

HOUSING SELECT COMMITTEE			
Title	Borough-wide Licensing: Consultation responses		
Key decision	Yes	Item no	8
Wards	All		
Contributors	Executive Director of Housing, Regeneration and Environment Head of Law		
Class	Part 1	18 Sept 2019	

1. **Purpose of report**

- 1.1. This report provides the response to a consultation on introducing two new private sector housing licensing schemes: an application for a borough-wide selective licensing scheme to submit to the Secretary of State (SoS) at the end of this calendar year and a new additional borough-wide licensing scheme (which does not require Secretary of State approval). The consultation responses were broadly positive towards both schemes.
- 1.2. This report informs Committee about the proposals for introducing a new additional licensing scheme to include all Houses in Multiple Occupation (HMOs) across the borough and to applying to the Secretary of State for approval to introduce a Selective Licensing scheme. The report contains some specific information about the proposals for introducing the new licensing schemes. However, these proposals are still being amended following responses to the consultation. The final plans will be submitted to Mayor and Cabinet.
- 1.3. This report:
 - a) summarises the consultation conducted on the licensing proposals and the responses received;
 - b) outlines the proposals for both new licensing schemes, including the proposed license fee and license conditions;
 - c) provides an initial summary of how both the selective and new additional schemes will be implemented, subject to further changes as analysis of the consultation results continues.

2. **Recommendations**

- 2.1 Housing Select Committee are asked to:
 - a) note the statutory consultation undertaken on the proposed Additional Licensing Scheme and the proposed Selective Licensing Scheme as required by Section 56 (3) of the Housing Act 2004, and the consultation responses received and officer comments provided;
 - b) note the summary of the proposal for an additional licensing scheme for all Houses in Multiple Occupation in the whole of the Council's area

- c) note the summary of the proposal to apply to the Secretary of State for a Selective Licensing Scheme to apply to all privately rented single occupancy dwellings in the Council's area.

3. Background

- 3.1. The housing landscape has changed substantially in recent years and continues to do so. Greater numbers of families and single people are now relying on the private rented sector to provide a home, and not just in the short term. This is consistent with the trend across London where the growth in private renting continues.
- 3.2. Between the 2001 census and 2016, the Greater London Authority (GLA) estimates that the number of households in social housing in Lewisham decreased by 14%, the number of owner occupiers increased by 9% and the number of private renters increased by 98%.
- 3.3. This rapid increase in the private rented sector is due in part to the unaffordability of home ownership in Lewisham as a result of rapidly increasing house prices. House prices in Lewisham increased by 45% between January 2014 and January 2019, with the average house price now almost £420,000.
- 3.4. In addition, there are a substantial number of households on the housing waiting list (9,694 households as of January 2019) and a decreasing number of lets available. This combined with the aforementioned increase in the cost of housing means that Lewisham residents are more reliant on the private rented sector than ever before.
- 3.5. The stock condition of the private rented sector is also shown to be below that of other sectors. The 2017/18 English Household Survey found that privately rented dwellings were more likely to be older with 35% built before 1919, with a high proportion of converted flats and the highest proportion of non-decent homes¹. Housing Health and Safety Rating System (HHSRS) hazards are more prevalent in the private rented sector and the sector has the lowest proportion of homes with central heating².
- 3.6. The Chartered Institute of Housing and the Chartered Institute of Environmental Health carried out joint research of 20 local authorities with selective licensing schemes. It found 'numerous examples of inspections leading to very high numbers of serious hazards and defects being identified and addressed in licensed areas'³. Licensing is not noted for being a 'quick win'⁴ but has also led to a reduction in anti-social behaviour. For example, one area of Doncaster saw a 'reduction of 35% in noise complaints, 44% in nuisance complaints and a 20% fall in reports of unkempt properties. Fly tipping had also reduced'⁵.
- 3.7. The Council's Corporate Strategy 2018-2022 made a commitment to seek to deliver a borough-wide landlord licensing scheme for privately rented homes. Last April, Mayor and Cabinet agreed to conduct a consultation on proposals to introduce new licensing schemes. This report details the responses from the consultation, and proposals to introduce two new licensing schemes.

4. Policy context

- 4.1. The contents of this report are consistent with the Council's policy framework. It supports the following priorities of the Council's [Corporate Strategy](#) 2018-2022:
- Tackling the housing crisis – Everyone has a decent home that is secure and affordable.

¹ Ministry of Housing, Communities and Local Government, (2019), English Household Survey 2017/18, accessed via <https://www.gov.uk/government/statistics/english-housing-survey-2017-to-2018-headline-report> , pages 25-9

² Ibid, pages 30 and 35

³ Sandoul, T. and Pipe, D. (2019), A license to rent, Chartered Institute of Environmental Health and Chartered Institute of Housing, page 5

⁴ Ibid, page 10

⁵ Ibid, page 12

- Building safer communities – Every resident feels safe and secure living here as we work together towards a borough free from the fear of crime.
- 4.2. This report specifically addresses the following commitment in the Council's Corporate Strategy: We will seek to deliver a full borough-wide landlord license to crack down on rogue landlords.
- 4.3. The work of the Private Sector Housing Agency (PSHA) will also help meet the Council's [Housing Strategy 2015-2020](#) in which the Council commits to the following key objectives:
- Helping residents at times of severe and urgent housing need.
 - Greater security and quality for private renters.
 - Promoting health and wellbeing by improving our residents' homes.
- 4.4. Further details of how the selective licensing scheme meets the licensing conditions of being consistent with the Council's Housing Strategy and seeks to adopt a co-ordinated approach in dealing with homelessness, anti-social behaviour and empty homes are set out in Section 9 of the April Mayor and Cabinet [report](#) on Borough-wide licensing consultation.

5. Existing licensing schemes in Lewisham

- 5.1. The Council currently operates the following licensing schemes:
- Mandatory scheme relating to all Houses of Multiple Occupation (HMO) where five people across two or more households (families) live in the same property and share facilities such as a kitchen or bathroom. This is a national scheme.
 - Additional licensing relating to HMOs above commercial premises where there are at least three people living in two or more households, or poorly converted privately rented self-contained flats.
- 5.2. The additional licensing scheme has been operating since February 2017 and is Lewisham specific. The reasons for adding an additional licensing scheme in Lewisham was because available data highlighted that poor standards, conditions and hazards had been found in shared accommodation and particularly within flats over commercial properties.
- 5.3. Below are tables to show the performance to date:
Table 1 shows the progress made in recent years in respect to HMO licensing in the borough. Between 2013 and 2017, annual increases in licensed properties ranged from 0 to 18%. Between 2017 and 2018 there was a much larger increase of 58%. Between 2018 and 2019 there was an increase of 30% with an additional 186 applications paid and awaiting further information.

Date	Total number of licenced properties	Mandatory or additional
31 st March 2013	169	Mandatory
31 st March 2014	168	Mandatory
31 st March 2015	185	Mandatory
31 st March 2016	196	Mandatory
31 st March 2017	231	Mandatory & Additional
31 st March 2018	366	Mandatory & Additional
31 st March 2019	477	Mandatory & Additional

Table 2 shows the current number of licensed properties in the 19/20 financial year. This table highlights that the current number of licensed properties in the borough has increased by 114 properties since the start of the 19/20 financial year, an increase of nearly 24%. There are a further 187 applications which are being processed and will be formalised in this

financial year. This will bring the total of new licences for the current financial year to 779 - an increase from the previous financial year of 63%.

	Numbers
Mandatory licensed properties	479
Additional licensed properties	112
Total licensed properties (mandatory and additional)	591
Properties paid and awaiting documentation	187

- 5.4. Existing licensing schemes have allowed the Council to address problems with property standards in Lewisham. Since mandatory licensing was introduced in 2006, licensing and enforcement work has developed considerably and more issues are being addressed through the licensing process. This is evidenced further by the fact that since the introduction of additional licensing in 2017 and the extension of mandatory licensing in 2018, the number of disrepair complaints has fallen by 26%, while the number of HMO complaints rose by 190%⁶. This shift towards addressing issues through licensing work gives the Council significantly more power to address issues in these properties than if properties were not licensed.
- 5.5. However, the existing licensing schemes have limitations as not all landlords voluntarily license their properties. Significant Council resources are required to find properties and ensure relevant licenses are applied for. There has been evidence of some landlords reducing occupancy level below licensing thresholds by illegally evicting tenants or claiming that tenants are part of the same household when in fact they are not. When this happens it prevents the Council from being able to use licensing to regulate tenancy management and housing conditions.
- 5.6. A borough-wide licensing scheme would address these issues as licensable properties would be easier to identify and there would be significantly less scope for landlords to persuade and/or force tenants to leave tenancies to bring homes under licensing thresholds. It would also mean that the Council had more influence over standards and practices for all HMOs as opposed to just those covered by existing schemes.

6. Licensing schemes put to consultation

- 6.1. Extensive data analysis was carried out to develop an informed map of Lewisham's private rental sector and to establish whether there was a need to introduce new licensing schemes. This data was presented to Housing Select Committee in March 2019. As a result of the data analysis, proposals were formed to introduce two new licensing schemes.
- 6.2. A consultation was carried out on two separate proposals to introduce the new licensing schemes. The two new schemes and the mandatory licensing would work together to ensure that all rented properties in the borough would require a license.
- 6.3. The first proposal was to introduce a new additional licensing scheme that would apply to all HMOs in the borough. A 'General Approval' from the Secretary of State is in place for introducing additional licensing schemes as per the 2015 General Approval⁷. This means it is not necessary to apply for approval to the SoS for this scheme and it can be approved and implemented by the local authority following public consultation.

⁶ Using figures between 2016 (the year prior to additional licensing) and 2018 (latest annual figures).

⁷ Ministry of Housing, Communities and Local Government, The Housing Act 2004: Licensing of houses in multiple occupation and selective licensing of other residential accommodation (England) General Approval 2015, via https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418588/General_consent_fin_al_2_.pdf

- 6.4. The second proposal was to introduce a selective licensing scheme to apply to all single occupancy privately rented dwellings in the borough. Approval from the SoS is required for this type of scheme where it covers more than 20% of the borough or more than 20% of the private rented properties in the borough. Approval is therefore needed for this borough-wide selective licensing scheme.
- 6.5. Both schemes contain a number of proposals:
- A commitment to inspect every property that has received a license over the course of the 5 year scheme starting with the highest risk properties.
 - A risk rating system would be used to identify these highest risk properties.
 - Best practice guides, specific advice on dealing with issues affecting the private rented sector and landlord forums were also part of the proposals.
 - Draft licensing conditions were published as part of the consultation. The requirements of the licence conditions must sit alongside existing legal obligations covered by the HHSRS or other statutory requirements without duplicating these requirements.
 - Draft license fees were also included in the consultation materials.
- 6.6. More information about both proposals that have been consulted on can be found in the [borough-wide licensing consultation Mayor and Cabinet report](#) from April, the [consultation guide](#) and the full [consultation evidence base](#).

7. Consultation

- 7.1. Section 80 (9) of the Housing Act 2004 states that when considering designating an area the local housing authority must:
- take reasonable steps to consult persons who are likely to be affected by the designation, and,
 - consider any representations made in accordance with the consultation.
- 7.2. A public consultation considering both the additional and selective licensing schemes ran for just over 12 weeks, from 28th May to 21st August 2019. The consultation was hosted on Citizen's Space, Lewisham Council's online consultation portal and asked respondents to answer a series of questions online.
- 7.3. The consultation was promoted widely including:
- Social Media:** promotions via the Lewisham Council website and social media (Facebook, Twitter and Instagram); sponsored posts on Facebook; emails sent direct to residents and landlords. In addition, a banner was on the South London Press & Mercury website, a feature added in Housing staff email signatures and the consultation was promoted in the Council's Homesearch newsletters.
- Printed materials:** this included flyers, posters, coasters, roll-up banners and t-shirts worn by councillors and members of staff; advertising was placed on billboards and buses in and outside of the borough; adverts in Lewisham Life magazine delivered to every Lewisham household; flyers distributed at local libraries, children's centres, Youth First centres, cafes, leisure centres and roll-up banners and flyers were displayed at the customer service desk at Laurence House.
- Media coverage:** Coverage of the consultation was included in the following: News Shopper, London Property Licensing, The Negotiator, National Landlords Association, The Landlord Law Blog, Ladywell Live, Lewisham Homes, Residential Landlord Association, PainSmith Solicitors, Renters' Rights London, Love Catford, Lewisham/Blackheath Knoll Residents and Boyne Road Neighbourhood Watch resident groups, Lewisham Ledger, GetRentr, Voluntary Action Lewisham, Optivo and Phoenix Community Housing newsletters.

Events: consultation information events were held in libraries, parks, Lewisham Shopping Centre, busy train stations, markets, local assemblies and at festivals across the borough. In addition, a presentation was delivered at an National Landlord Association event and the Safer Lewisham Partnership, and flyers were distributed at the Interfaith Forum.

Support from Partners: Throughout the consultation period, support was received from the Mayor, MPs, councillors, housing associations, local businesses, charities and tenants' and landlords' organisations. In addition, flyers were displayed at Lewisham Hospital, Lewisham Foodbank, Lewisham College, Lewisham Homes reception and residents' events.

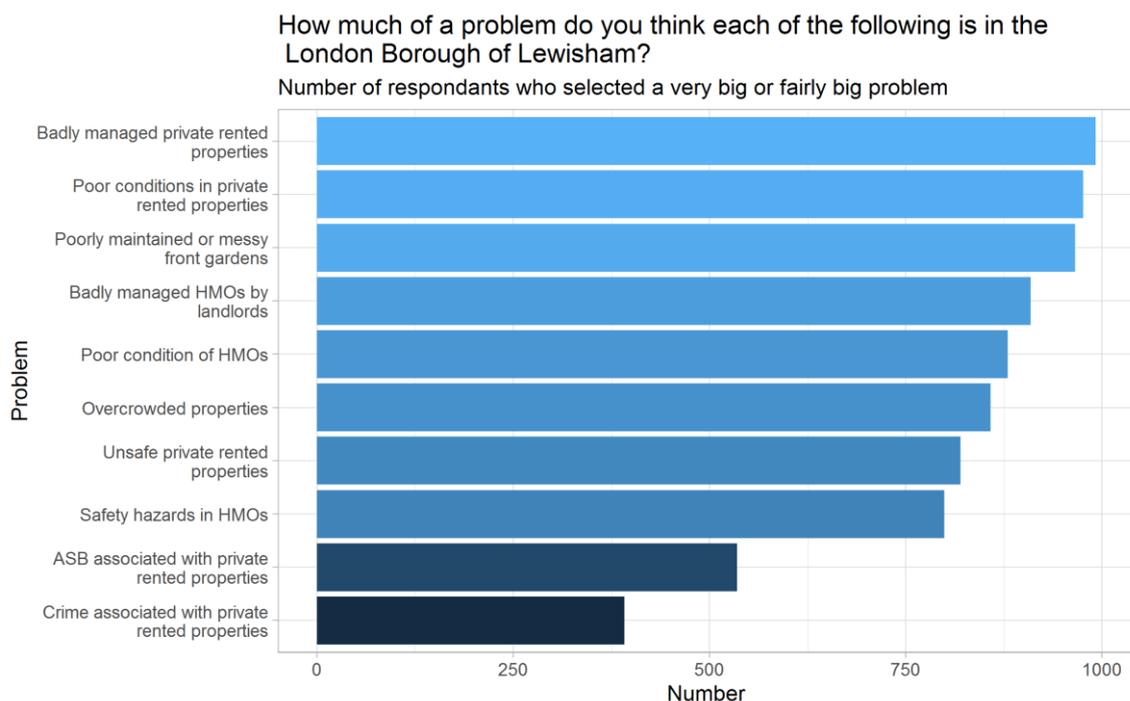
- 7.4. Paper consultations and translations in other languages were available upon request. Those whose first language was not English and who wanted to input their views were able to send an email with their details and their chosen language. We could then contact them and collect their views in their first language. This was communicated to residents throughout the consultation. In addition, due to the large Turkish-speaking population in the area, a flyer about the consultation was printed in Turkish and distributed to Turkish shops, meeting points and cafes in the area.
- 7.5. In order to reach out to all residents of Lewisham to give them the chance to have their say in the consultation, specific promotion was targeted towards particular groups including older residents, disabled people, BAME and LGBTQ+ communities, young people and residents from various faiths. Following engagement with various places of worship across the borough, several churches shared information about the consultation to their members via email and displaying flyers, as well as flyers and face-to-face discussion with residents from a local mosque.
- 7.6. Early in the consultation period it was noted there were comparably limited responses from the following groups – residents in Downham, the BAME communities and people between the ages of 21 and 25. The following efforts were then made to reach out to these communities:
 - The following organisations were approached: Voluntary Action Lewisham (who included our consultation in their e-newsletter, sent to 850 people); Stephen Lawrence Charitable Trust; Lewisham BME Network; Community Connections; Lewisham Indochinese Community Centre; Goldsmiths University and University of Greenwich.
 - 77 places of worship from Christian, Islamic, Hindu and Judaist religions and Buddhist belief system were approached. These included: Catford Synagogue, Long Chen Foundation, London Sivan Koli, Ahmadiyya Muslim Community UK, Lewisham Islamic Centre as well as a number of Christian churches. These included: Forest Hill Christadelphians (who included our consultation in their emails and displayed the flyer on their notice board); Burnt Ash Methodist Church (who displayed our flyers); Olivet Deptford Baptist Church; Mountain of Fire and Miracles Ministries Deptford; Deptford Methodist Church and Mission; New Testament Church of God; The Bear Church; St Nicholas C Of E Church; Catholic Church of Our Lady of The Assumption; Deptford Salvation Army Centre; Elim Pentecostal Church Brockley; Emmanuel Church; and Kings Church Catford.

8. Consultation responses

- 8.1. 1,831 people responded to the consultation and a full analysis is being carried out. Appendix 1 attached contains initial analysis of the data captured. Within each consultation response the respondent is able to provide free text feedback on eight occasions, the free text information is being analysed with over 6,000 written responses.
- 8.2. In comparison to consultations by 21 other boroughs this is significantly higher than the average response of 910 and it is the fifth highest response overall (Newham, Waltham

Forest and Croydon received 4,080, 2,400 and 2,309 respectively, although these boroughs were renewing their schemes and so had established data on their landlords and tenants; Hammersmith and Fulham received 2,018).

- 8.3. The number of responses to the consultation has been very positive, but has also meant it is taking longer to analyse the responses, particularly the free text comments provided. As such, the consultation responses are still being analysed. This section provides some key statistics and commentary on the results.
- 8.4. The respondents consisted of the following groups:
- 88% (1,619) of respondents live in Lewisham borough;
 - 26% (473) were private housing tenants;
 - 22% (411) were private landlords of one or more Lewisham properties;
 - 21% (88) of the landlords who responded were HMO landlords.
- 8.5. Analysis of the responses shows there was general support for the boroughs proposals to extend additional HMO licensing and introduce borough-wide selective licensing.
- 53% (962) of respondents support proposals to introduce selective licensing to cover all privately rented properties across the borough whilst 30% (558) do not.
 - 10% (43) of landlords support the proposal; 75% do not.
 - 65% (919) of respondents who are not landlords support the proposal; 18% (251) do not.
 - 61% (1,111) of respondents support proposals to extend HMO licensing to cover all HMOs across the borough; 21% (379) do not. Of these:
 - 26% (108) of landlords support the proposal; 47% (195) of landlords do not.
 - 71% (1003) of respondents who are not landlords support the proposal; 13% (184) do not.
- 8.6. Whilst many respondents thought the private rented sector experiences problems with issues such as poor conditions and badly managed properties, far fewer thought ASB and crime were associated with privately rented properties.



- 8.7. 50% of all respondents found the license conditions to be clear and understandable, compared with 18% who did not. 37% of landlords and 55% of tenants found them to be clear and understandable.
- 8.8. There were a range of responses to the fee levels. The vast majority of respondents believe the proposed early bird discount, the HMO fees based on lettable units and the reduction for accredited landlords to be fair.
- 8.9. On the proposed fees for the HMO scheme:
 - 43% found the proposed fees 'about right' or 'too low'
 - 32% found the fees 'too high' or 'the Council should not be charging at all'
 - 25% answered 'don't know'.

For the Selective Scheme:

- 39% said 'about right' or 'too low'
 - 40% answered 'too high' or 'the Council should not be charging at all'
 - 21% said 'don't know'
- 8.10. Whilst many respondents think the selective licensing fee proposal is fair, there were a notable number (29%) who think basing the selective licensing fees on council tax bands is not fair. The Council have therefore reviewed the comments received and amended this position. Proposals are being developed to charge a fixed fee for all selective licenses instead. Further details on this point are available at section 11.
 - 8.11. Separate responses have been received from the National Landlords Association, the Residential Landlords Association and Safeagent, as well as individual residents. These letters are being analysed as part of the consultation and changes to certain elements of both schemes are being considered as a result.

9. Key principles of the new schemes

Key Principles of both Schemes

- 9.1. Landlords will be supported with best practice guides, landlord forums and advice on dealing with issues affecting the private rented sector. This work will continue after the scheme has ended, providing a lasting legacy beyond the period of the scheme.
- 9.2. Landlords will also benefit from discounts related to early bird application and membership to an accredited landlord scheme. Other discounts are being considered once full analysis of the consultation results has been completed. An element of discretion around discounts is likely to be built into the scheme for certain organisations such as charities that operate low risk properties. Following representations made during the consultation, analysis is now being done to see if a discount should be offered to landlords that use an accredited letting agent.
- 9.3. A key focus of the schemes will be to support honest landlords through robust, informed and targeted enforcement, and protect residents from unscrupulous landlords and criminal activity.
- 9.4. Income will be monitored to ensure any potential surplus is utilised for the improvement of the private rented sector in line with any legal guidance on the administration of the scheme.
- 9.5. The project will aim to introduce a high level of apprentices into the service at the initial coordinating and trainee officer level to help support the sector by maintaining the level of trained staff in the future.

10. The new Additional HMO scheme

- 10.1. The proposed extension to the Additional HMO Scheme will make it a requirement for all privately rented HMOs in Lewisham to be licensed by the Council. An HMO is defined in Section 254 of the Housing Act 2004.
- 10.2. The current Additional HMO Scheme will be subsumed by the extension to Additional Licensing. The national Mandatory Scheme will continue to run alongside the Additional Scheme.
- 10.3. 100% of HMO properties will be inspected before a licence is issued.

11. The Selective Scheme

- 11.1 The proposed Selective Licensing Scheme will make it a requirement for all privately rented accommodation within an area to be licensed by the Council.
- 11.2 All identified high risk properties will receive an inspection during the five year licence period. High risk properties will be identified from applications using a risk matrix and other relevant data and will be inspected prior to being issued a licence.
- 11.3 All other properties will be inspected based on the level of risk they pose or the level of support needed by the landlord or tenant. The scheme aims to visit all properties within the 5 years period.
- 11.4 It is proposed that the application to the Secretary of State incorporates both a request to licence the borough as a whole or options to approve a selective scheme in specific areas of the borough. This will be done to maximise chances of a successful application, as it will allow the SoS to agree an alternative if they consider that the evidence does not meet the statutory tests to agree a selective scheme for the entire borough. The Ministry of Housing, Communities and Local Government (MHCLG) have provided guidance on the best way to pursue a borough-wide selective licensing scheme and this incorporates their advice.
- 11.5 The strongest links between the conditions for licensing and the private rented sector have been found in wards indicated as designation 1 below. Designation 2 contains those wards where there are significant relationships with migration, property conditions and deprivation and above average crime. Designation 3 contains wards with multiple levels of ASB and significant relationships with migration, property conditions and deprivation. Designation 4 has significant relationships with migration, property conditions and deprivation and less evidence of ASB. The evidence for these links has been provided in section 8 of [the April Mayor and Cabinet report](#) as well as the evidence base for the consultation.
- 11.6 The ward designations are therefore proposed as follows:

Ward	Antisocial behaviour	Deprivation	Crime	Migration	Property conditions	Designation
Brockley	✓	✓	✓	✓	✓	1
Lewisham Central	✓	✓	✓	✓	✓	1
New Cross	✓	✓	✓	✓	✓	1
Rushey Green	✓	✓	✓	✓	✓	1
Blackheath		✓	✓	✓	✓	2
Evelyn		✓	✓	✓	✓	2
Bellingham	✓	✓		✓	✓	3
Crofton Park	✓	✓		✓	✓	3
Downham	✓	✓		✓	✓	3

Ladywell	✓	✓	✓	✓	3
Perry Vale	✓	✓	✓	✓	3
Sydenham	✓	✓	✓	✓	3
Telegraph Hill	✓	✓	✓	✓	3
Whitefoot	✓	✓	✓	✓	3
Catford South		✓	✓	✓	4
Forest Hill		✓	✓	✓	4
Grove Park		✓	✓	✓	4
Lee Green		✓	✓	✓	4

12. Licensing Conditions

- 12.1. Schedule 4 of the Housing Act 2004 sets out the mandatory conditions for Selective and HMO Licences which must be included in any licences issued under Part 2 (HMOs) or Part 3 (selective) of the Housing Act 2004. At the same time, section 67 of the Housing Act 2004 allows local authorities to include conditions that the authority considers appropriate for regulating the management, use or occupation of the property for both additional and selective licensing schemes.
- 12.2. The requirements of the licence conditions for the Additional Scheme for HMOs will sit alongside the existing legal obligations covered by the HHSRS or other statutory requirements. The proposed licensing conditions were included in the consultation documents. It should be noted that these may change depending on the final analysis of consultation responses.
- 12.3. The licence conditions for the Selective scheme are being finalised following feedback from the consultation, and advice from counsel. The conditions has been devised with the aim of tackling problems identified as relating to private sector accommodation in the borough. The conditions have been produced in collaboration with other departments in the council and partner organisations.

13. Fees for new Additional Scheme

- 13.1. Work continues on fee levels and further changes may be made once the consultation feedback has been analysed in full.
- 13.2. Section 63 (3) of the Housing Act 2004 allows the Local Authority to require an application for an HMO licence be accompanied by a fee, fixed by the authority, to cover the cost of administering and enforcing the scheme.
- 13.3. The fees for Mandatory and Additional licence applications have been calculated together, taking into account all costs associated with administering and enforcing the scheme.
- 13.4. Landlords will also benefit from discounts related to early bird application and membership to an accredited landlord scheme. Other discounts are being considered once full analysis of the consultation results has been completed. An element of discretion around discounts is likely to be built into the scheme for certain organisations such as charities that operate low risk properties. Following representations made during the consultation, analysis is now being done to see if a discount should be offered to landlords that use an accredited letting agent.
- 13.5. It is proposed that the fee for an Additional or Mandatory HMO licence remain £500 per lettable unit to cover the cost of administering and enforcing the scheme for five years. This figure is based on the Council's experience in operating its previous licensing schemes.

- 13.6. The fees have been scrutinised by officers across the key services and compared with fees charged by other boroughs with additional licensing schemes, although it is difficult to compare like for like:

Council	HMO Fee
Croydon	£250 per room
Southwark	£262.65 per room
Tower Hamlets	Up to £660 flat fee
Brent	£840 flat fee
Hackney	£950 flat fee
Ealing	£1,100 + £30 per room
Newham	£1,250 flat fee
Hammersmith and Fulham	£1,400 (on average)
Havering	Up to £1,788
Redbridge	Up to £1,864
Lewisham (proposed)	£500 per lettable unit (which is an average of around £1650 per property)

- 13.7. The fee will remain capped at a maximum of £5,000 per application.
- 13.8. Following the Gaskin vs Richmond case, it has been clarified that the fee must be charged in two parts; an administration fee, chargeable as part of the application, and an enforcement fee, chargeable on licence issue. The split between administration costs and enforcement costs is being calculated, taking into account all costs associated with each element.

14. Fees for Selective Scheme

- 14.1. Section 87 (3) of the Housing Act 2004 allows the Local Authority to require an application for a selective licence be accompanied by a fee, fixed by the authority, to cover the cost of administering and enforcing the scheme.
- 14.2. The fee for a borough-wide selective scheme was been calculated after taking into account all costs associated with running the scheme. Work continues on the fee levels and further changes may be made once the consultation feedback has been analysed full.
- 14.3. Objections were raised during the consultation by both landlord groups and individuals to proposals to base the Selective License fees on Council tax bandings. 523 responses were received during the consultation where the respondent felt that basing the fee on Council Tax banding was unfair. 78 comments were made about the proposal to base fees on Council Tax bands. Respondents felt that the proposal relied on an outdated system, is not related to rental income, and is unreasonable. As a result of these consultation responses, and on further analysis about the implementation of the scheme, applying a flat fee for all Selective Licence applications prior to discounts being applied is now being considered.
- 14.4. A 20% discount will be applied to applications made during the 'early bird' period, before the designation comes into force, to encourage early applications, this will also be available to renewal applications where a previous licence expires. Following representations made during the consultation period, a different 20% discount will now also be offered where the applicant is a member of a recognised landlord accreditation scheme, or their agent is a member of an accredited scheme. This is to encourage to encourage professionalism and development in the sector. The maximum discount per application will be capped at 20%.
- 14.5. The proposed fee per application for a selective licence without discounts has yet to be finalised pending full consultation analysis but is expected to be between £600 and £650. The fee will be set to completely cover the cost of running the selective scheme.

14.6. The proposed fee has been scrutinised by officers across the key services and compared with fees charged by other boroughs with selective licensing schemes:

Council	Selective Fee
Brent	£540
Croydon	£750
Ealing	£500
Hackney	£500
Hammersmith and Fulham	£500
Havering	£550
Newham	£1,050
Redbridge	£500
Southwark	£500
Tower Hamlets	£520
Lewisham (proposed)	£600-£650

14.7. Following the Gaskin vs Richmond case, it has been clarified that the fee must be charged in two parts; an administration fee, chargeable as part of the application, and an enforcement fee, chargeable on issuing the licence. The split between administration costs and enforcement costs is being calculated, taking into account all costs associated with each element.

15. Building a new licensing team

15.1 The data analysis indicates that there are around 32,000 private rented properties across the borough. This is broken down to around 26,000 single occupancy properties and 6,000 houses of multiple occupation. These figures have been used to estimate the resources required to run a borough-wide scheme, including staff. The resources required have been calculated separately for the proposed Selective scheme, and Mandatory and Additional HMO scheme.

15.2 Proposals for the new Licensing and Enforcement service were included in the April Mayor and Cabinet. Specific proposals for the service are being finalised following representations made during the consultation.

16. Financial implications

16.1. This report provides an update on the statutory consultation undertaken and responses received for the introduction of a new additional licensing scheme for all Houses in Multiple Occupation (HMOs), and a borough wide selective licensing scheme. It also requests the committee to note the proposals for the additional licensing scheme for HMOs based on responses received. In addition committee is requested to note the proposals to apply to the Secretary of State for approval to introduce a borough wide Selective Licensing scheme in the council area.

16.2. The Council's current budget includes an allocation of £0.89m for licensing and environmental health in the strategic housing division. This includes the additional budget allocation given as part of the 2016/17 expansion of the service for the additional licensing scheme project (additional £1m over five years).

16.3. Detailed costings are still being undertaken with the final fee proposal for the selective licensing scheme still to be decided. However, it should be noted that there are significant staffing and operational costs associated with the implementation of both an additional and selective borough-wide licensing scheme. These costs will need to be fully covered by the implementation of a licensing fee to ensure full cost recovery. Based on

current assumptions a fee basis as set out at in section 13.5 & 14.5, would be sufficient to recover costs incurred.

16.4. An initial budget of £400k is required as a start-up fund in order to secure office space, provide for a consultation period, and publicise the scheme prior to implementation. Funding for the additional £400k will need to be identified approximately three to six months prior to the official scheme start date. However, this cost can be recovered via the fee income. Some of the early fee income will be carried forward to ensure future scheme costs are covered.

Further financial implications of the introduction of a selective licencing scheme will be reported on as and when the information gathering and outline of the implementation plans are complete and brought forward for approval by Mayor and Cabinet.

17. Legal implications

17.1 The Housing Act 2004 provides local authorities with the power to impose different types of licensing schemes on houses in multiple occupation, ("HMO"s). HMO's governed by Part 2 of the Housing Act 2004 are generally defined as premises which are 3 or more storeys high, contain 5 or more people in 2 or more households and contain shared facilities. There is a statutory requirement for every HMO to be licensed by a local authority. This is 'mandatory' licensing.

Part 2 of the Housing Act 2004, gives local authorities power to introduce licensing schemes for HMO's not covered by mandatory licensing and which go beyond the national mandatory regime. For each type of statutory licensing scheme, the definition of an HMO is modified accordingly.

Whether an HMO is included in a scheme depends on the local authority designation. An 'additional' licensing scheme needs 'general approval' and a 'selective' licensing scheme requires the approval of the Secretary of State ("SoS") for confirmation of designation. Consultation for these different licensing schemes is necessary.

17.2 An authority may, pursuant to s. 56 of Part 2 of the 2004 Act, designate either the whole of its area or a part of its area to 'additional licensing' in relation to a description of HMO's specified in its express designation. When exercising power under s. 56, local authorities must ensure that exercise of their power is consistent with their overall housing strategy, seek to co-ordinate their approach to homelessness, to empty properties, and to anti-social behaviour affecting the private rented sector, not make a designation unless they have considered whether there are other effective measures dealing with the problem, and consider that the designation will significantly assist them to deal with the problem.

Designations require either 'General Approval' (for 'additional' licensing schemes) or the approval of the Secretary of State by confirmation (for 'Selective' licensing schemes).

The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selection of Other Residential Accommodation (England) General Approval 2015, revoked the former 2010 General Approval provisions, such that 'General Approval' is deemed to be granted for additional licensing schemes, subject only to confirmation by the local authority that it has consulted persons, likely to be affected by them, (s. 56(3)(a) of the 2004 Act,) for not less than 10 weeks.

Designations may last no longer than 5 years from the date on which they come into force.

17.3

Sections 79- 81 of Part 3 of the 2004 Act, provide local authorities with power to introduce selective licensing schemes for other houses falling outside of Part 2.

The types of houses to be licensed under a selective licensing scheme are defined within s. 79 (2) of the 2004 Act. It applies to a house “if (a) it is in an area that is for the time being designated under section 80 as to selective licensing, and (b) the whole of it is occupied either- (i) under a single tenancy or licence that is not an exempt tenancy, or (ii) under two or more tenancies or licences of different dwellings contained in it, none of which is an exempt tenancy or licence...”

Further statutory considerations for a local authority apply under Part 3 of the Housing Act 2004 for selective licensing schemes, pursuant to section 80 (2)(a) and (b). These include conditions in relation to housing conditions, deprivation, migration and conditions in relation to crime.

- 17.4 Before making a decision to introduce selective licensing the local authority must:
- a) consult with those who are likely to be affected, including those who live, work or operate businesses in adjoining local authority areas where they will be affected
 - b) consider whether there are other effective methods of achieving the intended objective

17.5 Approval by the Secretary of State is required for selective licensing schemes.

The Secretary of State will take into account when deciding whether to confirm a Scheme, the robustness of the proposed measures to ensure compliance. In particular, the Secretary of State will expect to be assured there are systems in place to monitor compliance and enforcement measures will be in place where there is non-compliance.

Approval of the Secretary of State will be required for a selective Licensing scheme as the proposed borough-wide scheme will:

- a) cover more than 20% of the authority's area, and / or
- b) affect more than 20% of privately rented homes in the authority's area.

Selective licensing may come into force no earlier than three months after the designation has been approved (or it falls under the general approval).

17.6 When fixing fees, the local housing authority may pursuant to the HA 2004 s. 87 (subject to any regulations made under subsection 5) take into account:

- a) all costs incurred by the authority in carrying out their functions under this Part, and
- b) all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 in relation to Part 3 houses (so far as they are not recoverable under or by virtue of any provision of that Chapter).

17.7 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

17.8 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.

17.9 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above.

17.10 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

17.11 The Equality and Human Rights Commission has 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: <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

17.12 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- [The essential guide to the public sector equality duty](#)
- [Meeting the equality duty in policy and decision-making](#)
- [Engagement and the equality duty: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

17.13 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:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

18. Crime and disorder implications

18.1 There are no direct crime and disorder implications from this report. Specific crime and disorder implications will be submitted to Mayor and Cabinet as part of any proposals to introduce new licensing schemes.

18.2 Likely implications are that the implementation of new licensing schemes should not have negative crime and disorder implications. The scheme will identify further crime and disorder as a result of inspections and investigation, and the team will work with landlords to address identified such as ASB. Introducing these new and larger schemes will also raise the profile of the service which in turn will mean individuals are likely to contact the Council to report issues.

19. Equalities implications

19.1 An Equalities Analysis Assessment (EAA) was completed as part of the proposals to go to consultation. This EAA is being updated to take account of the responses to the consultation. This updated EAA will be presented to Mayor and Cabinet as part of any proposals to introduce new licensing schemes.

20. Environmental implications

23.1 There are no direct environmental implications from this report. Specific environmental implications will be submitted to Mayor and Cabinet as part of any proposals to introduce new licensing schemes.

23.2 Likely implications are that any new and larger licensing schemes will identify environmental issues not already known such as fly-tipping and waste management issues in private rented accommodation.

21. Conclusion

- 21.1 Initial results indicate the consultation was successful in achieving a good response from both landlords and tenants along with others affected. Efforts have been made to consult with a wide section of Lewisham residents throughout the consultation period. Useful feedback has been received about, amongst other comments, basing the selective fees on Council tax and including discounts for accredited letting agents. These responses are likely to lead certain crucial alterations to the fees and structure in the final proposals.
- 21.2 Although work is still being carried out to analyse the written responses, results show overall support for both schemes. Further improvements will inevitably be incorporated into the final proposal for Mayor and Cabinet.
- 21.3 Going forward, working with MHCLG will help ensure the Council shows a robust evidence base to effectively represent the necessity of the selective licensing scheme and meet the statutory tests required to submit a successful application.

22. Background Documents and Report Originator

Background documents			
Title	Date	File Location	Contact Officer
Mayor and Cabinet report: Borough-	24 April 2019	http://councilmeetings.lewisham.gov.uk/documents/s64456/Bor	Nicholas Stabaler

wide licensing consultation		orough-wide%20licensing%20consultation.pdf	
Equalities Analysis Assessment Borough-wide licensing scheme	April 2019	http://councilmeetings.lewisham.gov.uk/documents/s64457/Borough%20wide%20licensing%20Equalities%20Analysis%20Assessment.pdf	Nicholas Stabeler
Borough-wide licensing consultation guide	May 2019	https://consultation.lewisham.gov.uk/strategic-housing-and-regulatory-services/making-renting-better/user_uploads/consultation-guide.pdf	Nicholas Stabeler
Borough-wide licensing consultation evidence base	May 2019	https://consultation.lewisham.gov.uk/strategic-housing-and-regulatory-services/making-renting-better/user_uploads/evidence-base-for-public-consultation-1.pdf	Nicholas Stabeler

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