	<h2 style="margin: 0;">Housing and Growth Committee</h2> <p style="margin: 0;">13th June 2022</p>
Title	<h3 style="margin: 0;">Private Sector Housing Licensing Schemes - Phase 2</h3>
Report of	Deputy Chief Executive Cath Shaw
Wards	Childs Hill, Cricklewood, Edgware, Edgwarebury, Finchley Church End, Golders Green, Hendon, Mill Hill, West Finchley, West Hendon
Status	Public
Urgent	No
Key	Yes
Enclosures	Appendix 1 – Draft full consultation business case including indicative fees and licence conditions
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Summary

This report seeks approval from the Housing and Growth Committee to commence a public consultation for the proposal to implement a second selective licensing scheme for private rented properties in ten wards, subject to subsequent confirmation by the Secretary of State.

Officers Recommendations

1. That the committee approve the commencement of a minimum 12 week public consultation on the proposal to introduce a selective licensing scheme as described in part 2 of this report.
2. That the committee note that subject to the above consultation taking place, a future report will be brought to the committee setting out the results of the statutory consultation and potentially seeking further approval to implement the licensing scheme, subject to confirmation by the Secretary of State.

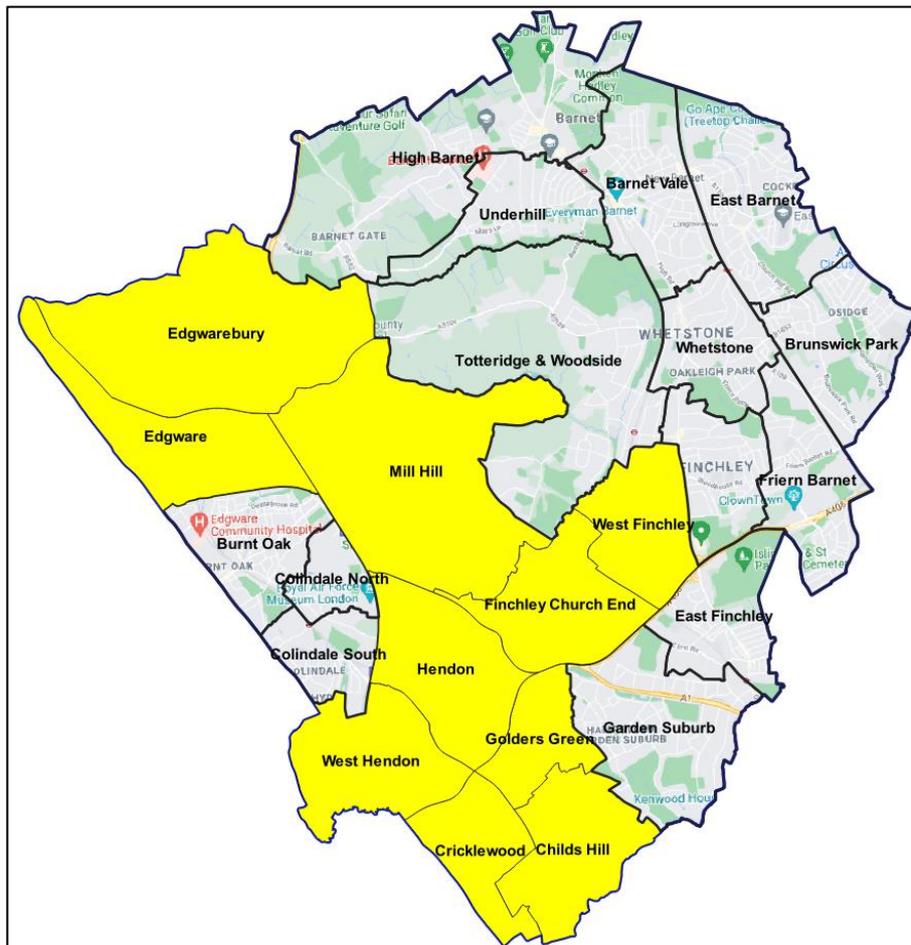
1. WHY THIS REPORT IS NEEDED

- 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 in 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.

Selective Licensing for private rented properties (other than houses in multiple occupation)

- 1.4 There are many privately rented properties that are in poor condition and/or badly managed, thus putting tenants at risk and also being detrimental to the neighbourhood, due to the physical appearance, the effects of anti-social behaviour of occupiers and visitors to the properties and crime. 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 criterion are met and when used alongside other strategies and initiatives that will together improve such issues in the private rented sector. Selective licensing enables local housing authorities to apply conditions to licences that will help to improve standards of accommodation and management of the property.
- 1.5 A review of the private rented sector in the borough was undertaken in 2020/21, following which it was believed there was a case for introducing selective licensing schemes in several old wards under the previous ward boundary system. A phased implementation of selective licensing schemes was proposed in the broadly equivalent new wards, with three new wards in phase one and two further phases for an additional six wards.
- 1.6 A public consultation was conducted between August and November 2021 for this proposal, along with a renewed borough-wide additional licensing scheme for houses in multiple occupation (HMOs).
- 1.7 Following the consultation it became possible to convert property condition data previously held against old ward boundaries to match the new ward boundary system, which resulted in some changes in the overall profile of which wards were the worst for housing conditions, with a total of thirteen new wards now falling within scope, rather than the nine previously believed to be the case.

- 1.8 It was therefore recommended to the committee that the first phase of selective licensing for the new wards of Burnt Oak, Colindale North and Colindale South be implemented on the criterion of deprivation, (along with borough-wide additional licensing for HMOs), but that a further public consultation be conducted for a revised phase two selective licensing proposal.
- 1.9 Additional licensing is due to come into operation later in 2022, with phase one of selective licensing proposed to come into operation early in 2023.
- 1.10 This report now seeks approval to undertake a public consultation on a phase 2 of selective licensing for the ten new wards below and shown in Map 1:
- Childs Hill
 - Cricklewood
 - Edgware
 - Edgwarebury
 - Finchley Church End
 - Golders Green
 - Hendon
 - Mill Hill
 - West Finchley
 - West Hendon



Map 1. Wards in the proposed selective licensing scheme.

- 1.11 If it is subsequently approved to proceed, due to the size of the scheme, the Housing Act 2004 requires that the scheme must be submitted to the Secretary of State for confirmation.

2 REASONS FOR RECOMMENDATIONS

- 2.1 The recommendations of this report are consistent with the Barnet Housing Strategy 2019 – 2024:
- The strategy commits 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.

Selective Licensing

- 2.2 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 (ASB);
 - poor property conditions;
 - high levels of migration;
 - high level of deprivation;
 - high levels of crime.
- 2.3 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. The detailed analysis of the housing stock and housing stressors to determine which of these criteria are applicable in Barnet undertaken for the 2021 consultation has been refreshed to reflect the new ward boundaries. However, the property condition and complaint data used still covers the same five-year period (April 2015 to March 2020). The details of this analysis are in the full consultation business case which is in Appendix 1.
- 2.4 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 business case considers alternatives and has determined that the proposed designation is 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.

- 2.5 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.
- 2.6 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.
- 2.7 The proposed designation is consistent with the activities set out in the council's Housing Strategy, as well as the Barnet Plan, Homelessness and Rough Sleeping Strategy, Local Plan and Community Safety Strategy, and when used in combination will result in the improvement of the private sector in the designated areas.
- 2.8 It should be noted that, as well as the criteria in paragraph 2.2, there are further additional criteria to be considered for selective licensing, which are described in the following paragraphs.
- 2.9 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).
- 2.10 The 2021 Census data has yet to be published and the last Census in 2011 was based upon the old ward boundaries and so is not directly comparable. The stock analysis undertaken, 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 and the local land and property gazetteer (LLPG). None of the proposed wards in phase 2 have a level of private rented sector (PRS) properties below 19% of the total housing stock, meaning that all phase 2 wards would be eligible for designation for selective licensing, subject to fulfilling other criteria. If the 2021 Census data has been published before consultation is

commenced, the size of the PRS will be reviewed against the council data and if there is any significant impact on these proposals, appropriate adjustments will be made accordingly.

Application to the Secretary of State for Confirmation

2.11 The Secretary of State gives local authorities general approval, subject to public consultation of at least 10 weeks, to the declaration of selective licensing schemes, except in the following circumstances:

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 confirmation.

2.12 The ten wards proposed for designation under phase 2 are collectively greater than both 20% of the geographical area and 20% of the borough PRS and so will require Secretary of State confirmation. The three wards previously approved in phase 1 are collectively below both these triggers and so are able to proceed without any further confirmation.

2.13 The case for selective licensing needs to be made on an area-by-area basis not by considering the borough as a whole. It is usual practice that ward boundaries are chosen to delineate the areas selected. Blanket selective licensing designation across a whole borough is unlikely to receive approval from the Secretary of State as such action would not be appropriate in certain wards given the housing conditions.

2.14 Each of the criteria have been considered in turn to determine if a designation would be applicable under them for each ward. The full consultation business case describes the process used to do this. The result is that the applicable criterion for designation for all ten wards is poor property conditions. However, in addition, the data suggest that six of the wards also meet the test for designation under ASB and eight of the wards also meet the test for designation under crime.

2.15 Therefore, the principal grounds for designation of all ten wards is to improve poor property conditions, although reduction of ASB and crime in the relevant wards will be further aims of the scheme.

Poor property conditions

2.16 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.
- 2.17 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.
- 2.18 The outcome of the designation would be a general improvement of property conditions in the designated area within the lifetime of the designation.
- 2.19 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

- 2.20 The Valuation Office Agency has only published property age data up until 2015. Based upon old wards, Childs Hill had 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 had the largest numbers of these older properties. Altogether, around 60% of dwellings in Barnet were built pre-1939.
- 2.21 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 prior to 1945. Only 15% were in properties that were built post 1979.
- 2.22 The greatest number of category 1 hazards found in pre 1945 properties were in the old wards of Childs Hill, West Hendon, Golders Green and West Finchley.

Number of private rented properties

- 2.23 As the 2021 Census has yet to be published, 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.
- 2.24 Analysis of multiple data sets, including housing benefits, council tax, environmental health complaints and inspections, a property survey and the three national tenancy deposit schemes has identified a total of approximately 42,203 privately rented properties. The

local land and property gazetteer (LLPG) held records of around 159,785 dwellings in January 2022, so the PRS is now estimated at 26.4% of all housing in the borough.

Property condition complaints

- 2.25 The council received 7,503 complaints about 5,793 properties in the PRS (excluding specific HMO related complaints which may link to properties under other licensing schemes) in the period between April 2015 and March 2020. (Note: data has not been analysed since March 2020 as the effects of the COVID-19 pandemic make this data unrepresentative.) This is a significant number of complaints, which range from serious disrepair to nuisance such as accumulations of rubbish and pests. The wards proposed for designation are generally those with the greatest number of properties with such complaints
- 2.26 The new wards of Hendon, Childs Hill, West Hendon, Burnt Oak, Mill Hill, Edgware, Friern Barnet, West Finchley, Finchley Church End, East Barnet and Golders Green are all above average for the total number of complaints received.
- 2.27 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).
- 2.28 The ward with the highest number of complaints was Hendon. Childs Hill, West Hendon, Burnt Oak, Friern Barnet, West Finchley, Edgware, Finchley Church End, Golders Green and Mill Hill are all also above average. When considering the number of properties with complaints as a proportion of the PRS in each ward, the profile changes somewhat, with both Edgwarebury and Cricklewood also becoming above average.
- 2.29 West Hendon, Childs Hill, Burnt Oak, Edgware, Hendon, West Finchley, Golders Green, Mill Hill, Finchley Church End, Friern Barnet, Edgwarebury and Cricklewood were all above average for cases that resulted in formal action.
- 2.30 Property condition complaints were analysed on the basis of:
- Numbers of complaints, actions, formal actions
 - Numbers of unique properties with complaints, actions, formal actions
 - Numbers of unique addresses with complaints, actions and formal actions as a percentage of the PRS in the ward

Nuisance complaints

- 2.31 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.

- 2.32 Hendon had the greatest number of these complaints, with West Hendon, Childs Hill, Mill Hill, Burnt Oak, Edgware, Friern Barnet, West Finchley, East Barnet, Finchley Church End, and Cricklewood Wards being above average.
- 2.33 Nuisance complaints were analysed using the same criteria as for property condition complaints.

Category 1 and 2 hazards

- 2.34 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.
- 2.35 Hazards were analysed under the following criteria:
- Total number of hazards
 - Number of category 1 hazards
 - Number of high rated category 2 hazards
 - Number of unique addresses with hazards
 - Average number of category 1 and high rated category 2 hazards per address
 - Number of unique addresses with hazards as a percentage of the PRS in each ward
- 2.36 HHSRS inspections identified a total of 3,058 hazards between 2015 and 2020. West Hendon, Childs Hill, Hendon, Burnt Oak, Edgware, West Finchley, Finchley Church End, Cricklewood, East Barnet, Golders Green and Friern Barnet were above average.
- 2.37 When looking at the number of hazards in unique addresses as a percentage of the PRS in each ward, Edgwarebury and Mill Hill were also above average.
- 2.38 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.

Enforcement actions

- 2.39 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.
- 2.40 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 unique addresses with notices as a percentage of the PRS in each ward

2.41 There was a total of 552 notices served in the period. West Hendon had significantly the highest number of notices. Childs Hill, Burnt Oak, West Finchley, Finchley Church End, Hendon, Golders Green, Brunswick Park and Edgwarebury were all average or above average.

2.42 Looking at the numbers as a percentage of the PRS in each ward, Edgwarebury, Cricklewood and Mill Hill were also above average.

Property condition index

2.43 When all the 34 data sets for complaints, category 1 and 2 hazards and enforcement actions are analysed, it shows that the wards of West Hendon, Burnt Oak, Childs Hill, Hendon, West Finchley, Edgware, Finchley Church End, Golders Green Mill Hill, Cricklewood and Edgwarebury are all above average for these combined 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 34 would mean a ward was average for Barnet across all indicators. Table 1 shows a table of the total index for each ward. The wards with scores shaded red (darkest shading) are all above average.

2.44 Note that Burnt Oak Ward ranks second in this list but has already been approved for designation under the deprivation criterion in phase one of selective licensing. This leaves ten wards as being above the Barnet average and thus indicating the worst property conditions.

Table 1. Total poor property condition index for all wards.

New ward	COMBINED INDEXES
West Hendon	63.05
Burnt Oak	56.35
Childs Hill	52.23
Hendon	49.39
West Finchley	42.34
Edgware	41.46
Finchley Church End	39.63
Golders Green	38.98
Mill Hill	38.66
Cricklewood	36.61
Edgwarebury	36.27
East Barnet	33.83
Friern Barnet	33.73
Brunswick Park	27.18
Woodhouse	27.12
Barnet Vale	25.41
High Barnet	24.93
Colindale South	24.73
Underhill	24.03
Colindale North	23.99
Garden Suburb	21.18
East Finchley	21.16
Whetstone	20.76
Totteridge and Woodside	16.88

2020 property survey

- 2.45 A 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 of the unknown properties will have been privately rented also.
- 2.46 Garden Suburb, Barnet Vale, Edgwarebury, Childs Hill, Edgware, Cricklewood, High Barnet, Burnt Oak, Golders Green, East Finchley and Hendon were above average for the percentage of PRS properties that were identified as having poor conditions. However, caution should be applied in analysing this data due to sample sizes across the wards.

- 2.47 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 ten wards proposed.
- 2.48 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 1 sets out the conditions that will be applied to licences.
- 2.49 Utilising complaint data, the survey data and data in a Shelter report¹ on housing conditions, it is estimated that between 37.6% and 61% of PRS properties may have category 1 or 2 hazards. This projects to a total of between 15,905 and 25,381 PRS properties across the ten wards.

Anti-social behaviour

- 2.50 To show that anti-social behaviour is a relevant criterion for the designation of a Selective Licensing scheme, it must be demonstrated that the area is experiencing a significant and persistent problem caused by anti-social behaviour (ASB).
- 2.51 Guidance suggests the authority should consider whether private sector landlords in the designated area are not effectively managing their properties so as to combat incidences of anti-social behaviour caused by their tenants, or people visiting their properties and in particular the area suffers from anti-social behaviour as a result of this failure, or because that failure significantly contributes to that problem.
- 2.52 For these purposes, the guidance suggests ASB includes acts of (but not limited to):
- intimidation and harassment of tenants or neighbours;
 - noise, rowdy and nuisance behaviour affecting persons living in or visiting the vicinity;
 - animal related problems;
 - vehicle related nuisance;
 - anti-social drinking or prostitution;
 - illegal drug taking or dealing;
 - graffiti and fly posting;
 - and litter and waste within the curtilage of the property
- 2.53 Between April 2015 to March 2020 there was a total of 7,932 ASB complaints recorded by the council and police. Hendon, Colindale South, Childs Hill, West Hendon, Finchley Church End, Friern Barnet, Edgware, West Finchley, Golders Green and Burnt Oak are above average.
- 2.54 Comparison of this data with the properties identified as being in the PRS, shows the ASB cases that are either directly associated with or in the close vicinity. Colindale South, Hendon, Finchley Church End, Friern Barnet, Childs Hill, Edgware, West Hendon, West Finchley, Colindale North and Burnt Oak are all above average for this measure.

¹ https://landlordlawblog.co.uk/wp-content/uploads/2014/03/6430_04_9_Million_Renters_Policy_Report_Proof_6_opt.pdf

- 2.55 Looking at the rate of ASB complaints per ward compared to the number of PRS properties per ward shows that Colindale South, Colindale North, Friern Barnet, Edgware, Finchley Church End and Hendon are above the average.
- 2.56 Analysis of the combined ASB data across a total of three measures shows that six of the proposed wards for designation for selective licensing are above average. Table 2 shows all those wards above average highlighted in red, with the ten proposed designated wards' names in bold. ASB provides supporting evidence for the case for selective licensing in those six wards and conditions will be applied that address potential ASB issues.

Table 2. Total ASB indexes for all wards.

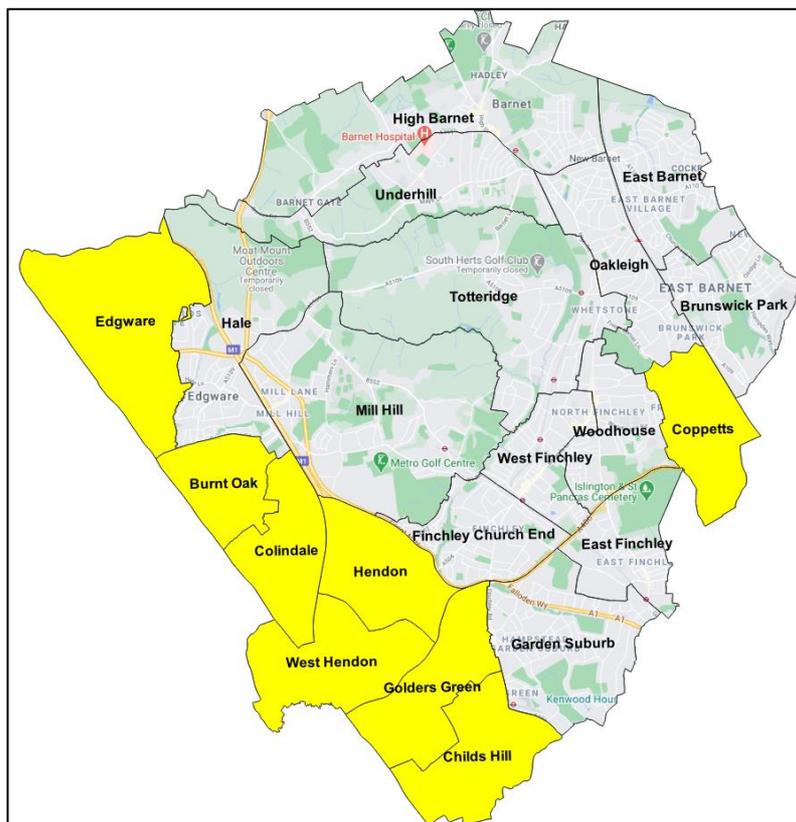
New ward	Combined Indexes - ASB
Hendon	6.09
Colindale South	6.92
Childs Hill	3.89
Finchley Church End	4.09
Friern Barnet	4.01
West Hendon	3.66
Edgware	3.94
West Finchley	3.05
Burnt Oak	3.09
Colindale North	3.84
Golders Green	2.68
Woodhouse	2.60
East Barnet	2.62
Mill Hill	2.68
Barnet Vale	2.51
East Finchley	2.29
Cricklewood	2.24
Brunswick Park	1.91
Totteridge and Woodside	1.76
Garden Suburb	1.74
Edgwarebury	1.68
Underhill	1.74
High Barnet	1.41
Whetstone	1.17

Crime

- 2.57 To show that crime is a relevant criterion for the area(s) proposed for a selective licensing designation, it must be demonstrated that the area suffers from high levels of crime.
- 2.58 Guidance suggests the authority should have regard to whether the area has displayed a noticeable increase in crime over a relatively short period, such as in the previous 12

months; whether the crime rate in the area is significantly higher than in other parts of the local authority area, or that the crime rate is higher than the national average. In particular, the local housing authority may want to consider whether the impact of crime in the area affects the local community and the extent to which a selective licensing scheme can address the problems.

- 2.59 Metropolitan Police statistics for the period January 2021 to January 2022 show a 3.1% increase in total offences of all offence types, from the previous 12 months in Barnet compared with a 4.9% increase for the whole of London.² For residential burglary, which significantly affects the local community, there was decrease of 10.5% compared to a 7.62% decrease for London.
- 2.60 In 2020/21 Barnet had the 6th lowest violent crime rate in London at 21.3 offences per 1,000 population, compared to 27.12 per 1,000 for London.
- 2.61 Map 2 shows the distribution of crime across wards in 2020/21 where total crime in the ward is above the average for the borough or, where there was a percentage increase in crime in the ward that was more than that of the whole Metropolitan Police Force. This data is only available against the old wards. In total 8 out of 21 old wards met this criterion and are shaded yellow. These wards are largely equivalent to the new wards (or parts of the new wards) of Edgwarebury, Edgware, Burnt Oak, Colindale North, Colindale South, West Hendon, Hendon, Cricklewood, Golders Green, Childs Hill and Friern Barnet.



Map 2. Distribution of crime above the average for Barnet by ward over a 12-month period.

² <https://www.met.police.uk/sd/stats-and-data/met/crime-data-dashboard-previous/>

- 2.62 Analysis of crime data looked at total crime cases, total crime cases associated with likely SFOs, residential burglary in potential SFOs and all crime and residential burglary cases linked to SFOs as a percentage of the PRS.
- 2.63 Across the five criteria, the wards of Childs Hill, Burnt Oak, Hendon, West Hendon, Friern Barnet, Mill Hill, Finchley Church End, Brunswick Park, Cricklewood, Edgware and West Finchley feature above average. Crime is a supporting factor to designation under property conditions in the eight wards in bold in Table 3. All wards above the Barnet average are highlighted in red. Licence conditions will be applied under the proposed scheme that address potential crime issues.

Table 3. Total crime indexes for all wards.

New ward	COMBINED INDEXES
Childs Hill	7.71
Burnt Oak	6.82
Hendon	6.74
West Hendon	6.66
Friern Barnet	6.37
Mill Hill	6.07
Finchley Church End	5.55
Brunswick Park	5.48
Cricklewood	5.39
Edgware	5.28
West Finchley	5.03
East Barnet	4.97
Barnet Vale	4.91
Woodhouse	4.85
Underhill	4.75
Garden Suburb	4.57
Golders Green	4.34
East Finchley	4.30
Colindale North	4.16
Edgwarebury	4.02
Whetstone	3.88
Colindale South	3.76
Totteridge and Woodside	3.34
High Barnet	3.16

- 2.64 Table 4 shows a summary of the criteria that have been met for designation of each ward.

Table 4. Criteria for designation for selective licensing.

New ward	Index above average for:		
	Housing conditions	Anti-social behaviour	Crime
Barnet Vale			
Brunswick Park			✓
Burnt Oak	✓	✓	✓
Childs Hill	✓	✓	✓
Colindale North		✓	
Colindale South		✓	
Cricklewood	✓		✓
East Barnet			
East Finchley			
Edgware	✓	✓	✓
Edgwarebury	✓		
Finchley Church End	✓	✓	✓
Friern Barnet		✓	✓
Garden Suburb			
Golders Green	✓		
Hendon	✓	✓	✓
High Barnet			
Mill Hill	✓		✓
Totteridge and Woodside			
Underhill			
West Finchley	✓	✓	✓
West Hendon	✓	✓	✓
Whetstone			
Woodhouse			

Selective licensing as part of the overall housing strategy

2.65 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

- 2.66 The selective licensing scheme must be consistent with the council's 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.
- 2.67 The council's Housing Strategy addresses the first of the three points listed in paragraph 2.65. 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 the 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.
- 2.68 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.
- 2.69 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.
- 2.70 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.
- 2.71 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.
- 2.72 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).
- 2.73 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.

- 2.74 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.
- 2.75 A key strand of the selective licensing strategy will be the encouragement of landlords to achieve accreditation, as has previously been with the additional licensing scheme. Advice is available to landlords and tenants. Resources are discussed in part 5 of this report.
- 2.76 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.
- 2.77 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 and Brent have selective licensing schemes covering some wards. Camden has previously sought views on proposals to introduce selective licensing. All neighbouring boroughs will be consulted on the proposals as part of the public consultation.

Proposed Designation

- 2.78 The analysis has determined it would be appropriate to make a designation under the category of housing conditions for the ten wards.
- 2.79 It is now proposed to make one single selective licensing designation for phase two, rather than having a phase 2 and phase 3 as was proposed previously.
- 2.80 The designation will require Secretary of State confirmation because independently and when considered together the selective licensing scheme in phase one, which is expected to be in place by early 2023, the combined percentage of private rented properties and geographical area will be greater than 20%.

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.
- 3.2 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:

- 3.2 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.
- 3.3 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. In the 2021 consultation for phase one of property licensing in Barnet, landlords and letting agents were far less likely to support the introduction of schemes than tenants and other residents. Reasons for supporting licensing schemes include that they 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 rented properties, nor efficient for the council to rely simply on being reactive to complaints and to undertake low levels of proactive visits to properties. Many privately rented properties 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 properties in an area also creates a level playing field where all occupants 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.
- 3.5 Doing nothing is therefore not a preferred approach for the wards in the proposed selective licensing scheme.

Increase enforcement activity:

- 3.6 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, this does not ensure the improvement of all privately rented properties in the area that a selective licensing scheme would enable.
- 3.7 This approach would also not enable the best use of intelligence that would be obtained through selective licensing, which will enable better work prioritisation and risk assessment.

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

- 3.7 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 the ten proposed wards. These areas also suffer to varying degrees from issues of ASB and crime. 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:

- 3.8 The extent of the problem of poor conditions in the proposed wards is spread across the area and not restricted to specific and distinct streets or terraces of housing. Therefore, targeted renewal of properties is not seen as a practical solution to resolving the issues.

Alternative measures and tools:

- 3.9 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 implementation of the options discussed above.

The Housing Health and Safety Rating System (HHSRS):

- 3.10 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.
- 3.11 Conversely, selective licensing requires the landlord to come forward and obtain a licence and applies conditions that must be met in the property, 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):

- 3.12 These have been considered in several 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.

Housing and Planning Act 2016:

- 3.13 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. These powers are complementary to selective licensing.

Landlord Accreditation:

- 3.14 Barnet already promotes the London Landlord Accreditation Scheme (LLAS) through HMO licensing, Empty Property Grant conditions and as an alternative to payment of notice charges.
- 3.15 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. LLAS 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 over 1,000 accredited landlords in Barnet under LLAS. 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 licensing schemes.

- 3.16 In view of the numbers of PRS dwellings experiencing poor conditions 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 and a reduction in the levels of ASB and crime associated with the PRS in the designated areas, within the five-year lifetime of the designation.
- 3.17 All licensed properties will be inspected within the duration of the scheme, or wherever possible prior to the issuing of a licence. 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 confirmation 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

- 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 phase one, 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 The consultation will include the following approaches. The strategy will be guided by the agency appointed:
- Direct emailing
 - Council website
 - Local media,
 - Forums/focus groups (likely to be on line)
 - Social media
 - Consultation with neighbouring boroughs
- 4.4 For phasing and resourcing reasons associated with the already approved additional and selective licensing schemes, the consultation is expected to be launched around

September 2022 and will run for a period of a minimum of 10 weeks until at least December 2022. A longer consultation period is recommended.

- 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, which is expected to be around March 2023 depending on the committee cycle.
- 4.6 As the proposed wards cumulatively will cover more than 20% of the PRS and also 20% of the geographical area of the borough, once made, the designation must be sent to the Secretary of State for confirmation. The application 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.
- 4.7 For reasons of phasing and resourcing along with the other schemes, it is proposed the designation be made and submitted around August 2023 at the latest. This is assuming that a decision is received within eight weeks, then, following this, the designation can come into effect three months later. It is proposed that this would be around January 2024. i.e. 12 months after the phase one designation for Burnt Oak, Colindale North and Colindale South. Depending on the date of signing of the designation the data will be reviewed as necessary to ensure that there is no change in what the data is saying in the individual wards.

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:

- **Clean, Safe and Well Run**

Address issues of anti-social behaviour such as frauds, fly-tipping, noise nuisance and parking:

- Advise
- Mediate
- Enforce

- **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 selective licensing and completing a full consultation exercise has been borne by LBB and delivered by Re.
- 5.2.2 If the proposed licensing scheme is considered appropriate following consultation, a breakdown of the financial implications of introducing it will be presented to committee to consider the viability of the scheme in conjunction with the review of the consultation findings.
- 5.2.3 Indicative fees for selective licensing are set out in Appendix 1, which are based upon currently agreed fees and will be subject to usual annual fee reviews prior to implementation. 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, based upon current costs. 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.
- 5.2.4 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 if 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 considered 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.
- 5.2.5 No additional IT or property will be required to investigate the case or consult on the proposed licensing schemes.
- 5.2.6 Procurement of the external agency to conduct the consultation will be undertaken directly by Re.
- 5.2.7 By the time that the designation goes live in around January 2024, the transfer of Environmental Health service staff from Re back to the council will have taken place and so administration and enforcement of the licensing scheme will be undertaken by the council.
- 5.2.8 The scheme will require a very significant level of staffing for both administration and enforcement of potentially around 22,295 PRS properties. As this is in addition to the staffing required for additional licensing of over 3,000 houses in multiple occupation from August 2022, and 5,050 PRS properties under phase one of selective licensing in January 2023, it is essential that the introduction of phase two is programmed to allow for comprehensive recruitment and bedding in of those schemes and to prevent a risk of failure.
- 5.2.9 The legislation and guidance require licensing schemes to work alongside other strategies and initiatives to jointly achieve the outcomes of the licensing schemes. Should the schemes come into effect, Environmental Health 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 HB Law 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

5.3.1 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.

5.3.2 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.

5.3.3 The Selective Licensing of Houses (Additional Conditions) (England) Order 2015 introduced another route for designation of selective licensing –

(a) that the area contains a high proportion of properties in the private rented sector, in relation to the total number of properties in the area;

(b) that the properties referred to in sub-paragraph (a) are occupied either under assured tenancies or licences to occupy; and

(c) that one or more of the sets of conditions in articles 4 to 7 is satisfied

- Conditions in relation to housing conditions
- Conditions in relation to migration
- Conditions in relation to deprivation
- Conditions in relation to crime

5.3.4 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.

5.3.5 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.

- 5.3.6 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.
- 5.3.7 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).
- 5.3.8 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).
- 5.3.9 In relation to setting fees for the licences, the legislation states: 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 Part 3 houses (so far as they are not recoverable under or by virtue of any provision of that Chapter).

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.”

Once fees are set, the council is expected to review its fees and adjust them where necessary to reflect previous deficits or surpluses. 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.

- 5.3.10 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.
- 5.3.11 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.

5.3.12 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).

5.4 Insight

5.4.1 The statutory requirements and government guidance requires local housing authorities to take decisions relating to 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 scheme has been undertaken and is set out in Section 8 – the Evidence chapter of the full consultation business case (see Appendix 1)

5.4.2 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.

5.4.3 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.

5.4.4 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 submission to the Secretary of State for consent.

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

5.4.6 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.

5.5 Social Value

5.5.1 The proposed introduction of a further selective licensing scheme 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 contact vulnerable people living in this accommodation and if necessary direct them to other services.

5.5.2 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.

5.5.3 The scheme 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.

5.6 Risk Management

- 5.6.1 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 introduction of the scheme. As described above, a thorough and detailed analysis of data from multiple sources has been compiled, aiming to ensure that each point has been considered in turn and is fully supported by the data. Selective licensing is not proposed in areas of the borough where the evidence does not strongly support the case for it.
- 5.6.2 There is a risk that there are broadly strong objections to the proposals in the consultation. 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. In the consultation for phase one, there was a relatively low response to the consultation of around 466. Most respondents were landlords who tended not to agree with the proposals. This is a consistent response from this sector to such schemes. 56% of private tenants responding did support the proposals and 55 % of owner occupiers responding also supported them. Evidence from other boroughs shows that most tenants and other residents have supported the introduction of schemes, although landlords and agents tend to be against the principle of such schemes.
- 5.6.3 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 into neighbouring boroughs as it is important to consider businesses, services and residents or neighbouring boroughs who may be affected.
- 5.6.4 In the case of *R (Moseley) v Haringey London Borough Council* [2015] 1 All ER 495, although not to do with 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.

- 5.6.5 There is also a risk that the designation for selective licensing submitted to the Secretary of State is refused, as happened to the London Borough of Croydon in 2021 . 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 designation. 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.

5.6.6 The court has also, in the past, removed conditions that a council applied to its selective licensing scheme which it considered went beyond the power the authority had in relation to management and use or occupation of a house.

5.7 Equalities and Diversity

5.7.1 Equality and diversity issues are a mandatory consideration in the decision-making of the council.

5.7.2 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 has 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:

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

5.7.3 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:

- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- 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;
- 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.

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

5.7.5 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 to the need to:

- (a) Tackle prejudice, and
- (b) Promote understanding.

5.7.6 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

5.7.7 An Equalities Impact Assessment (Eqia) has been drafted for phase two and will be reviewed once the consultation exercise has concluded to consider the feedback.

5.7.8 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.

5.7.9 The licensing proposals should have a positive impact on people of all protected characteristics living in and around 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. This licensing scheme will enable the council to be more able to help and support those most in need.

5.8 Corporate Parenting

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

5.9 Consultation and Engagement

5.9.1 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.

5.9.2 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.

5.9.3 The Housing Act 2004 also requires local housing authorities to undertake a public consultation on the proposed selective licensing scheme. Non-statutory guidance suggests this should be for a period of at least 10 weeks.

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

5.9.5 Consultation approach:

- The consultation will consist of an online questionnaire, a summary consultation document, full consultation business case and frequently asked questions 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 over 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.
- Discussion groups will be conducted with those residents and stakeholders 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, and direct mailing to interested parties.
- 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 border implications for residents and businesses.

5.9.6 It is proposed that, as with the previous consultation for selective and additional licensing schemes that analysis of the survey responses, report writing and face-to-face engagement will be conducted by an external agency, in order to ensure impartiality.

5.10 Environmental Impact

5.10.1 There are no direct environmental implications from noting the recommendations, although if Phase 2 is supported through consultation, this will improve the conditions of the private

rented sector in Barnet which in some circumstances will reduce the impact of these dwellings on the environment for example through the provision of loft insulation.

6 BACKGROUND PAPERS

- 6.1 Previous Decision – Housing and Growth Committee 14th June 2021 Decision Item 12 - resolved to consult on the proposals for an additional licensing scheme and three selective licensing schemes.
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=10845&Ver=4>
- 6.2 Previous Decision – Housing Committee 17th February 2022 Decision Item 10 – resolved to approve the designation of a borough-wide additional licensing scheme and a selective licensing scheme in Burnt Oak, Colindale North and Colindale South Wards.
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=10848&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>