



## CABINET

8 May 2019

**Subject Heading:**

Private Sector Housing Enforcement Scheme Two. To Consult on Proposal to Expand Additional Licensing for Housing of Multiple Occupation and Introduce Selective Licensing.

**Cabinet Member:**

Councillor Persaud

**SLT Lead:**

Caroline Bruce Director of Neighbourhoods

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**Policy context:**

Following the decision taken at Cabinet in October 2017 (Private Rented Houses in Multiple Occupation Landlord Licensing Designation, Implementation and Enforcement), Cabinet will be asked to give approval to consult on the proposal to expand the Additional Licensing for Houses in Multiple Occupation and to introduce Selective Licensing.

**Financial summary:**

There is a cost to running the statutory consultation. This will be met within existing budget

**Is this a Key Decision?**

Significant effect on two or more Wards

**When should this matter be reviewed?**

October 2019

**Reviewing OSC:**

Towns and Communities

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

Communities making Havering  
Places making Havering

[x]  
[x]

**SUMMARY**

- 1.1 This report provides an update of the Additional Licensing Scheme for Housing of Multiple Occupation (HMO), which was agreed in October 2017 and has been in operation since 1 March 2018.
- 1.2 The report presents a proposal for extending discretionary licensing in the Borough, the legal evidential test required to be met and a recommendation to proceed with a statutory consultation.
- 1.3 The scheme proposed to be consulted on has been determined from a Housing Stock Condition and Stressors Report (Appendix 1) which provides information about the number of privately rented properties by ward, stock condition, anti-social behaviour linked to rental properties and other housing stressors. The option recommended meets the evidential criteria set out by legislation.
- 1.4 The key recommendation in the report is to seek agreement to conduct a statutory consultation exercise on extending the discretionary licensing scheme.

**RECOMMENDATIONS**

Cabinet is asked to:

1. Note the progress report on the Additional Licensing Scheme for HMOs introduced in March 2018.
2. Authorise commencement of a consultation on extending the coverage of the Additional Licensing Scheme for HMOs (approved by Cabinet on 11<sup>th</sup> October 2017) to cover the remaining six wards in the Borough, which are Cranham, Emerson Park, Hacton, Hylands, St Andrews and Upminster.
3. Authorise commencement of a consultation on a Selective Licensing Scheme for Romford Town and Brooklands wards.
4. Note that, if it is agreed to proceed with the consultation, the results of the consultation will be presented to Cabinet in autumn 2019.

## REPORT DETAIL

### 2. Havering's current Additional Licensing Scheme for HMOs and proposal for extending discretionary licensing.

2.1 Havering introduced Additional Licensing to cover all HMOs in 12 of 18 wards in late 2017 and enforcement of the scheme commenced in March 2018. The scheme mandates that all shared dwellings (properties with 3 or more persons and 2 or more households) must licence with the Council. The scheme covers less than 3% of Havering's total PRS. The scheme has been well received and has enabled the Council to deliver a number of complex private rented sector (PRS) regulatory interventions over the last 12 months, including:

- **25** multi-agency operations, involving Police and Home Office Enforcement Officers.
- **131** Financial Penalty Notices with a value of **£373,750**.
- **209** licence applications received.

2.2 It is too early to assess what the impact of the scheme will be over the 5 years; however early indicators are that licensing is an effective tool to tackle criminal landlords and disorderly tenants in Havering.

2.3 As can be seen from the outputs above, licensing has provided a legal platform from which to increase the effectiveness of the service in tackling poor housing conditions and management in the borough. It has led to the uncovering of previously unknown criminal activity.

2.4 As well as licensing enforcement, the service is now using all its statutory powers to address serious hazards and disrepair cases amongst the 97% of PRS properties not covered by the current additional licensing scheme.

2.5 The legal framework for Additional Licensing is set out in detail in the Cabinet Reports of 18<sup>th</sup> January 2017 and 11<sup>th</sup> October 2017. Additional licensing provides a power for local authorities to licence HMOs not covered by Mandatory licensing. Before designating further areas for Additional Licensing, the Authority must be satisfied in its evidence in relation to each proposed area, that it considers that a significant proportion of the HMOs of the relevant description in the area are being managed sufficiently ineffectively as to give rise to, 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.

2.6 Selective licensing allows local authorities to introduce licensing for privately rented properties accommodating single households. It is intended to address the impact of poorly rented properties on the local environment and to improve housing conditions. Under Section 80 of the Housing Act 2004, a local authority can designate the whole or any part(s) of its area as being subject to Selective Licensing. Where a Selective Licensing Designation is made it applies to all Part 3 houses or flats which are privately rented (as set out in section 79 and 99 of the Act). Exemptions apply for example for registered social landlords.

2.7 If the local authority makes a Selective Licensing Designation that covers

- i) 20% or less of its total geographical area and
- ii) includes less than 20% of its privately rented properties,

then the scheme will not need to be submitted to the Secretary of State for Communities and Local Government (DCLG) for approval. (Larger Selective Licensing Schemes covering a wider designation or whole borough will require specific Government approval).

2.8 Before the Council introduces a Selective Licensing Scheme applying to non HMOs, under The Selective Licensing of Houses (Additional Conditions) (England) Order 2015 they must be satisfied it is in an area in which one or more of the following general conditions apply;

- i. That the area is, or is likely to be become, an area of low housing demand;
- ii. That the area is experiencing a significant and persistent problem caused by antisocial behaviour;
- iii. The area has poor property conditions;
- iv. The area has high levels of migration;
- v. The area has high levels of deprivation;
- vi. The area has high levels of crime.

2.9 The authority must also be satisfied that making the designation will when combined with other measures in the area by the local housing authority (or by other persons together with the local housing authority) lead to a reduction in, or elimination of, the problems).

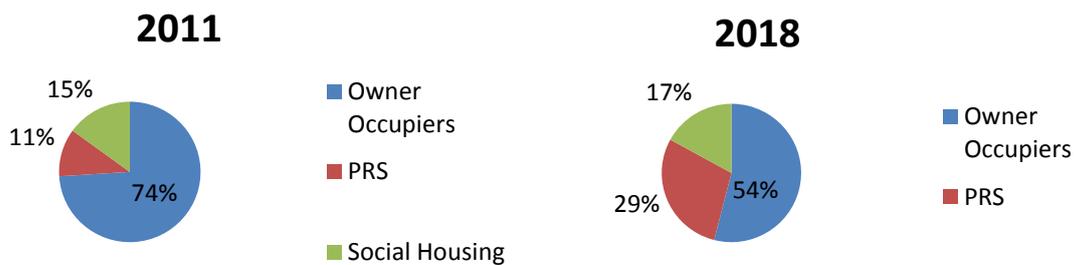
2.10 Prior to adopting the extension of the additional licensing scheme and introduction of the selective licensing scheme in the proposed wards the local authority must consider a) whether there are other courses of action available that might provide an effective method of achieving objectives that the

designation would be intended to achieve and b) that making the designation will significantly assist it to achieve the objective or objectives.

**3. Havering’s Private rented sector (PRS)**

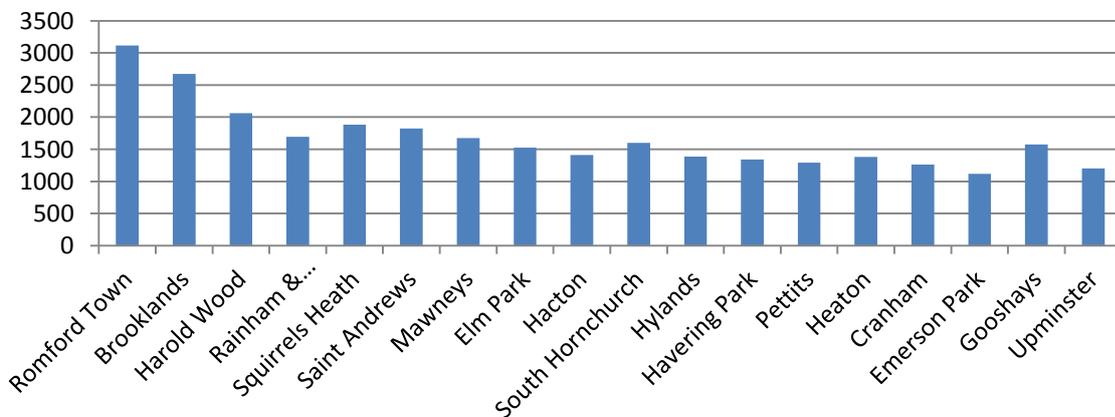
3.1 The PRS has grown rapidly in Havering since 2001. Population growth, lower London median rents and new transport infrastructure are factors.

3.2 The service has commissioned consultants to report on Havering’s housing stock condition and stressors (**Appendix 1: Havering Housing Stock Condition and Stressors Report 2019**). The report calculates that Havering’s PRS is now 30,215 (29% of total housing stock) (Graph 1), including up to 1300 HMOs.



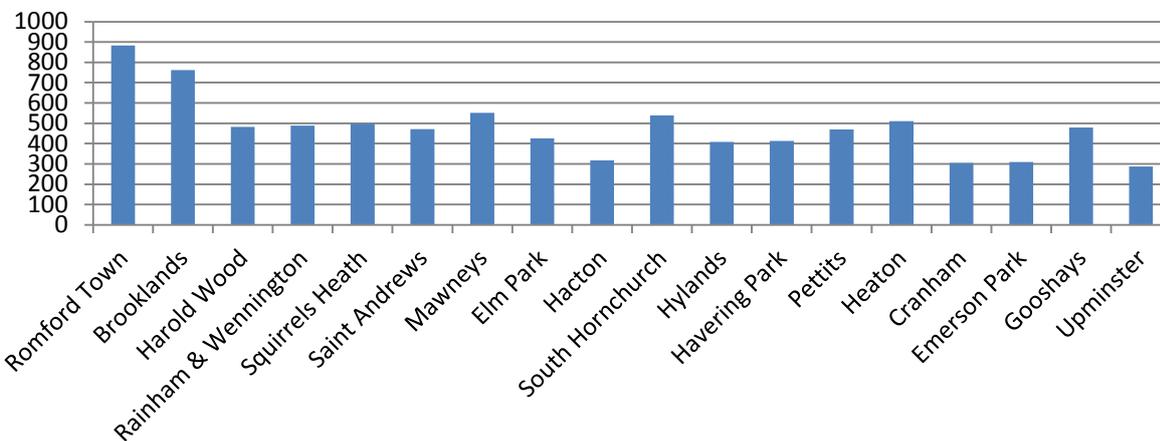
*Graph 1 - Tenure profile 2011 to 2018 (ONS & Metastreet data)*

3.3 Romford Town and Brooklands wards have the highest number of PRS properties (Graph 2).

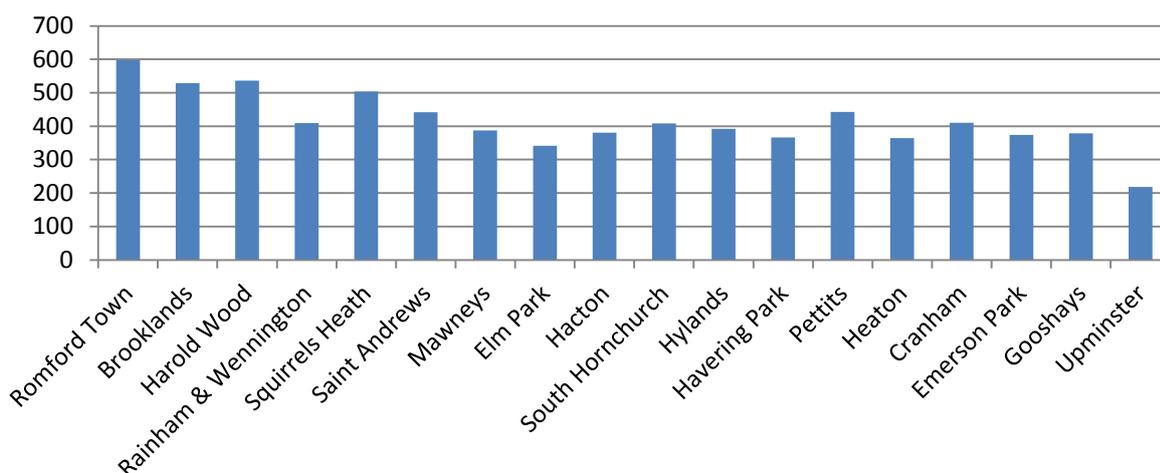


*Graph 2 - Number of PRS dwellings by each Havering ward*

3.4 The report also concludes that PRS properties have been a source of 8,600 recorded ASB incidents since 2013 (Graph 3), and 7,400 (24.5%) properties are predicted to have serious home hazards (Category 1). This includes damp, mould and electrical faults amongst others (Graph 4).



*Graph 3 - Number of ASB incidents linked to PRS 2013-18*



*Graph 4 - Predicted number of properties with serious housing hazards (Category 1)*

3.5 To introduce discretionary licensing as set out in the recommendations above, the Council must demonstrate that conditions exist in the Borough to meet the legal evidential tests as set out in this section. The evidence collated in the Housing Stock Condition and Stressors Report meets the tests for the proposed selective licensing scheme.

- Brooklands and Romford Town have more than 19% of the housing stock that is privately rented.
- There are a significant number of properties in poor condition in Brooklands and Romford Town.

- Finally, there is a significant proportion of the HMOs of the relevant description in the area 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.

3.6 This is the case for the proposed extension of Additional Licensing in the remaining six wards in the Borough namely Cranham, Emerson Park, Hacton, Hylands, St Andrews and Upminster.

3.7 Before making the proposed designations as set out above the Council has a duty to formally consult all persons likely to be affected and to consider any representations made.

#### **4. East London Context**

4.1 Rapid PRS growth has been seen across east London over the last 15 years. The policy response has generally been greater regulation of the market through property licensing to mitigate some of the concerns that accompany large and growing PRS populations. Havering currently has the lowest level of PRS licensing of any outer east London borough.

### **REASONS AND OPTIONS**

#### **5. Reasons for the decision:**

5.1 The number of privately rented properties in Havering is high and still growing. Through the experience gained from the operation of the Additional Licensing Scheme for HMOs and the Housing Stock Condition and Stressors Report 2019 circumstances exist justifying an extension of discretionary licensing in the Borough. There is a significant proportion of rental accommodation which is below standard and requires intervention.

5.2 A consultation exercise is legally required before any decision can be made before introducing further licensing.

#### **6. Other options considered:**

6.1 A number of other options were considered:

- **Do nothing** - Continue with existing Additional Licensing HMO Scheme for 12 of 18 wards.
- **Selective scheme covering more wards** - Introduce a larger selective licensing scheme in all wards to cover single family properties, except Uppminster and Cranham wards.
- **Borough wide Selective scheme** - Introduce selective licensing borough wide.

## IMPLICATIONS AND RISKS

### **7. Financial implications and risks:**

7.1 In respect to the consultation for the proposed Additional and Selective Licensing Schemes a fee proposal will be included in the consultation and may vary depending on the final size of the scheme. The larger the number of properties covered, the cheaper per unit the scheme will be due to economy of scale savings. The schemes will also strive to be self-funding reducing the requirement for general funding.

7.2 A financial model has been developed which broadly sets out the range of fees taking into account forecasted income and expenditure based on the predicted number of properties that may be licensed. These fee levels will be included in any consultation, inviting comment from those affected.

7.3 Fees must be set at a level which meets the cost of the scheme, be justified and structured in a way that is legally compliant. No surplus can be made.

7.4 The cost of the consultation will be met from existing budgets.

### **8. Legal implications and risks:**

8.1 This report seeks Members approval to commence formal consultation exercise to extend the existing additional HMO licensing scheme to a further 6 wards as set out in the report and to introduce a selective licensing scheme in the wards of Brooklands and Romford Town. Under the Housing Act 2004 a Local Authority has the power to designate the whole or any parts of its area as being subject to Selective Licensing and/or Additional Licensing for Houses in Multiple Occupation.

8.2 Under section 80 of The Housing Act 2004 a Local Authority can designate whole or any parts of its area subject to Selective Licensing and this applies to privately rented properties in the area. Before designating a Selective licensing area, the Council must consider;

- a) The area is or is likely to become an area of low housing demand and that the conditions in the areas will be improved by the designation combined with other measures or;
- b) That the area is experiencing a significant and persistent problem caused by anti-social behaviour which is not being dealt with by private landlords and that designation will in combination with other measures lead to a reduction in or elimination of the problem.

8.3 Under The Selective Licensing of Houses (Additional Conditions) (England) Order 2015 a Selective Licensing designation may be made if the area to which it relates satisfies one or more conditions as set out in paragraph 2.8 of the report.

8.4 Before designating further areas for Additional Licensing, under section 56 (2) of the Housing Act 2004 the authority must be satisfied that a significant proportion of the HMOs of the relevant description in the area are being managed sufficiently ineffectively as to give rise to, 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. A significant proportion means a proportion of the overall HMOs of the description falling within the proposed designation which the Authority considers to be significant (bearing in mind local conditions). This test applies to each area proposed for Additional licensing.

8.5 Before the designations are made, the Authority must consider the matters set out in paragraphs 2.9 and 2.10. They must also ensure they are consistent with the overall Housing strategy and must seek to adopt a co-ordinated approach in tackling homelessness, empty properties and antisocial behaviour in the privately rented sector whether on its own or in combination with other measures.

8.6 From 1<sup>st</sup> April 2015 a local housing authority will need to apply to the DCLG for confirmation of a Selective Licensing scheme which covers more than 20% of their geographical area or that would affect more than 20% of privately rented homes in the local authority area. If the local authority makes two designations at the same time, each of which account for less than 20% of the area or privately rented stock but cumulatively account for more than 20% of

either, both schemes will need to be submitted to the Secretary of State for approval. Therefore it is vital the data and evidence gathered by the Authority is carefully analysed to determine whether or not it meets this threshold.

8.7 The Council must take reasonable steps to consult with persons likely to be affected by the proposed designations such as local residents, businesses, landlords, tenants, and managing agents within the proposed and surrounding area. Even if the designation does not require confirmation of Secretary of State due to its extent, the formal consultation must be prescribed for a minimum period of not less than 10 weeks. To ensure an effective consultation, it must take place when the proposals are at a formative stage, it should include sufficient reasons for the proposals to enable the consultees to consider them and respond intelligently, and the responses must be taken into account before a decision is made.

8.8 There should also be sufficient detail on the proposed fee structure. Once both proposed schemes have been fully drafted for formal consultation the designations may be challenged by judicial review. The Council will need to consider alternative options in the event of a successful challenge. The time limit for issuing a claim for judicial review is three months from date of designation.

## **9. Human Resources implications and risks:**

9.1 There are no HR implications at this time as this report only relates to a consultation exercise. Further HR implications will be considered as part of any report on a decision to extend licensing if proposed.

## **10. Equalities implications and risks:**

10.1 The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- i. the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- ii. the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- iii. foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

10.2 The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

10.3 An equalities assessment has been carried out; there is no significant impact on any of the protected characteristics. The assessment is attached as an appendix.

### **Appendices**

1. Havering Housing Stock Condition and Stressors Report 2019
2. Equality and Health Impact Assessment

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| <b>BACKGROUND PAPERS</b> |
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Cabinet Report October 2017: Private Rented Houses in Multiple Occupation  
Landlord Licensing Designation, implementation and enforcement