

EXECUTIVE BOARD DECISION



REPORT OF:	Executive Member for Environmental Services
LEAD OFFICERS:	Strategic Director for Environment and Operations
DATE:	11th August 2022

PORTFOLIO/S AFFECTED:	Environmental Services	
WARD/S AFFECTED:	Ewood	Mill Hill and Moorgate
KEY DECISION:	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	

SUBJECT: Consultation on the Designation of a new Selective Licensing Area

1. EXECUTIVE SUMMARY

To seek approval to consult on the designation of a new Selective Licensing Area. This would require all privately rented houses within the designated area to be licensed under Part 3 of the Housing Act 2004.

2. RECOMMENDATIONS

That the Executive Board:

- a) Approves the formal consultation process with residents, landlords and other parties regarding the designation of a new Selective Licensing Area;
- b) Notes the timelines outlined for the consultation, if approved. (Appendix 1);
- c) Notes the outcomes of a comparator study of the expired Infirmity and Darwen schemes (Appendix 2);
- d) Subject to satisfactory outcomes of consultations request further reports to be presented to the Executive Board seeking formal approval of the designation of the Selective Licensing Area under the Housing Act 2004. It is unlikely that the designation of this area would affect more than 20% of privately rented homes within the Borough, based on figures from census data, but if it does the designation would need to be submitted to the Department for Levelling Up, Housing and Communities for confirmation by the Secretary of State.

3. BACKGROUND

Section 80 of the Housing Act 2004 provides for the introduction of a scheme of selective licensing of private landlords in a local housing authority's area. The powers in the Act came into force in April

2006. Selective licensing is intended to address the impact of less engaged private landlords and anti-social tenants. It has primarily been developed with the need to tackle problems in areas of low housing demand in mind – although the Act also allows for selective licensing in areas of significant crime / anti-social behaviour. Low housing demand is where there is a high number of private rented properties, people are moving and only staying for short periods, and house prices and rental prices are low meaning owner occupiers are often in negative equity. This results in it being very difficult for a strong community to be developed and maintained in the area.

Many of the provisions relating to selective licensing are similar to those relating to the mandatory and discretionary licensing of Houses in Multiple Occupation (HMOs) – new regimes which were also introduced by the 2004 Act.

In an area subject to selective licensing, all privately let properties must be licenced and if they are let without being licensed, or fail to comply with licensing conditions, the authority can take enforcement action.

To date the Borough has introduced five Selective Licensing schemes, all due to low demand:

- 1) Infirmary – came into force in February 2009
- 2) Central Darwen – came into force June 2009
- 3) Griffin – came into force in January 2013
- 4) Infirmary 2 – came into force March 2016
- 5) Darwen 2 – came into force May 2017

All selective licensing areas have now expired. A comparator study was recently commissioned to assess the relative impacts of the most recent selective licensing schemes (Infirmary 2 and Darwen 2), and this has shown that the schemes appear to have been beneficial in terms of addressing some of the issues which contribute to low demand; however there is still scope for improvement (Appendix 2).

As well as the comparator study, a review of the Borough has been undertaken to identify areas where low housing demand continues to be an issue (Appendix 3), for which a further designation may be appropriate, and a suitable area has been identified.

4. KEY ISSUES & RISKS

The private rented sector is an important and essential part of housing provision and housing choice in the Borough. Insufficiently managed private rented properties are the source of many problems and place high demands and costs across the Council and partner services as well as disruptive impact on local communities. Selective licensing aims to address the problems with poor quality and insufficiently managed private rented housing and in turn reduce the burden on Council services. Typically, such areas would be categorised as experiencing low housing demand.

A comparator study was commissioned in 2021 to evaluate the performance of the Infirmary and Darwen selective licensing areas. The study took into account factors such as property price changes, rent changes, time to let and empty properties, and concluded selective licensing has been particularly successful in increasing rent levels, reducing the time to let properties and reducing vacant properties. In terms of increasing property values, there has been greater success in Infirmary but generally prices have seen limited increases.

The study also recommended that further designation be considered to protect and develop the improvements seen.

To consider which areas of the Borough might currently be suitable for designating a selective licensing area, a review of the Borough was undertaken to identify areas of continuing low demand. (Appendix 3).

The indicators which have been assessed in the review in line with the requirements specified in the Housing Act 2004 are:

- Proportion of privately rented properties
- Property prices
- Rental values
- Time to let
- Long term empty properties
- Number of sales
- Turnover
- Rental yields

The above indicators have been collated and examined at Lower Super Output Level (LSOAs). It is important to collate and examine at LSOA level as this provides information for a smaller geographical area than at Ward Level; it would not be accurate to state a whole ward has low housing demand when the statistics relating to low housing demand relate only to one or two smaller geographical areas (LSOAs) within the whole ward.

The statistical analysis of the data gives an indication of the situation, but this needs to be considered with the Council's local knowledge and experience on whether an area requires intervention and whether other interventions have or are going to be put in place in the area being considered.

For this reason the statistical data in this review has been used as the basis of a consultation with partners within the Council in relation to demand on their own services in various areas of the Borough, and further detailed analysis has taken place in relation to prevalence of privately rented stock.

As a result of this work, an area has been identified which is believed would benefit from being designated as a Selective Licensing Area, and a map of this proposed area is attached as Appendix 4. It has been selected as the review identified that it is suffering from low demand, and analysis shows that the proportion of privately rented properties is high at 51% (the English Private Landlord Survey recently published by the Department of Levelling Up, Housing and Communities puts the national proportion of privately rented properties at 19%).

The purpose of the scheme is that the implementation, combined with other measures being delivered by partners, will lead to a reduction in or elimination of the blight of low housing demand and therefore lead to improvements in social and economic conditions

The benefits of designating the area would include:

- Specific requirements for landlords to obtain references for new tenants.
- Specific requirements for landlords to take steps in relation to complaints about anti-social behaviour issues caused by their tenants.
- Specific requirements relating to the provision of bins built into the tenancy agreements.
- Provision of an Officer dedicated to working solely in the area who has close ties with Envirocrime, Community Safety and Empty Properties Teams. Consideration will be given to authorising this officer to enforce as wide a range of legislation as possible.

A key part of this proposed designation would be an evolved approach to enforcement within the scheme, compared with previous designations; while housing conditions would still be addressed as necessary within the area, more focus would be placed on ensuring compliance with conditions relating to environmental matters such as waste presentation and disposal, and general management

of tenants. Alongside this work, very close collaboration will take place with internal and external partners to maximise the mutual benefits of work undertaken within the area. Therefore further discussions will take place with colleagues in Envirocrime, Growth, Housing Needs and Community Safety Teams, as well as external partners during the 10-week consultation period.

A fair but robust approach will be taken towards enforcement within any newly designated selective licensing area.

Councils can recover costs associated with administering and performing the relevant functions of a selective licensing scheme. To achieve a cost neutral scheme the licence fees will have to be calculated with a view to recovering this cost over the 5 year period. Councils are not allowed to make a profit from licence fees, or use it for other purposes.

The legislation requires an intensive consultation and evidence base to be made in order to implement designation. The Council is required to consult fully with local residents, tenants and landlords, managing agents and local businesses, both within the proposed areas and in the surrounding areas. The Government Guidance also states that consultation on the designation must also contain the fee proposals as well as the scheme itself.

From 1st April 2015 the government introduced a new requirement that applications for Selective Licensing designation must be submitted to the Secretary of State for confirmation if the designation together with existing designations affect more than 20% of private rented homes in the local authority area, based on figures from census data. Given that no selective licensing areas are currently in force in Blackburn with Darwen, it is very unlikely that a referral to the Secretary of State would be required if designation took place. However the number of private rented homes in the area will be confirmed after the boundaries are agreed following the consultation exercise, indicating whether confirmation by the Secretary of State is required should the scheme go ahead.

5. POLICY IMPLICATIONS

Tackling the issues caused by substandard privately rented housing, poor housing conditions, inadequate tenant control and empty homes is a key priority for the Council. In policy terms it is a root cause when considering neighbourhood decline both in terms of social deprivation and environmental blight. Longer term if unchecked can lead to whole areas declining into further low demand, undermining communities leading to abandonment.

Whereas the Council normally relies of complaints from tenants to address poor housing conditions, with an associated weakness that tenants living in the worst properties (or who have unscrupulous landlords) do not complain for fear of harassment or retaliatory eviction, selective licensing provides an ability to proactively intervene within a designated area.

One of the challenges is of landlords not fully appreciating the significance of their roles and responsibilities. Buying a property can be a cheap but lucrative investment but if a landlord has no experience or understanding of property management, problems can impact more widely across a neighbourhood.

As well as clearly setting out duties to landlords via licensing conditions, selective licensing also builds in a 'fit and proper person' criteria in to the licensing process, and where a landlord cannot be licensed because they fail to meet the criteria, management has to be transferred to an acceptable licence holder who can manage the property satisfactorily.

The Council has in the past consulted on the development of a voluntary Landlord Accreditation Scheme as an alternative to selective licensing. This would entail 'accredited' landlords committing to ensure their properties achieve minimum standards and are well managed. The consultation indicated

that although there was perceived to be some benefit to the scheme landlords were reluctant to commit and there would be significant costs attached to development and maintenance. Previous accreditation schemes have not been well supported by landlords.

The designation of the selective licensing scheme would also support the Anti-Social behaviour policy for Blackburn with Darwen. A key outcome for the policy is “Improving the quality of life for all those who live, work and socialise in the Borough” and the designation of this selective licensing area would contribute significantly to that aim.

Selective Licensing supports the health and wellbeing of tenants and residents, and has a significant role in the Health and Well Being Strategy to promote healthy settings.

It would also be completely compatible with the vision set out in the draft Local Plan; ‘residents will take pride in their local neighbourhood as an attractive, clean and safe place to live, work, visit and move around in’.

In addition, the designation of the scheme would contribute towards the following Corporate Priorities:

- Safeguarding and supporting the most vulnerable people.
- Safe and clean environment.
- Strong, growing economy to enable social mobility.

6. FINANCIAL IMPLICATIONS

A licensing fee of £727 is proposed (subject to consultation) for the area with a discount for applications submitted early within the scheme. Approximately 1200 licence applications are predicted, giving an annual income of approximately £157K over a 5 year period. As the law currently prohibits licensing schemes making a profit, the intention is to operate the scheme on a cost neutral basis, modelling income and expenditure over a 5 year period and matching staffing resources and costs. The proposed licence fee has been determined with reference to the cost of the Scheme over the 5 year period.

The proposed model provides for sufficient staffing resource to maintain a scheme which is robust in terms of enforcement but will allow integration of value-added elements such as landlord and tenant engagement to improve on issues which have a Council-wide impact (e.g. waste enforcement and other anti-social behaviour).

The Council will need to support those designation costs which cannot be recovered from the licensing fee, which includes the costs of consultations. This will be done from within existing budgets. Enforcement costs cannot be included in costings, although costs are applied for when a prosecution is successful (but cannot be applied for when cases do not reach the courts). Where appropriate, civil penalties will be used as an alternative to prosecution for non-compliance to minimise enforcement costs and avoid criminalisation of non-compliant landlords unduly.

7. LEGAL IMPLICATIONS

The Housing Act 2004 and regulations under the Act gives the Local Authority the power to introduce selective licensing in specified localities within their area. Guidance requires the Local Authority to present the case for selective licensing, and to say why it is the most appropriate solution, how consultations have been undertaken and how responses have been dealt with.

Local authorities can approve a scheme under 'general consent' powers. However, if the setting up of a scheme is not thorough and is not carried out in accordance with the legislation, the scheme can be

subject to judicial review. Responding to such a legal challenge would be both time consuming and costly.

The Act provides that privately rented properties falling within the designated area for a selective licensing scheme are required to be licensed. The relevant local authority is required to consider applications, deciding whether to approve and issue a licence or to refuse to issue a licence. The authority must impose some statutory licence conditions. In addition, the authority may impose other conditions relating to the management, use and occupation of the property. Further the authority must consider whether the proposed licence holder is a fit and proper person to hold a licence and whether the proposed management arrangements are satisfactory. The local authority may charge a licence fee reflecting the administration costs of the scheme.

After formal designation it is a criminal offence for a person who has control of or manages a property within the designated area (landlord or managing agent) not to have a licence for that property unless the property is exempt and the penalty is a fine for which there is now no statutory limit. It is also an offence not to comply with a condition for which the penalty is the same. If a person is unlicensed would also indicate that the person would not be a fit and proper person. In April 2017 an alternative civil penalty sanction was introduced for breaches relating to selective licensing; a local authority may issue a civil penalty of up to £30K, although lower is more likely. The issue of Civil Penalties must be authorised by Legal Services.

In recent years the Council has made use of the civil penalty regime made available by the Housing Act 2004, issuing 3 civil penalties of around £6K each for failure to obtain a licence in spite of reminders being sent.

The maximum period that an area may be designated as subject to selective licensing is five years. The Act provides that before making a selective licensing designation a local housing authority must take reasonable steps to consult persons who are likely to be affected by the designation and consider any representations made in accordance with the consultation.

8. RESOURCE IMPLICATIONS

The scheme would be administered by the Housing Standards team within Public Protection & Environmental Health.

It is anticipated that 1.5 FTE enforcement officer and 2 FTE admin staff would be required to administer the scheme, managed by the Principal Officer, Housing Standards. Existing staff will be reassigned to the duties, so no additional recruitment will be required.

9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

10. CONSULTATIONS

Preliminary consultations have taken place with key members and enforcement partners, informing the draft outline of the proposed designated area.

The statutory consultation will inform the development of the EIA. Prior to any paper being submitted to Executive Board requesting the designation of the new area an EIA will be completed.

As mentioned previously, the Council is required to consult fully with local residents, tenants and landlords, managing agents and local businesses, both within the proposed area and in the surrounding area. Consultation will be undertaken through specific events and written communication. The minimum legal time period for consultation is 10 weeks to provide adequate time for people to respond and their views to be considered.

Following the Council's decision on whether or not to approve the designation, it is a legal requirement that the outcome of the consultations and the Council's decision is communicated to everyone who responded to the consultation.

The proposed consultation plan is attached as Appendix 1.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

VERSION:	1
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CONTACT OFFICER:	Joanne Byrne, Gary Johnston
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DATE:	30 th May 2022
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BACKGROUND PAPER:	Appendix 1 – Consultation Plan Appendix 2 – Comparator Study Appendix 3 – Borough Review Appendix 4 – Map of Proposed Selective Licensing Area
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