

**Southend-on-Sea Borough Council**

**Report of Deputy Chief Executive, Executive Director of  
Growth and Housing and Executive Director  
Neighbourhoods and Environment**

**To**

**Cabinet**

**On**

**23<sup>rd</sup> February 2021**

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

**Agend  
a  
Item  
No.**

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**Selective Licensing Designation Report**

**Relevant Scrutiny Committee(s)**

**Cabinet Member: Councillor**

**Part 1 (Public Agenda Item) / Part 2 (Confidential Agenda Item)**

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**1. Purpose of Report**

This report presents to Cabinet the results of the public consultation on the proposal to introduce a Selective Licensing Scheme within specific neighbourhoods in the wards of Milton, Kursaal, Victoria and Chalkwell.

The report further sets out the basis for recommending Selective Licensing Designation and the work that is needed to move this forward.

**2. Recommendations**

Cabinet is recommended to:

1. Take note of the findings of the public consultation as set out in section 4 of this report and to agree to make a Selective Licensing Scheme designation in the proposed neighbourhoods.
2. Note that a further report will be presented back to Cabinet for consideration in June or September 2021, containing a comprehensive financial assessment and clear recommendations on how the scheme could be delivered.

3. 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.

### **3. Introduction & Background**

- 3.1 Selective Licensing (SL) allows local authorities to introduce licensing for privately rented properties accommodating single households. It is intended to address the impact of poorly rented properties on the local environment and to improve housing conditions. Under Section 80 of the Housing Act 2004, a local authority can designate the whole or any part(s) of its area as being subject to Selective Licensing. Where a Selective Licensing Designation is made it applies to all Part 3 houses or flats which are privately rented (as set out in section 79 and 99 of the Act). Exemptions apply, for example for registered social landlords.

If a local authority makes a Selective Licensing Designation that covers

- i) 20% or less of its total geographical area and
- ii) includes less than 20% of its privately rented properties,

then the scheme will not need to be submitted to the Secretary of State for Ministry of Housing, Communities and Local Government (MHCLG) for approval. Larger Selective Licensing Schemes covering a wider designation or whole borough will require specific Government approval.

Before a Council introduces a Selective Licensing Scheme, under The Selective Licensing of Houses (Additional Conditions) (England) Order 2015 it must be satisfied it is in an area in which one or more of the following general conditions apply:

- i. That the area is, or is likely to become, an area of low housing demand.
- ii. The area has high levels of migration.
- iii. That the area is experiencing a significant and persistent problem caused by antisocial behaviour.
- iv. The area has poor property conditions.
- v. The area has high levels of deprivation.
- vi. The area has high levels of crime.

Following the research commissioned after the Cabinet agreement in September 2019, Southend Council is seeking to designate on the last four criteria above.

- 3.2 The Council must also be satisfied that making the designation will, when combined with other measures in the area by the local housing authority (or by other persons together with the local housing authority) lead to a reduction in, or elimination of, the problems.

Prior to the introduction of the Selective Licensing scheme in the proposed wards the local authority must consider:

- a) whether there are other courses of action available that might provide an effective method of achieving objectives that the designation would be intended to achieve and
- b) that making the designation will significantly assist it to achieve the objective or objectives.

- 3.3 The Council previously undertook extensive research into Selective Licensing in 2011/12 and following public consultation, a decision was made by Cabinet not to introduce the scheme at the time but instead the recommendation was to develop a closer working relationship with landlords, in particular with the South East Alliance of Landlords (SEAL). SEAL was formed as an alternative to SL however, it is a voluntary scheme without any way of enforcing non-compliance and as a result, the problems within the private sector have persisted despite their best efforts which has necessitated revisiting SL again.

- 3.4 The private rented sector (PRS) has continued to grow nationally, regionally and locally. Reasons for this include its attraction as a stable investment vehicle, amongst non-traditional landlords. Increasing demand and limited supply places pressure on tenants to accept poor standards of accommodation. Due to fear of retaliatory evictions tenants are frequently reluctant to seek improvements, either through the landlord or local authority engagement.

- 3.5 An affordable and safe PRS contributes to the 2050 ambitions Safe & Well and Pride & Joy. Due to the persistent problems within the sector, it has therefore become necessary for the Council to look at Selective Licensing again in order to ensure that living conditions for the residents in the sector meet the minimum standard. The demand for housing in the region is still predicted to grow putting more pressure on housing supply. Licensing provides a useful tool to regulate this sector and raise the standards in private rented accommodation, contain ASB and poor property standards.

- 3.6 On 19<sup>th</sup> September 2019 Cabinet considered a further report proposing to consideration of Selective Licensing and agree both to commission dedicated, targeted research in support of the proposal and to undertake full consultation based on the findings of this preparatory phase.

- 3.7 The Council commissioned Arc4 to carry out the initial investigative work of gathering the evidence base and ensuring that the identified problems were linked to the private rented sector. They provided the Council with a report which formed the basis of the consultation documents. Based on the report, it was proposed that some of the neighbourhoods within the wards of Milton, Kursaal, Victoria and Chalkwell (as identified in appendix G) are designated as Selective Licensing areas as provided for in the Housing Act 2004 section 80. Arc4 have a detailed understanding of housing markets, excellent knowledge of market intelligence and significant experience of collecting and interpreting data to identify areas for designation under Selective Licensing as set out in legislation. They have completed similar work for other local authorities and came highly recommended by their previous customers. A part of the data they relied upon for their analysis was the 2011 Census data. Whilst this was gathered 10 years ago, it is the most recent data for such purposes as the next census is not due until this year and the results are not likely to be available until 2022 at the earliest.
- 3.8 According to the 2011 Census, of the 77,036 dwellings in the borough at the time, 17,109 of those were privately rented. Whilst the census data is now 10 years old, it is still a valid source of data until the new census is conducted and published. Whilst it is acknowledged that this data is old, we know that the PRS has grown over the period both nationally and regionally. And in May 2019, Southend Home Analytics, estimated that out of 84,086 residential dwellings, 18,136 were privately rented, that is a 6% increase in the sector. The proposed designation is estimated to affect around 3,251 which will be within the threshold to proceed without requiring authorisation from Secretary of State (SoS).
- 3.9 Whilst the Council acknowledges that there are other neighbourhoods with similar problems to those in the proposed areas, additional neighbourhoods have been ruled out of inclusion in the scheme at this stage. This is because the research, implementation and management over the five-year life of such a scheme is labour intensive for the areas highlighted for inclusion. At this stage, the Council has instead focused on the worst performing areas, as intervention is most warranted due to the levels of anti-social behaviour recorded as well as a combination of deprivation, poor property conditions and crime. As identified above, the Housing Act 2004 enables Local Authorities to introduce a Selective Licensing Scheme without the need for Secretary of State approval provided it is 20% or less of the size of the municipal area or 20% or less of the size of the Private Rented Sector. The proposed scheme is estimated to affect 19.7% of the PRS.
- 3.10 The Council is committed to improving housing conditions in the private rented sector and our proposal to designate will be complementing many other

ongoing projects to improve this sector. The Selective Licensing scheme approach will provide a visible neighbourhood presence in those neighbourhoods where it will be focused. To support this initiative the Council acknowledges that a significant officer resource will be needed to deliver an effective Selective Licensing scheme, both from within a range of Council departments including social services, planning, housing, environmental health, community safety, waste and legal services, as well as from a range of public and community sector partners and our local communities. To be effective Selective Licensing needs to run in conjunction with other tools and pages 29-32 of the evidence base report (appendix B) summarise some of the initiatives that will complement the proposed scheme.

- 3.11 Additionally, before making a designation, the Council must ensure that it is consistent with its overall housing strategy and must seek to adopt a co-ordinated approach in tackling issues of homelessness, empty properties and anti-social behaviour affecting the private rented sector in its use of property licensing, whether on its own or in combination with other measures. Details on this can be found in appendix B, pages 87-90.

#### **4. The Consultation Methods, Results, Concerns and Recommendations.**

- 4.1 Before making a designation under Part 3 (Section 80 - Selective Licensing) of the Housing Act 2004, the authority must undertake all reasonable steps to consult persons who are likely to be affected by the designation, and consider any representations made in accordance with the consultation and not withdrawn. The statutory consultation must be for a minimum period of at least ten weeks. The 10-week stakeholder consultation on the Selective Licensing proposal commenced on 02/11/2020 and was concluded on the 11<sup>th</sup> January 2021. The consultation was conducted by M.E.L Research, a specialist consultation organisation with experience in this area of work. The final report from M.E.L indicates a very strong response rate to the consultation, as summarised below in section 4. The full results of the consultation can be found in appendix 1. The proposal will be reviewed to take into account the comments and suggestions made by respondents wherever possible.
- 4.2 In an effort to encourage maximum participation from all stake holders, the consultation was promoted in several ways to interested parties in Southend and beyond, such as landlords, agents, tenants, residents, local businesses and third sector organisations. This included through press releases, publicity via Southend Echo and various Southend Council channels, such as the website, Twitter, Facebook and Your Say Southend. It was also promoted to neighbouring boroughs and encouraged these to promote the survey to landlords, residents, tenants and other businesses who may wish to take part in the consultation.

- 4.3 Government guideline on Covid-19 compliance procedures were fully adhered to during the consultation process as all engagement with the various stakeholders was done in safely accessible ways. Whilst the current government Guidance on Covid-19 is not statutory, the Council did have due regard to it. Counsel was sought on whether the consultation should be paused following a formal request to do so and was advised on the basis of the response rate to all forms of the consultation, that there were no grounds for pausing or extending the consultation.
- 4.4 A variety of methods were used to consult with the different stakeholders. These included an online survey which was hosted on the Your Say Southend site, postal surveys which were sent to all 11,640 residential and commercial addresses within the proposed areas, 2,841 addresses outside the proposed areas but within Milton and Kursaal, and a random sample to 5,520 residential and commercial addresses in adjacent areas. In addition, 3 public meetings were held online due to Covid-19 restrictions, stakeholder interviews in which 8 organisations gave feedback (these included SEAL, NLRA, HARP, C.A.B, Police and several others). Four neighbouring local authorities (Thurrock, Castle Point, Basildon and Rochford) were also contacted for their views on the proposals.
- 4.5 The consultation sought to obtain stakeholders' views on the proposals to designate some neighbourhoods within the borough, mainly focusing on the degree to which respondents agreed or disagreed with the proposals to introduce the Selective Licensing scheme. The local problems identified prior to the consultation included ASB, deprivation, poor property conditions as well as crime and the degree to which respondents felt the proposed licence fees and conditions were reasonable or unreasonable.

#### **Consultation responses**

- 4.6 In total, the consultation generated 1,792 responses to the survey (1,208 postal and 584 online). One neighbouring local authority fed into an online survey: Rochford District Council. 65 people had registered onto the three public meetings. Eight stakeholders, representing a good range of interests, were interviewed. Finally, 22 individuals or organisations responded with formal written submissions to the consultation. Together, these represent a wide range of interests and views covered during the consultation.
- 4.7 Of the 1,792 responses received, 74% (1,313) of those that responded to the survey were residents, 19% (335) were landlords, 14% (253) were tenants while 33% (593) identified as other which included those working or conducting business within the borough.
- 4.8 The following table shows the summary of the overall results of the consultation by each respondent group.

	Overall	Residents	Landlords / agents	Private tenants	Other
<b>Base</b>	<b>1,768</b>	<b>1,310</b>	<b>334</b>	<b>250</b>	<b>591</b>
Agree with selective licensing in designated areas	<b>68%</b>	<b>77%</b>	<b>21%</b>	<b>67%</b>	<b>73%</b>
Disagree with selective licensing in designated areas	<b>26%</b>	<b>18%</b>	<b>74%</b>	<b>23%</b>	<b>21%</b>
<b>Base</b>	<b>1,567-1,748</b>	<b>1,145-1,291</b>	<b>319-329</b>	<b>223-251</b>	<b>522-585</b>
Positive impact on proposed areas	<b>68%</b>	<b>76%</b>	<b>21%</b>	<b>67%</b>	<b>72%</b>
Positive impact on nearby areas	<b>55%</b>	<b>62%</b>	<b>16%</b>	<b>54%</b>	<b>58%</b>
Positive impact on you / your business / organisation	<b>47%</b>	<b>54%</b>	<b>11%</b>	<b>46%</b>	<b>50%</b>
<b>Base</b>	<b>1,700-1,744</b>	<b>1,256-1,292</b>	<b>322-324</b>	<b>242-250</b>	<b>566-585</b>
Anti-social behaviour is a problem	<b>84%</b>	<b>88%</b>	<b>68%</b>	<b>78%</b>	<b>86%</b>
Deprivation is a problem	<b>74%</b>	<b>78%</b>	<b>57%</b>	<b>70%</b>	<b>75%</b>
Poor quality housing is a problem	<b>76%</b>	<b>81%</b>	<b>57%</b>	<b>71%</b>	<b>79%</b>
Crime is a problem	<b>80%</b>	<b>84%</b>	<b>65%</b>	<b>78%</b>	<b>82%</b>
<b>Base</b>	<b>1,774</b>	<b>1,303</b>	<b>333</b>	<b>253</b>	<b>588</b>
Agree with level of licence fees	<b>62%</b>	<b>72%</b>	<b>14%</b>	<b>52%</b>	<b>65%</b>
Disagree that level of licence fees	<b>32%</b>	<b>23%</b>	<b>84%</b>	<b>32%</b>	<b>27%</b>
<b>Base</b>	<b>1,774</b>	<b>1,303</b>	<b>333</b>	<b>253</b>	<b>588</b>
Agree with monthly fee payment	<b>56%</b>	<b>56%</b>	<b>63%</b>	<b>52%</b>	<b>55%</b>
Disagree with monthly fee payment	<b>24%</b>	<b>26%</b>	<b>15%</b>	<b>17%</b>	<b>23%</b>
<b>Base</b>	<b>1,717-1,757</b>	<b>1,266-1,294</b>	<b>328-330</b>	<b>240-245</b>	<b>560-582</b>
Agree improve quality of neighbourhood	<b>73%</b>	<b>81%</b>	<b>28%</b>	<b>70%</b>	<b>77%</b>
Agree improve property safety and standards	<b>76%</b>	<b>83%</b>	<b>38%</b>	<b>75%</b>	<b>80%</b>
Agree improve management standards	<b>74%</b>	<b>81%</b>	<b>34%</b>	<b>72%</b>	<b>78%</b>
<b>Base</b>	<b>1,732</b>	<b>1279</b>	<b>322</b>	<b>245</b>	<b>576</b>
Support choice to be monitored by an external non-regulatory body	<b>26%</b>	<b>26%</b>	<b>22%</b>	<b>26%</b>	<b>28%</b>
Opposition for choice to be monitored by an external non-regulatory body	<b>49%</b>	<b>50%</b>	<b>53%</b>	<b>39%</b>	<b>47%</b>

- 4.9 Support for licensing was strongest among organisations supporting or advocating for tenants with the opposition coming from landlords and agent bodies who generally wanted the Council to make better use of existing regulations and to enforce standards. Several landlords and agents questioned how far they should be responsible for their tenants' behaviour with many suggesting more input from police and support for tenants with mental health or addiction problems.
- 4.10 Some landlords felt that evictions are now taking longer now due to backlogs with court cases as a result of Covid-19 restrictions and this is causing major financial loss to some so introducing a scheme would further financial hardship.
- 4.11 Some respondents believed the fees and added cost would be passed onto tenants in higher rents, potentially leading to rent arrears which would result in more evictions. Some landlords also suggested that the Council should consider discounts for those with multiple properties or those who are members of accredited organisations or scheme. Some landlords wanted to see real value for their fees.
- 4.12 A few respondents questioned the amount of resource allocated to enforcing standards with Selective Licensing. Some also believed that the introduction of the scheme would deter some landlords, and some would sell up, resulting in increased homelessness. There was also expressed concern that the scheme could devalue properties.
- 4.13 Alternative suggestions included greater partnership working with landlords and agents, a stronger focus on ASB using existing powers and that the resurrections of landlord fora. Some landlord and letting agent members of SEAL proposed to continue the self-regulation scheme instead of Selective Licensing. However, such a scheme has been in operation for more than five years and in that time, there have continued to be substantial challenges within the proposed designation areas. A full response to the comments and the questions brought up during the consultation along with the M.E.L report will be published on the Council's website in due course.
- 4.14 It is the Council's intention to ensure that the actual application process for landlords is as streamlined, as simple and as supportive as possible. Licence application processes typically involve landlords (and/or their managing agents) submitting a large amount of supporting documentation as well as completing an online application form for each property they wish to licence and in order to reduce the burdens of any such process, the Council is currently exploring a range of options of how to best deliver the scheme, including an electronic application system which will allow for the application to be completed, supporting documentation to be submitted and payment of the licence fee all to be made online.



## 5. Next Steps

Significant and additional resources will be required for the assembly and preparation for the introduction of the scheme if approved.

Such resources will include but are not limited to:

### 1. **The creation of a Selective Licensing function**

This will be an expansion of the current Private Sector Housing function and will need to be resourced effectively in order to meet the demands of the scheme.

### 2. **An efficient IT solution to provide a good online licensing system**

This will include an assessment of current platforms the Council already uses as well as other bespoke systems to determine what will provide the most efficient system to complement staff resource.

### 3. **The engagement of expert advice to embed the necessary skills within the team**

In order to ensure effective implementation and to learn from the experience of experts who have implemented and delivered this successfully elsewhere.

### 4. **Evaluating options to deliver and communicating the end to end process mapping**

The range of delivery options, including outsourcing or in-house provision will be examined and recommendations made as to the most suitable arrangement for Southend. This will make up part of the process mapping which will be informed by expert advice (as above).

### 5. **Detailing what will come back for decision in June/September**

An update on each of the sections above and any decisions taken in order to move forward swiftly with implementation.

## 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 standard within the sector whilst ensuring the surrounding environment is also well maintained.

**Active & Involved:** The proposals contribute by ensuring that Southend will continue to be a place where residents know and support their neighbours and where we all share responsibility for where they live. Selective Licensing is part of the initiatives of enhancing neighbourhoods and the environment.

**Opportunity & Prosperity:** By improving standards in this sector, it will contribute to residents leading happier and safer lives, thereby having fewer barriers to contributing to the local area.

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.

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),
- Possible 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.

## 6.2 Financial Implications

- 6.2.1 The two main elements of running a Selective Licensing Scheme, for which financial implications need to be considered include both the administration of the scheme and the impact on existing statutory duties that the Council must continue to undertake.
- 6.2.2 Regarding the general administration of the scheme, the full costs of running the new scheme for the five-year period can be recovered through the license fee. These costs include licence administration, staffing, system development, ICT and legal costs. A detailed financial analysis will need to be carried out to ensure that the proposed licence fee will cover all the anticipated costs for running the scheme. It is highly likely that some initial investment to set up the scheme will be needed and funded from the Council's existing resources. The plan will then be to recover this initial outlay over the lifetime of the scheme through the licencing income recovered.
- 6.2.3 The second major element for consideration is the cost of delivering the Council's existing statutory duties. The main costs will be in relation to enforcement. Enforcement officers will ensure appropriate regulation of the properties and compliance from landlords. These costs will need to be funded from the Council's existing resources as the licence fee income cannot cover any additional enforcement costs that may be generated by the implementation of the new scheme.
- 6.2.4 Detailed financial modelling and the associated price sensitivity analysis for the new scheme will be undertaken and presented in the future report to Cabinet. This work will assess the cost implications and outline a range of reasonable assumptions to be considered. This will include pricing options to determine the level of anticipated income and ensure overall medium-term viability of the new scheme. It is proposed that £50,000 be allocated from the Business Transformation Reserve to facilitate these requirements and to support the design of a suitable scheme for Cabinet to consider.

## 6.3 Legal Implications

- 6.3.1 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.

6.3.2 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.

6.3.3 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.

6.3.4 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.

6.3.5 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.

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

6.3.6 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.

6.3.7 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.

6.3.8 There is a risk of judicial review where the correct processes leading to the declaration of Selective Licensing have not been properly followed. The Council can be confident that all due processes have been followed leading up to this decision paper. The guidance document 'Approval steps for additional and Selective Licensing designations in England' has been followed, consultation has been successfully carried out for the correct time frame and with over 1790 responses to the consultation this is evidence that the consultation was carried out effectively.

6.3.9 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;

6.3.9a Challenge – As stated earlier, a designation may be challenged by way of judicial review as has been the case with other authorities such as Thanet and Hyndburn. The time for seeking judicial review is within 3 months of the date the designation is made. The general legal principles of reasonableness, procedural propriety and proportionality will be applied on any such review.

Some of the identified 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

6.3.9b 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.

6.3.9c 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.

Based on the above case, the licence fee has been split into two part 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.

## 6.4 People Implications

6.4.1 In order to implement the scheme, more staffing would 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.

6.4.2 During the scheme designation, several officers would be required to both administer the designation, issue licences, 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, Housing Solutions Team, Community Safety as well as the Legal team.

6.4.3 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.

## 6.5 Property Implications

6.5.1 No properties directly owned by Council will be affected but there are implications for private landlords in the proposed designation areas.

6.5.2 The proposed licensing scheme will introduce a new local regulatory environment for the private rented sector within the proposed 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.

6.5.3 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 proposes to ensure licensing and enforcement are complementary.

6.5.4 It is envisaged that the proposed scheme will assist in increasing the consistency of safeguards available to tenants, while improving the quality of private rented stock and tackling poor quality landlords. A desired outcome will be the effective management of properties by private sector landlords which will in turn raise property standards within the sector.

## 6.6 Consultation

6.6.1 The details of the consultation and the findings are discussed in section 4 of this report and the Final report from the commissioned consultation partner, M.E.L, is attached as appendix A.

## 6.7 Equalities and Diversity Implications

6.7.1 The introduction of Selective Licensing in the proposed neighbourhoods 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.

6.7.2 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.

- 6.7.3 If the proposed scheme is approved, 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.
- 6.7.4 It is likely that tenants most impacted by these proposals 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.
- 6.7.5 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.

## 6.8 Risk Assessment

- 6.8.1 There is a risk of Judicial Review where the rationale, data and process followed for implementation could be challenged. A number of schemes across the country have been subject to Judicial Review. These have only been successful where local authorities have failed to follow the correct processes or have been unable to justify part of their scheme, proposals or evidence base. There is therefore the potential for additional and unfunded legal work to meet any challenges or cases.
- 6.8.2 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.



- 6.8.3 There is a perceived risk that local rents may increase as the landlords may wish to recoup the cost of a license 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. The findings of MHCLG’s review of Selective Licensing in 2019 indicate that there was no evidence of this being the case in the majority of the local authorities that took part in the review.
- 6.8.4 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.
- 6.8.5 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 bad landlords. There will need to be an increase in enforcement action against non-licensing landlords 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.
- 6.8.6 There is the potential risk of a budget shortfall and a failure to effectively impact the aims and objectives of the designation if the scheme does not receive sufficient applications. This risk could be mitigated by ensuring that there are sufficient staff levels to identify un-licensed properties and carry out licensing activities.
- 6.8.7 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,
- 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

6.8.8 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.

## 6.9 Value for Money

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 proposed designation.

## 6.10 Community Safety Implications

The scheme if implemented successfully will create stronger communities within the proposed 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.

## 6.11 Environmental Impact

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.

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.

The proposed Selective Licensing conditions that landlords would 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.

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.

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 get grants specifically to improve the fabric of their buildings and the licensing scheme to be seen as beneficial to them.

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.

## **7. Background Papers**

Previous cabinet paper dated 17<sup>th</sup> September 2019.

## **8. Appendices**

**M.E.L SL Consultation results – Appendix A**

**SL Scheme Proposal and Evidence Base – Appendix B**

**Proposed Licence conditions – Appendix C**

**Arc 4 report – Appendix D**

**Fees & Notes – Appendix E**

**Maps of proposed designation - Appendix F**

**Stakeholder responses to Consultation – Appendix G**

