

Cabinet - 19 March 2018

Statutory Consultation on Proposed Selective Licensing Scheme for Private Rented Sector - Willenhall and Town Centre and Adjoining Areas.

Portfolio: Councillor D Coughlan – Social Care

Service: Resources and Transformation

Wards: Birchills Leamore, St Matthew's, Willenhall South

Key decision: No

Forward plan: Yes

1. Summary

- 1.1 On 5 March 2018 Corporate and Public Services Scrutiny Committee recommended that cabinet reconsider the proposals to introduce Selective Licensing for Willenhall and Town Centre (and adjoining areas) to allow further consultation with Walsall landlords, to ensure a full consultation process has been completed and is in a position where any application for judicial review can be robustly defended.
- 1.2 This report details the consultation undertaken by the Council for the proposed selective licensing which is considered to be in full accordance with the statutory requirements of the Housing Act 2004 and can be robustly defended.

2. Recommendations

- 2.1 That Cabinet note the level of consultation undertaken by the Council as detailed in this report and that it is considered to be in accordance with the statutory requirements and as a result re-affirm its decisions made at February 2018 Cabinet report on selective licensing.

3. Report Detail

- 3.1 In April 2017 Cabinet approved that statutory consultation for Selective Licensing of the private rented sector take place for two parts of the borough (Willenhall and the Town Centre and adjoining areas). In advance of the statutory 10 week phase of consultation (9 October 2017 to 8 January 2018), an early phase of 'pre-consultation' took place. Officers attended two landlord forums where information on the draft proposals was provided and initial feedback sought. Feedback gathered at these events was used to inform the draft proposals for consultation
 - Walsall Landlord steering group – 28 June 2017 – Agenda item
 - Walsall Landlord forum - 11 July 2017 – maps and briefing notes provided to attendees.

- 3.2 Formal consultation was conducted prior to any decisions being made, with proposals at a formative stage. Allowing a total of 13 weeks (3 more than the statutory timescale) ensured everyone had sufficient time to access, absorb and digest the information prior to making their response.
- 3.3 To support the consultation and in order to ensure that all consultees, especially landlords, had sufficient information to allow for intelligent consideration and response (something noted during judicial reviews such as in Croydon), significant effort was made to ensure that a range of supporting information was readily available (see section 3.13 to 3.14 for details).
- 3.4 In February 2018 Cabinet considered the representations received on the proposed Selective Licensing for the two areas received through the statutory consultation, and agreed the responses to those representations.

Relevant legislation

- 3.5 The legislation related to statutory consultation for Selective licensing is contained within Housing Act 2004 Section 80 (9) and reads:

“Before making a designation the local housing authority must -

(a) take reasonable steps to consult persons who are likely to be affected by the designation; and

(b) consider any representations made in accordance with the consultation and not withdrawn.

- 3.6 The Government has subsequently provided the “Selective Licensing in the private rented sector - A Guide for local authorities Reasonable Steps (March 2015).

Compliance with legislation and statutory guidance

Overview

- 3.7 There is no definition of ‘reasonable steps’ that an authority must take. In a range of judicial reviews related to Selective Licensing judgements have indicated that; “there is clear authority that the Council must have a comparatively wide discretion as to how the consultation process is carried out and the process will not be considered unlawful unless something went clearly and radically wrong. So there is a high threshold for the Claimant to reach to obtain relief “ (i.e. a finding against the council). *Croydon Property Forum Ltd, R (on the application of) v The London Borough of Croydon.*
- 3.8 In the above decision the Judge also highlighted the decision in *R (Wainwright) v Richmond upon Thames London Borough Council* judicial review where it noted “that to be unlawful the nature and extent of the process must be so narrow that no reasonable council, complying with the principles set out above, would have adopted it.”
- 3.9 The Council considers that its approach to consultation has taken the reasonable steps other councils would take and there has been nothing that the Council is aware of that would suggest it has gone ‘radically wrong’.

3.10 A more detailed explanation of the form of consultation is provided by the 2014 Guide states that authorities will be required to conduct a full consultation and details a range of topics / methods in which this should be undertaken. These are listed below and the Council's position on each is listed alongside.

3.11 *A) It should include consultation of local residents, including tenants, landlords and where appropriate their managing agents and other members of the community who live or operate businesses or provide services within the proposed designation.*

3.12 *It is considered that this was fully met:* In addition to the pre-consultation with landlords / agents which sought to raise awareness of and gather initial feedback on the draft proposals, the statutory consultation comprised a range of activities and methods of communicating to interested parties about the proposals and provided a range of ways for people to have their say. These are summarised in section 3.13 to 3.20 below. The vast majority of the work was focused on an external audience, although internal channels were used to engage staff whose work is public facing, where their support was sought to act as ambassadors for the consultation and encourage more responses.

3.13 **Direct mailing to residents:**

Direct mailing delivered to all residential addresses within and surrounding the proposed areas. This included residents who were private tenants. Packs contained a covering letter explaining the consultation, a detailed map paper questionnaire and pre-paid reply envelope

Direct mailing to businesses / organisations (including but not limited to landlords and agents):

Direct mailing delivered to all commercial addresses within and surrounding the proposed areas. Packs contained a covering letter explaining the consultation, a detailed map paper questionnaire and pre-paid reply envelope.

Direct email sent to landlords and agents:

Emails were sent to landlords and agents who have attended previous Walsall landlord forums. The email explained the consultation and provided direct links to the detailed information on the website and a specially designed online questionnaire for landlords / agents; which itself included direct links to supplementary information to aid understanding and completion.

3.14 **Council Website:**

News item on the front page of the Council website detailing the consultation and linking to the housing web pages where further information could be found;

- Original April 2017 Cabinet report
- Proposed licensing conditions (as separate appendices for ease of access)
- Answers to frequently asked questions
- Maps showing the proposed boundaries to the areas
- A link to the online survey for landlords and agents
- Contact details

3.15 **Key stakeholders:**

The following key stakeholders were contacted via email / letter providing information, links to information on the website and invited them to have their say;

- West Midlands Police
- West Midlands Fire and Rescue
- National Landlords Association
- Walsall NHS
- Walsall AgeUK
- Local ward members for Birchills Leamore, St Matthew's, Willenhall South
- Community and voluntary groups in the proposed designation areas
- Neighbouring councils.
- Voluntary sector consulted Promotion to voluntary organisations via One Walsall who also promoted the consultation online

3.16 **Walsall Landlord Forum**

A council officer attended at the 9 November 2017 forum to update on a specific Agenda Item – 'Update on Selective licensing consultation'.

Attendees were asked to forward to the council any additional contact details of individuals / organisations who they thought may not have already received information about selective licensing.

3.17 **Other**

Consultation with internal council services involved:

- Planning, environmental health, public health, clean and green services.
- Employees via Staff notice boards throughout Walsall Civic Centre (a key place of employment for local people). Communication and promotion via social media and traditional media : Council Facebook pages and Council Twitter account and article in Walsall Express and Star

3.18 **Public information and consultation sessions**

A number of public information and consultation sessions were held in both areas during November and December 2017. The informal drop in sessions gave people the opportunity to find out about the draft proposals and how to have their say.

3.19 **Posters displayed**

Posters were displayed in the following venues throughout both selective licensing areas. The posters gave information about the selective licensing proposal, how people could get involved and included the web address and times of drop in sessions :

- Doctors surgeries
- Schools
- Health centres
- Libraries
- Supermarkets
- Social clubs

3.20 The following major national private landlord organisations and related parties publicised the consultation themselves including:

- The National Landlord Association (NLA)
- Residential Landlords Association (RLA)
- UK Association of Letting Agents
- Landlord Letting network

3.21 *B) It should also include local residents and those who operate businesses or provide services in the surrounding area outside of the proposed designation that will be affected.*

It is considered that this was fully met: The boundary for the bespoke letters for consultation for residents and businesses was 'drawn wider' than the proposed selective licensing area and as a result those outside the proposed area were also consulted and given the opportunity to comment. In addition, other forms of consultation as per section 3.13 to 3.20 provided the opportunity to draw input from people / businesses from outside the proposed areas. For example; Social media was not boundary specific.

3.22 In relation to private landlords and agents the principal and recognised national bodies have each for a number of years kept their members updated on Selective Licensing through email newsletters / briefings and via their website. As highlighted in 3.20 each of the organisations listed publicised both Walsall's proposals and the statutory consultation period.

3.23 The NLA made direct representations during the statutory consultation process, these representations were duly considered and the council's response to them was contained within the February 2018 Cabinet report (Appendix 4 page 40 to 47).

3.24 The RLA highlighted during the statutory consultation process that their goal is 'Making renting better' through advice, information, education and representation. The council considers that there is nothing within the proposals for selective licensing in Walsall that is at odds with the RLA's goal. The RLA have also highlighted that they are available to help with bespoke landlord training.

3.25 *C) authorities should ensure that the consultation is widely publicised using various channels of communication*

It is considered that this was fully met: As per section 3.13 to 3.20 a broad range of methods have been used to publicise the proposals and seek feedback.

3.26 *D) The guidance re-iterates a minimum consultation period of 10 weeks was required under the General Consent issued by the Secretary of State in March 2010;*

It is considered that this was fully met: For the Walsall scheme consultation was undertaken between 9 October 2017 and 8 January 2018 (13 weeks) and therefore exceeded the length that is required, as a minimum, by legislation.

3.27 *E) The consultation should be informative, clear and to the point, so the proposal is readily understood.*

It is considered that this was fully met: Material used in the consultation was developed in close partnership with the council's Corporate Consultation & Customer Feedback Officer. As a result all consultation materials were designed in line with the Council's Corporate Consultation Strategy, quality assured by The

Consultation Institute. Furthermore the research was conducted in adherence with the Market Research Society Code of Conduct.

3.28 All material was produced in a way to ensure it provided sufficient information to allow informed comment, clearly explaining complex information and signposting to where further information could be found. All materials were professionally designed and printed by the council's award winning Print and Design service. The team also appointed a dedicated consultation officer to specifically lead on the statutory consultation. This officer acted as the council's main point of contact for those wanted further information or advice for how to respond.

3.29 F) *It should inform local residents, landlords, letting agents and businesses about the proposed designation, giving the reasons for proposing it, why alternative remedies are insufficient, demonstrating how it will tackle specific problems together with other specified measures, and describing the proposed outcome of the designation;*

It is considered that this was fully met: In consultation material (including but not limited to the letters to all households and businesses and emails to landlords / agents) the Council provided this information and also direct web-links to the evidence contained in the original cabinet report recommending the consultation take place. In addition to this the Council provided an online Frequently Asked Questions webpage and a hand-out / postal version.

3.30 G) *It should also set out the proposed fee structure and level of fees the authority is minded to charge (if any);*

It is considered that this was fully met: In consultation material direct reference was made to the fee structure including direct web-links to details of the proposed fees. The questionnaires gave residents and businesses (including landlords and agents) the opportunity to specifically comment on the fee structure.

3.31 H) *Consultees should be invited to give their views, and these should all be considered and responded to.*

It is considered that this was fully met: All parties have had a full opportunity during the statutory consultation period to make their views known including for example returning completed paper and online questionnaires and or making direct written representations. All representations received were reported to February 2018 Cabinet, formally considered and duly responded to. Individual responses to consultation representations following the Cabinet meeting have also been sent out either by letter or email.

4. Financial implications

4.1 There would be a financial cost associated with:

- a) Re-running the statutory consultation programme (should cabinet consider this to be necessary) estimated at circa £25,000;
- b) defending a Judicial Review.

4.2 As indicated at 3.9 the Council considers that its approach to consultation has taken the reasonable steps other councils would take and there has been nothing that the Council is aware of that would suggest it has gone 'radically wrong'.

Based on this whilst it cannot predict the outcome of any possible judicial review it does not consider that one would be successful.

5. Legal implications

- 5.1 February 2018 Cabinet considered the consultation process undertaken, the representations made and the responses to representations. A detailed review of the consultation process in line with legislation (3.5 above) and statutory guidance (3.6 to 3.31) is contained in that report.
- 5.2 Independent legal advice has been received on the matter and supports the Council's position that it's approach to consultation has taken the reasonable steps other councils would take and there has been nothing that the Council is aware of that would suggest it has gone 'radically wrong'.
- 5.3 The proposal is in line with the existing Housing Strategy (2012-2016) which highlights that the Council is committed to improving the condition and availability of private rented homes in the borough. It is expected that Selective Licensing will also be referenced in the new Housing Strategy consultation document due for publication later in 2018/19.

6. Procurement reporting

- 6.1 There are no procurement implications.

7. Property implications

- 7.1 There are no direct property implications for the council as this proposal relates to private landlords and agents only.

8. Health and wellbeing implications

- 8.1 Selective licensing is in accordance with the Marmot Review (Fair society healthy lives) as there are numerous direct links between improvement in housing conditions and health and wellbeing improvements. Direct support to develop and analyse the areas for possible consideration for selective licensing has been provided by the Council's Public Health service.

9. Staffing implications

- 9.1 Recruitment to the proposed roles for the Selective Licensing Team for Willenhall and Walsall Town Centre is to take place following adoption of the scheme.

10. Reducing Inequalities

- 10.1 The implications for reducing inequalities have been taken into account and assessed and are covered in detail in the report approved by Cabinet in February 2018.

11. Consultation

- 11.1 The decision to proceed with selective licensing was subject to further consideration on 14 February 2018 by Corporate and Public Services Scrutiny Committee. This report is a direct response to Scrutiny's recommendation.
- 11.2 Other matters raised at the Scrutiny Committee that are not covered earlier in this report are covered below. It is noted that these are principally representations already made during the statutory consultation and already considered by Cabinet and responded to (February 2018). For completeness they are again covered below and overleaf (in summary form).

Observation	Council response
<p>It was suggested that the changes to Houses in Multiple Occupation legislation due to commence in October 2018 would remove the need for selective licensing.</p>	<p>This legislation only covers certain HMOs and there are significantly more private rented properties that are outside the scope of this new legislation in the proposed selective licensing areas. The new legislation will complement the selective licensing proposals.</p>
<p>Impact on good landlords – forced to pay a higher cost for operating in the licensing area. Bad landlords will not join the scheme</p>	<p>Legislation does not enable the council to omit 'good' landlord from licensing.</p> <p>The Council will (as other council's have nationally) act robustly to ensure compliance. Landlords who fail to comply will be subject to fines and or prosecution.</p>
<p>Risk of increased costs for landlords will be passed onto tenants. Will impact on low income tenants and lead to increased homelessness</p>	<p>It is the landlords decision whether to pass on the cost of licensing through increased rents.</p> <p>It is considered that the licence fee is tax deductible. It covers a 5 year period at circa £2.27 per week (based on average fee), there is no evidence of an increase in homelessness in areas where selective licensing has been introduced.</p> <p>Tenants (of all incomes) will benefit from improved property considerations and property management.</p> <p>The Council is using the private rented sector more and more as both a prevention solution as its size increases and social housing reduces. Therefore a scheme which gives greater assurances of good management and good property conditions fits very well with the Council's approach to homelessness. This is recognised by the emerging Homelessness Strategy which</p>

	contains as an Action to improve housing standards through implementation of selective licensing in the borough.
It would be better to share good working practices and supporting vulnerable tenants whilst targeting bad landlords, rather than a blanket approach that may not engage the worst landlords.	<p>The Council agrees with many points raised in this:</p> <p>Partnership work – is valuable and ongoing – examples include the publicity about changes in EPC legislation, joint publicity on changes to HMO legislation.</p> <p>Supporting tenants – this is undertaken by many council services and will be strengthened through the selective licensing approach.</p> <p>The Council, however, does not agree with the point made about the worst landlords not engaging. It is recognised that poor / rogue landlords may <u>seek</u> to not engage however there are significant penalties fines (civil or prosecution fines) for those landlords seeking to avoid or ignore the requirements of the scheme. The Council will work proactively and take a robust approach to tackling those landlords who seek to avoid / ignore the scheme.</p>
Mortgage providers for buy-to-let (BTL) may not lend to landlords in selective licensing areas.	<p>UK Finance Mortgage Lenders' Handbook (formerly known as the Council of Mortgage Lenders Handbook) makes limited reference to selective licensing – a review of a page specifically mentioned HMOs and mortgages only indicates one lender as precluding mortgages specifically for selective licensing (State Bank of India UK).</p> <p>In 2015 the organisation “Mortgages for Businesses” suggested from their research that BTL lenders would not necessarily restrict mortgages in the same way they may do with HMOs.</p>
A number of Local Authorities had completed consultation on proposals for selective licensing and decided against its implementation.	<p>The decision of each council on their own scheme and as a result of their own consultation is for them to make.</p> <p>There have been many (estimated at 30+) Councils who following consultation have adopted selective licensing.</p>
The Walsall's Housing Strategy 2012 – 2016 makes no mention of the proposal	This is noted. The proposal was first considered by Cabinet in 2017 (after the publication of the Housing Strategy) and is expected to be referenced in the new consultation document due for publication later in 2018/19.

The review of Homelessness in Walsall, the draft Homeless Strategy 2018 – 2022 makes no mention of the proposal.

It is noted that original draft documents did not include it, however the strategy is being progressed through the consultation stages and is expected to be considered by Cabinet on 21 March 2018. The version to be considered by Cabinet contains an Action to improve housing standards through implementation of Selective Licensing in the borough.

Background papers

None

Author

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James Walsh
Executive Director
Resources and Transformation

13 March 2017



Councillor D Coughlan
Portfolio holder Social Care

13 March 2017

Cabinet report consultation sheet

Report title:	Statutory Consultation on Proposed Selective Licensing Scheme for Private Rented Sector - Willenhall and Town Centre and Adjoining Areas.
Author and contact details:	David Lockwood Ext 8459
Responsible Executive Director:	James Walsh
Cabinet meeting:	19 March 2018
Key decision	No
Report included in forward plan	No
Stakeholder consultation	Not required
Equality Impact Assessment	Completed previously and part of Feb 18 cabinet report
Service area Oracle code (without this legal cannot comment on the report)	6632.6321010

Consultees

Members	Consulted - Who	Date(s) consulted	Comments of consultees
(a) Portfolio holder	Councillor D Coughlan	06/03/18	
(b) Ward Councillors	NA		

Officers	Consulted - Who	Date(s) consulted	Comments of consultees
(a) Legal services	Tony Cox Javed Iqbal	07/03/18	To be included
(b) Finance	Irfan Mohammed	06/03/18	Included
(c) Procurement – for all procurement and contract related reports	NA		
(d) Property services	n/a		
(e) Public health	n/a		
(f) Human resources	n/a		
(g) Heads of other relevant service(s)	n/a		

Other consultees (if applicable)

Others	Consulted - Who	Date(s) consulted	Comments of consultees
(a) Trade Unions	n/a		
(b) Communications Unit			

Comments:

For any press release.

Cabinet are being recommended to again consider the comprehensive consultation programme undertaken in line with statutory requirements for the selective licensing for the private rented sector in the areas of Willenhall and Walsall Town Centre (and adjoining areas). They are also being asked to again approve the designation of the areas for selective licensing, the relevant fees that will apply and the conditions for licences.

It is considered that noted that selective licensing can have a disproportionate positive effect on some of the Council's most vulnerable customers as evidenced by the high levels of multiple deprivation in the areas proposed for selective licensing.

Approvals

Officer	Comments	Signature	Date
Head of Service		David Lockwood	7/3/18
Assistant Director		Paul Gordon	
Executive Director			

Please note:

It is the role of Democratic Services to ensure that your reports meet members' expectations in terms of quality, validity and relevance. To do this suggested changes may be made to your report.

It is important therefore that proper attention is paid to the completion of the consultation sheet and that it is updated as necessary throughout the process.

If a consultation sheet is not provided to Democratic Services with the report, or is not completed satisfactorily, your report may be withdrawn from the agenda for the meeting.

June 2015