

BRIEFING - EXECUTIVE DECISION FOR BLOCK FEES (HMO LICENSING)



This briefing note sets out the reasons for applying ‘Mandatory’ HMO licensing to accommodation containing 5 or more unrelated persons, contained within a converted block of accommodation in Plymouth. The appropriate fee level calculated is matched to expected expenditure for a cost neutral service.

I. Reasons for decision:

Legislative changes made to the ‘prescribed description’ of licensable HMOs, effective from 1st October 2018, <https://www.legislation.gov.uk/ukxi/2018/221/article/4/made>, have removed the ‘storey condition’ from the pre-existing description. This change led to a significant increase in the number of licensable HMOs in our city, doubling from an average of Circa 650 to an Average of Circa 1300. In addition it has also opened up the opportunity to look at flats in block style accommodation that meet the criterion of a licensable HMO.

In Plymouth we have a number of large blocks of accommodation that contain multiple self-contained flats (each consisting of 5 or more letting rooms). Primarily this type of accommodation is occupied by students attending one of the universities in the city. Whilst some student accommodation is exempt from being considered a HMO, and therefore cannot be considered a licensable HMO, in the Housing Act 2004 (under section 4 of schedule 14), there are stipulations that include the requirement for the HMO to be under the management and/or control of the educational establishment the students attend. In addition there are HMO tests under section 254 ((2) Standard Test, (3) Self-contained Flat test, (4) Converted building Test) that help us to identify types of building that can be considered HMOs. Where we have identified blocks as purpose built (i.e. Discovery Heights and Alexandra Works) these are exempt, but many others are not. Unfortunately ‘purpose-built’ is not defined in the legislation, which leaves this open to interpretation. Our consideration is that any building that has not been built from the ground-up as accommodation (i.e. retains any part of original structure), it should not be considered ‘purpose-built’ and should be considered as a ‘converted building’.

A review of block style accommodation across the city has so far identified 113 licensable HMOs in block style accommodation that we believe would be considered HMOs following the section 254 tests, and would not be exempt under Schedule 14 of the Housing Act 2004. In these cases we believe that the blocks contain accommodation that should be considered as licensable HMOs and should therefore be licensed in accordance with Part 2 (Mandatory HMO Licensing) of the Housing Act 2004.

When we reached the point that we considered these premises as licensable we then had a duty, under section 63 (3) and (7) of the Housing Act 2004, to consider the application process and what fixed fee should apply for HMO licences of this type of accommodation. We felt the best way to do this was to create a new application form (bespoke to block style accommodation), and run test cases on two block style accommodations and analyse the inspection data against our traditional style HMOs. This highlighted that there are

economies of savings for time and travel that apply when there are 5 or more licensable HMOs in one block style accommodation. The analysis of this data was then applied to Plymouth City Council's cost recovery model with the outcome of £610 being identified as the correct fee level.

2. Actions taken: We started this latest process of review in Autumn 2019 with the following actions being taken:

- Identification of purpose-built and converted blocks of accommodation across the city.
- Written communication to owners of converted blocks that may be subject to licensing.
- Ongoing consultations with Portfolio Holder, Cllr Penberthy.
- Posting on RIAMS, a Professional Forum for Local Authorities
- Attempted consultation with LGA proved unsuccessful.
- Run test-cases over two blocks of accommodation, containing a combined 15 licensable units with an agreed discretionary fee.
- Ongoing discussions with PCC Finance department.
- Ongoing discussions with PCC Legal department.
- Consultation with both Strategic Manager and Director of Service for Community Connections.

There have been a few bumps in the road and shifting of priorities that have affected the timescale for delivery of both business as usual and strategic service improvements (i.e. development of a new customer relationship management system, and COVID-19). However, we are now in a position to move forward and implement the necessary changes to our licensing scheme once approved.

3. Financial implications:

There are no financial implications brought about by this introduction as the increase in revenue is matched against the costs of undertaking the works associated. The revenue has been budgeted already. The following financial breakdown is just for reference

1) Fees/Revenue expected: £67,000 fees income generation over a 5 year period, raised from these licences to support and sustain Community Connections Housing Improvement Team delivering its HMO licensing service, and meeting statutory duties.

Considering the 113 identified, what we believe to be, licensable HMO's contained within block style accommodation. 15 of these properties, across 2 buildings, formed the test cases which had an agreed discretionary fee of £520 to be able to gather the data necessary. The remaining 98 properties would be subject to the agreed new fee level of £610. The licences would last 5 years and it is very probable, given the nature of these buildings, that they would remain licensable in the future.

Financial Year	Number of New	Predicted Income
2019-2020	15	£7,800 (received)
2020-2021	98	£59,780

2021-2022	0	£0
2022-2023	0	£0
2023-2024	0	£0
2024-2025	15	£7,800
2025-2026	98	£59,780

These amounts are in addition to our core business of HMO's which is Circa 1300. At present we would not be able to integrate these licences into a 2-stage payment process but would look to incorporate as soon as is reasonably practicable.

2) Potential reimbursement: £7,800 fees to be returned to test case examples if it is considered that these properties were, exempt from licensing. This figure could rise to whatever income is generated from these properties should a later ruling, override our interpretation.

4. Resourcing Implications:

The resourcing impact of this change has been financially calculated in the above section to ensure that the local authority can recover its costs. As a department we have recently appointed 2 team members to replace positions that had been void for a while. There is a huge resourcing demand in HMO licensing to ensure that we meet our duties and this is something that we continuously monitor with service management.

5. Risks:

As 'purpose-built' is not defined in the legislation, which leaves this open to interpretation. Our consideration is that any building that has not been built from the ground-up as accommodation (i.e. retains any part of original structure), it should not be considered 'purpose-built' and should be considered as a 'converted building'.

Whilst we have had positive communication with landlords of blocks, they do have the opportunity to appeal our decision to licence and the matter could be heard at First-tier Tribunal (F-tT). If the F-tT found a case not in favour of our interpretation then we may need to refund the licence fees paid at that point for this type of accommodation.

6. Benefits:

It appears that we, as a local authority, may be leading the way with this application of the 'prescribed description' to converted blocks of accommodation. It was hoped that consultation with the LGA would have elicited some further details in respect of this, but unfortunately there was a lack of response. This could bring positive attention to the council in the way it is operating.

Applying the 'prescribed description' to block style accommodation increases regulation in the sector, and any improvements in management and standards of HMOs in the city can contribute to the reduction in health inequalities in our society.

7. Alternative options considered and rejected:

In theory we could consider doing nothing in respect of licensing this type of HMO, because of the lack of definition of purpose-built. However, we have rejected this option, as we believe our understanding is correct, and that in not licensing these HMOs we would be failing a statutory duty under section 55 of the Housing Act 2004.

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There are no other options available for consideration, it is either these HMOs are licensable, and should be licensed, or they are not licensable and should not be licensed.