

Southend-on-Sea Borough Council

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

To

Cabinet

On

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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.
- 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.

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.

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

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

		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,

- 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