

Executive Board – 24th May 2022

Subject:	Proposal for a Scheme of Selective Licensing for Privately Rented Homes
Corporate Director(s)/Director(s):	Sajeeda Rose Growth and City Development Frank Jordan Resident Services
Portfolio Holder(s):	Councillor Toby Neal Portfolio Holder for Housing and HR
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Subject to call-in:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Key Decision:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Criteria for Key Decision:	
(a)	<input type="checkbox"/> Expenditure <input checked="" type="checkbox"/> Income <input type="checkbox"/> Savings of £750,000 or more taking account of the overall impact of the decision
and/or	
(b)	Significant impact on communities living or working in two or more wards in the City <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Type of expenditure:	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
	If Capital, provide the date considered by Capital Board Date:
Total value of the decision:	Gross Value £25million
Wards affected:	All
Date of consultation with Portfolio Holder(s):	8 th March 2022
Relevant Council Plan Key Outcome:	
Clean and Connected Communities	<input checked="" type="checkbox"/>
Keeping Nottingham Working	<input checked="" type="checkbox"/>
Carbon Neutral by 2028	<input checked="" type="checkbox"/>
Safer Nottingham	<input checked="" type="checkbox"/>
Child-Friendly Nottingham	<input type="checkbox"/>
Healthy and Inclusive	<input checked="" type="checkbox"/>
Keeping Nottingham Moving	<input type="checkbox"/>
Improve the City Centre	<input checked="" type="checkbox"/>
Better Housing	<input checked="" type="checkbox"/>
Financial Stability	<input type="checkbox"/>
Serving People Well	<input checked="" type="checkbox"/>
Summary of issues (including benefits to citizens/service users):	
<p>Selective licensing is a power available to local authorities to tackle problems in privately rented housing. The Council has been delivering a scheme of selective licensing since August 2018. The scheme will end in July 2023 and the evidence supports a second scheme in order to build upon the first and continue to deliver the benefits which are already being seen in the city's private rented sector (PRS). Selective licensing relies solely on fee income and therefore has minimal impact on the Council's annual budget.</p> <p>This report and its accompanying documents presents the case for a second scheme. It reports</p>	

the outcomes of an evidence gathering project which has identified a continuing need for selective licensing within the city, and presents a proposal and designation, based on the statutory guidance, for public consultation.

Use of selective licensing powers will provide the following benefits to citizens/service users:

- Bring greater regulation to a housing tenure which is home to a third of our citizens but exhibits comparatively poorer quality standards
- Raise standards of management and property conditions in privately rented housing
- Improve outcomes for citizens living in and around privately rented homes

- Help to improve neighbourhoods and the public realm by:
 - Being a key tool in the overall reduction of antisocial behaviour (ASB) and time taken to resolve ASB complaints
 - Ensuring better management through more extensive regulation
 - Leading to higher levels of customer satisfaction within private rented sector accommodation in the city and improve the city's reputation
 - Supporting the services the Council delivers in neighbourhoods such as waste management and community protection

- Reduce pressure on finite Council resources across the organisation whilst working towards strategic outcomes by:
 - Providing additional support to multiple teams across Council operations to support statutory objectives
 - Proactively identifying and resolving property health and safety hazards
 - Reducing the overall demand on services and the workload of existing reactive core housing support and community protection teams – without a scheme, additional budgetary pressures would be placed on these services
 - Making a significant contribution to Carbon Neutral 2028 goals by supporting national efforts to raise energy efficiency within privately rented homes such as the Minimum Energy Efficiency Standard (MEES)

As noted, selective licensing is discretionary, and the Council does not have to have a scheme. However it can be seen from the current scheme that it supports a number of statutory functions and delivers a range of benefits to the city with minimal call upon existing budgetary resources.

A number of other local authorities have successfully pursued large-scale selective licensing schemes, some bigger than Nottingham's existing and proposed second scheme. These include the London Boroughs of Newham and Waltham Forest and Liverpool City Council, who have all subsequently implemented second schemes. Birmingham City Council and Leicester City Council are at various stages of implementing significant schemes. An independent review of selective licensing commissioned by the then Ministry of Housing, Communities and Local Government in 2019 reported widespread benefits being delivered by schemes across the country.

Supporting documents provided are:

- Appendix 1: the detailed proposal and evidence for the scheme;
- Annex documents which contain analysis and learning from the current scheme, to further support the case for a second scheme, plus detail on specific parts of the schemes such as the licence conditions and the licence fee.
- Appendix 2: Draft Designation.

If the proposed Designation is approved in principle by the Board a public consultation will take

place from June to August 2022.

Does this report contain any information that is exempt from publication?

No

Recommendation(s):

- 1** To approve in principal to pursue a second scheme of selective licensing as outlined in the report
- 2** To approve the Proposal Report (Appendix 1) and draft Designation (Appendix 2), for consultation in accordance with the statutory requirements and DCLG guidance document *Selective Licensing in the Private Rented Sector: A Guide for local authorities 2015*
- 3** To receive a further report detailing the results of the consultation to consider and determine if the proposed scheme and Designation should be made and submitted to the Secretary of State for Levelling Up, Housing and Communities for approval

1. Reasons for recommendations

- 1.1 The proposed designated area has been chosen because evidence, gathered in accordance with the DCLG guidance suggests that relevant statutory tests have been met and that selective licensing of privately rented houses in the area would be an appropriate tool to resolve problems.

2. Background (including outcomes of consultation)

- 2.1 The introduction of a licensing scheme for private rented accommodation to drive up standards and protect tenants across the City was a key objective in the Council Plan for 2015-2019 with an initial scheme being approved and running from August 2018 to July 2023.

- 2.2 The current scheme has been evaluated in terms of the outcomes and benefits achieved so far. These are examined in annexes iii and iv of Appendix 1. The highlights have been:

- Approx. 90% of the city's private rented sector brought under a regulatory regime which requires landlords to be pro-active about managing and maintaining their properties effectively
- 666 improvements made to a total of 446 properties
- The ability to influence energy efficiency improvements with over 2000 properties having an improved EPC rating between 2018-2019 within the designation
- Speedier resolution to cases of antisocial behaviour emanating from PRS properties due to selective licensing business intelligence on landlords
- A number of rogue landlords have exited the market
- The existence of selective licensing and the required landlord training has encouraged proactive rectification of health and safety issues pre licence issue

2.3 The current Strategic Council Plan 2021 – 2023 states

“We will tackle poor-quality housing in Nottingham, regardless of tenure, and continue to drive up housing standards in the city, ensuring sustainable communities and neighbourhoods for residents’

- 2.4 Selective Licensing aims to improve living conditions for residents both in the private rented sector and the surrounding community and drive up standards amongst poor landlords. The scheme is an important element of the Council’s commitment to safeguarding and protecting vulnerable citizens across the city and in providing good quality, safe housing.
- 2.5 The current scheme has begun to deliver towards these strategic outcomes; however there is much more work to do to embed long term improvement. Officers therefore recommend that, in the light of the evidence that has been collected, a second Designation and scheme to be considered.
- 2.6 As schemes are time limited this has to be a brand new scheme and not simply a continuation or renewal of the current one. Evidence has to be obtained and tested to ensure that it meets the strict statutory criteria and conditions prescribed by the Housing Act 2004 just as the first Designation and scheme did and this may therefore result in a different designated area.
- 2.7 The current private rented stock of the City is estimated at approximately 45,500 properties, including 6228 Houses of Multiple Occupation (HMOs). The Council commissioned the Building Research Establishment (BRE) to undertake a series of modelling exercises on the City’s housing stock in 2016 when the current scheme of selective licensing was under consideration. That report used stock and tenure figure data from 2016 and showed an increase in the number of private rented properties in the city compared to the 2011 household census data. The report also highlighted that the figure was set to grow. In 2021 BRE refreshed the tenure data for this report which has indicated an increase to over 45,500 Private Rented Sector (PRS) properties (from 43,000 in 2016) now representing 33% of Nottingham City households.
- 2.8 The Housing Act 2004 (the Act) creates three different types of licensing scheme:-
- mandatory licensing - which applies to Houses in Multiple Occupation (HMOs) meeting certain statutory criteria within the Council’s area (currently properties accommodating 5 or more people in more than 2 households)
 - additional licensing - which is a discretionary scheme which can be applied to HMOs of a type prescribed by the Council in an area or areas chosen by the Council, and
 - selective licensing - which is also a discretionary scheme and which can be applied to “houses” (as opposed to HMOs) let in a prescribed manner in an area or areas chosen by the Council
- 2.9 All 3 schemes carry statutory exemptions for prescribed types of property and both discretionary schemes have to comply with prescribed statutory tests before they can be adopted. The City Council has adopted a second scheme of additional licensing covering approximately 1,800 properties which came into effect in January 2019 and the current scheme of selective licensing licenses around 30,000 properties.

- 2.10 Legislation requires local authorities to obtain confirmation from the Secretary of State for any selective licensing scheme which would cover more than 20% of their geographical area or which would affect more than 20% of privately rented homes in the local authority area.
- 2.11 The scheme proposed covers 2994 hectares - 40% of the City geographically; 79% of licensable properties and 66 of 98 Lower Super Output Areas (LSOAs) which meet the high proportion of PRS criteria. If it proceeds, it will ultimately require Secretary of State confirmation. Any scheme to be adopted will require robust, properly considered and clearly presented evidence.
- 2.12 In order for selective licensing to be considered one or more of 6 statutory Conditions have to be met. In summary the Conditions are that the area:-
- i. is an area of low housing demand (or is likely to become such an area)
 - ii. suffers from or has a significant and persistent problem caused by anti-social behaviour
 - iii. is experiencing poor property conditions
 - iv. is experiencing or has recently experienced an influx of migration
 - v. is suffering a high level of deprivation or
 - vi. suffers from high levels of crime
- 2.13 Conditions iii. – vi. can however only be applied where the area is one containing a “high proportion” of properties in the PRS. What constitutes a high proportion is for the Authority to determine and subject to Guidance. The Conditions and the Council’s approach to determining what constitutes a “high proportion” are set out in more detail in Appendix 1 (page 48).
- 2.14 Evidence gathering work has been carried out to establish if there are grounds for implementing a second scheme of selective licensing in Nottingham and if so, where. An evidence base to inform a Designation was gathered using a number of data sources. Extensive analysis of the evidence against each of the conditions as identified in paragraph 2.6 was undertaken excluding low housing demand and migration, as a significant change was not identified since gathering the evidence for Scheme 1, when these criteria were not found to apply. The area that has been chosen as a proposed Designation to consult upon has been arrived at through the analysis of this data. The evidence that has been gathered supports a designation based on the following grounds: -
- significant and persistent problem caused by anti-social behaviour
 - poor property conditions:
 - high level of deprivation and;
 - high levels of crime.
- 2.15 Officers are satisfied that there is sufficient evidence to show that two or more of the Conditions are met for all areas within the proposed Designation. The evidence has revealed, very broadly:
- Continuing problems of ASB in areas with high levels of PRS: for example, in the police data analysed, twice as many reports of noise related ASB came from Lower Super Output Areas (LSOAs) with a high proportion of PRS, and 1.8 as many reports of other ASB;
 - Significant reports of disrepair in PRS homes: reports relating to poor property conditions are overwhelmingly located in LSOAs with a high proportion of PRS property, with a report being 4 times more likely to

occur on average in these LSOAs, than an area with a lower proportion of private rented tenure.

- The coincidence of high levels of deprivation in areas with parts of the city with high proportions of privately rented homes: LSOAs with a high proportion of PRS housing performed worse on average than the remaining LSOAs in Nottingham across all of the domain/indicators of the Indices of Multiple Deprivation (IMD) except the overall combined IMD
- There are higher levels of crime in areas with more PRS: LSOAs with a high proportion of PRS property had 25% more reports of dwelling related crime on average, than other areas

2.16 Officers have focused the proposed Designation only on areas which contain a high proportion of PRS to ensure a robust case is put forward to the Secretary of State for a second scheme which evidences learning from the first and will deliver a more targeted approach. Maps showing which areas within the proposed Designation meet which Conditions are contained in Appendix 1 (page 52, 57 and 60).

2.17 Collectively the Act and DCLG guidance document *Selective Licensing in the Private Rented Sector: A Guide for Local Authorities 2015* state that before proposing a designation and embarking on a consultation the local housing authority must:

- Identify the problems affecting the area to which the designation will apply and provide evidence to support the existence of the problems.
- Decide what other measures it, or other persons together with the local housing authority, will take together with the selective licensing scheme to eliminate or mitigate those problems and how they will work together.
- Assess what outcomes will be delivered through the making of a scheme and taking the other measures.
- Show how such a designation will be part of the overall strategic approach, and how it fits with existing policies on homelessness, empty homes, regeneration and anti-social behaviour associated with privately renting tenants.
- Carefully consider any potential negative economic impact that licensing may have on their area – particularly the risk of increased costs to landlords who are already fully compliant with their obligations.
- Demonstrate the role of other partners (if any), such as the Police or Social Services, in ensuring the designation reaches its goal. (case studies / referrals to be included)
- Show it has considered whether there are any other courses of action available to them that might provide an effective method of achieving the objectives that the designation is intended to achieve.
- Show how the making of the designation will significantly assist the local housing authority in achieving its' objectives (whether or not in conjunction with those other measures).

- Demonstrate how licensing will work in conjunction with existing initiatives (such as landlord accreditation) and partnerships.
- Consider some of the possible effects of making a designation, and to include any risk assessment they may have carried out.

2.18 Officers have considered the strategic significance of the scheme and how the proposed scheme will support a co-ordinated strategic housing approach and assist with the achieving of objectives within the designation. As part of this consideration officers have:-

- looked at the other measures available
- assessed what outcomes will be delivered through the making of a scheme
- considered any potential negative economic impact on their area
- identified the role of other partners and shown how licensing will work in conjunction with existing initiatives and partnerships
- considered whether there are any other courses of action available and
- considered some of the possible effects of making a designation

Details to support the proposal are contained in Appendix 1

3. **Other aspects of the proposed scheme**

3.1 Selective licensing designations can only be made for up to a maximum of 5 years and there is a statutory duty to review the scheme from time to time. At this stage it is proposed that this designation would run for a 5 year period. This will enable its implementation and effect to sufficiently stabilise for it to be effectively monitored and reviewed.

3.2 Before making a final decision as to whether to make (and seek confirmation of a scheme) the Council is required to conduct a full consultation for a minimum of 10 weeks which should be informative, clear and to the point, so that the full details of the proposal can be readily understood. It is proposed that consultation be carried out for a period of 10 to 12 weeks between June 2022 and August 2022, which would include information on the proposed scheme, the reasons for it and how the proposed Designation has been arrived at, and providing indicative information regarding fees and conditions.

3.3 The Council will consult widely with local residents, including tenants, landlords and where appropriate their managing agents and other members of the community including voluntary and community groups who live or operate businesses or provide services within the proposed Designation. The Council will publicise the project widely via multiple channels. It will also work with neighbouring authorities to publicise the proposed scheme and to ensure that the consultation includes local residents and those who operate businesses or provide services in the surrounding area outside of the proposed designation that will also be affected. In addition Council officers will attend pre-existing partners and public meetings with stakeholder groups to raise awareness about the project and the consultation and answer any queries. The Council will also publicise the project and the consultation via relevant landlord trade press in order to engage with landlords who live outside of Nottingham.

3.4 The consultation will include:-

- details of the proposed Designated area
- why the Council believes there is a need for a licensing scheme in the proposed designation, the alternatives that have been considered, the

merits and demerits of the alternatives and the reasons the preference is for the introduction of a licensing scheme

- what the Council considers the likely effect of the scheme will be
- the licensing process and proposed standard conditions
- the proposed fee structure

It will gather views on the above matters and the potential impacts of the proposed licensing scheme. A Consultation document will be produced which sets out the detail behind the Proposal to accompany the questions and to assist with responses to the consultation. Any decisions regarding the Proposal will only be taken by the Council after it has fully considered the responses to the consultation, the supporting evidence and any other relevant information.

- 3.5 The formal consultation is in addition to the ongoing listening and engagement which occurs as part of the current scheme of selective licensing. The selective licensing team engages regularly with landlords and tenants at forums which are delivered by the Council and any relevant themes which have arisen will be incorporated into the consultation.

4. Other options considered in making recommendations

- 4.1 Before adopting a scheme of selective licensing, local authorities are required to consider whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question. The Council has operated a range of schemes and initiatives to improve property conditions and management of PRS properties for a number of years. These initiatives and work with other partners have ensured ongoing engagement with landlords. However problems still exist with some landlords and properties, which the Council believes can appropriately be addressed continuing to use selective licensing powers, alongside existing initiatives and legislative provision. Details of these initiatives, work and considerations can be found in Appendix 1

5. Consideration of Risk

- 5.1 The following risks have been identified:

I. There are risks to this scheme which could have an impact on the financial business model (covered below)

II. An example of some of the risks that could impact on the schemes financial viability and would require a resources review to mitigate are:

- Level of applications vary.
- Landlords may gain accreditation in order to secure a lower fee
- Number of accredited landlords could change with significant changes to accreditation numbers potentially affecting costs and income.
- If operational activity identifies unexpected qualities of property (better or worse) which would mean staffing balance or costs are different to those that are anticipated.
- If there are any legislative, guidance changes and/or case law rulings

6. Finance colleague comments (including implications and value for money/VAT)

- 6.1 This report is looking for approval to proceed with the required public consultation.
- 6.2 Financial analysis and impact of the scheme will be reviewed and any implications identified during and at the conclusion of the consultation process.
- 6.3 The value of the scheme identified is circa £25m, however, the results of the consultation could significantly affect this scope and duration as identified in the risks highlighted above.
- 6.4 There are financial risks with not progressing with the Selective Licence renewal, insomuch that a proportion of eligible overheads and costs allocated to the scheme will need to be funded by alternative means.
- 6.5 All finances associated with the scheme will need to adhere to all policies and procedures as required and meet the required conditions of the scheme.

Susan Turner, Senior Commercial Business Partner – 07 April 2022

7. Legal colleague comments

- 7.1 In order for the Board to ultimately make a Designation and approve a scheme for selective licensing Councillors must:-
 - be satisfied that one or more of the Statutory Conditions for making a scheme are met
 - have taken reasonable steps to consult persons likely to be affected by the designation and have considered any representations
 - ensure that any exercise of the power is consistent with the authority's overall housing strategy
 - seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour both as regards combining selective licensing with other courses of action available to them and measures taken by other persons, and must not make a designation unless:-
 - they have considered whether there are any other courses of action available to them that might provide an effective method of achieving the objective(s) that the designation would be intended to achieve and
 - they consider that making the designation will significantly assist them to achieve that/those objective(s)
- 7.2 The matters outlined above are addressed more fully in Appendix 1 and Councillors should satisfy themselves of these matters before proceeding to consultation. Any suggested amendments to the designated area would need to be evidence based and justifiable in order to withstand potential legal challenge. However, at this stage as approval is being sought purely to consult the risks of any legal challenge to the Proposal and Designation are low.
 - 7.2.1 As indicated in the report the council would be required to obtain confirmation from the Secretary of State for any selective licensing Designation which covers more than 20% of the administrative district or which would affect more than 20% of privately rented houses in the local authority area. If, following consultation, the Council proceeds to make the proposed Designation, confirmation will be required from the Secretary of State. There is a risk therefore that the Secretary of State may take an alternative view on the evidence or approach taken by the Council

and may refuse consent for the proposed Scheme. There is no right of appeal against the Secretary of State's decision though it would potentially be open to Judicial Review if the relevant grounds were met.

Ann Barrett, Team Leader Legal Services 7 March 2022

8. HR colleague comments

- 8.1 HR are in agreement that this proposal should be consulted on due to the nature of the statutory functions that NCC are responsible for.

Janade Akhter, HR Consultant, Finance and Resources – 27th April 2022

9. Procurement

- 9.1 N/A

10. Strategic Assets and Property

- 10.1 N/A

11. IT

- 11.1 no comments at this stage

12. Crime and Disorder Implications

- 12.1 Continue to work with our statutory partners and voluntary sector through partnership working to address crime and community safety issues

Colin Wilderspin, Head of Community Safety, Community Protection 12 April 2022

13. Social value considerations

- 13.1 N/A

14. Regard to the NHS Constitution

- 14.1 The NHS Constitution has as one of its guiding principles that the NHS will work across organisational boundaries. It says: "The NHS is committed to working jointly with other local authority services, other public sector organisations and a wide range of private and voluntary sector organisations to provide and deliver improvements in health and wellbeing". The Council's approach to housing also follows this principle, seeking to work with a range of other services to improve citizens' lives, not least their health and wellbeing. One of the key benefits the Council believes that selective licensing will bring is improved housing conditions; the positive impact that better housing can make on health and wellbeing has been demonstrated both nationally and locally.

15. Equality Impact Assessment (EIA)

- 15.1 Has the equality impact of the proposals in this report been assessed?

No

An EIA is not required because:
(Please explain why an EIA is not necessary)

Yes
Attached as Annex vii in Appendix 1, and due regard will be given to any implications identified in it.

16. Data Protection Impact Assessment (DPIA)

16.1 Has the data protection impact of the proposals in this report been assessed?

No
A DPIA is not required because:
This report is to go out to consultation. DPIA will be created as part of next Executive Decision to agree if these proposals are taken forward to implementation

Yes
Attached as Appendix x, and due regard will be given to any implications identified in it.

17. Carbon Impact Assessment (CIA)

17.1 Has the carbon impact of the proposals in this report been assessed?

No
A CIA is not required because:
This report is to go out to consultation. CIA will be created as part of next Executive Decision to agree if these proposals are taken forward to implementation

Yes
Attached as Annex vii, and due regard will be given to any implications identified in it.

18. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

18.1 All background papers are either referenced in: "Proposal for a Scheme of Selective Licensing for Privately Rented Houses"- Appendix 1 or annexed within it.

19. Published documents referred to in this report

- Housing Act 2004
- Selective Licensing of Houses (Additional Conditions) (England) Order 2015
- Selective Licensing in the private rented sector – A guide for local authorities (DCLG March 2015)
- **Appendix 1 refers to the following documents:**
- The Nottingham City Joint Strategic Needs Assessment (JSNA) on Housing and Excess Winter Deaths (2020)
- Quality Homes for All: Nottingham's housing strategy 2018-21
- The Homelessness Prevention Strategy for Nottingham City, 2018-2023
- Open for business: LGA guidance on locally set licence fees (2017)
- The Mental Health and Wellbeing Strategy 2019-2023

