

# Birmingham City Council

## Report to Cabinet

15 December 2020



**Subject:** Selective Licensing – Private Rented Sector

**Report of:** Robert James, Acting Director, Neighbourhoods

**Relevant Cabinet Member:** Councillor Sharon Thompson, Homes and Neighbourhoods

**Relevant O &S Chair(s):** Councillor Penny Holbrook, Housing and Neighbourhoods  
Councillor Sir Albert Bore, Resources

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
<p>If yes, name(s) of ward(s): <b>Edgbaston</b>, Balsall Heath West, Edgbaston, North Edgbaston, Weoley and Selly Oak; ; <b>Erdington</b> – Gravelly Hill Stockland Green,; <b>Hall Green</b> – Balsall Heath West, Brandwood &amp; Kings Heath, Hall Green North, Sparkbrook &amp; Balsall Heath, Sparkhill, Tyseley &amp; Hay Mills; <b>Hodge Hill</b> – Alum Rock, Bordesley Green, Bordesley &amp; Highgate, Heartlands, Small Heath, Ward End, <b>Ladywood</b>, Aston, Bordesley Green, Bordesley &amp; Highgate, Holyhead, Ladywood, Lozells, North Edgbaston, Soho &amp; Jewellery Quarter; <b>Northfield</b> -Weoley and Selly Oak</p> <p><b>Perry Barr</b> – Aston, Birchfield, Handsworth, Holyhead and Lozells; <b>Selly Oak</b> – Bournbrook &amp; Selly Park, Brandwood and Kings Heath, Weoley and Selly Oak Ward, <b>Yardley</b> – Acocks Green, Bordesley Green, Hall Green North, Small Heath, South Yardley, Sparkbrook &amp; Balsall Heath, Tyseley &amp; Hay Mills, Yardley West &amp; Stechford.</p>		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 007941/2020		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

## **1 Executive Summary**

- 1.1 The Council Plan sets out six outcomes that they would like to achieve. One of the priorities is to ensure that; we will have the appropriate housing to meet the needs of our citizens.
- 1.2 The private rented sector is the second largest housing sector after owner occupation in the City. Within the Council's Housing Strategy there is a commitment to tackle issues within this sector. A selective licensing scheme (SLS) is one of the tools available to improve standards and ensure that all privately rented properties meet a minimum housing standard, which gives the tenant a stable home and helps with building stable communities.
- 1.3 The Housing Act 2004 (Section 80) ("the Act") allows local authorities to designate the whole or any part or parts of their area as subject to selective licensing. The introduction of selective licensing means that all private rented accommodation which is let or occupied is done so under a licence, including non-licensable HMOs.
- 1.4 There are specific conditions set out in the legislation that must be met before a selective licensing scheme can be considered. Selective Licensing (SL) designation may be made if the area to which it relates satisfies one or more of six conditions. Where the designation is to be based on property conditions, migration, deprivation or crime, the local authority may only make a designation if the area has a high proportion of property in the private rented sector e.g. 19% or more. In addition, Similar neighbourhoods need to be considered across a local authority area or within a region.
- 1.5 Eight of the ten constituencies of the City have a high proportion of property in the private rented sector, except Northfield and Sutton Coldfield. i.e. more than 19%. Further analysis of various data, both national and local has demonstrated that six of the City's constituencies; Ladywood, Hall Green, Perry Barr, Hodge Hill, Erdington and Yardley meet the condition for selective licensing based on high levels of deprivation. Ladywood and Erdington also meet the condition based on high levels of crime.
- 1.6 Analysis of the data was also compared by ward and 28 of the 69 wards across nine constituencies have met the conditions due to high levels of deprivation and/or crime. This represents 40% of the City. It is the ward data that has been relied upon to demonstrate which of the six conditions of the SL criteria have been met. (See appendix 9)

## **2. Recommendations**

- 2.1 Cabinet agree that the conditions for selective licensing based on deprivation and crime have been met (for the below 28 wards) and that consultation should now take place regarding the pursuance of a selective licensing scheme in the stated wards in the constituencies; Edgbaston,

Erdington, Hall Green, Hodge Hill, Ladywood Northfield, Perry Barr, Selly Oak and Yardley.

Following the outcome of the consultation a further report will be submitted to Cabinet providing a detailed analysis of the feedback received during the consultation process and making further recommendations as appropriate.

### **3 Background**

- 3.1 Within the Council's Housing Strategy there is a commitment to tackle issues within the Private Rented Sector (PRS) market to ensure that private tenants can live in good homes and neighbourhoods. The City Council has committed to explore and where possible make use of licensing and other powers to target rogue landlords across the city.
- 3.2 The Housing Act 2004 (Section 80) ("the Act") allows local authorities to designate the whole or any part or parts of its area as subject to selective licensing. The introduction of selective licensing means that all private rented accommodation which is let or occupied is done so under a licence, including non-licensable HMOs. Selective licensing designation can be made for a period of up to five years and is renewable after that period.
- 3.3 A local housing authority must apply to the Secretary of State for confirmation of any scheme which would cover more than 20% of their geographical area or that would affect more than 20% of privately rented homes in the local authority area. Selective licensing in the private rented sector: A Guide for local authorities (March 2015) (Appendix 1) referred to as "the Guidance" in this report refers to the fact that a selective licensing designation may be made if the area to which it relates satisfies one or more of six conditions detailed in the Act, namely:
  - Low housing demand (or is likely to become such an area)
  - A significant and persistent problem caused by anti-social behavior – attributable to the private rented sector
  - Poor property conditions
  - High levels of migration
  - High level of deprivation
  - High levels of crime
- 3.4 When considering whether to make a selective licensing designation a local housing authority must first identify the objective or objectives that a designation will help it achieve (i.e. it must identify which of the above conditions are said to apply) and what it expects the designation to achieve. It must also consider whether there are any other courses of action available to it that would achieve the same objective or objectives as the proposed scheme without the need for the designation to be made. The Guidance provides that it is only where there is no practical and beneficial alternative to a designation that a scheme should be made. The Guidance states that selective licensing must;
  - be done in conjunction with other activities to resolve issues in the private rented sector

- be consistent with other related strategies i.e. housing strategy, homelessness, empty properties etc.
- have clear objectives of what the scheme will achieve – “only where there is no practical or beneficial alternative to a designation should a scheme be made “
- have full consultation (of at least 10 weeks if the designation does not require the confirmation of the Secretary of State) and the results must be published.

3.5 If the local housing authority decides there is no practical and beneficial alternative to the scheme, it must only make the designation if it is satisfied that the scheme will significantly assist it in achieving its objective or objectives, with other actions the local housing authority may be taking.

#### **4.0 Related Strategies and their consistency with a Selective Licensing Scheme.**

The guidance requires that any SLS must be consistent with other related strategies. The following information evidences that an SLS would be consistent with the Council's related strategies.

##### **4.1 Council Plan 2018 - 2022**

The Council Plan sets out six outcomes that they would like to achieve;

- Birmingham, an entrepreneurial city to learn, work and invest in
- Birmingham, an aspirational city to grow up in
- Birmingham, a fulfilling city to age well in
- Birmingham, a great, clean and green city to live in
- Birmingham, a city whose residents gain the most from hosting the Commonwealth Games; and
- Birmingham a city that takes a leading role in tackling climate change.

A SLS is one of the tools available to improve standards in the PRS. Such a scheme would fit within the fourth outcome, 'Birmingham is a great, clean and green city to live in'. Specifically, the implementation of a SLS will contribute to priority 2 of the 6 priorities to achieve this outcome, as follows:

##### **4.2 Priority 2**

We will have the appropriate housing to meet the needs of our citizens. A selective licensing scheme will ensure that all privately rented properties meet a minimum housing standard, which gives the tenant a stable home and helps with building stable communities. Tenants would be confident that homes meet the minimum energy saving requirements which would contribute to the green city aspiration.

A SLS will also contribute to alleviating fuel poverty as measures to improve standards will ensure that heating appliances are properly checked, maintained and working efficiently. Improvements in the housing standards should also make properties more secure which should assist with minimising crime, particularly burglary.

**4.3 Priority 3** - We will work with partners to tackle rough sleeping and homelessness. The availability of and living in improved housing conditions should contribute to the reduction in homelessness.

#### **4.4. Homelessness Prevention Strategy**

Since March 2018, the number of customers being made homeless from the PRS had increased. There are a variety of reasons for this, including disrepair. By ensuring that landlords meet a set housing standard it would be expected that there would be a reduction of homeless applications for this reason.

#### **4.5 Empty Properties Strategy**

The Council's Empty Property Strategy aims to bring privately owned properties back into use. Empty properties adversely affect the lives of people in the vicinity. They attract vandalism and ASB. In addition, they have a negative impact on the surrounding living environment and drive down house values. In the financial year 2019/2020 the target of bringing empty properties back into use was exceeded by two properties.

There is great demand for family accommodation in the city and most of the empty properties are houses. Bringing these properties back into use will contribute to the supply of family accommodation. A SLS will assist with ensuring that the standards are maintained and reduce the likelihood of housing related crime. It will also help with the stability of households from which they can improve their life outcomes.

### **5.0 Data Gathering and Analysis ..Housing Conditions Plus**

In 2018, an initial analysis of housing data based on Census 2011 was carried out to identify if a selective licensing scheme (SLS) could be implemented in Birmingham. The 2011 census showed that the PRS was 68,000 properties. Local intelligence was indicating that the PRS had grown much larger and to obtain a more accurate picture of the sector further analysis was required.

The council's Insight programme was commissioned to carry out the data analytics. The case brief is called Housing Conditions Plus (Appendix 2). It provides a more up to date and better understanding of the residential housing market in the City and will be the baseline evidence for any proposal for SL. The data can also be used to aid partnership working on housing issues.

The data used was obtained from various sources both internal and external to the Council. Due process has been followed to ensure Data Protection Act compliance including a Data Protection Impact Assessment (DPIA) (Appendix 3). The methodology of how the data was collated and analysed can be found in Appendix 4. Primarily the data was built up by using Lower Super Output Areas (LSOAs). These are parts of the city which are smaller than wards and larger than single postcode areas, allowing for accurate comparison. They allow for improved reporting of small area statistics in England and Wales. Birmingham is made up of 639 LSOAs, of which 290 have a percentage of PRS equal to or greater than 20%. E.g. Ladywood Constituency is made up of 87 LSOAs, of which 61 have a percentage of PRS greater than or equal to 20%.

The total number of residential properties in Birmingham across all tenures is estimated to be 468,048, of which the PRS is now estimated at 104,941 properties, which include 6121 HMOs. That is an increase of more than 50% since the 2011 census. It is the second largest tenure after owner occupation and represents 22.14% of housing tenure. Given the demand for housing in the City it is becoming the main route to suitable accommodation for households who are homeless or on limited income.

In considering whether to designate an area for selective licensing on the grounds of Property Conditions, Migration, Deprivation or Crime, the Council need to demonstrate that the area(s) have a high proportion of property in the private rented sector. The Government stated that nationally the private rented sector makes up 19% of the total housing stock in England (as at March 2014) and that if the number of privately rented properties in an area exceeds 19%, the area can be considered as having a high proportion of privately rented properties.

Insight undertook an analysis of the housing sector in Birmingham by tenure and has produced dashboards against the six statutory criteria for selective licensing which demonstrates in which areas PRS is greater than 20% and where selective licensing conditions are met. The dashboards are interactive and provide the analysis of the data by constituency and ward. Appendix 4 provides the methodology used to create the dashboards. Table 1 shows the percentage of the PRS by constituency. Table 2 (Appendix 5) provides the analysis by wards.

<b>No.</b>	<b>Constituency</b>	<b>PRS %</b>
1	Edgbaston	23.63
2	Erdington	21.30
3	Hall Green	26.74
4	Hodge Hill	22.54
5	Ladywood	31.21
6	Northfield	13.56
7	Perry Barr	22.95
8	Selly Oak	22.67
9	Sutton Coldfield	13.79
10	Yardley	21.29

**Table 1. Percentage of PRS by Constituency.**

Out of the 10 constituencies, only Northfield (13.56%) and Sutton Coldfield (13.79%) have less than the England average percentage of PRS in the area. Analysis of the PRS by ward demonstrates that there are certain wards that have a higher percentage share of PRS than their related constituency. See Table 2 Appendix 5. The wards data has been used to identify if the conditions for selective licensing have been met in the wards concerned.

Each of the six criteria for SL was assessed against the housing tenure information. For four of the SLS conditions it has not been possible to demonstrate that the criteria have been met. These are:

**ASB - attributable to the private rented sector.** Analysis of the council's data on ASB shows that the reports are not primarily from the private rented sector. There was insufficient data to demonstrate that this condition would be met.

- **High levels of migration** - the data shows that net migration in the city has increased by 0.85% but it is not possible to assign with any accuracy across the constituencies.

- **Poor Housing conditions** - a requirement is that the Council has carried out a review of housing conditions under section 3(1) of the Housing Act 2004. This is one of the priorities in the Council Plan 2018 - 2022.

- **Low Housing Demand** - across all the constituencies and wards there has been an increase in the sale of houses from 2015 – 2018, which indicates that there is not low housing demand in the City. Another indicator of housing demand is the number of housing applicants on the Council's Housing Register. Following a review of the Council's Allocation Scheme in 2017, there has been a steady increase in the number of applications year on year.

## 5.1 Crime

The data relating to Crime was taken from the West Midlands Police open crime data base. The crime ranking for England is 179.41 and for Birmingham 203.7. Any constituency or ward with a ranking greater than the above can be interpreted as experiencing high levels of Crime.

The Guidance states that when assessing if an area suffers from a high level of Crime, the local authority should consider the crime rankings compared across similar neighbourhoods across the local authority area or within the region. We have considered the crime rankings across the 10 constituencies and the 69 wards.

Table 2 ( appendix 5), shows the constituencies where the PRS is 20% or more and the crime ranking in relation to England and Birmingham average ranking. Ladywood is far above at 408.22 compared to 179.41 for England and 203.7 for Birmingham.

Table 3 (appendix 9) shows the wards where the PRS is 20% or more and the crime ranking in relation to England and Birmingham average ranking.

Even where a constituency may have a lower ranking for crime when compared to the city, there will be wards within a constituency which may show higher levels of crime. For example, Edgbaston constituency crime ranking is lower than the city at 194.32. However, the Edgbaston ward has a crime ranking of 287.33 and a PRS of 33.54%. This demonstrates why comparison by ward is a better indicator to demonstrate which areas meet the criteria for selective licensing. This is clearly shown in Table 2 ( appendix 5)

Residents of the City have frequently contacted the Council about various type of unacceptable behaviour in their locality. These behaviours include noise nuisance, accumulation and dumping of rubbish and public disorder, amongst others. There is an assumption that these behaviours are due to the high number of PRS in their locality, especially in areas where there is a high number of HMOs and that the properties are poorly managed by the

landlords/agents. The data seems to bear out the assumptions made by residents in some of the wards when compared against the Birmingham average ranking.

## **5.2 Deprivation**

To assess whether an area is experiencing high levels of deprivation, consideration must be given to;

- the employment status of adults
- the average income of households
- the availability and ease of access to education, training and other services for households
- the health of households
- levels of crime
- barriers to housing
- physical environment

All the above factors are combined in the Combined Index of Multiple Deprivation. This index was used to assess the level of deprivation in Birmingham. A ranking score was used to compare the deprivation levels of Birmingham compared to the national average. A rank of 1 means that the area is the most deprived. The average rank for England is 16,422 and for Birmingham it is 7,752.

Table three (appendix 9) shows the wards that meet the conditions for Crime or Deprivation or both. These total 28 wards which is 40% of the 69. There are wards that straddle one or more constituencies. Where one part of the ward meets the conditions, then the whole ward is considered to have met the condition. E.g. Weoley and Selly Oak have parts in Edgbaston, Northfield and Selly Oak Constituencies. As the condition has been met for Crime in the part of the ward in Selly Oak Constituency, the entire ward can be considered for any proposed selective licensing scheme. Central Government have confirmed this approach in a telephone conversation on 22 October 2020.

In June 2016, Birmingham Child Poverty Commission, published an independent report (Appendix 6) on deprivation and its impact. It detailed how the significant levels of deprivation and poverty in the city, impact on the growth, development and aspirations of residents, especially young people. Given the shortage of social housing, vulnerable households and those on limited income are having to rely on private sector housing.

A SLS would mean that private sector landlords would have to adhere to any licence standards. This could include ensuring that there is adequate space heating, making properties secure, ensuring space standards are adequate, taking reasonable steps to prevent or reduce unacceptable behaviour by tenants and persons visiting the property, provision of adequate refuse disposal and maintaining in good order outbuildings and gardens. In addition, a



landlord/managing agent would need to be a 'fit and proper person' and competent to manage the property.

During the period of the licence, there could be an inspection of properties to ensure that the licence is being adhered to and complaints would also be investigated. Where it was identified that licensing conditions were not being adhered to, enforcement action could be taken. It is anticipated that a SLS will aid in alleviating some of the elements that cause deprivation and enable households to have stability of accommodation and communities.

## **6.0 Alternative Options**

The Guidance states that an SL must be done in conjunction with other activities to resolve issues in the PRS. Below are the existing activities that the Council currently undertakes to improve standards in the PRS.

### **6.1 HMO Licensing**

Prior to 2018, HMO licensing only applied to properties with three storeys or more. The removal of this condition saw an increase of approximately 500 licensable HMOs.

The Council currently enforces a statutory licensing scheme for certain types of House in Multiple Occupation where a property is;

- rented to 5 or more people who form two or more households and
- tenants share toilet, bathroom and/or kitchen facilities

There are currently 2,000 licensed properties on our published HMO licensing register. This doesn't include any exempt accommodation as they are excluded under the legislation.

Recent data estimates that there are 6,160 HMOs in the city. It is anticipated that some of these HMOs may not meet the criteria as a Licensable HMO, therefore the enforcement action that can be taken against licensable HMOs will not apply. The council is working through the new data sets to ensure all those that require a licence under the regulations receive one. However, a SLS scheme would mean all HMOs would require a licence, excluding those classed as exempt.

### **6.2 Civil Penalties**

The Housing and Planning Act 2016 section 126 and Schedule 9 amended the Housing Act 2004 and introduced the ability for Local Housing Authorities to impose financial penalties (civil penalties) of up to £30,000 per offence.

Civil Penalties are an alternative to prosecution for the following offences under the Housing Act 2004:

- failure to comply with an Improvement Notice (Section 30);
- offences in relation to Licensing of Houses in Multiple Occupation (Section 72);

- offences in relation to Licensing of houses under Housing Act 2004 Part 3, (Section 95);
- offences of contravention of an Overcrowding Notice, (Section 139(7));
- failure to comply with management regulations in respect of HMOs. (Section 234);

The Council seeks to impose Civil Penalties in accordance with its Enforcement Policy for the Regulation of Housing Standards and the Licensing of Houses in Multiple Occupation.

Following the implementation of the revised policy, the Council served its first civil penalty in April 2019. In the financial year 2019/2020, final notices totalling £26,221. were issued.

Legal Services is currently reviewing the recovery of debt policy in relation to civil penalties for those landlords who do not pay the charge in a timely manner.

### **6.3 Private Tenancy Enforcement**

There is a specialist Private Tenancy Team that provides specialist advice on renting in the private rented sector. They will intervene to prevent unlawful eviction and harassment and pursue, in appropriate cases, criminal prosecutions for offences under the Protection from Eviction Act 1977 and other relevant legislation. The Team, through education and encouragement, promotes good practice. In 2019/2020 the team dealt with more than 2,500 requests for assistance.

### **6.4 Empty Properties**

It is estimated that there are approximately 10,000 empty properties in Birmingham. The majority of these are family accommodation which if brought back into use would add to the supply of family accommodation; a valuable contribution to the housing crisis in the city and it could contribute to reducing the number of households in temporary accommodation, especially B&B.

Bringing these properties back into use will reduce the likelihood of nuisance, blight, devaluation of homes and crime in the local community. In 2019/2020 the target of bringing 350 properties back into use was achieved.

### **6.5 Controlling Migration Team**

The city has a proud history of welcoming migrants. It is recognised that migrants often must rely on accommodation at the lower rental of the private sector market. The Team's aim is to support migrant communities in Birmingham to ensure that they and the local communities understand the help and support in relation to housing that is available to them. They will also tackle rogue and criminal landlords, thereby improving poor housing conditions.

The team operates in a multi-agency framework comprising and working with the West Midlands Police, West Midlands Fire Service, the Gang Masters and

Labour authority, MPs and Councillors, local resident groups and other Council departments, principally Waste Management.

## **6.6 Article 4 Direction**

Planning legislation allows certain types of development to take place without planning approval; known as 'permitted development rights'. Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 allows local authorities to remove these permitted development rights.

The Council implemented a Direction under Article 4 which means that planning permission will be required for the conversion of family homes to small HMOs. The direction took effect on 08 June 2020.

In November 2014 an Article 4 Direction was introduced within designated areas of Selly Oak, Edgbaston and Harborne Wards.

Once the Development Management in Birmingham DPD is formally adopted in early 2021, a new policy will be implemented which will mean that new HMOs will not be permitted where 10% or more of houses within a 100-metre radius of the application site are not a single dwelling.

A city-wide analysis was undertaken to assess the locations and concentration of HMOs. A mapping exercise of the licensed HMOs, along with Council Tax exemptions and planning consents for sui generis HMOs, and small C4 HMOs in the November 2014 Article 4 Direction area is also underway.

Before Article 4 took effect, landlords of HMOs were invited to declare their HMO's. The Council Planning team received 2,600 declarations, which they are currently processing. PRS and Planning are collaborating on this work. Landlords whose HMO's meet the mandatory licence criteria, but don't have a licence will be informed to apply. The Article 4 Direction is however not retrospective and can only help with newly proposed HMO's.

## **6.7 Exempt Accommodation**

'Exempt' accommodation was defined in 1996 as "accommodation which is...provided by a non-metropolitan county council, a housing association, a registered charity or a voluntary organisation where that body or a person acting on its behalf also provides the claimant with care, support or supervision". The Housing Benefit and Universal Credit (Supported Housing) (Amendment) Regulations 2014 introduced a definition of 'Specified Accommodation', with 'Exempt' accommodation remaining as part of four new categories, retaining the same meaning and provisions.

There has been an increase in the supply of such accommodation; as well as being excluded from local allowance housing (LHA) rates, such accommodation is also excluded from the legislation relating to the enforcement powers, including SL, available to improve standards in the PRS.

Research commissioned by Birmingham Safeguarding Adult Board (BSAR) originally identified that there were 8,000 units of such accommodation. The latest estimation is that this accommodation has increased to 19,000 and is

increasing at a rate of 1000 units a month. Only 1,200 units of this accommodation have been commissioned by the City.

Through benchmarking with other local authorities, it has become apparent that the issue of such high levels of exempt accommodation is relatively unique to Birmingham.

A large proportion of these properties sit within umbrella Registered Providers who are subject to regulatory standards of the Regulator of Social Housing (RSH). However, the standards do not extend to the quality and extent of support provided to often vulnerable individuals who live in the accommodation.

A cross council and partner working group has been established to take forward recommendations from the BSAB report. Working with the larger Registered Providers a self-regulated Quality Assurance framework and Charter of Rights have been developed to drive up standards and regulation in the sector. Two officers have been appointed to promote and encourage the landlords and managing agents of such accommodation to sign up to the charters.

The Council is in regular dialogue with the RSH on the issues in Birmingham and continue to lobby on matters of regulation and resourcing and are also developing area-based action plans and targeted action to address specific issues in areas e.g. Francis Road, Erdington.

Given the significant increase in such accommodation, residents who live in the vicinity of such accommodation have voiced their opinion about the lack of management of these properties. This opinion includes the negative impact the accommodation has on neighbourhoods to the extent that long standing residents would look to move from the affected areas which could have a destabilising effect on the community. This would be contrary to the Council's aim of building and maintaining sustainable communities as set out in the Council Plan.

Exempt accommodation tends to be found in areas of the city with large Georgian and Victorian houses, most of which are in the inner wards of the city.

## **6.8 Additional Licensing**

The Housing Act 2004 allows for additional licensing to help deal with the problems associated with HMOs that are not already covered by mandatory licensing and would be an extension only applicable to smaller HMOs and would not cover the majority of the PRS sector.

It relates to properties where 3 to 4 people who are not related share accommodation e.g. smaller privately rented houses, flats or substandard conversions.

With the introduction of Article 4 there are opportunities to address issues with smaller HMO's through the planning route.

## **7.0 Options Considered and Recommended Proposal**

- 7.1 The body of the report details the alternative options that are in place to improve standards in the private rented sector and it shows that singularly or

collectively they are insufficient to adequately improve standards within the private rented sector.

- 7.2 Housing and related data has been analysed and assessed against the six criteria for selective licensing. There is insufficient data to assess the condition for selective licensing due to ASB attributable to the PRS, Migration, Low Housing Demand and Property Conditions. However, the data indicates that 28 of the 69 wards meet the conditions due to deprivation and or crime.
- 7.3 The Guidance states that a local authority must apply to the Secretary of State for confirmation of any scheme that covers more than 20% of their geographical area or would affect more than 20% of the privately rented homes in the local authority area.
- 7.4 In each of the 28 wards the private rented sector is greater than 20% and combined they represent 40% of the local authority area. Consequently, any proposed scheme will have to be submitted to the Secretary of State for confirmation.
- 7.5 This report is seeking Cabinet's agreement that the conditions for selective licensing based on Deprivation and Crime have been met and that consultation should now take place regarding the pursuance of a selective licensing scheme in the stated wards.

Following the outcome of the consultation a further report to be submitted to Cabinet

- 7.6 If Cabinet agrees that consultation in respect of such a scheme should be pursued, agreement should also be given to meet the requirements and financial implications as set out below.

## **8. Consultation**

- 8.1 Section 80 (9) of the Housing Act 2004 states that , when considering designating an area as subject to selective licensing the council must take reasonable steps to consult persons who are likely to be affected by the designation of a SLS e.g. local residents, landlords, businesses within the proposed designation etc and all representation must be considered. The consultation period should be for a period of at least 10 weeks and the local authority is required to conduct a full consultation .
- 8.2 Any consultation undertaken will be compliant with the requirements as set out in the Housing Act 2004. In addition, guidance from MHCLG and practice from other councils who have undertaken consultation on SLS will be noted.
- 8.3 A SLS working party has been established, consisting of representatives from the West Midlands Police, BSHP, West Midlands Fire Service, Housing Strategy and Legal Services.

- 8.4 If the recommendation is agreed to consult on a possible SLS based on Crime and Deprivation in the named wards, a robust consultation programme will be implemented. This will include promoting it via the Council's website, roadshows, ward forums etc.

## **9. Risk Management**

- 9.1 Implementing a SLS is human resource intensive. The administration of the scheme can be fully covered by resulting licence fees and be self-financing. However, costs related to enforcement for landlords who do not have a licence cannot be recovered via SL fee. If a scheme is implemented the main risk is that there is a low take up by landlords, which would increase the cost of compliance and recovery of enforcement costs.
- 9.2 The scheme could also be susceptible to legal challenge if, for example, there was a challenge as to whether the criteria were met.
- 9.3 It is also noted that any SL scheme would require the approval of the Secretary of State. The approval system is concerned with ensuring that the local housing authority has carried out the requirements imposed on it through the legislation before seeking to make the designation and can sufficiently demonstrate, where a scheme will impact on a large geographical area or number of privately rented properties, that there is robust evidence to support the reasons for making the designation.

## **10. Compliance Issues**

### **10.1 How are the recommended decisions consistent with the council's policies, plans and strategies?**

- 10.1.1 The Council's vision is to be a City of growth where every child, citizen and place matters – It wants to make a positive difference, every day, to people's lives. This aim underpins everything we do, whether that's setting our priorities, making decisions or delivering services. There are eight outcomes to achieve that vision.

Outcome 4, Birmingham is a great, clean and green city. A SLS is a one of the tools available to improve standards in the PRS. Such a scheme would contribute to priority 2 of this outcome.

A scheme will also be consistent with the council's Homelessness Prevention and Empty Properties Strategies as it would bring about improvements in the PRS, help to sustain and stabilise communities, thereby contributing to the reduction in approaches to the council for homelessness assistance.

### **Legal Implications**

- 10.2.1 The legal framework in respect of selective licensing is set out in Section 79-100 of the Housing Act 2004. It allows the local authority to introduce selective licensing of privately rented homes across the whole or part of the local authority area, if the area to which it relates satisfies one or more of the conditions stipulated in the legislation. In considering whether to

designate an area, Guidance provides that the local authority must first identify the objective or objectives that a designation will help it achieve. Secondly, it must also consider whether there are any other courses of action available to it that would achieve the same objective or objectives without the need for the designation to be made. Only where there is no practical and beneficial alternative to a designation should a scheme be made.

10.2.2 If the local housing authority decides there is no practical and beneficial alternative to the scheme, it must only make the designation if it is satisfied that the scheme will significantly assist it in achieving its objective or objectives, with other actions the local housing authority may be taking. The local housing authority will have to show how such a designation will be part of the overall strategic borough wide approach and how it fits with existing policies.

10.2.3 When considering designating an area as subject to a selective licensing scheme, the local housing authority must conduct a full consultation. They 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 (Section 80 (9) of the Act). Such consultation should be over a period of at least 10 weeks. Once the consultation has been completed the results should be published and made available to the local community.

10.2.4 An Application to the Secretary of State for confirmation of Selective Licensing designations must be made where the designation is for more than 20% of the local authority's geographical area or affects more than 20% of privately rented homes in the area. Documents and information in support of a designation must be provided. The final decision whether to confirm or refuse to confirm a designation will be made. There is no appeal against the Secretary of State's decision, although it can be subject to judicial review.

### **10.3 Financial Implications**

A one-off budget allocation of £0.250m has been provided in 2020/21 to fund a feasibility study into the introduction of a Selective Licensing Scheme in Birmingham. The funding has been used to carry out data analytics as part of the feasibility study and will support the appointment of a project manager to oversee governance arrangements and implementation if a scheme is to be implemented. If a scheme is introduced it is expected to be self-financing over the licence period and recover costs through the charging policy and fee setting mechanism. Consideration will need to be given to the profile of income and expenditure over the licence period potentially managed through the use of a specific reserve. If the recommendation in this report is approved there will be further costs of £0.150m to carry out a robust consultation. These costs will form part of the cost recovery model, however, will need to be managed within the service if a scheme is not progressed. Detailed financial modelling will need to be undertaken including impact on previously identified saving proposals of £0.5m. The proposed fee structure and level of fees will form part of the consultation.

## **10.4 Procurement Implications**

- 10.4.1 Consulting on the proposal to implement a SLS requires a dedicated and specific skill set. There are not the current resources within the Private Rented Service Team to conduct such robust consultation and continue with business as usual. Consequently, a procurement exercise will need to be undertaken to contract a specialist in this type of consultation.
- 10.4.2 Benchmarking with other local authorities who have implemented a SLS and mindful that Birmingham is the largest local authority, it is estimated that the cost of consultation will be approximately £150,000.
- 10.4.2 The introduction of a scheme will have implications for the IT used to administer the scheme. An assessment of current IT used will be made to find out if it can easily incorporate the additional processing and storage requirements. Any requirement for a new scheme will need to go through procurement.

## **10.5 Human Resources Implications**

- 10.5.1 Funds have already been set aside to employ a project lead to oversee the governance and implementation.
- 10.5.2 If a selective licensing scheme is introduced it is expected that it will be self-financing through the fee charging mechanism. Any recruitment will be done in accordance with the council's recruitment and selection procedure.

## **10.6 Public Sector Equality Duty**

An initial equality impact assessment has been completed ( See appendix 8) At the consultation stage a full equality impact assessment will be undertaken. It is anticipated that the introduction of the scheme will likely bring about benefits to groups with protected characteristics (as described within the Equality Act 2010). For example, improvements in management standards due to ability to enforce standards across the six constituencies will benefit vulnerable people (including the elderly and/or disabled) and households dependant on this type of accommodation.

## **11 Appendices**

- Appendix 1 – A Guide for local authorities (March 2015)
- Appendix 2 – Housing Conditions Plus User Brief
- Appendix 3 – Data Protection Impact Assessment
- Appendix 4 - Data Methodology
- Appendix 5 - Table 2 – Constituencies and Wards with Deprivation and Crime Rankings
- Appendix 6 – Birmingham Child Poverty Commission Report
- Appendix 7 – Risk Assessment
- Appendix 8 – Equality Assessment



## Appendix 9 – Table 3 Wards meeting the Crime and Deprivation Conditions