

Report title	Proposal to review HMO licensing
Report author	Daniel Bradding and Helen Clark
Department	Environmental Services
Exempt?	No
Exemption type	Not applicable
Reasons for exemption	Not applicable

Purpose of report:

- To resolve

Synopsis of report:

The Overview and Scrutiny Select Committee at its meeting on 28th March 2024 requested that the following activities be reviewed by Environment and Sustainability Committee;

- 1) A review considering if there is sufficient evidence to implement an additional HMO licensing scheme in the borough to include non - licensable HMOs
- 2) Introduction of new HMO Licensing conditions on the following themes which would apply to existing and additionally licensed HMOs
 - a) Bins and waste management
 - b) Garden Maintenance
 - c) ASB and nuisance behaviour
- 3) To review HMO licensing fees.

After careful consideration by officers this report concludes the following:

- the evidence gathered, on analysis, did not meet the three evidence tests required for implementation of an additional licensing scheme as set out in the Housing Act 2004
- existing powers and processes are available to tackle ASB, nuisance behaviour, waste management and garden maintenance issues. The use of existing powers would deliver a more targeted, effective and efficient results.

Recommendation(s):

That the Committee does not progress the introduction of an additional HMO licensing scheme to include non-licensable HMOs where there are two or more separate households, because none of the three evidential tests prescribed in the Housing Act 2004 are met.

That the Committee does not approve the introduction of new HMO licensing conditions because existing powers and processes are available to tackle ASB, nuisance behaviour, waste management and garden maintenance issues. The use of existing powers will deliver a more targeted, effective and efficient results.

1. Context and background of report

1.1 Relevant background matters have been discussed at the following past committees:

- 13th December 2023, Overview & Scrutiny Select Committee [weblink](#)
- 1st February 2024, Overview & Scrutiny Select Committee [weblink](#)
- 28th March 2024, Overview & Scrutiny Select Committee [weblink](#)
- 6th June 2024, Environment and Sustainability Committee [weblink](#)

1.2 On 6th June 2024 Environment and Sustainability Committee were invited to endorse Overview & Scrutiny Select Committee's recommendations, namely requesting Environment & Sustainability Committee bring a report to a future committee covering the following matters:

- 1) To consider the introduction of an Additional Licencing Scheme to include non-licensable HMOs
- 2) To explore the introduction of new HMO Licence conditions on the following themes which would apply to existing and additionally licensed HMOs:
 - a. Bins and waste management
 - b. Garden Maintenance
 - c. ASB and nuisance behaviour
- 3) To review HMO licensing fees

1.3 An HMO is any property (house or flat) occupied by three or more people comprising two or more households who share facilities (kitchen, bathroom and/or toilet) and occupy the property as their only or main residence, even if they are all friends and occupy the property on a single tenancy.

1.4 In England & Wales a mandatory HMO licensing scheme is in effect. A license is required where an HMO has 5 or more tenants. This scheme is administered successfully in Runnymede by the small Private Sector Housing team in Environmental Services, comprising the Private Sector Housing Manager and Private Sector Housing Officer.

1.5 Local housing authorities have the power to introduce an additional licensing scheme that may apply to non-licensable HMOs in the local authority area or any part of it. Such schemes may apply to any category of HMOs as the authority considers appropriate. Any such designation must meet the prescribed evidential test.

1.6 The Housing Act 2004 sections 56 and 57 contain three evidential tests that must be reviewed before any designation can be made;

Test one - *The authority must consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more*

particular problems either for those occupying the HMOs or for members of the public. [section 56 (2)]

Test two - *The authority must not make a particular designation under section 56 unless ... they have considered whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question, [section 57(4)(a)]*

Test three - *The authority must not make a particular designation under section 56 unless ...they consider that making the designation will significantly assist them to deal with the problem or problems (whether or not they take any other course of action as well) [section 57(4)(b)]*

- 1.7 The authority must consult with those likely to be affected by it and must identify the extent to which those HMOs have been managed in accordance with any approved code of practice. The period of consultation must be not less than 10 weeks. The authority must ensure that the making of a scheme is consistent with its overall housing strategy and consider whether there is any other course of action available.
- 1.8 When considering a scheme, the authority must have regard to any information regarding the extent to which any Housing Act 2004 section 233 codes of practice for management standards have been complied with by persons managing HMOs in the area in question.

There are 3 such codes in effect¹ and the effect of the codes is to require local housing authorities to exempt accommodation operated by Educational Establishments from mandatory, additional or selective HMO Licensing. Accommodation provided by non-educational establishments are not exempted. Members of the Codes voluntarily agree to comply with good practice standards that relate to both the physical condition of a building as well as its day-to-day management. They also agree to be vetted to check they are meeting the standards.

There are six non-educational establishment Purpose Built Student Accommodation (PBSA) developments in Egham who are code members. The Egham PBSA developments are not in scope of HMO licensing because they fall outside of the prescribed description contained in The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018). Consequently, they would not be impacted by any additional licensing scheme and, unless this were to change, no further consideration is required.

- 1.9 The authority would consult with individuals and organisations likely to be impacted including landlords and tenants together with other community representatives and bring back results to committee
- 1.10 Additional licensing schemes are in place for 5 years within which time a review must take place to establish whether they should continue or not.

¹Codes of practice are as detailed in The Student Accommodation (Codes of Management Practice and Specified Educational Establishments) (England) Regulations 2024

An overview of potential tools to regulate HMOs is presented table 1 below:

Table one – Potential tools to regulate HMOs

HMO control	Requirements	Applies to	Effect	Application to Runnymede
Article 4 Direction (planning power)	Would require planning policies in order to be effective. An article 4 does not ban further HMOs simply requires them to seek permission. an Article 4 would require a strong evidence base that clearly shows significant HMO density and/or numbers of HMOs within an area are creating an unbalanced community or other planning related problems	Specific areas of existing high concentration of HMOs in a Borough	Where an article 4 is present a planning application is required. This Enables the Council to consider the planning merits of additional HMOs in specific areas of the Borough only. Applications can generally only be refused where there are conflicts with policies.	Considered at Overview & Scrutiny Select Committee 13 th December 2023 – Further exploration of evidence would be required, additionally would need to be considered in conjunction with review of the 2030 Local Plan for Runnymede. Not retrospective. HMO's are being considered as part of the Local Plan review.
Additional HMO Licensing (licensing power)	Strong evidence base that clearly shows significant numbers of HMOs are being significantly mismanaged	Specific areas of a Borough (ward-by ward)	Requires HMOs with 3-4 persons to be licensed, in specific areas of the Borough only	Presently no demonstrable causal evidence in relation to ASB. Other tests to introduce not met as outlined in this report

2. Report

Detailed investigation into the four evidential tests as prescribed in the Housing Act 2004.

2.1 Test one: Evidence of poor management

2.2 Housing standards

Hazards in homes are assessed using the Housing Health & Safety Rating System. An assessment determines if there are category one or two hazard(s) present. Both categories of hazard are indicators of poor management however category one hazards are the most severe with a corresponding duty to take the most appropriate enforcement action.

Modelling data estimates that the proportion of private rented dwellings with a category one hazard in Runnymede is at 5.5%, this is just below the Surrey average of 5.6%, below the Southeast average of 6.4% and under half the level of

the England average of 12.9%² . This data does not demonstrate evidence of poor management in the private rented sector in Runnymede.

2.3 Impact on tenants

The number of complaints from tenants is relatively low. 63 complaints from tenants were received in 2023/24, with a range of 22 – 66 tenants per year in the past five years. It is acknowledged that the threat of section 21 evictions is likely to depress the number of complaints, to what extent it is unknown, and this would be a national factor.

2.4 Routine inspections

Programmed inspections of licensed HMOs are not demonstrating widespread poor management.

Over the past five financial years the majority of improvement notices and hazard awareness notices are against non-HMO properties rather than HMOs (all types). Prohibition order numbers are low (no.5) with one more order served on HMOs (no.3) than non-HMOs (2 no.). One prosecution was initiated in relation to an HMO (Egham Hythe ward) and four Civil Penalty Notices were served in relation to HMOs with no such action taken against non-HMOs . Table two below shows enforcement actions from 2019/20 to 2023/24.

Table two: Formal enforcement actions

All notices	19/20	20/21	21/22	22/23	23/24
Hazard Awareness	3	2	1	6	6
Improvement Notice	6	2	12	11	8
Prohibition Order	1	0	1	2	1
Civil Penalty Notices	0	1	2	0	1
Prosecutions initiated	0	0	0	0	1
Non- HMO					
Hazard Awareness	3	2	0	3	4
Improvement Notice	4	2	8	6	6
Prohibition Order	1	0	1	0	0
Civil Penalty Notices	0	0	0	0	0
Prosecutions initiated	0	0	0	0	0
HMO's					
Hazard Awareness	0	0	1	3	2
Improvement Notice	2	0	4	5	2
Prohibition Order	0	0	0	2	1
Civil Penalty Notices	0	1	2	0	1
Prosecutions initiated	0	0	0	0	1

The low numbers and spread of action against property types do not provide evidence of mismanagement of HMO's in respect of housing standards.

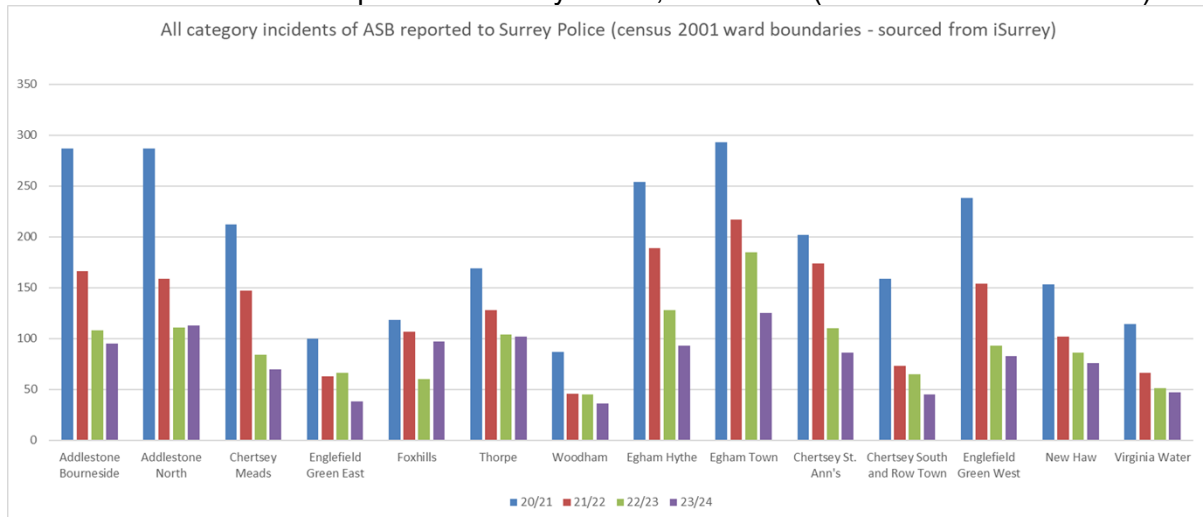
² [Housing JSNA dashboard | Tableau Public](#)

2.5 Impact on local residents – Complaints from neighbours about tenant behaviour & ASB

To note when considering impacts that the availability of on-street parking and proliferation of HMOs are not factors that can be controlled by an additional licensing scheme. Likewise potential adverse consequential impacts flowing from an increase in student HMOs, such as a reduction in the number of family households or a reduction in school aged children cannot be addressed by a licensing scheme.

The Surrey Police ASB crime data is shown in chart 1 below. This shows, with some variation, a general year on year decrease in ASB. Only the geographical area of the former 'Foxhills' ward and 'Addlestone North' show an increase in ASB from 2022/23 to 2023/24.

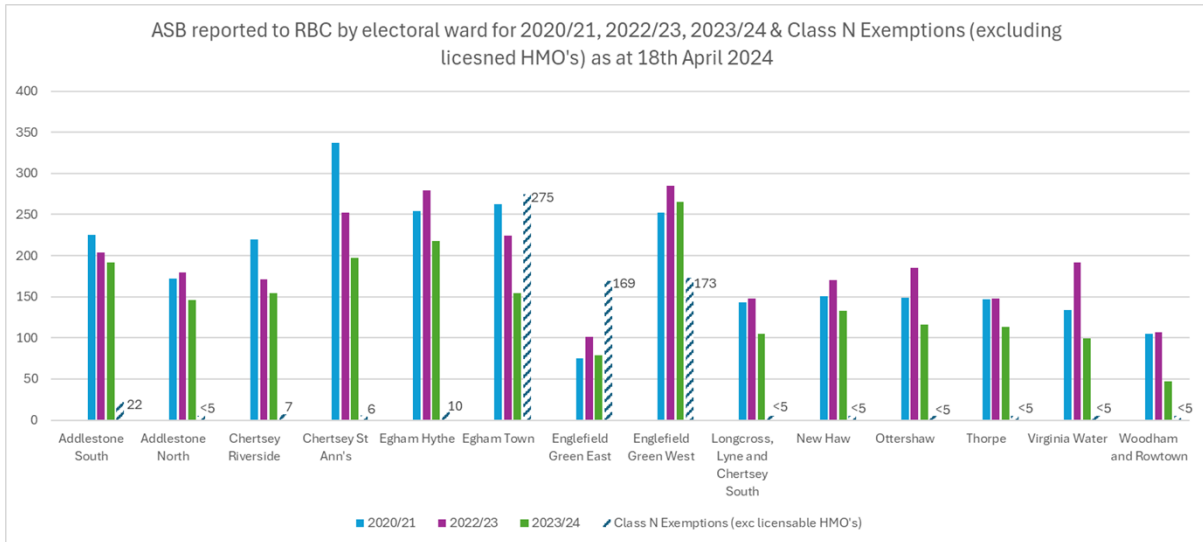
Chart 1 – ASB incidents reported to Surrey Police, ward level (census 2001 boundaries)



Council tax exemption 'class N' are available for full time students. This is an imperfect, but best available, proxy for the number of smaller HMO's that could be in scope of an additional licensing scheme. An unknown number of these may be occupied by one or two persons and therefore out of scope of any additional licensing scheme.

Chart 2 shows ward level ASB reported to RBC for the past three full financial years together with Class N exemptions as at 18th April 2024. Licensed HMO's have been removed from this data so that this data is the best representation of smaller HMO's. Englefield Green West has the greatest number of reports for 2023/24 however there is no self-evident relationship between the number of Class N exemptions (as a proxy for smaller HMOs) in the wards with significant numbers of class N exemptions (Egham Town, Englefield Green East and Englefield Green West) versus the rest of the wards in the borough.

Chart 2 - Ward level ASB reported to RBC for the past three full financial years together with Class N exemptions (licensed HMOs excluded from class N data).



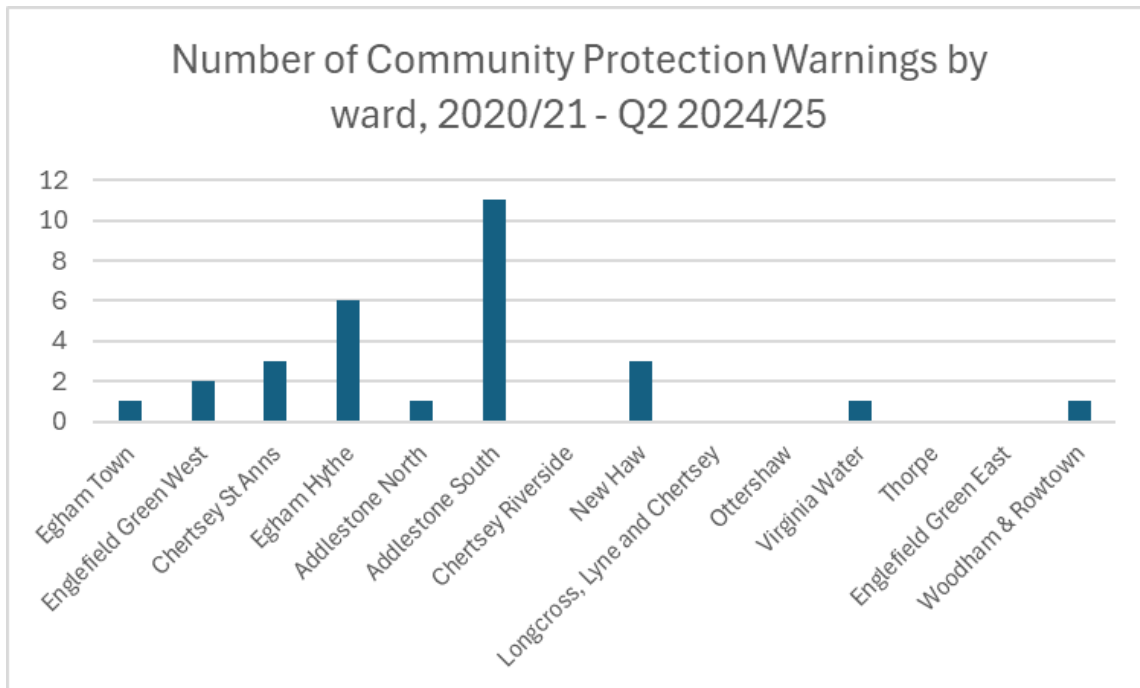
When standardising the reports per 1000 residents chart 3 below shows a decline in ASB in Egham Town over the past 3 years. Egham Town ranks 8th for 2023/24, Englefield Green West having the highest rate of ASB in the Borough in 2023/24, and Englefield Green East ranking 13th out of the 14 wards in the Borough.

Chart 3 – ASB reported to RBC per 1000 residents for the three financial years 2020/21, 2021/22, 2023/24



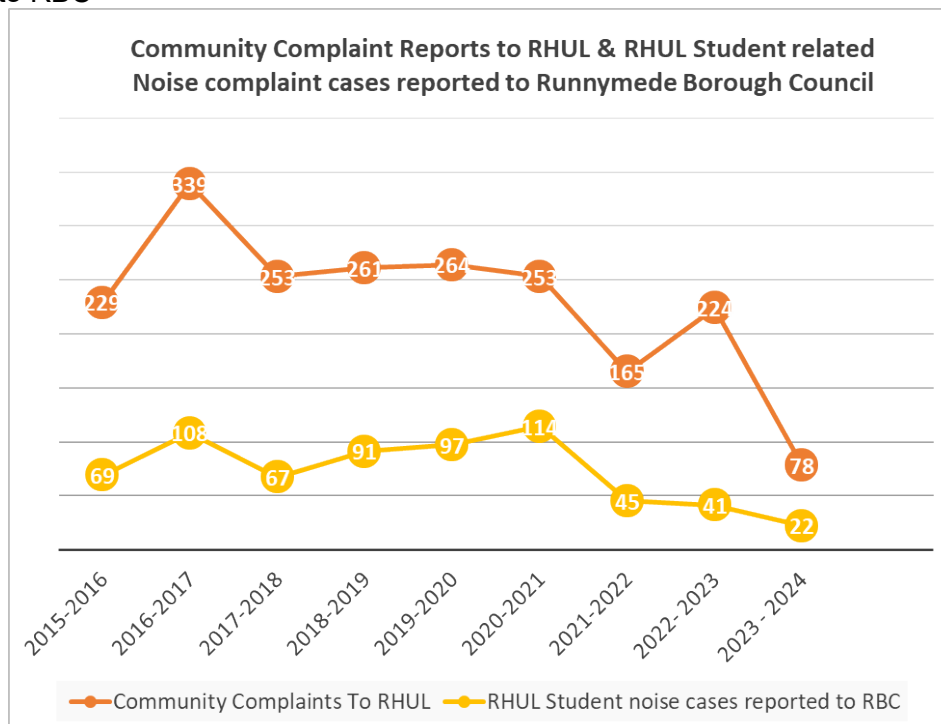
The following data in chart 4 provided by the community safety team shows the number of Community Protection Warnings for antisocial behaviour served by the council between 2020/21 - Q2 2024/25. Addlestone South (no. 11) and Egham Hythe (no. 6) have the highest level of warnings by some margin with remaining wards between 0-3. The three wards with high levels of Class N exemptions (Egham Town, Englefield Green East & Englefield Green West) have 0-2 Community Protection warnings.

Chart 4 – Community Protection Warnings per ward 2020/21 to Quarter 2 2024/25



In respect of noise complaints attributable to students made to RBC and community complaints made to Royal Holloway University London these are presented in chart 5 below. Both show a decline in the number of complaints to the lowest numbers in nine years.

Chart 5 - Complaints from community to RHUL & RHUL student related noise complaints reported to RBC



Complaints about unsatisfactory storage or presentation of waste, by ward, can be seen in Table 3 below.

Table three - Unsatisfactory storage or presentation of waste by ward for financial years 2021/22, 2022/23, 2023/24 & April to September 2024

Ward	2021/22	2022/23	2023/24	6 Months April – September '24
Egham Town	22	27	33	16
Englefield Green West	4	15	29	5
Chertsey St. Anns	5	4	6	0
Egham Hythe	3	3	2	2
Addlestone North	3	4	6	2
Addlestone South	16	5	3	1
Chertsey Riverside	9	5	1	2
New Haw	7	3	1	0
Longcross, Lyne and Chertsey	1	1	1	0
Ottershaw	0	1	1	0
Virginia Water	2	2	1	1
Thorpe	2	1	6	0
Englefield Green East	3	8	0	3
Woodham & Rowtown	3	3	1	2

Looking at the most recent data for April to September 2024, 34 unsatisfactory storage or presentation of waste complaints were received across the borough. Of the Egham Town complaints 13 related to one road, Nightingale Shott. The database showed that 56% of complaints were from separate households with the remaining 44% from 2 households.

Of that 44% of complaints from 2 households 13 complaints were from one household in relation to properties in Nightingale Shott (Egham Town) and 2 were from one household in relation to properties on Cherrywood Avenue (Englefield Green West).

In summary the evidence does not suggest a relationship between ASB and HMO's. Englefield Green West has the highest level of ASB per thousand residents but 102 fewer numbers of class N exemptions than Egham Town. Both noise complaints in respect of RHUL students & ASB complaints to RHUL have fallen to the lowest levels in nine years. Chertsey St. Anns, Egham Hythe Addlestone South and New haw wards have greater levels of Community Protection Notices served than Egham Town, Englefield Green West and Englefield Green East.

2.6 **Test two: Other courses of action available to deal with problem/s in question**

Complaints by tenants about housing standards

Existing powers under the Housing Act 2004 provide enforcement powers to deal with poor housing standards. The current approach and a summary of how the service operates are included in Appendix B.

Where there is sufficient evidence that smaller HMO's or other privately rented property were being mismanaged the authority could investigate whether an additional licensing scheme should be brought into effect.

It is noted that one of the challenges of dealing with hazards is identifying which properties are rented and whom the landlord is. The governments guidance to the Renters Rights Bill published 11th September states a national database will be established to aid local authority enforcement.

2.7 **Routes to address complaints from the local community about ASB**

New bin allocation policy

A new Waste & Recycling Policy was recently approved at Environment & Sustainability on the 7th March 2024. This policy clarified and increased the capacity of refuse bins for HMOs. In doing so it has aided potential action under the management regulations which apply to all HMOs. Eight properties have been provided with additional refuse capacity since introduction of the new policy. Occupiers are responsible for waste they produce during their tenancy of residential property. HMO Management regulations can be used where the landlord is not providing refuse storage capacity in accordance with RBC's waste & recycling policy.

Where waste is not contained in a bin and is liable to be scavenged the Environmental Health Team can use public health powers (such as the Prevention of Damage by Pests Act 1949 to deal with waste that could sustain or provide harbourage to rodents and powers under the Public Health Act 1936 to deal with Noxious Matter in respect of putrescible /malodourous waste).

Council Officers from Environmental Health & the Depot work collaboratively to respond to complaints received and proactively visit high student occupied locations at the start of each new academic term to swiftly challenge new occupiers who are not presenting their waste correctly.

Waste & HMO Management regulations

Since October 2018, local authorities have been required to impose a mandatory condition for licensed HMOs requiring the licence holder to comply with any scheme which is provided by the local housing authority to the licence holder, and which relates to the storage and disposal of household waste at the HMO pending collection.

The Management of Houses in Multiple Occupation (England) Regulations 2006 ('management regulations') include a like requirement and apply to both licensed and unlicensed HMOs. Namely HMO managers must:

- (a) *ensure that sufficient bins or other suitable receptacles are provided that are adequate for the requirements of each household occupying the HMO for the storage of refuse and litter pending their disposal; and*
- (b) *make such further arrangements for the disposal of refuse and litter from the HMO as may be necessary, having regard to any service for such disposal provided by the local authority.*

The Management Regulations give officers powers and the option of sanctions to address waste receptacle provision. This already applies to all HMOs in the borough, both licensed and non-licensed without requiring an additional licensing scheme.

Garden Maintenance

The management regulations state that HMO managers must ensure that

...any garden belonging to the HMO is kept in a safe and tidy condition

Complaints from tenants and those living nearby can be investigated and the private sector housing team can contact the landlord where they consider there to be non-compliance with the regulations. This regulation applies to all HMOs.

Land and buildings detrimental to amenity

In addition to powers available to the Private Sector Housing team they may, in appropriate circumstances, refer or signpost residents to the planning service where building maintenance or the condition of land and/or buildings is detrimental to the amenity of an area.

Section 215 of the Town & Country Planning Act 1990 provides a discretionary power to require the proper maintenance of land and/or buildings where there is detriment to amenity.

Environmental Protection Act 1990– Noise

The Council has a statutory duty to take reasonable steps to investigate noise complaints made by those who live within its geographical boundaries under part III of the Environmental Protection Act 1990. Where the council investigates and finds that noise amounts to a statutory nuisance it has a duty to serve an abatement notice (or defer service for up to 7 days in certain cases).

When a complaint about student occupied property is received officers will visit the alleged noise maker as soon as practicable. Where complaints continue, officers will investigate to establish if a statutory nuisance exists. Officers will ask residents to complete a diary sheet, or to email with details of how they have been disturbed. Cases progress either by deployment of noise recording equipment or by council officers attending a complainant's property.

Additionally, officers work hand in hand with other partners as outlined in the following section, including RHUL.

Community Safety & partnership working

Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014 came into effect in England and Wales on 20 October 2014 introducing new powers such as Community Protection Notices (CPNs) & Public Space Protection Orders (PSPOs).

Monthly meetings are held with Environmental Health, RHUL, Surrey Police and RBC Community Safety to discuss persistent problem addresses and the most appropriate course of action to resolve the issue.

Additionally weekly interdepartmental professionals' meetings are held with Community Safety, Environmental Health, Planning Enforcement, Housing Tenancy Management & Open Spaces and other relevant departments, as appropriate, to discuss complaints and areas of concern and decide on most appropriate course of action.

The Council has published details of its Community safety partnership plan outlining how statutory partners will work together to reduce crime and disorder in Runnymede in the [Runnymede Community Safety Partnership plan](#).

CPN's

Community Protection Notices. These can be issued by the police or the council if they are satisfied, on reasonable grounds, that the conduct of an individual, business or organisation:

- is having a detrimental effect on the quality of life of those in the locality;
- is persistent or continuing in nature; and
- is unreasonable.

Before a Notice can be issued, a written warning must be issued to the person committing anti-social behaviour.

PSPO's

Councils can use PSPOs to prohibit specified activities, and/or require certain things to be done by people engaged in particular activities, within a defined public area. PSPOs differ from other tools introduced under the Act as they are council-led, and rather than targeting specific individuals or properties, they focus on the identified problem behaviour in a specific location. Most recently a PSPO had been in place for ASB in Addlestone Town Centre

The legislation provides for restrictions to be placed on behaviour that apply to everyone in that locality. Breach of a PSPO without a reasonable excuse is an offence.

Closure orders

The Anti-Social Behaviour Crime and Policing Act 2014 gives the Police and local authorities the power to issue a closure notice which can last for up to 48 hours before applying to the Magistrates Court to obtain a closure order. The 'closure notice' and 'closure order' work in similar ways as they can both exclude specified persons from a property and may specify those who are allowed to access the property during the period of the notice or order (which can include a person who habitually lives at the property).

Case Study: In 2019 a closure notice was served in response to numerous and ongoing complaints of ASB, loud music and littering from a property in Egham. At the time the property was non-licensable. The council served noise abatement notices on five occupiers; however, this did not resolve the matter. Surrey Police (Safer Neighbourhoods Team) and Environmental Health developed evidence for a closure Order. Between the service of the closure notice and the hearing for the order, due to the overwhelming evidence the occupants signed a deed of surrender and vacated the property. RHUL started disciplinary proceedings against students.

2.8 Test three: Will the additional licensing designation assist in addressing the problems in question?

Additional licensing would offer a time limited opportunity (initially 5 years) to licence smaller HMOs and to attach conditions to a license in relation to housing standards, ASB, provision of waste receptacles and tidy gardens.

The three matters in question, ASB and nuisance, Garden Maintenance and Bins and Waste Management are already the subject of existing HMO management regulations and so on investigation non-compliance can be subject to risk-based enforcement in the usual manner subject to our enforcement policy / Regulators' Code summarised in **Appendix B**.

In delivering regulatory services the council are required under the Regulator's Code to avoid imposing unnecessary regulatory burdens through their regulatory activities and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means, similar to the requirements under section 57 of the Housing Act 2004 that alternative options would be equally effective.

With respect to ASB, existing powers to serve Community Protection Notices are designed to speedily address any issues relating to ASB. The Community Safety team is responsible for this work in collaboration with the neighbourhood policing team and other partner agencies.

Implementing a scheme would result in a programmed inspection of licensed properties during the 5-year licence term. Given the relatively low level of complaints, the availability of more targeted enforcement action using existing powers outlined earlier in this report it would appear that in this Borough additional licensing will not assist in addressing the problems in question.

In the context of the low level of complaints and low rate of enforcement action in the existing licensed HMO housing stock, the establishment of an additional licensing scheme would likely disproportionately impact compliant landlords.

2.9 Renters Rights Bill

Additional Guidance to the Renters' Rights Bill, published 11th September 2024, sets out a number of measures the Bill will introduce that represent the biggest legislative change to regulation of the Private Rented Sector in decades. [Guide to the Renters' Rights Bill - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/renters-rights-bill)

Among the measures outlined in the guidance, is the introduction of a private rented sector database, the impact for this Council is described in the guidance:

...One of the biggest and most time-consuming barriers faced by local councils is identifying poor quality and non-compliant private rented sector properties and who owns them. The database will provide a trusted and consistent intelligence source which will remove unnecessary, frustrating administration, meaning council staff will be able to focus on enforcement against criminal landlords.

Such a database would assist the council's Private sector Housing team.

Other measures outlined are the introduction of additional investigatory powers and application of the Decent Homes standard to the Private Rented Sector.

2.10 Licence conditions relating to ASB and noise

In order for a landlord to address ASB and noise issues, the only legal recourse to a landlord is to terminate the tenancy under section 21 or section 8 of the Housing Act 1988.

The Ministry for Housing, Communities and Local Government (MHCLG) announced on the 11th September that section 21 no fault evictions will be abolished. The Renters' Rights bill guidance sets out new mandatory grounds for possession, including for properties let to full time students (with 4 months' notice) and severe ASB/criminal behaviour (including where a closure order has been served for more than 48 hours).

In the case of ASB the efficacy of an ASB licence condition may be limited by the duration of the typical student tenancy (ie the students are likely to have moved out before a hearing for possession. Where a landlord takes graduated reasonable steps to enforce the conditions of the occupancy agreement, they would be compliant with the condition. Where a landlord progresses to seeking possession the progression of the case is outside the control of the Landlord and the Council.

2.11 Review of HMO licensing fees

A review of the fee has been undertaken which is presented in a separate item subject to approval at November 2024 Environment & Sustainability Committee.

3. Policy framework implications

- 3.1 Private Sector Housing service delivery predominantly impacts on the Healthy Homes and Healthy Communities objectives under the Health and Wellbeing theme of the Corporate Business Plan 2022-26.
- 3.2 The Economic development strategy recognises there is a lack of affordable housing. Introducing a scheme could have an adverse effect on rents, though anticipated any impact would be relatively low it is at the most affordable end of the housing market potentially impacting those who can least tolerate an increase in housing costs.

4. Resource implications/Value for Money

- 4.1 The ongoing delivery of the private sector housing functions and other supporting teams (such as Environmental Health for noise, Community Safety for anti-social behaviour) have no additional financial implications.
 - Comments of ACE151/Corporate Head of Finance

5. Legal implications

- 5.1 As mentioned earlier in this report, to be able to consider additional HMO licensing, the Council needs to pass the three-part test described in sections 56 & 57 of the Housing Act 2004. It also needs to consider whether this is consistent with its overall housing strategy and should adopt a coordinated approach with dealing with homelessness, empty properties and anti-social behaviour.
- 5.2 Part of the process to designate an area for additional HMO licensing, requires consultation with relevant people otherwise the council would need to submit and receive approval of the Secretary of State. The final decision then needs to be published before it comes into effect.
- 5.3 The Council then needs to review the designation on a regular basis.
- 5.4 In this instance, the three-part test is not fulfilled and a decision to designate would be open to challenge.

6. Equality implications

- 6.1 The Council has a Public Sector Duty under the Equalities Act 2010 (as amended) to have due regard to the need to:
 - a) Eliminate unlawful discrimination, harassment or victimisation;
 - b) Advance equality of opportunity between persons who share a Protected Characteristic and persons who do not share it;
 - c) Foster good relations between those who share a relevant characteristic and persons who do not share those characteristics;

in relation to the 9 'Protected Characteristics' stated within the Act.

If a decision is taken to progress with Additional Licensing, the justification report once prepared will be screened to establish whether there may be an impact, either positive or negative on any of the nine protected characteristics (namely, age, disability, race/ethnicity, pregnancy and maternity, religion, sexual orientation, sex, gender reassignment and marriage/civil partnership). This will be reported in later Committee reports.

7. Environmental/Sustainability/Biodiversity implications

- 7.1 Enforcement action in respect of safe & tidy gardens must be proportionate and balanced in respect of biodiversity.

8. Risk Implications

8.1 Resources

No additional resources are required to continue to deliver the private sector housing function.

It is worth noting that the additional powers and duties within the Renters Rights Bill, presently making its way through the House of Commons, are not fully quantified.

They represent the most significant change in Housing legislation in decades. Further resourcing may be required in readiness for the changes and may be the subject of a further report.

9. Other implications

Human Rights

No adverse impact on human rights is foreseen.

Crime and Disorder (Section 17 implications)

Both establishing a scheme and business as usual are compatible with crime and disorder reduction obligations under section 17 of the Crime and Disorder Act 1998.

Disability Discrimination Act

No direct or indirect impact on those with disabilities is foreseen.

Social inclusion

HMO's are often one of the most affordable housing options. They often house some of the most vulnerable in society.

Continuing to deliver the private sector housing function provides recourse to housing standards enforcement in respect of category one and category two hazards as assessed under the Housing Health and Safety Rating system. Additionally, enforcement action may be taken in respect of non-compliance with Management Regulations for all HMO's including those currently below the mandatory licensing threshold.

10. Timetable for Implementation

10.1 To be determined depending upon the decision of the committee.

11. Conclusions

11.1 Officers have thoroughly investigated the legal position and have analysed the data with respect to introducing an additional HMO licensing scheme. Officers did not find evidence to support the introduction of a scheme.

11.2 The evidence gathered on analysis did not meet the three evidential tests as set out in the Housing Act 2004. Given these circumstances the authority would be at risk of Judicial Review if a scheme were introduced. Officers consider that the existing powers and processes are available to tackle ASB, waste management and garden maintenance and use of existing powers would deliver a more targeted, effective and efficient result.

12. Background papers

12.1 None

13. Appendices

- Appendix A – Complaints & ASB data review
- Appendix B – Private Sector Housing: Overview of enforcement