



# **Additional Licensing Evidence Report**

July 2022

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## Introduction

The Housing Act 2004 allows Local Authorities to introduce additional licensing of Houses of Multiple Occupation (HMOs) where there is evidence that certain HMOs are being managed sufficiently ineffectively so that they give rise to problems for the tenants or for members of the public in the vicinity.

Housing is a key priority for Birmingham residents and the City Council, and it plays a significant part in all our lives. The location, type, and quality of the homes in which we live has a major impact on the rest of our lives including the employment we can access and how long we can expect to live. Without question the human need for food, water and shelter are the highest priorities in life. We therefore urge you to consider our proposals carefully.

The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015 grants a general consent to Local Housing Authorities' to introduce additional HMO licensing, so far as the legislative steps have been complied with. It requires Local Authorities to take reasonable steps to consult persons who are likely to be affected by the designation.

This evidence report outlines our proposals and approach. The consultation survey seeks your views about these proposals, our objectives, our proposed licence conditions, our proposed licensing fees, and the alternatives that you think we should consider. We will listen carefully and consider the results of the consultation before making a decision about how to proceed.

The consultation process will run for a ten-week period from **9am Monday 4<sup>th</sup> July 2022 to 9am Tuesday 13<sup>th</sup> September 2022**.

The consultation survey can be accessed by visiting the Council's consultation hub "Be Heard" at [www.birminghambeheard.org.uk/place/additional-licensing](http://www.birminghambeheard.org.uk/place/additional-licensing).

It is proposed, subject to legislative requirements and Cabinet approval, that the designation would come into effect on the 1<sup>st</sup> April 2023.

## What is Additional Licensing?

The Housing Act 2004 (“the Act”) provides local authorities with the power to designate areas as being subject to an additional licensing scheme, in relation to some or all of the HMOs in their area, which are not already subject to mandatory licensing.

As a simple rule of thumb, an HMO is any property (house or flat) occupied by three or more people comprising two or more households who share facilities (kitchen, bathroom and/or toilet) and occupy the property as their only or main residence, even if they are all friends and occupy the property on a single tenancy.

It can also include converted blocks of flats known as Section 257 HMOs. Section 257 of the Housing Act 2004 applies to whole converted properties rather than individual dwellings and describes an HMO as a building:

- which has been converted into and consists of self-contained flats
- where the conversion work did not comply with the appropriate building standards and still does not
- where less than two-thirds of the flats are owner-occupied

The appropriate building standards are those required by the Building Regulations 1991 or 2000 (whichever were in force at the time of the conversion).

Owner-occupiers are those with a lease of more than 21 years or who own the freehold in the converted block of flats.

HMOs statistically present significantly greater risks to tenants’ health, safety and wellbeing than comparable single occupancy dwellings. Risks such as dangerous gas appliances, faulty electrical systems and inadequate means of escape and other fire precautions are just some of the hazards that the Private Sector Housing Team come across during inspections. These hazards put tenants’ health, safety, and lives at risk. Living in such conditions can also have a significant impact on the mental health and wellbeing of the occupants of the HMO. HMO residents are also eight times more likely than the general population to suffer from mental health problems as well as having other problems<sup>1</sup>.

<sup>1</sup> Shaw M, Danny D and Brimblecombe N (1998) Health problems in houses in multiple occupation

For many people in this situation, their housing choices are limited due to socioeconomic status and availability of suitable alternative accommodation, and it may not be easy to find somewhere else to live. Local housing allowance caps have meant that for some, shared accommodation is the only affordable option. Issues such as a lack of community cohesion due to high turnover of tenancies can also be exacerbated by such private rented accommodation, especially where property management issues are present.

Additional licensing is a tool that local authorities can use alongside their normal enforcement powers in order to manage specific issues that are affecting housing in the local authority area and its communities.

Primarily, through the implementation of an additional licencing scheme, Birmingham City Council will look to address such issues related to property management such as waste problems, housing conditions, and anti-social behaviour. The proposal is to designate all 69 wards within the city as subject to additional licensing.

Additional licensing also enables a property to be easily identified and as such for organisations and regulators such as the Council, the Police, Her Majesty's Revenue and Customs (HMRC) and others, to be able to advise and support tenants and landlords alike. It provides a clearly defined offence in that a property is either licensed or unlicensed. It clarifies ownership and responsibility which simplifies enforcement and makes it more effective. Where a landlord is intentionally operating without a licence it is possible the inspection process will uncover further offences.

Licensing also provides a clear driver for effective engagement between landlords and local authorities, and drives up landlord awareness of their responsibilities.

Additional licensing encourages the development of effective intelligence gathering mechanisms to support compliance by identifying unlicensed properties and then targeting those problematic properties. It promotes joint working within the Council and other agencies – fire and rescue services, police, border control/immigration, social services and HMRC.

The designation would regulate the management, use and occupation of privately rented properties that are HMOs. The Council has reviewed the evidence available to understand the conditions within HMOs in the city and considers that the proposed scheme meets the statutory criteria for additional licensing in that the evidence shows that a significant proportion of the HMOs in the city are being managed sufficiently

ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.

The designation will last for five years and will include statutory and general conditions aimed at ensuring licensed properties are safe, meet basic standards and they are managed in a satisfactory way.

The additional licensing designation will help the Council to:

- Prioritise enforcement against those landlords who flout the law.
- Protect the health, safety and welfare of tenants through improved property conditions and management
- Target resources towards HMOs with highest risk of serious conditions and poor management.
- Reduce the number of service requests concerning poor accommodation in the private rented sector.
- Improve intelligence and data on HMOs, leading to better regulation of the sector, and detection of non-compliance

The Council proposes the targets below to achieve these outcomes over a five-year period:

- Ensure that at least 75% of licensable properties are licensed
- In 100% of licensed properties that have been inspected, compliance with licence conditions have been achieved or enforcement action taken or in progress.
- Inspect 80% of licenced premises
- To reduce ASB incidents linked licensed properties by 20%
- To reduce waste incidents linked to licenced properties by 20%

If the proposal is implemented, the Council will provide regular and open publication of progress against targets and outcomes.

In implementing an additional licensing scheme, the Council not only wants to tackle non-compliant landlords, but also work with all landlords to address tenancy issues at the earliest opportunity. The eviction and reletting process can be costly for landlords and will have a range of negative impacts on tenants including moving costs and a possible move away from an existing support network and employment opportunities.

The Council has historically used existing enforcement powers to deal with property conditions and management. This is predominantly as a reactive response to complaints, with the Council relying heavily on the information from tenants and neighbours to identify which properties are HMOs are in poor condition or are being badly managed. The Council cannot solicit complaints by virtue of “marketing” its services or door knocking. It is therefore limited in proactively seeking out those tenants that may be living in poor or high-risk accommodation.

Additional licensing would be beneficial in identifying all HMOs and ensuring a minimum standard. In addition, it would allow landlords operating illegally to be identified and enable those properties to be targeted for inspection and to be brought into compliance. This would help to raise standards and improve conditions in the sector. It would provide a level playing field for legitimate landlords and reduce the risk of exploitation of tenants. Additional Licensing provides clear guidance for landlords on the expected standards for property conditions and management.

An Article 4 Direction requiring planning permission for all new smaller HMOs was implemented by the Council from 8 June 2020. It should be noted that Paragraph 53 of the National Planning Policy Framework (NPPF) states that “The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the well-being of the area”. It is clear therefore that the evidence that supported this Direction demonstrated regulating density of HMOs was an action that needed to be taken to satisfy that paragraph. Although this was based on specific reasons related to planning legislation, reference was also made in the technical paper appended to the Cabinet report of 14 May 2019 at points 3.11.

*“As part of the research for this paper, officers undertook field visits to the many areas of the city illustrated above where higher proportions of HMOs are evident. This has helped to identify the following impacts, which appear to be linked to a prevalence of HMOs in an area:*

- *More vehicles parked in front of properties and on streets*
- *Some HMOs were poorly maintained, resulting in a degradation of the quality of the local environment and raising questions about the quality of the living environment for the inhabitants*



- *Higher numbers of wheelie bins cluttering streets and pavements*
- *Property frontages cluttered with 'rooms to let' signs, multiple satellite dishes, electricity and gas meters, doorbells, and occasionally multiple front doors.*

Further evidence of insufficient management of HMOs giving rise to problems was shown by the responses to the consultation on the Houses in Multiple Occupation Supplementary Planning Document. In the Cabinet report of 26 April 2022 "Adoption of Supplementary Planning Documents 1) Houses in Multiple Occupation 2) And Large-Scale Shared Accommodation" responses included:

*"General concerns about the issues caused by HMOs such as noise, antisocial behaviour, litter, parking and the enforcement of standards were raised. Some residents expressed a desire to see a complete moratorium on the licensing of and planning permission for further HMOs in the city"*

Furthermore, feedback from a previous consultation relating to selective licensing (which covers all private rented properties) in 25 wards of the city indicated that citizens outside of these wards would like a licensing scheme for private rented accommodation in their area or ward. An additional licensing scheme would be a proportionate response to these views as it would not cover all private rented housing but focus on a type of occupancy that potentially has higher risks of negative impacts on tenants and neighbourhoods.

An additional licensing scheme would mean that landlords would have to adhere to licence conditions. These could include ensuring that they take all reasonable and practical steps for preventing and dealing with anti-social behaviour, making properties secure, ensuring space standards are adequate, provision of adequate refuse storage and disposal arrangements, 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.

## Housing Profile

There is a total of 452,754 residential properties in Birmingham. Of these, 24.7% (111,811) are within the private rented sector (an increase of more than 50% since the 2011 census), 52.1% (235,760) are owner occupied, and 23.2% (105,183) socially rented. Birmingham is likely to have the largest private rented population, measured by the number of dwellings, of any housing authority in England. This compares to 17% of households in 2011 (Office of National Statistics). The growth of the private rented sector has come mostly from a proportional reduction in owner occupation, from 60% in 2011 to 52% in 2022 (Figure 1).

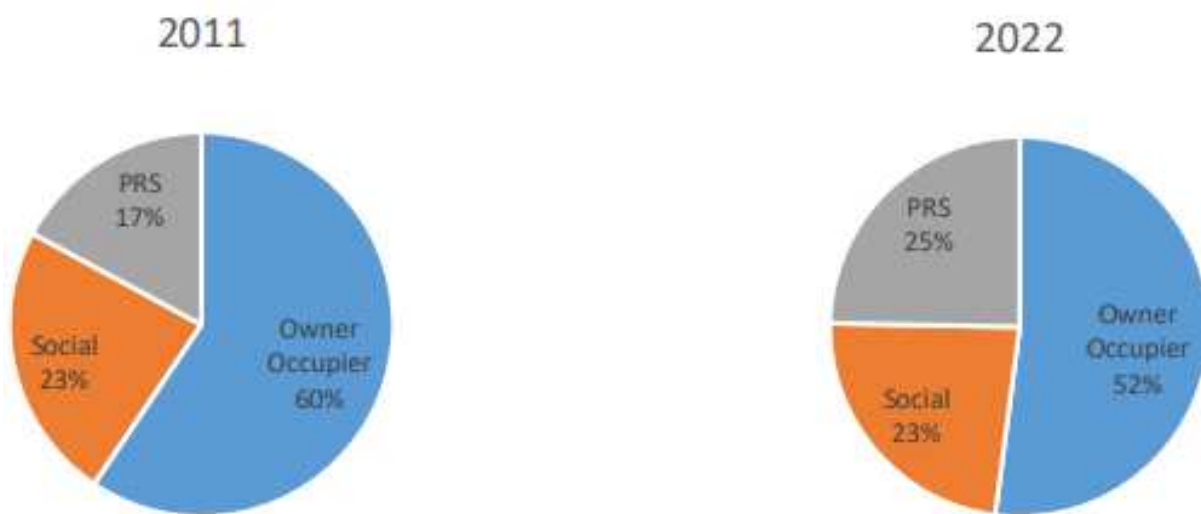


Figure 1. Tenure profile 2011 & 2022 (Source: ONS & Ti 2022)

This increase is part of a nationwide trend with the private rented sector now the second largest housing tenure in England, with a growing number of households renting from a population of around 1.5 million private landlords.

It is important to note that shared housing that is managed by a registered provider or public body is excluded from the definition of an HMO (see page 41 “Exemptions from Additional Licensing”). The volume of this type of accommodation has grown rapidly in the city over the last four years from about 11,000 bedspaces in 2018 to around 22,750 bedspaces in June 2022. It is recognised that such properties have similar characteristics to HMOs and therefore potentially similar impacts on local areas. The Council is aware of a number of issues in the supported exempt accommodation sector, which are largely due to insufficient legislation and regulation being in place nationally.

The Council are separately piloting a multi-agency approach to tackling issues related to exempt accommodation.

## **HMO Profile**

HMOs referred to in this evidence report are HMOs that share basic amenities (“section 254 HMOs”) The Housing Act 2004 defines HMOs as a “dwelling of 3 or more persons not forming a single household”. Section 254 HMOs are categorised as buildings or flats that are occupied by two or more households and 3 or more persons that share a basic amenity, such as bathroom, toilet, or cooking facilities. This type of rented property represents the cheapest rental accommodation; rented by room with the sharing of amenities, usually kitchen/bathroom.

The Council estimates that there are 11,933 HMOs in the city. Figures 2 and 3 shows that they are distributed across all wards. Bournbrook & Selly Park has the highest number of HMO (1159), followed by Soho & Jewellery Quarter (418) & North Edgbaston (414).

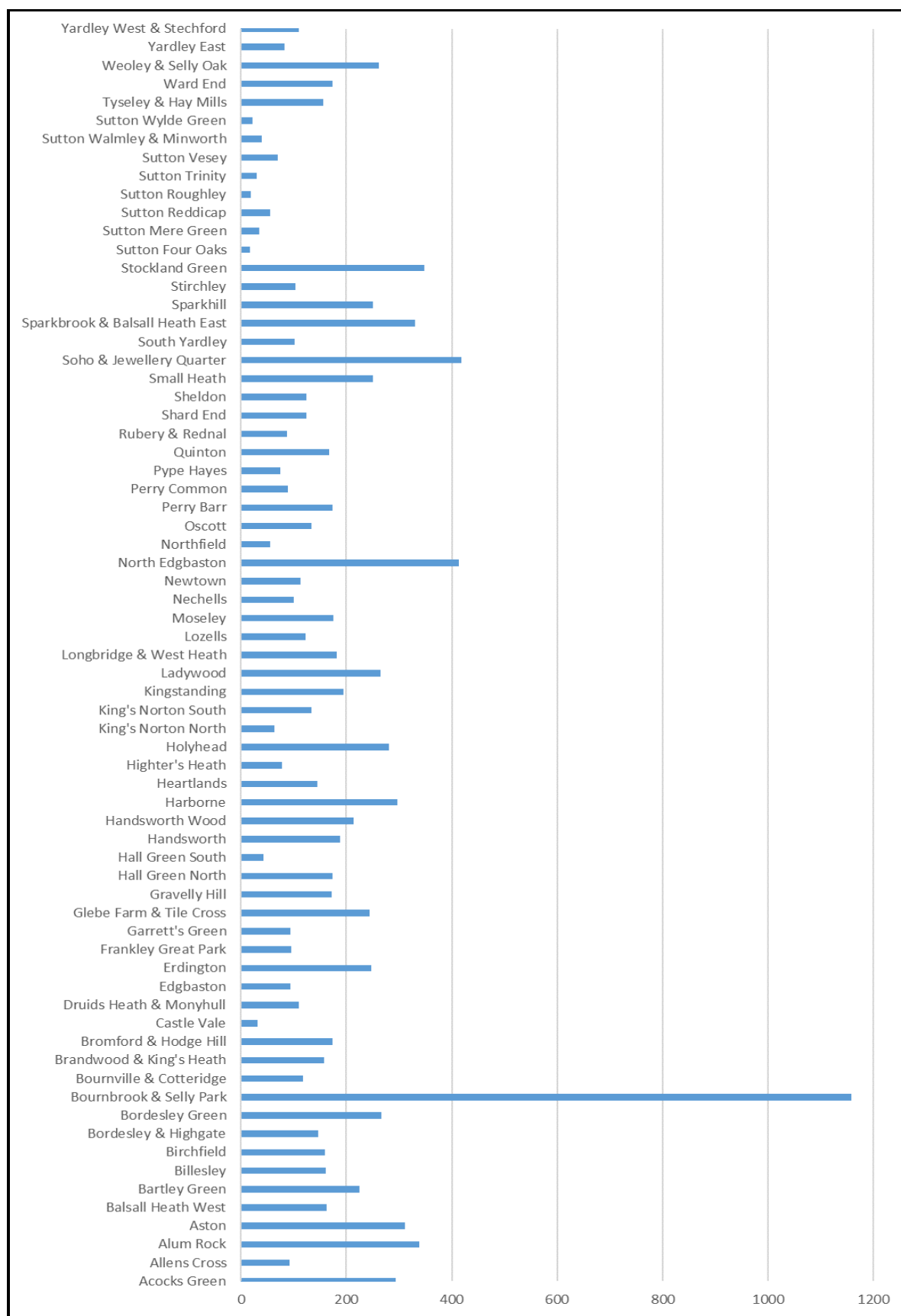


Figure 2. Number of shared amenities HMOs (s.254) by ward (Source Ti 2022).

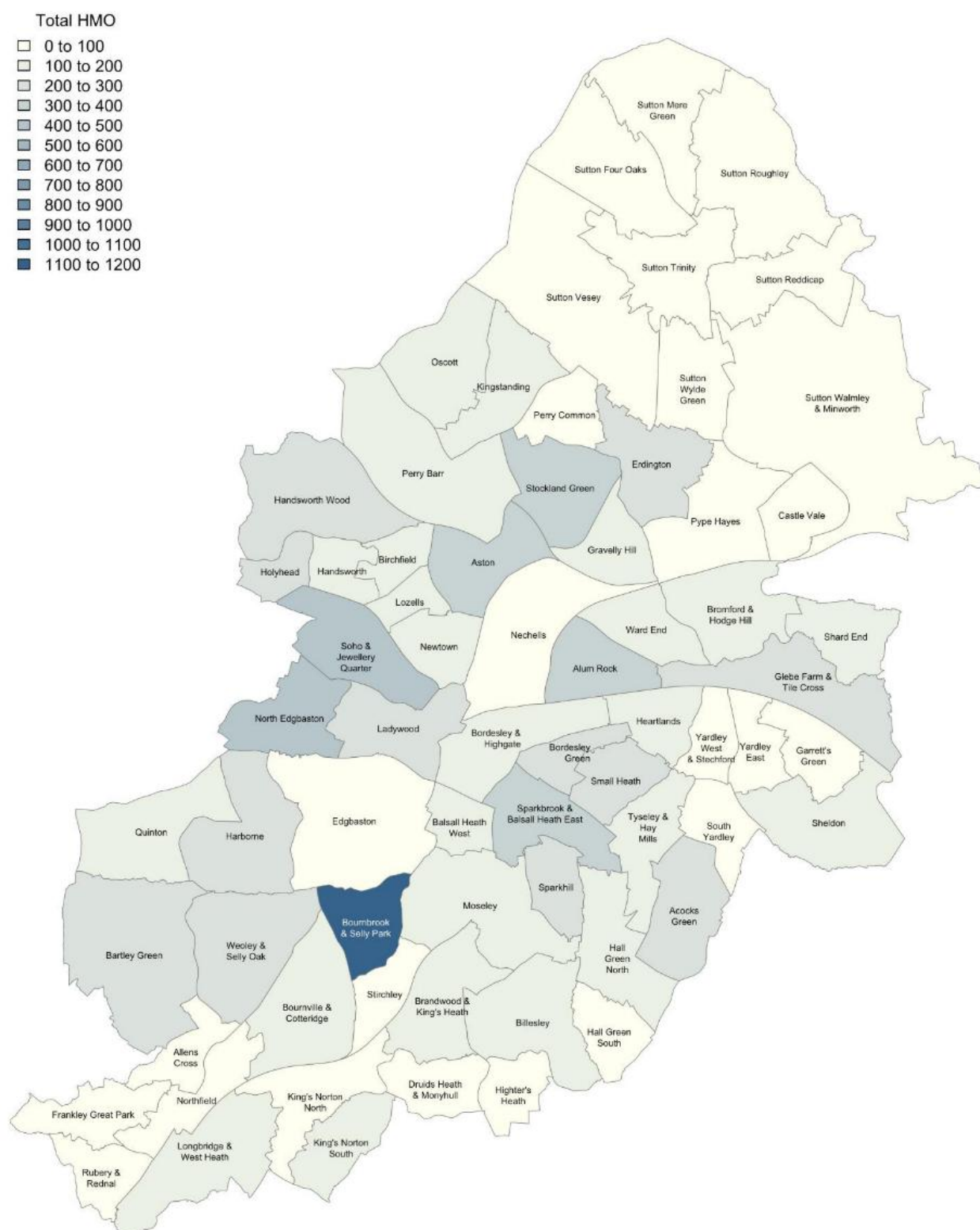


Figure 3. Heatmap showing number of HMOs (s.254) by Ward

## Legislative Framework

Section 55 of the Act sets out the scope of the licensing provisions under Part 2 and the general duties on Local Housing Authorities (LHA) in relation to their licensing functions. The section provides that LHAs are required to license the types of HMOs prescribed in an order made by the appropriate national authority (that is initially to be those of 3 storeys and above occupied by at least 5 persons who constitute more than one household). It also provides that an LHA may license other categories of HMOs designated by it under an additional licensing scheme.

Section 56 permits a LHA to extend licensing beyond the scope of mandatory licensing. A LHA can designate part or all of its area as subject to additional licensing for specified types of HMOs. An LHA must consider that a significant proportion of the HMOs (of the type it is considering licensing) are being managed ineffectively so as to give rise problems for the occupiers or members of the public. In considering the quality of management, LHAs must take into account the degree to which relevant codes of practice (if any) are being adhered to (see section 233).

Before making a designation an LHA must consult with those likely to be affected by it and take account of any representations.

Section 57 sets out further requirements that the LHA must consider before extending licensing to additional categories of HMO. These are:

- ensuring the use of additional licensing is in accordance with the LHA's overall housing strategy and is part of a co-ordinated approach to deal with wider issues such as anti-social behaviour;
- examining whether there are other courses of action that could be used to deal with the problems identified (e.g. voluntary accreditation schemes) and
- concluding that additional licensing, whether on its own or in conjunction with other policies, will make a significant contribution to dealing with the problems.

In the Act, “anti-social behaviour” means conduct on the part of occupiers of, or visitors to, residential premises -

- which causes or is likely to cause a nuisance or annoyance to persons residing, visiting or otherwise engaged in lawful activities in the vicinity of such premises, or

- which involves or is likely to involve the use of such premises for illegal purposes

Section 60 of the Act provides that a designation must from time to time be reviewed and can be revoked following a review, but in any case, must end five years after it has been made. When a scheme is revoked, notice of the revocation must be publicised in accordance with requirements contained in regulations.

A local authority may only make a designation after they have considered if there are any other available courses of action to them and if these would produce the intended outcomes that the designation would achieve; and if making the designation will significantly assist them to achieve the objectives.

## **Key Aims of Proposed Scheme**

The key aims of the proposed additional licensing scheme is to:

- Prioritise identification, inspection, and enforcement of HMOs with highest risk of serious conditions and poor management
- Protect the health, safety and welfare of tenants through improved property conditions and management
- Improve intelligence and data on HMOs, leading to better regulation of the sector, and detection of non-compliance

## **Related Strategies and Their Consistency with an Additional Licensing Scheme**

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

### **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.

The Plan is currently being refreshed, but good quality housing for all is an important aspect of the City Council's goals.

An additional licensing scheme is a one of the tools available to improve standards in the private rented sector. The proposed scheme would fit within the fourth outcome - 'Birmingham, a great, clean and green city to live in'. Specifically, the implementation of additional licensing will contribute to priorities 2 and 3 of the eight priorities to achieve this outcome:

**Priority 2** - We will have the appropriate housing to meet the needs of our citizens

An additional licensing scheme will ensure that all HMOs meet a minimum housing standard, which gives the tenant a stable home and helps with building stable communities. Tenants would be confident that accommodation meets the minimum energy efficiency requirements which would contribute to the green city aspiration.

An additional licensing scheme will also contribute to alleviating fuel poverty as measures to improve standards will ensure that heating appliances are properly checked, maintained, and working efficiently.

**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.

An awareness of all private rented sector property in the relevant 25 wards and engagement with both tenants and landlords will ensure all parties are aware of the protections in place under the tenancy. It is hoped that this will prevent illegal evictions and help support landlords by resolving tenant disputes. Enabling security of tenure and wrapping around partner services will hopefully reduce homelessness from the private rented sector which we are aware is a major contributor to homelessness in Birmingham.



## **Homelessness Prevention Strategy 2017+**

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

A landlord who is required to have a licence but does not, loses the right to automatic possession of the rented property under an assured shorthold lease under Housing Act 1988, s.21 (as amended s.75). Thereby offering extra protections from illegal evictions.

With a licence the Licence holder must supply to the occupiers of the house a written statement of the terms on which they occupy the property. This is usually a tenancy or licence agreement. This ensures the tenants understand their commitment and that of their landlord, but also the agreement in terms of length of tenancy and notice periods. This adds that protection of occupying under a legal framework.

## **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 anti-social behaviour. In addition, empty properties have a negative impact on the surrounding living environment and drive down property values.

There is great demand for family accommodation in the city and most of the empty properties reported are houses. Bringing these properties back into use will contribute to the supply of family accommodation. An additional licensing scheme will assist with ensuring that the standards are maintained and reduce the likelihood of the property becoming void/empty.

## **Private Rented Sector Strategy 2022 – 2027**

The Council's Private Rented Sector Strategy identifies the key challenges facing Birmingham and sets out the Council's priorities for tackling them.

It is generally accepted that poorly managed private rented accommodation can negatively impact individual residents, neighbourhoods, and the wider community – “the broken window” syndrome. Conversely, properly managed and maintained accommodation will help reduce environmental crime and increase community cohesion.

The Council's vision is to "Achieve long term and sustainable improvements in the quality of private rented sector through engagement and regulation". To achieve this vision, the Council has defined a number of priorities. The proposed scheme would fit within Priority 2 "Identify and implement local initiatives to address local issues". In order to meet this priority, the strategy states that we will:

- Undertake a review of the city's Houses of Multiple Occupation (HMO) and implement Additional Licensing if required.

## **Evidence Base**

### **HMO & Tenant Complaints**

Complaints made by tenants to the Council about HMOs are common and are distributed across all wards. The Council received 1,441 complaints related to HMOs over a 5 year period between 2016 and 2021. Complaints regarding poor property conditions and inadequate property management can be an indicator of low-quality properties.

Figure 4 shows the number of complaints by ward linked to predicted HMOs between 2016 and 2021. HMOs in Bournbrook & Selly Park (153) and Stockland Green (74) received the most complaints

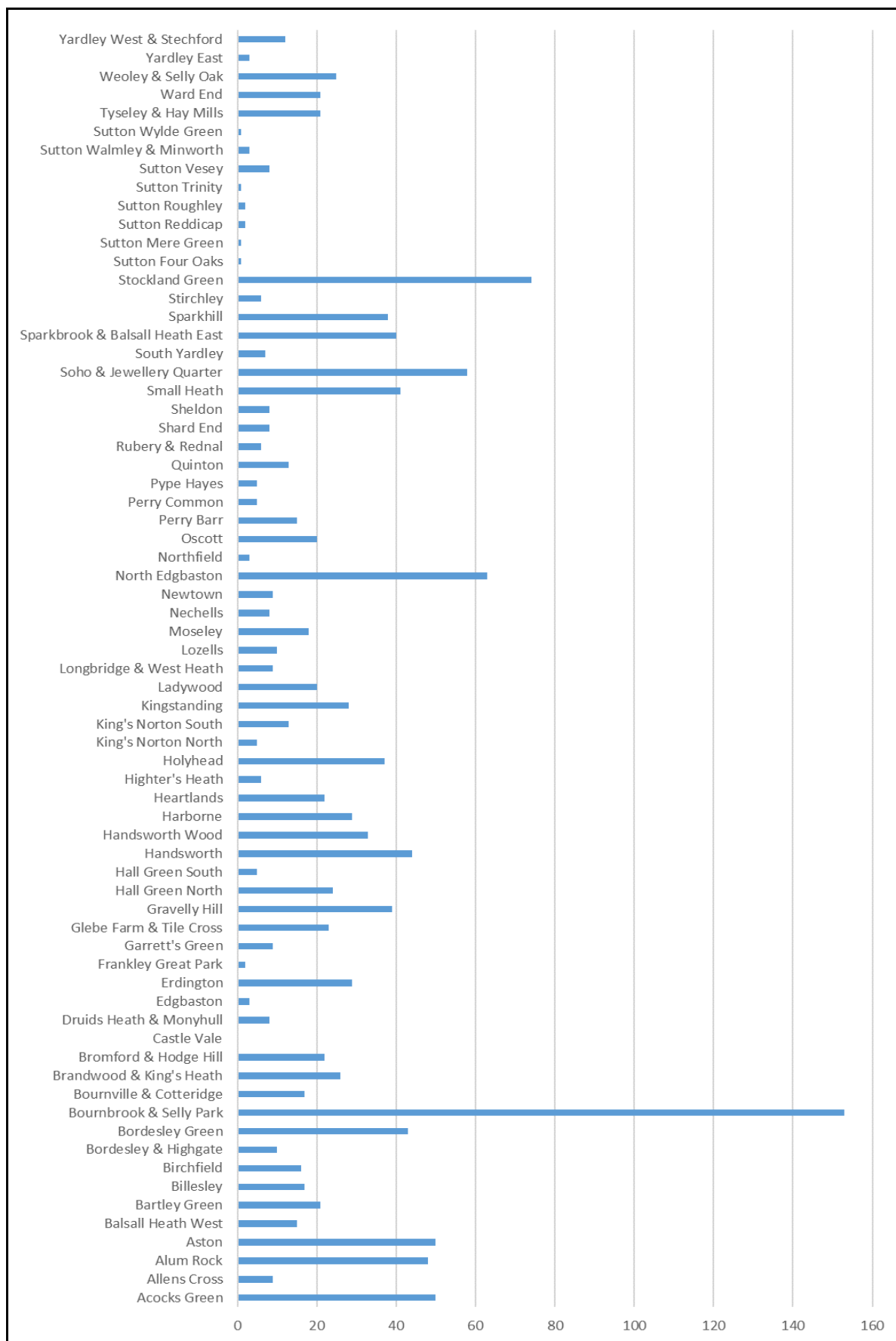


Figure 4. Complaints by ward linked to HMOs (s.254) (Source Ti 2022)

## **HMOs and Hazards**

There are a predicted 5,866 private rental properties in Birmingham that are likely to have a serious home hazard (Category 1, Housing Health and Safety Rating System). This represents 49.1% of the HMO stock, significantly higher than the national average (12%) for the private rented sector as a whole.

Figure 5 shows the number of Category 1 hazards linked to predicted HMOs broken down by ward.

Predicted HMO properties with serious hazards are distributed across the city with Bournbrook & Selly Park (231) and Soho & Jewellery Quarter (196) having the highest number of properties with at least one Category 1 hazard (HHSRS).

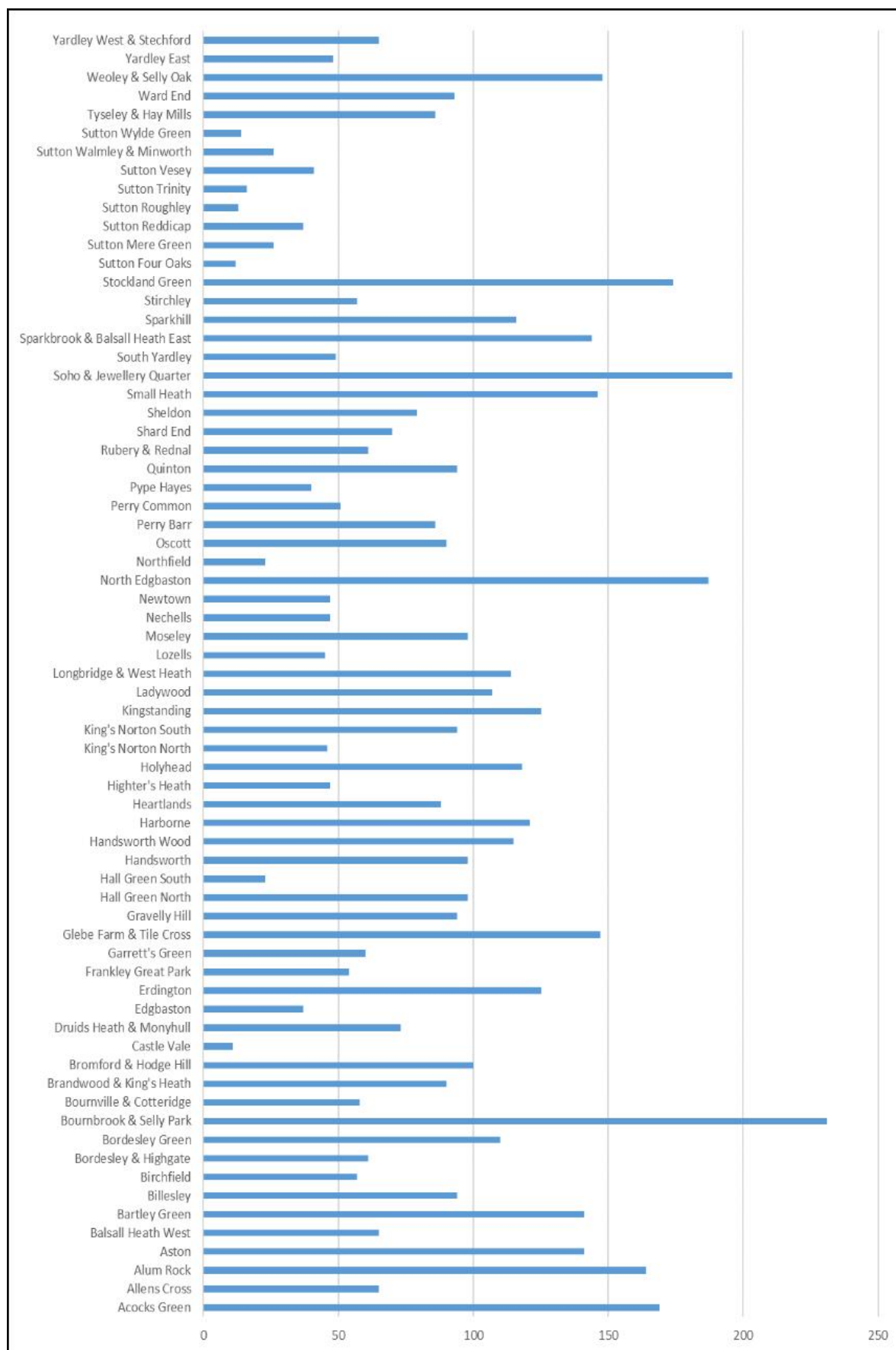


Figure 5. Category 1 hazards linked to predicted HMOs (s.254) (Source Ti 2022)

## Energy Efficiency

Under the Energy Performance of Buildings (England and Wales) Regulations 2012, whenever a property is rented, an Energy Performance Certificate (EPC) is required,. The certificate contains information about the property's energy use, typical energy costs and provides recommendations about how to reduce energy use and save money. The energy performance of a building is rated on a scale of A to G. A indicates a highly efficient property, G indicates low efficiency

These regulations put obligations on landlords of private rented domestic properties in relation to their energy performance. The Regulations set the minimum energy efficiency rating for all private rented properties and make it unlawful for properties with an energy performance rating of F or G to be let. Essentially a landlord who rents a property with an EPC rating below an E will be required to undertake work to improve its energy performance. Additional Licensing imposes conditions which will ensure HMO properties which are licensed meet the legal requirements of Energy Efficiency, ensuring that all tenants live in warmer and more energy efficient homes. The rating is from A to G.

Figure 6 show the distribution of current Energy Performance Certificate ratings in HMOs. It is estimated that 215 HMOs have an F and G rating and are therefore likely to fail the MEES statutory requirement.

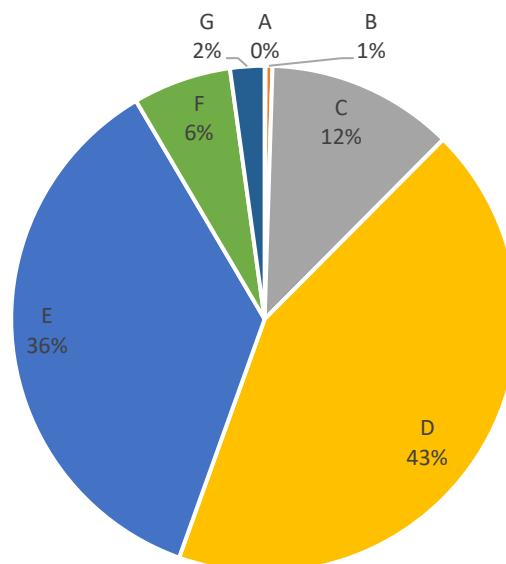


Figure 6. Distribution of current Energy Performance Certificate ratings in predicted HMOs (Rating A-G)(Source Ti 2022).

## **HMOs and Waste Incidents**

The number of waste incidents that have been recorded by the Council over the last 5 years and have been linked to predicted HMOs are shown in Figures 7 and 8. Waste incidents not linked to residential premises are excluded from these figures.

The figures relate to waste that has not been properly disposed of, including dumped rubbish and accumulations of waste. Incidents that could not be linked to an individual HMO have been put aside. For example, waste incidents reported on a street corner that cannot be linked to a residential property are excluded.

28,490 records have been linked to 6,848 predicted HMOs. The original pool of data linked to a residential property included 106,831 records. Therefore, 26.7% of all waste records can be attributed to predicted HMOs in Birmingham. Soho & Jewellery Quarter (1,496) and Bordesley Green (1,297) have the highest number of waste incidents linked to HMOs.

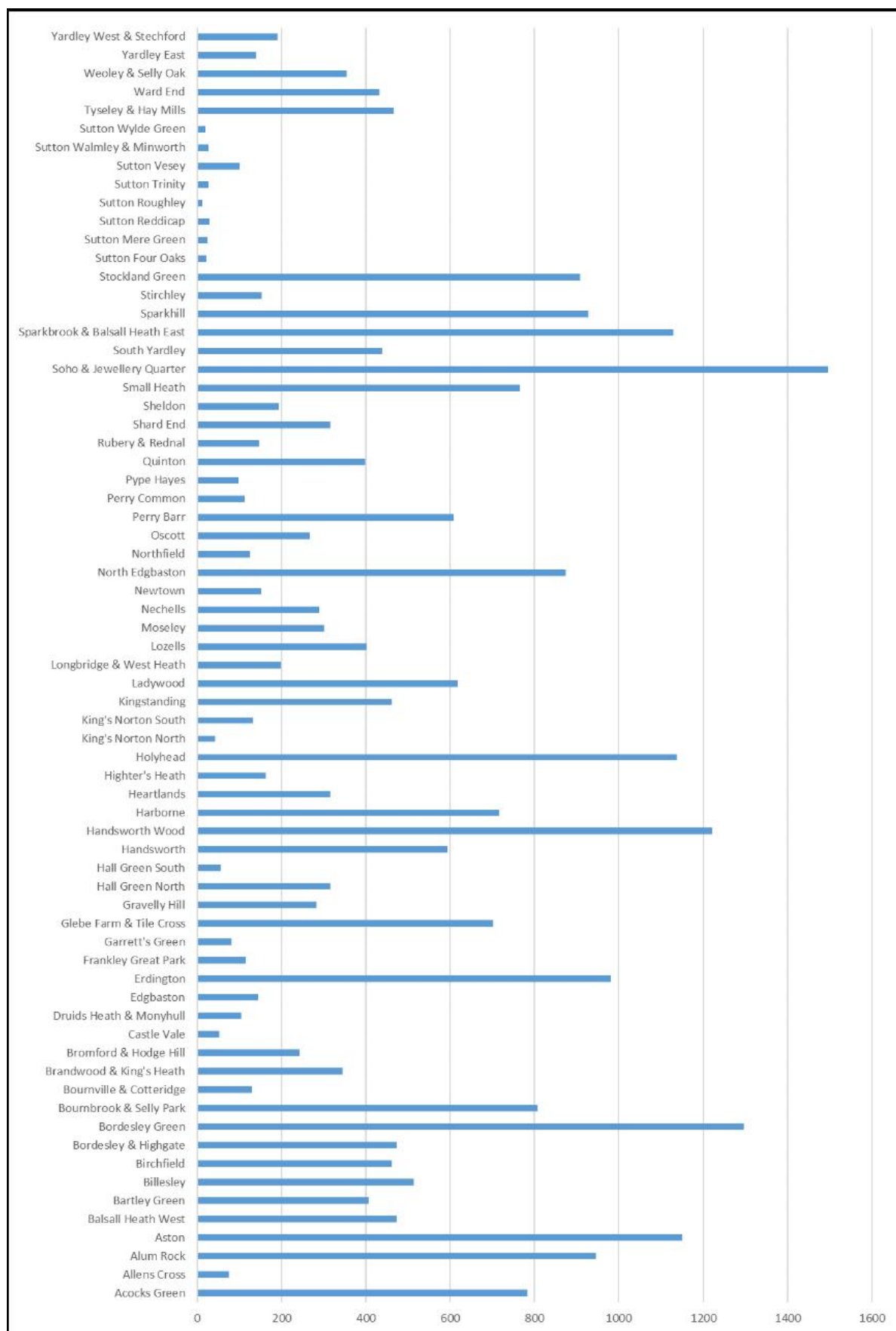


Figure 7. Waste records linked to predicted HMOs (s.254) (Source Ti 2022).



Waste Issues (HMO)

- 0 to 200
- 200 to 400
- 400 to 600
- 600 to 800
- 800 to 1000
- 1000 to 1200
- 1200 to 1400
- 1400 to 1600

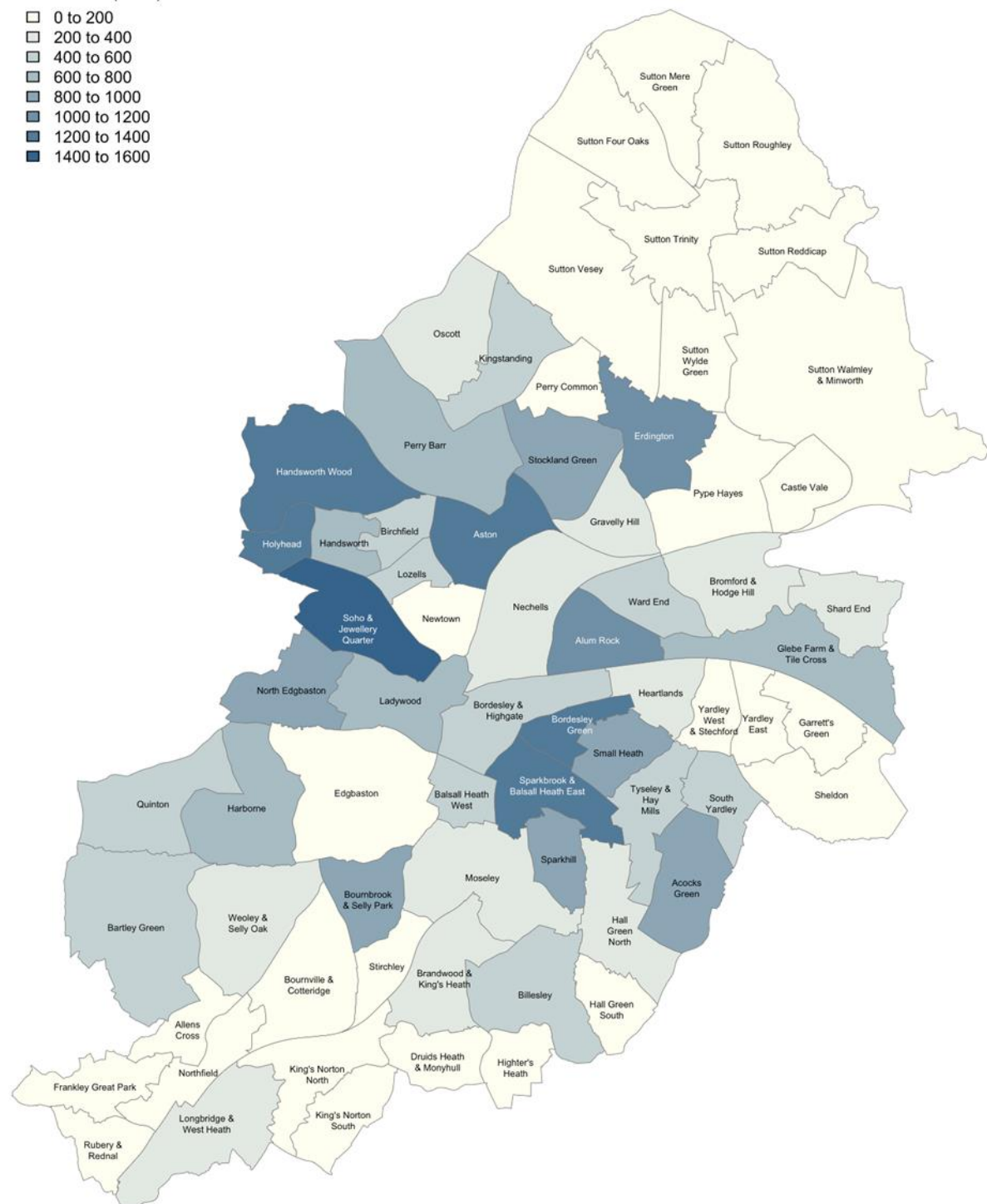


Figure 8. Heatmap showing number of waste incidents related to predicted HMOs (s254) by ward (Source Ti 2022).

## **HMO & Anti-Social Behaviour (ASB)**

Over a 5-year period to between 2016 and 2021, 11,241 ASB incidents have been linked to 4,107 HMOs in Birmingham. 1,599 HMOs were the source of 2 or more incidents over the same period.

A high level of ASB can be used as a proxy indicator of poor property management. HMO properties typically have higher levels of transience which can result in higher waste production, more noise and other issues if the property is not managed well. Figures 9 and 10 show the number of ASB incidents associated with predicted HMO premises (ASB incidents not linked to residential premises are excluded from these figures). Bromford & Hodge Hill (468) & Bartley Green (435) have the highest recorded level of ASB.

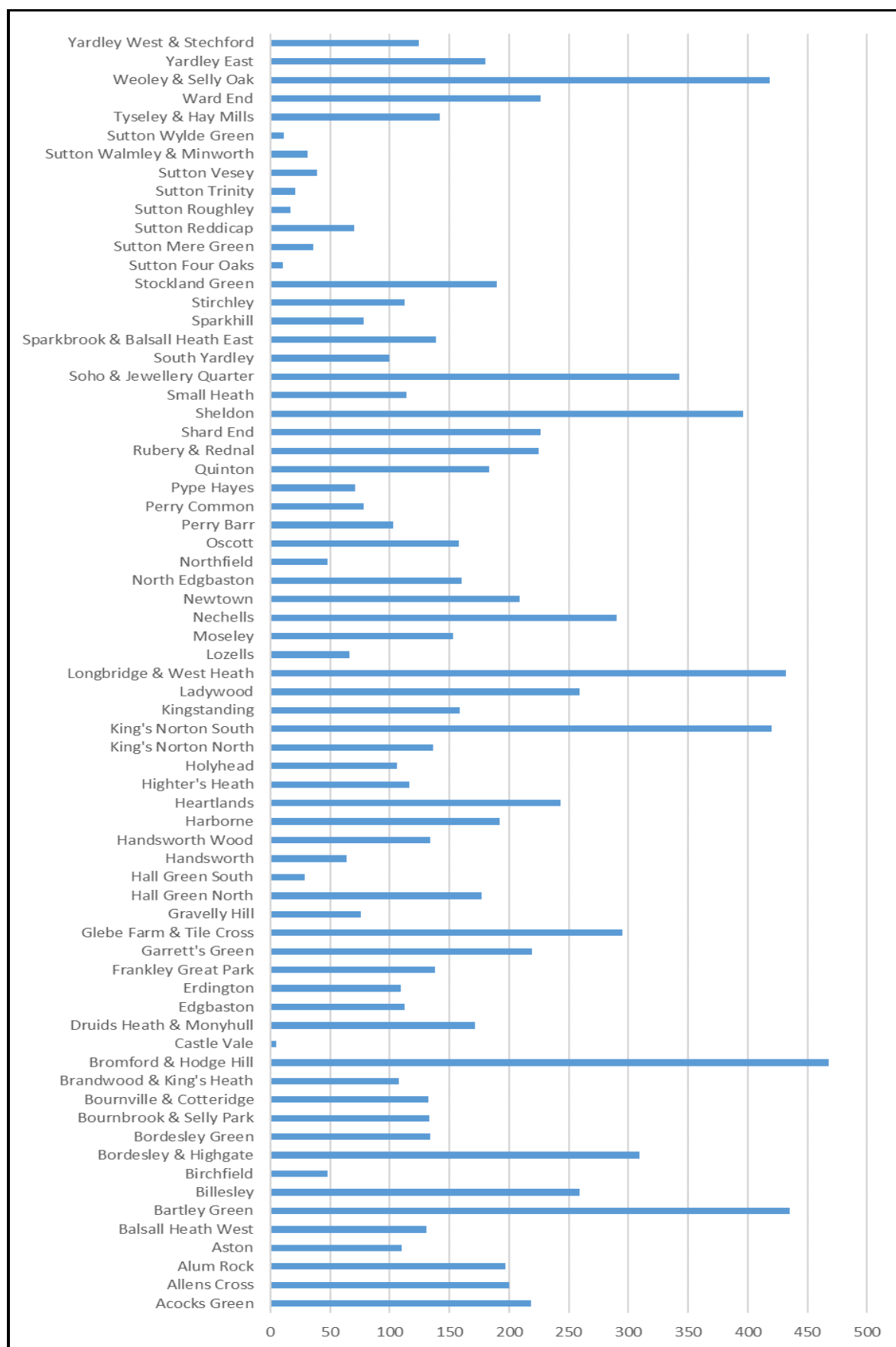


Figure 9. Number of ASB incidents linked to predicted HMOs (s254) by ward (Source Ti 2022).

☐ 0 to 50  
☐ 50 to 100  
☐ 100 to 150  
☐ 150 to 200  
☐ 200 to 250  
☐ 250 to 300  
☐ 300 to 350  
☐ 350 to 400  
☐ 400 to 450  
☐ 450 to 500

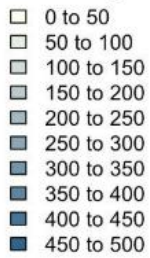


Figure 10. Heatmap showing number of ASB incidents linked to predicted HMOs (s.254) by ward (Source Ti 2022).

ASB incident in Birmingham City can be split into various sub-categories including noise, neighbour nuisance, harassment, vehicle nuisance, intimidation, drug and substance misuse (Figure 11).

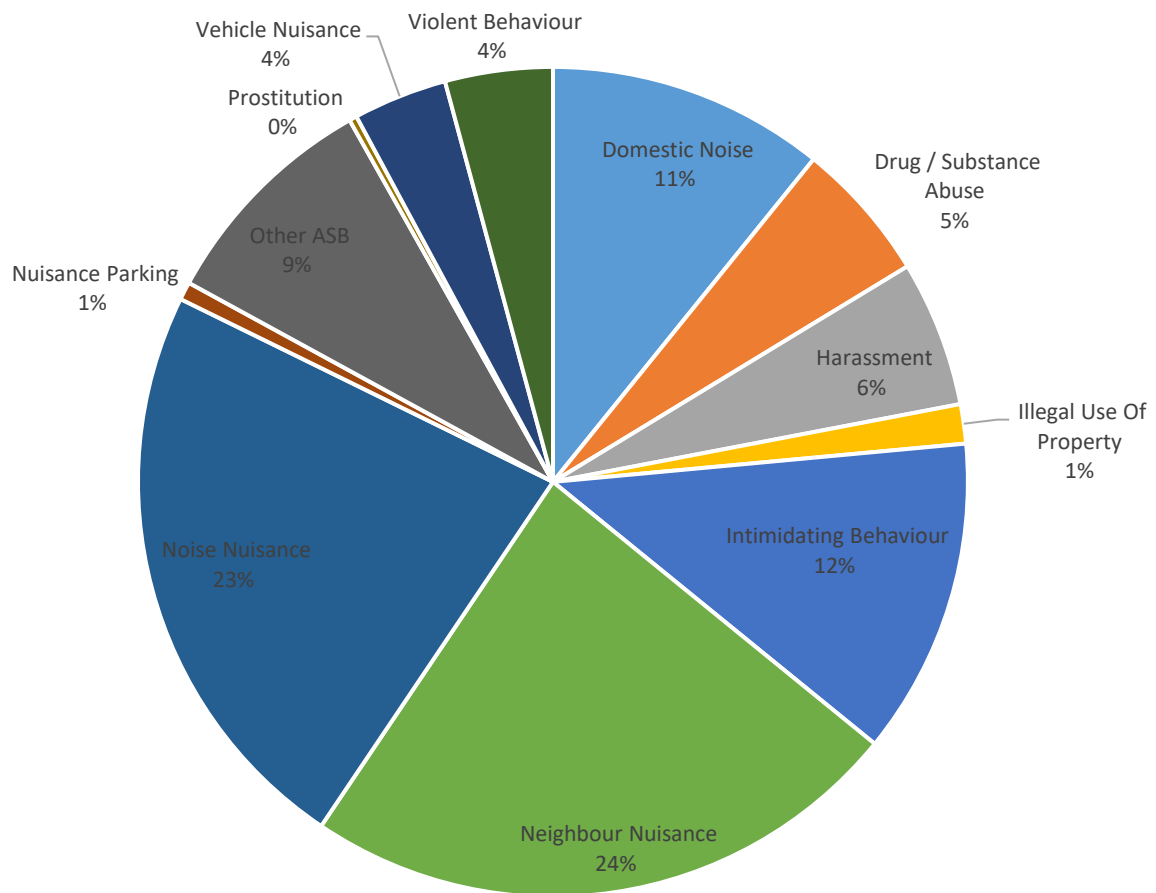


Figure 11. Types of ASB linked to predicted HMOs (s.254) (Source Ti 2022).

Repeat ASB incidents at any given property can be an indicator of properties that are poorly managed by their owners and start to identify a pattern of poor behaviour. 1,599 HMOs were the source of two or more incidents between 2016 and 2021 (Figures 12 and 13). Bartley Green (62) and Weoley & Selly Oak (62) have the highest recorded level of repeat ASB.

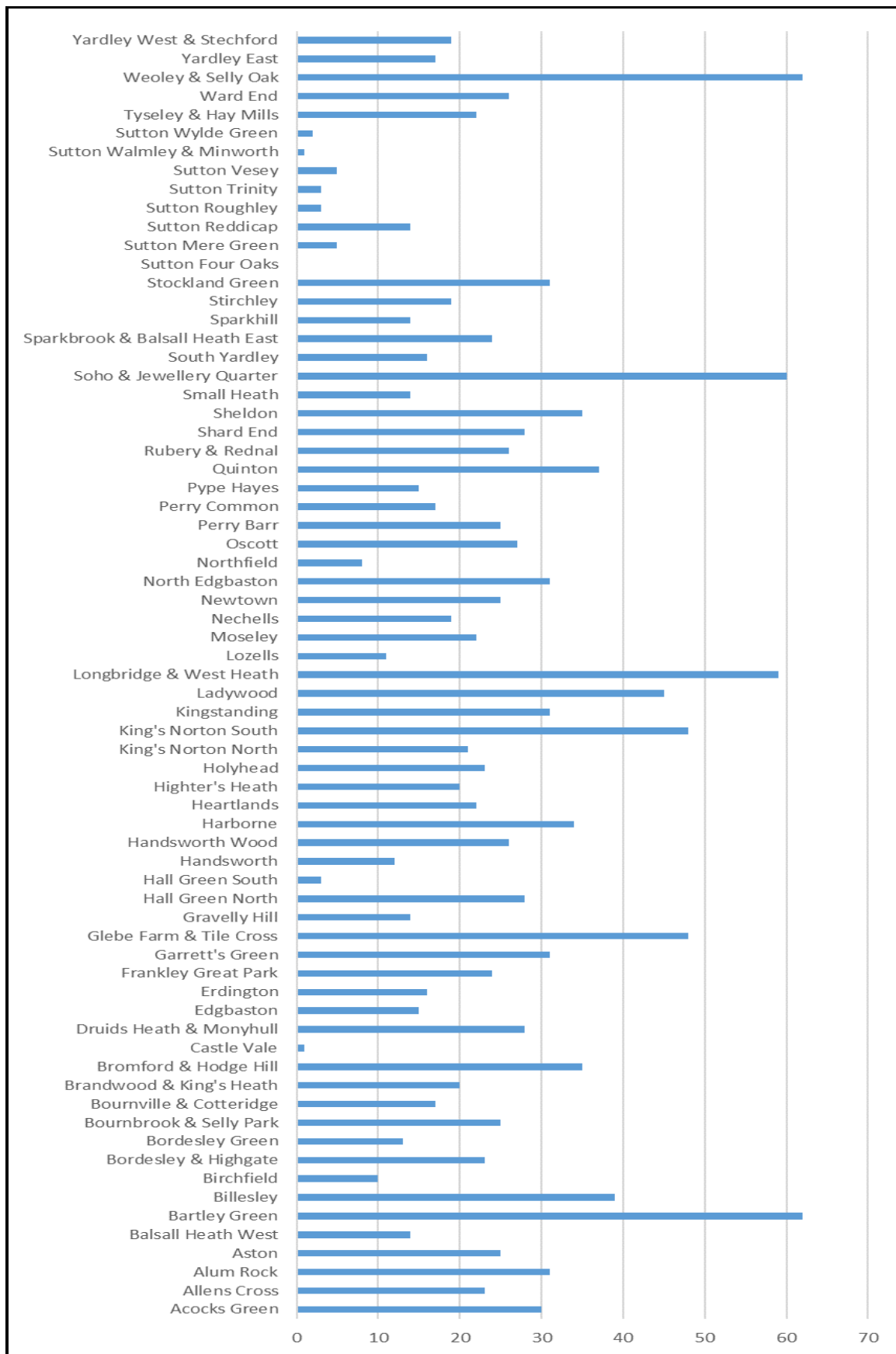


Figure 12. Two or more ASB incidents linked to HMOs (s.254) by ward (Source Ti 2022).

# Repeat ASB Incidents (HMO)

- 0 to 10
- 10 to 20
- 20 to 30
- 30 to 40
- 40 to 50
- 50 to 60
- 60 to 70

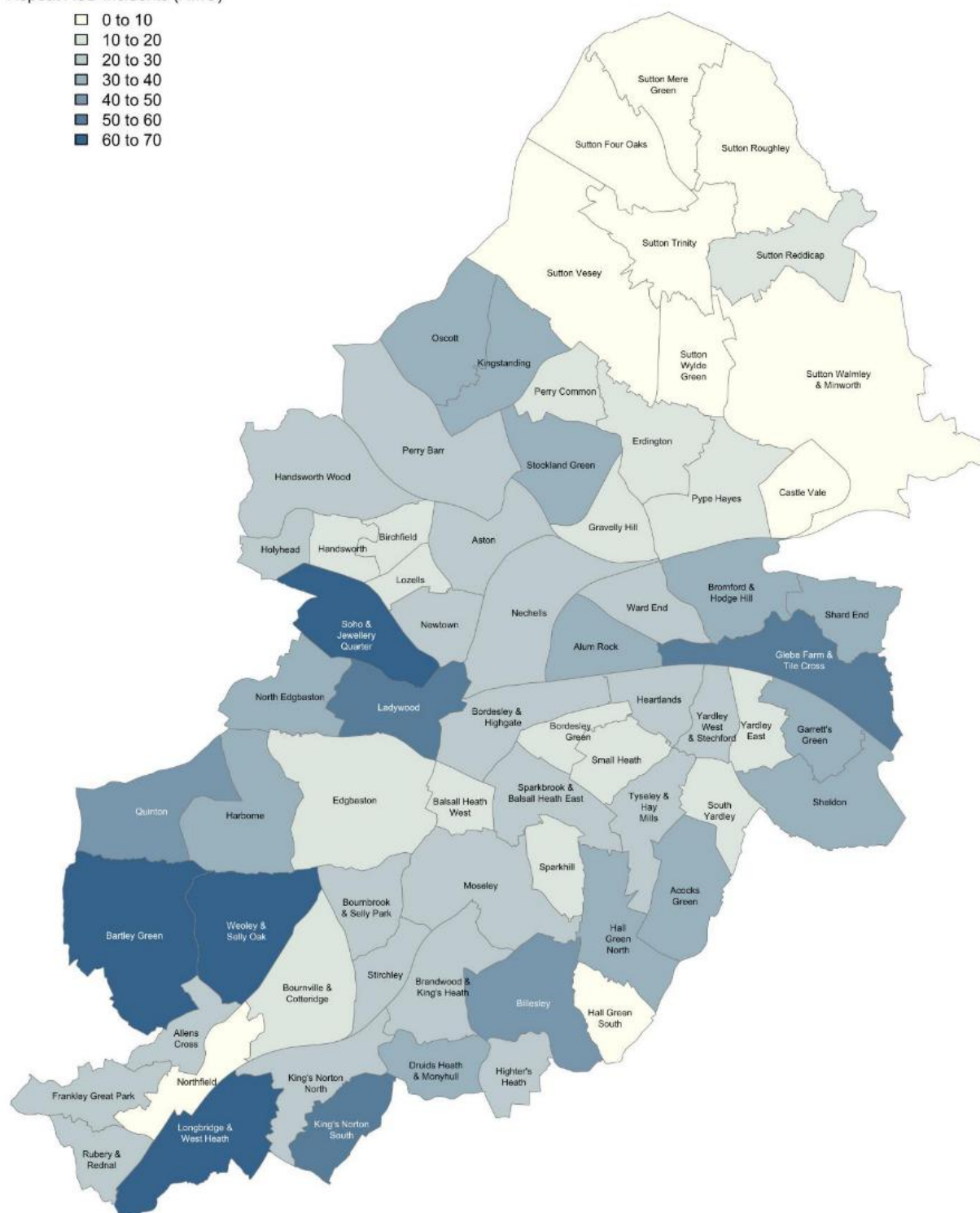


Figure 13. Heatmap showing repeat ASB incidents linked to predicted HMOs (s.254) by ward (Source Ti 2022).



# Evidence Summary

The city is predicted to have 11,933 HMOs that share basic amenities (“section 254 HMOs”) distributed across all 69 wards. Bournbrook & Selly Park has the highest number of HMOs (1,159), followed by Soho & Jewellery Quarter (418) & North Edgbaston (414)

215 HMOs have an Energy Performance Certificate Rating of F and G rating and are therefore likely to fail the Minimum Energy Efficiency Standard statutory requirement.

Complaints made by tenants about HMOs are common and are distributed across all wards with the Council receiving 1,441 complaints between 2016 and 2021. The highest number of complaints were related to Bournbrook and Selly Park (153) and Stockland Green (74).

The Council predicts that 5,866 HMOs in Birmingham are likely to have a serious home hazard (Category 1, HHSRS). This represents 49.2% of the HMO stock, significantly higher than the national average (12%) for the private rented sector as a whole.

28,490 waste incidents are linked to 6,848 HMOs. Soho and Jewellery Quarter (1,496) and Bordesley Green (1,297) have the highest number of waste incidents linked to HMOs. The original pool of waste data linked to a residential property included 106,831 records. Therefore, 26.7% of all waste records have been attributed to predicted HMOs although they only make up 2.6% of all dwellings (452,754).

Over a five-year period to March 2021, 11,241 ASB incidents have been linked to 4,107 predicted HMOs in Birmingham (approximately a third of predicted HMOs). Bromford & Hodge Hill (468) & Bartley Green (435) have the highest recorded level of ASB.

1,599 HMOs (14.2% of the total ) were the source of two or more incidents over the same period which can be an indicator of properties that are poorly managed. Bartley Green (62) and Weoley & Selly Oak (62) have the highest recorded level of repeat ASB incidents linked to predicted HMOs.

The data shown in the above section provides the evidence that supports the view that a significant proportion of HMOs in Birmingham are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public. The Council are



therefore proposing to licence all HMOs not already covered by mandatory licensing including those in purpose-built blocks and those living in section 257 HMOs.

## Data Summary

The table below and continued on pages 31 and 32 provides a summary of the main evidentiary data referred to in this report.

Ward	All figures below relate to predicted HMOs				
	No. of HMOs	Complaint recorded against HMOs	ASB incidents linked to HMOs	Repeat ASB incidents linked to HMOs	Waste issue linked to HMOs
Acocks Green	293	50	218	30	784
Allens Cross	92	9	200	23	75
Alum Rock	339	48	197	31	945
Aston	311	50	110	25	1151
Balsall Heath West	163	15	131	14	473
Bartley Green	225	21	435	62	407
Billesley	161	17	259	39	514
Birchfield	159	16	48	10	461
Bordesley & Highgate	146	10	309	23	473
Bordesley Green	267	43	134	13	1297
Bournbrook & Selly Park	1159	153	133	25	808
Bournville & Cotteridge	118	17	132	17	130
Brandwood & King's Heath	157	26	108	20	345
Bromford & Hodge Hill	173	22	468	35	242
Castle Vale	32	0	5	1	52
Druids Heath & Monyhull	109	8	171	28	104
Edgbaston	93	3	112	15	145
Erdington	248	29	109	16	982
Frankley Great Park	95	2	138	24	115

<b>Ward</b>	<b>No. of HMOs</b>	<b>Complaint recorded against HMOs</b>	<b>ASB incidents linked to HMOs</b>	<b>Repeat ASB incidents linked to HMOs</b>	<b>Waste issue linked to HMOs</b>
Garrett's Green	94	9	219	31	81
Glebe Farm & Tile Cross	244	23	295	48	702
Gravelly Hill	172	39	76	14	283
Hall Green North	174	24	177	28	316
Hall Green South	43	5	29	3	56
Handsworth	188	44	64	12	593
Handsworth Wood	213	33	134	26	1222
Harborne	297	29	192	34	717
Heartlands	145	22	243	22	316
Highter's Heath	77	6	116	20	162
Holyhead	280	37	106	23	1137
King's Norton South	133	13	420	48	132
Kingstanding	194	28	159	31	461
Ladywood	265	20	259	45	618
Longbridge & West Heath	182	9	432	59	199
Lozells	123	10	66	11	401
Moseley	176	18	153	22	300
Nechells	100	8	290	19	289
Newtown	113	9	209	25	151
North Edgbaston	414	63	160	31	874
Northfield	56	3	48	8	125
Oscott	134	20	158	27	267
Perry Barr	174	15	103	25	607
Perry Common	89	5	78	17	113
Pype Hayes	75	5	71	15	97
Quinton	168	13	183	37	398
Rubery & Rednal	87	6	225	26	147
Shard End	124	8	226	28	315

<b>Ward</b>	<b>No. of HMOs</b>	<b>Complaint recorded against HMOs</b>	<b>ASB incidents linked to HMOs</b>	<b>Repeat ASB incidents linked to HMOs</b>	<b>Waste issue linked to HMOs</b>
Sheldon	124	8	396	35	194
Small Heath	251	41	114	14	766
Soho & Jewellery Quarter	418	58	343	60	1496
South Yardley	101	7	100	16	439
Sparkbrook & Balsall Heath East	331	40	139	24	1129
Sparkhill	251	38	78	14	928
Stirchley	103	6	112	19	153
Stockland Green	348	74	190	31	908
Sutton Four Oaks	17	1	10	0	21
Sutton Mere Green	34	1	36	5	24
Sutton Reddicap	56	2	70	14	29
Sutton Roughley	19	2	17	3	11
Sutton Trinity	29	1	21	3	27
Sutton Vesey	70	8	39	5	101
Sutton Walmley & Minworth	39	3	31	1	27
Sutton Wylde Green	22	1	11	2	19
Tyseley & Hay Mills	156	21	142	22	466
Ward End	174	21	226	26	433
Weoley & Selly Oak	261	25	418	62	355
Yardley East	82	3	180	17	140
Yardley West & Stechford	109	12	124	19	191

Table 1. Summary of evidentiary data by ward

## **Alternative options considered**

We have considered several other courses of action to address the issues described in this report. However, we do not believe that either individually, or collectively, that they would prove sufficiently effective, or be as an effective means of tackling anti-social behaviour and waste problems related to HMOs in the city. Below are the alternative approaches that we have considered and explains why we do not believe they are not sufficient to meet the city's objectives.

### **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 if a notice is not complied with. Landlords also risk being prosecuted if they do not comply with a notice.

Using the range of tools at its disposal, the Council will decide on the most appropriate action on a case by case basis. Formal action is generally a slow process with appeal provisions against most types of notices served, which can significantly delay the time for compliance. These powers do not place any obligation on landlords to be proactive in improving conditions. Work in default can be effective but is expensive and time consuming for the Council, with the risk that costs will not be recovered without significant delays. Whilst it is a powerful tool, it is still reactive,

Lastly, successful prosecutions do not themselves secure improvements in property conditions and the Council's prosecution costs will not always be met in full.

### **Voluntary landlord accreditation schemes to facilitate improvement in property conditions and management standards**

The Council supports landlords in being members of accreditation schemes and recognises the benefits it can bring to both landlord and tenant in the successful management and sustainment of tenancies. However, accreditation requires voluntary landlord engagement and rogue landlords are unlikely to actively engage in these initiatives.

There is no single intervention that will achieve an overall solution to reducing anti-social behaviour and waste problems, and each measure will have its limitations. Additional licensing will provide a mechanism which allows for a co-ordinated approach for strong effective partnerships, which will link agencies and services together for the benefit of tenants and the communities they live in.

### **Mandatory Licensing**

Mandatory licensing refers to the licensing of Houses in Multiple Occupation (HMO) where the premises are occupied by five or more people who form two or more households. This licensing regime has been in place in the city since 2006, but only covers a proportion of the HMO sector. If additional licensing was not implemented, this Mandatory Licensing would still take place.

Mandatory Licensing is able to ensure that standards are in place for specific, individual premises but does not apply to all HMOs. Therefore, the use of this mandatory licensing regime alone would not meet the objectives of ensuring all high risk housing is addressed.

### **Do Nothing**

The proposed Additional Licensing scheme puts in place clear, set standards, that are advertised and consistent, ensuring that the risk across Houses in Multiple Occupation is addressed.

It places an emphasis on proactive application by landlords, allowing the Council to focus resources on those operating outside of the scheme.

While basic statutory standards can be enforced without a scheme, this would be on a reactive, complaint-based process, that does not lead to a consistent standard of protection to tenants, nor provision of clear standards for landlords to refer to. This will lead, even inadvertently, to new premises not meeting statutory requirements.

In line with Council commitments and requirements of putting the community first, and protecting the vulnerable and families, doing nothing is not an option.

## Licence Fee

The Council will exercise its powers to charge under Section 63(7) of the Housing Act 2004 and does so taking into account the Provision of Services Regulations 2009.

Section 63(7) of the Act permits the Council to require any application for a licence under Part 2 is accompanied by a licence fee and that this fee may cover all costs incurred by the Council in carrying out its function.

In calculating the fee, the Council has set out the process for handling a licence application. This process includes the costs relating the set up costs, the administrative process involved in handling an application, the legal processes involved in proposing the licence and conditions and finally making the decision to either grant the licence or refuse it. The fee covers the entire period of the scheme.

This process has identified that the costs incurred to carry out the function of additional licensing to be £755 per licence application and is due in two parts (see table below).

Individual Property Licence Fee(s)	Standard Fee
Total Licence Fee	£755
Part A – Application Fee	£325
Part B - Fee on approval	£430

The first part (Part A) of the licence fee is payable when the licence application is submitted and is for the assessment and processing of the application to the stage of issuing the decision notice and, where applicable, the draft licence.

The second part (Part B) of the licence fee is due following the issue of a draft licence but prior to the licence being issued.

This fee structure reflects the cases of *R (on the application of Hemming (trading as Simply Pleasure Ltd) and Others) v Westminster City Council* and *R (Gaskin) v Richmond-upon-Thames*.

The fee must be paid in full in order for the licence application to be considered as having been duly made and, if it is not, then the application will not be considered, and

a licence cannot be granted. If an application is unsuccessful the Part B fee will not be required.

In principle the Council should not make a surplus from the scheme, neither should it make a loss. It is intended that the fees will be reviewed on an annual basis. This could mean that the fees charged may need to be increased or reduced depending on whether the number of applications received deviates from the assumed profiles or fluctuations in the running costs.

The Council is not proposing to have a discounted fee structure for membership of a landlord accreditation scheme, nor an “early bird” discount. This is because the fee is calculated to cover the administration of the scheme. Being a member of a landlord accreditation scheme or applying early does not reduce the resources required to administer a scheme.

As such, a reduced fee option would only result in a short fall in the amount of income from the fees that is required to cover the expenditure costs of administering the scheme. Such a shortfall would potentially risk the success of the scheme in that licences would not be determined within a reasonable timescales, compliance visits would not occur, and illegally operating rented property would not be tackled as appropriate staff resource would not be in place. Furthermore, the landlords paying the full fee would potentially be subsidising those paying the reduced fee.

The Council intends to deliver online resources and training to landlords in the future to raise awareness of property management standards.

The table below details the additional circumstances where either Part A, Part B, or both parts are due, and where no fee is due.

Change of licence holder	Standard fee (Part A & B)
Variation of licence – <ul style="list-style-type: none"> <li>• Change of property owner, freeholder, mortgagee, or leaseholder</li> <li>• Change of property manager</li> <li>• Change of address details</li> <li>• Agreed change in number of occupiers</li> <li>• Increase in number of rooms or changes in room size and/or amenities</li> </ul>	No fee
Licence variation instigated by the Council	No fee
Licence application following revocation	Standard fee (Part A & B)
Licence application refused	Part A fee
Property ceases to be licensable during application process	Part A fee
Application withdrawn by applicant	Part A fee
Application made in error	No fee

## Licence Conditions

The licence conditions will include the mandatory conditions set out in schedule 4 of the Housing Act 2004 as well discretionary licence conditions designed to assist in meeting the objectives and desired outcomes of the scheme. The proposed conditions can be found in Appendix 1 on pages 41 to 47.

## Penalties for not having an additional licence

Failing to have a licence is a criminal offence and subject to an unlimited fine upon conviction. Listed below are details of possible breaches:

- it is an offence if the landlord or person in control of the property fails to apply for a licence and he/she is liable on summary conviction to an unlimited fine
- a licence holder who breaches any of the licence conditions is liable on conviction to a fine not exceeding level 5



- it is a criminal offence to obstruct the Local Authority in carrying out their functions under Parts 1 to 4 and sections 239 and 240 and is liable upon conviction a fine not exceeding level 4 on the standard scale
- overcrowding - a landlord committing an offence of overcrowding is liable on conviction to a fine not exceeding level 2 on the standard scale and to a further fine not exceeding one-tenth of the amount corresponding to that level in respect of every day subsequent to the day on which he is convicted on which the offence continues

Under s.324 of the Housing Act 1985 a 'dwelling' (home) is overcrowded when the number of persons sleeping in the dwelling is such as to contravene:

- 1) the standard specified in section 325 (the room standard)
- 2) the standard specified in section 326 (the space standard)

## **Consequences of not having an additional licence**

The following are some of the consequences of not having a licence:

- A landlord who is required to have a licence but does not, loses the right to automatic possession of the rented property under an assured shorthold lease under HA1988, s.21 (as amended s.75).
- Tenants may make an application to a Residential Property Tribunal for a Rent Repayment Order (RRO) if the landlord has been convicted of the offence of operating a licensed property without a licence.
- If rents were paid through Housing Benefit, the Council will use its powers under the Act to seek RROs for repayment of twelve months' Housing Benefit or for the period since the landlord was required to license the HMO, if less. We may also provide tenants with information about how to apply for an RRO.

## **Defences for not having a licence**

The Act provides for three defences to someone who does not have the requisite licence. These are:

- 1) When there is a reasonable excuse for his failure (section 95(1))
- 2) At the relevant time the landlord has notified the local Housing Authority of his intention to cease renting out the property or otherwise no longer be subject to additional licensing and his notification remains effective (section 95(3)(a))
- 3) At the relevant time the landlord has applied for a licence and the application remains effective (section 95(3)(b))

The Council acknowledges that there may be situations beyond the landlord's control that prevent them from applying. Should additional licensing be introduced, it is important that any problems are communicated to the Council as soon as possible so that agreement can be reached.

## **Exemptions from Additional Licensing**

You do not need an additional licence if:

- The property is an HMO that already requires a licence under the mandatory HMO licensing scheme;
- The property is subject to an Interim or Final Management Order under Part 4 of the Housing Act 2004 (i.e. the council have taken over the management of the property);
- The property is covered by a temporary exemption notice.
- The property is managed a local housing authority, registered social landlord, police or fire & rescue authority or a health service body;
- The property is already regulated under certain other statutory provisions (Schedule 1 to SI 2006 Number 373)
- The property falls within an exemption applying to certain student halls of residence;
- The property is occupied principally for the purposes of a religious community whose principle occupation is prayer; contemplation, education or the relief of suffering;

- The property is owner occupied with no more than two lodgers; or
- The property is occupied by just two people who form two households.

# **Appendix 1 - Proposed Additional Licencing Conditions**

## **Mandatory conditions under Part 2 Housing Act 2004**

### **Condition 1 – Gas**

If gas is supplied to the house, the Licence Holder must provide Birmingham City Council a Gas Safety Certificate issued within the previous 12 months at the time of the application and thereafter on demand.

### **Condition 2 – Electrical Appliances**

The Licence Holder must keep electrical appliances made available by them in the house in a safe condition and supply the authority (at the time of the application and on demand thereafter) a declaration by the Licence Holder as to the safety of such appliances.

### **Condition 3 – Furniture and Furnishings**

The Licence Holder must ensure that furniture and furnishings supplied by them are compliant with the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended 1989 and 1993) and must provide a declaration as to their safety at the time of application and thereafter on demand.

### **Condition 4 - Smoke Alarms**

- i) The Licence Holder must ensure that smoke alarms are installed on each storey of the house on which there is a room used wholly or partly as living accommodation. A declaration as to the positioning of such alarms must be provided to Birmingham City Council on demand.
- ii) The Licence Holder must ensure that the smoke alarms are kept in proper working order. A declaration as to the proper working order of the alarms must be supplied to the Council on request.

## **Condition 5 - Carbon Monoxide Alarms**

The Licence Holder must ensure that a carbon monoxide alarm is installed in any room which is used wholly or partly as living accommodation and contains a solid fuel combustion appliance. A declaration as to the positioning of such alarms must be supplied to the Council on demand.

Note: Room includes a hall or landing. A bathroom or lavatory is to be treated as a room used for living accommodation. The Licence Holder must ensure that the carbon monoxide alarms are kept in proper working order. A declaration as to the proper working order of such alarms must be supplied to the Council on demand.

## **Condition 6 – Bedroom Sizes**

The Licence Holder must ensure that:

- The floor area of any room in the House of Multiple Occupation (HMO) which is used as sleeping accommodation by one person over the age of 10 years is not less than 6.51 square metres.
- The floor area of any room in the HMO which is used as sleeping accommodation by two persons over the age of 10 years is not less than 10.22 square metres.
- The floor area of any room in the HMO which is used as sleeping accommodation by one person under the age of 10 years is not less than 4.64 square metres.
- Any room in the HMO with a floor area of less than 4.64 square metres is not used as sleeping accommodation.
- Where any room in the HMO which is used as sleeping accommodation by persons aged over the age of 10 years only, it is not used as such by

more than the maximum number of persons aged over 10 years specified in the Licence.

- Where any room in the HMO which used as sleeping accommodation by persons aged under the age of 10 years only, it is not used as such by more than the maximum number of persons aged under 10 years specified in the Licence.
- Where any room in the HMO which is used as sleeping accommodation by persons aged over 10 years and persons aged under 10 years, it is not used as such by more than the maximum number of persons aged over 10 years specified in the Licence together with the maximum number of persons aged under 10 years as so specified.

### **Condition 7 - Terms of Occupation**

The Licence Holder must supply to the occupiers of the house a written statement of the terms on which they occupy the HMO. This is usually a tenancy or licence agreement. A copy of the terms will be provided to the Council on demand.

### **Condition 8 – Waste**

The Licence Holder must ensure that suitable and adequate provision is made for the storage and disposal of domestic refuse from the house and that the Council's arrangements for storage and waste disposal are adhered to.

### **Discretionary Conditions**

### **Condition 9 – Bedroom area**

Any area of the room in which the ceiling height is less than 1.5m cannot be counted towards the minimum room size. Communal space in other parts of the HMO cannot be used to compensate for rooms smaller than the prescribed minimum.

### **Condition 10 – Change of Circumstances**

The Licence Holder must notify the Council within 14 days of any material change in circumstances that may affect the validity and terms of the licence.

This would include:

- i) a change of address
- ii) change of manager, management arrangements, or HMO ownership
- iii) any change in the Licence Holders and, if appropriate, a person on whom restrictions or obligations under the licence are imposed, or any associate's circumstances that may affect their status as a fit and proper person under the Housing Act 2004
- iv) any proposed changes to the house, including its layout.

### **Condition 11 – Energy Performance Certificate**

The HMO must have a valid Energy Performance Certificate (EPC) throughout the duration of the licence and in compliance with the Minimum Energy Efficiency Standard in place at the time. The EPC should be displayed clearly in a common part of the HMO.

### **Condition 12 – Security**

The Licence Holder must:

- i) Carry out a lock change prior to a new tenant taking up occupation when the previous tenant has not returned all keys.
- ii) Ensure that provisions for securing access to the premises are maintained in good working order at all times, and sufficient to prevent reasonable attempts of forced entry.

- iii) Ensure occupiers have access to the necessary keys to access the security provisions, including window locks if fitted.
- iv) Where a burglar alarm is fitted to the HMO, the Tenant(s) is (are) made aware of the code, how the alarm is operated and the circumstances under which the code for the alarm can be changed.
- v) So far as reasonably practicable, any works necessary to protect the security of the HMO are undertaken within 24 hours of notification e.g. damage to windows/entry points to the HMO.

### **Condition 13 – Crime and Anti-Social Behaviour**

The Licence Holder must:

- i) ensure that all reasonable and practical steps are taken to prevent or reduce criminality or anti-social behaviour by the occupants of, and visitors to, the HMO.
- ii) where complaints of criminality or anti-social behaviour are made to the Licence Holder, the Licence Holder shall investigate them and take appropriate action to resolve them. Copies of the complaint shall be kept together with notes arising during the course of the investigation and how the matter was resolved; and the Licence Holder must keep them for the duration of the Licence. Where the Licence Holder has reason to believe that criminal activity is taking place at the HMO or the curtilage of it, the Licence Holder must ensure that the appropriate authorities e.g. Police, are informed.
- iii) There may be instances where anti-social behaviour occurs more than once, but not continuously and possibly intermittently over several months. In such circumstances the Licence Holder shall, as far as is reasonably practicable, take all steps required to ensure that it is effectively dealt with, up to and including eviction.



## **Condition 14 – Refuse and recycling**

The Licence Holder must:

- i) Provide suitable and sufficient provision for storage of refuse generated in the HMO and ensure that occupants use receptacles provided by the Council for storage prior to collection. No waste or waste receptacle must cause obstruction.
- ii) Ensure that all tenants upon commencement of their tenancy are given details about the refuse storage arrangements, including the collection dates for refuse, recycling and green waste, and how to present their waste.
- iii) Ensure that any kind of refuse which the Council will not ordinarily collect (e.g. large items, bedding, furniture, hazardous waste etc.) are disposed of responsibly and appropriately.
- iv) Ensure that no refuse or bulky waste items are kept in the front or rear garden otherwise within the curtilage other than in an appropriate storage container for that purpose. These areas are also to be kept free of litter. The Licence Holder is also responsible for ensuring that any kind of refuse which the Council will not ordinarily collect (e.g. large items of furniture, hazardous waste etc.) are disposed of responsibly and appropriately.

## **Condition 15 – References**

The Licence Holder must demand references from persons who wish to occupy the house. No new occupiers should be allowed to occupy the HMO if they are unable to provide a suitable reference. When referencing, consideration must be given to the prospective tenant's previous tenancy history, and right to rent checks. The Licence Holder must provide evidence of such reference and checks carried out when requested by the Council. The Licence Holder must respond to any tenant reference requests they receive within 14 days.

**Condition 16 – Inventory**

The Licence Holder must arrange to carry out a detailed inventory to be agreed with each tenant at the start of their occupation of the house. The Licence Holder must provide the tenant with a copy of the agreed inventory and keep their own copy.

**Condition 17 – Rent Payments**

The Licence Holder must ensure that there is a record of all rent payments received in respect of the HMO. All occupiers should be given a rent book or similar receipt for payments made, such as a rent statement. If rent is due weekly, this should be provided to the tenant each week. If rent is due monthly, this should be provided to the tenant at monthly intervals as a minimum.

**Condition 18 – Copy of licence**

The Licence Holder shall give the tenant(s) a copy of the licence to which these conditions relate at the start of their tenancy together. A copy of the licence shall also be displayed in a prominent position in the common parts of the HMO.

**Condition 19 - Emergency Arrangements**

The Licence Holder must have in place appropriate emergency and other management arrangements in the event of their absence. The name and contact details of the alternative contact must be provided to the occupant/occupiers.