

EXECUTIVE BOARD - 22nd November
2016

Subject:	Proposal for a Scheme of Selective Licensing for Privately Rented Houses
Corporate Director(s)/Director(s):	David Bishop Corporate Director Development & Growth, Deputy Chief Executive Andy Vaughan, Corporate Director for Commercial & Operations
Portfolio Holder(s):	Councillor Jane Urquhart, Portfolio Holder for Planning and Housing Councillor Nicola Heaton, Portfolio Holder for Community Services
Report authors and contact details:	Graham de Max, Housing Partnership and Strategy Manager Lorraine Raynor, Head of Community Protection, Chief Environmental Health and Safer Housing Officer
Subject to call-in: X Yes <input type="checkbox"/> No	
Key Decision: X Yes <input type="checkbox"/> No	
Criteria for Key Decision:	
(a) X Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 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 X Yes <input type="checkbox"/> No	
Type of expenditure: X Revenue <input type="checkbox"/> Capital	
Total value of the decision: Gross Value £22.652m Net Value £1.652m over 5 years	
Wards affected: All	
Date of consultation with Portfolio Holder(s):	
Relevant Council Plan Key Theme:	
Strategic Regeneration and Development	<input type="checkbox"/>
Schools	<input type="checkbox"/>
Planning and Housing	X
Community Services	<input type="checkbox"/>
Energy, Sustainability and Customer	<input type="checkbox"/>
Jobs, Growth and Transport	<input type="checkbox"/>
Adults, Health and Community Sector	<input type="checkbox"/>
Children, Early Intervention and Early Years	<input type="checkbox"/>
Leisure and Culture	<input type="checkbox"/>
Resources and Neighbourhood Regeneration	<input type="checkbox"/>
Summary of issues (including benefits to citizens/service users):	
This report informs Executive Board of the data collection and analysis work that has been completed to inform a decision on proposals for a selective licensing scheme for privately rented houses. If the proposed designation is approved in principle by the Board a public consultation will take place.	
Use of selective licensing powers will provide the following benefits:	
<ul style="list-style-type: none"> • An opportunity to effectively influence higher standards of privately rented houses and to ensure effective management through more extensive control; • A key tool in achieving the overall reduction of Anti-Social Behaviour (ASB); and • Lead to higher levels of customer satisfaction with private rented sector accommodation within the City 	
The report outlines the outcomes of an evidence gathering project surrounding the need for selective licensing within the City, and presents a proposed designation for consideration.	

Exempt information:

Appendices 1 and 5 to this report contain exempt information under Paragraphs 3 and 5 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended). This information relates to the financial affairs of the authority and advice to which a claim to legal professional privilege could be maintained. The public interest in maintaining the exemption outweighs the public interest in disclosing it as the information relates to issues to which legal privilege can be claimed and where maintaining confidentiality will enable full and proper debate of the authority's financial affairs outweighing the public interest in disclosing the information.

Recommendation(s):

1 To approve in principle to pursue a scheme of selective licensing as outlined in the report.

2 To approve the draft designation contained in Appendix 3 for consultation in accordance with the statutory requirements and Department for Communities and Local Government guidance document *Selective Licensing in the Private Rented Sector: A Guide for local authorities*.

3 To bring back the results of the consultation to a future meeting of the Executive Board to consider and determine if the proposed scheme and designation should be made and submitted to the Secretary of State for Communities for confirmation.

4 To note the requirement to establish a ring fenced reserve, as detailed in recommendation 5, for this scheme.

5 To approve the use of reserves to fund setup costs of £0.080m should the scheme be approved (see 4.1).

1 REASONS FOR RECOMMENDATIONS

1.1 The proposed designated area has been chosen because evidence, gathered in accordance with the Department for Communities and Local Government (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.

1.2 Ward councillors have been consulted on the proposed scheme and designation.

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 is a key objective in the current Council Plan for 2015-2019. Selective Licensing (a power available to local authorities to licence private rented houses) 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 quality, safe housing. In order for a scheme to be implemented there are strict statutory criteria and conditions which need to be met. The scheme will also contribute to reductions in levels of Crime and Anti-Social Behaviour and also contributes to one of the Council's key objectives to "cut the number of victims of crime by a fifth and contribute to reduce anti-social behaviour."

2.2 The current private rented stock of the City is estimated at approximately 43,000 properties, including 7,748 Houses in Multiple Occupation (HMOs). As part of the proposal the Council commissioned the Building Research

Establishment (BRE) to undertake a series of modelling exercises on the City's housing stock (attached at Appendix 5). The report used stock and tenure figure data from 2016 and shows a further increase in the number of private rented properties in the city compared to the 2011 household census data. The report also highlights that this figure is set to grow.

2.3 The Housing Act 2004 (the Act) creates three different types of licensing scheme:-

- mandatory licensing - which applies to HMOs meeting certain statutory criteria within the Council's area (currently properties of 3 storeys or more 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

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 scheme of additional licensing covering approximately 3,000 properties which came into effect in January 2014.

2.4 Recent changes to legislation mean that Local authorities are now required to obtain confirmation from the Secretary of State for any selective licensing scheme which would cover more than 20% of their geographical area or would affect more than 20% of privately rented houses in the local authority area. The scheme proposed covers the entire City and, if it proceeds, will ultimately require Secretary of State approval. Any scheme to be adopted will require robust, properly considered and clearly presented evidence.

2.5 In order for selective licensing to be considered one or more of 6 statutory grounds have to be met. Whilst the definitions of the grounds are more complicated the grounds essentially 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

Criteria iii – vi can however only be applied where the area is one containing a "high proportion" of properties in the private rented sector. What constitutes a high proportion is for the Authority to determine and subject to Guidance.

2.6 Evidence gathering work has been carried out to establish if there are grounds for implementing a 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 criteria as identified in paragraph in 2.5 was undertaken. 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.

The evidence demonstrates the existence of problems within the proposed designation and that there is a strong correlation between these criteria and the private rented housing stock in Nottingham. Whilst different parts of the City meet different grounds, collectively there is a strong argument for suggesting that the entire City should be covered by the scheme. "Nottingham City Council: Evidence to support the proposal"- Appendix 2 contains a map for each criteria. A map showing the designation is shown in Appendix 3 to this report "Designation for proposed scheme of selective licensing for privately rented houses".

2.7 Collectively the Act and DCLG guidance document *Selective Licensing in the Private Rented Sector: A Guide for Local Authorities* 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.
- 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.
- 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.

The Council has considered the above and believes that it has met all of the required tests

2.8 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 can be found in the attached report "Nottingham City Council: The Strategic case for Selective Licensing" - Appendix 2.

Other aspects of the proposed scheme

2.9 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.

2.10 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 minimum period of 10 weeks between December 2016 and March 2017, which will include information on the proposed scheme, the reasons for it and how it has been arrived at, and indicative information regarding fees and conditions.

2.11 The consultation will include:-

- details of the area affected,
- why the Council believes there is a need for a 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 and
- the proposed fee structure.

and 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.

2.12 The Council will consult with local residents, including tenants, landlords and where appropriate their managing agents, key interested parties (i.e. Police,

Fire Service, local health providers etc.) and other members of the community including voluntary and community groups who live or operate businesses or provide services within the proposed designation. A survey will be developed which will be online and available as a printed version at various Council and community venues. Printed information will be made available in the form of posters and flyers to be distributed in public places in both the local authority's area and those of neighbouring authorities. The Council will publicise the project via social media, individual letters, adverts in local papers and news items on its own and partners' websites. 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.

2.13 The formal consultation is in addition to the listening and engagement exercise that has already been undertaken by the Council. The purpose of the exercise was to engage with landlords and tenants, representatives from community groups and other interested parties to gather their views and to assist with gathering information in relation to the proposal. A small number of focus groups were held over the period April to August 2016. The Council held a number of dedicated sessions to which it invited along either landlords and or their managing agents who are currently renting out properties in Nottingham, tenants who are currently renting properties in Nottingham and representatives from different sections of the community. The aim of the sessions was to find out what are the issues faced by the groups, what impact a licensing scheme may have on the City's private rental sector and the City in general and to discuss what a scheme could look like. The outcomes have been looked at as part of the Council's proposal.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

3.1 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 private rented sector properties for a number of years. These initiatives and work with other partners have ensured ongoing engagement with landlords. However problems still exist with a large number of landlords and properties which the Council believes can appropriately be addressed using selective licensing powers alongside existing initiatives and legislative provision. Details of these initiatives, work and considerations can be found in "Nottingham City Council: The Strategic case for Selective Licensing" – Appendix 2.

3.2 The Council could decide to not pursue a selective licensing scheme; however the evidence that is presented within Appendix 2 supports the view that the proposed scheme is needed. If the scheme is not implemented the City will continue to experience the significant problems in the private rented sector which have been identified.

4 FINANCE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)

4.1 Summary

- I. The total cost of the scheme over the five years is **£22.652m** with a licence cost per 'house' being calculated at **£600**.
- II. The scheme will be self-funding and the establishment of a ring-fenced reserve is required to manage the profile of take-up and costs.
- III. The scheme will require set up costs before Central Government make the decision. This will be approximately £0.080m and is included in the overall costs. Funding of this would be required in 2016/17 and will be repaid if the scheme is approved.

4.2 The calculation is based on the following assumptions:

- I. Costs to administer the scheme are included in the licence cost and have been assessed using an updated Local Government Association (LGA) toolkit to ensure value for money.

The costs included are:

- a. Staffing costs to run the scheme, these have been included at productive hours only as per the guidance and relevant staff grades for each piece of work.
 - b. Processing costs of each licence, application, checking etc. – this has been calculated using percentages for the amount of time taken.
 - c. Enforcement and compliance costs Management fees.
 - d. Start-up costs.
 - e. Exit costs.
 - f. Staff overhead costs (as per additional licencing).
 - g. Inflation factors.
- II. Only 600 accredited landlords have been included in the forecasts for this report for an estimate and only 75% of privately rented properties will apply.

This assumption is based on the experience of the Additional Licensing scheme which is still progressing.

4.3 Risks

- I. Resources will have to be reviewed if:
 - a. Level of applications may vary.
 - b. Landlords may gain accreditation in order to secure a lower fee. Accredited landlords could receive a reduction of £140. This would need to form part of the consultation.
- II. An on- going European Court case rules that enforcement costs are no longer recoverable. The net position would then be reduced and there would be risks of funding costs.

4.4 Reserve requirement

It is inevitable that applications will not be made uniformly over the five years of the scheme, with a larger proportion likely in the early years. This scheme needs to be self-financing with no gain or loss to be aligned to the Local Authority; to facilitate this a **ring fenced reserve will be required** for Selective Licencing.

The Selective Licencing scheme also includes **non-recoverable costs** which over the five years are estimated at £1.652m and will be funded from reserves; these are set out in **Table 1** below:

TABLE 1: NON RECOVERABLE COSTS	
Costs	£m
Housing rating Inspection	0.460
Prosecutions of licence conditions through the courts	0.780
Tribunal costs including Legal	0.398
Locksmiths	0.014
TOTAL	1.652

4.5 There may be additional demand placed on Council services such as Safer Housing, Community Protection, Housing Aid and Social Care. These are at this stage unknown.

4.6 Once the consultation has been undertaken, any material variations to the assumptions above will be represented for approval by the Portfolio Holders.

5 LEGAL AND PROCUREMENT COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND INCLUDING LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

5.1 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 grounds 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)

5.2 The matters outlined above are addressed more fully in Appendix 2 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.

- 5.3 Recent changes to legislation mean that local authorities are now required to obtain confirmation from the Secretary of State for any selective licensing scheme which would cover more than 20% of their geographical area or would affect more than 20% of privately rented houses in the local authority area. If, following consultation, the Council proceeds to make the 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.
- 5.4 The Business plan to support the operational arrangements around selective licensing has assumed that applications will only be received for 75% of properties. There is potential for this number to further change due to changes in the housing market, legislative changes etc., which could have a significant impact on costs and income. The adjustment from 100% is based on experience of patterns of application and market change. The fee may go up or down before implementation due to various influencing factors and this variation could be up to 20%. In addition there is currently a case before the European Court relating to the calculation of fees for various types of licences and authorisations in general. Whilst the proposed fee structure has been devised taking into account existing law and guidance fees may have to be reviewed once the outcome of this case is known and this may affect the sums being charged to the Council's general fund if it is held that certain elements which have been included in the fee can no longer be lawfully charged. Annual review of income and expenditure and the recruitment of staff on temporary contracts are proposed to assist with the risk management of these pressures and both the Corporate Director and Director of Community Protection have delegated power to agree any necessary revisions to fees and charges with the relevant Portfolio holder
- 5.5 Recruitment will commence if agreement is given by the Secretary of State to implement the scheme. Pre planning of this is underway and further information will be made available before the implementation of any scheme. The ability to recruit experienced and competent staff is a risk. If sufficient staff cannot be recruited through the normal processes then the agreed procedures for recruiting consultants/agency staff may be used, to ensure there is sufficient resource and capacity. It is possible that the balance between administration/compliance may differ from the model. This would affect income and expenditure outcomes. If costs of the scheme change i.e. salary the cost of the licence will vary. Any changes to numbers due to accreditation, will also affect income and expenditure and staffing levels. Performance monitoring, annual review and a 5 year business account that allows flexibility will assist with risk management.
- 5.6 The resources which will be required in ensuring the success of the scheme, including the potential need for external recruitment can be found in Table 2 "*Nottingham City Council: The proposed scheme, how it will help to tackle problems and the outcomes we seek*" – Appendix 2. Subject to the costs being agreed as shown 4.1 above, recruitment will be delegated to the relevant Corporate Director in line with current delegated authorities (Nottingham City

Council Constitution, Part 2, Responsibilities for Functions and Terms of Reference, Section 9). The potential resource and people implications should be considered with colleagues within Human Resources, specifically Service Design and Recruitment, to look at the most appropriate, cost efficient, and timely options for filling the predicted posts.

6 STRATEGIC ASSETS & PROPERTY COMMENTS (FOR DECISIONS RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE)

6.1 None.

7 SOCIAL VALUE CONSIDERATIONS

7.1 The use of selective licensing is consistent with the Council's overall strategic approach to housing and its approach to a number of key priorities for the City. Selective licensing, by tackling the problems which are evidenced in the proposal, will help to achieve a number of positive outcomes in terms of regeneration, health and wellbeing, and community safety, which are all major priorities for the city. This will help to deliver improved outcomes for citizens.

8 REGARD TO THE NHS CONSTITUTION

8.1 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.

8.2 The City's Health and Wellbeing Strategy has "Healthy Environment" as one of its four main priorities. Within this there is the priority action "Housing will maximise the benefit and minimise the risk to health of Nottingham's citizens". The proposal for selective licensing fits very clearly with this action

9 EQUALITY IMPACT ASSESSMENT (EIA)

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

Yes - see Appendix Four

10 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)

10.1 Nottingham Crime and Drugs Partnership Exploring the role of private rented households on rate of crime and anti-social behaviour in Nottingham.

11 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT

11.1 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 2 refers to the following documents.

The Nottingham City Joint Strategic Needs Assessment (JSNA) on Housing
(April 2013)

Housing Nottingham Plan: Nottingham Housing Strategic Partnership Plan
2013-2015

The Homelessness Prevention Strategy for Nottingham City, 2013-2018

12 OTHER COLLEAGUES WHO HAVE PROVIDED INPUT

12.1 David Hobbs - Operations Manager Housing Licensing and Compliance David.hobbs@nottinghamcity.gov.uk

Ann Barrett - Team Leader, Legal Services
Ann.barrett@nottinghamcity.gov.uk

Michelle Pullen – Commercial Business Partner
Michelle.pullen@nottinghamcity.gov.uk

Ceri Davies - Housing Strategy Specialist
Ceri.davies@nottinghamcity.gov.uk

Lisa Ball - Strategic Planning & Performance Consultant
Lisa.ball@nottinghamcity.gov.uk