



Overview & Scrutiny Committee
24th July, 2007

**Report from the Director of Housing
& Community Care**

For Action

Wards Affected:
ALL

**Licensing of Houses in Multiple Occupation (HMOs) –
Referral from the Private Sector Housing Forum**

1.0 Summary

- 1.1 Part 2 of the Housing Act 2004 (the Act), with effect from April, 2006, introduced mandatory licensing for higher risk houses in multiple occupation (HMOs). These are HMOs of three storeys and above occupied by at least five people who make up more than one household.

Questions were raised at the Private Housing Forum, held on March 14th why no new licenses had been issued by Brent Council in the 11 months that the Act had been in force.

- 1.2 A related query was raised in respect of the Council's intention to introduce discretionary licensing for HMOs which are not covered by the mandatory scheme.

2.0 Recommendations

- 2.1 That the Overview & Scrutiny notes the report.

The Committee may wish to identify issues for further investigation.

3.0 Detail

3.1 Reasons for delay in issuing new licences

Although legislation introducing HMO licensing came into effect in April 2006, guidance from the Department for Communities and Local Government was slow to emerge. The guidance was needed by local authorities to help

implement the scheme with some degree of consistency in respect of standards to be applied, conditions which maybe attached to a licence and fees which could be charged.

3.1.1 Once the guidance was received, a great deal of groundwork was necessary to prepare for the new system. The West London Alliance (WLA) worked together to produce an integrated approach producing a legally watertight application form and a robust and accountable fee structure. The work was finalised towards the end of 2006, though work is still continuing on a specification inviting tenders from organisations (probably housing associations) to hand over HMOs where the landlord/person managing the property fails to comply with local and legislative requirements.

3.1.2 The legislation is very complex and loosely drafted, open to interpretation. The government are aware of the problem and to overcome it, LACORS (Local Authorities Coordinators of Regulatory Services) has been given the responsibility of providing advice, guidance and support in respect of duties imposed and powers given to local authorities by the 2004 Act. The delay in implementing the licensing scheme affected all local authorities as illustrated by the table below which shows the number of licences issued by boroughs in the WLA as at February 2007.

Local Authority	HMOs Passported	Applications Received	Licences Issued for 3 storey+ occupied by 5+ in 2 or more households
Brent	143 mandatory and 116 discretionary	19	0
Ealing	n/a	n/a	n/a
Hammersmith & Fulham	30	90	0
Harrow	n/a	n/a	n/a
Hillingdon	173	11	5
Hounslow	n/a	n/a	n/a
Kensington & Chelsea	0	126	0

3.1.3 Since then the process for issuing licences has been bedded down and progress has been made by most local authorities. The position of boroughs in the WLA as at mid June 07 is shown in the table below.

Local Authority	HMOs Passported	Applications Received	Licences Issued for 3 storey+ occupied by 5+ in 2 or more households
Brent	143 mandatory and 116 discretionary	66 (151 applications sent out)	4 licences issued; 1 in the process of being issued; and a further 12 in the process of checking and inspection.
Ealing	226	300	107
Hammersmith & Fulham	70	40	0
Harrow	217	106	36 issued and 12 pending
Hillingdon	173	11	5
Hounslow	133	68	14
Kensington & Chelsea	0	146	4 licences issued; 13 in the process of being issued; and a further 12 in the process of checking and inspection.

3.1.4 Although all preparatory work was agreed with our WLA partners the process of actually issuing a licence differs in each borough in terms of the research and investigation undertaken. Some authorities issue a licence passing it to an enforcement officer to do a health and safety risk analysis, thus relying on the enforcement role to identify problems. However, the legislation is quite clear in stating that the process of licensing is rigorous and quite different from enforcement under the Housing Health and Safety Rating System.

3.1.5 Officers in Brent saw the introduction of licensing as an opportunity to work with private sector landlords to achieve fundamental improvements in the sector which involves attaching appropriate conditions to a licence (which cannot be done without inspecting the property and carrying out the relevant checks on the landlord to ensure he is a “fit and proper person” as defined by the Act. We also require landlords to complete an accreditation course to ensure sustained progress in property management.

3.1.6 Based on available evidence we have 250 – 300 HMOs licensable under the mandatory scheme. We have already passported 143 HMOs in this category from our Registration Scheme and we believe that we will fulfil our target in 2007/08 of issuing 100 new licences, as long as staffing resources are maintained at their current level. By April 2008 therefore, almost all high risk HMOs in the borough will have been licensed.

3.2 **Discretionary Licensing**

The Act allows local authorities to introduce additional licensing for HMOs which are outside the criteria for mandatory licensing. In fact, under the transitional arrangements, authorities who had a Registration Scheme with control provisions, are deemed by the DCLG to have additional licensing in place as long as deadlines were met for advertising the scheme to the public. However the legislation is unclear whether under such a scheme authorities can issue new licences or merely passport properties previously registered

under the Registration Scheme. However, LACORS have advised that as the law stands, we do not have a transitional scheme at present.

- 3.2.1 The issue of additional licensing is relevant in Brent as the two most common types of properties used as HMOs are flats (converted houses) and two storey properties (shared houses) rather than houses which are 3 storeys plus, (in common with most other outer London boroughs). The two categories from which properties eligible for mandatory and additional licensing are drawn, are bedsits (438) and shared houses (1,670), as shown in the table below, which is taken from the 2003 private sector House Condition Survey.

Category	Number of buildings	% of HMOs
Bedsits	438	4.1%
Shared houses	1,670	15.6%
Household with lodgers	193	1.8%
Bed & Breakfast	0	0.0%
Registered Home	98	0.9%
Converted House	8,275	77.5%
Total	10,674	100.0%

- 3.2.2 As indicated in paragraph 2.1.6 above, our estimate of HMOs in the borough that are subject to mandatory licensing is between 250 - 300. Although, there are a further 1,800 HMOs not meeting the mandatory criteria, those eligible under the statutory scheme represent the greatest risk to tenants. Officers consider that the most effective use of resources is to concentrate on HMOs subject to mandatory licensing. The process employed in Brent to achieve better conditions for HMO tenants is time consuming and rigorous. It includes inspection, investigation of the person managing the property and finally licensing with appropriate conditions. If however, the person managing the property refuses to co-operate with us, then enforcement action is taken.
- 3.2.3 Licences are issued either for 2 or 5 years, depending on the suitability of the landlord and the property for the number of occupants allowed by the licence. The local authority has a duty to keep licences under review to ensure continued compliance and in addition a risk assessment must be carried out under the Housing Health & Safety Rating System within the life of the licence.
- 3.2.4 We calculate that with existing resources, two dedicated officers and a small proportion of the team leader's time, most HMOs subject to mandatory licensing will have been contacted and appropriately dealt with by 2008/09. Consideration maybe given to a discretionary scheme at that time depending on availability of resources.
- 3.2.5 It should be noted that although the mandatory licensing scheme is meant to be self-financing, authorities are only allowed to include activities directly related to issuing a licence. Similar conditions apply for setting a fee for a discretionary scheme. Staff costs cannot be included for any enforcement work under the Housing Health & Safety Rating System (HHSRS) in the licence fee as confirmed by unequivocal legal advice.

- 3.2.6 Existing enforcement staff are fully occupied with reactive enforcement work and enforcement work arising from the mandatory licensing scheme. If we were to extend the mandatory scheme, 1 surveyor completes 25 major enforcement jobs in a year. Our estimate is that we have approximately 1,800 properties which would qualify for discretionary licensing. Therefore, we would need 18 extra surveyors to cope with this volume of work in 4 years.
- 3.2.7 Clearly the existing enforcement service will deal with any complaints from tenants of HMOs, or indeed any rented property, arising from conditions which present a serious health and safety risk.