



## Cabinet

<b>Title</b>	Selective Licensing Phase 2 Consultation Feedback
<b>Date of meeting</b>	12 <sup>th</sup> December 2023
<b>Report of</b>	Councillor Ross Houston, Deputy Leader and Cabinet Member for Homes & Regeneration
<b>Wards</b>	<i>Childs Hill, Cricklewood, Edgware, Edgwarebury, Finchley Church End, Golders Green, Hendon, Mill Hill, West Finchley, West Hendon</i>
<b>Status</b>	Public
<b>Key</b>	Key
<b>Urgent</b>	No
<b>Appendices</b>	<p>Appendix A – Schedule of consultation activity and coverage</p> <p>Appendix B – Executive Summary of Consultation Report</p> <p>Appendix C – Council response to issues raised in the consultation</p> <p>Appendix D – Summary of proposed changes to consultation proposals</p> <p>Appendix E – Proposed conditions for licenced properties</p> <p>Appendix F – Indicative proposed fees for selective licensing</p> <p>Appendix G – Objectives, targets, and reporting timetable for the proposed selective licensing scheme</p> <p>Appendix H – Draft designation for selective licensing Phase 2</p> <p>Appendix I – Designation communications plan</p>

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## Summary

This report is to inform Cabinet of the results of the public consultation into the proposed designation of a second phase of selective licensing for private rented properties in ten wards to ensure minimum standards for these properties. Following the consultation, it is proposed that the second phase of selective licensing is introduced, however the report highlights the key issues raised and outlines changes to the proposed scheme in response to comments received. The report highlights several risks raised in the consultation. If the making of the designation is approved, an application for confirmation from the Secretary of State for The Department for Levelling Up, Housing and Communities will be required, but only once officers and the Cabinet Member for Homes and Regeneration are satisfied that there is sufficient evidence of the successful implementation of Phase 1 of selective licensing and the existing mandatory and additional licensing schemes for HMOs and that the proposed scheme can be adequately resourced. This is anticipated to be no sooner than the end of 2024.

## Recommendations

### That Cabinet resolves to:

#### 1. Approve:

- a. the proposed changes to the original proposals following the consultation as set out in Appendix D,
- b. the conditions for licenced properties in Appendix E, and that these will also supersede the conditions approved for phase 1 of selective licensing approved by the Housing and Growth Committee on 13<sup>th</sup> June 2022,
- c. the indicative fees for property licensing in Appendix F,
- d. the objectives, targets, and reporting timetable in Appendix G,
- e. the communications plan in Appendix I,

#### 2. Approve the making of the designation for a selective licensing scheme in the proposed ten wards in Appendix H and confirm that Cabinet is satisfied:

- a. that the making of a single phase 2 selective licensing scheme for the proposed 10 wards is the appropriate course of action, and
- b. that the statutory grounds and requirements outlined in this report to introduce a selective licensing scheme have been met

- c. that it has considered other courses of action available to the council that might provide an effective method of achieving the objectives that the designation intends to achieve, and
- d. that it considers that making the designations will significantly assist the council to achieve those objectives.

- 3. **Agree** that a submission be made to the Secretary of State for The Department for Levelling Up, Housing and Communities requesting confirmation of the designation;
- 4. **Delegate** subject to recommendation 4, to the Deputy Chief Executive, in consultation with the Cabinet Member for Homes and Regeneration, responsibility for agreeing the final documentation requesting confirmation of the scheme to the Department for Levelling Up, Housing and Communities.
- 5. **Approve**, subject to receiving confirmation from the Secretary of State for the Department for Levelling Up, Housing and Communities for the proposed scheme to come into force no sooner than 3 months following receipt of confirmation.

## 1. Reasons for the Recommendations

### Introduction

- 1.1 The 2021 census shows that private renting in Barnet now amounts to 32.7% of housing tenure, with an overall increase of 39.7% compared to 2011. This growth is the 8<sup>th</sup> highest in London, where the average is just 28.5%.
- 1.2 The Housing Act 2004 enables local housing authorities to introduce licensing schemes for specified types of private rented accommodation and to apply conditions to the licence, designed to improve the standard and management of the property. A fee is payable by the licence holder. The two types of licensing scheme are additional licensing for houses in multiple occupation, and selective licensing for other privately rented properties. Analysis of the private rented sector (PRS) in Barnet has demonstrated that there is a need for such licensing schemes.
- 1.3 The council introduced a borough-wide additional licensing scheme for houses in multiple occupation on 27<sup>th</sup> October 2022. This scheme can run for a maximum of five years up to October 2027 and follows on from a previous scheme between July 2016 and July 2021.
- 1.4 The Housing and Growth Committee on 17th February 2022 approved the making of a designation for a selective licensing scheme under the deprivation criterion, in the wards of Burnt Oak, Colindale North and Colindale South (Phase 1), to be designated on an appropriate date in the future, subject to setting up of adequate resources. It was also important to allow the additional licensing scheme to bed in before making the designation. The designation has yet to be made due to delays in implementation of online licensing software, which is deemed essential to the efficient running of the scheme, and recruitment issues for the additional licensing scheme. It is anticipated the designation will be made in early 2024 and will come into effect three months later.
- 1.5 On 13th June 2022 the Housing and Growth Committee approved the undertaking of a further public consultation on a second proposed selective licensing scheme (Phase 2) and for the results of that consultation to be brought back to the committee and if deemed appropriate to seek further approval to implement the licensing scheme, which due to scale, would be subject to

confirmation by the Secretary of State for the Department for Levelling Up, Housing and Communities.

- 1.6 There is a legal requirement to consult on proposed schemes. Consultation should run for a minimum of 10 weeks. A public consultation on the new proposals was commenced, initially for 12 weeks on 22<sup>nd</sup> February 2023 and was extended, running for a total of 22 ½ weeks until 31<sup>st</sup> July 2023. Views on the proposals were invited via an online survey in SurveyMonkey. The extensive consultation was publicised widely, using various channels, both inside and outside the borough, including local press, Barnet First, Barnet Council's website, social media and direct emailing of interested parties. A full schedule of the consultation activity and coverage is in Appendix A.
- 1.7 This report sets out details from the consultation in Section 7, with a schedule of comments received and the council's response in Appendix C. Resulting amendments to the proposed schemes and licence conditions are set out in Appendix D. Some comments were made in the previous consultation that resulted in amendments to the proposed Phase 1 scheme and these were also incorporated in the Phase 2 proposals, so as a result the number of amendments resulting from this consultation are limited.
- 1.8 The report recommends that if Cabinet are satisfied that it is appropriate to do so, and taking into account the consultation feedback and current economic and private sector rental climates, they approve the designation of a new selective licensing scheme for the wards of Childs Hill, Cricklewood, Edgware, Edgwarebury, Finchley Church End, Golders Green, Hendon, Mill Hill, West Finchley and West Hendon, under the poor property conditions criterion. If approved, delegated authority is sought for the Deputy Chief Executive to sign the designations at an appropriate time, which would be once the existing additional licensing and Phase 1 of selective licensing are properly bedded in, adequately resourced and alongside mandatory HMO licensing shown to be working effectively.
- 1.9 Final confirmation of the implementation must be received from the Secretary of State for the Department of Levelling Up, Housing and Communities before it can commence no sooner than three months after confirmation is received.
- 1.10 The report also seeks the committee's approval of the proposed conditions and indicative fees for the selective licensing scheme, the objectives, targets, and reporting plan and the communications plan. (Appendices E, F and G).

#### **Why this scheme has been proposed**

- 1.11 Analysis of available data has shown that the PRS in the wards proposed for inclusion in the scheme are seen as suffering from the worst property conditions in Barnet, comparable to other wards. This data analysis is contained in the 13<sup>th</sup> June 2022 Housing and Growth Committee report (see background papers). There are a significant number of properties that it would be appropriate to inspect to determine if there are category 1 or category 2 hazards present. It is the intention to inspect those premises with a view to carrying out any necessary enforcement action. This action would be consistent with the council corporate plan and housing strategy and contribute to an improvement in the general housing conditions in those areas.
- 1.12 The resources required to inspect this many properties (estimated 25,250) are not available to the council without significant investment from the general fund. Licensing schemes are self-

funding through the fees levied, enabling a significant improvement in the PRS that would not otherwise be possible. This is further explained in Section 5 of this Report.

- 1.13 Supporting evidence was also identified to show that several of the proposed wards are above average for relevant measures of anti-social behaviour (ASB) and/or crime. Although the primary reason for designation of a selective licensing scheme is to improve poor property conditions, the scheme can also help contribute to other strategies to reduce ASB and crime in the wards.

#### Effects of implementing the scheme

- 1.14 The PRS analysis conducted for the pre-consultation report estimated 26.4% of households were privately rented across the borough and 31.94% across the ten wards in scope for selective licensing Phase 2. See Table 1.

Ward	LLPG Dwellings	Estimated PRS	% PRS
Hendon	9,159	3,748	40.92%
Childs Hill	8,665	3,255	37.56%
Golders Green	5,629	2,066	36.70%
West Hendon	6,735	2,317	34.40%
West Finchley	8,329	2,725	32.72%
Cricklewood	4,253	1,297	30.50%
Finchley Church End	8,092	2,445	30.22%
Edgware	7,470	2,020	27.04%
Mill Hill	7,215	1,600	22.18%
Edgwarebury	4,257	822	19.31%
<b>TOTAL</b>	<b>69,804</b>	<b>22,295</b>	<b>31.94%</b>

Table 1.

- 1.15 The above analysis was conducted prior to the 2021 Census and based upon extensive analysis of various existing data sources. The updated Census data is now published and shows that the level of private renting across the borough and especially in the ten wards in scope is now significantly greater than previously estimated. See Table 2. This likely means that the number of poor condition and poorly managed properties is even greater than anticipated.

Ward	All Households	Private rented	% PRS
Childs Hill	7908	3686	46.61%
Cricklewood	3848	1528	39.71%
Edgware	7113	2088	29.35%
Edgwarebury	4094	955	23.33%
Finchley Church End	7573	2842	37.53%
Golders Green	5164	2464	47.71%
Hendon	8273	3904	47.19%

<b>Mill Hill</b>	6730	1788	26.57%
<b>West Finchley</b>	7756	3199	41.25%
<b>West Hendon</b>	6460	2796	43.28%
<b>TOTAL</b>	<b>64,919</b>	<b>25250</b>	<b>38.89%</b>

Table 2.

- 1.16 The PRS across the ten wards is almost 39% of all residential accommodation (compared to 32.7% for the borough as a whole), amounting to 25,250 properties that will be in scope for licensing, compared to 22,295 in the previous estimates. This is a significant number of properties that will benefit from the improvements to management and maintenance that arise from inclusion in a selective licensing scheme.

#### **Implementation timetable**

- 1.17 As highlighted in the section 5, the Risk section of this report, consultees have raised concerns about implementing this scheme due to economic pressures on landlords and potentially tenants, as well as the ability of the council to resource a large scheme on top of the existing mandatory and additional licensing schemes for houses in multiple occupation and phase 1 of selective licensing in Burnt Oak, Colindale North and Colindale South. Some consultees have suggested phase 2 of selective licensing is not implemented until the additional licensing and phase 1 selective licensing schemes have ended, which would be approximately in early 2029.
- 1.18 The Housing and Growth Committee has previously decided not to implement selective licensing in two further separate phases after phase 1, but to undertake the recent consultation to implement selective licensing where poor property conditions is the predominant criterion as a single phase (Phase 2). This data analysis is contained in the 13<sup>th</sup> June 2022 Housing and Growth Committee report (see background papers). Cabinet is asked to confirm (recommendation 3 (a)) that it is satisfied that a further single phase of selective licensing, to be implemented, subject to considerations about effective implementation of other schemes, is the appropriate course of action.
- 1.19 If it is not considered that implementation of phase 2 at the proposed 12 months after the commencement of phase 1 is appropriate, Cabinet are requested to indicate any alternative implementation phases or timetable that they consider appropriate.

## **2. Alternative Options Considered and Not Recommended**

- 2.1 Alternative options were considered in section 3 of the report to Housing and Growth Committee on 13<sup>th</sup> June 2022. The reasons for not recommending these options remain valid.
- 2.2 One of those options is to do nothing. As discussed in section 7 of this report, of the 376 respondents to the consultation, the majority were opposed to the scheme, with the bulk of the respondents being private landlords, who do not want the scheme to go ahead at all, with some suggesting we should use existing powers. Whilst the council acknowledge the responses received from the consultation, the evidence held by the council highlights the issues in the condition and management of private sector accommodation in the ten wards in the borough, and therefore a selective licensing scheme to address poor property conditions in those wards remains a justifiable approach. To not proceed with the scheme is not therefore recommended.

2.3 Delayed implementation until after the current additional licensing scheme and phase 1 of selective licensing are complete in 5 years, as has been suggested in the consultation is discussed under the Risks heading in section 4 of this report and is not recommended.

### **3. Post Decision Implementation**

3.1 If Cabinet approve the making of the designation, then as described elsewhere in this report, no action will be taken until the Deputy Chief Executive, in consultation with the Cabinet Member for Homes and Regeneration, is satisfied that efficient delivery, robust enforcement and adequate resourcing is in place for the existing additional licensing scheme and proposed Phase 1 selective licensing scheme.

3.2 Once these safeguards are deemed to be met, which is not anticipated to be until early 2025 at the earliest, only then will the designation in Appendix H be signed.

3.3 Once the designation is signed, it will not come into effect without receiving confirmation from the Secretary of State for the Department of Levelling Up, Housing and Communities.

3.4 Following signing of the designation, an application will be made to the Secretary of State for confirmation, using the Department for Levelling Up, Housing and Communities (DLUHC) published application form.

3.5 In addition, the local housing authority must include with the application:

- A copy of the consultation document and the published summary of the responses;
- Details of the fees that will be charged;
- A copy of the Designation and minutes of the Council meeting resolving to make the designation;
- A copy of the local housing authority's strategy to ensure compliance with the scheme and enforcement against those who do not comply. It must also set out the level of compliance with other licensing schemes it operates, including mandatory Houses in Multiple Occupation licensing.

3.6 A decision in relation to an application for confirmation will take around 14 weeks from receipt, but processing applications may take longer if the DLUHC has not been given all the information required, or if further information or research are required, or if the case is complex.

3.7 The Secretary of State or delegated Minister will also take account when considering confirmation of a new scheme whether there has been sufficient compliance with other licensing schemes operating in the local housing authority area <https://www.gov.uk/government/publications/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities>. This may be done by reviewing the local housing strategy if available and considering the other courses of action that the local authority has taken alongside licensing.

3.8 It is expected that a local housing authority is able to demonstrate evidence of robust enforcement and a clear approach to ensuring compliance in its application. Demonstration of robust enforcement will help to evidence the grounds for introducing a new scheme.

3.9 If the application for confirmation is refused, then the scheme will not be able to proceed. There is no appeal against the Secretary of State's decision, although it can be subject to judicial review.

3.10 If the designation is confirmed by the Secretary of State, the earliest it can come into force is 3 months after. The introduction of the scheme may be delayed up to an additional 3 months, if

need be, to prepare for the scheme's implementation. There should not be an excessive delay between the consultation and the scheme's introduction, to ensure consultation requirements are met and persons who are likely to be affected by the designation have been consulted.

- 3.11 If the designation is confirmed it can run for up to five years, although it is not unusual for local authorities to renew expired schemes, as has been done with the additional licensing scheme for HMOs.
- 3.12 Once confirmed, the council must publish a notice of the designation within seven days and notify all those consulted on the proposed designation within two weeks.
- 3.13 Once the scheme has become operational the council must carry out a review from time to time. The council must continue to monitor the designation to show that it is achieving the desired effect. Appendix G sets out the objectives, targets and reporting timetable that is proposed to be used to meet this requirement.
- 3.14 Should the implementation timetable not be possible due to issues related to effective implementation, delivery and enforcement of the council's other licensing schemes and particularly as the government guidance indicates there must not be excessive delay between the consultation and the scheme's introduction, then a further report will be brought to Cabinet to consider next steps.

#### **4. Corporate Priorities, Performance and Other Considerations**

- 4.1 The Corporate Plan: Our plan for Barnet for 2023 - 2026, under the theme of 'Healthy, energy-efficient homes' states: "We must also work to improve the quality and energy efficiency of existing housing in the borough. We are investing in our own council housing, to improve fire safety and ensuring homes are healthy by tackling damp and mould, as well as renewing kitchens, bathrooms and windows. We are also seeking to lead the way in making our homes more energy efficient and fit for the future. We want to encourage others to do the same, including by requiring private sector landlords to demonstrate they meet minimum standards through our licensing schemes."
- 4.2 Under the theme of 'Homes for all', the Plan states: "London's housing crisis is felt most keenly by those who have no home at all, and Barnet, like all councils, faces major challenges to reduce the harms associated with this. We will continue to invest in preventing and reducing homelessness and take steps to end rough sleeping. We will focus on working in partnership to better understand the root causes of homelessness, prevent recurring homelessness, give appropriate advice and support to those in need, and make sure there is sufficient supply of accommodation."
- 4.3 The new Housing Strategy 2023-2028, Priority 4 is: To raise quality and standards in the private rented sector. Our ambition to deliver this is that: "We will make effective use of property licensing across the borough, seeking to extend it where it is identified to be the most appropriate way to improve living conditions for private tenants."

##### **Corporate Performance / Outcome Measures**

- 4.4 There are currently no specific measures relating to this proposal.

##### **Sustainability**

- 4.5 There are no sustainability issues associated with this report.

##### **Corporate Parenting**

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



## **Risk Management**

- 4.7 Several of the risks highlighted in the Housing and Growth Committee report of 13<sup>th</sup> June 2022 are applicable to this report and are included below. In addition, there are further risks highlighted.
- 4.8 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, the consultation ran longer than originally proposed for a total of 22 ½ weeks duration, rather than the minimum 10 weeks required. The consultation extended into neighbouring boroughs including businesses, services and residents or neighbouring boroughs who may be affected.
- 4.9 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.
- 4.10 Additionally, the degree of specificity with which the public authority should undertake the consultation might be dependent on the identity of those being consulted.
- 4.11 There is a risk that the designation for selective licensing submitted to the Secretary of State is refused, due to a perceived failure to adequately consult. The consultation was conducted with advice from the council's Consultation and Engagement Manager and is thought to meet the requirements for thorough consultation. For Phase 2 the legislation and guidance has been afforded due consideration and relevant data analysed to support the case for the proposed designation.
- 4.12 The feedback from the consultation has been fully considered and the response to the issues raised is set out in Appendix C. Overall, the majority of respondents opposed the introduction of the selective scheme. The majority of responses and objections were received from landlords and their agents. Further detail is included in section 7 of this report. There is a risk of legal challenge if the results of the consultation are not carefully considered before deciding to proceed. This issue has been discussed with HB Public Law and the council's Consultation and Engagement Manager and it is deemed that the data and reasons established that led to the proposal in the consultation remain sound and although there are strong representations from one category of respondent, these do not undermine the original intentions to introduce the scheme. Amendments have been made where deemed necessary in response to comments received (Appendix D).
- 4.13 Two common themes emerged from responses by landlords and agents. The first is that the costs of the licensing scheme will be passed on by them to their tenants, thus making rents even more challenging in the current economic climate. The second is that the additional costs and perceived bureaucracy will cause landlords to leave the rental market, thus reducing the number of available

homes to rent. Respondents suggested that both these issues will lead to an increase in homelessness.

- 4.14 The first of these issues was addressed in the consultation documentation. Council's operating large selective licensing schemes have been consulted about these issues. Although an increase in rents has been noted since the COVID pandemic, it is suggested this may be more likely because landlords are responding to market forces, higher demand, and interest rate increases rather than licensing fees. An independent study carried out in 2019 by the former MHCLG found that the impact of other factors such as market forces were the primary reasons for rent rises and not licensing schemes.
- 4.15 The PRS market in London is currently retracting generally, for example due to buy to let loans maturing, presenting an opportunity for landlords to sell and take advantage of current higher property values. There is some evidence that rental properties are being put up for sale is reported by authorities, but not necessarily because of operating licensing schemes. One authority reported that where landlords do sell properties, they are frequently simply purchased by new landlords. It has been suggested sale of rental properties is more likely to be because of the current socio-economic climate and regulatory factors rather than the impact of licensing. It is reported that some landlords have changed their properties from HMOs to single family rental to avoid alteration costs that might arise, but they are not necessarily leaving the rental market altogether.
- 4.16 A consultation respondent suggested the council should focus on HMO licensing and rolling out the first selective licensing scheme. They suggested the council should demonstrate competent scheme delivery and adequate resourcing before seeking permission for a further scheme.
- 4.17 It is vitally important to demonstrate strong outcomes and efficient delivery of the scheme and to do this, authorities must provide adequate resourcing. Failure to do so could quite likely lead to refusal by the Secretary of State to confirm the scheme, as was the case for the London Borough of Croydon in 2021.
- 4.18 Phased implementation will help to mitigate this risk. Therefore, if Cabinet approve the implementation of the scheme, it is recommended that the designation will not be made until the Deputy Chief executive, in consultation with the Cabinet Member for Homes and Regeneration and the Chief Legal Advisor, is satisfied that the mandatory and additional licensing schemes for HMOs are adequately resourced and any shortfalls or issues in effective delivery identified in the additional licensing Year One review, including evidence of robust enforcement, have been effectively addressed. Further, that Phase 1 of selective licensing in Burnt Oak, Colindale North and Colindale South has been in operation for a minimum of twelve months and that evidence is available of effective delivery and outcomes. Provided these safeguards are observed It is not considered that to wait at least five years until the conclusion of Phase 1 is appropriate, considering the evidence of poor conditions established through the assessment of the private rented sector.
- 4.19 The Secretary of State may also consider if there is an excessive delay between the consultation and the scheme's introduction. If the timetable proposed in this report is followed, it is possible that a period of at least 18 months may elapse between the end of the consultation and the signing of the designation. It is not considered this length of time is excessive as it is suggested it is not unreasonable that the council ensures robust implementation and enforcement of its other licensing schemes before launching this much larger scheme. Phased implementation is considered a more practical and safer mechanism to ensure success.
- 4.20 Section 5 of this report deals with resourcing of the scheme. The scale of the scheme will warrant significant numbers of technical support and qualified enforcement staff to implement effectively.

There is currently a national shortage of qualified enforcement staff. There is also a lot of competition for the small pool of staff as a significant number of authorities, especially in London are already, or are planning to operate discretionary licensing schemes. There is therefore a risk that recruitment and retention of staff may pose difficulties in effective delivery of the scheme unless this is planned and managed carefully and effectively. The council has already seen delays in reaching full staffing levels for the additional licensing scheme for HMOs, which has taken a year to achieve with a resultant backlog in achieving objectives. This is in large part due to the scheme launch coinciding with the advanced return of the outsourced service in-house and resultant re-organisation. Plans are in place to mitigate this risk through an inhouse training programme, whereby suitable but not necessarily qualified staff can be recruited and brought up to a sufficient level of competence to ensure the scheme can be operated effectively.

- 4.21 Section 5 of this report considers the financial aspects relating to the scheme. Fees have been calculated on the basis of cost recovery for the perceived level of resource required for the number of properties believed to be in scope. Some consultees have suggested that the indicative fee is too high and is above the average fee level for London authorities operating similar schemes. It was also felt by some that the fee structure would penalise compliant landlords compared to those who do not comply. Fees have been calculated using best available evidence and in line with those agreed for Phase 1 of selective licensing, although allowing for subsequent inflation. However, the operation of the fee structure in Phase 1 will be carefully monitored and it is proposed that alternative models of fees and discounts given by other authorities will be closely examined with the potential for an alternative fee structure, whilst still covering costs of the scheme, being brought to Members before the designation is made if deemed appropriate to do so.

#### **Insight**

- 4.22 Data analysis leading to the proposals for a selective licensing scheme for ten wards was set out in the Housing and Growth Committee report of 13<sup>th</sup> June 2022.
- 4.23 As described in section 1 of this report, the Census 2021 published data has further strengthened the evidence relating to the size of the PRS in the wards in scope.

#### **Social Value**

- 4.24 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.
- 4.25 The licensing scheme will contribute to the council improving the general appearance of neighbourhoods, protect the environment, reduce ASB, improve energy efficiency and reduce fear of crime.
- 4.26 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. Resource Implications (Finance and Value for Money, Procurement, Staffing, IT and Property)**

- 5.1 It is a requirement that fees charged for property licensing schemes should be reasonable, proportionate and not exceed the cost of delivering the scheme. Authorities cannot use licensing schemes for income generation and so fees should be set for cost recovery only over the lifetime of the scheme (five years), although an element of enforcement of the scheme is permissible in the calculations. Indicative fees for selective licensing set out in Appendix F are based upon a projection of currently agreed fees and will be subject to usual annual fee reviews prior to implementation. The Council has not previously administered a Selective Licensing Scheme so a full review of the fee as part of the Council's fee setting governance is key. This will also be reviewed prior to any application to the Secretary of State being made.
- 5.2 Fees and expenditure levels are variable across different periods of the life of licensing schemes and so a separate cost centre is required with a view to a net zero budget by the end of year 5 of the scheme. If a surplus arises then this could be returned pro-rata to licence applicants or utilised for enforcement in relation to licences that do not expire until after the end of the scheme (i.e. those issued towards the end of the scheme). Any surplus refund would be calculated at the end of the 5-year scheme. However, fee levels should be monitored and managed throughout the life of the scheme to where possible avoid any surplus or deficit.
- 5.3 As set out in paragraph 4.21, it is proposed that a full review of alternative approaches to fees and discounts offered by other authorities will be undertaken to address some of the concerns expressed by consultees. A lower year 1 fee followed by a sharp increase in the set fee across the 5 years will be considered as one option. This incentivise applications in the first months of the scheme and may result in lower levels of enforcement being required. Discounts for accredited agents as well as for landlords is another example. This approach will also be used in relation to phase 1 of selective licensing in 2024
- 5.4 The legislation relating to selective licensing requires a local authority to make such arrangements as are necessary to secure the effective implementation. It is therefore essential that, should the decision be made to make the proposed designation, the scheme is properly administered with adequate resources to secure effective implementation, to process applications and payments within a reasonable time and to support the enforcement of the scheme. (i.e. it is important that the scheme is promoted to ensure landlords obtain a licence.)
- 5.5 Based on the estimated costs of delivering this proposed Phase 2 Selective licensing scheme from 2023/24, the current fee would be £826 (split into 2 fees). Due to the length of time for consultation and implementation of the proposed Phase 2 selective licensing scheme, the proposed fee for this scheme in the actual year of implementation will need to be updated to reflect updated costs and assumptions.
- 5.6 The current proposed fee for selective licensing has been reviewed by the Finance Service and is believed to be accurate and cover all permissible associated costs for a cost recovery model. Subject to paragraph 5.3, depending upon timing, the usual annual fee review may have resulted in changes to these fees by the time any other proposed designations, if approved, come into effect.
- 5.7 The fee is made up of two elements; Part 1 of the fee is for the application for a licence and covers the costs of processing, administration, and validation of the application. Part 2 of the fee covers the running costs of the scheme, including the licensing inspections and enforcement.
- 5.8 The income and operating costs have been assessed below for the full five years of the scheme based on the evidence base. These are indicative at this stage. This will be subject to regular review and resources will be flexed accordingly. The projections do not accommodate fluctuations in running costs and any variation in fee income. Where applications are not forthcoming this will

affect the income and operating cost profiles. If there did start to be a significant profit or loss margin the staffing and or fees would be adjusted as appropriate in the annual review. Any excess funds would be used to fund further licensing activity within the scope of the declared scheme.

- 5.9 Income received from a Rent Repayment Order to recover benefit payments, 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. Any such amounts are not predictable.
- 5.10 The new licensing team staff will require standard issue council IT equipment and licences.
- 5.11 The new licensing team staff will join existing departmental staff working in a hybrid way at home and in the offices at Colindale. The pressures on Colindale will increase as the team expands and this should be reviewed at each stage in recruitment and implications considered by the council.
- 5.12 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, the property licensing team will need to work with other services and organisations to ensure that the objectives are met. For example, Community Safety and the Metropolitan Police in reducing the effects of ASB and crime arising from the private rented 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.
- 5.13 Government guidance states: "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 itself 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." The scheme will therefore also require input and resource from Barnet Homes to fulfil these requirements.
- 5.14 The current financial modelling is as follows. Assumptions have been made in relation to processing times, staffing costs, inflation and bad debt which are subject to review and update.

	<b>Operating costs</b>	<b>Licensing fee income</b>
<b>Year 1</b>	£5,360,359	£6,284,481
<b>Year 2</b>	£5,107,596	£6,724,398
<b>Year 3</b>	£4,617,713	£4,796,735
<b>Year 4</b>	£3,938,810	£2,544,261
<b>Year 5</b>	£4,066,700	£2,720,288
<b>Total</b>	£23,091,177	£23,080,159

## 6. Legal Implications and Constitution References

- 6.1 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.
- 6.2 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.
- 6.3 The Selective Licensing of Houses (Additional Conditions) (England) Order 2015 introduced another route for designation of selective licensing:
- Article 3 (1)
- (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 (see below).
- Conditions in relation to housing conditions
  - Conditions in relation to migration
  - Conditions in relation to deprivation
  - Conditions in relation to crime
- 6.4 Article 4 sets out the conditions in relation to Housing Conditions as:
- (a) that having carried out a review of housing conditions under section 3(1) of the 2004 Act, the local housing authority considers 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;
- (b) that the local housing authority intends to carry out such inspections as referred to in sub-paragraph (a), with a view to carrying out any necessary enforcement action; and
- (c) 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, including any licence conditions imposed under section 90 of the 2004 Act, contribute to an improvement in general housing conditions in the area.

- 6.5 The full consultation business case considered borough data against each of the six specified conditions and identified that Condition relating to housing conditions was met in the ten wards.
- 6.6 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.
- 6.7 Section 81(2) of the Act specifies that the authority must ensure that any exercise of the power is consistent with the authority's overall housing strategy.
- 6.8 Paragraph 5 of The Housing Act 2004: Licensing of houses in multiple occupation and selective licensing of other residential accommodation (England) General Approval 2015, states that the general approval is not given if a designation has not been consulted on for at least 10 weeks. Paragraph 6 of the same also states that general approval is also not given if a designation of an area falls within either of the following criteria:
- a) the designation, either by itself, or in combination with other selective licensing designations made by the local housing authority, would cover more than 20% of the geographical area of the local housing authority; or
  - b) the designation, either by itself, or in combination with other selective licensing designations made by the local housing authority, would affect more than 20% of privately rented homes in the local housing authority area, based on figures from census data.
- 6.9 Paragraphs 6 a) and 6 b) apply to the proposed scheme and so the general approval provision does not apply in this case.
- 6.10 Section 82(1) 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).
- 6.11 The designation does not fall under Section 82(1)(b) and so will require confirmation by the Secretary of State under Section 82(1)(a) and if approved by cabinet an application for confirmation will be made to the Secretary of State once prepared in accordance with guidance.
- 6.12 The designation does not fall under Section 82 (b) and so will require confirmation by the Secretary of State under Section 82 (a) and if approved by the committee an application for confirmation will be made to the Secretary of State once prepared in accordance with guidance.
- 6.13 Section 87 (7) 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).
- 6.14 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.”

- 6.15 Once fees are set, the council is expected to review its fees and adjust them where necessary to reflect previous deficits or surpluses.
- 6.16 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.
- 6.17 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.
- 6.18 The Barnet Council Constitution Part 2D – Terms of Reference and Delegation of Duties to the Cabinet – Paragraph 4 gives Cabinet the responsibility for all key decisions including
- Development of proposals for the budget (including the capital and revenue budgets, the fixing of the Council Tax Base, and the level of Council Tax) and the financial strategy for the Council;
  - Monitoring the implementation of the budget and financial strategy;
  - Recommending major new policies (and amendments to existing policies) to the Council for approval as part of the Council’s Policy Framework and implementing those approved by Council;
  - Approving policies that are not part of the policy framework;
  - Management of the Council’s Capital Programme;

## **7. Consultation**

### **The consultation**

- 7.1 As a matter of public law, the council has a duty to consult on proposals to vary, reduce or withdraw services in the following 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.
- 7.2 Consultation is also recommended in other circumstances, for example to identify the impact of proposals or to assist with complying with the council’s equalities duties.
- 7.3 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.

7.4 An external research company – Enventure Research was procured to produce the final report on the outcomes of the consultation. A summary of this report can be found at Appendix B.

7.5 There were 369 online respondents and seven written responses via email.

7.6 No events were arranged for this consultation as it is a relatively short period since the previous consultation and the Consultation and Engagement Manager advised that since proposals are broadly as they were under the previous consultation, such events would not be likely to provide any significant insight that has not already been captured. Despite efforts to recruit participants for the previous consultation, only 25 tenants/residents and 4 landlords/agents came forward to participate. Relevant feedback from those three previous events was captured prior to formulating the proposals for the latest consultation.

7.7 Overall, of online respondents, more people responding (69.9%) did not support the proposed selective licensing scheme than supported it (28.1%). However, 53.1% of all online respondents were private landlords or managing or letting agents and only 19.8% of respondents were private renters. 100% of managing agents and 94% of landlords opposed the scheme. It is recognised that landlords are generally not in favour of any licensing schemes per se and that they are more likely to respond to licensing consultations, whereas private renters are less inclined to respond to consultations, even if they would support the idea of a licensing scheme that would help to improve the condition and management of their home. 43% of private tenants responding supported the scheme, along with 63% of owner occupiers. Significant efforts were made over the consultation period to encourage residents and tenants to respond.

7.8 Most landlords and agents were against licensing schemes generally as they see them as a money-making exercise for the council. It was explained in the consultation documentation that by law, licensing schemes must not raise more income than it costs to deliver the scheme.

7.9 A further concern of landlords and some tenants is that the cost of the licence will simply be passed on to the tenant, making rents even less affordable in the current financial climate. This issue is discussed in Section 4 of this report under the Risk Management heading.

7.10 Another concern of landlords is that the scheme will cause landlords to exit the rental market. This issue is also discussed in Section 4.

7.11 A detailed response to the consultation was received from Barnet Public Health. Public Health generally supports the selective licensing scheme for the selected wards, stating that it is a step further in regulating the PRS, and can support implementation of actions outlined in the housing strategy and other council policies aimed at improving living conditions and health of residents. Public Health state that raising standards of the PRS will have positive health impacts across the lifespan and their response references a number of information sources that highlight the causal link between poor housing conditions and poor health outcomes as being long established. Barnet Public Health went on to say that poor-quality housing harms health and evidence shows that exposure to poor housing conditions (including damp, cold, mould, noise) is strongly associated

with poor health, both physical and mental. Furthermore, they said that it will positively influence the health, security and suitability of Barnet's housing stock. Public Health do however express concerns over the ability to resource adequate levels of enforcement of the scheme. This issue is also discussed in Section 4, Risk Management.

### **Response to consultation comments**

- 7.12 All consultation comments have been reviewed and considered. A full schedule of all comments received is provided in Appendix C – *Council response to issues raised in the consultation*. This includes detailed responses to each comment. Some comments relating to the same issue have been grouped together and a single response is provided to avoid unnecessary repetition. Some comments have resulted in changes to the final proposals, which are set out in the following paragraphs. Although many comments were made, a great many related to the same issues and a number of these had been covered in the consultation documentation. It is not considered that any of the comments other than those in the following paragraphs warrant further amendments to the proposals.
- 7.13 A schedule of the proposed changes to the scheme arising from the consultation is set out in Appendix D. Changes in response to comments made in the previous consultation for phase 1 of selective licensing have already been brought forward into the proposals for phase 2.
- 7.14 Several of the proposed changes relate to the wording of proposed licensing conditions. The revised proposed conditions are set out in Appendix E. It is proposed that these conditions will also apply to the yet to commence phase 1 selective licensing scheme to ensure consistency. Therefore, if Cabinet approve the conditions in Appendix E for phase 2, these conditions will supersede those approved by the Housing and Growth Committee on 13th June 2022 for phase 1 and they will apply for both schemes.

## **8. Equalities and Diversity**

- 8.1 An equalities impact assessment (EqIA) has been undertaken on the proposals following the consultation, a summary of which is provided as a background paper. Overall, the findings of the assessment were that large scale improvement to housing conditions and management standards of private rented properties resulting from the proposed selective licensing scheme would positively impact residents, landlords and tenants in the private sector, and particularly those who are most vulnerable. Feedback from the public consultation raised concerns about potential issues such as the cost of licence fees being passed onto tenants in rent increases and a potential for increased evictions.

## **9. Background Papers**

- 9.1 Enventure Research - Consultation on proposals for a selective licensing scheme for privately rented properties 2024-2029 October 2023  
<https://barnet.moderngov.co.uk/ecCatDisplay.aspx?sch=doc&cat=14016>
- 9.2 Selective Licensing Phase 2 – Summary of Equalities Impact Assessment  
<https://barnet.moderngov.co.uk/ecCatDisplay.aspx?sch=doc&cat=14016>
- 9.3 Previous Decision – Housing and Growth Committee 14th June 2021 – resolved to consult on proposed additional and selective licensing schemes.  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=10845>

- 9.4 Previous Decision – Housing and Growth Committee 17th February 2022 – resolved to approve the designation of a borough-wide additional licensing scheme and a selective licensing scheme in the new wards of Burnt Oak, Colindale North and Colindale South. ([Public Pack](#))[Agenda Document for Housing and Growth Committee, 17/02/2022 19:00 \(moderngov.co.uk\)](#)
- 9.5 Previous Decision – Housing and Growth Committee 13th June 2022 – resolved to consult on a proposal to introduce a selective licensing for 10 wards. ([Public Pack](#))[Agenda Document for Housing and Growth Committee, 13/06/2022 19:00 \(moderngov.co.uk\)](#)
- 9.6 Housing Act 2004. <https://www.legislation.gov.uk/ukpga/2004/34/contents>
- 9.7 Selective licensing in the private rented sector: a guide for local authorities – updated 20 June 2023 [Selective licensing in the private rented sector: a guide for local authorities - GOV.UK \(www.gov.uk\)](#)
- 9.8 The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015 [The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation \(England\) General Approval 2015 \(publishing.service.gov.uk\)](#)
- 9.9 Consultation Documents [Consultation on proposals for a privately rented property licensing scheme 2024 - 2029 | Engage Barnet](#)
- 9.10 Landlord Licensing in the Private Rented Sector: Research Report for Core Cities UK - Metastreet 2018 [https://metastreet.co.uk/files/Core\\_Cities\\_UK\\_Metastreet\\_licensing\\_report\\_Oct\\_2018.pdf](https://metastreet.co.uk/files/Core_Cities_UK_Metastreet_licensing_report_Oct_2018.pdf)
- 9.11 Evaluation of the impact of HMO licensing and selective licensing – [CLG / BRE 2010 \[ARCHIVED CONTENT\] \(nationalarchives.gov.uk\)](#)
- 9.12 An Independent Review of the Use and Effectiveness of Selective Licensing – [MHCLG 2019 Title \(publishing.service.gov.uk\)](#)
- 9.13 Can't complain: why poor conditions prevail in private rented homes - [Shelter 2014 Campaigns briefing - Can't complain: why poor conditions prevail in the private rented sector \(ctfassets.net\)](#)
- 9.14 Health of one in five renters harmed by their home – [Shelter \(YouGov\) 2021 Health of one in five renters harmed by their home - Shelter England](#)