



North Devon Council

Report Date: 5 July 2021

Topic: Houses In Multiple Occupation: Amenity Standards, Minimum Room Sizing and Licence Conditions

Report by: Public Protection Manager and Graduate Environmental Health Officer

1. INTRODUCTION

- 1.1. North Devon Council is responsible for the licensing of Houses in Multiple Occupation (HMOs) in the district. This includes all homes with five or more occupants from two or more households, who share amenities and facilities. There are an estimated 1,100 HMOs in North Devon, of which approximately 290 fall under the Part 2 mandatory licensing scheme¹.
- 1.2. The legislation surrounding HMOs allows the Council to impose licence conditions and locally adopted standards on amenities within properties. The current conditions and amenity standards adopted are from a Devon Wide document published in 2011.
- 1.3. The purpose of this report is to feedback on the results of a six week consultation exercise on a set of updated licence conditions, amenity standards and room sizes under the new HMO licensing regime, and to seek approval for their implementation.

2. RECOMMENDATIONS

- 2.1. That the Strategy and Resources Committee:
 - 2.1.1.1. Consider the feedback on the results of the public consultation exercise, contained within **Appendix A**.
 - 2.1.1.2. Adopt the draft Amenity Standards and Minimum Room Sizing requirements in **Appendix B**.
 - 2.1.1.3. Adopt the proposed Licence Conditions in **Appendix C**.
 - 2.1.1.4. Adopt a continued licence period of five years for HMOs.

3. REASONS FOR RECOMMENDATIONS

- 3.1. To consider feedback on the results of the consultation exercise and make any amendments to the draft documents consulted upon.

¹ BRE Dwelling Level Housing Stock Modelling and Database for North Devon Council Report, May 2019



- 3.2. To implement a new set of amenity standards and minimum room sizes specific to the housing market within North Devon.
- 3.3. To ensure the protection of safety and wellbeing of residents and vulnerable persons who reside in HMOs.
- 3.4. The current standards are not up to date and in line with the most current legislation.
- 3.5. Recommendations pertaining to radon gas, lead in drinking water, sustainability/energy efficiency and washing/drying facilities have been included in the amenity standards document. These are all areas which have not been addressed in previous amenity standards documents.
- 3.6. The new licensing regime aims to incorporate additional sustainability measures in line with the Government's targets to reduce all greenhouse gas emissions to net zero by 2050, and also the Council's Carbon Reduction Plans.
- 3.7. The addition of energy efficiency recommendations will also help to address fuel poverty in North Devon by making homes more fuel efficient, and in turn reducing fuel bills.
4. REPORT
 - 4.1. The Council currently has 43 licensed HMOs across the district.
 - 4.2. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 removed the original three-storey rule for HMOs set out under the Housing Act 2004. Both nationally and locally, this has resulted in an increase in the number of properties which now fall under the mandatory licensing scope for Part 2 HMO licences. It is estimated that there are around 250 additional HMOs in North Devon which now fall under the new licensing regime¹. These are all properties which are yet to be licensed by the Council and would be impacted by the proposed new HMO licensing regime.
 - 4.3. Schedule 4 of the Housing Act outlines the conditions local authorities must impose on licence holders as part of this process. Whilst Section 67 of the Act allows local housing authorities to impose additional conditions on properties which fall under the scope of mandatory licensing. The current licence conditions used by the Council were last updated in 2011, and solely relate to those conditions imposed under Schedule 4 of the Act. They do not take into account conditions which could be set under S67, for example those relating to mitigating anti-social behaviour. Such conditions would be beneficial in a number of licensed properties in the district, especially those with high numbers of anti-social behaviour related complaints associated with them. A summary of the proposed conditions are contained in **Appendix C**.
 - 4.4. Mandatory licensable properties have a set of prescriptive standards Council's must apply when setting the number of occupants permitted in a property.

These are national minimum standards relating to personal washing facilities and sanitary conveniences etc. Section 65 (2) of the Housing Act 2004 gives the local housing authority power to set higher standards over and above the prescribed standards set by legislation. These standards can be set to reflect local housing conditions providing they do not fall below national standards.

- 4.5. It is proposed to implement a new set of amenity standards and minimum room sizes specific to North Devon, to reflect the changes in legislation and the local housing market within the last decade. A summary of the proposed standards are contained in a document in **Appendix B**.
- 4.6. Following the adoption of the proposed licence conditions, amenity standards and minimum room sizing, all new licences issued will be subject to the updated conditions and standards. A licence holder's failure to comply with the new conditions and standards will result in a breach of licence conditions.
- 4.7. The licensing review process aims to improve housing standards, and reduce the high number of Category 1 and 2 hazards in the licensable community. Refining the standards in HMOs would also improve public health and wellbeing. For example, the draft plan outlines areas which are of a particular public health concern in North Devon. This includes advice pertaining to radon gas and lead in drinking water, and gives recommendations to licence holders on how to mitigate the impacts of these hazards in their property.
- 4.8. Moreover, the new licensing regime aims to incorporate additional sustainability measures in line with the Government's targets to reduce all greenhouse gas emissions to net zero by 2050, and also the Council's Carbon Reduction Plans.

Consultation

- 4.9. A six week consultation period ran in respect of the proposed revisions, between 25 April 2021 and 6 June 2021. This was undertaken with key stakeholders including estate agents, management companies and landlords of HMOs.
- 4.10. Five individuals (including a response from Ilfracombe Town Council) completed the consultation questions that were posed. These are attached at **Appendix A**.
- 4.11. For the most part the responses were broadly positive. It was good to note that the room size requirements were welcomed, and there were comments from an individual with experience of having lived in rooms having failed to meet these requirements, particularly when personal space was confined to one room. This particular individual cited he was gratified to read that there were separate specifications proposed for bedsits where sleeping and kitchen/living rooms are combined.

- 4.12. Ilfracombe Town Council welcomed the specification of room sizes and recognised that for many people inhabiting HMO's they have limited personal space. They cited that it is important to be mindful of the unique configuration of Victorian buildings (some in conservation areas or listed) and their conversion, which has left some with unusual room divisions. It was cited that bathrooms can be more than two storeys away from bedrooms, and there was recognition that houses may have restrictions around changing the internal layout. They have suggested that guidance will be needed to ensure that these minimum room sizes can be achieved.
- 4.13. One individual commended the configuration of the documentation, in how it gives clear instruction, backed up by the health and safety reasons as to why areas are important.
- 4.14. It was acknowledged that fixed and controllable heating is important in mitigating the health effects of cold and damp, and the feedback cited that the individual was glad to see this recognised. The feedback of one responder's experience was that many sub-standard HMO's are absolutely freezing, which leads occupants taking risks with unsuitable electric heaters. There was recognition that other maintenance issues (lack of double glazing, draughts, lack of insulation etc.) contribute to cold rooms and occupants of HMOs were known to have controllable heating but that could not afford to put it on due to heat escape through single glazing, ill-fitting doors etc.
- 4.15. One of those making feedback, cited that it was excellent to set out minimum requirements per resident in terms of food storage, equipment and preparation.
- 4.16. The introduction of improved energy efficiency was also welcomed by one individual, who stated actions taken by landlords would improve tenant health and wellbeing, and also benefit tenants through reduced energy costs.
- 4.17. All five respondents cited they would be incentivised to adhere to the recommended standards should there be a financial incentive for doing so. This is something which will be discussed and looked into in the future following the completion of this work.
- 4.18. One respondent cited that it would be of benefit to provide guidance to landlords on anti-social behaviour (ASB) related matters. A commitment will be made to produce guidance on the Council's website pertaining to the management of ASB issues, as it is acknowledged that is not currently available and this would be advantageous.
- 4.19. A number of key themes did exist in terms of the consultation feedback. The main points provided in the feedback have been addressed below.
- 4.20. **Capacity for Licence**

Confusion surrounding the number of persons residing in a HMO before a licence is required.

We believe there may be an element of confusion pertaining to the introduction of a discretionary licensing regime in certain local authority areas. There are no current proposals to bring in discretionary licensing at this point in time, albeit this is a future aspiration of the Council.

4.21. Collaboration

Support for a collaborative enforcement approach with other statutory agencies, e.g. working with police on ASB.

Suggestion that fire safety, smoke, and carbon monoxide requirements fall under the jurisdiction of the fire authority.

Support for a set of guidelines about the steps needed to tackle ASB for landlords.

Improved collaboration with Planning and Development Services. A suggestion for a more detailed assessment of any planning applications and a more robust analysis of any property/ planning proposals by potential landlords to ensure that properties serve the benefit of our own community.

We have adopted a collaborative approach and inspect properties on a multi-agency basis. We have recently worked with the Police and Fire Authority in partnership, and this is a well-established relationship across EHHS.

The Fire Reform Order and associated legislation sets out which authority (LA or Fire Authority) is appropriate to be the enforcing authority in prescribed circumstances.

Consideration will be made to produce guidance on the Council's website pertaining to the management of ASB issues specific to landlords, as it is acknowledged that is not currently available.

4.22. Pre-application Advisory Service

Suggested development of an advisory service/pre-application advice to improve working relationships between HMO landlords and the District Council.

This is a valued area of suggestion, and one for which further exploration will be made upon completion of this area of work.

4.23. Robust Enforcement

Persistently poor landlords and those who fail to gain a licence should be subject to strict enforcement and penalties.

Clear message that landlords who fail to seek a licence or repeatedly fail to act on advice will be subject to action.

Publication of successful prosecutions.

Need for appropriate level of resources to enforce compliance, otherwise NDC will fail to achieve improvements.

There is strategy pertaining to those who fail to meet minimum standards, but following comments there will be a further review of this area of work, and improved information will be provided in terms of the sanctions available on the Council's website.

A review of resources available and required to meet future demands of the HMO licensing services is being undertaken currently.

4.24. Frequency of Inspection

Suggestion to make a 'fitness for human habitation annual report' mandatory.

Regular monitoring of HMO's is essential.

A view that inspections should be more regular than every 5 years.

The Homes (Fitness for Human Habitation) Act 2018 does exist to regulate all privately let accommodation in the UK. The standards relating to HMOs will be higher in many respects, and therefore an annual report in terms of this legislation would not necessarily be appropriate.

Moreover, specific powers exist to regulate HMOs by way of Civil Sanction (e.g. Housing Act 2004 S249A, Housing and Planning Act 2016, S42).

The Council hold a Private Sector Housing Civil Penalty Enforcement Policy. This is not currently housed on the Council's website, and this action is being undertaken as part of this HMO review.

Current resources and licence fees adopted do not currently permit additional inspections, however this can be re-examined as the project moves forward, as fees can be reviewed.

4.25. Waste Storage

Concerns with regard to waste collections not being frequent enough for larger households.

Concerns about storage of waste in bedrooms and in communal areas, hallways etc. and external space to house recycling receptacles.

NDC documentation cites adequate internal or external non-habitable space must be provided, but concern how this will be achieved if no actual space is available inside or outside the property.

Productive for the Council to work proactively with HMO landlords to achieve the standards set out.

It is acknowledged that this is a difficult area in terms of enforcement, particularly where properties are already converted to HMOs and there is limited external/internal space to accommodate bins.

A policy of a two weekly collection has been approved and initiated across the district for some time. It is unlikely that this will be amended.

Additional bins and recycling bins can be requested for larger households to manage waste between collection dates. A policy exists in terms of gaining extra receptacles. This is based upon the numbers residing in a property (6 or more adults or 5 adults with children in nappies).

Unfortunately if internal layout does not permit adequate space for waste receptacles, then a decision may need to be taken to reduce the number of occupants (e.g. use a room as a waste storage room), to avoid risks associated with waste storage in communal areas or fire egress routes. Each case will need to be carefully judged on its merits.

4.26. Shower Facilities

Query over the permissibility of a shower where installed in a bedroom. If permissible there is a query over whether this arrangement utilises space from the minimum size of the sleeping accommodation required.

Concerns over the ventilation of showers in bedrooms, and risks associated with moisture dispersing into the room.

Suggestion that an advisory service should be able to suggest suitable fixed heating sources in bathrooms, as high risk examples had been noted by one individual.

Clarification pertaining to sanitary accommodation within a bedroom has been provided on page 12 of the Amenity, Minimum Room Sizing and Management Standards Document (**Appendix B**). The document has been amended to

reflect that an assessment will be made on a case by case basis in instances such as that described.

A decision to make an assessment on a case by case basis, is based upon the fact that this is an area currently unknown. Data does not exist in terms of the number of showers in bedrooms, and their size. Shower sizes can vary substantially.

Showers that are inadequately ventilated and causing an issue surrounding damp and mould will be assessed under the HHSRS and actioned accordingly.

An advisory service will be explored further following the completion of this area of work.

4.27. Washing and Drying of Clothing

Concern was raised in respect of the lack of mention of areas to wash and dry clothing. It was cited that residents do not always have access to a laundrette (or cannot afford one), and so they often try to wash or dry clothes in their room which contributes to damp and condensation issues.

The provision of a washing machine and tumble dryer (or if possible outside drying space) were also cited to be welcomed additions if possible.

This is a welcome suggestion, and the addition of recommended standards pertaining to clothes washing and drying facilities has been added to the Amenity, Minimum Room Sizing and Management Standards Document (**Appendix B**) under the 'Miscellaneous recommendations' section on page 19.

4.28. Energy/Sustainability

Suggestion to work in partnership with an agency such as 361 Energy to help assist landlords with energy saving measures, home visits and grant applications.

The idea of a partnership with 361 Energy is something which will be considered following further exploration.

4.29. Incentive Scheme

An incentive scheme for improvements which are recommended but not desirable was welcomed, but one applicant also raised the idea of a Council accreditation scheme for competent landlords to validate good landlords.

Reducing the licence fee is one good idea but another might be enabling access to grants or loans to make some improvements.

A suggestion was made that a smaller licence fee could be implemented for appropriate for those properties for which the EPC is a band C or above.

It is useful to understand that an incentive scheme would be welcomed, and whilst it is not something which will be encompassed as part of this report, these form useful suggestions for the work which will follow.

The introduction of reduced licence fees and an accreditation scheme are both ideas which will be considered once the whole licensable community has been adequately licensed.

5. RESOURCE IMPLICATIONS

- 5.1. Resource requirements for the processing of the consultation and amendments to documentation etc., will be covered within existing staffing resources.

6. EQUALITIES ASSESSMENT

- 6.1. There are two positive implications (relating to the age and disability characteristics) as a result of this report. The remaining characteristics are anticipated to be neutrally impacted. Please see the corresponding Equality Impact Assessment for further details.

7. CONSTITUTIONAL CONTEXT

- 7.1. Article of Part 3 Annexe 1 (1) (h)
- 7.2. Referred or delegated power?: Delegated

8. STATEMENT OF CONFIDENTIALITY

- 8.1. This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

9. BACKGROUND PAPERS

- 9.1. The following background papers were used in the preparation of this report:

- BRE, May 2019, BRE Dwelling Level Housing Stock Modelling and Database for North Devon Council Report
- Department for Business, Energy & Industrial Strategy, April 2020, Sub-regional Fuel Poverty in England, 2020 (2018 data)
- Housing Act 2004



- The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) England Regulations 2018
- The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018
- The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006
- The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012

10. STATEMENT OF INTERNAL ADVICE

10.1. The author (below) confirms that advice has been taken from all appropriate Councillors and Officers.

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