

Birmingham City Council Report to Cabinet

18 May 2021



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
Report author: Deborah Moseley, Acting Senior Service Manager, Housing Options and Private Rented Service
Telephone No: 0776 692 3825
Email Address: Deborah.Moseley@birmingham.gov.uk

Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Acocks Green, Alum Rock, Aston, Balsall Heath, Birchfield, Bordesley Green, Bordesley & Highgate, Bournbrook & Selly Park, Edgbaston, Gravelly Hill, Handsworth, Heartlands, Holyhead, Ladywood, Lozells, North Edgbaston, Small Heath, Soho & Jewellery Quarter, South Yardley, Sparkbrook & Balsall Heath, Sparkhill, Stockland Green, Tyseley & Hay Mills, Ward End, Yardley West & Stechford.		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 008852/2021		
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 A report in respect of selective licensing was submitted to Cabinet on 15 December 2020. Appendix 4 includes the Housing Conditions Plus (HCP) Data Methodology which was submitted as part of that report. This outlined how data had been collated and analysed. A geography data model was used with Lower Super Output Areas (LSOAs) to build the data up to ward level. Within the methodology there was a caveat which identified some LSOAs could be part of

more than one ward. As part of the preparation for consultation, a further independent review of the data was undertaken. This included apportioning the LSOAs to reflect the geographical boundary of each ward which provided an improved reflection of each ward's housing tenure.

- 1.2 This report reflects the revised wards that meet one or more of the conditions for selective licensing and therefore, where it is proposed consultation should be undertaken. In essence, three wards have now been removed from the initial list contained in the previous Cabinet Report dated 15th December 2020. These are, **Brandwood & Kings Heath, Hall Green North and Weoley & Selly Oak Wards.**
- 1.3 Analysis of the data was also compared by ward and 25 of the 69 wards have met the conditions due to high levels of deprivation and/or crime. This represents 36% of the City.

2. Recommendations

- 2.1 Cabinet approves that the conditions for selective licensing based on deprivation and crime have been met (for the below 25 wards) and that consultation should now take place regarding the pursuance of a selective licensing scheme in the stated wards; Acocks Green, Alum Rock, Aston, Balsall Heath, Birchfield, Bordesley Green, Bordesley & Highgate, Bournbrook & Selly Park, Edgbaston, Gravelly Hill, Handsworth, Heartlands, Holyhead, Ladywood, Lozells, North Edgbaston, Small Heath, Soho & Jewellery Quarter, South Yardley, Sparkbrook & Balsall Heath, Sparkhill, Stockland Green, Tyseley & Hay Mills, Ward End, Yardley West & Stechford
- 2.2 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 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.
- 3.2 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 license, including non-licensable Houses in Multiple Occupation (HMOs).
- 3.3 There are specific conditions set out in the legislation that must be met before a selective licensing scheme can be considered. A 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.

3.4 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) <https://www.gov.uk/government/publications/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities> (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

3.5 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 is not a tool that can be used in isolation and should only be used where existing measures alone are not sufficient to tackle the underlying housing problems of a specific area. Any such scheme must;

- be done in conjunction with other activities to resolve issues in the private rented sector
- be consistent with other related strategies e.g. Housing Strategy, Homelessness Prevention Strategy, Empty Properties Strategy 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 “
- be the subject of a 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.

3.6 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 a SLS would be consistent with the Council's related strategies.

4.1 Council Plan 2018 - 2022

The Council Plan sets out six outcomes that the Council seeks 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 a 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 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%.

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 produced dashboards of data against the six statutory criteria. This demonstrates those area which have PRS properties of more than 20%. 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. The ward data has been used to identify if the conditions for selective licensing have been met, given it's the locality area with which residents usually identify. Appendix 5 shows the percentage of the PRS by ward.

Each of the six criteria for SL was assessed against the housing tenure information. For four of the conditions, it has not been possible to demonstrate that the criteria was 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 years 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 ward with a ranking greater than 203.7, 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 may wish to have regard to whether the area has displayed a noticeable increase in crime over a relatively short period, whether the crime rate in the area is significantly higher than in other parts of the local authority area or that the crime rate is higher than the national average. The Crime rankings across the 69 wards have been considered.

Appendix 5 shows the wards where the PRS is 20% or more and the crime ranking in relation to England and Birmingham average ranking. Ladywood is far above at 692.00 compared to 179.41 for England and 203.7 for Birmingham.

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

In deciding whether to make a designation because the local authority considers the area suffers from a high level of deprivation, the Guidance recommends that the local housing authority should consider the following factors when comparing to other similar neighbourhoods in the local authority area or within the region:

- 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
- housing conditions
- the physical environment

All the above factors are combined in the Combined Index of Multiple Deprivation which is 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.

Appendix 5 shows the wards that meet the conditions for Crime or Deprivation or both. These total 25 wards which is 36% of the 69.

In June 2016, Birmingham Child Poverty Commission, published an independent report (Appendix 6) on deprivation and its impact.

https://www.birmingham.gov.uk/downloads/file/7881/child_poverty_commission_report

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 2,432 licensed properties on our published HMO licensing register. This doesn't include any exempt accommodation as they are excluded from licensing under the legislation.

Recent data estimates that there are 6,160 HMOs in the city. It is suspected 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 this new data to ensure all HMOs that are licensable have 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 are 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 Bed and Breakfast.

Bringing these properties back into use will reduce the likelihood of nuisance, blight, devaluation of homes and crime in the local community. In 2020/2021 the target of bringing 263 properties back into use was exceeded, 305 properties were brought back into use.

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 certain permitted development rights. The City Council made a decision to introduce a city-wide Article 4 Direction which came into force on Monday 08 June 2020.

The Direction means that throughout the city a planning application must be submitted for proposals to convert family houses (C3 use class) to small Houses in Multiple Occupation (HMOs) accommodating between 3 and 6 people (C4 use class).

Small HMOs that were created using permitted development rights before Monday 8 June 2020 can continue to operate without the need for a planning application.

Sui Generis HMOs (7 or more people) are not permitted development and continue to require planning permission.

In gathering evidence for the Article 4 Direction, the City Council undertook an exercise to identify and map the distribution of HMOs across the city utilising Council Tax data, planning consents and HMOs licensing records and declared C4 HMOs. During the 12 month period before the Article 4 Direction came into force, the City Council asked landlords and owners of HMOs to declare their small HMOs, so that as accurate a record as possible could be made of HMOs which were created using the permitted development rights that were removed by the city-wide Article 4 Direction.

It should be noted that certain properties are not classified as HMOs under national legislation, such as those managed by Registered Social Landlords, and therefore the Article 4 Direction does not apply to such properties.

Once the Development Management in Birmingham Development Plan Document is formally adopted in late 2021, a new policy will be implemented which will mean that the development of new HMOs will only be permitted where they will not form more than 10% of residential properties within a 100 metre radius of the application site, where it will not result in a family dwelling being sandwiched between two HMOs or non-family residential uses, and where it will not lead to a continuous frontage of three or more HMOs or non-family residential uses.

The Article 4 Direction does not change which properties need an HMO licence, which are properties occupied by five or more people who form two or more households, as set out in paragraph 6.1.

6.7 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 25 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 would cover more than 20% of their geographical area or would affect more than 20% of privately rented homes in the local authority area.
- 7.4 In each of the 25 wards identified, the private rented sector is greater than 20% and combined they represent 36% 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.
- 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 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, Birmingham Social Housing Partnership (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, virtual meetings, 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 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 £0.150m has been provided in 2021/22 to fund robust consultation. 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. Detailed financial modelling needs to be undertaken. 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. 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.

10.4.3 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 any 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 25 wards 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) – see link in report

Appendix 2 – Housing Conditions Plus User Brief

Appendix 3 – Data Protection Impact Assessment

Appendix 4 - Data Methodology

Appendix 5 - Wards with Deprivation and Crime Rankings

Appendix 6 – Birmingham Child Poverty Commission Report – see link in report

Appendix 7 – Risk Assessment

Appendix 8 – Equality Assessment

Appendix 9 – Environment and Sustainability Assessment.