

Southend-on-Sea Borough Council

Report of Deputy Chief Executive People

To

Cabinet

On

17th September 2019

Report prepared by: Faith Nassuna, Projects & Policy
Support Officer, Housing & Social Inclusion

Introduction of Selective Licensing of the Private Rented Sector

Policy and Resources Scrutiny – Cabinet Member: Councillor Ian Gilbert
A Part 1 Public Agenda item

1. Purpose of Report

- 1.1 To inform Cabinet of the preliminary work underway to introduce Selective Licensing in parts of the borough and to seek agreement for next steps, including resources required to undertake the preparatory research and other work needed ahead of implementation.

2. Recommendation

That Cabinet agrees:

- 2.1 A one off resource of £50k in order to undertake in-depth preparatory work ahead of any implementation of Selective Licensing within the borough through a service delivery partner.
- 2.2 That targeted consultation is progressed on the adoption of powers of Selective Licensing within parts of the borough identified as experiencing antisocial behaviour (ASB) problems, crime and deprivation associated with poorly managed Private Rented Sector (PRS) accommodation.
- 2.3 That following the above work, a further report is brought before Cabinet relating to the introduction of Selective Licensing in parts of the Borough.

3. Background

- 3.1 There are two types of licensing schemes for the PRS which the Council can adopt, these being the additional licensing scheme for houses in multiple occupation (HMOs) which is already in operation and a Selective Licensing scheme for *any* properties within the private rented sector. Section 80 of the Housing Act 2004 allows local authorities to apply for Selective Licensing of privately rented properties in areas experiencing low housing demand and/or suffering from anti-social behaviour. These powers were further extended in 2015

with the publication of *Selective licensing in the private rented sector: a guide for local authorities*, to cover areas experiencing poor property conditions, large amounts of inward migration, a high levels of deprivation or high levels of crime.

- 3.2 The above regulations require that for an area to be designated as subject to selective licensing, it must contain a high proportion of properties in the private rented sector. Further, at least one of the above conditions must be demonstrated to be satisfied for selective licensing to be introduced. In recognition of this it is a requirement that consultation is carried out with interested groups such as landlords, tenants, letting agents, local businesses and any other interested parties. Local authorities can designate an area for selective licensing for five years, following demonstration of evidence for the requirement, consideration of alternative approaches and having undertaken consultation.
- 3.3 A selective licensing scheme would enable the Council to impose legal requirements in designated areas 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. Poorly managed properties can result in unacceptable levels of antisocial behaviour, which can be damaging to local neighbourhoods if not dealt with appropriately. Within the poorly managed PRS there are also concerns about the standard of housing conditions and unacceptable landlord practice, including abuse of tenants' rights.
- 3.4 Nationally the PRS has doubled in size since 2002¹. Southend's PRS has also grown and it is believed that 25% of dwelling places within the borough fall within the PRS. Southend has a higher proportion of households classified as overcrowded compared with the East of England².
- 3.5 Selective licensing designation requires agreement from the Secretary of State where the proposal covers either 20% or more of the geography of the local authority area, or 20% or greater of the total private rented stock in the borough. In Southend, according to data drawn from the 2011 Census approximately 3000 properties could be subject to a selective licensing designation before Secretary of State approval would be required.
- 3.6 As of 1st January 2019 there were reportedly 44 selective licensing schemes in operation, including 4 that cover the entirety of the local authority area, and a further 9 that exceed the 20% requirement and thus have been approved by the Secretary of State³.
- 3.7 It is noted that the "process of evidence gathering and consultation prior to designation is rigorous and challenging"⁴ and that there is a lack of national guidance to support this process, with most local authorities considering the introduction of selective licensing reliant on other local authorities for support. The process of applying for selective licensing designation has been identified as complex and highly bureaucratic, and often takes over a year to complete. Included within the requirements are: the undertaking of research in order to

¹ *English Housing Survey Headline Report 2017-2018*

² BRE Client Report, March 2017

³ MHCLG, *An Independent Review of the Use and Effectiveness of Selective Licensing*, July 2019

⁴ *Ibid.*

establish the scale of the local PRS and evidence of any associated problems that may be grounds for selective licensing; preparation and undertaking of extensive consultation over a period of at least 10 weeks (this can be slightly shorter if it is already known a scheme would not exceed 20% of geography or PPRS), followed by detailed analysis and presentation; and following declaration of designation there is a 12 week statutory period before a scheme can start.

- 3.8 Selective licensing schemes are required to be self-supporting and cannot be used as a means to raise additional income for local authorities. The fees raised are required to cover all costs of operation but it is unclear what upfront costs can be recouped from these fees and again there is no guidance in this area. Establishing the correct fee is imperative to effective delivery as setting it too low can impact the ability to undertake inspections and issue licenses. It is noted that the number of schemes that are genuinely self-supporting are in the minority and that many required subsidising⁵. Research has indicated a range of fees are in operation with an average of around £750 per licence per 5 year period.
- 3.9 Guidance regarding costs of establishing and operating selective licensing schemes is again not available from MHCLG, but in preparing for this report indications from other local authorities and from desk research have suggested that resourcing is a critical consideration. The MHCLG's *Independent Review of the Use and Effectiveness of Selective Licensing* (July 2019) identified that it was not uncommon to require initial research costs of £30k and publicity costs of up to £20k. Additionally there are costs for data and ICT changes and software requirements to be considered, along with the need to resource landlord engagement and training, additional work by other Council teams (for example, legal services, social care, environmental health, community safety).
- 3.10 Following the introduction of selective licensing, it is important that this is robustly enforced and that staffing is sufficient to allow for this. Failure to provide for this is likely to result in slower processing of licenses, reduced inspections and a greater propensity for unscrupulous landlords to continue to operate. Where landlords do not comply with the requirements of the selective licensing designation a range of options are available to the local authority, including the imposition of civil penalties of up to £30k, banning orders which prevent landlords from letting property, or rent repayment orders respect of properties that should be licensed but are not. A breach of a licence condition can render a landlord liable to a fine for each offence. Additional powers such as Interim Management Orders or Final Management Orders are also available to local authorities.
- 3.11 There is somewhat limited evidence of the effectiveness of selective licensing⁶ with the result that it is difficult to be conclusive in how well they work. In the MHCLG Select Committee inquiry 2017-18 local authorities and their representative bodies said that selective licensing allowed authorities to better regulate the PRS and were thus effective⁷. This was disputed by landlord bodies consulted as part of that inquiry, but the local authority view was echoed within the *Independent Review of the Use and Effectiveness of Selective Licensing* (MHCLG, July 2019). Additionally recent research from The Chartered Institute of

⁵ *Ibid.*

⁶ Rugg, J. & Rhodes, D. *The Evolving Private Rented Sector*, 2018

⁷ MHCLG Select Committee, Private rented sector, HC 440, 19 April 2018

Housing (CIH) and the Chartered Institute of Environmental Health (CIEH) also identified selective licensing as effective in tackling property conditions and problems with anti-social behaviour⁸. Further information about the characteristics of effective selective licensing schemes is included within the appendix to this report.

- 3.12 There have suggestions made that selective licensing will lead to displacement of unscrupulous landlords into non-designated areas, with the effect of reducing housing standards in those areas. Further, there has been suggestion that landlords will pass on any licensing costs to their tenants via increased rent. In both cases the recent MHCLG Independent Review failed to find any evidence which supported these claims.

Designation and timescales

- 3.13 In accordance with Section 82 of the Housing Act 2004, any designation made by the Council cannot come into force within three months of the designation date so the timing would need to be worked out accurately to avoid legal challenges. This means that for the scheme to be implemented from May 2020, all the preparatory work would need to be completed by January 2020.
- 3.14 The consultation period would need to be at least 10-12 weeks but it can be as little as 6 weeks if the area covered is under the 20% guideline. Given the timeframe, this process would need to be underway in September. Once the consultation is done, the results would need to be published and made available to the local community.
- 3.15 The Council would need to publish the notice of the designation once confirmed. This must be done within 7 days of the designation being confirmed. All the stakeholders consulted must also be notified within two weeks of the designation being confirmed.
- 3.16 The designation will cease on 30 April 2025 unless it is revoked sooner for any other reasons.

4 Other options

- 4.1 Some of the options to tackling substandard and problematic properties within the borough would include but (not limited to) the following;
- **Do nothing** -The Council could opt not to intervene in the private rented sector, leaving the housing market as the driver for landlords carrying out improvements to their properties.
 - **Do the minimum** – This would mean a limited intervention by the Council and this could be through responding to complaints and taking action by other departments on ad hoc basis using the various powers available to them.

⁸ CIH and CIEH *A licence to rent*, January 2019

- **Informal area action** - A non-statutory Action Range, taking in portion of the Borough where sub-standard properties are concentrated, would be declared. The momentum for lodging change would come from a combination of the Council's movement within the area through a blend of advisory overviews, Council-landlord discourse and, where vital, the threat of follow-up enforcement action.
- **Targeted use of Interim Management Orders (IMOs) and Final Management Orders (FMOs)**. The Housing Act 2004 provided tools like IMOs & FMOs to deal with non-licensable HMOs or Special Interim Management Order for other properties to address anti-social behaviour in selected properties where conditions are sufficient to justify use of the powers.
- **Area based voluntary accreditation** – This would involve a localised accreditation scheme, tailored to the characteristics of the properties and the problems associated with them.
- **Borough wide selective licensing** – The Council could consider introducing licensing for all private rented properties across the borough as some other local authorities have done.
- **Borough wide additional licensing** - Licensing introduced for all HMOs not covered by mandatory licensing (i.e. two or more storeys with three or more households) across the whole Borough.

5 Reasons for Recommendations

- 5.1 It is recommended that research continues to gather evidence for the introduction of selective licensing and that detailed consultation is prepared and undertaken as part of this evidence collation. It is further recommended that this research investigates opportunities that may exist to work with other local authorities and / or to outsource the provision of licensing to a Delivery Service Partner as one of the available options to the Council. These recommendations are made on the basis of the potential for selective licensing to augment management of the PRS in Southend where poor landlord practice is contributing to negative impacts, as described above. Further support for the recommendations is included within the appendix, which is a reproduction of the key findings of the MHCLG Independent Review.

6 Corporate Implications

6.1 Contribution to the Southend 2050 Road Map

Improving the Private Rented Sector would assist a number of Safe and Well themes for Southend 2050 such as ensuring that *everyone has a home that meets their needs*, ensuring people *feel safe and secure at all times* and *improving the quality of life for the most vulnerable in our community*. It would also more broadly support other key themes around Pride & Joy (*Our streets and public spaces are clean and inviting*) and Active and Involved (*Communities coming together to enhance their neighbourhood*).

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 into use and delivering demonstrable improvements to private rented homes through the use of licensing schemes.

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.

6.2 Financial Implications

The Council would need to have the relevant resources in place before implementing any designation in order to set up, administer and enforce the scheme. Details of some of the options are included in appendix A.

Consideration must be given to the full financial implications if the scheme is adopted, including the calculation of a cost-neutral fee and any implications of that fee impacting on rents and this will be fully considered in the next report to Cabinet.

Without the necessary start-up cost, the Council's ability to operate and enforce the scheme would be inhibited. This would be exacerbated by lower than expected income from licensing fees.

The one off cost of the research and options analysis of a Selected Licensing scheme is estimated at £50k and this can be met from the Council's Business Transformation Reserve.

6.3 Legal Implications

If the necessary background work is not done before implementation of the scheme, it could result in a Judicial Review. Such areas of challenge may include, inter alia, the following:

- Incorrect basis for the implementation of the scheme
- Ability to administer and enforce the scheme for said period
- The quality of the data that informs the decision to designate

6.4. People Implications

In order to implement the scheme, more staffing would be required in order to conduct research and gather relevant data for consideration of a selective licensing scheme, and coordination of the relevant Council services in order to implement the scheme. A concurrent recruitment strategy will be undertaken between the Housing and Regulatory Services teams to assist in this process and ensure that requisite skilled resources are available should a selective licensing scheme be designated. Initial preparatory work would be supported by

additional officer resource, either from a contracted delivery service partner or via interim staff recruited for this purpose.

During the scheme designation, several officers would be required to both administer the designation, issue licenses, carry out inspections, undertake enforcement activities as well as attending court for prosecutions. This would require coordinated action between several Council departments, such as Private Sector Housing team, Planning, Regulatory services, Community Safety as well as Legal team.

To ensure timely response, proper verification to applications and to undertake technical verification, inspections and any consequent enforcement would all require increased staff members including technical staff to deal with knowledge in the field.

Collaborative working with other teams within the Council would be key to the scheme's success. Teams like Early Help, Adult & Children Social Services, Environmental Health, Private Sector Housing, Housing Solutions and others that engage with the general public would be able to share information which would contribute in identifying housing issues that could be impacting local residents in order for the Council to address them.

6.4 Property Implications

By making the designation, all privately rented accommodation in the designated areas will require a licence. Owners of rented properties will be required to make an application to the Council or through a Delivery Service Partner for a licence and will need to nominate either the manager or the property owner to be the licence holder.

Section 79(2) details those houses that are covered and this is defined as a whole house that is occupied either under:

- a) A single tenancy or licence,
- b) Under two or more tenancies or licences in respect of different dwellings contained in it.

The overall property conditions in the borough would be improved thereby increasing property demand in the designated areas.

6.5 Consultation

Consultation must take place in order to demonstrate the evidence for the areas of concern and this would include giving due considering alternative options to selective licensing before designation.

If the Council opts for the option of using a Delivery Service Partner, they can carry out the consultation and provide a report to the Council which would indicate the areas that should be licensed.

6.6 Equalities and Diversity Implications

An equality analysis would need to be carried out to assess the impact of introducing selective licensing. This would be need to be included in the consultation process.

6.7 Risk Assessment

There is a risk of Judicial Review which means the rationale, data and process followed for implementation must be robust and accurate.

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.

Local rents may increase as the landlords may wish to recoup the cost of a license fee. It is important that licensing schemes that already exist are robustly enforced and if a local housing authority is unable to show compliance this will cast doubt on its ability to ensure compliance with the application scheme.

Some Local authorities were challenged on the decision to introduce selective licensing as it was felt that good landlords were being made to pay for the problems caused by the bad landlords.

6.8 Value for Money

A cost benefit analysis would need would need to be undertaken to determine whether the scheme would work out cost neutral or would need to be supplemented with additional funds from the Council.

6.9 Community Safety Implications

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

6.10 Environmental Impact

Improved energy efficiency standards and enhanced enforcement of environmental health standards within the PRS may have beneficial environmental outcomes for the borough.

7. Background Paper

Selective Licence Scrutiny paper - July 2018

8. Appendices

Appendix 1 – Options for Service Delivery

Appendix 2 - Summary of key findings of *An Independent Review of the Use and Effectiveness of Selective Licensing* (MHCLG, July 2019)

