

# Communities Scrutiny Commission

## 7 December 2020



**Report of:** Director of Housing and Landlord Services - GANDR

**Title:** Houses in Multiple Occupation (HMOs) in the Private Rented Sector

**Ward:** Citywide

**Officer Presenting Report:** Tom Gilchrist, Gary Collins, Nick Carter

**Contact Telephone Number:** 0117 352 1975

### **Recommendation:**

Update only for information only.

### **The significant issues in the report are:**

This report provides a summary of the work currently being undertaken by the council to tackle issues relating to HMOs in the city.



## 1 Summary

1.2. Communities Scrutiny commission has requested that officers set out how the Council tackles issues presented by the 14,000 Houses in Multiple Occupation (HMOs) in the city that provide housing for people in a Private Rented Sector of around 62,000 properties. This report explains the regulatory framework and the actions taken to address licensing and standards, planning, noise and waste related antisocial behaviour sometimes found in HMOs.

## 2. Introduction

2.1. Bristol's private rented sector has grown dramatically in the past 20 years with 30% of the City's population living in the sector compared with 12% in 2001. This has had two major impacts on the City:

- Firstly, an increase in the proportion of the City's housing stock that is exposed to the hazards and poor-conditions historically associated with the private rented sector.
- Secondly, an increase in the amount of shared rented housing accommodating-a largely younger, more transient population. This increase is particularly concentrated in certain areas around the City centre bringing about fundamental changes in the make-up of local communities and a growth in environmental pressures – typically noise nuisance, waste management and parking issues.

2.2. Two groups in Bristol find their quality of life seriously challenged by these changes: private rented tenants are more likely to face unacceptable safety hazards and poor conditions in their living accommodation; and long-established communities facing radical changes to their neighbourhoods with much greater concentrations of multiple occupation housing bringing more noise nuisance, waste management issues and parking problems.

2.3. These two impacts are distinct and demand different responses from the Council if they are to be addressed effectively. The legislative tools being employed are:

- Focused use of rented accommodation licensing powers to identify properties that are in shared rented use to enable comprehensive survey of their safety and quality to be made. This provides the information for much more accurate targeting of enforcement resources to eliminate unacceptable hazards and living conditions.
- Expansion of areas of the city covered by Article 4 Directions, which has the effect of requiring planning applications for changes of use from dwelling houses to small HMOs, a change of use that would normally come under the definition of "permitted development". Alongside this there has been the adoption of a Supplementary Planning Document (SPD) which provides further detail on existing planning policies and brings tighter planning control on the further expansion of shared accommodation in defined areas, primarily providing greater definition of what may constitute a "harmful concentration" of this type of accommodation.

2.4. Neither of these measures have immediate effect (licensing schemes have a life of five years with some properties not being inspected until later in that five-year period, and the Article 4 planning

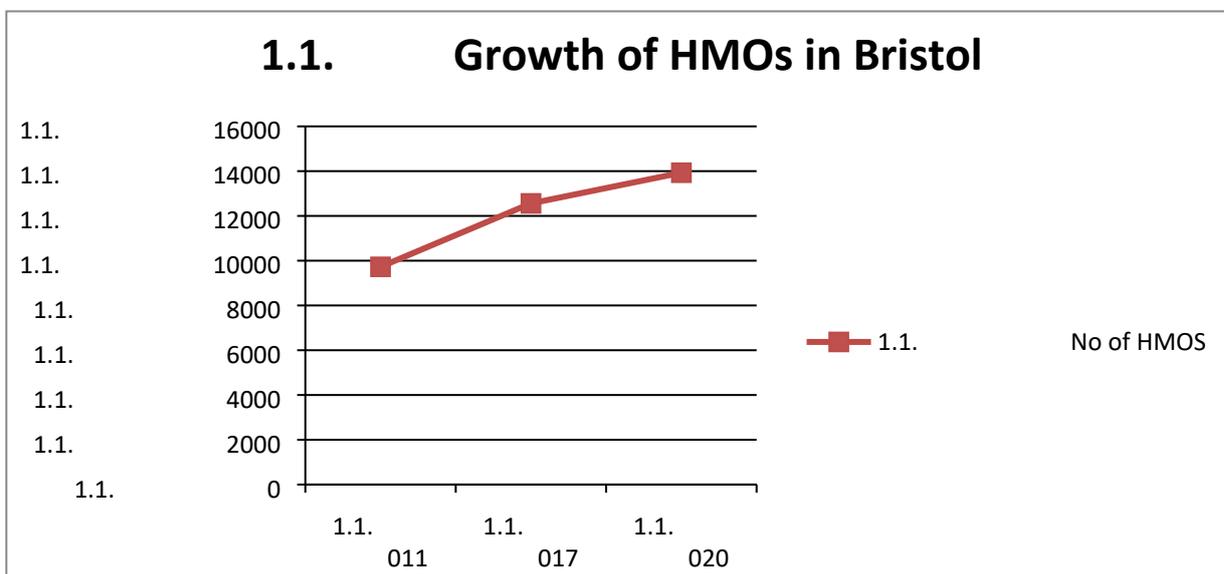
controls can only address future changes and are not retrospective in their effect). An immediate response to environmental nuisance is provided by the Neighbourhood Enforcement Team (NET); however in the most difficult cases, where prosecution is required, time is needed to build up strong legal cases if they are to be effective.

2.5. This report provides outlines on work on the work of three Council service areas to three strategic responses:

- The use by the Private Housing Service of licensing schemes and Housing Act enforcement powers to address examples of unacceptable housing conditions;
- The use by the Planning Service of the new Supplementary Planning Document (SPD) *'Managing the Development of Houses in Multiple Occupation'* designed to address the potential of even higher concentrations shared housing in certain parts of the City;
- The use by the Neighbourhood Enforcement Team of environmental protection enforcement powers to address day-to-day environmental problems of noise nuisance and ineffective waste management.

### 3. Condition of HMOs in the PRS (Private Rented Sector)

3.1. The PRS in Bristol has grown significantly from 12.2% in 2001 to 30.3% in 2020. This figure compares to the national figure of 19%. Of the 61,580 properties in the PRS in Bristol, 13,929 are Houses in Multiple Occupation.



3.2. Different regulatory regimes have different definitions for HMOs. The Housing Act 2004 definition of an HMO is a house or flat or building let to 3 or more people from two or more households sharing facilities like kitchen, bathroom or toilet facilities i.e. shared accommodation. Typically they are shared houses, flats or bedsits.

- 3.3. The Planning definition of an HMO however is small shared houses or flats occupied by between 3 and 6 unrelated individuals who share basic amenities.
- 3.4. The PRS and HMOs in particular, are in the poorest physical condition compared to other accommodation and suffer from variable property management standards. These issues in combination with a transient population with little or no connection with an area can sometimes lead to an increase in anti-social behaviour and crime.
- 3.5. The Building Research Establishment (BRE), Dwelling Level House Stock Modelling Report, October 2020 identified that:

- In some wards of Bristol the concentration of HMOs in the private rented sector is much higher than the citywide average - Bishopston & Ashley Down 44%; Horfield 41%; Cotham 38%, Lockleaze 33%; Clifton Down 31%; Ashley 30%;
- In four wards there are estimated to be over 1,000 HMOs – Ashley (1,098), Central (1,200), Clifton Down (1,042), and Cotham (1,046)

Table 1: BRE Report 2020: Number of HMOs and percentages of those with hazards; disrepair and those HMOs occupied by tenants in Fuel Poverty (Low Income/High Cost definition)

HMOs in Bristol		Number	Percentage HMOs	Citywide Average	PRS
Number of Dwellings		13,929	23%		
HHSRS Category 1 Hazards present	All Hazards	1,797	12%	12%	
	Excess Cold	556	4%	3%	
	Falls	802	6%	5%	
Disrepair		424	3%	4%	
Fuel Poverty		3,203	23%	17%	

#### 4. HMO Licensing

- 4.1. HMOs falling within the scope of the nationwide ‘Mandatory Licensing Scheme’ are those where five or more people forming different households’, share or lack facilities such as kitchen or bathrooms. Since the introduction of the Mandatory licensing scheme in 2004 until 2018, only HMOs of three storeys or more were included. However in 2018 the number of stories was removed from the definition, increasing significantly the number of HMOs falling within the scope of the ‘Mandatory Licensing Scheme’. In Bristol this increased the number of mandatory HMOs from 1,550 to 2,400.
- 4.2. In addition to the duty to administer the national ‘Mandatory Licensing Scheme’, local authorities have the power to declare Discretionary Licensing schemes (known as Additional Licensing – where a wider definition of HMOs require a licence (typically in defined areas). In Bristol three Additional licensing Schemes have been declared which have brought more HMOs into the scope of licensing locally: firstly in the Stapleton Road area (this scheme completed its five-year life in 2018), secondly in 2016 in the Eastville and St George wards, and most recently in 2019 across the 12 central wards of the City.
- 4.3. Property licensing is a mechanism for tackling problems of poor management and housing conditions in privately rented properties. It helps tenants, residents and members of the public

where landlords have failed to properly manage their tenancies. The key objective of licensing is to improve the condition of tenant's homes.

#### 4.4. Some of the issues facing private renters in Bristol today (Images below)



### 5. Work to improve conditions in HMOs under the Housing Act

5.1. In addition to licensing, Local Authorities have a number of other ways in which to monitor and improve HMOs:

- Through the use of the minimum legal powers for all rented accommodation;
- Regulations controlling the management of HMOs;
- Enforcement and the promotion of voluntary schemes such as the West of England (WoE) Rental Standard.

### 6. Legal framework applying to condition and management of HMOs

6.1. The Housing Act 2004 sets out a very basic, risk based approach to all privately rented properties whether they are an HMO or not. To take action the Local Authority needs to be satisfied that a serious hazard exists where, within a 12 month period, there is a likelihood that someone effected by the risk needing medical attention. This is known as the Housing Health and Safety Rating System (HHSRS.) There is no criminal offence for letting a property which is not free of serious hazards, however a Local Authority is able to require a landlord to remedy serious hazards under the HHSRS and failure by the landlord to comply with this requirement, could lead to prosecution.

6.2. There are also minimum electrical safety standards for rented properties for new tenancies which apply from July 2020.

6.3. All HMOs falling within the Housing Act definitions whether they require a licence or not also have to be managed in accordance with Management Regulations. These place legal duties on landlords to manage and maintain HMOs, placing duties on them to make sure they are safe and clean to use

and that the tenants are able to follow the Council’s requirements in relation to refuse and recycling.

Table 2: Outcomes of Additional licensing schemes

Scheme Name	Stapleton Road	Eastville/St George	Central Area (so far)
Start Date	Apr-13	Jul-16	Jul-19
Additional Licence Applications received	194	260	3191
Inspections	203	220	310
HMO Service Requests Received	119	279	909
Notices Served	46	51	57
Hazards Identified	126	161	7
Breaches in Management Regulations	183	262	200
Civil Penalty Notices Issued	1	2	0

## How the Private Housing Service regulates HMOs:

### 7. Private Housing policies

7.1. How we enforce legal requirements for rented properties is set out in the Private Housing [Enforcement Policy](#) and [Policy in relation to basic standards under the Housing Act its objectives](#).

### 8. Non-Licensed HMO Reactive complaints service

8.1. HMOs that are not subject to licensing are dealt with by the Council on an individual basis (responding to complaints from tenants/others). Landlords must adhere to minimum legal requirements for all rented properties and the management of HMOs.<sup>1</sup> The former dealing with serious hazards in the property and the latter ensuring the general maintenance and upkeep of the premises is satisfactory.

8.2. Where a complaint is made in relation to the conditions or management of an HMO an assessment is made whether or not we have the power to help the tenants concerned and if so the Regulation Team will investigate the complaint made.

### 9. Inspection programme for licensed HMOs

9.1. Where a property requires a licence, the Licence Inspection Team will inspect the property to check if it meets the licensing standards for these HMOs. If it doesn’t then

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<sup>1</sup> Part 1 Housing Act 2004 (health and housing safety rating scheme) and the Management of Houses in Multiple Occupation (England) Regulations 2006.

the licence holder will be required to improve the property within a certain period of time.

9.2. Licensing of HMOs allows the Council to require higher than the minimum basic HHSRS standards in relation to their management, use and condition. It also allows the Council to regulate who is able to be a licence holder or manager of a property and decide whether that person is Fit and Proper to hold the licence or be a manager. If there are unsatisfactory management arrangements, licences can be refused or revoked. This power is used in a small number of cases to protect tenants against rogue landlords.

Table 3: The table below gives a breakdown of the measures taken to improve licensed HMOs this year **(1 April to 31 Oct 2020)**

HMO Licensing Scheme	Licences issued	Inspections	Inspection schedules	Informal Improvement Notices (Cat 1 and Cat 2 hazards)	Management Regulation schedules
Eastville and St George West (Additional)	19*	7	9	1	7
Central (Additional)	1,342	202	184	36	120
Mandatory	446	265	278	39	203
<b>Totals</b>	<b>1,807</b>	<b>474</b>	<b>471</b>	<b>76</b>	<b>330</b>

\* NB most licences for this scheme were issued in previous years as the scheme started in 2016.

## 10. Identifying unlicensed HMOs

10.1. It is important to understand there is no single database which gives an accurate up to date picture of where rented properties are. When licensing schemes are being considered a number of sources are used to establish an overview of the potential licensable HMOs in a specific area(s). The primary source used to gather this information is from BRE Dwelling Level Housing Stock Modelling Report.

10.2. Following the declaration of a scheme and the deadlines for the submission of licence applications, those landlords who are believed should have licensed their HMOs, but have not done so, are investigated. These investigations continue throughout the life of the schemes (five years) where checks and searches of many databases and information sources to identify possible unlicensed properties. These include Land Registry, Benefits, Council Tax, Electoral Register, Energy performance property records and where appropriate National Anti-Fraud Network data base. Following the 'desk-top' investigations the next stage in the process will be to prioritise the outstanding investigations and prioritise properties for a visit/inspection (subject to COVID restrictions). Officers will then assess occupancy levels and tenant/landlord details to determine if the property is licensable and also assess property condition.

10.3. The main objective of the investigation work is to ensure that these properties are licensed and improved to a decent standard, above the national minimum HHSRS requirements. However, where landlords who we believe should be licensing their HMOs, do not engage with the council's investigators they are referred to the Regulation team for possible enforcement action.

10.4. The 178 licence applications received following investigations undertaken in 2020 represent 19% of the potential unlicensed properties in the Central Additional licensing scheme. These investigations have identified properties where no license is required together with other properties that are exempt from licensing as they are registered providers or religious community housing.

10.5. The table below sets out the ‘desk-top investigations undertaken for the current schemes in operation this year.

Desk-top licensing investigations (1 April to 31 October 2020).			
Investigations	Licence applications from investigations	Income from licence applications	Investigations referred for possible enforcement
961	178	£213,600	58

## Regulation and enforcement by the Private Housing Service

### 11. Proactive and Targeted Action

11.1. The Regulation Team take a more formal approach where landlords have not complied with informal requests to improve the condition or management of an HMO, focussing on licence enforcement, including unlicensed HMOs and where licence conditions are not met.

11.2. The Regulation Team may also target particular landlord agents or types of HMOs where particular serious regulatory failures are identified. This can mean formal legal action or sanctions are taken without giving an informal opportunity to rectify a situation.

### 12. Regulatory sanctions

12.1. There are a number of regulatory powers available to use where an HMO is not being managed, operated or licensed as it should be.

12.2. The offences relating to HMOs are technically very complicated and certain pieces of evidence must be obtained to be able to prove an offence has been committed. Officers carrying out criminal investigations are due to the serious implications required to make sure the investigations are compliant with the [Criminal Procedure and Investigations Act Code of Practice](#).

12.3. Where there is evidence of a criminal offence the Private Housing Service is required by law<sup>2</sup> to consider whether or not there is evidence to prove beyond all reasonable doubt and offence has been committed. The code makes it clear even through if the law may have been broken “*It has never been the rule that a prosecution will automatically take place once the evidential stage is met.*”<sup>3</sup> Officers must demonstrate that it would be in the public interest to prosecute and criminalise a landlord or agent to be able to take a case forward. These tests are scrutinised by the

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1.1. <sup>2</sup> [The Code for Crown Prosecutors](#)

<sup>3</sup> The Code for Crown Prosecutors para 4.10

courts and if cannot be demonstrated, the Council's case fails. The code we are bound to follow makes it clear that Where there is sufficient evidence the Council has powers to:

- Make a simple caution
- Take a prosecution to the magistrates court where there are unlimited fines; and for some offences;
- Make a Civil Penalty of up to £30,000.

12.4. Civil Penalty Notices are not like fixed penalty notices. The Council has to have the same level of proof as is required to go to court and it must also still be in the Public Interest to penalise the landlord. The amount of Penalty is decided by the Council in line with our [policy on determining the level of a civil penalty](#). There are appeal rights for landlords which are easy and inexpensive to invoke and many notices are subject to appeals to tribunal. The Private Housing Service has won all the appeals made against notices so far, however they do take up significant resources and so in addition to all the legal tests that must be met it is also important any civil penalty notice served will withstand an appeal in tribunal. These penalty notices can be an effect tool and some examples of recent ones are given below.

### **13. Prosecutions**

- Landlord in Avonmouth fined for serious fire safety breaches of management regulations - £87,500 fine.
- Landlords prosecuted for failing to return information required to identify whether a property requires a licence £10,500
- Landlord in Ashley being prosecuted for serious fire safety breaches including use of Aluminium Composite Material (ACM) inside a property and non-return of information under Management Regulations.
- Landlord being prosecuted for failure to licence a property and for failure to return documents demanded to determine whether a property was required to have a licence or not
- Following multiple convictions - Banning order applied for to ban a landlord for renting any properties for up to five years.

### **14. Civil Penalty Notices (CPN)**

- A Civil Penalty for circa £6,000 was issued to a portfolio landlord who failed to licence a property and let an attic room to tenants who could only access or escape using a ladder.
- A CPN was served on a landlord for failure to licence two flats in the same building. The fine was for £1,289.93 for two offences under section 95(1) and he eventually made two valid applications.
- A Civil Penalty Notice for £3,200 on a landlord for permitting occupation of more than the permitted number.

### **15. Rent Repayment Orders (RRO)**

- 15.1. Where a property has been found to be unlicensed or fails to meet the management regulations, a Rent Repayment Order can be made by a Tribunal to require the landlord to repay up to 12 months' rent to the tenants or where Housing Benefit has been paid, to the Local Authority. RROs are not able to be used where a landlord has failed to meet the licence conditions.
- 15.2. So far in 2020, three Rent Repayment Orders resulted in £31,000 being repaid to tenants where their landlords have been found to have not complied with offences related to HMO regulations or licensing requirements. Please note other rent repayment orders have been made but these were for offences that did not relate to HMOs.

### **16. Revocation and refusal of licences**

- 16.1. Where a landlord breaches licence conditions or there is a serious breach, in addition to being liable for prosecution they can also have their licence revoked or refused. This is a serious step as it means that the landlord has to make alternative arrangements for the management of their property without them involved. Currently, proceedings are underway to revoke and refuse around 20 licences where portfolio landlord believed not to be Fit and Proper partly due to them failing to meet their obligations to manage their property.

## **17. Other Enforcement Action**

- 17.1. In a large city centre HMO Emergency Remedial Action was taken to repair fire alarms and instate a 'waking watch' (fire wardens patrolling the premises at night) to protect around 80 residents who were at imminent risk from fire. This led to Prohibition Notices being made by Avon Fire and Rescue who are now prosecuting the then owner for alleged failure to comply with the prohibition notices.
- 17.2. The Private Housing Service also uses powers under the Protection from Eviction Act and Trading Standards legislation to protect tenants. This is not subject of the report so no further detail provided.

## **18. Properties which are not HMOs**

- 18.1. Certain types of buildings or parts of buildings are not HMOs. <sup>4</sup> These broadly speaking include:
- Buildings managed or owned by public sector bodies. (i.e. local authority housing, and properties managed or owned by registered social landlords, police authorities, Fire and Rescue authorities and the NHS);
  - Buildings where the residential accommodation is ancillary to the principal use of the building i.e. caretaker accommodation
  - Buildings occupied by religious communities;
  - Student accommodation managed and controlled by educational establishments<sup>6</sup>;
  - Buildings regulated otherwise than under the Act, such as care homes;
  - Bail hostels;
  - Hostels - the description of which are specified by law;
  - Buildings entirely occupied by freeholders or long leaseholders;
  - Buildings occupied by owners;
  - Buildings occupied by no more than two, unrelated people;
  - Buildings occupied by a resident landlord with no more than two lodgers;
  - Buildings which are Housing Co-operatives.

## **19. HMOs which are exempt from Licensing**

- 19.1. Before declaring an area as an Additional Licensing scheme and subject to licensing the Council are legally required to consider whether organisations managing properties in the area which are

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<sup>4</sup> Schedule 14 of the Housing Act 2004

subject to government approved codes of practice, are being complying with the requirements of the codes<sup>5</sup>.

19.2. The relevant codes of practice are approved under s233 of the Housing Act and relate to larger developments of student accommodation not managed and controlled by educational establishments such as universities. E.g. those properties signed up to the ANUK/Unipol National Code.

19.3. The definition of “larger development” is a development where 15 or more students live in one building in rooms off a central corridor, in cluster flats, or in self-contained flats.

19.4. In addition, under the Housing Act 2004, any House in Multiple Occupation which is owned and managed by Bristol University or University of the West of England are also legally exempt from the Additional Licensing Proposal.

## **20. Overcrowding in HMOS**

20.1. For non-licensable HMOs no standards are published by the Council in relation to minimum room sizes and number of amenities. The main reason for this is the Private Housing Service use of minimum Housing standards (HHSRS) to intervene where rented accommodation is severely overcrowded.

20.2. Licensed HMOs must comply with the Council’s ‘room size and amenity standard’. The minimum size for bedrooms and shared facilities is determined by the number of occupant. In addition to the Council’s standard, new minimum room sizes for licensed HMOs were introduced by the Government in 2018. When licences are issued, landlords are given up to 18 months to comply.

20.3. Following inspections of licensed HMO’s, the number of these properties that require action to reduce the number of occupants is relatively small. However, although these instances are dealt with and recorded the information this statistical information is not retrievable without investigating each individual case.

20.4. With regard to undersized rooms, the landlord will be required to either prohibit the use of the room for sleeping, change the layout to increase the size of reduce the number of occupants. Where there is a lack of facilities for the number of occupants, the landlord will be required to consider how the facilities can be increased. This could be met through the provision of additional amenities. If this is not achievable then the number of occupants will be reduced in line with the amenities standard.

20.5. Numbers of Service Requests in relation to overcrowding in HMOs during April to Oct 2020 is 1. For unlicensed HMOs unless tenants or local residents complain about overcrowding, the service will be unable to investigate, unless it is a licensable HMO due an inspection.

## **21. Reducing the impact of licensed HMOs on local communities**

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<sup>5</sup> Section 233, Housing Act 2004

- 21.1. The majority of regulatory controls and focus of the Private Housing Service is to improve the living standards of HMOs for their occupiers. Consideration is also given to the impact these types of rented accommodation have on neighbours and community cohesion.
- 21.2. There are licence conditions which relate to the impact of the way an HMO is managed in relation to people in its immediate vicinity. These conditions require the landlord *'to take reasonable and practical steps within their power to assist with problems arising in relation to antisocial behaviour arising from occupiers or visitors to the licensed HMO, which is an annoyance or nuisance to people in the immediate vicinity of the HMO'*.
- 21.3. Where there are complaints about noise, waste or other ASB arising from a licensed HMO these are referred to Neighbourhood Enforcement Team (NET) to investigate.
- 21.4. Where NET or other council services are dealing with issues arising from their investigations of a licensable HMO they are able to refer cases to Private Housing to assist them by considering whether the landlord is complying with licence conditions and whether action can be taken to address tenant's behaviour.

## 22. Waste and recycling issues

- 22.1. There is currently an agreed advice and guidance for dealing with these matters (see Appendix 1 Briefing note – Neighbourhood issues - Mandatory and Additional Licensing) 2018
- 22.2. Licensed HMOs have a condition now which requires the landlord to have enough space and arrangements for tenants to be able to comply with the Council Waste and recycling collections in relation to a property.
- 22.3. It is the tenant's legal obligation to recycle and present their waste as the Waste Management Authority part of the Council requires. General requirements are published but in some cases where there are physical limitations other non-standard waste collection arrangements are put in place.
- 22.4. If these arrangements are not followed then the Council's Neighbourhood and Enforcement Team investigate and have powers to require occupiers to present their waste in the appropriate way. As above if this action is taken and tenants repeated fail to meet their obligations then cases can be referred to Private Housing teams.
- 22.5. There are a small number of cases referred to Private Housing for consideration. So far no prosecutions under licensing conditions have been found to have met the threshold for formal legal action in relation to ASB. Private housing has also made 11 referrals to NET – 6 related to rubbish and 5 to noise complaints.
- 22.6. Powers that are available in relation to waste, noise and ASB in relation to licensed HMOs have been reviewed to be clear what powers the Council has available to address the issues raised in relation to licensed HMOs. The legal advice is clear-) there are constraints on when we can use HMO licensing powers to require the landlord to take action and more importantly there are other powers available to the Council to address waste problems from tenants. The legal advice on housing enforcement on these matters is outlined in Appendix 2.
- 22.7. Private Housing are currently carrying out work with NET and Waste Management teams in particular problem locations to see how a joint approach may improve situation for local residents.

This approach is very resource intensive and often requires multiple stranded actions to manage the situation. Commonly even though a problem is immediately resolved, it can frequently reoccur with further intervention needed to manage the problem.

### **23. Non licensable HMOs and waste**

- 23.1. As mentioned above there are regulations covering the management of all HMOs whether or not they require a licence.
- 23.2. Waste and recycling - Duties on managers on all HMOs whether or not they have or require a licence.
- 23.3. Managers of HMOs have a legal duty to ensure that sufficient bins or other suitable receptacles are provided for their tenants taking into account the collection arrangements at that property.
- 23.4. Tenants though are responsible for ensuring that their refuse and recycling are put out for collection in line with what is required by the Council.
- 23.5. It is the duty of the manager to maintain common parts, fixtures, fittings and appliances.
- 23.6. The manager must also ensure that any garden belonging to the HMO is kept in a safe and tidy condition. This does not include the pavement outside of a property.

#### **Duty on occupiers of HMOs**

- 23.7. Tenants must conduct themselves in a way that will not hinder or frustrate the landlord to carry out their obligations under the management regulations. This includes, storing and disposing of litter in accordance with the arrangements set out by the landlord which are necessary to meet the recycling or waste disposal requirements made by the Council.
- 23.8. What does this mean in practice if it is found that tenants at a property are not putting their waste out as required?
- 23.9. A tenant can be prosecuted under the Housing Act if there is evidence they have not complied with these requirements. However, in practice, it is difficult to prove a particular tenant has not put waste in the bin or who is responsible for causing the receptacle to overflow with waste. . There is only a power to prosecute the alleged offender under the Act - there is no power to issue a warning or a notice for example there is no FPN option.
- 23.10. In contrast, the powers under Environmental Protection Act (EPA) sections 46 and 47 are available and specifically designed to deal with low level waste issues. The two legislative regimes have been discussed with legal services. Their view was that it would not be appropriate to use the Housing Act to routinely criminalise a tenant for this extremely low level conduct. Further, it is very unlikely that the vast majority of cases would be in the public interest to pursue in this manner. The Housing Act is designed to ensure HMOs are managed correctly. There is, as mentioned above, almost a 'last resort' option to penalise tenants who refuse to comply with a 'good management' regime. It is suggested that this provision should be reserved for a tenant deliberately refusing to comply with requirements; a refusal that results in a dangerous situation – for example persistently blocking a fire exit with immovable objects. The EPA has a specific section relating to waste and how it should be managed by a household in terms of receptacles etc. It is suggested this is the more appropriate regime to deal with the issues being discussed.

## 24. The Interaction between the Planning and Property Licensing regimes

- 24.1. Planning and licensing are separate regimes. The lack of license cannot constitute a reason to refuse planning permission, and it is also the case that when determining a HMO licence application it is not a requirement of the Housing Act, to consider whether the property has planning consent.
- 24.2. Appendix 3 has a map showing areas in the city covered by Additional/Mandatory HMO licensing and Article 4 directions. There are some small areas which are not covered by both regulatory controls. This differences are partially due to ward boundary changes introduced in 2016 but also because licensing declarations are based on ward boundaries and meeting the licensing designation criteria and not just on HMO concentrations.

## 25. Housing legislation

- 25.1. Housing legislation is used to regulate licensable HMOs. Part 2 of the Housing Act 2004 sets out the criteria for houses in multiple occupation that are required to be licensed. Amongst other things the act is also explicit in the criteria to be adhered to when granting or refusing a licence.

## 26. Housing and planning legislation links

- 26.1. There are some links within the two regimes, however, these two pieces of legislation are designed to achieve different purposes and were not designed to be interdependent on each other.
- 26.2. That said, there is a lack of a joined-up approach of housing and planning legislation in relation to HMOs. A letter from the Private Housing service sent to the Ministry of Housing, Communities and Local Government in 15 May 2019 highlighted the problems caused by the current regulatory framework along with some solutions..
- 26.3. The only action taken to-date is to add the following paragraph to the above HMO guidance:
- 26.4. “We actively encourage local authorities to ensure planning permission has been given before issuing a licence. Wherever possible we recommend processing consents in parallel, to resolve any issues as early as possible”.

## 27. Legal advice

- 27.1. Discussions with Legal Services have confirmed the following:
- When Private Sector Housing receives a HMO licence application it must determine the application (grant or refuse) in accordance with Housing Act 2004.
  - Following submission of a licence application if the property requires planning consent to operate as a HMO but does *not* have the consent this cannot be taken into consideration when determining the licence application.
  - Where a HMO *has* planning consent and requires a HMO licence it cannot operate without the relevant licence (Mandatory, additional) as this is a criminal offence (Housing Act 2004). If the relevant licence application has not been submitted, action will be considered in accordance with the Private Housing Enforcement Policy 2018, where appropriate.

- If a HMO *is* licensed but does *not* have the required planning consent this is a matter for planning enforcement.

## 28. Information sharing between housing and planning

- 28.1. Every quarter Private Housing sends a list of licensed HMOs to Planning to map on the HMO Planning tool to enable checks to be made on harmful concentrations of existing HMOs when considering new HMO planning applications.
- 28.2. In return Planning sends to Private Housing a list of HMO Planning decisions from the previous quarter which is then be checked against Private Housing records to ensure that a licensable property has the appropriate licence in place and if not follows up to ensure the landlords make a licence application.

## 29. Legislative Change

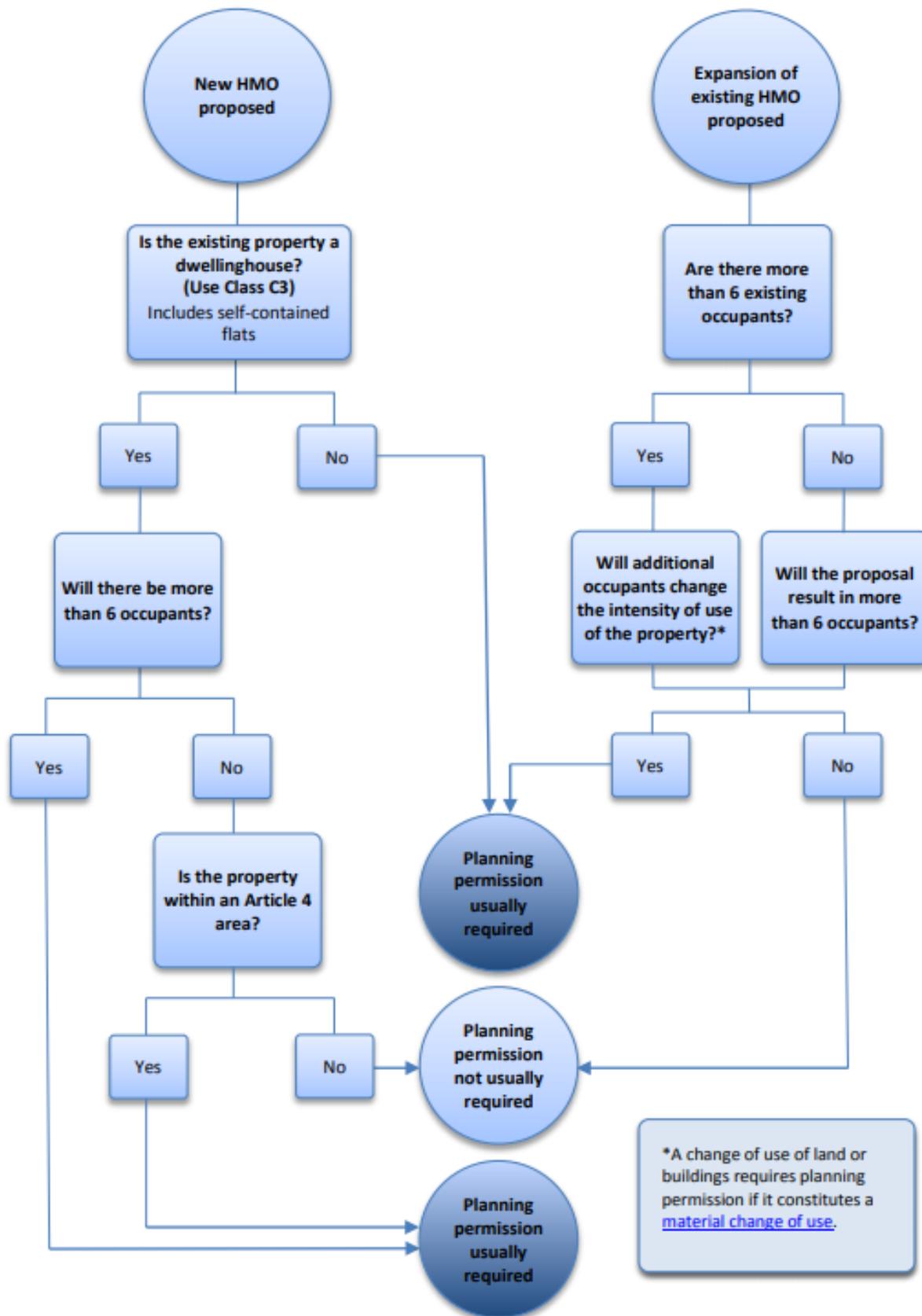
- 29.1. Without a change in legislation, we believe the arrangements in place, bridge the gap between the two regulatory regimes and do link the work of Private Housing licensing to Planning enforcement, giving the planning enforcement team to take the appropriate enforcement action under planning regulations.

## 30. Planning Legislative Background

- 30.1. Under planning legislation, the requirement to obtain planning permission covers not only new building work but also changes in use of buildings or land.
- 30.2. The Use Classes Order places uses of land and buildings into various classes. Changes of use within a use class do not require an application for planning permission. In addition, there are also separate provisions that allow for changes of use between certain classes in the Order without the need for planning permission. These are set out in separate legislation – the General Permitted Development Order – and are known as permitted development rights.
- 30.3. An amendment to the Use Classes Order in April 2010 introduced a definition of small-scale HMOs into the planning system. Dwelling houses and small HMOs are covered by the following classes in the Use Classes Order:
- Class C3: Dwelling houses – this class is formed of 3 parts:
    - C3(a): those living together as a single household as defined by the Housing Act 2004 (basically a ‘family’);
    - C3(b): those living together as a single household and receiving care, and
    - C3(c): those living together as a single household who do not fall within the C4 definition of a house in multiple occupation.
  - Class C4: Houses in multiple occupation (3-6 occupants) – in broad terms, the C4 class covers small shared houses or flats occupied by between 3 and 6 unrelated individuals who share basic amenities.

- 30.4. In October 2010, amendments were made to the General Permitted Development Order. These changes gave permitted development rights for changes of use from a dwelling house (Class C3) to a small HMO (Class C4).
- 30.5. Large HMOs (those with more than 6 people sharing) are unclassified by the Use Classes Order. In planning terms they are described as being sui generis (of their own kind). As a result, a planning application will be required for a change of use from a dwelling house to a large HMO or from a Class C4 small HMO to a large HMO where a material change of use is considered to have taken place.
- 30.6. Whilst a planning application is therefore not always required for the development of a small HMO falling within Class C4, as with most types of permitted development rights, local authorities are able to use powers, in the form of Article 4 Directions, to remove these rights and require planning applications for such changes of use in defined areas. Article 4 Directions relating to HMO development are in force in parts of the City and this is discussed further below.

The diagram below summarises the requirement for planning permission:



31. Article 4 Directions

- 31.1. The Council has introduced Article 4 Directions which remove permitted development rights that allow a dwelling house (Class C3) to change to a small HMO (Class C4) without the need for planning permission. The first Article 4 Directions were introduced in December 2011 within the wards of Clifton East, Cotham, Cabot, Ashley and Lawrence Hill (based on ward boundaries pre-May 2016).
- 31.2. Further Article 4 Directions were introduced in October 2012 within the wards of Clifton and Redland (based on ward boundaries pre-May 2016).
- 31.3. The continuing increase in the numbers of HMOs citywide since 2014 led to a review of Article 4 Direction coverage. This has resulted in the introduction of further Article 4 Directions in parts of North, South and East Bristol in July 2020.
- 31.4. The location of all Article 4 Directions can be viewed using the Council's web mapping tool Pinpoint available on the Council's website.
- 31.5. It is important to note that an Article 4 Direction simply results in permitted development rights being withdrawn and planning permission is therefore required. It does not follow that all planning applications will then be refused; instead they must be duly assessed relevant planning policies.
- 31.6. In parallel, extensions to HMO licensing control have been introduced by the Government and the Council. These include a widening of Mandatory licensing control over larger HMOs introduced in October 2018 and local Additional licensing schemes introduced by the Council to cover smaller HMOs. The Additional licensing schemes were introduced in East Bristol (Eastville and St. George West) in July 2016 and in Central Bristol (Ashley, Bishopston and Ashley Down, Central, Clifton, Clifton Down, Cotham, Easton, Hotwells and Harbourside, Lawrence Hill, Redland, Southville and Windmill Hill) in July 2019.

## **32. Planning Policy Context**

- 32.1. The Council's policies relating to HMOs, housing type and community health and well-being are set out in the Bristol Local Plan and are consistent with National Planning Policy.
- 32.2. In response to issues identified and to prevent further or new harmful impacts occurring policy DM2: Residential Sub-divisions, Shared and Specialist Housing was developed and brought forward as part of the Site Allocations and Development Management Policies (SADMP) Local Plan. The plan was adopted in July 2014. The policy offers an approach to addressing the impacts arising from HMOs and other forms of housing with similar issues. Its key aims are to ensure that such development preserves the residential amenity and character of an area and that harmful concentrations do not arise.
- 32.3. The supporting text to policy DM2 provides a broad definition of harmful concentration and some explanation of how existing and likely future conditions should be analysed. Implicit within this guidance is the need to assess the quantity and type of existing housing in an area to determine whether a harmful concentration of a particular type of housing has arisen or is likely to arise. There is also an implicit understanding that the greater the quantity of such housing the greater the cumulative impact it has on the residential qualities and characteristics of an area and the more limited the housing choice will be. The policy and explanatory text does not quantify a harmful concentration or explain in detail the method for assessing one.

32.4. Also of relevance is Core Strategy Local Plan policy BCS18: Housing Type and SADMP Local Plan policy DM14: The Health Impacts of Development. Policy BCS18 ensures that all residential development contributes to the mix of housing in an area to support mixed, balanced and inclusive communities. This includes a need to redress any housing imbalance that exists. Policy DM14 ensures that all new development contributes to and does not result in unacceptable impacts on health and wellbeing. Development resulting in harmful concentrations of HMOs will be contrary to these policies.

### **33. HMO Supplementary Planning Document**

33.1. On 3rd November 2020, the Council adopted a new Supplementary Planning Document (SPD) on developing houses in multiple occupation (HMOs) 'Managing the development of houses in multiple occupation'.

33.2. The SPD provides further guidance on the implementation of policy DM2: Residential Sub-divisions, Shared and Specialist Housing set out in the Site Allocations and Development Management Policies Local Plan.

33.3. The SPD provides guidance on parts of the policy and explanatory text that relate to harmful concentrations of HMOs and to the standard of accommodation proposed. In particular, the SPD identifies situations where harmful HMO concentrations are likely to arise. These include a residential property being located between two HMOs, referred to as the 'Sandwiching assessment', and areas where more than 10% of dwellings are occupied as HMOs, referred to as the 'HMO threshold assessment'.

33.4. To accompany the newly adopted SPD a GIS application has been created to calculate the proportion of residential properties known to be HMOs within 100 metres of any planning application site to inform the carryout of the HMO threshold assessment.

33.5. The datasets used to calculate the proportion of dwellings that are occupied as HMOs in any given area include total identified dwellings and total identified dwellings in use as HMOs.

33.6. Total identified dwellings are based on residential records held within the Bristol Local Land and Property Gazetteer (LLPG) and include all approved residential classifications but exclude garages, residential car parks and provisional records.

33.7. Total identified dwellings in use as HMOs include:

- All licensed HMOs including properties with a mandatory licence or an additional licence (in areas of the city where additional licensing schemes have been declared);
  - All planning permissions and other authorisations for HMOs that are not licensed.

33.8. HMO datasets are updated on a quarterly basis to ensure current HMO numbers are available to help determine planning applications. Not all HMOs can be identified as licences and/or planning permission/authorisation is not required for all properties.

33.9. The dataset on purpose-built student accommodation bed spaces is drawn from annually updated records of all completed schemes and schemes with planning permission. The update is carried out as part of the Council's annual Residential Development Survey.

### **34. Planning Enforcement**

- 34.1. The Bristol Local Enforcement Plan (April 2017) sets out the City Council's priorities for investigation, explains what will be investigated and what will not, and it outlines the Council's general discretionary powers with regard to planning enforcement.
- 34.2. The Council can investigate complaints related to the planning status of HMOs. The Planning Enforcement Team investigates possible planning breaches and takes the appropriate form of action. The aim is to provide a service that is reactive to complaints made by citizens, members and stakeholders. Where appropriate, the Planning Enforcement Team liaises and works with other enforcement functions of the Council.
- 34.3. For a breach of planning control to have occurred, it must first be established that development requiring planning permission has taken place.
- 34.4. It should be noted that in those areas covered by Article 4 Directions, but where changes of use from a dwelling house (Class C3) to a small HMO (Class C4) were carried out prior to the introduction that Direction, no planning enforcement action may be taken against such changes of use in those instances as they would have been considered lawful in planning terms at the time.
- 34.5. It is also the case that unauthorised HMO development can become immune from enforcement if no action is taken within 10 years of the breach of planning control. Lawful Development Certificate applications can be submitted to the Local Planning Authority to obtain a decision on whether such an existing use is lawful for planning purposes or not. These applications must be assessed based on evidence and not planning merits.
- 34.6. Where it is established that breaches of planning control have taken place, Local Planning Authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations.

### **35. Interaction between Planning and Licensing Regimes**

- 35.1. Planning and licensing are separate regimes. The lack of license cannot constitute a reason to refuse planning permission, and it is also the case that when determining a HMO licence application it is not a requirement of the Housing Act, to consider whether the property has planning consent. Lists of addresses are however shared periodically between services to assist with the operation of these respective functions. When assessing planning applications for HMO development using the new GIS application, notifications will also be sent to Private Housing by planning officers to enable a cross-check to take place.

### **36. Managing future HMO development**

- 36.1. It is anticipated that overall demand for HMOs will increase as a result of student growth and new pressures for HMOs are likely to result in residential areas surrounding the proposed University of Bristol campus at Temple Quarter. For these reasons it was considered expedient to remove permitted development rights that allow a change of use from a dwelling house (Use Class C3) to a small HMO (Use Class C4) through the Article 4 Directions that came into force in parts of North, South and East Bristol in July 2020.
- 36.2. This will ensure that the local amenity and wellbeing of these areas is protected through greater planning control over this form of development, exercised through current and emerging Local Plan policy.

### **37. The Future**

37.1. There is every indication that the number of properties in the private rented sector, and within that the number of HMOs, will continue to increase over the coming few years. Recent surveys continue to identify poor conditions in the sector, and at the same time the environmental issues that accompany high concentrations of HMOs continue to threaten local communities.

### **38. New initiatives**

38.1. In order to deal with these challenges the Council is considering a range of measures. Consideration is being given on options to broaden the areas currently covered by licensing to bring improvements to housing conditions. The Private Housing and Planning services are looking at the potential of information sharing protocols to use the comprehensive information yielded by licensing on the location of HMOs to support the effectiveness of Article 4 planning initiatives.

### **39. Collaborative work between Council services is critical**

39.1. As was discussed in the introduction to this report the Council uses three distinct legislative regimes to address different aspects of the impact of the growth in shared rented accommodation in the City: housing legislation, planning legislation and environmental protection legislation. Each of these three is administered by different service areas and there may be opportunities to improve data sharing between these services.

39.2. For any legal action to be successful it is important that the most appropriate piece of legislation is used and there is frequent contact between the service areas to ensure that the most effective legal approach is taken in dealing with the particular circumstances of individual cases.

### **40. Policy**

Not applicable

### **41. Consultation**

Internal "Not applicable"

External "Not applicable"

### **42. Public Sector Equality Duties**

42a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.

ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --

Remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;

take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);

Encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –

Tackle prejudice; and

Promote understanding.

42b) this report is for information only.

#### **43. Appendices:**

Appendix 1: Briefing note – Neighbourhood issues - Mandatory and Additional Licensing

Appendix 2: Legal Advice on Waste, Noise and ASB in HMOs

Appendix 3: Map - Article 4 areas and Property Licensing areas – showing gaps

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

None

## **Appendix 1: Private Housing / NET Briefing note – Neighbourhood issues - Mandatory and Additional Licensing**

### **44. Waste storage and disposal**

With regard to properties that are HMOs the disposal, storage and collection of refuse is the responsibility of the local authority, landlords and tenants.

### **Government position**

(Houses in Multiple Occupation and residential property licensing reforms consultation 2016-17)

### **Government response to waste and refuse in HMOs**

The Government recognises that overfilling bins and rubbish dumped inappropriately is not only a visual blight, but can attract vermin and cause health issues. The more people living in separate households in a building, the more domestic rubbish is going to be generated from that building. Whilst tenants are responsible for properly disposing of their rubbish, they need adequate and accessible receptacles to do so. We accept that the issue of rubbish collection is not within the control of the landlord and there is no intention to require landlords to perform functions which are the responsibility of the local waste authority. However, securing the provision of suitable facilities for disposal and storage of refuse is, in the Government's opinion, a fair and proper responsibility for the manager of an HMO.

Although we acknowledge that the management regulations (The Management of Houses in Multiple Occupation (England) Regulations 2006) cover refuse disposal, regulation 9 is reactive because it is only concerned with situations where the facilities are deemed by a court to be inadequate, if the local authority has chosen to prosecute. A condition of a licence, on the other hand, would proactively require the provision of adequate facilities in the first instance.

We, therefore, propose to include a mandatory condition in all HMO licences (mandatory and additional) going forward, relating to the provision of suitable facilities for refuse storage and disposal.

### **Bristol Waste Company**

Waste collection is carried out for Bristol City Council by Bristol Waste Company

Collection

Two weekly collections

180ltr bin for up to 5 people

Larger bins for more than five

Weekly collections

recycling facilities/boxes; Green Black and Brown food caddy

## **Alternative arrangements**

Where it is not possible for the above bin collections to be accommodated, due to the inability to store bins in the premises, the curtilage of the property, or other circumstances the following may apply:

### **Weekly**

Refuse black bag (60L per bag) collection and recycling facilities/boxes; Green Black and Brown food caddy

NB. Any arrangements must be agreed through Bristol Waste Company call via Customer Services 922 2100

### **Fly tipping/Rubbish dumped.**

Where rubbish is dumped illegally on the road, pavement or public land Bristol City Council through its Neighbourhood Enforcement Service will where there is evidence take enforcement action will clear the obstruction (Tel. 0117 922 2100)

Where rubbish is dumped in front or rear gardens and not presented in the correct manner for collection action can be taken against either the occupant(s) or land owner to clear the rubbish by Bristol City Council through its Neighbourhood Enforcement Service. Where appropriate the council will clear the obstruction (Tel. 0117 922 2100).

## **Landlords' responsibilities**

All mandatory and additional licences will include the following conditions:

The licence holder and/or manager:

- Must provide suitable facilities for the storage and disposal of refuse and recycling in accordance with the Council's waste and recycling collection requirements.
- Must issue new tenants/occupiers with a tenancy/written agreement that include clauses that will allow the licence holder to take reasonable steps to tackle anti-social behaviour

## **Breach of Licence conditions**

Where there are serious and or continued breaches of licence conditions enforcement actions may be taken by the Licensing team and could result in the revocation of the Licence

## **Tenants' responsibilities**

It is the tenant's responsibility to ensure the receptacles provided for refuse are used in a proper manner and the refuse is presented for collection at the times indicated by Bristol Waste Company

The Neighbourhood Enforcement Service has the powers to take enforcement action against tenants, where appropriate if refuse is not presented in the proper manner and in the correct receptacles.

## **Tenancy agreements**

All Tenancy Agreements should include a clause(s) relating to the storage and disposal of refuse from the premise and clearly state what the tenant's responsibility is in relation to this matter.

### **The Government's model tenancy agreement has two clauses:**

- Disposing of all rubbish in an appropriate manner and at the appropriate time.
- The Tenant must remove all possessions (including any furniture) belonging to the Tenant or any Member of the Tenant's Household or visitor and all rubbish from the Property at the end of the Tenancy. If any such possessions are left at the Property after the Tenancy has ended, the Tenant will be responsible for meeting all reasonable removal and storage charges. The Landlord will remove and store the possessions for one month (other than any perishable items which will be disposed of immediately) and will take reasonable steps to notify the Tenant. If the items are not collected within one month, the Landlord may dispose of the items and the Tenant will be liable for the reasonable costs of disposal. The costs of removal, storage and disposal may be deducted from any sale proceeds.

## **Breach of Tenancy Agreement**

Where a landlord has a legal reason for ending a fixed term tenancy, e.g. rent arrears or breach of the tenancy agreement he/she can apply to the courts for a possession order under Section 8 Housing Act 1988.

## **Noise nuisance**

### **Bristol City Council**

The Neighbourhood Enforcement Service will investigate noise from:

- noisy neighbours, like loud music, shouting or DIY at night
- burglar and car alarms
- animals, like barking dogs or crowing cockerels
- Complaints can be made by telephone: 0117 922 2500, option 3 or on-line through the council's web sites. The complainant will be asked to follow a set procedure and this will include the completion of a diary over a period of time listing the times, dates, duration and the type of noise nuisance being experienced.
- Following initial investigations undertaken by the Neighbourhood Enforcement service the property licensing team will be made aware of any complaint where it involves a private landlord with a HMO in the designated area. Where anti-social behaviour caused by noise nuisance is established through the Neighbourhood Enforcement service investigations the licensing team will investigate the landlord's actions to ensure they have taken reasonable steps to mitigate this and have adhered to the licence conditions

- Neighbourhood Enforcement Service has delegated powers to take action under the Anti-social Behaviour Crime and Policing Act 2014 and under the Environmental Protection Act 1990 where appropriate.

## **Landlords' responsibilities**

All mandatory and additional licences include the following conditions:

The licence holder and/or manager:

- Must issue new tenants/occupiers with a tenancy/written agreement that include clauses that will allow the licence holder to take reasonable steps to tackle anti-social behaviour
- Must take all reasonable steps to deal with anti-social behaviour perpetrated by occupiers and/or visitors to the property
- Must ensure that the property is inspected on a regular basis to assess if there is evidence of anti-social behaviour; this should be at least quarterly, but more frequently if anti-social behaviour has been established.
- Landlords need to demonstrate that they have taken steps to address the threat of noise nuisance to neighbours and to residents in the local area from the HMO(s) they manage and this will include their compliance with licence conditions and how they deal with their tenants responsibilities/obligations agreed at the start of the tenancy.

Although the council cannot dictate to landlords what is in their tenancy agreements it would be reasonable to expect that a landlord considers the following conditions to be included for both the tenants and their visitors:

- The level of sound being emitted from radios, televisions and stereos at all times of the day.
- Avoid placing sound emitting appliances next to shared walls.
- Consider the time of day chosen to carry out housework, DIY and gardening.
- Limit noise at inconvenient hours.
- Look after any pets properly and clean up after them.
- Avoid leaving dogs barking and disturbing the neighbours.
- Inform neighbours if they are to carry out disruptive DIY work such as drilling, hammering etc.
- Let neighbours know if they intend to have a party or bonfire.
- If going out or returning home late at night take extra care not to disturb neighbours through loud voices and slamming of car doors.

## **Objections and representations to an application for a mandatory or additional licence**

These licences are granted under the Housing Act 2004.

The process for granting a licence is in two parts. Prior to granting a licence a local authority must serve a notice on those individuals, companies or organisations with an interest in the property; e.g. joint owners or mortgage companies and consider any representations received from those people. This does not include tenants (unless the tenant is under a lease with an unexpired term of 3 years or less) or residents.

The Council also needs to consider if the management arrangements (Part 2 section 66 Housing Act 2004) are satisfactory and will take into account any evidence available to them at the time of granting a licence.

As part of the licence application landlords will need to confirm that there are systems in place to comply with licence conditions, including anti-social behaviour.

The council must also have regard to the Department of Communities and Local Government draft guidance (A guide to the licensing and management provisions in Parts 2, 3 and 4 of the Housing Act 2004)

The section of this guidance concerning management standards and satisfactory management arrangements gives the following guidance:

Paragraph 90 states; it is the proposed competences and structures that need to be satisfactory, not those actually pertaining at the date of application. Thus arrangements can be made satisfactory through the imposition of conditions in the licence.

The council has included within an Additional Licence conditions that landlords must comply with and these include:

The requirement for all landlords/managers to undertake competency training (West of England Landlord Development Programme or equivalent) and

The need to put in place measures to deal with anti-social behaviour.

## Appendix 2: Legal Advice on Waste, Noise and ASB in HMOs

*"I do not consider it in the public interest to punish or criminally sanction landlords for the acts of their tenants relating to waste, which are low level and essentially beyond their overall control. I have reviewed the relevant conditions on licences and I'm pleased to say BCC has robust conditions in place to ensure landlords manage their properties effectively - if tenants choose to break the law, there is only so much a landlord can do to remedy a problem in terms of stopping the behaviour (although clearly in line with his licence, he should be doing everything he can...). Ultimately, the tenants need to be held responsible for their actions and sanctioned appropriately.*

*In my view, there is no question that fly-tipping and littering by tenants are criminal offences that should be prosecuted by the Neighbourhood Enforcement Team as appropriate. These crimes are not within the remit of Private Sector Housing. Likewise, serious and ongoing ASB should be reported to the dedicated ASB team – I do stress that the examples I have been given of issues relating to waste would not fall into this Category however as whilst persistent, are low level and minor in nature.*

*The examples of issues I have been referred to relate to tenants putting out their bins early/not on the right day/leaving them out late/not putting them out in a proper fashion, litter escaping etc.*

*It would be my proposal, having consulted with a colleague specialising in anti-social behaviour issues, that Bristol City Council should be targeting occupiers of HMO's to deal with the waste issues described. The waste issues, whilst an irritating and consistent issue for some, are fairly minor when compared to serious cases of ASB involving waste. Such targeting of occupiers would avoid potentially criminalising landlords and/or taking action affecting their livelihoods for minor problems over which they have limited control. Targeted action could include a mix of Community Protection Warnings and Notices or Injunctions either at common law (nuisance), or under statute using ASB legislation, statutory nuisance (Environmental Protection Act 1990) etc. Of course, if we serve CPNs, we can also do the works in default, and charge the occupiers for so doing.*

*The Neighbourhood Enforcement team/ASB team have the tools to deal with these issues within their legislation – such as S46 Environmental Protection Act 1990. Any targeted action of this nature therefore, should properly be instigated by those teams. Private Sector Housing may be required to become involved in cases where landlords are failing in their duty to comply with the licence conditions but in reality, many of them will be diligent landlords complying with their licence conditions by informing/reminding tenants of their responsibilities, inspecting regularly and addressing issues as and when they arise.*

*However, if the landlord is failing to comply with his conditions, not taking an active role in the situation and failing to engage with BCC then action can and should be taken under the HA 2004 to remedy. I note Liverpool Council have taken cases like this where a pattern arises with the tenant's ASB not being addressed by the landlord. This situation would be appropriate for Private Sector Housing to become involved with and could involve a prosecution/CPN/action on the licence itself depending on the circumstances."*

Therefore it will only be in serious circumstances of ASB, not minor incidences where a landlord is not, at each stage, taking reasonable and practicable steps to prevent ASB that a landlord can be prosecuted for non-compliance with conditions of their licence.

Appendix 3: Map of Article 4 Areas and property Licensing Areas.

