


Cabinet Decision 3 September 2014	
Report of: Stephen Halsey, Head of Paid Service, Corporate Director – Communities, Localities and Culture	Classification: Unrestricted
Consultation on Selective Licensing for the Private Rented Sector Housing	

Lead Member	Councillors Rabina Khan (Cabinet Member for Housing and Development) and Ohid Ahmed (Cabinet Member for Community Safety)
Wards affected	Blackwall and Cubitt Town, Canary Wharf, Island Gardens, Poplar, Weavers, Whitechapel, Spitalfields and Banglatown, Stepney Green, Bow East and Bow West.
Community Plan Theme	A Great Place to Live
Key Decision?	No

Executive Summary

- 1.1 The Fairness Commission was established in November 2012 and the Council's response was provided to Cabinet in April 2014. One of the responses recommended that the Council should
- gather the necessary evidence, explore data and consider options for taking forward a landlord licensing scheme;
 - consult stakeholders and to pilot a private rented sector housing licensing scheme in an area within the Borough and to identify any unintended consequences.
- 1.2 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.
- 1.3 A licensing scheme would enable the Council to impose a legal requirement in the designated area requiring all landlords to register, apply for a licence for each property they rent out and comply with specific licence conditions. This would give the Council more power to tackle irresponsible landlords and drive up management standards.
- 1.4 Prior to designating an area, the Council must consult with interested groups such as landlords, tenants, letting agents, landlord associations and other interested parties.

- 1.5 There are two types of adoptive licensing schemes for the 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 and recommends that pilot areas be introduced in the first instance to enable it to be properly evaluated pending possible roll out across the Borough.
- 1.6 The nature and level of information that needs to be gathered and reviewed presents the council with a complex and time consuming exercise. As an increasing number of councils are now reviewing the possibility of introducing such schemes, there are a growing number of companies that can offer support to Council's to prepare the relevant evidence base necessary to introduce such an initiative and the documentation for consultation. A number of Councils have used these housing consultancies to carry out the preparatory work to introduce a licensing scheme. The cost of employing a consultancy to undertake this work will be in the region of £40,000 depending on the size of the pilot area and the scope of the specification.
- 1.7 A PRS housing licensing scheme will attract a licence fee for each property and the scheme must be cost neutral.

Recommendations:

The Mayor in Cabinet is recommended to:-

- 2.1 Agree that consultation take place on the adoption of the powers for selective licensing within the following former wards: Blackwall and Cubitt Town, Millwall, Weavers, Whitechapel, Spitalfields and Banglatown, Bow East and Bow West. (pre May 22nd boundaries)
- 2.2 Agree that a Housing Consultancy should be engaged to assist with conducting the consultation.

3. REASONS FOR THE DECISIONS

- 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 action that it would be appropriate for them to do to combat the problem.
- 3.2 It is not felt that there are any areas in the Borough that are facing low housing demand, the selective licensing scheme is being considered due to

persistent problems with ASB.

3. ALTERNATIVE OPTIONS

- 3.1 The Council could take no action, however, this power could be useful in addressing ASB. This proposal is to commence a consultation within the wards detailed in the report, a future decision will need to be made whether a landlord selective licensing scheme is to be introduced.

4. DETAILS OF REPORT

- 4.1 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.
- 4.2 The Private Sector Stock Condition Survey carried out in 2011, estimated that 39% of properties in the Borough were from the PRS, this equated to approximately 41,870 properties. The census also reported a similar figure with 33% of properties being in the PRS. Around 50% of Tower Hamlets Homes properties are now privately rented as a result of government 'right to buy' schemes.
- 4.3 One of the difficulties that the Council has in managing the PRS is that it has no way of accurately compiling and maintaining a register of properties and must rely upon complaints to deal with disrepair and anti-social behaviour issues.
- 4.4 Many other Local Authorities have designated PRS licensing schemes, most notably Newham.
- 4.5 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, uptake is not extensive.
- 4.6 Most Local Authorities who have implemented PRS licencing schemes implement pilot areas initially to allow for evaluation before rolling out across the whole Borough, to ensure that the objectives of the scheme are met and that there are no adverse consequences.
- 4.7 The table in Appendix One summarised the benefits of selective licensing schemes to the four main participants: the Council, Landlords, tenants and communities.
- 4.8 The Housing Act 2004 provides for three licensing schemes for the PRS, two of these schemes are adoptive;
- a) Mandatory Licensing of Houses in Multiple Occupation where a property consists of three or more storeys is occupied by five or more persons living

in two or more single households. The scheme is mandatory due to the increased fire risk in these premises and the opportunity for poor management of the premises. This scheme is currently being carried out across the Borough and from the estimated 324 properties in this category, 127 are currently licensed by Environmental Protection. The estimate for the three storey Houses in Multiple Occupation comes from the Housing Stock Condition Survey in 2011. The survey does not contain address data for the estimated HMO stock.

- b) An Additional Licensing scheme is one that applies to Houses in Multiple Occupation that do not fall into the above category i.e. two storey properties or flats that are let as multi occupied premises. It is estimated from the Housing Stock Condition Survey in 2011, that there are 8,287 properties in the Borough that fall within this category. As explained above the addresses were not identified by the survey. An additional licensing scheme cannot be designated unless a significant proportion of the HMOs are being managed ineffectively so as to cause problems for the occupiers of the HMOs and members of the public – including anti-social behaviour. The Environmental Protection Team has existing powers to deal with management arrangements and fire precautions in these types of property but the service relies on complaints to address issues on a reactive basis. If a scheme is to be introduced to tackle specific problems around anti-social behaviour, all premises types should be included due to economies of scale.
- c) Selective Licensing: this is the subject of this report, and further detail is provided below.

- 4.9 It is possible to run an additional licensing scheme and a selective licensing scheme in the same designated area providing that the evidence secured to justify it expressly includes HMO data and demonstrates ineffective management of Houses in Multiple Occupation and the relevant issues are covered in the public consultation.
- 4.10 The Council is able to charge a fee for the management of all the licensing schemes to recover its costs.

Selective Licensing

- 4.11 In order for a selective housing licensing designation to be made, the Council must demonstrate that the designated 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 action that it would be appropriate for them to do to combat the problem.
- 4.12 In order to assess the extent to which the criteria are being met in 4.11, a comprehensive research exercise needs to be carried out. This would include a review of the data the Council already holds on ASB. The review would investigate the links between ASB and the PRS in the pilot areas. The Service

does not have the necessary in-house expertise to carry out this exercise and would need to seek external advice.

- 4.13 A selective designation can only be made if, when combined with other measures taken, it will lead to a reduction of ASB.
- 4.14 The designation needs to be consistent with the overall housing strategy, ensuring that it is co-ordinated to combat homelessness, empty homes, and the work of other agencies.
- 4.15 The Council also needs to formally consider if there is any other course of action it can take to deal with the problems identified.
- 4.16 The Council must consult before making a designation and detail why it feels that it is the most appropriate course of action.
- 4.17 The Council will have to demonstrate that it has followed the proper procedures and that there has been proper consultation which ensures that the Council has:
 - a) Identified the problems the designation is intended to address as well as the scale and impact of those problems.
 - b) Considered alternative actions
 - c) Ensure that the designation is consistent with its overall strategy of how it combats ASB, homelessness and empty homes in the PRS
 - d) Identified the outcome of the designation and the measures to be put in place to evaluate its effectiveness
- 4.18 The designation can be made for any period of time, up to a maximum of 5 years.
- 4.19 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.
- 4.20 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
- 4.21 The terms of the licence will require certain mandatory conditions to be imposed on the licence namely:

- a) 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
- b) Declaration that the electrical appliances and furniture are in a safe condition.
- c) Declaration that smoke alarms are provided in the dwelling and positioned correctly and in working order.
- d) Gas safety certificate to be provided on an annual basis.
- e) Each occupier to be provided with a written statement of the terms of their occupation.
- f) The provision of references from all prospective tenants.

4.22 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.

Housing Consultancy Assistance

4.23 A number of Local Authorities that have licensing schemes designated in their areas have used a housing consultancy to assist in compiling the evidence and managing the consultation process. It is proposed that the Council should engage such a consultancy as it does not have the necessary expertise or capacity to manage this process in house.

4.24 The types of information that would need to be co-ordinated fall into the following three categories:

- a) Crime: tenants not respecting the property in which they live and engaging in vandalism, criminal damage, burglary, robbery/theft and car crime.
- b) Nuisance neighbours: intimidation and harassment, noise and animal related problems – tenants engaged in begging, anti-social drinking, street prostitution and kerb crawling – street drugs market within the curtilage of the property.

- c) Environmental crime: tenants engaged in graffiti, fly posting, littering and nuisance vehicle complaints in and around the curtilage of their property.
- 4.25 The Council has many different data sources, along those held by external partners. This information, as highlighted in the attached Appendix Two would need to be formatted and presented in such a way as to support a consultation.
- 4.26 If anti-social behaviour is being carried out within the immediate vicinity of the property and is being caused by the occupiers of it, then it would be reasonable to expect a landlord to ensure that those occupants and or visitors to the property moderate their behaviour to acceptable standards. Council systems do not necessary capture this level of detail.
- 4.27 An initial equalities check list has been undertaken and is at Appendix Three. This assessment has determined that there are few discernable adverse equality impacts at present, but this assessment will be reviewed as the project progresses.

5. COMMENTS OF THE CHIEF FINANCE OFFICER

- 5.1 A decision will need to be made the Council on whether to consult on the adoption of powers for selective licensing and on the introduction of a pilot scheme. It is therefore proposed that a Housing Consultancy company be employed to gather and prepared the documentation evidence for the consultation. The cost for the proposed pilot areas is expected to be £40,000 which can be met from the resources available for joint working with Public health
- 5.2 The full financial implications if a landlord licensing pilot scheme is adopted including the ability to levy a reasonable charge for a license would need to ensure that the full costs including administration in relation to any final proposal will be financially neutral for the authority.

6. LEGAL COMMENTS

- 6.1 Part 3 of the Housing Act 2004 creates a licensing regime in respect of specified residential accommodation (the selective licensing regime). The scheme applies to a house if it is situated in an area which the Council has designated as being subject to selective licensing and is wholly occupied under a tenancy or a licence (or two or more tenancies or licences).
- 6.2 The scheme excludes houses occupied under a tenancy or licence granted by: (a) a non-profit registered provider of social housing; (b) a profit-making registered provider of social housing in respect of social housing as defined in Part 2 of the Housing and Regeneration Act 2008; or (c) a registered social landlord under Part 1 of the Housing Act 1996.

- 6.3 Under the selective licensing regime, it is an offence to have control of or manage a house which is required to be licensed without such a licence. It is also an offence to fail to comply with any condition of such a licence. There are specified conditions which a licence must contain but otherwise a licence may include such conditions as the Council thinks appropriate for regulating the management, use or occupation of the house concerned.
- 6.4 The Council may only grant a licence under the selective licensing regime if it is satisfied of specified matters. The council must be satisfied that: (a) the proposed licence holder is a fit and proper person and is the most appropriate person to hold the licence out of all the persons reasonably available to be the licence holder in respect of the house; (b) the proposed manager of the house is a fit and proper person and either has control of the house or is the agent of the person who has control of the house; and (c) the proposed management arrangements are otherwise satisfactory.
- 6.5 The Council has an obligation as a local housing authority to make arrangements to secure the effective implementation of the selective licensing regime in Tower Hamlets (Housing Act 2004, s79(5)). The Council must ensure that applications for licences are determined within a reasonable time. These obligations will have effect if the Council determines to designate an area as subject to selective licensing.
- 6.6 The circumstances in which the Council may designate an area as subject to selective licensing are set out in section 80 of the Housing Act 2004 and are summarised in the report. Before making a designation, the Council must take reasonable steps to consult persons who are likely to be affected by the designation. The Council must consider any representations which are made in accordance with the consultation and not withdrawn.
- 6.7 The report proposes that the necessary consultation be commenced and that a consultant be engaged to assist with this. The engagement of the consultant will need to be carried out in accordance with the Council's Procurement Procedures, which should help to ensure that the Council delivers upon its best value duty under section 3 of the Local Government Act 1999.
- 6.8 Before making a designation, the Council would need to be satisfied, relevantly, that –
- The area is experiencing a significant and persistent problem caused by anti-social behaviour;
 - Some or all of the private sector landlords who have let premises in the area are failing to take action (that it would be appropriate for them to take) to combat the problem;
 - Making a designation will lead to a reduction in, or the elimination of, the problem, when combined with other measures taken in the area by the Council.

- Making a designation is consistent with the Council's overall housing strategy.
- Making a designation will significantly assist the Council to achieve the objective that the designation is intended to achieve, whether or not the Council takes any other action to achieve the objective. The Council must consider whether there are other courses of action available that might provide an effective means of achieving the objective.

- 6.9 The Council is required to seek to adopt a co-ordinated approach in dealing with homelessness, empty properties and anti-social behaviour. It must do this in two respects: (a) by combining the selective licensing regime with other courses of action available to it; and (b) by combining such licensing with measures taken by other persons. There will need to be material provided relevant to all the action proposed to address the anti-social behaviour problem should a proposal be brought forward for designating an area as subject to selective licensing.
- 6.10 There may be an issue about whether designating an area as subject to selective licensing involves the imposition of an authorisation scheme governing access to a service activity within the meaning of Part 3 of the Provision of Services Regulations 2009. If it falls within that description, then the Council must also be satisfied that the scheme is non-discriminatory, that the scheme is justified by an overriding reason relating to the public interest and that the objective cannot be attained by means of a less restrictive measure.
- 6.11 If the Council designates an area as subject to selective licensing, this requires approval from the Secretary of State. The Secretary of State has issued a general approval, dated 30 March 2010, which the Council would seek to rely upon. In order to do so, the Council must ensure that its statutory consultation is conducted for a minimum period of 10 weeks.
- 6.12 Once made, the designation can last for no more than 5 years from the date on which it comes into force. The Council must review the designation from time to time and, if appropriate, the designation may be revoked.
- 6.13 The Council will set its own application fee. Such fee must be reasonable and should properly reflect the anticipated costs for the Council in administering the application, appeal costs and the costs associated with licensing visits should a licence be granted. Fees should not be set at an unreasonably high level to dissuade applications. Further, such fees cannot include costs associated with enforcement against unlicensed properties.
- 6.14 When considering whether to designate an area as subject to selective licensing, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't. This will require an equality analysis, which should be informed by information gathered as part of the statutory consultation.

6.15 The designation of an area for selective licensing is an executive function by virtue of section 9D(2) of the Local Government Act 2000, there being no contrary statutory indication, particularly in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

7. ONE TOWER HAMLETS CONSIDERATIONS

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

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 There are no environmental impacts with regards to this plan.

9. RISK MANAGEMENT IMPLICATIONS

9.1 There are no identified risks with the consultation exercise.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 The Appendix to the report identifies the current anti-social behaviour statistics. As discussed in the report the proposal is currently to commence consultation on the introduction of a selective licensing scheme. If adopted at a later date, the scheme should have a downward pressure on the number of anti-social behaviour incidents and complaints.

11. EFFICIENCY STATEMENT

11.1 There are no efficiency issues relating to this report. The cost of the Housing consultancy will be met by joint working with Public Health.

Linked Reports, Appendices and Background Documents

Linked Report

None

Appendices

Appendix One: Benefits of Private Rented Housing 'selective' licensing

Appendix Two: Data collection and evidence base for pilot wards

Appendix Three: Equalities Checklist

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

None

Officer contact details for documents:

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