

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Deputy Chief Executive (People)

to

Policy & Resources Scrutiny Committee

on

12th July 2018

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Future delivery of a regulated Private Rented Housing Sector

Cabinet Member: Councillor Tony Cox
Part 1 (Public Agenda Item)

1. Purpose of Report

- 1.1 On 7 November 2017 Cabinet referred to this Committee a proposal to introduce a compulsory licensing scheme for consideration by way of pre-Cabinet scrutiny. This pre-Cabinet scrutiny report provides options for the future regulation of the Private Rented Sector (PRS) in Southend including the requirements, benefits, risks and wider implications of each.

2. Recommendations

- 2.1 That the Committee considers the options for the future regulation of the Private Rented Sector (PRS) in Southend, and makes recommendations to Cabinet; this will inform the development of the Housing Strategy to be agreed in September 2018. In particular Option 1 with its enhanced use of recently introduced enforcement powers presents a natural progression to a more interventionist delivery of service to meet the present challenges in the PRS. Any change will be reviewed for effectiveness after twelve months.

3. Background

- 3.1 An affordable and safe PRS is a basic requisite to ensuring the health and wellbeing of residents. Southend-on-Sea has a large proportion of housing in the PRS (23% at the time of writing). With increasing rents and increasing population there is more pressure than ever on people trying to find affordable accommodation and there is anecdotal evidence that poorer standards of accommodation are being accepted with tenants reluctant to seek improvement either through landlord or local housing authority engagement. This suggests a need for a service delivering intelligence-led enforcement and having the capacity to see such enforcement appropriately and proportionately pursued.

- 3.2 Reduced housing construction has contributed to the increased demand for housing and there has been a demonstrable degrading of the PRS stock mainly due to some landlords renting out a variety of unsuitable accommodations to occupiers who may perceive they have little choice in this regard. As a result Private Sector Housing (PSH) teams have become more enforcement orientated. The Housing Act 2004 and more recent changes in legislation from 2004 are providing a variety of powers to compel repair and renovation
- 3.3 Licensing of dwellings has been a tool for the identification of high risk shared houses and with the criteria extension in October 2018 will continue to be so. Additionally enforcement powers are enhanced within such schemes for non-compliance. Discretionary licensing provides for inclusion of other dwellings which do not fall within the mandatory scheme criteria but also relies on initial data to show that such licensing would be an effective tool (see 3.8 below). Around 44 Councils in England have adopted or are adopting discretionary licensing as well as several of the London boroughs; of these some have found that a borough-wide scheme was required. Discretionary licensing usually reflects local data and so is less commonly used borough-wide.
- 3.4 The Government's intentions to reduce retaliatory eviction through the Deregulation Act 2015 depend on formal process. By contrast, Southend Council currently relies on an approach of escalating interventions over time; this originates from an expectation of compliance and therefore provides for an informal first contact with landlords. This has the advantage of preserving good relations with landlords, continuing good relations between landlords and tenants and often results in speedy responses where there have been genuine reasons for non-compliance and deficiencies in dwellings; but there is a cost.
- 3.5 Legislation to control retaliatory eviction relies on formal processes being undertaken immediately rather than as currently followed by Southend Council. Indeed it is possible that approaching landlords informally will give undue warning of the likelihood of formal action and so encourages possession actions before they become otherwise proscribed. While a collaborative approach to deficient dwellings is to be preferred in most cases, the tension between hard and soft enforcement should not prevent full use of the Council's powers and so moving away from the historical informal approach gives greater discretion to the Council in regulating the PRS .
- 3.6 The Government, in the Housing Act 2004, introduced powers (subject to certain exemptions) to licence *dwellings rather than landlords* through three schemes. Mandatory licensing was intended to identify high risk dwellings and was restricted to dwellings which met certain criteria:
- 3.7 Having been identified and recorded, the dwellings were licensed for no more than five years during which time, some additional powers were given to apply reasonable conditions to the licence. Failure to licence was another offence which attracts a high penalty.
- 3.8 Discretionary licensing was introduced as Selective Licensing and Additional Licensing. Selective licensing was intended to be used as a response to the following:

- Low demand from both owners and occupiers for the dwellings or
- Anti-social behaviour (ASB) attributable to a significant number of dwellings.

In 2015 further criteria were added as follows:

- Poor property conditions or
- High levels of migration or
- High levels of deprivation or
- High levels of crime

3.9 Additional licensing schemes require licensing of all houses of multiple occupation (HMOs) in the area for which they are set up, that is, there are no special trigger criteria as with mandatory licensing. It is likely that an additional licensing scheme would be required simultaneously with any selective licensing scheme. Commencing 1st October 2018, the criteria for mandatory licensing of HMOs widens to include dwellings housing five or more persons in two or more households; effectively dropping the criterion of three or more storeys. This will increase the number of dwelling requiring mandatory licensing and therefore reducing the number of multi-occupied dwelling in any additional licensing scheme and will be an important factor in the scope and timing of any discretionary scheme.

3.10 In 2011, Southend Council undertook extensive research into selective licencing, followed by a public consultation held 1st July – 23rd September 2011, proposing to introduce Selective Licencing. The consultation document considered a number of factors including:

- Why selective licensing was thought to be needed and the benefits of its introduction;
- Lists of proposed streets;
- Maps with anti-social behaviour (ASB), Crime, Fire and the proportion of private sector dwellings overlaid and supporting crime & ASB data;
- Proposed fees and charges;
- A risk assessment.

3.11 Following the consultation, on the 19th June 2012, Cabinet considered a report into Selective Licencing and resolved not to introduce licencing at the time and alternatively to develop closer working with local landlords, in particular the South Essex Alliance of Landlords and Residents (SEAL) with whom Southend Council would enter into a formal agreement.

- 3.12 On the 19th October 2017, an opposition debate regarding selective licencing resolved that the following motion would be considered at 7th November 2017 Cabinet:

“That Cabinet be recommended to introduce a selective licencing scheme for all residential landlords in the Borough, such scheme to supersede the voluntary arrangements with South East Alliance of Landlords (SEAL).”

3.13 *Consideration for implementation*

- 3.14 Consultation on the proposals using a variety of notifications and access types including local press, street advertising, post, email and on-line/website for a period of not less than ten weeks must take place. Significant and additional resources will be required for the assembly and preparation of robust data as well as the publication exercise. Resources will be required for consideration and reply to general responses to the consultation and to any formal challenge.

The method of introduction would need to be decided upon, either by sector or borough-wide, and then whether on a “worst sector/ward first” or north-south-east-west approach with appropriate timeframes and consideration of resource implications for each.

Where the area under consideration exceeds 20% of the Council area or the total number of rented dwellings exceeds 20% of the total of the PRS (so includes whole-borough licensing) then consent for the scheme must be sought from the Secretary of State for Housing, Communities and Local Government.

Challenge might be expected to come from households not included in the requirement to license where the statement of the various trigger data might be seen to impact on the value and perception of property and area.

After consultation there may be a need for further legal opinion in preparation for any challenge including Judicial Review.

Following any agreement to pursue licensing schemes consideration will need to be given to implementation and the commencement dates would require similar extensive and timely publicity akin to the initial consultation.

- 3.15 Costing of a discretionary licensing scheme is difficult to assess accurately and will entail consideration of investment both to initiate and to administer. This is further complicated as during the administration of any scheme it is expected that there would be regular income from licence fees.

The introduction of a licensing scheme for Southend Council, if identified as necessary, would be either a borough-wide scheme requiring the licensing of, an estimated, 17,000-20,000 properties in the PRS. Any scheme based on one or more, smaller geographic areas would of course amount to fewer dwellings requiring licensing.

A discretionary scheme must include dwellings both singly and multiply occupied. To illustrate the size of the implementation, since the introduction of mandatory licensing for houses in multiple occupation (HMO) in April 2006, Southend Council has processed licence applications and renewals for 98 HMOs at the time of the initial draft of this report. This approximates to 0.1% of the PRS. The additional resourcing and cost difference therefore would be considerable at both borough-wide and sector levels.

Although licensing schemes are expected to be cost-neutral through the setting of fees, nevertheless the cost will be heavily front-loaded. Using the current minimum fee of £920 for a mandatory licence, the likely administration cost per 1,500 dwellings is of the order of £1,380k. If a borough-wide scheme were implemented, it could be expected to cost in excess of £10 million and up to £12 million. This is an indicative figure dependant on the number of liable dwellings being verified and does not include any 'early-bird' discount scheme the Council might wish to promote.

- 3.16 The challenges involved and the impact on the Council's enforcement policy require specific consideration if discretionary licensing is expected to be a part of an overall strategy to improve the housing stock. Southend Council enforcement is presently based upon escalation resulting in an appropriate light touch for generally compliant landlords but with progression through to hard enforcement of so-called rogue landlords. Without real criminal sanctions for those who are considering evading licensing, significant non-compliance can be expected, therefore it is important to generate a meaningful threat for non-compliant landlords early in the discretionary licence scheme life. The role of the Courts will become important as they are integral to the success of borough-wide licensing where enforcement relies on Court and Tribunal time. This means developing a hard enforcement regime within which any campaign against non-licensed dwellings would become credible. Such a change of policy will need careful consideration particularly if it was an unintended consequence of the extension of licensing.
- 3.17 Hard enforcement strategies bring their own challenges particularly where notices and orders result in displacement of occupiers who might then become eligible for Council assistance under the Land Compensation Act.
- 3.18 It is reasonable to expect most landlords will license their property on time while some may only require the threat of enforcement via warning letters. However it is also expected that enforcement action will be required against the remaining non-compliant landlords both to exercise the statutory duties of the Council and to ensure that the Council's reputation is not risked through criticism of lack of action against a minority while there had been compliance by the majority.
- 3.19 A Judicial Review (JR) is a potential challenge to discretionary licensing and is highly probable when directly linked to a borough wide scheme. The early part of the consultation would be expected to attract the interest of larger landlords and landlord organisations which may opt to raise challenge not just on local grounds but also for fear of such a scheme leading to further Councils positively considering borough-wide licensing. It is likely that areas of challenge meeting the JR criteria of irrational or unlawful use of the power might be:

- Incorrect basis for implementation including assessment of practical and beneficial alternatives;
 - Proof of data;
 - Southend Council's ability to process up to 20,000 licences;
 - Southend Council's ability to administer and enforce up to 20,000 licences over five years.
- 3.20 The financial risks are mostly linked to lower than expected licensing income and court costs. Without necessary start up resources or reduced income, Southend Council's ability to enforce and administer licensing on such a large scale would be inhibited.
- 3.21 Calculation of the licence fee is strictly prescribed to ensure that while expenses are covered, the operation is cost neutral; enforcement cannot be included in the fee calculation. Additional regulatory controls will inevitably result in increased enforcement which will require a significant increase in resources particularly within PSH and associated officer costs will likely be substantial. Any licence fee would need to be considered not simply to reflect actual costs but also to invite faster and ready application; early-bird reduced fee, for example, is often used to this end. High licence fees may be seen as a barrier and result in greater numbers failing to license in the early stages.
- 3.22 As with other housing fees, there is a potential for the additional cost of a licence being passed on to occupiers in the form of rent increases, particularly given that the licence pertains to the individual dwellings. Such action would likely impact poorer households disproportionately, with the potential to increase numbers of households at risk of homelessness.

4. Options

- 4.1 Further to the above considerations related to selective licensing, the following options are presented, ranging from an improved current operation through to the introduction of hard enforcement and discretionary licensing at borough-wide or narrower geographical level.
- 4.2 Option 1: Revise the present delivery to incorporate enhanced enforcement.

Deliver the PSH service retaining a choice to operate in an informal to formal manner when appropriate but generally make early reliance on the full range of powers. To achieve this, various strands of reliable intelligence would be used to provide an effective, enforcement based-service. Contact from occupiers and informants would remain a key part of this intelligence however most interventions would be planned to focus on the most serious cases and in areas where such instances occur more frequently. Use would be made of all authorised enforcement powers accommodating new and developing legislation including expansion of the national mandatory licensing and would not hamper future consideration of discretionary licensing.

The Council can ensure there is no loss of impact either on the Retaliatory Eviction provisions of the Deregulation Act 2015 – outlined in 3.3 and 3.4 above - or the use of additional enforcement powers in the Housing and Planning Act 2016. The powers brought in by the Housing and Planning Act include Banning Orders, Civil Penalties, Rent Repayment Orders and Management Orders together with support of the Rogue Landlord Database to which all Councils in England have access. The Government regard these recently-added powers as crucial to regulating the PRS and expect Councils to use them.

Financial Implications

- Present staffing will require review both in numbers and training. This is likely to result in additional resources to ensure delivery of a service more reliant on formal enforcement.
- Insufficient availability of staff might result in reduced capacity for income-generating, non-statutory business.

Legal Implications

- Increased formal enforcement can be expected to elicit increased challenge and defence at tribunal or courts

People Implications

- Present staffing will require review to ensure delivery of a service more reliant on formal enforcement. Additional resources will be necessary to permit continuity of current collaborative initiatives such as SEAL and also deliver effective enforcement through well-trained and well-motivated staff.

Consultation

- No specific consultation is required.

Risks

- May lead to uncontrolled availability of resources (for example, due to the need for greater attendance at court and tribunals as and when required) again impacting on finance and people;
- May have a longer-term deleterious effect on the perception of the Council as a whole - reasonably compliant landlords could perceive they are treated similarly to non-compliant “rogue” landlords

Benefits

- The Council continues to meet its statutory duties
- Supports anti-retaliatory-eviction measures provided by the Deregulation Act 2015;
- Works towards removing a misconception that informants are customers, expecting an advocacy from the service which is often not the case.
- No major policy adjustment is required other than to accommodate national changes in legislation
- The existing relationships with landlords can be expected to remain including an association with SEAL including any perceived or actual benefits of the relationship.

4.3 Option 2: Enhanced enforcement as Option 1 and explore discretionary licensing

As 4.2 but include consideration of the need and likely success of implementing a discretionary (selective) licensing scheme within the borough. The data amassed might indicate either of a borough-wide or area-based (i.e. not more than greater than 20% of the borough PRS stock or area) scheme(s).

Financial Implications

- Present staffing will require review both in numbers and training. This is likely to result in additional resources to ensure delivery of a service more reliant on formal enforcement
- Additional staff will be required to administer the gathering of relevant data for the consideration of a discretionary licensing scheme.
- Additional staff will be required to administer implementation and management of any such scheme.
- It is possible an external advisory or consultancy service would need to be procured to respond to any challenge to a discretionary licensing scheme.
- The introduction of a borough-wide scheme for Southend Council, if found necessary, would require the licensing of around 17,000-20,000 properties. Since the introduction of mandatory licensing in April 2006, Southend Council has processed licence applications and renewals for 98 properties representing 0.1% of the PRS. As such the resourcing difference would be considerable at either borough-wide or sector levels.
- Any reduced capacity due to staff being diverted or concentrating on licensing may result in limited scope for income-generating, non-statutory business.
- Prepare publicity and implementation programme

Legal Implications

- Increased formal enforcement can be expected to elicit increased challenge and defence at tribunal or courts
- Anticipated challenge on the assembly of relevant data to consider the value of implementing a discretionary (selective) licensing scheme including data on demand, criminality, migration and ASB.
- Anticipated challenge from any public consultation process
- Potential for rejection of any application to Secretary of State.

People Implications

- Additional skilled staff resource will be required for assembly and assessment of relevant data.
- Sufficient time will be required for proper consideration.
- Additional staff will be required for implementation of a discretionary licensing scheme. In effect a licensing team will be required to complement Option 1 staffing requirements.
- Consideration and preparation of a method for implementation dependent upon whole-borough or discrete areas - whether implementation is from a single date or phased together with numbers and type of staff required.
- Prepare publicity and implementation programme

Consultation

- Appropriate and practical engagement with interested parties will be necessary on the proposal to consider a discretionary (selective) licensing scheme.
- Suitable timescales will be required to be established for a satisfactory consultation process and consideration of responses.

Risk Assessment

- As well as need to introduce a discretionary licensing scheme, data will inform the decision on extent, that is, borough-wide or applied to one or more appropriate geographic areas. Although a borough-wide scheme cannot be discounted before any data has been considered, should a borough-wide scheme (or any scheme encompassing more than 20% of the private housing stock) be indicated then Secretary of State approval would be required. This would subject the proposal to further scrutiny where it can be expected that not just landlords and tenants but owners and occupiers outside of those intended to be targeted might join any formal challenge as indicated in 3.10 above with a greater probability of approval being withheld..
- May lead to uncontrolled availability of staff (due to court and tribunal attendance)
- May have a longer-term deleterious effect on the reputation of the Council as a whole - reasonably compliant landlords might perceive they are treated similar to highly non-compliant “rogue” landlords.
- Should any discretionary licensing scheme be implemented, there is potential for a drain on the available resources as processing of applications will necessarily become high priority.
- This option presents the potential for a disproportionate response where landlords attempting to be compliant will receive attention while those failing to do so may not be found immediately.
- Discretionary licensing is frequently seen as a “tax” on landlords; a cost which is likely to be passed on to occupiers. This is more likely to happen if no other enforcement enhancement is evident

Benefits

- The Council continues to meet its statutory duties
- No major policy adjustment is required other than to accommodate national changes in legislation
- The existing relationships with landlords can be expected to remain including an association with SEAL and this maintains any perceived or actual benefits of the relationship.
- Any discretionary licensing will contribute to identifying dwellings in the PRS and can be expected to help identify non-compliant dwellings as part of the licensing process.
- Any licensing scheme will provide for additional penalties to be applied in cases of failure to license, including income-generating opportunities.

4.4 Option 3: Strict application of all powers available; consider discretionary licensing

Revise the existing delivery of regulation of the PRS based upon hard enforcement in all instances of contravention and deficiency in dwellings. Include consideration of introduction of discretionary licensing within the borough at either borough-wide or discrete geographic areas as the relevant data may indicate.

Financial Implications

- Present staffing will require review to ensure proper service delivery in the enhanced enforcement environment.
- Additional (project) staff will be required to administer gathering of relevant data for consideration of a discretionary licensing scheme.
- It is possible an external advisory or consultancy service would need to be procured to respond to any challenge to a discretionary licensing scheme.
- Additional staff will be required to administer implementation and management of a discretionary licensing scheme.
- The introduction of a borough-wide scheme for Southend Council would require the licensing of around 17,000-20,000 properties. Since the introduction of mandatory licensing in April 2006, Southend Council has processed licence applications and renewals for 98 properties representing 0.1% of the PRS. As such the resourcing difference would be considerable at either borough-wide or sector levels.

Legal Implications

- Increased formal enforcement can be expected to elicit increased challenge and defence at tribunal or courts
- Likelihood of challenge to the data and effectiveness of public engagement in any preparation for a discretionary licensing scheme.
- For a borough-wide scheme or one including 20% or more of the housing stock, this would include the likelihood of responding to consent not being given by the Secretary of State
- There is the potential and high likelihood for challenge of any discretionary licensing scheme.

People Implications

- The present staff will require review to ensure sufficient resources are available to deliver an enforcement led regulation of the PRS
- A Project team will be required for assembly and assessment of relevant data.
- Sufficient time will be required for proper consideration.
- Staffing will be required for consideration and preparation of a method for implementation dependent upon whole-borough or discrete areas - whether implementation is from a single date or phased together with numbers and type of staff required.
- Staffing will be required to prepare publicity and implementation programme

- Additional staff will be required for implementation of a discretionary licensing scheme. In effect a licensing team will be required to complement existing staffing requirements.

Consultation

- The implementation of a hard enforcement environment for the PRS will be a significant change in Southend Council regulation of the sector and will require suitable publicity and may be expected to be challenged to some degree. Appropriate and practical engagement with interested parties will be necessary on the proposal
- Separate relevant and practical engagement with interested parties will be necessary on the proposal to consider a discretionary (selective) licensing scheme.
- Suitable timescales will be required to be established for those consultation processes and the consideration of responses.

Risks

- It can be expected that the Council's relationship with landlords and in particular SEAL will come under considerable tension.
- Failure to achieve staff of sufficient training and motivation might delay proper implementation both of the service as a whole and any discretionary licensing scheme. Such a failure might also result in poor service delivery exposing the Council to criticism which would be hard to defend.
- A perceived general disengagement with landlords might be expected to lead to suspicion of the Council's view of the PRS. In turn this could lead to a reduced level of co-operation in provision to the Housing Solutions team and could damage any past advantage derived from SEAL
- Preparation for the introduction and delivery of an enforcement-led service will be essential and require considerable investment in resourcing however might not meet with the expectations of residents and landlords in the borough and so become subject to challenge
- Consideration and any implementation of a discretionary licensing scheme will require considerable investment of time and staff and might still be subject to challenge.

Benefits

- A restructured PSH team will likely provide improved service delivery through dedicated elements; initially achieving quick-win intervention and longer-term results in complex enforcement cases.
- Expectations will cease to be raised unrealistically both with early determination of appropriate PSH intervention and without implication of advocacy.
- Early, informed signposting will avoid delays in seeking intervention by other more relevant agencies.
- Teams within PSH are able to quickly engage in formal enforcement particularly where summary or fixed penalty results are provided for.
- Opportunities for joint action with other teams can be created more easily particularly where team targets align with those of other service areas

- It can be argued that the easy transport links with London together with the hardening of PRS enforcement in London boroughs may be leading to a migration of rogue landlords into Southend Council area. The introduction of a hard enforcement regime will contribute to making the borough unattractive to this sector of the market.
- The re-assessment of staffing level could include capacity for income-generating, non-statutory business
- Southend Council reputation could be expected to be enhanced by a fair and equitable pursuit of rogue landlords. It also presents a strong signal not just to non-compliant landlords but also those working hard to maintain compliance.

5. Reason for recommendations

The above options are presented in order to furnish members with information to support decisions related to the enforcement of standards with the realm of the Private Rental Sector. This paper has been authored under the guidance that options are presented without recommendations being made at this stage. Following any selection of one of the above options, preparation, training as well as research and data gathering will be required prior to recommendations being made about modes of delivery, scale of operations or such matters as licence cost.

6. Corporate Implications

6.1 Contribution to Council's Vision & Corporate Priorities

This work aligns with several of the Council's priorities, including the Housing strategy being developed and broader corporate objectives of safe, clean and healthy.

6.2 Financial Implications

Outlined in each of the above options.

6.3 Legal Implications

Outlined in each of the above options.

6.4 People Implications

Outlined in each of the above options.

6.5 Property Implications

Outlined in each of the above options.

6.6 Consultation

Aspects of the work will require detailed consultation and lead officers will draw upon the expertise of Corporate Consultation officers to ensure best practice. Findings from consultations will be published and will inform final strategies and policies to be endorsed by subsequent Cabinets.

6.7 Equalities and Diversity Implications

Aspects of this work programme will require equality analyses to be undertaken in line with national and local requirements. Related activity will report via the

Corporate Equality Steering Group and findings will be incorporated into the final drafting of policy and strategy papers.

6.8 Risk Assessment

The proposal is intended to support improved housing within the PRS and the Council's broader corporate work and thus it is expected the work will have a positive impact.

6.9 Value for Money

Value for money would need to be considered as part of any further analysis of options. Licensing schemes, as identified above, are intended to be cost neutral but should also deliver wider benefits.

6.10 Community Safety Implications

Improvements within private stock conditions are intended in part to reduce anti-social behaviour and other property associated community safety concerns.

6.11 Environmental Impact

Continued or enhanced enforcement of environmental health standards within the PRS will have beneficial environmental outcomes for the borough.

7. Background Papers

None.