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Bath and North East Somerset Council consultation on the proposal to introduce an Additional (HMO) licensing scheme in the Bath City area 2018

Please find below the Association of Local Landlords (Wessex) response to the BANES Council Consultation for Additional HMO Licensing 2018.

We object strongly to the proposal for the following reasons;

- The current additional licensing scheme has not identified that there is a particular problem with housing standards. Using some intelligence and a little leg work, the Council could have identified HMOs with poorer standards without resorting to an additional licensing scheme. The volume of prosecutions proves this point.
- Although the Council claims that 31% of HMOs in the current additional licensing scheme had a significant hazard, it fails to mention that more than 60% of properties (600+) were already fully compliant with the Council's standards as they were already part of the Council's Accreditation Scheme. The Council changed the housing standards and it is disingenuous to claim any extra hazards in the pool of Council Accredited properties as a result.
- The Council has failed to clearly identify that this consultation also covers the renewal of the existing additional licensing scheme. This is a breach of its legal duty to be clear and transparent. Indeed, the first reference to the start date for this scheme is in the final paragraph of the final page of the consultation document (page 16).
- Having improved the stock of HMOs in Westmoreland, Oldfield and parts of Widcombe wards under the current additional licensing scheme, there is a strong argument its renewal is not required because the HMOs have achieved the required standard.
- The Council's proposal are founded on a desktop exercise which is flawed. For example, 5 years ago, BANES said 12.2% of HMOs had significant hazards. Despite the introduction of the current additional licensing scheme, the Council now says that 21% of HMOs have significant hazards. Given that around 1,500 HMOs out of a total of 3,500 are known to meet housing standards, it is fanciful to think that 21% of the total, which translates as 36% of the remaining HMOs, are below the standard required.

We hope you find our response to the consultation document of benefit and look forward to hearing the collated feedback received in response this consultation, also BANES response to this consultation.

Yours sincerely

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Comments On BANES Additional Licensing Proposal

Page 3.

The numbers of HMOs in the consultation document are not very clear.

27% of dwellings in BANES are within the PRS. According to the consultation document, this amounts to 21,000 properties. (The current figure is 22,673).

16% of the PRS dwellings in BANES are HMOs – HMOs account for only 4% of dwellings in BANES, so let's keep a sense of proportion.

HMOs in BANES number 3,556 and BANES says there are 3,159 HMOs within the City of Bath area.

Of the 3,556 HMOs, 1,029 are within the existing additional licensing scheme and there are 473 Mandatory licensed HMOs. To be clear, these two groups of HMOs, numbering 1,502, meet the housing standards laid down by the Council.

This leaves 2,054 HMOs where the Council has not done the work to assess whether they comply with housing standards.

The Council's case for introducing a city-wide additional licensing scheme is founded on the results of "Recent stock modelling" as stated in the consultation document which says that 21% of HMOs in BANES (or approx. 747) fall below the minimum statutory housing standard. For this to be anywhere near true, it would mean that 36% of the remaining HMOs not part of the existing additional licensing scheme or subject to Mandatory licensing would have to fall below the standard. There is no concrete evidence for this assertion and it is highly unlikely. It is the result of a statistical exercise so has a high degree of unreliability.

To base a proposal to expand the additional licensing scheme on a questionable statistical exercise is simply unacceptable. Real data justifying the proposed additional licensing is missing.

Furthermore, a Freedom of Information (FOI) request at the time of the previous consultation revealed that the Council believed 12.2% of HMOs across BANES had significant hazards. It is quite reasonable to assume that improvements to HMOs brought about by the introduction of the last additional licensing scheme would have reduced this percentage. It is therefore highly unlikely and fanciful to say that this percentage would have increased to 21% in the last 5 years.

Page 4.

The consultation says there is insufficient regulation over HMOs at the moment. This is, of course not true, particularly with reference to housing standards but the premise that all HMOs in BANES should be regulated seems rather Stalinist particularly when you consider that a great deal of student accommodation is NOT regulated because it is managed either by a large plc or the universities. It should be remembered that the conditions within these other units will only be as good as the local management allow them to be. Interestingly, while HMOs in the PRS are not

allowed to have shared bedrooms, there was plenty of evidence on the television recently that students were sharing bedrooms in Bath University's accommodation. It is hypocritical of BANES to tolerate such arrangements when they are not permitted in the PRS and we call on BANES to explain this example of double standards.

It is the inability or unwillingness of Council staff to locate the bad HMOs that fail to meet housing standards that is the real problem. The additional licensing scheme merely provides Council staff with a legal stick with which to beat any landlord that fails to register under the scheme.

The consultation paper says that the additional licensing scheme provides support to landlords to meet their obligations. It is unclear what form this support has taken over the past 5 years other than carrying out an inspection of the HMOs.

Much is made of the improvement to housing standards brought about by the existing additional licensing scheme. While undoubtedly there have been instances where standards have improved, this sweeping generalisation needs to be challenged on the basis that around 600 of the 1,029 properties included in the scheme were already part of the Council's own Accreditation Scheme and as such, complied with the standards dictated by the Council at that time. The standards demanded by the additional licensing scheme changed, so the goalposts were moved and that accounts for a significant proportion of the 31% level of improvement claimed by the Council. Many, if not all the improvements in standards would have been achieved within the Accreditation Scheme if the Council had only asked. This point has been made numerous times to the Council so it is very disappointing that it has sought to persistently mislead the extent of the improvements to housing standards in this way.

We are pleased to see that the Council has acted on local intelligence and using a range of tools to identify unlicensed HMOs. Some of these tools were undoubtedly proposed by our landlord group, currently designated ALL WESSEX, prior to the introduction of the additional licensing scheme as a means of discovering potentially low quality HMOs, such as examining the Council's own Council Tax records.

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It is interesting to note that despite the huge increase in regulation on over 1000 HMOs within the additional licensing scheme, there have only been 6 prosecutions, 5 of which relate to failure to register the HMO in the additional licensing scheme. This demonstrates beyond any doubt that the Council's claims that the introduction of the original additional licensing scheme was necessary because potentially there were many HMOs of a very poor standard were unfounded and exaggerated. It further demonstrates that the main reason to bring in an additional licensing scheme is to provide the Council with funds so it can fulfil its statutory duty and inspect and monitor all the HMOs within the designated area. In other words, it should be doing this job anyway without resorting to charging landlords.

There is a statement that introducing a city-wide licensing scheme will "improve communities across the designated areas". This is meaningless mumbo jumbo. The extent of HMOs within the City of Bath that have directly impacted on local communities is a direct result of previous planning decisions by this Council that allowed a massive expansion in student numbers at both universities and had a consequential knock-on effect on the growth in the number of HMOs across the city. The Article 4 direction has somewhat belatedly, been an attempt to stem the tide. To suggest that licensing will improve communities is fallacious.

Furthermore, there is a statement that extending the licensing scheme will "Ensure that the standards of accommodation provide a safe and healthy environment (such as having adequate fire, gas and electrical safety, suitable room sizes and adequate kitchens/ bathrooms for the number of

tenants)”. Again, this statement is highly misleading because the Council already has sufficient legal powers to ensure that these standards are present in HMOs. Rather than using the tools available to detect HMOs, the Council prefers to sit back, implement a licensing scheme, then make sure that all the compliant landlords’ properties meet designated housing standards – which for the most part, they will do because these are the good landlords. Those properties where landlords are ‘hiding’ and whose properties are more likely to offer poor standards will not be uncovered simply by the introduction of a licensing scheme. The prosecution of landlords with poor standards of property could still take place but if the current additional licensing scheme is anything to go by, the scale of the problem is not significant.

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It is claimed that a benefit for landlords of a licensing scheme is “All landlords will receive information and support to help them meet legal requirements for safety and management”. The licences issued under the current additional licensing scheme state that landlords are expected to constantly monitor the housing standards page on the Council’s website to ensure compliance with the latest standards. Not much evidence of support there then! Given that the Council probably has 90+% coverage by email of licence holders/landlords, it should not be an onerous task to notify changes in housing standards. This is a clear demonstration of the Council’s desire to manage housing standards in BANES by the reclining armchair approach rather than playing a proactive role which their statutory obligations would suggest they should.

One of the benefits of licensing for the community is stated as “Protect vulnerable people who may currently live in poor condition properties”. Again, we are back to this concept that licensing is the answer to all the Council’s problems, when clearly, it is not judging by the low incidence of prosecutions. There is nothing to stop the Council’s staff currently finding and dealing with poor condition properties apart from a lack of will.

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The PRS represents 21,000 properties within BANES. This figure has been updated to 22,673.

The report is written in a perjorative style. For example, in the section dealing with coordination with other broader functions, there is an implied assumption that new HMOs designed to provide accommodation to meet the needs of the Homelessness Strategy will not be at the minimum statutory housing standard. The report could have said that licensing will help ensure these HMOs achieve the minimum statutory housing standard.

Page 8

No comments.

Page 9

In discussing alternative options available to the Council, Interim Management Orders are referred to. While it is agreed that this is not appropriate as an area based tool, it should be abundantly clear to both members and officers of BANES that an area based approach is not relevant, given that only 6 prosecutions have resulted from the current area based additional licensing scheme and 5 of these arose because the HMO was not registered in the scheme. Interim Management Orders would therefore be a very suitable tool and a very good alternative to an additional licensing scheme, in dealing with the low number of cases where HMOs are of a very poor standard and poorly managed.

Under ‘Licensing Scheme Being Considered’ the document states “Having more than one household living in a property can increase the risk to the health, safety and welfare of the occupiers if the property is not properly managed.” While the management of a property is an important factor and this statement has some truth to it, it avoids the most obvious fact that the conduct of the

individuals living in the household probably has a more important bearing on the health, safety and welfare of the other occupiers and this should not be ignored.

“A Council may make a designation to introduce an additional licensing area if it considers that a significant proportion of HMOs are being poorly managed to an extent which will give rise to one or more particular problems either for those occupying the property or members of the public.”

Item 1 under this heading relates to the presence of housing health and safety hazards within HMOs. The main problem with the data presented by the Council is as previously described – the Council moved the goalposts and subsequently flagged up issues with a large number of HMOs that were part of the previous Accreditation Scheme. If the effect of moving the goalposts is stripped out, the impact of the Additional Licensing scheme has been much less marked and the main assertion by the Council that it is likely 31% of HMOs elsewhere would have similar defects is statistically incorrect.

This disingenuous use of statistics has been pointed out to Council staff on previous occasions so it is particularly disappointing that appropriate corrections have not been made to its evidence.

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No comments.

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BANES estimates there are 3,159 HMOs in the City of Bath area.

440 or 25% of all service requests to the Housing Team come from HMOs. Of the 440, about two thirds come from HMOs in the current additional licensing area so comparatively few service requests arise from HMOs in the rest of the BANES area. This undermines the Council's case to extend the licensing area as additional licensing has done little to reduce the flow of requests.

Page 12

When the original additional licensing scheme was out to consultation, it was stated that it would run for 5 years and a new consultation would be required in order to continue the scheme. The new consultation document says nothing on this point but Council officers have subsequently confirmed that the new city-wide scheme is intended to 'mop up' the original scheme. The new consultation documents should have made this very clear – the failure of the Council to do this demonstrates that there is an intention to slide the renewal of the old scheme through on the back of the new one. The Council has failed in its legal duty to be clear and transparent.

Pages 13 and 14

No comments.

Page 15

The estimated costs appear to have been matched with the proposed fee income. We have concerns that the fee has simply been pitched at something similar to what other Councils' are seeking to charge rather than a true reflection of the likely costs.

The National Landlords' Association has carried out research into comparative licensing fees around the country. While the least expensive additional license fee is £135 and this would undoubtedly raise eyebrows, there are other examples where the fee is £400 or less.

Given that much of the application process is automated, we believe we could design a system that is significantly less expensive than the costs identified by BANES. Similarly, we can prove that inspections can be achieved in a much more cost effective manner than that proposed.

There is no detailed breakdown of costs that demonstrates and justifies the proposed fee.

The Council has a duty to provide services in a cost effective manner and we would support a regime whereby those HMOs that require more Council input to achieve the licensing standard are charged more.

We understand that monies collected through licensing schemes escape the due diligence and scrutiny of an independent accounts auditor. How do landlords know that fees are fair and reasonable and not being used for purposes other than the provision of the licensing service?

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At last, the start date for the scheme is revealed! This is the first mention of the start date. Nowhere in the document is it mentioned that this scheme mops up the current scheme. The Council is under a legal duty to ensure that its proposals are clear and transparent – on this point it has failed.

Draft Licensing Conditions

7. It is unacceptable to say that it is the landlord's responsibility to resolve an issue with a pest infestation. Many of these infestations arise due the way the tenants live in the property – in other words, leaving food lying around, not cleaning the property sufficiently or properly. It is quite ridiculous to then propose that the landlord has to deal with problems arising from this.

8. It is quite unreasonable for the Council to expect landlords or the licence holder to "take reasonable steps to minimise any nuisance, alarm, harassment or distress that may be caused to neighbours by the way the property is used."

Such a wide ranging requirement is highly subjective and in any event, what is the Council proposing? Should licence holders and landlords be going round to HMOs at 3am to speak to tenants when a neighbour has telephoned to complain about noise? Bear in mind, landlords are supposed to give 24 hours' notice except in emergencies and a high level of noise can hardly be described as an emergency.

Furthermore, it is wrong of the Council to insist that landlords provide contact details to immediate neighbours of HMOs. If the neighbour has an issue with the occupiers of the HMO, in the first instance he/she should do what everybody else has to do, that is take up the issue with the occupants. If that fails, the next step may be contacting the police or the Council's Environmental Health Officer, depending what the issue is. The online register provided by the Council showing the managing agent or landlord's contact details should suffice.

While landlords can include a clause in the lease designed to rein in excessive behaviour, such clauses may be deemed to be unreasonable to tenants. There are legal remedies to counter anti-social behaviour that are available to all citizens. There is no case for the neighbours of HMOs to be treated as more privileged than others.

Landlords are prevented by law from entering a rented property without giving 24 hours notice. Tenants have a right to privacy and quiet enjoyment. If the tenant does not grant entry into the property, the landlord cannot be expected by the Council to resolve issues such as anti-social behaviour or pest infestations etc. Clear legally compliant guidelines are required by the Council that explains their expectation of landlords in addressing these problems.