



# Cabinet Member Report

<b>Decision Maker:</b>	Councillor Heather Acton, Cabinet Member for Communities and Regeneration
<b>Date:</b>	23 September 2021
<b>Classification:</b>	General Release
<b>Title:</b>	<b>Houses in Multiple Occupation (HMO) Licensing Policy 2021 and Revocation of part of the Designation made on 21 April 2021</b>
<b>Wards Affected:</b>	All
<b>Key Decision:</b>	An entry was included in the Forward Plan of Key Decisions enabling a decision to be made from 28 <sup>th</sup> June 2021
<b>Financial Summary:</b>	The projected income for s.257 licences was £1.3m over the 5-year period (2021-22 to 2025-26). Removing s.257 HMOs from the designation will result in a reduction of this income, but also some savings. The 5-year net reduction in income is estimated to be £980k.
<b>Report Of:</b>	Raj Mistry, Executive Director for Environment & City Management

## 1.0 Executive Summary

- 1.1 We consider high-quality and, above all else, safe accommodation to be a basic right, whether as a homeowner or tenant. Improving the private rented sector (PRS) in Westminster is a top priority as set out in our [Private Rented Sector Strategy 2021-2025](#).
- 1.2 The Council, through this strategy, committed to introducing Additional Licensing for Houses in Multiple Occupation (HMOs) that fall outside of the national scheme of mandatory licensing, namely:
  - S.254 HMOs - these are typically referred to as house shares, where occupants share basic amenities such as bathrooms, toilets and kitchens. Additional Licensing includes

smaller HMOs, occupied by 3 or more persons who form more than one household. Whilst these properties offer the cheapest accommodation within our City, this also means they are at increased risk of severe overcrowding, serious hazards arising from electrical and gas safety non-compliance, and pests. The Council estimates there are c.4800 of these HMOs across the borough.

- S.257 HMOs – these are buildings which have been converted into self-contained flats, which are less than two thirds owner-occupied, and do not comply with the appropriate modern building standards. There is increased risk that fire and excess cold precautions in communal parts of the building are not up to the standards of most new buildings because they were converted prior to the 1991 Building Regulations coming into force.

- 1.3 In March 2021, Full Council resolved to approve the Council adopting an HMO Additional Licensing Scheme. The Designation was made on 21<sup>st</sup> April 2021 and the scheme came into effect on 30<sup>th</sup> August 2021.
- 1.4 However, since the policy was first developed, it is clear that the Covid-19 pandemic has had a major impact on Westminster's economy.
- 1.5 The Council is concerned that falling rents may result in rented accommodation falling into further disrepair and living conditions worsening, placing our most vulnerable tenants at further risk. It is predicted that over 80% of s.254 HMOs have at least one Category 1 hazard in the home and that these HMOs are more likely to be occupied by those with lower incomes and less security of tenure, and consequently these occupiers are at greater risk of exploitation by landlords.
- 1.6 The Council considers efforts should be focused on the pro-active identification and inspections of s.254 HMOs, to ensure we are doing all we can to improve living conditions within people's homes at this time.
- 1.7 It is therefore recommended that the Council revokes the designation of s.257 HMOs whilst maintaining the designation of s.254 HMOs so that the Council's efforts can be focused on protecting the most vulnerable, namely residents in s.254 HMOs which are not required to be licensed under mandatory licensing. Improving standards and conditions of the communal parts within s.257 HMOs will continue to be targeted through the Council's existing housing and environmental health regulatory frameworks.
- 1.8 If approved the additional licensing of s.257 HMOs will be removed from the designation with effect from 1 October 2021. Any fees paid under the designation for s.257 HMOs will be refunded.

## **2.0 Recommendations**

- (i) That the Cabinet Member for Communities and Regeneration, having consulted the Cabinet Member for Housing, approves the partial revocation of the additional licensing designation made on 21<sup>st</sup> April 2021 to remove from the designation HMOs to which section 257 of the Housing Act 2004 applies (certain converted blocks of flats).
- (ii) That the above revocation takes effect from 1 October 2021.
- (iii) That the draft HMO Licensing Policy 2021 is approved.
- (iv) That delegated authority is given to the Director of Public Protection and Licensing to make minor modifications and updates to the HMO Licensing Policy, in consultation with the Cabinet Member for Communities and Regeneration.
- (v) That authority to carry out HMO enforcement is delegated to an Officer authorised by the Executive Director of Environment and City Management.

## **3.0 Reason for Decision for Removal of s.257 HMO's from the Designation**

- 3.1 The Council has a duty to undertake a review of any discretionary licensing scheme it has implemented to determine whether it is achieving the scheme's objectives. With the Covid19 pandemic impacting the rental market since the adoption of the scheme, and the way people are living and working changing, it is necessary for the Council to undertake a review to inform a decision on whether the scheme will continue to achieve its objectives in its current framework.
- 3.2 A review of Westminster's additional Houses in Multiple Occupation (HMO) licensing scheme designation was conducted in September 2021 and is attached as Appendix A.
- 3.3 HMOs subject to additional licensing are divided into two categories; HMOs that share basic amenities (s.254) and converted blocks of flats, which are less than two thirds owner-occupied and the conversion works did not comply with the appropriate building standards (s.257).
- 3.4 We know that people living in s.254 HMOs (and not subject to mandatory licensing) are more likely to be living in substandard living conditions and are often exposed to cold rooms, damp and severe overcrowding. Of the estimated c4,800 shared amenities HMOs (s.254) across the borough, over 80% are expected to have at least one Category One

hazard defined under the Housing Health and Safety Rating System (HHSRS)<sup>1</sup>. Those residing in s.254 HMOs are also more likely to make service requests and complaints to the Council about their housing standards and conditions, and require enforcement action taken under housing and public Health legislation (Source [Metastreet 2019](#)).

3.5 Comparison of the overall indices of deprivation for Westminster, location of s.254 HMOs, and predicted Category One hazards for wards in Westminster show a marked correlation particularly to the north west of the city with Church Street, Harrow Road, Queens Park and Westbourne Wards most affected (Source [Metastreet 2019](#)).

Figure 1: Indices of Deprivation 2019

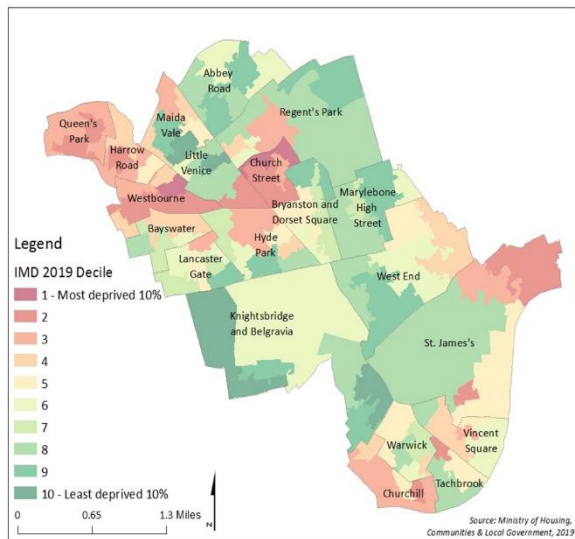
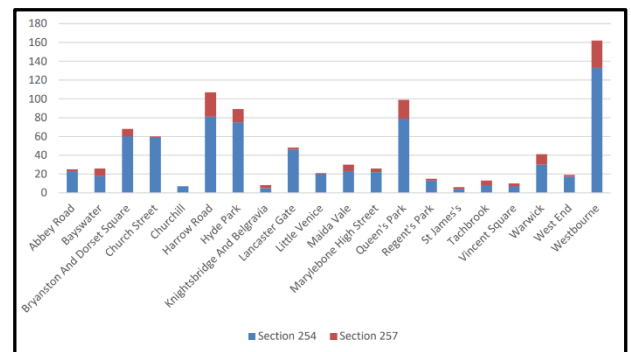


Figure 2: No. of statutory notices served on HMOs 2019



3.6 S.254 HMOs are the lowest cost accommodation type in the centre of the City, and as a result, these HMOs are more likely to accommodate the most vulnerable and harder to reach communities, meaning there is a greater risk of exploitation by landlords. In particular, some of our worst observed properties have been amongst migrant groups. 25% to 30% of Westminster’s population fluctuates every year due to the transient nature of some migrants and the PRS accommodates c.75% of this churn<sup>2</sup>. This cohort are often low-income midterm visitors that stay for several months, and then move on only to be replaced by new and increasing demand for the spaces they occupied. Research and our officer experiences evidence that the living arrangements and conditions of these migrants are often poor-quality, and for those with irregular or unresolved legal status, living conditions are observably worse. Some of our worst cases in Westminster have uncovered up to 30 people residing together in just a 3-bedroom room flat. However, requests for

<sup>1</sup> Category One Hazards are the extreme harm outcome including death from any cause; Lung cancer; Mesothelioma and other malignant lung tumours; Permanent paralysis below the neck; Regular severe pneumonia; Permanent loss of consciousness; 80% burn injuries

<sup>2</sup> ESRO 2007, Behind the Numbers, Migrant Patterns in Westminster

intervention within these communities are disproportionately under-represented because language or cultural barriers means that they are often unaware that support services exist, they are unwilling to report concerns for fear of retaliatory eviction, intervention from authorities, or disinclined to report concerns due to their intended short stays. Resource efforts are therefore required to pro-actively identify and target our worst properties and their landlords, who are unlikely to comply with the additional licensing scheme and operate under the radar.

### Impact of Covid19

- 3.7 Since the policy was first developed, the City and its economy has changed, with the Covid19 pandemic fundamentally changing the way people are choosing to live and work.
- 3.9 Officers are concerned that falling rents may result in rented accommodation falling into further disrepair and living conditions worsening, placing our most vulnerable tenants at further risk. Officers consider that efforts should be focused on the pro-active identification and inspections of s.254 HMOs, to ensure we are doing all we can to improve living conditions within people's homes at this time.
- 3.10 Officers therefore recommend revoking the designation of s.257 HMOs whilst maintaining the designation of s.254 HMOs so that the Council's efforts can be focused on protecting the most vulnerable, namely residents in s.254 HMOs, which are not required to be licensed under mandatory licensing. A draft notice of partial revocation of designation is attached as Appendix B.
- 3.11 Improving standards and conditions of the communal parts within s.257 HMOs will continue to be targeted through the Council's existing housing and environmental health regulatory frameworks.

## **4.0 HMO Licensing Policy 2021 Overview**

- 4.1 The draft HMO Licensing Policy is attached at Appendix C. A summary of the key elements of the policy include:
- the type of HMOs that require a licence.
  - HMOs and agents who are exempt from licensing (such as registered social providers)
  - the information and documents applicants are required to provide to complete a valid application, including property details, confirmation that they are 'fit and proper' to hold a licence, and the requirement to pay a licence fee.
  - our aim to determine valid applications within 3 months
  - how a decision is made to grant, vary or refuse an application

- our commitment to inspecting HMO properties within 5 years, and prioritising those that are considered higher risk
- our enforcement approach and the circumstances where we may consider action (the level of penalty is set out in the Private Housing and Lettings Enforcement Policy)

## 5.0 Consultation

5.1 The HMO Licensing Policy 2021 (Appendix C) was drafted by Environmental Health Officers under Public Protection & Licensing, in consultation with Legal, Policy and Finance colleagues. There is no legal requirement to carry out a public consultation.

## 6.0 Equalities Impact Assessment

6.1 Decision makers must comply with the Council's public sector equality duty under section 149 of the Equality Act 2010. In summary section 149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to:

- eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

6.2 Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

6.3 An Equalities Impact Assessment has been prepared (Appendix D) and this should be taken into account .

## 7.0 Financial Implications

### License & Enforcement Fee's

7.1 A fee for a Licence is charged and costs are published on the Council's website. These are to be kept under review and may be subject to change.

7.2 The HMO licence fee is split into two parts:

<b>Part A</b>	covers the cost of processing the application
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<b>Part B</b>	becomes payable when the licence has been approved and prior to the licence being issued and covers the cost of enforcing the scheme.
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7.3 At the time of writing fees for s.254 HMOs are as follows:

Licence Type	Part A	Part B	Total
Section 254 (shared houses, flats and bedsits)	£705	£270	<b>£975</b> <i>(An additional fee of £25 per letting will be charged for larger Section 254 HMO's with more than five lettings.)</i>

*Financial Implications of removing of s.257 HMOs from the Designation*

7.4 The projected income for s.257 HMO licences was £1.3m over the 5-year period (2021-22 to 2025-26). Removing s.257 HMOs from the designation will result in a 5-year net reduction of income to the Council estimated at £980k. Details of this is shown below.

Table 2: Impact of removing s.257 HMO Licences

Details	Financial Impact £000's
Total Income loss assumed over 5 years (1,050 Licences issued)	1,300
Staffing cost savings – reduction in licence applications	-320
<b>Total Net Financial Impact</b>	<b>980</b>

*Refunds*

7.5 Since the introduction of Additional Licensing, the income received/pending for s.257 HMO licences is c.£138k. These fees will be refunded. Freeholders, building managers or managing agents of s.257 HMOs may also expect further compensation for costs in paying a third party to submit their application. These potential costs are not yet known and will be subject to individual requests for compensation claims.

**8.0 Legal Implications**

8.1 Pursuant to s.58(7) of the Housing Act 2004 the Additional Licensing Scheme came into force on 30 August 2021 and will cease to have effect on 30 August 2026 (or earlier if revoked under s.60(4) of the Housing Act 2004).

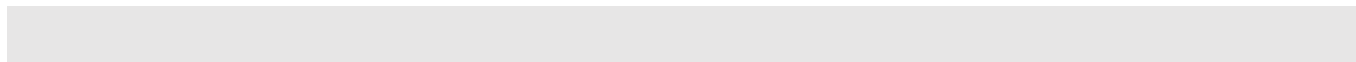
8.2 Under s.60(3) of the Housing Act 2004 the Council must from time to time review the operation of any designation made by the Council.

- 8.3 Under s.60(4) of the Housing Act 2004 if following a review they consider it appropriate to do so, the Council may revoke the designation. It is considered that this power includes the power to revoke a designation in part. In any event, the Council could revoke the designation as a whole and re-make it in part, which would have the same overall result.
- 8.4 Under s.60(6) of the Housing Act 2004 on revoking a designation the Council must publish notice of the revocation in a manner as prescribed by regulations. Regulation 10 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006/373 provides that within 7 days after revoking a designation the Council must publish the notice on the Council's internet site and arrange for the publication of the notice in at least two local newspapers circulating in or around the designated area in the next edition of those papers. A draft notice of partial revocation of designation is attached as Appendix D.
- 8.5 The HMO Licensing Policy 2021 adequately sets out the Council's approach to delivering HMO licensing, including receipt, authorisation, and determination of licence applications and sets out the applicable legislation and considers equality issues.

**APPENDICES**

- Appendix A: Review of Westminster City Council's Additional HMO Licensing scheme
- Appendix B: Draft notice of partial revocation of designation
- Appendix C: Houses in Multiple Occupation (HMO) Licensing Policy 2021
- Appendix D: Equalities Impact Assessment

**BACKGROUND PAPERS** none



For completion by the **Cabinet Member for Communities and Regeneration**

**Declaration of Interest**

I have <no interest to declare / to declare an interest> in respect of this report

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

NAME: \_\_\_\_\_

State nature of interest if any .....



.....  
(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled

.....and reject any alternative options which are referred to but not recommended.

Signed .....

Cabinet Member for Communities and Regeneration

Date .....

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment: .....  
.....  
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal and Democratic Services, Strategic Director Finance and Performance and, if there are resources implications, the Strategic Director of Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.