing. Surpluses and deficits cannot be carried forward in respect of elements which are not properly chargeable.
- Fees can only cover the actual cost of the application process (plus monitoring); i.e. only the cost of processing the application and monitoring can be charged.
- Set up charges for the scheme cannot be recovered.
- Overheads and general administrative costs cannot be recovered. This means that the running and capital costs of the relevant council department cannot be charged as part of the fee.
- Fees can only be charged for the procedures themselves; i.e. steps which are followed in processing the application for a licence or for its renewal (plus monitoring of the licence holder) which means that the administrative costs involved for vetting applications and for monitoring compliance with licence terms.
- The Council is not allowed to make a profit.
- A formula can be used to set charges so long as it is based on the cost of the actual authorisation process (plus monitoring costs).

The Council must act lawfully and in accordance with any guidance given to it by the Court as to how the fee is to be determined. If it is necessary as a result for the Council to re-determine a fee then the same principles apply in relation to the re-determination.

Furthermore, it was always clear that costs associated with enforcing the Housing Health and Safety Rating System which operates alongside licensing could not be recovered via licensing fees.

A number of local authorities charge extra fees if an application is submitted late. This has always been highly questionable as a disguised penalty but it would appear that this would now be largely outlawed by the ESD. Discounted fees are often allowed for early applications. It may now have to be shown that the normal application fee is no more than the actual processing cost so that fees for an early application would have to be genuinely discounted. However, the proposed £150 discount for applicants in the first

year of the scheme for Aylesbury Vale scheme should not be permissible as per the ESD².

It should also be noted that any element of the fee that cannot be recovered must fall on the Council Tax payer, i.e. the Council's general fund; not the general body of licensed landlords.

The ESD also deals with the time to be taken in processing applications. It requires local authorities to publically state the time to be taken to process the application. There is provision for extending the time limit in a case involved complexity. Subject to this if the authority failed to process the application within the stated time then the applicant can automatically assume that the application is granted.

Finally, should Aylesbury Vale Council chose to ignore the ESD and implement a HMO additional licensing scheme based on a proposed budget that does not adhere to the ESD, any impermissible overcharge can be recovered by way of a claim for restitution. The time limit for such a claim is six years and the normal three month time limit which applies to judicial review does not apply in this instance. As part of the process the Council may have to re-determine what is a reasonable charge in line with any guidance given by the Court. The amount overpaid will then have to be calculated. Giving credit by way of carry forward does not apply to an impermissible overcharge so it has to be refunded. Interest is payable in addition.

2. HMO additional licensing is ineffective at reducing incidents of anti-social behaviour

Landlords are not responsible for the behaviour of their tenants, and attempting to impose a licensing scheme on them to resolve anti-social behaviour will not work.

As a House of Commons briefing note recently stated, "As a general rule, landlords are not responsible for the actions of their tenants as long as they have not 'authorised the anti-social behaviour. Despite having the power to seek a court order for eviction when tenants exhibit anti-social behaviour, private landlords are free to decide whether or not to take action against their tenants. The question of whether a landlord can be held liable for the nuisance of its tenants has been considered in a number of cases."³

The paper continues, "It is established that no claim can be sustained in nuisance where the nuisance is caused by an extraordinary use of the premises concerned, for example by the tenants being noisy or using drugs on the premises. The rationale behind this approach is that it is up to the victim of the nuisance to take action against the perpetrator. To found an action in negligence against a landlord the victim must show that there has been a breach of a duty of care owed by the alleged perpetrator."

The briefing paper also notes the court decision of *O'leary v London Borough of Islington*⁴ case, in which, "...it was held that a term to enforce nuisance clauses could not be implied into a tenancy agreement. This indicates that landlords cannot be sued for breach of contract unless there is an express term in the tenancy agreement that obliges him or her to "take all reasonable steps to prevent any nuisance". Even where such a clause exists, the courts have been reluctant to find the landlord in breach."

3. The RLA has a number of general concerns about mandatory licensing

² "Proposals for an Additional Licensing Scheme for Houses in Multiple Occupation" page 6. Aylesbury Vale District Council 2014

³ "Anti social neighbours in private housing" (2013) House of Commons Library, p.3, para.1.1. [SOURCE: <http://www.parliament.uk/briefing-papers/SN01012>]

⁴ *Ibid*, p.3, para.1.1.

The RLA has several areas of concern in regards to HMO additional licensing, namely;

- i. Worrying trends are emerging in the case of discretionary licensing. Licensing entails a huge bureaucracy and much time, effort and expense is taken up in setting up and administering these schemes; rather than spending it on the ground and flushing out criminal landlords.
- ii. Increasingly, discretionary licensing is being misused to fund cash strapped housing enforcement services. The recent Westminster sex shop Court of Appeal (*Hemming (t/a Simply Pleasure) Limited v Westminster City Council*) has brought such funding into question (see paragraph 1).
- iii. Discretionary licensing is not being used for its intended purpose of a short period of intensive care; rather it is being used by the back door to regulate the PRS.
- iv. The level of fees which are ultimately passed on to tenants to pay is a major worry so far as it affects landlords.
- v. Despite high fee levels local authorities still lack the will and resources to properly implement licensing.
- vi. Little has been done to improve property management. Opportunities to require training have been ignored. As always it has become an obsession with regard to physical standards with very detailed conditions being laid down. No action is taken against criminal landlords.
- vii. We believe that a significant number of landlords are still operating under the radar without being licensed.
- viii. As always it is the compliant landlord who is affected by the schemes. They pay the high fees involved but do not need regulation of this kind.
- ix. Licensing is not being used alongside regeneration or improvement of the relevant areas. Insufficient resources are being employed to improve the areas.
- x. Where areas are designated for additional or selective licensing this highlights that they can be "sink" areas. This could well mean it would be harder to obtain a mortgage to buy a property in these areas.
- xi. Schemes are not laying down clear objectives to enable decisions to be made whether or not these have been achieved. Proper monitoring is not being put into place to see if schemes are successful or not.
- xii. There is little use of "fit and proper person" powers to exclude bad landlords.

4. A critique of Aylesbury Vale's consultation document

3. The case for introducing additional licensing

3.1 The vast majority of HMOs in the district fall outside of the mandatory licensing scheme and most of these have not been subject to any enforcement or regulatory powers. As there is currently no requirement for the majority of HMO landlords to inform us about their properties, we often find out about HMOs after a complaint is received.

3.2 Of those HMOs inspected in the past five years, 89% were found to be non-compliant. An additional licensing scheme could identify those properties outside the current mandatory scheme without having to rely on the receipt of complaints.

RLA response: It is no wonder that any of these properties may fall foul of standards as complaints will generally relate to an issue – in this case it is interesting to consider the outcome of frivolous claims. The council is making it seem as though the private landlords of these HMOs fall foul of legal obligation when there is no obligation. This wording is (unconsciously, we hope) biased against private landlords.

When mandatory licensing for HMO is required, the RLA insist that members and private landlords adhere to regulation. However, when an HMO does not fall under the mandatory licensing conditions, it is no obligation of the landlord to inform the council they manage an HMO. Suggesting landlords of non-mandatory HMOs are not reporting to the council is spurious.

3.3 The process of licensing can provide motivation to improve standards and ensure non-compliant landlords either improve their properties or remove themselves from the sector. This would have the added benefit to the many landlords who strive to provide decent accommodation of creating a 'level playing field' in the HMO market.

RLA response: Charging the good landlords, who already invest in their properties and professional development is illogical. The costs of licenses will be passed onto tenants creating a greater risk of exposing them to criminal landlords who operate outside of the law and legal requirements. These criminal landlords, who operate knowingly outside of the law will not adhere to licensing requirements and the council should take more direct measures to tackle these people rather than create a roster of good landlords and HMOs within the district.

4 AVDC's proposal for Additional Licensing of HMOs

4.3 Recent changes to housing benefits and future changes, including Universal Credit, are likely to increase demand for shared and bedsit type accommodation. This is primarily due to the age limit for claiming self contained accommodation being raised to 35, ie more potential occupiers will only be entitled to claim the 'room rate' and live in HMO type accommodation.

RLA response: As we mentioned in relation to point 3.3 above, charging landlords for a licence to let out their property may result in greater charges to tenants. If it is believed that a portion of these will be claiming benefits it would not be a stretch to think that these people will need support. Landlords provide crucial housing to vulnerable people, and rather than charging them for licenses the council should consider providing them the support and tools to provide good accommodation for those that need it most. Landlord groups, engagement from the council, 'good landlord' lists and other tenant education measures can help enforce high standards for landlord and associated property whilst sending a positive message to other landlords and tenants in the area.

Consultation website analysis.

From the AVDC website (<http://www.aylesburyvaledc.gov.uk/news/2014/jan/views-wanted-scheme-improve-hmos-aylesbury-vale>):

Councillor Sir Veville Stanier is quoted:

"We are determined that all private tenants in Aylesbury Vale live in safe, good quality accommodation. In addition to improving safety for private tenants, we think additional licensing could also improve the environment for those living nearby and bring significant benefits for the district by securing improved housing accommodation and better management of properties."

RLA response: While the RLA fully agree with the desire to have good, safe, and quality accommodation for all tenants, we do not believe that licensing is the best way to achieve these goals. Contrary to popular belief, landlords are not cash rich and charging licenses for landlords to provide accommodation will take away vital funds that could otherwise be spent on improving properties through renovations or training to improve professionalism and awareness of legal responsibilities and obligation.

The RLA would encourage AVDC to consider accreditation, tenant education, and tackling the criminal landlords who may operate in the area. We are pleased that accredited landlords will receive recognition for their investment in professional development, but a word of warning to AVDC regarding the European Services Directives (EDS) outline previously in the document.

Elsewhere, AVDC claim:

"Licensing these properties is a way of controlling the management and operation of HMOs and will help prevent landlords renting out properties that are damp, cold, dirty, unsecure, too small or don't have the appropriate number of bathrooms or toilets."

RLA response: While the RLA appreciate and support the notion that all landlords should provide good accommodation we argue that licensing is not the best way forward. Councils have hundreds of regulatory powers to enforce good standards within the private rented sector (PRS) and licensing should only be considered/pursued if all other options have been exhausted.

5. Conclusion

The RLA is opposed to the proposed HMO additional licensing scheme for the reasons outlined in this response. However, the Association is very keen to work with Haringey Council to promote accreditation and the Landlord Forum to local landlords, and would welcome further dialogue with the Council on this issue.

I look forward to the Council's thorough consideration of the RLA's response.

Yours faithfully,

William Keunen

Policy & Communications officer

Residential Landlords' Association

Email: William.keunen@rla.org.uk

Appendix C

Licence Fees

HMO type	Licence Fee
Mandatory HMO Licence 5 bedroom/letting unit	£550 (+/- £25 for each extra/fewer bedroom/units)
Additional HMO Licence 5 bedroom/letting unit - 1 st year of scheme Years 2 - 5 of scheme	£385 (+ / - £25 for each extra / fewer bedroom/units) £550 (+ / - £32.50 for each extra / fewer bedroom/units)
s257 HMOs (5 flats) (Restricted to HMOs where the freeholder is in control of the whole property) 1 st year of scheme Years 2 - 5 of scheme	£385 (+/- £25 for each extra/fewer flat) £550 (+/- £32.50 for each extra fewer flat)
Assistance in making an application	£50/hour
Revocation of licence (at landlord request)	No charge
Variation of licence (change in the property; the licence holder remains the same)	No charge
Discounts (only the highest one will apply) For Accredited Landlords For known compliant HMOs (not requiring inspection) For HMOs where the Energy Performance Certificate (EPC) is graded A-C In years 2-5 of the Additional Licensing Scheme, where a valid application is submitted within 3 months of occupation of an HMO	£80 discount £80 discount £30 discount 30% discount

Appendix D

HMOs – Space, Amenity and Fire Precautionary Standards

SPACE STANDARDS

One Person Units of Accommodation

One room units

- where kitchen facilities located in the room 11m²
- where separate exclusive or shared kitchen facilities 8m²

Room sizes may be reduced by up to 1.5m² to a minimum of 6.5m² at the discretion of the inspecting officer where a communal living room or kitchen with dining area exists. This will depend on the size and nature of the communal facilities and adequate standards of management. Health and Safety issues will also be taken into consideration when accepting reduced space standards.

Two or more room units

As a guide, rooms in two or more roomed units of accommodation should meet the following sizes:

Living room/kitchen	10m ²
Living room	8.5m ²
Bedroom	6.5m ² (minimum size)

Discretion may be applied by the inspecting officer in regard to room sizes providing the proposed layout is acceptable and the aggregate habitable floor area of the rooms is not less than 15m²

Two Person Units of Accommodation

One room units

- where kitchen facilities located in the room 16m²
- where separate exclusive or shared kitchen facilities 13m²

*Not normally suitable for persons who are not either married couples or co-habitees
Room sizes may be reduced by up to 2m² at the discretion of the inspecting officer where a communal living room or kitchen with dining area exists. This will depend on the size and nature of the communal facilities and adequate standards of management. Health and Safety issues will also be taken into consideration when accepting reduced space standards.*

Two or more room units

As a guide, rooms in two or more roomed units of accommodation should meet the following sizes:

Living room/kitchen	13m ²
Living room	10m ²
Living / bedroom	13m ²
Bedroom	10m ² (minimum size)

Discretion may be applied by the inspecting officer in regard to room sizes providing the proposed layout is acceptable and the aggregate habitable floor area of the rooms is not less than 20m²

AMENITY STANDARDS

Heating

Each unit of living accommodation must be equipped with an adequate means of space heating.

All rooms shall be provided with a fixed radiator, as part of a space heating system, or sufficient fixed appliances capable of achieving and maintaining temperatures of 21° C in each bedroom / bed-sitting room and bath / shower-room and 18° C in all other rooms and

circulation areas when the external temperature is -1°C . This provision should be efficient, safely designed and be so sited and guarded as to minimise the risks to health and safety. Where a central heating system is provided to comply with the heating requirements it must be operational at all reasonable times such that each separate occupancy may be capable of achieving and maintaining a temperature of 21°C .

A secondary heating appliance may be required in bathrooms / shower-rooms where the central heating system is not available at all times. This may be a wall mounted high level electric fan heater, with pull cord operation and capable of achieving and maintaining temperatures of 21°C ; an isolating switch for each appliance should be located outside of the rooms.

A competent person shall maintain all such heating systems or appliances annually.

Kitchens

Exclusive kitchen facilities

Units of living accommodation containing kitchen facilities for the exclusive use of the individual household, and there are no other kitchen facilities available for that household, must be provided with a kitchen of such layout and size and equipped with such facilities so as to adequately enable occupants to store, prepare and cook food. Kitchens shall be equipped with appropriate extract fans and fire blankets.

Kitchen facilities should comprise the following: -

(a) Cooking appliance(s) and equipment: -

A cooker with a minimum of two burners / hobs (four burners / hobs if provided for more than one person), an oven and a grill. Alternatively, a microwave oven may be substituted for one or two of the burners / hobs, as appropriate.

(b) Kitchen sink: -

A stainless steel (or similar) sink and drainer in good condition and of minimum overall dimensions 500×1000 mm set on a stable base with a constant supply of hot and cold (drinking) water. A two course tiled splash-back shall be provided to each kitchen sink. The sink shall be connected to the drainage system via a suitable trap.

(c) Food Preparation surface(s):

A worktop of smooth and impervious material of minimum size 600×1000 mm.

(d) Electrical sockets: -

Two twin outlet power sockets in addition to any serving major appliances set at a convenient height and safe position above the worktop.

(e) Storage of kitchen utensils and crockery: -

A storage cupboard / drawer unit of minimum capacity 0.16m^3 .

(f) Storage for food: -

A refrigerator, incorporating a freezer compartment, of minimum overall capacity of 0.15m^3 .

Note: Items (a) and (f) above shall not apply in relation to any unit of accommodation where –

(i) the landlord is not contractually bound to provide such appliances or equipment;
(ii) the occupier of the unit of accommodation is entitled to remove such appliances or equipment from the HMO;

or

(iii) the appliances or equipment are otherwise outside the control of the landlord.

Shared kitchen facilities

Where all or some units of living accommodation within an HMO do not contain exclusive kitchen facilities -

(a) there must be a kitchen, not more than one floor distant from any user, accessible from a common area and of such layout and size and equipped with such facilities so as to adequately enable those sharing the facilities to store, prepare and cook food, or alternatively, where the kitchen is more than one floor distant from a unit of living accommodation it must have an integral or adjoining dining space that would allow at least 4 persons to eat a meal at the same time;

(b) the kitchen must be equipped with the following facilities, which must be fit for the purpose and supplied to a ratio of one set of facilities for each three units of living accommodation or a maximum of 5 persons sharing them;

(c) there shall be no more than two sets of facilities in any one kitchen.

Where the kitchen is more than one floor distant from a unit of living accommodation it must have sufficient space for the provision of a suitable dining table and sufficient chairs to allow meals to be eaten in the kitchen.

Each set of facilities should comprise the following: -

(a) Cooking appliance(s): -

A cooker with a minimum of four burners / hobs, an oven and a grill. Where 6 or 7 persons are sharing a set of kitchen facilities an additional cooking appliance, e.g. a microwave with grill / conventional oven facility must be provided.

(b) Kitchen sink: -

A stainless steel (or similar) sink and drainer in good condition and of minimum overall dimensions 500 x 1000 mm set on a stable base with a constant supply of hot and cold (drinking) water. A two course tiled splash back shall be provided to each kitchen sink. The sink shall be connected to the drainage system via a suitable trap.

(c) Food Preparation surface(s): -

A worktop of smooth and impervious material of minimum size 600 x 1500 mm.

(d) Electrical sockets: -

Two twin outlet power sockets in addition to any serving major appliances set at a convenient height and safe position above the worktop.

In addition, the following facilities must be provided either within the shared kitchen or within each unit of living accommodation –

(a) Storage for food or kitchen utensils and crockery: -

Storage cupboard(s) of minimum capacity 0.16m³.

(b) Storage of food: -

A refrigerator, incorporating a freezer compartment, of overall capacity 0.15m³.

A shared kitchen shall be provided with covered refuse storage container(s).

A shared kitchen shall be equipped with fire blanket(s) and fire door(s).

General

All kitchens must be accommodated within a room or space of conventional construction that is adequately insulated, heated and equipped with appropriate extract ventilation.

Toilet and Washing Facilities

4 Exclusive use facilities

Units of living accommodation having facilities for the exclusive use of the individual household, and there are no other facilities available for that household, must be provided with facilities comprising -

An enclosed and adequately laid out and ventilated room with a toilet, bath or fixed shower and wash basin supplying adequate cold and constant hot water provided for the exclusive use of the occupiers of that unit either -

- (a) within the living accommodation; or
- (b) within reasonable proximity to the living accommodation.

Each bathing / toilet facility shall not be entered from another room, except in respect of an “en-suite” arrangement. An “en-suite” bathing / toilet facility shall be acceptable as the sole provision for any accommodation only where that accommodation is of the “studio” or one bedroom type.

Shared facilities

Where all or some of the units of living accommodation in an HMO do not contain bathing and toilet facilities for the exclusive use of each individual household, shared facilities must be provided comprising –

- (a) where there are 5 or fewer persons sharing those facilities there must be at least one bathroom with a fixed bath or shower, a wash basin (suitable for personal washing) and a toilet (which may be situated within the bathroom);
- (b) where there are 6 or more persons sharing those facilities there must be a minimum of one bathroom with a fixed bath or shower, one toilet and one wash basin (suitable for personal washing) for every 5 persons or lesser number. The second shared toilet must be within a compartment separate from the bathroom. Where 3 or more shared toilets are required at least one

third shall be provided within a compartment separate from bathrooms.

- (c) where reasonably practicable there should be a wash basin (suitable for personal washing) in each unit of living accommodation other than a bed-sit unit in which a sink has been supplied as part of the unit's kitchen facilities and having regard to the age and character of the HMO, the size and layout of each unit and its existing provision for wash-hand basins, toilets and bathrooms.

General

Each toilet must be provided with a wash basin suitable for hand washing within the toilet compartment.

All baths, showers and wash basins in an HMO must be suitably equipped to provide an adequate supply of cold and constant hot water. Baths to be of minimum dimensions 1700mm x 760mm and showers of minimum dimensions 800mm x 800mm. Wash basins, other than those provided exclusively for hand washing in association with separate toilets, to be of minimum dimensions 560mm x 430mm.

A two course tiled splash back should be provided to each wash basin and bath. Any showers provided should have fully tiled walls or be a complete self-standing cubicle.

All bathrooms in an HMO must be suitably and adequately heated and ventilated.

All bathrooms and toilets in an HMO must be of an adequate size and layout.

All baths, toilets and wash basins in an HMO must be fit for the purpose.

All bathrooms and toilets in an HMO must be suitably located in or in relation to the living accommodation in the HMO. Shared facilities should be provided not more than one floor distant from any user and to be accessible from a common area.

MEANS OF ESCAPE AND OTHER FIRE PRECAUTIONS

The property shall be provided with an adequate means of escape from fire, together with other fire precautions including, so far as necessary, a fire detection and warning system and an emergency escape lighting system, to the satisfaction of the local authority.

National guidance on fire safety provisions for HMOs may be obtained by reference to a document published by LACORS (the Local Authorities Coordinators of Regulatory Services) in July 2008, HOUSING – FIRE SAFETY 'Guidance on fire safety provisions for certain types of existing housing'. A PDF version of the guidance can be downloaded free from the LACORS website at

www.lacors.gov.uk/lacors/NewsArticleDetails.aspx?id=19844 .