

Report for:
DECISION

Item Number:

Contains Confidential or Exempt Information	No
Title	Private Rented Sector Licensing Schemes Renewal
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For Consideration By	Cabinet
Date to be considered	20 th April 2021
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Affected Wards	All
Keywords/Index	Private Rented Sector, Additional Licensing, Selective Licencing, HMOs

PURPOSE OF REPORT

The purpose of this report is to:

- To provide an update on the Council's current private rented property licensing schemes and present up to date evidence of poor housing conditions, deprivation, crime, anti-social behaviour (ASB) and environmental nuisance linked to the private rented sector in Ealing.
- Set out the process for the renewal of these licensing schemes, with some amendments. Properties which meet the criteria of these schemes would be required to be licenced for a period of up to 5 years.
- Seek a decision from Cabinet to carry out a statutory consultation with all key stakeholders that would be affected by the proposals to renew the licensing schemes.

1. RECOMMENDATIONS

It is recommended that Cabinet:

- 1.1 Notes the progress made with improving the private rented sector (PRS) since January 2017 following the introduction of additional House in Multiple Occupancy (HMO) licensing boroughwide and selective licensing of all other PRS properties in the wards of Acton Central, East Acton, South Acton, Southall Broadway and Southall Green.
- 1.2 Notes the evidence report highlighting the scale of poor housing conditions, deprivation, crime, anti-social behaviour (ASB) and environmental nuisance linked to the private rented sector in Ealing.
- 1.3 Authorises the Director of Place Delivery to commence a statutory consultation exercise with residents, private landlords, businesses and other key stakeholders on proposals for additional and selective licensing schemes for five years from 2022.
- 1.4 Notes a further report with the outcome of the consultation will be brought to November 2021 Cabinet with recommendations as to whether or not to renew the additional and selective licensing schemes.

2. REASON FOR DECISION AND OPTIONS CONSIDERED

Background

- 2.1 Ealing is among the largest Boroughs in London with a population estimated at 346,908 in 2018. Population projections by the GLA anticipate that this will increase to 398,309 by 2031.
- 2.2 Currently there are over 143,863 residential properties in the borough and 54,776 are estimated to be in the private rented sector. Based on tenure modelling undertaken in January 2021, Ealing's PRS is now calculated to be 38.1% of housing stock. This compares to 23% of households in 2011 (ONS) and represents a 65.7% increase over the last 10 years. By comparison owner occupation has shrunk from 55% in 2011 to an estimate of 42% in 2021, whilst social renting has been virtually static at 20%
- 2.3 Ealing is consistent with London in that it has a shortage of affordable housing and a shrinking prevalence of owner-occupation. These facts together with the projected increase in population indicate that the size and importance of the PRS will continue to grow and be the only type of accommodation available to many Ealing residents including persons who are on low incomes and are vulnerable. The PRS is also becoming the only sector available to older persons, including those of retirement age, who have not been able to buy their own home.
- 2.4 Housing conditions in the PRS are, on average, often in worse condition than in other tenures. The coronavirus pandemic has highlighted that housing and health inequalities are a factor in exacerbating the spread of covid-19, as well as other illnesses such as cancer, respiratory and cardiovascular diseases.

- 2.5 Black, Asian and Minority Ethnic groups are disproportionately likely to suffer from poor housing, which will not only have an impact on their health but can also have a detrimental impact on safety, education and life chances.
- 2.6 HMOs remain an important and integral part of the housing supply and meet the demands of a whole range of residents. The term HMO applies to a wide range of forms of housing normally in the private rented sector, for example, hostels, 'bed and breakfast' accommodation, halls of residence and supported housing regimes. HMOs are the cheapest form of private rented accommodation and often house people who are vulnerable, disabled and or are living on low incomes. Unfortunately, housing conditions in HMOs are often some of the worst in the PRS.
- 2.7 Licensing allows a local authority to adopt a much more proactive approach to tackling poor housing conditions and raising standards in the PRS. Licensing encourages good practices and imposes a level of self-regulation as licenses will not be granted if at point of application a landlord is not able to demonstrate that they comply with fire, gas and electrical safety conditions.
- 2.8 Mandatory HMO licensing under Part 2 of the Housing Act 2004 operates nationwide and this applies (generally) to larger HMOs that are occupied by five or more persons in two or more households. Larger HMOs are considered to be higher risk hence the requirement for all local authorities to operate a mandatory HMO licensing regime.
- 2.9 Sometimes it isn't just the larger HMOs that cause concern. If a local authority is aware of demonstrable problems associated with smaller HMOs (i.e. those not meeting the mandatory definition), then it has powers under the Housing Act 2004 to designate an area or areas to be subject to additional licensing in respect of some or all HMOs not already subject to mandatory licensing. However, unlike mandatory licensing which runs indefinitely, additional licensing can only last for up to 5 years. Ealing currently has a boroughwide additional HMO licensing scheme which includes HMOs occupied by four or more persons and some so called "section 257" HMOs. This boroughwide additional licensing scheme is due to expire on 31 December 2021.
- 2.10 In addition to HMO licensing, where an area has demonstrable problems associated with low housing demand, poor housing conditions, ASB, deprivation, migration or crime, the Housing Act 2004 enables local authorities to introduce a selective licensing scheme which is applicable to all private rented dwellings (typically single household dwellings) not just HMOs. Like with additional licensing, selective licensing can only last for up to 5 years. Ealing currently operates selective licensing in the wards of Acton Central, East Acton, South, Acton, Southall Broadway and Southall Green and the scheme is due to expire on 31 December 2021.
- 2.11 The current licensing schemes have ensured that there has been good progress in improving property standards for residents living in the PRS and reducing ASB. However poor housing conditions remain prevalent in Ealing's growing PRS and many dwellings in the PRS remain unlicensed or do not meet the necessary criteria to be licensed within the existing licensing schemes.

- 2.12 In order to build on the successes of the current licensing schemes and to continue to protect as many tenants living in the PRS as possible, the evidence supports the Council in renewing both its additional and selective licensing schemes.
- 2.13 The option of the Council not renewing both its additional and selective licensing schemes, relying on only the mandatory schemes, will lead to a deterioration in the standards of housing across the whole borough.
- 2.14 This report provides cabinet with an overview of the provisions of the Housing Act 2004 that set out the process for the renewal of the licensing schemes and seeks agreement to consult and gauge opinion with all key stakeholders that would be affected by the proposals.
- 2.15 These are two distinct schemes that will, if introduced, operate in parallel to mandatory HMO licensing and as part of the Council's wider strategies for housing and other related issues.
- 2.16 The decision to designate an additional HMO licensing scheme can be agreed locally by the Council's Cabinet. However, should the overall size of a renewed selective licensing scheme cover more than 20% of the geographical area or would affect more than 20% of private rented properties in the local authority area, approval from the Secretary of State will be required to proceed with the scheme.

3. KEY IMPLICATIONS

Licensing in Ealing: the current position

- 3.1 On 1st January 2017, the Council, introduced a boroughwide additional HMO licensing scheme and a selective licensing scheme in the wards of Acton Central, East Acton, South Acton, Southall Broadway and Southall Green. These schemes operate alongside national mandatory HMO licensing but will expire on 31 December 2021.

Since the introduction of the schemes 2239 HMO licences and 8069 selective licences have been granted.

LICENCE TYPE	APPLICATIONS RECEIVED	LICENCES GRANTED
MANDATORY	1524	1404
ADDITIONAL	987	835
SELECTIVE	8758	8069
TOTAL	11269	10308

A ward analysis of all licences granted is detailed at **Appendix 1**.

Improvements in poor property conditions

- 3.2 Through the licensing schemes, the Council has been able to improve basic standards in often the most dangerous housing at the bottom end of the housing

market where some of the most vulnerable people in society live. All licences have conditions attached which must be complied with, enabling the Council to regulate the private rented sector, improve housing conditions and promote better standards of management.

- 3.3 In particular we have been able to impose a level of 'self-regulation' in the private rented sector as landlords will not be granted a licence unless they are able to demonstrate at the point of application that they comply with fire, gas and electrical safety conditions.
- 3.4 Licensing requires landlords to proactively manage their properties and to take reasonable action to address any identified problems so that they comply with licence conditions.
- 3.5 Generally, where a landlord is intentionally operating without a licence it is highly likely that the licensing regime and inspection process will uncover further offences which officers will take action against.
- 3.6 Since the start of the licensing schemes, Ealing's Property Regulation team has served over 640 statutory notices across the full remit of Housing and Environmental Health legislation, bringing about much needed improvements and raising the standards of poor accommodation across the borough for the benefit of many tenants.
- 3.7 The case studies at **Appendix 2** show examples of the benefits of licensing schemes and how they have improved property conditions across the borough.

Reduction in Anti-Social Behaviour

- 3.8 Poorly managed privately rented properties have a negative impact on many neighbourhoods. In particular high levels of noise complaints, and accumulations of rubbish can be linked to the failure of private landlords to manage their properties and tenancies effectively.
- 3.9 Poor waste management and fly tipping particularly in HMOs has been cited as a major ASB issue in many wards. All HMO licences contain a condition that the licence holder must provide adequate sized bins and sufficient recycling containers for the occupiers. They must also display a notice for the occupiers of the property indicating the day of the week rubbish and recycling is collected. The notice must also state any Council specific requirements e.g. that rubbish and recycling should be left at the edge of the property, before 7 a.m. on the morning of the scheduled collection day or at the earliest, the evening before.
- 3.10 Working with Envirocrime colleagues a focus group was facilitated with local residents to discuss how the Council could deal with the issues of waste in rented properties. Through partnership working and sharing of intelligence we continue to educate both landlords and tenants on their responsibilities in terms of waste disposal.
- 3.11 When a property is overcrowded this is often linked to an increase in noise complaints. Through licensing we have been able to limit the number of

occupants in a property, reducing overcrowding and the likelihood of noise nuisance.

- 3.12 Through licensing, in order to ensure they do not breach licence conditions, there has been a notable increase in landlords managing their properties effectively including the enforcement of tenancy conditions to combat incidences of anti-social behaviour caused by their tenants or people visiting their properties.

Engagement with landlords and letting agents

- 3.13 We recognise that the majority of landlords in the borough are both responsible and cooperative. Therefore, in the first phase of the scheme implementation the department took a more educational approach seeking to work with landlords and bring about compliance through informal means. Over 100 letting and managing agents were visited and advised on the requirements of the new schemes.

- 3.14 At the launch of the schemes the Council offered a concessionary discount of 25% to landlords who promptly applied for a licence during a 3 month 'early bird' period. Compliant landlords were keen to take up this offer, with 3095 applications being received during this period.

- 3.15 We have particularly encouraged landlords to become accredited to increase their professionalism in managing their properties. Through accreditation landlords are able to achieve a level of knowledge and competence before letting a home, which is key to raising standards in the private rented sector. Accredited landlords are eligible to receive a £75.00 discount on the licence fee. As of January 2021, Ealing had 1,425 landlords accredited to the London Landlord Accreditation Scheme, which is the second highest figure of all London boroughs.

- 3.16 Detailed guidance for landlords on their legal obligations and responsibilities has been produced and made available on-line. A quarterly newsletter is also sent to all licensed landlords containing relevant news articles, information on legal developments and links to any available grants.

- 3.17 The information gathered through property licensing enabled the Council to proactively support landlords to understand and implement the government-imposed restrictions to minimise the spread of Covid-19. Practical guidance was given to all landlords of HMOs to help limit the spread of the disease in shared accommodation, including A4 posters to be printed and displayed within the HMO.

Engagement with tenants

- 3.18 Through publicity of the licensing schemes, tenant awareness of the minimum standards to be expected in rented accommodation has dramatically increased. Tenants have been encouraged to report landlords who do not comply with licensing conditions. Since the start of the licensing schemes the Council has

received 9,931 complaints from tenants in the private rented sector. Resulting in significant interventions and property improvements.

- 3.19 Where properties have been unlicensed the Council has been able to provide supporting information to assist with tenants seeking Rent Repayment Orders.
- 3.20 During the coronavirus pandemic, practical guidance was also sent directly to all occupants of HMOs, including A4 posters with the latest NHS advice to be displayed in all shared areas of the HMO.

Unlicensed properties

- 3.21 In the second phase of the implementation of the licensing schemes resources were focused on identifying unlicensed premises. Over 5000 properties have been visited during street surveys and over 6000 letters have been sent to landlords warning them of the consequences of failing to license their properties.
- 3.22 Working in partnership with the London Fire Brigade and Enviro Crime colleagues, high visibility action days have been undertaken in the selective licensing wards, to identify unlicensed properties and those that may have inadequate fire safety and/or waste disposal provisions.
https://www.ealing.gov.uk/news/article/1617/council_teams_up_with_fire_brigade_to_improve_local_homes
- 3.23 During this phase where compliance could not be achieved informally, landlords have been prosecuted. The Council is also using its Civil Penalty powers which were brought into law under the Housing and Planning Act 2016, to help councils tackle rogue landlords and agents.
- 3.24 In 2020 following a fatal house fire in an unlicensed HMO the investigation resulted in the landlord, letting agency and its directors being fined the maximum £30,000 each by the council for the safety failures contributing to the fatalities. Upon appeal to the Residential Property Tribunal, those fines, totalling £120,000 were upheld.

[Fatal fire in unlicensed HMO leads to £120,000 penalty for the landlord and managing agent | London Property Licensing](#)

Intelligence led enforcement

- 3.25 The licensing schemes has enabled the Council to create a 'level playing field' for responsible landlords by taking a much more robust approach in respect of the minority of so called 'rogue' landlords who fail to invest in their properties and meet their legal obligations. Through intelligence gathered via service requests or licence applications we are able to target our inspections to both identifying unlicensed properties and also to those properties that are deemed to be a high risk priority property. Targeted enforcement action ensures robust interventions are taken which often acts as a deterrent to other landlords in the borough, and ensures improvements are achieved for the benefit of their tenants and the wider community.

Licence compliance

- 3.26 The final phase of the administration of the schemes is to ensure that where a licence has been granted, the licence conditions are being complied with. Inspections are being carried out in accordance with their risk assessment. Those properties with the highest risk factors being inspected first. Desktop inspections or audits are also undertaken where license holders are requested to produce relevant safety certificates in accordance with their licence conditions.

Joint working initiatives

- 3.27 The licensing schemes have engendered closer working with partners such as the fire service, police, community safety team and enviro crime colleagues enabling a holistic approach to all the problems which may be present at a single address.
- 3.28 The intelligence obtained through property licensing has also improved knowledge of the prevalence of outbuildings throughout the borough. This has enabled more cross-departmental working with the Planning Enforcement team to take action against illegal and unsafe outhouses or so called 'beds in sheds'.
[Ealing Council demolish illegal outbuilding and send landlord the bill | London Property Licensing](#)
- 3.29 The Property Regulation team has also joined together with colleagues from Hounslow, Hillingdon and Slough, looking for innovative ways of tackling unscrupulous landlords who break the law. The partnership is backed by a Government grant of over almost £60,000, to untangle the web of family and company owned properties that 'Portfolio Criminal Landlords' use to disguise their operations which can extend over borough boundaries.
- 3.30 The table below provides a summary of the licensing schemes key achievements and work undertaken to improve property conditions and anti-social behaviour.

SUMMARY	TOTAL
Applications received (all schemes)	11269
Licences granted (all schemes)	10308
Number of accredited landlords	1425
Properties visited as part of street surveys	5000
Licence Compliance Checks/Audits undertaken	3723
Warning Letters issued	6000
Properties brought into compliance (licence submitted) following receipt of warning letter	75%
Service Requests (complaints) received and responded to	9931
Housing & Public Health Statutory Notices served	642
Civil Penalties (policy adopted May 2019)	44
Prosecutions	8

- 3.31 As demonstrated above the licensing schemes have enabled the Council to make a real and notable difference in driving up improvements in Ealing's private rented sector and protecting the most vulnerable in the community.

The Case to Support Additional and Selective Licensing

3.32 Part 2 of the Housing Act 2004 and the Selective Licensing of Houses (Additional Conditions) (England) Order 2015 set out the criteria and considerations that the Council must be satisfied are met when considering designating a selective licensing area. These general conditions are:

- That the area is, or is likely to become, an area of low housing demand
- That the area is experiencing a significant and persistent problem caused by antisocial behaviour
- The area has poor property conditions
- The area has high levels of migration
- The area has high levels of deprivation
- The area has high levels of crime.

3.33 Metastreet Ltd were commissioned to undertake an in-depth review of Ealing's housing stock and assess housing stressors related to key tenures, particularly the private rented sector.

The main aim of this review was to investigate and provide accurate estimates of:

- Current levels of PRS properties and tenure change over time.
- Information on the number of HMOs as a subset of the PRS.
- Levels of serious hazards that might amount to a Category 1 hazard (HHSRS).
- Other housing related stressors, including antisocial behaviour (ASB), service demand, population and deprivation linked to the PRS.

3.34 Metastreet has developed a stock-modelling approach based on metadata and machine learning to provide insights about the prevalence and distribution of a range of housing factors. The models are developed using unique property reference numbers (UPRN), which provide detailed analysis at the property level.

3.35 The report 'London Borough of Ealing Private Rented Sector: Housing Stock Condition and Stressors Report' dated January 2021 is attached as **Appendix 3**. The key findings are summarised as follows:

3.36 Ealing has a large PRS. 54,776 dwellings are currently predicted to be PRS, accounting for 38.1% of all dwellings in the borough. This high prevalence of PRS is found throughout all wards in the borough and is consistently higher than the national average (19%).

3.37 As well as having a mixture of high and low deprivation wards, Ealing has high rents, above London average private rented property possession claims, fuel poverty and homelessness. All wards are rated higher than the national average for barriers to housing and services.

- 3.38 Poor housing conditions are prevalent in all wards throughout Ealing's PRS. Furthermore, 2.2% of PRS dwellings have an EPC rating of F and G, which is below the statutory minimum requirement.
- 3.39 Ealing has a relatively high number of HMOs across all wards with ASB significantly higher in HMOs than in any other tenure.
- 3.40 The Council receives significant numbers of complaints from tenants in the private rented sector, the service recorded 9,931 complaints over a 5-year period.
- 3.41 The Council makes large numbers of statutory interventions in the private rented sector. Council enforcement officers served 1,254 housing, public health and planning enforcement notices over 5 years.
- 3.42 These key findings and indicators have been used to develop Ealing's proposals for additional and selective licensing as detailed below; and will enable the Council to take a targeted approach to tackling poor housing across the borough.

Proposals for an additional HMO licensing scheme

- 3.43 The Stock Condition and Stressor report shows that Ealing has a relatively high number of HMOs (8360) across all wards. This consists of two categories; HMOs that share basic amenities (5113) and HMOs which are converted properties with multiple flats that share common parts (3,247). Some wards show higher concentrations of HMOs (Hanger Hill, Acton Central and South Acton) but generally HMOs are distributed throughout the whole borough.
- 3.44 Poor housing conditions are prevalent in Ealing's HMOs, with nearly half (46%) of the "shared amenities" HMOs predicted to have serious (category 1) housing hazards. Poor standards are compounded by other factors such as ASB, deprivation, fuel poverty and affordability. HMOs that share common parts (or so called "section 257" HMOs) are usually older buildings converted into flats either under considerably older building regulation standards or converted without any due consideration of the required standards. They are also more likely to experience serious (category 1) housing hazards than other tenures. Common issues found in both categories of HMO include lack of adequate fire and electrical safety provisions, inadequate amenities and heating provision and overcrowding.
- 3.45 Anti-social behaviour across the PRS is considered to be moderate, with 6025 incidents recorded over the past five years. These incidents were distributed fairly consistently throughout all wards in Ealing, with the highest being East Acton and Acton Central. However, ASB is significantly higher in HMOs than in other tenures. Nearly half (40.3%) of all ASB investigations in the PRS stemmed from HMOs across all wards, again with East Acton and Acton Central having the highest number of incidents.
- 3.46 ASB incidents linked to HMOs in the PRS usually occur where management of the property is poor. These issues include noise, verbal abuse, harassment, intimidation, nuisance animals, nuisance vehicles, drugs and substance misuse, domestic violence, rubbish and fly tipping.

- 3.47 Ealing's existing boroughwide additional licensing scheme has ensured good progress in identifying smaller HMOs. Currently 835 additional HMO licences have been granted (987 applications received).
- 3.48 Since 2017 the Council has issued 565 housing, public health and planning enforcement notices in relation to HMOs bringing about much improvements to property conditions.
- 3.49 The evidence however demonstrates that there is more work to do. The Council considers that a significant proportion of HMOs boroughwide are being managed ineffectively. Many are still experiencing serious housing hazards and significant ASB. It is vital that all HMOs are of an adequate standard and offer a safe home for their (often vulnerable and low income) occupiers. The Council are satisfied that by renewing the additional licensing scheme this will enable the Council to continue its work to improve this important tenure and will significantly assist with dealing with the problems identified.
- 3.50 As such, it is proposed that the Council consult on **renewing a boroughwide additional HMO licensing scheme**.

A licence will be required for all HMOs rented to 3 or more occupiers in 2 or more households that share (or lack) toilet, washing or cooking facilities. This excludes houses in multiple occupation that require a mandatory licence.

An additional HMO licence will also be needed if you are an owner or a person in control of a "converted building" HMO as defined by s257 of the Housing Act 2004, but only where the building and any rented flats in the building are in the same ownership or control, or considered by the housing authority to be effectively in the same ownership or control. This will include buildings within mixed use development or over non-residential accommodation. Any owner-occupied flats or flats demised to separate leaseholders will not form a part of the licence. An additional s.257 HMO licence will not be required where the building has been converted into no more than two flats.

- 3.51 The proposed additional HMO licence conditions are attached as **Appendix 4**
- 3.52 Following consultation, the decision to implement an additional HMO scheme can be agreed locally by the Council's cabinet and could be implemented in early 2022.

Proposals for a selective licensing scheme

- 3.53 The Stock Condition and Stressor report shows that poor housing conditions are prevalent in Ealing's PRS. 12,063 PRS properties are predicted to have at least 1 serious hazard (Category 1, HHSRS). This represents 22% of the PRS stock, higher than the national average (13%).
- 3.54 East Acton (1,224), Acton Central (1,099) and Southall Green (1,089) have the highest number of properties with at least one Category 1 hazard.
- 3.55 The council receives a significant number of complaints from tenants in the private rented sector. With tenants living in East Acton (1564), Southall Green

(1085) and Acton Central (1042) making the highest number of complaints over a 5-year period.

- 3.56 In response to non-compliance in the private rented sector the Council has served a significant number of statutory notices over 5 years. Southall Green (200), Southall Broadway (148) and East Acton (115) were issued with the most statutory notices

Table 1 below provides a summary overview of Ealing PRS by ward

Table 1. Ward PRS summary overview

Ward	Percent PRS (%)	% of dwellings with serious hazards (Cat 1)	No. of dwellings with serious hazards (Cat 1)	No. of disrepair complaints received	No. of housing & public health Statutory Notices served	No. of ASB incidents
Acton Central	45.2	33.73	1,099	1042	37	365
Cleveland	28.0	15.59	267	164	13	197
Dormers Wells	26.3	27.37	341	268	12	167
Ealing Broadway	46.9	13.98	508	317	26	311
Ealing Common	44.0	13.04	370	240	23	268
East Acton	57.0	19.86	1,224	1564	76	501
Elthorne	37.3	13.98	354	218	9	232
Greenford Broadway	36.5	18.75	481	329	24	318
Greenford Green	30.6	23.57	408	265	22	274
Hanger Hill	46.2	17.25	530	335	24	330
Hobbayne	26.0	19.89	292	172	8	223
Lady Margaret	31.6	30.14	403	332	21	160
North Greenford	29.4	26.18	417	299	15	261
Northfield	34.5	16.15	314	166	13	219
Northolt Mandeville	26.3	19.73	310	186	8	224
Northolt West End	27.6	20.21	331	181	7	247
Norwood Green	28.6	16.32	249	181	20	167
Perivale	36.7	23.74	516	374	24	289
South Acton	38.9	26.89	839	832	30	273
Southall Broadway	42.2	53.48	1,015	993	82	190
Southall Green	54.1	38.87	1089	1085	124	274
Southfield	38.7	12.81	341	183	7	249
Walpole	38.7	15.93	365	205	17	286

(Source: Ti 2021)

- 3.57 Ealing’s current selective licensing scheme applies to the five wards of Acton Central, Acton South, East Acton, Southall Broadway and Southall Green. Through selective licensing the Council has been able to make some improvement to PRS dwellings in these wards. Currently 8069 selective licences have been granted (8758 applications received).
- 3.58 However, the stock modelling shows that substantive concerns with poor housing conditions in the PRS remain in these wards and beyond in most other wards in the borough. As with the HMO sector, poor standards are compounded by other factors such as deprivation, fuel poverty, affordability and homelessness.
- 3.59 In order to continue work to drive up improvements to the PRS as a whole, it is proposed to consult on increasing the geographical area of the selective licensing scheme by adopting a phased approach.
- 3.60 **Phase 1 - Designation 1**

This designation includes the following **three wards**.

Ward	Area sq.kms	Total PRS	Percent PRS (%)	No. of dwellings with Cat 1 hazard	% of dwellings with Cat 1 hazard
East Acton	4.28	6,162	57.0	1244	19.86
Southall Broadway	1.62	1,898	42.2	1,015	53.48
Southall Green	1.59	2,802	54.1	1089	38.87

This designation equates to 13.48% of the geographical area of the borough and 18.37% of the total private rented sector in Ealing.

The designation comprises of the three wards experiencing some of the highest prevalence of poor housing conditions in the borough. The council receives a significant number of complaints from tenants in these wards and in response to non-compliance a significant number of statutory notices have been served.

The size of these designations, which affect less than 20% of the geographical area of Ealing and less than 20% of its privately rented housing, means they can be agreed locally by the Council’s cabinet and could be implemented in early 2022.

These wards are currently subject to selective licensing and the Council considers that there would be a detrimental effect to property conditions and tenant safety should selective licensing cease in these wards for any significant period of time.

3.61 **Phase 2 - Designation 2**

This designation includes the following **twelve wards**.

Ward	Area sq.kms	Total PRS	Percent PRS (%)	No. of dwellings with Cat 1 hazard	% of dwellings with Cat 1 hazard
Acton Central	1.77	3,258	45.2	1,099	33.73
Dormers Wells	2.26	1,246	26.3	341	27.37
Greenford Broadway	2.52	2,566	36.5	481	18.75
Greenford Green	3.38	1,731	30.6	408	23.57
Hanger Hill	3.28	3,073	46.2	530	17.25
Hobbayne	2.21	1,468	26.0	292	19.89
Lady Margaret	1.54	1,337	31.6	403	30.14
North Greenford	3.26	1,593	29.4	417	26.18
Northolt Mandeville	2.76	1,571	26.3	310	19.73
Northolt West End	3.55	1,638	27.6	331	20.21
Perivale	3.37	2,174	36.7	516	23.74
South Acton	1.72	3,120	38.9	839	26.89

This designation equates to 56.89% % of the geographical area of the borough and 41.35% of the total private rented sector in Ealing.

The designation comprises a further twelve wards experiencing a high proportion of poor housing conditions.

Due to the size of the designation, after being agreed by the Council's cabinet, this designation would need confirmation by the Ministry of Housing, Communities and Local Government (MHCLG). If approved, this designation could be introduced Mid 2022.

3.62 **Designations 1 and 2**

Phase 1 and 2 will result in a combined designation which equates to 70.37% of the geographical area of the borough and 59.72% of the total private rented sector in Ealing.

3.63 **Wards not included in the selective licensing scheme**

Eight wards have been excluded from all selective licensing designations. Although these wards contain high levels of PRS the evidence does not show the high proportion of housing hazards that we see in other parts of the borough.

The Council considers that it is more appropriate to focus its resources to the worst affected areas of the borough. The higher risk properties included in designations 1 and 2 will be prioritised for inspection and enforcement action will be taken, where necessary, to improve poor property conditions.

We shall however continue to monitor the wards not included in the scheme and should the evidence change then consideration will be given to introducing a third designation.

The wards not included in either designation 1 or 2 are:

- Cleveland
- Ealing Broadway
- Ealing Common
- Elthorne
- Northfield
- Norwood Green
- Southfield
- Walpole

- 3.64 In accordance with the Selective Licensing of Houses (Additional Conditions) (England) Order 2015, having carried out a review of housing conditions in the borough, the Council considers it would be appropriate for a significant number of the properties within the proposed designations be inspected, with a view to determining whether any category 1 or category 2 hazards exist on the premises and the Council intends to carry out such inspections with a view to carrying out any necessary enforcement action.
- 3.65 The Council also considers that the making of the designations will, when combined with other measures taken in the area by the Council, or by other persons together with the Council, including any licence conditions imposed under section 90 of the 2004 Act, will contribute to an improvement in general housing conditions in the area.
- 3.66 The proposed selective licensing conditions are attached as **Appendix 5** and the proposed timetable for consultation is set out in section 16.

Other conditions to be satisfied before making an additional or selective licensing scheme designation

- 3.67 Before making an Additional or Selective Licensing Scheme designation the local authority must be satisfied that the following conditions are met:
- the proposed designations are consistent with the overall housing strategy,
 - a co-ordinated approach is adopted in dealing with homelessness, empty properties and ASB,
 - alternative courses of action have been considered.
 - the proposed designations will significantly assist in achieving the object or objectives.

3.68 The proposed designations are consistent with the overall housing strategy

The [London Housing Strategy](#) sets out the Mayor's plans to tackle the capital's housing crisis and his vision to provide all Londoners with a good quality home they can afford. The strategy supports well-designed and operated council property licensing schemes.

The Council is committed to expanding Private Landlord Licensing Schemes, in order to improve standards, tackle rogue landlords and revenge evictions, and campaign for new powers to roll this out boroughwide.

Ealing's overarching Housing Strategy is currently being updated, however its key aims will remain consistent with its 2014/19 [Private Sector Housing Strategy](#) which sets the following four strategic priorities:

- Increase the supply of private housing
- Support residents to access affordable, well managed private rented homes
- Improve the condition of private housing through regulation through our licencing schemes.
- Develop strong partnerships to support the private housing sector

These priorities are complimentary to the Council's [Homelessness Reduction Strategy 2018 – 2022](#) which focuses on recent developments and supplements the main strategy. It refers to PRS licensing as an "opportunity to take greater control of property standards but also provides an opportunity for households to access private sector lettings or for the Council to take on the direct management of PRS properties for homeless households. Targeting landlords and offering nominations at the point of licensing could help to boost the supply of much needed lets in the borough"

In January 2021, the Council adopted its [Climate and Ecological Strategy](#) in order to reduce emissions across the borough and become carbon neutral by 2030. Insulating homes is one of many actions that can be taken to reduce carbon emissions. A key objective of the strategy is to contact all licensed landlords to promote energy efficiency measures. Licence conditions also require dwellings to have an EPC rating of E and above.

3.69 A co-ordinated approach is adopted in dealing with homelessness, empty properties and ASB

The Council already uses a wide range of powers and approaches with respect to improving the condition of private sector housing in the borough, and dealing with homelessness, empty properties and ASB. This includes joint working initiatives with partners and agencies such as the Police, Fire Service, HMRC, Immigration Enforcement, Social Services, Park Guard, Community Safety, Envirocrime and Planning Enforcement.

Homelessness – The Homelessness Service seeks to prevent homelessness by assisting households to find their own accommodation in the private sector and identifying private sector units. HMOs and self-contained units in the private rented sector are therefore utilised to relieve homelessness pressure both as

temporary accommodation and as permanent accommodation for households leaving temporary accommodation.

The Housing Service works with landlords to support them to provide well managed homes providing secure and good quality accommodation. It is a requirement that all landlords who let their properties through the council are accredited through an approved accreditation scheme. The Housing Service is also able to offer a management service therefore any landlord unable to meet any new licensing requirements will be signposted to this service.

Empty Properties –The Empty Property team is responsible for investigating empty properties in the borough with a view to bringing them back into use through a number of interventions including enforcement and incentives such as property renovation grants. A condition of this grant is that the Council have nomination rights to the renovated properties for re-homing families in need of housing. Work in default is often undertaken to repair immediate issues affecting nearby residents. Where owners refuse to engage or are unwilling or unable to take action Compulsory Purchase Orders (CPO) are considered as an essential element of the Council's Empty Property Strategy.

Anti-Social Behaviour - The Council's Safer Communities Team oversees the Council's response to ASB in the borough and undertakes enforcement and partnership work with the Police and other key partners. Their work includes:

- Overseeing patrols of parks, housing estates, ASB/noise response and park gate locking. These patrols link closely with the Council's CCTV control room and the police.
- The introduction of a Spaces Board which analyses data to identify high ASB/crime areas in order to address areas of concern with the aim of discouraging and reducing ASB/crime activity. The Spaces Boards compliments the EC MARAC panel, which is a multi-agency board that regularly meets to examine and problem-solve specific and complex high-risk cases of ASB/exploitation.
- Enforcement work in 2019/20 resulted in 207 separate enforcement actions in relation to ASB, including 33 injunction applications to stop persistent perpetrators of ASB.
- Prioritising domestic abuse work, including a continued commitment to funding independent advocates and third sector services supporting persons fleeing domestic abuse. Additionally, the Woman's Wellness Zone has been developed to provide a one-stop shop service offering domestic abuse, drug and alcohol, mental health, job seeking and other support services for women with complex needs.
- In 2019, enacting Ealing's first boroughwide PSPO (Public Spaces Protection Order) which enables the Council to enact its own additional requirements in public spaces and give local police and council patrol officers additional powers to intervene and issue fixed penalty notices (FPN) in relation to specific ASB behaviours such as street urination, spitting, use of legal highs, drink related ASB/ street drinking and

congregation amongst others. Ealing's PSPO covers three distinct public spaces across the borough (high streets, parks and housing estate locations) and has led to a number of FPN's to be issued to persistent perpetrators of ASB.

3.70 Alternative courses of action have been considered

We have considered a number of other courses of action or alternatives to the selective and additional licensing proposals we wish to consult on, but do not believe that, individually or collectively, they provide an effective, or as effective means of tackling poor housing conditions in the borough. The alternative options considered are as follows:

- i. **To operate a mandatory HMO licensing scheme only** - The existing discretionary licensing schemes will expire on 31 December 2021 and the Council has the option to not renew these schemes. This would mean that, generally, only larger HMOs meeting the mandatory criteria would require a licence. There is clear evidence to show that the number of HMOs in Ealing is much larger than those covered by the mandatory scheme. If discretionary licensing powers are not utilised the majority of HMOs will remain unregulated. The evidence also shows that there are widespread problems of single family rented properties in poor condition. This option does not enable the Council to effectively deal with these dwellings and would revert back to a reactive rather than proactive approach to improving property conditions.
- ii. **To renew boroughwide additional HMO licensing only** – The evidence supports the designation of a further boroughwide additional licensing scheme and this would ensure all HMOs are subject to property licensing and proactive regulation. However, the evidence also shows that there are widespread problems of single family rented properties in poor condition. This option does not enable the Council to effectively deal with these dwellings and would revert back to a reactive rather than proactive approach to improving property conditions.
- iii. **To adopt a selective licensing scheme only** – The evidence suggests that many HMOs are experiencing serious housing hazards and significant ASB. This option does not enable the council to deal with the problems associated with smaller HMOs.
- iv. **To adopt a boroughwide selective licensing scheme only** – Although poor property conditions exists in all wards, levels vary, as does the extent of private renting. It is therefore considered more appropriate to focus our resources to the worst effected wards and those wards that meet key selective licensing criteria. This option does not enable the council to deal with the problems associated with smaller HMOs.
- v. **To renew a selective licensing scheme in the 5 existing wards only (Acton Central, East Acton, South Acton, Southall Broadway and Southall Green)** – The evidence supports the renewal of selective licensing in the existing wards, however it also shows a significant proportion of properties in poor condition in many more wards across the

borough. This option does not enable the council to deal with the problems associated with single family properties in other wards or smaller HMOs.

- vi. **Wider promotion of voluntary accreditation landlord schemes** - We recognise that accredited landlords are key to raising standards in private sector housing, and encourage all landlords to become accredited and achieve a level of knowledge and competence before letting a home. As of January 2021, Ealing had 1,425 landlords accredited to the London Landlord Accreditation Scheme, which is the second highest figure of all London boroughs. The scheme is however voluntary and our experience is that compliant landlords become accredited; rogue landlords do not proactively participate in such schemes.
- vii. **Use of Part 1 Housing Act 2004 enforcement powers [HHSRS] and Public Health powers** – Formal statutory notices can be served that require improvements to a property. If the notice is not complied with the council can carry out works in default or may prosecute the landlord. Works in default can however be expensive and resource intensive for the Council. Prosecutions do not themselves secure improvements. Enforcement officers have served a large number of statutory notices over the last 5-years (1254) however poor property conditions still exist across the borough. These powers are reactive and do not place any obligation on landlords to be proactive in improving conditions within a property.
- viii. **Rely on prosecutions and civil penalties** - Prosecutions or the imposition of civil penalties do not themselves secure property improvements. These powers are reactive and do not place any obligation on landlords to be proactive in improving conditions within a property.

3.71 The proposed designations will significantly assist in achieving the object or objectives.

An additional and selective licensing scheme would place the responsibility on the landlord to inform the Council that their property is licensable and encourage them, with the Council's support, to ensure that they meet the required standards. The Council can then prioritise its resources effectively to dealing with the properties of most concern and target enforcement actions to those landlords who fail to licence their properties and/or breach licence conditions.

The main objectives of the schemes will therefore be to:

- i. **Improve housing conditions by eliminating poor standards of management in the private rented sector**
 - Proactively inspect each privately rented property during the duration of the licence and robustly enforce the conditions of the license.
 - Improve the health, safety and welfare of tenants.
 - Ensure that absentee or unfit landlords employ an agent to actively manage their properties.

- ii. **Reduce ASB in the private rented sector**
 - Working with partners, proactively target nuisance areas.
 - Reduce flytipping and other forms of environmental nuisance through better management of private rented properties.
- iii. **Eliminate rogue landlords**
 - Take appropriate enforcement action against those landlords who fail to licence or deliberately flout licence conditions.
- iv. **Improve the working relationship between the Council and private sector landlords**
 - Deliver an education campaign for landlords so that they understand their rights and responsibilities.
 - Establish a landlord's focus group.
 - Provide discounts for accredited landlords.
 - Develop a comprehensive database of Ealing landlords, letting and managing agents.
 - Assist the local rental market through the provision of clear standards through which landlords will operate on a level playing field and tenants will know what they should expect.
- v. **Increased awareness in tenants on the minimum standards to be expected in rented accommodation**
 - Deliver an education campaign for tenants so that they understand their rights and responsibilities.
 - Improved protection for vulnerable groups living in the PRS.
 - Improved communication between landlords and tenants.

3.72 **Other conditions which must be satisfied when making a Selective Licensing designation**

In addition to the above criteria, when making a selective licensing designation the council must:

- a) have considered any potential negative economic impact that licensing may have on the area, and
- b) can demonstrate how licensing will work in conjunction with existing initiatives (such as landlord accreditation) and partnerships.

3.73 **Potential negative economic impact**

There is no evidence to suggest that the introduction of the Council's discretionary licensing schemes in 2017 had a negative impact on the areas in which they operated. A recent Independent review of the *Use and Effectiveness of Selective Licensing* commissioned by MHCLG determined that there was no substantive evidence of rent rises being passed onto tenants due to the introduction of selective licensing schemes. If selective licensing is extended to other wards in the borough, no negative economic impacts are anticipated. It is considered that selective licensing, when combined with other measures taken in

the designated areas will have a positive economic impact rather than negative by contributing to improved housing conditions.

3.74 Licensing working in conjunction with existing initiatives and partnerships

We will continue to build on the good working relationship with our external partners. As detailed earlier we have engaged in several joint working initiatives and partnerships with agencies such as the Police, Fire Service, HMRC, Immigration Enforcement, Social Services, Park Guard, Community Safety, Envirocrime and Planning Enforcement.

We will continue to actively promote the London Landlord Accreditation Scheme (LLAS) and provide discounts to accredited landlords.

4. FINANCIAL

- 4.1 Landlords or managing agents will be required to pay a licence fee for each property requiring a license in the designated area. Local authorities can set the level of the fee; however, it is expected that the level of fee should be 'transparent' and should cover the actual cost of the scheme's administration. The Regulatory Impact Assessment on licensing makes it clear that authorities should not use fee income to raise additional revenue.
- 4.2 The Property Licensing account (separate from statutory services) going forward will need to operate on a ringfenced trading account basis carrying over deficits and surpluses with the aim of breaking even over the period of the scheme (10 years for 5 year licenses) in terms of income and expenditure with no subsidy from the general fund (as is the case with the statutory service). This will allow the profile of income and expenditure to be managed flexibly over the period of the scheme enabling peaks and troughs in activity to be managed. Fees will be set with the aim of full cost recovery, being mindful of any benchmarking and any regulations as specified in the following paragraphs.
- 4.3 The proposed Additional Licensing fee is £1100 per HMO plus an additional £50 for each habitable room. The proposed Selective Licencing fee is £750.
- 4.4 It is also proposed for both schemes that:
 - Applicants who apply within the first three months of the scheme commencement will receive a 25% concessionary discount.
 - Applicants who apply after the commencement date and are sent two warning letters will be charged an additional 25% late application fee.
 - Applicants who are members of a Landlord Accreditation Scheme will receive a £75 discount.
 - Applicants with properties which have an Energy Performance Certificate (EPC) of C or above, will be eligible to receive a £50 discount.

- Registered charities operating and managing properties will be exempt from a licence fee but will still need to apply for a licence and meet all safety standards and conditions.

4.5 The below table illustrates Ealing's proposed fee in relation to other Council's with both additional and selective licensing schemes (based on 3 habitable rooms excluding discounts).

Local Authority	Additional	Selective
Barking and Dagenham	£1300	£900
Brent (proposed)	£840	£540
Enfield (proposed)	£900	£600
Harrow	£1310	£580
Hammersmith & Fulham	£555	£555
Havering	£900	£900
Islington	£864	£500
Newham	£1250	£750
Redbridge	£1373	£616
Southwark (proposed)	£1300	£900
Waltham Forest	£1000	£700
Average Fee	£1,053.82	£685.55
Ealing Fee (Proposed)	£1250.00	£750.00

**Correct as of February 2021*

4.6 The proposed additional and selective licence fee structure is attached as **Appendix 6**.

4.7 The administration of the schemes is such that they are intended to be self-financing over a five year period. The fees that are being applied are set at a level where the revenue from the fee will cover the cost incurred. The funding model ensures that the adequate resourcing is available for the lifetime of the license (i.e. a model which extends to 10 years).

4.8 The costs incurred will include:

- additional staff to process applications (including recruitment and training)
- additional staff to carry out inspections of premises,
- the cost of dealing with appeals against licensing decisions
- IT costs to enable online applications and payment,
- other costs associated with ensuring compliance with the scheme.

4.9 The Provision of Service Regulations 2009 and a decision of the Supreme Court (R. (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council, [2015] UKSC 25), allow the Council to include the costs of enforcement of the designations against unlicensed operators, within the license fees, as well

as the costs of monitoring the compliance of licensed landlords. Whilst all applicants can be charged a sum to cover the cost of administering the application, only successful applicants should be required to pay a fee to contribute towards regulatory and enforcement costs.

- 4.10 Payment of fees will be in two instalments. An initial payment of 30% of the fee to cover the processing of the application form. Once an application has been assessed, the 'fit and proper person' criteria met and a desktop risk assessment completed the final 70% of the fee will become payable and the licence granted and issued.
- 4.11 The income will be closely monitored and a team proportionate to the demand for the service will be employed.
- 4.12 Charges at Appendix 6 have been set with regard to costs, uptake levels, benchmarking with other LA's and also in compliance with the relevant regulations. The licensing scheme has to be cost neutral over the multi-year period of its operation by the use of a surplus/deficit mechanism for the Property Licensing trading account. Any funding not used within the period of the scheme's operation would have to be refunded to those charged. This is unlikely given that the Council is seeking to move the service from being subsidised to a break even position over the period of the scheme. The fees have therefore been set having regard to these overall objectives.
- 4.13 The proposed fee structure is based on the introduction of a combined Additional and Selective licensing scheme. If only one of the schemes is implemented, the fee structure will need to be revised to ensure that the scheme remains cost neutral.
- 4.14 The licence fee for both schemes will cover the owner of the property for a period up to 5 years, however should ownership of the property be transferred within that period, a further licence fee will be payable by the new owner.
- 4.15 The fees will be reviewed annually as part of the Council fees and charges process.

5. LEGAL

Mandatory Licensing

- 5.1 Section 61 of the Housing Act 2004 requires the Council to administer a licensing scheme for all large HMOs. Mandatory licensing applies to all privately rented HMOs occupied by five or more people who form two or more households.

Additional licensing of HMOs

- 5.2 Section 56 of the Housing Act gives Councils the discretion to introduce additional licensing of other types of (smaller) HMOs which are not subject to mandatory licensing. The authority must consider that a significant proportion of

the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise to one or more particular problems either for those occupying the HMOs or for members of the public. The Council must also be satisfied that the designation will significantly assist with dealing with the problems.

- 5.3 With additional licensing a Local Authority can specify the maximum number of people who can occupy the house, and attach conditions relating to the management of the building, as well as making sure amenities are kept up to standard.

Poorly converted flats (section 257 HMOs)

- 5.4 Under section 257 Housing Act 2004, certain converted blocks of flats may be designated an HMO for the purposes of Additional Licensing. A purpose-built block of flats is not an HMO because the building must have been "converted" into self-contained flats.

- 5.5 A property will require an additional HMO Licence if it falls into the below definition of a s.257 HMO:

- A converted property (could be a house or commercial building, for example) converted into residential flats which are self-contained (no sharing, or it would be a traditional HMO);
- The conversion was completed before 1st June 1992 (the date after which it would have had to comply with the new Building Regulations);
- The works were done to the pre 1991 Building Regulations standard or did not comply at all at the time;
- The conversion has not subsequently been upgraded to comply with current Building Regulations or at least the 1991 regulations;
- More than 1/3rd of the flats in the HMO are rented out by the leaseholders to shorthold tenants (not occupied by their owners).

Selective Licensing

- 5.6 Section 80 of the Housing Act 2004 and the Selective Licensing of Houses (Additional Conditions) (England) Order 2015 sets out the criteria and considerations that the Council must be satisfied are met when considering designating a selective licensing area. These general conditions are:

- That the area is, or is likely to become, an area of low housing demand
- That the area is experiencing a significant and persistent problem caused by antisocial behaviour
- The area has poor property conditions
- The area has high levels of migration
- The area has high levels of deprivation
- The area has high levels of crime.

- 5.7 Confirmation from the Secretary of State is required for any selective licensing scheme which would cover more than 20% of their geographical area or would affect more than 20% of privately rented homes in the local authority area.
- 5.8 For both additional and selective licensing schemes the Council must be satisfied that:
- the proposed designations are consistent with the overall housing strategy,
 - a co-ordinated approach is adopted in dealing with homelessness, empty properties and ASB,
 - alternative courses of action have been considered.
 - the proposed designations will significantly assist in achieving its objectives
- 5.9 In addition to the above criteria, when making a Selective Licensing designation the council must:
- a. have considered any potential negative economic impact that licensing may have on the area, and
 - b. can demonstrate how licensing will work in conjunction with existing

Duration and Notification of a Selective licensing Scheme

- 5.10 Where a designation does not require confirmation by the Secretary of State, it cannot come into force until three months after it is made. A designation may be made for up to 5 years.
- 5.11 Section 59 (Additional Licensing) and Section 83 (Selective Licensing) of the Act requires local housing authorities to publish a notice of the designation once it has been confirmed. A local housing authority must:
- publish a notice within the designated area within seven days of the designation being confirmed.
 - notify all those consulted on the proposed designation within two weeks of the designation being confirmed.

Local Authority Review of a Selective licensing Scheme

- 5.12 Once made, the operation of the designations must be reviewed from time to time and if appropriate the designation may be revoked.

Licence conditions

- 5.13 Under Schedule 4 of the Housing Act 2004, the following mandatory conditions must be applied to all additional and selective licences:
- a gas safety certificate must be presented annually to the council (if there is a gas supply to the house)
 - electrical appliances and furniture supplied by the landlord must be maintained in a safe condition

- the landlord must provide the authority, on demand, with declaration as to the safety of electrical appliances and furniture in the property
- smoke alarms must be provided and kept in working order
- a carbon monoxide alarm must be installed in every room used as living accommodation in which there is a solid fuel burning combustion appliance, and kept in working order
- the landlord must provide the authority, on demand with a declaration as to the condition and positioning of smoke and carbon monoxide alarms
- the landlord must provide each occupant with a written statement of the terms of occupancy.

HMO licences must also include mandatory conditions relating to minimum room sizes and compliance with the council's storage and waste disposal scheme.

Selective licences must also include a mandatory condition requiring the landlord to obtain references from prospective tenants.

For additional licensing, councils can impose further discretionary conditions for the management, use and occupation of the house and also its condition and contents.

For selective licensing, councils can only impose further discretionary conditions for the management, use or occupation of the house.

- 5.14 The proposed additional and selective licence conditions are attached as **Appendix 4 and Appendix 5.**

Granting a Licence

- 5.15 Under section 64 (Additional Licensing) and section 88 (Selective Licensing) of the Act, having received a complete licence application, the Council must issue a licence if it is satisfied that:
- The proposed licence holder is a fit and proper person
 - The proposed licence holder is the most appropriate person to hold the licence.
 - The proposed manager is a fit and proper person,
 - The manager has control of the property, or they are an agent, an employee of the person having control of the property.
 - The proposed management arrangements for the property are satisfactory.
 - The property is reasonably suitable for occupation.
- 5.16 The most appropriate person is the person in control of the house; in most cases the person who collects the rent, even if it is on behalf of someone else and who usually has day-to-day control of repairs and management responsibility (Housing Act 2004, s263). Similarly, if the licence holder appoints a manager to carry out part of the functions, the manager must also be deemed 'fit and proper'
- 5.17 In determining if a person is fit and proper for the purposes of the Act, the Council must take into account:

- Any previous convictions relating to violence, sexual offences, drugs and fraud;
- Contravention of any law relating to housing or landlord and tenant matters;
- Whether the person has been found guilty of unlawful discrimination;
- Whether the person has contravened any Approved Code of Practice.
- Whether there is a banning order in force against the person

5.18 A criminal conviction doesn't necessarily mean that a landlord won't pass the test. The Council will look at every case individually and weigh up all the circumstances when making a decision. For example, the Council will have to think about:

- What the conviction was for;
- How long ago it was and whether it is spent or not;
- Whether or not it will affect the person's ability to be a good landlord;
- The risk of the same thing happening again and whether that would affect the person's duties as a Licence Holder.

5.19 The proposed Licence Holder and any proposed manager will be required to declare to the Council as part of the application process that they are a 'fit and proper' person.

5.20 Before making a decision to grant or refuse a licence the Council is obliged to consult "relevant persons", i.e. any other person who has an estate or interest in the property (other than a tenant under a lease of three years or less to run) or any other person managing or person having control of the property. On the grant or refusal of the licence, the authority must inform the applicant and any relevant person of their decision. There is a right of appeal to the appropriate tribunal within 28 days.

5.21 A licence may be revoked where the Council no longer considers that the licence holder is a fit and proper person to be the licence holder or the Council no longer consider that the management of the property is being carried out by fit and proper persons.

Penalties and Sanctions

5.22 It is a criminal offence for a landlord to operate a property without a licence in a designated area or to fail to comply with any licence conditions. This may result in prosecution proceedings or a financial penalty of up to £30,000. On conviction, the Court may impose an unlimited fine.

5.23 In accordance with the Housing and Planning Act 2016 a landlord operating a property without a licence or failing to comply with any licence conditions may also be subject to a Banning Order, preventing them from letting or managing a property in England.

5.24 Furthermore, landlords operating a licensable property without a licence are also liable to being issued, by the First-tier Tribunal, a Rent Repayment Order (RRO) to repay up to 12 months of rent or housing benefit paid during the period the property was unlicensed.

- 5.25 A landlord who does not have a licence for a property in a designated area cannot rely on section 21 Housing Act 1988 to gain possession for as long as the property remains unlicensed.

Consultation

- 5.26 Section 56 (3) for Additional Licensing, and Section 80 (9) for Selective Licensing, of the Housing Act 2004, state that when considering designating an area the local housing authority must:
- a. take reasonable steps to consult persons who are likely to be affected by the designation, and,
 - b. consider any representations made in accordance with the consultation.

Public Sector Equality Duty

- 5.27 When considering the recommendations of this report, due regard must be given to the public sector equality duty in section 149 of the Equality Act 2010. This requires the council to consider all individuals when carrying out its functions. Specifically, to have due regard to the need to eliminate discrimination, harassment, victimisation or other prohibited conduct; advance equality of opportunity and foster good relations between people with protected characteristics and those who do not. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The PSED also applies to marriage and civil partnership, but only in relation to the need to eliminate discrimination, harassment, victimisation or other prohibited conduct. Cabinet must take note of the Council's obligations as set out above when making a decision and are referred to the Equality Analysis Assessment detailed in section 11 of this report.

6. VALUE FOR MONEY

- 6.1 Once the scheme is set up it is designed to be self-financing through the levy of fees. The schemes also have potential to produce value for money in other areas, as set out below.

- 6.2 Health benefits - It is estimated that poor housing costs the NHS in the UK at least £2.5bn per year. By addressing poor housing conditions this will help to improve health and wellbeing, reduce health inequalities, and prevent and reduce demand for primary health care and social care interventions, including admission to long-term care settings. This will produce a quantifiable cost saving to health and social care budgets. (<https://www.bre.co.uk/filelibrary/pdf/87741-Cost-of-Poor-Housing-Briefing-Paper-v3.pdf>)

The Covid-19 pandemic has also shown correlations between susceptibility to the virus and poor-quality housing. Therefore, good quality housing can do much to help combat the spread of covid-19, as well as other illnesses such as cancer, respiratory and cardiovascular diseases.

- 6.3 Educational attainment - It is also well understood that poor housing conditions and overcrowding have a negative impact on educational attainment. This in turn impacts on an individual's ability to reach their full potential. It is expected that licensing will assist the council and partners in achieving objectives in improving educational attainment and residents achieving their full potential.
- 6.4 Fraud detection - Other licensing schemes have identified housing benefit, council tax benefit and leasehold/tenancy fraud through their schemes, recouping money for the public purse as a result.
- 6.5 Future Ealing – The goal of Future Ealing is to improve the lives of residents, which in turn will save the Council money. Licensing helps contribute to the achievement of the nine [Future Ealing outcomes](#).

7 SUSTAINABILITY IMPACT APPRAISAL

- 7.1 The introduction of the additional and selective licensing schemes will have a positive impact on property conditions. A good quality private rented sector will encourage residents to stay in Ealing, in turn creating sustainable communities.
- 7.2 All property licence conditions will contain a requirement to ensure properties have a minimum energy performance indicator of 'E', in line with the Minimum Energy Efficiency Standard (MEES). In addition, landlords will be incentivised to improve the EPC rating of their properties to 'C' through licence fee discounts.

8 RISK MANAGEMENT

- 8.1 The following risks have been identified in respect of introducing additional and selective licensing schemes in Ealing:

Risks	Mitigation
Failure to receive estimated number of applications and fees creating significant budget shortfall.	<p>Landlords will be incentivised to apply for a licence through the fee structure.</p> <p>Prior to commencement of the schemes a major publicity campaign will be undertaken.</p> <p>Sufficient staffing resources have been allocated to identifying unlicensed properties.</p>
Landlords exit the Private Rented Sector causing a reduction in private rented dwellings.	Evidence from previous additional and selective licensing schemes and other authorities who have introduced similar schemes suggests that this will not happen. However, we will carefully monitor the impact on homelessness in the PRS.

Risks	Mitigation
	Due to Ealing's desirability as a location, very high demand with good links to central London, and cross rail development it will still be viewed as an area in which to invest. Therefore, new landlords will enter the PRS balancing out those who exit.
Landlords evict tenants reducing the occupancy below the threshold.	Evidence from previous additional and selective licensing scheme and other authorities who have introduced similar schemes suggests that this will not happen. However, advice and assistance will be available for any displaced tenants.
Cost of licence fee passed on to tenants	<p>Evidence from previous additional and selective licensing scheme shows that landlords absorb the cost of the licence fee over the 5-year period. Should landlords raise rents the overall impact on rent affordability to tenants would be minimal and outweighed by the additional benefits tenants would receive from the scheme.</p> <p>Independent review of the Use and Effectiveness of Selective Licensing commissioned by MHCLG determined that there was no substantive evidence of rent rises being passed onto tenants due to the introduction of selective licensing schemes.</p>
Displacement of good landlords to other boroughs.	This risk is considered unlikely as many of Ealing's neighbouring boroughs have or are in the process of introducing similar licensing schemes.
Scheme does not reduce ASB or improve property conditions	<p>Robust enforcement action will accompany the licensing regime. Inspections will be undertaken to ensure that landlords comply with licensing conditions and maintain well managed properties. Enforcement action will be taken where appropriate.</p> <p>Tenants will also be aware of the standards that should be in place and will be encouraged to report landlords who do not comply with licensing conditions.</p>
The proposed designations may not be approved by Secretary of State.	A large selective licensing scheme (more than 20%) will require Secretary of State approval. Due regard will be had to legal advice and lessons learnt from authorities

Risks	Mitigation
	have who have had applications approved and rejected.
<p>The designations may be challenged by judicial review, as has been the experience of other local housing authorities. There is the potential for additional and unfunded legal work to meet any such challenges or cases brought against the local authority</p> <p>Judicial review proceedings may be successful where local authorities have failed to follow the correct processes or have been unable to justify part of their scheme, proposals or evidence base.</p>	<p>Independent research has been undertaken to develop the evidence base. The evidence is considered to be reliable and supports justification for scheme proposals.</p> <p>Independent consultants experienced in the legal process required for proposed licensing schemes have been commissioned to conduct the statutory consultation process.</p> <p>It is considered that the above actions mitigate the potential risk of Judicial review.</p> <p>Furthermore, should the designations require confirmation from the secretary of state and receive such confirmation, the risk of Judicial review is lowered.</p>

9 COMMUNITY SAFETY

- 9.1 This report has direct links to making Ealing one of the safest places in London and impacts on residents' perception of how we deal with crime and antisocial behaviour.

10 LINKS TO THE THREE KEY PRORITIES

- 10.1 Future Ealing is the council-wide transformation programme. Its goal is to improve the lives of residents. Making things better for residents saves the council money and Future Ealing is central to the Council's plan to close the budget gap by 2022. The licensing schemes help to contribute to improving housing for residents which underpins the nine Future Ealing outcomes.

11 EQUALITIES, HUMAN RIGHTS AND COMMUNITY COHESION

- 11.1 The United Kingdom is a signatory to the European Convention on Human Rights (ECHR) which came into force as an international treaty in 1953. The Convention comprises a statement of rights, which signatory states guarantee, and incorporates machinery and procedures for their enforcement through the European Commission of Human Rights and the European Court of Human Rights in Strasbourg.

- 11.2 The provisions of the ECHR which are of most relevance to additional and selective licensing in this context are as follows:

Article 8 - "Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country. For the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 1 of the First Protocol - "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law. The preceding provisions shall not, however, in any way impair the right of the state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest...."

- 11.3 The Human Rights Act 1998 came fully into force on 2 October 2000, incorporating the provisions of the ECHR into domestic law.
- 11.4 Although the ECHR guarantees the right to peaceful enjoyment of property, it is clear from Article 1 of the First Protocol that the control of property does not involve an infringement of the ECHR so long as it is done in the public interest and subject to the law laid down by statute. Similar considerations apply to Article 8.
- 11.5 Members need to be satisfied that the proposed interference with the use of property is justified by virtue of being in the public interest before a final decision to introduce the scheme is made.
- 11.6 A full Equality Analysis Assessment (EAA) has been undertaken to consider the impact on any groups having protected characteristics. It is considered that that the schemes will have a positive impact on any of the groups having a protected characteristic who are negatively affected by poor housing conditions, ASB, discrimination and/or overcrowding in the borough's PRS. Please refer back to the Public Sector Equality Duty at para 5.27 of this report and the EAA attached as **Appendix 7**.
- 11.7 The Council's EAA shall be kept under continuous review and the analysis revised before making any further recommendations to Cabinet.

12 STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS

- 12.1 There are no direct staffing/workforce and accommodation implications arising from this report.

13 PROPERTY AND ASSETS

- 13.1 There are no property or assets implications.

14 ANY OTHER IMPLICATIONS

14.1 None applicable.

15 CONSULTATION

15.1 Section 56 (3) for Additional Licensing, and Section 80 (9) for Selective Licensing, of the Housing Act 2004, state that when considering designating an area the local housing authority must:

- a) take reasonable steps to consult persons who are likely to be affected by the designation, and,
- b) Consider any representations made in accordance with the consultation.

15.2 Local housing authorities will be required to conduct a full consultation. This should include consultation of local residents, including tenants, landlords and where appropriate their managing agents and other members of the community who live or operate businesses or provide services within the proposed designation. It should also include local residents and those who operate businesses or provide services in the surrounding area outside of the proposed designation that will be affected, including those in neighbouring authorities' areas. Local housing authorities should ensure that the consultation is widely publicised using various channels of communication.

15.3 If the designation does not require the confirmation of the Secretary of State because of its extent the local housing authority must consult on the proposed scheme for at least 10 weeks.

15.4 The consultation should be informative, clear and to the point, so the proposal is readily understood. It should inform local residents, landlords, letting agents and businesses about the proposed designation, giving the reasons for proposing it, why alternative remedies are insufficient, demonstrating how it will tackle specific problems together with other specified measures, and describing the proposed outcome of the designation. It should also set out the proposed fee structure and level of fees the authority is minded to charge (if any). Consultees should be invited to give their views, and these should all be considered and responded to.

15.5 Once the consultation has been completed the results should then be published and made available to the local community. This should be in the form of a summary of the responses received and should demonstrate how these have either been acted on or not, giving reasons.

15.6 It is proposed that a consultation exercise be undertaken with stakeholders from the 10th May 2021, for a period of 12 weeks. The consultation methodology will include: an online questionnaire, virtual public consultation meetings, focus groups meetings with landlords and tenants, interviews with key stakeholders.

15.7 The consultation exercise will be accompanied by a comprehensive communications plan and the following communications methods will be used to highlight the consultation exercise:

- Leaflet drop to all those affected in the proposed designated areas
- Articles in Around Ealing
- Articles/Adverts in local press
- A link to the consultation will be posted out via Social Media (Twitter and Facebook)
- Articles in Inside Ealing/intranet
- Posters will be placed on community notice boards across the borough
- Adverts will be placed on the Council and ECVS website
- Adverts will be placed in neighbouring borough local press and national press
- Leaflets to be distributed at key locations across borough
- Direct mail outs to landlords/letting agents/tenants (where address known to council).

16 TIMETABLE FOR CONSULTATION AND PROPOSED IMPLEMENTATION

	Date	Action
PHASE 1	May – Jul 2021	Statutory consultation period
	Aug – Oct 2021	Consideration of consultation responses. Formulate final proposals.
	Nov 2021	Report to cabinet on results of consultation process and make recommendations. Publication of consultation results
	Dec 2021	Implementation date if not called in
	Dec - Feb 2022	If proposals accepted by cabinet, and for any scheme not needing Secretary of State approval (less than 20%) , major statutory publicity campaign will be undertaken to advertise the schemes in the three-month period before they come into operation.
	Mar 2022	Additional HMO and any small selective licensing schemes commence.
PHASE 2	Dec – Jan 2022	For proposals accepted by Cabinet requiring Secretary of State approval (more than 20%) application to be prepared and submitted. A response is usually expected in around 6 months but presently, some applications submitted by other LA's 12 months ago are still awaiting a response.
	Jun 2022	Secretary of State approves larger selective scheme. Launch three-month statutory publicity campaign.
	Sept 2022	Larger selective licensing scheme commences.

17 APPENDICES

No.	Title
Appendix 1	Ward analysis of licences granted
Appendix 2	Licensing Case studies
Appendix 3	London Borough of Ealing Private Rented Sector: Housing Stock Condition and Stressors Report
Appendix 4	Draft additional HMO licence conditions
Appendix 5	Draft selective licence conditions
Appendix 6	Proposed additional and selective licensing fee structure
Appendix 7	Equalities Analysis Assessment

18 BACKGROUND INFORMATION

- [Cabinet Report: Licensing the Private Rented Sector July 2016](#)
- [The Housing Act 2004](#)
- [The Housing and Planning Act 2016](#)
- [The Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation \(England\) General Approval 2015.](#)
- [Selective licensing in the private rented sector, a guide for local authorities, MHCLG, March 2015](#)
- [The Licensing of Houses in Multiple Occupation \(Mandatory Conditions of Licences\) \(England\) Regulations 2018](#)
- [Houses in multiple occupation and residential property licensing reform: guidance for local housing authorities, MHCLG, June 2018.](#)

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Gary Alderson	Executive Director of Place	11.03.21		
Dipti Patel	Director Place Delivery	11.03.21	18.03.21	Section 1
Justin Morley	Head of Legal Services (Litigation)	11.03.21	18.03.21	Throughout
Russell Dyer	Assistant Director, Accountancy	11.03.21	18.03.21	Section 4

Report History

Decision type:	Urgency item?
Key decision	No
Report no:	Allison Forde, Head of Property Regulation, Planning Enforcement and Environment Email: fordea@ealing.gov.uk Tel: 020 8825 7741
	Rachel Fell, Property Regulation Lead Practitioner Email: fellr@ealing.gov.uk Tel: 020 8825 8513