



**Cabinet**  
14 October 2019

**Report from the Strategic Director of  
Community Wellbeing**

**Selective and Additional Licensing in the Private Rented  
Sector in Brent**

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| <b>Wards Affected:</b>   | All  |
| <b>Key Decision:</b>   | Yes  |
| <b>Public Access (Open or Part/Fully Exempt):</b><br>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act) | Open   |
| <b>No. of Appendices:</b>  | <p>Ten Appendices:</p> <p>Appendix 1: Consultation Findings Report (Sept 2019)</p> <p>Appendix 2: Council response to representations</p> <p>Appendix 3: Consultation Proposal and Evidence Report</p> <p>Appendix 4: (A-D) Selective Licensing Scheme Designations</p> <p>Appendix 5: Additional Licensing Scheme Designation</p> <p>Appendix 6: Licensing scheme objectives</p> <p>Appendix 7: Fee structure for Licence Applications</p> <p>Appendix 8: HMO Licence scheme conditions</p> <p>Appendix 9: Selective Licence scheme conditions</p> <p>Appendix 10. Equalities Analysis (EA)</p> |
| <b>Background Papers:</b>  | None   |
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## 1.0 Summary

- 1.1 In April 2014 the Executive approved the introduction of an Additional Licensing scheme, covering all Houses in Multiple Occupation (HMOs) in the borough and in August 2014 approved the introduction of a Selective Licensing scheme, covering all private rented housing in the wards of Harlesden, Wembley Central and Willesden Green. Both schemes came into effect in January 2015 and run to 31<sup>st</sup> December 2019. In June 2018 the selective licensing scheme was extended to the electoral wards of Dudden Hill, Kensal Green, Kilburn, Mapesbury and Queens Park. This latter designation will run until May 2023.
- 1.2 Under the licensing schemes, landlords of privately rented homes within the designations are required to apply to the Council for licences for which fees must be paid. Where licences are granted, the Licence Holder and Manager, if different, are required to comply with property management licence conditions.
- 1.3 On 7<sup>th</sup> June 2019, in consultation with the Leader of the Council, the Lead Member for Housing and Welfare Reform agreed to consult on proposals to renew the 2014 additional and selective licensing and on extending selective licensing to other areas of the borough. The decision was informed by an evidence based report and the relevant Government guidance on the introduction of discretionary licensing schemes. The detailed proposed schemes are:
  - i. To renew the designation of the whole of the borough, as subject to an additional Houses in Multiple Occupation licensing scheme under Part 2 of the Housing Act 2004, with effect from February 2020.
  - ii. To renew the selective licensing scheme designation in the wards of Harlesden, Wembley Central and Willesden Green wards under Part 3 of the Housing Act 2004 on the grounds of poor housing conditions and ASB with effect from 1<sup>st</sup> April 2020, or at a later date in accordance with the statutory time required for the scheme to come into force.
  - iii. To introduce a selective licensing scheme under Part 3 of the Housing Act 2004 to the following designated areas of the borough with effect from 1st April 2020, or at a later date in accordance with the statutory time required for the scheme to come into force, for the reasons as follows:

Designation 2: Queensbury, Fryent and Brondesbury Park – This is along the A5 corridor Grounds; Poor Housing Conditions and ASB

Designation 3: Barnhill and Welsh Harp – Grounds; Poor Housing Conditions, Deprivation and ASB

Designation 4: Northwick Park, Preston, Tokyngton (Excluding Wembley Park), Alperton and Sudbury; Poor Housing Conditions and ASB
- 1.4 The consultation started on the 10th June 2019 and concluded on 25th August 2019. 1,110 individuals or organisations completed the online or postal questionnaire. In summary the results were very similar to previous consultation exercises we have undertaken on private sector licensing, with residents and business being in favour of the schemes and landlords less in favour or not at all. Of those who returned the questionnaire 69.3% were residents or businesses, 27.6% were landlords or agents and 3.2% were other stakeholders.

- 1.5 A further 605 face-to-face interviews were conducted in Brent and a further 102 face-to-face interviews in the surrounding boroughs. From the responses, significant proportions of Brent residents and those residents sampled from “outside of Brent” agreed and were supportive of the proposals.

Deliberative forums were also carried out:

- A large event for landlords and representatives of letting and managing agents, for which around 570 reserved places, and around 300 participants attended. Two deliberative focus groups with local residents, involving 24 participants in total;
- A meeting involving six key stakeholders (including the Fire Brigade, landlord representative bodies, and organisations that support local residents/tenants).
- Written submissions: stakeholders were able to provide their views by writing to LBB or ORS

- 1.6 The findings of the consultation exercise are provided in Appendix 1.

- 1.7 This report makes recommendations in relation to the licensing schemes beyond 31 December 2019.

## 2.0 **Recommendations**

Cabinet is recommended to:

- 2.1 Note the outcome of the consultation process detailed in the Consultation Findings Report of September 2019 [Appendix 1], in particular the representations received and the Council’s consideration thereof, and response to these representations [Appendix 2].
- 2.2 Note the consultation evidence [Appendix 3] relating to the problems being caused by poorly managed HMOs, and also that the report has considered that additional licensing will assist the Council in achieving wider objectives, as well as alternatives to additional licensing.
- 2.3 Note the content of the Equality Impact Assessment as set out in Appendix 10.
- 2.4 Agree, subject to paragraphs 2.1 to 2.3 above, that the legal requirements for introducing additional licensing for the whole of the borough of Brent as set out in paragraphs 10.1 to 10.6 of this report have been met.
- 2.5 Agree, subject to paragraphs 2.1 to 2.3 above, that the Council using its powers under section 56 of the Housing Act 2004, to renew and authorise the designation of the entire borough of Brent as an area subject to additional licensing to last for five years from 1<sup>st</sup> February 2020 or on a later date to be set by the Strategic Director of Community Wellbeing as delineated and edged red on the map at Appendix 5.
- 2.6 Agree that the evidence report [Appendix 3] highlights that the legal requirements as set out in paragraphs 10.11 to 10.21 below for introducing Selective Licensing on the grounds of anti-social behaviour (ASB); and/or poor property conditions; and/or high levels of deprivation have been met with regard to the proposed selective licensing designation areas as summarised in table 2 in section 5.0 below.

2.7 Agree, subject to paragraphs 2.1 and 2.3 above, to authorise the designation of four areas for selective licensing to last for five years from the date of designations coming into force, and which cover the following Council wards as delineated and edged red on the map(s) in appendices 4A to 4D:

- i. Designation 1: A selective licensing scheme designation in the wards of Harlesden, Wembley Central and Willesden Green wards under Part 3, s.80 Housing Act 2004 on the grounds of poor housing (property) conditions and ASB with effect from 1<sup>st</sup> April 2020, or at a later date in accordance with the statutory time required for the scheme to come into force.
- ii. A selective licensing scheme under Part 3, s.80 Housing Act 2004 to the following designated areas of the borough with effect from 1st April 2020, or at a later date in accordance with the statutory time required for the scheme to come into force, for the reasons as follows:

Designation 2: Queensbury, Fryent and Brondesbury Park – This is along the A5 corridor and on the Grounds; Poor Housing (Property) Conditions and ASB

Designation 3: Barnhill and Welsh Harp – Grounds; Poor Housing (Property Conditions), Deprivation and ASB

Designation 4: Northwick Park, Preston, Tokyngton (Excluding Wembley Park), Alperton and Sudbury on the Grounds; Poor Housing (Property) Conditions and ASB.

2.8 Agree to seek consent from the Secretary of State for the designation for Selective Licensing of the four designation areas as set out in appendices 4A to 4D and paragraph 2.7, which will last for five years from the date of the designation(s) coming into force, if approved by the Secretary of State.

2.9 Agree the authority to issue the required statutory notifications in relation to the Additional and Selective Licensing Scheme designations are delegated to the Strategic Director of Community Wellbeing, in consultation with the Lead member for Housing and Welfare Reform.

2.10 Agree that, subject to the issue of statutory notifications, that the Strategic Director of Community Wellbeing, in consultation with the Lead Member for Housing and Welfare Reform is authorised to decide the date from which the council will begin to accept applications for Additional licensing.

2.11 Agree that, subject to consent being obtained from the Secretary of State, and the issue of statutory notifications, that the Strategic Director of Community Wellbeing, in consultation with the Lead Member for Housing and Welfare reform is authorised to decide the date from which the council will begin to accept applications for Selective Licensing for each of the four designated areas and decide the date on which the designations and the extended Selective Licensing scheme will come into effect.

2.12 Agree that the licensing conditions for the proposed designation areas for additional licensing as set out in Appendix 8, and for selective licensing as set out in Appendix 9 be approved and to authorise the Strategic Director for Community Wellbeing, in consultation with the Lead Member for Housing and Welfare Reform, to make any minor variations to such licensing conditions.

- 2.13 Agree to the proposed fee structure for licence applications under the Additional and Selective Licensing schemes at Appendix 7.
- 2.14 Agree that authority be delegated to the Strategic Director of Community Wellbeing, in consultation with the Lead Member for Housing and Welfare Reform to agree the basis for and level of any changes including discounts which may be applied to these licensing application fees.
- 2.15 Note that the Additional and Selective Licensing schemes will be kept under review at least annually. Any significant changes, including the withdrawal of a licensing designation or a proposal to introduce any new designation(s), will be subject to further consultation and a decision by Cabinet.

### **3.0 Background**

- 3.1 Our population has increased by 18 per cent over the past 10 years, to 335,000 residents today, projected to increase to almost 350,000 by 2023, and over 375,000 by 2030. We are now the seventh largest of the London boroughs and the fourteenth most densely populated local authority in the country.
- 3.2 The private rented sector (PRS) in Brent has grown from 17% of the total housing stock in 2001, beyond 31% (35,000 properties) in 2011, to our current estimates of 37%. This is higher than the change seen in England as a whole. PRS in Brent is now slightly less than its owner-occupied sector (41%), and bigger than its social rented sector (22%).
- 3.3 Almost two thirds (65%) of the Brent population are from Black, Asian and minority ethnic groups. Brent is the second most ethnically diverse (Index score =9, compared to London score of 5.1) borough in London, after Newham (according to the Simpson's Diversity Index (Ethnicity), London 2019).
- 3.4 Under the Housing Act 2004, there are three types of licensing available to local authorities:

- (a) **Mandatory Licensing**

All local authorities are obliged to run a licensing scheme covering most Houses in Multiple Occupation (HMOs) that 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 4 people forming 2 or more households. 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. In April 2014 the Executive approved the designation of an Additional Licensing Scheme covering the whole borough with effect from 1<sup>st</sup> January 2015.

(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, which are not subject to additional licensing. A scheme covering three wards has been in place since 1<sup>st</sup> January 2015, and this was extended to a further five wards in June 2018.

- 3.5 The regulations also stipulate that where a licensing designation in relation to selective licensing would cover more than 20% of the local authority area or more than 20% of the private sector stock, consent to a scheme must be sought from the Secretary of State. The 20% total would include any areas already designated, meaning that any significant extension of Selective Licensing in Brent would require consent.
- 3.6 This report is concerned solely with the renewal of Selective and Additional schemes and the extending of selective licensing to cover other areas of the borough. The current Selective Licensing scheme covering the wards of Dudden Hill, Kensal Green, Kilburn, Mapesbury and Queens Park are not affected by this report, apart from the policy recommendation regarding the duration of existing licences where granted (Para 2.14).
- 3.7 According to the proposal document, the Council had licensed 11,550 properties including 3,410 Houses in Multiple Occupation (HMOs). Licensing has been used strategically to deal with problems of ASB and to improve conditions associated with the PRS. For example, the Council has operated a licence condition and compliance inspection regime, along with proportionate enforcement action, to target non-compliant landlords and improve properties. This has led to over 4,400 properties being improved in the period outturns for the 4 years 2015/16 to 2018/2019.
- 3.8 Over the same period, over 2,200 notices have been served on private landlords and there have been 160 prosecutions resulting in fines and costs totalling £1.5m. As an alternative to prosecutions, in some cases the Council has also issued over 100 Civil Penalty Notices.

#### **4.0 The Proposals for renewing Additional HMO in Brent**

- 4.1 Paragraph 7.1. of the consultation evidence report [Appendix 3] summarises that this proposal is to renew the requirement for those managing or having control of HMOs, that are not subject to mandatory licensing. The Council has proposed to do so for the entire area of Brent because it considers that a significant proportion of such HMOs in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, particular problems either for those occupying the HMOs or for members of the public. Additional licensing applies to HMOs only with the aim of improving conditions for local occupiers and the surrounding communities.
- 4.2 Table 1 below from the evidence report [Appendix 3] summarises the results of proportion of HMOs, additional and mandatory, found in the private rented stock in Brent at ward level. Additional licensing will cover 27% of the total 38% of HMOs found in the private rented stock.

- 4.3 The BRE report 2019 now estimates that there are 4,831 mandatory HMO in Brent under the new definition, and therefore we estimate that 12,153 properties will fall under the additional licensing.

**Table 1: Number of HMOs – Additional and mandatory licensable HMOs by ward**

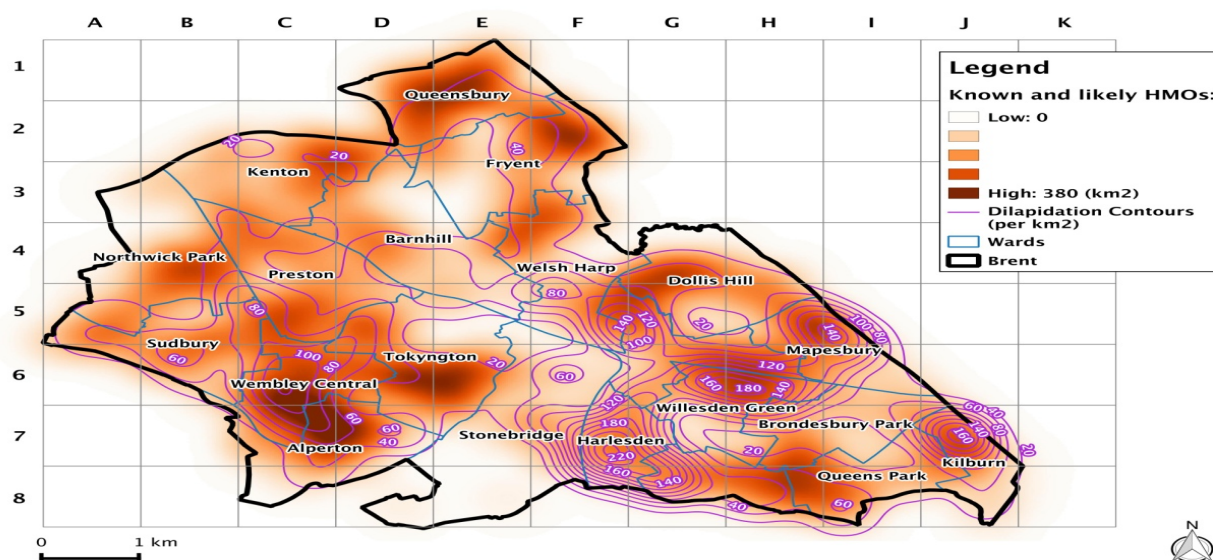
| Ward             | Dwellings - private rented stock | HMOs                            | Mandatory Licensable HMOs      | Additional Licensable HMOs      |
|------------------|----------------------------------|---------------------------------|--------------------------------|---------------------------------|
| Alperton         | 1,776                            | 699<br>( 39% )                  | 144<br>( 8% )                  | 555<br>( 31% )                  |
| Barnhill         | 1,481                            | 798<br>( 54% )                  | 137<br>( 9% )                  | 667<br>( 45% )                  |
| Brondesbury Park | 2,316                            | 1,063<br>( 46% )                | 201<br>( 9% )                  | 862<br>( 37% )                  |
| Dollis Hill      | 937                              | 394<br>( 42% )                  | 152<br>( 16% )                 | 242<br>( 26% )                  |
| Dudden Hill      | 2,271                            | 1,058<br>( 47% )                | 432<br>( 19% )                 | 626<br>( 28% )                  |
| Fryent           | 1,088                            | 486<br>( 45% )                  | 117<br>( 11% )                 | 369<br>( 34% )                  |
| Harlesden        | 3,433                            | 811<br>( 24% )                  | 249<br>( 7% )                  | 562<br>( 17% )                  |
| Kensal Green     | 3,154                            | 1,169<br>( 37% )                | 454<br>( 14% )                 | 715<br>( 23% )                  |
| Kenton           | 776                              | 315<br>( 41% )                  | 70<br>( 9% )                   | 245<br>( 32% )                  |
| Kilburn          | 3,871                            | 1,232<br>( 32% )                | 339<br>( 9% )                  | 893<br>( 23% )                  |
| Mapesbury        | 3,948                            | 1,661<br>( 42% )                | 437<br>( 11% )                 | 1224<br>( 32% )                 |
| Northwick Park   | 795                              | 409<br>( 51% )                  | 107<br>( 13% )                 | 302<br>( 38% )                  |
| Preston          | 1,660                            | 751<br>( 45% )                  | 213<br>( 13% )                 | 538<br>( 32% )                  |
| Queens Park      | 3,334                            | 1,163<br>( 35% )                | 367<br>( 11% )                 | 796<br>( 24% )                  |
| Queensbury       | 1,164                            | 411<br>( 35% )                  | 127<br>( 11% )                 | 284<br>( 24% )                  |
| Stonebridge      | 1,106                            | 426<br>( 39% )                  | 89<br>( 8% )                   | 337<br>( 31% )                  |
| Sudbury          | 1,869                            | 804<br>( 43% )                  | 183<br>( 10% )                 | 621<br>( 33% )                  |
| Tokington        | 2,444                            | 900<br>( 37% )                  | 241<br>( 10% )                 | 659<br>( 27% )                  |
| Welsh Harp       | 1,219                            | 527<br>( 43% )                  | 177<br>( 15% )                 | 350<br>( 29% )                  |
| Wembley Central  | 2,312                            | 600<br>( 26% )                  | 158<br>( 7% )                  | 442<br>( 19% )                  |
| Willesden Green  | 3,962                            | 1,307<br>( 33% )                | 437<br>( 11% )                 | 870<br>( 22% )                  |
| <b>Totals</b>    | <b>44,916</b>                    | <b>16,984</b><br><b>( 38% )</b> | <b>4,831</b><br><b>( 11% )</b> | <b>12,153</b><br><b>( 27% )</b> |

- 4.4 The table when mapped shows the geographical distribution of all licensable HMOs at ward and census output areas (COA) level revealing that HMOs are scattered

across the borough in high numbers with a slight tendency towards the south east. – in fact the data shows that the wards with the highest numbers of HMOs are Mapesbury (1,661), Willesden Green (1,307) and Kilburn (1,232). The picture is similar for the Additional licensable HMOs with a propensity towards the south east corner and again, the data shows that the wards with the highest numbers of licensable Mapesbury (1,224), and Kilburn (893), Willesden Green (870) and Brondesbury Park 862). The data in the table shows that the wards with the highest percentages of licensable additional HMOs are Barnhill (45%), Northwick Park (38%), Brondesbury Park (37%), Fryent (34%) and Sudbury (33%).

- 4.5 The BRE study reported for each of the key indicators in Brent for the private rented sector split into non-HMOs and HMOs and compared with 2014 EHS regional and national averages. In general, HMOs in Brent show similar levels of HHSRS hazards and disrepair to non-HMOs in the private rented sector. The levels of HHSRS category 1 hazards are slightly higher for HMOs (9% compared to 8% for non-HMOs), but similar for the 2014 EHS regional average (9%). Levels of disrepair are the same for all HMOs (5%) and the 2014 EHS regional average (5%). The levels of fuel poverty are higher for HMOs for the Low Income High Costs definition (11% compared to 10%). Low income households 43% is higher than the 2014 EHS regional average (31%) and 2014 EHS national average (33%).
- 4.6 Map 1 below mirrors the general distribution of HMO to indicate that the ASB and poor property condition are closely correlated. HMOs are present in all wards and with high proportions of hazards or in disrepair are therefore proposed for a borough wide Additional HMO licensing scheme.

**Map 1: Hotspot and contour map showing concentrations of high risk HMOs, attributable ASB and poor housing conditions**



- 4.7 In 2017 we analysed the ASB incidents and established a positive link with HMO at ward level. The correlation  $R^2 = 0.48$  was higher than the link between ASB and single family private rented ( $R^2 = 0.20$ ) and the ASB incidents linked to the social sector  $R^2 = 0.01$ ). The resultant map at COA level shows that the incidents are borough-wide with significant concentrations in the south of the borough.



- 4.8 Table 2.2 of the evidence report [Appendix 3] stated that of 2,184 HMOs inspected, 83% were non-compliant. A joint inspection exercise of HMOs undertaken by the Brent Fire Brigade and Private Housing in 2018 showed licensed HMO were more compliant than unlicensed HMOs, and further that those properties which had had compliance inspections by Housing officers were significantly more compliant.
- 4.9 Most Brent residents (73%) and other stakeholders (70%) agreed that continuing with the licensing schemes would improve or further improve the condition and management of privately rented properties, compared with only a minority of landlords and agents (21%).
- 4.10 Around four fifths of Brent residents (80%) and other stakeholders (79%) agreed with the proposal to renew the Additional Licensing scheme across the whole of Brent. Landlords and agents were quite evenly split, with 46% in agreement and 43% in disagreement, although a significant 19% of landlords neither agreed or disagreed with the statement
- 4.11 We have considered the proposal relating to s257 Housing Act 2004 HMOs (s257 HMOs certain converted blocks of flats). Such an HMO can be surmised as a building which is converted entirely into self-contained flats if the conversion did not meet the standards of the 1991 Building Regulations and no more than one-third of the flats are let on short-term tenancies. Every effort will be made to determining the status of such buildings for licensing purposes.
- 4.12 The Council has considered the points raised regarding the exclusion of the Quintain/Tipi estate in the Wembley Park area of the Tokyngton ward in relation to additional HMO licensing. Given the overall support for a borough wide HMO licensing scheme, this report does not recommend a change in the proposed additional licensing designation area following the consultation exercise.

## **5.0 The Proposals for renewing and extending Selective Licensing in Brent**

- 5.1 Set out in Paragraph 8 of the consultation proposals [appendix 3] is the requirement for those managing or having control of other privately rented accommodation that does not have to be licensed under mandatory or additional licensing schemes, to obtain a licence to let their property. The proposals are for four designations which cover 13 of the 21 wards in the borough. The proposal excludes the Wembley Park area of the Tokyngton ward, plus the entire areas of the Dollis Hill Kenton and Stonebridge wards. It is again mentioned that 5 wards (Dudden Hill, Kensal Green, Kilburn, Mapesbury and Queens Park) are already under the 2018 designation.
- 5.2 The scope of Selective Licensing is prompted by the evidence that;
- The local authority is satisfied that one or more of the sets of conditions below is satisfied:
    - (i) (a) that the area is experiencing a significant and persistent problem caused by ASB where some 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; (b) that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other

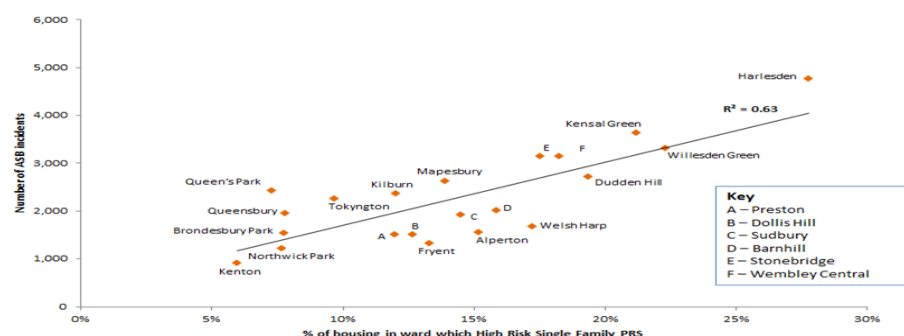
persons together with the local housing authority, lead to a reduction in, or the elimination of the problem.

- (ii) That there is evidence of poor housing conditions in the sector and that making a designation will, combined with other measures, contribute to an improvement in general housing conditions in the area.
- (iii) That the area is suffering from a high level of deprivation, which affects a significant number of the occupiers of relevant properties; and that making a designation will, with other measures, contribute to a reduction in the level of deprivation in the area.
- (iv) That the area suffers from high levels of crime and criminal activity affects those living in relevant properties or other households and businesses in the area; and that making a designation will, with other measures, contribute to a reduction in the levels of crime in the area, for the benefit of those living in the area.

- In relation to the conditions set out in (ii) to (iv) above (paragraph 5.2), that the area contains a high proportion of properties in the private rented sector which (according to the findings of the Brent 2019 Housing Stock Condition (HSCD) provided for Brent by the Building Research Establishment [BRE]) is above the latest national average reported by the English Housing Survey of 20%), in relation to the total number of properties in the area.

5.3 Within the overall private rented sector, Selective Licensing is concerned with Single Family dwellings. Individual charts of all data sources were prepared and Figure 1 is a composite chart which illustrates the positive correlation for these properties with  $R^2 = 0.63$ .

**Figure 1: No. of ASB incidents\* against % of ward where housing is predicted to be High Risk Single Family PRS**



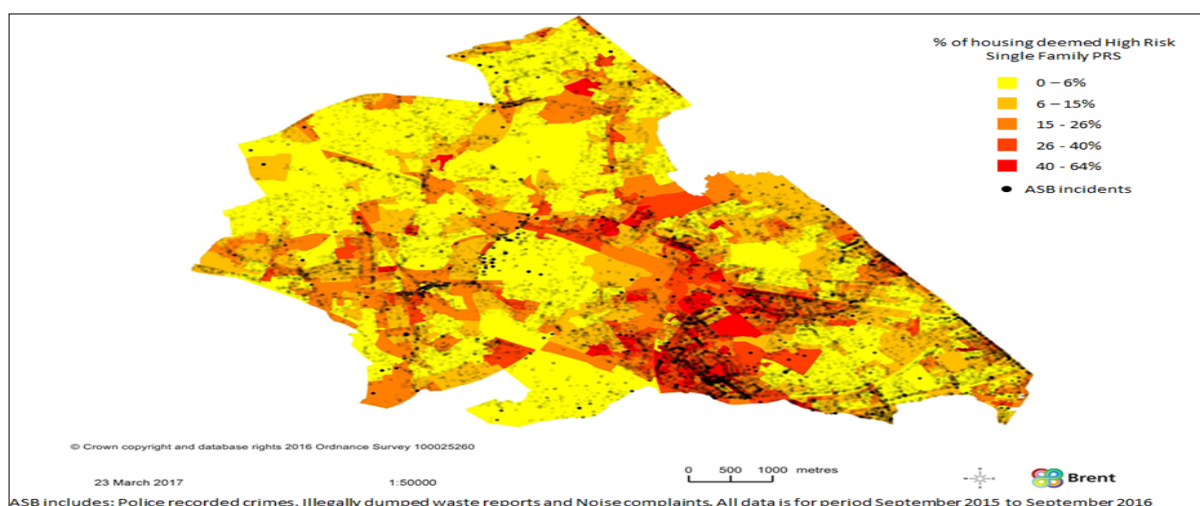
\*Includes data from four sources; police recorded crime, fly tipping reports, noise complaints and police recorded ASB – data aggregated to ward level

\*\*17,505 properties were identified as being high risk of being Single Family Private Rented. This was deduced by indicators such as having housing benefit at the address, two or more adults at the address, reports of dilapidation or noise, as well as being smaller properties (council tax bands A-C). Please note that we cannot be 100% certain these are single family PRS, nor indeed private rented.

5.4 The indicators most correlated with private renting are enviro-crime (+0.79), fly-tipping (+0.74), and property conditions (0.68). Those correlated least, albeit still positively, are Police-reported ASB (0.58) and Council reported ASB (0.57) [although it must be noted that the sample size for this indicator was relatively small]. The three wards with the highest levels of contaminated waste reports are Brondesbury Park

(13,080), Queensbury (12,206) and Barnhill (11,619). The levels of contaminated waste are also high in other wards. There is also a strong relationship between PRS and reports of illegally dumped waste across the borough, with Harlesden, Kensal Green and Willesden Green showing especially high levels. Overall there is a slight positive correlation (0.32) between noise complaints and private renting, with Harlesden, Mapesbury and Kilburn wards showing the highest correlation. Map 2 below breaks down ASB by single family households and shows that there is significant distribution across all Brent wards.

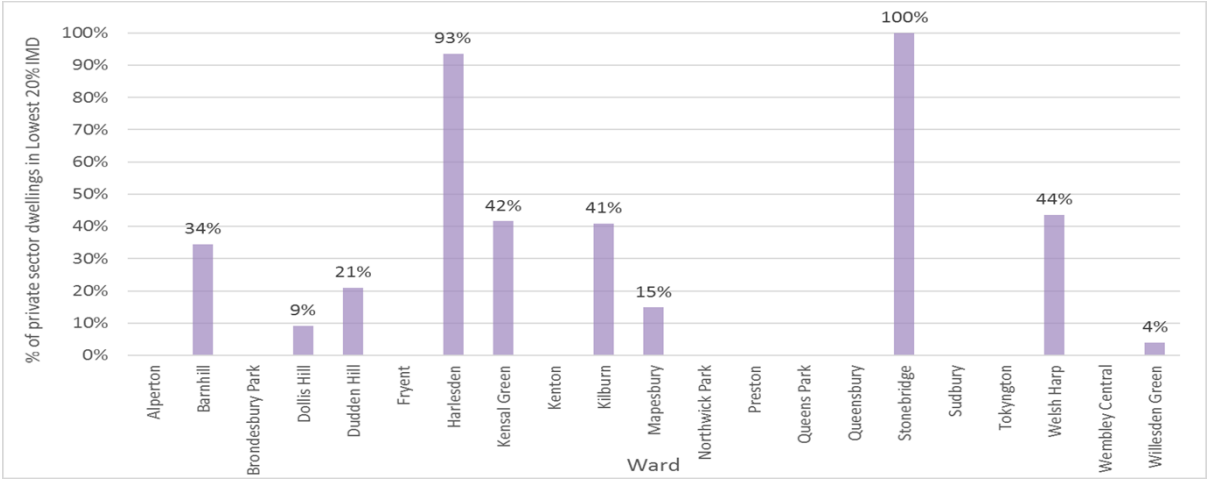
**Map 2: Map showing % of properties by census output area predicted to be High Risk of being Single Family PRS by recorded ASB incidents**



### ***Information on Deprivation***

- 5.5 To determine deprivation, we have looked at the 2015 Indices of Multiple Deprivation (IMD). Factors that have been used to determine whether a proposed area suffers from high level of deprivation include: the employment status of adults; the average income of households; the health of households; the availability and ease of access to education, training and other services for households; housing conditions; the physical environment; and levels of crime. To determine whether an area is deprived or not for the purposes of this study, the 20% most deprived LSOAs have been used.
- 5.6 Figure 2, which is taken from the BRE report, shows the results of this analysis in graphical form from looking at the proportion of privately rented dwellings that are in the 20% most deprived areas in each ward. The figure for Brent as a whole is 21% and it can be seen that in Harlesden 93% of privately rented dwellings are in the 20% of the most deprived LSOAs in England. For Welsh Harp the figure is 44% and for Barnhill 34%.

**Figure 2: Percentage of privately rented dwellings in each ward in Brent which are in the 20% most deprived areas in England (IMD 2015)**



**Summary of evidence for selective licensing designations**

5.7 The evidence for the selective licensing designations proposals is summarised in Section E of consultation Evidence report. Overall table 2 shows that all wards with a PRS stock of 20% and above fits the conditions for inclusion in a selective licensing scheme. The table gives a breakdown of the elements of poor property conditions (Hazards and Disrepair) for each ward where found. Where conditions exist to similar extents, we have grouped wards to form the designations.

**Table 2 Summary of findings for selective licensing scheme conditions in Brent**

| Conditions for licensing |                           |                                   |   |                                     |                                 |   |             |  |    |
|--------------------------|---------------------------|-----------------------------------|---|-------------------------------------|---------------------------------|---|-------------|--|----|
| Ward                     | % of Dwellings in the PRS | Poor Property Conditions          |   |                                     |                                 |   | Deprivation | ASB  |    |
|                          |                           | All Cat 1 > regional average (9%) | 1 no. Cat 1 > regional average for Excess Cold or Falls | High Cat 2 > regional average (42%) | Disrepair > regional 5% average | Has one or more elements of poor property condition |             | Persistent & Significant ASB with wards Ranked |    |
| Alperton                 | YES                       |                                   | √   |                                     |                                 | YES   |             | YES  | 13 |
| Barnhill                 | YES                       |                                   | √   | √                                   |                                 | YES   | YES         | YES  | 10 |
| Brondesbury Park         | YES                       | √                                 |   | √                                   | √                               | YES   |             | YES  | 19 |
| Dollis Hill              | NO 19%                    | √                                 |   | √                                   |                                 | YES   | YES         | YES  | 17 |
| Dudden Hill              | YES                       | √                                 |   | √                                   | √                               | YES   | YES         | YES  | 8  |
| Fryent                   | YES                       | √                                 |   | √                                   | √                               | YES   |             | YES  | 18 |
| Harlesden                | YES                       | √                                 |   | √                                   | √                               | YES   | YES         | YES  | 2  |
| Kensal Green             | YES                       | √                                 |   | √                                   | √                               | YES   | YES         | YES  | 5  |
| Kenton                   | NO 19%                    | √                                 |   | √                                   |                                 | YES   |             |  | 21 |
| Kilburn                  | YES                       |                                   | √   | √                                   | √                               | YES   | YES         | YES  | 3  |
| Mapesbury                | YES                       | √                                 |   | √                                   | √                               | YES   | YES         | YES  | 3  |
| Northwick Park           | YES                       | √                                 |   | √                                   |                                 | YES   |             |  | 20 |
| Preston                  | YES                       |                                   | √   |                                     |                                 | YES   |             | YES  | 15 |
| Queens Park              | YES                       | √                                 |   | √                                   | √                               | YES   |             | YES  | 7  |
| Queensbury               | YES                       |                                   | √   |                                     |                                 | YES   |             | YES  | 12 |
| Stonebridge              | NO 16%                    |                                   |   |                                     |                                 |   | YES         | YES  | 9  |
| Sudbury                  | YES                       |                                   | √   |                                     |                                 | YES   |             | YES  | 14 |
| Tokington                | YES                       | √                                 |   |                                     | √                               | YES   |             | YES  | 11 |
| Welsh Harp               | YES                       | √                                 |   | √                                   | √                               | YES   | YES         | YES  | 15 |
| Wembley Central          | YES                       | √                                 |   | √                                   |                                 | YES   |             | YES  | 6  |
| Willesden Green          | YES                       | √                                 |   | √                                   | √                               | YES   | YES         | YES  | 1  |

- 5.8 The three wards covered by the selective licensing scheme introduced in 2015 are Harlesden, Wembley Central and Willesden Green have high levels of private rented stock – 49%, 46% and 60%, respectively. These wards score highly positively for ASB, poor property conditions and deprivation.
- 5.9 In extending licensing the Council has identified particular problems with property conditions in Alperton, Barnhill, Brondesbury Park, Fryent, Northwick Park, Preston, Queensbury, Sudbury, Tokington (excluding Wembley Park) and Welsh Harp wards. It also believes the majority of these areas have persistent problems with ASB, and that a couple have specific issues with deprivation. The Council believes that there are links between these issues and the private rented sector.

- 5.10 Three wards (Dollis Hill, 19%; Kenton 19%; and Stonebridge 16%) are not included in this selective proposed extension. The Council feels they do not satisfy the legal criteria for selective licensing in that those wards have less than the national average of 20% of the properties being privately rented. The Council has also chosen to exclude the Wembley Park area of the Tokyngton ward because it does not believe the area meets the criteria for poor property conditions, ASB linked to the private rented sector or deprivation.
- 5.11 Stonebridge is characterised by a high percentage of social housing and industrial use. However, the ward also contains a high proportion of PRS stock, much of it in the form of public sector stock purchased under the Right to Buy. Based on the 2011 census the proportion is 16.9% (Mayhew), and the BRE analysis (16%). Stonebridge ranks poorly across almost all selective licensing criteria.
- 5.12 Officers have considered whether the evidence supports a single designation area covering all the wards selected in paragraphs 5.8 and 5.9. We have taken account of analyses and responses to consultation and have concluded that the varying patterns in connection with each factor indicate a strong case for keeping the wards separate, but also for a series of other separate designations which group wards according to the factors most relevant in each area.
- 5.13 Renewing and extending the scope of selective licensing on this basis means that the geographical coverage and the percentage of the PRS involved exceeds the 20% rule noted earlier and that Secretary of State's confirmation of the scheme is needed if the proposals are agreed by Cabinet. It also allows the Council to ask for early decision by MHCLG, as may be appropriate, in respect of the designation area being renewed.
- 5.14 In proposing separate designations, officers have considered the following factors:
- The level of the PRS in each ward (known PRS rank)
  - That Harlesden, Wembley Central and Willesden Green are wards which have already been designated
  - The ranking for each of the criteria examined based on the outcome tables and coefficient ( $R^2$ ).
  - The counts and distribution of key indicators at LSOA level (BRE analysis)
  - The geographical position of the areas e.g. borough boundaries (A5 corridor), physical boundaries (Wembley Park with respect to the Tokyngton ward)
  - The juxta-position of each ward as this indicates a similarity of problem faced, and with the position of wards designated in the 2018 scheme (Dudden Hill, Kensal Green, Kilburn, Mapesbury and Queens Park) as this also allows the boundaries to be easily delineated.
  - The ability to target problems and to deploy resources to particular designations over time, working strategically with others to achieve the desired scheme benefits.
- 5.15 This rationale lends itself to the four separate designations, where at least one or more criteria have been met, as follows:
- Designation 1: Harlesden, Willesden Green and Wembley Central (ASB, poor housing [property] condition and/or Deprivation)

- Designation 2: Queensbury, Fryent and Brondesbury Park (Grounds: poor housing [property] conditions and ASB).
- Designation 3: Barnhill and Welsh Harp (Grounds: poor housing property conditions, Deprivation and ASB)
- Designation 4: Northwick Park, Preston, Tokyngton (excluding Wembley Park), Alperton and Sudbury (Grounds: poor housing property conditions and ASB)

5.16 Regarding the consultation responses in respect to the proposals, around three quarters of Brent residents (76%) and other stakeholders (73%) agreed with the proposal to renew Selective Licensing in Harlesden, Willesden Green and Wembley Central (Designated Area 1), compared with only around a quarter of landlords and agents (24%). (See Appendix 1 - Figure 24)

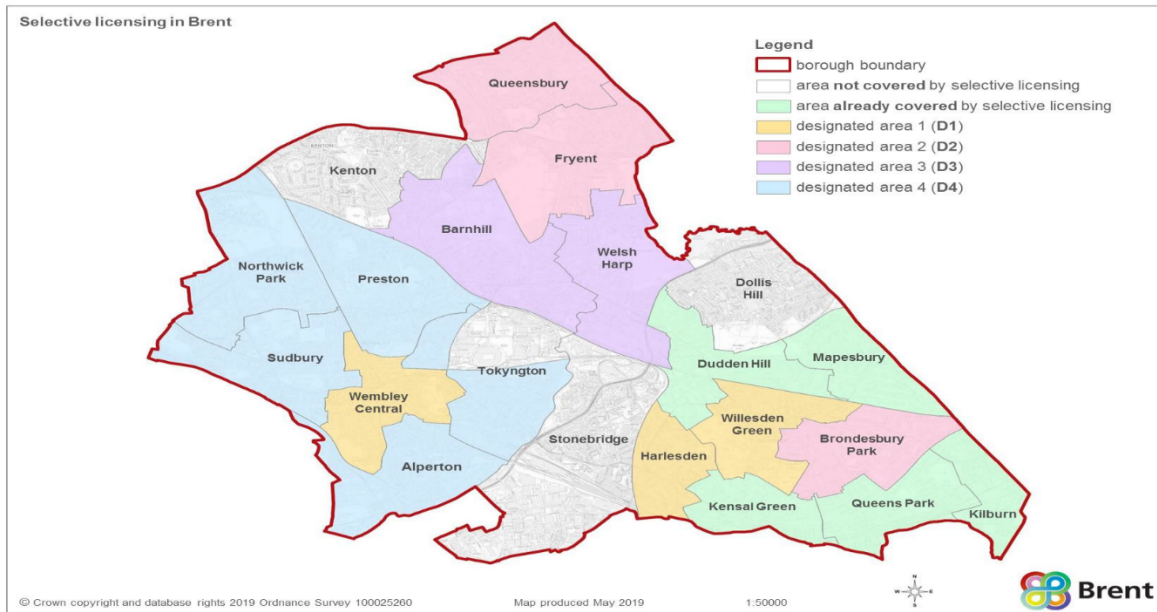
5.17 The proportions agreeing with the proposals to introduce Selective Licensing into new areas were as follows: (See Appendix 1 – Figure 25)

- Designated Area 2: 73% of Brent residents and 63% of other stakeholders compared with 24% of landlords and agents agreeing
- Designated Area 3: 74% of Brent residents and 66% of other stakeholders with 24% of landlords and agents agreeing
- Designated Area 4: 73% of Brent residents and 66% of other stakeholders with 22% of landlords and agents agreeing

5.18 The proposals exclude the wards of Dollis Hill, Kenton, Stonebridge and the Wembley Park area of the Tokyngton. Though there was a general public acceptance of the reasons for the exclusions, it was felt that problems exist through Brent as a whole.

5.19 The Council has considered the points raised regarding the exclusion of the areas specified in 5.18 above, notably Wembley Park. This report does not recommend a change the proposed selective licensing designation area following the consultation exercise, but have indicated that selective licensing schemes will be kept under review and that any significant changes or proposal to introduce any new designation(s), will be subject to further consultation and a decision by Cabinet.

**Map 3: Map of the selective licensing designations**



## 6.0 Other matters applying to both additional and selective licensing

**6.1 Effect of the schemes** - If introduced, the effect will be that landlords who rent or let any Additional HMO in Brent that is not occupied as a mandatory House in Multiple Occupation (HMO) must have a licence. The licence application must be accompanied by a fee [Appendix 7], and where a licence is granted, HMO licensing conditions will be applied to the licence [Appendix 8]. See section 8.0 on licensing fees and section 7.0 on licensing conditions.

**6.2 Objectives licensing aim to achieve** - Overall licensing will help us to work with landlords to drive up housing standards for private rented properties in the whole borough. The objectives are stated in the proposal document (Appendix 3).

**6.3 Alternative courses of action** - The consultation proposal report (Appendix 3) provides details of the actions being taken by the Council includes;

- Landlord Accreditation and Landlord Forum
- Housing Standards, Regulation and Enforcement
- Empty Properties
- Regulatory Enforcement Group, Partnership working and tasking
- Article 4 Direction to remove permitted development rights from residential use to Houses in Multiple Occupation.

**6.4 Alternative Options** - The consultation, notably via the written submissions resulted in some alternatives suggested to introducing licensing. These suggestions include the;

- introducing a registration scheme,
- reliance on inspection and utilisation of the existing enforcement tools already available
- decision to include/exclude Wembley Park area from the schemes



- Neither to renew the additional or selective schemes
- 6.5 This would leave discretionary licensing applicable to the five wards in the 2018 scheme and would not achieve the Council's overall objectives.
- 6.6 Introduce Selective licensing for the 18 wards meeting the criteria for introducing a selective scheme, and not pursue additional licensing.
- Although selective licensing can be applied to all other houses which do not meet the mandatory definition. The option would provide too wide a scope. In addition, selective licensing conditions cannot be used to regulate the condition of the property, and we note that HMOs are generally in a poor condition
- 6.7 Renew additional licensing borough-wide and not pursue renewing selective licensing;
- This would not maintain or sustain the work done in respect of Harlesden, Wembley Central and Willesden Green wards
- 6.8 Not to pursue extending selective licensing;
- Alternatives considered would not provide an effective method of tackling the PRS problems in these wards.
  - To include Quintain/Tipi (Wembley Park) area from the selective scheme, but to include their properties for the borough-wide additional licensing scheme.
- 6.9 **Approach consistent with housing strategy** - Within the Brent Housing strategy there are opportunities for the private rented sector to play an important role in delivering new supply but there are serious concerns over standards, access and affordability. The Licensing schemes have considered the homelessness and housing regeneration strategies (Appendix 3).
- 6.10 **Equalities Analysis** - 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 discretionary 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 Cabinet, Members must consider the effect that implementing a particular policy will have in relation to equality before making a decision. An Equality Impact Assessment has been undertaken for this purpose. This is found at Appendix 10. A summary of the issues raised in the Equalities Impact Assessment is set out in paragraphs 11.1 to 11.12 below in the equalities implications section to this report.
- 6.11 **Planning and HMOs** - Local Planning Authorities have the ability through Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), to remove permitted development rights. In pursuing the use of Article 4 Directions, the Planning Service is seeking Cabinet approval to remove permitted development rights for change of use from residential dwellings and houses in multiple occupation. This will apply to the whole borough. The HMO Licensing proposal if approved will also apply to the entire borough.

- 6.12 HMO powers under the Housing Act are different to those found under the Town and Country Planning Act. For example, licensing powers would not be able to address potential over-concentration of HMOs, whilst planning policy can, and planning would not deal with ensuring the proper management, use and occupation of the house concerned, and its condition and contents, whilst licensing can. The HMO Licensing and HMO Article 4 Direction proposals will assist in a complementary and co-ordinated approach between the Housing and Planning functions in regulating HMOs in the borough, for which clear policies will be developed.

## **7.0 Licensing Conditions**

- 7.1 The conditions for Additional Licensing and for Selective Licensing are set out in Appendix 8, and 9 respectively of report. Some of these are mandatory requirements under the Housing Act 2004 and therefore must be included in any scheme. The council also has discretion to set the precise conditions of the licence subject to the requirements set out in sections 67 and 90 of the Housing Act 2004 for additional licensing and selective licensing respectively as set out in paragraphs 10.31 below. These can include selective licensing conditions relating to the management, use and occupation of the house, and, for HMOs only, also in respect to its condition and contents.
- 7.2 Across all three of the respondent groups, an absolute majority agreed with the proposed Additional (HMO) Licence conditions: 80% of Brent residents, 55% of landlords and agents, and 76% of other stakeholders. For landlords and agents, 21% strongly disagreed, 10% tended to disagree and 14%, neither agreed or disagreed. (see Appendix 1 – Figure 27).
- 7.3 Substantial majorities of Brent residents and other stakeholders agreed with the proposed conditions for a Selective Licence (78% and 70% respectively). Landlords and agents were fairly split: with 39% agreeing and 44% disagreeing, though a significant 165 of these respondents neither agreed or disagreed. (See Appendix 1 – Figure 27).
- 7.4 Comments and submissions were received regarding some specific HMO and selective conditions. These comments were considered and where accepted, we have deleted and amended the conditions, as well as more clearly indicated what matters are licensing conditions as opposed to those which are for advice and guidance. The amended conditions are at Appendices 8 and 9 to the Cabinet Report. The Council's response to representations raised on the condition is provided in Appendix 2 to the Cabinet report.

## **8.0 Licensing Fees**

- 8.1 The council is entitled to cover the costs associated with the scheme through a fee but is not allowed to make a surplus or to use the fee income for purposes unrelated to licensing. As long as the conditions are complied with, the licence would remain valid until the end of the scheme (i.e. up to a maximum of 5 years). To meet these conditions, fees are set at £840 for an additional HMO licence, and at £540 for five years for a Selective Licence, payable in two parts – Part 1 for the processing and administration, and Part 2 for the enforcement of the scheme. The proposal included a discount for certain accredited landlords.

- 8.2 From the face-to-face interviews, the majority of Brent residents felt that the proposed fees are at about the right level: 67% for the Additional Licence and 70% for the Selective Licence. Just over a quarter (27% and 26% respectively) felt they are too high, while relatively small proportions (both 5%) felt that they are too low. (See Appendix 1 – Figures 15 and 16)
- 8.3 Views outside Brent were broadly similar, with large majorities feeling that the proposed fees for an Additional and a Selective Licence are about right (73% and 77% respectively).
- 8.4 From the open questionnaire, Brent residents were fairly evenly split as to the appropriateness of the fees: around two fifths felt that the proposed fees for the Additional Licence (41%) and Selective Licence (42%) were at about the right level, although three in ten felt they were too high (30% and 31% respectively), or too low (29% and 27% respectively). (Appendix 1 – Figure 26)
- 8.5 In contrast, more than four fifths of landlords and agents (86%) felt the proposed Additional Licence fee was too high, and an even higher proportion (94%) felt this way about the proposed Selective Licence fee. Among the remaining, other stakeholders, the majority view was that the fees are at about the right level, although a sizeable minority (around two fifths in both cases) felt they were too high.
- 8.6 Consultation comments were made e.g. extending the discount to other landlords, prorating, renewal fees and on the legal basis of charging the “Finder’s” and “missed appointment”. These have been considered as part of the Council responses. The fee structure is at Appendix 7. The Council’s response to representations made regarding fees is provided in Appendix 2 to this report.

## **9.0 Consultation Summary and Representations**

- 9.1 The consultation exercise was undertaken over 11 weeks starting on 10 June 2019 and closing on 25 August 2019. The consultation received 1,110 responses to its online/paper questionnaire. For the sake of clarity, the views of the responses from residents, tenants and businesses, private landlords and managing agents have been analysed and reported separately.
- 9.2 In total, ORS conducted 707 interviews with residents between 20th June and 18th July 2019, of which 605 were conducted inside Brent and 102 in neighbouring boroughs. The primary purpose of the residents’ survey was to achieve a broadly representative sample of face-to-face interviews with residents of Brent, aged 16 and over.
- 9.3 It was conducted using a quota sampling approach with targets set on the numbers of interviews required by age, gender, tenure, working status and ethnicity, and with randomly selected sample points based on census Lower Super Output Areas (LSOAs). The questions asked in the survey were a subset of those included in the main consultation questionnaire, with some very minor simplifications to the wording (to make them more easily administered as part of a face-to-face exercise). For the sake of clarity, the views of residents inside and outside of Brent have been analysed and reported separately.

- 9.4 The responses were from for residents, tenants and businesses, private landlords and managing agents and from London Boroughs of Barnet, Camden, Ealing, Harrow, Hammersmith and Fulham, Kensington and Chelsea, and Westminster, as these boroughs border Brent.
- 9.5 The open questionnaire responses and the face-to-face interviews were analysed and reported separately. A full report on the consultation findings is attached at Appendix 1, with paragraphs which summarise the process and key findings on their views;
- about local issues and of the problems in relation to privately let properties in Brent
  - about the current licensing schemes in Brent
  - on renewing additional and selective licensing and on introducing selective licensing into new areas in Brent
  - where selective licensing should apply based on one or several of the criteria: - ASB, poor property conditions, or high levels of deprivation or high levels of crime,
  - on the licensing conditions and on licence fees
- 9.6 The council has considered the representations made during the consultation and a consultation response is provided in appendix 2. A result of the responses, officers intend to bring a further report to Cabinet to provide a policy on the duration of licences, where granted.
- 9.7 The diversity of the respondents to both the open questionnaire and the face-to-face interviews are representative of the Borough population profile (Equalities Analysis - Appendix 10).

## **10.0 Legal Implications**

### *Additional Licensing*

- 10.1 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.
- 10.2 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.
- 10.3 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.

- 10.4 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.
- 10.5 Under section 57(3) of the HA 2004, the Council must also seek to adopt a coordinated 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.
- 10.6 Under section 57(4) of the HA 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 courses 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).
- 10.7 When making a decision to authorise the designation for an additional licensing scheme, the Cabinet needs to be satisfied that the statutory requirements set out in paragraphs 10.1 to 10.6 above are met.
- 10.8 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.
- 10.9 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.

10.10 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*

10.11 Under section 80(2) of the Housing Act 2004 (“HA 2004”), before introducing a selective licensing scheme, the Council (in this case, the Council’s Cabinet) must consider that –

- (a) the first or second set of general conditions mentioned in section 80(3) or (6) of the HA 2004; or
- (b) any conditions specified in an order under section 80(7) of the HA 2004 as an additional set of conditions are satisfied in relation to the area. In this case, The Selective Licensing of Houses (Additional Conditions) (England) Order 2015 (“2015 statutory instrument”) will apply as they have provided for additional conditions which involve poor housing conditions, migration, deprivation and crime.

10.12 Section 80(3) of the HA 2004 refers to the first set of general conditions which relates to low housing demand and that is not relevant for this report.

### *ASB (anti-social behaviour)*

10.13 The second set of general conditions is set out in section 80(6) of the HA 2004 in relation to ASB and they are as follows:

- (a) that the area is experiencing a significant and persistent problem caused ASB;
- (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.

10.14 ASB is relied upon as the one of the reasons and justifications for all six of the proposed designation areas and the Council’s Cabinet must be satisfied the requirements set out in (a), (b) and (c) in the previous paragraph are met when considering and deciding to make Selective Licensing Designation areas for the

proposed designation areas 1 to 4 as set out above on the ground of anti-social behaviour.

10.15 As for the definition of “ASB”, 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.

#### *2015 Statutory Instrument – additional conditions*

10.16 In relation to the 2015 statutory instrument, the following conditions are specified as additional conditions which the Council’s Cabinet must consider are met in relation to a proposed designation area before making a selective licensing designation:

- (i) that the area contains a high proportion of properties in the private rented sector, in relation to the total number of properties in the area;
- (ii) that the properties referred to in sub-paragraph (i) above are occupied under either assured tenancies or licences to occupy; and
- (iii) that one or more of the four sets of conditions as set out in the 2015 statutory instrument is satisfied. Two of the four sets of additional conditions are set out below. Conditions relating to migration and crime are not set out below as they are not relevant to this report.

#### *Conditions in relation to housing conditions*

10.17 The first set of additional conditions, which are set out in the 2015 statutory instrument, relate to poor housing conditions. The requirements to rely on poor housing conditions as a sufficient reason to introduce a designation for selective licensing are as follows:

- (a) that having carried out a review of housing conditions under section 3(1) of the 2004 Act, the local housing authority considers it would be appropriate for a significant number of the properties referred to in paragraph 10.16(i) above to be inspected, with a view to determining whether any category 1 or category 2 hazards exist on the premises;
- (b) that the local housing authority intends to carry out such inspections as referred to in the previous sub-paragraph, with a view to carrying out any necessary enforcement action; 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, including any licence conditions imposed under section 90 of the 2004 Act, contribute to an improvement in general housing conditions in the area.

10.18 Poor housing conditions are relied upon as the one of the reasons and justifications for Designation 1 to 4 of the proposed designation areas. The Council’s Cabinet

must be satisfied the requirements set out in paragraph 10.16 above and in (a), (b) and (c) in the previous paragraph are met when considering and deciding to make a Selective Licensing Designation area for the proposed designation areas 1 to 4 on the ground of poor housing conditions.

#### *Conditions in relation to deprivation*

10.19 The third set of additional conditions as set out in the 2015 statutory instrument relates to deprivation and they are as follows:

- (a) that the proposed designation area is suffering from a high level of deprivation, which affects a significant number of the occupiers of properties in paragraph 10.16 above;
- (b) that making a designation will, when taken by the other measures taken in the designation area by the Council, or by other persons together with the Council, contribute to a reduction in the level of deprivation in the area.

10.20 When determining whether a proposed designation area is suffering from a high level of deprivation, the Council's Cabinet may have regard to the following factors in relation to the proposed designation area: (a) the employment status of adults; (b) the average income of households; (c) the health of households; (d) the availability and ease of access to education, training and other services for households; (e) housing conditions; (f) the physical environment; and (g) levels of crime.

10.21 Conditions in relation to deprivation are cited as one of the reasons and justifications for the proposed designation area 3 (wards of Barnhill and Welsh Harp). The Council's Cabinet must be satisfied the requirements set out in paragraphs 10.16, 10.19 and 10.20 above are met when considering and deciding to make a Selective Licensing Designation area 3 on grounds of deprivation.

#### *Other matters relating to selective licensing*

10.22 Under section 81(2) of the HA 2004, the Council must ensure that any exercise of the power in relation to a selective licensing designation is consistent with the Council's overall housing strategy.

10.23 Under section 81(3) of the HA 2004, the Council, when making its designation, must also seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and ASB 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.

10.24 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).

10.25 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."

10.26 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.

10.27 As soon as a designation regarding additional licensing has made (following approval by the Secretary of State) 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 by the Secretary of State and that it has been confirmed; (c) the date on which the designation is to come into force; and (d) any other information which may be prescribed.

### *Licence Fees*

10.28 Sections 63(7) and 87(7) of the HA 2004 provide for the fixing of HMO and selective licensing fees respectively. In summary, they say that local authorities take into account all costs incurred when carrying out their functions in relation to additional and selective licensing respectively. The power to charge fees for additional licensing is set out in section 63(3) of the HA 2004 and the power to charge for fees for selective licensing is set out in section 87(3) of the HA 2004. Those powers to charge allow the Council to require a licensing application to be accompanied by a fee.

10.29 However, the EU Directive and the Provision of Services Regulations 2009 was subsequently passed. Regulation 18 of the Provision of Services Regulations 2009, which incorporates Article 13(2) of the 2009 EU Directive, 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."

- 10.30 In the case of *Hemming v Westminster CC*, the Supreme Court stated that the fee relating to the administration of the application can be charged when the application is submitted and is non-returnable if the application is refused and is compatible with the EU Directive. The Supreme Court also stated that the fee to cover the costs of managing and enforcing the licensing regime can be charged and is compatible with the 2009 EU Directive if the application for a license is successful. However, as for the costs of managing and enforcing the licensing regime if the application for a license is unsuccessful, the European Court of Justice stated that charging in advance for costs other than those directly related to the authorisation process, even if the payment is refundable where the application for a license is refused.

#### *Licence Conditions*

- 10.31 Sections 67 (for additional licensing) of the HA 2004 allows the Council to include such conditions are considered appropriate for regulating the management, use and occupation, and the condition and contents of the HMO concerned. In respect to other houses (selective licensing properties), Section 90 of the HA 2004 allows the Council local authorities to impose such conditions that are considered appropriate to regulating the management, use or occupation of the properties. The Council has reviewed the licence conditions and in so doing have taken account of relevant legal decisions, including the Court of Appeal decision of *Brown v Hyndburn [2018] EWCA* in relation to selective licensing.

#### *Public Sector Equality Duty*

- 10.32 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 Cabinet, Members 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.
- 10.33 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.
- 10.34 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.

10.35 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.

10.36 The Equality Impact Assessment is set out in Appendix 10 to this report.

## **11.0 Equality Implications**

11.1 The introduction of additional and selective licensing is intended to enhance housing management practices in the private rented sector (PRS), in compliance with the Housing Health and Safety Rating System (HHSRS) standards. It is anticipated that this will have positive outcomes for tenants across all protected characteristics, particularly those who are currently over-represented in the PRS.

11.2 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.

11.3 In order to inform the final licensing proposals, officers have carried out an extensive consultation and research available in Appendix 1 and a full Equality Analysis available in Appendix 10. The findings of the analysis show that the groups that are over-represented in PRS are ethnic minority groups (notably Asian, but also including White: Other groups), older adults, people under 35, households with children (including single parent households), as well as people with disabilities and long term health conditions, socio-economic and other vulnerable groups.

11.4 If the licensing schemes are introduced, all equality groups are likely to benefit from improvements in engagement, communication and signposting information between the council, landlords and tenants and other service providers. Information would relate to such matters as changes in the law affecting the PRS, energy efficiency measures and grants availability, information on local organisations and agencies which may be able to provide support. One of the intended outcomes of licensing is that landlords will be more aware of their duties under the Equality Act 2010 and of the support and funding available to them and their tenants such as the Disabled Facilities Grant for reasonable adaptations. This will further enhance the equality outcomes for people with disabilities and long term health conditions, older adults and their carers; as well as other vulnerable groups.

11.5 One of the key aims of licensing is to reduce antisocial behaviour, including hate crime and homophobic incidents. This will benefit all protected characteristics, including sexual orientation, gender identity, disability, race and religion.

11.6 The Equality Analysis, however, has also identified some potential negative consequences for over-represented equality groups in the affected landlord, agent and tenant cohorts. Black, Asian and minority ethnic (BAME) landlords are overrepresented in Brent, and as such it is recognised that the introduction of the

scheme is likely to have a greater impact on them in relation to increased business costs and potential financial penalties.

- 11.7 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. The findings of the study by Future of London (2017) bear directly on this point and will be taken into account in the implementation of any scheme. Any impact, in this or other areas, will be monitored closely and will inform regular reviews of the operation of licensing.
- 11.8 It is likely that tenants most impacted by these proposals will be among the lower income groups in the sector, living in 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.
- 11.9 In addition, data indicates that Black and Asian tenants are over-represented in the private rented sector. There is a high presence 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.
- 11.10 Some landlords may seek to pass on costs arising from the scheme to tenants, which may result in cases of tenant displacement and landlords' claims for possession through both legal and illegal actions. If landlords decide to increase rents, tenants from over-represented equality groups such as people under 35, migrants, single parent households may be particularly affected by this. However, based on the PRS team's experience of licensing over the past two years and that of other Councils who have introduced s licensing, it is believed that this unintended outcome is very unlikely to materialise.
- 11.11 Tenants may also potentially be affected by enforcement actions against landlords of overcrowded properties. Wherever possible the Council will work with landlords to make properties fit for the number of tenants. In cases when tenants have been unlawfully displaced or evicted, every effort will be made to effectively support and signpost them to available information and support.
- 11.12 Much concern has been expressed about the Government's plan to end section 21 "no-fault" evictions. Both landlord and tenant groups say that licensing will add to the problems they will face and have asked that the Council clearly sets how it will act with regard to section 21, should be ban be introduced.
- 11.13 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. At the same time, closer partnership working with landlords should support promotion of good practice on equalities in the sector. The Equality Analysis includes a detailed action plan available in Appendix 10.

## **12.0 Financial Implications**

- 12.1 The administration of the scheme is such that it is intended to be self-financing over a five-year period with higher levels of income from years 1 and 2 funding expenditure over the full 5 years. Fees of £840 and £540 relating respectively to the Additional and Selective Licensing schemes will be charged per application and is set at a level where the total revenue from the fee is intended to cover the total costs incurred.
- 12.2 It is estimated that 7,400 Additional HMO licences will be issued in the 5-year period generating income in the region of £5.98m. This assumes 2400 licences being processed as renewal licences at a reduced rate of £740.
- 12.3 It is estimated that if MHCLG renew selective licensing in Harlesden, Willesden Green and Wembley Central, 4,800 licences will need renewing at a cost of £440 per licence, generating an income in the region of £2.1m.
- 12.4 It is estimated that if MHCLG approve all other areas designated for selective licensing a further 6,800 licences will be issued in the 5-year period generating total income of £3.7m over 5 years.
- 12.5 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, compliance monitoring and enforcement against an applicant who is given a licence.

## **13.0 Staffing Implications**

- 13.1 With the introduction of Selective and Additional licensing in January 2015 Private Housing Services already has a dedicated and experienced team of officers employed to both process applications and inspect properties as well as carry out and required enforcement activities. 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. It is also possible that additional Licence Enforcement Officers will also need to be employed to further enforce standards within the private rented sector. Detailed staffing and resourcing plans will be developed.

## **14.0 Next Steps**

- 14.1 A decision to proceed with additional 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. Following the issue of the designation notice and on a date to be set by the Strategic Director for Community Wellbeing in consultation with the Lead Member for Housing and Welfare Reform, licensing applications will be invited and processed.
- 14.2 As noted earlier, a decision to designate wards for Selective Licensing over the 20% rule will require consent from the Secretary of State. Once, and assuming this is

obtained, a confirmation of the selective licensing decision 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. Following this, licensing applications will be invited and processed. It is not possible to indicate precise timings for the commencement of the scheme since this will depend on the time taken to obtain Secretary of State's approval.

Related Documents (copies available on request):

Selective Licensing Cabinet Report – 19 June 2017

Brent Integrated Housing Stock Modelling Database Report

Quintain Licensing Consultation Proposal - Final Submission

**Report sign off:**

***Phil Porter***

Strategic Director of Community Well Being