

Cheltenham Borough Council

Cabinet – March 17 2015

Private Rented Sector House Condition and Management Survey Tender & Funding

(Discretionary Licensing / Article 4 Direction Planning Control)

Accountable member	Cabinet Member Housing, Councillor Peter Jeffries
Accountable officer	Martin Stacy, Lead Commissioner – Housing Services
Ward(s) affected	Wards potentially affected include: St Paul's, Lansdown, All Saints, College, Pittville, St Peters
Key Decision	Not at this stage
Executive summary	<p>Local housing authorities have a duty to review the housing conditions within their administrative area, with a view to identifying any action that needs to be taken. The last review was carried out in 2011, since when there has been a continued expansion of the private rented sector in Cheltenham. The private rented stock is generally in the worst condition, is the most unsafe and exhibits accompanying management issues.</p> <p>It is proposed that a house condition and management survey of the private rented stock is carried out by consultant surveyors as a first stage to identify areas which could potentially benefit from the introduction of a discretionary licensing scheme under housing act legislation and/or an Article 4 Direction under planning legislation.</p> <p>The consultant surveyor's services, to carry out this survey, would be procured following a tendering process and the selection of the successful tender will require Cabinet approval (tender approval report).</p> <p>If the survey identifies the potential for discretionary licensing and /or an article 4 direction then, subject to a further Cabinet decision, or appropriate officer delegation, all formal consultation necessary to reach a final decision on the introduction of the Licensing scheme/Direction could be commenced.</p> <p>Once all necessary consultation has been carried out, the final decision about whether to introduce the Licensing scheme / Article 4 Direction, will form the basis of a final Cabinet report.</p>
Recommendations	<p>That Cabinet:-</p> <ol style="list-style-type: none">1. Approves going out to tender, to understand the survey cost implications of each of the following survey options that could be undertaken:-<ol style="list-style-type: none">i. The costs involved in surveying all types of private rented housing in one or more of the following wards:

- **St Paul's;**
- **Lansdown;**
- **All Saints;**
- **College;**
- **Pittville; and**
- **St Peters**

ii. **The costs involved in surveying only Houses in Multiple Occupation (HMOs) in one or more of the wards, as detailed above.**

2. Agrees that a further report be brought back to Cabinet to approve the tender price and selection, along with a recommendation as to which of the survey options should be undertaken.

Financial implications

There is a budget balance of £103,000 as at 31/03/2015 in the Housing Survey Reserve and currently £7,500 is added to this reserve each year.

The final cost of survey work will depend on prices received following the tendering process.

Funding for the proposed survey work can be made available from the House Survey Reserve Fund by virement authorised by the Director of Resources.

The continued setting aside of £7,500 each year into the Housing Survey Reserve will enable a borough wide house condition survey, which is usually carried out every five years and last carried out in 2011, to be carried out in 2020/21.

If the survey report identifies the need for discretionary licensing and / or the introduction of an Article 4 Direction, there will be resource implications for the required public consultation necessary to determine whether the introduction of any such scheme is appropriate. The cost of such consultation could be met from the current Housing Survey Reserve.

Funding for the proposed consultation work can be made available from the House Survey Reserve Fund by virement authorised by the Director of Resources.

Any shortfall in budget will be highlighted and presented to Cabinet in the tender approval report, which will detail tender prices, options and recommendations regarding budget / survey scope, specification and contractor choice.

Subject to legal advice, the use of Town and Country Planning Act section 106 commuted sums in meeting any budget shortfall may be an option. The use of such funding will be reported to Cabinet within the tender approval report.

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Legal implications	<p>The Council's contract procedure rules need to be complied with when undertaking the procurement. There are now new public contracts regulations in force and advice on the tender exercises should be sought from GOSS procurement or One Legal before commencing the procurement.</p> <p>Some legislative content is contained in section 2 of the report. The legal implications for the potential HMO licensing regime and planning controls will be referred to in the future Cabinet report.</p> <p>Contact officer: Peter Lewis Head of Legal Services, One Legal peterlewis@teWKesbury.gov.uk, 01242</p>
Key risks	See appendix 1
Corporate and community plan Implications	<p>The recommended outcomes of this report positively contribute to the following Corporate and Community Plan objectives:-</p> <ul style="list-style-type: none"> • People have access to decent and affordable housing • Cheltenham's natural and built environment is enhanced and protected • Communities feel safe and are safe • Cheltenham has a clean and well maintained environment

1. Background

- 1.1** The Private Sector housing condition survey was last carried out in 2011 and has historically taken place every five years.
- 1.2** The report showed a total of 10,260 private rented dwellings forming 22% of the housing stock.
- 1.3** Since 2001 the private rented stock in Cheltenham had almost doubled at the time of this latest survey. This growth is set to continue.
- 1.4** The majority of the private rented stock is situated in the following wards
- St Paul's
 - Lansdown
 - All Saints
 - College
 - Pittville
 - St Peters

These wards have been identified from previous house condition surveys as the most appropriate areas to be covered by the recommended private rented sector house condition and management survey.

- 1.5** The 2011 stock condition survey showed that 15.7% of the private rented stock exhibited at least one category 1 hazard as measured by the Housing Health and Safety Rating System (HHSRS). Category 1 hazards are the most severe hazards assessed under this system and the Council is required to take action when such hazards are identified.
- 1.6** The 2011 survey report also showed that the private rented sector contained the worst house conditions with 38.3% failing the decency standard with significant levels of disrepair. Ongoing

disrepair can quickly lead to the formation of Category 1 hazards where they are not already present.

2. Options available to improve private sector housing conditions in Cheltenham

2.1 There are a number of potential options open to the Council to improve standards in the private rented sector in addition to the existing enforcement measures that are currently undertaken. The proposed survey work will seek to provide the Council with statistical evidence to help inform the appropriateness of implementing one or more of the following options across the wards covered by the proposed survey: Additional Licensing and/or Article 4 Direction concerning HMOs in specified wards in Cheltenham, or introducing Selective Licensing of all private rented accommodation in specified wards in Cheltenham.

2.2 Additional Licensing of all HMOs

2.1.2 The Council can help to address the issues associated with poor management and large concentration of HMO's, utilising Housing and Planning Act Powers in addition to the mandatory licensing requirements of HMOs contained in the Housing Act 2004.

2.1.3 In 2010, through a general consent, the government enabled Council's to introduce Additional Licensing of Houses in Multiple Occupation's (HMO's) within their area without the need for government approval of the scheme. The Council still has to show that the area meets the necessary criteria for the introduction of the Scheme.

2.1.4 The Council must consider that a significant proportion of the HMO's in the area are being managed sufficiently ineffectively to cause problems for the tenants or members of the public.

2.1.5 The Council must have considered whether there are any other ways to deal with the problem and also consider that introducing Additional Licensing will significantly help them deal with the problems. The decision must be consistent with the Council's overall Housing Strategy.

2.1.6 Additional licensing is intended to provide local authorities with greater controls on improving the condition of HMO housing stock including management. Schemes are designed to be self funding for the local authority through the payment of license fees by the landlord. The local authority must adhere to the rules set down by Government when seeking to identify areas. Failure to do this can leave the local authority open to legal challenge, usually in the form of judicial review.

2.1.7 To introduce an Additional Licensing Scheme, the local authority must show that the types of HMO's to be licensed in that area are being poorly managed and causing problems for occupants and/or the local community. A significant number of these HMO's would not come under the mandatory licensing scheme.

2.3 Selective Licensing of all privately rented accommodation

The use of Selective Licensing may also be considered by the Council. This covers all private rented accommodation and takes into account areas of low housing demand and antisocial behaviour. Findings from the survey will help determine how appropriate this type of intervention is, but it is recognised that Cheltenham does not suffer from low housing demand.

2.4 Article 4 Directions on Housing of Multiple Occupation

2.3.1 In addition to Housing Act powers, Planning Act powers may be used to help restore balance to communities over time, where there are large numbers of HMO's in an area.

2.3.2 Local Planning Authorities may make a direction under Article 4 (1) of the Town and Country

Planning (General Permitted Development) Order 1995 (as amended) so that change of use by permitted development must instead require planning permission.

- 2.3.3 The change of use from a use falling within Class C3 (dwelling houses) to a use falling within Class C4 (houses in multiple occupation) has been permitted development since October 2010.
 - 2.3.4 The introduction of an Article 4 Direction could remove this permitted development right and therefore a change of use to a house in multiple occupation would require planning permission.
 - 2.3.5 In this way the formation of all new HMO's could be controlled where an unbalanced community is identified due to the numbers of HMO's in an area compared to other types of residential accommodation.
 - 2.3.6 There is a growing concern amongst residents in St Paul's that the number and management of HMO's in St Paul's is causing an imbalance and problems for the community.
 - 2.3.7 Local planning authorities should only consider making article 4 directions in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area.
 - 2.3.8 The survey work will help to provide evidence to show whether there is a need for licensing schemes and/or Article 4 Directions in any identified wards.
- 2.5 The outline specification for the survey is contained in appendix 2.

3. Reasons for recommendations

- 3.1 Local housing authorities have a duty to review housing conditions within their district. Growth in the private rented sector is set to continue and the recommendation in this report will help provide statistical evidence to assess the needs for targeted interventions to address the condition and management of stock which has historically been shown to contain the worst residential accommodation.

4. Alternative options considered

- 4.1 The option of carrying out survey work internally, utilising officers employed by the Council was considered. However, the length of time it would take to complete the survey would be significantly longer because of the council's duty to respond to poor conditions immediately following survey inspections.

5. Consultation and feedback

- 5.1 The survey and questionnaire work recommended by this report will provide part of the required consultation prior to the introduction of any discretionary schemes, if the need to introduce such schemes is identified.

6. Performance management – monitoring and review

- 6.1 The performance of the consultants appointed will be managed and monitored via the contractual arrangements.

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Appendices	<ol style="list-style-type: none">1. Risk Assessment2. Outline specification for the survey
Background information	<ol style="list-style-type: none">1. Private Sector House Condition Surveys 2011, 2005, 2001

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the survey work provides insufficient data to identify need (if any) relating to the introduction of discretionary licensing /Article 4 Directions, then the Council could be challenged if it chose to implement one or more of the potential options referred to in this report.	Martin Stacy	Jan 2015	5	1	5		The survey work must be sufficiently detailed to identify the need for and justify any proposed statutory intervention. Detailed understanding of the required data collection and process will inform the drafting of the tender specification and associated contractual requirements.		Mark Nelson	
	If tender prices exceed the set aside budget for the survey work, then the survey cannot go ahead without additional funding being found..	Martin Stacy	Jan 2015	2	2	4		The acceptance of tender price will be the subject of a further Cabinet report, which will detail the survey specification on which the tender price was based. If the tender prices exceed budget the report will recommend appropriate options regarding budget, scope and specification. Subject to legal advice, the potential use of section 106 commuted sums to		Mark Nelson	

								bridge any budget shortfall will also be included as an option in this report.			
	If the appointed consultant surveyors are unable to complete the contracted work or complete it to an adequate standard, then the council will be unable to implement any of the potential options referred to within this report.	Martin Stacy	Jan 2015	5	2	10		The contract rules for procurement are followed, as laid down in Part 4 of the Council's constitution.		Mark Nelson	