



**Executive
22 April 2014**

**Report from the Director of
Regeneration and Growth**

Wards affected

all

Licensing in the Private Rented Sector

1. Summary

- 1.1 This report seeks approval for the introduction of an Additional Licensing scheme in the whole area of Brent and to defer a decision on introducing Selective Licensing in Brent to the next available meeting following a further two month consultation on which wards should be covered. Drawing on a range of evidence and the outcomes of an extensive consultation exercise it explains the basis and rationale for the schemes.
- 1.2 The Private Rented Sector now constitutes a third of the housing in Brent and plays a very important role in meeting the housing requirements of residents. Much of the sector provides decent accommodation and is reasonably well-managed but there are problems associated with parts of the sector arising from poor management and property conditions, and related problems of anti-social behaviour.
- 1.3 To address these, extensive public consultation was undertaken from December 2013 to early March 2014 on proposals to extend licensing from larger HMOs, which are subject to Mandatory Licensing, to all HMOs in the borough (Additional Licensing). In addition consultation was conducted on the proposal to licence all private rented properties in selected areas of the borough with three wards initially identified (Selective Licensing).
- 1.4 A significant number of consultation responses were received from private landlords, private tenants, other residents and businesses. Following consideration of these it is proposed to proceed with the introduction of Additional Licensing, which will cover all HMOs in the borough. It is also proposed to defer a decision regarding introducing Selective Licensing of private rented properties so as to allow time for further consultation in two additional wards. Thereafter, the Executive will be invited to make

a decision on introducing Selective Licensing and how widely within the borough this should be introduced.

2. Recommendations

2.1 That the Executive:

- 2.1.1 Considers the evidence and the responses to consultation on Additional and Selective Licensing set out in this report and determines whether the proposed schemes should be introduced.
- 2.1.2 Subject to 2.1.1 above, agrees that the legal requirements for introducing additional licensing for the whole area of the borough of Brent as set out in paragraphs 11.1 to 11.6 of this report have been met.
- 2.1.3 Subject to 2.1.1 and 2.2.2 above, agrees to authorise the designation of an Additional Licensing area to cover the whole borough of Brent, as delineated and edged red on the map at Appendix 3, to take effect from 1 January 2015 and to last for five years from that date.
- 2.1.4 Agrees that the council will begin to accept applications for Additional Licensing from 1st November 2014, in anticipation of the scheme coming into effect on 1st January 2015.
- 2.1.5 Agrees that authority to issue the required statutory notifications in relation to the Additional Licensing Scheme designation is delegated to the Director of Regeneration and Growth
- 2.1.6 Defers the decision to proceed with Selective Licensing in Wembley Central, Harlesden and Willesden Green to a future Executive meeting and before then, proceeds with:
 - i. Further consultation over a two month period on whether other wards, namely Dudden Hill and Mapesbury, should be included in addition to Harlesden, Wembley Central and Willesden Green in the areas to be subject to a Selective Licensing scheme.
 - ii. Further analysis and consideration of the evidence relating to additional wards.
- 2.1.7 Agrees that the fees for Additional Licensing will be set at £550 for the five-year licensing period.
- 2.1.8 Agrees that, subject to further consultation, authority should be delegated to the Director of Regeneration and Growth to agree the basis for and level of any discounts to be applied to these fees.
- 2.1.9 The Executive is asked to note that the Additional Licensing scheme will be kept under review annually. Any significant changes, including the withdrawal of a licensing designation, will be subject to further consultation and a decision by the Executive.

3. Background

- 3.1 Under the Housing Act 2004, there are three forms of licensing relating to private rented housing available to local authorities:

(a) Mandatory Licensing

All local authorities are obliged to run a licensing scheme covering Houses in Multiple Occupation (HMOs) that have three or more storeys and are occupied by five or more people. A scheme has been in operation in Brent since 2006.

(b) Additional Licensing

Section 56 of the Housing Act 2004 provides a power to licence HMOs not covered by mandatory licensing; defined as properties containing 3 or more separate households in a property of no more than 2 floors. Under Additional Licensing, local authorities can designate an area for an initial 5 years but must be satisfied that a significant proportion of the HMOs in the area are being managed sufficiently ineffectively as to give rise to one or more particular problems, either for those occupying the HMOs or for members of the public.

(c) Selective Licensing

Under Part III of the Act, local authorities can introduce Selective Licensing schemes that focus on improving the management of privately rented properties accommodating single households as well as HMOs. Areas designated for Selective Licensing must demonstrate low housing demand or be experiencing 'significant and persistent' problems with anti-social behaviour.

The requirements for Additional and Selective Licensing are considered further below.

- 3.2 The private rented sector has grown across London in the ten years between the 2001 and 2011 Census exercises and growth in Brent has been particularly pronounced. In 2001, the private rented sector represented almost 18% of the stock and by 2011 had grown to over 28%. Latest estimates indicate that the sector comprises around 35,000 properties - over 31% of the stock, making it bigger than the social rented sector in Brent.
- 3.3 The sector is therefore a vital resource that has grown in response to demand, particularly as house purchase has moved increasingly out of reach for Brent residents and access to social housing is restricted by short supply. Much of the sector in Brent offers good accommodation but there is also evidence of poor management and the quality of some rented accommodation is low and, in some cases, unsafe.
- 3.4 There is also evidence that poorly-managed privately rented properties have a negative impact on some neighbourhoods. Anti-social behaviour, nuisance neighbours, accumulations of rubbish and other problems can be linked to the failure of private landlords to manage their properties and tenancies effectively. Overcrowding, sub letting and illegal conversions are also features of the private rented sector in Brent on the back of huge demand for housing in the borough and all contribute to neighbourhood problems.
- 3.5 In response to the rapid growth of the sector and concern about standards of management and maintenance, Housing Quality Network were commissioned in May 2013 to undertake a study to explore the nature and extent of the sector, problems

related to it and possible solutions; in particular, the brief called for consideration of the current and possible future use of the authority's licensing powers.

- 3.6 The findings of the study indicated a correlation between poorly managed private rented housing and the incidence of anti-social behaviour in some areas, suggesting that there was a case for consideration of Selective Licensing. Evidence of poor standards of management and maintenance in HMOs in all parts of the borough suggested that there was also a case for Additional Licensing of HMOs. On the basis of these findings, it was agreed that the council should consult on proposals to extend licensing and, concurrently, gather further evidence that would indicate the most appropriate course of action, including in particular further analysis of the evidence of the connection between private renting and anti-social behaviour. Mayhew Harper Associates were commissioned to carry out this analysis, which confirmed the connection. More detail on the work carried out by HQN and Mayhew Harper Associates, together with other evidence, is set out below and in Appendix 1, while the consultation exercise is also summarised below, with further detail in Appendix 2.
- 3.7 In line with the powers outlined above, this report is concerned with two distinct schemes that will, if introduced, operate in parallel and as part of wider strategies for housing and related issues.

4. Private Renting in Brent and the Role of Licensing

- 4.1 The Housing Act 2004 sets out specific requirements for the introduction of Additional or Selective Licensing. These differ, reflecting the different purposes of each approach and are considered in detail in the legal implications of this report. Evidence gathering and consultation have sought to establish the position in relation to the requirements for each scheme, which are summarised below.

4.2 Additional Licensing

- 4.2.1 Before implementing an Additional Licensing scheme, the authority must "consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public" (s.56 (2) HA 2004).
- 4.2.2 Before making a designation, the authority must:
- (a) Take reasonable steps to consult persons who are likely to be affected by the designation; and
 - (b) Consider any representations made in accordance with the consultation and not withdrawn.
- 4.2.3 It is also a requirement (as it is with Selective Licensing) that any exercise of the power is consistent with the council's overall Housing Strategy and that a co-ordinated approach is taken in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector. The authority must also consider whether any other course of action – for example the use of other enforcement powers – would be effective and whether the designation of Additional Licensing will assist in dealing with identified problems. Also, the authority must have regard to any information regarding the extent to which any codes of practice

approved under section 233 of the HA 2004 have been complied with by persons managing the HMOs in the area in question. The legal requirements which the Executive has to consider before authorising the introduction of an additional licensing scheme are set out in paragraphs 11.1 to 11.6 of this report.

4.3 Selective Licensing

4.3.1 Selective Licensing is intended to assist in dealing with one or both of two problems: low demand and anti-social behaviour. Clearly, the former is not relevant in Brent and the focus has therefore been on anti-social behaviour. The relevant set of general conditions is:

- a. that the area is experiencing a significant and persistent problem caused by anti-social behaviour;
- b. that some or all of the private sector landlords who have let premises in the area (whether under leases or licences) are failing to take action to combat the problem that it would be appropriate for them to take, and;
- c. 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.80(6) HA 2004)

4.3.2 As with Additional Licensing, the requirements summarised in 4.2.3 above apply. The legal requirements which the Executive has to consider before authorising the introduction of a selective licensing scheme are set out in paragraphs 11.11 to 11.17 of this report.

4.4 The Private Sector in Brent

4.4.1 With support from HQN and Mayhew Harper Associates, data provided mainly from council sources and the Metropolitan Police has been used to map the extent of the private rented sector, identify problems attributable to it and assess the link between the sector and a range of anti-social and criminal activity. Analysis also draws on responses to consultation set out in section 5 and Appendices 1 and 2.

4.4.2 As noted above, the sector has grown significantly. Wards with over 2,000 properties are Willesden Green and Harlesden, while wards with the highest percentage of private renting are Mapesbury (44%), Willesden Green (42%) and Kensal Green (35%). The largest increases in private renting between 2001 and 2011 occurred in Harlesden and Kensal Green. The south and south-east of the borough have the largest concentrations of private renting, with the nature of the stock and historic tenure patterns contributing to this imbalance. However, the sector has also grown in the north of the borough, where owner occupation has been the primary tenure in the past. Appendix 1 maps the distribution of the sector.

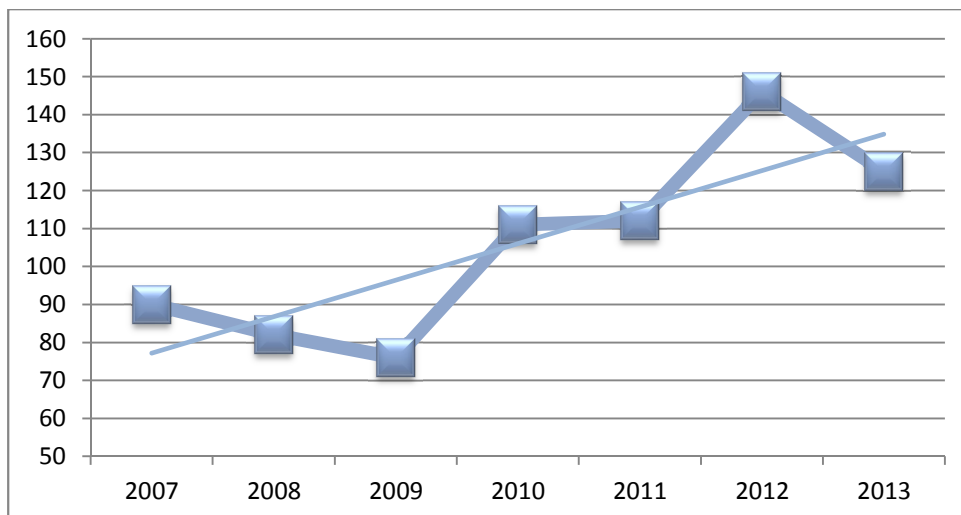
4.4.3 The precise extent of private renting and the number of HMOS within the total is difficult to ascertain; there is no requirement for landlords or tenants to inform the council or others of their status in most cases and there is a constant flow of properties into and out of the sector. The HQN study used data from the 2011

Census, which although reliable contains some under-reporting and only provides the picture for a particular point in time. Mayhew Harper Associates' analysis uses a predictive model, based on council data – for example Housing Benefit claims and other engagement with landlords and tenants - which arrives at a higher total. Both methods demonstrate the growth in the sector and the number of both HMOs and single household lets.

4.5 Additional Licensing

- 4.5.1 With regard to Additional Licensing, evidence focusses on the distribution of HMOs within the sector and quality of management. Since 2006, the council has granted over 300 HMO licences under the mandatory scheme imposed by the Housing Act 2004. However, these larger properties represent only a small proportion of the total. While it is not possible to give a precise figure for the number of HMOs, analysis indicates that the total of HMOs that would require a licence is likely to be at least 6,000 and may be as high as 16,000. One indicator of the increase in private renting overall is that the Census showed an increase of 10,484 properties in Brent since 2001, while only 6,475 new homes were built. It is likely that the remaining 4,000 units have been created by sub-division and conversion of property in the rental market. While some of these conversions may have created new single-family dwellings - for example by conversion of a house into self-contained flats - it is clear that many have involved the conversion of single-family dwellings to multi-occupancy use. Planning Enforcement Officers believe that many of these conversions may be illegal and potentially hazardous. In addition, experience in other boroughs suggests a significant increase in sub-letting – either with or without the knowledge of the landlord – driven in the main by tenants sub-letting rooms to help in paying high rents.
- 4.5.2 Mapping of the sector indicates that, in line with the overall distribution of private rented housing, there are particular concentrations of HMOs in the wards south of the North Circular Road but that there are properties in all other wards. Mapping of enforcement action in relation to HMOs indicates that this is also spread across the borough but with higher numbers in the southern areas. Appendix 1 provides further detail while Figure 1 shows enforcement action taken since 2007 against properties, borough wide, that are multi-occupied.

Figure 1: Enforcement Action in Multi-Occupied Properties



4.5.3 Enforcement activity in response to complaints is carried out under the Housing Health and Safety Rating System (HHSRS) and gives an indication of the problems associated with poor management and maintenance of HMOs in Brent. The HHSRS identifies a range of potential hazards and ranks them by categories, the highest risk being classed as Category 1. Of the category 1 hazards identified in HMOs since 2007, the most common are crowding and space, fire, damp and mould growth and excess cold. It should be noted that the chart above shows only those properties where formal enforcement action has been taken. Overall activity in response to complaints is much higher: for example, in 2013/14, 942 cases involving 1590 tenancies were dealt with, the majority of these being resolved by negotiation.

4.5.4 Focus groups run by HQN gave further indications of the range of problems encountered by tenants, residents and agencies working in the sector. Concerns about management included:

- Owner-occupier complaints about run down properties, noise and pests.
- Disrepair.
- Rapid turnover of tenants.
- LIFT, a voluntary sector agency working with single homeless people, reported that 28 of 80 properties recently viewed for clients had been rejected due to poor conditions.

4.5.5 Evidence of these concerns was reinforced in consultation responses from tenants and other residents. These (not including landlord responses) identified widespread problems in relation to the sector of:

- Illegal extensions and conversions, reported by 47%
- Unkempt external appearance and poor maintenance reported by 65%
- Excess refuse and fly-tipping reported by 72.3%
- Other anti-social behaviour reported by 51.3%
- Noise and disturbance from HMO residents reported by 55%
- Poorly maintained properties contributing to the decline of the area, reported by 80%

- Poorly managed properties contributing to the decline of the area, reported by 79.5%

4.5.6 Tenants reported a range of problems, including:

- Poor amenities – 55.5%
- Poor fire safety – 53.4%
- Disrepair – 59.9%
- Poor management of common parts – 53.8%
- Damp and mould – 65.1%

4.5.7 These results, and the other evidence examined, demonstrate that a range of problems in relation to anti-social behaviour and poor maintenance and condition are widespread and relate to inadequate management of HMO properties in the borough. In summary, the evidence supports the view that there is a strong case for the introduction of Additional Licensing. This would apply to all HMOs in Brent.

4.6 Selective Licensing

4.6.1 There is some overlap between the requirements for Additional and Selective Licensing in terms of relevant evidence; for example, poor management leading to problems for other residents in the vicinity of private rented homes is a factor in both. However, the purposes of each scheme differ and Selective Licensing is concerned in particular with the impact of anti-social behaviour.

4.6.2 It should be stressed that the research does not set out to prove a causal link between incidents of ASB and any *particular* property, landlord or tenant. Nor is it implied that all landlords or tenants are responsible for ASB in an area or that licensing alone is the solution to these problems. The focus has been on collecting evidence that would demonstrate whether or not there is a correlation between levels of ASB and related criminal activity and the scale of private renting in wards in Brent, within the meaning set out in the legislation and, in particular, whether there is a significant and persistent problem.

4.6.3 Focus groups and other evidence, particularly from consultation responses, noted concerns relating to overcrowding and poor management in the sector and its contribution to:

- Refuse and fly tipping.
- Noise in converted properties, although often at a level too low for enforcement action.
- Parking problems, particularly in the south of the borough where off-street parking is not generally available. Although parking issues are not a direct indicator of anti-social behaviour, they provide an indication of local occupancy levels and possible overcrowding, which is a factor underlying anti-social behaviour, particularly in relation to noise and waste issues.
- Increased street drinking in some areas.
- Use of rented properties to run unlicensed businesses or criminal activity such as drug dealing.

- 4.6.4 Examination of data from the Community Safety Team, the Police and other services indicates that the wards with the highest incidence of anti-social behaviour are concentrated in the south and east of the Borough. These wards have relatively high levels of private rented sector stock, apart from Stonebridge which has a high concentration of social housing (although it should be noted that a significant number of homes bought under Right to Buy are now let privately). The only ward in the south of the Borough that does not feature in this list is Brondesbury Park (ranked only seventh highest in the Borough for relevant anti-social behaviour).
- 4.6.5 Criminal activity with anti-social behaviour undertones as recorded by the Metropolitan Police is distributed more widely across the borough than the anti-social behaviour recorded by the Council's Environmental Service. Nonetheless, the data indicates that many of these crimes occur in the south of the borough, with Harlesden particularly affected by high rates of certain types of criminal activity. Wembley Central also features prominently in these statistics. Wembley's status as the Borough's principal shopping area, where disproportionately high levels of crime are often found, together with the proximity of Wembley Stadium in an adjoining ward may influence Wembley's high ranking. However, it is worth noting that reports of anti-social behaviour emanate from residential streets rather than the High Road.
- 4.6.6 The Community Safety team collects data on anti-social behaviour by ward and by tenure. This shows that in the three years to 2012/13, 96 anti-social behaviour incidents were associated with premises in the private rented sector throughout the Borough. The six wards where the most anti-social behaviour was recorded were, in order, Willesden Green, Mapesbury, Wembley Central, Alperton, Northwick Park and Harlesden. It needs to be noted here that the number of incidents was small – less than 35 a year – although it should also be stressed that this represents only a proportion of all anti-social behaviour incidents, not all of which are reported to the Community Safety Team, either because they are reported to the police, because they are examples of other kinds of anti-social behaviour such as fly-tipping or because they are reported by social housing tenants, who are likely to inform their landlord rather than another service. Also there are some wards in this list that are unexpected (e.g., Northwick Park), perhaps reflecting reporting patterns rather than levels of anti-social behaviour experienced on the ground.
- 4.6.7 Consultation responses provided many examples of serious and persistent anti-social behaviour connected to private rented housing and these are covered in Appendices 1 and 2.
- 65.4% of residents and businesses and 72.3% of tenants reported problems with rubbish dumping and refuse
 - 53.3% reported problems with nuisance neighbours
 - 57.3% reported problems with noise nuisance
- 4.6.9 Consultation responses on a ward basis were also analysed. Although a relatively small number of respondents provided the information necessary to identify the ward they lived in, responses indicated particular concerns about the three wards identified in the proposal as well as other wards.
- 4.6.10 Mayhew Harper Associates analysis correlated the concentration of private renting with ASB, fly tipping and graffiti at ward level. This found that there was:

- A 56% correlation between properties likely to be HMOs and ASB/noise intensity
- A 73% correlation between properties likely to be single family rented households and fly tipping intensity by ward
- A 42% correlation between properties likely to be single family rented households and graffiti intensity at ward level.

4.6.11 More detail on the methodology and findings is set out in Appendix 2 but an important finding from this analysis is that there is evidence that a strong link between significant and persistent anti-social behaviour exists in wards beyond the three identified in the early stages of research. In particular, Dudden Hill, Mapesbury and Welsh Harp show a correlation between private renting and anti-social behaviour that equals or exceeds levels in Willesden Green, Harlesden and Wembley Central.

4.6.12 The evidence supports the view initially taken following the HQN study that some landlords are failing to take appropriate action to address anti-social behaviour that is impacting on their tenants and neighbouring homes and businesses. Direct evidence from anti-social behaviour and crime-related complaints and interventions, together with the views and examples provided by consultation, demonstrate that problems persist and are not being addressed effectively.

4.6.13 As noted earlier, licensing is not proposed as the sole solution to problems of anti-social behaviour, but as part of a range of strategies and actions. Licensing is intended to assist as far as these problems occur in and affect the private rented sector in the wards where particular problems have been identified. It will assist in tackling problems of overcrowding and poor management and maintenance, which in turn lead to issues related to noise nuisance, waste and dumping problems and other matters. It will operate in conjunction with, for example, the council's work with the Safer Brent Partnership and the council's waste management and street care strategies, as well as providing landlords and tenants with clear guidance on rights and duties.

4.6.14 The evidence supports the implementation of Selective Licensing in the three wards of Harlesden, Wembley Central and Willesden Green. However, the consultation process and further research provisionally support the case for implementation in wards beyond those identified in the original study and the implications of this are discussed further in section 6 below.

5. Consultation

5.1 Consultation aimed to test the initial analysis of issues in the sector and seek views on and perceptions of problems associated with it and the potential of licensing to address them, in line with the requirements of the Act. Views were sought from landlords and tenants, other Brent residents and local businesses, recognising that issues impact on the whole community. Questionnaires and other exercises focussed on:

- Views on local problems to gauge perceptions and experience of a range of matters either directly or indirectly associated with private renting. This element of the exercise supported the development of the evidence base.
- Views on licensing proposals, including perceptions of its potential efficacy and on the extent and coverage of any scheme.

5.2 In general, consultation showed strong support from tenants and residents for both Additional and Selective Licensing and, in the case of the latter, for a borough-wide scheme rather than one covering only certain wards. Landlords took the opposite view, although a significant minority supported Additional Licensing and there were indications that landlords share concerns about problems caused by poor management and anti-social behaviour. Full details of the consultation process and an analysis of responses are given in Appendix 2, while the following paragraphs highlight some key elements.

5.3 Initial consultation was carried out by HQN as part of their commission from May 2013. This included:

- Focus groups with voluntary sector agencies and council staff
- Interviews with staff from the council, Registered Providers and other organisations
- An online survey of private tenants
- A workshop with members, council officers, police and voluntary sector

5.4 In light of the findings of the HQN report a formal consultation exercise was carried out. This covered two main proposals:

- A proposal to introduce an Additional Licensing scheme to cover the whole borough
- A proposal to introduce a Selective Licensing scheme for the wards of Harlesden, Wembley Central and Willesden Green.

Any change to these proposals would be identified based on the outcome of the consultation exercise and further evidence gathering.

5.5 The main elements of the consultation exercise included:

- On-line surveys accessible through the Consultation Portal: one targeted at landlords and one for tenants, residents and businesses
- Direct mail out of questionnaire to Brent landlords and letting agents
- Direct mail out to residents and businesses in the Harlesden, Willesden Green and Wembley Central wards
- Direct mail out to residents in receipt of Housing Benefit
- Presentation and discussion at a Private Housing Forum meeting
- Presentation and discussions at the Landlord Fair, attended by 100 private landlords
- Presentations to all Brent Connects Forums during January and February 2014:
 - Brent Connects Kilburn & Kensal, 8th January
 - Brent Connects Wembley, 14th January
 - Brent Connects Harlesden, 15th January

- Brent Connects Willesden, 22nd January
- Brent Connects Kingsbury & Kenton, 4th February

5.6 The exercise was promoted in a variety of ways to encourage responses, including:

- Adverts that ran for 4 weeks in the Brent and Kilburn Times
- A radio advertising campaign supported by an interview and phone-in with the Lead Member for Housing
- Alert on the Brent website
- Poster campaign on 80 JC Decaux hoardings across the borough
- Adverts on local buses
- Use of the information screens in the Civic Centre
- Facebook advert that took readers to the consultation portal
- Twitter feed
- Adverts and article in the Brent Magazine, delivered to all Brent residents
- Article in Partnership News, the BHP tenant newsletter
- Press release featured in the local and housing press.

5.7 736 responses to the questionnaire were received: 149 from landlords and agents and 587 from tenants, other residents and businesses. In addition direct contact was made through the various meetings and forums with over 350 Brent residents including a large number of private rented landlords operating in the borough.

5.8 Problems in the Private Rented Sector

5.8.1 Responses to the questionnaire provided clear indications of the views of tenants, residents, businesses and landlords. A full analysis is provided in Appendix 2, but some significant findings are highlighted here.

5.8.2 In terms of overall perceptions of their neighbourhood among tenants, residents and businesses:

- 62.6% felt that poorly maintained properties were a problem
- 65% felt that poorly managed properties were a problem
- 90.3% agreed that landlords have a responsibility to manage effectively

5.8.3 Asked to identify the main problems experienced in their homes, tenants cited:

- Poor amenities – 55.5%
- Disrepair – 59.9%
- Damp and mould – 65.1%

5.8.4 Asked about problems in the vicinity, Brent businesses cited:

- Poor external appearance of properties – 65.1%
- Refuse, fly-tipping etc. – 65.4%
- Noise from neighbouring properties – 55.1%

5.8.5 Asked about the significance of poorly maintained or poorly managed properties, landlords responded as follows:

- 45.8% said poor maintenance is a problem (43.% said there was no problem)
- 58.4% said poor management is a problem (28.9% said there was no problem)

It is striking that only a minority of landlords appear to feel that there are no problems relating to the sector.

5.8.6 Responses to the impact of anti-social behaviour by tenants showed a similar pattern:

- 43.7% felt there was some problem with their own tenants
- 58.4% felt there was a problem with tenants of other landlords (with over 30% identifying problems as serious or very serious).

5.8.7 In summary, the results of the exercise show:

- Evidence of problems with the management of HMOs relevant to Additional Licensing.
- Evidence of problems with anti-social behaviour relevant to Selective +Licensing

5.9 Views on Additional Licensing

5.9.1 Tenants, residents and businesses showed strong support for Additional Licensing, with 77.1% supporting introduction and, of those who supported the proposal, 76.6% agreeing that it should be borough-wide.

5.9.2 Among landlords, 55.7% did not agree that Additional Licensing would improve the management and maintenance of properties but a significant minority of 23.5% took the opposite view. While 57.7% opposed the introduction of Additional Licensing, an even larger minority of 35.6% supported the proposal.

5.9.3 Across all respondents, including landlords, 56.9% supported the introduction of Additional Licensing.

5.10 Views on Selective Licensing

5.10.1 A large majority (75.6%) of tenants, residents and businesses agreed that Selective Licensing would assist in reducing anti-social behaviour. 65.5% agreed with the introduction of a scheme and in terms of the area to be covered:

- 70.6% supported introduction in Willesden Green
- 71.7% supported introduction in Harlesden
- 68.6% supported introduction in Wembley Central
- 51.8% supported a borough-wide scheme

5.10.2 Landlords were sceptical about the impact of licensing on anti-social behaviour, with 57.7% saying that it would not assist, although 23.5% agreed that it would. Asked about the impact of Selective Licensing on the quality of management and

maintenance, a smaller majority of 51% felt that Selective Licensing would not lead to improvement, while 30.1% agreed that the impact might be positive.

5.10.3 67.1% of landlords opposed the introduction of Selective Licensing, with only 17.4% in favour. However, views on specific wards differed, with support for Selective Licensing at the following levels:

- Willesden Green – 22.8%
- Harlesden – 26.2%
- Wembley Central – 21.5%

5.10.4 Across all respondents, including landlords, 30% supported the introduction of Selective Licensing.

5.11 Other Points from Consultation

5.11.1 In general, responses from individual landlords, both to the questionnaires and in discussion at public meetings, concentrated on a fairly narrow range of objections: that licensing is primarily a revenue-raising exercise for the council, effectively imposing a “tax” on landlords; that licensing obliges the majority of good landlords to pay for the actions of a minority; that licensing introduces an unnecessary layer of bureaucracy and that charging fees will lead to increased rents. More detailed collective responses were submitted by the National Landlords Association (NLA) and the Residential Landlords Association (RLA). These and other comments are addressed in Appendix 2.

5.11.2 Each of the Brent Connects Forums was attended by around fifty residents. It is not advisable to draw firm conclusions from what were, inevitably, short discussions with groups that are not necessarily representative and which were made up mainly of local residents who were neither landlords nor tenants. However, officers also spoke to residents individually and there was, with some exceptions, strong support for licensing proposals. The main feedback included concerns as to whether licence fee costs would be passed on to tenants and whether income from licensing would be used to fund other council activity; it was explained that landlords may be able to pass on fees but that levels would be proportionate and should not have a significant impact on rents, while strict rules prevent use of fee income for other purposes. There were also concerns about the council’s willingness to take robust enforcement action.

5.11.3 The Private Housing Forum and the Landlord Fair also heard presentations on the proposals and comments were invited. Both these events were attended primarily by landlords, although a small number of tenants were present at the Forum and agents and landlord organisations were represented at the Fair. The main concerns expressed mirrored the questionnaire responses summarised in paragraph 5.11.1 above.

5.8 More detail on comments received and the council’s response is set out in Appendix 2.

6. Conclusions from the Evidence and Consultation

- 6.1 The evidence required by the legislation to support each of the proposals differs and ultimately it is this that should govern the decision in principle as to whether the implementation of either or both schemes is justified. Outcomes from consultation indicate the level of support for or opposition to the proposals, as well as providing further evidence and an indication of areas of concern.
- 6.2 The outcomes of consultation are positive and provide additional evidence in support of the case for the extension of licensing. While a numerical majority of all responses supported both proposals there were, perhaps inevitably, differences of view between different interest groups. While it may have been anticipated that landlords and landlord groups would oppose licensing in principle, as they have done elsewhere, the objections put forward raise genuine concerns that have helped to shape the detail of the proposals and will be given due weight in finalising operational arrangements.
- 6.3 Given the size of the sector and the extensive publicity devoted to the exercise, the number of responses was not high (particularly from landlords, given that the size of the stock and experience in other authorities suggests that the number of landlords operating in Brent is likely to be well over 15,000), although it was broadly comparable to the levels achieved by other boroughs that have undertaken similar projects. Levels of support and opposition to the proposals also reflected experience in other authorities. Responses supported the original proposition that there are significant concerns about both standards of management and maintenance in relation to Additional Licensing and neighbourhood issues in relation to Selective Licensing. There was also strong acknowledgement of the importance of good management by landlords and of the need for the council to intervene appropriately.
- 6.4 From the start, a number of options have been open, with each intended to be tested by consultation and evidence gathering. These are summarised below.

6.5 Mandatory Licensing Only

- 6.5.1 Landlords, in particular through representations from the NLA and RLA, have argued that the council has sufficient enforcement powers at its disposal so that, coupled with existing licensing arrangements, there is no need for any further scheme. In part, this is an argument against the principle of licensing, which is not accepted; the licensing powers in the 2004 Act are in themselves recognition that other powers alone may not always be sufficient. However, it is accepted that the adoption of additional mechanisms must be justified in law and in practice and that maintaining existing arrangements is an option to be considered.
- 6.5.2 In making the recommendations in this report, officers have considered the use of existing powers. The Mandatory Licensing Scheme covers only a very small proportion of all HMOs in the borough but has proved effective in delivering improvement in management and maintenance and it can be expected that extension of similar arrangements to other HMOs can deliver similar outcomes. Some of the limitations of existing enforcement powers have been referred to earlier and there are concerns about the time-consuming, complex and expensive characteristics of the regime. The regime is by its nature largely reactive, with officers responding to

tenant complaints, which may be discouraged by lack of security of tenure and fear of retaliatory eviction. Both landlords and tenants find the enforcement regime impenetrable and difficult to understand and there is clearly a need for better information, which is considered further below.

- 6.5.3 Analysis of enforcement activity which applies across the private rented sector since 2007 (see Appendix 1) shows a steady increase over the period, but this is coupled with an increase in complaints for all property types. It can be inferred that the current approach being taken to deal with private rented sector properties has not led to a reduction in complaints/requests for services being made. While enforcement activity has remedied problems in individual dwellings it is not, by its nature, able to raise standards generally.

6.6 Designation of Additional Licensing

- 6.6.1 The conclusion of this report is that there is clear evidence to show that the number of HMOs in Brent is much larger than the number covered by Mandatory Licensing and that there is evidence of poor management within the meaning of S56, Part II, Housing Act 2004 that justifies the designation of an Additional Licensing scheme for the whole borough. The spread of HMOs and the spread of enforcement activity and requests for assistance demonstrate that problems are not confined to any one neighbourhood or group of neighbourhoods.
- 6.6.2 Additional Licensing will provide greater clarity for both landlords and tenants over their respective rights and responsibilities and means of redress. It should be stressed that licensing does not replace or override other paths to enforcement, which will continue to operate in tandem with it. Rather, it provides a clear framework within which enforcement powers can be used and targeted most effectively.
- 6.6.3 When making a decision to authorise the designation for an Additional Licensing scheme, the Executive needs to be satisfied that the statutory requirements set out in paragraphs 11.1 to 11.6 below are met.
- 6.6.4 Under section 56(2) of the Housing Act 2004 ("HA 2004"), before making a designation regarding additional licensing, the Council must consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public. The evidence and outcomes from consultation demonstrate that poor management of HMOs is widespread, affecting all wards in Brent. Further, tenants, residents, businesses and, albeit to a lesser extent, landlords have all expressed concern and/or have cited specific problems in relation to HMOs.
- 6.6.5 Under section 56(3) of the HA 2004, before making a designation regarding additional licensing, the Council must:
- (a) Take reasonable steps to consult persons who are likely to be affected by the designation; and
 - (b) Consider any representations made in accordance with the consultation and not withdrawn.

- 6.6.6 The consultation process has been comprehensive and widely promoted and, as noted elsewhere in this report and in Appendix 2, views expressed have assisted in shaping the proposals.
- 6.6.7 Under section 56(5) of the HA 2004, in forming an opinion as to the matter mentioned in section 56(2) of HA 2004, the Council must have regard to any information regarding the extent to which any codes of practice approved under section 233 of the HA 2004 have been complied with by persons managing the HMOs in the area in question. The relevant codes of practice are: The Housing (Approval of Codes of Management Practice) (Student Accommodation) (England) Order 2006 (2006/646) and The Housing (Approval of Codes of Management Practice) (Student Accommodation) (England) Order 2008 (2008/2345). These orders were revoked by The Housing (Codes of Management Practice) (Student Accommodation) (England) Order 2010 (2010/2615) which came into force on 25 November 2010. The majority of student accommodation in Brent is exempt under the terms of the Act and any relevant accommodation will be addressed in accordance with the code of practice..
- 6.6.8 Under section 57(2) of the HA 2004, the Council must ensure that any exercise of the power (additional licensing designation) is consistent with the Council's overall housing strategy. The proposals set out in this report arose from consultation on the council's draft Housing Strategy, which will be submitted to the Executive for approval in June 2014. In particular, priorities identified include the need to respond to the rapid growth of the sector and concerns over conditions and standards of management and the rise in homeless applications from the sector. The council's priority is to support an effective, accessible and high quality private rented sector that will meet a range of needs for Brent residents.
- 6.6.9 Under section 57(3) of the HA 2004, the Council must also seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector, both:
- (a) As regards combining licensing (under Part 2 of the HA 2004 – additional licensing) with other courses available to them, and
 - (b) As regards combining licensing with measures taken by other persons.
- 6.6.10 Homelessness and empty property are priorities the council's Housing Strategy and the current Homelessness Strategy. Action to improve the condition and management of private sector housing is an identified priority, as is action to ensure that best use is made of the housing stock across all tenures, including bringing empty property back into use. The council's approach to anti-social behaviour is set out in the Safer Brent Partnership Strategic Statement and relevant strategies are considered further below. Licensing will assist, when co-ordinated with the other actions identified in these documents, in delivering the council's strategic objectives.
- 6.6.11 Under section 57(4) of the Housing Act 2004, the Council must not make a particular designation under section 56 of the HA 2004 unless-
- (a) They have considered whether there are any other course of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question, and
 - (b) They consider that making the designation will significantly assist them to deal with the problem or problems (whether or not they take any other course of action).
- 6.6.12 The role of licensing together with other courses of action, in particular the council's enforcement powers, is considered at 6.5.2 above. The evidence and responses

from consultation indicate the limitations of existing approaches, which have failed to deliver the scale of improvement required.

6.7 Designation of Selective Licensing in Three Wards

- 6.7.1 The conclusion of this report is that there is clear evidence to support a Selective Licensing designation in the three wards of Harlesden, Wembley Central and Willesden Green (but see 6.8 below). The purpose of Selective Licensing is to address anti-social behaviour and, as with Additional Licensing, the designation does not replace other powers or actions that the council and its partners may take. Rather, the intention is that Selective Licensing will act as one of a range of tools and provide a framework within which these can work most effectively.

6.8 Designation of Selective Licensing Borough-wide or in Additional Wards

- 6.8.1 The conclusion of this report is that there is not sufficient evidence to support a borough-wide Selective Licensing designation, despite significant support for this option from tenants and other residents. Although ASB occurs in all wards, levels vary, as does the extent of private renting. Although other boroughs have elected or are proposing to introduce selective licensing on a borough-wide basis, any decision must be based on conditions in Brent.
- 6.8.2 However, research and evidence gathering since publication of the original proposals also indicate that there are other wards with similar or higher levels of problems relating to anti-social behaviour linked to high concentrations of private rented housing and accordingly that further investigation and consultation is warranted to consider the possible extension of Selective Licensing beyond the three wards originally identified.
- 6.8.3 In particular, the work undertaken by Mayhew Harper Associates suggests an alternative approach. Their analysis confirms the status of Harlesden, Wembley Central and Willesden Green among the wards experiencing significant and persistent anti-social behaviour linked to the private rented sector. However, it also identifies some neighbouring wards such as Dudden Hill and Mapesbury as exhibiting similar problems.
- 6.8.4 Mayhew Harper's research, based on a mix of indicators, found that Wembley Central and Willesden Green were in the top five wards for anti-social behaviour, whilst Harlesden was in sixth place. The top five also included Dudden Hill (in first position), Welsh Harp in third position and Mapesbury in fifth. Welsh Harp may be anomalous as it contains open space and may therefore owe its higher position to fly tipping and graffiti, in which case Harlesden moves into fifth place. While this confirms that the three wards originally identified experience significant problems, Dudden Hill shows an even higher correlation and Mapesbury a comparable one to the three wards initially identified.
- 6.8.5 The consultation that has been undertaken was borough-wide but a more intensive approach was used in the three wards originally proposed for Selective Licensing,

including a postal survey of all residential properties in each ward. In view of the evidence of comparable problems in Dudden Hill and Mapesbury it is proposed to undertake a further period of consultation through a comprehensive survey in these wards.

- 6.8.6 Following this additional consultation and consideration of the responses a further report will be made to the Executive for decision on the extent of the area to be designated for Selective Licensing.
- 6.8.7 In light of the elevated levels of ASB and high levels of private renting in Wembley Central there is a strong case to introduce selective licensing in this ward. However, the research has found a particular concentration of HMOs in this ward, which would in any case be covered by the proposed borough-wide Additional Licensing scheme, and further consideration will be given to whether this measure could be adequate in this context. The results of that examination will be reported further to the Executive together with the results of the additional consultation in Dudden Hill and Mapesbury wards.

6.9 Other Issues Arising from Consultation

- 6.9.1 Landlords and landlord groups presented a number of points and suggestions that have been taken into account in developing final proposals. These are covered in more detail in Appendix 2 but some are worth highlighting here.
- 6.9.2 Responses stressed the need for better information, training and advice for both landlords and tenants, either as an alternative or an adjunct to licensing proposals. The consultation paper made it clear that it is the council's intention to provide and support such services, including voluntary accreditation schemes such as the London Landlord Accreditation Scheme (LLAS) and those run by the national landlord organisations. Brent Housing Partnership is in the process of establishing a lettings agency service that will be available to landlords and tenants in the borough, providing a full range of services.
- 6.9.3 There was particular concern over fees. Officers believe that the fees proposed in the consultation documents are proportionate and reasonable and that, even if landlords choose to take account of them in rental charges, the impact on rents and affordability will be minimal. Experience in other authorities where licensing has been introduced does not indicate any noticeable effect on the market, wither in terms of rent levels or the willingness of landlords to let. The period between the decision to proceed and the implementation of both schemes, including the further consultation required to consider additional wards for Selective Licensing, provides an opportunity for further consideration of fees, with particular regard to the options for discounted fees, in discussion with landlords and landlord representatives. As noted earlier, fees should be set in relation to the costs of administration and it is not permissible for the council to either make a surplus or use fees for other purposes. Also, licence fees cannot be used to fund the costs of enforcement against landlords who have not obtained a licence from the Council.

6.10 Objectives and Anticipated Outcomes

- 6.10.1 Additional and Selective Licensing are separate schemes with distinct but related aims. The former focusses on HMOs and is intended to provide clarity about standards and conditions and to facilitate intervention where problems occur. The latter is aimed primarily at tackling anti-social behaviour related to private renting but, in doing this, aims to deliver similar clarity for all rented homes.
- 6.10.2 Neither scheme will operate in isolation and both are part of wider strategies to improve standards and conditions and tackle neighbourhood problems. The Housing Strategy is currently in draft form, has been subject to extensive public consultation and will be presented to the Executive for approval in June 2014. It identifies addressing the growth of the private rented sector and associated problems as a high priority, recognising that a quality, well-managed rental market is an essential resource.
- 6.10.3 The Borough Plan 2013-14 notes that rapid population growth has increased the pressure on available housing, and that the huge increase in the private rented sector is a major concern, especially in relation to standards, overcrowding and illegal lettings such as 'beds in sheds'. Although the level of crime in the borough has fallen significantly over the past few years, fear of crime and antisocial behaviour remain an issue for many Brent residents, such that preventing and reducing it are key tasks. Making sure that the borough is clean and attractive and feels safe and secure by maintaining streets and neighbourhoods to a high standard is also an identified priority. The plan sets targets for reducing the number of graffiti incidents alongside a 10% reduction in the incidence of fly-tipping and dumped waste and improving waste arrangements and tidiness in HMOs through partnership work with landlords and tenants, as well as raising living standards in the private rented sector by working more closely with landlords to improve the quality and overall management of their properties. Licensing is identified as a potentially valuable element in securing these improvements.
- 6.10.4 The Safer Brent Partnership Strategic Statement identifies priorities for the period to December 2014. A focus on reducing the number of incidents in crime hotspots like Harlesden, Wembley Central and Kilburn is identified, while reducing anti-social behaviour – tackling ways of behaving that make people feel uncomfortable or unsafe in our shared public spaces – is a high priority. This includes tackling hate crime and an approach to safer neighbourhoods that encompasses environmental crime such as fly-tipping. Within the overall aim of increasing confidence and satisfaction, fire safety and awareness is a priority. Each priority will have a lead officer and appropriate partnership support to drive progress, bringing together the partners required to develop a work programme for the actions in the plan and using an optimum number of performance indicators to assess progress. Priorities and objectives for licensing will be incorporated into the work programme. There will be engagement with private landlords and their representatives and tenants and theirs in the development of operational arrangements for the schemes following implementation.
- 6.10.5 In addition, improving physical standards and the quality of management in the sector will deliver wider social and health benefits. The links between poor housing and poor health – for example the impact of damp and mould growth on respiratory

conditions and the impact of poor housing on mental health – are well-established. Improved quality in all sectors can therefore have a positive effect on demand for health services and individual health and well-being. Similarly, it is well-understood that poor housing conditions and overcrowding in particular have a negative impact on educational attainment. While the primary aims of licensing are distinct, it is expected that it will assist the council and partners to achieve objectives in these and other areas.

6.10.6 Overall, the intention is that licensing should assist the local rental market through provision of clear standards through which landlords will operate on a level playing field and tenants will know what they should expect. While licensing will impose significant penalties on rogue landlords and parallel enforcement activity will be targeted at the worst properties and landlords who breach licensing conditions and HHSRS standards, a primary intention of the scheme is to support and encourage landlords who provide a good service and develop effective partnerships with the sector. Over sixty landlords who responded to the questionnaire indicated that they would be interested in regular meetings with the council to this end.

6.10.7 Both schemes will include a range of incentives, details of which will be subject to further discussion with landlords and landlords' representatives. At this stage, it is envisaged that incentives may include:

- Discounts for landlords with multiple properties
- Discounts for landlords who are already members of or agree to become members of a recognised accreditation scheme
- Support and advice on achieving accreditation
- Provision of lettings agency services through BHP
- Access to accredited training provision
- Access to advice and support over tenancy and property issues
- Access to information for landlords and tenants
- Enhanced access to Green Deal and ECO funding through the council's recently appointed ECO Delivery Partner
- Access to other grant funding – for example Empty Property Grants.

6.10.8 The original proposal highlighted the possibility of a discount for landlords who enter the scheme in its early stages – a so-called “early bird” discount of the kind that has been made available by other authorities such as Newham. However, it has been argued by the RLA that such discounts are contrary to the European Directive (European Union Directive 2006/123/EC, Services in the Internal Market) which was discussed in the recent *Hemming v Westminster* case. This question is considered further in the legal implications for this report but, at this stage, it is proposed that no early-bird discount should be offered pending clarification of the legal position.

6.10.9 In the long term, licensing will contribute to improved conditions in the sector and a more stable and accessible rental market. In particular, licensing is expected to assist in encouraging stable, long-term tenancies to the benefit of landlords and tenants. It is worth noting that evidence nationally indicates that the gains from investment in private renting are realised through the ultimate sale of the property rather than rental income, where returns generally cover costs but deliver only limited

revenue gains, especially for landlords owning a small number of properties. In that context, it is in a landlord's interest to invest in the maintenance of the property to maintain or increase its eventual sale value. Licensing and the benefits associated with licensing, such as the opportunity to invest in energy efficiency improvements, will benefit landlords in this regard.

6.10.10 Improved stability in the market will also have a positive impact on the overall accessibility of rented housing and will assist in reducing homelessness and Housing Register applications from the sector, a central aim for the council's overall housing strategy.

6.10.11 In the short term, it is recognised that the implementation of licensing may impact on the willingness of some landlords to let, although as noted above, experience elsewhere suggests that this impact will not be large. To some extent, it is desirable that the very worst landlords, who operate outside the law, should be discouraged and they will be a priority for action within both schemes. It is acknowledged that this may impact on their tenants, including a risk of eviction, although it should also be stressed that tackling "beds in sheds" – the most extreme examples of rogue landlord activity – has not resulted in any rise in homeless applications. Such landlords are a minority and many issues are the results of ignorance or inexperience rather than criminality. Provision of incentives, advice and support is intended to encourage landlords to remain in the sector but, from the perspectives of the council's wider housing and related strategies, the welfare of tenants and the overall stability and efficiency of the market, a slightly smaller but better quality sector is a desirable outcome.

7. Licensing Proposals

7.1 The proposed draft conditions for Additional and Selective Licensing are set out in Appendix 4. Some of these are mandatory requirements under the Housing Act 2004 and therefore must be included in any scheme. Others are discretionary and these conditions and the way in which they will operate in practice will be subject to further discussion in the period leading up to commencement of the schemes. The intention is that any additional burden on landlords should be minimised and that the council's administrative requirements, and by extension the costs of the schemes, should be proportionate.

7.2 As noted above, the council is entitled to cover the costs associated with the scheme through a fee (subject to the provisos set out in 11.26 below) but is not allowed to make a surplus or to use the fee income for purposes unrelated to licensing. To meet these conditions, fees will need to be set at:

- £550 for five years for Additional Licensing
- £350 for five years for Selective Licensing (if introduced)

7.3 It is proposed that discounts to these fees should be applicable, as noted at 6.10.5 above. The nature and application of discounts will be considered further in consultation with Brent landlords and their representatives.

8. Next Steps

- 8.1 A decision to proceed with licensing proposals triggers a formal notification by way of a designation notice, which must be followed by a period of at least three months before any scheme comes into effect. In the case of Additional Licensing it is proposed that this period should be extended to allow sufficient time to make operational and administrative arrangements and to hold further discussions with landlords and other interested parties on the detail of the scheme, in particular to finalise the licence conditions and discounts to be applied. Following this, licensing applications will be invited and processed, and it is expected that this will commence no later than 1 November 2014. This will precede the formal commencement of the Additional Licensing scheme and it is proposed that designation of the scheme should commence from 1st January 2015.
- 8.2 In the case of Selective Licensing, as noted above, there is a need to give further consideration to the scope of the scheme. It is therefore proposed that further consultation should take place over the next two month period following which a further report will be made to the Executive at the earliest opportunity. Subject to the outcome of further consultation and the decision of the Executive it is anticipated that designation of Selective Licensing would similarly take effect from 1st January 2015. However, the Executive will not make a final decision until it considers at a future meeting whether to introduce selective licensing in Brent and for which wards.

9. Equalities Implications

- 9.1 An initial impact assessment is attached at Appendix 5. In general, it is anticipated that licensing proposals will have a positive impact for all protected groups.
- 9.2 It should be stressed that data relating to the protected groups among both tenants and landlords is limited, partly due to the unregulated nature of the sector. Although Census data provides a breakdown of tenure by ethnicity and age, analysis relevant to other issues such as disability has not yet been completed by ONS. Overall, the size of the sector and the estimated number of landlords suggests that there will be members of all protected groups among both tenants and landlords. The sector also contains a mix of household and income types that ranges across the spectrum.
- 9.3 It is likely that tenants most impacted by these proposals will be among the lower income groups in the sector, living on the poorest quality housing and, similarly, that the landlords of these properties will experience the greatest impact from their perspective. In particular, there may be issues relating to people under 35 who are affected by the single room rate for Housing Benefit and are therefore more likely to be living in HMOs. In addition, the most striking finding from the initial analysis is the over-representation of the Other White ethnic group among private tenants. Although further research is required, it may be that this is due to the presence of high numbers of European migrants in the sector. Again, it is likely that many of these are living in HMOs or property in the cheaper end of the market.
- 9.4 The main identified risk of negative impact at this stage is the possibility that the introduction of licensing may lead some landlords – particularly those likely to struggle to comply with licensing conditions – to withdraw from the market and evict their tenants. It is not possible to assess the scale of this risk accurately, although

experience elsewhere has not demonstrated any significant withdrawal from the market. Any impact, in this or other areas, will be monitored closely and will inform regular reviews of the operation of licensing.

- 9.5 In the longer term, licensing will, among its other benefits, provide an opportunity to obtain a more complete picture of the sector and its operation that will assist in identifying issues relevant to protected groups.

10. Financial Implications

- 10.1 The administration of the scheme is such that it is intended to be self financing over a five year period. A fee of £550 relating to the Additional Licensing scheme will be charged per application and is set at a level where the revenue from the fee is intended to cover the costs incurred.
- 10.2 The income will be closely monitored and a team proportionate to the demand for the service will be employed. The costs of the scheme exclude the cost of any enforcement action on non-licensed properties but will cover the cost of processing the license application and of compliance monitoring and enforcement against an applicant who is given a license.

11. Legal Implications

Additional Licensing

- 11.1 Under section 56(2) of the Housing Act 2004 ("HA 2004"), before making a designation regarding additional licensing, the Council must consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.
- 11.2 Under section 56(3) of the HA 2004, before making a designation regarding additional licensing, the Council must:
- (c) Take reasonable steps to consult persons who are likely to be affected by the designation; and
 - (d) Consider any representations made in accordance with the consultation and not withdrawn.
- 11.3 Under section 56(5) of the HA 2004, in forming an opinion as to the matter mentioned in section 56(2) of HA 2004, the Council must have regard to any information regarding the extent to which any codes of practice approved under section 233 of the HA 2004 have been complied with by persons managing the HMOs in the area in question.
- 11.4 Under section 57(2) of the HA 2004, the Council must ensure that any exercise of the power (additional licensing designation) is consistent with the Council's overall housing strategy.
- 11.5 Under section 57(3) of the HA 2004, the Council must also seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector, both:
- (c) As regards combining licensing (under Part 2 of the HA 2004 – additional licensing) with other courses available to them, and
 - (d) As regards combining licensing with measures taken by other persons.

- 11.6 Under section 57(4) of the Housing Act 2004, the Council must not make a particular designation under section 56 of the HA 2004 unless-
- (c) They have considered whether there are any other course of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question, and
 - (d) They consider that making the designation will significantly assist them to deal with the problem or problems (whether or not they take any other course of action).
- 11.7 When making a decision to authorise the designation for an additional licensing scheme, the Executive needs to be satisfied that the statutory requirements set out in paragraphs 11.1 to 11.6 above are met.
- 11.8 Section 55(5) of the HA 2004 (under Part 2 – additional licensing of houses in multiple occupation) states that the Council (as the local housing authority) has the following duties in relation to additional licensing:
- (a) To make such arrangements as are necessary to secure the effective implementation in their district of the licensing regime provided for by this Part (i.e. Part 2 of the HA 2004 regarding additional licensing);
 - (b) To ensure that all applications for licences and other issues falling to be determined by them under this Part 2 (regarding additional licensing) are determined within a reasonable time; and
 - (c) To satisfy itself, as soon as is practically practicable, that there are no Part 1 functions (relating to mandatory licensing) that ought to be exercised by them in relation to the premises in respect of which such applications are made.
- 11.9 As soon as a designation regarding additional licensing is made, pursuant to section 59 HA 2004, the Council must publish in the prescribed manner a notice stating—
- (a) that the designation has been made,
 - (b) whether or not the designation was required to be confirmed and either that it has been confirmed or that a general approval under section 58 of the HA 2004 applied to it (giving details of the approval in question relating to additional licensing),
 - (c) the date on which the designation is to come into force, and
 - (d) any other information which may be prescribed.
- 11.10 The proposed designation in respect of additional licensing will not require confirmation from “the appropriate National Authority” under section 56 of the HA 2004 as designations regarding additional licensing are covered by a General Approval dated 30 March 2010, which was issued by the Department of Communities and Local Government under section 58(6) of the HA 2004.

Selective Licensing

- 11.11 Under section 80(2) HA 2004, before introducing a selective licensing scheme, the Council must consider that –
- (a) the first or second set of general conditions mentioned in s80(3) or (6) of the HA 2004; or
 - (b) any conditions specified in an order under s.80(7) of the HA 2004 as an additional set of conditions [this does not apply here]
- are satisfied in relation to the area.
- 11.12 Section 80(3) HA 2004 refers to the first set of general conditions which relates to low housing demand which is not relevant for the Executive report.

- 11.13 The second set of general conditions is set out in section 80(6) of the HA 2004 and they are as follows:
- (a) that the area is experiencing a significant and persistent problem caused anti-social behaviour;
 - (b) that some or all of the private sector landlords who have let premises in the area (whether under leases or licences) are failing to take action to combat the problem that it would be appropriate for them to take; and
 - (c) 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.
- “Private sector landlord” does not include a registered social landlord within the meaning of Part 1 of the Housing Act 1996.
- 11.14 Under section 80(9) of the HA 2004, before making a designation relating to selective licensing, the Council must-
- (a) take reasonable steps to consult persons who are likely to be affected by the designation; and
 - (b) consider any representations made in accordance with the consultation and not withdrawn.
- 11.15 Under section 81(2) of the HA 2004, the Council must ensure that any exercise of the power (selective licensing designation) is consistent with the Council's overall housing strategy.
- 11.16 Under section 81(3) of the HA 2004, the Council must also seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector, both:
- (a) As regards combining licensing (under Part 3 of the HA 2004 – selective licensing) with other courses available to them, and
 - (b) As regards combining licensing with measures taken by other persons.
- 11.17 Under section 81(4) of the HA 2004, the Council must not make a particular designation (for selective licensing) under section 80 of the HA 2004 unless-
- (a) They have considered whether there are other courses of action available to them (of whatever nature) that might provide an effective method of achieving the objective or objectives that the designation would be intended to achieve; and
 - (b) They consider that making the designation will significantly assist them to achieve the objective or objectives (whether or not they take any other course of action as well).
- 11.18 As for the definition of “anti-social behaviour”, this is set out in section 57(5) of the HA 2004 which states:
- “anti-social behaviour” means conduct on the part of occupiers or, or visitors to, residential premises –
- (a) Which causes or is likely to cause a nuisance or annoyance to persons residing, visiting or otherwise engaged in lawful activities in the vicinity of such premises; or
 - (b) Which involves or is likely to involve the use of such premises for illegal purposes.
- 11.19 When making a decision to authorise the designation for a selective licensing scheme, the Executive needs to be satisfied that the statutory requirements set out in paragraphs 11.11 to 11.17 above are met.
- 11.20 As for the Council's general duties regarding selective licensing under Part 3 of the HA 2004, these are set out in section 79(5) of the Housing Act 2004 which states as follows:

“every local housing authority has the following general duties-

- (a) To make such arrangements as are necessary to secure the effective implementation in their district of the licensing regime provided for by this Part (i.e. Part 3 HA 2004 regarding selective licensing);
- (b) To ensure that all applications for licences and other issues falling to be determined by them under this Part are determined within a reasonable time.”

11.21 As soon as a designation regarding additional licensing is made, pursuant to section 83 HA 2004, the Council must publish in the prescribed manner a notice stating—

- (a) that the designation has been made,
- (b) whether or not the designation was required to be confirmed and either that it has been confirmed or that a general approval under section 82 of the HA 2004 applied to it (giving details of the approval in question relating to additional licensing),
- (c) the date on which the designation is to come into force, and
- (d) any other information which may be prescribed.

11.22 The proposed designation in respect of additional licensing will not require confirmation from “the appropriate National Authority” under section 82 of the HA 2004 as designations regarding selective licensing are covered by a General Approval dated 30 March 2010, which was issued by the Department of Communities and Local Government under section 82(6) of the HA 2004.

Licence Fees

11.23 Section 63(7) of the HA 2004 states as follows regarding fixing licensing fees for additional licensing:

“When fixing fees under this section, the local housing authority may (subject to any regulations made under subsection (5)) take into account—

- (a) all costs incurred by the authority in carrying out their functions under this Part [i.e. Part 2 HA 2004 relating to additional licensing], and
- (b) all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 in relation to HMOs (so far as they are not recoverable under or by virtue of any provision of that Chapter).

11.24 Section 87(7) of the HA 2004 states as follows regarding fixing licensing fees for selective licensing:

“When fixing fees under this section, the local housing authority may (subject to any regulations made under subsection (5)) take into account—

- (a) all costs incurred by the authority in carrying out their functions under this Part [i.e. Part 3 of the HA 2004 relating to selective licensing], and
- (b) all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 in relation to Part 3 houses (so far as they are not recoverable under or by virtue of any provision of that Chapter).

11.25 However, the EU Directive and the Provision of Services Regulations 2009 was subsequently passed. Regulation 18 of the Provision of Services Regulations 2009 states:

“Any charges provided for or by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities.” In essence, the fees must cover no more than the actual cost of the application and authorisation process.

- 11.26 In short, the costs related to the enforcement against landlords that do not have licensed properties are not recoverable when setting the licence fee. When taking legal action against such landlords, legal costs can be recovered when the courts award costs in successful court enforcement actions. However, costs orders for all the legal costs incurred are not always made by the courts and where court enforcement cases are unsuccessful, not only does the Council not recover the legal costs of such cases, they can be liable to pay the costs of the defending parties who successfully defend such enforcement cases. The case of *Hemming v Westminster CC*, which is currently subject to an appeal, restricts the power of the local authority to the power of local authorities to include in setting the licence fee the costs of enforcement against those who have not applied for licences or have not paid the licence fee. Once fees are set, the Council is expected to review its fees and adjust them where necessary to reflect previous deficits or surpluses.

Public Sector Equality Duty

- 11.27 The public sector equality duty, as set out in section 149 of the 2010 Act, requires the Council, when exercising its functions, to have “due regard” to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who have a “protected characteristic” and those who do not share that protected characteristic
- 11.28 The “protected characteristics” are: age, disability, race (including ethnic or national origins, colour or nationality), religion or belief, sex, sexual orientation, pregnancy and maternity, and gender reassignment. Marriage and civil partnership are also a protected characteristic for the purposes of the duty to eliminate discrimination.
- 11.29 Having “due regard” to the need to “advance equality of opportunity” between those who share a protected characteristic and those who do not includes having due regard to the need to remove or minimise disadvantages suffered by them. Due regard must also be had to the need to take steps to meet the needs of such persons where those needs are different from persons who do not have that characteristic, and to encourage those who have a protected characteristic to participate in public life. The steps involved in meeting the needs of disabled persons include steps to take account of the persons’ disabilities. Having due regard to “fostering good relations” involves having due regard to the need to tackle prejudice and promote understanding.
- 11.30 The Council’s duty under section 149 of the Equality Act 2010 is to have “due regard” to the matters set out in relation to equalities when considering and making decisions on the introduction of additional licensing for the area of Brent and the introduction of selective licensing. Due regard to the need to eliminate discrimination, advance equality and foster good relations must form an integral part of the decision making process. When the decision comes before the Executive, Members of the Executive must consider the effect that implementing a particular policy will have in relation to equality before making a decision. An Equality Impact Assessment will assist with this.
- 11.32 There is no prescribed manner in which the equality duty must be exercised, though producing an Equality Impact Assessment is the most usual method. The Council must have an adequate evidence base for its decision making. This can be achieved by means including engagement with the public and interest groups and by gathering relevant detail and statistics.

11.33 The Equality Impact Assessment is set out in Appendix 5 to this report.

12. Staffing Implications

- 12.1 Private Housing Services currently employs a Mandatory HMO Licensing Team Leader and two HMO Licensing Officers. These will form part of a new team tasked to process all licence applications. If the predicted number of applications is received, further license application and administration officers will be employed on a temporary contract basis to deal with the demand. It is thought that the vast majority of license applications will be received in the first year of the scheme and there will therefore need to be more officers employed in year one of the scheme than in years two to five. In addition Licence Enforcement Officers will also need to be employed and this may include the deployment of some existing Enforcement Officers in this role. Detailed staffing and resourcing plans will be developed and will be subject to any necessary staff consultation.
- 12.3 As stated above, all staffing and other required activities will be funded from the income generated by the license fee.

Background Papers

Report from Housing Quality Network

Report from Mayhew Harper Associates

Consultation documents

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