

Meeting:	Cabinet
Date:	4 th October 2006
Subject:	Delegated Authority in respect of the Licensing of Houses in Multiple Occupation
Responsible Officer:	Gareth Llywelyn-Roberts, Head of Community Safety Services
Contact Officer:	Bruce Williams, Senior Professional, Community Safety Services
Portfolio Holder:	Councillor Marilyn Ashton, Portfolio Holder for Property, Housing Planning (Development) and Planning (Strategic)
Key Decision:	No
Status:	Part 1

Section 1: Summary

Decision Required

1. That Cabinet delegate to the Executive Director, Urban Living the power to determine (approve but not refuse) applications for the Licensing of Houses in Multiple Occupation under Part 2 of the Housing Act 2004;
2. That in respect of the delegation in paragraph 1, Cabinet authorise the Executive Director Urban Living to further delegate the power to other Council officers.
3. That Cabinet delegate the power to refuse applications to the Portfolio Holder for Property, Housing Planning (Development) and Planning (Strategic)

Reason for report

The Housing Act 2004 brought in the mandatory Licensing of HMO's and details the criteria which must be met in order for an application for a licence to be granted. When such criteria are met the local authority must grant the licence.

The Act does not detail the process by which the local authority should come to a decision when considering the refusal of an application. It is proposed that officers should be delegated authority to grant a licence where all criteria for licensing are met and that the the Portfolio Holder for Property, Housing and Planning (development) should consider all applications where officers are minded to refuse an application.

Should the Council decide to refuse to grant a licence the local authority must take the unlicensed property into management. There is a right of appeal against the decision of the Council to a Residential Property Tribunal.

The proposed delegations are consistent with best practice in decision making and making Harrow a Safe, Sound and Supportive environment.

Benefits

Consideration by the Portfolio Holder for Property, Housing and Planning of those applications which officers are minded to refuse will remove officers from the final decision making process. This process would allow proper consideration by an independent representative of the Council, who has had no involvement with the application. This makes the process fair, clear and transparent to the applicant within the public domain.

Cost of Proposals

Any costs associated with the proposed delegations can be met by the provision for HMO licensing contained in the budget.

Where a licence is refused the full cost of the process to bring the unlicensed property into management will be detailed in each report to the Portfolio Holder for decision.

Risks

Although there is no statutory timescale in which a licence must be either granted or refused a timescale of 6 weeks was recommended by the then Office of The Deputy Prime Minister. The process may take the application beyond the recommended timescale.

Should the Council decide to refuse to grant a licence the local authority must take the unlicensed property into management, which has financial and staffing implications for the Council. It is not possible at this time to quantify the financial implications of taking a property into management as this will depend on particular circumstances relating to the property and will be detailed in each report to the Portfolio Holder dependant on the individual circumstances.

Implications if recommendations rejected

If the proposal is rejected a decision should be made as to delegated authority for the refusal of a licence. There are financial implications for the Council if an application is refused.

Section 2: Report

2.1 Brief History

2.1.1 The Housing Act 2004 came into force in April 2006. Part 2 of the Act places a duty on the local authority to licence all houses in multiple occupation (HMOs) to which the Act applies, including the areas and properties designated as licensable HMOs by the local authority. This was the subject of a previous report in September 2005 to the Licensing and General Purposes Committee, (19th September 2006, Minute 78).

2.1.2 There are 2 options for dealing with licence applications:

1. Where the Council is of the opinion that matters specified in the Act have been satisfied and the Council has not received any representation from relevant persons disagreeing with the granting of the licence, the Council may grant the licence;
2. Where the Council is of the opinion that the matters specified in the Act cannot be met they may refuse to grant the licence.

2.1.3 One of the matters specified in the Act is that the proposed licence holder is a fit and proper person. As there is no specific guidance in the Act or issued with the Act as to how this assessment may be made, other than the requirement to detail any criminal convictions, the decision on this matter will be an individual decision relating to each application on the circumstances relating to that person and property.

2.1.4 Where an application for a licence is refused the Council must make an Interim Management Order. The applicant may appeal against the refusal to licence to the Residential Property Tribunal. As yet, no guidance has been issued by the Government on the procedures and costs involved for the person appealing or the Council responding to the appeal, but there will clearly be implications in terms of officer time and resources in preparing the Council's response to an appeal, which will depend on the grounds of the appeal.

2.2 Options considered

2.2.1 Currently, the Schedule 3A-1 to the Council's Constitution does not contain a reference to the licensing of Houses in Multiple Occupation and the Schedules to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 do not include the function of licensing under the Housing Act 2004. Where, a matter is not reserved to the Council under the regulations, then it is to be exercised by the Executive (Local Government Act 2000, s13). Given that appeals against a licensing decision lie to a Residential Property Tribunal and those decisions may be judicially reviewed, it is important that the Council is clear about its decision making arrangements in respect of licences. The options considered are:

1. That officers have delegated authority to grant a licence and refuse a licence.
2. That officers have delegated authority to grant a licence but not to refuse a licence, with the consequential referral to the Portfolio Holder to consider the application.

2.3 Consultation

- 2.3.1 Forums for Private Sector landlords have been held at which the implications of the Council's decision to refuse a licence have been discussed.

2.4 Financial Implications

- 2.4.1 The costs and resource associated with the provision of the Licensing regime and implementation of the proposals can be met from the existing budget and staffing provision of Community Safety Services.
- 2.4.2 However, where the Council refuse to grant a licence the local authority must take the unlicensed property into management, which has financial and staffing implications for the Council. It is not possible at this time to quantify the financial implications of taking a property into management as this will depend on particular circumstances relating to each property. The financial implications of such actions will be detailed in each report to the Portfolio Holder dependant on the individual circumstances.

2.5 Legal Implications

- 2.5.1 There is no legal difficulty with the required decision.

2.6 Equalities Impact

- 2.6.1 Giving the applicants, whose licence applications officers are minded to refuse, the opportunity for the facts to be considered by the Portfolio Holder, will allow proper consideration by an independent representative of the Council, who has had no involvement with the application. This makes the process fair, clear and transparent to the applicant within the public domain.
- 2.6.2 The Private Sector Housing Team will prepare a system of supporting applicants who are in need of language services and any other special needs as part of the standard operating procedures.

2.7 Section 17 Crime and Disorder Act 1998 Considerations

- 2.7.1 The requirements of the Housing Act 2004 in respect of the licensing of HMOs supports the Council in its priorities of strengthening its communities and using partnerships to improve and sustain the quality of life for its residents through improved housing conditions and fire safety in such accommodation.

Section 3: Supporting Information/Background Documents

Housing Act 2004;

Guidance contained in the Chartered Institute of Environmental Health's HMO Licensing Project Plan.

Licensing and General Purposes Committee, 19th September 2006, Minute 78. – Licensing of Houses in Multiple Occupation.