

	<h2>Housing Committee</h2> <h3>14th January 2019</h3>
<p style="text-align: right;">Title</p>	<p>Private Sector Housing Enforcement Proposals</p>
<p>Report of</p>	<p>Cllr Rozenberg</p>
<p>Wards</p>	<p>All</p>
<p>Status</p>	<p>Public</p>
<p>Urgent</p>	<p>No</p>
<p>Key</p>	<p>Yes</p>
<p>Enclosures</p>	<p>Appendix 1- Private Sector Housing Team Performance Data since the commencement of Additional HMO Licensing Appendix 2- Proposed milestones to increase housing enforcement activity and HMO licensing applications Appendix 3- Case studies</p>
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Summary
<p>Following approval of the draft Housing Strategy this paper sets out proposals for expanding the existing approach taken by Barnet Council in relation to supporting responsible tenants and making sure that landlords provide safe accommodation.</p>

Recommendations
<p>This report recommends that the Housing Committee:</p> <ul style="list-style-type: none"> • Approve reinvestment of income obtained through Financial Penalty Notices (FPNs) into increasing the amount and type of work undertaken by the Private Sector Housing Team. • Subject to contractual agreement approve the creation of two additional posts for 23 months to undertake housing enforcement and HMO licensing activities

- **Subject to contractual agreement approve the creation of an additional post for up to 23 months to investigate the viability of Selective Licensing in Barnet**
- **Delegate responsibility to approve additional staffing funded through FPN income to the Deputy Chief Executive.**

1. WHY THIS REPORT IS NEEDED

- 1.1 The high cost of home ownership in Barnet has resulted in a tenure shift and a significant increase in the number of people in privately rented accommodation. The use of private rented sector accommodation has increased from 17% of households in 2001 to 26% in 2016.
- 1.2 It is therefore increasingly important to improve standards in the private rented sector.
- 1.3 This report provides detail around the proposals contained in the draft Housing Strategy having regard to the Government's 2017 Housing White Paper '*Fixing our Broken Housing Market*' and to the Mayor of London's Draft Housing Strategy.
- 1.4 The Private Sector Housing Team in Re deal with all aspects of private sector housing enforcement including:
 - Licensing of houses in multiple occupation (HMOs)
 - Bringing empty properties back into residential use
 - Investigating requests for help in securing repairs to private accommodation

Property improvements are achieved through advice, mediation, HMO licensing and statutory action. Appendix 3 contains case studies demonstrating some of the work completed by the service.

- 1.5 The table in Appendix 1 shows some key aspects of the Private Sector Housing Team performance data since the commencement of Additional HMO Licensing in 2016.
- 1.6 Accreditation through the London Landlord Accreditation Scheme is actively supported by Barnet to try to improve the quality of landlords in an increasing sector. The London Landlord Accreditation Scheme (LLAS) awards accreditation to reputable landlords who undergo training and comply with a code of conduct. Accredited landlords are able to display the LLAS logo as a badge of good practice and access a range of products and incentives including local authority grants, leasing schemes and discounts on fees for licences and other charges. Accreditation with LLAS is free and lasts for five years. To become accredited with LLAS or ATLAS, landlords must:
 - complete a one-day development course
 - agree to comply with a code of conduct

- be a fit and proper person.
- 1.7 Accreditation is promoted in Barnet through:
- Reduced HMO licensing fees for accredited landlords
 - Empty Property Grants
 - Waiver of fees for the service of enforcement notices if LLAS training is completed
 - Reduction in Fixed Penalty Notices if LLAS training is completed
- 1.8 The Private Sector Housing Team performs well using all available tools to improve property standards, but it is acknowledged that there are still a high number of unlicensed HMOs in the borough. There are also areas of poor housing where tenants are less likely to ask the local authority for help, and proactive enforcement action is required to improve the standards of private tenanted accommodation in these areas
- 1.9 From the data collection exercise completed as part of the consultation exercise for Additional HMO Licensing, indications were that there are over 3,000 HMOs in the borough that would fall within the scope of the proposed scheme.
- 1.10 Whilst there are many well managed properties in the private sector in Barnet, there are also landlords who are not managing their properties appropriately and leaving their tenants at risk. These fall into several categories:
- In the worst cases, the “rogue” landlords purposefully leaving their tenants in poor accommodation for example rooms overcrowded and conversions poorly carried out.
 - Ill-informed landlords who have not found out about their responsibilities for example in relation to fire safety.
 - Anecdotally there has also been an increase in Rent to Rent properties, with property owners thinking that they are letting to a single family, but one tenant has then sublet the house to multiple tenants, converting lounges and dining rooms into unsafe lettings.
 - There is also a significant issue with landlords obtaining a licence and then not complying with any of the conditions, without significant coercion.
- 1.11 Increasing amounts of time are being taken up with:
- Landlords trying to avoid licensing or reducing the occupancy of their premises so that that property is no longer licensable. In the year to date (seven months), 29 Temporary Exemptions from licensing have been served, compared to 35 in the whole of 2016-17.
 - Obtaining compliance with HMO licencing conditions.

- Significant enforcement action. There are currently over 20 Financial Penalty Notices at varying stages of implementation and these are leading to an increase in out of court negotiations involving solicitors.
- 1.12 The challenge remains to set a balance between dealing reactively with tenants in immediate need, proactively targeting the worst accommodation in the borough, processing HMO licences, ensuring that conditions are complied with, and locating and taking enforcement action against non-compliant landlords.
- 1.13 Feedback from other boroughs indicates that where they have Selective Schemes involving all tenanted premises in the borough/specific areas, it is easier to administer the HMO Licensing schemes. This is because all that is required to prove that a licence is needed, is that a property is let in the private rented sector.
- 1.14 The draft Housing Strategy introduces the **LEAD** agenda, increasing the focus on **L**icensing, **E**nforcement, **A**dvice and **D**ata:
- Considering the case for Selective Licensing in some areas of the borough for tenanted accommodation other than HMOs.
 - Additional resources for the Private Sector Housing Team.
 - Improving the information and advice available for tenants on their rights and obligations.
 - Making better use of the data available to ensure that enforcement activities are targeted to areas and properties where it will be most effective and reduce resources wasted on following up non-licensable premises.
- 1.15 The challenge remains that the council has limited resources and these must be prioritised across non- income generating services that are required to support those in most need.
- 1.16 Appendix 2 contains proposals to increase housing enforcement activity and HMO licensing applications. To complete this work three additional officers will be required and this should be funded through additional HMO Licensing applications and income from FPNs.

2 REASONS FOR RECOMMENDATIONS

- 2.1 The proposals contained in the draft Housing Strategy cannot be delivered without providing additional resource to the existing Private Sector Housing Team. The aim would be, subject to contractual agreement, to expand the amount of housing enforcement and HMO licensing activity whilst investigating

Selective Licensing over the next twelve to eighteen months. At this stage, the staffing provision will be reviewed depending on the outcome of the investigations into the viability of Selective Licensing for Barnet.

3 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 Do nothing – as an option this will not increase the amount of housing enforcement activity completed in the borough, and this is not considered an appropriate response given the number of unlicensed HMOs and the increase in size of the private rented sector in Barnet.

4 POST DECISION IMPLEMENTATION

- 4.1 Review and agree any contractual implications.
- 4.2 Commence recruitment for suitable enforcement officers. There is a national shortage of housing enforcement officers so recruitment to these posts could be difficult and involve a significant induction period.
- 4.3 Appendix 2 contains the proposed milestones to increase housing enforcement activity and HMO licensing applications.

5 IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 This report is in accordance with the council's Corporate Plan 2015-2020 which is based on the core principles of fairness, responsibility and opportunity to make sure Barnet is a place:

- Of opportunity, where people can further their quality of life
- Where people are helped to help themselves, recognising that prevention is better than cure
- Where responsibility is shared, fairly
- Where services are delivered efficiently to get value for money for the taxpayer

6.1 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 **Finance & Value for Money:** The additional staffing costs will be met through HMO licensing fees and income from FPNs linked to housing enforcement activity. This is subject to contractual agreement. To ensure a balanced budget, the income will be closely monitored and the staffing situation reviewed if income projections are not on target.

- 5.2.5 **Procurement:** At this time, there are no procurement implications.
- 5.2.6 **Staffing:** There is a national shortage of Housing Enforcement Officers so recruitment to these posts could be difficult and salary costs high.
- 5.2.7 **Property:** At this time, there are no property implications.
- 5.2.8 **IT:** Additional IT will be required for any new staff employed.
- 5.2.9 **Sustainability:** At this time, there are no sustainability implications. Improving private rented housing provides an opportunity to reduce energy use and carbon dioxide emissions through improving poor heating and inadequate insulation provision through reduction of Category 1 hazards. Each HMO licence contains the following licence conditions regardless of which scheme it falls within:

“The licence holder shall ensure that all units of living accommodation including sleeping and bath/shower rooms are equipped with an adequate means of fixed space heating (meaning a fixed gas or electrical appliance, or an adequate system of central heating) operable at all times and available at all times, taking into account affordability, the presence of thermal insulation, the location of the appliance, ease of use and performance. Heating appliances in bath/shower rooms must be suitable for use in such locations and be suitably sited within the room. Heating installations must in all other respects, comply with the council’s Adopted Standards for Houses in Multiple Occupation”

“The licence holder shall ensure that any roof voids are insulated with 270mm deep mineral wool (or equivalent) insulation between the joists taking care to maintain roof ventilation and to avoid the overheating of proximate electrical cables. Otherwise the installation is to be in accordance with the manufacturer’s/suppliers’ instructions”

5.3 Social Value

- 5.3.1 Through the licensing of HMOs and housing enforcement action, the highest risk accommodation in the borough is improved to help protect the lives of vulnerable persons. The Private Sector Housing Team will continue to try and target the worst performing landlords.
- 5.3.2 All enforcement action is taken in line with the Regulatory Services Enforcement Policy which ensures that any action taken is transparent and proportionate in relation to the offence.

5.4 Legal and Constitutional References

- 5.4.1 Under the council’s Constitution, Article 7, Committees, Forums, Working Groups and Partnerships, the Housing Committee has the following specific responsibilities (amongst others):

- Responsibility for housing matters including commissioning of environmental health functions for private sector housing.

- Responsibility for housing matters including housing strategy, homelessness, social housing and housing grants, commissioning of environmental health functions for private sector housing.

5.4.2 Under the Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 a local housing authority may apply any financial penalty recovered under section 249A of the Housing Act 2004 to meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector. Any amount recovered as a financial penalty which is not used in this way must be paid into the Consolidated Fund.

5.5 Risk Management

5.5.1 The more legal action that is taken by the council, the more exposed the local authority is to legal challenge.

5.5.2 As the posts are to be funded from HMO licensing and FPN income, there is a risk that due to legal challenge or process issues that the income may not be obtained to cover the costs. The income will be closely monitored and the staffing situation reviewed if income projections are not on target.

5.5.3 Securing licensing applications can be very resource intensive.

5.5.4 As many boroughs are currently introducing additional and selective licensing schemes and the mandatory licensing scheme criteria has expanded difficulties recruiting any new staff required may arise which could cause delays in scheme administration.

5.6 Equalities and Diversity

5.6.1 The Corporate Plan 2015-2020 sets the Strategic Equalities Objective, which is: that citizens will be treated equally, with understanding and respect, and will have equal access to quality services which provide value to the tax payer. Changes to policies and services are analysed in order to assess the potential equalities impacts and risks and identify any mitigating action possible before final decisions are made.

5.6.2 The Equality Act 2010 sets out the Public Sector Equality Duty which requires public bodies to have due regard to the need to:

- eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not
- foster good relations between persons who share a relevant protected characteristic and persons who do not

5.6.3 The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

5.6.5 It is considered that HMO licensing and housing enforcement action requiring the improvement of accommodation has an overall positive impact for landlords, tenants, residents and businesses by virtue of the potential improvement to the quality and management of accommodation in the borough. Any enforcement action taken is in line with the Regulatory Services Enforcement Policy.

5.7 Consultation and Engagement

5.7.1 There has been no specific consultation on the approach detailed in this report. Extensive consultation was undertaken prior to the introduction of the Additional HMO Licensing Scheme.

5.7.2 Consultation is ongoing in relation to the draft Housing Strategy.

6 BACKGROUND PAPERS

None

Appendix 1

Private Sector Housing Team Performance Data since the commencement of Additional HMO Licensing

	2015-16	2016-17	2017-18	2018- 7 months
Mandatory HMO Licences issued	64	85	153	86
Additional HMO Licences issued	No scheme	128	245	91
Total number of licensed premises in the borough	149 HMOs in total	371 HMOs in total	710 HMOs in total	831 HMOs in total
Requests for help in securing repairs to private accommodation	1,488	1,628	1,349	679
Category 1 hazards reduced (through informal and formal action)*	202	211	190	144
Landlords accredited under the London Landlord Accreditation Scheme	592 YTD March 2016	632 YTD March 2017	671 YTD March	838 (Dec)
Empty properties brought back into use	229	120	222	106
Appeals to the First Tier Tribunal received	0	2	1	2

Appeals to the First Tier Tribunal defended	0	2	1	2 withdrawn
FPNs served	n/a	n/a	0	1 (£11,200 for Failure to Licence an HMO)
FPN intentions served	n/a	n/a	0	20
Successful prosecutions	17 successful prosecutions since March 2016. 1 case for failure to licence was used by the tenants to support a Rent Repayment Order leading to a repayment of £5,000 of rent to the tenants.			

***The Housing Health and Safety Rating System (HHSRS)** is used to assess if there are hazards that could put the health of occupiers or visitors at risk. Common hazards relate to Overcrowding, Damp and Mould, Excess Cold, Fire and risk of Falls. Hazards are rated according to how serious they are and the risk to health caused by them. A category 1 hazard is the most serious threat to health. The HHSRS takes into account any extra risk to young children or older people. Local Authorities must take action to reduce category 1 hazards. The action will range from a notice requiring work to an Emergency Prohibition Order requiring immediate cessation of the use of the premises by tenants due to the serious risk to health. Four of these have been served to date this year, a 50% increase on the same period last year.

Appendix 2

Proposed Milestones to increase housing enforcement activity and HMO licensing applications

Objective	Target Date	Outcome
Investigate the case for Selective Licensing	2019/20	<ul style="list-style-type: none"> • Project officer recruited • Initial data analysis completed • Initial report to Housing Committee • Data analysis completed • Evidence base, consultation questionnaire, Case for Selective Licensing, Schedule of Proposed Fees, Terms and Conditions, and FAQs drafted • Consultation exercise completed (minimum 12 weeks) • Consultation data collated and reviewed • Response to consultation published • Committee report and Equalities Impact Assessment drafted and presented to the appropriate boards • Report to Housing Committee in April 2020 • Report to Secretary of State (if required) • Three month statutory lead in between scheme approval and scheme commencement
Review the information available for tenants on their rights and obligations	April 2019	<ul style="list-style-type: none"> • Webpages reviewed • Monthly electronic messaging to landlords and tenants
Pilot a monthly	February-April 2019	<ul style="list-style-type: none"> • Monthly tenant drop in session

tenant drop in session		to be piloted and usefulness reviewed
Increase the amount of housing related enforcement including proactively targeting areas in most need	2019/20	<ul style="list-style-type: none"> • 220 category 1 hazards reduced (or alternative remedial action taken for example Prohibition Order served). • We expect at least a minimum of 25 FPNs to be served in line with the Regulatory services Enforcement Policy. • A minimum of 70 HMO licence applications received by the additional HMO Licensing Officer plus completion of associated conditions compliance and enforcement work
Increase the amount of HMO licensing activity	2019/20	<ul style="list-style-type: none"> • 1,150 licensed HMOs (including reissuing licences for those that expire in 2019)
Increase the number of accredited landlords in the borough	2019/20	<ul style="list-style-type: none"> • 900 (accreditation linked to HMO Licensing conditions, Empty Property Grant conditions, and potential reductions in FPNs and notice charges)
Investigate the business case for using additional data analysis tools to assist in positive identification of licensable HMOs	July 2019	<ul style="list-style-type: none"> • Business case investigated for using additional data analysis tools to assist in positive identification of licensable HMOs and implemented if found to be viable

Appendix 3

Case Studies demonstrating the work completed by Housing Enforcement Officers

HMO Licensing Case Study

The council was made aware of an unlicensed, two-storey property following noise complaints from neighbouring residents.

Barnet's Enforcement Team found that nine different tenants under different letting agreements were sharing a single kitchen and bathroom, with no satisfactory means of fire escape or fire detection.

One of the more dangerous lettings was formed by placing a partition in the kitchen which, in the event of a kitchen fire, would leave the tenant completely trapped.

After the District Judge had seen the photos of the undersized rooms, he concluded that the owner was aware that an HMO licence was required for the property and that the letting of undersized rooms was strictly prohibited.

Housing Enforcement Case Study

Following referral from the London Fire and Emergency Planning Authority (LFEPA) an HMO was inspected above a shop with one means of escape in case of fire blocked with rubbish and accumulations and the other through the shared kitchen. Due to the risk to the occupiers an Emergency Prohibition Order was served that evening requiring immediate vacation of the property and the dwellings within it. The occupiers were sign posted to Barnet Homes for assistance.

Empty Property Case Study

In 2013 a serious house fire ravaged through a semi-detached house in Colindale leaving the owner and his family being forced to move out to another address. The property was left in a poor condition with a collapsed roof. The owner fell ill and the house lay empty, in a poor and rapidly deteriorating condition.

After about a year, the neighbours grew concerned at the lack of progress in restoring the house and complained to their local Councillor. Empty properties impact on local communities leaving residents in fear of increased criminal behaviour and public health issues and worrying about the detrimental impact on their

properties. The owner was offered advice, support and financial assistance by the Empty Property Officer to try and ensure that the property was brought back into residential use swiftly. Unfortunately, progress remained slow.

In situations where properties have been empty for a long time, are in a poor condition and owners are not progressing with property renovations and/or reoccupation of the premises Compulsory Purchase powers are used. The final step of this process is the forced sale of the property to the local authority. In this case the council took steps to make a Compulsory Purchase of the property which had the effect of spurring the owner into action. The house was restored and the family moved back in.