

Birmingham City Council Report to Cabinet

1 March 2022



Subject: Selective Licensing – Private Rented Sector
Report of: Robert James, Managing Director, City Operations
Relevant Cabinet Member: Councillor Shabrana Hussain, Homes and Neighbourhoods
Relevant O &S Chair(s): Councillor Kate Booth, Housing and Neighbourhoods
Councillor Mohammed Aikhlaq, Resources
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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: 009750/2022		
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 Two reports in respect of selective licensing have previously been submitted to Cabinet on 15 December 2020 and 18 May 2021. Following these reports Cabinet agreed that the conditions for selective licensing based on deprivation and crime have been met (for the 25 wards below) and that

consultation should 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

- 1.2 A comprehensive consultation relating to the proposed selective licensing scheme was held between 25 October 2021 and 4 January 2022 (10 weeks)
- 1.3 This report details the outcome of that consultation and the Council's response to it.
- 1.4 This report seeks to progress the pursuance of a selective licensing scheme in Birmingham that covers the proposed 25 wards and seeks approval to submit an application to the Secretary of State for Levelling Up, Housing and Communities to that effect.
- 1.5 Additionally Officers will commence the gathering of city-wide data that will establish if there is evidence to support a city-wide or specified areas/wards Additional Licensing Scheme (ALS) that would further complement the proposed SLS.

2. Recommendations

- 2.1 That Cabinet notes and considers the outcome of the consultation in respect of the proposed Selective Licensing scheme.
- 2.2 That Cabinet approves the pursuance of a selective licensing scheme covering the proposed 25 wards.
- 2.3 That Cabinet approves the submission, to the Secretary of State for Levelling Up, Housing and Communities, of an application for a Selective Licensing Scheme in Birmingham covering the wards specified in paragraph 1.1 of this report.

3 Background

- 3.1 The private rented sector (PRS) 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 within the SLS 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 licence,
- 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 higher proportion of property in the private rented sector than the England average.
- 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)” 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 statutory 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 (ASB) – 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 and that the local housing authority must be satisfied that the scheme will significantly assist it in achieving its objective or objectives , with other actions the local housing authority may be taking .
- 3.6 The Guidance states that selective licensing is not a tool that can be used in isolation. 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. 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.

3.7 If the local housing authority decides there is no practical and beneficial alternative to the scheme, the local housing authority must show:

- It has considered whether there are any other courses of action available to them that might provide an effective method of achieving the objectives that the designation is intended to achieve, and
- How the making of the designation will significantly assist the local housing authority in achieving its’ objectives (whether or not in conjunction with those other measures).

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 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 within the designated area 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 a reduction in homelessness.

4.4 Housing Strategy

The proposals within this policy support the delivery of the priorities of the Housing Strategy (Birmingham- A Great Place to Live) which are:

- A strong supply of new high-quality homes;
- Citizens are able to find, access and sustain housing that meets their needs;
- Neighbourhoods are enhanced and the quality of existing housing is improved.

4.5 Homelessness Prevention Strategy 2017+

Since March 2018, the number of customers being made homeless from the PRS has 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 in homeless applications for this reason.

4.6 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 those that live in it as well as driving down house values.

By raising the standard of PRS properties within the area of the SLS this will prevent premises falling into disrepair and becoming vacant i.e. an empty property. This will prevent properties becoming unavailable for housing purposes and such properties having a negative impact on the neighbourhood.

4.7 Private Rented Sector Strategy (subject to Cabinet approval on 1 March 2022)

This strategy will (if approved) identify the following priority:

- **Identify and implement local initiatives to address local issues** including consideration of selective and/or additional licensing, and issues relating to exempt accommodation

The proposed strategy recognises that there is a disparity between the standards of accommodation and the density of private rented sector properties in different wards and the need to ensure the Council's resources are targeted where the greatest benefits can be achieved such as in areas where housing conditions are

at their worst and/or issues such a significant deprivation or crime are having a negative impact.

5.0 Required Conditions and Evidence

The analysis of data has established that in respect of the areas noted in Paragraph 1.2. two of the six conditions referred to in paragraph 3.4 have been established.

These conditions are deprivation and crime. The data behind the conditions was presented in the Cabinet report of 18 May 2021. The Council produced a comprehensive evidence report (appendix 1) as part of the consultation process. This report clearly identifies the % PRS, crime, and deprivation levels for each ward in the city and the reasons for pursuing selective licensing in those 25 wards.

Inclusion in the proposed scheme requires that a ward:

- Contains a high proportion of PRS compared to the national average (greater than 20%)
- The ward is experiencing levels of crime higher than the Birmingham average
- The ward is experiencing higher levels of deprivation amongst its population than the Birmingham average

The crime and deprivation conditions are described below and in more detail in pages 14 to 29 of the Evidence Report found at appendix 1.

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.

5.2 Deprivation

In deciding whether to make a designation because the local authority considers the area suffers from a high level of deprivation 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**.

Any ward with a ranking lower than **7,752**, can be interpreted as experiencing greater than average levels of deprivation for Birmingham.

6.0 Current activities to Improve Standards in Neighbourhoods and the Private Rented Sector

The Guidance states that a SLS should complement other measures being taken 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 (Mandatory) Licensing

The Council currently delivers and enforces a mandatory 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 2,937 mandatory HMOs that are licensed. This doesn't include any exempt accommodation and smaller HMOs as they are excluded from licensing under the legislation.

6.2 Use of Housing Act 2004 enforcement powers

The Council's enforcement powers in respect of the private rented sector are largely provided by the Housing Act 2004, with other public health legislation being applied where necessary and appropriate.

Under the Act, formal notices can be served that require improvements to be carried out. Should these improvements not be carried out, the Council can carry out works in default. Landlords also risk being prosecuted if they do not comply with a notice or the breach of legislation is significant.

6.3 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));
- offences of 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.

6.4 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.

6.5 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.

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.

A city-wide HMO Article 4 direction requires planning permission to change from a residential house to an HMO. Policy DM11 Houses of Multiple Occupation within the Development Management in Birmingham Document sets out the Council's local planning policy in relation to the development of new or extensions of HMOs which is supported by the proposed supplementary planning document.

This approach prevents harmful concentrations of HMO's arising which negatively impact on the character, balance, and amenity of local communities. This approach will enable the concentration of Exempt Accommodation to be taken into account.

7.0 **Potential further activities**

7.1 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.

Officers will commence the gathering of city-wide data that will establish if there is evidence to support a city-wide or specified areas/wards Additional Licensing Scheme (ALS) that would further complement the proposed SLS.

An ALS requires approval from Birmingham City Council Cabinet and not Government.

8.0 Proposed Selective Licensing Scheme

Full details of the proposed scheme across 25 wards are set out in the evidence report shown in appendix 1.

8.1 Proposed area for designation

Conditions for selective licensing based on deprivation and crime have been met in the following 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

These 25 wards are proposed for inclusion in the selective licensing scheme

8.2 Proposed objectives and outcomes

The key objectives of the proposed scheme are to:

- Reduce deprivation in conjunction with other key Council strategies. These include the Homelessness Prevention Strategy 2017+ and Corporate Plan.
- Reduce crime linked with the private rented sector in conjunction with the Police and community safety team.
- Improve the condition of privately rented housing in the City and thereby the wellbeing of residents from that sector.

The targeted outcomes for the proposed scheme over the five-year period are:

- Ensure that at least 75% of licensable properties are licensed
- In at least 95% of licensed properties, compliance with licence conditions and improved property conditions has been achieved or enforcement action taken or in progress
- Reduce incidents of home burglary and non-domestic violent crime.

- Improve 1000 properties in the Private Rented Sector per annum as a result of the Local Authority's intervention
- Reduce the deprivation gap between that found in the 25 proposed wards and that of the city's other wards
- Reduce the number of wards within the selective licensing area that are designated as the 10% most deprived Super Output Areas nationally

8.3 Proposed property licence conditions

Pages 41 to 46 of appendix 1 state the proposed conditions for property licences within the Selective Licensing Scheme.

8.4 Proposed Selective Licensing Fees

The fee for a selective licence is proposed as £700. This is an increase on the proposed fee of £670 stated within the consultation. This increase reflects a review of proposed staffing and the view that extra staffing needs to be provided within the enforcement team to deal with landlords/properties that are operating without an appropriate licence. The fee is split into two parts:

- Part A (application fee) £295
- Part B (licence fee) £405

A local authority may recover "reasonable costs" for administering a licensing scheme. The fees proposed in this report are calculated to recover the full cost of carrying out the scheme. This includes all costs related to administration of the scheme and processing the licences, as well as compliance with those licences and enforcement (except prosecution costs) against landlords operating without a licence in the designated area.

Members will note that the fees are split into a non-refundable application fee and a licence fee. This split is required further to case law set by R. (Hemming and Others) vs Westminster City Council and R. (Gaskin) v. Richmond-upon-Thames LBC [2018].

Each fee takes account of salary costs, overhead costs, and processing and activity times.

The time taken to process and administer (including compliance and enforcement) each licence has been calculated using forecast costs.

9.0 Selective Licensing team structure

If approved Birmingham's proposed selective licensing scheme will be the biggest scheme in the UK. The structure proposed in appendix 2 seeks to ensure that there is adequate capacity in each of the five years of the scheme to ensure it can be delivered efficiently and that outputs and outcomes are delivered. The structure may be revised as part of the process for implementation but will remain within the budget envelope of the fee income.

10.0 Options Considered and Recommended Proposal

10.1 The body of the report details the alternative options that are in place to improve standards in the private rented sector. It is considered that singularly or collectively they are insufficient to adequately improve standards within the private rented sector.

The powers available to the local authority in the absence of a SLS are predominantly reactive. The neighbourhoods within the wards proposed for inclusion in the SLS are clearly the most deprived or suffer higher crime levels than average for Birmingham as well as having over 20% private rented property. It may be that tenants in these properties are wary of complaining or may not know their rights or the responsibilities of their landlords. A SLS would mean that the Council could proactively ensure that a framework is created for landlords to be actively required to manage their properties and ensure that they meet adequate standards. The Council can monitor this compliance. Landlords are required to sign up to mandatory conditions and to engage with the local authority.

10.2 The proposed SLS will enable the local authority to proactively plan interventions using a wide range of powers as detailed in section 6. This ability to co-ordinate activity within the city council and with partners will support a holistic approach to tackling deprivation and crime in these wards. There are limited opportunities to explore these improvements without the information that would be available through a licensing scheme.

10.3 An additional licensing scheme alone would not achieve the objectives outlined in section 7.2 as it would only apply to non-mandatory HMOs rather than the PRS as a whole. It would therefore be less impactful in tackling deprivation and crime in these wards.

10.4 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.

10.5 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.

10.6 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.

10.7 This report is seeking Cabinet's agreement that the conditions for selective licensing based on Deprivation and Crime have been met and that an application should now be submitted to the Secretary of State for Levelling

Up, Housing and Communities in the pursuance of a selective licensing scheme in the stated wards.

11.0 Consultation

11.1 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.

11.2 The consultation exercise on the Council's proposal to introduce a selective licensing scheme across 25 wards within Birmingham ran for a period of ten weeks from Monday 25 October 2021 to Tuesday 4 January 2022. The Council was supported with the consultation by Opinion Research Services, an independent company that carries out research for Local Government and other organisations.

11.3 The consultation ensured that specific groups such as landlords, tenants and residents and businesses were consulted with regard to the proposals. However, the consultation was not limited to these groups and consultation was presented as a featured consultation (front page) on Birmingham City Council consultation hub "Be Heard. News of the consultation was also reported in local media outlets. Specific feedback shown in 11.6 clearly demonstrates that residents outside the proposed SLS wards were aware of and participated in the consultation.

11.4 The consultation activities included:

Written notifications to:

- National Residential Landlord Association who have in turn shared details with their members
- Midland Landlord Accreditation Scheme
- Birmingham Landlord Forum attendees
- Landlord Steering Group Chair who have in turn shared with their members
- St. Basils – youth homelessness and advice
- Shelter
- Citizens Advice Bureau
- Birmingham Solihull Women's Aid
- Cranstoun – housing advice/support charity including domestic abuse
- Birmingham City Council Community Safety Team
- West Midlands Police
- West Midlands Fire and Rescue
- Chief Executives of neighbouring Local Authorities - Walsall, Sandwell, Dudley, Lichfield, North Warwickshire, Solihull, Bromsgrove – and nearest city – Wolverhampton.

In addition to the above:

- Landlord focused consultation events (x4)
- Tenant consultation events (x 6)
- 125,000 flyers delivered to homes and business across the proposed designation
- Press releases (which then appeared in local newspapers and landlord forums)
- Featured consultation (front page) Birmingham City Council consultation hub “Be Heard”. Link at <https://www.birminghambeheard.org.uk/place/selective-licensing-consultation/>
- Evidence report and questionnaires available at public facing Council offices around the city
- Two presentations and FAQs provided to Elected Members in the proposed wards

11.5 Appendix 3 shows the full response to the consultation and appendix 4 shows our response to the themes raised within the consultation. These themes included some views that there may be potential negative impacts to implementing a SLS. These have been addressed in full in appendix 4.

11.6 Of particular note is the desire for additional wards or lower super output areas to be included in the proposed scheme. It is not possible to add additional wards into the proposed scheme as the additional wards have not met the original thresholds set for % PRS per ward, deprivation and crime. It is not possible to include additional lower super output areas as the city’s original proposals were based on wards only.

However, the Council will seek to provide local initiatives for local issues and as such will work with partners and communities to establish effective interventions where problems relating to private rented sector properties are evident. This may include establishing whether further selective licensing or additional licensing schemes should be pursued.

11.7 Changes made as a result of consultation

- Following feedback from the consultation: the proposed fee for a variation of a licence has been removed. The cost for variations will now be subsumed within the overall licence fee.
- The Council will consider if possible support or signposting for arbitration between landlord and tenant disputes can be delivered.
- The Council will investigate providing online annual updates on the delivery of outcomes for the selective licensing scheme.

12.0 Risk Management

12.1 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 prosecution related 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 through the courts (related to prosecution). This risk is mitigated by the fact that operating without a licence is a criminal offence and landlords will need to consider if non-compliance, that may result in a criminal conviction, is a valid option.

- 12.2 The scheme could also be susceptible to legal challenge (judicial review) if, for example, there was a challenge as to whether the statutory conditions were met or whether appropriate consultation had been undertaken.
- 12.3 The Secretary of State will need to confirm any scheme proposed. 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.
- 12.4 There is a lack of consistency across Selective Licensing Schemes regarding the inclusion of non-mandatory HMOs' within such schemes. Approximately 50% of the current schemes (circa 45) in England have included this tenure while the others have licensed these premises under an ALS running concurrently with their SLS. Officers have been meeting regularly with DLUHC and have informed them of our intention to include non-mandatory HMOs in Birmingham's proposed SLS. No issues have been raised in this regard and we are not aware of any legal challenge to date regarding their inclusion in a SLS

13. Compliance Issues

- 13.1 How are the recommended decisions consistent with the council's policies, plans and strategies?

- 13.1.1 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, Empty Properties, and Private Rented Sector 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.

13.2 Legal Implications

- 13.2.1 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.

13.2.2 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.

13.2.3 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.

13.2.4 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.

13.2.5 The extent and application of Selective Licensing Schemes differs throughout local authority areas as detailed in Paragraph 12.4 and is a matter of legal interpretation. There is no case law on this specific point and, whilst the risk of legal challenge is noted, it is further noted that DLUHC is satisfied with our proposed application of the scheme.

13.3 Financial Implications

13.3.1 The Selective Licensing Scheme is to be self- financing over the five-year lifetime of the scheme. This is achieved with a full licence fee of £700 for 40,000 properties generating income of £28m. This income is to meet all the costs associated with the scheme.

13.3.2 Detailed financial modelling has been undertaken. If the scheme is implemented costs will be recovered through the charging policy and fee setting

mechanism. The scheme expenditure and income has been profiled over a six-year period, with year zero covering set up costs for the scheme and employment and training of staff. The scheme will be managed through a ring-fenced budget with appropriation to / from reserves to manage in-year surpluses or deficits. Any expenditure for project management relating to the submission of the application to the Secretary of State will be included within the costs related to the scheme. Should the application not be successful then these costs will be met through existing budgets.

13.4 Procurement Implications

13.4.1 To process the number of licences expected under the SLS it is likely that a new IT software system will be required. The scope and specification of such a system will be progressed with IT &D and the required procurement processes will be followed.

13.5 Human Resources Implications

13.5.1 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.

13.6 Public Sector Equality Duty

An initial equality impact assessment has been completed (See appendix 5). This does not show an adverse impact on any specific protected characteristic.

14 Appendices

Appendix 1 – Selective Licence Evidence Report October 2021

Appendix 2 – Proposed Team Structure

Appendix 3 – Report of Consultation Findings

Appendix 4 – Response to Consultation Themes

Appendix 5 – Equality Assessment