

CABINET

11 JULY 2023

ADDITIONAL AND SELECTIVE LICENSING FOR THE PRIVATE RENTED SECTOR

Portfolio Holder: Councillor Naushabah Khan, Portfolio Holder for Housing and Property

Report from: Richard Hicks, Chief Executive

Author: Mark Breathwick, Chief Housing Officer

Summary

The report seeks approval to formally commence an exercise to establish the need and scope of both additional licensing and selective licensing for homes in the privately rented sector (PRS).

1. Budget and policy framework

- 1.1. The Council currently operates within the statutory framework, with the only licensing activity for properties in the PRS being undertaken in relation to larger houses in multiple occupation (HMO).
- 1.2. The decision to consider whether the Council should explore a selective or additional 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. Larger schemes require approval from the Secretary of State.
- 1.4. Approving an additional licensing scheme is a matter for Cabinet.
- 1.5. There is currently no specific budget provision in the 2023/24 budget.

2. Background

- 2.1. The Housing Act 2004 gave local authorities powers to tackle poor property conditions in the private rented sector. The Act also introduced different types of landlord licensing scheme, with mandatory licensing for larger HMOs; additional licensing, allowing local authorities to introduce licensing for a wider

range of HMOs; and selective licensing, which allows local authorities to apply for licensing of all private rented properties, in order to address issues such as low housing demand, antisocial behaviour, poor housing quality, and deprivation.

- 2.2. In 2015 local authorities were required to seek confirmation from the Secretary of State where selective licensing schemes would cover more than 20% of their geographical area or more than 20% of privately rented homes in that area.
- 2.3. The Act requires local authorities to consult with those likely to be affected by any designation - including landlords, managing agents and tenants - and to consider any representations made during that process. Failure to do this may result in a scheme being overturned.
- 2.4. Selective and additional licensing must also form part of the Council's Housing Strategy, which it currently does not. Therefore, this document will need to be reviewed in tandem with any proposals for selective licensing.

3. Options

- 3.1. There are two options available to the Cabinet.
- 3.2. Option one: Do not proceed with any work in relation to selective or additional licensing.
- 3.3. Option two: Proceed with assessing the need for selective and additional licensing.

4. Advice and analysis

- 4.1. In relation to 3.2 (above) option one, there is no further analysis needed. This option maintains the current position. The authority would continue to pursue its existing powers to improve the condition of private sector housing stock.

Option two analysis.

- 4.2. **Additional licensing.** Sections 56 and 57 of the Housing Act 2004 provide local authorities with the power to designate areas as being subject to an additional licensing scheme, in relation to some or all of the houses in multiple occupation (HMO) in that area which are not already subject to mandatory HMO licensing.
- 4.3. In applying an additional licensing scheme, the local authority must:
 - Consider that a significant proportion of the HMOs (that will be subject to the proposed designation) in the area are being managed sufficiently ineffectively as to give rise, or likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.

- Consider whether there are any other courses of action available to them that might provide an effective method of dealing with the problem or problems in question.
 - Consider that the making of the designation will significantly assist them to deal with the problem or problems.
- 4.4. Further work is needed to determine to what degree these conditions would be met in Medway.
- 4.5. **Selective licensing.** 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 levels of deprivation;
 - high levels of crime.
- 4.6. 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.
- 4.7. 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). In addition, for either scheme there is a 3 month standstill period after designations are approved by the Cabinet.
- 4.8. A significant amount of information is publicly available to analyse, including indices of deprivation, crime statistics, tenure information and house price data. More interrogation and collation of data is needed to better map property condition and property turnover.
- 4.9. In order to ensure that the Council complies with its duties to keep the condition of the PRS under review, it has commissioned a company to provide tenure intelligence information. This has been funded from the Safer Streets Initiative. This will provide the base data for establishing the need for either selective or additional licensing.

- 4.10. Following on from this exercise the data will need to be analysed and designations developed. The Local Authority will need to then “take reasonable steps” to consult persons who are likely to be affected by the designations.
- 4.11. Following consultation, the Council will need to publish the results giving detail in relation to what it had considered and what had been amended or not amended.
- 4.12. **Budget.** The development of a business case for the scheme will be funded through the Council’s Feasibility Studies Flexible Use of Capital Receipts, within the approved revenue budget for 2023/24, with £50,000 allocated to this activity.
- 4.13. It is estimated that the following further costs will be needed in year one.
- £25,000 consultant costs to assist in the development of designations and data analysis.
 - £15,000 Consultation and engagement costs
 - £10,000 Legal/Counsel costs
- 4.14. It is expected that the costs of running the scheme on an ongoing basis, will be generated from the fees payable. Further detail will be developed through the project for future presentation to the Cabinet and to Council for inclusion in the revenue budget for future years.

5. Risk management

- 5.1. The following risks have been identified in relation to the options available. Please note that these are the risks identified at this stage of the project and will need further development dependent on the direction of travel and consultation.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Option one only. A further deterioration of accommodation in the PRS.	Property conditions deteriorate in areas, or properties that may have been included in a licensing scheme.	To continue to review resources and approach to enforcement and mandatory licensing.	B2
Option two. Resources	Sufficient resources are not available to allow a proper exploration of the options resulting in a scheme that is not fit for purpose.	Resources clearly identified to mitigate the risk before commencement	A2

Risk	Description	Action to avoid or mitigate risk	Risk rating
Negative impact on the PRS	The prospect of an enhanced licensing scheme leads to landlords leaving the market.	Engagement and consultation with the sector, communications strategy, proportionate scheme size and fee setting.	C2

Likelihood	Impact:
A Very high B High C Significant D Low E Very low F Almost impossible	1 Catastrophic (Showstopper) 2 Critical 3 Marginal 4 Negligible

6. Consultation

- 6.1. As set out in the body of the report, consultation will be required throughout the process.

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. Licensing schemes are likely to have a positive impact on the energy efficiency and condition of properties, reducing carbon emissions. However, a licensing scheme is not a complete solution and investment will be needed from the government and property owners to improve thermal efficiency.
- 7.3. As part of its general package of support to landlords, the Council will need to support with advice and information to enable improvements to properties and not solely rely on enforcement.

8. Financial implications

- 8.1. As set out in paragraphs 4.12 – 4.14, the cost of £50,000 required to develop the business case for the Selective Licensing Scheme will be funded from the Council's Feasibility Studies Flexible Use of Capital Receipts, within the approved revenue budget for 2023/24.
- 8.2. It is expected that the ongoing costs of running the scheme will be generated from the fees payable with no net impact on the Council's budget.

9. Legal implications

- 9.1. The Housing Act 2004 gave Local Authorities the option of implementing a selective licensing scheme which would extend the Authority's remit to licence more properties than covered by the mandatory criteria set out in the act.
- 9.2. Before adopting these powers the Local Authority must consult in compliance with the requirements of the act. Any consultation should reach all affected groups including Landlords and letting agents.
- 9.3. Landlords are able to appeal against the refusal of licences or the imposition of conditions on a licence, it is also possible for the grant of a licence to be appealed. In both instances the appeal is made to the First Tier Tribunal.

10. Recommendations

- 10.1. It is recommended that the Cabinet agree:
 - 10.1.1. to instruct officers to commence formal assessment in respect of the need for selective or additional licensing.
 - 10.1.2. to instruct officers to enter into consultation with relevant parties in relation to selective or additional licensing.

11. Suggested reasons for decision(s)

- 11.1. The decision is needed to formally commence assessing the need for either scheme but more specifically to enter into consultation with relevant parties.

Lead officer contact

Mark Breathwick, Chief Housing Officer, Gun Wharf
Tel: 01634 333540 Email: mark.breathwick@medway.gov.uk

Appendices

None

Background papers

[DLUHC - Selective Licensing Guide](#)