

Report of Director of Resources and Housing

Report to Executive Board

Date: 7th February 2018

Subject: Improving standards in the private rented sector – consideration for selective licensing

Are specific electoral Wards affected?	Yes
If relevant, name(s) of Ward(s): Beeston and Holbeck, City and Hunslet, Gipton and Harehills and Richmond Hill and Burmantofts	
Are there implications for equality and diversity and cohesion and integration?	No
Is the decision eligible for Call-In?	Yes
Does the report contain confidential or exempt information?	No
If relevant, Access to Information Procedure Rule number:	
Appendix number:	

Summary of main issues

In March 2016 the Executive Board considered options for addressing standards within the private rented sector. As the housing market changes and the growth of the sector continues, it provides an increasing number of homes for families who do not have access to the owner occupation or social housing. A healthy privately rented sector is essential for the city to grow. It is also important, however, that good standards apply.

Considerable progress has been made on a number of the initiatives approved by the Board to improve quality. The Rogue Landlord Unit has been established and has targeted a number of landlords with successful prosecutions and actions against them and is working in partnership with others to target those who prey on vulnerable families and provide poor accommodation. The Leeds Letting Scheme has been developed with increasing number of homes being made available in the private sector in homes that meet standards and tenancies that are supported. In December 2017 46 such lets were made and the scheme is on target to provide over 450 new homes to those in need. The Leeds Neighbourhood Approach in Holbeck, which concentrates partnership activity in areas of poor quality rented accommodation, continues to address standards.

As part of the options put forward, the Board considered selective licensing as a means to improve standards in the sector. Under the Housing Act 2004, Part 3, there is a discretionary power, which allows the Council to identify an area, based on one of 6 criteria and designate a licensing scheme subject to a business case. All private sector landlords who operate in the designated area would require a licence to operate and abide by conditions within it. Failure to obtain a licence or breach of any conditions could lead to prosecution or a fine under the recently introduced civil penalty legislation.

Selective licensing can only be introduced subject to an approved business case. This can be approved by the Council provided the number of privately rented properties within the proposed scheme is less than 20 percent of the total for the city. If the proposed scheme exceeds this level then it would be for the Secretary of State to approve the designation.

Any business case must be based on the Government's criteria which would require to be developed at risk by the Council. To support this, funding has been identified and approved for this purpose within the Housing Leeds budget.

If approved, any scheme would be self-funding as all privately rented properties will require a licence to operate in the designated area for which a fee would be charged to all landlords. This fee would cover the cost to the Council to administer the scheme but cannot be used to cover the cost of any other housing enforcement function which the Council has a duty to deliver. All designations are subject to challenge by judicial review, which could affect the implementation of any scheme.

It is proposed to consider selective licensing as part of the Council's locality agenda targeting those communities living in areas deemed in the lowest one percent based on the Index of Multiple Deprivation (IMD) data. Harehills and Beeston Hill are the two areas which are likely to meet the Government's criteria for selective licensing. Both areas have seen a significant increase in the private rented sector, have some of the poorest quality homes in the city and have neighbourhoods in the lowest 1% of the IMD.

The proposed areas will be less than the 20% threshold requiring Secretary of State approval. Therefore it will be for the Executive Board to determine any potential business cases under Part 3 of the Housing Act 2004 for Harehills and Beeston Hill once they have been developed. In other parts of the country, schemes have been subject to challenge and judicial review. If the Council decides to proceed, it is therefore imperative that proper processes are followed and robust business cases presented.

Recommendations

Executive Board are requested to approve the development of potential business cases under Part 3 of the Housing Act 2004 for selective licensing schemes for Harehills and Beeston Hill for future consideration by the Council.

Executive Board are invited to consider the matter again at a future date once the final business case(s) have been fully developed and agreed in order to assist with the long term development of such business cases.

Note that the business case(s) will be developed in line with the timescales detailed in 3.8 of this report and will be the responsibility of the Service Managers in Private Sector Housing, Housing Leeds

1 Purpose of this report

- 1.1 The purpose of this report is to request the Executive Board to approve the development of business case(s) for selective licensing. Any business case will need to be considered in the future by the Council on its merits based on the criteria in Government guidance prior to any designation.
- 1.2 The proposed areas for potential introduction of any scheme based on the Council's priority locality agenda are Harehills and Beeston Hill. Appendix one shows the initial areas for consideration.

2 Background information

- 2.1 The housing market has dramatically changed over the last 10 years with the expansion of the private rented market. In 2007 it was estimated to be 13% of all homes. Over that last 10 years that has increased to over 20%, greater than the social housing sector and estimated at just over 70,000 homes. This expansion has been mainly at the expense of the owner occupation sector which now constitutes less than 60% of the homes in the city.
- 2.2 All cities require a private rental market as it provides choice, homes and the flexibility that many individuals and families require. As part of the fabric of the city privately rented accommodation is required for students, visiting professionals to the academic and educational institutions in the city as well providing a tenure of choice for individuals and families depending on their circumstances. Without the sector there would be an impact on the growth and the economic prosperity of the city. The majority of the private rented sector functions well and provides good accommodation. The Council has cultivated strong relationships with a large active landlord group who are committed to responsible management of their properties.
- 2.3 There remain concerns, however, about the operation of part of the sector. Whilst the expansion of the sector has been seen in all markets it has its most adverse effects in the inner areas of the city. In some parts of the inner city, it is now the main housing tenure with some areas having over 50% privately rented. This has had an impact on some areas leading to increased issues such as poor environmental quality, high turnover, changes in communities, increases in poor quality accommodation offered, poor management of the sector by some landlords, and a lack of affordability for families and individuals when looking for a home.
- 2.4 Selective licensing is a discretionary power available to the Council which, alongside other regeneration initiatives, can contribute to improved areas. If the Council wishes to introduce such a scheme then the Government has laid out criteria by which any designation can be made. There are 6 potential individual

business case criteria: low housing demand; persistent antisocial behaviour due to the private rented sector; poor housing conditions; high levels of migration; high levels of deprivation and high levels of crime. Any designated scheme must also be consistent with the overall Housing strategy and be part of a coordinated approach.

- 2.5 The intention of Selective Licensing is to bring about significant improvements to property conditions and the way they are managed. This is achieved through multiple interventions including the requirement for all landlords in the area to be licensed. In addition, all private rented properties will be fully inspected to assess their suitability and strict conditions will be attached to the license that requires the landlords to not only achieve improved standards but also regulate the way they manage the tenancies.
- 2.6 Any designated scheme requires to be self-financing via a licence fee. All privately rented properties would require a licence to operate and this is intended to generate the income to administer and enforce the scheme. The licence will have conditions attached which the owner must comply with. Any owner failing to obtain a licence or breaching a condition(s) would be liable for prosecution or a civil penalty under recently introduced legislation.
- 2.7 However the licence fee cannot be used to cover the cost to develop any business case, the set up costs or to cover the cost of enforcing housing standards under Part 1 of the Housing Act 2004 for which the Council has a duty to address.
- 2.8 Any scheme would take time to implement as the Government guidance specifies minimum time scales for different aspects of the process. All schemes must be subject to consultation with the sector, stakeholders, the community and any interested parties.
- 2.9 Previously the city introduced selective licensing in Cross Green and East End Park. This approval and designation was made by the Secretary of State. Whilst the business case was challenged by the landlords it was for the Secretary of State to determine the case for selective licensing. Under changes to the legislation the approval of any scheme will be dependent upon its size in relation to the local authority area. Provided any scheme or scheme(s) cover 20% or less of the geographical area or the private rental market, and there has been a minimum of 10 weeks consultation, then the Council can self-designate any scheme. If the total number of properties or area exceeds the 20% then it will be for the Secretary of State to approve any such scheme
- 2.10 Any scheme has a maximum designation period of 5 years. However it has been recognised by Government that this may not be long enough to resolve such complex issues and can be renewed for a further period. However this would be subject to a further business case, again at the Council's risk.
- 2.11 Any stakeholder has the right to challenge the introduction of selective licensing via judicial review. This is a risk to the Council as such a review may decide that the scheme cannot be introduced, it could be varied or at the very least delay its introduction. Any review must be based on the process followed by the Council

and the evidence for the case. Whilst any review could find in the Council's favour it will impact on its introduction should one be brought by any stakeholder(s).

3 Main issues

- 3.1 Recent years have seen an increase in the privately rented sector of the city. It is an important provider of homes contributing to the growth of the city. Most privately rented markets have seen an increase over the last decade and it provides good quality homes for individuals and families.
- 3.2 However not all of the sector provides good quality homes and can in some circumstances have an adverse effect on communities in which they are located. This can be due to poor management practices, no accountability for the impact they cause to areas, absentee landlords with no interest in their property or area and criminality, either via laundering money by buying property and /or the exploitation of vulnerable people.
- 3.3 Whilst not appropriate for all housing markets in the city, selective licensing provides a tool by which the Council is able to address issues which this part of the sector can cause in communities. It is proposed that any scheme(s) would support the locality agenda of the Council and support the approach of improving the lives of those in the lowest one percent as determined by the IMD. The Council has identified six priority areas in which to target actions to make a difference to the lives of those living in the areas.
- 3.4 Whilst six areas have been identified, only in three areas is the main tenure predominately privately rented, namely the Receptions in Holbeck, the Beverley's in Beeston Hill and the Nowell's/Clifton's in Harehills. In July 2016 the Executive Board approved the Leeds Neighbourhood Approach to remain in Holbeck to address private rented sector issues so it is proposed that the option of selective licensing be considered for the other two priority areas.
- 3.5 To implement selective licensing, the Council will have to consider a wider area than just the Beverley's and the Nowell's/Clifton's. Neither area on its own would be sufficient in size to justify or allow a successful business case to be developed. It is also essential that the issue of dispersal be considered in any business case. Any scheme should reduce the impact of the issues moving out of the designated area wherever possible.
- 3.6 In both Harehills and Beeston, larger geographical areas than the specified priority areas would need to be considered for any business case to be successful. It is proposed to develop potential business cases in the two areas as shown in Appendix One of the report. Whilst the primary priority for the Council is the two small areas, the wider communities suffer from similar deprivation, high levels of poor quality privately rented accommodation and poor environmental conditions. A larger geographical area would therefore enable a potential viable business case to be developed which would address these and associated issues.
- 3.7 Both areas have seen an increase in the level of the private rented sector in the last decade, with it becoming the main tenure in significant part of

neighbourhoods. It is estimated that there will be approximately 3000/4000 privately rented properties in Harehills and 1500/2500 privately rented properties in Beeston. Recent IMD data shows that both areas suffer from issues of deprivation and the 2016 Private Stock Condition Survey shows that the housing stock is some of the poorest in the city, which is the same outcome from the 2007 survey.

- 3.8 Any business case will take a period of time to develop due to the complexity of the issues. Initially there will be a need to gather all the evidence required to support the business case as per the criteria in the Government's Guidance. This data will include the tenure mix, location of the privately rented properties, the IMD data, crime information, environmental data, existing stock condition and employment, demographics etc. All this will be required to justify the business case prior to any consultation being undertaken. It will be essential that during this period all potential stakeholders are identified so that robust consultation can occur. This will take around 3 to 4 months as it will be crucial for the justification for any proposed licence scheme.
- 3.9 It is critical to consult with all stakeholders about the potential business case and the justification for licensing schemes in Harehills and Beeston. The length of any consultation must be a minimum of 10 weeks if the Council is to self-designate the scheme. However it is likely to take longer for this to occur in reality to ensure it is fully comprehensive and addresses all issues raised as part of the process. The requirement to consult fully is the main issue where most judicial reviews have occurred in other local authorities. As part of the consultation process it is essential that feedback be given to those who participated.
- 3.10 The length of consultation will be determined once the detailed information of both areas has been gathered. As part of the initial evidence gathering a consultation plan will be developed in conjunction with colleagues. This will cover how the consultation will occur, and the media that will be used. It is anticipated that the consultation will involve public meetings, social media, dedicated website pages, the dissemination of information via existing local channels, visits to all the main stakeholders, drop in at local community hubs, specific landlord and community engagement and a dedicated phone line. However, for any scheme to be self-designated by the Council, the consultation must be a minimum of 10 weeks but given the size of the areas and need for robust consultation this is likely to take longer.
- 3.11 Once the consultation has been completed then it will be possible to determine any business case(s) for consideration by the Council. At this stage if and how any scheme would be implemented can be determined. The areas in Appendix One are significant and any scheme could include all or part of them. Any business case(s) will include whether it will be single case for the areas or whether there will be more than one case per area. It was also determine an implementation strategy for any designated schemes. All of this will be determined based on the evidence obtained.
- 3.12 Any business case(s) will then need to be considered by the Council based on its merits. It is anticipated that due to the size of the areas to be considered any approval would be by Executive Board not the Secretary of State.

- 3.13 Once any business case is approved then there has to be at minimum 3 month lead in period in which the scheme is published and owners given the opportunity to apply for a licence. The lead in period will depend on the size of the area(s) involved and the practicality of implementing the scheme(s).
- 3.14 The introduction of any potential selective licensing scheme(s) will therefore take time and will be dependent upon the potential size, number of privately rented properties, the outcome of the consultation and if there is any challenge to it via judicial review(s). It is anticipated that any business case for either or both areas will take at least 18 months to reach designation.
- 3.15 The 18 month time line is based on the following assumptions:
- The first 3 to 5 months to initially develop the draft business case(s),
 - Depending on the approval to consider both or either area, and be ready for consultation a minimum of a further 5 months for full and robust consultation,
 - A further 2 months to then address the issues raised during the consultation,
 - An additional 2 to 3 months to finalise the business case to seek formal council approval,
 - Finally, a minimum of 3 months lead in to the designation as required by the legislation, if approval is granted.
- 3.16 Any business case can be subject to challenge via Judicial Review. The challenge can be by any interested party and be based on any aspect of the case put forward by the Council. The main challenges against other business cases have been around the consultation process and the proportionality of the use of selective licensing to address the problems identified in a business case. It is anticipated that this is a likely outcome of any approval and would be part of the overall cost to develop the case. Any judicial review would affect the implementation of any scheme as until the outcome of any judgement it may not be possible to implement any scheme(s).
- 3.17 If approval is given by the Council for any scheme there is a minimum 3 month lead in period before any designation can come into existence. The guidance provides details for how the Council must publicise the scheme. This period is to allow landlords to apply for licences prior to the scheme becoming operational. The lead in period will depend on size and number of privately rented properties in any designated scheme and will be detailed in the implementation plan.
- 3.18 Any introduction of selective licensing has risks, which must be addressed in the business case. All landlords require a licence to operate within any designated area. Good landlords as well as those who fail in their legal duty will require a licence. This can be contentious but in Cross Green the good landlords in the area supported its introduction as they saw it as a means to improve standards, improve the area and therefore it was seen as good for their business. All good

landlords are able to join the Leeds Rental Standard and, as with mandatory licensing, a discount on their licence fee will be available to all those members.

- 3.19 Whilst there are risks to selective licensing it does provide a tool to support improvements in an area. As part of any scheme all privately rented properties will be inspected to ensure compliance. This gives the Council the opportunity to cross the threshold of a significant number of homes allowing it to help vulnerable occupiers with issues and not just deal with housing conditions.
- 3.20 All landlords and owners in the area will be identified by the Council allowing better working practices and communications with the sector. The scheme is not just about regulating the sector but working with it to improve the area as a whole and their businesses. However it does allow targeted action against those landlords and owners who wilfully fail in their legal duties or are involved in criminal activity which materially affects the area as a whole.
- 3.21 The cost of any scheme(s) will be dependent upon the size of the area and a budget of £300k has been identified to cover all potential costs, including the staffing required to develop any scheme.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The lead member has been consulted on the proposal for selective licensing and for a potential business case(s) to be developed for consideration in Harehills and Beeston Hill.
- 4.1.2 Scrutiny Board has been consulted on the general principle of selective licensing in the city. They have endorsed this approach for the city and will continue to monitor progress.
- 4.1.3 Ward members will be consulted on the proposals for their areas as part of the process of developing any potential business case for their wards.
- 4.1.4 The principle of selective licensing being introduced in the city has been discussed with representatives of National Landlord Associations and landlords at the Annual Landlord Conference in November 2017.

4.1.5 Equality and Diversity / Cohesion and Integration

- 4.1.1 A full Equality, Diversity, Cohesion and Integration Assessment for any scheme will be required to be undertaken should approval to develop a business case(s) be granted.

4.2 Council Policies and Best Council Plan

- 4.2.1 One of the Council's priorities is that everyone lives in a good quality affordable home within a clean and well cared for place. This is linked to the Breakthrough Project of Housing Growth and Jobs for young people. As part of the locality agenda to support targeted interventions, selective licensing can help to achieve this ambition by helping to raise standards in the private rented sector in Beeston

Hill and Harehills. This will help towards creating resilient communities in both of these areas

- 4.2.2 As well as addressing housing issues, selective licensing will assist with identifying vulnerable households who otherwise will not receive the help and assistance they need. By visiting all privately rented properties and crossing the threshold occupiers can be supported with more than just housing conditions but with issues affecting their lives.

4.3 Resources and value for money

- 4.3.1 Selective licensing as part of a coordinated approach can make a significant impact and help to improve an area. The Council has had previous experience of selective licensing in Cross Green and East End Park and the review of the scheme was positive especially from the community who saw a difference to their area and neighbourhood. However, selective licensing was not a stand-alone tool but was closely linked to capital investment aimed at improving the stock and providing new built homes.
- 4.3.2 The Council will be liable for all costs in the development and implementation of any designated scheme(s). This cost cannot be recuperated by the licence fee charged once designated. This is a financial risk to the Council as to develop the previous scheme in Cross Green and East End Park, the total cost was estimated at £120k. A budget of £300k has already been approved within Housing Leeds funding to pay for the cost of any potential business case.
- 4.3.3 Any approved scheme would charge a licence fee which would cover the cost of the scheme. The fee would cover the cost of the scheme's administration and the enforcement of licences and conditions. This would mean that the actual scheme was cost neutral to the Council as the fee should cover all costs making it self-funding. However the fee cannot cover the cost of any additional enforcement under Part 1 of the Housing Act 2004, as the Council has a duty to address housing conditions under this legislation and this cost cannot be charged as part of any licence fee.
- 4.3.4 To manage the scheme, additional staffing resources would be required. These staff would need to be experienced in enforcing Housing Act 2004 legislation and, depending on the scheme size, the number of staff would depend on the resources required. The specific skills and experience required may not be available within the Council and therefore there may be a need for external recruitment of the staff to ensure the success of any approved scheme.

4.4 Legal Implications, Access to Information and Call In

- 4.4.5 The report is eligible for call in.
- 4.4.6 Whilst the Council has the power to self-designate any selective licensing area it can only use the power provided the total designation(s) within its area at any one time is less than 20% of the total privately rented market or the geographical area. Should it be greater than either of these then it will be for the Secretary of State to approve any scheme(s). The proposed areas would be below this threshold so

any designated scheme would be for the Council to approve, subject to a robust business case(s) for either or both areas.

- 4.4.7 The Government has provided guidance as to the expectations for any business case and the process to designate an area(s). The Council will be required to follow this guidance when developing and implementing any case to ensure that it meets the legal requirements for designation.
- 4.4.8 Previously the designation of selective licensing in Cross Green and East End Park was via the Secretary of State. Subsequently the legislation has changed as per 4.4.6. Any business case can now be subject to challenge via Judicial Review. The challenge can be made by any interested party or individual and be based on any aspect of the case put forward by the Council. The main challenges against other business cases have been around the consultation process and the proportionality of the use of selective licensing to address the problems identified in a business case. It must be anticipated that this could be an outcome of any approval and would be part of the overall cost to develop the case. Any Judicial Review would affect the implementation of any scheme as until the outcome of any judgement the scheme(s) could not be fully implemented.
- 4.4.9 The purpose of the report is to approve the areas of the development of a potential business case(s) in Harehills and Beeston. Any business case will require to be determined by the Council at a future date based on the Government guidance.

4.5 Risk Management

- 4.5.1 The Council has experience of selective licensing following the scheme in Cross Green/East End Park. The lessons learnt from that scheme will support the development of any additional schemes.
- 4.5.2 Discussions have taken place and will continue to be had, with other Councils who have recently introduced selective licensing in their authority. This will allow the Council to learn from others and develop best practise for the development and potential introduction of selective licensing in the city.
- 4.5.3 The Government has set out criteria by which any business case(s) will be judged. It is essential that this is followed to reduce any risk of a successful challenge to the Court.
- 4.5.4 As part of the development of any business case it will be essential to consider all options, have a robust consultation and ensure that all evidence considered is robust and appropriate for whichever of the six criteria the case is based.
- 4.5.5 The licence fees paid by owners will fund the administration of selective licensing. Therefore to fund the scheme it is essential that fees are set and collected. The Council has experience through the mandatory HMO licensing scheme of setting and recovering licence fees.
- 4.5.6 The licence fee can only cover the cost of administering any scheme. The Council will be liable for any costs under Part 1 of the Housing Act 2004 as it

already has a duty to enforce this legislation. Within the service resources will be identified to ensure that all necessary enforcement action is taken over and above the administration of any scheme.

5 Conclusions

- 5.1 In March 2016 the Executive Board considered options for dealing with the private rented sector and determined that selective licensing was a tool that the Council should consider to support improving standards across this market.
- 5.2 Selective licensing is a discretionary power available to the Council subject to specific Government criteria and guidance. There are potentially 6 criteria by which a business case(s) can be determined and provided the area is less than 20% of the total private rental market the Council can self-designate any scheme. The Council has to develop a suitable business case(s) based on one of the 6 criteria. This is at risk to the Council and a budget of £300k has been provided to cover the cost of developing and implementing any scheme(s).
- 5.3 All privately rented properties within a designated area would require a licence to operate, for which a fee would be charged. The fee income covers the cost of the administration and running of the scheme, so making it self-funding. The licence has conditions which address issues relating to property management and can be enforced as part of the scheme. The Council already has powers under Part 1 of the Housing Act 2004 to deal with property conditions. Failure to obtain a licence or any breach of conditions could lead to the landlord being prosecuted or imposed with a civil penalty.
- 5.4 Any business case(s) will take time to develop and introduce. This will be dependent upon the size of any area and the number of privately rented properties. All proposed schemes must be subject to consultation with all stakeholders as part of any process. Any approved scheme can be subject to Judicial Review.
- 5.5 As part of the Council's Locality agenda, 6 areas have been identified as priorities. The introduction of selective licensing in Harehills and Beeston could, subject to approval of a suitable business case, contribute to improving the area. Both areas have seen a significant increase in the private rented sector in the last decade; have some of the poorest quality homes in the city and are in the lowest 1% in relation to the recent IMD data. Prior to implementing any scheme a business case(s) for both areas will need to be developed and any scheme considered for approved by the Council.
- 5.6 Any scheme would have a 5 year life, all privately rented properties would require a licence to operate, and failure to obtain a licence or a breach of any condition is an offence. However Government recognises that a 5 year period may not be sufficient to address all issues and schemes can be extended for an additional period subject to a future business case.

- 5.7 Any selective licensing scheme has risks, such as all landlords, good or poor, have to be licensed. Often this is a contentious issue with the better landlords. Also, the possibility that issues are simply dispersed to surrounding areas and the risk of Judicial Review. However, there are also many benefits. As well as targeting poor landlords, it gives the opportunity of working with the sector to improve the area and their business, and it crosses the threshold of a significant number of individuals who otherwise may not receive the help and assistance they need to improve their lives.

6 Recommendations

- 6.1 Executive Board are requested to approve the development of potential business cases under Part 3 of the Housing Act 2004 for selective licensing schemes for Harehills and Beeston Hill for future consideration by the Council.
- 6.2 Executive Board are invited to consider the matter again at a future date once the final business case(s) have been fully developed and agreed in order to assist with the long term development of such business cases.
- 6.3 Note that the business case(s) will be developed in line with the timescales detailed in 3.8 of this report and will be the responsibility of the Service Managers in Private Sector Housing, Housing Leeds.

Appendix One – Maps to show areas in Beeston and Harehills for the development of potential business cases for selective licensing.

7 Background documents

None.

The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.