



<b>Report for:</b> <b>DECISION</b>
<b>Item Number:</b>

<b>Contains Confidential or Exempt Information</b>	No
<b>Title</b>	Private Rented Sector Licensing Schemes Renewal
<b>Responsible Officer(s)</b>	Mark Wiltshire (Director of Community Development)
<b>Author(s)</b>	Allison Forde (Assistant Director Property Enforcement and Environmental Protection)  Rachel Fell (Property Regulation Lead Practitioner)
<b>Portfolio(s)</b>	Councillor Shital Manro (Portfolio Leader for Good Growth)
<b>For Consideration By</b>	Cabinet
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<b>Affected Wards</b>	All
<b>Keywords/Index</b>	Private Rented Sector, Additional Licensing, Selective Licencing, HMOs

**PURPOSE OF REPORT**

The purpose of this report is to:

To consider the evidence and responses following a statutory consultation exercise on proposals to renew and expand its private rented sector licensing schemes and to determine whether any proposed renewed and new scheme shall be introduced.

## 1. RECOMMENDATIONS

It is recommended that Cabinet:

- 1.1 Consider the outcome of the consultation process detailed in the Consultation Report (**Appendix 1**), the representations received and the Council's consideration and response to these representations (**Appendix 2**).
- 1.2 Agree to designate a new Additional Licensing area of the whole of the London Borough of Ealing from 01 April 2022 as delineated and edged red on the map in the draft designation in **Appendix 4** for a five-year period.
- 1.3 Agree to designate a new Selective Licensing area (to be known as Selective Licensing Designation 1) in the three ward areas of East Acton, Southall Broadway and Southall Green (pre May 2022 boundaries) from 01 April 2022 as delineated and edged red on the map in the draft designation in **Appendix 5** for a five-year period.
- 1.4 Agree to the licensing scheme objectives as set out in **Appendix 7**.
- 1.5 Agree the proposed HMO licensing conditions set out in **Appendix 8**.
- 1.6 Agree the proposed selective licensing conditions set out in **Appendix 9**.
- 1.7 Agree the proposed property licensing fee structure detailed in **Appendix 10**.
- 1.8 Agree the policy regarding the length (duration) of licences granted under any new licensing scheme and the variation of licences granted for less than five years under the existing additional and selective licensing schemes at **Appendix 11**.
- 1.9 Agree to delegate the authority to the Director of Community Development to issue the required statutory notifications in relation to the designations and, in consultation with the Portfolio Holder, to amend the licensing fee and make such other changes to the schemes as is necessary for the effective administration of the schemes.
- 1.10 Agrees for the Director of Community Development to consult with the Chief Finance Officer annually with regards to seeking:
  - a) approval of any surplus and deficits to be carried forward for the established ring fenced trading account, which has the financial objective of breaking even over the life of the schemes. In doing so regard will be given to the current financial performance and expected future financial performance and recommendations will be made as to any corrective action to be taken to ensure that the financial objective is met over the agreed scheme period.
  - b) approval of updated financial plan. In doing so regard will need to be given to the prior-year outturn position and forecasted future position with the key aim to deliver a break-even position over the remaining scheme term.

- 1.11 Note that a further report will be brought to Cabinet in 2022 informing it of the results of its recruitment campaign for the new licensing schemes and proposals for a Selective Licensing Designation 2.

## 2. REASON FOR DECISION AND OPTIONS CONSIDERED

### Background

- 2.1 On 01 January 2017, the Council's existing additional and selective licensing schemes required eligible private rented properties to be licensed with the Council. Property licences require the licence holder to comply with conditions relating to the letting and management of the property. Such discretionary property licensing schemes can only last for a maximum of five years and Ealing's schemes are due to expire on 31 December 2021.
- 2.2 On 20 April 2021, the report presented to Cabinet *Private Rented Sector Licensing Schemes Renewal* set out the achievements of the existing schemes, evidence of the current nature of the private rented sector (PRS) in Ealing and resultant proposals, informed by the evidence, for new additional and selective licensing schemes. As a result, Cabinet approved the decision to launch a statutory consultation seeking stakeholders' views on these proposals.

- 2.3 The proposals and options considered subject to the consultation were:

- A new boroughwide additional HMO licensing scheme applicable to all "shared amenity" HMOs and many "converted building" HMOs (so called "section 257" HMOs).
- Selective licensing of all other private rented accommodation in specific wards in the borough, to be introduced in two distinct phases.

Phase (1) consisting of the wards of East Acton, Southall Broadway and Southall Green.

Phase (2) consisting of the wards of Acton Central, Dormers Wells, Greenford Broadway, Greenford Green, Hangar Hill, Hobbayne, Lady Margaret, North Greenford, Northolt Mandeville, Northolt West End, Perivale and South Acton.

In this report, phases 1 and 2 shall now be referred to as designations 1 and 2.

- 2.4 The consultation started on 10 May 2021 and lasted for 14 weeks, closing on 16 August 2021. As the consultation was held towards the end of COVID restrictions, the consultation communication channels and activities were adjusted to mitigate any issues and to ensure all stakeholders could be reached despite the challenges. Further details are in the consultation report (**Appendix 1**) which sets out how the Council conducted the consultation and the response received. As required by the Housing Act 2004, the Council must consider any representations made which are not withdrawn. The Council's response to these representations can be found in **Appendix 2**.

- 2.5 In order to ensure independence, the Council commissioned Housing Quality Network (HQN), an independent housing consultancy, to undertake the consultation exercise on its proposals. The consultation included an online survey, live online public meetings, and interviews with key stakeholders. The exercise sought views from residents, private tenants, private landlords, lettings/managing agents, businesses and other stakeholders about the Council's proposals. Additional effort ensured that landlords resident outside the borough were also advised of the consultation exercise. The consultation materials and evidence made available during the consultation to support the proposals can be found in **Appendix 3**.
- 2.6 This report sets out the response to this consultation, providing evidence upon which the recommendations are made for the designation of a new boroughwide additional HMO licensing scheme and the designation of selective licensing to the wards of East Acton, Southall Broadway and Southall Green (Designation 1).

### **3. KEY IMPLICATIONS**

#### **Additional HMO licensing designation**

- 3.1 During the consultation exercise, the Council proposed on renewing a boroughwide additional licensing scheme. The HMOs required to be licensed would be as follows:
- All HMOs that are rented to three or more occupiers in two or more households that share (or lack) toilet, washing and cooking facilities (section 254 HMOs).
  - Converted building HMOs (section 257 HMOs), but only where the building or any rented flats in the building are in the same ownership or control, or considered by the housing authority to be effectively under the same ownership or control. This will include buildings within mixed use developments or above non-residential premises. Any owner-occupied flats or flats demised to separate leaseholders will not form a part of the licence. An additional licence will not be required where a building has been converted into no more than two flats.
- 3.2 From the consultation, 50% of online survey respondents supported the Council's proposal to introduce a new additional HMO licensing scheme. This varied from 65% of PRS tenants and 71% of residents being in support of the scheme compared to 25% of landlords and 7% of lettings/managing agents. Overall, 37% of respondents were against the proposals.
- 3.3 The majority of survey respondents (42-55%) agreed that additional HMO licensing would help to address issues in the PRS (including improving conditions, safety of tenants and tackling neighbourhood problems such as ASB). However, the majority of landlords did not agree (47-56%).
- 3.4 74% of PRS tenants and 70% of residents felt that the scheme would identify poorly performing landlords and letting agents over the five-year period.

- 3.5 In the freetext parts of the survey, some respondents including both PRS tenants and landlords, voiced concerns about the cost of licensing and that it would be passed on to tenants. Another common theme emerging was the need for the schemes to be underpinned by effective enforcement. The Council's response to these representations can be found in **Appendix 2**.
- 3.6 In addition to the survey findings, the Council also received feedback in relation to the inclusion and description of s.257 HMOs. Having carefully considered these representations the Council shall exclude any s.257 HMO that contains any flats demised to separate leaseholders.
- 3.7 The HMOs required to be licensed in the new designation shall now be as follows:
- All HMOs that are rented to three or more occupiers in two or more households that share (or lack) toilet, washing and cooking facilities (section 254 HMOs).
  - Converted building HMOs, as defined by section 257 of the Housing Act 2004, but only where all accommodation units are privately rented and the building and accommodation units are in the same ownership or control, or considered by the housing authority to be effectively under the same ownership or control. This includes buildings within mixed use developments or above non-residential premises. An additional licence is not required where a building has been converted into no more than two flats.
- 3.8 Having carefully considered the consultation representations there are no other changes recommended in regard to the overall proposals to introduce a boroughwide additional HMO licensing scheme.
- 3.9 The proposed additional licensing designation can be found in **Appendix 4**.

#### **Selective licensing designation**

- 3.10 During the consultation exercise, the Council proposed a new selective licensing scheme that would cover two distinct designations. The scheme would apply to all private rented sector properties in the designated areas that are not included in the mandatory or additional licensing schemes.
- 3.11 Designation 1 consists of three wards (East Acton, Southall Broadway and Southall Green) which covers 13.48% of the geographical area of the borough and 18.37% of the total private rented sector in Ealing.
- 3.12 Designation 2 consists of a further 12 wards and covers 56.89% of the geographical area of the borough and 41.35% of the total private rented sector in Ealing.
- 3.13 The selective licensing proposals were supported by 42% of survey respondents. This varied between 61% of PRS tenants and 67% of residents being in support compared to 9% of landlords and 8% of lettings/managing agents. Overall, 47% of respondents disagreed with the proposals.

- 3.14 33% of respondents were in support of the 15 wards proposed. This varied between 48% of PRS tenants and 50% of residents being in support compared to 10% of landlords and 8% of lettings/managing agents. Overall, 39% of respondents disagreed with the proposals.
- 3.15 30% of respondents were in support of the two-phase approach. This varied from 43% of PRS tenants and 44% of residents being in support compared with 11% of landlords and 8% of lettings/managing agents. Overall 38% of respondents disagreed with it.
- 3.16 Most PRS tenants (63-63%) and 15-22% of landlords felt that selective licensing would lead to improvements in the PRS over the next five years (including improving the physical conditions of properties, health and safety of tenants, and assisting landlords to raise their standards). However, most landlords (63-71%) did not agree with the potential benefits of selective licensing.
- 3.17 70% of PRS tenants and 67% of residents felt that the scheme would identify poorly performing landlords and letting agents over the five-year period.
- 3.18 As with additional HMO licensing, some respondents expressed concerns about the cost of licensing being passed on to tenants. Similarly respondents from all the main groups expressed the need for the effective enforcement of the schemes. The Council's response to these representations can be found in **Appendix 2**.
- 3.19 Having carefully considered the consultation representations there are no changes recommended in regard to the proposals to introduce selective licensing designation 1.
- 3.20 The proposed selective licensing designation (Selective Licensing Designation 1) can be found in **Appendix 5**. A list of all streets that fall within this designation can be found in **Appendix 6**.
- 3.21 Whilst the Council collated evidence and carried out a public consultation for both designation 1 and designation 2, this report does not seek approval to implement designation 2 at this time.
- 3.22 As part of the process of preparing its new licensing schemes, the Council has become aware of a shortage in specialist staff in this area, particularly qualified and/or experienced environmental health officers. This may create challenges in the recruitment of the large team that will be required to administer, inspect and enforce both selective licensing designations. This challenge is heightened as the existing team has been scaled back over the last two years to coincide with the end of the current schemes. As a result, the Council is proposing to split its selective licensing schemes into two distinct phased designations.
- 3.23 The Council proposes to introduce designation 1 first under the general approval as set out at section 5 below. This will allow the Council to continue to have a selective licensing scheme in operation in the borough, in the areas where there is the most acute need. The timeline for implementation of this designation means that there should be only a small break (3 months) between the existing selective scheme and the new designation 1. This is important as these three

wards have some of the worst property conditions in the borough and as a result have had the most statutory notices issued for both housing and planning violations. If this designation were any larger, it would need confirmation by the Secretary of State, which we know from the experience of other local authorities, can cause considerable delays. The relatively small size of this designation means that the council will be able to scale up staffing from the current team size of 31 to the new team size of 45 over the next three to six months.

- 3.24 During this time the Property Regulation team will put together a fully researched and realistic people/HR plan which will provide a practical road map to how the selective licensing designation 2 will be staffed. This will include the recruitment results and challenges of designation 1, a fully researched market analysis of available skilled EHOs or similar level officers, a graduate recruitment and retention plan, apprenticeships plus a training and development plan for existing officers within the Property Regulation team.
- 3.25 The Council will present this people/HR plan in 2022 when seeking approval from Cabinet to make Selective Licensing designation 2. Due to the size of the designation, after being agreed by the Council's cabinet, approval will also be sought from Cabinet to make an application to the Secretary of State for the Department of Levelling Up, Housing and Communities (DLUHC) requesting confirmation of the Selective Licensing Designation 2.

### **Objectives of the proposed schemes and alternatives to licensing**

- 3.26 The objectives of the proposed schemes can be found in **Appendix 7**.
- 3.27 A local authority must not make a property licensing designation unless consideration has been given to other courses of action available to them that would achieve the objectives they would want the designations to achieve.
- 3.28 These objectives and alternative options were also set out in the Council's consultation evidence documents which can be found in **Appendix 3**.
- 3.29 The most common theme about alternatives to licensing that emerged from the consultation was that the Council should focus on using its existing powers rather than designate further discretionary licensing schemes. The Council's response to these representations can be found in **Appendix 2**.
- 3.30 It is considered that no alternatives were identified through the consultation process that would, individually or collectively, be capable of delivering the scheme objectives that the Council would deliver through its selective and additional licensing schemes.

### **Licence conditions**

- 3.31 Property licences are issued with licence conditions which the licence holder must comply with. The conditions are a combination of those which local authorities must impose (mandatory conditions by law), and those which they have a power to impose. Draft licence conditions were available for persons to comment on during the consultation.

- 3.32 The online survey proposed a number of items for inclusion in the licensing conditions (including fire safety, provision of amenities, numbers of occupiers, energy efficiency, management of ASB including rubbish/recycling) and there was considerable support for each of the proposed items (additional and selective) compared with the proportion of responses opposed to the conditions.
- 3.33 In addition to the survey findings, the Council also received feedback in relation to the proposed licence conditions. Following consideration of all responses, eight conditions (three from additional HMO licensing and five from selective licensing) have been removed from the proposed additional HMO licence conditions and the proposed selective licence conditions. A further seventeen conditions (nine for additional HMO licensing and eight for selective licensing) have been amended. The details of these changes can be found on pages 3 and 4 of the Council's response to the consultation (**Appendix 2**).
- 3.34 Taking these changes into account, the revised proposed additional HMO licence conditions are attached as **Appendix 8** and the revised proposed selective licence conditions as **Appendix 9**.

### **Licence Fees**

- 3.35 The landlord or managing agent will be required to pay a licence fee for each property requiring a licence in the designated area. The proposed additional licensing fee is £1,100 per HMO plus an additional £50 for each habitable room. The proposed selective licensing fee is £750.
- 3.36 The proposed fee schedule was made available for persons to comment on during the consultation. It set out the fees the Council was proposing to charge, together with a number of concessionary and discount rates available. These included a 25% discount for "early bird" applications, a £75 discount for accredited landlords and a £50 discount for properties with an EPC rating of C or higher.
- 3.37 In regard to additional licensing:
- 34% in the survey agreed with the fee structure for additional licensing and 49% disagreed – 35% PRS tenants, 56% residents and 11% landlords and 8% lettings/managing agents were in support.
  - 35% agreed and 48% disagreed with the additional charges (including charges for late applications, or the submission of a paper application) — 38% PRS tenants and 53% residents compared to 16% landlords and 15% lettings/managing agents were in support.
  - 48% agreed and 28% disagreed with the discounts – 60% PRS tenants, 57% residents compared to 26% landlords and 30% lettings/managing agents were in support.

In regard to selective licensing:

- 31% in the survey agreed and 53% disagreed with the fee structure – 40% PRS tenants, 52% residents and 7% landlords and 12% lettings/managing agents were in support.



- 35% of respondents supported and 50% disagreed with additional charges (including charges for late applications, or the submission of a paper application) – 41% PRS tenants and 54% residents in support compared to 14% of landlords and 12% lettings/managing agents.
- 46% agreed and 35% disagreed with the discounts – 68% of PRS tenants and 55% resident occupiers were in support compared to 34% of landlords and 31% of lettings/managing agents.

3.38 Concerns over fees were strongly expressed by landlords (as well as some tenants) in the free text parts of the survey, with comments including ‘tax on good landlords’, ‘fee costs are passed on to tenants’ and ‘good landlords receive no benefits from licensing’. The Council’s response to these representations can be found in **Appendix 2**.

3.39 Having carefully considered the consultation representations the Council is proposing to make the following changes to the proposed fee structure. This is to support responsible landlords who have previously licensed their properties and/or who are improving their professionalism through a broader range of landlord accreditation organisations.

- Early bird fees: the Council has taken into consideration the feedback regarding licence holders whose licence started mid-way through the current scheme. This will mean that their licence will expire later in the new scheme and they would, therefore, be unable to take advantage of the early bird discount. In order to give the same opportunity for a discount to these responsible landlords, the Council will offer a 25% discount where the property meets the requirements of the new scheme and if the licence holder applies for a new licence within the three months prior to the expiry date of their current licence.
- Landlord accreditation discounts: to include Safeagent as a recognised organisation for the purposes of receiving the £75 discount, and to keep the list of organisations under review and updated.

3.40 The proposed fee structure has been amended accordingly and can be found in **Appendix 10**.

#### **Length (duration) of a licence**

3.41 This did not form a part of the consultation but as the Council transitions between the existing and proposed property licensing schemes, Cabinet approval is sought for the agreement of a policy in relation to the length (duration) of licences.

3.42 In determining an application for any property licence, the Council must decide whether to grant or refuse a licence. In circumstances where the Council is minded to grant a licence, it has some discretion as to the length of the term of any licence period, except that any granted licence must not exceed a 5-year period.

3.43 The proposed policy sets out the Council’s approach to:

- Determining new applications.
- Granting licences for a reduced term.
- Consideration of the planning status of a property.
- Applications to extend a licence granted for less than 5 years under the existing additional and selective licensing schemes.

#### **4. FINANCIAL**

- 4.1 The proposed additional and selective licensing fees are set out in section 3.35 above.
- 4.2 It is the Council's intention to grant all additional HMO and selective licences for a period of five years starting from the date they are granted, unless the Council is satisfied that in the circumstance of a particular property a shorter period is appropriate.
- 4.3 Evidence from the current licensing schemes support that although the largest proportion of applications are received in year 1 when landlords wish to take advantage of 'early bird discounts', applications are consistently received throughout the scheme designation and continue to be received well into year 5 of the designation.
- 4.4 A financial model has therefore been created to be cost neutral over the course of a 10 year period. The model assumes that although the scheme is for 5 year licences there is an ongoing licence enforcement and management requirement over the life of the licence, even though the new additional and selective schemes will cease and no new licences issued from year 6 onwards.
- 4.5 The costs of resourcing the schemes in years 6 -10 will reduce in line with the number of licences that need to be managed and enforced during this period.
- 4.6 In setting the fee the Council has had regard to the EU Service Directive and sections 63(7) and 87(7) of the Housing Act 2004 which confirms that "when fixing fees the local authority may take into account all costs incurred by the authority in carrying out their functions".
- 4.7 The Regulatory Impact Assessment on licensing makes it clear that authorities should not use fee income to raise additional revenue.
- 4.8 The proposed licence fees will be sufficient to cover the estimated costs of establishing and administering the schemes and also the undertaking of any enforcement action.
- 4.9 The proposed fee structure is based on the introduction of a combined additional and selective licensing scheme (Designation 1 and 2). If only one of the schemes is implemented or selective licensing designation 2 is not approved, the fee structure will need to be revised to ensure that the scheme remains cost neutral.
- 4.10 Expenditure

The costs included in the fees model are:

- 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
- the cost of a new Information Technology system
- other costs associated with ensuring compliance with the scheme.

Costs (£m)	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	TOTAL
Staffing	3.75	2.97	2.53	1.76	1.59	1.24	1.19	1.16	1.11	1.10	18.40
Non Staffing	3.31	0.84	0.68	0.49	0.41	0.21	0.20	0.20	0.19	0.19	6.72
<b>Total</b>	<b>7.06</b>	<b>3.80</b>	<b>3.21</b>	<b>2.25</b>	<b>2.00</b>	<b>1.45</b>	<b>1.39</b>	<b>1.36</b>	<b>1.31</b>	<b>1.29</b>	<b>25.12</b>

#### 4.11 Income

The estimated net position over a 10 year period is detailed below.

Revenue (£m)	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	TOTAL
Expenditure	7.06	3.80	3.21	2.25	2.00	1.45	1.39	1.36	1.31	1.29	25.12
Income	(8.49)	(5.51)	(4.51)	(2.42)	(2.07)	(0.81)	(0.63)	(0.46)	(0.25)	(0.21)	(25.36)
<b>Total</b>	<b>(1.43)</b>	<b>(1.70)</b>	<b>(1.30)</b>	<b>(0.17)</b>	<b>(0.07)</b>	<b>0.64</b>	<b>0.76</b>	<b>0.90</b>	<b>1.05</b>	<b>1.08</b>	<b>(0.24)</b>

- 4.12 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 licences) 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.
- 4.13 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.
- 4.14 There is the potential risk of a significant under recovery of income and a failure to effectively achieve the schemes objectives if the Council does not receive the estimated number of applications and fees. This risk has been mitigated by ensuring that sufficient staffing resources are allocated to identifying unlicensed properties.
- 4.15 Should the number of licences vary from those anticipated, and/or the profile of applications change, the resourcing requirement will be flexed to manage any pressure this creates within existing budgets.
- 4.16 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.

- 4.17 The actual financial position of the schemes against the budget will be robustly reviewed on an annual basis. This will be undertaken as part of the Council fees and charges process to ensure that the fees remain reasonable and proportionate. The Council is aware that any consistent surplus must be used to adjust fees in upcoming years, although some reinvestment over more than a year is permitted. This balance will be assessed in the yearly review and adjustments made accordingly if required.

#### *Overall Financial Operation of the Scheme*

- 4.18 Given the nature of the scheme is intended to break even over several years of its operation with no material subsidy from the Council, it will operate as a ring fenced trading account within the General Fund, carrying over surpluses and deficits as appropriate. The Director of Community Development will need to manage and operate the trading account in accordance with the financial regulations and appropriate finance guidance notes/advice. The operation of the ringfenced trading account will be subject to an annual review and decisions with regards to any carry over of surplus and/or deficit balances between years will be subject to formal approval by the Chief Finance Officer as the Council's Section 151 Officer. In doing so regard will be given to the financial performance of the scheme with regard to the objective of break-even over the life of the scheme, including corrective actions recommended by the Director of Community Development which may include relevant adjustments to expenditure and income and charges levied and the continued operation of the scheme therein.

## **5. LEGAL**

### **Additional licensing of HMOs**

- 5.1 Section 56 of the Housing Act 2004 gives local authorities the discretion to introduce additional licensing of other types of (smaller) HMOs which are not subject to mandatory licensing. A local 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. It must also be satisfied that the designation will significantly assist with dealing with the problems.

### **Properties defined as HMOs under the Housing Act 2004**

- 5.2 Sections 254 – 260 set out the meaning of “house in multiple occupation” for the purposes of the Housing Act 2004. Generally, section 254 defines most types of HMOs, which are generally buildings (or part) that are occupied by three or more persons in two or more households sharing (or lacking) one or more basic amenities. Examples of properties this will cover include bedsits, shared houses, shared flats and some hostels and bed and breakfast accommodation.
- 5.3 Any of these HMOs not licensable under the mandatory scheme will require an additional HMO licence under the Council's current proposals.

5.4 Certain converted blocks flats are also considered to be HMOs under section 257 of the Housing Act 2004. The criteria are:

- that building work undertaken in connection with the conversion did not comply with the appropriate building standards\* and still does not comply with them, and
- it is less than two-thirds owner-occupied.

\*"Appropriate building standards" means:

- in the case of a converted block of flats (i) on which building work was completed before 1st June 1992 or which is dealt with by regulation 20 of the Building Regulations 1991 (S.I. 1991/2768), and (ii) which would not have been exempt under those Regulations, building standards equivalent to those imposed, in relation to a building or part of a building to which those Regulations applied, by those Regulations as they had effect on 1st June 1992; and
- in the case of any other converted block of flats, the requirements imposed at the time in relation to it by regulations under section 1 of the Building Act 1984 (c. 55).

5.5 Certain types of buildings are not HMOs for the purpose of Part 2 of the Housing Act 2004. These are set out in schedule 14 of the Act.

### **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. In this case, Selective Licensing Designation 1 equates to 13.48% of the geographical area of the borough and 18.37% of the total private rented sector in Ealing, so this designation can be agreed locally and will not require confirmation from the Secretary of State.

5.8 Certain types of tenancies/licences are exempt from selective licensing, and these are set out in section 79 of the Housing Act 2004 and the Selective Licensing of Houses (Specified Exemptions) (England) Order 2006.

### **Other criteria to be met prior to designated additional and selective licensing schemes.**

- 5.9 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
- 5.10 In the case of *Iyawa v Newham LBC LON/00BB/HMV/2016/0004* the First Tier Tribunal held that a local housing authority may grant a licence for up to five years even if, by doing so, the licence expires after the scheme designation has ceased to have effect. The Council obtained counsel's advice previously to confirm this position.
- 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.
- 5.12 For both additional and selective licensing designations 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

### **Housing Strategy**

- 5.13 The designation of a new additional and selective licensing schemes is consistent with the Council's housing strategy. The strategy is currently being updated with the following six draft priorities (subject to consultation). Property licensing is key to contributing to these priorities and will play an integral role in helping the Council achieve its objectives.
- Priority 1: Increase the supply of homes across all tenures in Ealing
  - Priority 2: Support sustainable homes & neighbourhoods
  - Priority 3: Seek to prevent and address homelessness and rough sleeping
  - Priority 4: Ensure intermediate and low cost rented homes are genuinely affordable and well managed (N/A)
  - Priority 5: Address housing inequality in the borough
  - Priority 6: Safer, better managed private rented homes

### Homelessness

- 5.14 Property licensing will ensure the quality and standard of housing in Ealing is better, with less overcrowding, and longer tenancies thus helping to prevent homelessness by persons feeling they cannot remain in their existing accommodation. Furthermore, licensing will improve the professionalism of landlords in their management of their properties so potential problems with tenancies are dealt with quickly and effectively before things become unresolvable, thus decreasing the likelihood of tenants being evicted.

### Empty Properties

- 5.15 The Council's Property Licensing and Empty Properties functions regularly share intelligence in regard to the location, ownership etc of both empty and licensed properties. Empty Properties attract nuisance and ASB, so work done to bring empty properties up to standard and back into use as liveable homes is complimentary to the objectives of Property Licensing and other Council strategies such as homelessness and ASB reduction.

### Antisocial Behaviour

- 5.16 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. We will continue to work closely with the Safer Communities Team to share information and intelligence on the ownership and management of rented properties in order to resolve ASB in privately rented properties. There are a number of licence conditions that deal with tenancy management and ASB, clearly stating the landlords' responsibilities when dealing with ASB. The property licensing designations are vital in supporting the Council's multi-agency approach to tackling and reducing ASB by obliging landlords and property managers to be proactive in dealing with any ASB arising in their properties. A protocol is currently being drafted which will set out our coordinated approach to addressing ASB in privately rented properties.
- 5.17 In addition to the above criteria, when making a selective licensing designation the council must:
- have considered any potential negative economic impact that licensing may have on the area, and
  - can demonstrate how licensing will work in conjunction with existing initiatives (such as landlord accreditation) and partnerships.

### Potential negative economic impact

- 5.18 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 (now DLUHC) 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.

#### Licensing working in conjunction with existing initiatives and partnerships

- 5.19 We will continue to build on the good working relationship with our internal and external partners. 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 also continue to actively promote the London Landlord Accreditation Scheme (LLAS) and provide discounts to accredited landlords.

#### Penalties and Sanctions

- 5.20 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.
- 5.21 Other consequences of operating a licensable property without a licence include Banning Orders, Rent Repayment Orders, and not being able to issue so called “no-fault” eviction notices.

#### Public Sector Equality Duty

- 5.22 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. Cabinet must take note of the Council’s obligations as set out above when making a decision and are referred to the updated Equality Analysis Assessment (EAA) detailed in **Appendix 12** of this report. The EAA has taken account of the consultation process, the information gathered through that process and assessed the impact that the recommendations could have on different protected groups and, where possible, identify methods for mitigating or avoiding any adverse impact on those groups.

### **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.

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>)



- 6.2 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.

## 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
	<p>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.</p>
<p>Cost of licence fee passed on to tenants</p>	<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><i>An Independent review of the Use and Effectiveness of Selective Licensing</i> commissioned by MHCLG (now DLUHC) determined that there was no substantive evidence of rent rises being passed onto tenants due to the introduction of selective licensing schemes.</p>
<p>Displacement of good landlords to other boroughs.</p>	<p>This risk is considered unlikely as many of Ealing's neighbouring boroughs have or are in the process of introducing similar licensing schemes.</p>
<p>Scheme does not reduce ASB or improve property conditions</p>	<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>

Risks	Mitigation
<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>

## 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. Property licences come with conditions that include conditions that require licence holders to take proactive action in relation to any ASB occurring on their properties.

## 10 LINKS TO THE THREE KEY PRIORITIES

10.1 The Council has three key priorities for Ealing which are:

- Creating good jobs - returning good well-paid jobs to our borough and delivering the next generation of genuinely affordable homes.
- Tackling the climate crisis - cleaning our air and ensuring the borough we build is sustainable.
- Fighting inequality – that blights too many lives and disproportionately holds back all too many people from achieving their dreams and aspirations.

Property licensing, by improving the standard of homes in the borough, helps support these priorities.

## 11 EQUALITIES, HUMAN RIGHTS AND COMMUNITY COHESION

11.1 An Equalities Analysis Assessment (EAA) has been completed and is included as **Appendix 12**.

## **12 STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS**

- 12.1 If adopted recruitment will commence immediately and it is recognised that it will be a challenge to recruit a competent team before 01 April 2022. We will therefore use a combination of short contracts, permanent recruitment and agency staff to meet the levels of activity required. This also provides an opportunity to generate new career opportunities and we will be looking at opportunities to recruit and train those interested in this area of work.
- 12.2 Workforce accommodation will be required for the new personnel identified for the delivery of the schemes. The development of the team to deliver these schemes will need to be accommodated in accordance with our existing accommodation strategy.

## **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 Consultation has been carried out with the relevant stakeholders.

## **16 TIMETABLE FOR IMPLEMENTATION**

<b>Date</b>	<b>Action</b>
20 Dec 2021	Implementation date if not called in.
Dec - March 2022	If proposals accepted by cabinet <ul style="list-style-type: none"><li>• major recruitment campaign to begin</li><li>• statutory publicity campaign will be undertaken to advertise the schemes in the three-month period before they come into operation.</li></ul>
01 Apr 2022	Additional HMO and Selective Licensing Designation 1 commence.

## 17 APPENDICES

No.	Title
Appendix 1	Consultation Report
Appendix 2	Council response to comments received during public consultation
Appendix 3	Consultation materials
Appendix 4	Additional HMO Licensing Designation
Appendix 5	Selective Licensing Designation 1
Appendix 6	List of streets within Selective Licensing Designation 1
Appendix 7	Licensing schemes objectives
Appendix 8	HMO Licence Conditions
Appendix 9	Selective Licence Conditions
Appendix 10	Fee Structure
Appendix 11	Policy on the Length (Duration) of licences
Appendix 12	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 Selective Licensing of Houses \(Specified Exemptions\) \(England\) Order 2006](#)
- [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 \(Prescribed Description\) \(England\) Order 2018](#)
- [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:
<b>Internal</b>				
Cllr Shital Manro	Portfolio Holder for Good Growth	04.11.21		
Mark Wiltshire	Director of Community Development	04.11.21		
Justin Morley	Head of Legal Services (Litigation)	04.11.21	10.11.21	Throughout
Russell Dyer	Assistant Director, Accountancy	04.11.21	24.11.21	Section 4
Yalini Gunarajah	Senior Finance Business Adviser	04.11.21	09.11.21	Section 4

## Report History

Decision type:	Urgency item?
Key decision	No
Report no:	Allison Forde, Assistant Director Property Enforcement and Environmental Protection Email: <a href="mailto:fordea@ealing.gov.uk">fordea@ealing.gov.uk</a> Tel: 020 8825 7741
	Rachel Fell, Property Regulation Lead Practitioner Email: <a href="mailto:fellr@ealing.gov.uk">fellr@ealing.gov.uk</a> Tel: 020 8825 8513