

LONDON BOROUGH OF WALTHAM FOREST

Meeting / Date	Cabinet 18 th March 2014	
Report Title	Borough Wide Licensing of Private Rented Sector Properties	
Cabinet Portfolio	Councillor Marie Pye, Portfolio Lead Member for Housing and Regeneration	
Report Author/ Contact details	Gavin Douglas Head of Environmental Health and Trading Standards . 02084962201 gavin.douglas@walthamforest.gov.uk,	
Wards affected	All	
Public Access	Open	
Appendices	Appendix 1(Selective Licensing draft proposal) Appendix 2 (Draft proposals appendices 1-5) Appendix 3 (Alternative Options) Appendix 4 (Consultation details) Appendix 5 (Equality Assessment)	

1. SUMMARY

- 1.1 The Council agreed that a proposal to introduce a scheme for the licensing of privately rented properties in the Borough, or part/parts of the Borough, be considered and taken forward by the relevant portfolio holder. This report provides Cabinet with an update on work carried out so far. It explains the process and methodology for the consultation on a proposed scheme for licensing of private rented sector properties, evidence of anti-social behaviour linked to the private rented sector.

2. RECOMMENDATIONS

- 2.1 For the reasons set out in this report, Cabinet is recommend to
- 2.2 Note the process adopted for consulting stakeholders on a possible licensing scheme for the private rented sector;
- 2.3 Agree to the further evaluation and consideration of the evidence gathered for a scheme in the Borough;
- 2.4 Agree to receive a further report at a future meeting of Cabinet with a view to making a decision as to whether or not to proceed with a Selective Licensing Scheme (SLS) for the Borough or for a part or parts of the Borough;

3. PROPOSAL.

- 3.1 The purpose of the report is to update Cabinet on progress to date, including the consultation process. The Council now must consider and evaluate all of the evidence gathered in response to its proposal to consider a SLS, before a decision can be made as to whether or not to proceed with such a scheme. A further report will be brought to Cabinet before making a final decision on the consultation proposal.
- 3.2 Waltham Forest suffers from significant and persistent anti-social behaviour (ASB) that is often related to poor tenancy and property management. The Housing Act 2004 provides powers for local housing authorities to designate areas, or the whole of the area of its district, as subject to discretionary licensing in respect of private rented accommodation. The authority must consider that amongst other criteria, the area is experiencing significant and persistent problems caused by anti-social behaviour (ASB); that some of the private sector landlords are failing to take action to combat the problem; and that making a designation will, when combined with other measures, lead to a reduction in, or elimination of the problem.
- 3.3 When evidence was gathered to consider selective licencing it was clear the ASB was significant and higher than the London average spread throughout the borough.
- 3.4 The evidence also showed that private rented sector accommodation was also spread throughout the borough and higher than both national and London averages.
- 3.5 The maps 1-5 contained within the draft proposal in appendix 1 show that there is a link between the location of ASB and the PRS.
- 3.6 Based on this evidence, it was decided to consult on designating the whole borough for selective licensing rather than just part or parts of the borough.
- 3.7 The Council must ensure that any exercise of the power is consistent with its overall housing strategy (Section 81(2)) see Section 6 of this report).
- 3.8 Section 81 also requires that the Council seeks to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour, both as regards combining licensing with other courses of action available to them, and in co-ordinating such licensing with measures taken by other persons. The authority must not make a particular designation under section 80 unless it has considered whether there are any other courses of action available (of whatever nature) that might provide an effective method of achieving the objective or objectives that the designation would be intended to achieve, and they consider that making the designation will significantly assist them to achieve the objective or objectives. (see Section 5 of this report).

- 3.9 In an area subject to selective licensing, all private landlords must obtain a licence for their properties and if they fail to do so, or fail to achieve acceptable management standards, the authority can take enforcement action - e.g. bringing a prosecution under Section 95 which can give rise to a fine of up to £20,000 or (in some cases) assume management control of the property. Section 79 requires that Councils must resource themselves both to determine applications efficiently and to implement and enforce the scheme.
- 3.10 Public notice of a designation must be given once it is made. The designation cannot come into force until at least three months after the date the designation is made or approved. A scheme can last for no more than five years and during its life the Council is required to keep the designation under review. If, following a review the Council considers it appropriate to do so, it may revoke the designation (Section 84).
- 3.11 There is a growing perception that poorly managed privately rented properties are having a negative effect on neighbourhoods. Anti-social behaviour, noise nuisance, and accumulations of refuse are just three issues which have been linked to the failure of private landlords to manage properties in an effective way.
- 3.12 The private rented sector (PRS) in Waltham Forest is now estimated to comprise nearly 34,000 dwellings. It is now the second largest tenure in the borough behind owner occupation and has nearly doubled in size over the last 10 years. It provides 32% of all housing in Waltham Forest compared to 16% nationally and is the only accessible housing option for many households on modest incomes or those which are homeless and or vulnerable.
- 3.13 The Borough has seen a growth in our PRS households from 16% to 26% (by an additional 11,000 households) over the last decade (according to census data). This figure increases to 32% if we look at the local Strategic Market Assessment carried out in 2011. There is also a significant and persistent problem with ASB, which has put high levels of demand on the Council's enforcement services and Police resources (see appendix 1).
- 3.14 Once the consultation results have been analysed, a further report will be brought to Cabinet. Cabinet will then at that time need to consider this analysis and whether the adoption of a SLS will enable us to tackle these issues more effectively, underpin our wider strategic objectives (as discussed in the section 6 below) and improve the quality of life for our residents.
- 3.15 A SLS, if proposed, would seek to reduce and/or eliminate ASB in private rented properties by imposing management conditions in a licence given in respect of each individual property.
- 3.16 Before the Council puts forward proposals for a SLS for approval, it must look at alternative options to tackle the issues a SLS will seek to address. Details of some alternative options along with their strengths and weaknesses are set out in Appendix 3.

3.17 In summary the Council needs to consider whether any of the alternatives can holistically address the issues of ASB across the PRS in the Borough.

3.18 **Additional Licensing**

3.19 Additional Licensing applies to Houses in Multiple Occupation (HMO's) that fall outside the existing mandatory scheme, which covers mainly three storey premises. In Waltham Forest additional licensing would generally include 2 storey HMO's where there 2 or more families and at least 3 residents.

3.20 In order to consider additional licensing, a local authority must consider that a significant proportion of the HMO's falling outside of the current scheme are being managed sufficiently ineffectively so as to give rise, or is to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for the members of the public.

3.21 Whilst it is recognised that there are some HMO's in this category within the borough that do give rise for concern, at present there is insufficient raw data or evidence base to reasonably meet the requirement within the Housing Act 2004. On this basis Additional Licensing is not being pursued as an option, however, if selective licensing was introduced further research could be carried out to see whether there would be a case for considering and consulting on an additional licensing scheme.

3.22 **Bye-laws**

3.23 A byelaw is a local law which is made by a statutory body, such as a local authority, under an enabling power established by an Act of Parliament. If there is general legislation to cover the subject causing concern, however, byelaws are not generally considered suitable. Since byelaws create criminal offences, they cannot come into effect unless they have been confirmed by a Secretary of State. Given the various statutory options with specific powers attached, it not considered that this is a preferable option in this case. Approval for such byelaws would therefore be unlikely to be given.

4. **OPTIONS & ALTERNATIVES CONSIDERED**

4.1 This report seeks Cabinet agreement to progress the work carried out to date and agreeing that officers evaluate and consider the evidence gathered during the consultation period and report back to Cabinet.

4.2 Alternatively, Cabinet could agree not to pursue this proposal, in which case no further work would be undertaken. This option is not recommended as this would not enable a full evaluation and consideration of the issues involved so that Cabinet could make an informed decision whether or not to proceed with any proposal.

4.3 Please also see 3.16 for alternative schemes considered.

5. **SUSTAINABLE COMMUNITIES STRATEGY (AND OTHER NATIONAL OR LOCAL POLICIES OR STRATEGIES)**

- 5.1 A key aspiration of the Sustainable Communities Strategy is to create a more economically balanced population. A poorly managed private rented offer detracts from the look and feel of the street and this will put off residents of all sectors from remaining in the Borough, regardless of tenure. A good quality private rented offer will encourage residents to stay in Waltham Forest, in turn creating sustainable communities.
- 5.2 The benefits of running a scheme have been highlighted within the report. The aim of selective licensing would be to reduce ASB. A reduction in ASB is also consistent with the four Council priorities:
 - 5.2.1 'Making our community a safer place' by supporting our commitments of tackling ASB, and targeting bad landlords and support good one
 - 5.2.2 'Keeping our borough Clean' by helping to reduce nuisance rubbish and fly tipping.
 - 5.2.3 'Bringing you better shopping, street and leisure (regenerating the borough)' by reducing tenant turnover leading to a more stable community and improving the image of the borough by an assured standards of tenant and landlord behaviour.
 - 5.2.4 'Helping you and your family' by: protecting vulnerable adults and children from landlords that are not 'fit and proper person'.
- 5.3 The authority must ensure that any exercise of the power, in the event it is exercised, is consistent with the authority's overall housing strategy. The Council's Housing Strategy 2008-2028 has three priorities, the second is 'making the most of the homes that we have'. Delivering a well-managed, quality offer for the PRS is a key in delivering this.
- 5.4 In its Housing Strategy, the Council is committed to working in partnership with the landlords and tenants of the PRS which (at 32%) represents the second highest tenure in the Borough and a critical part of the housing supply in the Borough. The Strategy references the Council's Sustainable Communities Strategy objective to "raise standards within the private rented sector, and bring empty homes into use, through enforcement and use of compulsory purchase powers if necessary." The Housing Strategy has the aim of "encouraging the private sector to play its part in improving standards, and reducing empty homes and anti-social behaviour, "
- 5.5 In November 2013, Cabinet agreed a housing prospectus 'Creating Better Homes Waltham Forest 2014-2018' which set out the actions that were required to deliver these objectives to take account of the changing economic landscape and legislation since the Strategy was written, particularly the growing importance of the private rented sector in meeting the housing needs of an increasing number of residents in the borough.
- 5.6 'Good quality private rented homes' is one of the four key objectives of Creating Better Homes. The prospectus sets out some of the ways in

which the Council envisages delivering this including working with good landlords, proactive front line enforcement and the consideration of licensing for all privately rented properties.

- 5.7 The decision sought which is to agree that the consultation responses are evaluated and considered and to report back to Cabinet with any proposal is consistent with the Council's key strategies.

6. CONSULTATION

- 6.1 The Housing Act 2004 imposes statutory consultation requirements set out in Section 80(9). The Council must take reasonable steps to consult persons who are likely to be affected by the designation and then must fully consider any representations made.

- 6.2 A comprehensive public consultation with landlords, the public and local businesses was carried out from the 8th of November 2013 to the 24th January 2014. The consultation was based on a Proposal document setting out the issues and some options available (See appendix 1 and 2). The process achieved a large number of responses of over 1500 from all sectors of the community, and one of the largest responses to such a process anywhere in the country. A full analysis of the consultation responses will be presented to Cabinet in due course so they can be fully taken into account when a final decision is made.

6.3 Consultation approach

- 6.4 The approach to consultation was compliant with the requirements of the Housing Act 2004 and the following guidance and evidence:

6.4.1 The Department for Communities and Local Government (DCLG) guidance Approval Steps for Additional and Selective Licensing Designation in England (revised version February 2010)

6.4.2 Other relevant guidance include Library Standard Notes: SN/SP/1012 Anti-social behaviour in private housing and SN/SP/4634 Selective Licensing of Privately Rented Housing

6.4.3 Practice from other local authorities that have previously undertaken licensing consultation;

6.4.4 An equalities assessment of the potential impact of selective licensing in Waltham Forest and the consultation approach

A detailed breakdown of the approach can be found in Appendix 4.

- 6.5 In practice, the consultation included:

6.5.1 Promoting the consultation via the Council's website homepage, 11,000 emails to residents, Facebook and six articles in Waltham Forest News.

6.5.2 1,117 letters and leaflets sent to Landlords.

6.5.3 Two well attended Landlord Forums.

6.5.4 34,067 letters and leaflets to tenants.

- 6.5.5 Community ward forums by presentations.
- 6.5.6 Open drop in sessions.
- 6.5.7 Road shows throughout the borough.
- 6.5.8 Informing key stakeholders and community groups by mail outs and presentations at meetings

7. IMPLICATIONS

7.1 Finance, Value for Money and Risk

- 7.1.1 Section 87 of the Housing Act 2004 provides that the Council may recover its costs of running a SLS by charging fees from the applicant. All costs incurred by the authority in carrying out their functions to run a SLS are recoverable. Such fees must be reasonable and proportionate and cannot make a “surplus” for the Council. The estimated costs of the proposed scheme exclude the cost of enforcement but include compliance checks of licenced properties. An estimate of the level of these costs will be included in any report seeking a final decision on whether to proceed or not
- 7.1.2 Whilst the administration of the scheme is envisaged to be self-financing, it is important to note that any costs related to the enforcement of landlords that have not licensed premises is not recoverable. Therefore, to the extent that such costs are not recovered by courts awarding costs in successful enforcement actions, funding will need to be identified. An estimate of the level of resource for this would be included in a future report to Cabinet if a recommendation is made to proceed.

7.2 Legal

- 7.2.1 This report is for information, setting out the current position and actions taken following the Council motion in 2013. The report is not seeking a decision on the introduction of a SLS but an agreement from Cabinet that the results of the consultation carried out are now evaluated and considered. It is a legal requirement that the Council conscientiously consider responses to a consultation and so this approach is sound.
- 7.2.2 The body of the report sets out an outline of the legal framework. Part 3 (Sections 79 to 100) of the Housing Act 2004 gives local authorities the discretionary power to introduce a scheme of selective licensing of privately rented properties in the whole or part of its area imposing conditions on landlords for minimum standards of management.
- 7.2.3 It may exercise this power where the statutory criteria are met and following a consultation process. In the Council’s case, the SL proposal is put forward on the statutory ground relating to anti-social behaviour. Section 80 (6) provides that a SL scheme may be introduced where:

- (a) the area is experiencing a significant and persistent problem caused by anti-social behaviour;
- (b) that some or all of the private sector landlords who have let premises in the area (whether under leases or licences) are failing to take action to combat the problem that it would be appropriate for them to take; and
- (c) that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, lead to a reduction in, or the elimination of, the problem.

7.2.4 The Council's proposal falls within the statutory framework and, as stated, the consultation process meets the requirements of s.80(9) with the decision to defer a final decision to provide the Council with time to consider the high level of responses a sensible and rational approach to decision-making on this matter.

7.3 Equalities and Diversity

7.3.1 To support the consultation phase of this proposal, an Equality Analysis was carried out (attached at Appendix 5) to consider any barriers that might be faced by protected groups to enable them to understand and respond to the consultation. An action plan was developed to ensure that the consultation process was inclusive and accessible and this was implemented and monitored throughout the process. The EA also considers the potential impact of the proposals on the protected equality characteristics, although a further EA will be undertaken to take account of the findings from the consultation and to inform any decision on the proposed licensing scheme going forward.

7.3.2 A copy of the EA drawn up to inform the consultation is attached at Appendix 5. As Cabinet will be aware, details of the statutory duty under s.149 of the Equality Act 2010 and guidance on how to exercise this duty is set out at the front of the Council's EA template.

7.3.3 The EA will be reviewed and updated when the responses to the consultation process have been fully considered and analysed and based on the final recommendation to be put to Cabinet on whether or not to proceed with a SLS.

7.4 Sustainability (including climate change, health, crime and disorder)

7.4.1 The introduction of property licensing designations, if agreed, should have a positive impact on climate change and alleviating fuel poverty as any measures to improve housing management will ensure that heating appliances are properly checked, maintained and working efficiently. Further the requirement for energy performance certification for each privately rented dwelling will ensure that both tenants and landlords are made aware of steps that can be taken to reduce energy consumption.

7.5 Council Infrastructure

- 7.5.1 If a SLS was to be introduced, consideration will need to be made on the Human Resources, ICT and property infrastructure implications in considering the best model to proceed.

BACKGROUND INFORMATION (as defined by Local Government (Access to Information) Act 1985)