

<b>Subject:</b>	<b>Private Rented Sector Licensing Schemes</b>		
<b>Date of Meeting:</b>	<b>14 June 2017</b>		
<b>Report of:</b>	<b>Executive Director Neighbourhoods, Communities &amp; Housing</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Martin Reid/Diane Hughes</b>	<b>Tel: 01273 293321/293159</b>
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<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE****1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 A key Housing Strategy theme has been the significant growth in the private rented sector housing in Brighton & Hove. Whilst many landlords operate responsibly, there are concerns that a significant number do not and as a result issues continue to be raised in relation to the management, standards and quality of homes in the city.
- 1.2 On 16 November 2016 Housing & New Homes Committee considered a report on the extension of discretionary licensing in the local authority area. It agreed the recommendation to consult on an extension of additional licensing to smaller Houses in Multiple Occupation (HMOs) citywide and the introduction of a Selective Licensing Scheme for non HMO private rented sector homes in 12 wards in the city.
- 1.3 This report:
- outlines the proposed fee structure for a Selective Licensing Scheme and an updated fee structure for the Mandatory and Additional Licensing Schemes
  - outlines proposals to harmonise the current HMO fee structures
  - presents conditions for a Selective Licensing Scheme and updated conditions for the Mandatory and Additional Licensing Schemes
  - highlights the approach to consultation due to take place in Summer 2017
- 1.4 The introduction of further licensing in the city aims to improve management and housing conditions across the private rented sector. Benefits would include:
- Responsible landlords would gain from the improved clarity of their role in raising property and tenancy management standards while action is taken to tackle those who flout their legal responsibilities.

- Tenants would be clear on what they can expect from both the homes that they rent and the landlord that they rent it from, with minimum standards resulting in better managed, quality and safer homes.
- Communities would benefit from a consistent approach towards proactively assessing and improving housing conditions across an area.

## **2. RECOMMENDATIONS:**

That the Housing & New Homes Committee:

- 2.1 Approve for consultation the proposed fee structure for a Selective Licensing Scheme.
- 2.2 Approve for consultation the updated fee structure for an Additional HMO Licensing Scheme.
- 2.3 Approve the updated fee structure for the National Mandatory Scheme.
- 2.4 Note for consultation the draft Selective Licensing Scheme conditions attached at Appendix 1.
- 2.5 Note for consultation the draft updated Additional HMO Licensing Scheme conditions attached at Appendix 2.

## **3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 The Housing Act 2004 has given councils the power to introduce additional HMO licensing and selective licensing of privately rented properties to improve conditions for tenants and the local community in certain circumstances.
- 3.2 Housing & New Homes Committee on 16 November 2016 approved the recommendation to go out to consultation on the preferred option for private rented sector discretionary licensing across Brighton & Hove with persons who are likely to be affected by the designation. Having considered the evidence base the preferred option was:
  - Citywide additional Houses in Multiple Occupation (HMO) licensing covering properties defined as HMOs for the purposes of Part 2 of the Housing Act 2004 (also referred to below as 'the Act') that are not covered by mandatory licensing
  - Selective licensing on non-HMO private rented sector homes in the 12 worst affected wards where the evidence demonstrates a clear link between poor property conditions and anti-social behaviour with the private rented sector.

- 1 St Peter's & North Laine
- 2 Regency
- 3 Moulsecoomb & Bevendean
- 4= Hollingdean & Stanmer
- 4= Queens Park
- 6 Hanover & Elm Grove

- 7= Brunswick & Adelaide
- 7= East Brighton
- 9 South Portslade
- 10 Central Hove
- 11 Westbourne
- 12 Preston Park

### **SELECTIVE LICENSING SCHEME CONDITIONS**

- 3.3 During the proposed scheme all landlords, or letting/managing agents on behalf of a landlord, would be required to obtain a licence for each property that they let (with some exemptions that apply under the Housing Act). In order to obtain such a licence they would need to demonstrate that they are a fit and proper person and meet a number of conditions.
- 3.4 The conditions attached to each licence would relate to the management of the property. Under Schedule 4 of the Housing Act 2004, several conditions are mandatory. They include:
- A gas certificate must be obtained annually and produced to the council (if there is a gas supply to the home)
  - Electrical appliances and furniture supplied by the landlord must be kept in a safe condition
  - Smoke alarms must be installed in the house and should be well maintained
  - Carbon monoxide alarms must be installed where there is solid fuel appliances and should be well maintained
  - The licence holder must supply the occupiers with a tenancy agreement
  - The licence holder must obtain references from prospective tenants.
- 3.5 In addition the Act under, Section 90, allows councils to apply discretionary 'local' conditions to regulate the management, use or occupation of the house concerned. The council is proposing to introduce a number of these conditions to improve the management and quality of private rented homes and to reduce anti-social behaviour. A copy of the proposed conditions is attached at Appendix 1.
- 3.6 The Selective Licensing Scheme will last up to five years and a fee is payable in order to obtain a licence.

### **CITYWIDE HMO LICENSING SCHEME CONDITIONS**

- 3.7 The council's mandatory and additional HMO licensing conditions were last reviewed in September 2012. We are proposing to update these conditions to ensure where appropriate that scheme conditions mirror each other across the three schemes. There are certain requirements under legislation and regulations. They include:
- Amenities and facilities
  - Keeping the property in a good state of repair and free from significant hazards that could affect the health and safety of tenants, occupiers and visitors to the properties
  - A gas certificate must be obtained annually and produced to the council (if there is a gas supply to the home)

- Electrical appliances and furniture supplied by the landlord must be kept in a safe condition
- Smoke alarms must be installed in the house and should be well maintained
- Carbon monoxide alarms must be installed where there is solid fuel appliances and should be well maintained
- The licence holder must supply the occupiers with a tenancy agreement
- Fire safety requirement and Fire Risk Assessments are required where there are common areas.

3.8 In addition discretionary 'local' conditions can be applied to regulate the management, use or occupation of the house concerned. Key ones relate to tenancy management, dealing with property standards and property management. An updated set of conditions for the HMO licensing schemes with a summary of the changes from the existing conditions are attached at Appendix 2.

### **SELECTIVE LICENSING SCHEME COSTS AND FEE STRUCTURE**

3.9 Brighton & Hove City Council has considerable experience of mandatory licensing and running the additional licensing schemes for HMOs in 12 wards in the city as these schemes cover in excess of 3,400 HMOs. If the decision is made to designate a Selective Licensing Scheme covering 12 wards this would require further licence applications for around 27,000 dwellings. This scheme is larger than a number of others that have been reviewed with Peterborough and Hastings reporting property numbers between 6-9,000 but the scheme would be smaller than other authorities such as Newham which covers property numbers in excess of 33,000.

3.10 Legislation allows authorities to charge a fee in order to recover the costs to administer and run the scheme. This means that administrative support, the inspection regime and any other scheme-related issues can and would be funded from the licence fees. The proposed fee structure is laid out in Table 2. The council proposes to set the fee at a level that would ensure full cost recovery for the scheme and be a balance between a reasonable cost for landlords, whilst also seeking to ensure the scheme would be successful, properly funded and appropriately resourced. It is intended that the fees would be reviewed on an annual basis.

3.11 Extensive benchmarking has taken place to understand fee structures in other Local Authorities who operate or who are currently consulting on Selective Licensing Schemes. This benchmark group and the fees applied are laid out in Table 1:

**Table 1 – Benchmarking group for fees**

<b>Local Authority</b>	<b>Standard selective licence fee</b>	<b>Early bird selective licence fee (*)</b>	<b>Approx number of properties in selective licence scheme</b>
Croydon	£750	£350 for 1 <sup>st</sup> 3 months	30,000
Waltham Forest	£650	£250 for 1 <sup>st</sup> 6 months	26,000
Nottingham	£600	£600 (No early bird	35,000

(proposed scheme)		fee)	
Peterborough	£600	£50 for 1 <sup>st</sup> 3 months**	6,205
Harrow	£550	£550 (No early bird fee)	2,000
Tower Hamlets	£520	£520 (No early bird fee)	6,000
Barking & Dagenham	£506	£180 for 1 <sup>st</sup> 2 months	13,500
Southwark	£500	£400 for 1 <sup>st</sup> 7 months	5,000
Newham	£500	£150 for 1 <sup>st</sup> 2 months	33,500
Hastings	£460	£185 for 1 <sup>st</sup> 6 months	8,800
Brent	£340	£340 (No early bird fee)	4,000

\* average fee for authorities with early bird fees will be lower as described in paragraph 3.14 below

\*\*additional criteria were also applied to this early bird fee

3.12 The fee has been calculated based on the following elements and has been assessed using the Local Government Association's toolkit to ensure cost recovery.

- Set up costs and on costs – publicising the scheme, recruitment costs, accommodation, support services including IT services and equipment
- Processing applications – staff costs in assessing and processing the application
- Visits – time spent inspecting the premises including travel to and from
- Monitoring costs – estimated staff time to undertake compliance checks of licence conditions
- Administration – the actual costs involved in producing and sending the licence.

**Table 2 – Proposed fees for a Selective Licensing Scheme**

Type	Fee	Fee per week	Comments
Standard application fee	£460	£1.77	
Prompted application fee	£600	£2.31	It is proposed that this would apply where a licence application has not been made proactively and the council has to carry out investigation and/or chase up work to ensure that an application is made

- 3.13 The fees have been calculated taking into account existing law and guidance on fees. They may go up or down before implementation due to various influencing factors and the final fee structure will be brought back to this committee for approval should the designation of a selective licensing scheme be recommended after the completion of the consultation. Our experience to date with HMO licensing is that it has not had a material effect on the level of rents or availability of accommodation in the city. The proposed fee structure is considered reasonable; fees are fully tax deductible and over a five year scheme would cost a licence holder less than £2.00 per week.
- 3.14 Our proposed fee is lower than a number of our peers, as can be seen in Table 1. This is partly due to the size of the proposed scheme which means that fixed costs (such as set up costs, publicity etc) would be divided over 27,000 properties and is therefore reduced for each licence. Also a number of authorities have offered an early bird fee. This lowers the average fee that they receive e.g. for a scheme of 10,000 licences, with a fee of £550 and an early bird fee of £200, if they have 20% of applicants paying the reduced rate, the average fee would be £480. B&HCC fee is comparable to other authorities after the other authorities 'early bird' fee is used.
- 3.15 The current fee structure does not propose an adjusted fee where a landlord is accredited with a representative body. However, the consultation will seek feedback from all respondents including landlords, agents and landlord groups on whether this is something that should be considered and on what basis this would justify a lower fee.
- 3.16 Under the proposed fee structure, those who fail to apply to licence would forgo the option of the standard fee and would be required to pay £600 for a licence. This is a progressive fee structure and a deliberate policy to try and ensure licensing of rented property is made in a timely manner, thereby avoiding additional costs in identifying unlicensed properties.

The council will only give a refund if:

- A duplicate application has been made or
- An application has been made for a property that does not need to be licensed.

## **LICENCE DURATION**

- 3.17 Licences could not be issued to extend beyond the date of the end of any designated scheme, which would be no more than five years after the scheme came into force. This would ensure there is no benefit gained by those applying late and will run in line with the length of the scheme.
- 3.18 There would be no requirement for the local authority to issue a licence for the full length of the scheme, and issuing a shorter licence would be a welcome tool where there are outstanding planning permission or other issues at the property. In these circumstances it is proposed that the council would generally issue a one year licence in the first instance to allow sufficient time to regularise the planning position or other issues. Licence holders could then apply for a further licence. This would apply across all mandatory, additional and selective licence schemes.

## MANDATORY AND ADDITIONAL LICENSING FEE STRUCTURE

3.19 The set up costs for mandatory HMO licensing have been included as part of the mandatory licence fee. These have now been recovered and so it is therefore reasonable to harmonise the mandatory and additional fees for properties of a similar size in terms of numbers of occupants/lettings. Therefore, it is proposed to reduce the initial fee for new applications made under the mandatory scheme. In order to harmonise licence fees, the proposed HMO fee structure now has a prompted application fee and a renewal fee for both mandatory and additional licensing schemes. The fees have also been simplified by the introduction of bandings for the number of rooms/tenancies. The tables below show the proposed fee structures for mandatory and additional licensing. For the purpose of comparison, the current fee structures are shown in Appendix 3.

**Table 3**

<b>Mandatory/Additional Licensing Scheme – one tenancy</b>				
<b>No of occupiers</b>	<b>3-5</b>	<b>6-8</b>	<b>9-11</b>	<b>10-12</b>
Standard initial fee	£670	£710	£750	£790*
Prompted fee	£810	£850	£890	£930
Standard renewal fee	£430	£450	£470	£490**
Prompted renewal fee	£570	£590	£610	£630**
* For HMOs larger than this, add £40 for up to 3 additional occupiers over 12				
** For HMOs larger than this, add £20 for up to 3 additional occupiers over 12				

**Table 4**

<b>Mandatory/Additional Licensing Scheme – multiple tenancy lets</b>				
<b>No of lettings</b>	<b>2-5</b>	<b>6-8</b>	<b>9-11</b>	<b>10-12</b>
Standard initial fee	£850	£1,010	£1,170	£1,330***
Prompted fee	£990	£1,150	£1,310	£1,470
Standard renewal fee	£520	£600	£680	£760****
Prompted renewal fee	£660	£740	£820	£900****
*** For HMOs larger than this, add £160 for each additional letting over 12				
**** For HMOs larger than this, add £80 for each additional letting over 12				

## **CONSULTATION ON THE PROPOSED SCHEMES**

- 3.20 Subject to committee approval a 12 week public consultation is planned to begin on the 19 June 2017 concluding on the 10 September 2017. The consultation process has been designed to enable the initial proposals to be fully considered and scrutinised by the public. The consultation should be informative, clear and to the point, so that the full details of the proposal can be readily understood. The consultation will include information on the proposed schemes, the reason for it and how it has been arrived at. It will also include information regarding proposed fees and conditions.
- 3.21 The council will consult with local residents, including tenants, landlords, managing agents, key interested parties (i.e. Police, Fire Service, Universities) and other members of the community including business owners and voluntary and community groups who live or operate businesses or provide services within the areas of the proposed designations. Consultation will also take place in the surrounding areas that may be affected by the introduction of the proposed schemes.
- 3.22 This consultation will consist of an online survey available on the council's website and available as a printed version at council public offices and the city's libraries. Printed information will be made available in the form of posters to be displayed in libraries and other public locations in the local authority's area. Postcards publicising the consultation will be sent to a sample of 3,000 residents in the proposed and surrounding areas. The council has also commissioned a door knocking exercise, in line with successful exercises completed in 2012 and 2015 at a sample 1,000 properties.
- 3.23 The council will publicise the consultation via press releases and other local media, social media, adverts in local papers and news items on its own website. In addition officers will attend pre-existing meetings with stakeholder groups including landlord groups and Local Action Teams to raise awareness about the consultation and to answer any queries.
- 3.24 Outline proposals for the consultation were discussed at the Strategic Housing Partnership on 21 March 2017 and at the Southern Landlords Group meeting on 5 April 2017.

## **4. ANALYSIS & CONSIDERATION OF ANY OPTIONS**

- 4.1 The report on *Private Rented Sector Discretionary Licensing Scheme: the evidence and next steps* discussed at the committee on 16 November 2016 undertook a full options appraisal on the five possible options for licensing in the city. The committee agreed to proceed with consultation on the preferred option of citywide additional licensing for smaller HMOs and selective licensing for private rented properties in 12 wards in the city.



## 5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Section 80(9) of the Housing Act 2004 states that prior to designating an area as subject to selective licensing 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 and not withdrawn.

Section 50(3) imposes the same consultation requirements for the designation of areas subject to additional licensing. To meet these requirements we will be undertaking a 12 week public consultation on the proposed schemes as outlined in paragraphs 3.20 – 3.23 of this report.

## 6. CONCLUSION

- 6.1 The results of the consultation will be analysed and the consultation responses and outcomes brought back to Housing & New Homes Committee to consider, and then to decide whether to proceed with the designations. If citywide additional licensing is agreed three months notice of the new designation would be required and the scheme would be anticipated to be in place by March 2018. It should also be noted that for selective licensing, permission would need to be sought from the Secretary of State should the proposed scheme proceed before notice of a new designation could be made. The Secretary of State decision should be made within 8 weeks from the date of submission but the council would have no control over this time period. If agreed, such a Selective Licensing Scheme would at the earliest be in place by May 2018.

## 7. FINANCIAL & OTHER IMPLICATIONS:

### 7.1 Financial Implications:

The proposed fee structures are calculated to recover costs over a five year period. Therefore, the aim of the scheme is to be cost neutral to the council. The final fee structure will be reported back to this committee after consideration of the consultation responses. The cost of consultation will be met from the 2017/18 budget of £22,000 set aside for this purpose. This is considered to be sufficient, however, any costs incurred in excess of this budget will be met from current Housing Services budgets (General Fund) and managed through the Targeted Budget Management (TBM) process.

*Finance Officer Consulted: Monica Brooks Date: 18<sup>th</sup> May 2017*

### 7.2 Legal Implications:

The criteria and procedures for the introduction of additional and selective licensing in parts 2 and 3 respectively of the Housing Act 2004 are very prescriptive. Failure to adhere to the requirements may leave the council vulnerable to challenge by way of judicial review in the High Court.

**Consultation:** Before introducing either sort of scheme, the council is statutorily required to take reasonable steps to consult persons who are likely to be affected

by the designation. Case law has determined that to be proper, the consultation should be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken. The Secretary of State's Guide for local authorities on "Selective licensing in the private rented sector" interprets those principles, and advises that, "The consultation should be informative, clear and to the point, so the proposal is readily understood. It should inform local residents, landlords and letting agents and businesses about the proposed designation, giving the reasons for proposing it, why alternative remedies are insufficient demonstrating how it will tackle specific problems together with other specified measures, and describing the proposed outcome of the designation. The consultation proposals set out in paragraphs 3.17 to 3.20 satisfy the statutory requirements.

**Confirmation or General Approval:** The designation of an area as subject to additional licensing or selective licensing cannot come into force unless it has been confirmed by the appropriate national authority (the Secretary of State) or it falls within a description of designations in relation to which the Secretary of State has given a General Approval. The current general approval is "The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of other Residential Accommodation (England) General Approval 2015." For additional licensing schemes, local authorities can rely on the General Consent provided that the consultation period with persons who are likely to be affected is at least 10 weeks. At least 10 weeks consultation is required under the General Consent for selective designations, but that is only available where the authority is designating less than 20% of its geographical area, or the designation affects less than 20% of privately rented homes in the local authority area.

**Fees;** The general rule relating to the setting of fees is that it is not an income generating measure, rather that the fees should be set at a level to reasonably reflect the authority's costs. The rules under the Housing Act 1984 reflect that approach. The council can require an application for a licence for a property subject to the additional licensing regime to be accompanied by a fee fixed by the council. When fixing fees, the council may take into account all costs incurred by them in carrying out their Part 2 of the Housing Act 2004 (Licensing of Houses in Multiple Occupation), and under Chapter 1 of Part 4 of the Act (Interim and Final Management Orders). Fees for Selective Licensing may take into account the council's costs in carrying out their functions under Part 3 of the Act (Selective Licensing of Other Residential Accommodation). The proposed fees referred to in the report reflect the statutory constraints.

**Conditions:**

In relation to the additional licensing regime, the Housing Act 2004 provides that a licence may include such conditions as the local housing authority consider appropriate for regulating the management, use and occupation of the house concerned, and its condition and contents. The conditions may include as appropriate conditions:- imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it;

requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house;  
requiring facilities and equipment to be made available in the house; conditions requiring such facilities and equipment to be kept in repair and proper working order;  
requiring, in the case of any works needed in order for any such facilities or equipment to be made available or to meet any such standards, that the works are carried out within such period or periods as may be specified in, or determined under, the licence;  
conditions requiring the licence holder or the manager of the house to attend training courses in relation to any applicable code of practice approved under [section 233](#).

A licence must include the conditions required by [Schedule 4](#). (See section 3.4 of the report for more detail.)

In relation to the selective regime, a licence may include such conditions as the local housing authority consider appropriate for regulating the management, use or occupation of the house concerned. Those conditions may include conditions:-

- (a) imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it;
- (b) requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house.
- (c) requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed for the purposes of this section by regulations made by the appropriate national authority;
- (d) requiring such facilities and equipment to be kept in repair and proper working order;
- (e) conditions requiring, in the case of any works needed in order for any such facilities or equipment to be made available or to meet any such standards, that the works are carried out within such period or periods as may be specified in, or determined under, the licence.

(4) A licence must include the conditions required by [Schedule 4](#).

The draft conditions have been drawn up with due regard to the statutory restraints.

*Lawyer Consulted: Name Liz Woodley*

*Date: 24/04/17*

### 7.3 Equalities Implications:

In seeking to tackle poor management, quality standards and anti-social behaviour, it is expected that any licensing scheme would have a positive impact on tenants including those with protected characteristics. After the consultation a full equalities impact assessment would be undertaken in relation to any discretionary licensing scheme recommended to Housing & New Homes Committee for approval. This assessment would incorporate the relevant findings of the stakeholder consultation to help inform decision making.

#### 7.4 Sustainability Implications:

The evidence has identified poor property conditions in the private rented sector. Action to tackle this is expected to improve the quality of the city's housing stock, thereby improving its sustainability.

#### Any Other Significant Implications:

#### 7.5 Public Health Implications:

Poor housing conditions, management and anti-social behaviour impact negatively on health, as evidenced in the city's Joint Strategic Needs Assessment. Improvements to housing quality and management will have a positive health impact on tenants and neighbours.

#### 7.6 Crime & Disorder Implications:

The evidence has identified anti-social behaviour linked to properties in the private rented sector. Action to tackle this is expected to reduce anti-social behaviour and nuisance associated with these properties.

#### 7.7 Risk and Opportunity Management Implications:

Should the schemes be recommended for implementation after the consultation, the scale of the schemes would require careful planning in terms of making sure sufficient staffing and resources are in place to effectively implement and manage them.

#### 7.8 Corporate / Citywide Implications:

The long term impact would be a higher quality and better managed private rented sector to the benefit of owners, tenants and neighbours. Improvements sought in management and standards and reductions in anti-social behaviour related to private rented homes would have wider beneficial impacts and is not anticipated to have a significant adverse effect on property supply.

### **SUPPORTING DOCUMENTATION**

#### **Appendices**

Appendix 1 - Selective licence proposed conditions

Appendix 2 –Mandatory and additional HMO licence proposed conditions

Appendix 3 – Current Mandatory & Additional HMO Licensing Scheme fees

**Documents in Members' Rooms            None**

#### **Background Documents**

- Housing Act 2004
- The Selective Licensing of Houses (Additional Conditions) England Order 2015
- Department of Communities and Local Government '*Selective licensing in the private rented sector: A guide for local authorities*' March 2015'

- Report on Private Rented Sector Discretionary Licensing Scheme: the evidence and next step, Housing & New Homes Committee 16 November 2016

