



CABINET

Subject Heading:

Private Rented Houses in Multiple Occupation Landlord Licensing Designation, implementation and enforcement

Cabinet Member:

Councillor Damian White

SLT Lead:

Steve Moore

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Policy context:

Following the decision taken at Cabinet in January, 2017 (Consultation on Proposed Licensing Schemes for HMOs and Other Private Rented Housing Sector), Cabinet will be asked to give approval to the proposed additional Licensing Scheme

Financial summary:

The estimated costs of operating a self-funding Additional scheme over five year duration has been costed out

Is this a Key Decision?

Yes - Significant effect on two or more Wards

When should this matter be reviewed?

March 19

Reviewing OSC:

Towns and Communities

The subject matter of this report deals with the following Council Objectives

Communities making Havering
Places making Havering
Opportunities making Havering
Connections making Havering

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SUMMARY

This report seeks approval from members for the introduction and operation of an additional (HMO) private landlord licensing scheme. The results of the consultation on the introduction of a licensing scheme for privately rented houses in multiple occupation (HMO) are also presented. The public consultation and the evidence collated support the case that there is a significant proportion of these smaller HMO's in the proposed area which are being poorly managed as to give rise to one or more particular problems, either for those occupying the HMO's or for members of the public e.g. poor housing conditions and/or anti-social behaviour (ASB).

Approval from members is therefore sought to introduce an additional (HMO) licensing scheme covering the 12 wards in which this is a problem.

The recommendation is to introduce an additional licensing scheme covering the following 12 wards; Brooklands, Mawneys, Elm Park, Pettits, Gooshays, Rainham & Wennington, Harold Wood, Romford Town, Havering Park, South Hornchurch, Heaton, Squirrels Heath. This will require all privately rented houses in multiple occupation in these wards to have a licence from the Council. It is estimated that up to 800 properties may require a licence.

This Council believes that the implementation of additional licensing will, alongside other existing and proposed activities, improve management practices in HMO's and reduce the negative impact that poorly-managed shared accommodation in the private rented sector can sometimes have on the local community.

The report also outlines how the Council intends to deliver the scheme. To ensure both the efficient and effective delivery of the scheme and deliver best value to the Council it is intended to award a contract to the London Borough of Newham to deliver parts of the processing and enforcement of the scheme on Havering's behalf. Cabinet approval is sought for the contract with the detail of the contract to be delegated to the Director of Neighbourhoods. The arrangements will be made under the Local Authorities (Goods and Services) Act 1970.

Additionally, Cabinet is asked to adopt the use of all powers to issue, use and enforce civil penalties and all other enforcement powers under the Housing and Planning Act 2016 and delegation of the enforcement powers under the Act and (and subsequent regulations).

The new powers enable local authorities to issue civil penalties for offences where landlords fail to repair, manage or improve their properties when required to do so by the Council. The civil penalties also relate to offences including but not limited to:-failing to licence houses in multiple occupation (HMOs) under parts 2 of the Housing Act 2004, contravention of an overcrowding notice and failing to comply with HMO management regulations.

The use of these new powers will support and complement the proposed additional licensing scheme and can be used throughout the Borough. The civil penalties are

an alternative to prosecution as the penalties can be imposed up to £30,000 and therefore will provide a new deterrent to criminal landlord behaviour.

Attachments to report;

Appendix 1 – Designation

Appendix 2 – Consultation and responses

Appendix 3 – Summary of Evidence

Appendix 4 – Proposed license conditions

Appendix 5 – Proposed fees

Appendix 6 – Equalities Impact Assessment

Appendix 7 – Draft matrix for issue of civil penalties

Full reports on the consultation and evidence will be placed in the Members room

RECOMMENDATIONS

Cabinet is recommended to:

- 1) Consider the representations received in response to the consultation on the additional HMO licensing scheme (as attached at Appendix 2) and agree the additional HMO licensing designation which is attached at Appendix 1.
- 2) Agree to introduce an additional licensing of houses in multiple occupation (HMO's) and to designate an additional licensing area of the district of the London Borough of Havering as delineated and shaded pink on the map at Annex A in Appendix 1 which covers 12 wards in the Borough and to come into force from 1 March 2018 and be of five years duration.
- 3) Agree that the additional HMO licensing scheme shall be cited as the London Borough of Havering Designation for an Area for Additional Licensing of Houses in Multiple Occupation No 1, 2018 and that this additional licensing designation shall come into force on 1 March 2018.
- 4) The scheme shall be publicised as required by regulation before enforcement starts and supplemented with a comprehensive publicity campaign.
- 5) Agree to enter into a contract with the London Borough of Newham for administration of parts of the scheme where beneficial to do so and to waive the Council's Contract Standing Orders and Contract Procedure Rules to the extent necessary to make such award.
- 6) Delegate to the Director of Neighbourhoods in consultation with the lead Cabinet member for housing, the authority to agree minor changes to the proposed implementation and delivery, including administration, fees and

conditions where necessary and ensure that all statutory notifications are carried out in the prescribed manner for the licensing designation.

- 7) Delegate to the Director of Neighbourhoods in consultation with the Deputy Director of Legal and Governance authority to negotiate the contract with Newham (recommendation 5 above) to give effect to these recommendations including authority to negotiate any novation of that agreement to a company owned by Newham.
- 8) Delegate to the Director of Neighbourhoods all powers to issue, use and enforce civil fixed penalties and all other enforcement powers under the Housing and Planning Act 2016.
- 9) Authorise the Director of Neighbourhoods to further delegate the discharge of powers at recommendation 8 above to other Council officers included but not limited to those officers identified in paragraph 7.5 of the report.

REPORT DETAIL

1. Background

- 1.1 The population of the Borough is projected to increase by 10% by 2020, an increase of 24,000 people. This is expected to place significant pressures on the housing market in the Borough, particularly the demand for affordable housing.
- 1.2 The rise in HMOs has correlated to increased complaints of anti-social behaviour from these properties by occupiers of neighbouring homes and a significant number of campaigns and petitions organised by residents in the borough to challenge the development of HMOs and the management practices conducted by local landlords. With such growth in mind, there is a need to ensure effective management of these properties in order to prevent rogue landlord activity, maintain good standards, maintain a thriving affordable private rented sector and ensure well managed stock for future years to come.
- 1.3 More people moved into residential accommodation in Havering in 2015 than in any other London borough. This was due to lower rental costs than in Inner London, excellent transport links to London and the M25 and the amount of public open space. Havering Council has also seen significant growth in the private rented sector. The 2011 Census revealed that the private rented housing sector in Havering had nearly doubled over the last 5

years, and the rapid growth of this sector has continued to grow year on year.

- 1.4 In 2011, 10,464 properties in Havering were owned by the local authority, 3,355 by registered social landlords, 71,698 were owner-occupied and 9,601 (9.6%) were privately-rented.
- 1.5 The latest figures suggest that, in 2016, there were approximately 100,000 dwellings in total, of which 17,037 (17%) are privately-rented, with two wards having a level of 26.5% (Romford Town) and 27.5% (Brooklands). This growth has been largely through the activities of 'buy to let' investors and these new landlords have replaced owner occupiers in many of our streets and neighbourhoods. Havering has also experienced a rise in the growth of Houses in Multiple Occupation (HMOs).
- 1.6 Data modelling predicts that there may be up to 1,200 HMOs in Havering which would represent 7% of the borough's total private rented sector. This is significantly higher than the 300 HMOs already known to the council. Certain parts of the borough, such as Heaton and Gooshays wards, have a disproportionately high percentage of HMOs in relation to their total private rented stock, and levels of anti-social behaviour and crime are significantly higher in areas where there is a high concentration of HMOs.
- 1.7 The recommendation is to introduce an additional licensing scheme covering 12 wards; Brooklands, Mawneys, Elm Park, Pettits, Gooshays, Rainham & Wennington, Harold Wood, Romford Town, Havering Park, South Hornchurch, Heaton and Squirrels Heath. This will require all privately rented houses in multiple occupation in these wards to have a license from the Council. It is estimated that up to 800 properties may be required to license.
- 1.8 The introduction of a suitable licensing scheme will enable a significant change in the way that anti-social behaviour and poor management associated with some of the private rented sector is tackled. Through licensing, the Council will know who is responsible for the management of properties that are rented out and who is responsible for dealing with problems associated with the dwelling.

Licensing Objectives

- Improvement in the physical condition, management practices and overall quality of bedsit type accommodation
- Improved protection for vulnerable groups living in HMO's
- Benefits to neighbourhoods and local communities in terms of reducing anti-social behaviour and crime, making Havering a safer and more desirable place to live
- Reduced environmental costs tackling fly tipping and other forms of environmental crime through ensuring better management of HMOs
- Prevention of rogue landlord activity

- Promotion of landlord training and accreditation schemes and support for landlords in dealing with anti-social tenants.
- Education for tenants in their responsibilities to behave in a tenant like manner

2. The Legal Framework

- 2.1 Under Part 2 of the Housing Act 2004 (the Act) all mandatory HMO's in England and Wales must be licensed. These are properties that are three or more storeys high, with five or more persons who form two or more households and contain shared facilities. Under section 56 (1) the Housing Act 2004 a Local Housing Authority has the power to designate the whole or any parts of its area as being subject to Additional Licensing for Houses in Multiple Occupation (HMO's). Generally these are HMO's which are not covered by mandatory licensing such as those which are less than three storeys high, or occupied by fewer than five or more people, in two or more separate households.

The steps a housing authority must take to lawfully designate an area (a whole district or a part) subject to additional licensing are as follows; section 56 (2) of the Housing Act 2004 states the authority must be satisfied there is a significant proportion of those HMO's in the area are being managed sufficiently ineffectively as to give rise to one or more particular problems, either for those occupying the HMO's or for members of the public. This can cover the whole or part of the Borough if there is supporting evidence for a particular local area. In forming this opinion under Section 56 (5) of the Housing Act 2004 the authority must determine whether any codes of practice approved under section 233 of the Housing Act 2004 have been complied with by persons managing HMO's in the proposed area.

- 2.2 The authority must be satisfied that making a designation will, when combined with other measures taken in the area by the local housing authority (or by other persons together with the local housing authority) lead to a reduction in, or the elimination of, the problem(s). Under Section 57 (4) (2) of the Housing Act 2004 the authority must be satisfied the exercise of power under section 56 is consistent with the overall strategy, and under Section 57 (4) (3) of the Housing Act 2004 the authority must adopt a coordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector as regards combining licensing with other action taken by them or others.
- 2.3 Under section 57 (4) (a) of the Housing Act 2004 the Council must also consider whether other courses of action available to it that might provide an effective method of dealing with the problem or problems in question, or would achieve the same objectives without the need for a designation to be made. Linked to that is under Section 57 (4) (b) of the Housing Act 2004 the requirement that the authority must be satisfied making of the designation will significantly assist with the problem, whether or not it takes any other course of action as well.

- 2.4 The Council and its partners have attempted to resolve the problems associated with poorly managed HMOs and anti-social behaviour using a number of methods but none have been capable of providing an effective widespread solution to the problems experienced. The courses of action already in place or considered are set out in the table below.

Type of action	Description
Landlord Accreditation and engagement	This is a voluntary scheme and has been available for several years. Havering has a low rate of accreditation compared with other London boroughs. The proposed license fee will offer a discount to accredited landlords. Engagement events will be delivered throughout the proposed scheme.
Community Safety partnership	Although powers under the partnership can be effective at addressing problem behaviour of individuals, they are not capable of regulating the management and occupation of HMOs
Part 1 Housing Act	Complaint work only deals with a very small number of properties, many poor conditions are 'hidden' due to tenants not reporting problems with their landlords. The process is also slow and relies on pre-informed inspections.
Enforcement HMO Management Regulations	Powers already being used, however currently relies on tenants reporting problems and reactive visits. General under reporting due to tenants fear of repercussions
Nuisance and noise	Powers under 1990 Act to prosecute offenders are not suitable for addressing the majority of problems associated with HMOs that the Council has identified.
Article 4	Article 4 is in place and can be expected to reduce the number of new HMOs being created in the Borough. However does not help address standards in existing HMOs
Homelessness	The additional licensing designation will provide greater protection for assured shorthold tenants living in unlicensed HMOs and protect against retaliatory evictions.
Empty properties	Empty properties are not a significant issue in the Borough as Havering is not an area of low demand for housing. However where they are identified action is taken to help bring them back into use. Licensing and the use of data management tools will assist in the identification of these properties and targeted action can be taken.

- 2.5 Therefore the reasons the Council proposes to introduce an additional licensing scheme are to:

- Address the significant problems of anti-social behaviour associated with the privately rented HMOs, by making landlords more accountable for the management of their properties and the behaviour of their tenants;
 - Improve the standards of HMO accommodation and prevent overcrowding;
 - Implement an inspection programme to identify premises where action is needed;
 - Address the inequality that exists currently with the mandatory HMO licensing regime by removing the loopholes that enable landlords to avoid licensing altogether.
 - Improve the management practices within HMOs by ensuring only fit and proper landlords or managers are granted licenses and through promoting landlord accreditation.
- 2.6 Under Section 58 of the Housing Act 2004 the designation cannot come into force until the lapse of 3 months after the date it is made. Sections 59 and 60 of the Housing Act and associated regulations set out the notification requirements in that a public notice of a designation must be given within set timescales once it is made. There will also be a further publicity campaign inviting landlords to license and an awareness campaign for residents to report HMOs which might not be licensed.
- 2.7 If the additional HMO licensing designation is approved the authority will review the operation of the licensing scheme from time to time in accordance with Section 60 (3) of The Housing Act 2004. This will be essential to monitor the progress of the scheme and the effectiveness of dealing with rogue landlords. Following a review, the authority may also revoke the designation under section 60 (4) of The Housing Act 2004. However this step will only be taken if it is appropriate and necessary to do so.
- 2.8 It is proposed that an initial review is carried out at the end of the first year of enforcement in March 19 with a further review towards the end of year 4 which will be useful for determining the strategic direction of the scheme in particular if a further one is required.

3. Consultation

- 3.1 Before making a designation under Part 2 (additional licensing) of the Housing Act 2004, the authority must under Section 56 (3) (a) of Housing the Act take all reasonable steps to consult persons who are likely to be affected by the designation, and under Section 56 (3) (b) of the Act consider any representations made in accordance with the consultation and not withdrawn. Since the authority is relying on The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015 the statutory

consultation under Section 56 (3) (a) of the Housing Act must be for a minimum period of at least ten weeks

- 3.2 In January 2017 an informal consultation was carried out which was effectively a public engagement exercise which gathered general opinions on licensing, proposals for selective and additional HMO licensing schemes and the private rented sector. This was used to inform the basis of the statutory consultation which ran from 19 May 2017 to 28 July 2017.

The outcome from the statutory public consultation was that:

- Over 70% of respondents agreed that HMOs were contributing to the decline in some areas of Havering
 - Litter and rubbish associated with private rented properties was reported as the key issue 58%, followed by neglected and run down properties 60%, nuisance neighbours 53% and noise 51%.
 - 74% supported a 12 ward scheme, 6% a 4 ward scheme and 19% disagree with an additional licensing scheme
 - 71% agreed with the proposed fee level
 - 93% agreed with reduced license sanction for criminal landlords
 - Over 77% agreed with the license conditions
- 3.3 A summary of the consultation report is attached at Appendix 2 this also includes the Council's consideration of responses to the consultation and any changes to the proposals.
- 3.4 Several changes were made to the proposals as a result of comments received these include; amending some wording in the conditions, reducing the Part A fee but increasing the Part B fee which allows more resources for enforcement.
- 3.5 A Members' briefing session was held on 12 September to discuss the proposal and consultation feedback. Members welcomed the introduction of the licensing scheme and emphasised the need for enforcement.

4. Evidence to support further regulation of Havering's Private Rented Sector

- 4.1 The evidence must support the introduction of an Additional licensing scheme. The Council has undertaken a proactive HMO inspection programme of 2-storey and non-licensable HMO's in order to gain knowledge about the quality of the accommodation, to work with landlords to improve standards and fire safety and to ensure greater compliance with the Management Regulations.
- 4.2 A sample of around 100 two storey HMOs was undertaken. The results illustrated that poorly managed HMOs exist in almost all wards of Havering. Of the properties inspected, only 37% were found to be fully compliant with

legislative requirements relating to property condition and management arrangements. Less than 50% of the HMOs inspected were found to have adequate fire safety provisions and almost one-third were poorly managed.

- 4.3 Recent data obtained through data analysis using the Tenure Intelligence Model (TIMS) created by LB of Newham has indicated that the proportion of private rented housing stock is approximately 17% borough-wide. However, when the data is analysed at ward level it can be seen that there are areas which have a significant concentration of PRS and HMOs. 12 out of the 18 wards in the Borough have significant levels of HMOs or predicted HMOs. See table 1 below;

Ward	Benefits	Council Tax	HM1 – Bedsit HMO's	HM2- Section 257	HM3- Shared House HMO	Public Register (Licensed HMO's)	Liberty Housing	Total	Suspected *(updated TIMS data)	Grand Total
Brooklands	4	11	9	2	5	1		32	57	89
Cranham		1			1			2	6	8
Elm Park	1	3	1		2	7		14	23	37
Emerson Park		1			1		1	3	17	20
Gooshays	6	4					1	11	57	68
Hacton	1	1	3					5	13	18
Harold Wood	1	2			3	4	1	11	30	41
Havering Park	2	5	1		2	3	2	15	27	42
Heaton	5	8	2		2	1	4	22	63	85
Hylands			3		1			4	18	22
Mawneys	1	2	4		1			8	20	28
Pettits	1	3	1				1	6	21	27
Rainham & Wennington	3	2	1	1	3	1	3	14	46	60
Romford Town	4	12	20	4	4	10	1	55	80	135
South Hornchurch	6	7	2		1			16	34	50
Squirrels Heath		2	2		1	4		9	22	31
Saint Andrews		1	3				1	5	19	24
Upminster		1						1	7	8
Totals	35	66	52	7	27	31	15	233	560	793

Table 1

- 4.4 The evidence also shows that there is a link between HMOs and crime and HMOs and ASB, with HMOs being over represented in crime and noise reports. An HMO occupant is 7 times more likely to be accused of a crime than non HMO occupants and a quarter of HMOs are linked to reported incidents of crime.
- 4.5 There is sufficient evidence that a significant proportion of HMOs in the area are being managed sufficiently ineffectively as to give rise to, or be likely to give rise to, problems for the occupants or for members of the public. This is also supported by the findings of the sample survey of HMOs which showed

nearly 2/3rds of HMOs surveyed failed basic standards. A full breakdown of these findings is set out in Appendix 3.

- 4.6 At the current time the levels of HMOs in the remaining 6 wards are low and would not support these wards being covered by the scheme. However these areas will be monitored carefully and if the HMO population grows and is poorly managed the Council could designate further areas after following the required statutory processes.
- 4.7 Historic research into the levels of PRS in Havering indicated that the Borough did not meet the evidence criteria required to enable the introduction of a selective licensing scheme which would cover all private rental properties. However, as there is evidence that the private rented sector is growing rapidly this will be closely monitored and proposals put forward if appropriate.

5. Conditions

- 5.1 The Housing Act 2004 requires that every licence must include certain mandatory management conditions. Local authorities also have the power to include other discretionary conditions which are considered appropriate for tackling the issues they identify as negatively affecting the private rented sector in the borough. Havering consulted on a set of conditions and has considered the responses to these. The proposed conditions are set out at Appendix 4.
- 5.2 Where appropriate, licence conditions will allow the council to intervene early and work with landlords to help and support them to meet their responsibilities. Where landlords undermine the local community by failing to meet minimum standards, the council can use its enforcement powers and work with partner agencies to address the negative impact of the breaches.

6. Arrangements for delivery of the Licensing scheme

Several options have been considered for the delivery of the scheme:

- In house
- Contracting with another Local Authority
- Combination of the two

- 6.1 Due to the modest size of the scheme the recommended option is to enter into a contract with the London Borough of Newham to deliver parts of the scheme supported by some enhanced in house resource. Newham has had considerable success in delivering licensing schemes and have a talented pool of well-trained officers to carry out the work. Additionally Havering already has a partnership with Newham for financial, legal and HR support services.

- 6.2 The arrangements will be made under the Local Authorities (Goods and Services) Act 1970. This contains a very wide power that enables local authorities to enter into agreements with other local authorities or public bodies providing services to each other. The power can be used for the purposes of:-
- supplying goods or materials
 - Administrative professional technical services
 - The use of vehicles plant or apparatus
 - Works of maintenance in connection with land or buildings
- 6.3 The arrangement will be for the provision of administrative, professional technical services to deliver the licensing scheme within the London Borough of Havering.
- 6.4 There is an intention that the Licensing services at Newham will be outsourced to a wholly controlled council owned company – if Havering have a contract with Newham there will need to be a provision in it allowing the contract to be novated to that company if Havering so decide.
- 6.5 If circumstances arise that a partnership with Newham for the provision of these services is not viable for any reason, officers have alternative delivery solutions in place.

7. Implementation of Housing and Planning Act 2016

- 7.1 The Government has provided additional powers and remedies under the Housing and Planning Act 2016 to deal with Housing crimes.
- the power to issue civil fixed penalties as an alternative to criminal prosecution,
 - the use of new 'Banning Orders' and the Department of Communities and Local Government (DCLG)'s "rogue landlord database" which will identify the worst offenders
 - Extend the number offences where Rent Repayment Orders (RRO's) can be sought against criminal and rogue landlords.
- 7.2 A formal decision is now required to delegate the use of the new powers alongside property licensing and current powers under The Housing Act 2004.
- If these proposals are agreed the Council will be able to impose a civil fixed penalty as an alternative to criminal prosecution for the following offences under the Housing Act 2004:
- Failure to comply with an Improvement Notice (section 30);
 - Offences in relation to licensing of HMOs (section 72);

- Offences of contravention of an overcrowding notice (section 139);
- Failure to comply with management regulations in respect of HMOs (section 234) for example those involving household waste control
- Breaching of a Banning Order (Housing and Planning Act, section 23)

7.3 Section 15 (1) of the Act provides the power to a local authority in England to apply for a banning order against a person who has been convicted of a banning order offence. It is not yet known what will constitute a banning order offence and it is envisaged this will be defined in further regulations and/or Secretary of State Guidance. A banning order under section 14 (1) of the Act will prevent a person from;

- letting any house
- engaging in letting agency work,
- engaging in property management work or
- doing two or more of these activities.

7.4 Chapter 3 of the Housing and Planning Act 2016 introduces provisions for the Secretary of State to create a central database of landlords and agents who are fined or convicted of an offence or have a Banning Order which will be accessed by all local authorities. The database will allow more joined up enforcement and information sharing across London and the rest of England. At the time of writing this report the Database of rogue landlords and agents and Banning Orders are scheduled to be in force on 1st October 2017.

7.5 The members are asked to delegate the use of the enforcement powers under the 2016 Act to the Director of Neighbourhoods and also authorise the Director to further delegate powers to officers in his directorate. The members are asked to approve the authorisation of the following posts to exercise these powers: Assistant Director of Environment, Public Protection Manager, Operational Manager, Principal Managers, Principal Environmental Health Officers, Senior Environmental Health Officers, Senior Private Sector Housing Officers, Private Sector Housing Officers, and Environmental Health Officers. The officers identified in this paragraph will assess each case carefully to identify and apply the appropriate sanction dependent on the severity of the offence and circumstances. These will include a civil fixed penalty or undertaking other enforcement interventions, such as issuing prosecution proceedings or offering a simple caution. It is important to note if a civil fixed penalty is imposed a prosecution cannot be sought for the same conduct. The same criminal standard of proof is required for a civil fixed penalty as for a prosecution therefore officers will need to be satisfied there is a 'realistic prospect of conviction' under the Code of Crown Prosecutors.

- 7.6 Banning Orders will be reserved for the most serious cases and therefore civil fixed penalties will potentially form the bulk of the enforcement action for any relevant criminal offences under the Housing Act 2004
- 7.7 A general policy setting out the processes of how licences will be issued and granted etc. and an enforcement policy will be created to include guidance on how the new enforcement powers will be used against rogue landlords and letting agents under the Act.

REASONS AND OPTIONS

8. Reasons for the decision:

- 8.1 Havering has become a sought after location for buy to let investors as it is currently more affordable with higher yields than other Boroughs. This is borne out by the growth of the private rented sector in Havering over the last few years. The demand for Housing in the South East is predicted to grow putting more pressure on housing supply. Licensing provides a useful tool to regulate this sector and raise the standards in HMOs.
- 8.2 It is also considered that the designation of Additional and/or Selective Licensing Schemes in neighbouring local authorities has exacerbated the problems that already existed within Havering's private rented sector. The licensing regimes threaten to displace the worst landlords from those boroughs and drive them into boroughs that do not operate any form of non-mandatory private rented housing licensing which are, therefore, seen as being more lightly regulated.
- 8.3 The displacement of such landlords into this Borough will be damaging to our private rented sector. It is therefore important for Havering to implement suitable measures to enable it to prevent such displacement and to bring unscrupulous landlords to account.
- 8.4 In response to these issues, it is anticipated that the introduction of more robust controls, such as those achievable through Additional Licensing, will (i) deter the migration of rogue landlords into Havering, (ii) provide an opportunity to drive up standards within the private rented sector by improving the management of HMOs (iii) reduce antisocial activity often linked to poorly managed properties. A more proactive approach to tackle these complex issues will see benefits for landlords, tenants and local residents.
- 8.5 Other options considered:

- To introduce additional licensing in only 4 wards
- Not to designate any of the Borough for additional licensing
- Introduce selective licensing in part of the borough

IMPLICATIONS AND RISKS

9. Financial implications and risks:

9.1 Additional licensing scheme

If the additional licensing scheme is agreed, the scheme will need to be cost neutral over the 5 year duration. Fee income is forecasted to peak in this financial year so will require ring fencing to meet subsequent years funding requirements. Fees must be set at a level which are reasonable and proportionate and it would be ultra vires to make more money than it costs to administer the licensing scheme.

- 9.2 It is proposed to operate a two part fee structure where a Part A fee is charged for the administration and processing cost of the licence which is non-refundable, and if the licence is approved, a further Part B fee will be charged to cover the management and enforcement of the scheme in view of the latest Supreme Court judgement in the case of *R (on the application of Hemmings (t/a Simply Pleasure Ltd) and others) v Westminster City Council (2017) UKSC 50*. The proposed fees are attached Appendix 5.

- 9.3 Several models were developed to forecast the fee income from both Part A and Part B and are shown in Table 2

Options	2017/18 PY	2018/19	2019/20	2020/21	2021/22	2022/23 PY	Total
Model 1	214,500	383,250	56,250	9,000	9,000	10,750	682,750
Model 2	165,000	428,250	77,250	9,000	9,000	10,750	699,250
Model 3	123,750	320,750	59,750	9,000	9,000	10,750	533,000
Model 4	134,063	238,875	37,875	9,000	9,000	10,750	439,563

Table 2

The four models shown above were based on a varying number of licenses being issued across the 5 year period with majority of these being allocated in years 1 and 2. Those allocated in the 2017/18 financial year have been assumed at the lower rate of income

- 9.4 Model 4 has been selected as the most appropriate model as it represents the lowest level of take up and income achievable. This provides a realistic forecast taking into account that this is a new scheme and the number of HMOs is a predicted figure. Model 4 shows a breakdown of income and costs over the life of the licensing designation and is shown below in Table 3;

Model 4	2017/18 PY	2018/19	2019/20	2020/21	2021/22	2022/23 PY	Total
Income	134,063	238,875	37,875	9,000	9,000	10,750	439,563
Expenditure	(150,249)	(113,000)	(79,000)	(36,751)	(33,000)	(27,563)	(439,563)
Net	(16,187)	125,875	(41,125)	(27,751)	(24,000)	(16,813)	0

Table 3

- Income has been estimated based on 540 licenses over the 5 year period
 - The profile assumes majority of licenses will be issued in Years 1 and 2 of the scheme
 - Part B fees are forecast to be received from year 2 onwards for all licenses allocated
 - On average 82% of the overall cost is on Staffing for both administration and enforcement.
 - Remaining costs estimated for IT, Publicity and other expenses
- 9.5 This scheme is expected to be fully self-financing over the five year period. The net cost in 2017/18 may not be offset by the potential income in the same period due to the lower fee structure proposed until 28 February 2018, the majority of fees are forecasted to be paid in this period. This will require a one-off general fund contribution that will be reimbursed the following year. The 2018/19 net position will be held as a reserve to fund the future years deficits.
- 9.6 There will be one-off costs incurred in 2017/18 of £110,000 that will be funded from the additional licensing income received.
- 9.7 Income from Part B licences is profiled as being received partly in the year the Part A licence is issued and partly in the following year. The final year includes the residual element for all licences issued.
- 9.8 For 2019/20 and beyond a prudent approach has been taken and it is expected that the scheme will breakeven at the end of the 5 year period.
- 9.9 There are risks associated with the scheme, in particular whether the income targets will be achieved and whether these will be sufficient to offset the costs incurred. Income and expenditure will be closely monitored to remain viable.

- 9.10 The costs of the scheme identified above include the cost of enforcement action. This will depend on the scale of compliance with the scheme and whether the cost of any enforcement activity would be recoverable income generated from the Part B licence fees.
- 9.11 If the licence fee income does not recover the cost there is a risk to the general fund although the risk will be mitigated by employing a robust enforcement approach to ensure all properties which require a licence are licensed.

10. Financial implications - Civil Fixed Penalties

- 10.1 On the 6th April 2017 The Housing and Planning Act 2016 came into effect which allows the authority to issue civil fixed penalties for offences under the Housing Act 2004 etc. as set out in this report on rogue landlords directly as an alternative to prosecution. The income from the civil fixed penalties will be retained by the authority and is to be used to improve the housing authority's statutory functions in relation to enforcement activities within the private rented sector.
- 10.2 An additional resource of 1.5 FTE for 18 months has been agreed to bolster the enforcement of housing standards throughout the Borough. The Directorate will endeavour to meet this sum from within its approved budget. However, any shortfall up to the value of £75,000 will be met from the Business Risk Reserve.

11. Legal implications and risks:

- 11.1 Members are referred to the body and content of the report which sets out the legal framework and proposal for a 12 ward additional HMO licensing scheme, adoption of the new enforcement powers which include the civil fixed penalties under The Housing and Planning Act 2016, and an arrangement for delivery of some of the scheme by the London Borough of Newham.
- 11.2 Under section 56 (1) the Housing Act 2004 (the Act) a Local Housing Authority has the power to designate the whole or any parts of its area as being subject to Additional Licensing for Houses in Multiple Occupation (HMO's). Sections 254 – 260 of The Housing Act 2004 set out the definition of HMO's. The designation can only be introduced provided the authority has complied with the full legislative requirements under section 56 and section 57 of The Housing Act 2004 as set out in this report. In addition members must be satisfied the evidence relied upon is sufficiently robust to justify the designation. The effect of the designation is that all privately rented additional HMOs would require a licence in the relevant ward areas unless an exemption applies. Exemptions can include houses which are occupied by single households and properties which are specifically excluded from the legislation such as care homes etc.

- 11.3 The Homelessness Reduction Act 2017 is not expected to be in force until April 2018. In brief the changes are likely to increase the number of homeless applications therefore there is a possibility local authorities will require an increase in the supply of high quality temporary accommodation from the private rented sector to meet its duties under the Act. There is likely to be a limited impact on the additional HMO's within the proposed areas however this will be kept under review once the Act is in force.
- 11.4 The Government had previously announced its intention to extend the scope of mandatory licensing under Part 2 of the Housing Act 2004 to include HMO's occupied by five or more persons in two or more households, regardless of the number of storeys. It has not yet legislated to give effect to that proposal and if enacted, it is likely the extension of the definition of mandatory HMO's which the Council intends to include within the proposed additional licensing scheme will cover some HMO's in the borough. The legal implications of this will be kept under review.
- 11.5 Members are asked to agree to delegate to the Director of Neighbourhoods and subsequently further delegation to the relevant officers of the Council as set out in this report the use of the Civil Fixed Penalty regime under Sections 126, 249A and Schedule 9 in addition to all other enforcement powers within The Housing and Planning Act 2016 (the Act). The Leader has the power under the Local Government Act 2000 to delegate executive powers to officers and an officer with delegated powers may authorise other officers to discharge those functions.
- 11.6 A general policy setting out the process for issuing and granting licences etc. and an enforcement policy will need to be implemented. The enforcement policy will include matters such as circumstances when a criminal prosecution will be issued as opposed to a civil fixed penalty, which will usually be where an offence is particularly serious and where an offender has previously committed similar offences. The draft 'civil fixed penalty' matrix appended to this report (appendix 7) will be kept under review. The new powers of civil fixed penalties under the Act came into force on 6th April 2017 therefore the powers can only be exercised for offences committed after this date. The statutory guidance under Schedule 9 (12) of the Act was published in April 2017 which local authorities must have regard in the exercise of their functions for civil fixed penalties.
- 11.7 The Council has power to enter into contractual arrangements in support of the implementation of the scheme under s1 of the Localism Act 2011 and s111 of the Local Government Act 1972.
- 11.8 Under the Local Government Goods and Services Act 1970 as set out elsewhere in this report a local authority can enter into arrangements for the provision of certain services to another authority. The arrangements for this service are outside the scope of the Public Contracts Regulations 2015 which require that services over the threshold be put out to competition as they are below the threshold.

- 11.9 However, the Council must comply with its own internal standing orders, which require contracts to be put out to competition and so there is a request for a waiver of those requirements in the recommendations. Officers are satisfied that the arrangements with Newham are best value for the Council for reasons set out in the report.
- 11.10 The arrangements will be contractual arrangements for the delivery of services and there is delegation of authority to an officer to agree those arrangements without further reference back to Members.
- 11.11 There is a proposal on the part of Newham to outsource its licensing services to a wholly owned company. If the Council does that then any contractual arrangements may be novated to that company and Havering may choose to agree to that or make other arrangements. Havering may want a guarantee of performance, for example. Power is being sought to enable an officer to deal with any new arrangements.

12. Procurement

- 12.1 The oneSource Strategic Procurement Unit is working closely with the service to ensure they deliver the best value for money procurement outcome

13. Human Resources implications and risks:

- 13.1 It is possible that the implementation of an additional licensing scheme may require some extra staff resources to work alongside existing staff (and Newham colleagues) in the short term - specifically during the initial set up of the scheme. Any additional enforcement activity required once the scheme is set up can be funded from the fee income generated. Any recruitment activity or engagement of agency worker resources will be undertaken in accordance with the Councils usual recruitment and selection policies & procedures.

14. Equalities implications and risks:

- 14.1 An Equalities Impact Assessment has been made, the scheme is relevant to all equality groups in Havering and the overall impact has been assessed as positive. All private tenants living in HMOs in the areas covered will be positively affected by any designation for property licensing as they benefit from the additional requirements on licensed landlords to provide a written tenancy and statutory management arrangements. Further, landlords without licences are unable to use the mandatory grounds for possession (s21) in the County Court.
- 14.2 Generally the effect of property licensing is to formalise the lightly regulated private rented housing market by imposing an increased regulatory framework to impose obligations on landlords/licence holders. It should lead

to better quality accommodation, a reduction of anti-social behaviour from HMOs effecting local residents and HMO residents themselves as well as a useful tool to reduce overcrowding in these properties.

BACKGROUND PAPERS

None