

**EXECUTIVE BOARD – 19 NOVEMBER 2019**

<b>Subject:</b>	Scheme of Selective Licensing for Privately Rented Houses – Review of the Licensing of Block Buildings and Revised Fee Structure 2019
<b>Corporate Director(s)/Director(s):</b>	Chris Henning, Corporate Director for Development and Growth Andy Vaughan, Corporate Director for Commercial and Operations Andrew Errington, Director for Community Protection
<b>Portfolio Holder(s):</b>	Councillor Linda Woodings, Portfolio Holder for Planning, Housing and Heritage
<b>Report author and contact details:</b>	David Hobbs, Operations Manager Selective Licensing T: 0115 915 61555 E: <a href="mailto:David.hobbs@nottinghamcity.gov.uk">David.hobbs@nottinghamcity.gov.uk</a>
<b>Subject to call-in:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Key Decision:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Criteria for Key Decision:</b>	
(a)	<input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision
<b>and/or</b>	
(b)	Significant impact on communities living or working in two or more wards in the City <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Type of expenditure:</b>	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
<b>Total value of the decision:</b>	£173,000
<b>Wards affected:</b>	All
<b>Date of consultation with Portfolio Holder(s):</b>	Ongoing throughout Review but specifically on report 6 November 2019
<b>Relevant Council Plan Key Theme:</b>	
Strategic Regeneration and Development	<input checked="" type="checkbox"/>
Schools	<input type="checkbox"/>
Planning and Housing	<input type="checkbox"/>
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 checked="" type="checkbox"/>
Children, Early Intervention and Early Years	<input type="checkbox"/>
Leisure and Culture	<input type="checkbox"/>
Resources and Neighbourhood Regeneration	<input type="checkbox"/>
<b>Summary of issues (including benefits to citizens/service users):</b>	
This report sets out the outcomes of a review of licensing Block Buildings within the Council's Selective Licensing Scheme and also recommends a revised fee structure for the Scheme.	
<b>Exempt information:</b>	
This appendix is exempt from publication under paragraph 5 and 7 of Schedule 12A to the Local Government Act 1972 because it contains legal advice relating to a proposed revised Policy relating to licensing of Block Buildings under Part 3 of the Housing Act 2004 and the associated proposed Fee Structure and, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.	
It is not in the public interest to disclose this information because this advice is professionally privileged and relates to potential proceedings which are in contemplation and may arise	

dependant on the Board's determination of these matters.

**Recommendation(s):**

- |   |  |
|---|--|
| 1 | To adopt the Policy document as set out in Appendix 1, which sets out the Council's approach to the licensing of dwellings within the city under the Council's Selective Licensing Scheme;                       |
| 2 | To adopt the additional standard licence conditions set out in Appendix 2 to apply to any Block Licences that the Council, may in its discretion grant;  |
| 3 | To adopt the revised fee structure as set out in Appendix 3, in relation to all new licensing applications submitted under the Selective Licensing Scheme;   |
| 4 | With all recommendations, if adopted, to be applied from 1 December 2019, with the exception of the proposed licence fee increase for Individual Property Licences, which is to be applied as from 1 April 2020. |

**1 REASONS FOR RECOMMENDATIONS**

- 1.1 Nottingham City Council exercised its powers under section 80 Housing Act 2004 ("HA 2004") and designated a significant amount of the City to be subject to a scheme of selective licensing. Under the 'Nottingham City Council Designation of an Area for Selective Licensing 2017', which came into force on 1 August 2018, most privately rented homes in the city are required to have a property licence ("Property Licence"). Since implementation, the Council continues to review its operating model, and in light of learning and developed knowledge, it is recommended that the ability for an applicant to apply for a 'Block Licence' where certain conditions are met, be included within the Council's Policy. The meaning of a 'Block Licence' and 'Individual Property Licence' are more particularly defined in the Policy recommended for adoption at Appendix 1 to this report.
- 1.2 The Council acting in its capacity as the Local Housing Authority has a discretion to include conditions in its licences considered appropriate to regulate the management, use or occupation of the house. While the Council maintains a preference for Individual Property Licences for individual dwellings, it is recognised that where certain conditions are met, then the exercise of its discretion to grant a Block Licence would offer the ability (where relevant), to include additional licence conditions particular to the management of Block Buildings.
- 1.3 Alongside the recommended Policy revision, it is necessary to review the licence fee structure. As a result of operating and processing licence applications over the past year, the Council is able to be more accurate in its assessment of resource implications and therefore it is appropriate to review the overall fee structure for the Selective Licensing Scheme. The Housing Act 2004 Act, permits a local housing authority to require a licence application to be accompanied by a fee and, when fixing that fee, may take into account, *all costs incurred by the authority in carrying out its functions*, which permits the Authority to operate the Scheme in a cost-neutral manner.

**2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)**

**SELECTIVE LICENSING SCHEME**

2.1 The City Council conducted an 11 week consultation exercise on the proposal to implement a Scheme of Selective Licensing between the dates of 16 January to 31 March 2017. Representations were received during that consultation in relation to applicants wanting some 'compromise for flats with the same leaseholder in a block or new build properties'.

2.2 The Executive Board Report of 18 July 2017, which ultimately led to the adoption of the Scheme, responded to these representations at Appendix 2 (vi) by stating that:

*It recognised that recently built purpose built blocks of non HMO flats may take less time to process and undertake compliance inspections if each flat is the same and there is one lease holder and freeholder only. This would not be the case for other houses or houses converted into non-HMO flats.*

*The Council carefully considered the proposal to issue one licence for a block and constructed a robust methodology and criteria to consider this. However it was felt that the criteria required would make the fee structure more complex and the licensing process more complicated.'*

2.3 At that time, the Council was of the understanding that there were not many blocks in the city that would meet the criteria and therefore the complexity outweighed any benefits. The Council was not aware of any other local authorities offering the ability to apply for block licences within their schemes at that point in time. The Council took into consideration that it was offering a discount for accredited landlords, and had increased the level of discount in response to the consultation, being of the view that this would assist landlords with larger property portfolios, including those who owned all properties in a block, should they become accredited.

2.4 Having operated the Scheme for over a year, the Council now has an increased knowledge of the complexity of the building profile in the city and it has developed practices and processes which enables it to recommend the availability of Block Licences where certain conditions are met. From an administrative point of view, the processes behind licensing scheme have been operating for over a year and a less complex administrative process can be operated with the efficiencies being reflected in the fee structure for a Block Licence.

2.5 A desktop benchmarking exercise was completed to review what other local authorities were doing in relation to 'Block Licences,' the results of which have been considered, as have other local authority policies and fee structures for such licences. A summary of the results of this exercise is a background document to this report.

2.6 Within the draft Policy, the Council specifically recognises that the legislative provisions contemplate circumstances in which a Single Property Licence may relate to more than one separate dwelling in the same building ("a Block Licence"). However, for the reasons outlined below, the Council prefers

separate dwellings in a building to have their own, individual property licence ("an Individual Property Licence") but does recognise that in certain circumstances and depending on the building it may be beneficial to offer the facility for landlords to apply for and have in place a Block Licence to cover the entirety of a building where certain conditions are met.

2.7 For some landlords and tenants, an Individual Property Licence (for an individual dwelling) would be beneficial as it provides for a clearer and less complicated scheme. For landlords, individual licences are more flexible and more responsive to changes in managing agents, the carrying out of major works, or the sale of individual flats in buildings for example; and for tenants, it removes ambiguity where the Council is required to enforce landlord obligations and duties owed to them. However, for some buildings where the management and control of the building covers all the individual dwellings, all common parts and areas and where the management and control is anticipated to remain static over an extended period of time, it may be more beneficial for landlords to apply for a Block Licence. The Council accepts that under Part 3 HA 2004 it is possible for it to grant a Block Licence which covers more than one separate dwelling where the following conditions are met:

- each of the dwellings are separate dwellings (usually self-contained flats), within the same building; and
- each of the dwellings are occupied under non "exempt tenancies"; and
- the entire building which contains the separate dwellings must be under common control and management .

2.8 Accordingly, it will be open to an applicant (which is usually, but not invariably, the landlord) to apply for a Block Licence where the applicant considers that each of these conditions is met. Where such an application is made to the Council it may grant such a Block Licence where it is satisfied that:

- the conditions are met; and
- there are no other contra-indications that would mean that such a Licence should not be granted, after considering the matters required by Section 88 (3) of the Housing Act 2004.

2.9 In the event that a Block Licence is granted, and there is then a change in circumstances which results in there being more or fewer dwellings in the building that met the conditions, this would result in the granted licence no longer reflecting the 'house' now present. In such circumstances, the existing Licence would need to be revoked and a new application made that reflects the 'house' now defined by the dwellings let in accordance with the conditions.

### **BLOCK LICENCE – ADDITIONAL LICENCE CONDITIONS AND INSPECTIONS**

2.10 The Council acting in its capacity as the Local Housing Authority must impose certain mandatory conditions within the licences it grants under the Selective Licencing Scheme, but it also has a discretion and may lawfully include

conditions in its licences which it considers appropriate to regulate the management, use or occupation of the house. Whilst the Council maintains a preference for Individual Property Licences for individual dwellings, it recognises that where certain conditions are met, then the exercise of its discretion to grant a Block Licence would offer the Council an ability (where relevant), to include additional licence conditions particular to the management arrangements within the Block Building. These recommended additional licence conditions seek to explicitly require (where relevant) that management arrangements are in place for matters such as regular inspections, fire safety, emergency lighting, maintenance of communal areas and waste management. Fire safety and waste management are particular issues that have come to the fore with the rapid development or expansion of new flat development and permitted development in urban centres like the city of Nottingham.

- 2.11 As a matter of Policy, any building the subject of a 'Block Licence' application will be inspected prior to determination of the application, this is to enable the Local Housing Authority to ensure that the arrangements for managing it are satisfactory and, at the same time, it may also undertake a Housing, Health and Safety Rating Assessment under Part 1 of the 2004 Housing Act, to ensure that any hazards are identified and addressed. During the lifecycle of the Scheme, at least two compliance visits will be made to Block Buildings where the Licence Holder is non-accredited and one visit made to Block Buildings where the licence is held by an accredited Landlord.
- 2.12 The proposals which include, the availability of a Block Licence, additional licence conditions (where appropriate) and additional inspections together complement a separate project which involves a planned programme of joint working between the Safer Housing Team and Nottingham Fire and Rescue Service (NFRS). These two services are pooling together their expertise to deliver a programme of joint audit and inspections of identified multi-occupied buildings where there are factors which indicate, on a risk based approach, that it would be beneficial for the building and management arrangements to be reviewed. The services have history of joint working and a shared vision of 'Creating Safer Communities' in Nottingham and they both have concurrent statutory duties under the Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005 to ensure the safety of residential and non-residential premises.

### **SELECTIVE LICENSING – FEE STRUCTURE**

- 2.13 The Housing Act 2004 Act, permits a local housing authority to require a licence application to be accompanied by a fee and, when fixing that fee, may take into account, '*all costs incurred by the authority in carrying out its functions*', which permits the Authority to operate the Scheme in a cost-neutral manner. The proposed introduction by the Council of a Block Licence results in the need for an associated fee structure for such licences, in this instance the structure needs to be flexible responding proportionately to the size of the building and the administration required for such a licence. Furthermore, after operating the Selective Licensing Scheme for over a year the Council is able to develop further its cost estimates for processing, administration and enforcement of the licensing Scheme. The review of costs is now incorporated into the proposed revised fee structure for the Selective Licensing Scheme.

2.14 Within the revised Fee Structure, the Council continues to divide relevant costs between first-stage and second-stage payments which is as a result of recent judgements pertaining to the interpretation of the Provision of Services Regulations 2009. The corollary of the above Regulations and decisions, in summary, is that local housing authorities may not, at the point of application, require a licence application made by a “service provider” under Part 2 or, by extension, Part 3 of the 2004 Act to be accompanied by a fee which exceeds the costs of processing the application. Further, that fee must be both reasonable and proportionate to the aforementioned costs. Local housing authorities may, however, charge successful applicants – and only successful applicants – a further fee upon the grant of a licence to cover a contribution to their costs of, generally, “running, managing and enforcing” the licensing scheme. By making available the option of a Block Licence in certain circumstances, then, such a policy furthers the objectives of the Provision of Services Regulations 2009 which aims to prevent Competent Authorities from imposing disproportionate or unnecessary requirements on businesses who seek to provide services in the UK.

### **3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

3.1 Not to offer an ability to apply for Block Licences. This is not a recommended action as the Council’s previous response during the statutory consultation was not to offer Block Licences due to the complexity of the arrangements outweighing the benefit given the amount of potential buildings that may qualify to make such an application. The Council, after review, can now propose options to accommodate such applications and current records and future building development plans show that there is a potential benefit in now offering this option. The Safer Housing Team recognises that there may be additional benefits arising from more efficient administration arrangements and the ability to include additional licences conditions (where appropriate) particular to the management of block buildings.

3.2 Not to review the fee structure – not recommended because after a year of operating the Scheme, the Council has been able to develop its cost estimations of time for the actions contained within the Licensing Process. In addition, the proposed availability of a Block Licence mean that an associated proportionate fee for such licence had to be calculated. Given the Scheme is operated on a cost neutral basis through the payment of licence fees, the Council is under a duty to keep under review the financial model for the Scheme.

3.3 The Council has reviewed Block Building Licence fee structures offered by other Local Authorities, some of which have adopted a similar flexible fee structure which results in a total fee which is proportionate to the size of the building. The Council does have the option of a flat fee structure for a block licence but this is an inadvisable option. The weakness in such an approach is that it would seem unfair for a Licence for a Block of four self-contained flats to cost the same as a Licence for a Block of 100 self-contained flats. The Council needs to be mindful of the need to apply reasonable and proportionate fees for its licences.

3.4 The Council also considered whether to apply a flexible fee structure to individual property licences where an applicant has more than one self-

contained dwelling within a Block Building. It has decided not to do so. This is because the Council's experience is that the wider management and enforcement costs it is permitted to reflect in the fee are similar per dwelling, when viewed across the city. Some of the efficiencies in offering a Block Licence are gained due to the fact that the entire building is under common control and management. The Council also draws comparison with where an applicant may have a number of individually licenced properties across the city. In these circumstances the fairest and simplest way to calculate the fee is to divide it amongst the thousands of Property Licence holders. The current fee structure also provides for a discount for accredited landlords. Where landlords have become accredited, including those with larger or multiple property portfolios and those who own an entire block of dwellings do benefit from a reduction in the licence fee.

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

As a result of this decision the estimated value of this scheme over the five year period will increase by £173,000. The revised value is now £24,273,000 having increased from £24,100,000 as report to Executive Board in April 2018. This was based on approx. 32,000 privately rented dwellings that potentially fall within the Selective Licensing scheme. For comparative purposes, the same number of dwellings has been used in the calculations listed in **Table 1**, which shows the latest breakdown of costs, to reflect the maximum impact on the Council's accounts in respect of the current fees and revised fees chargeable from April 2020.

<b>Table 1: Estimated Operating Costs of scheme</b>		
	<b>Apr-18</b>	<b>Apr-20</b>
	<b>£'000</b>	<b>£'000</b>
<b>Personnel Costs</b>	<b>17,491</b>	<b>17,570</b>
Operating Costs :		
Premises	1,082	1,093
Transport	83	96
Supplies & Services	1,120	951
IT Support	1,056	1,099
Other overheads inc EHO, Legal, Finance, HR, Bus Analyst support functions	1,515	1,711
<b>Total Operating Costs</b>	<b>4,856</b>	<b>4,950</b>
<b>Set up, publicity &amp; exit fees</b>	<b>1,753</b>	<b>1,753</b>
<b>Total Costs</b>	<b>24,100</b>	<b>24,273</b>

- 4.1 The fees have been set in accordance with the Open for business Local Government Association (LGA) guidance on locally set licence fees. The following extract outlines the principles referred to in calculating the revised fees:

*“Fees should be broadly cost neutral in budgetary terms, so that, over the lifespan of the licence, the budget should balance. Those benefitting from the activities permitted by the various licences should*

*not, so far as there is discretion to do so, be subsidised by the general fund.*

*Annual reviews allow for the fine-tuning of fees and allow councils to take steps to avoid either a surplus or deficit in future years. This will not immediately benefit licence holders where the licence has been granted for a number of years and paid for in a lump sum, but will ensure new entrants to the licensing scheme are charged appropriately”.*

4.2 In following the LGA, this scheme will continue to be self-funded, and all allowable costs will be recovered from the licence fee. There will be no gain or loss associated with this scheme, will continue to remain cost neutral, and therefore there will be no negative impact to the Council’s Medium Term Financial Plan (MTFP).

4.3 The revised fees as outlined in appendix 3 will take effect from 1 April 2020 and are summarised in Table 2 below:

<b>Table 2 : Details of Fees</b>		
	<b>Revised fee April 2020</b>	<b>Original fee 2018</b>
	£	£
<b>Standard Selective licence fee</b>		
Standard fee	890	780
Accredited landlord fee	670	480
<b>Block Licence Fee - Standard</b>		
Initial block base fee	2,720	n/a
Fee per dwelling within block building	425	n/a
<b>Block Licence Fee - Accredited landlord</b>		
Initial block base fee	2,025	n/a
Fee per dwelling within block building	385	n/a

4.5 In accordance with previous approvals, these fees have been based on 75% (24,000) of dwellings, following a review of the expenditure incurred for this scheme. In the event that the licence numbers exceed 24,000, then additional resources would be factored in and budgeted accordingly. Likewise, if income falls below expectation, then the operating model would be reduced to reflect this to ensure the scheme remains self-sufficient.

4.6 As outlined in paragraph 4.9 in the report to Executive Board on 17 April 2018, there continue to be a number of risks and uncertainties regarding this scheme. Each financial year there will continue to be a balanced budget set based on planned activities, and this will allow managers to monitor their budgets to ensure they remain on track and to address any variances. At the end of each financial year, the income and expenditure will be consolidated into the Council’s Statement of Accounts in accordance with International Financial Reporting Standards (IFRS).

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

- 5.1 By undertaking this Policy Review, the Council is exercising its statutory duty in accordance with Section 84, of the 2004 Act by keeping its designation under review. It is reasonable that the Council reviews its position and response to the statutory consultation in relation to Block Licences in light of the new information, knowledge and experience of having operated the Scheme since 1 August 2018.
- 5.2 Section 87 of the 2004 Act permits a local housing authority to require a licence application to be accompanied by a fee and, when fixing that fee, it may take into account all costs incurred by the authority in carrying out various defined functions. Recent authority under Part 2 of the 2004 Act (Gaskin v Richmond upon Thames) has confirmed that this empowers local housing authorities to offset the entire cost of exercising various functions and in effect allows the scheme to be cost-neutral.
- 5.3 The two-part fee structure has arisen as a result of the ruling in Hemming v Westminster CC, as applied in Gaskin v Richmond upon Thames which confirm that that the Provision of Services Regulations 2009 apply to housing licensing and require that a local housing authority may not at the point of application require a fee which exceeds the costs of processing the application and that any fee requested must be both reasonable and proportionate to the costs of the scheme. Local Housing Authorities may subsequently charge successful applicants a further (“part B”) fee upon grant of the licence to cover a contribution to the costs of generally running, managing and enforcing the licencing scheme.
- 5.4 The Council acting in its capacity as the Local Housing Authority must impose certain mandatory conditions within the licences it grants under the Selective Licencing Scheme (Part 3 of the 2004 Act), but it also has a discretion and may lawfully include conditions in its licences which it considers appropriate to regulate the management, use or occupation of the house.

Connie Green, Solicitor 11 November 2019

**6 STRATEGIC ASSETS & PROPERTY COLLEAGUE 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, tackles the problems that were identified as part of the evidence base for the Scheme, it assists with achieving a number of

outcomes in terms of regeneration, health and wellbeing, and community safety, all of which are major priorities for the city and key to delivering improved outcomes for citizens.

## **8 REGARD TO THE NHS CONSTITUTION**

8.1 The NHS Constitution has one of the 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 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. The evidence base for the selective licensing designation approved by Government, the housing strategy and emerging health and housing chapter of the joint strategic needs assessment all refer to the links between poor housing conditions and poor health outcomes.

8.2 In an independent review commissioned by the Ministry of Housing, Communities and Local Government (MHCLG) on the use and effectiveness of selective licensing. The summary of the effectiveness of selective licensing states, *'the research overall indicates that selective licensing can be an effective policy tool with many schemes achieving demonstrable positive outcomes.'* (Para 9) The full report which was published in September 2019 can be viewed via the following direct link.

<https://www.gov.uk/government/publications/selective-licensing-review>

8.3 In addition, a report has recently been submitted to the Council's Overview and Scrutiny Committee which includes discussion some local successful case studies arising out of the Selective Licensing Scheme. This report can be viewed via the following link:

<https://committee.nottinghamcity.gov.uk/ieListDocuments.aspx?CId=230&MIId=8002&Ver=4>

8.4 The City's Health and Wellbeing Strategy has 'Healthy Environment' as one of its four main priorities. Within this there is a priority action, 'Housing will maximise the benefit and minimise the risk to health of Nottingham's citizens'. The operation of the selective licensing scheme within the city aligns with and contributes to the delivery of this priority.

## **9 EQUALITY IMPACT ASSESSMENT (EIA)**

9.1 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 Appendix 4, and due regard will be given to any implications identified in it.

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

10.1 None

**11 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT**

11.1 The fee structure is calculated in accordance with the toolkit created by the Local Government Association (LGA) 'Open for Business: LGA Guidance on locally set licence fees', June 2017.

<https://www.local.gov.uk/open-business-lga-guidance-locally-set-licence-fees>