

Housing and Growth Committee

14th June 2021

Title	Private Sector Housing Licensing Schemes
Report of	Councillor Richard Cornelius
Wards	All
Status	Public
Urgent	No
Key	Yes
Enclosures	Appendix 1 – Review of the existing additional licensing scheme Appendix 2 – Indicative licence fees Appendix 3 – Draft conditions Appendix 4 – Standards Appendix 5 - Draft full consultation business case
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Summary

This report seeks approval from the Committee to commence a public consultation for the following proposals:

- a) renewal of the borough-wide additional licensing scheme for certain houses in multiple occupation due to expire on 4th July 2021, and
- b) to implement three selective licensing schemes for other types of private rented properties in certain wards, noting that as a result of the new ward boundaries taking effect from May 2022, these will change slightly but the schemes will, in any event, specify the affected roads.

Officers Recommendations

That the committee

1. note the findings of the review of the existing additional licensing scheme in Appendix 1.
2. approve the commencement of a minimum 12-week public consultation on the proposal to renew the existing borough-wide additional licensing scheme, applicable to the types of properties as set out in paragraph 2.8 of this report, for a further 5 years.
3. approve the commencement of a minimum 12-week public consultation on the proposal to introduce three selective licensing schemes as described in paragraphs 2.84 - 2.88 of this report.
4. Note that subject to the above consultations taking place, a future report will be brought to the committee setting out the results of the statutory consultations and potentially seeking further approvals with a view to implementation of the licensing schemes.

1. WHY THIS REPORT IS NEEDED

- 1.1 At a time when the demand for low cost accommodation is high, not just in Barnet, but across London and nationally, it falls upon local authorities to ensure that the standard of accommodation within their borough is of a satisfactory standard, regardless of the cost. It must be safe, not overcrowded and so not impact upon the health and wellbeing of those who live in it. The accommodation should also not have an adverse impact upon the neighbourhood it is in, through poor visual impact caused by mismanagement, or the anti-social behaviour of those living or visiting the accommodation.
- 1.2 A wide range of homes, of all types of tenure and size is required in Barnet to meet current and future needs. The private sector makes up a quarter of Barnet's housing, and must thrive to be able to contribute to the availability of high quality, safe, warm and well-maintained homes.
- 1.3 The Housing Act 2004 enables local housing authorities to introduce licensing schemes for specified types of private rented accommodation, which includes the making of conditions attached to the issue of a licence, designed to improve the standard and management of the property. An analysis of the private rented sector in Barnet has demonstrated that there is a need for such licensing schemes.

Additional Licensing for Houses in Multiple Occupation

- 1.4 In July 2016, following a public consultation, the council introduced a borough-wide '*additional licensing*' scheme for certain houses in multiple occupation (HMOs) to help improve the condition and management of HMOs across the borough. The Housing Act 2004 allows for additional licensing schemes to run for a period of five years and so the existing scheme is due to expire in July 2021. The scheme has been successful in improving the standard of HMOs, with around 550 additional licenses currently in force. However, there is more work to do, as it is believed there are still potentially around a further 2,350 HMOs that meet the criteria to require licensing under the scheme that have

yet to come forward and obtain a licence and so this report seeks approval to consult on a renewal of the scheme. Appendix 1 contains a review of the existing scheme.

- 1.5 The Housing Act 2004 does not allow for extension of an additional licensing scheme and so it falls upon local authorities that consider there is a need to continue with additional licensing schemes to commence the designation process over again, including undertaking public consultation on the proposals, which should be a minimum of 10 weeks.
- 1.6 Due to the COVID-19 pandemic, the commencement of a review of the existing additional licensing scheme was delayed. The statutory time periods for public consultation and scheme implementation following designation mean that the earliest the renewed scheme could commence would be around six months from the date of this committee decision. There would therefore be a period of around five months where an additional licensing scheme would not be in force and licenses issued in the early months of the existing scheme will expire and not be renewable until a new scheme is in force. This report therefore seeks the committee's approval to commence a public consultation to renew the additional licensing scheme, subject to the outcome of the consultation, at the earliest opportunity.

Selective Licensing for other private rented properties

- 1.7 Although HMOs present the most significant risk in the private sector, it is apparent that there are many other privately rented properties that are similarly in poor condition and/or badly managed, thus putting tenants at risk and also being detrimental to the neighbourhood, due to the physical appearance and the effects of anti-social behaviour of occupiers and visitors to the properties. The Housing Act 2004 enables local housing authorities to declare '*selective licensing*' schemes in some, or all of their area, subject to establishing that certain criteria are met and when used alongside other strategies and initiatives that will together improve the private rented sector. As with additional licensing, selective licensing enables local housing authorities to apply conditions to licenses that will help to improve standards of accommodation and management of the property.
- 1.8 A review of the private rented sector in the borough has been undertaken and it is believed there is a case for introducing selective licensing schemes in the existing wards of Burnt Oak, Colindale, West Hendon, Childs Hill, Golders Green, Hendon Edgware and Hale, which will translate to the new ward boundaries (May 2022) of Burnt Oak, Colindale North, Colindale South, West Hendon, Cricklewood, Childs Hill, Golders Green, Hendon and Edgware (Edgwarebury is not proposed to be included). The scheme designations will make clear exactly which areas are covered by the selective licensing schemes to avoid any confusion in implementation.

2 REASONS FOR RECOMMENDATIONS

- 2.1 The recommendations of this report are consistent with the Barnet Housing Strategy 2019 – 2024:
 - The strategy makes reference to the existing additional licensing scheme, specifically the progress made and that more resources need to be applied to licence more properties.

- The strategy goes on to commit to a fresh approach to the private rented sector being adopted by the council, with a focus of Licensing, Enforcement, Advice, and Data.
- The strategy makes a commitment to consider the case for making use of a selective licensing scheme in areas where there is evidence of a higher prevalence of poor conditions in the private rented sector, persistent anti-social behaviour, high levels of deprivation, high levels of migration or high levels of crime.

Additional Licensing

2.2 The following reasons for re-introducing the existing additional licensing scheme reported to Committee back in 2015 remain valid. i.e.:

- a reactive approach to enforcement deals with difficult situations after they have arisen, rather than at a time where, more preferably, the problems are prevented from arising in the first place
- reactive enforcement is a resource intensive approach, often requiring extensive investigations, including identifying owners, gaining access to properties, and ultimately enforcement action
- enforcement action in relation to HMOs is costly, resource intensive and complex
- the courts do not necessarily award full costs to the council, even when the defendant is convicted
- there is no onus on landlords to identify themselves or their properties to the council
- this can be recurrent as landlords are under no obligation to advise the council of any other HMOs that they have in the borough
- Landlord accreditation and landlord forums do not necessarily assist the council in dealing with non-compliant landlords. They generally help the compliant landlords improve and are useful tools which assist landlords to improve their current knowledge
- statutory requirements in relation to HMOs are often confusing for landlords, as they are not uniform across all HMOs, leading to misperceptions that if a landlord's HMO does not meet the definition to require a mandatory licence, it is not an HMO at all and that important management regulations do not apply

2.3 For an additional licensing scheme to be designated, the Housing Act 2004 requires that *a significant proportion of the HMOs of the description to be included in the area are being managed sufficiently ineffectively as to give rise, or likely to give rise, to one or more particular problems, either for those occupying the HMO or for members of the public.*

2.4.1 The council has established that, of all the 1,148 HMOs in the borough that were licenced at March 2020, 74.6% of them were found to have issues that required major conditions to be applied to the licence. This is a significant indication of ineffective management in this sector.

2.4.2 Between January 2015 and March 2020, there were 557 complaints received by the Environmental Health Department that could be attributed to HMOs at 363 unique addresses. A rate of approximately 26.4% of all the known HMOs during that period (1,375). Although the number has decreased in more recent years, there was an average of 106 complaints about HMOs per annum across the borough in this period.

2.5 Of the 3,760 licenced and potential HMOs identified, 31.5% or 1,183 have had ASB related incidents directly associated with the property, with a further 7,655 cases of ASB recorded

in the close vicinity around HMOs in the last 5 years. Evidence shows, that whilst numbers of HMOs are greater in some wards than others, they are distributed widely across the borough and so a borough-wide scheme continues to be an appropriate measure.

- 2.6 A survey of randomly identified properties was carried out in 2020 (although an internal inspection was not undertaken due to the ongoing COVID-19 pandemic). Of 2,719 properties surveyed, 5.6% of properties were found to be or believed to be likely HMOs. 19.7% of HMOs had issues relating to the external condition of the property, such as being overgrown or with rubbish accumulations in the front garden. 9.9% were deemed to be externally in poor condition (where poor means there were matters requiring urgent action) and 45.4% appearing to be in fair condition (where fair means there were property conditions, although not urgent, that required attention). Only 41.4% appeared to be in good external condition (where good means no matters were identified requiring attention). It is important to note that due to poor responses from occupiers, for 1,281 properties (47.1%) the surveyor was unsure of the tenure due to lack of, or inadequate response from the occupier. The true number and percentage of HMOs and by extrapolation HMOs in need of attention, will have therefore been higher than indicated above.
- 2.7 An analysis of multiple data sets has indicated that in the region of 2,550 confirmed or potential HMOs remain currently unlicensed. Both the findings in HMOs under the existing scheme and the results of the survey indicate that a significant proportion will be being managed sufficiently ineffectively to warrant the renewal of a borough-wide additional licensing scheme.
- 2.8 In the renewed scheme, it is proposed to amend the additional licensing criteria from those in the existing scheme to include HMOs occupied by three persons, rather than four persons. Landlords sometimes reduce occupation levels to avoid the requirement to licence, even though the risks associated with the property, or management of the property doesn't change. Nevertheless, tenants of HMOs occupied by three persons who do not form a single household should be afforded the same level of protection and standards of management as HMOs with more occupants. In areas where selective licensing may be introduced, this will mean that all private rented properties are included in a licensing scheme and will avoid HMOs with three tenants falling outside of any licensing scheme. This will result in the proposed renewed scheme requiring the following properties to be licensed. The wording has been simplified to avoid confusions met through enforcing the current scheme:
- All HMOs falling under section 254 of the Housing Act 2004, occupied by **three** or more persons in two or more households
 - All HMOs falling under section 257 of the Housing Act 2004, where the building or part of a building is of three or more storeys that have been converted into **three** or more self-contained flats and where both the building and self-contained flats it contains are under the same ownership or considered by the council to be effectively under the same control.
- 2.9 Licences will have conditions applied relating to the management of licenced HMOs. Appendix 3 sets out the conditions that will be applied and Appendix 4 sets out the council's standards for HMO accommodation.

Selective Licensing

2.10 For a selective licensing scheme to be designated, the Housing Act 2004 requires that the area to which it relates satisfies at least one of the following conditions.

The area is experiencing:

- low housing demand (or is likely to become such an area);
- a significant and persistent problem caused by anti-social behaviour;
- poor property conditions;
- high levels of migration;
- high level of deprivation;
- high levels of crime.

2.11 When considering whether to make a selective licensing designation a local housing authority must first identify the objective or objectives that a designation will help it achieve. In other words it must identify whether the area is suffering problems that are caused by or attributable to any of the criteria for making the designation and what it expects the designation to achieve - for example, an improvement in property conditions in the designated area. A detailed analysis has been carried out of the housing stock and housing stressors to determine which of these criteria are applicable in Barnet and if applicable, in which areas of the borough. The details of this analysis are in the full consultation paper described in paragraph 1.12 above and are summarised in paragraphs 2.36 to 2.70 below.

2.12 The local housing authority must also consider whether there are any other courses of action available to it that would achieve the same objective or objectives as the proposed scheme without the need for the designation to be made. For example:

- if the area is suffering from poor property conditions, is a programme of renewal a viable alternative to making the designation?
- in areas with anti-social behaviour, where landlords are not taking appropriate action, could an education programme or a voluntary accreditation scheme achieve the same objective as a selective licensing designation?

The full consultation document considers alternatives and has determined that the proposed designations are the most appropriate course of action to deal with problems in the private rented sector in the specified wards. Only where there is no practical and beneficial alternative to a designation should a scheme be made.

2.13 If the local housing authority decides there is no practical and beneficial alternative to the scheme, it must only make the designation if it is satisfied that the scheme will significantly assist it in achieving its objective or objectives, with other actions the local housing authority may be taking.

2.14 Any designation made must:

- ensure that the exercise of the power is consistent with their overall housing strategy; and
 - 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 them or others.
- 2.15 The proposed designations are considered to be consistent with the activities set out in the council's Housing Strategy and when used in combination will result in the improvement of the private sector in the designated areas.
- 2.16 It should be noted that, as well as the criteria in paragraph 2.10, there are further additional criteria to be considered for selective licensing that do not apply to additional licensing, which are described in the following paragraphs.
- 2.17 In considering whether to designate an area for selective licensing on the grounds above on property conditions, migration, deprivation and crime the local housing authority may only make a designation if the area has a high proportion of property in the private rented sector. Current guidance dictates that this would mean the number of private rented properties in the area must be greater than 19% of the housing stock in the area (currently the average level in England).
- 2.18 The last Census in 2011 indicated that every ward except Hale, Brunswick Park and Underhill met this level. The stock analysis undertaken, which has provided an estimate of the current number of private rented properties based upon analysis of various data sets, such as statutory tenancy deposit schemes, housing benefits and Environmental Health Department records, suggest that the current position is that only Brunswick Park and Underhill now have a level of PRS properties below 19% of the total housing stock, meaning that any other ward would be eligible for designation for selective licensing, subject to fulfilling other criteria.

Application to the Secretary of State for Confirmation

- 2.19 The Secretary of State gives local authorities general approval, subject to public consultation of at least 10 weeks, to the declaration of additional and selective licensing schemes, except in the following circumstances for selective licensing:
1. Where the designation, either on its own, or in combination with other selective licensing designations already made by the authority covers greater than 20% of the authority's geographical area.
 2. Where the designation, either on its own, or in combination with other selective licensing designations already made by the authority affects more than 20% of the privately rented properties in the local authority area.

This is known as the 20% rule. If either of these criteria apply, following consultation and designation by the authority, the designation must be submitted to the Secretary of State for approval.

What does this mean in practice?

- 2.20 Barnet area is 86.7 square kilometres. Therefore, a selective licensing designation covering wards totalling greater than 17.34 square kilometres (20% of the total area) would require Secretary of State approval. By way of example;
- Childs Hill Ward is 3.1 square kilometres, or 3.56% of the geographical area of the borough. A designation for Childs Hill Ward alone would not require Secretary of State approval. However, the seven wards of Childs Hill, West Hendon, Golders Green, Hendon, Colindale, Burnt Oak and Edgware together are a total of 26.05% of the geographical area, i.e. over the 20% rule, meaning any selective licensing designations that included those seven wards (or more) would require Secretary of State approval.
- 2.21 The 2011 Census details the percentage of private rented households at ward level. The total number of residential properties was 132,538 and the total number in the private rented sector (PRS) was 34,854, or 26.3%, meaning, as it is over 20%, that a whole borough selective licensing designation would require Secretary of State approval. By way of example:
- Childs Hill Ward had 3,050 PRS properties amounting to 40.84% of all properties in the ward, but this was only 8.75% of the whole borough's PRS properties. A designation for Childs Hill Ward alone would not require Secretary of State approval. However, the three wards of Childs Hill, West Hendon and Golders Green together had 20.69% of the borough's PRS properties, i.e. over the 20% rule, meaning any selective licensing designations that included those three wards (or more) would require Secretary of State approval.
- 2.22 There is a presumption against a blanket selective licensing designation across a whole borough and such an approach is unlikely to receive approval from the Secretary of State. Several other councils' borough-wide designations have been refused in the past. The case needs to be made on an area by area basis and due to differences in neighbourhoods it is unlikely that the criteria will be met across the board. It is usual practice that ward boundaries are chosen to delineate the areas selected.
- 2.23 Having established which wards meet the required levels of private rented properties (i.e. greater than 19% as explained in paragraph 2.17), each of the criteria have been considered in turn to determine if a designation would be applicable under them. The full consultation document describes the process used to do this. The result is that the two applicable criteria for Barnet are:
- high level of deprivation
 - poor property conditions

Deprivation

- 2.24 A local housing authority may make a designation if the area is experiencing a high level of deprivation. It must, however, be clear that by making the scheme it will, together with other measures as part of a wider strategy, improve housing conditions in the private rented sector in that area.

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

- the employment status of adults;
- the average income of households;
- the health of households;
- the availability and ease of access to education, training and other services for households;
- housing conditions;
- the physical environment;
- levels of crime.

These are the seven domains of deprivation in the index of multiple deprivation (IMD).

2.26 The scheme should state what actions the local housing authority intends to take to combat housing problems associated with the deprivation; including, for example, through licence conditions to ensure properties are managed properly, and can contribute to an improvement in the well-being of the occupants and wider community.

2.27 The outcome of the designation should be (together with other measures) a reduction of the problems with housing in the private rented sector contributing to the high level of deprivation.

2.28 Although the overall ranking from the IMD 2019 does not suggest that Barnet as a whole is a deprived borough, there are clear areas of deprivation. 70% of the lower-level super output areas (LSOAs) in Burnt Oak Ward are in the 30% most deprived areas in England, with Colindale Ward at 50% of the LSOAs in this band.

2.29 Burnt Oak and Colindale have 90% and 60% respectively of LSOAs in the 30% most deprived areas in England for income, 100% and 83.3% respectively for barriers to housing and services and 90% and 84% respectively for crime.

2.30 An average for deprivation in Barnet was calculated from the IMD average rank for every LSOA in the borough. An index has been produced for each ward, where 1 is equivalent to the average for Barnet. Table 1 shows the index for each ward, with Burnt Oak being over twice the average. The index for all those above average is shaded (red). Burnt Oak and Colindale are more than 1

.5 times the average for Barnet.

$$\text{Index} = \frac{(\text{Sum of all LSOA IMD ranks/No. of LSOAs in Ward})}{(\text{Total of all LSOA ranks/16})}$$

Table 1. Average IMD score index

Ward	Ave IMD rank for Ward	Index
Burnt Oak	9240.6	2.09
Colindale	11896.4	1.63
Childs Hill	15551.8	1.24
West Hendon	15614.7	1.24
Underhill	16074.7	1.20
Golders Green	16687.6	1.16
Coppetts	18046.3	1.07
Hendon	18445.0	1.05
Woodhouse	18490.4	1.05
Hale	19409.6	1.00
East Barnet	19861.1	0.97
Edgware	19999.0	0.97
East Finchley	20556.5	0.94
Mill Hill	20693.4	0.93
West Finchley	22247.6	0.87
Brunswick Park	22340.1	0.87
Oakleigh	22509.8	0.86
High Barnet	23499.8	0.82
Finchley Church End	24096.1	0.80
Totteridge	24986.1	0.77
Garden Suburb	25768.6	0.75

2.31 The high levels of deprivation in Burnt Oak and Colindale Wards would warrant a selective licensing designation for deprivation, which would work alongside the council's other strategies in these areas, such as regeneration and homelessness to improve the private rented sector in these wards.

Poor property conditions

2.32 The guidance suggests that a significant number of properties in the private rented sector should be in poor condition and are adversely affecting the character of the area and/or the health and safety of their occupants. Authorities should consider the following factors to help determine whether there are poor property conditions in their area:

- the age and visual appearance of properties in the area and that a high proportion of those properties are in the private rented sector

- a significant number of properties in the private rented sector need to be inspected in order to determine whether any of those properties contain category 1 or 2 hazards. In this context “significant” means more than a small number, although it does not have to be a majority of the private rented stock in the sector. It would not be appropriate to make a scheme if only a few individual properties needed attention.
- 2.33 The scheme should state what action the authority intends to take under Part 1 of the Act if it identifies there are serious deficiencies with properties, including the timescale for taking the appropriate action and its enforcement plan for non-compliance with improvement notices or prohibition orders it serves.
- 2.34 The outcome of the designation would be a general improvement of property conditions in the designated area within the lifetime of the designation.
- 2.35 To assess against these criteria, the following data was considered:
- the age of properties
 - the number of private rented properties
 - complaints about the condition of private rented properties
 - numbers and proportions of category 1 and 2 hazards found
 - numbers and proportions of properties requiring enforcement actions
 - projections based upon the findings in the 2020 Barnet property survey

Age of properties

- 2.36 According to the Valuation Office Agency, Childs Hill has the highest number of pre-1939 properties in Barnet, with almost 6,000 properties, the majority of which are pre-1918. Garden Suburb, Golders Green, West Finchley, Woodhouse, Hale and Hendon have the largest numbers of these older properties. However, the greatest number of the oldest properties, i.e. pre-1900, are in High Barnet, East Finchley, Coppetts and Childs Hill.
- 2.37 When looking at hazards in PRS properties, it was found that almost 50% of the properties with category 1 (the worst) hazards were in properties built up to 1945. Only 15% were in properties built post 1979.
- 2.38 The greatest number of category 1 hazards found in pre 1945 properties were in the wards of Childs Hill, West Hendon, Golders Green and West Finchley.

Number of private rented properties

- 2.39 The most recent assessment of the number of private rented properties by ward in Barnet was the Census 2011. This indicated there were 34,854 private rented properties in Barnet, accounting for 26.3% of the total housing stock. Every ward except Hale, Brunswick Park and Underhill had greater than 19% privately rented properties, rising to 41% in Childs Hill, which had 3,050.
- 2.40 Analysis of multiple data sets, including housing benefits, council tax, environmental health complaints and inspections, a survey and the three national tenancy deposit schemes has identified a total of approximately 42,200 privately rented properties. The local land and property gazetteer (LLPG) holds records of around 158,500 dwellings, so the PRS is now estimated at 26.6% of all housing in the borough.

Property condition complaints

- 2.41 Between January 2015 and March 2020, there were 7,503 complaints received by the Environmental Health Department that could be attributed to the private rented sector (PRS) (excluding HMOs) at 5,793 unique addresses. A rate of approximately 16% of the PRS, based upon 2011 Census numbers of PRS properties. Although the number has decreased in more recent years, the average is 1,430 complaints about the PRS per annum across the borough.
- 2.42 Childs Hill, West Hendon and Hendon each had over 1.5 times the average number of complaints. The wards of Burnt Oak, Colindale, Edgware, Golders Green, Hale and Mill Hill are all above average.
- 2.43 Disrepair complaints are by far the greatest type of complaint, accounting for 29% of complaints. 2,701 complaints were about poor property conditions and/or overcrowding at 2,212 unique addresses. Of these complaints, in 1,971 cases, the investigating officer identified an issue that required follow up action, ranging from informal advice to formal action such as serving statutory notices or prosecution. Based upon those cases that had an outcome recorded, there were 73% of complaints that required some action, even if it was resolved informally. 464 cases required some form of formal action (it should be noted that the method of recording case outcomes may mean that this figure is underreported).
- 2.44 The ward with the highest number of complaints was Childs Hill. In addition Hendon, West Hendon, Colindale, Burnt Oak, Edgware, Hale, Golders Green and Woodhouse were all above average.
- 2.45 Childs Hill, West Hendon, Edgware, Golders Green, Colindale, Burnt Oak, Hendon, Hale, Mill Hill and West Finchley were all above average for cases that resulted in formal action.
- 2.46 Property condition complaints were analysed on the basis of:
- Overall numbers of complaints
 - Number of unique properties with complaints (some properties had multiple complaints over the period)
 - Number of cases requiring action
 - Percentage of cases requiring action
 - Number of cases requiring formal action
 - Percentage of cases requiring formal action
 - Unique addresses with complaints as a percentage of the PRS based upon the 2011 Census
 - Unique addresses with complaints as a percentage of the total number of complaints across Barnet
- 2.47 Across five of these eight criteria Childs Hill was the highest and in seven of the criteria Childs Hill was above average, making it the worst ward for property condition complaints.
- 2.48 The wards of Hendon, West Hendon, Colindale, Burnt Oak, Edgware, Hale, Golders Green and Woodhouse were also consistently above average on most criteria.

Nuisance complaints

- 2.49 Other complaints received by Environmental Health also relate to the condition of properties and are indicative of the standard of management. These include nuisance complaints such as defective drainage, filthy and verminous premises, accumulations of refuse, pests and other public health issues. 4,811 were about nuisance issues relating to the condition of the property at 3,853 unique addresses. Of these complaints, in 3,978 cases, the investigating officer identified an issue that required some follow up action, ranging from informal advice, to formal action, such as serving statutory notices or prosecution. 82.6% of complaint cases required some action, even if it was informal. 197 cases required some form of formal intervention.
- 2.50 West Hendon had the greatest number of these complaints, with Childs Hill, Hendon, Mill Hill, Golders Green, Hale, Burnt Oak and Edgware Wards being above average.
- 2.51 Nuisance complaints were analysed using the same criteria as for property condition complaints.
- 2.52 Across four of the eight criteria West Hendon was the highest and in all eight criteria was above average, making it the worst ward for nuisance complaints.
- 2.53 The wards of West Hendon, Childs Hill, Hendon, Mill Hill, Golders Green, Edgware and Burnt Oak were also consistently above average above most criteria.

Category 1 and 2 hazards

- 2.54 Residential premises can suffer with problems that are known as hazards under the Housing health and safety rating system (HHSRS). A hazard is any risk of harm to health or safety of an actual or potential occupier of a dwelling or HMO which arises from a deficiency. Under the Housing Act 2004, where local authorities consider it is appropriate to determine whether a hazard exists on a premises, they shall inspect the premises. Hazards are classified as either category 1 or category 2 hazards. Category 1 hazards are more serious and the council must take action. Category 2 hazards are less serious and the council has power to take action.
- 2.55 Hazards were analysed under the following criteria:
- Total number of hazards
 - Number of unique addresses with hazards
 - Number of category 1 hazards
 - Number of high rated category 2 hazards
 - Average number of category 1 and high rated category 2 hazards per address
- 2.56 HHSRS inspections identified a total of 3,058 hazards between 2015 and 2020. The greatest numbers of hazards were in the wards of West Hendon, Childs Hill, Golders Green and Hendon. There were 1,370 Category 1 hazards, with by far the greatest numbers in Childs Hill and West Hendon. By far the largest numbers of category 1 hazards were for excess cold and for damp and mould growth.
- 2.57 The wards above average for all five of the criteria analysed were West Hendon, Childs Hill, Golders Green, Hendon, Hale and Colindale.

Enforcement actions

- 2.58 Where a defect or conditions at the property found on inspection cannot be resolved informally with a landlord, some inspection cases require enforcement action, such as serving notices and orders under the Housing Act or other legislation such as the Building Act or Public Health Acts.
- 2.59 Enforcement actions were analysed under the following criteria:
- Number of notices served
 - Number of unique addresses with notices served
 - Number of Housing Act notices
 - Number of unique addresses with Housing Act notices
 - Number of miscellaneous notices
- 2.60 There was a total of 552 notices served in the period. West Hendon had significantly the highest number of notices at 73 and Childs Hill, Finchley Church End, Hendon, West Finchley, Garden Suburb, Woodhouse, Burnt Oak, Golders Green, Hale and Edgware were all above average.
- 2.61 West Hendon, West Finchley, Golders Green and Hale were above average for all the criteria analysed.
- 2.62 When all the data sets for complaints, category 1 and 2 hazards and enforcement actions are analysed, it shows that the wards of West Hendon, Childs Hill, Hale, Edgware, Golders Green and Hendon are all consistently above average for these indicators of poor property conditions. Each of the indicators was scored according to an index where a score of one would mean the ward was average for Barnet. When the index from each indicator is added together, a score of 36 would mean a ward was average for Barnet across all indicators. Table 2 shows a table of the total index for each ward. The wards with scores shaded red (darkest shading) are all above average. The wards with the names shaded orange are all 16% or more above the average. West Hendon is over 70% above average and Childs Hill is 25% above average.

Table 2. Total poor property condition index for all wards.

Ward	Total of All Indexes
West Hendon	61.53
Childs Hill	48.62
Hale	48.27
Edgware	44.32
Golders Green	41.98
Hendon	41.79
Burnt Oak	40.86
Mill Hill	39.43
Colindale	37.86
Brunswick Park	37.66
Woodhouse	36.14
West Finchley	34.80
Underhill	34.67
East Barnet	34.06
Finchley Church End	33.74
Oakleigh	31.35
Coppetts	30.04
Garden Suburb	27.50
High Barnet	24.58
Totteridge	20.62
East Finchley	19.81

- 2.63 The survey of 2,719 properties across the borough in 2020 identified that 476 (17.5%) properties were found to be or believed to be likely to be single family private rented. 9.2% of the private rented properties had issues relating to the external condition of the property, with 4.2% being deemed to be externally in poor condition (where poor means that urgent action was required). 33.4% appeared to be in fair condition (where fair means that matters required attention). 58.2% appeared to be in good external condition, i.e. no action was required. Of the 1,281 where it was not possible to establish the tenure, 32.3% of these were in poor or fair condition. An internal inspection was not undertaken due to the ongoing COVID-19 pandemic, but it is likely several the unknown properties will have been privately rented also.
- 2.64 Burnt Oak had the highest percentage of properties surveyed that were privately rented at 27%, followed by Edgware at 26.1%.
- 2.65 Garden Suburb and Golders Green had the highest percentage of private rented properties surveyed that were in poor or fair condition at 55.6%, whilst Childs Hill had 54.8%.
- 2.66 The findings from analysing complaint and inspection data and the results of the survey, along with the projected numbers of PRS properties indicate that it would be appropriate for a significant number of the properties referred to in article 3(1)(a) to be inspected, with a view to determining whether any category 1 or category 2 hazards exist on the premises

and so would warrant the designation of a selective licensing scheme for poor property conditions in the wards of:

- West Hendon
- Childs Hill
- Golders Green
- Hendon
- Edgware
- Hale

2.67 A selective licensing scheme in these wards would enable the council to undertake inspections of private rented properties to determine whether any of those properties contain category 1 or 2 hazards and to take appropriate enforcement actions to realise a general improvement of property conditions in the designated area within the lifetime of the designation. Appendix 3 sets out the conditions that will be applied to licences and Appendix 4 sets out the council standards for private rented properties.

2.68 Analysis of ASB data shows that there is without doubt evidence of high levels of ASB associated with or in the vicinity of PRS properties and particularly in six of the proposed wards for designation for selective licensing. Only Edgware and Hale are not above the Barnet average. Although not selected as the criterion for designation, ASB provides supporting evidence for the case for selective licensing in those six wards and conditions will be applied that address potential ASB issues.

2.69 Analysis of crime data shows the wards of Childs Hill, Colindale, Hendon, Golders Green, and Edgware feature above average for both residential burglary and total crime in the borough. Above average numbers of crimes have been linked to PRS properties in the wards of Childs Hill, Burnt Oak, Colindale, Hendon, and West Hendon. However, there has not been a noticeable increase in crime over a relatively short period, such as in the previous 12 months, as suggested in the guidance. Due to not meeting the trigger in the guidance, crime has not been considered as a criterion for a selective licensing scheme, although the above average crime levels in the PRS in the areas proposed for designation is a supporting factor and conditions will be applied that address potential crime issues.

2.70 It should be noted that Hale Ward was identified in the Census 2011 as having only 18.23% PRS, i.e. below the current indicator level of 19% required to designate a scheme. However, the recent stock analysis suggests this is now 22.78%.

Selective licensing as part of the overall housing strategy

2.71 Selective licensing is not a tool that can be used in isolation. The local housing authority will have to show how such a designation will be part of the overall strategic borough wide approach, and how it fits with existing policies on:

- Homelessness
- Empty Homes
- Regeneration
- Anti-social behaviour associated with privately renting tenants

- 2.72 The selective licensing scheme must be consistent with the overall housing strategy and co-ordinated with procedures for homelessness, empty properties, anti-social behaviour in the private rented sector, and housing market renewal activity.
- 2.73 The council's Housing Strategy addresses the first of the three points in paragraph 2.69. The Homelessness and Rough Sleeping Strategy addresses Homelessness. The Growth Strategy addresses plans for Regeneration, as does Barnet's Local Plan (Core Strategy). The Community Safety Strategy addresses our approach to anti-social behaviour and crime. The Housing Strategy specifically includes a commitment to using licensing as a tool alongside its other measures to improve housing standards. Selective Licensing therefore is a tool which fits strategically with other council initiatives that will improve the private sector.
- 2.74 Local housing authorities must also ensure that selective licensing complements other measures. It should only be used where existing measures alone are not sufficient to tackle the underlying housing problems of a specific area. Local authorities should also carefully consider any potential negative economic impact that licensing may have on their area – particularly the risk of increased costs to landlords who are already fully compliant with their obligations. These additional costs can reduce further investment and are frequently passed on to tenants through higher rents.
- 2.75 Licence fees will be set to cover costs of running the scheme only. Experience from the additional licensing scheme and that of other authorities already running selective licensing schemes is that licence fees reflect a tiny proportion of the cost of running a privately rented property and do not present a significant burden to landlords.
- 2.76 Local housing authorities will also have to demonstrate the role of other partners (if any), such as the Metropolitan Police or Social Services, in ensuring the designation reaches its goal.
- 2.77 Partnership arrangements such as the Joint Tasking and Action Group (JTAG) and Multi Agency Risk Assessment Conference (MARAC) will be used to highlight the progress of selective licensing and to ensure a coordinated response to issues that contribute to a better private rented sector.
- 2.78 The local housing authority must show:
- it has considered whether there are any other courses of action available to them that might provide an effective method of achieving the objectives that the designation is intended to achieve, and;
 - how the making of the designation will significantly assist the local housing authority in achieving its' objectives (whether or not in conjunction with those other measures).
- 2.79 Other courses of action available to the council are discussed in part 3 of this report. As outlined above, the proposals support the Housing Strategy, where five themes of focus are:
- 1) Raising standards in the private rented sector
 - 2) Delivering more homes that people can afford
 - 3) Safe and secure homes
 - 4) Promoting independence
 - 5) Tackling homelessness and rough sleeping in Barnet.

- 2.80 It is important for local housing authorities to demonstrate how licensing will work in conjunction with existing initiatives (such as landlord accreditation) and partnerships. Licensing is not a stand-alone tool, and local housing authorities should take account of this. For example, landlords will need adequate support to help them deal with problem tenants. Local housing authorities should ensure that their schemes are adequately resourced and include services such as active outreach support programmes to engage with landlords and tenants who need their assistance.
- 2.81 A key strand of the selective licensing strategy will be the encouragement of landlords to achieve accreditation, as it is with the existing additional licensing scheme. Advice is available to landlords and tenants. Resources are discussed in part 5 of this report.
- 2.82 It is also important for local housing authorities to consider some of the possible effects of making a designation, and to include any risk assessment they may have carried out. For example, has there been an assessment of the likelihood of possible displacement of unprofessional landlords to other areas within the local authority's jurisdiction, or to neighbouring local authorities.
- 2.83 The impact of the selective licensing scheme will be closely monitored and if there is evidence that unprofessional landlords move elsewhere in Barnet, this may require consideration of further selective licensing designations in the future. The boroughs neighbouring the wards proposed for designation are Harrow, Brent and Camden. Harrow has a selective licensing scheme, as does Brent, although renewal of one existing scheme and an extension to further wards has recently been refused by the Secretary of State. Camden is currently seeking views on proposals to introduce selective licensing. All neighbouring boroughs will be consulted on the proposals as part of the public consultation.

Proposed Designations

- 2.84 The analysis has determined it would be appropriate to make a designation under the category of deprivation for the wards of Burnt Oak and Colindale and under the category of poor property conditions for the wards of West Hendon, Childs Hill, Hendon, Golders Green, Hale and Edgware.
- 2.85 It is proposed to make three separate selective licensing designations:
- a). Under deprivation, the existing wards of Burnt Oak and Colindale
 - b). Under poor property conditions, the existing wards of West Hendon and Childs Hill
 - c). Under poor property conditions, the existing wards of Hendon, Golders Green, Hale and Edgware

Designation a). is proposed to be implemented as soon as possible and this can be designated under the general approval provisions as the combined percentage of private rented properties amounts to 2.3% (Census 2011) and combined percentage of geographical area amounts to 5%. The aim will be to try and go live with this selective scheme (and the Additional HMO licensing scheme) in early 2022 depending on the consultation outcomes, the committee cycles and approval.

Designations b). and c). will require Secretary of State approval because, when considered together the scheme under designation a). which is expected to be in place

by then, the combined percentage of private rented properties will be greater than 20%. The Secretary of State approval process is anecdotally taking in the region of 12 months currently therefore the other two selective licensing schemes may not be approved and designated until late 2022 or early 2023.

Changes to ward boundaries May 2022

2.86 The Boundary Commission for England has made changes to the ward boundaries in Barnet, which will take effect from the time of the local elections in May 2022. The boundaries of the wards proposed to be included in the designations will change as a result. Although data is currently only available based upon existing ward boundaries, by the time any proposed designations come into effect, the new boundaries may be in place. It is therefore appropriate to outline the proposals in terms of the new boundaries. Although it is not possible to produce tables of data and an index of poor property conditions based upon the new wards, Figure 1 shows the concentrations of cases of private rented properties with poor condition indicators overlaid onto the new ward boundaries as both dot and heat maps.

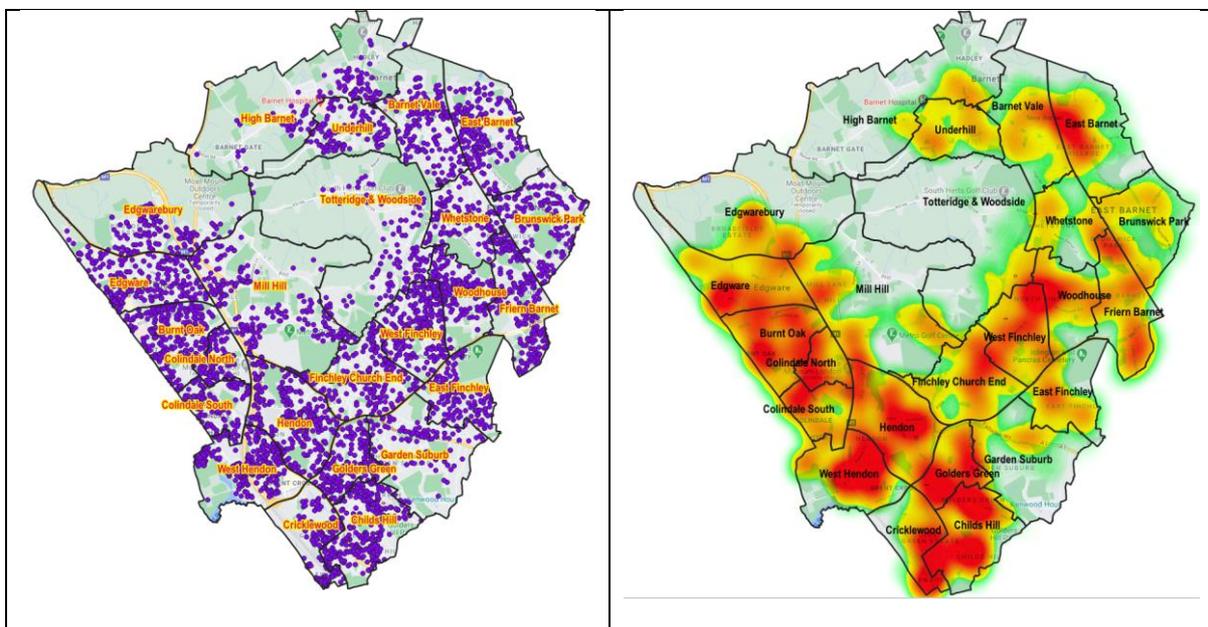


Figure 1.

- 2.87 The data analysis transferred onto the new wards highlights that the proposals in paragraph 2.82 translate into the following proposals:
- Under deprivation, the new wards of Burnt Oak, Colindale North and Colindale South
 - Under poor property conditions, the new wards of West Hendon, Cricklewood and Childs Hill
 - Under poor property conditions, the new wards of Hendon, Golders Green and Edgware (the new ward of Edgwarebury is excluded)
- 2.88 As noted earlier, any designations will specify the roads that it applies to and so even with ward boundary changes, the applicability of them will be clear. If the designation is confirmed then it cannot come into effect any earlier than three months after the date on which the designation is confirmed by the Secretary of State.

3 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 Consideration has been given to other options that the council could pursue if the proposals in this consultation are not supported.

Alternatives to Additional Licensing

- 3.2 Alternative courses of action for dealing with HMOs being managed sufficiently ineffectively as to give rise, or likely to give rise, to one or more particular problems include the following:

Do nothing:

- 3.3 At the expiry of the existing additional licensing scheme, the council could revert to the previous approach of enforcement in response to complaints and identifying properties through street surveys. This could be linked with a more robust promotion of accreditation for landlords. A review of evidence obtained by other authorities in London would indicate that this approach is not generally supported by the public (excluding landlords) in their consultation exercises. Of HMO residents, other PRS tenants, local residents and other stakeholders, a significant majority supported the introduction of a scheme. Indeed, in the consultation for the current scheme in Barnet, agreement levels for all groups, with the exception of landlords and letting agencies was high with the majority of respondents supporting the introduction of additional licensing (75% or more). Reasons for supporting licensing schemes include that it would improve the standards and living conditions of housing, improving issues with poor tenants, helping to ensure a more consistent standard of accommodation throughout the borough, improving the quality of landlords and enable the targeting of rogue landlords.
- 3.4 It is neither effective for the occupants of HMOs, nor efficient for the council to rely simply on being reactive to complaints and to undertake low levels of proactive visits to properties. Many HMOs go under the radar because tenants are afraid or reluctant to complain and proactive visits are not necessarily targeting the worst properties first, whereas a licensing regime requires landlords to come forward and enables the council to target the highest risk properties first. The licensing of all HMO properties also creates a level playing field where all occupants of HMOs can be assured that landlords will maintain properties to certain standards, or that the council will know about them and apply conditions or take the relevant enforcement action to ensure they do.

Increase enforcement activity:

- 3.5 The council could increase the level of resources and amount of enforcement activity devoted to HMOs. A more proactive approach could be taken to target the worst landlords. This would involve the need to increase the resourcing for enforcement, funded from council finances. For the reasons given above, this does not ensure the protection of all HMO residents that an additional licensing scheme would enable.

Introduce additional licensing in specific areas of the borough:

- 3.6 An area based scheme could be designated. As stated above, it is recognised that HMOs are spread across the borough. An area-based scheme could cause inconsistency in regulation and confusion amongst landlords and tenants. Alongside mandatory licensing, it is seen that the clearest approach for all and the way to protect all occupants of HMOs is to have complete coverage of HMOs under the mandatory and additional licensing schemes.

- 3.7 Specifically, alternative courses of action for dealing with poor housing conditions and poor management in HMOs that might be used in implementing the options above include the following discussed below:

The Housing Health and Safety Rating System (HHSRS):

- 3.8 This is the main tool for enforcing housing conditions in the PRS. However, it is resource intensive and can only be applied to dwellings on an individual case-by-case basis. It is generally a reactive process and does not place a legal duty on landlords to “register” with the council in the way licensing does. It does not impose standards in relation to management or housing conditions. In practical terms the legal requirement on landlords to improve dwellings only comes into force when the council takes action against them. That action does not impose a penalty for hitherto failing to comply with housing standards but merely requires matters to be rectified. It does not provide an incentive to comply, or a deterrent to non-compliance.
- 3.9 Conversely, additional licensing requires the landlord to come forward and obtain a licence and applies conditions that must be met in the HMO, including housing conditions and property management. The penalty for failure to obtain a licence or for breach of licence conditions can be the imposition of a fixed penalty, a criminal prosecution leading to an unlimited fine, and/or a Rent Repayment Order requiring the landlord to repay up to twelve months’ previous rent.

Interim Management Orders (IMOs):

- 3.10 These have been considered in a number of individual cases but there are significant disadvantages to their use as they are very resource intensive, deal only with individual properties on a case-by-case basis, and do not address the general lack of professional management expertise in the local housing market.

The Management of Houses in Multiple Occupation (England) Regulations 2006:

- 3.11 These regulations can be enforced to require HMO landlords to remedy certain housing defects and failures of management. However, these can only be used to remedy certain specified failings and cannot be used to bring about improvements such as the provision of additional amenities. The penalty for contraventions can be the imposition of a fixed penalty or a criminal prosecution leading to an unlimited fine. These provisions can be used alongside additional licensing conditions in enforcing good management standards in HMOs across the borough.

Housing and Planning Act 2016:

- 3.12 Powers under the Act include the use of Banning Orders, which prevent rogue landlords and agents trading when they have committed certain serious offences. There is also a Rogue Landlords Register. Civil Penalties and Rent Repayment Orders are further sanctions.

Landlord Accreditation:

- 3.13 Barnet promotes the Accreditation and Training for Landlords and Agents Scheme (ATLAS) known as the London Landlord Accreditation Scheme (LLAS) through HMO licensing, Empty Property Grant conditions and as an alternative to payment of notice charges.

- 3.14 This is a voluntary scheme where landlords undergo training and sign up to a code of conduct which requires certain standards of management and maintenance. ATLAS is a valuable scheme for engaging with well-meaning landlords. It provides support and imparts the knowledge necessary for them to run their businesses effectively, comply with the law, and provide safe, decent quality homes. There are currently 1,196 accredited landlords in Barnet under ATLAS. However, experience has shown that whilst good landlords are willing to participate in accreditation, a significant proportion of landlords are not, and this includes rogue landlords at the bottom end of the market with whom there is most concern. For this part of the sector, effective enforcement is the appropriate course of action. The council will continue to promote landlord accreditation alongside any discretionary licensing schemes.
- 3.15 The alternative powers outlined above do not offer an effective alternative to additional licensing for the reasons stated. However, using these powers in conjunction with an additional licensing scheme has been proven to provide an effective and comprehensive regulatory framework for the PRS and bring about improvements in property conditions and property management. Licensing requires the landlord and managing agent to meet “fit and proper person” criteria to obtain a licence. The council makes checks to ensure this is the case and can exclude criminal landlords from the market. The anticipated outcome of renewing the additional licensing scheme will be a general improvement in property conditions and management within the five-year lifetime of the designation.

Alternatives to Selective Licensing

- 3.16 Alternative options for dealing with areas with a high proportion of properties in the PRS that are suffering problems that are caused by, or attributable to any of the criteria for making a designation include:

Do nothing:

- 3.17 As would be the case if the additional licensing scheme is not renewed, the council could continue with the current approach of enforcement in response to complaints and identifying properties through street surveys, linked with a more robust promotion of accreditation for landlords. The reasons stated above for this not being a preferred approach for additional licensing apply to selective licensing also.

Increase enforcement activity:

- 3.18 The council could increase the level of resources and amount of enforcement activity devoted to the PRS. A more proactive approach could be taken to target the worst landlords. This would involve the need to increase the resourcing for enforcement, funded from council finances. For the reasons discussed above for additional licensing, this does not ensure the improvement of all privately rented properties in the area that a selective licensing scheme would enable.

Introduce a borough-wide selective licensing scheme, or one covering more wards:

- 3.19 Although the PRS is spread across the borough and most, but not all wards have over 20% of properties in the PRS, our research and evidence base indicate that the highest numbers of properties with poor conditions are in West Hendon, Childs Hill, Hendon, Golders Green, Edgware and Hale Wards. These areas also suffer to varying degrees from issues of ASB, crime, migration and deprivation. Residents in the wards of Colindale and Burnt Oak suffer with significantly higher levels of deprivation than other wards in Barnet, particularly in the domains of barriers to housing and services, income

and crime. They also suffer to a slightly lesser degree from issues of poor property conditions. Although the other areas of the borough also suffer problems, they are not as marked as the data shows for the proposed ward designations and so a selective licensing scheme is not seen as an appropriate mechanism for the whole borough or other wards at this time. It may be that in time, following a review of the success of the proposed schemes, other wards that are above average for the relevant criteria will be considered for a future selective licensing scheme.

A programme of renewal:

- 3.20 The extent of the problem of poor conditions in West Hendon, Childs Hill, Hendon, Golders Green, Edgware and Hale Wards is spread across the area and not restricted to specific and distinct streets or terraces of housing. Similarly, the deprivation in Burnt Oak and Colindale is not restricted to specific street or terraces and is spread across multiple LSOAs. Therefore targeted renewal of properties is not seen as a practical solution to resolving the issues.
- 3.21 As with additional licensing, there are alternative courses of action for dealing with poor housing conditions and poor management in the PRS that might be used as part of the options discussed above. These include the HHSRS, Interim Management Orders, Powers under the Housing and Planning Act 2016 and landlord accreditation schemes. These alternative courses of action have been considered and our conclusions are as for those discussed above for additional licensing.
- 3.22 In view of the numbers of PRS dwellings experiencing poor conditions and deprivation in the proposed wards, it is not practical to deal with them on an individual, reactive basis. However, using these powers in conjunction with a selective licensing scheme and other council strategies and initiatives will provide an effective and comprehensive regulatory framework for the PRS and bring about improvements in property conditions and property management. Licensing requires the landlord and managing agent to meet “fit and proper person” criteria in order to obtain a licence. The council makes checks to ensure this is the case and can exclude criminal landlords from the market. For these reasons there is no practical alternative to a selective licensing scheme in proposed areas selected to achieve the desired outcomes. The anticipated outcome of such a scheme will be a general improvement in property conditions, a reduction in the levels of deprivation and also a reduction in ASB and crime associated with the PRS in the designated areas, within the five-year lifetime of the designation.
- 3.23 All licensed properties will be inspected wherever possible prior to the issuing of a licence, or within the duration of the scheme. Outcomes from this scheme would be monitored during its operation in order to determine whether the scheme should be rolled out to other wards with significant levels of poor housing conditions in the future; although this would be conditional on the approval of the Secretary of State. For wards with lower levels of poor housing conditions, a programme of targeted enforcement will continue to be undertaken.

4 POST DECISION IMPLEMENTATION

Additional Licensing and Selective Licensing

- 4.1 If the committee approves the recommendations in this report, a widespread public consultation will be undertaken. The extent of the consultation will take account of the

experience of other local authorities undertaking similar consultations and that were subject to judicial review for not being deemed adequate to meet the objectives of the legislation and guidance.

4.2 As with the existing additional licensing scheme, an independent agency will be procured and engaged to undertake the public consultation and to analyse the results and produce a post consultation report.

4.3 Depending on Covid restrictions and risk appropriateness the consultation will include the following approaches. The strategy will be guided by the agency appointed:

- Direct mailing to known landlords and tenants and other interested parties where appropriate
- Council website
- Local media,
- Landlords forums (likely to be on line)
- Drop-in sessions (likely to be on line)
- Focus Groups (likely to be on line)
- Leaflets and posts in public buildings
- Social media
- Consultation with neighbouring boroughs

4.4 The consultation will run for a period of a minimum of 10 weeks.

4.5 Feedback from the consultation will be considered and the proposals reviewed if necessary or appropriate, before a further report is submitted to this committee to make further recommendations on the designations in the autumn.

Additional Licensing

4.6 If, following the consultation, the committee approves the designation, then the designation would be made as soon as practicable and would come into effect three months later. It is currently estimated this would be around January 2022 depending on completion of consultation and the committee cycle.

4.7 During the three-month period before the designation comes into effect, the scheme will be publicised to encourage early submission of applications for licences.

4.8 HMOs that were licenced for a period of five years at the beginning of the existing scheme and that expire before the proposed new designation comes into effect will be required to obtain a new licence once the new designation is made.

4.9 Licences issued for HMOs under the existing scheme, but that are due to expire after the proposed new designation comes into effect will remain in force until their original expiry date. Once these licences expire, they will be required to be renewed under the proposed new scheme.

Selective Licensing

4.10 If, following the consultation, the committee approves the designations, there will need to be two different processes:

Designation a). (Under deprivation) the current wards of Burnt Oak and Colindale (which will be the new wards of Burnt Oak, Colindale North and Colindale South))

- 4.11 Under the general approval provisions, the designation would be made as soon as practicable and would come into effect three months later. It is currently estimated this would be early 2022.

Designation b). (Under poor property conditions) the current wards of West Hendon and Childs Hill (which will be the new wards of West Hendon, Cricklewood and Childs Hill)), and

Designation c). (Under poor property conditions) the current wards of Golders Green, Hendon, Hale and Edgware Wards (which will be the new wards of Hendon, Golders Green and Edgware)).

- 4.12 As the proposed areas (for designations b and c) cumulatively with designation a) will cover more than 20% of the PRS in the borough, once made, the designations will be sent to the Secretary of State for approval. These applications will set out the reasons for the designations as per guidance for local authorities. The guidance indicates the Secretary of State will aim to decide within eight weeks of the application being received. However, there is evidence that some decisions recently have been taking many months. Assuming a decision is received within eight weeks, then, following this, the designations can come into effect three months later. It is estimated that this would be around May 2022 at the earliest.

5 IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The proposals outlined in this report further Barnet's Corporate Plan – The Barnet Plan 2021 – 2025 and its stated priorities as follows:

- **Healthy**
Addressing homelessness and the longer-term impacts of COVID-19
- **Thriving**
Building a Barnet fit for the future, where all residents, businesses and visitors benefit from improved Housing, infrastructure & economic opportunity

- 5.1.2 Links between the proposals in this report and the Housing Strategy and Housing and Growth Committee priorities are set out in paragraphs 2.1 and 2.2.

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

- 5.2.1 The cost of investigating the viability of additional licensing and completing a full consultation exercise has been borne by LBB and delivered by Re.
- 5.2.2 If the proposed licensing schemes are considered appropriate following consultation, a breakdown of the financial implications of introducing them will be presented to committee to consider the viability of the schemes in conjunction with the review of the consultation

findings.

- 5.2.3 Indicative fees for both additional licensing and selective licensing are set out in Appendix 2. These have been reviewed by the Finance Service and are believed to be accurate and cover all permissible associated costs for a cost recovery model. Authorities cannot use licensing schemes for income generation and so fees should be set for cost recovery only over the lifetime of the scheme, although an element of enforcement of the scheme is permissible in the calculations. As the selective licensing designations will come in incrementally, due to the need to obtain Secretary of State consent, the proposed fees will be applied to the first proposed designation only and these are likely to have been subject to the usual annual fee review by the time the other proposed designations come into effect, if approved.
- 5.2.4 The fees proposed for the new additional licensing scheme are in line with those already approved by the Council for HMO licensing this financial year. This is reasonable as costs will not have increased in year. They will be reviewed in line with the Council's fee review cycle in December 2022.
- 5.2.5 Income received from a Rent Repayment Order or from a Civil Penalty arising from enforcement of licensing schemes can be retained by the local housing authority provided that it is used to further the local authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in regulations. As any such amounts are not predictable, they are not taken into account in calculating the overall costs of the licensing scheme and so should be used for additional enforcement action, for example to enhance enforcement in areas that are not subject to licensing.
- 5.2.6 No additional IT or property will be required to investigate the case or consult on the proposed licensing schemes.
- 5.2.7 Procurement of the external agency to conduct the consultation will be undertaken directly by Re.
- 5.2.8 It is proposed that administration and enforcement of the licensing schemes will, as with the existing additional licensing scheme be undertaken by Re subject to contractual agreement.
- 5.2.9 Existing staff engaged in additional licensing will, during the hiatus between additional licensing schemes engage in mandatory licensing and enforcement in relation to the PRS generally.
- 5.2.10 The legislation and guidance requires licensing schemes to work alongside other strategies and initiatives to jointly achieve the outcomes of the licensing schemes. Should the schemes come into effect, Re will need to work with other services and organisations to ensure that the objectives are met. For example, Community Safety and the Police in reducing the effects of ASB and crime arising from the private sector. Advice and support from Legal Services will be required for additional enforcement action that may arise from dealing with the worst properties and reluctant landlords.

5.3 Legal and Constitutional References

5.4 Additional Licensing

- 5.4.1 Section 56 of the Housing Act 2004 ('the Act') provides local authorities with the power to designate the area of their district, or an area in their district as being subject to additional licensing in relation to a description of HMOs specified in the designation. 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.
- 5.4.2 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 that are not withdrawn.
- 5.4.3 The power to make such a designation makes all HMOs in the area in question subject to the provisions of Part 2 of the Act.
- 5.4.4 Section 57 of the Act requires an authority exercising the power to designate an area under Section 56 to ensure that the exercise of the power is consistent with its overall housing strategy. Paragraphs 2.1 and 2.2 of this report set out how this proposal is in accordance with the Barnet Housing Strategy 2019-2024.
- 5.4.5 The authority must also seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector, both—
- (a) as regards combining licensing under Part 2 with other courses of action available to them, and
 - (b) as regards combining such licensing with measures taken by other persons.
- 5.4.6 Under the Housing Strategy 2019-2024, licensing will be co-ordinated with the council's initiatives for tackling homelessness, empty properties and ASB (Anti-Social Behaviour) and with the police in relation to ASB.
- 5.4.7 The authority must not make a particular designation under section 56 unless—
- (a) 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
 - (b) 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).
- 5.4.8 The other courses of action available are discussed in paragraphs 3.1 – 3.23 of this report. The experience from the existing additional licensing scheme has demonstrated that the designation will significantly assist in improving the standard and management of HMOs in the borough.
- 5.4.9 The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015 gives every local

housing authority that designates an area of their district as subject to additional licensing in relation to a description of HMOs specified in the designation made under section 56(1) of the Act, the Secretary of State's general approval of that designation for the purposes of section 58(1)(b) of the Act.

5.4.10 Section 58 of the Act requires that the date the designation comes into force specified by the authority must be no earlier than three months after the date on which the designation is confirmed.

5.4.11 Section 59 of the Act specifies that as soon as a designation is made by an authority, they must publish in a prescribed manner a notice stating –

- (a) that the designation has been made,
- (b) whether or not the designation was required to be confirmed and either that it has been confirmed or that a general approval under section 58 applied to it (giving details of the approval in question),
- (c) the date on which the designation is to come into force, and
- (d) any other information which may be prescribed

5.4.12 Section 60 of the Act states that a designation ceases to have effect at the time that is specified for this purpose in the designation and that time must be no later than five years after the date on which the designation comes into force. A local housing authority must from time to time review the operation of any designation made by them. If following a review, they consider it appropriate to do so, the authority may revoke the designation and if they do, the designation ceases to have effect at a time that is specified by the authority for this purpose and the authority must publish notice of the revocation in such manner as prescribed by regulations.

5.4.13 Under section 61 of the Act, every HMO to which the designation applies must be licensed, unless a temporary exemption notice is in force, or an interim or final management order is in force in relation to it.

5.4.14 Section 61 also requires every local authority must take all reasonable steps to secure that applications for licences are made to them in respect of HMOs in their area which are required to be licensed but are not.

5.4.15 Section 63(7) of the Housing Act 2004 states that: *“when fixing fees under this section, the local housing authority may (subject to any regulations made under subsection (5)) take into account:*

- (a) *all costs incurred by the authority in carrying out their functions under this Part, and*
- (b) *all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 in relation to HMOs (so far as they are not recoverable under or by virtue of any provision of that Chapter)”.*

5.4.16 However, the EU Directive and the Provision of Services Regulations 2009 which was subsequently passed states, at Regulation 18(4):

“Any charges provided for or by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the

procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities.”

5.4.17 Once fees are set, the Council is expected to review its fees and adjust them where necessary to reflect previous deficits or surpluses. It can take into account the cost of administering the licence over a 5 year period.

5.4.18 The fees and charges are reviewed annually and, in line with case law, will be a split fee with the second element payable by successful applicants.

5.5 **Selective Licensing**

5.5.1 Section 80 of the Housing Act 2004 (and associated Regulations) provides local authorities with the power to designate the area of their district, or an area in their district as being subject to selective licensing.

5.5.2 Under Section 80 of the Act. to make a designation, the authority must consider that any of certain general conditions are satisfied in relation to the area, as set out in the following paragraphs (a) and (b).

(a) The authority must consider that the area is, or is likely to become an area of low housing demand and that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, contribute to the improvement of the social or economic conditions in the area.

(b) The area is experiencing a significant and persistent problem caused by anti-social behaviour, that some or all of the private sector landlords who have let premises in the area (whether under leases or licences) are failing to take action to combat the problem that it would be appropriate for them to take; and that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, lead to a reduction in, or the elimination of, the problem.

The Selective Licensing of Houses (Additional Conditions) (England) Order 2015 introduced another route – a high proportion of private rented sector properties subject to conditions referred to earlier in this report.

5.5.3 Section 80 of the Act requires that, before making a designation the local housing 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 and not withdrawn.

5.5.4 Section 81 of the Act specifies that the authority must ensure that any exercise of the power is consistent with the authority's overall housing strategy.

5.5.5 The authority must also seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour, both –
(a) as regards combining licensing with other courses of action available to them, and
(b) as regards combining such licensing with measures taken by other persons.

- 5.5.6 The authority must not make a particular designation under section 80 unless they have
(a) considered whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of achieving the objective or objectives that the designation would be intended to achieve, and
(b) they consider that making the designation will significantly assist them to achieve the objective or objectives (whether or not they take any other course of action as well).
- 5.5.7 Section 82 of the Act requires that a designation of an area as subject to selective licensing cannot come into force unless—
(a) it has been confirmed by the appropriate national authority; or
(b) it falls within a description of designations in relation to which that authority has given a general approval in accordance with subsection (6).
- 5.5.8 Case law in this area is mostly related to the consultation process, its duration and extent but there have also been challenges linked to the level of evidence to justify a designation and the alternatives, failure to meet approval requirements etc, and such failures can lead to Judicial Review challenge(s) against the council.
- 5.5.9 The Barnet Council Constitution, Article 7 – Committees, Forums, Working Groups and Partnerships (April 2021) gives the Housing and Growth Committee responsibility for housing matters including housing strategy, homelessness, social housing and housing grants, commissioning of environmental health functions for private sector housing.
- 5.5.10 Article 10 – Decision Making, sets out that apart from matters reserved to Full Council, committees (and sub-committees) will be responsible under their terms of reference for all decisions which are key (as defined in Article 2).

5.6 **Social Value**

- 5.6.1 The proposed renewal of the additional licensing scheme and introduction of selective licensing will help the council to protect some of the most vulnerable members of society, who often end up in sub-standard accommodation and who do not know who to turn to, or are afraid to ask for help in relation to their living conditions. Licensing will enable council officers to make contact with vulnerable people living in this accommodation and if necessary direct them to other services.
- 5.6.2 The licensing schemes will contribute to the council improving the general appearance of neighbourhoods, protect the environment, reduce ASB, improve energy efficiency and reduce fear of crime.
- 5.6.3 The schemes will assist the council in knowing where in the borough the PRS is located, as well as where the bad landlords are and to promote other relevant services to both good and bad landlords.

5.7 **Risk Management**

- 5.7.1 There is a risk that the evidence base does not meet the requirements of the legislation and guidance and so adequately support the case for the renewal/introduction of the schemes. As described above, a thorough and detailed analysis of data from multiple sources has been compiled over several months, aiming to ensure that each point has

been considered in turn and is fully supported by the data. For example, a selective licensing scheme is not proposed in areas of the borough where the evidence does not strongly support the case for it.

5.7.2 There is a risk that the proposals in the consultation are not supported by the majority of respondents. This would result in the proposals potentially having to be reconsidered and either abandoned or redrawn and a further consultation conducted. The benefits of licensing schemes have been considered and will be clearly set out in the draft consultation. These schemes are consistent with schemes successfully introduced by neighbouring boroughs and across London and other parts of the country. Evidence from other boroughs and the council's own consultation for the existing additional licensing scheme shows that a majority of tenants and other residents have supported the introduction of schemes, although landlords and agents tend to be against the principle of such schemes.

5.7.3 There is a risk of legal challenge to proposals. In *R (Regas) v London Borough of Enfield* [2014] EWHC 4173, the High Court held that the London Borough of Enfield's decision under the Housing Act 2004 to designate the whole borough for both additional licensing of houses in multiple occupation and selective licensing of private rented sector properties was unlawful for a failure to properly consult. Although Enfield carried out a consultation, the court held that the consultation was insufficient, both in terms of duration and the extent to who was consulted. For Barnet, in light of this, it is proposed that the consultation will run for 12 weeks duration, rather than the minimum 10 weeks required, and will extend in to neighbouring boroughs as it is important to consider businesses, services and residents or neighbouring boroughs who may be affected for those who may be affected.

5.7.4 In the case of *R (Moseley) v Haringey London Borough Council* [2015] 1 All ER 495, although not to do with additional or selective licensing schemes, the court reasserted the principles set out in the earlier case of *R (Gunning) v Brent London Borough Council* [1985] 84 LGR 168 when undertaking a consultation:

- (i) consultation should take place when proposals are still at a formative stage,
- (ii) sufficient reasons should be given for any proposal to allow intelligent consideration and response,
- (iii) adequate time should be provided for consideration and response, and
- (iv) the outcome of the consultation has to be conscientiously taken into account in finalising any proposals.

Additionally, the degree of specificity with which the public authority should undertake the consultation might be dependent on the identity of those being consulted.

5.7.5 There is a risk that designations for selective licensing submitted to the Secretary of State are refused. However, as described, the legislation and guidance have been considered and each issue addressed and the data analysed to support the case for each of the proposed designations. The feedback from the consultation will also be fully considered before any proposals are brought back to this committee. A borough-wide designation is not proposed as the evidence available does not support this approach.

5.8 **Equalities and Diversity**

5.8.1 Equality and diversity issues are a mandatory consideration in the decision-making of the

council.

5.8.2 Decision makers should have due regard to the public-sector equality duty in making their decisions. The equalities duties are continuing duties they are not duties to secure a particular outcome. The equalities impact will be revisited on each of the proposals as they are developed. Consideration of the duties should precede the decision. It is important that Housing and Growth Committee as regard to the statutory grounds in the light of all available material such as consultation responses. The statutory grounds of the public-sector equality duty are found at section 149 of the Equality Act 2010 and are as follows:

A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.8.3 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- (d) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (e) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (f) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

5.8.4 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

5.8.5 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- (g) Tackle prejudice, and
- (h) Promote understanding.

5.8.6 Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act. The relevant protected characteristics are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race,
- Religion or belief
- Sex

- Sexual orientation
- Marriage and Civil partnership

5.8.7 An initial Equalities Impact Assessment (EqIA) will be drafted as part of the drafting of the consultation plan and a full EqIA will be carried out once the consultation exercise has concluded to take into account the feedback. Responses will be reviewed and take into account the consultation feedback.

5.8.8 Additional licensing will be applied across the borough. Therefore all residents of HMOs and those of neighbouring areas will benefit from the proposals. The number of lettings in an HMO included in the scheme is to be reduced to ensure more residents benefit from the proposals.

5.8.9 Selective licensing, due to the legislative criteria will not apply across the borough. However, it will be applied equally in all private rented properties in the areas that are designated and so all residents of the PRS in those areas will benefit from the proposals. Residents of PRS properties that are not included in the proposed areas will continue to be able to be supported by environmental health using statutory powers.

5.8.10 The licensing proposals are expected to have a positive impact on people of all protected characteristics living in and around HMOs and other PRS properties within scope. There tend to be a lower level of complaints from people with protected characteristics, although it is known that these people may often live in sub-standard rented accommodation and HMOs. These licensing schemes will enable the council to be more able to help and support those most in need.

5.9 Corporate Parenting

5.9.1 The licensing proposals could have a positive impact for care leavers as rented accommodation is potentially where these residents may end up being housed.

5.10 Consultation and Engagement

5.10.1 As a matter of public law, the duty to consult with regards to proposals to vary, reduce or withdraw services will arise in four circumstances:

- where there is a statutory requirement in the relevant legislative framework
- where the practice has been to consult, or, where a policy document states the council will consult, then the council must comply with its own practice or policy
- exceptionally, where the matter is so important that there is a legitimate expectation of consultation
- where consultation is required to complete an equalities impact assessment.

5.10.2 Regardless of whether the council has a duty to consult, if it chooses to consult, such consultation must be carried out fairly. In general, a consultation can only be considered as proper consultation if:

- comments are genuinely invited at the formative stage
- the consultation documents include sufficient reasons for the proposal to allow those being consulted to be properly informed and to give an informed response

- there is adequate time given to the consultees to consider the proposals
- there is a mechanism for feeding back the comments and those comments are considered by the decision-maker / decision-making body when making a final decision
- the degree of specificity with which, in fairness, the public authority should conduct its consultation exercise may be influenced by the identity of those whom it is consulting
- where relevant and appropriate, the consultation is clear on the reasons why and extent to which alternatives and discarded options have been discarded. The more intrusive the decision, the more likely it is to attract a higher level of procedural fairness.

1.10.3 The Housing Act 2004 also requires local housing authorities to undertake a public consultation on proposed selective licensing schemes as well as additional HMO licensing schemes. Non-statutory guidance suggests this should be for a period of at least 10 weeks.

1.10.4 Due to differences in the designation process between additional and selective licensing, (which are described later in this report), the timescales before designation and subsequent implementation may not be the same. However, as both proposals are part of the overall borough strategy towards the private rented sector and due to the complexity and cost of the consultation process, it is considered appropriate to combine the proposals for both types of licensing into a single consultation, commencing at the same time.

1.10.5 This report therefore seeks approval to commence a public consultation of 12 weeks on the proposals for additional and selective licensing, based upon the business case that is described in part 2 of this report.

1.10.6 Consultation approach:

- The consultation will consist of an online questionnaire and a summary consultation document which will be published on engage.barnet.gov.uk
- The summary consultation document, which will be drafted following the decisions of this Committee, will set out the proposals and how we came about this decision. It will also include an outline of questions we are asking within online questionnaire
- Engage Barnet will also include a link to the fuller detailed explanation of the proposals, including the full evidence base upon which the decision has been taken, available through the council's website. This full consultation document which runs to 180 pages is provided as a background paper to this report
- Paper copies and an easy-read version of the consultation will also be made available on request.
- Further face to face discussion groups (if possible) will be conducted with those residents and stakeholder most affected by the proposals
- The consultation will have a wide reaching communication programme including promotion via the council's residents e-newsletter magazine, Barnet First; Communities Together Network newsletter; the council's website; Twitter; Facebook.
- Tenants, landlords, agents and other relevant key stakeholders will be invited to take part in the consultation.
- The consultation will also be promoted in neighbouring authorities as there may be cross boarder implications for residents and businesses.

1.10.7 It is proposed that, as with the previous consultation for the existing additional licensing scheme that analysis of the survey reposes, report writing and face to face engagement will be conducted by an external agency, in order to ensure impartiality

5.11 Insight

5.11.1 The statutory requirements and government guidance requires local housing authorities to take decisions relating to additional and selective licensing based upon evidence in relation to the specific areas in which they are proposed to be designated. A detailed analysis of all relevant matters for both proposed schemes has been undertaken and is set out in Section 8 – the Evidence chapter of the Full consultation and evidence base (see background papers)

5.11.2 The analysis has used data from a wide range of recognised sources, including the GLA data store and the Office for National Statistics (ONS), as well as the environmental health Idox Uniform database for private sector housing.

5.11.3 Depending upon the specific guidance, data has been analysed to provide both long term trends and the current position, as required for the relevant criterion.

5.11.4 Depth of data and accuracy have been considered to ensure that the conclusions reached are as robust as possible and to give confidence for both publishing for public consultation and if necessary, submission to the Secretary of State for consent.

5.11.5 Support in compiling data was provided from both the Intelligence and Insight Hub and the Regulatory Services Community Protection (Regulation) Analyst within Re.

5.11.6 Should the proposed public consultation take place, the results will be analysed by the external agency employed to undertake the consultation and an in depth report will be produced to assist in considering if any of the proposals should be changed or amended, before submission to the committee again for approval to make the designations.

6 BACKGROUND PAPERS

6.1 Previous Decision – Housing Committee 2nd February 2015 -resolved to consult on the proposals for an additional licensing scheme.
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=699&MID=7937#AI11020>

6.2 Previous Decision – Housing Committee 2nd February 2016 Decision Item 7 – resolved to designate a borough-wide additional licensing scheme.
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=699&MId=8269&Ver=4>

6.3 Housing Act 2004. <https://www.legislation.gov.uk/ukpga/2004/34/contents>

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

6.3 Full consultation and evidence base.