

MAYOR AND CABINET		
Title	Private Rented Sector: Proposed Additional Licensing Scheme for Flats over Commercial Premises	
Key Decision	Yes	Item No.
Ward	All wards	
Contributors	Executive Director of Customer Services	
Class	Part 1	Date: 15 July 2015

1. Purpose

- 1.1 In December 2014 and March 2015 Housing Select Committee received in depth information and reports on the private rented sector. The Committee explored licensing schemes that have been and are being introduced in other London boroughs. It also considered the case for introducing an “additional” licensing scheme in Lewisham in order to improve conditions in this sector and in particular to build on the work of the Rogue Landlord Team to tackle the very worst conditions.
- 1.2 Having considered a range of licensing schemes and options, Lewisham officers were asked by the Housing Select Committee to prepare a business case with detailed costings for introducing discretionary licensing of private rented flats above commercial premises (primarily over shops) across the borough.. The results were presented to Housing Select Committee at its meeting on 19 May 2015.
- 1.3 This report presents the rationale and business case for the designation of an “additional” licensing scheme within the area of the Lewisham housing authority for consideration by the Mayor.

2. Recommendation

The Mayor is recommended to:

- 2.1 Note relevant evidence gathered for Housing Select Committee which suggests the worst private rented sector housing in the borough is located in flats above commercial premises, particularly concentrated in secondary and tertiary shopping streets across the borough;
- 2.2 Note that, if it is decided to proceed with an additional licensing scheme for flats above commercial premises, there will be costs to the council of between £350k and £480k per year for a period of 5 years, i.e. a total of up to £2.4m over 5 years; and
- 2.3 To resolve that consideration of “additional” licensing in the area of the London Borough of Lewisham be approved and that the required public consultation be commenced by officers;
- 2.4 To resolve that officers develop the public consultation document containing the detailed proposals and terms of the scheme and report back on the results of the consultation to Mayor & Cabinet later this year

3. Background

3.1 Housing Select Committee considered the legal and local housing strategy context for licensing private sector landlords in December 2014 and March 2015 and explored three options:

- Whole borough selective (including additional) covering all of the borough's private rented stock an estimated 33,000 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

3.2 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.

3.3 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

3.4 The key findings considered by HSC were :

- 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

3.5 Based on the detail behind these findings, Housing Select Committee concluded that an "additional" licensing scheme for private rented accommodation over commercial premises represented the best fit with the local housing strategy and accepted there is strong evidence that increased regulation of this part of the private rented sector is required.

3.6 In May 2015 the Committee further considered the business case for discretionary licensing of the private rented sector, under the Housing Act 2004, Parts 2 and 3. This report sets out the business case.

3.7 Discretionary Licensing enables local housing authorities to extend the regulation of management of private rented housing stock in designated areas. 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.

4. Licence fees and enforcement costs

Licensing

- 4.1 The Council are entitled to recover all costs relating to the operating of a licensing scheme by way of a licensing fee but cannot recover any set-up costs relating to the scheme.
- 4.2 Officers have modelled a number of scenarios based on varying numbers of properties and officer capacity to visit and process licenses. This has provided indicative information on the level of license fee needed to finance the scheme, and the cost to the general fund of essential programmes that are not legally license fee recoverable. This information has been used as the basis of the business case and will inform any consultation the council decides to undertake with landlords and agents.
- 4.3 The tables below give examples of projected costs and income over a 5 year period. In each scenario it can be seen that there are peaks and troughs of expenditure and income but that both schemes broadly cover their costs over the period, before taking into account set up costs.

Table 1 – Fee @ £500 Percentage of lets covered 97.5%

	1 £k	2 £k	3 £k	4 £k	5 £k	Total £k
Licensing Recoverable costs						
Staffing costs	399	275	216	151	155	1,195
Other costs	167	132	116	97	100	612
Total expenditure	566	407	331	248	255	1,807
License fee income	-766	-433	-299	-152	-159	-1,810
Net licensing cost (surplus)	-200	-27	32	96	96	-3
Set up costs (Irrecoverable)	305	0	0	0	0	305
Net cost to Council	105	-27	32	96	96	302

Table 2 – Fee @ £550 Percentage of lets covered 85%

	1 £k	2 £k	3 £k	4 £k	5 £k	Total £k
Licensing Recoverable costs						
Staffing costs	376	262	206	147	151	1,142
Other costs	159	127	112	95	98	591
Total expenditure	535	389	318	242	249	1,733
License fee income	-716	-406	-281	-144	-151	-1,698
Net licensing cost (surplus)	-181	-17	39	98	98	36
Set up costs (Irrecoverable)	305	0	0	0	0	305
Net cost to Council	124	-17	38	98	98	341

- 4.4 The modelling suggests that a fee of between £500 and £550 would be required to cover costs. An illustration of what this might mean for HMO of carrying sizes is set out in appendix 1.
- 4.5 The fee is higher than the current fee for the mandatory scheme but is comparable with schemes run by other boroughs as can be seen in appendix 2.
- 4.6 The Mandatory HMO scheme which has been in place since 2006. The licence fee under that scheme was last reviewed in 2012. A review of the fee charged has reached the conclusion that it does not fully recover the costs of managing the scheme. This will be rectified by setting the fee at the same level as the additional licensing scheme.
- 4.7 The recommendation is therefore to raise the mandatory license fee to cover the Council's costs of administering the scheme and bring it in line with other London boroughs. This will be referred to the Supplementary Licensing Committee. There will also be a recommendation to match the fee proposed for the "additional" scheme if a decision is taken by M&C in December 2015 for the scheme to proceed, so the two schemes operate on a level playing field.
- 4.8 There is no specific statutory requirement to consult on the level at which the Mandatory license fee is set. However it is proposed that existing license fee holders be formally consulted and their views considered prior to taking a final decision.

Enforcement

- 4.9 The cost of enforcement against any unlicensed landlords cannot be financed from license fee income. (Hemming v Westminster Council (Supreme Court 29th April 2015 – although the case involved licensing of sex establishments, the principles here are

applied.) The financial modelling have undertaken is consistent with case law to date on setting license fees.

- 4.10 Based on the criteria used in Tables 1 and 2, the table below shows the estimated cost to the Council of enforcement action arising from the scheme:

	Year					
	1	2	3	4	5	Total
	£k	£k	£k	£k	£k	£k
Enforcement costs (Irrecoverable)						
Staffing Costs	107	501	713	69	71	1,461
Other Costs	38	224	324	19	20	625
Total Enforcement costs	147	726	1,038	89	91	2,091

5. Consultation

- 5.1 Consultation and consideration of the results of it in framing proposals are a legal requirement. (s. 56(3) Housing Act 2004.) “Before making a designation, the authority must (a) take reasonable steps to consult persons who are likely to be affected by the designation; and (b) consider any representations made in accordance with the consultation and not withdrawn.”

On 30th March 2010, the Secretary of State issued a general approval (for this type of licensing designation, amongst others) to all local housing authorities in England, conditional upon the consultation under s.56(3) for “additional” licensing schemes to last for not less than 10 weeks. The outcome of the Judicial Review of Enfield’s discretionary licensing scheme proposals underscores the fact that the *minimum* consultation period (of 10 weeks) in fact may require more extended and extensive consultation,(R v LB Enfield (2014) EWHC 4173 (Admin) including with stakeholders in neighbouring boroughs. Croydon has recently extended their consultation by a further ten weeks in order to include nine neighbouring boroughs.

- 5.2 The cost of public consultation can vary depending on whether Councils commission independent consultancy firms.
- 5.3 Local authorities elsewhere have committed substantial budgets to external consultants to undertake statutory consultation, particularly where whole borough selective licensing schemes have been introduced. The proposed ‘additional’ licensing scheme is much less extensive and affects only a discrete segment of the private rented sector in Lewisham. A consultation exercise is being worked up to an indicative budget of £25k,
- 5.4 This proposed scheme will be run in-house, maximising the use of existing forums and channels and using our interactive ‘Survey Monkey facility. Costs will be incurred in placing advertisements in local media, producing printed material and postage (including business return envelopes) for those respondents who do not want to respond on line. 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
 - on-line survey promoted to landlords and tenants of flats over shops
 - campaign in the local media to publicise the consultation exercise
 - 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

- presentation to an event for our 1000+ database of private sector landlords inviting their feedback on proposals for the pilot

6. Financial Implications

- 6.1 The estimated financial impact of the proposed scheme is in the region of £2.4m over 5 years. This is made up of £0.3m set up costs for the additional licensing scheme and £2.1m for subsequent enforcement action, as illustrated in section 4 . Neither set of costs are recoverable through the licence fee whereas the cost of the operation of the licensing scheme is fully recoverable.
- 6.2 This report seeks Mayor and Cabinet approval to consult on the implementation of the scheme. The financial implications of agreeing to the recommendations is limited to the costs of consultations, currently estimated to be £25k. This can be met from existing resources within the Customer Services directorate budget.
- 6.3 If, after consultation, it is agreed to implement the scheme it should be noted that no specific budget provision currently exists. Funding for the scheme will need to be met from growth, which reduces resources for other services, or by cutting budgets for existing services.

7. Legal Implications

- 7.1 Section 56 (1) of the Housing Act 2004 (“HA 2004”) provides that a “a local housing authority may designate either (a) the area of their district, or (b) an area in their district, as subject to additional licensing in relation to a description of HMO’s specified in the designation, if the requirements of this section are met.”
- 7.2 The requirements are as follows:-
- “The authority must consider that a significant proportion of the HMO’s of that description [namely, ‘Private Rented Sector Flats over Commercial Premises’] in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMO’s or for members of the public. (s. 56(2))”
 - “In forming an opinion... [for the purposes of s. 56(2), the authority must have regard to any information regarding the extent to which any codes of practice approved under s. 233 have been complied with by persons managing HMO’s in the area in question.”
 - “Before making a designation the authority must (a) take reasonable steps to consult persons who are likely to be affected by the designation; and (b) consider any representations made in accordance with the consultation and not withdrawn.” (See further consideration of this aspect within paragraph 5.1 above.)
- 7.3 When exercising their power to make a designation under s. 56 HA 2004, “the authority must ensure that any exercise of the power is consistent with the authority’s overall housing strategy.” (s. 57(2)) “The authority must also seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector, both (a) as regards combining licensing under ... [Part 2 HA 2004] with other courses of action available to them, and (b) as regards combining such licensing with measures taken by other persons.” (s. 57(3))

- 7.4 “The authority must not make a particular designation under section 56 unless (a) they have considered whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question, and (b) they consider that making the designation will significantly assist them to deal with the problem or problems (whether or not they take any other course of action as well.)”
- 7.5 Designation of an area for “additional” licensing, falls within a description of designations in relation to which the Secretary of State on 30th March 2010 has issued a general approval to all local housing authorities in England. That general approval is however conditional upon the consultation carried out under s.56(3) lasting for not less than 10 weeks. (Refer also to paragraph 5.1 above for more details.)
- 7.6. “By virtue of a general approval, a designation does not need to be confirmed before it comes into force, designation comes into force on the date specified for this purpose in the designation. (s. 58(6)) “That date must be no earlier than three months after the date on which the designation is made”. (s. 58(8). Then, as soon as the designation is “made”, the authority must publish a notice in the prescribed manner, in accordance with the provisions of s. 59.
- 7.7. Given the context of this, the Council’s statutory obligations pursuant to the 2010 Equality Act are relevant when creating and implementing this policy.
- 7.8 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.9 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 7.10 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 7.11 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>
- 7.12 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

7.13 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

8. Crime And Disorder Implications

8.1 There are no crime and disorder implications

9. Equalities Implications

9.1 An Equalities Impact assessment will be prepared alongside the development of a detailed scheme.

8. Conclusions

8.1 A viable and costed business case for additional licensing has been worked up. The next steps, if accepted are to work up a detailed scheme and to undertake a consultation with all affected parties. Feedback from the consultation would be considered by the Mayor later this year. If approved, there would be costs to the council of up to £350 – 480k per year for 5 years ie a maximum of £2.4m.

9. Background Documents And Report Author

9.1 There are no background documents to this report.

9.2 If you require any further information about this report, please contact Madeleine Jeffery on 020 8314 9484.

Appendix 1

PROPOSED

Illustration of fee scale for a 5 year license for HMOs of varying sizes on first application – current and proposed

No. households	Current full fee	Current discounted fee	Proposed full fee	Proposed discounted fee
2	£360	£288	£1,000	£800
3	£540	£432	£1,500	£1,200
4	£720	£576	£2,000	£1,600
5	£900	£720	£2,500	£2,000
6	£1,080	£864	£3,000	£2,400
7	£1,260	£1,008	£3,500	£2,800
8	£1,440	£1,152	£4,000	£3,200
9	£1,620	£1,296	£4,500	£3,600
10+	£1,800	£1,440	£5,000	£4,000

Registered charities will receive a further 50% discount on the fees listed above
If you have any queries regarding the calculation of the fee, please do not hesitate to contact:

Appendix 2

HMO Licensing Fees for London Boroughs

Borough	Cost of HMO Licence
Brent	£540
Ealing	£994 + £30 per habitable room
Greenwich	£140 per letting
Hackney	£500 per letting
Hammersmith and Fulham	£1,060 + £16 per habitable room
Hounslow	£1,359.98 per building
Kensington and Chelsea	Up to £1,400 for average sized property
Lambeth	£250 per room
Lewisham	£180 per letting
Newham	£500 per letting
Redbridge	£670 up to 5 persons, £720 for 6 – 10 persons
Southwark	£180 per bedroom
Waltham Forest	£930 per building up to 6 units

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.