

CABINET

23 July 2024

Title: Private Sector Housing Licensing Schemes 2024 - 2029	
Report of the Cabinet Member for Enforcement and Community Safety	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Accountable Director: Gary Jones, Operational Director, Enforcement and Regulatory Services	
Accountable Executive Team Director: Leona Menville, Strategic Director, My Place	
Summary <p>By Minute 54 (19 February 2014) and Minute 80 (22 January 2019), the Council adopted five-year Borough-wide Private Rented Property Licensing (PRPL) Schemes which focused on reducing antisocial behaviour in homes let to single households or two unrelated sharers, and an additional HMO licensing scheme aimed at improving the management of small HMOs not covered by the mandatory HMO scheme.</p> <p>In anticipation of the expiry of the latest scheme, discussions were held regarding new arrangements and it was agreed to consult in respect of two proposed discretionary property licensing schemes, informed by an evidence base and Government guidance.</p> <p>As a result of the consultation process, this report seeks Cabinet approval for a new selective property licensing scheme, subject to confirmation by the Secretary of State, and a new additional licensing scheme for small HMO's which does not require Secretary of State approval.</p>	
Recommendation(s) <p>The Cabinet is recommended to:</p> <ul style="list-style-type: none">(i) Note the Property Licensing Consultation 2024 Proposal and Evidence Report, the Property Licensing Consultation 2024 Outcome Report, the Proposed Council Response to Consultation Representations Report and the Supplementary Supporting Data for Final Proposals Report, as set out at Appendices 1, 2, 3 and 4 to the report;(ii) Agree the licensing designations and proposal for a five-year Borough-wide Selective Licensing scheme, as detailed in Appendix 5 to the report, and to submit the application to the Secretary of State for the Department of Levelling Up, Housing and Communities (DLUHC);	

- (iii) Agree to introduce a five-year Additional Licensing of Houses in Multiple Occupation (HMO's) scheme across all wards;
- (iv) Agree that the Borough-wide Selective Licensing scheme shall be cited as the London Borough of Barking & Dagenham Designations for Areas for Selective Licensing 2024;
- (v) Agree that the Additional Licensing of HMO's Scheme shall be cited as the London Borough of Barking & Dagenham Designation of an Area for Additional Licensing of Houses in Multiple Occupation 2024;
- (vi) Agree the licence fee structure as set out at Appendix 7 to the report and delegate authority to the Operational Director, Enforcement and Regulatory Services, in consultation with the Cabinet Member for Enforcement and Community Safety, to periodically review the fee structure and determine any change for the duration of the selective and additional HMO licensing schemes;
- (vii) Agree to the proposed licence conditions that would accompany any granted Selective Licence in Designations 1 – 3, as set out in Appendix 5 to the report.
- (viii) Agree to the proposed licence conditions that would accompany any granted Additional HMO Licence, as set out in Appendix 6 to the report; and
- (ix) Delegate authority to the Operational Director, Enforcement and Regulatory Services to:
 - a) agree the final application requesting confirmation of the selective licensing designation from DLUHC;
 - b) agree minor changes to the proposed implementation and delivery of the schemes, including their general administration and any changes to licence fees and conditions where necessary, in consultation with the Cabinet Member for Enforcement and Community Safety; and
 - c) ensure that all statutory notifications are carried out in the prescribed manner for the licensing designations.

Reason(s)

- Given its proven impact, property licensing is a crucial tool for supporting our broader efforts to elevate standards and the quality of management across the private rented sector (PRS), fulfilling our priority that residents live in good housing and avoid becoming homeless.
- Property licensing enables the Council to take a proactive approach by inspecting every property and reaching vulnerable residents who may not know how to get help. This supports the priority that residents are safe, protected, and supported at their most vulnerable, and the principal that we focus on prevention and early intervention.
- Property licensing is self-funding, with both application checks and enforcement costs covered by the licence fees, which are ring-fenced for this purpose. Barking & Dagenham is able hire more staff, inspect more properties and take more enforcement action than other boroughs due to the income generated from the fees across both Licensing schemes. This reflects the council's principle of providing value for money.

- Licensing aims to reduce factors that contribute to deprivation connected to the PRS such as poor thermal efficiency of homes, rogue landlords and agents who use unscrupulous practices, and illegal evictions and harassment. This supports the Council's priorities that residents are supported during the current Cost-of-Living Crisis.
- Licensing aims to improve the safety and desirability of our neighbourhoods by tackling ASB, eyesore gardens, and dumped waste connected to PRS homes which supports the priority that residents live in, and play their part in creating, safer, cleaner, and greener neighbourhoods.
- Licensing has improved property conditions across thousands of properties in the borough since the inception of the first scheme, supporting the priority that residents live healthier, happier, independent lives for longer.

1. Introduction and Background

- 1.1 The Private Rented Sector (PRS) is the fastest-growing tenure in Barking & Dagenham, crucially serving many of our residents' fundamental right to a place to call home. Fuelled partly by escalating house prices and an acute lack of social housing, the sector now accounts for 30.6% of households in the borough (22,669), compared to 17.7% in 2011 (12,328). This represents a staggering 83.9% increase in the number of PRS homes over the past 12 years, a trend that surpasses the national average. Many of our most vulnerable residents and families live within the sector, grappling with expensive rents and housing instability.
- 1.2 As the PRS continues to burgeon, so too do the needs of both landlords and tenants. The sector faces persistent challenges of deprivation, rising antisocial behaviour, and lingering concerns over housing conditions. These challenges are further exacerbated by the compounding pressures posed by the COVID-19 pandemic and the enduring cost-of-living crisis.
- 1.3 There are three types of rented property licensing schemes operating in England:
 - Mandatory HMO licensing, which applies to properties with five or more people in two or more households sharing a property;
 - Additional HMO licensing, which is discretionary and applies to properties with 3 or 4 people in two or more households sharing a property; and
 - Selective licensing, which is discretionary and applies to single household properties.
- 1.4 Under the Housing Act 2004, a local authority can propose to designate a whole or part of its area to be subject to additional licensing and/or selective licensing.
- 1.5 Over the past decade, we have implemented a series of discretionary property licensing schemes for five-year terms to increase our regulation of the PRS, tackle the prevalence of these issues, and support the sector to thrive. These time-bound interventions have been run in conjunction with the national mandatory Houses in Multiple Occupation (HMO) licensing scheme for homes let to five or more unrelated sharers.
- 1.6 In September 2014, we adopted the first of two such schemes borough-wide: a selective licensing scheme focused on reducing antisocial behaviour in homes let to

single households or two unrelated sharers, and an additional HMO licensing scheme aimed at improving the management of small HMOs not covered by the mandatory HMO scheme. Both initiatives had positive outcomes, including a notable reduction in PRS-related antisocial behaviour, despite rates accelerating in other tenures. Additionally, they enhanced our intelligence on the PRS, enabling us to identify other problems necessitating intervention.

- 1.7 By the end of the schemes, addressing high levels of deprivation and supporting the surge in migration to the PRS emerged as our top priority areas of concern. A replacement borough-wide selective licensing scheme was introduced in September 2019 to help us address both issues. However, we did not renew the additional HMO licensing scheme.
- 1.8 Through our existing property licensing schemes, we have made significant strides in setting and enforcing standards, addressing poor management practices, and elevating the overall quality of privately rented homes. However, the sector faces persisting challenges.
- 1.9 Given the importance of the PRS in meeting the borough's housing needs, property licensing remains a crucial tool for supporting our broader efforts of safeguarding the health of our residents and ensuring they have the safe and decent homes they need to thrive.
- 1.10 In partnership with Our Insights and Innovation Hub, the Private Sector Housing team conducted a comprehensive and robust feasibility study to identify issues facing our local private rented sector and the evidence in support of a third round of property licensing schemes. Throughout the study, the team utilised council intelligence, stakeholder input, and national and regional data.
- 1.11 In response, and to equip us in supporting the sector to thrive over the next five years, we developed two proposed new licensing schemes:
 - A replacement selective licensing scheme to protect renters living in single-family homes. The current scheme concludes in August 2024.
 - A new additional HMO licensing scheme to protect renters living in small, shared homes (HMOs). Residents living in such homes are currently unprotected by our existing licensing schemes.
- 1.12 It was agreed in January 2024 to undertake a statutory public consultation on the proposed new schemes. The consultation ran from 16 February 2024 to 26 April 2024.
- 1.13 This report summarises the results and feedback of the public consultation and makes final recommendations to Cabinet concerning the implementation of the two proposed new schemes.

2. **Impact of current licensing schemes**

- 2.1 Our existing property licensing schemes have continued to have a positive impact in addressing critical issues within the borough's PRS over the past four years.

2.2 Since 1st September 2019 the Council has recorded the following private sector housing enforcement activities:

- 4,501 Housing Act Notices of Entry have been served on landlords.
- 17,556 selective licences and 345 mandatory HMO licences have been issued.
- 1,388 licences were issued for a reduced term.
- 595 licences were revoked.
- 64 prosecutions against criminal landlords.
- We have dealt with over 7903 requests and contacts from private landlords/tenants.
- Carried out 8,032 licence inspections.
- Served 509 notices on landlords relating to property standards.
- Imposed 203 Financial Penalty Notices on non-compliant landlords.

2.3 The scale of informal action to improve the 1 in 2 properties that have failed their initial inspection has been extensive.

2.4 We have also successfully digitalised the Private Rented Property Licensing service, significantly reducing out administrative staffing costs and expediting the time it takes to process an application.

2.5 In accordance with the Government's guidance for selective licensing of the PRS, we have closely monitored the performance of the selective licensing scheme and, following a series of mid-term review activities, made numerous improvement measures. These measures aimed to drive our primary objective of targeting the previously predicted 20% of non-compliant landlords and mitigate against the impact of the pandemic.

2.6 A large-scale analysis was undertaken in collaboration with the data insights hub to identify potentially unlicensed properties within the Borough. In total over 5000 properties were identified and an unlicensed project team was established to further investigate these suspected cases in 2022. The team, constituted of 5 officers, currently target up to 150 properties a month based on a risk assessment and the strength of available evidence. So far, they have generated £1.27m in income and licensed 430 properties.

2.7 We've also made qualitative improvements to our inspection procedures by training compliance officers on hazards to enable better detection and information recording. We are now able to monitor the prevalence of Category 1 and 2 hazards in the PRS and emerging trends relating to properties with common characteristics or poor landlord management.

2.8 Other improvements we've made include:

- The introduction of a quarterly landlord newsletter providing advice for over 10,000 subscribed landlords.
- Partnering with The London Landlord Accreditation Scheme to deliver landlord accreditation training sessions. As a result, last quarter, we achieved the second largest increase in the number of accredited landlords in London and now have over 1600 LLAS accredited landlords.

- Hiring a tenancy sustainability officer to support private rented tenants with their rights and responsibilities and provide mediation services for tenancy disputes. Since the start of the year, there has been 165 cases reported to us so far in 2023. Of these, 73 are still open and 8 are waiting for court dates. Commons cases include rent arrears and tenant harassment by landlords.
- Securing funding from the Public Health team to support our work to tackle damp & mould and pests within the PRS.

3. Public Consultation Results

- 3.1 We undertook a ten-week public consultation to seek feedback on our proposals to introduce two new borough-wide discretionary licensing schemes. This included canvassing views on the proposed licence conditions, fees, and respondents' perceptions of borough issues.
- 3.2 The consultation period ran from 16 February 2024 to 26 April 2024. This was not just a statutory obligation but a crucial step in our decision-making process.
- 3.3 The principal method of consultation was an online survey hosted on our One Borough Voice engagement platform, which garnered 824 responses. Additionally, we provided alternative methods of participation, including written representations (via email or post) and a series of seven public meetings held both online and in person.
- 3.4 Views received through these channels were analysed alongside the qualitative feedback from the survey. Furthermore, we conducted six recorded stakeholder interviews with tenant and landlord representative bodies and an external agency partner.
- 3.5 To ensure broad engagement, we conducted an extensive promotional campaign both within and beyond the borough, targeting private tenants, landlords, residents, businesses, and partner organisations. Our marketing tactics included direct letters with translation blocks sent to 18,523 private rented homes, emails to over 10,000 existing licence holders, and push SMS messages via the Thames View GP system, reaching over 20,000 residents. Additionally, we hosted drop-in sessions at our community enforcement hubs and established a dedicated phone line and email address for public enquiries.
- 3.6 Respondents were also invited to sign up for future focus groups aimed at enhancing engagement with landlords and private tenants.
- 3.7 The key findings from the online survey are summarised by respondent type in the table below.

	Overall	Residents – Private tenants	Residents – Other tenures	Landlords, managing & letting agents	Organisations, businesses & other respondents
Agree with Selective Licensing in designation 1	32%	60%	56%	16%	50%
Disagree with Selective Licensing in designation 1	35%	10%	18%	47%	34%

Agree with Selective Licensing in designation 2	30%	56%	51%	17%	33%
Disagree with Selective Licensing in designation 2	31%	9%	17%	40%	33%
Agree with Selective Licensing in designation 3	28%	48%	47%	16%	40%
Disagree with Selective Licensing in designation 3	31%	9%	16%	41%	30%
Agree with the Additional HMO Licensing designation	45%	62%	64%	34%	70%
Disagree with the Additional HMO Licensing designation	25%	7%	18%	33%	23%
Agree with the proposed fee for Selective Licensing designations (percentage of 'about right' responses only)	15%	29%	24%	7%	38%
Disagree with the proposed fee for Selective Licensing designations (% of 'much too high' responses only)	54%	17%	27%	73%	28%
Agree with the proposed fee for Additional HMO Licensing designation (% of 'about right' responses only)	18%	31%	20%	12%	41%
Disagree with the proposed fee for Additional HMO Licensing designation (% of 'much too high' responses only)	39%	16%	26%	50%	24%
Agree with the proposed silver compliance award discount for both schemes	45%	43%	39%	48%	49%
Disagree with the proposed silver compliance award discount for both schemes	20%	12%	18%	24%	21%
Agree with the proposed gold compliance award discount for both schemes	44%	45%	40%	44%	46%
Disagree with the proposed gold compliance award discount for both schemes	21%	9%	18%	35%	21%
Agree that the proposed conditions for Selective Licensing designations 1-3 are reasonable	32%	55%	48%	20%	45%
Disagree that the proposed conditions for the Selective Licensing designations 1-3 are reasonable	40%	9%	22%	55%	24%
Agree that the proposed conditions for the Additional HMO Licensing designation are reasonable	30%	48%	51%	18%	46%
Disagree that the proposed conditions for the Additional HMO Licensing designation are reasonable	19%	8%	15%	24%	21%

3.8 The results of the public consultation revealed strong overall support for the proposed schemes from most stakeholder groups. However, it is notable that landlords and managing agents, who constituted 62% of respondents, overwhelmingly disagreed with the proposed new schemes. Full details of the consultation findings are set out in Appendix 2 and the proposed official response to representations is set out in Appendix 3.

Key changes emerging from the consultation:

- 3.9 Removal of 'poor property conditions' as a condition for introducing the new selective licensing scheme. There are many statutory conditions under which we can apply for new a scheme. Under our new multi-designation approach to Selective Licensing, 'poor property conditions' was employed as a criterion for two of our designations (1 and 2). Following a review of the feedback received as part of the consultation, we have decided to drop the 'poor property conditions criteria' for the following reasons:
- Whilst the recent inspection data used to evidence poor property conditions undoubtedly demonstrates poor levels of compliance, we are unable to easily analyse across the number of severe hazards that were detected as part of these inspections across the entirety of the scheme. This is due to the previous enforcement system having limited reporting capabilities. This means that we may potentially face push back from the DLUHC, should they adopt a rigid interpretation of the requirements to demonstrate poor property conditions criteria causing unnecessary delays to the scheme.
 - Dropping poor property conditions has no material impact on the proposed new schemes. This is because we are legally prohibited to enforce terms on landlord licences relating to this criterion. Instead, we must use our Part 1 enforcement powers for the housing act.
 - The key advantage of property licensing is PROACTIVE inspections allowing us to access properties to determine their safety without relying on tenants' complaining who are often scared of retaliation. As such, by virtue of running the scheme, fulfilling our commitment to inspect every property and offering our bold new compliance discount, we will still be significantly improving the conditions and standards of rental properties in the borough.
- 3.10 Refinements to the proposed new compliance award discounts and guidance. In response to feedback received from landlords and reduce the chances of appeals, we will be removing any current requirements that go beyond the current legal requirements for landlords. As mentioned above, we are legally prohibited from enforcing terms under the licensing relating to property conditions.

4. Options Appraisal

- 4.1 **Not having a selective or additional licensing scheme:** This would have a hugely detrimental effect to the progress that has been made in this sector. There would be much reduced staff numbers and they would be limited to only helping those tenants who approach with Council with a complaint. Having a borough wide scheme sends a clear message to landlords and tenants that the borough take deprivation, property conditions and ASB seriously.

The following other options have been considered, and it was felt that although some offer supporting tools, none come close to the advantages of large-scale licensing in terms of proactive inspections, seeking out unlicensed and sub-standard properties, and as a way to ensure the sector is well managed, tenants are protected, and that residents are not burdened with problems caused by absentee or irresponsible landlords.

- 4.2 **A reduced selective property licensing scheme without further government approval:** With Council approval this can apply to less than 20% of the borough which would only be a few of our 19 wards. This would leave approximately 80% of Barking and Dagenham's private renters without licensing protection and it would be unfair and unjust to the landlord community and would mean tenants across the borough are not all afforded the same protection. While the problems affecting the borough vary in severity from ward to ward, they are nonetheless borough-wide; and some, such as crime and anti-social behaviour, are more severe in every ward in the borough than they are either regionally or nationally.
- 4.3 **Discretionary Additional (HMO) licensing scheme only:** There are an estimated 320 additional HMOs across the borough, and although these often present the greatest risk factors, it is less than 2 percent of the sector. Our Borough Manifesto of 'No one Left Behind' means giving the same protection to all residents in the PRS, not just those in HMOs.
- 4.4 **Use of current Housing powers to regulate landlords:** The ability to deal with hazards is a complex, time-consuming process and the powers under Part 1 of the Housing Act 2004 Act alone would be insufficient to tackle the scale of the problems in the private rented sector or provide for the regulation of management arrangements. More importantly, the cases brought to the Council attention would only be those where the tenant has complained.
- 4.5 **Government planned reforms:** The government is proposing the creation of a national landlord register. The Government acknowledges in their guidance that selective licensing remains a valuable tool when used appropriately and combined with other measures as it enables local authorities to target the improvement of standards and safety in areas suffering from issues such as poor housing quality, high levels of deprivation and anti-social behaviour, and it has the ability to drive better outcomes for local residents, tenants and responsible landlords.
- 4.6 **Voluntary landlord accreditation to seek improvements in private rented management:** The Council has been encouraging accreditation courses, promoting it through the quarterly landlords' newsletter, and facilitating training sessions in the Town Hall several times a year. Currently it is estimated that fewer than 2% of Barking and Dagenham landlords are members of any scheme, and therefore although it is a valuable supporting tool, it is not a viable alternative.
- 4.7 **Use of current ASB powers and formal notices to remedy ASB:** The Council has powers to take action against a private tenant but without licensing there is no obligation on landlords to proactively manage their properties to prevent, reduce or stop ASB occurring.

5. Financial Implications

Implications completed by: Kenny Leshi, Finance Business Partner, and Michael Jarrett, Finance Manager

- 5.1 Cabinet is asked to agree the proposed licensing designations and five-year borough-wide schemes for Selective Licensing and Additional Licensing of houses in multiple occupation across all wards being cognisant of the LBBB's proposed licence fees and discounts.

- 5.2 Licensing income will be collected by the Council under a five-year scheme. In the tables below income and operating expenditure have been assessed based on evidence collected from running the programme over the past five years. Price and salary inflation have been added to the estimates to make the forecasts as robust as possible.

Selective Licensing Income and Expenditure

The schemes are self-funding where the total anticipated income over the five-year period of £15,864,900 (Appendix 7) is expected to fully recover the associated expenditure.

Additional Licensing Income and Expenditure

The estimated number of licence applications is 320. The total income anticipated over the five-year period is £444,400 and is expected to fully recover the associated expenditure.

Expenditure for application checks, inspections and enforcement costs, covered by ring-fenced licence fees has been detailed in a comprehensive financial model developed to assess the resourcing implications of the selective licensing and the additional licensing schemes over the five-year licensing period. The model tries to ensure that fees are set at the right level to be cost neutral. As mentioned above, the evidence for the model has been based on the existing schemes where many staff are already in post administering, processing, inspecting and enforcing the current scheme.

The proposed selective licence fee at £950, is £50 higher than the current charge. Discounts of £250 are offered to encourage licence holders to ensure their properties are compliant before the inspection and also to promote accreditation with a recognised body.

The proposed fee for an additional HMO licence is £1,400, and if a discount is applied it can be reduced to £1,150. This is in line with our licence fees for mandatory HMOs which are £1,500 for a 5-bedroom property, £1,600 for a 6-9 bedroom property, £1,700 for 10-14 bedroom property etc.

It is anticipated that discounts will drive positive change, favouring responsible landlords who are already providing good quality accommodation and serving as an incentive to improve property conditions and management. Properties at the discounted rate are less likely to incur service requests by tenants and therefore have a much-reduced likelihood of requiring enforcement action.

As with the existing scheme, a significant proportion of the income is generated in Year 1. The net position at the end of each financial year is held as a reserve and is set against expenditure throughout the five-year period. Any surplus unexpectedly generated by the schemes will be ring-fenced to furthering the schemes' objectives, or to reduce the cost of licensing in subsequent years. Licence fee income and expenditure will be reviewed throughout the scheme to ensure the model continues to be on track to be cost neutral by the end of year 5.

One of the key drivers of the financial model is the number of licences being issued, with the risk that estimated income may not be achieved. This can be affected by

external factors, such as inflation, a pandemic or other issues which adversely impact landlords' behaviour. The covid pandemic created difficulty for staff inspecting properties, which in turn, resulted in backlogs and delays in the final part of licence fees being received. These factors can be mitigated by amending the projected income at different stages or through adjusting staffing and operational costs over the five-year period.

Civil financial penalties notices can be issued under Section 249A of The Housing and Planning Act 2016 for breaches of licence conditions or for failure to licence a property. The income from civil penalty notices and Rent Repayment Orders are not included in the modelling as it cannot be accurately predicted but during the year April 2023 to March 2024, penalty notices totalling £437,000 were issued. Income from these sources will be recycled towards enforcement activities.

6. Legal Implications

Implications completed by: Adam Rulewski, Principal Housing Prosecution and Civil Advocate

- 6.1 This report seeks Members approval to introduce a new Additional HMO Licensing and Selective Licensing Scheme as set out in the body of this report. Under the Housing Act 2004 (the 2004 Act) a Local Authority has the power to designate the whole or parts of its area as being subject to Selective licensing and / or Additional Licensing for Houses in Multiple Occupation.

Additional HMO licensing

- 6.2 Under section 56 of the Housing Act 2004, the Council may designate an area as subject to additional HMO licensing if it is satisfied that a significant proportion of the HMOs that it proposes to make subject to licensing are being managed sufficiently ineffectively as to give rise, or be likely to give rise, to one or more particular problems either for those occupying the HMOs or members of the public. Before making the designation, however, the Council must:
- a. consider whether there are any other courses of action available to it (of whatever nature) that might provide an effective method of dealing with the problem or problems in question (section 57),
 - b. consider that making the designation will significantly assist the Council to deal with the problem or problems, whether or not it takes any other course of action as well (section 57),
 - c. ensure that any exercise of its power is consistent with its overall housing strategy (section 57),
 - d. seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the PRS, both as regards combining licensing with (i) other courses of action available to the Council and (ii) measures taken by other persons (section 57),
 - e. take reasonable steps to consult persons who are likely to be affected by the designation (section 56), and
 - f. consider any representations made in accordance with the consultation and not withdrawn (section 56).

- 6.3 Under section 58 of the 2004 Act an additional licensing designation cannot come into force unless either (a) it has been confirmed by the Secretary of State or (b) it falls within a description of designations in relation to which the Secretary of State has given a general approval. By the Housing Act 2004: Licensing of HMOs and selective licensing of other residential accommodation (England) General Approval 2015 (the “General Approval”), the Secretary of State has given general approval to all proposed additional HMO licensing designations in respect of which the local authority has consulted those likely to be affected for at least ten weeks (which is the case here). Under Section 58 of the 2004 Act, if by operation of the General Approval, a designation does not require ministerial confirmation, it will come into force on the date specified in the designation, however that date must not be earlier than three months after the date in which the designation is made. Under Section 60 of the 2004 Act the designation may last up to four years.
- 6.4 Under section 63 of the 2004 Act of The Council may specify the requirements in accordance with which a licence application must be made, including a requirement that the application be accompanied by a fee. That fee may include a contribution to costs incurred by the Council in carrying out its functions (a) under Part 2 of the 2004 Act, and (b) under Chapter 1 of Part 4 (i.e., management orders) in relation to HMOs, in so far as the costs are not recoverable under Chapter 1 of Part 4. Under Section 60 of the 2004 Act the Council is required to publish notice of the designation, once made, in accordance with section 59 of the 2004 Act and secondary legislation, and to review the operation of the designation periodically.

Selective licensing

- 6.5 Under Part 3 of the 2004 Act, the Council may designate an area as subject to selective licensing if it is satisfied, broadly (see section 80 and the Selective Licensing of Houses (Additional Conditions) (England) Order 2015 for detail) that either –
- a. the area is or is likely to become an area of low housing demand, and the designation will contribute to the improvement of the social or economic conditions in the area, or
 - b. the area is experiencing a significant and persistent problem caused by antisocial behaviour that some or all PRS landlords are failing to combat, which the designation will either reduce or eliminate, or
 - c. the area contains a high proportion of properties in the PRS relative to the total housing stock, which are occupied under assured tenancies or licences, and either –
 - i. following a review of its housing stock, the Council considers that it would be appropriate to inspect a significant number of the properties to determine whether category 1 or 2 hazards exist, and intends to do so, and considers that the designation will contribute to an improvement in general housing conditions in the area, or
 - ii. the area is experiencing or has recently experienced an influx of migrants, who occupy a significant number of the PRS properties in the area, and the designation will contribute to the preservation or improvement of social or economic conditions and to ensuring that the above properties are properly managed, or
 - iii. the area is suffering from a high level of deprivation affecting a significant number of occupants in the PRS, and the designation will contribute to a reduction in the level of deprivation, or

- iv. the area suffers from high levels of crime affecting those living in the PRS, or its businesses, and the designation will contribute to a reduction in crime levels.

6.6 Before making the designation, however, the Council must:

- a. consider whether there are any other courses of action available to it (of whatever nature) that might provide an effective method of dealing with the problem or problems in question (section 81),
- b. consider that making the designation will significantly assist the Council to deal with the problem or problems, whether or not it takes any other course of action as well (section 81),
- c. ensure that any exercise of its power is consistent with its overall housing strategy (section 81),
- d. seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the PRS, 37 both as regards combining licensing with (i) other courses of action available to the Council and (ii) measures taken by other persons (section 81),
- e. take reasonable steps to consult persons who are likely to be affected by the designation (section 80), and
- f. consider any representations made in accordance with the consultation and not withdrawn (section 80).

6.7 Under section 82 of the Act a selective licensing designation cannot come into force unless either (a) it has been confirmed by the Secretary of State or (b) it falls within a description of designations in relation to which the Secretary of State has given a general approval. By the Housing Act 2004: Licensing of HMOs and selective licensing of other residential accommodation (England) General Approval 2015 (the "General Approval"), the Secretary of State has only given general approval to proposed selective licensing designations (a) which do not cover more than 20 percent of a local authority's geographical area, or affect more than 20 percent of its privately rented stock, and (b) in respect of which the local authority has consulted those likely to be affected for at least ten weeks. In this instance the Council's selective licensing proposal covers more than 20 percent of their privately rented stock therefore the proposal will be submitted to the Secretary of State for confirmation.

6.8 Since the designation requires ministerial confirmation, under Section 82 of the Act it will come into force on a date specified by the Secretary of State, but that date must not be earlier than three months after the date on which the designation is confirmed. Under Section 84 of the 2004 Act the designation may last up to five years.

6.9 Under Section 84 of the 2004 Act the Council is required to publish notice of the designation, once made, in accordance with section 83 of the 2004 Act and secondary legislation, and to review the operation of the designation periodically. Under section 85 of the 2004 Act, once the designation is in force, any house in the designated area that is occupied under one or more non-exempt tenancies or licences will require a licence under Part 3 of the 2004 Act unless (a) it is a house to which Part 2 applies, i.e. an HMO falling within a mandatory or additional licensing description, or (b) a temporary exemption notice or (c) a management order is in force in relation to it.

- 6.10 The 2004 Act contains a suite of provisions enabling the effective enforcement of the designation and individual licences. By section 95 of the 2004 Act, it is an offence, generally, (a) to manage or have control of a licensable Part 3 house without a licence, or (b) to breach a licence condition. By section 72 of the 2004 Act it is an offence, generally, (a) to manage or have control of a licensable HMO without a licence, (b) to knowingly cause a licensed HMO to become overcrowded, or (c) to breach a licence condition. The offences are punishable on summary conviction by an unlimited fine, or by the Council imposing a financial penalty of up to £30,000 for each offence (section 249A The Housing and Planning Act 2016). The 2004 Act and the Housing and Planning Act 2016 contain a further range of provisions designed to disrupt the 38-business model of rogue landlords, including rent repayment orders and banning orders.
- 6.11 Under Section 80 (9) of the Act the Council must take reasonable steps to consult with persons likely to be affected by the proposed designations such as local residents, businesses, landlords, tenants, and managing agents within the proposed and surrounding area and consider any representations made in response. This has taken place as set out in paragraph 2.2. Members must consider the consultation feedback under Appendix 2 and the Council's response to the representations made as set out in Appendix 3 before a decision is made. In line with the case of R v London Borough of Brent ex parte Gunning, four principles must be met in order for there to be a legitimate consultation (The Gunning Principles). Members must be satisfied these have been followed. These are: i) the proposals were consulted on at a formative stage (a final decision has not been made or predetermined), ii) sufficient information and reasons have been given for the proposals to enable the consultees to consider them and respond intelligently, iii) adequate time has been allowed for consideration and response for participants, iv) 'conscientious consideration' has been given to the consultation responses before a final decision is made, providing evidence this has been undertaken.
- 6.12 If both of the designations are implemented, they may, in principle, be challenged by way of judicial review. The Council would need to consider alternative options in the event of a successful challenge. The time limit for issuing a claim for judicial review is three months from the date of the designation. If the new designations are not in force by the expiry of those currently in existence, the Council runs the risk of the designations being unenforceable for a period of time.
- 6.13 As set out in section 5 above, the Council proposes to assess the licence fees as part of the review of the designations. If there is justification for a potential change in fees for example new information comes to light which justifies an increase to maintain cost neutral schemes, the Council would in principle be able to make that change but, depending on the extent of the change, might need to undertake a further public consultation in compliance with The Gunning Principles. The Council will consider the need for any such change and for any consultation at the material time.
- 6.14 Regulation 4 (1) of The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 states a local housing authority may apply any financial penalty recovered under section 249A of the 2004 Act to meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector.

This may have an impact on the assessment of the level of fees as set out in paragraph 5 above.

7. Other Implications

- 7.1 Risk Management** - There are a number of potential risks associated with the proposed large-scale additional HMO and selective licensing scheme, and the application to the Secretary of State for confirmation of the large-scale selective licensing scheme.

The selective licensing scheme requires that the Council submit an application to the Secretary of State at DLUHC and there is a risk that this could be rejected. For example, this could happen if the Secretary of State is not satisfied that the statutory criteria are met. Given the evidence supporting the designations and the Council's history of success with past designations, this risk is considered to be low. If the Council's application were to be rejected, however, the Council would need to prepare an alternative application, undertake further public consultation and agree it at Cabinet. This would take several months and require additional officer capacity. In the meantime, if the selective scheme is rejected by DLUHC, the financial implications would mean that staffing levels would have to be reduced, and the only proactive inspections would be for mandatory HMOs.

DLUHC have also advised that they currently take 14 weeks to make their decision on applications for selective licensing schemes. The scheme may not be approved by the time the current scheme ends, and following the decision there is a 3-month period following confirmation, before the designation can come into force. Therefore, there will not be a smooth transition from the current scheme, so to mitigate this risk the application needs to be made immediately. In the months between schemes staff will focus on processing and inspection additional HMOs.

Although the additional HMO licensing scheme does not require confirmation by the Secretary of State, it is still open to a potential legal challenge, which presents a risk. Again, given the evidence supporting the designations, this risk is considered low, but exists, nonetheless.

As noted in section 5 above, the licence fees pay for the Council's costs of licence administration and licensing enforcement activities in the private rented sector. If the Council fails to secure the new schemes, the private sector housing service budget will be significantly reduced. None of the expected income to fund the administer and enforce both schemes, would be received. This in turn will restrict the Council's ability to proactively inspect properties, and will reduce significantly the capacity to meet the objectives of the licensing schemes and the manifesto priorities.

- 7.2 Contractual Issues** - Metastreet which is the software package used for the processing of licences. This system is used for the mandatory HMO licensing scheme and the cost would not reduce if the selective or additional schemes were not approved.
- 7.3 Staffing Issues** - The team comprises of licensing processing officers, compliance inspectors, housing enforcement officers, a tenancy sustainment officer, and unlicensed property investigating officers. If approved, the licensing schemes will

also fund Anti-social behaviour officer posts, and there will be a recruitment drive for more compliance inspectors and enforcement officers. The staffing structure will be reviewed to ensure it is sufficiently resourced and prepared for successful delivery for the schemes and associated objectives, and that it continues to be on track to be cost neutral by the end of year 5.

- 7.4 **Corporate Policy and Equality Impact** - Renewing the borough-wide PRPL scheme directly supports the delivery of Corporate Plan priority 7: 'Residents live in good housing and avoid becoming homeless'. Agreeing this report is a step to being able to continue to raise quality and standards in the private rented housing sector and helps the Council to take enforcement action on housing and anti-social behaviour issues.

A full Equalities Impact Assessment (EQIA) is attached at **Appendix 11**. This has found that the introduction of new additional HMO and selective licensing schemes would have a positive or neutral impact on all protected characteristics. These groups are also often vulnerable in the housing sector and would benefit from the additional protection from exploitation, which is conferred by the licensing schemes. In particular, the fact that the schemes allow the Council to take a proactive approach may benefit groups that would be less likely to approach the Council, Police or other agencies.

- 7.5 **Safeguarding Adults and Children** - The Barking and Dagenham Safeguarding Children Partnership Neglect Strategy has the aim of reducing the impact of neglect on children, young people, families and vulnerable adults in Barking and Dagenham. A key principle is that neglect will be recognised as early as possible, so it can be responded to consistently and robustly. The Private Sector Housing Team are trained to recognise safeguarding concerns as well as detrimental and dangerous housing conditions. The existence of the licencing schemes means that every rented property in the Borough will be visited by officers who have been trained to recognise the signs and risk factors for the early signs of neglect such as school non-attendance, changes in financial circumstances and hidden members of households and families can be supported by early interventions.

An inspection of each licenced premise will identify at an early stage, premises where there are hazards present that would particularly impact vulnerable tenants such as a lack of window restrictors, damp and mould, inadequate fire separation or means of escape.

The licencing schemes enhance the role of the tenancy sustainment officer function. This is important to reduce inequalities and to help the most vulnerable adults and families to maintain their tenancies. This includes both disabled and older tenants who require adaptations made to their properties. We work with landlords by offering advice, signposting to disability services, encouraging permission for adaptations and discouraging evictions.

- 7.6 **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. The Council's Health and Wellbeing strategy sets out a renewed vision for improving health and wellbeing of residents and communities and reducing

inequalities by 2028. One of the key priorities and methods to achieve this is to address poor housing. The introduction of a new scheme would be instrumental in improving overall health for residents in the PRS. The scheme is designed to reduce the number of service requests received by the reactive Housing Enforcement team. Without the requirement for early compliance visits to rented premises it is likely that we would miss the opportunity to address detrimental housing conditions at an early stage before they have had an irreversible impact on the health of tenants.

7.7 Crime and Disorder Issues - The Council's policy is to tackle Anti-Social Behaviour (ASB) through a triple-track approach of early intervention and prevention, non-negotiable support, and strong enforcement action when necessary. The Private Sector Housing selective licencing scheme has a series of conditions designed to prevent ASB that landlords need to comply with. Landlords are required to actively work to prevent and stop ASB, whether that is from tenants or visitors. Where the ASB team identify serious issues or where landlords have ignored ASB or failed to act, the Private Sector Housing Team will revoke the property licence. The threat of revoking a property licence usually results in the landlord evicting tenants who persistently cause ASB. If they refuse to do so, and the licence is revoked, a new licence holder would have to be appointed to apply for a new licence and take over all management of the property. The Metropolitan Police may also investigate reports of ASB across all tenures, particularly when there is an allegation that a crime has been committed. The Council will work in partnership with the Metropolitan Police to investigate and tackle ASB in our communities.

There will be collaboration across services to tackle HMOs operating without planning permission and properties where work has been carried out that fails to meet the Building Regulations. This will help to tackle 'beds in sheds' and unauthorised or substandard subdivisions where unsuitable properties are used for residential use.

There will be collaboration with Trading Standards colleagues to ensure letting agents are a member of a government approved redress scheme and client money protection scheme, and that they are legally compliant regarding the advertisement and nature of fees that they charge.

The Council may refuse or revoke a licence if the proposed licence holder is not a fit and proper person to be the licence holder or manager of the property, or if the management arrangements or financial arrangements are unsatisfactory. In deciding whether someone is a fit and proper person, the Council will have regard to whether they have committed any offence involving fraud or other dishonesty, or violence or drugs or sexual offences, or if there have been discriminatory practices, or any enforcement action taken against them under the Housing Act by other local authorities.

Public Background Papers Used in the Preparation of the Report:

- [The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation \(England\) General Approval 2015 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/424242/2015-06-16-PRS-licensing-consultation-response.pdf)

- [Selective licensing in the private rented sector: a guide for local authorities - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

List of appendices:

- Appendix 1: Property Licensing Consultation 2024 Proposal & Evidence Report
- Appendix 2: Property Licensing Consultation 2024 Outcome Report
- Appendix 3: Proposed Council Response to Consultation Representations
- Appendix 4: Supplementary Supporting Data for Final Proposals
- Appendix 5: Selective Property Licence Conditions Designations 1-3 (final proposal)
- Appendix 6: Additional HMO Property Licence Conditions (final proposal)
- Appendix 7: Statement of Fees, Charges and Discounts (final proposal)
- Appendix 8: Compliance Award Guidance (final proposal)
- Appendix 9: Draft LBBB Public Notice: Selective Licensing Designations 1-3
- Appendix 10: Draft LBBB Public Notice: Additional HMO Licensing Designation
- Appendix 11: Updated Equality Impact Assessment
- Appendix 12: Interim Private Sector Housing Strategic Statement