

**Environment and Regeneration  
Town Hall, Upper Street, N1 2UD**

**Corporate Director of Environment and Regeneration**

<b>Meeting of:</b>	<b>Date:</b>	<b>Ward(s):</b>
Joint Board	25 Feb 2020	List wards: All
<b>Delete as appropriate:</b>		Non-exempt

**SUBJECT: Designation of Areas for Additional Licensing of Houses in Multiple Occupation and Selective Property Licensing**

**1.**

Synopsis

- 1.1 The council is committed to improving housing conditions for private tenants through the introduction of landlord licensing schemes. In August 2019 the council consulted landlords and residents on its proposals to introduce:
- a borough wide Additional Licensing scheme for houses in multiple occupation (HMOs)
  - a Selective Licensing scheme for all privately rented accommodation in Finsbury Park ward
- 1.2 This report, and its appendices, contain the relevant information and evidence to support the designation of the licensing schemes proposed above, including consideration of the feedback from stakeholder consultation.
- 1.3 If the Executive agrees that the legal considerations described in this report are satisfied, then the recommendation is to designate a borough wide additional licensing scheme for HMOs and a selective licensing scheme for privately rented accommodation in Finsbury Park.

## 2.

### Recommendations

- 2.1 To note the evidence relating to problems being caused by poorly managed HMOs and privately rented accommodation in Finsbury Park as described in the consultation document in Appendix A
- 2.2 To note the outcome of the consultation process as detailed in Appendix B and the consideration of the responses to representations given in Appendix C
- 2.3 To agree to designate the borough of Islington as an area subject to additional licensing of the following types of HMOs:
  - houses and flats occupied by three or four persons who are not members of the same family and who share kitchen and/or bathroom facilities
  - buildings converted into two or more flats where the conversion does not comply with the appropriate building standards (those applied in 1991 or later) where all the flats are privately rented and in single ownership.
- 2.4 To agree to designate the ward of Finsbury Park as an area subject to selective licensing
- 2.5 To approve the standard licence conditions set out in Appendices E1 and E2 and to authorise the Corporate Director of Environment and Regeneration to make variations to the standard conditions
- 2.6 To approve the revised HMO standards in appendix F and to authorise the Corporate Director of Environment and Regeneration to make variations to HMO standards
- 2.7 To approve the proposed fee structure in appendix G and to delegate any changes in the fee structure to the Corporate Director of Environment and Regeneration

## 3.

### Background

- 3.1 Islington has an important and growing private rented sector that provides affordable housing options for local people. With an estimated 66,300 households in the private rented sector, it falls upon the council to ensure that the housing conditions in this sector are satisfactory. Whilst evidence suggests that many landlords treat renters fairly and tenants behave responsibly, there is a significant amount of privately rented property that is not up to standard.

Proactive approaches, such as licensing schemes, supplemented by using data to identify high risk premises, can have the greatest impact on improving living conditions for private renters.

All property licensing schemes are intended to address inadequate housing standards, rogue landlords and anti-social tenants. In an area subject to licensing, all private landlords must demonstrate that they are a 'fit and proper' person to rent out property, obtain a licence and provide and manage accommodation to a reasonable standard. If they fail to do so, the council can take enforcement action.

Licensing schemes run for a maximum period of five years and a fee is payable for each licence.

- 3.2 The existing Additional Licensing Scheme, which commenced in 2015 covering HMOs in Holloway Road and Caledonian Road, has been very effective in helping the council to identify privately rented properties and improving standards of management and conditions. This scheme is due to end in 2020 and the proposal to adopt a borough wide Additional HMO scheme will enable us to use the lessons learnt from the pilot projects and extend the benefits to all areas of Islington.
- 3.3 Under the Housing Act 2004, there are three forms of licensing relating to private sector housing available to local authorities:
- (a) Mandatory Licensing of HMOs
  - (b) Additional Licensing for HMOs
  - (c) Selective Licensing
- 3.4 Mandatory Licensing of certain Houses in Multiple Occupation
- Under existing legislation, all local authorities operate a licensing scheme covering HMOs that are occupied by five or more unrelated people who share kitchen and/or bathroom facilities.
- 3.5 Additional Licensing of HMOs
- Local authorities can introduce a discretionary additional licensing scheme for
- houses or flats occupied by 3 or 4 unrelated people who share kitchen and/or bathroom facilities
  - properties that have been converted into self-contained flats, but where the work does not comply with the 1991 Building Regulations, meaning for example that fire protection is inadequate.
- 3.6 Selective Licensing
- A discretionary selective licensing scheme covers all private sector accommodation occupied by one or two households and can be introduced in part, or across the whole of the borough. Where a proposed Selective Licensing designation covers either an area greater than 20% of the geographical area of the borough, or greater than 20% of the private rented properties within the borough, then following public consultation, the scheme must be submitted to the Secretary of State for approval.

The proposed Selective Licensing Scheme in the Finsbury Park Ward is below the 20% threshold and therefore will not require Secretary of State approval.

#### **4. Consultation**

- 4.1 The proposals were initially presented at a conference for local Letting Agents and Landlords in the Islington Assembly Hall on 12 June 2019. The formal consultation commenced on 5 August 2019 and ran for 13 weeks, ending on 3 November 2019.
- 4.2 The consultation document, published on the council's website, explained the reasons for proposing the licensing schemes, the alternative options considered and relevant

supporting evidence. The consultation was promoted via press release, social media, Islington Life and the Residents E- Bulletin. Approximately 6200 flyers were printed and distributed to all residential addresses in Finsbury Park, to libraries and various community groups operating in the borough. Eighty posters were displayed in various public buildings and supermarkets. Letters and emails were sent to all landlords, managing and letting agents known to be operating in the borough to encourage them to submit their views. All organisations representing landlords, managing and lettings agents were provided details of the proposals. Three drop-in sessions were held for landlords, agents and tenants to seek more information and to express their views in person. To simplify the feedback process for tenants, residents and landlords, an online feedback questionnaire was also made available as an alternative to providing bespoke written feedback on the proposals.

## 5. Consultation Feedback

5.1 There were 280 responses to the online feedback questionnaire and 30 written and verbal responses to the consultation. These responses are given at Appendix B.

Overall, 67% respondents agreed with the proposal to introduce additional licensing for all HMOs. However, there was a stark difference in opinion between landlords and tenants with 23% private landlords and managing agents in favour of licensing whereas for tenants it was 77%. The table below summarises the responses to this specific question on the online feedback questionnaire:

To what extent do you agree or disagree with the proposed borough-wide HMO Licensing Scheme				
Responses	Number of respondents for question 11	Agree/strongly agree %	Neither agree/nor disagree %	Disagree/strongly disagree %
Private landlord or managing agent with properties in Islington	71	23%	15%	62%
Private Tenant	71	77%	17%	6%
Owner occupier or other resident in Islington	94	89%	2%	9%
Other interested party	44	73%	11%	16%

5.3 Feedback on the proposal to introduce Selective Licensing in Finsbury Park ward followed a similar pattern.

In response to the question seeking views on selective licensing, overall 64% of respondents supported the proposal. However, only 16% private landlords and managing

agents were in favour whereas for tenants living in Finsbury Park it was 82%. The table below summarises the response to this question on the online questionnaire:

5.4

To what extent do you agree or disagree with the proposed Selective Property Licensing Scheme in Finsbury Park				
Responses	Number of respondents to question 12	Agree/strongly agree %	Neither agree/nor disagree %	Disagree/strongly disagree %
Private landlord or managing agent with properties in Islington	70	16%	30%	54%
Private tenant living in Finsbury Park	22	82%	4%	14%
Other private tenant	48	67%	33%	0
Owner occupier or other resident in Islington	93	90%	1%	9%
Other interested party	41	76%	12%	12%

5.7 A full analysis of the responses and the amendments made in response to the feedback can be found in Appendices B and C respectively.

## 6. Implementing the Proposed Licensing Schemes

- 6.1 Following the formal designation of a licensing scheme there is a statutory notification process that needs to be followed which in effect means that there is a minimum of three months before the schemes can go live. Once the designations are agreed the implementation date will be no earlier than 1 July 2020.
- 6.2 The existing additional licensing scheme covering HMOs in Holloway Road and Caledonian Road designated in 2015 is due to end on 1 September 2020. The consultation document proposed revoking the existing licensing scheme prior to the implementation of the borough wide scheme but it is now considered to be more appropriate to allow the Holloway and Caledonian Scheme to end 1<sup>st</sup> September 2020. This will enable the Additional Licence holders to renew their additional HMOs licences on expiry of the licence rather than on the date the scheme is revoked.
- 6.3 Landlords will be required to demonstrate through their licence application(s) that they, and anyone involved in the management of their property, meet fit and proper person criteria, and that the management arrangements are satisfactory. Their application must be supported by plans of the property and certificates covering fire, gas and electrical safety. The cost of providing a licence is lower in relation to landlords who have already

made the effort to join a recognised accreditation scheme. This justifies the reduced fees proposed for accredited landlords.

- 6.4 A licence can be granted for up to five years. The period of time covered by each licence will in practice be determined taking into account whether there is a history of non-compliance, poor property management and incomplete licence applications. Such concerns will result in the licence period being reduced so that the Council can monitor compliance more intensively. The landlord will then be required to renew the licence before it expires so that the property remains licensed throughout the operation of the licensing scheme. This policy of reduced term licences for non-compliant landlords will allow the Council to focus the licensing scheme on those that require more regulation.
- 6.5 The Housing Act 2004 allows the council to set conditions that are appropriate for the management, use and occupation of properties subject to licensing requirements, and for HMOs it can specify requirements relating to the condition and contents. In addition, there are mandatory licence conditions that must be included on every licence.

Comments and suggestions on the proposed conditions received during the consultation have been considered and where accepted, the conditions have been amended or deleted accordingly. The proposed revised Licence conditions are attached at Appendix E

- 6.6 HMOs standards specify the minimum requirements for room sizes and the provision of suitable and sufficient bathroom and kitchen facilities. These standards, which are consistent with the legal standards for deciding the suitability of occupation of an HMO, have been reviewed and updated to reflect changes in the private rented sector in Islington. Comments and suggestions on the revised standards received during the consultation have been considered, and where accepted the standards have been amended or deleted accordingly. The proposed revised HMO Standards are attached at Appendix F.
- 6.7 The council is entitled to cover the costs associated with the scheme through a licence fee but is not allowed to make a surplus or to use the fee income for purposes unrelated to licensing. The licence fee is payable in two parts, part 1 to cover the cost of processing and administration, and part 2 to cover the cost of the enforcement of the scheme. The proposed fee structure, which includes a discount for accredited landlords, is set out in Appendix G.
- 6.8 The intention is to ensure that all properties subject to licensing are identified and licenced. A light touch approach towards landlords who comply with licensing requirements will enable enforcement resources to be targeted at those that seek to evade licensing and provide inadequate accommodation. All licenced properties will receive at least one compliance inspection during the five-year licensing period, with those being assessed as high risk inspected during the early part of the scheme.
- 6.9 The council is fully committed to allocating resources to identifying unlicensed premises, as this is essential to the success of any licensing scheme, and we will use data and intelligence to identify unlicensed premises and take appropriate action to secure compliance.

## 7.

### Implications

#### 7.1 **Financial implications:**

- 7.2 The administration of Additional and Selective Licensing should be self-funding over the five-year licensing period. Most income will be received in years 1 and 2 and the annual surplus will need to be carried forward to subsequent years to fund monitoring and enforcement activities.
- 7.3 It is estimated that 3500 Additional HMO licences will be issued in the 5-year period generating an income in the region of £3,024,000
- 7.4 For Selective Licensing the estimated income from 2000 applications will generate an income in the region of £1,000,000 over 5 years.
- 7.5 Income will be monitored and a team proportionate to the demand for the service will be employed.
- 7.6 The predicted numbers of applications mean that additional processing and enforcement officers will need to be employed. Detailed staffing and resourcing plans will be developed if the proposed designations are confirmed.

#### 8.0 **Legal Implications:**

##### 8.1 Additional Licensing

Under section 56 of the Housing Act 2004 ("the Act"), the council has the power to designate areas as subject to additional licensing in respect of some or all of the HMOs that are not already subject to mandatory licensing. In order to exercise this power the council must consider that a significant proportion of these HMOs are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.

##### 8.2 Selective Licensing

Under section 80 of the Act, the council has the power to designate the whole or part of the borough as subject to selective licensing if the scheme satisfies one or more general conditions:

1. That the area is, or is likely to become, an area of low housing demand and that the proposed designation will contribute to the improvement of the social or economic conditions in the area when combined with other measures taken by, or in cooperation with, the council;
2. That the area is experiencing a significant and persistent problem caused by anti-social behavior; that some or all of the private landlords who have let premises in an area are failing to take action to combat the problems that it would be appropriate for them to take; and that the proposed designation will when combined with other measures lead to a reduction or elimination of the problem;

In March 2015 the government extended the conditions for designation of selective licensing in England. The Selective Licensing of Houses (Additional Conditions) (England)

Order 2015 permits licensing where the area contains a high proportion of properties in the private sector, being properties which are occupied under assured tenancies or licence to occupy and one or more of the following conditions are satisfied:

- (I) it would be appropriate for a significant number of properties to be inspected with the view to determining if any category 1 and 2 hazards exist and appropriate enforcement action taken;
- (ii) the area has experienced or is experiencing an influx of migration into it;
- (iii) the area suffers from a high level of deprivation;
- (iv) the area suffers from high levels of crime.

### 8.3 Consultation and designation

Before making a decision to introduce an area of additional or selective licensing the council must consult people who are likely to be affected by the designation and consider any representations made.

The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015 ("the General Approval") provides the council with the Secretary of State's general approval to designate an area as subject to additional licensing or selective licensing where the Council has carried out a consultation for a minimum of 10 weeks.

The council must be satisfied that the proposed designation for additional or selective licensing is consistent with the council's overall housing strategy. The council must also seek to adopt a coordinated approach to homelessness, empty properties and anti-social behavior affecting the private rented sector. The council should not make a particular designation unless, having considered whether there are any other alternative courses of action available, it considers that making the designation will significantly assist in dealing with the problems.

The General Approval provides that Secretary of State consent is required for implementation of any selective licensing scheme which covers more than 20% of the council's geographical area, or would affect more than 20% of privately rented homes in the borough.

### 8.4 Licence fees

In the case of *R (Gaskin) v Richmond-upon-Thames* [2018], the Divisional Court has held that the licensing of HMOs is an authorisation scheme for the purposes of the Service Directive and the Provision of Services Regulations 2009. Fees must therefore be reasonable and not exceed the cost of the authorisation procedure.

Additionally, the fees must be levied in two separate parts, in accordance with the type A scheme endorsed by the Supreme Court in *R (Hemming t/a Simply Pleasure Ltd) v Westminster CC* [2015]. Part 1 – a fee levied at the point of application, to cover the costs of processing the application and Part 2 – if the application is successful, a further fee to cover the costs of running and enforcing the scheme.

The calculation and determination of fees and charges is a function of the Executive. However, under the council's constitution this can be delegated to the Corporate Director

for Environment & Regeneration. Section 59 Housing Act 2004 specifies the requirements for publishing a notice stating that the designation has been made

## **9.0 Environmental Implications and Net Zero Carbon**

9.1 The designation of Additional HMO and Selective Licensing Property Schemes will not undermine the net zero carbon emissions objective and there are no negative environmental implications arising from the proposal.

Landlords will be able to apply for licence applications on line and upload supporting documentation electronically. This will minimise the use of paper and the need to recycle paper applications and documentation at the end of data retention period.

Providing tenants with a copy of the Energy Performance Certificate will be required as a licence condition and landlords will be asked to submit a copy of the appropriate EPC as part of the application process.

Enforcement Officers will continue to walk, cycle or use public transport when traveling to compliance and enforcement inspections.

## **10.0 Resident Impact Assessment**

10.1 The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The Council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The Council must have due regard to the need to tackle prejudice and promote understanding.

The Resident Impact Assessment (RIA) completed on 19 December 2019 concluded that proposal will have positive impacts on all residents living in privately rented accommodation covered by the proposed licensing schemes. The RIA is attached at Appendix H

## **11.0**

### **Reason for recommendations**

11.1 Designating areas of the borough for property licensing is consistent with the council's Housing Strategy and 'Building a Fairer Islington' commitment. Evidence supports the proposal to designate a borough wide licensing scheme for HMOs and a Selective Licensing Scheme for all privately rented properties in Finsbury Park. Stakeholder consultation indicated that landlords tend not support licensing schemes whereas tenants and residents are in favour of licensing to regulate and improve housing conditions in the private rented sector.

## **Appendices**

- A [Consultation Document Proposing Property Licensing](#)
- B Consultation Feedback
  - B1 [Consultation Feedback Questionnaire](#)
  - B2 [Feedback – raw data](#)
  - B3 [Feedback – graphs and charts](#)
  - B4 [Bespoke responses](#)
- C [Council response to consultation feedback](#)
- D [Map showing boundary of Finsbury Park Selective Licensing Scheme](#)
- E Proposed Licence Conditions
  - E1 – [HMO Licence Conditions](#)
  - E2 - [Selective Licence Conditions](#)
- F [Proposed revised HMO standards](#)
- G [Proposed fees](#)
- H [Residents Impact Assessment](#)

**Background papers:** none

Final report clearance:

**Signed by:**

Corporate Director of Environment and  
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Date

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