


## LONDON BOROUGH OF WALTHAM FOREST

Meeting / Date	<b>Cabinet</b> <b>5 October 2023</b>	
Report Title	<b>LICENSING OF PRIVATE RENTED SECTOR PROPERTIES – REVIEW AND PREPARATION FOR POSSIBLE FUTURE DESIGNATION</b>	
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Wards affected	All	
Public Access	Open	
Appendices	Appendix A – Equality Analysis (EA) – Screening Template	

### 1. SUMMARY

- 1.1. Waltham Forest recognises that privately rented properties play a valuable role in providing housing for residents of the borough. More households in the borough rent from a private landlord than from a social landlord and an estimated 39% of households with dependent children live in privately rented homes.
- 1.2. In 2020, the Government approved Waltham Forest's large scale selective licensing designation covering 18 of the 20 wards in the borough that existed prior to the recent ward boundary changes and increase in the number of wards to 22. The current selective licensing scheme came into force on 1 May 2020 and is due to expire on 30 April 2025.
- 1.3. The selective licensing designation was in addition to borough-wide mandatory House in Multiple Occupation (HMO) and discretionary additional (HMO) licensing schemes. The discretionary additional HMO licensing scheme came into force on 1 April 2020 and is due to expire on 31 March 2025.
- 1.4. This report provides an overview of the implementation of the current licensing schemes since coming into force. It also reports on what is

required to continue any further discretionary licensing scheme after the expiry of their current 5-year terms through a further re-designation. For any further large-scale selective licensing scheme, Government approval is required.

- 1.5. Property licensing is an effective tool in improving conditions for private renters, forming an integral element of our Housing Strategy. In addition, licensing can support the delivery of several broader Council priorities that recognise the impact of poor-quality housing in resident's lives, including the Marmot report into health inequalities in Waltham Forest, the Climate Emergency Action Plan and our Safer Streets initiative, all core programmes in our current 15 Minute Neighbourhoods corporate framework. This report demonstrates these links and outlines how they will be considered in the development of any further scheme.

## **2. RECOMMENDATIONS**

- 2.1. Cabinet is recommended to:
- 2.2. Note the significant progress in tackling poor property conditions and anti-social behaviour in the private rented sector that has been achieved through the Council's large-scale property licensing schemes.
- 2.3. Agree for further work to be undertaken to identify whether the relevant legal criteria are met to support a consultation upon a further selective licensing designation and/or additional licensing designation being implemented following the expiry of the current schemes.
- 2.4. Delegate to the Strategic Director of Neighbourhoods and Environment, in consultation with the Director of Governance and Law and Strategic Director of Resources, authority to identify the proposed nature and scope of any further designation, informed by the work described in 2.2, and authority to undertake consultation as necessary with landlords, tenants and other stakeholders regarding future scheme options.
- 2.5. Note that Cabinet will receive a further report with the finalised outcomes of any consultation together with recommendations in relation to designation of discretionary property licensing schemes beyond the expiry of the existing schemes.
- 2.6. Note that any decision to designate a further large-scale Selective Licensing scheme must be taken at a point which enables time for an application to be considered and determined by the Secretary of State for the Department for Levelling Up Housing and Communities (DLUHC), and if confirmed, published before the current scheme expires on 30 April 2025.

### 3. PROPOSALS

#### ***Background***

##### *Waltham Forest's property licensing schemes*

- 3.1 There are currently three property licensing schemes in operation in Waltham Forest. In addition to operating the National HMO licensing scheme, the Authority has exercised its powers under Part 2 of the Housing Act 2004 (the Act) and has designated the whole of the borough as an additional licensing area. Under this scheme, which came into force on 1 April 2020, most privately rented HMOs, which fall outside of the mandatory HMO licensing scheme are required to have an additional (HMO) licence in order to operate in the borough.
- 3.2 The Authority has also exercised its powers under Part 3 of the Act and has designated the significant majority of the borough as a selective licensing area. Under this scheme, which came into force on 1 May 2020, most privately rented homes occupied by a single-family household or no more than two unrelated persons are required to have a property licence.
- 3.3 The discretionary additional and selective licensing schemes expire on 31 March 2025 and 30 April 2025 respectively.
- 3.4 The objectives of these schemes, which Cabinet agreed in July 2019 are summarised below:
- Ensuring that all licensable properties are licensed
  - On application, inspecting all HMOs prior to determining the application
  - Carrying out targeted audits of licensed properties
  - Improving the condition of properties, reducing the number of housing hazards in HMOs by 50% and in single family dwellings by 25% over the life of the schemes
  - Reducing ASB incidents in licensed properties

##### *The administration and enforcement of the schemes to date; applications and determinations, inspections and homes improved*

- 3.5 The Covid lockdowns had a significant impact on the implementation of the new licensing schemes in 2020 and 2021, with the early bird period extended to give landlords additional time to apply for a licence at a discounted rate, programmed/proactive inspections suspended during periods of lockdown and licensing staff reallocated to perform other functions to support the Council's response to the pandemic. Despite this disruption in service delivery, we have made good progress towards meeting our core licensing objectives (figures below as of 4 August 2023):

Core Licensing objective		
Performance Metric	Target	Performance
Licence applications	~30000 (5 years)	25556
Properties inspected	4800 (3 years)	5668
Properties improved	1650 (3 years)	1504

- 3.6 The table below summarises the key data regarding licence applications received and the outcome of applications that have been determined

Licence type	Applications received	Granted full term	Granted reduced term	Refused
Selective	23677	21886	222	810
HMO	1899	772	442	

- 3.7 At present, more than 95% of all licence applications have been determined. The Council's schemes are scheduled to run for the maximum term possible of five years. There are several reasons as to why a reduced term licence might be granted instead of the full-term including concerns identified regarding the Licence Holder/Manager (but which are not sufficient to find that the person failed the 'fit and proper person' test) or concerns regarding the property itself. Most licences granted for a reduced term or refused outright have related to properties operating as HMOs without the necessary planning permission or established use.
- 3.8 The private sector housing and licensing service has carried out thousands of property audits as part of the administration and enforcement of the current licensing schemes.
- 3.9 A proportion of visits to rented homes are in response to service requests relating to living conditions or other tenancy matters. The service receives about 800 service requests each year, which are subject to an initial triaging process.
- 3.10 The staffing levels required in order for the Council to meet ambitious licensing scheme objectives provide important capacity for the Private Sector Housing and Licensing (PSH & L) service to undertake proactive property audits and enforcement. Aside from inspections undertaken as part of the process for determining HMO applications, proactive, intelligence-led inspections are carried out in various circumstances, including to properties owned or managed by landlords or agents of concern or addresses with low EPC ratings.
- 3.11 In cases where audit checks identify non-compliance issues at a rented home, officers work with the landlord to ensure that identified issues are

resolved. In the significant majority of cases compliance is achieved through informal action working closely with the landlord or agent but the Council will use the full range of enforcement powers, in line with its adopted enforcement policy, where this is necessary.

- 3.12 Formal actions which might commonly include one or more of the following actions:

Formal action	Output
Service of a legal notice, most frequently under Part 1 Housing Act 2004 (Housing Health and Rating System – HHSRS) such as an Improvement Notice requiring works to be carried out	223
A criminal prosecution or imposition of a Financial Penalty of up to £30,000 for each offence	170
The making of an Interim Management Order, whereby the Council assumes management control of a property pending it being licensed	20

- 3.13 There are a range of statutory provisions, principally contained within the Anti-social Behaviour, Crime and Policing Act 2014, that provide local authorities and the police with powers to tackle ASB. However, these powers are generally reactive in nature, enabling enforcing authorities to respond to often quite serious instances of ASB that have occurred and/or which are on-going.

- 3.14 Through the granting of licences under the Council's licensing schemes, standard conditions are imposed that require licence holders to meet obligations relating to the letting and effective proactive management of their rented homes. These conditions include several requirements relating to the prevention of ASB and the early resolution of any ASB that might arise, including:

- Generally, taking all reasonable and practicable steps are taken to prevent and deal effectively with ASB resulting from the conduct of occupiers of, or visitors to, the house, including the investigation of complaints, notifying the occupants as to the consequences of any on-going evidenced ASB and keeping written records of any ASB-related documentation for a minimum 5-year period;
- Requiring licence holders to ensure that tenants are aware of, and comply with, the relevant rules relating to waste disposal and recycling and providing tenants with adequate facilities for the disposal of refuse and recycling;
- Carrying out inspections of the rented property at least every 6 months.

A failure to comply with a licence condition without reasonable excuse is a criminal offence.

- 3.15 Many private landlords operating in the borough take their responsibilities very seriously and provide well managed rented homes that are maintained to a good standard. However, analysis carried out in 2018, prior to the designation of the current selective licensing scheme, confirmed that there were widespread issues of disrepair and housing hazards in the private rented sector and poorly managed properties that gave rise to significant and persistent anti-social behaviour (ASB) compared to homes in other sectors.
- 3.16 Through the administration and enforcement of the licensing schemes, the Council has been able to place greater onus and responsibility on licence holders to prevent ASB in their rented homes, to investigate any reported ASB incidents and to take appropriate action to address any evidenced issues.
- 3.17 In recent research published in BMJ Open, researchers from the School for Public Health Research have found that the licensing of private rented housing in London is associated with less anti-social behaviour (ASB) with less calls being made regarding ASB concerns.

*Operating model and alignment with key priorities and policies*

- 3.18 Whilst the overall focus on the delivery of licensing scheme objectives has been maintained, the PSH & L's operating model has continued to evolve to align with new priorities, including:
- The establishment of a Team to prioritise action against empty homes and/or homes with poorest energy efficiency, contributing to the Council's adopted climate action plan and to tackling the borough's high incidence of fuel poverty;
  - Responding to additional service demands following the inquest in November 2022 that concluded damp and mould caused the tragic death of 2-year-old Awab Ishak;
  - Establishment of weekly tenant drop-in sessions where officers are able to provide in-person advice to private tenants reporting issues with the condition of their rented homes and to signpost tenants to other relevant services;
  - Undertaking inspections of accommodation offered by sponsors under the 'Homes for Ukraine' scheme;
  - Participation in the Community Safety-led Safe Streets pilot in South Leytonstone and Chingford Mount.
- 3.19 The Council's approach to the administration and enforcement of its property licensing schemes, alongside its use of wider powers, has meant that Waltham Forest has benefitted from a significantly raised profile with central and regional government and is seen as a 'go to' borough in relation to property licensing and the associated enforcement activities. Officers continue to work closely with civil

service counterparts to discuss and shape the nature of future regulatory powers.

- 3.20 The Council has taken a robust approach to enforcement against private landlords who failed to meet their legal obligations. We have embraced new powers. For example, we were one of the first local authorities nationally to adopt the power to issue a financial penalty of up to £30,000 introduced by the Housing and Planning Act 2016 as an alternative to prosecution for certain housing offences. In addition, we are the leading authority nationally in the use of Interim Management Orders to take control of unlicensed privately rented properties.
- 3.21 Much of the legislation around property licensing, and the more recently introduced legislation, has not been tested in the Courts. Our approach has been to push the boundaries to test the law in circumstances where there is a strong public interest to deliver more effective enforcement for the ultimate benefit of tenants who rent from a private landlord, and for the wider community.

#### *Proposal - Next Steps*

- 3.22 Much of what Waltham Forest has been able to deliver in improving standards in the PRS has been achieved through the administration and enforcement of its property licensing schemes. The large-scale selective licensing scheme provides an important regulatory framework in which landlords are required to proactively manage and maintain their rented homes though conditions attached to approved licences.
- 3.23 The Council has achieved a lot through the administration and enforcement of its property licensing schemes. It has adopted a light-touch approach to the administration of the schemes, minimising the burden on the very many responsible landlords who take their legal responsibilities seriously and who provide a good service for their tenants. More than 4500 private rented homes have been improved since the first borough wide selective licensing scheme came into force in 2015 through a combination of working with landlords and agents informally and the taking of formal action where necessary.
- 3.24 However, despite the improved regulation of the sector, it remains the case that renting from a private landlord is a tenure of necessity rather than choice for many tenants for well-documented reasons including a lack of rent controls and security of tenure. Whilst the Council has overseen the improvement of large numbers of privately rented homes, it remains the case that the worst housing conditions are still likely to be experienced by tenants who rent privately and that communities are more likely to be adversely impacted by issues arising from poorly managed privately rented properties.

- 3.25 We are now halfway through the fourth year of the five-year term for our large scale discretionary additional and selective licensing schemes. If these discretionary licensing schemes are to continue beyond the scheduled expiry of the current schemes, then the Council will need to determine whether there is a case to be made, having regard to the relevant statutory tests, for a new scheme or schemes, and carry out the necessary statutory consultation before making any decision to make a further designation. An application must then be made to the Secretary of State for DLUHC to have that confirmed.
- 3.26 Any proposed scheme would be subject to a period of public consultation lasting a minimum of 10 weeks. Current government guidance indicates that a decision in relation to an application to the Secretary of State will take around 14 weeks from receipt, but processing applications may take longer. In addition. A large-scale selective licensing scheme approved by the Secretary of State cannot come into force until at least 3 months after the Secretary of State's approval. Likewise, any additional licensing scheme approved by the Council cannot come into force until at least 3 months after approval.
- 3.27 Given the preparatory work required and steps that need to be taken which might lead to the designation of new discretionary schemes upon the expiry of the existing schemes the process must start now.

#### **4 OPTIONS & ALTERNATIVES CONSIDERED**

- 4.1 Cabinet could decide that no further work or steps should be taken towards identification of whether any new discretionary schemes should be progressed. This is not recommended because Council's large-scale property licensing schemes have proved successful and where the evidence supports the designation of a scheme this provides an important regulatory framework as set out in this report.

#### **5 COUNCIL STRATEGIC PRIORITIES (AND OTHER NATIONAL OR LOCAL POLICIES OR STRATEGIES)**

- 5.1 The Council's large-scale property licensing schemes provide an important regulatory framework in which we can more effectively regulate conditions and practices in the private rented sector and compliments several council priorities. The 2023 Affordable Housing Commission highlighted the impact of the national housing crisis on the private rental market and identified *improving standards and access to the PRS* as one of four key priorities for a renewed Housing Strategy for 2024. Large-scale property licensing enables us to undertake direct collaboration with landlords to drive up standards, achieve safe and well-maintained homes, deal with empty properties, and tackle ASB in private rented homes. The scheme will also continue to contribute to the Council's improved response to Community Safety challenges, providing



critical revenue and bringing regulatory powers to bear on the rising challenge of ASB and crime in Waltham Forest.

- 5.2 Secondly, the Marmot report in 2023 identified poor housing as a major cause of both mental and physical ill health and established 'Healthier homes' as one of the four key Marmot accelerator programmes. The accelerator aims to increase access to safe, affordable, and warm homes through a strengthened focus on tackling fuel poverty, cold homes and housing advice across all tenures, particularly the most deprived residents.
- 5.3 Lastly, the Climate Action Plan aims to address the energy efficiency of buildings including private rental homes, and ensure residents are supported to produce less waste and recycle more. Licensing supports the delivery of both these objectives through the conditions contained in licenses in regards provision for waste, recycling and proper property management.
- 5.4 The licensing service will continue to adapt to meet new corporate priorities and future schemes will respond to new evidence regarding new challenges and needs facing the residents of Waltham Forest.

## **6 CONSULTATION**

- 6.1 Consultation is not needed for this report.
- 6.2 However, there is a statutory obligation to consult in respect of any proposed additional or selective licensing schemes, as set out in Parts 2 and 3 Housing Act 2004 respectively. The Council must take reasonable steps to consult persons who are likely to be affected by the designation and then fully consider any representations made. Any consultation undertaken will be reported to Cabinet as part of the next report.

## **7 IMPLICATIONS**

### **7.1 Finance, Value for Money and Risk**

- 7.1.1 Budgetary provision in the sum of £300,000 has been made to meet the estimated cost to determine whether the legal criteria for a further scheme or schemes are met, any subsequent consultation exercise and other incidental costs as may be necessary arising from the report recommendations. These costs will be factored into financial assumptions regarding the preparation and cost-neutral delivery of any new discretionary licensing scheme or schemes identified as being necessary.

## **7.2 Legal**

- 7.2.1 The legal framework is found in Parts 2 and 3 of the Housing Act 2004 which gives local authorities the discretionary power to introduce, respectively, an additional HMO licensing scheme and a scheme of selective licensing of privately rented properties. The Council can designate additional and/or selective licensing schemes that cover whole or part of its area, imposing conditions on licence holders for minimum standards of management in relation to the rented home and, under any additional licensing scheme, its condition and content.
- 7.2.2 Cabinet is being asked to agree that work is undertaken to identify if the legal criteria for the making of a further large-scale selective licensing designation is met, and to delegate to the Strategic Director of Neighbourhoods and Environment, in consultation with the Director of Governance and Law and Strategic Director of Resources, authority to identify the proposed nature and scope of any further designation, and authority to undertake consultation as necessary with landlords, tenants and other stakeholders regarding future scheme options.
- 7.2.3 Following any consultation Cabinet will be presented with the results of that consultation and make a decision regarding what additional HMO licensing, if any, it should make, and what, if any, further designation of a selective licensing scheme should be made.
- 7.2.4 Specifically in relation to any proposed selective licensing scheme, every local housing authority in England that proposes any scheme which would cover more than 20% of their geographical area or that would affect more than 20% of privately rented homes in their area as subject to additional licensing, or who seek to renew an existing licensing scheme must have the Secretary of State's general approval of that designation. If the designation is confirmed by the Secretary of State it cannot come into force until the expiry of three months from the date of confirmation.

## **7.3 Equalities and Diversity**

- 7.3.1 This report recommends that the significant progress in tackling poor property conditions and anti-social behaviour in the private rented sector through its property licensing schemes is noted. It also recommends that further work be undertaken to identify whether the relevant legal criteria are met to support a further designation or designations.
- 7.3.2 Given the nature and scope of the report's recommendations, there are no equalities and diversity implications at this stage. An EA Screening Template is at Appendix A.
- 7.3.3 It is intended that Cabinet will receive a further report with the finalised outcomes of any consultation undertaken and recommendations in relation to designation of discretionary property licensing schemes beyond the expiry of the existing schemes. That future report would be accompanied by an appropriate Equality Analysis.

## **7.4 Sustainability (including climate change, health, crime and disorder)**

- 7.4.1 The Council's Climate Action Plan includes a committed to reach net zero greenhouse gas emissions by 2030. Currently 48% of the borough's carbon emissions are generated by residential homes and we know that the least energy efficient homes are privately owned. Improving the energy efficiency of residential housing across the Borough is a key to improving sustainability and reducing carbon emissions. Consideration of the latest available Energy Performance Certificate (EPC) data will form an integral part of the Council's consideration of the condition of the borough's housing stock.
- 7.4.2 The Council is committed to tackling health inequality in the Waltham Forest. In January 2022, Waltham Forest Council commissioned Professor Michael Marmot and the UCL Institute of Health Equity (IHE) to assess health inequalities in the borough. Their report "A fairer and healthier Waltham Forest" stated that poor quality housing, including damp and cold homes, increase mortality and ill-health. Damp and cold housing have been shown to have a direct impact on residents' health, for example an increased risk of cardiovascular and respiratory disease for residents living in cold and damp properties. Poor quality housing is a significant driver of health inequalities in the borough. Despite improvements delivered through the operation of the current and previous property licensing schemes, the worst housing conditions are still to be found in the private rented sector.
- 7.4.3 The English Housing Survey 2021 found that damp and mould are most prevalent in privately rented accommodation. The number of people renting private properties in Waltham Forest has increased steadily over the last decade and there are currently estimated to be close to 30,000 privately rented properties in the borough. Ensuring healthier homes for tenants across all tenures has been identified as a key part of the Council's response to the Marmot Report.
- 7.4.4 The Council must ensure that property licensing schemes are consistent with the authority's overall Housing Strategy and must seek to continue to adopt a co-ordinated approach in dealing with Homelessness, ASB and empty properties. The Council in its Housing Strategy is committed to working in partnership with landlords and tenants of the PRS, which represents the second highest tenure in the Borough and a critical part of the housing supply.

## **6.5 Council Infrastructure**

- 6.5.1 No specific implications until further proposals in next report.

### **BACKGROUND INFORMATION (as defined by Local Government (Access to Information) Act 1985)**

None