

Item No. 15.	Classification: Open	Date: 21 July 2015	Meeting Name: Cabinet
Report title:		Proposal to Implement the Extension of Licensing Powers under the Housing Act 2004	
Ward(s) or groups affected:		All wards affected. Particularly landlords and tenants of private rented dwellings	
Cabinet Member:		Councillor Richard Livingstone, Housing	

FOREWORD – COUNCILLOR RICHARD LIVINGSTONE, CABINET MEMBER FOR HOUSING

The private rented sector is rapidly growing in Southwark: in the 2011 census, 70,000 people – a quarter of all residents in the borough – lived in a privately rented home. Whilst most of these homes are well-managed, all too often the council has to intervene where landlords are not treating their tenants fairly or where landlords are doing too little to address the antisocial behaviour of their tenants.

As the sector has grown, it has become increasingly clear that the current powers available to the council are insufficient to tackle these problems effectively. As the pressures on housing numbers increase, the private rented sector will continue to grow and an increasing number of families are becoming its tenants. That change means that we need to pay more attention to the welfare of the children growing up in those homes, ensuring that they grow up in good, healthy housing conditions.

In 2014, the council decided to consult on extending its licensing powers relating to the private rented sector to tackle anti-social behaviour and improve the standards of housing. After extensive consultation, this report proposes to extend these powers in two ways:

- Firstly, by introducing a selective licensing scheme covering all privately rented properties in those parts of the borough most prone to anti-social behaviour, poor property conditions and poor management by the landlord. The appendices of this report identify these areas, focused on some of the borough’s main thoroughfares.
- Secondly, by implementing additional licensing requirements for Houses in Multiple Occupancy (HMOs). This will cover all privately-rented homes where more than one family unit is resident that are not currently covered by the council’s statutory HMO licensing duties.

These steps will help the council work in better partnership with good landlords, support those landlords who want to manage their homes more effectively whilst also enabling more targeted and effective action against rogue landlords.

RECOMMENDATIONS

1. To authorise the implementation of the additional licensing scheme from 1 November 2015 for Houses in Multiple Occupation (HMOs) in Southwark under

the Housing Act 2004. This will cover all HMOs in the borough that are not covered by mandatory HMO licensing.

2. To approve the initial fee levels for additional licensing as set out in the report.
3. To authorise the implementation of the selective licensing scheme from 1 November 2015 in Southwark under the Housing Act 2004. (Appendix 1 provides maps of the areas affected by the scheme and Appendix 2, addresses of those dwellings within the selective licensing Area)
4. To approve the initial fee levels for selective licensing as set out in the report.
5. To delegate the authority to the strategic director of environment and leisure to amend the licensing fee and make such other changes to the schemes as necessary for the effective administration of the schemes.

BACKGROUND INFORMATION

6. The private rented sector (PRS) now constitutes a quarter of the housing in Southwark, and plays an important role in meeting the housing requirements of residents. Much of the sector provides decent accommodation and is well managed. However, there are problems associated with parts of the sector (mostly HMOs), arising from poor management and property conditions and related problems of anti-social behaviour. Additionally, evidence also shows a link between increased antisocial behaviour in areas where the concentration of privately rented single family dwellings is high.
7. Growth in the PRS in Southwark has been significant; in 2001 it represented almost 9% of the stock and by 2011 had grown to over 25%. Latest estimates indicate that the sector comprises around 30,000 properties.
8. Poorly-managed privately rented dwellings have a detrimental impact on some neighbourhoods. Anti-social behaviour, nuisance neighbours, accumulations of rubbish and other problems can be linked to the failure of private landlords to manage their properties and tenancies effectively. Overcrowding, sub letting and illegal conversions are also features of the private rented sector in Southwark. All of these issues contribute to problems within the neighbourhood.
9. A lot of these issues described in 8 above, are due to the huge demand for housing in the Borough, such that some tenants have little choice but to accept poor quality and potential unsafe housing.
10. In response to concerns about the standards of management and maintenance in the sector, Officers undertook in-depth analysis and study to explore the nature and extent of the problems. Officers also needed to find potential solutions including the use of the authority's discretionary licensing powers.
11. The findings of the study demonstrated a correlation between areas where there is a high incidence of ASB and a higher density of privately rented dwellings. The incidence of anti-social behaviour in some areas, indicated that there is a case for the introduction of selective licensing. These areas were found to be predominately along the main thoroughfares and high streets of the borough where there is a concentration of privately rented flats above shops.

12. On the basis of the findings outlined above, it was agreed by the lead member for Housing, on 15 September 2014, that the Council should consult on proposals to introduce an additional licensing borough wide and selective licensing in the areas outlined in Appendix 1.
13. The Housing Act 2004 sets out specific requirements for the introduction of additional and selective licensing, these differ, reflecting the different purposes of each approach. Under the Act, there are three forms of licensing relating to private rented housing available to local authorities:
 - (a) **Mandatory Licensing**
All local authorities are obliged to run a licensing scheme covering Houses in Multiple Occupation (HMOs) that have three or more storeys and are occupied by five or more people. A scheme has been in operation in Southwark since 2006.
 - (b) **Additional Licensing**
Section 56 of the Housing Act 2004 provides a power to licence HMOs not covered by mandatory licensing; defined as properties containing 3 or more separate households in a property of no more than 2 floors. Under additional licensing, local authorities can designate an area for an initial 5 years but must be satisfied that a significant proportion of the HMOs in the area are being managed sufficiently ineffectively as to give rise to one or more particular problems, either for those occupying the HMOs or for members of the public.
 - (c) **Selective Licensing**
Under Part III of the Act, local authorities can introduce selective licensing schemes that focus on improving the management of privately rented properties accommodating single households as well as HMOs. Areas designated for selective Licensing must demonstrate low housing demand or be experiencing 'significant and persistent' problems with anti-social behaviour. Additional selective licensing conditions have also been recently introduced by the selective licensing of Houses (Additional Conditions) (England) Order 2015.
14. In line with the powers outlined above, this report is concerned with two distinct schemes that will, if introduced, operate in parallel and as part of wider strategies for housing and related issues.

KEY ISSUES FOR CONSIDERATION

15. This report provides cabinet with an overview of the provisions within the Housing Act 2004 that allow local authorities to introduce additional and selective licensing schemes of private rented accommodation. The report seeks agreement to implement additional licensing of HMOs borough wide, and selective licensing in pockets of the borough that have high levels of private rented accommodation, poor housing conditions and that suffer from high levels of deprivation and crime and anti-social behaviour.

The legal requirements for additional and selective licensing

16. The Housing Act 2004 sets out specific requirements for the introduction of additional and selective licensing. These differ, reflecting the different purposes

of each approach and are considered in detail in the legal implications of this report.

17. Evidence gathering and consultation have sought to establish the position in relation to the requirements for each scheme, which are summarised below.

Additional licensing

18. Additional licensing is intended to cover smaller HMOs, not covered by the mandatory scheme.

19. Before implementing an additional licensing scheme, s.56 -57 of the Housing Act 2004 states that the authority must:

- Consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public
- Take reasonable steps to consult persons who are likely to be affected by the designation
- Consider any representations made in accordance with the consultation and not withdrawn
- Ensure that exercise of the powers are consistent with the council's overall Housing Strategy and that a coordinated approach is taken in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector
- Consider whether any other course of action – for example the use of other enforcement powers – would be effective and whether the designation of Additional Licensing will assist in dealing with identified problems
- Ensure that the test for determining whether a landlord is a 'fit and proper' person to be a licence holder (s66) is carried out
- Have regard to any information regarding the extent to which any codes of practice approved under section 233 of the HA 2004 have been complied with by persons managing the HMOs in the area in question.

Selective licensing

20. Selective licensing is intended to assist in dealing with low demand and/or anti-social behaviour. As the former is not relevant in Southwark, anti-social behaviour has been the focus. Before a selective licensing scheme can be introduced, s.80 – s 81 of the Act states that an authority must:

- Be satisfied the area is experiencing a significant and persistent problem caused by anti social behaviour, that some or all of the private sector landlords who have let premises in the area are failing to take action to combat the problem that it would be appropriate for them to take
- Be satisfied that making a designation will, when combined with other measures taken by the local authority or by others together with the local authority, lead to a reduction in, or the elimination of, the problem
- Take reasonable steps to consult persons who are likely to be affected by the designation
- Consider any representations made in accordance with the consultation and not withdrawn

- Ensure that exercise of the powers are consistent with the council's overall Housing Strategy and that a coordinated approach is taken in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector
- Consider whether any other course of action – for example the use of other enforcement powers – would be effective and whether the designation of additional licensing will assist in dealing with identified problems
- Ensure that the test for determining whether a landlord is a 'fit and proper' person to be a licence holder (s89 paragraph 1, 2 and 3)
- Ensure that a licence include mandatory conditions as detailed in Schedule 4 of the Act.

The case to support additional and selective licensing

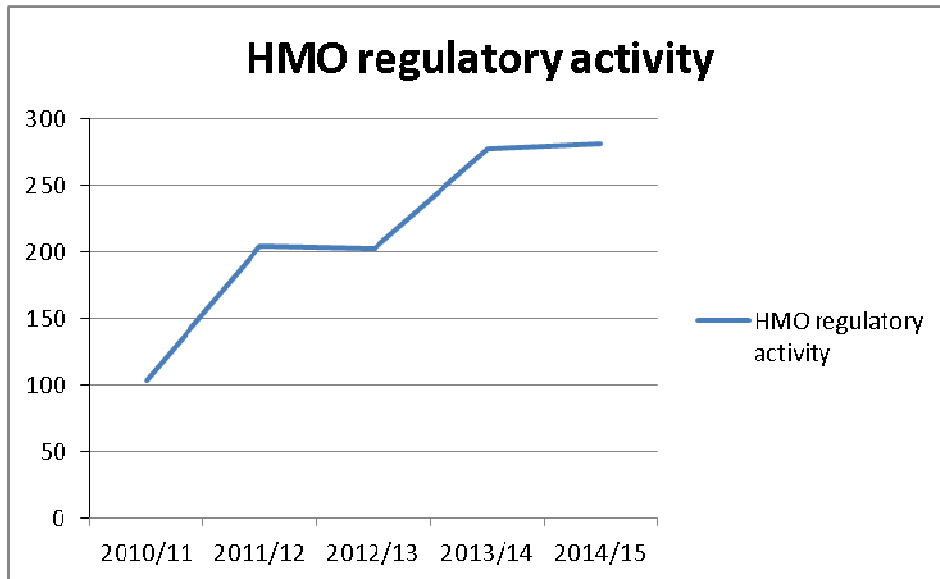
21. The precise extent of private renting and the number of HMOs is difficult to ascertain. There are no requirements for landlords or tenants to inform the council or others of their status. The market is also very dynamic.
22. There is some overlap between the requirements for additional and selective licensing in terms of relevant evidence. Poor management leading to problem for other residents in the vicinity of private rented homes is a factor in both. However, the purposes of each scheme differ and with additional licensing focusing on smaller HMOs to covered by the mandatory scheme and selective licensing being concerned with the impact of anti-social behaviour.

Additional licensing evidence

23. Additional licensing evidence focuses on the distribution of HMOs within the sector, and quality of management. Since 2006 the council has granted 530 licences under the mandatory scheme, there are currently 203 HMOs subject to a licence, and 156 Licences being renewed or applied for. (The difference in the figures for total licences granted and those currently in the system demonstrates the dynamic nature of the market and case law which removed a number of HMOs from the scheme). However, these larger HMO represent only a small proportion of the total. The house condition survey (2009) estimated that there were between 1,000 to 1,500 potentially licensable HMOs in Southwark. It is very difficult to give a precise figure for the total number of HMOs because different data sources define HMOs differently and a number of landlords will try and to hide the true nature of occupation. It is believed by extrapolating data from Experian Mosaic data, census 2011 and housing conditions survey 2009 that there are approximately 10,000 HMOs in Southwark.
24. Enforcement and regulation of HMOs is carried out under the Housing Act 2004, and is principally through the application of the Housing Health and Safety Rating System (HHSRS), or dealing with problems of poor management.
25. HHSRS identifies a range of potential hazards and ranks them by categories, the highest risk being classed as Category 1. Of the category 1 hazards identified in HMOs since 2009, the most common are: over-crowding and space, damp and mould growth and excess cold. The principle category 2 hazard is fire.
26. Figure 1 demonstrates how the council's regulatory activity with regard to HMOs has increased by 289% over the past 5 years. There has also been a 500%

increase in the number of HMO landlords the Council has had to prosecute over the same period.

Figure 1



27. The consultation responses also replicated the concerns about conditions, overcrowding and affordability. These results, other evidence examined, and the deterioration in the HMO sector anecdotally witnessed by officers over the past 10 years, demonstrate a range of problems in relation to anti-social behaviour, poor maintenance and conditions. These are widespread and relate to inadequate management of HMOs within the borough.
28. Appendix 3 details a small sample of documented case studies of poor conditions witnessed in HMO's. In summary, the evidence supports the introduction of Additional Licensing.
29. The business case for introducing additional licencing and selective licensing was made in the Council consultation papers and can be read on the Council's website at http://www.southwark.gov.uk/info/200529/lets_talk_rent.

Selective licensing evidence

30. Data from council data bases was used to map the concentration of the private rented sector, and data from the Metropolitan Police and the council was used to identify problems attributable to the sector, instances of criminal activity and anti-social behaviour. Analysis also drew upon the responses to the consultation set out in 42 and Appendix 4.
31. It should be stressed that the research does not set out to prove a causal link between incidents of anti-social behaviour and any particular property, landlord or tenant. Nor is it implied that all landlords or tenants are responsible for anti-social behaviour in an area or that licensing alone is the solution to these problems. The focus has been on collecting evidence that would demonstrate whether or not there is a correlation between levels of anti-social behaviour and related criminal activity and the relative incidence of the private rented sector in areas of Southwark. Primarily, whether this activity is significant and persistent.

32. The selective licensing evidence focused on:
- Noise nuisance service requests
 - Incidents of refuse and fly-tipping
 - Reports of street drinking
 - Reports of drug dealing
 - Poor management of dwellings
 - Reports of nuisance neighbours.
33. Examination of data from the community safety and enforcement division's records the police and other council services indicated that the areas with the highest incidence of anti-social behaviour are concentrated along the main thorough-fares and high streets of the borough. The evidence supports the view that some landlords are failing to take appropriate action to address anti-social behaviour, and that this impacts directly on tenants and the wider community.
34. Direct evidence from anti-social behaviour and crime related complaints and interventions, together with the views and examples provided through the consultation, demonstrate that the problems are persistent and are not being addressed effectively.
35. The consultation exercise supported the evidence in 34 above with a majority of respondents being in favour of the introduction of an area based selective licensing scheme that focused on the main thorough-fares and high streets of the borough.
36. Licensing is not proposed as the sole solution to problems of anti-social behaviour, but as part of a range of strategies and actions. Licensing is intended to assist as far as these problems occur in and affect the private rented sector in areas where particular problems have been identified. It will assist in tackling problems of overcrowding, poor management and maintenance, which in turn lead to issues related to noise nuisance, waste and refuse problems and if unresolved give rise to disputes and arguments. Licensing will operate in conjunction with the council's work with the Safer Southwark Partnership, other regulatory services and the police, as well as providing landlords with clear guidance on rights and responsibilities.
37. The evidence supports the implementation of selective licensing along the main thorough-fares and high streets documented in Appendix 1. However, the evidence for Selective Licensing did not currently support a ward based or borough-wide scheme.

Consideration of other courses of action

38. With regard to the issue of codes of practice for management standards, there are a number of initiatives and schemes available in Southwark such as: Landlord Forums, the Southwark Rental Standard and Southwark Landlord Accreditation scheme. In addition there are a number of national and regional accreditation schemes including the London landlord Accreditation Scheme which the Council actively promotes. The council also implemented Article 4 direction in one area of the Council to control the overdevelopment of HMOs which resulted in increases in anti social behaviour.

39. The council has to consider other courses of action available and this was carried out. Other courses of action include:
- doing nothing
 - expanding the accreditation schemes
 - expanding enforcement activities
 - offering advice and assistance.
40. The accreditation schemes enjoy a limited success as they are voluntary and attract compliant landlords; rogue landlords are unlikely to proactively participate in such schemes. Most Landlords seeking to become accredited are those that either lease or wish to lease their property to the council. This is because in order for the arrangement to be secured the council has stipulated that the dwelling and landlord must be in compliance with the Southwark rental standard. On reaching the standard and subject to “fit and proper” person checks the property will be accredited.
41. The issue with the other options is that there are so many more HMOs to be identified than resources available and other measures have been tried but have not adequately dealt with the identified problems. These measure include:
- Street surveys
 - Area based multi-disciplinary teams identifying environmental health regulatory issues including un-licensed HMOs
 - Using council data bases to identify HMO
 - All of these are resource intensive and place no responsibility on the landlord to come forward and advice the council that he/she is operating a HMO.

Consultation

42. Extensive public consultation was carried out between 29 September 2014 and 14 March 2015, on proposals to introduce additional licensing across the borough, and selective licensing in certain areas, principally along the main thoroughfares and high streets.
43. Over 1,000 responses to the consultation were received including from:
- private tenants and other residents
 - landlords and landlord representative groups
 - the home ownership council
 - tenants’ representative groups
 - Charities and further education establishments
 - letting agents and businesses.
44. In addition to the above, officers also attended a variety of different meetings and forums, and had face to face discussions with those interested parties who requested the opportunity.
45. Consultation was undertaken using a variety of methods that included:-
- An eform linked to the main consultation webpage
 - A prepaid response card for the community in general which was used at a variety of events below

- A prepaid response card for the residents in and around the selective licensing area which was posted out
- A prepaid response card sent to addresses which were indicated by our data to be occupied by residents with a profile that matched those in private rented property
- A prepaid response card for students which was distributed at local higher education establishments
- Community meetings and events in Southwark, including community councils, area housing forums, street consultation events and focus groups for some minority groups
- Landlord representative events, including Landlords Forum and the Landlords focus group, Southwark's Homeowners Forum for Leaseholders
- Emails to a wide range of national regional and local stakeholders
- Advertising in local publications, street adverts on buses and bus shelters and using electronic media
- A dedicated email address for responses
- Publicity on a landlord information website
- Advertisements on various platforms.

46. Questionnaires and other exercises undertaken focussed on the licensing proposal and the extent and coverage of the scheme. Because the evidence strongly suggested an area based selective licensing scheme respondents were presented with 3 options:

- (1) for the council not to introduce selective licensing
- (2) for the council to introduce selective licensing in discrete areas of the borough along the main thorough-fares and high streets
- (3) for the council to introduce a slightly wider selective licensing scheme that focuses on the main thorough-fares and high streets and immediately adjacent roads.

47. The results of the consultation from tenants and residents showed strong support for both additional and selective licensing, choosing option C for selective Licensing, however, Landlords took the opposite view. Only a minority of Landlords supported additional licensing who shared concerns about the reputational damage caused by poor management and anti-social behaviour on the sector.

48. In addition to the above, more general questions were asked seeking respondents views on the private rented sector and what Southwark should do to try and improve it.

49. Full details of the consultation exercise and results are given in Appendix 4.

50. On considering the responses given, together analyses of additional evidence, it is proposed that the council proceeds with the introduction of additional licensing, which will cover all HMOs in the borough, as well as selective licensing in a number of designated areas, which will cover single family dwellings.

Representations raised

51. Landlords and landlord groups presented a number of points and suggestions, these included the need for better information, training and advice for both landlords and tenants, and to revise the scheme from being regulation to

compliance based. These were taken into account as it was felt that the scheme's objectives would be far better achieved by working with landlords rather than against them, providing advice, guidance and support. Licensing will be operated with the intention of addressing non compliance, by helping landlords meet the standards, improving the condition of properties by providing achievable plans, improving management and skills by mentoring and advice.

52. Another particular concern was raised over fees. Initially it was proposed the licence run for 3 years. Following representations, this was changed to one and five year licenses. The one year licenses would be issued to landlords, who have contravened the law, operate lettings that do not comply with the licence conditions, or refuse to take action on management issues when requested. The year licence would give the landlord the opportunity to comply. If the landlord fails to do so within the specified period then the council would refuse to provide a licence and enforcement action should result. This addresses one of the key objections that bad landlords should receive far more active regulatory attention than good landlords. The 5 year licences would be for compliant Landlords. (Any landlord that fails the "fit and proper person test", and/or has been prosecuted for housing related offences will be refused a licence).

53. These and other representations are covered in more detail in Appendix 4.

How the schemes will deliver to council strategies

54. The objectives of introducing both schemes are to ensure that the council is taking forward alternative preventative strategies to properly regulate private rented accommodation, in order to complement and support its wider strategy to regenerate and improve the borough, through driving up standards, protecting tenants and supporting landlords in compliance.

55. The housing strategy to 2043 was formally adopted by cabinet in January 2015. The strategy commits the council to improving standards within the private rented sector and to tackling poor conditions and the rogue and irresponsible landlords who place tenants at serious risk.

56. The housing strategy recognises the population growth has increased pressure on available housing, and that the increase in the private rented sector is a concern, particularly in relation to standards, overcrowding, children living in HMOs and the impact of rogue and irresponsible landlords.

57. The council's anti-social behaviour strategy 2011-15 and the current Borough Plan commits the council to a zero tolerance approach to anti-social behavior, and to reducing crime and the fear of crime. Licensing will greatly assist the council in improving waste arrangements and tidiness in HMOs through working with landlords and tenants. It will also raise living standards in the private rented by allowing officers to work more closely with landlords to improve the quality and overall management of their properties.

58. It is anticipated that improvements in this sector will lead to improved stability in the market, this in turn will have a positive impact on the overall accessibility of rented housing, and will assist in reducing homelessness and housing register applications from the sector, both of which are central aims of the Housing Strategy.

59. The Code of Guidance “Approval steps for additional and selective licensing designations in England” (CLG November 2006, revised February 2010) stipulates that there must be clear transparent outcomes set which can be easily measured. It is therefore proposed to measure the overall perception of problems within the area by sending questionnaires to a sample residents and landlords 2 years after the start of the scheme, and at the end of the project.
60. As well as this, the amount of anti social behaviour and criminality recorded in the area and relating directly to private rented sector tenants will be collected annually. Information in the selective licensing proposal evidence on anti-social behaviour and crime came from police analysts and will be used as a consistent measure of the impact of the project. Other figures have been used to indicate the levels of problems within the area and these will also be revisited during the course of the project.
61. In order to be clear and transparent it is proposed that performance is monitored not only by officers, but is also set out to the public through the council’s website. In order to achieve this information will be provided on the number of licences approved, number applied for and numbers refused. The council will also provide periodically updates on changes in anti-social behaviour within the selective licensing area.

Objectives and anticipated outcomes

62. Additional and selective licensing are separate schemes run in tandem, with distinct but related aims. Neither scheme will operate in isolation and both are part of wider strategies to improve standards, conditions and tackle neighbourhood problems.
63. Improving physical standards and the quality of management in the sector will deliver wider social and health benefits. The links between poor housing and poor health, both physical and mental health are well established. Improved quality in all sectors will therefore have a positive impact on the demand for health services, on individual health and well being. 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 health, educational attainment and residents achieving their full potential.
64. The intention is that licensing will assist the local rental market through provision of clear standards through which landlords will operate on a level playing field and tenants will know what they should expect. Licensing will impose significant penalties on rogue and irresponsible landlords. Enforcement activity will be targeted at the worst properties and those landlords who breach licensing conditions. However a primary intention of the scheme is to support and encourage landlords who provide a good service and develop effective partnerships within the sector with emphasis being on compliance and not enforcement.
65. In the long term, licensing will contribute to improve conditions in the sector and a more stable and accessible rental market. In particular, licensing is expected to assist and encourage stable, long-term tenancies to the benefit of both landlords and tenants. It is also in the landlords’ interest to invest in maintenance of the

properties they own to maintain or increase its re-sale value or to secure credit against it.

66. Improved stability in the market will also have a positive impact on the overall accessibility of rented housing and will assist in reducing homelessness and Housing Register applications from the sector. This is a central aim of the Housing Strategy.
67. It is recognised that the implementation of licensing may impact on the willingness of some landlords to let. However, this is not the experience of other Boroughs who have implemented additional licensing schemes. Compared with other Boroughs, Southwark's selective licensing scheme is small and potential impacts on less than 5,000 dwellings out of sector of 29,000 dwellings. It is desirable that the very worst landlords, who operate outside the law, should be discouraged. They will be the priority for action under both schemes. Such landlords are a minority and many issues are the result of ignorance or inexperience. Provision of incentives, advice and support is intended to encourage landlords to remain in the sector. However, the perspectives of the council's wider housing and related strategies, the health, safety and welfare of tenants and the overall stability of the market and a better quality sector is the desired outcome.
68. Landlords will be encouraged to seek advice and guidance from officers on compliance issues and large portfolio landlords will be assigned a case officer to ensure consistency and manage compliance programmes.
69. Registration and renewal will be on line and account based with payments collected on application. An off line system will be available at an extra cost to reflect additional admin resources required.
70. All properties will be inspected during the term of the licence. Properties will be prioritised for inspection based on risk.

License conditions

71. Authorities have discretion to set the precise conditions of the licence. These can include conditions relating to the use and occupation of the house, and measures to deal with anti-social behaviour of the actual tenants or those visiting the property. They also typically include conditions around the provision of basic amenities and basic standards regarding the physical condition of property.

Mandatory conditions

72. There are also certain mandatory conditions which must be included in a licence. For example, licensees are required to:
 - Present gas safety certificates annually to the council
 - Keep electrical appliances and furniture in a safe condition;
 - Keep smoke alarms in proper working order;
 - Give tenants a written statement of the terms of occupation; and
 - Demand references from prospective tenants.

Discretionary conditions

73. It is proposed to impose 5 discretionary conditions:

- (1) All licensees will have to comply with the Southwark Private Rental Standard which summarises the requirements of the various legislation and provides guidance for landlords.
- (2) All licencees of HMO's will have to comply with the borough's HMO standard, which covers space, safety and amenity requirements for this type of accommodation.
- (3) The licencees must take all reasonable and practical steps to reduce or prevent anti-social behaviour by persons occupying or visiting the house and the use of premises for illegal purposes.
- (4) All licencees will have to ensure that the permitted number of households and individual for the HMO is not exceeded. The permitted number will be calculated using the Council's HMO standards.
- (5) All HMOs will be compliant with the LACORS (Local Authorities Coordinators of Regulatory Services) Fire guidance.

Fees

74. When determining licensing fees, the Act states that the local authority may take into account all costs incurred by the authority in carrying out their functions relating to additional and selective licensing (s. 63(7) & 87(7) respectively).

75. The EU Directive and Provision of Service Regulations 2009, regulation 8 further states:-
"Any changes provided for or by a competent authority which applicants may incur an authorisation scheme must be reasonable and proportionate to the cost of the procedure and formalities under the scheme and must not exceed the cost of those procedures and formalities."

76. The above has been clarified by the case of *Hemmings v London Borough of Westminster*. This landmark case sets out the basis upon which licensing fees can be charged. It also establishes what those fees can be used for. In summary the Supreme Court ruled that it is lawful for local authorities to use part of a licensing fee to fund regime enforcement.

Additional licensing fees

77. The proposed fee level is £250 per bedroom for HMOs up to ten bedrooms, plus £100 for each additional bedroom where the number exceeds ten, for the licensing period of five years. This fee will apply to all types of HMO licence including mandatory. There will be circumstances, as set out in paragraph 82, where a licence will only be issued for one year and the full fee applied. This will be limited to circumstances where there is a history of regulatory intervention due to the condition of the premises being of such a standard that it places the health safety and welfare of the tenants at risk.

78. The original proposal suggested a fee of £60 per bedroom per year, equating to £300 over 5 years per bedroom.
79. The revised fees were decided upon having regard to consultation responses by landlords, and equate to a reduction of £50 per bedroom over 5 years.

Selective licensing fees of single family dwellings

80. The licence fee applicable for this scheme will be a flat rate of £500, regardless of the length of the licence. In the original proposal the fee was £60 per bedroom per year for 5 years. A total of £300 for a one bed dwelling or £900 for a three bed dwelling. The flat rate of £500 will equate to a smaller fee in most single family dwellings.
81. A 20% discount will be offered for landlords who are accredited with a recognised accreditation scheme and for early completion of registration. The recommended period of time of 6 months from the date of when the scheme goes live. This discount will cover both schemes.
82. Any landlord who has a history of regulatory issues, or does not comply with the Act, so placing tenants' health, safety and welfare at serious risk, will be required to pay a full fee every year. It is anticipated that the Council will only have to take the one year licence approach in respect of 10 to 15 landlords with responsibility for 20 to 30 dwellings.
83. Once the landlord's property is in compliance the 1 year licence will be replaced with a 5 year licence. This measure will cover both schemes.
84. The licence fee for both schemes will cover the owner of that property for a period up to 5 years, however should ownership of the property be transferred within that period, a further licence fee would be payable by the new owner.
85. In deciding whether or not to grant a licence the Authority must consider whether the landlord (or the managing agent) is a 'fit and proper' person. This means the Authority must have regard to any previous convictions relating to violence, sexual offences, drugs or fraud; whether the proposed licence holder has contravened any laws relating to housing or landlord and tenant issues; and whether the person has been found guilty of unlawful discrimination practices.
86. The fees are payable on application, will also include the costs associated with carrying out the above check. As is the case with the granting of licences for HMOs, if the Authority determines that the landlord is not 'fit and proper', it can refuse to grant a licence, in these instances, the fee is non-refundable.
87. The Local Authority can also withdraw a licence after issue if the licensee is no longer considered a 'fit and proper' person.
88. If the Authority believes that a landlord has breached licence conditions they can issue a fine of up to £5,000 for each offence. Operating a property without a licence in a designated area can attract a fine of up to £20,000. In addition the act allows Authorities to step in and take over the management of property where conditions are being breached. These powers complement existing enforcement measures used by authorities such as the use of Improvement and Prohibition Notices.

The scheme

89. Details of Southwark's Additional and Selective Licencing Scheme are provided in Appendix 5.

Community impact statement

90. An equalities impact assessment is attached in Appendix 6. In general it is anticipated that additional Licensing will have a positive impact for all protected groups.
91. Data relating to the protected groups among both tenants and landlords is limited, partly due to the unregulated nature of the sector. Census data provides a breakdown of tenure by ethnicity and age. Overall, the size of the sector and the estimated number of landlords and tenants strongly suggests that there will be members of all protected groups owning or living within the private rented sector. The sector also contains a mix of household and income types that ranges across the income spectrum.
92. Tenants that will be most impacted by these proposals will be among the lower income groups within the sector, living in the poorest quality housing, placing their health, safety and welfare at risk. Similarly the landlords of these properties will experience the greatest impact as they will be required to improve dwellings to an acceptable standard. There maybe issues relating to people under 35 who are affected by the single room rate for Housing Benefit and are therefore more likely to be living in HMOs.
93. The main identified potential negative impact is the possibility that the introduction of licensing may lead some landlords, particularly those likely to struggle to comply with licensing conditions, to withdraw from the market and evict the tenants. It is not possible to assess this risk accurately, although experience elsewhere amongst other councils who have introduced similar or more far reaching schemes have not observed any significant change. Any impact of this nature from the Southwark schemes will be monitored closely using tenancy relations and environmental health databases and will inform regular reviews of the operation of licensing.
94. In the longer term, licensing will provide an opportunity to obtain a more complete picture of the sector and its operation that will assist in identifying relevant protected groups.

Resource implications

Financial issues

95. The administration of the scheme is such that it is intended to be self financing over a five year period. The fees that are being applied paragraphs 77 and 80 are set at a level where the revenue from the fee will cover the cost incurred.
96. The income will be closely monitored and a team proportionate to the demand for the service will be employed. The costs of the scheme exclude the cost of any enforcement action on non-licensed properties, but will cover the cost of processing the license application, compliance monitoring and enforcement against landlords who are non compliant with the licensing process.

Staffing issues

97. The private sector housing enforcement team is responsible for regulating the private rented sector. The team is responsible for the Mandatory Licensing Scheme. The team currently employs a team leader, 12 enforcement officers and a unit support officer. 2 further unit support officers are employed on fixed term contracts as the team prepares for discretionary licensing. If the predicted number of applications is received, approximately 10,000, then it will be necessary to employ additional unit support officers on fixed term contracts to deal with demand. In addition Licence Enforcement Officers will also need to be employed to ensure compliance and that rogue and irresponsible are subject to the regulatory process.
98. All staffing and other required activities to administer the licensing process, the costs of inspections, reporting on the subject property and any associated enforcement costs will be funded from the income generated by the licence fee.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

99. The report recommends the implementation of an additional and selective licensing scheme for certain private rented dwellings in Southwark. As confirmed in the report, the Housing Act 2004 requires private rented houses in multiple occupation (HMO's) of a specified size to be licensed (mandatory licensing) and allows a local housing authority to extend licensing to smaller HMO's by designating an area or areas of their district or the whole of their district as subject to additional licensing. The Act also enables local housing authorities to extend licensing requirements to other private rented properties by designating for selective licensing an area or areas of their district or the whole of their district.
100. Licensing provisions do not apply to houses let by local housing authorities or registered social landlord.
101. The circumstances in which the council may designate areas as subject to additional and selective licensing are set out in the Act and are summarised in this report together with the evidence supporting the proposed designations.
102. The council may designate areas to be subject to additional licensing if it is satisfied that a significant proportion of HMO's relating to a description of HMO's to be specified in the designation are being managed sufficiently ineffectively as to give rise to one or more particular problems either for those occupying or for members of the public. When considering an additional licensing scheme, the council must also be satisfied the designation will significantly assist with dealing with the problems.
103. For selective licensing, the council may designate areas as subject to licensing, if it is satisfied that the areas are impacted by one of a number of conditions set out in legislation; one of the conditions is that the areas are experiencing significant problems with anti-social behaviour (ASB). This is the condition relied on for the purpose of the scheme proposed in this report.

104. When considering a selective licensing scheme on the basis of ASB, the council must also be satisfied that there is a link between the ASB and private rented accommodation in the area. It must be satisfied:
- (i) the area(s) is/are experiencing a significant and persistent problem caused by ASB
 - (ii) some or all of the landlords letting in the area are failing to take reasonable action to combat the problem
 - (iii) when combined with other measures taken in the area by the local housing authority or by other persons, making designations will lead, to a reduction in or elimination of the problems identified
 - (iv) the scheme will significantly assist with achieving objectives.
105. For both additional and selective licensing schemes the council must also be satisfied before making designations that;
- (i) the proposed designations are consistent with the overall housing strategy,
 - (ii) a co-ordinated approach is adopted in dealing with homelessness, empty properties and ASB,
 - (iii) alternative courses of action have been considered.
106. The law specifies conditions which a licence must contain but otherwise a licence may include such conditions for regulating management use or occupation of the house as the council feels appropriate.
107. The council may set an application fee. Such fee must be reasonable and proportionate and should not exceed the anticipated cost to the council of running and enforcing the licensing scheme.
108. The council may invoke enforcement processes against those controlling or managing a property with out a license or failing to comply with license conditions.
109. Designation of areas subject to additional and selective licensing require approval from the Secretary of State. The Secretary of State has issued a general approval, dated 30th March 2010, which the council would seek to rely on.
110. The Act requires the local housing authority to carry out consultation before making a designation. Before making the designation the local housing authority must, (a) take reasonable steps to consult person who are likely to be affected by the designation; and (b) consider any representations made in accordance with the consultation and not withdrawn. DCLG guidance suggests that this consultation should include local residents, for example, tenants, landlords and managing agents, other members of the community who live or operate businesses or services in the proposed designated area and local residents and businesses in the surrounding area who will be affected. Case law indicates that those affected outside the council's area should also be consulted. A minimum consultation period of 10 weeks is required under the general consent issued by the Secretary of State in March 2010. The report sets out the consultation that has taken place, the outcome and consideration given.
111. When considering the recommendations of this report, due regard must be given to the public sector equality duty in section 149 of the Equality Act 2010. This requires the council to consider all individuals when carrying out its functions.

Specifically, to have due regard to the need to eliminate discrimination, harassment, victimisation or other prohibited conduct; advance equality of opportunity and foster good relations between people with protected characteristics and those who do not. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The PSED also applies to marriage and civil partnership, but only in relation to the need to eliminate discrimination, harassment, victimisation or other prohibited conduct. Cabinet members are referred to the community impact statement in the report.

112. Designations can last for no more than 5 years from the date on which it comes into force. The council must review the designation from time to time and if appropriate the designation may be revoked.
113. Designations, once made must be publicised by the council within 7 days and notice provided within 2 weeks to interested parties, in accordance with the specifications set out in regulations. Once the notice has been published the council must make copies of the designation and any prescribed information available to the public.

Strategic Director of Finance and Corporate Services (ref FC15/010)

114. The council can set the level of the fee (following consultation the Government decided not to cap the fees which can be charged for licensing) however, the council is expected to set a fee which is directly related to the actual cost of licensing a property. Fees should be 'transparent' and should cover the actual cost of the scheme's administration. The fees that are being applied as per paragraphs 77 and 80 are set at a level where the revenue from the fee will cover the cost incurred.
115. A team proportionate to the demand for the service will be employed to manage the process. The costs of the scheme will exclude the cost of any enforcement action on non-licensed properties, but will include the cost of processing the license application, compliance monitoring and enforcement against landlords who are non compliant with the licensing process.
116. The explanatory memorandum to the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions (England) Regulations 2006 states that, once the scheme has been set up, it should be self financing. Running costs of licensing schemes including costs of further training and development and enforcement costs will be covered by the licence fees.
117. The Regulatory Impact Assessment on selective licensing made it clear that authorities could not use fee income to raise additional revenue.
118. Initial estimates suggest a figure of £5m over years (an average of £1m per annum). The appropriate budgets will be set for the scheme during the 2016/17 budget planning process. These will be monitored on a regular basis as part of the departmental revenue monitoring process.

BACKGROUND DOCUMENTS

No.	Title
None	

APPENDICES

No.	Title
Appendices circulated separately as follows:	
Appendix 1	Map showing boundary of the area of the Selective Licensing Scheme
Appendix 2	Address of those dwellings within the Selective Licensing Area
Appendix 3	Case Studies
Appendix 4	Consultation Results, Analysis and Comment
Appendix 5	The Additional and Selective Licensing Schemes
Appendix 6	Equality Impact Assessment

AUDIT TRAIL

Cabinet Member	Councillor Richard Livingstone, Housing	
Lead Officer	Deborah Collins, Strategic Director Environment and Leisure	
Report Author	David Littleton, Environmental Health and Trading Standards Manager	
Version	Final	
Dated	6 July 2015	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
Housing Policy	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		9 July 2015