

Cabinet 2 February 2016	 TOWER HAMLETS
Report of: Stephen Halsey, Corporate Director Communities, Localities and Culture	Classification: Unrestricted
Licensing of the Private Rented Housing Sector	

Lead Member	Councillor Sirajul Islam, Statutory Deputy Mayor and Cabinet Member for Housing Management and Performance. Cllr Rachel Blake, Cabinet Member for Strategic Development
Originating Officer(s)	David Tolley, Head of Environmental Health and Trading Standards
Wards affected	Weavers, Whitechapel and Spitalfields and Banglatown
Key Decision?	No
Community Plan Theme	A Safe an Cohesive Community

Executive Summary

This report considers the extensive consultation that was undertaken during 2015 on introducing a private rented housing sector licensing scheme within designated parts of the Borough.

The report identifies the new restrictions introduced by the Government on introducing selective licensing in the private rented housing sector and makes recommendations on those areas that can be designated as licensable areas.

If it is agreed to introduce selective licensing in designated areas, the processes and standards that will apply are outlined along with the licence fee.

The current regulatory landscape with regards to the private rented housing sector is also reviewed with an option for further consideration of consulting on an additional Houses in Multiple Occupation (HMO) licensing scheme pending the outcome of the Government's current consultation on extending the current criteria for mandatory licensing of HMO's.

Recommendations:

The Mayor in Cabinet is recommended to:

- 1 Agree, considering the options available, to introduced a Selective Licensing scheme within Weavers, Whitechapel and Spitalfields and Banglatown areas (pre May 22nd 2014 ward boundaries)
- 2 Confirm that the proposed designation criteria for introducing Selective Licensing, as outlined in this report have been met.
- 3 Agree to delegate to the Corporate Director of Communities Localities and Culture to setting the commencement date and issuing of the required statutory notifications in relation to the notification of the Selective Licensing scheme designation.
- 4 Agree the fee structure, licence conditions, and Housing Standards which it is proposed are adopted as part of scheme.
- 5 Agree to delegate to the Director of Communities Localities and Culture, authority to bring in the lower fee for all applications to enable the scheme to be introduced sooner depending on the duration of the ICT development and introduction.
- 6 Agree that no further exemptions to the scheme should be considered in addition to the statutory exemptions.
- 7 Agree if additional licensing should be considered further, subject to approval with the Mayor and Lead Members, once the extent of the Governments consultation of extending the definition of a licensable House in Multiple Occupation is known.

1. REASONS FOR THE DECISIONS

- 1.1 There are two types of adoptive licensing schemes for the Private Rented Sector (PRS) which the Council can adopt. These comprise an additional licensing scheme limited to houses in multiple occupation only or a selective licensing scheme for any property in the private rented sector. This report addresses the latter. The Housing Act 2004 gives the Council the power to introduce Housing Licensing Schemes for privately rented properties within the whole Borough or in designated areas, in order to improve standards of management in the Private Rented Sector (PRS) and reduce anti-social behaviour.
- 1.2 A licensing scheme will enable the Council to impose a legal requirement, in the designated area, on all landlords to register, apply for a licence for each property they rent out, and comply with specific licence conditions thus giving the Council more power to tackle irresponsible letting of properties.

- 1.3 In addition, improving physical standards and the quality of management in the PRS will deliver social and health benefits. The links between poor health through damp and mould and overcrowding are well established. Improved quality of housing will have an impact across many different partner organisations i.e. health, education. Whilst the primary aim of licensing is clear, the reduction of anti-social behaviour and for landlords to assist with the management of their tenants, it is expected that licensing will also assist the Council and partners to achieve wider objectives.
- 1.4 Licensing is expected to assist in encouraging stable, long term tenancies to the benefit of landlords and tenants.
- 1.5 Prior to designating an area, the Council must consult with interested groups such as landlords, tenants, letting agents, landlord associations and other interested parties.
- 1.6 Recent changes were introduced by central government concerning PRS licensing schemes. The general approval was removed from Councils to designate the whole of their area for licencing. From the 1st April 2015, local authorities have to seek confirmation from the Secretary of State for any selective licensing scheme which would cover more than 20% of their geographical area or would affect more than 20% of privately rented homes in the local authority area
- 1.7 A PRS housing licensing scheme will attract a licence fee for each property and the scheme will be self-financing.
- 1.8 The private rented sector serves a diverse population of tenants and privately rented properties range from luxury apartments to large shared houses. Equally varied are landlords, who range from large companies to individuals renting out a single property.
- 1.9 The census reported that 33% of properties were in the PRS. There has been an estimated increase of 135% in PRS property since the previous census in 2001. The census data has been used when assessing the quantum of housing tenures, as this can be provided at ward level. The areas under examination relate to the pre 2014 wards, due to the amount of data available.
- 1.10 One of the difficulties that the Council has in managing the PRS is that it does not hold a register of properties and relies on complaints to deal with disrepair and anti-social behaviour issues.
- 1.11 Currently enforcement action is taken against landlords on a reactive basis via complaints. This relates more to housing conditions rather than anti – social behaviour. However, when contact is made with landlords they are encouraged to become registered with the Landlord Accreditation Scheme. This is a London wide scheme driven by the Mayor of London to improve private sector management and regulation. However, the uptake has not been extensive.

2. ALTERNATIVE OPTIONS

- 2.1 The Cabinet may chose not to introduce an adoptive housing licensing scheme and rely upon the current mandatory Houses in Multiple Occupation licence scheme alone.
- 2.2 Cabinet may determine to designate the whole Borough as a Selective Licensing scheme and in this case it would need to seek the approval of the Secretary of State.

3. DETAILS OF REPORT

- 3.1 The Council can designate an area or the whole Borough for a selective licensing scheme providing it can demonstrate the following:
 - a) The area is, or is likely to become an area of low demand for housing, and/or
 - b) The area is experiencing a significant and persistent problem caused by anti-social behaviour (ASB) that is attributable to occupiers of privately rented properties and that some or all of the private sector landlords are failing to take appropriate action to combat the problem.
- 3.2 It is not felt that there are any areas in the Borough that are facing a low housing demand. The selective licensing scheme is being proposed on the basis of the sectors links with persistent ASB problems. This link between the Public Rented Sector and ASB in the Borough has been demonstrated by the independent Mayhew study appended. The wider strategic implications of this study for other council services and functions are still being considered but the evidencing of this link is the primary reason that this study is presented here.
- 3.3 The ASB must:
 - a) emanate from private rented residential properties or be directly associated with lettings and;
 - b) link to absent or inadequate oversight and management by the landlord.
- 3.4 The designation can be made for any period of time, up to a maximum of 5 years
- 3.5 This scheme applies to houses, HMOs (as each unit of accommodation is a dwelling), a building converted into flats, flats above commercial property as well as individual flats.

3.6 The following properties will be exempt from licensing where the tenancy or licence is granted by:

- a) A registered social landlord
- b) Metropolitan Police Authority
- c) Fire and rescue Authority
- d) Health Service Body
- e) A dwelling held under a long lease occupied by the owner under the lease or members of his family
- f) Buildings occupied by students but is not an HMO
- g) Holiday lets
- h) Dwellings shared with the landlord

3.7 The terms of the licence will require certain mandatory conditions to be imposed. Namely:

- 1) Conditions regulating the management, use and occupation of the dwelling concerned i.e. requiring routine repairs, replacement of worn or dangerous furniture or fittings (but not to carry out improvements, alterations or adaptations)
- 2) Declaration that the electrical appliances and furniture are in a safe condition.
- 3) Declaration that smoke alarms are provided in the dwelling and positioned correctly and in working order.
- 4) Gas safety certificate to be provided on an annual basis.
- 5) Each occupier to be provided with a written statement of the terms of their occupation.
- 6) The provision of references from all prospective tenants.

3.8 Additional discretionary conditions can be imposed depending on the merits of each particular situation, such as:

- 1) Prohibit the use of certain parts of the house
- 2) Ensure that there are proper and effective management arrangements in place
- 3) Require landlords to attend relevant training sessions
- 4) Require landlords to manage their tenants, including dealing with anti-social behaviour.

Designation Criteria

- 3.9 The blanket approach for licencing the whole Borough has been reserved to the Secretary of State. As the basis upon which the Council might introduce such a scheme is centred on the sectors impact on ASB it would be very difficult to argue that this is the case across the whole borough or an area representing the substantive part of the Borough. The Council can determine to licence part of the Borough which would cover less than 20% of their geographical area or would affect less than 20% of privately rented homes in the local authority area without reverting to the Secretary of State. It is possible to establish a link between ASB and the Private Rented Sector at this level.
- 3.10 A selective designation can only be made if, when combined with other measures taken, it will lead to a reduction of ASB. In order for a designation to be made the Council must satisfy itself of the following:
- a) That the area contains a high proportion of properties within the PRS compared to the total number of properties in the area.
 - b) The properties in the PRS are occupied under assured tenancies or licences.
 - c) That at least one of the following conditions has been met:
 - i) There is low housing demand in the area
 - ii) The area is experiencing a significant and persistent problem caused by anti-social behaviour.
 - iii) A significant number of properties are in poor condition and require inspection
 - iv) The area has recently experienced an influx of migration
 - v) The area is suffering from a high level of deprivation
 - vi) The area suffers from high levels of crime
 - d) That a full consultation has taken place in relation to landlords, managing agents, tenants, residents and businesses in the area. This consultation needs to be of at least 10 weeks duration and any representations need to be considered. The consultation needs to detail why this is the most appropriate course of action, identify the problems the designation is intended to address as well as the scale and impact of those problems.
 - e) That there has been consideration of alternative means to achieve the aims other than to designating an area for selective licensing e.g. accreditation schemes.
 - f) That the designation of a selective licensing area fits in with the overall housing strategy and policies ensuring that it is co-ordinated to combat homelessness and empty dwellings and complements the work of other agencies.

- 3.11 The Council must also identify the desired outcome of the designation and the measures to be put in place to evaluate its effectiveness.
- 3.12 The Council needs to publish a notice within the designated area in 7 days of the designation being confirmed.
- 3.13 The Council needs to notify all those that have been consulted on the proposals, within two weeks of the designation being confirmed.

Proposed Areas for Designation

- 3.14 Since the removal of the general approval from the Secretary of State, the Council can only designate a licensable area if it's is less than 20% of the geographical area and private rented stock (the 20:20 rule). Appendix one presents the estimated percentage of private rented properties by geographical area as derived from the 2011 Census.
- 3.15 The evidence base used for the consultation, at Appendix Two, demonstrates that the Borough has a high proportion of PRS properties. If we examine the three areas that were shown to have high levels of anti-social behaviour from the Mayhew Associates report (Appendix Three), the comparisons set out in the table below can be made with the overall tenure in each grouped ward area (note as pre 2014). Appendix Four presents the overall tenure mix.
- 3.16 The table below demonstrates the consideration of the 20:20 rule that was enacted in April 2015. Specifically that the Council can designate a scheme provided it would cover less than 20% of their geographical area or would affect less than 20% of privately rented homes in the local authority area. Blackwall and Cubitt Town/Millwall falls outside the geographical percentage requirement for local designation. That Bow East and Bow West, when grouped shows that social rented properties are the largest tenure in this group. Spitalfields and Banglatown/Weavers and Whitechapel have the largest proportion of private rented properties compared to the other tenures and meet the 20:20 rule.

Pre 2014 wards	% of Borough area	% owner occupiers against all tenures in grouped ward	% social rented against all tenures in grouped wards	% PRS against all tenures in grouped wards	% PRS in grouped wards against all Borough (34,216)
Blackwall and Cubitt Town/Millwall	21.27%	29.3%	24%	46.6%	26.5%
Bow East and Bow West	16.24%	29%	41.2%	30.2%	10.1%
Spitalfields and Banglatown/Weavers/Whitechapel	11.81%	24.5%	36%	38.8%	17%

- 3.17 Bow East and Bow West areas and Spitalfields and Banglatown/Weavers and Whitechapel satisfy the requirements detailed in paragraph 3.9 and the latter cluster also satisfies the requirements in paragraph 3.10a.
- 3.18 Assured short-hold tenancies are the most common PRS tenancies so the expectation would be that most tenancies in the borough will be let under them. The assessment of the type of tenancies the private sector properties are occupied under can be drawn from considering the Council Tax Churn, as detailed in table three of Appendix Two. This has informed the evidence base for designating pilot areas for licensing the private rented sector within the London Borough of Tower Hamlets. The Council Tax payer would be likely to change as an assured tenancy or licence expires or tenants move out and are replaced. This would satisfy the requirement in 3.10b. The high number of multiple changes is unlikely to be linked to property sales in this 3 year period.

Council Tax Churn per Ward – 1/4/11 to 31/1/14

	Number of Changes per property									
	2	3	4	5	6	7	8	9	10	11
Millwall	2295	1257	491	143	33	9	3	1		1
Blackwall and Cubitt Town	1982	1010	466	104	18	4				
Bow East	1283	625	218	41	7	4				
Bow West	862	361	141	43	4	2				
Spitalfields and Banglatown	712	443	229	52	19					
Whitechapel	1172	693	337	75	11	1				
Weavers	856	467	167	53	7	1				

- 3.19 The findings of the Mayhew Associates report indicated a correlation between poorly managed private rented housing and the incidence of anti-social behaviour in some areas, suggesting that there is a case for consideration of Selective Licensing as required in paragraph 3.10c. Within the clusters identified. The purpose of selective licensing is to address anti-social behaviour, the designation, if made, would not replace other powers that the Council and its partners may take.

Consultation

- 3.20 The consultation was carried out between the 16th March and 12th July 2015. The consultation took place using a variety of communication channels. There was an on line consultation (including an on line questionnaire), a programme of public meetings, letters were sent out to ward Councillors, landlords, managing agents, adverts were placed in local and neighbouring Boroughs newspapers and direct letters were sent to landlord and tenant groups and neighbouring local authorities, as required in paragraph 3.10d.

3.21 Public meetings were held at the following venues:

- Tuesday, April 14 - St Margaret's House
- Monday, April 20 - Harry Gosling School
- Thursday, April 30 - PDC Bethnal Green
- Wednesday, June 17 – Mulberry Place
- Monday, 22nd June – Whitechapel Idea Store
- Monday 29th June – Millwall Rowing Club
- Monday 6th July – Bow Idea Store

3.22 The public meetings and the proposed scheme was advertised in the following newspapers:

NEWSPAPER	DATE	DATE	DATE
East End Life	March 16, 2015	April 6, 2015	June 15, 2015
Greenwich Time	March 24, 2015	April 7, 2015	June 23, 2015
Hackney Gazette	March 19, 2015	April 9, 2015	June 18, 2015
Islington Gazette	March 19, 2015	April 9, 2015	June 18, 2015
Lewisham Mercury	March 25, 2015	April 8, 2015	June 17, 2015
Newham Recorder	March 18, 2015	April 8, 2015	June 17, 2015
Southwark News	March 19, 2015	April 9, 2015	June 18, 2015
Waltham Forest News	March 30, 2015	April 20, 2015	June 22, 2015

3.23 The consultation documents consisted of the following:

- An interactive map so that postcodes could be identified to see if the property was in the proposed designated area.
- Benefits of a selective licensing scheme – Appendix Five
- Evidence Base for a scheme – Appendix Two
- Equalities Impact Assessment – Appendix Six
- Consultants analysis linking the PRS with anti-social behaviour – Appendix Three
- Frequently Asked Questions – Appendix Seven
- Fee Structure – Appendix Eight (calculation of fees added after consultation)
- Rental Standards for Houses in Multiple Occupation – Appendix Nine
- Statutory Management Standards for Houses in Multiple Occupation – Appendix Ten
- Licence conditions – Appendix Eleven

- 3.24 The on line questionnaire was aimed at three distinct groups; landlords/managing agents/agent – tenants/residents – businesses or service providers. We received 199 on-line submissions.

Consultation Results

- 3.25 The consultation responses varied, but in broad terms the tenants were in favour of a licensing scheme and the landlords were not in favour.
- 3.26 We also received written submissions from interested groups – namely the National Landlord Association and Tower Hamlets Renters. There submissions are within Appendix Twelve and Thirteen respectively.
- 3.27 A number of individual written submissions were received and these are summarised at Appendix Fourteen. These were predominately from landlords who were against the scheme. One portfolio landlord was requesting exemption from licensing due to their membership of ANUK (Accreditation Network UK) – a national accreditation scheme for the provision of rented accommodation for students.
- 3.28 The public meetings were not well attended, with only a few individuals coming to each public meeting. These were mainly landlords and their views were mainly not in favour of the scheme. A summary of their views are detailed in Appendix Fifteen.
- 3.29 The online questionnaire is detailed in Appendix Sixteen and from the results a series of graphs have been prepared to demonstrate the views expressed from the three main groups: landlords/managing agents – residents/tenants – and businesses/service providers. These graphs can be viewed in Appendix Seventeen and cover general responses, sector specific responses and tenant responses.
- 3.30 The spread of online questionnaire responses were 4 from businesses/service providers, 103 from Landlords/Managing Agents/Agents and 92 from tenants/residents. The majority of the responses within the Landlord/Managing Agent/Agent group were from individual landlords.
- 3.31 The most respondents were white males within the age group of 30-39.
- 3.32 The support for licensing across the wards was positive from the business grouping and positive from the tenants/residents but negative from the landlord grouping. When the views were considered overall, it is an even split in most wards, but with a greater proportion of respondents being positive for the Spitalfields/Banglatown and Whitechapel areas being licenced.
- 3.33 Approximately one third of respondents had been a victim or witnessed anti-social behaviour, the majority of those coming from the tenant/resident grouping.

- 3.34 The majority of the landlord grouping either owned or managed properties in other areas of Tower Hamlets. The highest numbers of respondents had properties in Blackwall and Cubitt Town, Whitechapel, Millwall, Bow East respectively.
- 3.35 The landlord grouping did not specifically identify a common problem encountered with tenants – this highest concern recorded was rent arrears.
- 3.36 The majority of landlords/managing agents requested references from their tenants and found that they could let property quickly or had waiting lists.
- 3.37 The majority of residents/tenants that responded were in the wards under consideration for selective licensing, but approximately a third of respondents were also outside those areas. From those that responded, about one third had lived in the same property for the past 5 years, with a quarter living in the same property for that last 2-5 years.
- 3.38 The majority of respondents from the residents/tenants grouping felt safe in their home. It was also recorded a significant proportion felt that landlords did not take action against tenants who caused a nuisance, but just under half of respondents did say they ‘did not know’ in response to this question. The majority (79%) also felt that the anti-social behaviour was not caused by the residents/tenants.
- 3.39 The majority of residents/tenants felt that landlord/managing agents were not maintaining their properties and those landlords did not always act responsibly.
- 3.40 In conclusion, the consultation results were mixed with landlords/managing agents against licensing and tenants /business supportive of it. A third of respondents reported being a victim of or witnessing anti-social behaviour in connection with the sector.
- 3.41 The consultation exercise undertaken would pass the criteria detailed in 3.10d.

Alternative Options

- 3.42 The Council Executive cannot make a designation unless it has considered other causes of action that may achieve the same objective of reducing anti-social behaviour, for which the selective licensing scheme is intended to address, as detailed in paragraph 3.10e.
- 3.43 Appendix Eighteen demonstrates the other courses of action previously considered and they should be reviewed again. Each of the processes detailed may assist with dealing with anti-social behaviour and poor management practices but none, either collectively or individually would be sufficient to resolve it without further additional intervention. It is proposed that selective licensing would contribute to a co-ordinated strategy which links agencies and services together to obtain and improved impact on ASB levels

with consequential impacts on landlord and tenant behaviour and positive tenant experience.

Overall Housing Strategy, Empty Homes and Homelessness

- 3.44 Every resident in the Borough has right to live in a home that meets a decent standard and is managed effectively – this is the overarching aim of the Housing Strategy. The standard of homes and management varies considerably in the borough and the Council wants to see all social sector housing and private rented housing, private housing occupied by vulnerable sector households raised to decent homes standards and wants all landlords delivering a good management service. It is expected that selective licencing will contribute to this aim, as required in paragraph 3.10f.
- 3.45 There is an undoubted housing need in the Borough and there are properties in the Borough that are vacant, which could provide much needed accommodation. During the last housing stock condition survey, there were approximately 1,500 homes empty for six months or more. The selective licensing scheme would assist in identifying owners and encouraging them to bring properties back into use.
- 3.46 Whilst the focus of the landlord licensing scheme must be to address ASB it would also ensure better management practices and should help to increase the length of tenure and reduce incidence of unplanned moves or homelessness.
- 3.47 Welfare Reform through capping of Local Housing Allowance (LHA) levels, applying the single person allowance to singles under 35 and the introduction of Universal Credit will further change the face of private sector renting in the borough. Increasingly local residents will not be able to rent within the borough, forcing many households out of Tower Hamlets or into worse and more crowded homes.
- There are over 1,996 households in temporary accommodation placed by the council; this has increased by 10 per cent in the last 12 months.
 - In 2013/14 the Housing Options Team made 882 homeless decisions, this is 25% up on decisions made in 2012/13.
 - 557 households were accepted in 2013/14, 24 per cent down on 2008/9.
 - During 2013/14 the Housing Options Team prevented over 731 households becoming homeless.
 - Although the general trend in homelessness has been downwards over the last four years, these trends have shown an upwards turn across the London region since the second quarter of 2011/12.
- 3.48 Selective Licensing is aimed at primarily tackling anti-social behaviour related to private renting but it will not operate in isolation and is part of wider strategies to improve standards and conditions including local neighbourhood

problems. A considerable growth in the private sector has been identified and associated issues are a high priority, but the Council also recognises that a quality, well managed rental market is an essential resource.

- 3.49 The intention is that licensing should assist the local rental market through clear standards which property owners and agents will operate in a consistent way. Licensing is expected to encourage stable, long-term tenancies to the benefit of landlords and tenants. Appendix Nineteen consider other complementary action that can be taken alongside or pursued instead of selective licensing.
- 3.50 The outcome of the proposed scheme would be the reduction of anti-social behaviour linked to the private rented sector. To measure the effectiveness of the scheme, a review would be undertaken to revisit the work carried out by Mayhew Associates using their report as a benchmark. This further comprehensive review would be undertaken once the scheme has become established with a view to developing some further KPI's for ongoing monitoring purposes.

Date of designation

- 3.51 Once a designation has been approved and a commencement date set there is a statutory process that needs to be followed. The supporting technology is still being developed and it is estimated that it will take up to six months before this will be operational from the point at which it is commissioned, at an approximate cost of £200,000. This commission cannot progress until the Executive has taken a formal decision to proceed with the scheme. This will push the commencement date back further. A review of the cost implications of bringing forward the commencement date by temporarily increasing staff levels whilst the technology is being commissioned is currently being completed and would need CEO and Executive consideration.
- 3.52 The fee structure is at Appendix Eight.

Options

- 3.53 Cabinet could decide to take the following options:
- Not to introduce a scheme
 - To take the original proposal to the Secretary of State for permission to designate all proposed areas for selective licensing.
 - To introduce a scheme that meets the current 20:20 rule, thus removing some areas from the designation therefore not requiring Secretary of State approval.
 - To introduce a scheme that meets the current 20:20 rule, thus removing some areas from the designation and at a later date ask the Secretary of State permission to extend the scheme to include all areas in the original proposal

- 3.54 The rationale for introducing a licensing scheme within linked areas was highlighted by the consultant that reviewed the PRS in relation to anti-social behaviour in that 'many of the wards in question are both small in area and contiguous. Hence it can be argued that introduction of licensing in one ward may not make sense if the problem straddles neighbouring wards or landlords shift their focus to an unlicensed neighbouring ward, as seems likely'. Thus it would make sense to licence linked areas.
- 3.55 When reviewing the evidence base in light of the new government restriction it is noted that Weavers, Whitechapel and Spitalfields and Banglatown are reflected more often in the high risk criteria parameters.

Licence Fees

- 3.56 The Licence Fees were included in the consultation process and are listed in Appendix Eight. When fixing fees under selective licensing the local housing authority may take into account all the costs incurred by the authority in carrying out their functions in relation to selective licensing. However, the EU Directive and the Provision of Services Regulations 2009 states:
- 'Any charges provided for or by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities'
- 3.57 Thus, the fees can cover the actual cost of the application and authorisation process and no more. The costs related to the enforcement against landlords that do not licence are not recoverable when setting the licence fee. Only when enforcement action is taken are these costs recoverable through the legal process.
- 3.58 The administration of the scheme is such that it can be self-funding over the five year period if fees were set at maximum allowable levels.
- 3.59 It is anticipated that the majority of applications will be received within the first year and this will require staff profiling at a technical and administrative level that can deal with the capacity issues this will generate. In the latter years, Environmental Health staff will need to be employed to carry out inspections to ensure that the licence conditions are maintained.
- 3.60 The scheme cannot fund certain elements of enforcement. The cost of enforcement to secure compliance with the scheme cannot be met through the licence fees generated. Whilst the costs of enforcing licencing conditions set by the scheme can be met by the charges for the scheme the carrying out enforcement in relation to property standards not explicitly linked to licensing conditions cannot be. The cost implication of this to the council is currently being modelled.

- 3.61 An initial equalities check list has been undertaken and is at Appendix 20. This assessment has determined that there are little adverse equality impacts at present, but this assessment will be reviewed as the project progresses.

Current and Proposed changes to the Regulatory Landscape

- 3.62 From the 1st October 2015, landlords will be required to install smoke alarms on every floor of their property, to test them at the start of every tenancy and to install carbon monoxide alarms in high risk rooms.

Deregulation Act 2015

- 3.63 There has also been new protection brought in to protect tenants from retaliatory evictions. This is where a tenant makes a legitimate complaint to their landlord about the condition of their property and instead of making the repair the landlord serves them with an eviction notice.
- 3.64 The new rules are set out in the Deregulation Act 2015 and apply to all new assured short hold tenancies that start on or after the 1st October 2015. The protection commences for tenancies after this date, where a tenant has, in writing, notified the landlord of a complaint about the condition of their property. The landlord will not be able to give notice to vacate and recover possession of the premises as a direct response to the complaint. The landlord must give an adequate response to the complaint in writing within 14 days and include details of how he proposes to deal with the issue, and a timescale for the work to be carried out. The Act sets out what an adequate response will have to include. If after 14 days the landlord does not reply or serves the tenant with an eviction notice, the tenant should contact the Environmental Health Service to verify the need for repair. If the complaint is verified the Environmental Health Service will escalate the action by trying to deal with the landlord informally and then issue a remedial notice if necessary on the landlord to carry out the necessary work. If a remedial notice is served then the landlord cannot evict the tenant for 6 months using the no-fault eviction procedure.
- 3.65 In addition to the protection from retaliatory eviction, the landlord should provide the tenant with the following documents at the start of a new tenancy or as soon as possible thereafter; if these documents are not provided then a no-fault eviction notice cannot be served.
- Energy Performance Certificate
 - Annual Gas Safety check
 - The ' How to rent: checklist for renting in England' booklet
 - Any mandatory information required by other legislation such as Tenancy deposit protection information.

3.66 The no-fault eviction notice cannot be served within the first four months of a tenancy; this is at the start of the original tenancies not a subsequent replacement of the tenancy.

Consultation on extending mandatory HMO licensing

3.67 The Government in November 2015, launched a consultation of extending the scope of mandatory HMO licensing, with an intention to make these changes during 2016. The main changes the consultation is considering are:

- Extending the scope of a mandatory HMO licence irrespective of the number of floors the building has – currently a mandatory HMO must have three storeys, or restricting the mandatory licence to two storeys.
- The occupation trigger is likely to remain at 5 persons from two or more households, although reducing this is covered in the consultation.
- Considering that self-contained flats that do not meet building regulations (and still do not comply with them) may be covered by mandatory licensing.
- Consideration of including all flats in multiple occupation above and below business premises as requiring a mandatory licence.
- Setting prescribed room sizes within HMO's
- Removal of the exemption from selective licensing to letting to family members.
- Simplifying the process for applying for an HMO or other residential property licence.

3.68 If the Government introduces some or all these changes within 2016, they will have little effect on the selective licensing scheme as all property within the private rented sector will need to have a licence, either mandatory HMO or a selective licence. It will no doubt increase the numbers of HMO's that will need licensing in the remainder of the Borough. There would be an effect on additional licensing schemes, which currently require HMO's to be licensed, this in effect may make them redundant depending on the scope and the extent of the proposals.

Proposals within the Housing and Planning Bill 2015

3.69 The current Housing and Planning Bill that is being reviewed by Parliament covers a range of measures that are designed to tackle rogue landlords and letting agents:

- Banning Orders: Councils would be able to apply for banning orders to stop poor landlords/letting agents from property management for six months if they are convicted of a banning order offence.
- Central database of rogue landlords and letting agents: The Bill states that the Secretary of State must establish and operate the database of rogue landlords and property agents.

- Rent Repayment Orders: these will be extended from the provisions currently contained in the Housing Act 2004 to rogue landlords who have committed a defined offence.
- Financial Penalties – Councils would be able to impose these penalties for defined offences
- Amended fit and proper person test for landlords who apply for licences, they must show that they are entitled to remain in the UK and not insolvent or bankrupt.
- Tenancy Deposit Schemes: Councils would be able to use information held by these schemes to carry out HMO licensing functions, where multiple deposits are registered against one address which does not hold a HMO licence.

Additional Licensing of Houses in Multiple Occupation

- 3.70 These adoptive provisions are available to the Council, if there is a desire to licence all Houses in Multiple Occupation, that fall outside the scope of mandatory HMO licensing. The 20:20 rule does not apply to this designation and the Council may currently designate the whole Borough as additional licensing, under a general approval from the Secretary of State.
- 3.71 This provision was not previously investigated as before a designation can be made a significant proportion of the HMO's, of the description, to which the scheme would be intended to apply would need to be managed sufficiently ineffectively so that they are causing or have potential to cause particular problems either for the occupiers or members of the public.
- 3.72 It is not the intention of the legislation that additional licensing should apply to all types of HMO's across the Borough – it should be used to tackle specific problems in specific areas.
- 3.73 Before making a designation, the Council must consult with persons likely to be affected by it and must consider those persons representations.
- 3.74 Before making a designation for additional licensing, the following criteria need to be met:
- The problems that additional licensing is intended to address and the scale and impact of those problems.
 - Consideration of any alternative courses of action available.
 - How such a designation is consistent with its overall strategy and how it is co-ordinated in combating anti-social behaviour, homelessness and empty homes in the private rented sector.
 - The outcome of the designation and the measures to be put in place to evaluate the effectiveness in delivering its objectives.
- 3.75 Cabinet may wish to explore introducing licensing of non mandatory licensed HMO's across the Borough. If so, they may wish to wait for the outcome of the current consultation extending the definition of a mandatory licensable HMO.

- 3.76 If Cabinet wish to consider introducing additional licensing, then further research work would need to be undertaken by a Housing consultancy to demonstrate the need for it.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 This report considers the outcome of the consultation process and makes recommendations on the options available for the introduction of a registered licensing scheme for the private rented sector. The full financial implications of a Selective Licensing scheme will be determined by the extent of the designation if approved, and the adoption of the proposed fee structure set out in Appendix Eight.
- 4.2 The report further highlights the need to upgrade the IT infrastructure at an estimated cost of approximately £200,000. The supporting technology will need to be procured six months in advance of the scheme becoming operational. The cost would be recovered from the 5 year licence fee. The fee is therefore calculated to ensure the ability of the Council to levy a reasonable charge for a licence that would ensure that the full costs including administration in relation to any final proposal will be financially neutral for the authority.

5. LEGAL COMMENTS

- 5.1 Part 1 of the Housing Act 2004 ('the 2004 Act') deals with Housing Conditions including the Enforcement of Housing Standards, service of notices and enforcement actions. Section 3 of the 2004 Act provides that the Council must review the housing conditions in their area with a view to identifying any action that may need to be taken in relation to the list of matters at subsection 3(2), which includes, inter alia, licensing of HMOs, selective licensing and management orders.
- 5.2 The selective licensing of residential accommodation other than HMOs is governed by Part 3 of the 2004 Act. Section 79 of the Act provides for houses to be licensed by the Council where there are houses in the Council's area which are designated as selective licensing areas.
- 5.3 As provided by section 79(5), every local housing authority has a general duty to make arrangements to secure the effective implementation in their district of the licensing regime and to ensure that all applications for licences and other issues falling to be determined by the authority are determined within a reasonable time.
- 5.4 Section 80 provides that the Council may designate either the area of their district or an area in their district as subject to selective licensing if the area is, or is likely to become, an area of low housing demand and that making a

designation will, when combined with other measures taken in the area by the local housing authority contribute to the improvement of the social or economic conditions in the area as provided in section 80(3) OR that the area is experiencing a significant and persistent problem caused by anti-social behaviour; that some or all of the private sector landlords who have let premises in the area (whether under leases or licences) are failing to take action to combat the problem that it would be appropriate for them to take; and that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, lead to a reduction in, or the elimination of, the problem as provided in section 80(6).

- 5.5 The report sets out the framework for the consultation which has already taken place.
- 5.6 Since 1 April 2015, new rules require Local Authorities to gain approval from the Secretary of State for any selective licensing scheme which would cover more than 20% of their geographical area or would affect more than 20% of privately rented homes in the local authority area, which seeks to prevent local authorities from being able to create ‘blanket’ schemes on privately rented properties. If the Selective Licensing Scheme does not exceed these figures, the Council can give general approval as provided by Section 82. The report gives the figures for the varying wards and whether the figure would or would not be exceeded.
- 5.7 In terms of the actual designation by LB Tower Hamlets and who has authority to designate, the decision is an Executive Function. Executive functions are ordinarily exercised by the Mayor and Cabinet unless it is a Key Decision reserved to Full Council.

A “Key Decision” under Article 13 is an executive decision which is likely (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the borough. The Council has not adopted a financial threshold for key decisions. The criteria in determining what amounts to a key decision include the following:

- Whether the decision may incur a significant social, economic or environmental risk.
- The likely extent of the impact of the decision both within and outside of the borough.
- Whether the decision is likely to be a matter of political controversy.
- The extent to which the decision is likely to result in substantial public interest.

A decision taker, when making a decision may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of the Constitution.

- 5.8 By virtue of section 82 the designation of an area as subject to selective licensing cannot come into force unless it has been confirmed by the appropriate national authority (being the Secretary of State; or it falls within a description of designations in relation to which that authority has given a general approval in accordance with subsection (6)). Therefore, in circumstances where general approval is given on the basis of the less than 20% rule, the designation will come into force on the date specified in the designation, which must be no earlier than 3 months after the designation is made.
- 5.9 Section 83 provides that as soon as the designation is made or confirmed, the Council must publish in a prescribed format, a notice stating that the designation has been so made, whether or not the designation was required to be confirmed and either that it has been confirmed or that a general approval under section 82 applied to it, the date on which the designation is to come into force, or confirmed and given general approval by the Council, the date it came into force and other information which may be prescribed by regulations.
- 5.10 Notices in the prescribed manner referred to above mean in accordance with Regulation 9 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006, which sets out publication requirements relating to designations made under Part 2 or Part 3 of the 2004 Act. Paragraph 9 of the Regulations provide as follows:
- (2) Within 7 days after the date on which the designation was confirmed or made the local housing authority must*
- (a) place the notice on a public notice board at one or more municipal buildings within the designated area, or if there are no such buildings within the designated area, at the closest of such buildings situated outside the designated area;*
- (b) publish the notice on the authority's internet site; and*
- (c) arrange for its publication in at least two local newspapers circulating in or around the designated area*
- (i) in the next edition of those newspapers; and*
- (ii) five times in the editions of those newspapers following the edition in which it is first published, with the interval between each publication being no less than two weeks and no more than three weeks.*
- (3) Within 2 weeks after the designation was confirmed or made the local housing authority must send a copy of the notice to*
- (a) any person who responded to the consultation conducted by it*
- (b) any organisation which, to the reasonable knowledge of the authority*
- (i) represents the interests of landlords or tenants within the designated area; or*
- (ii) represents managing agents, estate agents or letting agents within the designated area; and*
- (c) every organisation within the local housing authority area that the local housing authority knows or believes provides advice on landlord and tenant matters, including*
- (i) law centres;*

- (ii) citizens' advice bureaux;*
- (iii) housing advice centres; and*
- (iv) homeless persons' units.*

(4) In addition to the information referred to in section 83(2) (a), (b) and(c), the notice must contain the following information

- (a) a brief description of the designated area;*
- (b) the name, address, telephone number and e-mail address of*
 - (i) the local housing authority that made the designation;*
 - (ii) the premises where the designation may be inspected; and*
 - (iii) the premises where applications for licences and general advice may be obtained;*
- (c) a statement advising any landlord, person managing or tenant within the designated area to seek advice from the local housing authority on whether their property is affected by the designation; and*
- (d) a warning of the consequences of failing to licence a property that is required to be licensed, including the criminal sanctions.*

- 5.11 Unless previously revoked, a designation lasts no longer than 5 years after the date it came into force. There are publication requirements on revocation under Regulation 10 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006.
- 5.12 Section 95 of the 2004 Act, provides that it is a criminal offence to let a property that is required to be licensed, which is not licenced and any person convicted of a summary offence may be liable to a fine of any amount. Failure to apply for a licence may result in the prosecution of a person having control of or managing a house (e.g. landlords and/or managing agents). Additionally a licence holder that fails to comply with the terms of his licence or any restrictions or obligations under the licence may also result in prosecution. A person convicted of either summary offence may be liable to a fine not exceeding £5,000.
- 5.13 The Secretary of State, in exercise of the powers conferred by section 150(1) to (6) and (10) of the Energy Act 2013(1) and paragraph 3(a) of Schedule 4 to the Housing Act 2004(2), made The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 which came into force on 1st October 2015.
- 5.14 Regulation 4 of the above Regulations imposes duties on landlords in relation to prescribed alarms as referred to at paragraph 3.62 above.
- 5.15 Regulation 5 imposes a duty on local housing authority to serve a remedial notice where the local housing authority has reasonable grounds to believe that, in relation to premises situated within its area, a relevant landlord is in breach of one or more of the duties under regulation 4(1).
- 5.16 Regulation 7 imposes a duty on a local housing authority to arrange remedial action where it is satisfied, on the balance of probabilities, that a landlord on whom it has served a remedial notice is in breach of the duty. The authority must, if the necessary consent is given, arrange for an authorised person to

take the remedial action specified in the remedial notice. Further, the local housing authority must ensure the authorised person takes the remedial action within 28 days beginning with the day on which the authority is first satisfied under paragraph that a notice has been served and the landlord is in breach of the duty.

- 5.17 By virtue of Regulation 8 where a local housing authority is satisfied, on the balance of probabilities, that a landlord on whom it has served a remedial notice is in breach of the duty, the authority may require the landlord to pay a penalty charge of such amount as the authority may determine. The amount of the penalty charge must not exceed £5,000. Where a local housing authority decides to impose a penalty charge, the authority must serve notice of that fact on the landlord (“a penalty charge notice”) within six weeks beginning with the day on which the authority is first satisfied of the breach (8(3)). Regulation 9 sets out what must be contained in the Penalty Notice and Regulations 11 and 12 deal with appeals against the penalty and enforcing recovery of the penalty.
- 5.18 The Deregulation Act 2015 (‘the 2015 Act’) deals with Housing and development at sections 28 to 48 of the Act. The 2015 Act brings in new measures to protect tenants from eviction when they raise a complaint about the condition of their home in the private rented sector. It should be noted that sections 33 to 40 apply only to an assured shorthold tenancy of a dwelling-house in England granted on or after the day on which the provision comes into force. A provision of sections 33 to 40 does not apply to an assured shorthold tenancy that came into being under section 5(2) of the Housing Act 1988 after the commencement of that provision and on the coming to an end of an assured shorthold tenancy that was granted before the commencement of that provision.
- 5.19 Section 33 of the Act provides that:
- where a relevant notice is served, a section 21 notice may not be given in relation to an assured shorthold tenancy of the dwelling within six months beginning with the day of service of the relevant notice, or where the operation of the relevant notice has been suspended, within six months beginning with the day on which the suspension ends.
 - A section 21 notice given in relation to an assured shorthold tenancy of a dwelling-house in England is invalid where before the section 21 notice was given, the tenant made a complaint in writing to the landlord regarding the condition of the dwelling-house and the landlord (i) did not provide a response to the complaint within 14 days beginning with the day on which the complaint was given, (ii) provided a response to the complaint that was not an adequate response, or (iii) gave a section 21 notice in relation to the dwelling-house following the complaint, the tenant then made a complaint to the relevant local housing authority about the same, or substantially the same, subject matter as the complaint to the landlord, the relevant local housing authority served a relevant notice in relation to the dwelling-house in response to the complaint, and if the section 21 notice was not given before the tenant’s complaint to the local housing authority, it was given before the service of the relevant notice.

- Where the local authority has served an improvement notice or notice of emergency remedial action, the tenant is protected from eviction for 6 months from the date of service of that notice, regardless of whether they raise the issue with the landlord first. Where tenants are seeking to have a s.21 notice that has already been served to be found invalid, they need to have raised the complaint with the landlord first.
- 5.20 By virtue of Section 36 of the 2015 Act, landlords can no longer serve a Section 21 Notice within the first four months of the start of the tenancy. In the case of a renewed tenancy, the four month period is calculated by reference to the start of the original tenancy and not the start of the replacement tenancy, unless the tenancy is a periodic tenancy under which more than two months' notice is required.
- 5.21 Section 37 sets out the prescribed form of section 21 notices. The 2015 Act introduces a new standard form for section 21 eviction notices which must be used for all tenancies created on or after 1 October 2015.
- 5.22 As a general point it should be noted that Enfield Council's selective Licensing Scheme (a borough-wide scheme) was successfully quashed in December 2015. On Thursday 11 December, His Honor Judge McKenna, in the High Court, handed down his judgment which quashed Enfield Council's designations for additional and selective licensing schemes, which would have required all private rented property in the borough to be licensed from 1 April 2015. Judge McKenna found that Enfield Council had failed to properly consult the persons who should have been consulted and did not consult for the required time. Any flaws in the consultation process and failure to properly consider consultation responses could result in challenges from landlords as occurred with Enfield. LBTH should therefore be satisfied as to its consultation before proceeding to designate an area. Point 3 of the report sets out the Consultation process including relevant dates, the results and alternative options considered.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The Equalities Impact Assessment has been reviewed in respect of the consultation exercise and no adverse issues have been identified.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The Council is fulfilling its best value duty by considering that those landlords that impose a cost on managing anti-social behaviour, contribute financially to its regulation.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There are no environmental impacts with regards to this scheme, however it is likely that cold and damp properties that are identified will be made more energy efficient.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 There is a possibility that the proposal will be judicially reviewed by landlord associations.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 The Appendices to the report identifies the current anti-social behaviour statistics data. If adopted, the scheme should have a downward pressure on the number of anti-social behaviour incidents and complaints.

11. SAFEGUARDING IMPLICATIONS

- 11.1 There are no identified safeguarding implications for undertaking the licensing scheme.

Linked Reports, Appendices and Background Documents

Linked Report

None

Appendices

Appendix One – Pre 2014 wards as a percentage of the borough area against percentage of total properties in the private rented sector.
Appendix Two- Evidence base for designating pilot areas for licensing the private rented housing sector within the London Borough of Tower Hamlets
Appendix Three- The private rented sector and anti-social behaviour – Dr Mayhew and associates.
Appendix Four – Tenure as percentages
Appendix Five – Benefits of a selective licensing scheme
Appendix Six – EQIA used in consultation
Appendix Seven – Frequently asked questions
Appendix Eight- Landlord selective licensing scheme – fees
Appendix Nine – Private rented Housing Property Standards
Appendix Ten – Houses in multiple occupation – management
Appendix Eleven – Selective Licence conditions
Appendix Twelve – National Landlord Association response
Appendix Thirteen – Tower Hamlets Renters and Tower Hamlets Unit Community Centre response
Appendix Fourteen – Written responses
Appendix Fifteen – Questions and responses at the public consultation meetings
Appendix Sixteen- On line Questionnaires
Appendix Seventeen – Consultation responses from on line questionnaires
Appendix Eighteen – Other courses of action – positives and negatives
Appendix Nineteen – Complementary action

Appendix Twenty – Equalities Impact Assessment

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

None

Officer contact details for documents:

N/A