

Public Document Pack

Southend-on-Sea Borough Council

Legal & Democratic Services

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21 January 2022

CABINET - MONDAY, 24TH JANUARY, 2022 SUPPLEMENTARY REPORT PACK – SELECTIVE LICENSING

Please find enclosed, for consideration at the next meeting of the Cabinet taking place on Monday, 24th January, 2022, the following report that was unavailable when the agenda was printed.

Agenda No Item

- 4 Selective Licensing (Pages 1 – 34)**
Report of Executive Director (Growth and Housing) attached

Robert Harris
Principal Democratic Services Officer

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Southend-on-Sea Borough Council

Agenda
Item No.

4

**Report of Interim Executive Director (Growth and
Housing) and Executive Director (Neighbourhoods and
Environment)**

To

Cabinet

On

24th January 2022

Report prepared by: Glyn Halksworth, Director of Housing
and Andrew Elkington, Interim Director of Public Protection

Selective Licensing

Policy & Resources Scrutiny Committee

Cabinet Member: Councillor Gilbert

Part 1 (Public Agenda Item)

1. Purpose of Report

For Cabinet to reconsider the resolutions which it made on 14 September 2021 (as set out in minute 333), relating to the implementation of the Selective Licensing Scheme within neighbourhoods in the Milton, Kursaal, Victoria and Chalkwell Wards. The matter was referred back at Policy & Resources Scrutiny Committee on 7 October 2021 and full Council on 10 November 2021.

2. Recommendations

2.1 That Cabinet confirms the resolutions which it made on 14 September 2021 as set out in minute 333:

a. That the financial details of the Selective Licensing Scheme, as set out in the report be noted.

b. That the proposed discounts for the Scheme including the early bird period of four months (December 2021 to March 2022) to promote early compliance as set out in the report, be noted.

2.2 That for the avoidance of doubt, Cabinet ratifies the designation date of 1 December 2021.

2.3 That the Council complies with the obligations set out in section 3.13 of the report, without delay.

3. Background

3.1 On 23 February 2021, the Deputy Chief Executive, Executive Director of Growth and Housing, and Executive Director of Neighbourhoods and Environment:

- (a) Presented to Cabinet the results of the Council's public consultation about a proposal to designate certain areas of the Borough as subject to selective licensing; and
- (b) Recommended the designation of those areas and agreement about the work required for that purpose. They made the following recommendations in particular:
 - That Cabinet note the findings of the consultation exercise and agree to designate certain areas of the district as subject to selective licensing.
 - That a further report be presented to Cabinet in June or September 2021, containing a comprehensive financial assessment and clear recommendations about how the licensing designation, or scheme, could be delivered.
 - That Cabinet approve the use of up to £50,000 from the Business Transformation Reserve to support the design and associated financial modelling of a future scheme.

These recommendations were agreed by Cabinet and minute 856 also records the reasons for the decision "To address the impact of poorly rented properties on the local environment and to improve housing conditions".

3.2 The proposed designation did not require Ministerial confirmation under section 82 of the Housing Act 2004 Act but fell with a description of designations to which the *Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015* applied. In particular, the designation affects less than 20% of both the geographical area of the Borough and its privately rented homes.

3.3 The Cabinet's decision was called in and considered by the Policy & Resources Scrutiny Committee on 17 March 2021.

Minute 918 records the Committee's decision which was to refer the matter back to Cabinet for reconsideration, as the Committee felt that further clarity and information was required in respect of aspects of the proposed Selective Licensing Scheme.

However, Council Procedure Rule 39 was invoked, and the matter was referred to full Council.

3.4 The Council considered the matter on 18 March 2021 and the decision is recorded in minute 939:

"During consideration of Minute 918 (Selective Licensing Designation Report) a motion was moved and seconded to refer the matter back to Cabinet. The motion for reference was not carried. Resolved: That the minutes of this meeting be noted."

3.5 The same day (18 March 2021), the Council published notice that the designation would come into force on 1 December 2021 pursuant to section 83 of the Housing Act 2004 and, by corollary, Regulation 9 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 ("the 2006 Regulations").

The implementation date was determined by the former Interim Executive Director (Neighbourhoods and Environment), Steve Moore, who duly signed the public notice in accordance with the Council's delegation scheme.

- 3.6 On 14 September 2021, further to the recommendations made and approved by Cabinet on 23 February 2021, the Executive Directors of Growth and Housing and Neighbourhoods and Environment, reported to Cabinet about the work underway to prepare for implementation of the selective licensing designation. A copy of the report is attached at **Appendix 1**.

The report was made on the premise that the designation would come into force on 1 December 2021, referred expressly to that date, and described arrangements that had been made to bring the designation into force accordingly.

As recorded in minute 333, Cabinet resolved:

- “1. That the financial details of the scheme, as outlined in the financial implications in Section 7 of the submitted report, be noted.
2. That the proposed discounts for the scheme including the early bird period of four months (December 2021 to March 2022) to promote early compliance as stated in paragraph 7.2 of the Report, be noted.”

Minute 333 states the reasons for Cabinet’s decision, were:

“To complete the next preparatory stage of the Selective Licensing scheme ahead of the implementation date of 1st December 2021”.

- 3.7 The above resolutions of Cabinet were duly called-in and considered by the Policy & Resources Scrutiny Committee on 7 October 2021, at which meeting the Leader of the Council undertook to provide a written response to questions raised by members of the Committee about the financial implications of the designation, and specifically the cost of the specialist software procured for the management of the designation and the number and cost of officers required to manage and enforce it. As recorded in minute 400, the Committee resolved:
- “1. That the matter be referred back to the Cabinet for reconsideration, with reference to the additional information requested by the Committee in relation to the financial implications of the Selective Licensing Scheme.
2. That in accordance with Council Procedure Rule 39, the matter be referred to full Council for consideration.”

- 3.8 By an email dated 24 November 2021, sent on behalf of the Leader of the Council, the Interim Executive Director of Growth and Housing, Alan Richards, furnished councillors with further information, pursuant to the undertaking given by the Leader on 7 October 2021. A copy is attached at **Appendix 2**.
- 3.9 On 25 November 2021, the Council considered the matter and resolved to refer back the Cabinet's decision of 14 September 2021 (as recorded in minute 333) for further consideration.
- 3.10 The Cabinet now needs to re-consider the matter and decide on the relevant course of action.
- 3.11 The Cabinet needs to consider **a comprehensive financial assessment of the Scheme and to decide how the Scheme can be delivered** as per Cabinet minute 856 (23 February 2021).

A copy of the report to Cabinet on 14 September 2021 is attached at **Appendix 1** and this provides some information on these matters.

This was supplemented by the information provided to all councillors on 24 November 2021 (**Appendix 2**).

In addition set out below is:

- some additional financial information, demonstrating that the likely costs of the designation will be offset by the potential levels of income generated from licence fees, financial penalties etc, such that the designation will be cost-neutral. The overall income and expenditure levels for the scheme will be kept under regular review and any major variances/concerns will be reported back to Cabinet through the established regular financial monitoring reports at Periods 4, 6 and 8 each financial year (3.11.1)
- detail about other options considered for delivery of the licensing designation (3.11.2).

3.11.1 Financial information

The anticipated overall pressure for the 5-year programme is £330,000, with the first year achieving a surplus which will be held in a ring-fenced reserve to help to reduce the financial pressures in future years. Based on advice from leading industry experts, this financial modelling has assumed that the scheme will achieve an 80% compliance rate, with an early bird discount of 25% to encourage landlords to come forward early. The standard fee has been modelled at £668, with the discounted fee being £500 for the first four months of the scheme, from 1 December 2021 until 31 March 2022.

The estimated income generated from licence fees based on some initial headline modelling could generate around **£1,750,000** over the 5 years. This is based on 1,100 properties taking advantage of the early bird price @ £500 = **£550,000** and circa 1,800 properties @ the standard price of £668 would be over **£1,200,000**.

The scheme will strive to be self-funding, avoiding the requirement for funding from the Council's general fund. It is expected that there will be further income generated through penalties for non-compliant landlords. It is very difficult to estimate what level of income will be generated from enforcement. Any additional income achieved will be ring fenced for Selective Licensing to mitigate the anticipated pressure. The financial performance of the scheme will be kept under regular review and major variances reported back to Cabinet through the established financial monitoring arrangements.

There are a range of costs associated with the delivery of Selective Licensing within the designated neighbourhoods. These include costs relating to staffing, ICT and technology, and enforcement. It has been forecast, that there will be budgetary pressures in the later years of this 5 years scheme:

- The new Selective Licensing Team consists of 8 officers, including a Team Manager, with posts which range between Council staff Levels 5 and 11. The budget for the team is £363,549 per annum inclusive of National Insurance and Pensions contributions. There is an additional one-off budget of £23,417 for recruitment costs.
- The ICT system which has been procured for the delivery of Selective Licensing from Metastreet, following a competitive tender, has a total cost of £89,000 over the 5-year term of the scheme, this being £21,800 in Year 1, and £16,800 for each year thereafter.
- Further project management resource of £50k to support the transition of the project into delivery and operational service was agreed and has been in place since July 2021. This work has spanned policy, procurement, ICT and regulatory services operations and has ensured that the complexities of the project have been effectively managed to ensure a successful scheme is put in place.
- Stripe, the online payments infrastructure being deployed by the system in order that license fees can be collected, includes a 1% transaction fee, which is competitive with industry standards.

Regarding enforcement costs associated with Selective Licensing, we have consistently noted that it is very difficult to predict these at the outset of a scheme as it depends on the amount of Fixed Penalty Notices (FPNs) which will be issued. The Council approach to enforcement will be detailed in the Enforcement Policy which will be placed before Cabinet for consideration later in 2022. This policy is being drafted to include a very strong stance on enforcement and allow for the appropriate charges and FPNs to be issued to ensure compliance and reduce the need for higher level enforcement. The advice we have received is that the setting of quotas is not good practice and has been perceived by landlords as a prosecutions target, which is not in keeping with the objectives of Selective Licensing.

3.11.2 Other delivery options

During earlier stages of the preparation for the scheme, consideration had been given to outsourcing the Operational Delivery to a third party. Following advice relating to the difficulties that may be encountered in outsourcing statutory regulatory functions of the nature that Selective Licensing requires, it was felt that this was not a prudent approach. Furthermore, the public and key stakeholder consultation undertaken as part of the preparatory phase of this project did not support the notion of a delivery partner for the scheme. As a result of this decision, all delivery will remain an in-house function of Southend Council, alongside the outsourced components described in section 3.11.1 above.

3.12 In reconsidering the matter, the Cabinet does not need to consider the decision to designate the selective licensing area, which was properly made within the meaning of the Housing Act 2004 and the 2006 Regulations, when the former Interim Executive Director (Neighbourhoods and Environment), acting under delegated powers, implemented the decision of Cabinet of 23 February 2021 (as noted at Council on 18 March 2021) to designate areas of the Borough as subject to selective licensing, by setting a commencement date for the designation and publishing notice of it.

The designation is now in force and objections that the Cabinet ought to have set the designation date are either misplaced, or far too late to raise now.

Nevertheless, it is recommended that the Cabinet ratifies the designation date now for the avoidance of any doubt, and that reason only, and the recommendations cover this point.

3.13. To date the Council has focussed on working supportively with local landlords to assist with the preparation and submission of licence applications. Administrative work has commenced, but the Council has not processed any license fee payments, issued any licences, or engaged in any enforcement activity.

However, as the designation came into force on 1 December 2021 and is effective, the Council now has several key statutory obligations, not least of which:

- a. a general duty under section 79(5) of the Housing Act 2004 Act to make such arrangements as are necessary to secure the effective implementation of the designation;
- b. a duty under section 85(4) to take all reasonable steps to secure that applications are made in respect of Part 3 houses in its district that are not licensed; and
- c. a general duty under section 79(5) to ensure that all applications for licences and other issues falling to be determined under Part 3 of the 2004 Act are determined within a reasonable time.

The Council must proceed with these matters without delay and, in due course should review the operation of the designation under section 84 of the Housing Act 2004.

4. Other Options

To seek to revoke the designation made on 18 March 2021.

5. Reasons for Recommendations

To provide a comprehensive financial assessment and clear recommendations on how the Selective Licensing Scheme can be delivered.

6. Corporate Implications

6.1 Contribution to Southend 2050 Road Map

See previous report at **Appendix 1**.

6.2 Financial Implications

See previous report at **Appendix 1**, the information in Appendix 2 and information above.

6.3 Legal Implications

See previous report at **Appendix 1** and information above

6.4 People Implications

See previous report at **Appendix 1**.

6.5 Property Implications

See previous report at **Appendix 1**.

6.6 Consultation

See previous report at **Appendix 1**.

6.7 Equalities and Diversity Implications

See previous report at **Appendix 1**.

6.8 Risk Assessment

See previous report at **Appendix 1**.

6.9 Value for Money

See previous report at **Appendix 1**.

6.10 Community Safety Implications

See previous report at **Appendix 1**.

6.11 Environmental Impact

See previous report at **Appendix 1**.

7. Background Papers

None

8. Appendices

Appendix 1 – Report to Cabinet 14 September 2021

Appendix 2 - E-mail sent to Councillors on 24 November 2021 with further information.

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Southend-on-Sea Borough Council

**Executive Director of Growth and Housing and Executive
Director Neighbourhoods and Environment**

To

Cabinet

On

14th September 2021

Report prepared by: Faith Addy, Projects & Policy Support
Officer, Housing Development

Selective Licensing Implementation Report

Relevant Scrutiny Committee(s): Policy & Resource Scrutiny

Cabinet Member: Councillor Ian Gilbert

Part 1 (Public Agenda Item)

1. Purpose of Report

To update Cabinet on the work underway to prepare for the implementation of Selective Licensing scheme within neighbourhoods in the Milton, Kursaal, Victoria and Chalkwell wards.

2. Recommendations

Cabinet is recommended to:

1. Note the financial details of the scheme as outlined in the financial implications in section 7 of this report.
2. Note the proposed discounts for the scheme including the early bird period of four months (December 2021 – March 2022) to promote early compliance as stated in paragraph 7.2.

3. Introduction & Background

- 3.1 The Housing Act 2004 gives Councils the power to introduce Selective Licensing schemes for privately rented properties in order to improve standards of management in the private rented sector (PRS) and lead to an improvement of the area.

- 3.2 The power to designate is subject to certain conditions and criteria, including the requirement to consult persons who are likely to be affected by the designation; and to consider any representations made in accordance with the consultation being met.
- 3.3 The Council has designated a Selective Licensing scheme in nine neighbourhoods within the wards of Milton, Kursaal, Victoria and Chalkwell on grounds of anti-social behaviour, poor property conditions, and high levels of both deprivation and crime. The designation will be used as a tool to tackle these issues in the proposed areas through improving the quality of the management of rented accommodation.
- 3.4 Following the decision to proceed with the introduction of Selective Licensing at full council on 18th March 2021, work has been underway to complete the next preparatory stages of the scheme ahead of the implementation date of 1st December 2021.

4 Selective Licensing Service delivery

- 4.1 To help ensure effective implementation of Selective Licensing the Council engaged expert consultants. Metastreet specialise in this area of work and have implemented and supported several licensing schemes, including in the London Borough of Havering and Slough Borough Council.
- 4.2 During our discussions with Metastreet, the project team identified a number of key operational and technical project areas which are important to help ensure the scheme achieves its objectives, including:
- Property licensing processing and management
 - Customer service, resident engagement, and communications
 - Improving property standards and reducing ASB in PRS
 - Partnership working with internal and external agencies
 - Housing enforcement and regulation

Property licensing processing and management

- 4.3 The scheme requires the Council to license up to 3,667 rented properties over a 5-year period. A majority of the applications are expected to be made later this year from the first of 1st December 2021. Therefore, a capable digital solution is required to receive, process and manage each licence in accordance with the legislation, including the collection of a 2-part fee structure.
- 4.4 Procurement of a specialist software solution to manage the Selective Licensing applications and enforcement is underway. It is anticipated that a supplier will be confirmed following the conclusion of this procurement process by w/c 13th September 2021. There has been a delay to this process, which will be outlined further in the risk section below, but internal resource and requests for additional resource are being expanded so that we ensure that we have a system for receiving applications on 1st December 2021.
- 4.5 Further project management resource to support the transition of the project into delivery and operational service has been agreed. This will ensure that the complexities of the project that span various teams and external partners can be effectively managed in this key implementation period to ensure a successful scheme is put in place.

Customer service and community engagement

- 4.6 This includes an expansion of the current Private Sector Housing function and will be resourced effectively in order to meet the demands of the new scheme. This process began with a team re-structure, the consultation of which has just concluded.
- 4.7 A communication plan has been developed to improve engagement with tenants, landlords and residents to raise awareness of the scheme. Workshops are planned with the new team to develop knowledge and skills to manage an anticipated increase in demand from tenants and landlords once the scheme is underway. New procedures are being developed to help streamline the main office-based functions.
- 4.8 The Council has also had continued discussions with SEAL in order to work together to shape the scheme and ensure the landlord community has a voice within it.

Property standards and Anti-social behaviour

- 4.9 A key objective of the scheme is to raise property standards in the sector. Selective Licensing will provide the structure for a campaign of property inspections and follow up action to ensure minimum standards are being met. This will also contribute positively to growth and sustainability of the private rented sector in the area.
- 5.0 The new Private Sector Housing function will be tasked with undertaking this inspection campaign which will run over the 5 years of the scheme. Ensuring that the team has the necessary skills and experience to undertake this work is being built into the recruitment process.
- 5.1 The scheme aims to help create stronger communities within the proposed neighbourhoods by encouraging both landlords and tenants alike to recognise their civic responsibilities and help combat anti-social behaviour (ASB). Each licence the council will issue will include enforceable conditions to manage and mitigate ASB where it arises. Partnership work with the Police and ASB teams will be important to the delivery of this work stream. Some of the recommendations from some landlords were to have lighter touch inspections for 'good' landlords so the team, in designing the processes and enforcement approach will be considering what will be the best way to encourage compliance whilst ensuring that enforcement is also carried out where it is most needed.

Partnership working with internal and external agencies

- 5.2 Successful property licensing schemes are dependent on strong partnerships with internal and external agencies, including Police, Fire, ASB teams, Planning Enforcement etc.
- 5.3 The project team is continuing engagement with all the key partner agencies. This will maximise the resources available and help deliver the best outcomes.

Housing enforcement and regulation

- 5.4 Licensing is an effective tool to tackle criminal landlords and disorderly tenants. It provides the Council with a legal platform from which to increase the effectiveness of the service in tackling poor housing conditions and management in the borough.

- 5.5 The new Private Sector Housing function will take the lead on enforcement of the scheme, including ensuring that landlords licence their property and comply with licensing conditions. The team will be required to use a range of legal tools, including statutory notices, financial penalties, orders and, where necessary, prosecutions.
- 5.6 The project team is preparing a training plan to be delivered to develop officer knowledge and experience in this area.

6. Corporate Implications

6.1 Contribution to the Southend 2050 Road Map

Ensuring that housing within the borough meets the needs of the local residents does feed into several themes for Southend 2050 as briefly outlined below:

Safe and Well: Ensuring that public services, voluntary groups and community networks all combine to help people live long and healthy lives, carefully planned homes and new developments designed to support mixed communities and an effective, joined up enforcement to ensure that people have homes that meet their needs.

Pride & Joy: The proposals will ensure that people are proud of where they live by improving standards within the sector whilst ensuring the surrounding environment is also well maintained.

Active & Involved: Southend will continue to be a place where residents know and support their neighbours and where we all share responsibility for where we live. Selective Licensing is contributes to enhancing neighbourhoods and the environment with residents at the centre.

Opportunity & Prosperity: By improving standards in the private rented sector, residents are supported to lead happier and safer lives, thereby having fewer barriers to contributing to the local area.

- 6.2 Southend's *Housing, Homelessness & Rough Sleeping Strategy* aims to provide 'decent high quality, affordable and secure homes for the people of Southend'. An important priority within the strategy is to improve and make best use of the existing housing stock. To help achieve this, the strategy is underpinned by a range of actions including: advice, financial assistance, enforcement, bringing long term

empty homes back in use and delivering demonstratable improvements to private rented homes through the use of licence schemes.

6.3 Prioritising the supply of safe, locally affordable homes is a key priority within the *Housing, Homelessness & Rough Sleeping Strategy*. Improving access to good quality, well managed accommodation in the private rented sector is one of its key strategic priorities and the actions proposed to deliver this include:

- New approaches to working with the private rented sector including leasing,
- Improved joint working and support for private landlords,
- Bringing empty homes back into use, reviewing the tools/software, resources, and opportunities at our disposal to do so.
- Tackling Rogue Landlords,
- Improving the condition of accommodation,
- Addressing standards of management,
- Licensing Houses in Multiple Occupation (HMO),
- Selective Licensing in the private rented sector,
- Addressing financial barriers to accessing accommodation,
- Ensuring people have support to sustain tenancies,
- Exploring opportunities for developing a Local Lettings Agency.

7 Financial Implications

- 7.1 Detailed financial modelling has been carried out for the project, currently forecasting budget pressures in the later years of the scheme. The anticipated overall pressure for the 5-year programme is £330,000, with the first year achieving a surplus which will help reduce the pressures in future years.
- 7.2 The finance model assumes to achieve an 80% compliance rate, with an early bird discount of 25% to encourage landlords to come forward early. The standard fee has been modelled at £668, with the discounted fee being £500 for the first four months of the scheme. The expenditure includes staffing, ICT and legal costs.
- 7.3 The scheme will strive to be self-funding, avoiding the requirement for funding from the council's general fund. It is expected that there will be further income generated through penalties for non-compliant landlords. This income will not achieve a surplus/ saving for the council but will be ring fenced for Selective Licensing to mitigate the anticipated pressure. The forecast pressure can also be mitigated by reducing the early bird discount rate to achieve more income. However, early bird discounts tend to encourage landlords to come forward early, as has been seen in other areas that have introduced Selective Licensing. There has also been a level of initial investment which the council has funded from its existing resources, for Project management and support, in ICT and Regulatory Services.

- 7.4 As the scheme approaches the end of its 5-year term, any potential financial pressures will be reported through the budget monitoring process if enforcement income does not bridge the forecast gap between income and expenditure.

8 Legal Implications

- 8.1 Part 3 of the Housing Act 2004 gives the Council the power to designate areas of Selective Licensing to help tackle concerns over high levels of anti-social behaviour or low housing demand (e.g. low value properties, high turnover of occupiers, significant vacancy). In 2015 the conditions for designation were expanded by The Selective Licensing Houses (Additional Conditions) (England) Order 2015 to include poor property conditions, high crime, high levels of deprivation and high migration. The local authority can designate an area for Selective Licensing for five years but must first demonstrate the evidence of their concerns, look at alternative approaches and consult widely. Failure to engage in meaningful consultation with those likely to be affected by a proposed designation could lead to a scheme being quashed by the courts following judicial review.
- 8.2 In 2015 revised approval arrangements were put in place such that where the proposed designation covers either 20% of the total geographic area of the authority or 20% of the total privately rented stock (based on census figures) the designation requires approval by the Secretary of State.
- 8.3 Subject to limited exemptions, a valid licence must be held by the appropriate responsible person in respect of all privately rented properties in such a designated area, typically the landlord or managing agent. The legislation permits funds raised to be used for administration of the scheme and (subject to constraints) enforcement.
- 8.4 In addition, as a public authority, the Council must take account of the provisions of the Human Rights Act 1998 and not act in a way which is incompatible with a Convention right. Under Article 8, any interference with the right to respect for a person's private and family life and home must be proportionate and Article 14 requires that there must be no unjustified discrimination within the scope of human rights on any grounds, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.
- 8.5 The Council must also have 'due regard' to the Public Sector Equality Duty (PSED) in Section 149 of the Equality Act 2010. Section 149(1) provides that, in exercising its functions, a public authority must have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

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The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 8.6 Section 149(3) provides that having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 8.7 The general approval states that the local authority must conduct a consultation of not less than 10 weeks and this requirement has been met. The local authority must ensure that they fully consider all the evidence before making a decision to ensure that they are not subject to judicial review following the making of the designation. The legal team will continue to work with the project team throughout the implementation of the scheme.
- 8.8 The Council's legal team have previously given advice and guidance as part of the project approach and continue to work with the lead officer. The following legal implications have been prepared in full consultation with Counsel. We have also looked at best practice with other Councils that have Selective Licensing schemes in place and identified the main areas of challenge to include but not limited to;
- 8.9a Grant of a licence - The authority must apply a 'fit and proper person' test to applicants for licences and may include in any licence such conditions as it considers appropriate for regulating the management, use or occupation of the house concerned. In the instance of a dispute, the applicants will have a right of appeal to the Residential Property Tribunal.
- 8.9b Fees - When fixing licence fees, the Council has taken into account all costs that will be incurred in carrying out its functions under the Selective Licensing provisions of the Housing Act 2004.

In *R v Westminster City Council ex parte Hemming and others* [2013] EWCA Civ 591, the Court of Appeal has held that the Provision of Service Regulations 2009 prevent the authority from including in licence fees the cost of enforcing the scheme.

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Based on the above case, the licence fee has been split into two parts to form a clear distinction between part 1 – the cost of processing the application and part 2 – to cover the cost of monitoring and compliance to the scheme.

9 People Implications

- 9.1 In order to implement the scheme, more staffing will be required in order to conduct administration, monitoring and enforcement of a Selective Licensing scheme and coordination of the relevant council services in order to implement the scheme. This has been built into the budget forecast for the 5-year terms of this project, as outlined in Section 7.
- 9.2 During the scheme designation, several officers will be required to both administer the designation, issue licences, carry out inspections, undertake enforcement activities as well as attending court for prosecutions. This will require coordinated action between several Council departments, such as Private Sector Housing team, Planning, Regulatory Services, Housing Solutions Team, Community Safety as well as the Legal team.

10 Property Implications

- 10.1 No properties directly owned by Council will be affected but there are implications for private landlords in the designation areas.
- 10.2 The Selective Licensing scheme will introduce a new local regulatory environment for the private rented sector within the designated areas. The scheme will assist the Council in developing and maintaining a landlords' register thereby allowing transparency regarding the property and tenancy management arrangements for each address. This improved intelligence will enable the Council to notify landlords of their responsibilities and will assist the Council in responding appropriately to anti-social behaviour, crime, deprivation and poor property conditions associated with the address. Implementation of similar schemes by other boroughs has been noted to improve the environment of neighbourhoods and reduce anti-social behaviour.
- 10.3 The use of Selective Licensing is landlord and property based and will not always resolve many of the issues which are caused by 'bad tenants', however it will increase the oversight of these issues by landlords and where appropriate the use of enforcement powers where the law is being broken. In this regard, the Council will ensure licensing and enforcement are complementary.
- 10.4 The scheme will assist in increasing the consistency of safeguards available to tenants, while improving the quality of private rented stock and tackling poor

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quality landlords. An outcome of this will be the effective management of properties by private sector landlords which will in turn raise property standards within the sector.

11 Equalities and Diversity Implications

- 11.1 The introduction of Selective Licensing is intended to enhance housing management practices within the private rented sector (PRS), in compliance with the Housing Health and Safety Rating System (HHSRS) standards. It is anticipated that this will have positive outcomes for tenants across all protected characteristics, particularly those who are currently over-represented in the PRS.
- 11.2 It should be noted that data relating to the protected groups among both tenants and landlords is limited, partly due to the unregulated nature of the sector. Although Census data provides a breakdown of tenure by ethnicity and age, analysis relevant to other issues such as disability has not yet been completed by Office of National Statistics (ONS). Overall, the size of the sector and the estimated number of landlords suggests that there will be members of all protected groups among both tenants and landlords. The sector also contains a mix of household and income types that ranges across the spectrum.
- 11.3 All equality groups are likely to benefit from improvements in engagement, communication and signposting information between the Council, landlords and tenants and other service providers. Information would relate to such matters as changes in the law affecting the private rented sector (PRS), energy efficiency measures and grants availability, information on local organisations and agencies which may be able to provide support. One of the intended outcomes of licensing is that landlords will be more aware of their duties under the Equality Act 2010 and of the support and funding available to them and their tenants such as the Disabled Facilities Grant for reasonable adaptations. This will further enhance the equality outcomes for people with disabilities and long-term health conditions, older adults and their carers as well as other vulnerable groups.
- 11.4 It is likely that tenants most impacted by the scheme will be among the lower income groups in the sector, living in the poorest quality housing and, similarly, that the landlords of these properties will experience the greatest impact from their perspective.
- 11.5 In the longer term, licensing will, among its other benefits, provide an opportunity to obtain a more complete picture of the sector and its operation that will assist in identifying issues relevant to protected groups. At the same time, closer partnership working with landlords should support promotion of good practice on equalities in the sector.

12 Risk Assessment

Risk	Likelihood/Impact	Mitigation
Due to delays in procuring a suitable IT function, there is a risk to the delivery of a full software solution by the scheme start date. This could pose a reputational risk if not well managed	Medium/Medium	Evaluation of a preferred provider is currently underway. Once the provider is known in mid-September, faster onboarding can be looked at to have the system ready. Additionally, we are working with ICT to mobilise internal resources in order to have an interim solution in place by the scheme start date with a view to switch to a full solution by 01/01/2022 - as a back-up scenario.
Enforcement Support officers due to be recruited to by mid November become part of Business Support Review	Low/Low	Working closely with Business Support Review Leads to ensure the needs of the Selective Licensing Scheme are fully captured and that the required capacity to deliver is understood.
The current enforcement approach is unable to fulfil the expected needs of Selective Licensing program.	Low/Medium	To mitigate this, a new enforcement policy will be taken to cabinet in February/March 2022 and will if agreed, lead to a more robust and proactive approach to enforcement via the Selective Licensing function.
Risk of legal action by applicants if we fail to duly process licence applications in a timely manner and this will leave poor housing to continue in the areas identified for intervention through designation.	Low/Low	We are procuring a system that will automate most of the application process to ensure that there is an efficient processing system in place. We are also recruiting Licensing Support officers to ensure that applications are processed in a timely manner and be a point of contact for landlords to assist in the application process
There is a risk of failure to effectively achieve the aims and objectives of the designation if the scheme does not receive sufficient applications.	Low/Low	This risk will be mitigated by offering early bird discounts for the first 4 months of the scheme as well as wide reaching comms campaign to ensure that landlords are aware of the scheme. The risk can further be mitigated by ensuring that there are sufficient staff levels to identify un-licensed properties and carry out licensing activities.
There is also a known challenge to recruiting higher skilled enforcement officers nationally, which could impact our efforts to build a team of competent enforcement officers in early 2022.	Med/High	To mitigate this, the salaries have been made as competitive as possible against London and nearby authorities, as well as promoting benefits of working in Southend and ensure all recruitment routes for officers are

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		utilised. This will include working with our recruitment provider to engage with specialist agencies. Also, we are looking at alternative ways of how we can provide enforcement/inspections service.
There is a perceived risk that local rents may increase as the landlords may wish to recoup the cost of a licence fee. Selective Licensing is frequently seen as a “tax” on landlords; a cost which is likely to be passed on to occupiers in the form of rent increases, particularly given that the licence pertains to the individual dwellings.	Low/Low	The findings of MHCLG’s review indicate that there was no evidence of this being the case in the majority of the local authorities that took part in the review.
There is an unsubstantiated risk of alienating local landlords who may not be in favour of the scheme which could force them to take their business elsewhere or sell, thereby reducing the supply of much needed accommodation within the borough.	Low/Low	If some landlords do sell their portfolios, the assumption would be that the buyers would be willing to keep those properties in the private rented sector.

12.2 It is important that the mandatory licensing scheme which already exists is robustly enforced as it could cast doubt on the Council’s ability to implement the new scheme. The challenges involved and the impact on the Council’s enforcement policy require specific consideration as Government expects Selective Licensing to be a part of an overall strategy to improve the housing stock.

12.3 A risk register has been created as part of the project methodology to monitor the development of the proposals and their implementation should they be approved.

Key risks to be monitored include;

- effective communication strategies to inform landlords that licensing will be implemented and that they are required to register,
- the robustness of IT systems to ensure that licences can be processed accurately and quickly,
- the information sharing protocols between departments to ensure that a joined up and intelligence led approach is pursued,
- the rigorous on-going testing of the financial model to maintain cost effectiveness and cost neutrality,

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- that customer service standards associated with the scheme are developed, monitored and achieved.
- Legal challenge associated with both the implementation of the proposal and individual cases going forward

12.4 Each of these and other supporting areas will form the context of a risk register that will be maintained by the officer leading the scheme with support from the Council Risk Manager and incorporate best practice.

13 Value for Money

13.1 The scheme will deliver value for local residents in rental accommodation by bringing up standards within the private rented sector in the neighbourhoods within the designation area.

13.2 With improvements in the physical condition, management practices and the overall quality of the private rented stock in the designated areas, property value in the area could eventually go up as property standards improve in line with the licensing conditions as has been the case in other parts of the contract where Selective Licensing has been successfully implemented.

13.3 Tenants will take more pride in where they live as they see anti-social behaviour and other problems being tackled. This will in turn reduce the transiency which is common in areas with such issues, thereby creating more stable communities whilst ensuring that landlords continue to earn rent from their properties without the need to re-advertise their properties each time a tenancy ends.

14 Community Safety Implications

14.1 The scheme will create stronger communities within the designated neighbourhoods by encouraging both landlords and tenants alike to contribute more fully to the areas in which they live, recognise their civic responsibilities as such and to see themselves as part of dynamic and vibrant local areas that are committed to combating anti-social behaviour, crime, deprivation and promoting those neighbourhoods as a place that is attractive to live, visit and do business in.

15 Environmental Impact

15.1 The successful implementation of the scheme will contribute positively to growth and sustainability in the proposed neighbourhoods by encouraging stability in the private rented sector and will ensure that landlords have a greater stake in the

areas that they let accommodation in and by contributing to the physical and social wellbeing of our neighbourhoods.

- 15.2 Other local authorities who have successfully implemented the scheme have advised that there was a noticeable improvement in the neighbourhoods within the designation and that even landlords who were opposed to the scheme in the beginning, confirmed these improvements.
- 15.3 The Selective Licensing conditions that landlords will be expected to adhere to will contribute positively and complement the work by the Waste and Environmental Care team. Due to the transiency of tenants in the private rented sector, the licence conditions will ensure that landlords are encouraged to ensure that their tenants are fully made aware of best practice when it comes to waste management.
- 15.4 This will include ensuring that tenants are advised of the correct rubbish collection days, encouraging higher levels of recycling by supporting sustainable waste management, recovering valuable materials and, by reducing waste, lowering the environmental impact of the Councils operations. High recycling neighbourhoods will be something residents, businesses and visitors will take pride and joy in. Effectively managed recycling and waste will improve the street scene and ensure our streets and public spaces are clean and inviting and will serve to change the reputation of some areas within the proposed designation.
- 15.5 One of the significant challenges for the private rented sector in the coming years is the energy efficiency of the properties the move to an EPC C from 2025. With the proposed scheme an audit of properties energy efficiency (e.g. windows, insulation, boiler etc.) will be included in the inspections that are undertaken if the scheme is agreed, so that government bids can be more targeted. This would allow for landlords to obtain grants specifically to improve the fabric of their buildings and the licensing scheme to be seen as beneficial to them.
- 15.6 In October 2020, funding was awarded to some local authorities (SBC included) through the Green Homes Grant Local Authority Delivery (LAD) project. The scheme aims to help low-income homes keep warm by improving the energy efficiency rating and reducing energy bills. Residents across the borough who meet the eligibility criteria (i.e. low income and with energy efficiency rating of E, F or G) are able to apply, as part of the Warmer Homes Local Authority Delivery (LAD) program. The Warmer Homes team would undertake a free energy assessment for the home and help with accessing grant funding for any energy efficiency improvements. A number of energy efficiency measures are available such as: door improvements, solid wall and other insulation options, low carbon heating, smart heating controls. The initiative is available for those qualifying homeowners who will take advantage of it and will aid energy improvements by ensuring warmer homes and cheaper energy bills.

16. Background Papers

Previous cabinet papers dated 17th September 2019 & 23rd February 2021.

17. Appendices

Map of designation area - Appendix A

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APPENDIX 2

From: Executive Director (Growth and Housing)

Sent: 24 November 2021

Subject: Selective Licensing - Update re Minute 400 of P&R Scrutiny Committee 7.10.2021

Importance: High

Dear Councillor

Further to discussions held at the Policy & Resources Scrutiny Committee on 7th October 2021 (Minute 400), at which Cllr Gilbert undertook to supply further information regarding the Selective Licensing work, please note the following.

We were asked to furnish specific financial data which had not been included in the Cabinet report of 14th September 2021. These relate to staffing, ICT and enforcement costs:

- The new Selective Licensing Team consists of 8 officers, including a Team Manager. The posts range between Level 5 and Level 11, and the budget for the team is £363,549 per annum inclusive of National Insurance and Pensions contributions. There is an additional one-off budget of £23,417 for recruitment costs;
- The ICT system which has been procured for the delivery of Selective Licensing, has a total cost of £89,000 over the 5-year term of the scheme, this being £21,800 in Year 1, and £16,800 for each year thereafter;
- With regard to enforcement costs associated with Selective Licensing, we have consistently noted that it is very difficult to predict these at the outset of a scheme as it depends on the amount of Fixed Penalty Notices (FPNs) which will be issued. This varies from Council to Council. The best way to ensure we reduce the funding pressure and generate good income to offset against pressures and any high level enforcement is to have a robust Enforcement Policy. This, which is on the Forward Plan, will be drafted to reflect a very strong stance on enforcement and allow for the appropriate charges and FPNs to be issued to ensure compliance, and reduce the need for higher level enforcement. The advice we have received is that the setting of quotas is not good practice, and has been perceived by landlords as a prosecutions target, which is not in keeping with the objectives of Selective Licensing.

In addition to the above, officers were asked to consider whether the process for the introduction of Selective Licensing was correctly followed, and whether the agreement for a go-live date was undertaken properly. There were also questions raised regarding Cabinet reports and whether the information they contained was of sufficient detail.

Subsequent to the Policy & Resources Scrutiny Committee of 7th October 2021, we have taken expert legal advice on this matter and whose opinion is that the required process has been followed and is sound. This opinion also states that the detail provided in reports is appropriate and in keeping with expectations. We have also worked closely with leading specialist consultants in Selective Licensing throughout the period before and since the Cabinet of 23rd February 2021, and our approach is consistent with that taken in the other local authorities in which they are currently operating.

I trust the above is helpful and addresses the points raised.

