

REPORT TO: LICENSING COMMITTEE – 6 FEBRUARY 2014

REPORT ON: HOUSES IN MULTIPLE OCCUPATION – REVIEW OF OVERPROVISION POLICY

REPORT BY: DIRECTOR OF HOUSING

REPORT NO: 72-2014

1. PURPOSE OF REPORT

- 1.1. To review the existing policy on overprovision in relation to applications for Licences for Houses in Multiple Occupation in order to determine the effectiveness of the existing policy and to consider any other practical options.

2. RECOMMENDATIONS

- 2.1. It is recommended that the Committee:

- a. Agrees to maintain the existing policy and exemptions.
- b. Approves the continued use of the 2001 Census Output Area boundaries.
- c. Maintains the overprovision percentage at 12.5% city wide, with the exception of the City Centre.

3. FINANCIAL IMPLICATIONS

- 3.1. There are no financial implications arising from this report.

4. MAIN TEXT

4.1. Background

- 4.1.1. Following the introduction of mandatory HMO Licensing in October 2000 and reflecting a large student population, an increasing number of objections were being received which raised concerns over the effects of an over-concentration of HMOs in particular areas of the city. In an attempt to address these concerns, the Licensing Committee, in March 2006, instructed that all applicants for a licence must appear before the Committee. Up until then, only those applicants to whose application there were objections, representations or any other observations were referred to the Committee.
- 4.1.2. In the absence of a policy on overprovision, the approach, at that time, was to consider the provision levels based on the number of dwellings in the road or street where the application premises was situated as well as, in the case of a flat, the number of flats in the tenement/block and the number already licensed. This was a manual and time consuming exercise. It was then for the members to decide if to grant the application would amount to overprovision, after hearing the applicant and any objector(s). A number of applications were refused on this basis, the majority where there was otherwise no public or officer objection and many of these determinations were the subject of appeals to the Sheriff, some of which resulted in the Committee's decision being overturned.

- 4.1.3. The lack of a policy proved unsatisfactory for both the members of the Committee, the applicants and prospective applicants for licences as well as other stakeholders. The ratio of licences to residences was extremely misleading, especially if the HMOs were located in one small part of a very long street or road. It was not possible to provide any accurate information to any stakeholder in advance of a Committee and as a result the position was only made clear at the Committee meeting.

4.2. **A Policy Approach**

- 4.2.1. In December 2006, the Committee remitted to the Depute Chief Executive (Support Services) to consult with interested parties, including licence-holders, applicants for licences, the Dundee Landlords' Association, the Universities and other higher education institutions and community councils, Council departments, elected members, MPs and MSPs, and the general public as to whether a policy should be adopted and, if so, what kind of policy that should be.
- 4.2.2. A majority of respondents favoured a policy approach with the most favoured option being based on a then, recently implemented, Supplementary Planning Policy on Houses in Multiple Occupation which utilised Census Output Areas and a 12.5% cap on HMOs within any Census Output Area.
- 4.2.3. The above supplementary planning policy has been replaced by Policy 15 of the Dundee Local Development Plan 2014 which was adopted in December 2013. The policy approach remains relevant and reads as follows:

Policy 15: Houses in Multiple Occupation

Houses in Multiple Occupation (HMO) that require planning permission will be supported where:*

- 1) *they do not involve the change of use of a tenement flat** or other form of flat with a common stair or a shared entrance, unless in the City Centre; and*
- 2) *they will not be detrimental to traffic or pedestrian safety on account of increased parking pressures and must not lead to or exacerbate existing parking problems in the surrounding area; and*
- 3) *they will not have a detrimental impact on the residential amenity. In this regard each proposal must provide adequate refuse storage space, garden ground, car parking and secure bike storage space; and*
- 4) ***the approval of a planning application for an HMO would not result in the proportion of licensed HMOs in any Census Output Area (excluding the City Centre) exceeding 12.5% of the total residential stock***.***

The occupation of new mainstream residential developments and substantial conversions by 3 or more unrelated people within the Waterfront and in close proximity to higher education institutions (including Ninewells Hospital) will be prevented. The Council will secure this objective through obligations under Section 75 of the Town & Country Planning (Scotland) Act 1997.

*(*Planning permission is required for the occupation of a house by more than 5 unrelated people and by 4 or more unrelated people in a flat.)*

***Flat: means a separate and self-contained set of premises whether or not on the same floor and forming part of a building from some other part which it is divided horizontally. Part 1 (2) Town & Country Planning (General Permitted Development) (Scotland) Order 1992)*

****Purpose built HMO accommodation will be excluded from this assessment)*

- 4.2.4. Following a report to the Committee it was decided to adopt a similar policy based on Census Output Areas and utilising the same percentage. Using GIS Mapping technology, this introduced a consistent approach, provided meaningful and accurate real-time data

across the city as well as informing all stakeholders as to whether overprovision was likely to be an issue (including at the time when an owner of property is contemplating submitting an application), whether objections are made or not. Importantly this also ensured a consistent approach between the licensing and planning systems which has since been recognised and linked by changes in licensing legislation.

- 4.2.5. The implementation of this policy has been extremely successful. This is evidenced by the reduced number of objections received which cite overprovision and there have been no appeals to the Sheriff, based on overprovision since the policy was introduced. This approach provides a clear and consistent policy that ensures that all stakeholders are fully informed prior to Committee as well as enabling elected members to make informed and robust decisions. It places the onus on the applicant to argue for exemption from the policy (leaving the Committee to take a view and decide accordingly) and helps sustain existing residential areas. Where the provision level in a COA is at or just below 12.5%, the potential risk to an applicant in seeking to obtain the last licence, potentially in competition with another applicant, may also act as a deterrent.

4.3. **Census Output Areas**

- 4.3.1. Census Output Area (COA) boundaries are fixed at each census and the current policy utilises the 2001 COA boundaries based on frozen postcodes as at December 2000. The target COA size was 50 Households. The number of households will vary between COAs and more importantly will change over time as a result of demolition and development. Revised 2011 COAs have been published and these are considered later in this report. COAs are the lowest level of geography for which data will be published on all census topics. As a result this would enable, if required, the inclusion of data on HMOs to be included in or to supplement any census data.

4.4. **Scottish Government Guidance**

- 4.4.1. The Private Rented Housing (Scotland) Act 2011 introduced new powers which for the first time included the specific discretionary power to refuse to grant an HMO licence if it considers that there is, or the grant of a licence would result in, overprovision of HMOs in the locality. (Previously, overprovision fell within a “catch-all” ground of refusal where it amounted to “another good reason for refusal”.) It is for the local authority to determine locality. In considering whether to refuse to grant a licence on this ground, the local authority must have regard to whether there is an existing licence in effect in respect of living accommodation and, where known the views of the applicant and any occupants. In considering whether there is overprovision, the authority must have regard to the number and capacity of licensed HMOs in the locality as well as the need for HMO accommodation in the locality.
- 4.4.2. Section 129A of the 2011 Act also introduced the power of “Preliminary Refusal”, enabling a local authority to refuse to consider an application for a licence if it considers that the occupation of the living accommodation concerned, as an HMO, would constitute a breach of planning control.
- 4.4.3. The Council’s existing policy, supported by GIS Mapping technology and which is seen as good practice by other local authorities, effectively implements these powers and the close links developed with Planning in respect of processing applications and in having a coordinated approach to overprovision have been fundamental to the success of this approach.

4.5. Options for Change

4.5.1. Output Areas

Early experience of basing overprovision on streets and roads, as outlined in 4.1.2 and 4.1.3 above, proved problematic and it is not considered that this is a viable option to consider. A number of other geographic output areas exist and these are considered below.

4.5.2. Postcode Units

A number of postcode units, or parts thereof, make up a COA and notwithstanding that in some postcode areas there will have been both demolition and development, these are considered too small for the purposes of considering overprovision. The use of postcode units as a geographic output could lead, in certain circumstances, to an increased number of HMOs within an existing COA depending upon the disposition of existing HMOs within the COA relevant to the postcode units. It might also negate the benefits of the natural grouping of HMOs within a single tenement or terrace of houses. Enclosure No1 provides a GIS Map with Postcode units overlaying 2001 COAs.

4.5.3. 2011 Census Output Area Boundaries

Revised 2011 COA boundaries have been published. The output areas created for the 2011 census were designed to provide as much continuity as possible with those created in 2001. Whilst perhaps not radical they do make significant changes which could change the dynamics in at least a number of existing residential areas and impact on continuity of approach, eg, areas which are overprovided using the 2001 COA's may not be overprovided under the 2011 COA's and *vice versa*.

4.5.4. Data Zones

A number of COAs, typically 8 or more, make up a Data Zone, creating much larger geographic areas. There is an average of 365 households in each 2011 data zone compared with an average of 51 households in each 2011 COA. The larger geographic area presented by data zones will arguably not provide the same level of control that a COA does and again may change the existing dynamics in particular residential areas as well as impacting on continuity of approach. Enclosure No 2 provides a GIS Map with Data Zones overlaying 2001 COAs.

4.5.5. Percentage Cap

The 12.5% level set within the existing policy mirrors the existing planning percentage and is critical to coordinating the planning and licensing policies. At this time the vast majority of COAs have not reached the overprovision levels, meaning that there are less than 12 in 100 households in any one COA which are HMOs. Where within the West End of the City there are COAs which exceed the cap of 12.5%, this reflects their proximity to the university, historical use and the flexibility of the policy to allow exemptions to the policy to be considered.

4.5.6. The table below details COA capacity by category in the West End of the City as delineated in the GIS map at Enclosure 3 to this report.

West End		
Capacity of COA	Number of COAs	Percentage
Over Capacity	12	15.19%
At Capacity	4	5.06%
1 Remaining Licence	10	12.66%
2-3 Remaining Licenses	10	12.66%
4+ Remaining Licenses	20	25.32%
No Current HMOs	23	29.11%
TOTALS	79	100%

4.5.7. Of 4986 qualifying dwellings in the West End area detailed above, 8.3% (414) are legally operating qualifying HMOs. This figure excludes legally operating non qualifying HMOs such as University Halls of Residence in the area.

4.6. **Impact on HMO Data Management System and Coordination with Planning**

4.5.1 Any change to output area boundaries or percentage cap would require an equivalent change in planning policy to ensure continuity of approach. Any change will also require an update of the automated Data Management System and GIS mapping system which generate the reports on overprovision.

4.7. **Summary**

4.7.1. The existing policy provides an effective and robust mechanism to the members of the Committee to control the concentration of HMOs across the city and helps sustain existing residential areas.

4.7.2. It is flexible enough to allow exemptions to be considered as well as providing confidence to prospective applicants and residents by providing accurate, meaningful and real-time information.

4.7.3. The use of COAs as the geographic output areas provides a sound, recognised and independent datum from which to measure HMO concentrations, reflecting local community areas throughout the city. This approach is widely known and accepted in the city.

4.7.4. Retention of the 2001 COAs as the geographic output areas will ensure continuity of approach and prevent any negative impact as a result of a change to an alternative output area. It is accepted that the number of households in 2001 COAs will vary over time, but this will also be true of the new 2011 COAs.

4.7.5. As a policy it compliments the planning approach to HMOs and this has become all the more important following changes in legislation linking planning and licensing decisions.

4.7.6. The implementation of the policy and the use of GIS Mapping has led to a significant downturn in objections and appeals, saving significant time, energy and therefore cost to the Council.

5. **POLICY IMPLICATIONS**

5.1. This report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management.

5.1.1. There are no major issues at this time.

5.1.2. An equality impact assessment has been carried out and attached as Enclosure 4.

6. **CONSULTATION**

6.1.1. The Chief Executive, the Director of Corporate Services, the Head of Democratic and Legal Services and all other Chief Officers have been consulted in the preparation of this report. No concerns have been expressed.

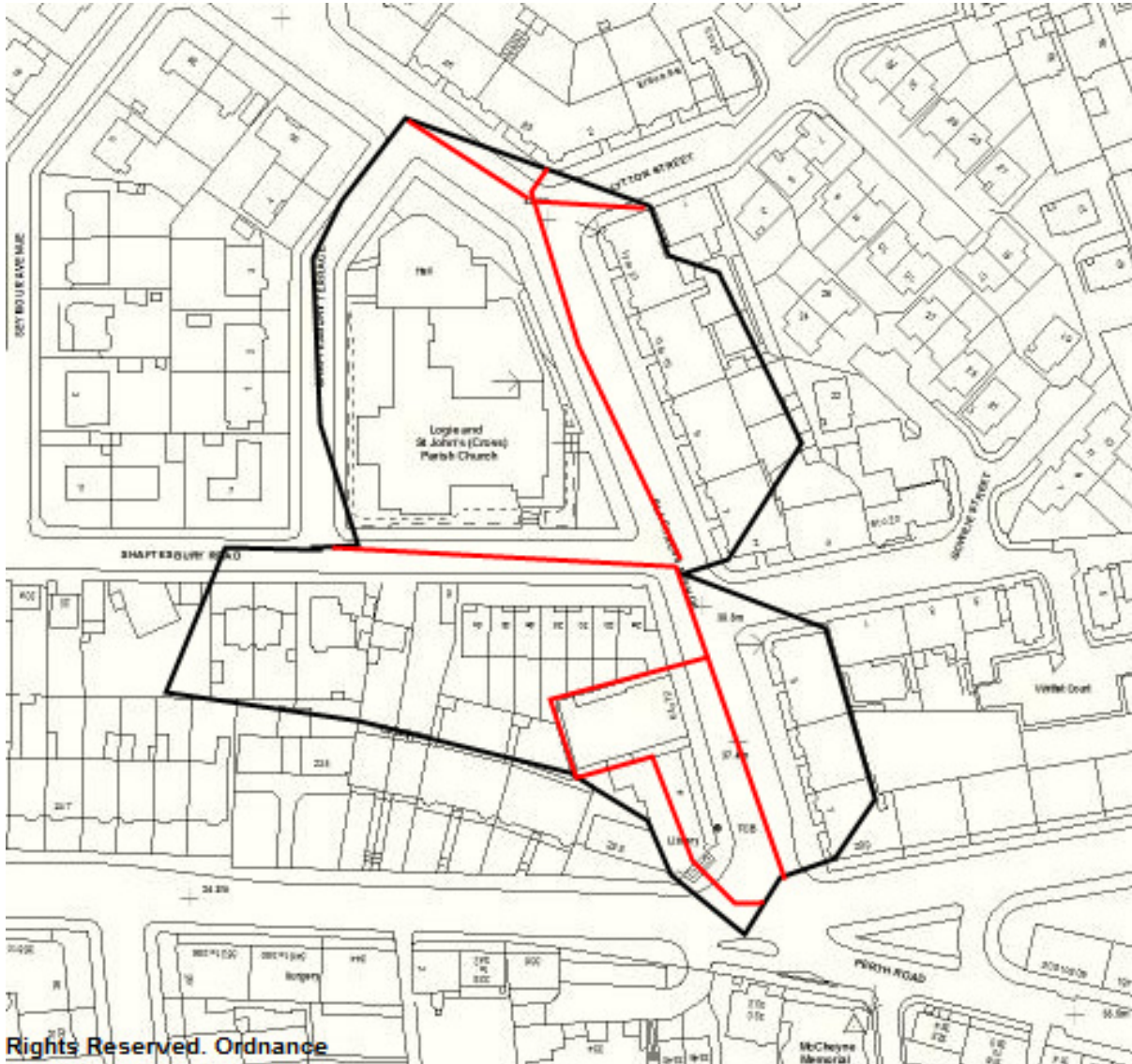
7. **BACKGROUND PAPERS**

- The Private Rented Housing (Scotland) Act 2011.
- Licensing Of Houses in Multiple Occupation: Statutory Guidance for Scottish Local Authorities.
- Houses in Multiple Occupation: Supplementary Planning Policy Guidance.
- Policy 15: Houses in Multiple Occupation -Dundee Local Development Plan 2014

ELAINE ZWIRLEIN
DIRECTOR OF HOUSING

JANUARY 2014

Census Output Areas – Postcode Units

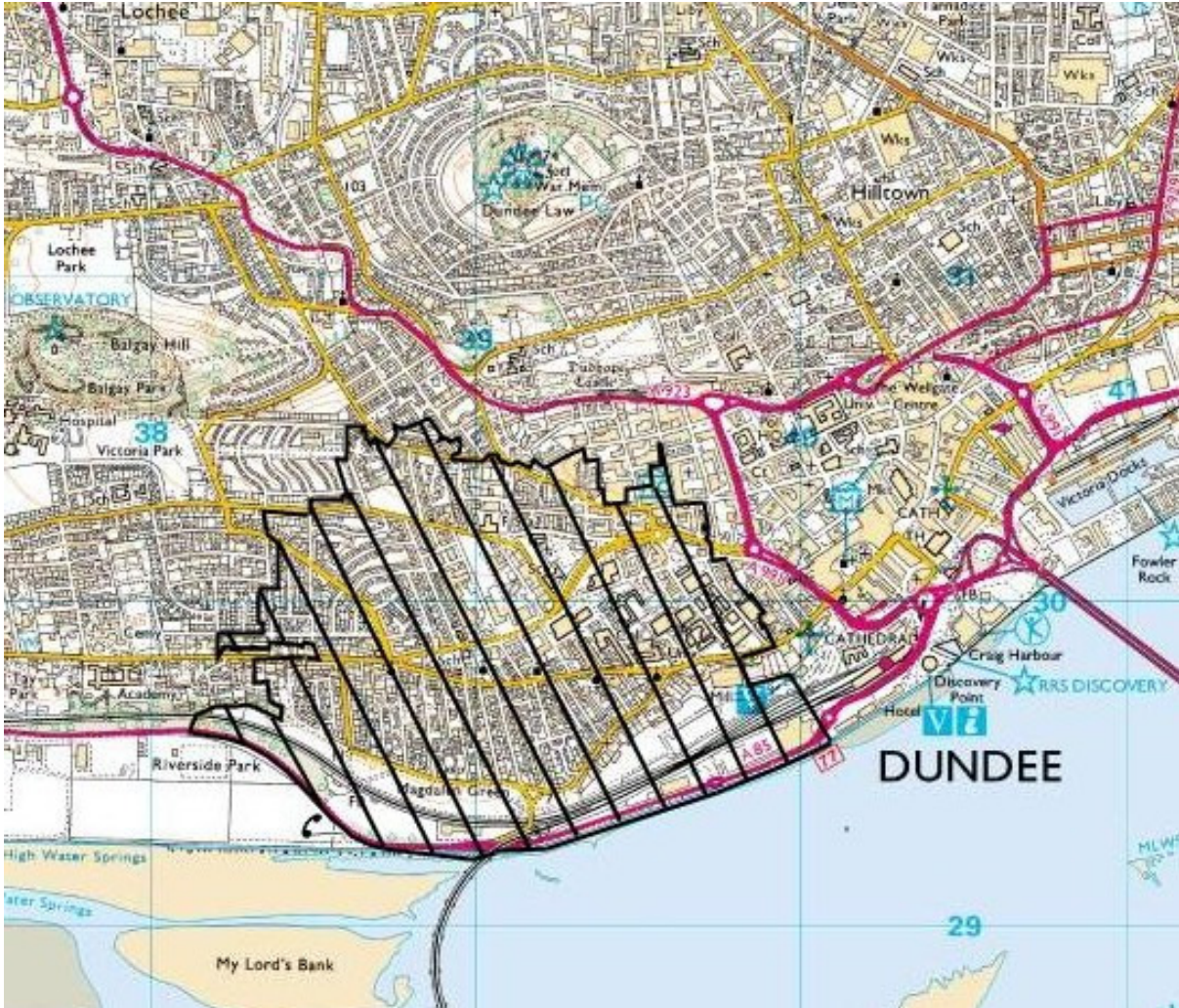


The outlined area on the map above is a Census Output Area. The internal lines within the delineated area define the postcode units which make up the Census Output Area. This particular Census Output Area has 5 full postcode units and 3 partial postcode units within its boundary.

Data Zones – Census Output Areas

The outlined area on the map above is a Data Zone. The internal lines within the delineated area define the Census Output Areas which make up this particular Data Zone. This Data Zone has 8 Census Output Areas within its boundary.

West End Census Output Areas



EQUALITY IMPACT ASSESSMENT TOOL

Part 1: Description/Consultation

Is this a Rapid Equality Impact Assessment (RIAT)?	Yes x <input type="checkbox"/>	No <input type="checkbox"/>
Is this a Full Equality Impact Assessment (EQIA)?	Yes <input type="checkbox"/>	No x <input type="checkbox"/>
Date of Assessment: January 2014	Committee Report Number: - 2014	
Title of document being assessed: HOUSES IN MULTIPLE OCCUPATION – REVIEW OF OVERPROVISION POLICY		
1. This is a new policy, procedure, strategy or practice being assessed (If yes please check box) <input type="checkbox"/>	This is an existing policy, procedure, strategy or practice being assessed? (If yes please check box) X <input type="checkbox"/>	
2. Please give a brief description of the policy, procedure, strategy or practice being assessed.	To seek to prevent overprovision of Houses in Multiple Occupation (HMO's) by trying to limit the number of HMO's in any Census Output Area (COA) to 12.5% of qualifying residential properties in each COA	
3. What is the intended outcome of this policy, procedure, strategy or practice?	See answer to 2. above.	
4. Please list any existing documents which have been used to inform this Equality and Diversity Impact Assessment.	1. Licensing of Houses in Multiple Occupation : Statutory Guidance for Scottish Licensing Authorities (Scottish Government); 2. Houses in Multiple Occupation : Supplementary Planning Guidance (Dundee City Council).	
5. Has any consultation, involvement or research with protected characteristic communities informed this assessment? If yes please give details.	No.	
6. Please give details of council officer involvement in this assessment. (e.g. names of officers consulted, dates of meetings etc)	Colin McCrae (Private Sector Services Unit); Stuart Galloway and Brian Woodcock (Corporate Services)	
7. Is there a need to collect further evidence or to involve or consult protected characteristics communities on the impact of the proposed policy? (Example: if the impact on a community is not known what will you do to gather the information needed and when will you do this?)	No.	

Part 2: Protected Characteristics

Which protected characteristics communities will be positively or negatively affected by this policy, procedure or strategy?

NB Please place an X in the box which best describes the "overall" impact. It is possible for an assessment to identify that a positive policy can have some negative impacts and visa versa. When this is the case please identify both positive and negative impacts in Part 3 of this form.

If the impact on a protected characteristic communities are not known please state how you will gather evidence of any potential negative impacts in box Part 1 section 7 above.

	Positively	Negatively	No Impact	Not Known
Race / Ethnic Minorities	<input type="checkbox"/>	<input type="checkbox"/>	x <input type="checkbox"/>	<input type="checkbox"/>
Gender	<input type="checkbox"/>	<input type="checkbox"/>	x <input type="checkbox"/>	<input type="checkbox"/>
Gender Reassignment	<input type="checkbox"/>	<input type="checkbox"/>	x <input type="checkbox"/>	<input type="checkbox"/>
Religion or Belief	<input type="checkbox"/>	<input type="checkbox"/>	x <input type="checkbox"/>	<input type="checkbox"/>
People with a disability	<input type="checkbox"/>	<input type="checkbox"/>	x <input type="checkbox"/>	<input type="checkbox"/>
Age	<input type="checkbox"/>	<input type="checkbox"/>	x <input type="checkbox"/>	<input type="checkbox"/>
Lesbian, Gay and Bisexual	<input type="checkbox"/>	<input type="checkbox"/>	x <input type="checkbox"/>	<input type="checkbox"/>
Socio-economic	<input type="checkbox"/>	<input type="checkbox"/>	x <input type="checkbox"/>	<input type="checkbox"/>
Pregnancy & Maternity	<input type="checkbox"/>	<input type="checkbox"/>	x <input type="checkbox"/>	<input type="checkbox"/>
Other (please state)	<input type="checkbox"/>	<input type="checkbox"/>	x <input type="checkbox"/>	<input type="checkbox"/>

Part 3: Impacts/Monitoring

<p>1. Have any positive impacts been identified?</p> <p>(We must ensure at this stage that we are not achieving equality for one strand of equality at the expense of another)</p>	No.
<p>2. Have any negative impacts been identified?</p> <p>(Based on direct knowledge, published research, community involvement, customer feedback etc. If unsure seek advice from your departmental Equality Champion.)</p>	No.
<p>3. What action is proposed to overcome any negative impacts?</p> <p>(e.g. involving community groups in the development or delivery of the policy or practice, providing information in community languages etc. See Good Practice on DCC equalities web page)</p>	N/A
<p>4. Is there a justification for continuing with this policy even if it cannot be amended or changed to end or reduce inequality without compromising its intended outcome?</p> <p>(If the policy that shows actual or potential unlawful discrimination you must stop and seek legal advice)</p>	N/A
<p>5. Has a 'Full' Equality Impact Assessment been recommended?</p> <p>(If the policy is a major one or is likely to have a major impact on protected characteristics communities a Full Equality Impact Assessment may be required. Seek advice from your departmental Equality lead.)</p>	No.
<p>6. How will the policy be monitored?</p> <p>(How will you know it is doing what it is intended to do? e.g. data collection, customer survey etc.)</p>	Will be kept under review by officers and also at the request of elected members of the Licensing Committee.

Part 4: Contact Information

Name of Department or Partnership	Housing Department
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Type of Document	
Human Resource Policy	<input type="checkbox"/>
General Policy	x <input type="checkbox"/>
Strategy/Service	<input type="checkbox"/>
Change Papers/Local Procedure	<input type="checkbox"/>
Guidelines and Protocols	<input type="checkbox"/>
Other	<input type="checkbox"/>

Manager Responsible	Author Responsible
Name: Colin McCrae	Name: Colin McCrae
Designation: Private Sector Services Manager	Designation: Private Sector Services Manager
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Signature of author of the policy:	Date: .24 Jan 14
Signature of Director/Head of Service:	Date: 28 Jan 14
Name of Director/Head of Service: Elaine Zwirlein.	
Date of Next Policy Review:	To be determined