

Item No. 19.	Classification: Open	Date: 24 March 2020	Meeting Name: Cabinet
Report title:		Consultation on Proposals for the Private Rented Sector 2020 - 2026	
Ward(s) or groups affected:		All wards	
Cabinet Member:		Councillor Victoria Mills, Finance, Performance and Brexit	

FOREWORD – COUNCILLOR VICTORIA MILLS, CABINET MEMBER FOR FINANCE, PERFORMANCE AND BREXIT

Southwark Council believes that every resident should have a warm, dry and safe place to call home and is firmly committed to driving up standards in the private rented sector which now makes up a third of the housing in our borough. To underline our commitment that everyone should have a good quality home no matter who their landlord is, we are seeking to renew and expand our existing housing licensing schemes.

We have operated a mandatory licensing scheme since April 2006 but since 2016, after extensive public consultation, we introduced additional and selective licensing schemes, using our discretionary powers to improve the management and maintenance of the private rented sector. With the three current schemes due to end on 31 December 2020, this report sets out our proposals for changes and expansions to these schemes. These proposals will then go out for public consultation with the intention that three improved, stronger and bigger schemes are seamlessly rolled out in January 2021. Taken in full, and if agreed by the Secretary of State following consultation, these proposals would see borough wide licensing across all the private rented sector in Southwark.

We know that there are many poor landlords in Southwark, but we also know that there are good ones and we know that the private rented sector plays an important role in meeting the housing needs of our residents. We want to focus not just on enforcement against rogue landlords but to recognise landlords who provide a good service and encourage others to achieve a higher standard. We also want tenants to have a better idea of what they should expect from a good landlord, see improvements in the quality of their accommodation and to support them when they are in poor housing or have been treated unfairly. This report therefore sets out our proposals for a Gold Standard for landlords, incentives for achieving it and how the standard will operate in conjunction with our licensing schemes. It also confirms our commitment to open the doors of a renter's union in Southwark in 2021.

RECOMMENDATIONS

1. That Cabinet approves the public consultation on the proposals for changes to the Southwark's mandatory licensing scheme.
2. That Cabinet approves the public consultation on the council's proposals for the additional licensing scheme in Southwark for 5 years from 2021.

3. That Cabinet approves the public consultation on the council's proposals for the selective licensing scheme to operate in Southwark for 5 years from 2021.
4. That Cabinet approves the public consultation on the proposed Gold Standard Charter.
5. That Cabinet notes the financial commitment made from the London Devolution Reserve to support the development of a renter's union and requests that work is undertaken to allow a renter's union to open its doors in Southwark in 2021 to coincide with the new licensing schemes.

BACKGROUND INFORMATION

6. The private rented sector (PRS) in Southwark constitutes approximately a third of the housing stock in Southwark, and plays a crucial role in meeting the housing requirements of residents. According to census data, 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 23% (28,493). Our recent estimates, based on data held by the council in 2019, shows the sector has grown to just over 29% (42,964).
7. There are different types of landlord operating within this sector: professional, responsible landlords; rogue, inexperienced, reluctant or accidental landlords; and criminal landlords. All these types of landlord require a different approach by the Council.
8. Rogue landlords knowingly flout their obligations by letting unsafe and substandard accommodation to tenants, placing their health, safety and welfare at serious risk. Many of these tenants are the most vulnerable people in our society. These landlords often target vulnerable tenants and usually house them in overcrowded and poorly managed and maintained accommodation. This also has a detrimental impact on neighbourhoods. Anti-social behaviour (ASB), nuisance neighbours, accumulations of rubbish and other problems can be linked to the failure of private landlords to manage their properties and tenancies effectively.
9. Common issues found in low quality housing are damp and mould, overcrowding and fire hazards. Damp is linked to allergies and respiratory problems including rhinitis, eczema and asthma. Spores from mould growth can also be allergenic, carcinogenic, and toxic and cause infections. There are also mental and social health effects such as anxiety, depression and social isolation caused by issues such as damage to internal decorations, staining, smells and living in small, dark rooms.
10. Sixteen of Southwark's twenty three wards have levels of deprivation above the national average. The huge demand for housing in the borough is such that poorer and more marginalised tenants have little choice but to accept poor quality and unsafe housing from landlords who take advantage of these market conditions. Overcrowding is an increasing issue as the cost of housing increases. More and more families with children resort to living in overcrowded conditions, including some who occupy one room in a house let in multiple occupation (HMO), as it's the only space they can find or afford. Lack of space and overcrowded conditions are linked to psychological distress, anxiety and depression, increased hygiene risks, increased risk of accidents and the spread of contagious diseases. Small children need at least as much space as an adult and the need for privacy begins to develop from the age of eight. Children living in overcrowded homes are found to be up to ten times more likely to contract meningitis and three times more likely to have respiratory problems. (Housing Health & Safety Rating System (HHSRS) – Operating Guidance)

Note: An HMO is a building or part of a building occupied as a main residence by 3 or more people in 2 or more households. A household can be one person or several people provided that they are related to each other, including cousins, grandparents and stepchildren as well as partners living together. An HMO can include buildings converted solely into self-contained flats ('Section 257 HMOs'), as well as buildings containing bedsits and/or non-self-contained flats, shared houses and hostels ('Section 254 HMOs').

11. Houses let in multiple occupation in particular, often have inadequate fire detection and protection equipment. The main causes of fire are cooking appliances, space heaters, and electrical distribution equipment. With occupiers often being confined to their own rooms all of their daily activities are carried out in a single room with multiple electrical appliances. Often a single kitchen being used multiple times in a day as each household takes its turn to cook a meal increases the risk of fire. The elderly and the very young are most at risk from this hazard. A household with children is also twice as likely to experience a fire as one without children. (*Housing Health & Safety Rating System (HHSRS) – Operating Guidance*)
12. It is estimated that avoidable disease and injuries caused by poor and dangerous housing costs the NHS at least £600 million per year. Home is where people spend most of their time and a safe, secure home is the foundation on which people build their lives. In turn, poor, dangerous housing conditions have a negative effect on physical and mental health. (*BRE Briefing Paper – The cost of poor housing to the NHS*).

Provisions for Licensing in the Private Rented Sector

13. There are 3 types of licensing that can apply to properties in the private rented sector. All three types are included in these proposals and are referred to and outlined in more detail within this document and its appendices. These are:
 - Mandatory Licensing - Under part 2 of the Housing Act 2004, larger HMOs that are occupied by 5 or more persons forming at least 2 separate households are required to be licensed.
 - Additional Licensing – Part 2 of the Housing Act 2004 also gives local authorities power to license HMOs that are not covered by mandatory licensing.
 - Selective licensing - Part 3 of the Housing Act 2004 gives local authorities power to license properties that are not covered by mandatory or additional licensing.
14. Additional and selective licensing are sometimes referred to as discretionary licensing as the decision to bring the schemes in, is down to the discretion of the local authority.
15. The above provisions are set out in more detail below in legal implications.

Actions already taken by the council to improve the private rented sector in Southwark

Licensing

16. The council has operated a mandatory licensing scheme since April 2006 in accordance with Part 2 of the Housing Act 2004.

17. In 2014/15 officers undertook an in-depth study to explore the nature and extent of poor standards of management and maintenance in the private rented sector, and look at potential solutions including the use of the authority's discretionary licensing powers.
18. Proposals for additional and selective licensing schemes, based on the outcome of the study, went through an extensive public consultation, and in July 2015 Cabinet approved the proposals. Public notices were issued and publicised in local newspapers, in council offices, on the web-site and through other media outlets. The schemes came into operation on 1st January 2016 to operate over a 5 year period.
19. More detail on both of the existing schemes is given below.
20. Both schemes are still in operation and will end on 31 December 2020.

Existing additional licensing

21. The findings of the study, outlined above, demonstrated that a significant number of HMOs across the borough, not covered by the mandatory licensing scheme, did not meet minimum legal standards for amenities and provision of adequate fire precautions. That gave cause for concern in that they placed tenants' health, safety and welfare at risk. This was sufficient evidence for a borough wide additional licensing scheme.
22. The additional scheme operates borough wide for 5 years from 1 January 2016.
23. There are 5 standard conditions attached to the additional licences. These are:
 - all licensed properties must be compliant with the LACORS fire guidance
 - landlords of licensed properties must take all reasonable and practical steps to reduce or prevent anti-social behaviour and the use of the property for illegal purposes by persons occupying or visiting the dwelling.
 - a permitted number of households and individuals; the licence holder is responsible for ensuring that the maximum number stated in the licence is not exceeded
 - all licensed properties have to comply with the private rental standards
 - all licensed HMOs must comply with Southwark's HMO standards.

Existing selective licensing

24. The study also found a correlation between areas where there was a high incidence of ASB and a higher density of privately rented dwellings. This indicated that there was a case for the introduction of selective licensing predominately along the main thoroughfares and high streets of the borough where there is a concentration of privately rented flats above shops. As other local authorities have found with this type of accommodation the main business is the shop and not the managing of the rented dwelling and these homes are therefore more likely to be neglected. Consequently Southwark's current selective licensing scheme includes some high streets and main thoroughfares and some of the immediate surrounding areas.

25. The Selective licensing scheme covers all privately rented properties, other than HMOs, in specific areas. See outline map below for current areas. Detailed maps are also available here: <http://www.southwark.gov.uk/home-owners-services/private-home-owners-and-landlords/property-licensing?chapter=3>



26. Conditions attached to the licence ensure that all those dwellings included in the schemes must achieve a satisfactory standard whereby the tenants' health, safety and welfare is protected.

There are 4 standard conditions attached to the selective licences. These are:

- all licensed properties must be compliant with the LACORS fire guidance
- landlords of licensed properties must take all reasonable and practical steps to reduce or prevent anti-social behaviour and the use of the property for illegal purposes by persons occupying or visiting the dwelling.
- a permitted number of households and individuals; the licence holder is responsible for ensuring that the maximum number stated in the licence is not exceeded
- all licensed properties have to comply with the private rental standards

Note: Not all of the required improvements, repairs or management that relate to a house/dwelling under the Act can be dealt with under the licensing conditions for any type of licensing scheme. In such cases they are dealt with separately to the licence under Part 1 of the Housing Act 2004 – Housing Health and Safety Rating System.

Results under the current additional and selective licensing schemes

27. Since January 2016 the council has licensed:

- 518 properties under mandatory licensing (and received a further 15 applications currently being processed)
- 2179 properties under additional licensing (and received a further 98 applications currently being processed)
- 948 properties under selective licensing (and received a further 159 applications currently being processed)

28. The conditions attached to licences are checked for compliance:

- Within 18 months of the date the full licence was issued for any conditions which would require the reduction of numbers of tenants in the property. This is to allow time to seek alternative accommodation.
- Within 6 months of the date the full licence was issued for all other conditions affecting the health safety and welfare of the tenants.
- Any urgent issues are dealt with under alternative legislation.

Following these initial periods conditions must be complied with continuously for the remainder of the licence period and are checked by officers at random inspections.

29. Between 1 January 2016 and 31 May 2018 officers carried out a study into the condition of licensable properties before licences were issued and conditions enforced. Inspections are routinely carried out once a licensing application had been received as part of the normal licensing process. Officers started recording conditions for the study at that inspection. The condition of the property was measured using the housing health and safety rating system (HHSRS) under the Housing Act 2004. This is a risk-based evaluation tool to help local authorities identify and protect against potential risks and hazards to health and safety from any deficiencies identified in dwellings. Hazards are rated by severity of hazard, category 1 being a serious or immediate risk to a person's health and safety and significant category 2 hazards, although less serious or less urgent, can still be regarded as placing the occupiers' health, safety and welfare at risk.

30. The results of the study were as follows:

a. For mandatory licensing - 121 properties inspected during the study and officers found:

- 31% have no hazards
- 24% have at least 1 category 1 hazard
- 34% have at least 1 category 2 hazard

b. For additional licensing - 1475 properties inspected during the study and officers found:

- 19% had no hazards
- 34% had at least 1 category 1 hazard
- 53% had at least 1 category 2 hazard

c. For selective licensing - 476 properties were inspected during the study and officers found:

- 59% had no hazards
- 13% had at least 1 category 1 hazard
- 32% had at least 1 category 2 hazard

Notes regarding the study:

Percentages will not total 100 in each scheme study as some properties have both cat 1 & 2 hazards and will appear in both the category 1 and category 2 percentage.

A number of the properties in the study had been licensed at least once since 2006 and had already been improved under previous licences. This would account for the higher percentage of properties with no hazards.

Following this study there were changes in the scope of the mandatory scheme and the criteria to only include properties with three or more storeys was removed. Some of the properties included in this study are now included in the mandatory licensing scheme. However, the average number of occupiers in HMOs in Southwark is four as landlords would keep the numbers low to avoid mandatory licensing, even after the current additional licensing designation. Therefore the numbers of these properties in the study is quite small and the results remain a good indicator of the HMOs found under the current additional licensing scheme.

31. In 2017, according to the English National Survey report, 14% of all privately rented homes in England contain a Category 1 hazard. From the study above, we could clearly see that 47% of licensable properties in Southwark had category 1 hazards. This is more than 3 times the figure for England. Category 1 hazards are more likely to be found in properties owned and managed by rogue and criminal landlords as properties deteriorate quickly with low levels of maintenance and management.
32. There are hazards that pose a serious threat to the health, safety and welfare of occupiers, for example; exposed wiring, leaking roofs, lack of heating and hot water, serious fire hazards and pest infestations. In addition to the negative effects on physical health, poor housing conditions also have a harmful influence on mental health and wellbeing. For example; children living in overcrowded homes are found to be more likely to be stressed, anxious and depressed, have poorer physical health and attain less well at school (HHSRS Operating Guidance).
33. Lack of fire safety arrangements accounted for 84% of the non-compliant HMOs and single family properties in the selective licensing areas. This would range from the lack of a single point detector in a single family property or a missing or defective full alarm system in an HMO.
34. The results of the study would seem to be good evidence that licensing helps uncover poor housing in the borough. Conditions would be improved either by action under part 1 of the Housing Act 2004 or by enforcing conditions on the licence. Most landlords carry out the improvements informally before any formal action is required. This resulted in a drop in formal notices being served as landlords looked to comply with basic standards after being made aware of them via the licensing process, whether or not the particular standards they fell afoul of could be enforced under licensing. Educating landlords is the aim of any local authority but it would seem that local

authorities need something to draw landlords' attention to first. Licensing certainly fits this bill.

35. It is important to note that the majority of properties assessed in this study were from landlords who came forward voluntarily to apply for a licence. These landlords include the most responsible in the borough. It does not include the many properties uncovered by the housing enforcement team since May 2018. The majority of these have been owned by landlords who have either deliberately evaded the licensing schemes or were unaware of their responsibilities.
36. Landlords deliberately evading licensing schemes are more likely to not only be evading other areas of housing law but also untaxed income, unpaid council taxes, fraudulent housing benefits claims, illegal immigration and even slavery. It is therefore imperative that the council continues to build on the successes of the current licensing schemes and enforcement practices to uncover the very worst privately rented housing in the borough.

Other enforcement work

37. The council have used all available means of improving conditions within the private rented sector and will continue to do so. Since the beginning of the current discretionary licensing schemes, in January 2016, the council has also taken the following actions:
 - Informal requests for compliance with standards – 437 informal notices served for hazards under HHSRS
 - Formal notices for compliance with standards – 308 formal notices served for hazards under HHSRS
 - Formal notices under minor provisions (i.e. not Housing Act 2004/HHSRS) - 227 for housing conditions including those that were prejudicial to health or a nuisance and served as part of a larger investigation (e.g. notices of entry or formally requesting information regarding the property for investigation purposes)
 - Prosecutions – Multiple landlords/agents and multiple offences have been prosecuted at 30 different PRS properties in the borough
 - Proceeds of Crime Act (POCA) – following a prosecution for housing and trading standards offences the council were granted a confiscation order of £55,372.96
 - Civil Penalty Notices – 1 CPN has been issued and paid with a further 6 notices of intention to issue a CPN being sent to offending landlords.
 - Rent Repayment Orders may be used to recover rent paid as Housing Benefit where a licensable property has not been licensed.
38. The details of all landlords who have been prosecuted are publicised on the GLA rogue landlord and agent checker. These records are checked as part of the fit and proper person test when applications are received for a Southwark property licence. If the proposed licence holder has been convicted of a related offence they will be declared as a person/company not fit and proper to hold a licence, with reference to sections 66 and 89 of Housing Act 2004.

Partnership Work

39. The Council operates a Rogue Landlord Multi-Disciplinary Task Force which includes the following internal and external partners:
 - Housing Enforcement & Property Licensing

- Trading Standards (capturing illegal trading practices within the sector)
- Planning Enforcement
- Revenues and Benefits (which includes council tax and housing benefits)
- Temporary Accommodation
- Tenancy Relations Service
- SASBU
- Legal Services
- LLPG (this team registers new/changes to addresses which can indicate conversion to flats/HMO)
- Home Office
- Fire Brigade
- Police
- HMRC
- Gang Masters and Labour Abuse Authority (GLAA).

40. The group's aims & objectives are to;

- Ensure that there are formal referral channels and that they are working effectively
- Facilitate intelligence sharing between the teams to uncover potential illegal activity for investigation (offences such as tax evasion, money laundering, trafficking, placing residents' health, safety and welfare at serious risk, modern day slavery)
- Highlight specific cases of concern
- Enable a coordinated response and robust enforcement against any rogue landlord or agent.
- Record multi-disciplinary successes, publicise through press releases and the GLA Watch list
- Sharing best practice.

41. The number of prosecutions of rogue landlords across the council has risen to 27 since the task force started in January 2018 from 4 prosecutions in the previous 2 year period. This can largely be attributed to the increased and efficient intelligence sharing across members of the task force. This helps officers meet the threshold of evidence required for successful prosecutions and has increased the numbers of cases referred between members, internally within the council and external partners.

Housing stock condition and stressors survey 2019

42. To enable a targeted approach to tackling the specific issues in the private rented sector in Southwark, the council worked with an external consultant, Metastreet Ltd, to carry out a Housing Stock Condition and Stressors Survey. The results of this survey are attached in appendix 1 and provides accurate estimates of:

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

43. These indicators have been used to develop Southwark's licensing proposals and enable a targeted approach to tackling poor housing, including the proposals set out below, and in appendix 2, of this report for licensing under Part 2 and Part 3 of Housing Act 2004.
44. The report (appendix 1) will form part of the consultation information and evidence for the proposed licensing schemes.
45. Information regarding Metastreet Ltd, and how the survey was conducted and data analysed is included in appendix 1.

KEY ISSUES FOR CONSIDERATION

Proposals for mandatory, additional and selective licensing

46. The changes to mandatory licensing and the proposed additional and selective licensing schemes are described in greater detail in appendix 2. The documents include information on the proposals for the formal licensing process. Enforcement and penalties attached to the schemes are proposed in accordance with legislation and the council's enforcement policy available on the council's website.
47. Appendix 2 also gives details of the following for each scheme:
 - types of properties included and excluded in the schemes,
 - areas the schemes will operate in,
 - the fees and discounts for each of the schemes, and
 - the standard conditions to be attached to licences under each scheme.
48. The proposed fees have been calculated to cover the cost of administration and enforcement of the scheme. Discounts have been calculated to include the reduction in cost to the council where landlords are likely to behave responsibly and require less intervention.
49. The mandatory scheme will continue to run without an end date in accordance with Part 2 of the Housing Act 2004.
50. The proposals for the additional and selective licensing schemes are for five years following the end of the current schemes in December 2020.

The proposals for changes to the mandatory licensing scheme

51. The proposed fees for the mandatory licensing scheme are set out in Appendix 2. These changes will help to ensure that fees for larger HMOs are fairer and more consistent with the proposed additional scheme.
52. The discretionary conditions attached to the current mandatory licensing scheme were devised in 2015 to address the issues found in this sector at that time. The proposed conditions (set out in Appendix 2) have been set out to ensure they are consistent with the additional scheme and updated to address the current issues found in the sector in accordance with the Housing Stock Condition and Stressors Survey in appendix 1.
53. Licensing is complex and any consistency across the schemes will help simplify licensing across all HMOs.

54. Although the council is not obliged to consult on mandatory licensing or the proposed changes, these have been included in the consultation as they are linked to the fees and conditions proposed for the additional scheme and the council would like to seek opinions on these changes.

The proposals for an additional licensing scheme

55. According to the Stock Condition and Stressors Survey Report (appendix 1), the predicted number of HMOs in Southwark is 5,031. North Walworth has the highest concentration of HMOs - however, there are also significant numbers of HMOs within all of the other wards. The report also shows that 86.3% of the HMOs in Southwark are predicted to have serious hazards (Category 1 HHSRS). HMOs are generally at a higher risk of fire, disrepair and overcrowding. HMOs that are poorly maintained and managed are the highest risk.
56. Anti-social behaviour incidents linked to HMOs in the PRS are high and usually occur where management of the property is poor. These issues include noise, verbal abuse, harassment, intimidation, nuisance animals, nuisance vehicles, drugs and substance misuse, domestic violence, rubbish and fly tipping (appendix 1).
57. The existing additional licensing scheme operating in Southwark since 2016 has made significant steps towards improving HMOs in the borough and the council is keen to continue this good work.
58. In light of the evidence above, the council is proposing to consult on the following proposal for additional licensing. All houses let in multiple occupation across the whole borough, that are not subject to Mandatory Licensing under the Housing Act 2004, will require a licence under the proposed additional licensing scheme detailed in appendix 2.

The proposals for a selective licensing scheme

59. Different considerations apply to each designation of a selective licensing scheme. For the council to introduce a scheme, applying to non HMOs, it has to be satisfied it is an area in which one or more general conditions apply. This is set out by the Selective Licensing of Houses (Additional Conditions) (England) Order 2015 and conditions specified for the purposes of section 80(2) (b) of the 2004 Act. The general conditions the council found applicable to Southwark, and therefore worthy of investigation are:
- a. that the area contains a high proportion of properties in the private rented sector, in relation to the total number of properties in the area;
 - b. That the area is experiencing a significant and persistent problem caused by antisocial behaviour (the Council must show some or all landlords who have let premises in the area (whether under leases or licences) are failing to take action to combat and effectively deal with the problem);
 - c. The area has poor property conditions;
 - d. The area has high levels of deprivation;
 - e. The area has high levels of crime.
60. More information regarding the legislation is given in the section on legal implications below.

61. Following the Stock Condition and Stressors Survey Report (appendix 1) officers analysed and ranked each ward in order of the highest percentage/severity found or predicted (depending on data source) for each of the following categories;
- Percentage of PRS,
 - deprivation,
 - poor housing conditions (measured by likelihood of a category 1 hazard being present).
 - Anti-social behaviour (ASB)
62. Southwark's private rented sector (PRS) exhibits evidence of poor housing conditions in most wards with some of the worst affected also suffering high levels of deprivation.
63. Tackling the issue of crime and anti-social behaviour (ASB) across all tenures, including the PRS, is a strong priority for the council. ASB evidence shows that it is an issue across the borough with some wards having considerable problems with ASB.
64. The Council's preferred course of action would be to introduce a borough wide selective licensing scheme to both improve property conditions and provide more protection for private tenants across the whole borough. The wards with a lower percentage of PRS still have unacceptable levels of either deprivation or poor conditions and the Council is concerned that omitting those areas would disadvantage PRS tenants in those areas.
65. In response to the above the council would propose the following options for public consultation.

Option 1

66. This option includes 15 wards, named below, in a single designation (Designation A).
- Camberwell Green
 - Chaucer
 - Faraday
 - Goose Green
 - London Bridge & West Bermondsey
 - North Bermondsey
 - North Walworth
 - Nunhead & Queens Road
 - Old Kent Road
 - Peckham
 - Rotherhithe
 - Rye Lane
 - South Bermondsey
 - St Giles
 - Surrey Docks
67. This designation includes the wards with the highest percentage of PRS and category 1 hazards in the borough. This designation also includes wards with some of the highest levels of ASB linked to the PRS and high level of deprivation.

Option 2

68. Option 2 includes designation A above and adds a further 8 wards included in a further designation (Designation B). These two designations are presented together to form a borough wide selective licensing option. Wards in designation B are:

- Borough & Bankside
- Champion Hill
- Dulwich Hill
- Dulwich Village
- Dulwich Wood
- Newington
- Peckham Rye
- St. Georges

69. Designation B includes over 22% of the PRS in the borough. The levels of each problem differs for each ward however collectively they suffer from issues with category 1 hazards, deprivation and ASB linked to the PRS.

Benefits of the proposals for licensing

70. By continuing to licence properties within the private rented sector, expanding the areas to which selective licensing applies and tailoring the proposed licensing schemes to address the current issues within the borough the council expects the benefits to be:

- a. Wider and continuing identification and prevention of rogue landlord activity in the borough.
- b. Wider and continuing improvement in the physical condition, management practices and overall quality of properties in the PRS.
- c. Reduction in anti-social behaviour associated with the private rented sector making the borough a safer and more desirable place to live.
- d. Reduce deprivation by lessening the barriers to housing such as overcrowding and homelessness.
- e. Tackling fly tipping and other forms of environmental crime through ensuring better management of private rented homes.
- f. Ensuring that absentee or unfit landlords employ an agent to actively manage their properties.
- g. Support for landlords in dealing with anti-social tenants and training on management of their properties.
- h. Education of tenants on the minimum standard they should expect in the PRS.
- i. Improvement in protection for vulnerable groups living in HMOs.
- j. Promotion of landlord accreditation and encouragement of landlords to maintain a better standard of property and behave in a professional manner;
- k. Encouragement of landlords to take responsibility for the behaviour of their tenants.
- l. Helping the council to build a better understanding of the PRS and develop further strategies.
- m. Building a better reputation for the PRS in the borough.
- n. Making Southwark a place to call home.

71. Work carried out by officers in preparation for the consultation has led to an improvement in data sharing across the council and uncovered the potential for further

improvements in the council's licensing IT systems. These improvements, alongside the proposals have the potential to:

- a. Provide opportunities to enhance the council's ability to uncover fraud which will lead to more prosecution and better compliance e.g. benefit & council tax, sublet council properties, breaches of building and planning regulations.
- b. Provide increased intelligence around the PRS improving rogue landlord enforcement, community engagement and the council's knowledge of the PRS in the borough.

Transfer of unexpired licences from the existing schemes

72. Licences issued under the current additional and selective licensing schemes that have not expired will be valid under the proposed schemes for the remainder of their licence period. This will be to the benefit of responsible landlords who have already licensed their properties under the current schemes and will provide better 'value for money' from their licensing fees. It will also prevent essential council resources being taken up with re-licensing properties that have already been licensed, inspected and brought up to standard recently under the existing schemes. The focus at the beginning of the new schemes can then be on continuing to license properties in areas previously unaffected by licensing or in existing licensing areas that have not been licensed previously. This approach means that council resources are concentrated on continuing to root out landlords who did not apply for a licence under the existing schemes, uncover rogue landlords and licensing properties in the new selective licensing areas (i.e. those areas not covered by the existing scheme).

Proposals for landlord's gold standard charter

73. The council's focus is on enforcing against rogue landlords with steps also taken to educate the inexperienced and provide support to the professional. Whilst licensing helps to ensure landlords provide an acceptable service to tenants the creation of a Landlord's Gold Standard Charter is an opportunity to recognise landlords who already provide a better service than the one required by law, encourage other landlords to achieve a higher standard, and give tenants a better idea of the standard of accommodation that they should be offered. Full details on the Charter and how it will operate are given in appendix 3.
74. The council also wants to work with private renters to drive up standards and ensure that this growing part of the borough's population has a voice. The council will commission research to identify and engage with a broad and representative cross-section of this diverse population. In 2021 the council will establish a standing body, conventionally termed a Renters Union, to ensure private renters have a collective platform and can work with the council to improve conditions and empower tenants in the private rented sector.

Proposals for the consultation

75. This report is seeking cabinet's approval for a public consultation on mandatory, additional and selective licensing proposals for 2021 to 2026 and for a Landlord's Gold Standard Charter. The consultation and engagement plan is set out in appendix 4.
76. The council is legally obliged to consult on additional and selective licensing proposals for a minimum of 10 weeks. In order to reach as many consultees as possible it has been decided that this consultation will be extended to 12 weeks. To support this and

make use of the additional time a number of different engagement activities have been planned for the licensing proposals and Gold Standard Charter.

77. The public consultation for the changes to the mandatory licensing fees and discretionary conditions is not a legal obligation. However, as with additional and selective licensing, the consultation is intended to be a way for the Council to find out what people and particularly private tenants think about the Council's proposals. The proposed changes align with the proposals for the other licensing schemes. It is not a referendum or a voting process and the intention is not just to gauge support or opposition to a particular proposal.
78. The public consultation for the Landlord's Gold Standard Charter is not a legal obligation. However, as with discretionary licensing, the consultation is intended to be a way for the council to find out what people and particularly private tenants think about the Council's proposals. It is not a referendum or a voting process and the intention is not just to gauge support or opposition to a particular proposal.
79. When the council introduced its current selective licensing scheme Part 3 of Housing Act 2004 section 80(2) (b) restricted local authorities to consider only housing in areas of low demand and significant anti-social behaviour for a selective licensing designation. Since then the Selective Licensing of Houses (Additional Conditions) (England) Order 2015 has increased the range of factors a local authority could look at.
80. This consultation will give the council the opportunity to engage with stakeholders again on a wider range of issues and allow them to voice fresh views in light of the changes. It will help the council to consider its approach and tailor it to meet changing needs of the sector and the community.
81. The council is keen to hear what people think of its proposals, what changes they would like to see in the proposals and if there are any better solutions to the problems facing the PRS that officers are seeking to address.
82. The consultation will include;
 - a. the evidence to support the proposed licensing schemes as described in appendix 1,
 - b. the proposals for the new licensing schemes as described in appendix 2,
 - c. and proposals for Gold Standard Charter as described in appendix 3.
83. The consultation will be open to all residents and business owners in the Southwark, and neighbouring boroughs but particularly aimed at:
 - a. private tenants,
 - b. landlords and landlord representative groups,
 - c. tenants' representative groups,
 - d. Charities and further education establishments, and
 - e. Managing and letting agents.
 - f. Neighbouring local authorities
84. After consultation officers will prepare a consultation outcome report. From this, officers will prepare final proposals for additional and selective licensing, and the gold standard charter to reflect the outcome of the consultation.
85. Officers will report back to Cabinet in September 2020 and seek approval to designate an additional licensing scheme, introduce a gold standard charter, and apply to the

Secretary Of State for Housing, Communities and Local Governmental for approval of a selective licensing scheme.

Policy implications

Manifesto commitments

86. As part of the 2018 manifesto the council committed to the introduction of a Gold Standard for the private rented sector. The proposal is to achieve this via the Landlord's Gold Standard Charter.
87. The 2018 manifesto also included a commitment to improving fire safety in the private sector. The proposal is to request fire risk assessments for all HMOs via the licensing conditions and request that they be published online via the Gold Standard Charter.
88. A further manifesto commitment in 2018 was made to introduce a renter's union to improve conditions and empower tenants in the private rented sector and have this in place by October 2020.

Southwark's Fairer Future commitments

89. The designation of discretionary Licensing schemes and the Landlord's Gold Standard Charter supports a number of the themes that form Southwark's Fairer Future Commitments. They support 'A place to call home' by improving living standards in the borough. Licensing specifically will help to address poor housing, as well as dealing with and deterring rogue landlords.
90. A secure home environment gives Southwark residents the platform to make the most of the opportunities on their doorstep supporting a number of the themes including; 'a place to belong', 'a healthier life' and 'a great start in life'.
91. Licensing also supports Southwark's and the GLA's commitment to tackling rogue landlords. Rogue landlords are likely to be responsible for other criminal activity such as money laundering, modern day slavery and trafficking. Through discretionary licensing we can establish more easily who the responsible landlords are (i.e. the ones that apply for a licence voluntarily and provide good quality accommodation), educate the less professional landlords (i.e. ones who apply but were unaware of the standards they should comply with prior to licensing) and identify the rogues (i.e. the ones who do not apply and deliberately flout the law). This benefits responsible landlords who most definitely make less profit from their business than the unscrupulous ones that ruin the reputation of the sector.

Southwark's Housing Strategy to 2043

92. The long-term housing strategy for the Borough was agreed by cabinet on 27 January 2015. It contains a vision for the future of housing in the Borough, which consists of four principles:
 - Principle 1: We will use every tool at our disposal to increase the supply of all kinds of homes across Southwark;
 - Principle 2: We will demand the highest standards of quality, making Southwark a place where you will not know whether you are visiting homes in private, housing association or council ownership;

- Principle 3: We will support and encourage all residents to take pride and responsibility in their homes and local area;
 - Principle 4: We will help vulnerable individuals and families to meet their housing needs and live as independently as possible.
93. Principle 2 of the strategy makes specific reference to demanding the highest standard of quality. Additional and selective licensing will help the Council to ensure all properties in the private rented sector comply with basic legislation. The Gold Standard Charter will show that the Council expects more from the private rented sector by outlining a standard which equates to best practice.
94. Principle 3 of the strategy makes specific reference to supporting and encouraging residents to take pride and responsibility in their homes. The consultation will help to empower residents giving their voice to proposals aimed at improving the private rented sector.
95. Principle 4 of the strategy makes specific reference to help vulnerable individuals and families to meet their housing needs and live as independently as possible. Additional and selective licensing and the Gold Standard Charter and renter's union are intended to help protect its vulnerable residents. The consultation will help give them a voice to highlight issues in the private rented sector that affect them directly.
96. Proposals for an updated housing strategy (2020 to 2043) will be available for public consultation in March this year. This proposed strategy includes the commitments for additional and selective licensing, the gold standard and a renter's union.

Community impact statement

97. The consultation will set out the Council's expectations for the private rented sector including a proposal to drive up standards via the Gold Standard Charter. These proposals will have a positive impact on the wider community, as it is recognised that an increase in legally compliant and decent homes are linked to improved communities, reduced crime, improved educational attainment and health. The consultation will allow residents and landlords to highlight issues that affect them and how the proposals can help to address those issues.

Equality analysis

98. Poor housing has been identified as a health inequality which adversely impacts on the health of vulnerable groups. It is accepted that the ability to live in decent housing is key to all aspects of wellbeing. The disabled, those with impaired immune systems, the very old and young, the most disenfranchised in our society; those escaping abuse, ex-offenders, addicts and reformed addicts, migrants and particularly illegal immigrants who are more susceptible to modern day slavery, are most likely to be living in the worst dwellings in PRS. The proposed additional and selective licensing schemes seek to improve the quality of accommodation for occupiers in the private rented sector, reduce the impact on the wider community and make our expectations for the sector clear and transparent. The consultation will help the council to consider all issues that concern the sector and the wider community and enable us to ensure the scheme is accessible and has an impact on all communities.
99. Licensable properties are required to meet conditions that are aimed at ensuring fit and proper management and tenancy, providing a fair environment for all tenants and landlords, better choice and standard of rented accommodation, and be adverse to

rogue and non-compliant landlords. Introducing a Gold Standard Charter will mean that tenants and landlords alike understand the Council's expectations and aspirations for the sector above and beyond that required by legislation. These proposals are designed to empower tenants so that they have a standard to point to when choosing a home and confidence in approaching their landlord for improvements to their existing home regardless of age, disability, gender, race, sexuality etc. This will lead to better quality accommodation and greater community stability for groups who are unable to access social housing or homeownership therefore can assist with community cohesion and tackle exclusion. The consultation for licensing and the gold standard has been designed to give all stakeholders and communities the opportunity to shape the future of the private rented sector in Southwark. The Equalities Impact Assessment for the consultation is provided in appendix 5.

Financial implications

100. The costs associated with the public consultation for licensing can be funded from existing budgets.
101. The council has committed £100k from the London Devolution Fund in 2020/21 to finance the initial costs of setting up and running a renters union. This will provide private renters with a collective platform to work with the council to improve conditions and empower tenants in the private rented sector. The ongoing costs of the renters union from 2021/22 will be included in the 2021-22 base budget estimates, to be funded by the renewal of the council's mandatory and additional licencing schemes and planned expansion of the council's selective licencing scheme.
102. 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 are set at a level where the revenue from the fee will cover the cost incurred and can be reviewed during the life of the scheme to ensure it is in line with inflation.
103. 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 licence application, compliance monitoring and, enforcement against landlords who are non-compliant with the licensing process. The consultation proposed will make full use of existing IT facilities, existing contacts and connections and, existing community groups. There will be a need for additional officer time which will be contained within existing divisional budgets.
104. The Gold Standard Charter would be run with the current levels of enforcement officers however it is estimated that an additional administration officer will be required to help administer the scheme.

Legal implications

The legislative framework for discretionary licensing

105. The Housing Act 2004 allows Councils to license privately rented housing in three ways:
 - a. Mandatory licensing under Part 2 of the Housing Act 2004 places a duty on all local authorities to license houses in multiple occupation occupied by five or more persons, living in two or more single households.

- b. Additional licensing under Part 2 of the Housing Act which gives a power to local authorities to license HMOs which are not licensable under the mandatory scheme (i.e. properties occupied by fewer than five or more people in two or more households but greater than three or more people in more than one household).
 - c. An additional licensing scheme should only be considered if the council believes a significant proportion of HMOs in the area are being managed sufficiently ineffectively as to give rise to, or be likely to give rise to, problems for the occupants or for members of the public.
106. Selective licensing under Part 3 of the Housing Act 2004 sets out the scheme for licensing private rented properties in a local authority area. Under section 80 of this Act, a local housing authority can designate the whole or any part(s) of its area as being subject to selective licensing. Where a selective licensing designation is made it applies to all Part 3 Houses which may be houses or flats as defined by sections 79 and 99 of The Housing Act 2004 which are privately rented property in the area, subject to certain exemptions for example Registered Social Landlords, or HMOs which are required to be licensed under Part 2 of the Act through an additional licensing scheme.
107. The local authority will need to submit an application for approval to the Secretary of State for Housing, Communities and Local Government (MHCLG) if it intends to make a selective licensing designation that covers.
- a. 21% or more of its total geographical area and
 - b. includes more than 20% of its privately rented properties
108. For each designation of a licensing scheme different considerations apply. For the Council to introduce a selective licensing scheme applying to non HMOs it has to be satisfied it is an area in which one or more of the following general conditions apply. These general conditions are:
- a. That the area is, or is likely to become, an area of low housing demand;
 - b. That the area is experiencing a significant and persistent problem caused by antisocial behaviour (the Council must show some or all landlords who have let premises in the area (whether under leases or licences) are failing to take action to combat and effectively deal with the problem);
 - c. The area has poor property conditions;
 - d. The area has high levels of migration;
 - e. The area has high levels of deprivation;
 - f. The area has high levels of crime.
109. The authority must also be satisfied that making a designation will, when combined with other measures undertaken in the area by the local housing authority (or by other persons together with the local housing authority) lead to a reduction in, or the elimination of, the problem(s).
110. Before a local authority can introduce a licensing scheme it must, by law, take reasonable steps to consult all persons who are likely to be affected by any licensing scheme and to consider any representations made.

Penalties

111. It is a criminal offence to let out a HMO in the designation area without applying for a licence. Failure to apply for or obtain a licence could lead to prosecution and an unlimited fine. In addition, the Council or the tenants of the property could apply to the

First Tier Tribunal for a Rent Repayment Order, requiring the landlord or agent to repay any rent paid for up to 12 months during which the property was unlicensed.

112. Once an additional licensing designation has been made, no notice under section 21 of the Housing Act 1988 (notice requiring possession) may be served in relation to a short-hold tenancy of the whole or part of an unlicensed property, whilst it remains unlicensed.
113. Where the breach of a licence condition is identified, the licence holder may be prosecuted and sentenced to a fine of up to £20,000 per breach.
114. If the licence holder allows the HMO in question to become occupied by more than the number of persons permitted by the licence, he or she may also be prosecuted and sentenced to an unlimited fine.

Gold Standard Charter

115. The Landlord's Gold Standard Charter will be a voluntary scheme with no legal obligations to comply. There are, therefore, no foreseeable legal implications to the proposals.

Legal implications in relation to the consultation

116. It is essential that the council follows the above legal requirements, including a public consultation on proposals, before declaring an additional or selective licensing scheme.
117. There are no foreseeable legal implications to the consultation on the Gold Standard Charter.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

118. The report recommends that Cabinet approves:
 - the public consultation on the proposals for changes to the Southwark's mandatory licensing scheme
 - the public consultation on the council's proposals for the additional licensing scheme in Southwark for 5 years from 2021.
 - the public consultation on the council's proposals for the selective licensing scheme to operate in Southwark for 5 years from 2021.
 - the public consultation on the proposed Gold Standard Charter.
119. 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.
120. The HMO Licensing provisions do not apply to houses let by local housing authorities or registered social landlord.

121. 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.
122. 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.
123. 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.
124. 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:
 - a. the area(s) is/are experiencing a significant and persistent problem caused by ASB
 - b. some or all of the landlords letting in the area are failing to take reasonable action to combat the problem
 - c. 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
 - d. the scheme will significantly assist with achieving objectives.
125. 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.
126. 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.
127. 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.
128. The council may invoke enforcement processes against those controlling or managing a property without a license or failing to comply with license conditions.
129. The designation of areas subject to additional and selective licensing requires approval from the Secretary of State.
130. 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.
131. 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 that 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.
132. 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.
133. Importantly, the Council must 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.
134. 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.
135. 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 & Governance (FC19/039)

136. The strategic director of finance and governance notes the recommendations to Cabinet to approve the public consultation on the proposals for changes to Southwark's mandatory licensing scheme; proposals for the additional licensing scheme and the selective licensing scheme to operate in Southwark for 5 years from 2021.
137. The strategic director of finance and governance also notes the recommendations to approve the public consultation on the proposed Gold Standard Charter.
138. The strategic director of finance and governance notes the commitment of £100k from the London Devolution Fund to establish a Renters Union in 2020/21 and the ongoing costs from 2021/22 will be incorporated within the council's budget setting process for 2021/21.
139. It is noted that there are no other financial implications at this stage and Officer time to effect the recommendations to be contained within existing departmental revenue budgets.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
None		

APPENDICES

No.	Title
Appendix 1	Stock Condition and Stressors Survey Report
Appendix 2	Proposal for licensing in Southwark 2021-2026
Appendix 3	Proposals for a Landlord's Gold Standard Charter
Appendix 4	Proposed Consultation and Engagement Plan
Appendix 5	Equalities Impact Assessment

AUDIT TRAIL

Cabinet Member	Councillor Victoria Mills, Finance, Performance & Brexit	
Lead Officer	Caroline Bruce, Strategic Director Environment and Leisure	
Report Author	Emma Trott, Private Sector Housing Enforcement Manager, Regulatory Services	
Version	Final	
Dated	4 March 2020	
Key Decision	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team	13 March 2020	