

# Birmingham City Council Report to Cabinet

17 January 2023

## AMENDED REPORT



**Subject:** Citywide Additional Licensing – Houses in Multiple Occupation

**Report of:** Mark Wiltshire, Interim Strategic Director of City Operations

**Relevant Cabinet Member:** Councillor Sharon Thompson, Housing and Homelessness

**Relevant O &S Chair(s):** Councillor Mohammed Idrees, Housing and Neighbourhoods  
Councillor Akhlaq Ahmed, Resources

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 010128/2022		
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

### 1.0 Executive Summary

- 1.1 A report in respect of progressing an additional licensing designation across all wards of the city was previously submitted to Cabinet on 28 June 2022.
- 1.2 Following this report, Cabinet agreed that the conditions for additional licensing had been met based on a significant proportion of the Houses in Multiple Occupation (HMO) in the area 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, and that a consultation should take place regarding the pursuance of an additional licensing scheme across all 69 wards of the city. A comprehensive consultation relating to the

proposed additional licensing scheme was held between 4 July 2022 and 13 September 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 an additional licensing scheme in Birmingham that covers all 69 wards and seeks approval to implement the proposed scheme.

## **2.0 Recommendations**

- 2.1 That Cabinet notes and considers the outcome of the consultation in respect of the proposed Additional Licensing scheme.
- 2.2 That Cabinet approves the pursuance of an additional licensing scheme covering all wards.
- 2.3 That Cabinet approves commencement of the scheme from the 5 June 2023.
- 2.4 That Cabinet delegates to the Director of Regulation and Enforcement in consultation with the portfolio holder to take such steps as are necessary to promote and implement this decision on behalf of the Council.

## **3.0 Background**

- 3.1 The private rented sector is the second largest housing sector after owner occupation in the City. Within the Council's Private Rented Sector Strategy there is a commitment to tackle issues within this tenure. An additional licensing scheme is one of the tools available to improve standards and ensure that non-mandatory HMOs meet a minimum housing standard and appropriate management mechanisms are in place.
- 3.2 Licensing with the private rented sector only larger mandatory HMOs with occupancy of five or more people living together as two or more households being subject to a mandatory licensing scheme. If a local authority can evidence that further categories of this tenure require licensing, then this can be pursued through discretionary additional or selective licensing schemes.
- 3.3 On the 1 March 2022 Cabinet approved the pursuance of a selective licensing scheme covering 25 wards and the submission to the Secretary of State for Levelling Up, Housing and Communities, of an application for a selective licensing designation in Birmingham covering these wards.
- 3.4 On the 5 September 2022 the Council received permission from the Secretary of State for Levelling Up, Housing and Communities to operate a selective licensing

scheme across 25 of the city's wards. The selective licensing designation will start on the 5 June 2023.

- 3.5 Feedback from the consultation for this proposed selective licensing scheme indicated that residents in wards not included within the scheme supported inclusion of their wards. Whilst that was not possible, the pursuance of a city-wide additional licensing scheme will provide appropriate regulation of non-mandatory HMOs across the city.
- 3.6 A selective licensing scheme requires all private rented properties in a designated area to be licensed. An additional licensing scheme only applies to non-mandatory HMOs and certain categories or self-contained flats (as described below). The mandatory licence conditions (set out in legislation) are different for both schemes to reflect the different categories. The approval of a city-wide additional licensing scheme would enable a consistent approach to be taken across the city in terms of the regulation and licensing of non-mandatory (smaller) HMOs. Where these HMOs are located within the proposed designated 25 wards covered by the selective licensing scheme the Council would direct landlords to the appropriate licence they would need for their type of premises.
- 3.7 Section 3 Housing Act 2004 ("the Act") requires local housing authorities to not only keep the housing conditions in their area under review (a stock condition survey), but also to identify any action that may need to be taken by them to respond to issues that are identified.
- 3.8 The Council's Houses in Multiple Occupation: Stressors Report (Appendix 2) considers specific issues around the correlation between HMOs and certain stressors (e.g. waste, anti-social behaviour (ASB)).
- 3.9 Section 56 of the Act allows local authorities to designate the whole or any part or parts of their area as subject to additional licensing. The introduction of additional licensing relates to all Houses of Multiple Occupation that relate to a description of HMOs specified in the designation.
- 3.10 An additional licensing scheme would apply to HMOs that are not covered by the mandatory HMO licensing scheme. This includes properties occupied by three or four people living together as two or more separate households and which meets the standard, self-contained flat or converted building HMO test in Section 254 of the Housing Act 2004.
- 3.11 An additional licence would also be required for any purpose-built self-contained flat which meets the self-contained flat HMO test in Section 254 of the Housing Act 2004, and which is in a block of three or more self-contained flats. In these

cases, it is the rented occupancy of the flat by unrelated households that drives any designation as an HMO.

3.12 An additional HMO licence would also be required for any building that has been converted into and which consists entirely of self-contained flats, less than two-thirds of which are owner-occupied, and where the building works to convert the property into self-contained flats did not meet and still does not meet appropriate building standards in force at the time. Such properties are known as Section 257 HMO's.

#### **4.0 Related Strategies and their consistency with an additional licensing scheme**

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

##### **4.1 Corporate Plan 2022-2026**

The Council Plan sets out five strategic outcomes that the Council seeks to achieve:

- A Bold Prosperous Birmingham
- A Bold Inclusive Birmingham
- A Bold Safe Birmingham
- A Bold Healthy Birmingham
- A Bold Green Birmingham

An additional licensing scheme is a one of the tools available to improve standards in the non-mandatory HMO sector. Such a scheme would fit within the fourth and fifth outcomes. Specifically, the implementation of an additional licensing scheme would contribute to priorities 9, 10,11, 12, 17, and 19 which fall under these outcomes.

##### **4.1.1 Priority 9 – Make the city safer and Priority 10 - Protect and safeguard vulnerable residents**

Improvements in housing standards will make properties more secure which will assist with minimising crime, particularly burglary. Licence holders would be required to undertake reference checks prior to offering a tenancy. Licence holders would also be required to be a "fit and proper" person, ensuring that properties are not managed by individuals who pose a risk to tenants.

##### **4.1.2 Priority 11 - Increase affordable, safe, green housing and Priority 19 - Continue on the Route to Net Zero**

#### **Additional Licensing – Houses of Multiple Occupation**

An additional licensing scheme would contribute to alleviating fuel poverty as measures to improve standards would ensure that heating appliances are properly checked, maintained and working efficiently. Tenants would be confident that homes meet the minimum energy efficiency standard, which would contribute to the green city aspiration and Route to Net Zero

#### 4.1.3 Priority 12 – Tackle homelessness

The proposal would ensure that all HMOs not subject to a mandatory licensing scheme meet a minimum housing standard, which gives the tenant a stable home and helps with building stable communities.

The availability of improved housing, and living in improved housing conditions, will contribute to a reduction in homelessness.

#### 4.1.4 Priority 17 – Improve street cleanliness

The proposed licence conditions would require the licence holder to provide suitable and sufficient provision is made for storage of refuse generated in the property and that occupants use receptacles provided by the Council for storage prior to collection. The licence holder must also ensure that the occupiers of the house are given information in writing about waste and recycling and 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.

These conditions will reduce the likelihood of fly tipping and incorrect use of street refuse bins.

### 4.2 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.

### 4.3 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 standard it would be expected that there would be a reduction in homeless applications for this reason.

#### 4.4 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 behaviour. 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 HMOs within the city, 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.

#### 4.5 Private Rented Sector Strategy 2022-2027

An additional licensing scheme would support the priorities of the Council's Private Rented Sector Strategy, in particular:

##### 4.5.1 Priority 2 – Identify and implement local initiatives to address local issues.

The conditions found within the private rented sector varies greatly across the city. In addition to the varying standard of accommodation, the proportion of private sector housing in each ward also varies greatly. To meet this priority the Council stated an aim to undertake a review of the city's Houses in Multiple Occupation (HMO) and to consider implementing Additional Licensing if required and appropriate.

##### 4.5.2 Priority 6 - Operate a high-quality mandatory HMO licensing scheme.

A high-quality mandatory HMO licensing scheme will ensure shared accommodation is safe and provides appropriate facilities to occupiers. Houses in Multiple Occupation (HMOs) play a valuable role in the city's housing market as they provide accommodation for many low income, vulnerable people and those requiring short term housing. However, HMOs are not without their problems with the physical condition varying considerably and there are concerns from many residents and partners that the property and management standards are poor.

##### 4.5.3 HMOs also create increased population density, leading to greater demand for infrastructure services, such as waste collections and on-street parking. They can also lead to a higher proportion of transient residents, potentially leading to less community cohesion and making the area less popular with local residents.

4.5.4 Many of the problems associated with HMOs subject to mandatory licensing are present in smaller, non-licensable HMOs and the implementation of additional licensing is likely to raise the standard of all HMOs through greater awareness and education.

#### 4.6 Development Management in Birmingham Development Plan Document (2021)

The Development Management in Birmingham Development Plan Document was formally adopted in December 2021. This introduced a new policy (DM11 Houses in Multiple Occupation) which requires that new HMOs will not be permitted where 10% or more of the number of residential properties within a 100-metre radius of the application site are a HMO, or if it would result in a family dwelling house being sandwiched between two HMOs or other non-family residential uses; or if it would lead to a continuous frontage of three or more HMOs or non-family residential uses.

To support the implementation of Policy DM11, the Council's Cabinet adopted the Houses in Multiple Occupation Supplementary Planning Document on 26 April 2022, which provides detailed planning guidance to help applicants and residents understand how the Council intends to apply its planning policy on HMOs.

### 5.0 Required Conditions and Evidence

5.1 There are specific conditions set out in the legislation that must be met before an additional licensing scheme can be considered (Section 56 and 57 of the Act). An additional licensing designation may be made if the authority considers that a significant proportion of the HMOs of that description in the area 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.

5.2 The Council's 2022 Private Sector Housing Stock and Stressors Report identified that 21% of private rented sector properties are likely to have serious home hazards compared to 12% nationally. A proportion (circa 10%) of the private rented sector is made up of shared accommodation.

5.3 Data shown in the Houses in Multiple Occupation: Stressors Report (Appendix 2) indicates that it is likely that:

- 11241 reported ASB incidents are associated with 4107 predicted HMO addresses (approximately a third of predicted HMOs).
- Repeat ASB incidents for a single property can be an indicator of properties that are poorly managed by the owners. Between 2016 and 2021, there were 1599 (14.2% of the total) repeat incidents of ASB linked to HMOs.

- There were 106,831 reported waste issues connected to an address over a five-year period between 2016 and 2021. 26.7% (28482) of these reports have been linked to predicted HMO addresses although they only make up 2.6% of all dwellings (452,754).
- 21% of all private rented properties in the City are predicted to have a serious home hazards compared with a national average of 12%. Within the City's HMO sector this is predicted to be 49.2% of properties (5866 of 11933 properties)

5.4 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.*

5.5 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 (SPD). In the Cabinet report of 26 April 2022 "Adoption of Supplementary Planning Documents 1) Houses in Multiple Occupation 2) And Large-Scale Shared Accommodation" section 4.17 states that 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”*

- 5.6 Furthermore feedback from the selective licensing consultation indicated that citizens outside the 25 wards where selective licensing is proposed 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.

- 5.7 The data shown in paragraphs 4.3 to 4.6 provides the evidence that support 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.
- 5.8 During the period of a licence issued under an additional licensing scheme, there would be an inspection of the property to ensure that the licence conditions are being adhered to. Where it was identified that licence conditions were not being adhered to, enforcement action could be taken in line with the appropriate enforcement policy.

## **6.0 Additional Licensing Scheme Process**

- 6.1 Unlike selective licensing schemes which require local housing authorities to request permission from the Department of Levelling Up, Housing and Communities 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, General Approval is given (subject to specific requirements being met) for additional licensing schemes to be approved by the local housing authority.
- 6.2 When considering whether to make an additional licensing designation, a local housing authority must ensure that any exercise of the power is consistent with the authority’s overall housing strategy. The authority must seek to adopt a coordinated approach in connection with dealing with homelessness, empty

properties and anti-social behavior affecting the private rented sector. The authority must not make a designation unless they have considered whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question and they consider that making the designation will significantly assist them to deal with the problem or problems ( whether or not they take any other course of action as well (Section 57 Housing Act 2004))

6.3 A local housing authority may designate an area as subject to additional licensing in relation to a description of HMOs specified in the designation if the requirements of Section 56 and 57 of the Act are met. The authority must:

- Consider that a significant proportion of the HMOs of that description in the area 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
- Have regard to any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the relevant area
- Consider whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question; and consider that making the designation will significantly assist them to deal with the problem or problems.

6.4 Before making a designation the authority 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.

- The authority must ensure that any exercise of the power is consistent with the authority's overall housing strategy and must
- seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector as regards combining licensing with other action taken by the local authority or others.

6.5 The local housing authority must only make a 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.

## **7.0 Current Activities to Improve Standards in Neighbourhoods and the Private Rented Sector**

7.1 The Guidance states that an additional licensing scheme should complement other measures being taken to resolve issues HMOs. Below are the existing activities that the Council currently undertakes to improve standards within HMOs

## 7.2 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 2,455 mandatory HMOs that are licensed. This does not include any exempt accommodation and smaller HMOs as they are excluded from licensing under the legislation.

## 7.3 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.

## 7.4 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.

#### 7.5 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.

#### 7.6 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.

#### 7.7 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.

### **8.0 Proposed Additional Licensing Scheme**

8.1 Full details of the proposed scheme across all 69 wards are set out in the evidence report shown in Appendix 1.

8.2 Conditions for additional licensing have been met in all wards of the city based on a significant proportion of the Houses in Multiple Occupation (HMO) in the

area 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.

8.3 The proposed designation would cover a predicted 9,500 HMOs not already covered by the mandatory licensing scheme.

8.4 Proposed objectives and outcomes

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

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

- 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%

8.4 Proposed property licence conditions

The proposed licence conditions can be found in Appendix 6.

8.5 Proposed Additional Licensing Fees

The fee for an additional licence is proposed as £755. The fee is split into two parts:

- Part A (application fee)      £325
- Part B (licence fee)          £430

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 Additional Licensing Team Structure**

9.1 The structure proposed in Appendix 3 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 calculated fee income. Should additional resources be required in ensure compliance in future years, the licence fee will be reviewed and adjusted accordingly.

## **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 HMOs. It is considered that singularly or collectively they are insufficient to adequately improve standards within this housing sector

The powers available to the local authority in the absence of an additional licensing designation are predominantly reactive.

It may be that tenants in these properties are wary of complaining or may not know their rights or the responsibilities of their landlords. An additional licensing scheme 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 and discretionary conditions and to engage with the local authority.

10.2 The proposed additional licensing scheme will enable the local authority to proactively plan interventions using a wide range of powers as detailed in section 7. This ability to co-ordinate activity within the city council and with partners will support a holistic approach to neighbourhood management, housing standards, housing security, ASB, and waste incidents. There are limited opportunities to explore these improvements without the information that would be available through a licensing scheme.

- 10.3 The additional licensing proposal would support wider private sector licensing arrangements including mandatory HMO licensing which applies to properties occupying five or more people made up of two or more households and selective licensing which will apply to 25 designated wards. The additional licensing proposal would apply to HMO's occupied by three or four people living together as two or more separate households.
- 10.4 Housing and related data has been analysed and assessed against the legislative criteria for additional licensing. The data indicates that problems linked to predicted HMOs are found across all wards of the city.
- 10.5 This report is seeking Cabinet's agreement that the conditions for additional licensing have been met as the evidence indicates 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.
- 10.6 If pursuance of the scheme is agreed, it is proposed that it will commence from the 5 June 2023. This will coincide with the commencement of Birmingham's selective licensing scheme in the designated 25 wards of the city. Any HMO falling within the 25 wards would be subject to the additional licensing scheme as opposed to the selective licensing scheme.

## **11.0 Consultation**

- 11.1 Section 56(3) of the Housing Act 2004 states that, when considering designating an area as subject to additional 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.
- 11.2 Section 58 Housing Act 2004 states that a designation of an area as subject to additional licensing cannot come into force unless it has been confirmed by the appropriate national authority.
- 11.3 However, the Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015 Order states that general approval is not given in relation to a designation in respect of which the local housing authority has not consulted persons who are likely to be affected by it under section 56(3)(a) or section 80(9)(a) of the Act for not less than 10 weeks.
- 11.4 In compliance with the General Approval, an extensive consultation exercise on the Council's proposal to introduce an additional licensing scheme across all 69

wards within Birmingham ran for a period of ten weeks from Monday 4 July 2022 to Tuesday 13 September 2022.

11.5 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. A review of the survey comments indicates that a range of respondents participated in the consultation.

11.6 The consultation activities included:

Written notifications to:

- National Residential Landlord Association who in turn shared details with their members
- Midland Landlord Accreditation Scheme
- Birmingham Landlord Forum attendees
- Birmingham Landlord Steering Group
- HMO licence holders
- 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
- University of Birmingham
- Aston University
- Birmingham City University
- 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:

- Press releases (which then appeared in local newspapers and landlord forums)
- Featured consultation (front page) Birmingham City Council consultation hub “Be Heard”.
- Agenda item at landlord steering group meeting
- Two virtual landlord consultation events facilitated by the National Residential Landlords Association



- 11.7 Appendix 4 details the consultation responses and the Council reply to the themes raised within the consultation. These themes included some views that there may be potential negative impacts to implementing an additional licensing scheme. However, overwhelmingly there was support for the proposal with 86% of respondents to the survey agreeing with the proposal to introduce additional licencing.
- 11.8 After full consideration of the feedback, no changes are proposed to the proposal.

## **12.0 Risk Management**

- 12.1 Implementing an additional licensing scheme 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 the additional licencing 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.

## **13.0 Compliance Issues**

- 13.1 How are the recommended decisions consistent with the Council's policies, plans and strategies?
- 13.1.1 Corporate Plan 2022-2026

The Council's vision is to play our part in strengthening Birmingham's position as a thriving, young and diverse global city, as the beating heart of the UK both commercially and culturally; a place where everyone is included in the opportunities that the city can offer; a place where we can celebrate our heritage with a sense of pride and also look forward with a sense of optimism to a golden decade of shared opportunity in a Bolder, Better Birmingham. Tackling inequalities is at the heart of our mission and at the centre of everything we do. We will help make Birmingham a city where all citizens share in the creation and benefits of sustainable economic growth and can live longer, healthier, and happier lives.

Supporting residents to live in safe, secure, housing is one of the foundations of providing the stable environment necessary to promote a society where all citizens can be included in all opportunities.

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

13.1.3 The Environment and Sustainability Assessment (Appendix 7) has identified positive impacts of the scheme in terms of reducing carbon emissions, improving the environment, and reducing waste. No negative impacts have been identified.

## 13.2 Legal Implications

13.2.1 Section 56 (1) of the Housing Act 2004 enables a local authority to designate either the area of their district or an area in their district as subject to additional licensing in relation to HMOs specified in the designation, if specified requirements are met.

13.2.2 The Housing Act 2004 states that local authorities considering the introduction of an additional licensing scheme for HMOs specified in the designation must:

- Consider that a significant proportion of the HMOs of that description in the area 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 (Section 56 (2))
- In forming an opinion in respect of section 56 (2) have regard to any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the relevant area (Section 56 (5))
- Not make a designation unless they have considered whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question; and consider that making the designation will significantly assist them to deal with the problem or problems (whether or not they take any other course of action as well)
- Take reasonable steps to consult persons who are likely to be affected by the designation, for a period of not less than ten weeks, and consider any

representations made in accordance with the consultation and not withdrawn.

- Ensure that any exercise of the power is consistent with the authority's overall housing strategy.
- Seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector as regards combining licensing with other action taken by the local authority or others.

13.2.3 If an additional licensing scheme is approved there are specific requirements to issue notices to publicise the scheme and ensure landlords are made aware of it.

13.2.4 Any additional licensing scheme may be subject to legal challenge if the above criteria are not met, or consultation is not found to be adequate.

### 13.3 Financial Implications

13.3.1 As set out in the report, the additional licensing scheme will complement existing private sector licensing arrangements including Mandatory HMO Licensing and Selective Licensing across the City. The Council is entitled to charge a fee that covers the costs of administering and enforcing the scheme. The proposed fee structure has been calculated on the basis that the scheme will be self-financing and cost-neutral to the Council over the five-year life of the scheme. This is achieved with a full licence fee of £755 for 7,125 properties covering scheme costs of £5.4m. The scheme will be managed through a ring-fenced budget with appropriation to/from reserves to manage in-year surpluses or deficits due to profile of income received and costs incurred. If the scheme is approved, the licence fee will be presented to Licensing and Public Protection Committee in March 2023 for approval

### 13.4 Procurement Implications

13.4.1 To process the number of licences expected under the additional licensing scheme 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 an additional 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

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

## 14.0 Appendices

Appendix 1 - Additional Licensing Evidence Report

Appendix 2 - Houses in Multiple Occupation (HMO) : Stressors Report

Appendix 3 - Proposed Team Structure

Appendix 4 - Consultation Report

Appendix 5 - Additional Licensing Scheme Equality Impact Assessment

Appendix 6 – Proposed Licence Conditions

Appendix 7 - Additional Licensing Environment and Sustainability Assessment