

CABINET

22 January 2018

Title: Private Rented Property Licensing (PRPL) Scheme 2019 - 2024	
Report of the Cabinet Member for Enforcement and Community Safety	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
Report Author: Gary Jones, Head of Regulatory Services	Contact Details: Email: gary.jones@LBBD.gov.uk Tel: 0208 227 5743
Accountable Strategic Leadership Director: Fiona Taylor, Director of Law and Governance	
Summary: <p>The current private rented property selective and additional HMO licensing Scheme has been in place since September 2014 and is operational for a period of 5 years. The scheme has been successful in reducing anti-social behaviour related to privately let accommodation - the ground on which the Council adopted the scheme in 2014. The existing scheme therefore ceases in August 2019 and this report seeks approval to extend the selective licensing scheme when it comes to an end.</p> <p>Over the last 5 years the private rented sector has been the fastest growing accommodation sector in the borough and provides more accommodation than social housing. During this period the borough has experienced one of the highest levels of migration change in England and remains one of the most deprived boroughs in the country.</p> <p>The combination of these factors means that the private rented sector is becoming an increasingly important source of income for the local economy and an increasingly important part of the local community, accommodating an increasing number of economically vulnerable individuals and families. The only statutory scheme that regulates the management and occupation of all properties let in the private sector is discretionary licensing, under the Housing Act 2004.</p> <p>This report also presents the outcomes of the consultation and gives an overview of the feedback from a variety of stakeholders including landlords, residents, MPs, ward councillors, and emergency services.</p> <p>The paper also sets out options and recommendations that have taken into account the views of our stakeholders and the evidence collated in relation to the criteria set by Ministry of Housing, Communities and Local Government (MHCLG).</p>	

Recommendation(s):

The Cabinet is recommended to:

- (i) Agree the licensing designation and proposal for a five-year Borough-wide scheme for submission to the Secretary of State for approval by the Ministry of Housing, Communities and Local Government (MHCLG);
- (ii) Delegate authority to the Director of Law and Governance, in consultation with the Cabinet Member for Enforcement and Community Safety, to determine any mitigation options should the proposed scheme be declined by MHCLG; and
- (iii) Delegate authority to the Director of Law and Governance, in consultation with the Cabinet Member for Enforcement and Community Safety, to determine the fees and charges to be applied for 2019/20.

Reason(s)

Adopting a 5-year discretionary licensing scheme is therefore vital to the Council's ambition that no one should be "left behind" by the changes in our borough, enabling the Council to use all of the powers at its disposal to ensure that accommodation let in the private rented sector is of a good standard, well maintained and well managed.

1. Introduction and Background

- 1.1. The Housing Act 2004 enables local authorities to introduce a discretionary licensing scheme for all properties that are privately let within the borough designation.
- 1.2. In 2014, the Council adopted a borough-wide, 5-year discretionary licensing scheme to address high levels of anti-social behaviour (ASB) across the borough. The scheme came into effect on the 1st September 2014 and is operational until the 31st August 2019.
- 1.3. The scheme has made a positive impact, reducing anti-social behaviour (ASB) in privately rented properties, while anti-social behaviour related to other tenures have remained the same. Analysis carried out by the Council's Insight Hub has identified that there has been a significant reduction in the proportion of anti-social behaviour reports related to privately rented properties, compared to other types of tenure in the financial years 2015/16 and 2016/7. Reported incidents of ASB linked to privately rented accommodation decreased from 8.8% in 2014/15 to 8% in 2016/17.
- 1.4. The current scheme has also allowed the Council to address some of the other issues affecting the sector: to tackle some of the criminality within the PRS; and to improve housing conditions and overall management of privately rented homes across the borough.
- 1.5. Barking and Dagenham's private rented sector has seen significant growth since the turn of the century. Compared with owner occupied and social housing, it has experienced the greatest increase in size. In 2001 the private rented sector accounted for 5.2% of the borough's housing tenure, with owner occupier accommodation making up 55.3% and social housing 37%. By 2017, private sector

housing accounted for 27% of the borough's housing tenure – and increase of almost 22% since 2001 - with owner-occupied accommodation dropping to 47.9% and social housing to 24.8%.

- 1.6. The significant growth of the private rented sector market requires careful regulation, to ensure that homes are safe and in good condition. The Council cannot afford to ignore the challenges that the sector's growth presents; and the proposal to extend the selective licensing scheme will ensure that the Council can safeguard and continue the progress work that has already been made.
- 1.7. Legislation now requires councils to make an application to the Secretary of State if they are to consider a discretionary licensing scheme that affects more than 20% of the borough's geographical area or privately rented stock, or both. The Housing Act 2004 prescribes six key pre-conditions to designating the borough as subject to selective licensing;
 - Low housing demand
 - A significant and persistent problem caused by anti-social behaviour
 - Poor property conditions
 - High levels of migration
 - High deprivation
 - High levels of crime
- 1.8. The Council's Insight Hub has used available data and considered proposals according to the challenges faced by each of the borough's wards; and has categorised the challenges under the conditions for making an application to the Secretary of State. All of the wards across the borough satisfy the conditions related to migration and deprivation. In addition, at least one of the remaining three criteria of ASB, Housing conditions, and Crime are met in each ward.
- 1.9. Accordingly, the available evidence supports a borough wide scheme. 27.5% of property tenure in the borough is now privately rented accommodation. The ward with the lowest amount of privately rented accommodation is Heath at 20.4%; and the highest is Abbey at 54.9%.
- 1.10. This is significantly higher than the national average (20.5%) and exceeds the MHCLG benchmark of 20.3%. Before considering whether to designate an area for selective licensing, under the grounds of migration, deprivation, property condition and crime, the local authority must demonstrate that the area has a high proportion of privately rented properties. The Government's view is that if the number of privately rented properties in each area is more than 20.3%, the area can be considered as having a high proportion of privately rented properties. In 2014, it was estimated that the borough had in excess of 17,000 privately rented properties. By 2017 it had 20,115; and the estimated number of such properties is set to rise to 25,000 by 2022 if the current growth trend continues.
- 1.11. **Anti-Social Behaviour** – In 2014 the Council adopted the current Discretionary Licensing Scheme because of the need to reduce anti-social behaviour linked to privately rented accommodation. The report looks at two different measurements of anti-social behaviour levels in our borough. The first measure is anti-social behaviour related to specific properties where there is identified ASB and the second looks at areas and how each area differs in terms of ASB reports.

- 1.12. The report provides evidence that levels of recorded anti-social behaviour are significantly higher in privately rented accommodation compared with other tenures. It is important to note that whilst the number of recorded incidents of ASB is higher in privately rented accommodation, compared with other tenures, there has been a reduction in the number of incidents, year on year, since the scheme came into force. Most noticeably, the private rented sector has seen the biggest reduction in such incidents. The reduction in owner-occupied properties was only 0.2%, compared with a 0.8% reduction in reports concerning the private rented sector between 2014/15 and 2016/17, notwithstanding the continued and significant growth in the private rented sector during this period.
- 1.13. **Deprivation** - Based on the evidence set out in the submission the borough satisfies the statutory conditions for a selective licensing designation on the grounds of deprivation. Using the 2015 Index of Multiple Deprivation, LBBB is one of the most deprived boroughs in the country, with a significant correlation between deprivation and privately rented properties, and every ward in the borough having significant higher rates of deprivation than the average for England. The average rate for England is 19.5%. The ward with the lowest level of deprivation in Barking and Dagenham is Longbridge at 20.87%; and the highest is Heath at 39.6%
- 1.14. **Migration** – Migration is one of the principal causes of population change in the borough. In fact, in recent years, the borough has experienced one of the most significant migration flows in both London and England. In 2016, more than 16,800 new residents arrived in the borough. In 2015 and 2016, 45% of internal migrants and 65% of international migrants moved into privately rented accommodation. For social rented property this was only 4% and 12.7% respectively; and for owner-occupied property, 28.8% and 38.6% respectively.
- 1.15. **Housing Conditions** – Council analysis highlights that the percentage of non-decent private sector housing in the borough was 37.9%, compared with 35.3% for England; and 20.4% of all properties in the borough, and 22.3% of private rented properties, had Category 1 hazards, within the meaning of the Housing Health and Safety rating System for which Part 1 of the 2004 Act provides. At current stock estimates, this would represent over 4,400 privately rented properties.
- 1.16. The Supporting Evidence in Appendix 1 provides a comprehensive breakdown on the statistics and analysis used to determine the categories in which the Council will be making its application to the Secretary of State.
- 1.17. Having considered other options, as highlighted in Appendix 1 and 2, and the growing challenges the borough faces in relation to both migration and deprivation, it is considered that a borough-wide selective licensing scheme is the most effective way to enable the Council to regulate the letting of privately rented accommodation, ensuring that both the management and condition of all such accommodation meet a minimum standard, are continually improved, and that no one is left behind.
- 1.18. Houses in multiple occupation are required to be licensed under Part 2 of the Housing Act 2004 and the above proposals do not require Secretary of State approval for Statutory HMOs.

2. Consultation

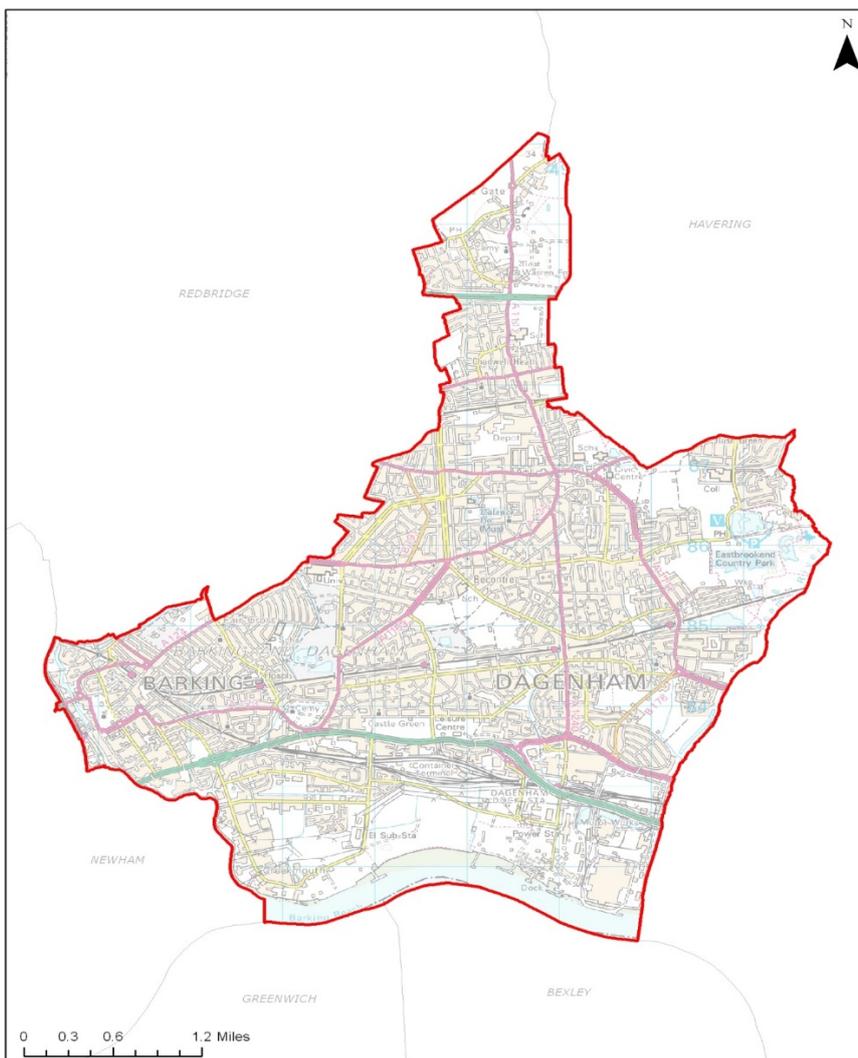
- 2.1 The Council is required under the Housing Act 2004 to take reasonable steps to consult persons who are likely to be affected by the proposed designation, and to consider any representation made in accordance with the consultation.
- 2.2 The Council adopted a comprehensive approach to consulting key stakeholders, including landlords, tenants, managing agents, neighbouring boroughs, and emergency services. It carried out a three-phase consultation that included two reviews during 2017/18 and a formal consultation commencing in October and running for twelve weeks up to the 14th December 2018.
- 2.3 The total number of responses to the consultation was 1017.
- 2.4 The two initial consultation phases were specifically designed to build a picture of the current scheme, identifying opinions about it and key areas to inform the future scheme design. Examples of the results include:
- 66% of tenants and 60% of borough residents believe continuing the scheme in 2019 will have a positive impact,
 - tenants and residents believe it has a particularly important impact on ASB, property conditions and overcrowding,
 - a common complaint in the current scheme review was that it treated good landlords the same as bad landlords,
 - 88% of respondents agreed that landlords providing a bad service should be penalised, and
 - 82% of respondents agreed that landlords with a history of providing bad services should be charged a higher rate.
- 2.5 **Summary of consultation**
- 2.6 36.09% of respondents were landlords, 34.7% were tenants in the private rented sector. The remaining respondents were owner-occupiers, letting agents or those living in social landlord accommodation.
- 2.7 55% of respondents strongly agreed or agreed that the current scheme has been effective in improving the overall condition and management of private rented accommodation.
- 2.8 61% agreed or strongly agreed with the proposal to continue with a selective licensing scheme.
- 2.9 59% agreed that the scheme should be borough-wide.
- 2.10 The key criticism of the current scheme related to the fees applied to a licence. The main challenge from landlords was that the Council does not provide enough support when they have problematic tenants. 83.5% felt that landlords who provide a good service should not be charged as much as landlords who provide poorly maintained accommodation or who failed to provide a good service to their tenants.
- 2.11 The full consultation results are attached in Appendix 2. (PRPL Consultation – Final Results)

2.12 The consultation responses highlights that the Council has a range of enforcement powers to regulate the private sector. However as set out in the report, the private rented sector makes a significant contribution to the local economy. Discretionary licensing is the only scheme which enables the Council to regulate the management and occupation of all properties let in the private sector, ensuring that those moving to the borough are not financially exploited and accommodation is of a decent standard.

2.13 Responses from representative bodies also highlighted that the license fee is being charged back to tenants, thereby pushing up rents. The licence fee is currently set at £506, as a one-off payment until the expiry of the current 5-year licensing scheme in August 2019. Our evidence however is that rental provides in Barking and Dagenham have risen at a far greater rate since the current scheme came into effect in September 2014. A two-bedroomed flat has increased in rent by 15% from £1,000 – 1,150 per calendar month, and a three-bedroomed flat has risen by 23% from £1,300 - £1,600 per calendar month.

3. Proposal and Designation

3.1 The map below illustrates the geographical coverage of the proposed designation depicted by a red boundary line. This designation will cover the entirety of the borough including all 17 wards.



4. Fee structure Borough Wide Selective Licensing

- 4.1 At the end of November 2017, the Council undertook work to confirm the true cost of operating the scheme. This review was repeated in May 2018 and a fee structure was agreed.

	Part A Payment	Part B Payment	Combined Licensing Fee
Selective Licence (Houses with one family or two people who are not related)	£470	£430	£900

- 4.2 The above fee structure has been devised in order to comply with Supreme Court judgement in *Hemming* and the High Court's more recent decision in *Gaskin*. Splitting the fee in this way will mean that the Council is compliant with the requirements of statute and case law.
- 4.3 The Part A payment above has been calculated taking into account only the Council's costs of processing an application.
- 4.4 The Part B payment, by contrast, which will be levied only if a licence application is successful, includes a contribution towards the Council's costs of carrying out functions under Part 3 of the Housing Act 2004 and its costs in carrying out its functions under Chapter 1 Part 4 in relation to Part 3 houses (single family dwellings), in so far as they are not recoverable under or by virtue of any provision of that Chapter.
- 4.5 In response to the feedback from landlords, the Council is proposing that a landlord who is considered a fit and proper person, has held a current licence with LBBB for a minimum of two years and has not been subject to any enforcement or legal action including conviction, caution or civil penalty, will be eligible for a 50% reduction in the Part B fee only. It is anticipated on current statistics that 80% of landlords will be eligible for this discount.
- 4.6 Privately rented accommodation which falls outside of selective licensing and is considered a House in Multiple Occupation is defined under a different section of the Housing Act 2004. The definition of a House in Multiple Occupation attracts a fee of £1,200 for a 5-year licence. There are approximately 500 known HMO's in the borough which fall under this definition which are already licensed and would fall outside of Selective Licensing.
- 4.7 **Benchmarking: Local Authorities**
- 4.7.1 The Council has carried out a benchmarking exercise with local authorities and the below gives an overview of their fees and charges in respect of Selective Licensing:

Local Authority	Selective Licensing Fee
Redbridge	£500 (50% discount before 1 st Jan 19)
Havering	No Selective (but £900 for Additional HMO)
Newham	£750
Tower Hamlets	£520

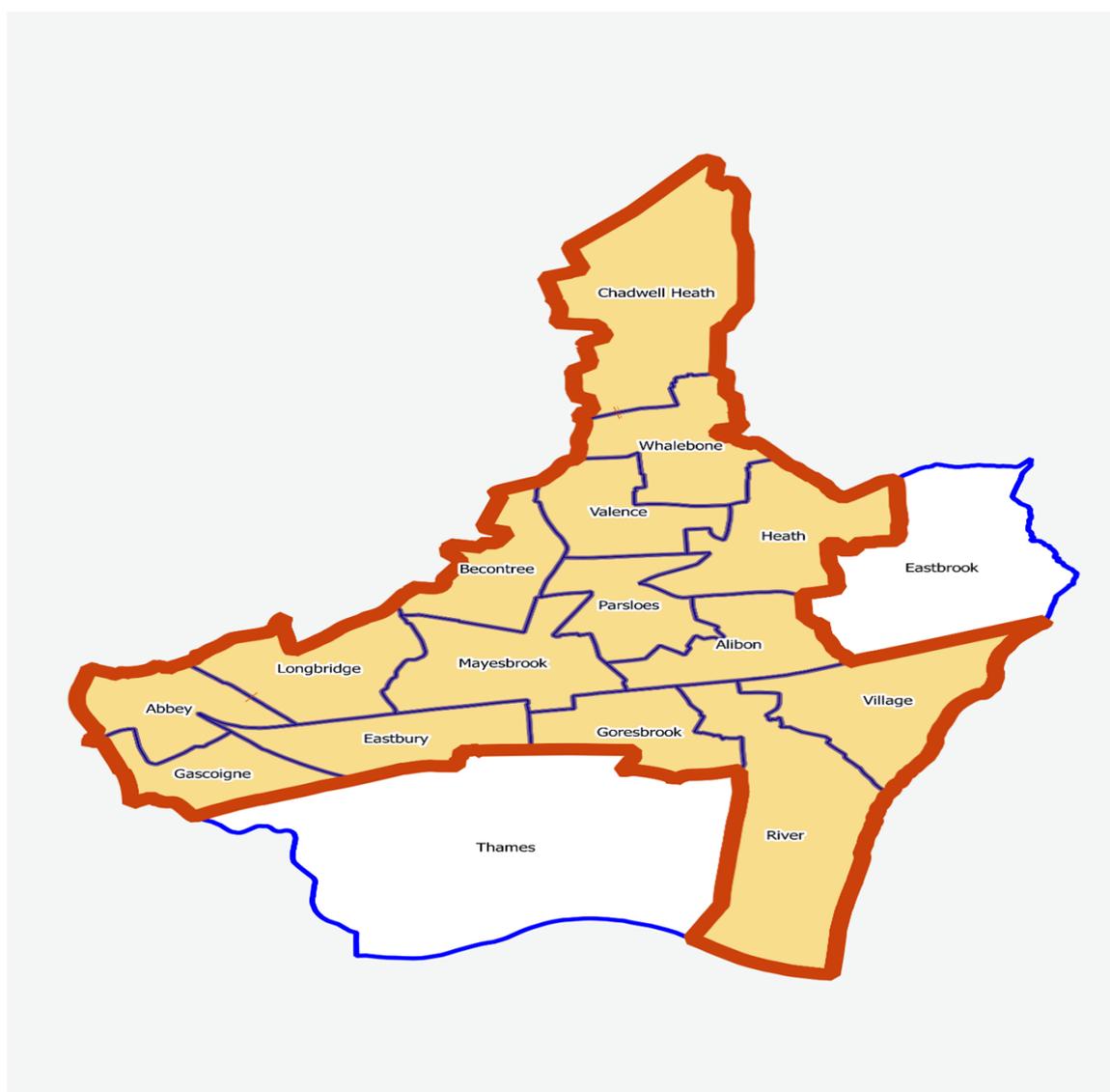
5. Consideration of risks and next steps

- 5.1 Based on the detailed evidence compiled, the expert advice used in the compilation of the submission, the support from the consultation responses and Counsel's advice, which demonstrates that the evidence meets the criteria set out by MHCLG, the recommendation is that the Council should apply for Secretary of State confirmation for a borough-wide scheme on the grounds of deprivation and migration.
- 5.2 The Council is aware that, at this time, MHCLG has not yet confirmed a borough-wide scheme for any local authority in England. Should MHCLG refuse the submission the Council would consider the following next steps.
- 5.3 The Council has taken expert legal advice from Counsel to ensure that its submission meets the legal test set out by MHCLG in their criteria. This advice confirms that the Council's proposals are compliant. Should the Secretary of State refuse the submission the Council could consider the most appropriate legal steps based on the grounds of refusal.

6. Applying for a discretionary licensing scheme for 15 wards

- 6.1 The Council could consider implementing a scheme made up of 15 wards across the borough, excluding Eastbrook and Thames. Eastbrook has the lowest percentage of privately rented accommodation in the borough at 20.4%, only 0.1% higher than the MHCLG benchmark. Whilst Thames Ward currently has a high proportion of privately rented property, the area is undergoing significant regeneration over the next decade. There is an argument, though not necessarily a cogent one, that Thames Ward could be excluded from the scheme on this basis.
- 6.2 While the exclusion of any ward from the proposed licensing scheme would jeopardise the objectives of both the scheme and the Council and is not the Council's preferred option, it would be open for consideration in the event that MHCLG confirmation for a borough-wide scheme is not forthcoming. The Council's view would be that a limited regulation would be better than no regulation at all.

Designation



- 6.3 The proposed designation boundary is depicted in red excluding Eastbrook and Thames.

Implementation of a discretionary Licensing Scheme covering 20% of the Borough –

- 6.4 Under the current General Approval, local authorities can, without HMCLG confirmation, implement a selective licensing scheme that would not cover more than 20% of the geographical area and would not affect more than 20% of privately rented homes in the local authority area, provided they consult for the minimum, prescribed period of 10 weeks.
- 6.5 In the event that confirmation is not forthcoming, therefore, the authority could consider designating up to 20% of the borough as subject to selective licensing. In that case, the available evidence would suggest that all or parts of Abbey, River, Alibon, Becontree, Parsloes, Whalebone and Chadwell Heath would fall under this designation.

- 6.6 If the Council were to consider this as an option, then only landlords within these designated areas would be required to make a licence application. Again, the limitation of the scheme would very probably jeopardise the objectives of both the scheme itself and the Council. The Council's view would be that a limited regulation would be better than no regulation at all.

7. Financial Implications

Implication completed by: Geetha Blood, Group Accountant, Housing and Environment

- 7.1 The above proposal and recommendation set out the grounds for the implementation of a discretionary licensing scheme based on the current profile of licences and proposed fee charges.
- 7.2 Any new scheme will have to be cost-neutral and have no direct impact on the financial position of the Council, either in terms of administering the scheme or enforcement action carried out by Council services.

8. Legal Implications

Implication completed by: Adam Rulewski, Barrister, Litigation and Prosecutions

- 8.1. The main legal implications are referred to in the body of this report. The key legal implications are:
- That in proposing a scheme, the Local Authority must satisfy the tests set out in s.80 Housing Act 2004, and within the Selective Licensing of Houses (Additional Conditions) (England) Order 2015 (SI 2015/977). The report demonstrates that the tests have been made out.
 - The Local Authority is under a duty to consult about the scheme. The Local Authority has carried out that statutory consultation, in accordance with the statutory requirements and the case law as identified in the case of *R (Croydon Property Forum Ltd) v Croydon LBC*.
 - In setting the fee structure, the Local Authority must take account of the decision in the *Gaskin* case. The proposed fee structure complies with these requirements.

9. Other Issues

- 9.1. **Staffing Issues** – this paper includes the staffing requirements for the introduction of a new discretionary licensing scheme. The current structure will need to be reviewed depending on the size of any new scheme.
- 9.2. **Health Issues** – Improving the management and condition of housing accommodation is a key feature in the overall health and well-being of residents in the borough. A focus on addressing non-compliant landlords who provide inadequate accommodation is a key feature in the introduction of any new scheme.

9.4 **Property / Asset Issues** – The Council has carried out an Equality Impact Assessment (EQIA) in relation to the submission. This is attached as Appendix 3.

Public Background Papers Used in the Preparation of the Report: None

List of Appendices

- **Appendix 1:** Submission and Supporting Evidence
- **Appendix 2:** PRPL Consultation – Final Results
- **Appendix 3:** Equality Impact Assessment