

CABINET

25 AUGUST 2020

REFERRALS FROM BUSINESS SUPPORT OVERVIEW AND SCRUTINY COMMITTEE – SELECTIVE LICENSING AND CONSULTATION

Portfolio Holders: Councillor Howard Doe, Deputy Leader and Portfolio Holder for Housing and Community Services

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Summary

The report sets out a couple of referrals from the Business Support Overview and Scrutiny Committee meeting held on 2 July 2020 in relation to selective licensing and consultation.

1. Budget and policy framework
 - 1.1. Overview and Scrutiny Committees may make recommendations to the Cabinet arising from the outcome of the scrutiny process (Constitution – Articles of the Constitution - Chapter 2, Article 6, Paragraph 6.4).
 - 1.2. The decision to consider whether the Council should explore a selective licensing scheme is a matter for the Cabinet.
 - 1.3. Approval of a scheme for selective licensing can be taken by the Cabinet if the scheme covers less than 20% of the area. Where the proposed designation covers either 20% of the total geographic area of the authority or 20% of the total privately rented stock (based on census figures), the designation requires approval by the Secretary of State.
 - 1.4. Approving an additional licensing scheme is a matter for Cabinet.
 - 1.5. The Committee has also referred the issue of consultation to Cabinet for consideration.

2. Background

2.1 On 22 June 2020 Councillor Curry submitted a Member's Item seeking the Business Support Overview and Scrutiny Committee's support for the introduction of a selective licensing scheme in Medway, to be targeted in those areas where deprivation is highest.

2.2 Councillor Curry's item is set out in full at Appendix A.

Director's Response as set out in the report to Business Support Overview and Scrutiny Committee held on 2 July 2020

2.2.1 Part 3 of the Housing Act 2004 gave local authorities the power to designate areas of selective licensing to help tackle concerns over anti-social behaviour and low housing demand. Selective Licensing aims to improve these designated areas by driving up property management practice and property standards in the private rented sector. It may also help to solve other issues contributing to poor property condition and low demand within a neighbourhood. In 2015, the conditions for designation were expanded to include poor property conditions, high crime, high levels of deprivation and high migration. Local authorities can designate an area for selective licensing for five years, but must first demonstrate the evidence for their concerns, look at alternative approaches and consult widely.

2.2.2 In addition to the mandatory licensing of certain houses in multiple occupation (HMOs), the Housing Act 2004 gives local authorities the power to impose additional licensing on HMOs beyond the national mandatory regime. For example, a local authority could extend licensing to include all HMOs in a specific area, or the whole district, to include those not covered by mandatory licensing. The Act permits additional licensing where the local authority believes that a significant proportion of HMOs are poorly managed and giving rise to problems for residents or the general public.

2.2.3 The Government published an independent review into Selective Licensing published in June 2019. The report highlighted that 44 Local Authorities reported to be operating a selective licensing scheme. Four authorities had a scheme that covered 100% of the local area, nine authorities had a scheme that covered 20% or more of the area.

2.2.4 A licence would be granted for five years and any fee should be pro rata depending on the amount of time left on the delegation. Fees range from approximately £500 to £900 per property. Certain exemptions would usually be in place for Registered Providers, student accommodation and other public owned housing. Registered charities may also be exempt from the fee but not the requirement for a licence.

2.3 The Committee was advised of the following options:

2.3.1 To recommend to the Cabinet that officers commence work to formally assess the need for selective and/or additional licensing.

- 2.3.2 Continue enforcement activity in its current form through the Enforcement and Licensing Policy only, with no selective or additional licensing scheme.
- 2.4 The Committee had regard for the advice and analysis, as reproduced in section 4 below, and considered the report, as follows:
- 2.4.1 Members considered a report which responded to a Member's item submitted by Councillor Curry on selective licensing.
- 2.4.2 Councillor Curry spoke in support of his item, commenting that the introduction of a selective licensing scheme would be a refinement of the existing licensing scheme. The Council had the power to designate certain areas for selective licensing to tackle problems such as low housing demand and anti-social behaviour. A scheme would help to drive up property standards and the quality of accommodation in the private rented sector and help boost the local economy.
- 2.4.3 Whether a selective licensing scheme had to apply to an entire Ward or instead be adopted in relation to a specific area within Medway was queried. The Chief Legal Officer advised that a scheme could be adopted in respect of the entire area of Medway or any part of Medway.
- 2.4.4 The need for a selective licensing scheme was questioned given the new Housing Enforcement and Licensing Policy had only recently been agreed and it was suggested that consideration of it should be deferred until there was a chance to evaluate the effectiveness of the new policy. The possibility of landlords moving to another area not covered by a selective licensing scheme or passing on the costs of it to their tenants was mentioned.
- 2.4.5 There was general support amongst Members for the proposal that further work be done to explore the possibility of introducing a scheme. The point was made that Ward Councillors should be consulted as part of this work.
- 2.4.6 Noting that approval from the Secretary of State was needed for schemes that covered more than 20% of the authority's area, it was suggested that this should not in itself be seen as a barrier if the evidence led to that conclusion.
- 2.4.7 In terms of the resources needed to enforce a scheme, Members were advised that the scheme should be self-financing.
- 2.4.8 The Committee agreed to recommend to the Cabinet that officers commence work to formally assess the need for selective and/or additional licensing in specific areas of Medway.

(Councillors Johnson, Maple and Stamp asked that their votes in favour be recorded.)

2.5 The Committee also considered the Housing Enforcement and Licensing Policy on 2 July 2020. The Committee made some specific comments about consultation as set out below.

2.5.1 Consultation – noting that the consultation exercise had resulted in 17 completed responses, the point was made this was a disappointingly low number and the analysis which broke this number down into percentages was therefore of limited value. The response probably accounted for only 3-4 tenants out of 200,000 properties. In addition, many landlords had 1-2 properties so most would not be aware of the new policy. The Head of Housing responded that the response rate was not as high as he would have liked and as many avenues as possible had been used to engage with landlords and tenants. The consultation had been carried out by the Communications team, but he would look at how the number of responses in future could be increased. A wider point was made that the Council's record on consultation generally was poor in terms of generating a meaningful number of responses.

2.5.2 The Committee agreed to ask Cabinet to review the consultation process across the Council, including response levels.

3. Options

3.1. The following options are available to the Cabinet with regards to selective licensing;

3.1.1 Option 1 – To agree the recommendation from the Business Support O&S Committee that officers commence work to formally assess the need for selective and/or additional licensing in specific areas of Medway.

3.3 Option 2 – To not agree the recommendation from the Business Support Overview and Scrutiny Committee and to ask officers to continue enforcement activity in its current form through the Enforcement and Licensing Policy only, with no selective or additional licensing scheme.

4. Advice and analysis

4.1 The Business Support Overview and Scrutiny Committee was provided with the following advice and analysis, with regards to selective licensing, option 1.

4.2 A selective licensing designation may be made if the area to which it relates satisfies one or more of the following conditions. The area is one experiencing:

- low housing demand (or is likely to become such an area)
- a significant and persistent problem caused by anti-social behaviour;
- poor property conditions;
- high levels of migration.
- high level of deprivation.

- high levels of crime.
- 4.3 The Member's item introduces three wards for consideration for selective licensing (River, Luton and Wayfield and Chatham Central). It would be necessary to expand this to cover a Medway wide position to;
- (1) fully explore and identify wards that may benefit from a selective licensing scheme and;
 - (2) provide a full spectrum of issues allowing wards or areas to be ruled out and therefore demonstrating the case for licensing for wards that need it.
- 4.4 Before making a decision to introduce selective licensing the local authority must:
- 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.
 - Consider whether there are other effective methods of achieving the intended objective.
 - Set out the strategic position in relation to housing need and how licensing will fit with other priorities and the role of other partners in meeting the aim of the licensing scheme.
- 4.5 To develop a new scheme and allow appropriate time for consultation it is likely that from commencement to implementation would take approximately 9-10 months with further time needed if the scheme had to be approved by the Secretary of State (up to 8 weeks).
- 4.6 A significant amount of information is publicly available to analyse, including indices of deprivation, crime statistics, tenure information and house price date. More interrogation and collation of data is needed to better map property condition and property turnover.
- 4.7 The report to the Committee also identified that there was no allocated budget or resource to undertake this work and whilst any proposed scheme would be self-financing there would be additional resource commitments in undertaking the preparatory work and consultation which were not currently available within service resources.

Further analysis of option 1 following the Business Support Overview and Scrutiny Meeting

- 4.8 Costs associated with implementation are estimated to be;
- Data collation and analysis - A one off cost of £20,000
 - System to monitor and manage - £15,000 implementation and £6,000 ongoing per annum.
 - Staffing resource – Dependent on the size of the scheme. One FTE for a qualified technical officer likely to cost £57,000 per annum.
- 4.9 In 2019 MHCLG published a review of the existing use of selective licensing schemes considering a wide range of research and literature. The report

concluded the following: *“The research overall indicates that selective licensing can be an effective and positive policy tool. There are a wide range of concrete examples of schemes achieving demonstrable positive outcomes. Furthermore, these schemes operate in a range of different ways dependent on local conditions and requirements, demonstrating that selective licensing offers the facility to provide a flexible framework to reflect local circumstances. However, it is also clear that there is considerable variation in the effectiveness of individual selective licensing schemes: some do not achieve tangible, positive results to the same degree as others. The extent to which a scheme is integrated into wider local strategies appears to play a key role in its effectiveness.”*

- 4.10 The report highlighted the following positive elements to selective licensing;
- Resources were focussed on the areas of most concern
 - Licensing provides a clear licenced/un-licenced offence
 - Simple route to access properties
 - Proactive not reactive approach
 - Clear mechanism for engagement with landlords
- 4.11 On the more challenging aspects of selective licensing the report highlights that most authorities uncovered more privately rented stock than originally expected and that this, in turn, led to pressure on staffing and IT systems than planned.
- 4.12 Genuinely self-supporting schemes were in the minority and those that were had higher licence fees. Various costs were not recoverable, such as the consultation and setup, which can be significant.
- 4.13 Schemes with sufficient funding also reported difficulties in recruiting staff meaning that less properties were inspected, and property issues not being discovered. This can lead to the degradation of relationships between the Council and both landlords and tenants.
- 4.14 The Business Support Overview and Scrutiny Committee was provided with the following advice and analysis, with regards to selective licensing, option 2.
- 4.15 The Council has recently reviewed its Enforcement and Licensing Policy which frames existing enforcement work to improve the standard of accommodation in the privately rented sector.
- 4.16 Significant partnership working is in place to improve outcomes for households in areas of higher deprivation through work with the Medway Task Force and other partners that is well supported by the Councils Private Sector Housing Team.
- 4.17 The Council can continue its reactive service to respond effectively to complaints from tenants in the privately rented sector.
- 4.18 Given that the initiatives set out in 4.15 and 4.16 are relatively new, it could be considered that they would form “other effective methods of achieving the

same outcome” and therefore should be given time to yield positive outcomes before selective licensing is considered.

Consultation

- 4.19 To respond to the Committee’s points on consultation, consultation and engagement is coordinated by the Corporate/Regeneration, Culture and Environment Business Intelligence Team. It is the responsibility of each service to undertake consultation relevant to their service. Business Intelligence Teams (RCE, Children & Adults and Public Health) have a responsibility to provide advice and guidance to Heads of Service on design, method, sample and analysis depending on the need.
- 4.20 In all instances the most appropriate method of participation will be considered for the groups being consulted, however, time and resources will be significant contributing factors to any design, e.g. face to face surveys or focus groups take the most resource and time compared to an online survey.
- 4.21 Business Intelligence Teams work with the Digital and Communications and Marketing Team to review consultations for accessibility and use different promotion methods to obtain the widest possible response.
- 4.22 Sample surveys are the main kind of consultation and engagement used by the Council as they provide a cost effective and reliable method of establishing community views. A sample survey uses the results from a small proportion of the population to estimate the responses of the entire population. Response rates will be effected by who is being surveyed e.g. all residents, targeted groups; and method of survey e.g. face to face, direct mail or survey open to all.
- 4.23 Surveys are published for a range of timescales dependent on the purpose and relevant legislation. Whilst surveys are published with a specified end date there have been examples where they have been kept open longer to encourage more participation
- 4.24 As well as directly run Council surveys, the Corporate Business Intelligence Team are responsible for supporting and promoting national surveys for the Council e.g. Census, Boundary Review, National Highways and Transport Survey. They are also responsible for the management and recruitment of the Council’s Citizens Panel.

5. Risk management

5.1 Risks at this stage, in relation to selective licensing, are detailed below;

Risk	Description	Action to avoid or mitigate risk	Risk rating
Resources and financing	Costs charged through the scheme do not	Costings to be fully mapped to ensure	C2

Risk	Description	Action to avoid or mitigate risk	Risk rating
	cover the cost of administering the scheme.	that the scheme is viable	
Increased rents to tenants	The costs to landlords are then directly passed on to tenants, increasing rents	Regular monitoring and engagement through homelessness prevention services	B3
Reduced incentive to landlords to operate in designated areas	Landlords sell property to avoid having to licence	Regular monitoring put in place, effective engagement with landlords through consultation.	D4
Resourcing	Lack of available suitably qualified and experienced staff.	Identify career pathways to bring through officers. Benchmark roles to ensure competitiveness	B2
Scheme refused by Secretary of State	If the scheme is 20% or larger it will need approval from the SoS. This brings a risk of refusal.	Detailed analysis to be undertaken to support any recommendation for a scheme. Feedback to be sought from other Council.	D1

6. Consultation

- 6.1 With regards to selective licensing, any scheme would need a minimum of 10 weeks consultation with local landlords, tenants, businesses and other stakeholders.

7. Climate change implications

- 7.1 [The Council declared a climate change emergency in April 2019](#) - item 1038D refers and has set a target for Medway to become carbon neutral by 2050.
- 7.2 The material improvement of properties and enforcement of standards will result in an increase of the thermal efficiency of homes. This will reduce utility consumption reducing CO2 emissions.

7.3 As standards change it is likely that the Council will continue to enforce against properties that do not fall within the scope of the measures set out. This is already the case with EPCs.

8. Financial implications

8.1 As highlighted above, further work to develop a scheme would need research and systems in place to support it. Estimated year one cost would be approximately £41,000 plus any additional staffing resource that would need to be brought in closer to scheme commencement. It is estimated that approximately £10,000 would need to be spent to ensure that any staff were recruited and inducted prior to the scheme taking effect and income generated from fees.

8.2 There is no budget to deliver a selective licensing scheme and as such, the cost of administering a scheme would need to be fully covered by the fees and charges collected. There is therefore a risk that a budget pressure would be created if the scheme is not self-financing. In order to mitigate this, more information would be provided in any future reports to set out the expected resource expenditure and income generation against the size and scope of any proposed scheme.

8.3 Given the forecast deficit highlighted in the financial monitoring report elsewhere on the agenda, with budgetary challenges likely to persist for this year and the next, it is suggested that the selective and/or additional licensing scheme is not pursued just at this time. Whilst the scheme is laudable and could yield distinct benefits, the additional revenue costs required and the uncertainty associated with the scheme being fully self-funding, it is perhaps prudent to pause at this stage, enabling the scheme to be pursued at a future date when the Council's financial position improves.

9. Legal implications

9.1 The legal implications are set out above.

10. Recommendations

10.1 Cabinet is asked to consider the following recommendation from the Business Support Overview and Scrutiny Committee:

10.1.1 That officers commence work to formally assess the need for selective and/or additional licensing in specific areas of Medway.

10.2 The Cabinet is asked to note the Council's arrangements for how it carries out consultation.

11. Suggested reasons for decision

- 11.1 The Business Support Overview and Scrutiny Committee has made these recommendations to Cabinet in accordance with its entitlement, under the Council's Constitution, to make recommendations to Cabinet arising from the outcome of the scrutiny process (Constitution – Articles of the Constitution - Chapter 2, Article 6, Paragraph 6.4). Cabinet is, therefore, required to consider its response.

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Appendices

Appendix A - Member's item on selective licensing

Background papers

None