

HOUSING SELECT COMMITTEE		
Title	Private Rented Sector: Options Study for Selective, Additional or Whole Borough Licensing Scheme – Flats over Commercial Premises	
Key Decision	No	Item No.4
Ward	All wards	
Contributors	Executive Director of Customer Services Head of Standards, Enforcement and Advice	
Class	Part 1	Date: 11th March 2014

1. Purpose

1.1 Following the report to its December 2014 meeting, Housing Select Committee RESOLVED:

- a) The proposals made in Section 2 of the officer report be noted.
- b) An update report to be presented in 2015-16.
- c) Generation Rent be asked for more information on their work with other local authorities in helping tenants claim rent back under RROs.

1.2 This report documents the work that has been undertaken since December 2014, exploring the business case for discretionary licensing and suggests what type of licensing scheme may be lawful, as part of its wider private sector housing strategy, using the powers available to the council under Part 3 of the Housing Act 2004. It sets out the evidence base, assumptions and reasoning that sit behind the various elements.

1.3 Financial modelling for three options has been commissioned; the outputs for two of these models are expected to be delivered on 9th March. This should therefore be available for tabling to HSC on 11th March, together with the comments from Finance.

2. Recommendation

Housing Select Committee is asked to:

2.1 note the work in progress to identify all premises in the borough being:

- private rented accommodation estimated at 45,000
- houses in multiple occupation
- flats over commercial premises, estimated at 4,223 lettings (in 1,800 properties)

2.2 comment on the preliminary findings of the research, in particular the on the emerging business case for licensing of flats over commercial property.

3. Background

3.1 Members will recall from the report to Housing Select Committee December 2014, the business case for licensing can be more immediately apparent in areas outside London, of housing market failure. Northern authorities and some student towns and cities were amongst the first to use the Housing Act 2004 Part 3 power to introduce discretionary licensing. More recently, London local housing authorities have started to explore and introduce schemes in a different market and policy context. The legislation was not drafted within the context of high housing demand. Therefore making the case for discretionary licensing in the London context presents a unique set of challenges, as it calls for an

evidence base linking poorly managed private sector housing to ASB or enviro-crime.

3.2 Discretionary Licensing enables local housing authorities to extend the regulation of management of private rented housing stock in designated areas. It is not an end in itself. The business case for discretionary licensing must demonstrate that:

- The scheme will help deliver the housing authority's strategic private sector housing policies;
- Quantitative evidence of problems created by poor private sector housing management;
- Evidence that licensing will sustainably assist with addressing the problem;
- Analysis to show that there is no alternative solution to address the problem;
- The scheme will operate for no more than five years and must be kept under review; if the exercise has achieved its objectives, it should be discontinued.

3.3 *Additional* licensing extends licensing to all types of Homes in Multiple Occupation (HMO) not covered by the mandatory scheme (large HMOs). This requires evidence that a significant proportion of those HMOs are being ineffectively managed, resulting in health or welfare problems for occupants or the public.

3.4 *Selective* licensing extends licensing to any and all private rented properties in a defined area that are not HMOs, if the criteria for this are satisfied. In the London context (where there are no areas of housing market failure), *selective* licensing requires evidence of a link between persistent ASB related to the housing management.

3.5 Both *additional* and *selective* schemes can be borough-wide or in a defined smaller area. To license all PRS either borough wide or in a smaller area requires both *additional* and *selective* licensing. It should be noted that LB Waltham Forest has taken the view that under its new borough wide selective licensing scheme, HMOs which do not currently require a licence under the mandatory scheme will be required to obtain a licence under a selective licensing scheme.

3.6 The overall scale of licensing in Lewisham therefore could range from borough-wide selective, which would include all privately rented homes, down to a small additional licensing scheme, based in a single ward, where only small HMOs and poorly converted properties in the ward, or specific types of accommodation eg flats over shops, which are added to the current mandatory scheme.

3.7 The options modelled in this report are:

- Whole borough selective (including additional) covering an estimated 45,000 properties
- Localised additional HMOs licensing
- Localised additional licensing of private rented flats and HMOS over commercial premises estimated at 4,223 lettings in 1,813 addresses

A digest of what other London boroughs have introduced or are considering for discretionary licensing schemes is attached at appendix 3.

3.8 A summary of the legal context which was covered more fully in the December Housing Select Committee report, is attached for reference at appendix 4.

3.9 Lewisham's PRS housing strategy

3.9.1 Lewisham's private sector housing strategy into which context any discretionary licensing scheme must fit, was set out in detail in the December 2014 report to Housing Select Committee. In summary, the key elements of the strategy are to improve the quality, management, affordability, and security of the private rented sector. Tackling anti-social behaviour is specifically referenced. A range of initiatives have been pursued including a blend of stick and carrot approaches:

- introduce landlord accreditation
- develop a 'Lewisham standard'
- set up a Rogue Landlord Taskforce to focus enforcement on the worst landlords and drive them out of business

3.9.2 It is recognised that a majority of private sector landlords are professional and provide a good service. Positive partnership approaches to raising standards including accreditation and incentives have worked best with those new "accidental" landlords who were unaware of their legal obligations. However we can now report that 66 licensed HMOs are managed by landlords or their agents that have accreditation out of a total of 173. At just 38%, this is a best an equivocal result for incentivising raising standards.

3.9.3. The council's Environmental Health Residential team deals with complaints about poor private rented sector property and overall, the council has a menu of enforcement options that runs into at least 29 different powers. The Environmental Health Residential team also forms the core of the multi-disciplinary, multi agency Rogue Landlord Taskforce which has been operating for over a year has enjoyed some success in prosecuting a handful of the worst rogue landlords. This is a work in progress. The challenges for the team include:

- Paltry level of fines imposed by the criminal courts for offences,
- Enforcement is piecemeal and long-winded High proportion because most of the poorest properties are not mandatory HMOs so the power declaring a landlord not "Fit and Proper Person" is not available
- Housing Benefit regulations do not permit suspension of benefit on properties where the landlord is guilty of continuing offences under the Housing Act

4. METHODOLOGY

4.1 There were four stages in preparing this report:

- (a) Desk top review of the work of boroughs across London in relation to improved regulation of the private rented sector and opening up collaboration with the SELHP plus Lambeth group of authorities
- (b) Data mining - interrogating a range of existing databases, to identify the size, location and characteristics of the private rented housing and the stock condition survey 2009 and 2014 SELHP & Lambeth survey of private tenants experiences
- (c) Street survey of shopping streets to create a database of suspected privately rented flats over shops
- (d) Analysis of the data and generation of options to tackle problems identified related to the private rented sector, including for using discretionary licensing
- (e) Financial modelling – based on assumptions, to be set out in Appendix 1;

5. FINDINGS AND KEY ISSUES

5.1 In order to be lawful, a licensing scheme, Lewisham needs to evidence that the requirements of the Housing Act 2004 Part 3 are satisfied. These are set out again for reference in Appendix 4 to this report.

5.2 Database of PRS and its characteristics

5.2.1 We have now commissioned building of a database of properties that we believe are very likely to be privately rented, which will be available next month. This has been done by using statistical analysis undertaken by consultancy Mayhew Harper working for other London boroughs which identified four pieces of data commonly held by existing council databases to identify:

- HB recipient at the address
- No council tax recipient at the property
- or more changes in council tax liable person surname in last 36 months
- or less adult electoral registrants at the address

We have also commissioned building of a database of properties of houses in multiple occupation (HMOs) which is also expected next month: from the same independent Mayhew Harper research, properties that appear in all 4 of the datasets below have been found statistically to be very likely to be HMO's:

- More than 3 surnames on electoral roll at the address in last 36 months
- No current council tax benefit recipient at the address
- At least one change in the electoral registrants in last 12 months
- or more changes in council tax liable surname in last 36 months

5.2.2 We have estimated the size of the PRS to have grown by some 8% per year since 2011. That would mean the sector would be 45,000 strong. The output from these reports will indicate the size of the PRS and within that, those that are the likely to be houses in multiple occupation based on a list of addresses. These are expected in approximately 2 weeks. These two databases will also be mapped.

5.2.3. To find out where the poorest conditions in the private rented sector are to be found, we reviewed primary survey research commissioned by South East London Housing Partnership and Lambeth council into the experiences and perceptions of private tenants and their landlords and agents which reported in October 2014. Though originally commissioned to explore the question, "What is the capacity of the private rented sector in South East London and Lambeth to meet the housing requirements of households who would otherwise be accommodated in the social housing sector", the report contains a wealth of data that helps us to understand conditions in the sector.

5.2.4 The analysis contained in this survey report led to some conclusions that shed some light on the case for introducing licensing and its likely impact on the private rented market. The key points are as follows:

- 'Continuing attrition' of the Local Housing Allowance sector is expected to occur as landlords relet to higher income earners when those claiming some housing benefit leave
- There is evidence of poorer physical and management conditions among those receiving Housing Benefit; local authorities would do well to focus attention on intervention and enforcement activities in this sub-sector

- There is evidence of poorer physical and management conditions in properties managed by agents
- Tenant satisfaction with their conditions is (counter-intuitively) higher for Mandatory HMOs than for self contained lettings
- The majority of landlord views were firmly against extending licensing

5.2.5 The authors of the report have mined the survey data from the responses from Lewisham residents were extracted into a separate free-standing database (in SPSS and Excel). They analysed the views of residents on:

- quality, condition and management of their homes,
- existence of Category 1 HHSRS hazards,
- instances of overcrowding
- degree of sharing of facilities (within HMOs)
- quality of the external environment
- instances of anti-social behaviour and crime

Segmented this analysis of the views of residents by:

- Different localities within the borough (particularly localities on the boundary between the Inner South East and Outer South East Broad Rental Market Areas)
- Different responses from those living in HMOs and self-contained accommodation
- Different responses from those living in HMOs subject to mandatory licensing and other HMOs
- Differences between views of those in HMOs paying higher and lower rents
- Differences between views of those on higher and lower incomes (including on HB)
- Differences between the views of those whose homes are managed by managing agents and directly by landlords

5.3 The key findings of this analysis are:

- Overall, HMO tenants are likely to experience worse standards, conditions, overcrowding and services than their self-contained counterparts.
- Though there is only a small sample so the conclusion should be treated with caution, managers of mandatory HMOs provide better levels of service and conditions than those of smaller HMOs, an argument in favour of licensing
- Tenants of HMOs with the highest quartile rents were less satisfied than those on 2nd and third quartile (lower rents); as paying higher rents is not a good indicator of higher incomes, this tends to suggest that landlords are able to charge high rents for relatively poor condition HMOs because of the state of the market
- There is strong correlation between claiming HB and worse standards, conditions, hazards and services, with the exception of anti-social behaviour where there is an inverse relationship

5.2.7 In commissioning the data mining, we were concerned to explore whether there was any spatial pattern to where the poorer standards, conditions, hazards and services were to be found, which might provide a case for localised discretionary licensing. We therefore extracted all addresses where the respondent identified likely Category 1 hazards and where one of the 3 criteria (standards, conditions, services) was judged to be “very poor”. The survey returns that fell into this basket of criteria defining “very poor” quality account for 35% of the total returns. Therefore any unifying explanations that predict where poor conditions are found are very valuable.

5.2.8 No strong spatial pattern of poorer standards, conditions, hazards and services was demonstrated, with two exceptions.

5.2.9 Firstly, damp and mould which appears to be more prevalent close to the border between inner London and outer London LHA rates. We speculate this may relate to the age and construction of housing stock in those zones.

5.2.10 Secondly, there was a very clear pattern of concentration of the poorest standards, conditions, hazards and services being located along high roads of 6 secondary shopping streets (Deptford, Lee, Hither Green, Brownhill Road, Sydenham and Brockley) see map at appendix 5.

5.2.11 Together the two reports conclude :

- There is some evidence to say that large HMOs provide more satisfactory housing than small HMOs,
- The only evidence of spatial concentration is the link to secondary shopping streets where there are flats over shops
- There is no evidence for any link between the poorest private rented housing and anti-social behaviour

5.3 Business case for discretionary licensing

5.3.1 From the survey evidence, there is support for the case for extending *additional* licensing (of small HMOs) is evident which is most particularly strong for private rented flats and HMOS over commercial premises. However the report found no evidence to support a business case for selective licensing in any localised part of the borough.

5.3.2 Conditions appear to be better in the segment of the stock that is subject to mandatory licensing, suggesting that it achieves the objective of raising standards. However we have no data on what impact the introduction of mandatory licensing of large HMOs from 2006 may have had on the availability of this type of property. It is possible that a proportion of landlords have chosen to change the use or tenure of their property to avoid the need to comply with license conditions that they may have perceived to be onerous. We also have no data on rent levels before and after 2006.

5.3.3 The council currently operates a Local Lettings Scheme in partnership with private landlords and lettings agents, to prevent homelessness. This operates within LHA benefit limits. This scheme is currently unable to meet the demands from those known to the council to be at risk of homelessness. For example there are currently 300 households looking for 2 bedroom property in the borough, whilst the supply to the Lewisham Lettings Scheme of such property in the last 3 years averaged just 18 lettings per year. In the current context of an imbalance of supply and demand for private rented housing and upward pressure on rents, there is evidence that landlords are withdrawing from the LHA sub-sector. There is therefore an inherent risk that the combination of continuing attrition of the LHA sub-sector and the resistance to licensing amongst landlords, that introducing discretionary licensing might increase the rate of attrition. There has also been identified market distortion arising as a result of an imbalance of supply and demand for private rented property in the borough which gives rise to some of the top quartile property being poorer the dilemma that confronts the authority is the choice between retaining affordable rented property on the one hand and raising standards.

5.3.4 The benefits of licensing are very likely to be offset by reductions in the supply and affordability of decent private sector housing. In light of two priorities coming into conflict, the council must strike a balance between the risks of action reducing supply of affordable private rented stock and the opposing risk from inaction of unacceptably low physical and management standards which we have seen does not even protect residents from top quartile rents being charged. The risks flowing from inaction are of low standards without

protecting a supply of affordable PRS while the risks from introducing discretionary licensing are that the supply of the poorest property archetype may diminish or become more expensive. This would support an approach that focuses discretionary licensing only on the type of property that is likely to have Category 1 hazards or be of a “very poor” quality from the tenants’ perspective. On our best evidential basis, this is flats over commercial premises.

5.3.5 Thus it is recommended that a pilot additional licensing scheme be introduced covering flats in multiple occupation above commercial premises.

6. Risk register

6.1 The risk register has been constructed to explore the risks associated with continuing existing arrangements and those arising from introducing a pilot additional licensing scheme be introduced covering private rented flats and HMOS over commercial premises. This is attached at appendix II.

6.2 In summary, there are significant risks attached to continuing the existing reliance on mandatory HMO licensing only, particularly :

- mandatory HMOs on average appear to be better quality than smaller HMOs. This can be considered an argument in favour of licensing, if the higher standards in the mandatory HMOs has been brought about by regulation.
- There are many more small HMOs than there are mandatory HMOs and therefore the priority is now for licensing of smaller HMOs where conditions are worse
- The worst conditions are found in private rented flats and HMOS over commercial premises in our secondary and tertiary shopping streets; these are seldom licensable under the mandatory scheme, so regulation is not covering the worst conditions in the borough
- Enforcement against rogue portfolio landlords controlling the worst stock in the borough can only be prosecuted on a property by property basis, whilst licensing would provide a portfolio solution of prosecuting as not a “fit and proper person”.

6.3 On the other hand, there are risks attached to the process of introducing discretionary licensing, should the project be poorly conceived and then risks flowing from the licensing scheme itself.

6.4 The key risks in a poorly executed scheme are:

- financial loss associated with project costs not being accurately budgeted for and controlled
- financial and reputational risks associated with failing to meet the requirements of the Housing Act 2004, leading to Judicial Review.

Key Inherent risks of discretionary licensing are:

- increases costs to the landlord lead to rent increases to recoup the costs
- continuing attrition of the LHA market in Lewisham forcing many lower income households out of the borough to areas from which they cannot afford to commute
- skill shortages for low income jobs that are vital to the Lewisham economy.

7.0 Financial modelling

7.1 Consultancy Campbell Tickell have recently developed an off-the-shelf financial model into which Lewisham data and assumptions have been input, where these depart from assumptions in the base model. This provides indicative information on the license fee that

we would need to levy to finance the scheme, and the cost to the general fund of essential programmes that are not legally license fee recoverable. This information is required for the preliminary evaluation of the business case and for any consultation the council decides to undertake with landlords and agents.

7.2 The results from the financial modelling of 2 out of 3 options commissioned will be tabled at the meeting on 11th March.

8.0 Consultation

8.1 Consultation and consideration of the results of it in framing proposals are a legal requirement. The Housing Act stipulates a minimum ten week period for formal consultation on the business case and detailed proposals for any scheme, prior to adoption. The outcome of the Judicial Review of Enfield's discretionary licensing scheme proposals underscores the fact that this minimum consultation period is a minimum and that whole borough schemes require more extended and extensive consultation including with stakeholders in neighbouring boroughs. Croydon has recently extended their consultation by a further ten weeks in order to include nine neighbouring boroughs.

8.2 The cost of public consultation can vary depending on whether Councils commission independent consultancy firms. Opinions on licensing vary by stakeholder group and are distinctly less favourable in the case of private landlords. This is reflected nationally, though recently the National Landlords Association has acknowledged some of the benefits of licensing in driving up standards, removing competition and limiting damage caused by a minority breed of rogue landlords.

8.3 Liverpool City Council used an independent firm for their consultation procedure and found the exercise was very successful in reducing potential query and unwillingness to engage in their proposals from landlords. They consider the £100k cost of the exercise as well spent, in light of the costs they might have incurred in defending a Judicial Review brought by landlords who opposed the scheme and might have sought to have it overturned on the grounds the consultation process was not adequate. We consider this a financially prudent approach.

8.4 This proposed scheme affects a discrete segment of the PRS in Lewisham. The form of consultation expected for whole borough licensing would be excessive. It is proposed to limit consultation on this scheme to:

- Publication of this report with all appendices on the Lewisham web-site and at Council offices, libraries and leisure centres
- An on-line survey promoted to landlords and tenants of flats over shops
- Campaign in the local media to publicise the consultation exercise
- A leaflet drop to all shops and commercial premises in the borough with a hard copy of the survey questionnaire, pointing respondents at the on line report
- A presentation to an event for our 1000+ database of private sector landlords inviting their feedback on proposals for the pilot

9 CONCLUSIONS

9.1 The picture emerging from our research suggests the worst private rented sector housing in the borough is located above commercial premises, particularly concentrated in secondary and tertiary shopping streets across the borough.

9.2 Since the physical conditions and management standards of this stock can be shown to be potentially injurious to the tenants and likely to also affect the immediate environment, it may be lawful to introduce additional licensing of this stock, based on defining this form of housing as a form of "house in multiple occupation".

9.3 The advantages of extending discretionary licensing are:

- regulation is not currently covering the worst conditions in the borough which are found in smaller HMOs and more particularly, private rented flats and HMOs over commercial property;
- licensing provides a portfolio solution for enforcement (through the not a "fit and proper person" test)

9.4 The cost of introducing discretionary licensing under the Housing Act 2004 Part 3 have been modelled, for illustrative purposes for three options, from the most extensive option of whole borough selective (and additional) licensing to the most focussed, being private rented flats and HMOs over commercial premises. The costs of running such schemes will be presented to the Housing Select Committee on 11th March 2015 for information. There is no provision in the budget to support the introduction of any of these options at this time.

9.5 There are significant risks in introducing discretionary licensing which need to be balanced against the advantages; these are:

- increases costs to the landlord lead to rent increases to recoup the costs
- continuing attrition of the LHA market in Lewisham forcing many lower income households out of the borough to areas from which they cannot afford to commute
- skill shortages for low income jobs that are vital to the Lewisham economy.

9.6 Housing Select Committee are asked to consider the content of this report and presentation of the financial implications and to decide whether or not to refer a formal business case for discretionary licensing to Mayor and Cabinet.

Appendix 1

**RESULTS OF FINANCIAL MODELLING OF 3 ALTERNATE OPTIONS FOR
DISCRETIONARY LICENSING**

To follow

Appendix 2

RISK REGISTER

OPTION	RISK	TREAT TOLERATE	MITIGATION
ADDITIONAL LIENSING FLATS OVER COMMERCIAL PREMISES	1. Poorly developed business case and/or failure in consultation process gives rise to JR, costs and reputational damage	Treat	Avoid options where robust business case not established
	2. Lack of reliable data means: - weak exception reporting capability, - increased costs or undermines effective enforcement which in turn - undermines credibility of the scheme	Treat	Identify legal basis for data sharing across council departments and partners
	3. Procuring ICT solution delayed or costs rise	Treat	Well prepared project plan and procurement process with detailed risk register
	4. Enforcement resources diverted into licensing enforcement - not focussed on the worst conditions	Treat	Ringfence additional resources for proactive enforcement against rogue landlords
	5. Costs estimates for scheme prove unreliable in light of uncertainties of the legal status of licensing	Treat	4% contingency included in the model
	6. High levels of re-inspection of properties that fail their initial license application, which may lead to requiring a larger establishment of enforcement officers	Tolerate	Close monitoring of the run rate of passes to failure to ensure consistency, transparency in the oversight of professional standards and risk assessment maintained

OPTION	RISK	TREAT TOLERATE	MITIGATION
	7. Landlords pass increased management costs onto tenants through increased rents; more properties unavailable to benefit claimants	Tolerate	Ensure private tenants aware of the terms of tenancy regarding frequency of rent rises and protection from eviction
	8. Management capacity for project overstretched	Treat	HR strategy to create necessary capacity ahead of implementation
	9. Skill shortage and recruitment failure undermines capacity: Operations not up to strength for 3 years as training scheme delivers recruits	Treat	Commission independent job market survey. Prepare local training scheme ahead of implementation
	10. Redundancy costs if scheme is terminated after five years	Tolerate	Issue fixed term contracts though this may hinder recruitment
	11. Increase in management costs to landlords passed on to tenants increasing affordability problems for low income households	Tolerate	Apply licensing only to property likely to be unacceptable standard
	12. Reduce supply of LHA housing in borough	Tolerate	Apply licensing only to property likely to be unacceptable standard
CONTINUING EXISTING ARRANGEMENTS	1. Large number of worst PRS property not routinely inspected leading to Category 1 hazards not detected, risks crystallising and health costs rising		
	2. Landlords that are "Not fit and Proper Persons" have to be enforced against on a property by property basis, wasting time and money		

OPTION	RISK	TREAT TOLERATE	MITIGATION

Appendix 3

Updated status of what other London Boroughs are doing with discretionary licensing

A variety of schemes have been or are in the process of being introduced in other London local authorities. They are as follows:

- (a) Whole borough selective:
 - Barking and Dagenham
 - Newham
 - Waltham Forest
 - Enfield, whose whole borough selective has the go-ahead but following a judicial review the whole borough additional licensing has been found to be unlawful,
 - Croydon
- (b) Whole borough additional:
 - Hounslow
 - Camden
- (c) Whole borough additional, plus local area limited selective:
 - Brent: 3 ward selective scheme
- (d) Local area only:
 - Islington: additional HMO licensing in Caledonian Road and Holloway Road wards
 - Haringey (also Article 4 Directive, removal of permitted development rights for HMO use class in Tottenham)
 - Ealing; additional in Southall Green, Southall Broadway, Greenford Broadway, South Acton, Acton Central and East Acton wards
- (e) Schemes in consultation:
 - Southwark: consulting on whole borough additional and a localised scheme for selective licensing in an area of poor quality PRS, associated with ASB.
 - Redbridge; whole borough selective and additional
- (f) Boroughs developing their thinking:
 - Hackney
 - Tower Hamlets
 - Lambeth
 - Royal Borough of Greenwich

2.8 A review of what other London boroughs have in place and what is known about those authorities that are developing their thinking indicates that there is no leading discretionary licensing model in London. There are:

- Three whole borough selective/additional schemes are in place with a further three potential schemes under consultation (assuming Enfield proceed with their appeal);
- Two whole borough additional schemes –with localised selective schemes sitting alongside it – could be joined by one more currently in consultation on this model;

- Three other boroughs whose thinking to date is (informally) against whole borough selective/additional licensing;
- Three other authorities have only introduced localised selective schemes.

Appendix 4

Summary of Legal context

The legal context was set out in the first report to Housing Select Committee in December 2014. To summarise and update on the key elements,

- The scheme, together with other measures, will help deliver Lewisham's strategic private sector housing policies;
- There is quantitative evidence of a problem related to significantly poor management of the PRS;
- Licensing, as part of an overall approach, can be expected to sustainably assist addressing management deficiencies;
- Analysis to show that no alternative powers are available that could equally address management deficiencies;
- Proper consultation with all stakeholders has been undertaken and the results considered;
- Enforcement of physical standards (e.g. removing HHSRS hazards) is not in itself a legitimate purpose of licensing, since the power is already available for a local authority under Part 1 of the Housing Act 2004;
- License conditions can only relate to management standards; for example they cannot include regulating the length or terms of tenancies, such as use of S.21, nor control rent levels or frequency of rent increases;
- License fee income can only be used for the administration of a licensing scheme – including compliance monitoring - but must not be used to finance enforcement activity;
- It is unclear legally if the licence fee can recover set-up costs and licensing authorities have taken different approaches;
- A five year scheme that has not achieved its objectives at the end of that period may need to be discontinued; and if the objectives are achieved, it may also need to be discontinued. Assessing the deliverability of a scheme is therefore business-critical, particularly for whole borough schemes.
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Judicial Reviews (JR) have been brought against councils by private landlords, including in Enfield where a challenge to proposed additional licensing scheme was upheld due to technical flaws in the extent and length of their public consultation. Enfield's appeal against the judgement is still pending.

2.1 Local authorities have discretion in how they operate a discretionary licensing scheme, within guidelines, including setting:

- License conditions over and above the mandatory scheme;
- Compliance monitoring regime;
- License fee structure;
- Length of the license;

2.2 Government guidelines issued at the time the legislation was enacted have been superseded by a key legal judgement (Hemming vs Westminster) relating to a European directive on licensing generally. Supreme Court appeal results

are expected in the near future. This introduces points of contention in what is and is not lawful. The government guidance that was followed, for example by Newham Council, is no longer considered safe on four key points that have a bearing on the financial modelling:

- Enforcement action against non-license fee holders is not a legitimate expense to set against license fee income;
- Set-up costs of a scheme may not be a legitimate expense to set against license fee income;
- Licensing schemes should not generate a financial surplus;
- When issuing a license, an authority must assure itself that there are no Category 1 or 2 Housing Health and Safety Risks to enforce, whether or not by inspecting the property.

