

Report for: **Cabinet**

Date of Meeting:	21 st January 2021
Subject:	Renewal of Selective Licensing of private rented accommodation in the Edgware Ward
Key Decision:	No
Responsible Officer:	Paul Walker, Corporate Director Community
Portfolio Holder:	Councillor Varsha Parmar, Portfolio Holder for Environment
Exempt:	No
Decision subject to Call-in:	Yes
Wards affected:	Edgware
Enclosures:	Appendix A – DCLG Guidance Appendix B – Edgware Complaint Breakdown Appendix C - Proposal for Introduction of Selective Licensing Scheme Consultation Report Appendix D – Consultation (including forms) Appendix E – Designation of Selective Licensing Appendix F – Draft Conditions Appendix G – Referred Legislation Appendix H- Equality Impact Assessment

Section 1 – Summary and Recommendations

This report proposes the re-introduction of a Selective Licensing Scheme in the ward of Edgware (which previously had one), which would require private rented accommodation to be licensed and meet conditions, in order to address significant and persistent problems with anti-social behaviour in that area.

Recommendations:

Cabinet is requested to:

1. Consider the evidence, consultation responses and other information forming part of this report and determine whether the Edgware ward (as delineated and edged in red on the map at **Appendix E**) should continue to be designated as being subject to Selective Licensing.
2. If the Edgware ward is to continue being designated as being subject to selective licensing, confirm that the designation is to take effect from 15th March 2021 for a period of five years.
3. Agree that the Council can begin to accept applications for Selective Licensing (if approved) from 1st March 2021, in anticipation of the scheme coming into effect on 22nd April 2021.
4. If the scheme is approved, agree to the Head of Community & Public Protection taking all steps necessary to publicise, commence and administer the scheme including the issuing and amending of licences.
5. Note that the Selective Licensing scheme (if approved) and the operation of the designation will be reviewed annually.
6. Delegate authority to the Corporate Director Community, in consultation with the Portfolio Holder for Environment, to amend and approve discretionary licensing conditions implemented by the Head of Community and Public Protection.

Reason: (For recommendation)

To continue to address issues of anti-social behaviour in the Edgware ward, in line with the corporate priorities of making a difference to residents, community, businesses and the vulnerable.

Section 2 – Report

1. Introduction

- 1.1 Harrow Council is committed to maintaining a clean and safe environment for the benefit of everyone in the borough. The commitment recognises the Council's responsibility to keep the local environment clear of litter, fly-tipping and vandalism; encourage behaviour change to initiate improvements; and reduce the fear of any crime in the Borough. This includes tackling rogue landlords but assisting those that need help.
- 1.2 A project was set up in 2012-13 to identify areas within the Borough that were suffering from high levels of anti-social behaviour and environmental issues.
- 1.3 As a result of the project, three areas were identified that suffered high levels of issues, evidenced in the project report in **Appendix B**. This included Edgware, which showed high levels of deliberate fires, above Borough average rates for serious crime and ASB, high levels of fly-tipping and large volume of noise nuisance (especially from private rented properties).
- 1.4 The data was analysed for the period 2012-13 and addresses cross-referenced with council tax data to determine how many ASB related complaints related to private rented properties, which was 33% for Edgware. This has remained steady in the last decade, though indicating a lot are centred around clusters (e.g. Park Way, Mollison Way)
- 1.5 The Housing Act 2004, Part III, allows Local Authorities to introduce a Selective Licensing Scheme if certain conditions are met for the area. The Department for Communities and Local Government "Selective Licensing in the Private Rented Sector" Guide for Local Authorities states that the area must have one or more of the following being experienced:
- i. low housing demand (not applicable in Edgware),
 - ii. significant and persistent problem caused by anti-social behaviour (ASB),
 - iii. poor property conditions,
 - iv. high levels of migration,
 - v. high level of deprivation, and
 - vi. high levels of crime.
- 1.6 Details of what factors can be considered is set out in pages 8 to 13 of the guidance that can be found in **Appendix A**
- 1.7 By designating an area for Selective Licensing, in combination with other actions, it should lead to a reduction in, or the elimination of, the problems being experienced.

- 1.8 The designation of an area as being subject to selective licensing is intended to lead to all private rented properties in the area, subject to certain exemptions, having to be licensed by the local authority, unless the property is a House in Multiple Occupation and therefore subject to another licensing scheme.
- 1.9 The Local Housing Authority can decide to designate an area, or part of an area, subject to meeting the requirements, without Secretary of State approval, unless it exceeds 20% of the Borough geographical area or private rented properties, in which case it will need such approval. The proposal to renew the Edgware Ward designation meets neither limit.

Objectives and outcomes of a selective licensing scheme

- 1.10 The purpose of a Selective Licensing Scheme is to directly tackle issues affecting an area, as detailed in 1.5 above, attributable to private rented accommodation.
- 1.11 In addition, Harrow has unfortunately witnessed increasing issues with housing standards over the last few years, especially in terms of overcrowding and inappropriate letting of premises (e.g. “Beds in Sheds”), which has led to increased environmental and ASB issues. This has included increased fly tipping due to lack of suitable numbers of bins for the occupants in place.
- 1.12 The breakdown of complaints in Edgware (comparatively to other Wards) shown in **Appendix B**, show the issues faced in the Edgware Ward especially in terms of environmental and anti-social behaviour matters. Added to this, there is a high transient population within the Ward, which brings its own issues in terms of consistent approach to problems and what those problems can be.
- 1.13 A breakdown of Edgware relevant complaints over the last 5 years has shown that there has been an impact on some of the key areas:

Description	2015	2016	2017	2018	2019	5 year change (%)
Abandoned vehicle report	86	104	56	43	27	-69
Asbestos	0	1	0	2	5	0
Drug substance misuse dealing	3	5		1	1	-67
Fly tipping	111	132	196	34	32	-71
Housing Dampness	4	9	2	1	0	-100
Housing Disrepair	12	0	9	6	14	17
Housing Overcrowding	8	9	15	22	9	13
Intimidation or harassment	1	1	1	2	1	0
Litter or rubbish (ASB)	7	1	0	1	0	-100
Noise (Received Normal Hours)	45	54	45	57	59	31
Nuisance behaviour	29	32	14	9	16	-45
Rowdy behaviour	1	3	0	3	1	0
Vehicle noise or use (ASB)	0	1	0	0	0	0

- 1.14 Fly tipping is a key indicator monitored, and this has seen a big decrease overall. The same is applicable across areas of abandoned

cars, drug use, litter and rubbish and nuisance behaviour. These are all positive impacts that Selective Licensing has contributed to.

- 1.15 The areas that show less of an impact are those localised to premises and occurrences within, such as noise complaints. As a result of this, work has taken place to improve guidance around landlords ASB action plans which need to capture steps around this and part of the selective licensing conditions.
- 1.16 Housing disrepair and overcrowding, while only minor increases, can be attributed to a proactive approach by the Service to inspect premises that apply for Selective Licences and subject to the Housing Health & Safety Rating Scheme (HHSRS) by Officers. Therefore, more issues such as this are being found that without such a scheme would remain hidden and unknown, partly down to tenants not understanding what to expect or who to report them to.
- 1.17 By continuing the Selective Licensing Scheme, it will retain the proactive measures in place to address potential tenant issues as well as ensuring that there are suitable conditions at premises to maximise the potential to prevent anti-social behaviour and environmental concerns. This can be seen in the mandatory conditions, set in Statute, and proposed conditions to be applied to the licences.
- 1.18 With the renewal of a clear licensing regime, it is intended to continue to bring confidence to the private rented sector within the Ward, with all parties understanding the standards that all rented accommodation will operate to. This, as well as targeted enforcement against rogue landlords, will help ensure a fair playing field in that area to encourage good landlords to operate.
- 1.19 Encouragement is given to good landlords with a discount being offered for membership of an accredited landlord scheme.
- 1.20 From a tenant aspect, it will be clear what is expected of them as Selective Licensing will require tenancy agreements to clearly define tenants' obligations regarding preventing anti-social behaviour. This, as well as the requirement for references prior to tenancy, will aid in ensuring that those actually living in the area become part of the solution regarding issues previously faced, rather than the actual problem.
- 1.21 For the vast majority of landlords that the Council encounters in terms of non-compliant premises, the problem tends to stem from a lack of understanding of standards or inexperience of managing a premise. Selective Licensing, in conjunction with educational work that officers routinely carry out, will aid in setting down clear guidance and standards to actually assist rather than penalise.
- 1.22 For "rogue" landlords, the renewal of selective licensing introduces elements that discourage their activities. For instance, a landlord that operates without a licence can be made, by Court Order, to repay rent paid in respect of the unlicensed premises.

- 1.23 Overall, Selective licensing aims to improve premises conditions in an area, as well as their management and occupation that will contribute to the community they are within. It will aid in protecting the welfare of tenants, provide confidence in the rented sector, and put clear standards in place for the good of all. It will be more conducive to good landlords but provide an environment that is less opportunistic and attractive for rogue landlords. It will also give the authority and landlords more powers in dealing with those tenants that chose to cause anti-social behaviour.

Aims:

To ensure:

1. A regulated standard of management and condition of private rented properties. Improving the standards to ensure landlords improve their properties and manage tenancy agreements to reduce anti-social behaviour;
2. A more settled and diverse community living with improved security and a sense of community;
3. Homes owners who do not sell up purely because of frustration / fear that their area is considered less appealing and house prices falling compared to neighbouring areas;
4. Encourage the good tenants to stay in the area and avoid displacement of tenants; and
5. Harrow to be considered an attractive area to live and work, which can result in improved economic future for local businesses.

Objectives:

A reduction in:

6. Accumulation of waste;
7. Drug and alcohol related crime;
8. Gang nuisance;
9. Illegal conversions;
10. Negativity due to badly managed and poorly maintained properties;
11. Overcrowding;
12. Sub-letting;
13. Vandalism; and
14. Transient population, leading to a more stable community.

2. Options considered

- 2.1 Section 81(4) of the Housing Act 2004 sets out the requirement that Councils must have considered other potential courses of action available to provide an effective method of achieving the objective or objectives that the designation would intend to achieve, and that making the designation will significantly assist them to achieve the objective(s).

- 2.2 All options were considered and for some, such as the additional and mandatory HMO licensing schemes, these are already in place.

Do Nothing

- 2.3 The evidence has shown that the area is subject to conditions that require intervention, for the purpose of helping the community.
- 2.4 The consultation which took place between 5th June 2020 to 14th August 2020 show that the issues have remained in place despite other forms of intervention taking place. This includes aspects of noise, which is mentioned in 1.15 above, as well as refuse storage especially in hot spot areas such as Park Way (more related to lack of storage rather than previously related to fly tipping)
- 2.5 In line with Council commitments and requirements of putting the community first, the option of doing nothing is not an option. If no action is taken the problems experienced in the ward are likely to continue.

Mandatory Licensing

- 2.6 Mandatory licensing refers to the licensing of Houses in Multiple Occupation (HMO) where the premises are occupied by five or more people who form two or more households. This licensing regime has been in place in Harrow since 2006, but only covers a small portion of the rented accommodation sector.
- 2.7 Despite being in place for 14 years, with proactive enforcement being in place, some of the issues highlighted in the evidence above have continued as can be seen in 1.13 above
- 2.8 Mandatory Licensing can ensure that standards are in place for specific, individual premises but not able to raise them in an area per se. Therefore, the use of this licensing regime alone would not meet the objectives set out by a Selective Licensing scheme.
- 2.9 This scheme is already in place, but only affects HMOs, and so does not deal with issues affecting the area resulting from other privately rented properties.

Additional Licensing

- 2.10 Additional Licensing covers Houses in Multiple Occupation not subject to the mandatory scheme noted above. In Harrow this covers any premise with two or more different households (up to October 2018 also covered 2 storey buildings until Mandatory HMO definition changed). Harrow has had such a scheme in place since 2010, and is seeking to be renewed in 2021, with consultation taking place currently.
- 2.11 Again, this addresses matter of multi occupied premises, but does not ensure a consistent approach across the rented sector in an area to bring standards up.

- 2.12 It is worth noting that while only 183 premises in Edgware have been licensed as a HMO, including Additional, this compares to 684 that currently are licensed for selective. Therefore, reliance purely on Additional Licensing would not cover approximately 80% of the rented premises in Edgware.
- 2.13 Additional licensing is already in place in Harrow but as noted above, does not go far enough in that it does not capture many privately rented properties.

Borough Wide Designation under Selective Licensing

- 2.14 Some councils have adopted Borough Wide schemes, such as seen in Newham, but Harrow has been keen to ensure that such a scheme is used only where it is required for a targeted approach, and in line with legal requirements. Additionally, it is important that there is a clear evidence base to support any scheme, and for the areas proposed, which is established for Edgware but is currently not in place for the whole Borough.
- 2.15 It should be noted that there has been widespread support for selective licensing on a larger scale, but this in itself cannot be evidence to justify introducing a wider scheme. Additionally, all areas will probably suffer from aspects of anti-social behaviour linked to private rented accommodation, but it is imperative that a proportionate, evidenced approach is taken to target and tackle areas.
- 2.16 This option not viable due to a lack of Borough wide evidence to justify it at present.

Accredited Landlord Scheme

- 2.17 There are accredited landlord schemes in operation that put in place a consistent standard and lead to improved standards of accommodation, not necessarily matters of ASB. While such schemes are valuable, it is imperative that all landlords in an area engage in improving it. Such a scheme is voluntary and so take up is variable. Therefore, it is felt that a more intensive intervention is required, making it mandatory on all landlords to comply with conditions in order to address the problems being experienced in the area.
- 2.18 As part of the selective licensing scheme, it is proposed that a £75 discount is applied to the initial application if the landlord is a member of an accredited scheme. This recognises the actions of landlords to be proactive in approach and already have signed up to agreed set standards.
- 2.19 This option is already in place, but merely compliments current licensing schemes and does not address the wider issues that selective licensing is expected to help with.

Action Against Individual Cases

- 2.20 Legislation allows enforcement action to be taken against cases of nuisance and fly tipping (Environmental Protection Act 1990), Anti-Social Behaviour (ASB, Crime and Policing Act 2014) and other related matters.
- 2.21 The Council has introduced Fixed Penalty Notices for environmental issues, such as littering across the Borough.
- 2.22 The Anti-Social Behaviour, Crime and Policing Act 2014 provides additional powers to local housing authorities by way of absolute grounds for possession in housing cases where certain conditions are met, although this will only assist with council tenancies.
- 2.23 The issue with reliance on these powers is that it affects property and/or person specific issues and does not necessarily address the wider issues, although it may have some deterrent effect.
- 2.24 The DCLG Guidance recognises that Selective Licensing is not a tool that can be used in isolation, and the above enforcement powers can be used to compliment a change in culture and address issues.
- 2.25 This option is already in place but has localised effect on its own.

Special Interim Management Order

- 2.26 A Special Interim Management Order transfers the management of a residential property to the local housing authority for a period of up to 12 months and can only be made if approved by a First-tier Tribunal (Property Chamber).
- 2.27 These orders are used to address matters of anti-social behaviour emanating from a property that the landlord is failing to take appropriate action to deal with. The order is then made to protect the health, safety or welfare of persons occupying, visiting, or engaged in lawful activities in the locality of the property.
- 2.28 These are strong powers to deal with isolated individual problems of anti-social behaviour which nevertheless seriously impact upon the community.

This option is already in place but has localised effect on its own and can be used where a focused approach is needed.

Part 1 of the Housing Act 2004

- 2.30 These enforcement powers are designed to effectively deal with hazards within a property and though effective at getting landlords to remedy such hazards, Part 1 of the Act does not offer a wider strategic procedure to improve a designated area.

Empty Property Strategy

- 2.31 The council already has an intervention team dedicated to bringing long-term empty dwellings back into use, but this initiative is only restricted to empty homes and cannot deal with poorly managed private rented accommodation.

Landlords Forum

- 2.32 The council has been hosting landlord forums for years which have shown a lot of interest from landlords and is a great way of exchanging information and educating our landlords who operate in the borough but this does not offer a comprehensive, structure for managing private rented properties and tenants and offers no enforcement to ensure that such a structure is adhered to.
- 2.33 Landlord forums have also shown that they are well attended by proactive landlords but not by all, and the issue remains that Harrow has a large proportion of independent landlords that are hard to reach or live outside the area and therefore do not attend.
- 2.34 This year was unfortunately this is the first year such a forum was not held due to covid-19.
- 2.35 Going forward, these forums will continue in addition to other steps.

Designation of the Edgware Ward for Selective Licensing

- 2.36 Selective licensing applies to privately rented homes which are not HMOs.
- 2.37 In light of the consultation outcome and feedback, and in conjunction with the evidential reports within the appendices, it appears that a Selective Licensing scheme designation for the Edgware Ward would continue to help to tackle the issues identified.
- 2.38 The renewal of such a designation would allow a consistent approach across the Ward that works in conjunction with the Mandatory and Additional Licensing Schemes, as well as enforcement powers, to address the issues highlighted in the area.
- 2.39 It should be noted that a premise that is subject to Mandatory or Additional Licensing would not also need to apply for a Selective License.
- 2.40 This option is recommended to Cabinet to put in place a Ward wide approach to issues.

3. Community Consultation

- 3.1 The Department of Communities and Local Government Selective Licensing Guidance recommends that any consultation on a scheme is for a minimum 10 weeks.

- 3.2 The consultation on the renewal of a Selective Licensing Scheme in the ward of Edgware ran from 5th June 2020 to 14th August 2020. The aim of the consultation was to seek the views of residents, landlords, local businesses and other stakeholders in the area and neighbouring boroughs about the issues in the Ward and the potential introduction of the selective licensing scheme.
- 3.3 The consultation was both online and available in hard copy. Copies of the form are attached in **Appendix D**.
- 3.4 Consultation was also conducted with neighbouring Boroughs due to potential concerns over displacement of issues. No responses were received for or against the proposed scheme.
- 3.5 Consultation also included writing to all landlords, managing agents and letting agents known as well as placement of consultation posters around Edgware and neighbouring wards giving details of the proposals as well as means to comment.
- 3.6 Feedback from the consultation is contained in **Appendix C**, with a summary below.
- 3.7 Formal consultation also took place with other relevant partners, including Housing Needs, due to the need to ensure a tie in with any approach addressing homelessness and empty homes.
- 3.8 On contacting other Councils who have introduced a Selective Licensing scheme, there appears to be no evidence to suggest an increase in homelessness as a result. This would tie in with the lack of evidence as a result of introducing additional and mandatory HMO licensing in the Borough.

Summary of Consultation

- 3.9 The consultation showed very low numbers of responses, totalling 23 overall of which 18 were residents and 5 landlords / managing agents. This was in line with previous consultations, despite it being advertised widely in the Borough (including posters throughout the area and neighbouring areas).
- 3.10 Residents were evenly split in terms of whether the scheme should be renewed, but all landlords and managing agents that responded indicated opposition to this. Unfortunately, with such low numbers, there is no statistical ability to determine a ward or wider view of the proposal. To give context, with over 600 premises licensed under the previous delegation, the opposition of 5 landlords and managing agents cannot lead to any conclusions being drawn.
- 3.11 The comments made by those in the consultation are captured in **Appendix C**, with response from the Council. A lot of these comments indicate a recognition of issues in the ward, especially around

environmental and ASB, which the Selective Licensing Scheme is aimed, in conjunction with other actions.

- 3.12 Additionally, Safeagent (who represent some landlords) also submitted a letter detailing a number of concerns and issues, all of which are addressed and documented in **Appendix C**.
- 3.13 Therefore, overall, there was opposition to the scheme, but evidenced with the need for action by the Council to address the matters covered by the scheme.

4. Licensing Conditions

- 4.1 Under the Housing Act 2004, Selective Licensing is subject to certain mandatory conditions that would be applied to all licences.
- 4.2 Further, discretionary conditions can also be applied in relation to certain aspects; it is proposed to include these to directly address elements of anti-social behaviour, including environmental impact. All proposed conditions, together with the mandatory ones, are shown in **Appendix F**.
- 4.3 The discretionary conditions are linked to the management of the premise and the tenancy use and are aimed not to put any further financial burden on any party. Additionally, it includes the requirement to inform the Authority of any material change to the premise or any legal action / convictions that occur. This is aimed to maintain confidence in the licensing scheme and ensure statutory requirements are met.
- 4.4 The original assessment of a Selective Licensing Scheme addressed the conditions that would be applicable, and these formed the basis of those previously imposed and subject to discussion during consultation.
- 4.5 The conditions have also been set in line with those applied by neighbouring boroughs, to ensure consistency of approach as landlords and tenants operate across boundaries, and therefore trying to minimise the burden on landlords by minimising conflicting or additional burdens and to minimise displacing any issues.
- 4.6 The fee set on application covers the reasonable monitoring of these conditions to ensure compliance, with the majority expected to be in place at the application and approval stages. These fees are set as part of the annual Council fee setting process.

5. Designation

- 5.1 Should Cabinet agree to the renewal of a Selective Licensing Scheme, a Designation Notice must be issued which gives formal notification of the scheme. This Designation Notice must comply with the

requirements set out in Section 83 of the Housing Act 2004, including the proper publication of it.

- 5.2 A period of no less than three (3) months (from the designation being made) must pass before the scheme then comes into force. This period is to be used to advertise the scheme, work with landlords and ensure the successful implementation.
- 5.3 Based on the above, it is proposed that the designation of the scheme comes into force on 29th April 2021, which meets the 3 month period and allows for the call in period.

6. Implications of the Recommendation

Resources

- 6.1 The administration of the Mandatory and Additional Licensing of Houses in Multiple Occupation schemes is currently managed by the Residential Licensing Team, with one specific officer involved. Compliance visits to, and enforcement of, Houses in Multiple Occupation is conducted by the Residential Licensing Team and assisted by colleagues from the Domestic Environmental Health Team who are also responsible for all other private sector housing enforcement and environmental protection matters.
- 6.2 If the scheme renews, we expect an increase in applications as the scheme is publicised, especially in the first few months of the renewal. As well as initial licensing and compliance visits, further staffing resources will be required. Detailed staffing and resources plans will be developed and will be subject to any necessary consultation with staff. The costs of additional staffing will be met by the selective licensing fee.

Performance Issues

- 6.3 Continuing to improve the private rented sector in Edgware will have a positive impact on helping make a difference to families, businesses and communities. It fits in with Harrow's Housing Strategy to provide good quality private sector housing locally, which recognises the contribution that a healthy private rented sector can make to the provision of housing solutions for those who cannot access home ownership or affordable housing.
- 6.4 The process to consult with and continue the selective licensing scheme has also enabled the identification of empty properties. The Council can enable and encourage property owners by offering a range of grants, funded with both external and council resources, to bring properties up to a standard suitable for letting. Selective Licensing will enable the environment that encourages the right responsible

landlords, but with assistance to them to help with tenancies, to contribute to the area.

- 6.5 By continuing the scheme, with clear conditions that must be met, the Council can assist and enable landlords and owners to achieve good standards, but recognising that it will be easier to target and achieve compliance with those landlords who seek to provide sub-standard accommodation. This will hopefully provide more suitable accommodation that the Council could also use for the purpose of housing homeless, knowing that minimum standards are ensured.
- 6.6 The continuation of Selective Licensing also ties in with the Council's Private Sector Housing Strategy for **2019-2024**, using additional powers to address areas where private sector housing can be seen to contribute to issues faced in the community and need addressing. It is to work with good landlords to provide them the environment where these properties will be successful and can be managed successfully.
- 6.7 With strategy and with the continuation of such scheme, Harrow Council believes that, through investment in private sector housing and by ensuring that good standards are maintained, wider benefits for the residents of Harrow will be delivered.
- 6.8 In view of the Council's limited resources, the Private Sector Housing Strategy focuses on what can be done to encourage and facilitate the continued provision of a good quality private housing sector, including private rented housing. This will be achieved by working in partnership with other boroughs, landlords, developers and private tenants and residents, whilst using available enforcement resources to tackle the worst conditions in the sector. Selective Licensing builds on and encourages this process and allow a sustainable approach.
- 6.9 The continuation of Selective Licensing Scheme will make a difference to the community within Edgware, by directly influencing the ASB, property standards and environmental issues affecting the area. It will introduce new conditions that the private rented sector will have to meet to ensure that their properties are maintained and managed properly. This will encourage a sustainable private rented sector market.
- 6.10 If the scheme is not renewed, then it will limit the options the Council has to make change across an area, with resources being focused on individual problem premises and people and not being able addressing the wider issues.

Environmental Implications

- 6.11 The renewal of the scheme allows conditions to be put against rented accommodation in a designated area. These conditions include those that directly relate to environmental matters, for instance in the aspect of refuse storage, and ensure that all parties connected to private

residential properties play their part in improving the area they reside in.

6.12 Therefore, such a scheme will aid in protecting the environment and having a positive impact.

Risk Management Implications

6.13 Risks included on corporate or directorate risk register? **No**

6.14 Separate risk register in place? **No**

6.15 The relevant risks from the risk register are attached/summarised below. **N/A**

6.16 The following key risks should be taken onto account when agreeing the recommendations in this report:

Risk Description	Mitigations	RAG Status
Bad publicity due to being seen as a tax on landlords	<ul style="list-style-type: none"> ▪ Evidence based approach to show need in this area, directly linked to conditions placed on the licence ▪ Consultation process allowing input from all to understand any concerns ▪ Scheme been in place for the last 5 years so is known 	
Poor compliance, including take up of the scheme	<ul style="list-style-type: none"> ▪ Work over the last 5 years has identified and licensed the majority of premises in the area, so details known ▪ Publicity, including 3 months advertising as per legislation, to take place to push scheme ▪ Better understanding of area from the last 5 years 	
Lack of benefit from the scheme	<ul style="list-style-type: none"> ▪ Evidence shows reduction in main issues, such as fly tipping, in area since scheme was originally introduced ▪ Inspections of premises as part of the licensing scheme means all premises do gain a proper inspection and follow up ▪ Monitoring of progress conducted to show effective, including conditions applied 	
Judicial review of the scheme by a landlord / representative	<ul style="list-style-type: none"> ▪ Evidence base to show justification for renewing ▪ Meet the legislation in terms of consultation, advertising and implementation ▪ Address any concerns raised directly to prevent need for a judicial review 	
Lack of resources to implement properly	<ul style="list-style-type: none"> ▪ Residential Licensing team in place to oversee, with additional officers introduced to assist 	

	<ul style="list-style-type: none"> ▪ Better online applications and payments scheme, with further work taking place 	
Requirement for income outweighs main outcomes of the scheme	<ul style="list-style-type: none"> ▪ Target assigned to scheme lessened, to better represent cost of scheme 	

7. Legal Implications

Selective Licensing designations

7.1 Sections 80 to 84 of the Housing Act 2004 (hereinafter referred to as 'the Act'), specifically covers the designation of selective licensing areas. Section 80(1) allows a local housing authority (the council) to designate either the whole of its area or an area within it to be subject to selective licensing.

7.2 However, under section 80(2) of the Act, before introducing a selective licensing scheme, the Council must consider that:

- a) the first or second set of general conditions mentioned in section 80(3) or (6) of the Act; or
- b) any conditions specified in an order under section 80(7) of the Act as an additional set of conditions are satisfied in relation to the area

7.3 Section 80(3) of the Act states:

“(3) The first set of general conditions are—

(a) that the area is, or is likely to become, an area of low housing demand; 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, contribute to the improvement of the social or economic conditions in the area.”

7.4 Section 80(6) of the Act states:

“(6) The second set of general conditions are—

(a) that the area is experiencing a significant and persistent problem caused by anti-social behaviour;

(b) that some or all of the private sector landlords who have let premises in the area (whether under leases or licences) are failing to take action to combat the problem that it would be appropriate for them to take; and

(c) that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, lead to a reduction in, or the elimination of, the problem.

“Private sector landlord” does not include [a non-profit registered provider of social housing or] a registered social landlord within the meaning of Part 1 of the Housing Act 1996 (c 52).”

- 7.5 Section 57(5) of the Act sets out the definition of “anti-social behaviour”.

Consultation, other requirements and options

- 7.6 Before making a (selective licensing) designation, the local housing authority is required by section 80(9) of the Act, to:

“(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.”

- 7.7 The consultation should run for at least 10 weeks. As noted, at 3.2 in this report the consultation for the proposed Edgware ward scheme ran for 10 weeks. Details of the consultation carried out to meet this requirement are set out in **Appendix C**.

- 7.8 Section 81(2) of the Act requires the local housing authority to *“ensure that any exercise of the power (selective licensing designation) is consistent with the authority’s overall housing strategy.”* Section 81(3) of the Act goes on to require that the authority seeks to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour.

- 7.9 Section 81(4) of the Act states that a designation should not be made unless the authority:

“(a) ...have considered whether there are any 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).”

- 7.10 In addition, under the Selective Licensing of Housing (Additional Conditions) (England) Order 2015, article 3 requires:

“(1) The following conditions are specified as additional conditions for the purposes of section 80(2)(b) of the 2004 Act, which a local housing authority must consider are satisfied in relation to the area

before making a selective licensing designation under this provision—

(a) 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;

(b) that the properties referred to in sub-paragraph (a) are occupied either under assured tenancies or licences to occupy; and

(c) that one or more of the sets of conditions in articles 4 to 7 is satisfied.

(2) For the purposes of this article, a property shall not be regarded as being in the private rented sector where the landlord is a private registered provider of social housing, as defined by section 80 of the Housing and Regeneration Act 2008.”

- 7.11 Articles 4-7 cover conditions relating to housing conditions, migration, deprivation, and crime. From 1 April 2015, a local housing authority will need to apply to the Secretary of State for Communities and Local Government for confirmation of any scheme which would cover more than 20% of its geographical area or that would affect more than 20% of privately rented homes in their area. The proposed designation in this case will not require Secretary of State confirmation.

Commencement, duration and notification

- 7.12 Under section 82 of the Act, a designation cannot come in to force earlier than 3 months after the date on which the designation is made. Any designation cannot be for no longer than a 5 year period and the local housing authority is expected to review the operation of the designation from time to time, and can revoke it if appropriate (section 84).
- 7.13 As soon as a designation is made, the authority is required to publicise this in accordance with the requirements of section 83 of the Act.

Conditions

- 7.13 Section 90 of the Act states that a licence can include such conditions as the local housing authority consider appropriate for regulating the management, use or occupation of the house concerned, and section 91 of the Act sets out general conditions that apply to licences.
- 7.14 The Licensing of Houses in Multiple Occupation and other houses (Miscellaneous Provisions) (England) Regulations 2006 sets out the mandatory conditions that need to go on to a licence (under a selective licensing scheme). **Details of these conditions are in Appendix F.**
- 7.15 There are procedures under the Act relating to appeals against decisions relating to licences, and the Act also sets out offences (and other consequences) relating to licensing requirements.

Relevant case law

7.16 Recent case law on the subject of selective licensing schemes has raised challenges against local authorities on issues such as:

- compliance with the consultation requirements (adequacy of consultation, length of it, who was consulted and how long before the designation it was obtained);
- the level of evidence to support a selective licensing scheme; and
- inadequate consideration of alternative options to a selective licensing scheme.

8. Financial Implications

8.1 Section 87(7) of the Housing Act 2004 states that “*when fixing fees under this section, the local housing association may (subject to any regulations made under subsection (5)) take into account:*

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

8.2 However, the EU Directive and the Provision of Services Regulations 2009 which was subsequently passed states, at Regulation 18(4):

“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.”

8.3 In line with *Hemming v Westminster City Council*, the fee is split into an administrative and management parts.

8.4 Once fees are set, the Council is expected to review its fees and adjust them where necessary to reflect previous deficits or surpluses. It can take into account the cost of administering the licence over a 5 year period.

8.5 Based on the scheme intending to be self-financing, for the life of the licensing period (5 years), a fee is set at a level where the total revenue from the fee is intended to cover the costs as stated above.

8.6 An initial discount of £75 is proposed for landlords who are a member of an accredited landlord scheme. This is in line with recognising the DCLG

guidance that Selective Licensing is to be used in conjunction with other action to improve the private rented sector. Ultimately, the ideal would be for the private sector to manage itself, addressing the issues, and the recognition of accredited schemes assists in encouraging this.

- 8.7 A licence will not be issued until a complete application and full payment has been received by the Local Authority, to ensure that costs are covered.
- 8.8 It is not the intention of the Authority to look to licence the whole Borough, but only where the evidence justifies it, within the limits of the DCLG requirements.
- 8.9 The continuation of Selective Licensing will reduce the service costs of Public Protection in line with making it self-financing
- 8.10 Further, in line with good practice, the fee is constantly benchmarked to ensure that it does not provide additional burdens or step outside what is seen across London. This includes London Wide benchmarking, including sites such as <https://www.hmoserviceslondon.com/hmo-licensing-cost/>

9. Equalities implications / Public Sector Equality Duty

- 9.1 The Council must pursuant to section 149 of the Equality Act 2010 (“the Act”), the council, in the exercise of its functions, has to have ‘due regard’ to (i) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (ii) advancing equality of opportunity between those with a relevant protected characteristic and those without; and (iii) fostering good relations between those who have a relevant protected characteristic and those without. It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above.
- 9.2 The relevant protected characteristics are age, race, disability, gender reassignment, pregnancy and maternity, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnership, but to a limited extent.
- 9.3 In line with this, an Equalities Impact Assessment (EqIA) has been conducted and took into account the consultation feedback. The EqIA can be found in **Appendix G**, and to summarise, found that no group would be adversely impacted by the introduction of this scheme.
- 9.4 Additionally, the policies and procedures governing, that oversee the licensing process and enforcement, address equalities and ensure a fair, balanced approach in line with statutory requirements and guidance.

10. Procurement

There are no procurement implications.

11. Council Priorities

The introduction of Selective Licensing in Edgware contributes to:

- 1. Improving the environment and addressing climate change**
 - a. By putting conditions on protecting the environment including around waste
- 2. Tackling poverty and inequality**
 - a. By tackling the tenants using private rented accommodation in an area
- 3. Addressing health and social care inequality**
 - a. By addressing the standard of accommodation for those living in an area to make sure it meets a minimum level

Section 3 - Statutory Officer Clearance

Statutory Officer: Jessie Man

Signed on behalf of the Chief Financial Officer

Date: 7th January 2021

Statutory Officer: Jabou Kinteh

Signed on behalf of the Monitoring Officer

Date: 11th January 2021

Statutory Officer: Nimesh Mehta

Signed on by the Head of Procurement

Date: 26th November 2020

Statutory Officer: Paul Walker

Signed by the Corporate Director

Date: 8th January 2021

Statutory Officer: Susan Dixon

Signed by the Head of Internal Audit

Date: 7th January 2021

Mandatory Checks

Ward Councillors notified: No as Borough Wide

EqIA carried out: YES

EqIA cleared by: David Corby

Section 4 - Contact Details and Background Papers

Contact: Richard Le-Brun, Head of Community and Public Protection, 020 8424 6267, Richard.lebrun@harrow.gov.uk

Background Papers: None

Call-in waived by the Chair of Overview and Scrutiny Committee - NO