

Southend-on-Sea Borough Council

Agenda
Item No.

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

To

Cabinet

On

24th January 2022

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

Selective Licensing

Policy & Resources Scrutiny Committee

Cabinet Member: Councillor Gilbert

Part 1 (Public Agenda Item)

1. Purpose of Report

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

2. Recommendations

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

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

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

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

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

3. Background

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

(a) Presented to Cabinet the results of the Council's public consultation about a proposal to designate certain areas of the Borough as subject to selective licensing; and

(b) Recommended the designation of those areas and agreement about the work required for that purpose. They made the following recommendations in particular:

- That Cabinet note the findings of the consultation exercise and agree to designate certain areas of the district as subject to selective licensing.
- That a further report be presented to Cabinet in June or September 2021, containing a comprehensive financial assessment and clear recommendations about how the licensing designation, or scheme, could be delivered.
- That Cabinet approve the use of up to £50,000 from the Business Transformation Reserve to support the design and associated financial modelling of a future scheme.

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

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

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

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

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

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

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

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

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

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

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

As recorded in minute 333, Cabinet resolved:

“1. That the financial details of the scheme, as outlined in the financial implications in Section 7 of the submitted report, be noted.

2. That the proposed discounts for the scheme including the early bird period of four months (December 2021 to March 2022) to promote early compliance as stated in paragraph 7.2 of the Report, be noted.”

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

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

- 3.7 The above resolutions of Cabinet were duly called-in and considered by the Policy & Resources Scrutiny Committee on 7 October 2021, at which meeting the Leader of the Council undertook to provide a written response to questions raised by members of the Committee about the financial implications of the designation, and specifically the cost of the specialist software procured for the management of the designation and the number and cost of officers required to manage and enforce it. As recorded in minute 400, the Committee resolved:

“1. That the matter be referred back to the Cabinet for reconsideration, with reference to the additional information requested by the Committee in relation to the financial implications of the Selective Licensing Scheme.

2. That in accordance with Council Procedure Rule 39, the matter be referred to full Council for consideration.”

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

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

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

In addition set out below is:

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

3.11.1 Financial information

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

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

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

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

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

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

3.11.2 Other delivery options

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

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

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

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

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

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

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

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

4. Other Options

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

5. Reasons for Recommendations

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

6. Corporate Implications

6.1 Contribution to Southend 2050 Road Map

See previous report at **Appendix 1**.

6.2 Financial Implications

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

6.3 Legal Implications

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

6.4 People Implications

See previous report at **Appendix 1**.

6.5 Property Implications

See previous report at **Appendix 1**.

6.6 Consultation

See previous report at **Appendix 1**.

6.7 Equalities and Diversity Implications

See previous report at **Appendix 1**.

6.8 Risk Assessment

See previous report at **Appendix 1**.

6.9 Value for Money

See previous report at **Appendix 1**.

6.10 Community Safety Implications

See previous report at **Appendix 1**.

6.11 Environmental Impact

See previous report at **Appendix 1**.

7. Background Papers

None

8. Appendices

Appendix 1 – Report to Cabinet 14 September 2021

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