

## MUNICIPAL YEAR 2013/2014 REPORT NO. 230

### MEETING TITLE AND DATE:

Cabinet  
9 April 2014

### REPORT OF:

Director of Health, Housing and Adult  
Social Care

<b>Agenda - Part: 1</b>	<b>Item: 7</b>
<b>Subject:</b> Proposal to implement a borough-wide additional and selective licensing scheme	
<b>Wards:</b> All	
<b>Cabinet Member consulted:</b> Cllr A Oykenner	

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### 1. EXECUTIVE SUMMARY

- 1.1 Against the background of a rapidly expanding private rented sector in Enfield, this report recommends the introduction of borough wide additional licensing of houses in multiple occupation, which do not fall within the existing mandatory licensing scheme and selective licensing of other private rented properties.
- 1.2 The adoption of licensing will enable the Council to create a proactive relationship with landlords and tenants to tackle anti-social behaviour associated with residential dwellings, as well as wider environmental crime by;
  - giving the authority much clearer information about the identity of landlords operating their business in Enfield
  - ensuring that landlords, tenants and other stakeholders, within the rapidly growing private rented sector in Enfield, are aware of their responsibilities and statutory duties
  - ensure consistency of safeguards available to private rented tenants
- 1.3 The scheme proposed is designed to be self-financing and should operate on a break-even basis, receiving an average income of £2m per annum over the five year life of the scheme. All of the income generated will be used to cover the operational costs of the scheme.
- 1.4 Independent research to understand the situation within the borough demonstrates that there is a statistical correlation between private rented properties and anti-social behaviour. This is further supported by data around anti-social behaviour, housing enforcement cases, environmental crime and overcrowding, to suggest that there is a significant and persistent issue in the borough which has clear links to the private rented sector (see appendix 4 for a summary of this).

1.5 Independently led consultation with local residents, landlords, tenants and other stakeholders was undertaken between November 2013 and February 2014. The executive summary of this consultation can be found in appendix 5. This shows that although there is no consensus between the stakeholder groups consulted, there is strong support for the proposal to implement licensing with:

- 84 % of individuals who live in Enfield strongly or tend to agree with the proposal, alongside a majority of Enfield businesses (62%) and local organisations (89%).
- 16% of letting or managing agents, and 18% of private landlords supported the general proposals.

1.6 The rationale behind implementing additional and selective licensing across the whole borough of Enfield, will achieve wide reaching benefits.

1.7 The introduction of licensing will enable a significant change in the way that anti-social behaviour associated with the private rented sector is tackled. A shift towards a proactive approach to tackle these complex issues, will see benefits for both landlords and tenants, as well as local residents.

1.71 The Council sees this as an opportunity for **responsible landlords** to sustain and grow their businesses, while action is taken to tackle those landlords who flout their legal responsibilities. Responsible landlords will gain from the improved clarity of their role in raising property and tenancy management standards to tackle the anti-social behaviour associated with the dwellings that they own or are responsible for. In addition responsible landlords will gain support from the Council and partner agencies to deal with 'bad tenants', through the creation of a Landlord Support Team

1.72 **Tenants** will gain from the clarity of what they can expect from both the home that they rent and the landlord that they rent it from. Implementation of minimum standards – as set out in the Licence Conditions - will result in better quality and safer homes to live in.

1.73 The simple act of knowing who is responsible for the management of properties that are rented out, and who is responsible in the first instance for dealing with problems associated with the premises, will improve the quality of life for **local residents**, in particular achieving a holistic improvement of the street scene and public realm through joint working. .

1.8 The Council does not envisage that the licensing proposal will have a negative impact on good quality providers of accommodation working in Enfield. Other authorities who have already introduced licensing schemes have indicated that licensing has helped to identify rogue landlords who impact negatively on the reputation of private landlords, thus improving the rental market by raising standards of both tenancy and property management.

- 1.9 During the consultation, landlords raised concerns about the affordability of the fee proposed as part of the consultation. The proposal was a £575 full fee or a £250 'early bird' discounted fee. In direct response to these concerns, the Council has taken steps to review the administration of the scheme (para 4.35). This has seen a reduction in the full fee to £500, with the 'early bird' discounted fee remaining unchanged.
- 1.10 This equates to a fee of £2.21 per week over the 5 year period if the full fee is paid at 6<sup>th</sup> April 2015, or 96p per week if landlords apply for the 'early bird' discount fee. These fees are also fully tax deductible as an expense incurred, and associated with, the letting of the property. As the fee is a tax deductible expense, this would equate to a net cost of as low as 58p per week per property for those paying the higher rate of tax.
- 1.11 Table 2 (para 4.36) sets these proposed fees in the context of a modelled gross income (pre-tax) for a two and three bedroom home rented at the local housing allowance level in the borough as set out below

3 bedroom home	Gross annual rental income of £15,756 Gross annual surplus £2000 Early bird discount annual fee £50 Full fee annual £100
2 bedroom home	Gross annual income of £12,756 Gross annual surplus £2700 Early bird discount annual fee £50 Full fee annual £100

## 2. RECOMMENDATIONS

- 2.1 Note the evidence and consultation findings that have been collected as part of developing the rationale for the additional and selective licensing schemes including improvements made as a direct result of feedback gathered through the consultation undertaken with stakeholders.
- 2.2 Approve the introduction of the additional and selective schemes to come into force on April 1<sup>st</sup> 2015 for a five year period, and to designate:
- a) A selective licensing area of the district of the London Borough of Enfield as delineated and edged red on the map at Appendix 1(a).
  - b) An additional licensing area of the district of the London Borough of Enfield as delineated and edged red on the map at Appendix 1(b).

- 2.3 Delegate authority to the Director of Health Housing and Adult Social Care and /or the Director of Regeneration and Environment and/or the Director of Finance Resources and Customer Services, as appropriate, to agree changes to the proposed implementation where necessary and ensure that all statutory notifications are carried out in the prescribed manner for those designations.
- 2.4 Review and approve the licence conditions and fee structures that would be applied to all private rented sector properties in the borough as a result of these designations (appendices 2 and 3.)
- 2.5 Consider and agree the proposed (annual) review arrangements, when members will receive an update on progress and impact (see paragraph 4.32).
- 2.6 That a reference group of landlords is established to enable feedback to the Council to be received on processes associated with administering the scheme. Steps will also be taken to ensure efficient and effective operational processes which minimise potential bureaucratic burdens for landlords at all times. These will be key principles underpinning the design of the scheme.
- 2.7 Private sector landlords will be invited to join the Council's anti-social behaviour Action Group (ASBAG), to be part of the multi-agency partnership, as appropriate, to tackle anti-social behaviour associated with private sector rental homes.

### **3. BACKGROUND**

- 3.1 The 2004 Housing Act gave authorities powers to designate areas, or the whole of the area of its district, as subject to discretionary licensing in respect of private rented accommodation. All authorities had to licence houses in multiple occupation (HMOs) of three stories or above (mandatory licensing), and Enfield currently has a licensing scheme in place to address this. However, powers in parts 2 and 3 of the Act allowed for authorities to consider licensing for all HMOs (additional licensing), or all private rented properties (selective licensing). The authority is required to evidence that the management of those properties was impacting negatively on housing demand or on anti-social behaviour in the area if considering the implementation of these discretionary powers.
- 3.2 Enfield is a borough with approximately one quarter of its housing stock as private rented housing. Enfield also has a strong commitment to reduce anti-social behaviour – particularly in the areas of improving the safety on the boroughs estates and streets, and the wider environmental quality. Historically, the approach of mandatory licensing , alongside engagement with landlords appeared sufficient to ensure that the quality of tenancy and property management had reached an adequate standard across these homes.

- 3.3 The exact number of private rented sector properties in any borough is hard to confirm as there is no requirement for landlords to make themselves or their properties known to any local statutory agencies. However, the 2011 Census confirmed a trend that had started to become more obvious to both residents and the Council. Of 119,916 households in the borough, 69,462 were owner-occupied (57.9%), 21,073 were social rented (17.6%), and 26,591 were privately rented (22.2%). Further research suggests that this Census figure is likely a minimum for the private rented sector, with independent statistical modelling giving an estimated figure of up to 31,994 properties in late 2013.<sup>1</sup>
- 3.4 This stock and tenure has changed significantly since 2001, with a 102.9% increase in the size of the private rented sector, a 9.2% increase in the social rented sector, and a 10.9% fall in the owner occupied sector. It is clear that the growth in the private rented sector in Enfield is driven by changes in tenure within neighbourhoods, and not just household growth – primarily the shift from owner occupation towards private rented occupation.
- 3.5 These changes have not occurred in isolation. Some types of anti-social behaviour, such as significant noise nuisance and environmental crime are persistent, significant, and in some instances increasing (see Appendix 4). Consultation also gave residents the opportunity to highlight severe overcrowding and short term lets as a driver of anti-social behaviour (see Appendix 5).
- 3.6 In October 2013, the Council agreed the use of an Article 4 Order, which withdrew permitted development rights for changes of use from Use Class C3 (Dwellings) to Use Class C4 (Houses in Multiple Occupation). This will support the management of HMOs in the longer term, and it is important to see the value of this policy together with the proposed implementation of licensing which will help to ensure a rise in the quality and effectiveness of the private rented sector, which meets the needs of the whole community. The equalities impact implications of the use of an Article 4 Order were considered at the time and the emphasis is on the ability for the council to reject schemes which do not fit the criteria of the Article 4 Order, rather than to reject all schemes.
- 3.7 There have been significant increases in calls to housing enforcement, alongside year-on-year increase in the instances of housing disrepair responses (67% increase in calls to the enforcement team, and 132% increase in responses by the Council). It is clear that the impacts of this sector are creating increasing costs which are not being met by either the landlord or the tenants. Issues regarding property condition in the private rented sector are becoming a cause for concern for the Council.
- 3.8 Finally, there have been significant and growing levels of overcrowding within the private rented sector at a time when overcrowding in the social rented

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<sup>1</sup>‘Understanding the relationship between private rented properties and anti-social behaviour in Enfield’, Nkm (November 2013).

sector is coming down.<sup>2</sup> It is the responsibility of landlords to manage these levels, and this problem is getting significantly worse across the borough.

- 3.9 Through independent research, the Council started to build on existing data and undertake a deeper exploration of the evidence around changes to the housing market in Enfield. As a result of this work the Council has considered and developed a view that the introduction of additional and selective licensing, would be both a valuable and relevant mechanism to deal with the issues that are occurring within Enfield.
- 3.10 A period of open engagement and discussion with tenants, landlords and stakeholders took place in late 2013, where the issues were discussed and the views of these key stakeholders were considered.
- 3.11 A formal consultation period specifically on additional and selective licensing began on 2<sup>nd</sup> January 2014, concluding on 28<sup>th</sup> February 2014. The consultation mechanisms included:

**Table 1**

Method	No of Events	Participants
Online questionnaire available on the council's website		1,528 responses
Invited & deliberative events with landlords and letting agents	Three events – geographically spread and undertaken a different times of the day to promote fair access	168 participants
Invited & deliberative events with tenants & stakeholders	Three events - geographically spread and undertaken a different times of the day to promote fair access	60 participants
Weighted household telephone survey		502 participants

- 3.12 In addition, written submissions from interested parties were also received and considered. The findings from this consultation are set out below (paragraph 4.13) and the executive summary of the report from the consultation exercise is attached at appendix 5, with the Council responses at appendix 6. Paragraph 4.24 below highlights the important changes made to the scheme by the Council as a result of the consultation exercise.
- 3.13 Although an early adopter of whole borough licensing, it is worth noting that Enfield's consideration of the use of this approach is not unique. LB Newham adopted a similar scheme in early 2013, with positive views of both officers and elected members regarding the value and success of the scheme. Barking and Dagenham have taken a cabinet decision to adopt whole borough

<sup>2</sup> Enfield Health and Wellbeing [http://www.enfield.gov.uk/healthandwellbeing/info/15/enfield\\_place/33/housing](http://www.enfield.gov.uk/healthandwellbeing/info/15/enfield_place/33/housing)

licensing, whilst both Brent and Waltham Forest are undertaking consultation with stakeholders.

#### **4. KEY CONSIDERATIONS**

- 4.1 The Housing Act 2004 requires a local authority to demonstrate a link between the private rented sector and anti-social behaviour before implementing licensing. Whilst no borough implementing licensing has been able to show a direct causal link between anti-social behaviour and this housing tenure due to the evidence available, all have used a mixed approach to developing the evidence base. This has meant a combination of the following information:
- demonstration of a correlation between the private rented sector and anti-social behaviour through independent research
  - wider evidence of a significant and persistent problem of anti-social behaviour and environmental crime
  - evidence from consultation
  - information from council services that current arrangements with private sector landlords, are not seeing them take on responsibilities for the implications created by the tenure.
- 4.3 Anti-social behaviour remains an issue of concern for residents of Enfield, with the Council consistently prioritising tackling it across the borough. This has produced an overall improving position over the past few years. However, while evidence suggests that strategies adopted by the Council have delivered a number of successes and that tackling anti-social behaviour has produced positive outcomes, ongoing stubborn issues remain. There are specific issues regarding environmental based anti-social behaviour and noise and nuisance/rowdy neighbour complaints. Whilst not all of these can be causally linked to the private rented sector, the costs and challenges of working with the consequences of the private rented sector are clear and require an ongoing response from the partnerships that are working with the issues in Enfield (see paragraph 4.7 below)
- 4.4 The evidence available also suggests that there is a stronger correlation between anti-social behaviour in the borough and properties that are single household dwellings, than those that are houses in multiple occupation. However, the case to licence both types of dwelling, is essential for the licensing scheme to work effectively. This is because the presence of both houses in multiple occupation and private rented single household dwellings is blended right across the borough. Differentiating between the two in terms of the need for licensing creates the opportunity for rogue landlords to move from operating one type of property to the other.
- 4.5 Licensing will give clear responsibilities and a minimum operating standard to landlords and tenants within the private rented sector and give clear routes to recourse where a breach occurs. The information available to support this, will ensure that public authorities will work effectively with good landlords, challenge bad landlords, and tackle issues such as anti-social behaviour and overcrowding quickly and effectively.

- 4.6 It is intended that the designation for both of these schemes will last for five years. A full consultation, review and new decision will be required before the scheme could be continued beyond this timeframe. It is anticipated that a significant impact will have been made on the issues associated with this tenure type by this point.

### **Existing work to tackle anti-social behaviour in Enfield**

- 4.7 The reduction of anti-social behaviour in Enfield has been a consistent priority for residents and the council and in many ways has been a success for the Council and its stakeholders in recent years. However it is apparent that there remains a significant and persistent level of anti-social behaviour in the borough, and current approaches alone are not sufficient in tackling the problem. This can be seen in the fact that perceptions of anti-social behaviour have improved in 2012, the most recent Enfield Residents survey. Complaints about anti-social behaviour to the police have fallen (by 16.9% between 2011/12 and 2012/13), but in certain areas, such as noise levels and complaints about rowdy neighbours, the problem remains either stubbornly persistent or worsening over the last few years (see appendix 4 for more data).
- 4.8 The Council's Housing Strategy (2012-2027) sets out the key areas for the borough's approach to the wider housing sector and the PRS. A key objective in the strategy is to "improve standards and management of homes in the private rented sector". This includes a focus on anti-social behaviour, and the Housing Strategy Business Plan for 2012-15 has a focus to 'reduce perceptions of anti-social behaviour, and increase the number of enforcement measures used'.
- 4.9 Enfield Council has taken a number of approaches to deal with anti-social behaviour. The Anti-Social Behaviour team (ASB team), as part of the Council's Community Safety Unit, tackles a range of anti-social behaviour issues within the borough. The ASB team takes a joint working approach with landlords to effectively tackle any complaints from or against their tenants. There have been some successes in this approach, but as the scale of the PRS grows it is clear that existing measures are not sufficient. Operation ECO, which has dealt with issues such as waste, fly tipping and illegal advertising boards in small areas, is no longer able to tackle the scale of these problems which have continued to rise over the last three years, alongside significant fly-tipping levels well above the levels seen in surrounding boroughs (see appendix 4 for details).
- 4.10 Enfield's Housing Enforcement Team provides an effective service to deal with complaints of disrepair from vulnerable tenants, when the landlord has been reluctant to assist. Enforcement officers carry out property inspections to assess disrepair and hazards that are present in the property. They also negotiate and advise landlords on the necessary repair works required. In the

five year period from 2008/9 to 2012/13, there has been a 67% increase in calls to the enforcement team, and 132% increase in responses by the Council.

- 4.11 The Council has a history of cross partner working with statutory, voluntary, business and third sector organisations in a range of ways to tackle anti-social behaviour. This has included data sharing and joint working between organisations including the Council's Community Safety Team, Environment and Street Scene Department, Revenues and Benefits Service, UK Borders Agency, the Metropolitan Police and sub-regional partners. This will be further strengthened as the Home Secretary has published a proposal document which suggests changes to the existing legislation. These proposals are far reaching and will, if enacted, have significant implications for all partners who tackle anti-social behaviour. The proposals consolidate 18 existing powers into 5 powers that will provide similar sanctions. In anticipation of the new legislation going live in mid-2014, Enfield Council has set up an Anti-Social behaviour Action Group (ASBAG). This group will meet monthly to consider cases and be chaired and coordinated by the council's Community Safety Unit and attended by representatives from the Public Health Department (Environment), Enfield Homes, Mental Health and registered housing providers. Private sector landlords will be invited to join this group, as appropriate, to discuss anti-social behaviour associated with private sector rental homes.
- 4.12 The Council has also aimed to combat problems of anti-social behaviour within the private rented sector, by working at a consultative level with landlords, on a voluntary basis. This has taken a number of forms: general advice to landlords, Accredited Landlords Forum and a good practice guide. The key element to the effectiveness of this approach has been the Accredited Landlord Forum. Although increases in membership in the scheme are positive, it represents a small fraction of the landlords operating within Enfield. Membership of the forum is voluntary in nature and therefore is comprised of engaged and responsible landlords but it does not effectively address persistent anti-social behaviour associated with the private rented sector or act as a mechanism to deal with problematic landlords.

## **Consultation**

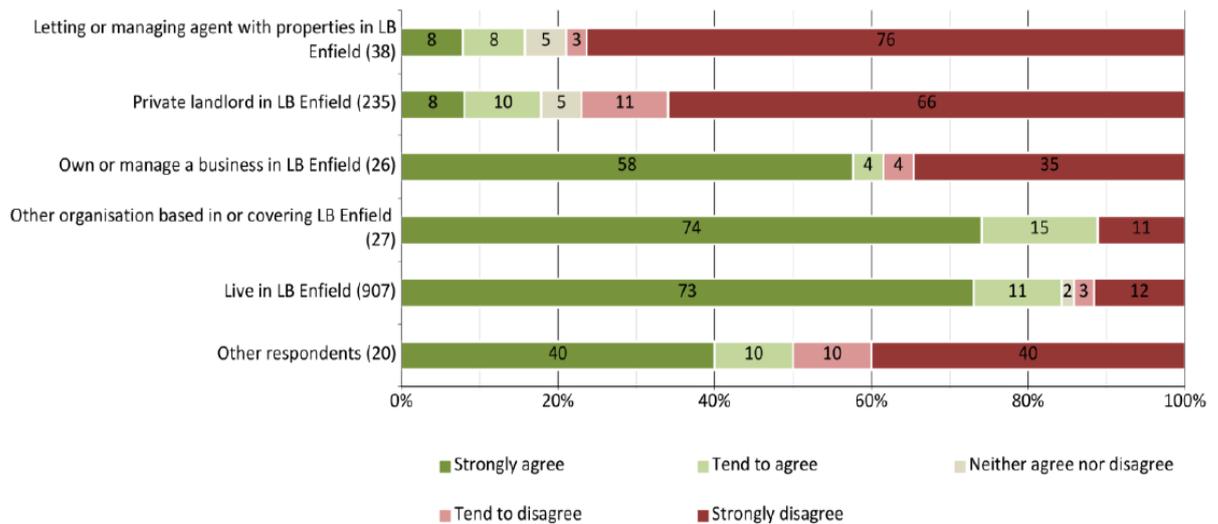
- 4.13 The consultation period was managed in partnership with an independent external market research body, Opinion Research Services (ORS), to ensure quality and independence. The consultation took place across four months and comprised of two distinct phases, an initial listening and engagement phase followed by a public consultation. The methodologies used were both qualitative and quantitative, but also included a statistically weighted, in-depth telephone survey, which was statistically representative of the resident population of Enfield. As stated by ORS:
- A wide range of views were expressed in the consultation exercise and there was no overall consensus about anti-social behaviour and licensing or its likely effects. Nonetheless...both the open questionnaire and residents' survey show*

clearly that big majorities of Enfield residents broadly support the council's proposals.

(Paragraph 1.56 in Appendix 5)

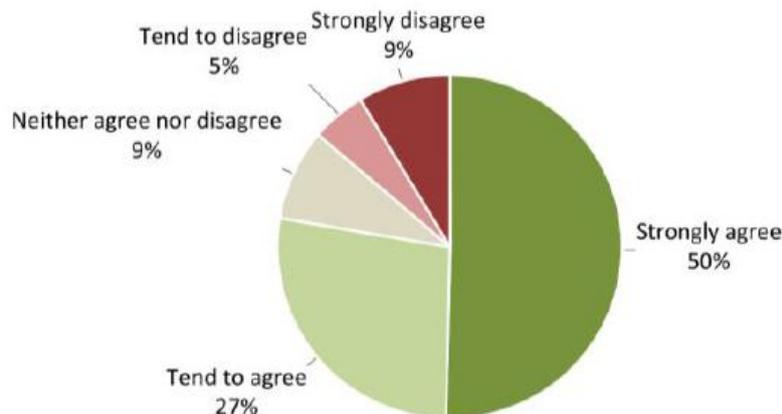
4.14 This extract demonstrates - in quantitative terms (and based on the online questionnaire), the answer to the question: **To what extent do you agree or disagree with the general proposals for a borough-wide licensing scheme?**

- 84 % of individuals who live in Enfield strongly or tend to agree with the proposal, alongside a majority of Enfield businesses (62%) and local organisations (89%).
- In contrast, only 16% of letting or managing agents, and 18% of private landlords supported the general proposals.



Base: all respondents (number in brackets)

4.15 In terms of the statistically weighted, household telephone survey, the answer to the question was as follows, showing a 77% agreement with the scheme:



4.16 There were also a number of more qualitative issues which were raised during the consultation, which were broadly welcomed as constructive by the Council.

Landlords took the opportunity to raise a range of concerns and areas for further clarification. Practical issues relating to the administration of the scheme and the potential for a bureaucratic overhead for landlords were also raised. These are addressed on a thematic basis below (full detail of responses in appendix 6).

**4.17 Landlords queried the licence cost.**

The Council has also offered the 'early bird' payment discount of £250 for the full five year period of the scheme. In addition the Council has revisited both the service operating model and the associated costs of the administration of the licensing scheme and made amendments to the schemer design. As a result of this, the Council has revisited the projected costs and reduced them. The proposed cost of a licence is £250 for the 'early bird' discount and £500 after the discount period.

The associated enforcement costs are budgeted for by the Council separately. The information and data that will be gathered resulting from licensing will lead to a more targeted and intelligence led approach to enforcement action.

**4.18 Landlords queried the justification for the scheme.**

Both the independent research and the Council's review of data presents the case for a strong correlation between the location of private rented properties and incidents of property based anti-social behaviour such as:

- rowdy behaviour
- rowdy neighbours
- noise
- malicious or nuisance behaviour

During the consultation, many landlords queried whether the evidence presented showed a clear, causal link. It is important to recognise that this data alone cannot do this; therefore, the correlation must be balanced with further information. This correlation combined with an awareness of the rapidly growing scale of the tenure in the borough, the increases to environmental crime that can be linked to poorly managed private rented homes (i.e. fly-boarding of estate agent, letting company and other advertising boards and unkempt gardens), the increasing complaints to and the required response from regulatory services about the quality and safety of private rented properties, and the very rapid increase in overcrowding in the borough's private rented properties, produces a collective body of evidence.

It is the weight of this collective body of evidence, rather than the correlation of incidents and the number of properties, that leads the Council to have determined that something needs to be done to address anti-social behaviour associated with the private rented sector.

**4.19 Landlords queried the justification for a borough wide scheme.**

The area for designation of the scheme has been chosen because of the correlation of evidence across the entire borough, rather than evidence being present only within certain wards.

A borough wide scheme is deemed appropriate in terms of evidence, equity and the potential impact and is not unprecedented, with both London Borough of Newham and London Borough of Barking and Dagenham having introduced whole borough licensing schemes.

**4.20 Landlords asked for a fuller understanding of the benefits to them of the licence.**

Landlords will receive direct benefits as a result of the clarity that the licensing scheme brings regarding the minimum standards required to manage both the property and the tenancy.

In addition the Council has committed to provide support to landlords not only by making these standards clear through the licence conditions, but by providing information and support to landlords to achieve these standards.

The Council has also committed to help good landlords tackle 'bad tenants', where these are identified to the Council. A Landlord Support Team will provide a service to landlords, ranging from advice and signposting through to practical assistance in certain instances e.g. support for accelerated possession proceedings through the local Court if an anti-social tenant fails to respond to the landlord's intervention.

In addition, indirect benefits - such as the improvement of local areas, the penalising of bad landlords who by not investing in their properties undercut reputable landlords, and the general improvement to the reputation of the sector within the borough - will be felt.

**4.21 The link to regulatory services was queried.**

The Council already has an established regulatory arm, with regards to the regulation of housing and anti-social behaviour legislation. Interventions and enforcement used to tackle anti-social behaviour, environmental crime and housing conditions were detailed in the summary of evidence used to support the formal consultation exercise. This showed that the Council uses all available legislation to alleviate problems of anti-social behaviour within the borough. However, despite this, anti-social behaviour incident rates are associated with private rented housing and the Council is keen to be proactive and reduce this.

The impact of ineffective management of anti-social behaviour in this sector is predominately borne by the Council, rather than the sector taking direct responsibility for this.

The Department for Communities and Local Government guidance<sup>3</sup> makes it clear that landlords have a responsibility to ensure that tenants do not cause nuisance or annoyance and to ensure they deal with tenants causing anti-social behaviour. The introduction of the licensing schemes will complement, not replace, the existing regulatory work allowing the Council to set and monitor standards across the sector.

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<sup>3</sup> Department for Communities and Local Government (Revised edition February 2010) 'Approval steps for additional and selective licensing designations in England'

- 4.22 **The ability of the council to implement the scheme was queried.** This is an important issue which some other authorities have not been able to demonstrate, and this has affected the viability of their schemes. The proposed approach and capacity of Enfield Council to deliver additional and selective licensing is addressed below (paragraph 4.27 onwards).
- 4.23 There were a number of issues highlighted in the consultation which supported the council's position. Many residents commented on the decline of some areas, with specific reference to rubbish dumping, unkempt gardens and overcrowding. These were linked to the private rented sector by residents. There were also concerns raised about landlords and agents who did not manage their properties effectively or, indeed, at all.
- 4.24 However, despite the recorded objections, a number of landlords were in favour of the introduction of some form of regulation, and suggested ways to make the approach work.

As a result of these views, the Council has revised its intended approach to consider the following:

- To reduce the licence fee from the proposed £575 to £500 with a £250 rate for applicants before April 1<sup>st</sup> 2015.
  - To create an 'Easy Pay' option for large portfolio landlords.
  - To work with a small collaborative group of landlords to test the effectiveness of the scheme proposals and take on board the 'landlord perspective' in scheme design
  - Develop an on-line application and payment process for the licences with a target that the application process will take no longer than 30 minutes to complete
  - Build self-certification and declarations into the application design to reduce the burden of providing supporting paperwork at the point of application
  - To produce a Good Practice Scheme and Guidance for landlords on how to identify and deal with anti-social behaviour, in their properties
  - To provide clear information on refuse storage and bulky waste arrangements
  - To provide guidance on how to make a planning application for (Article 4)
  - Reviewed the licence conditions to ensure they are proportionate and not too onerous e.g. property inspection intervals adjusted to a minimum of 6 months rather than quarterly and acceptance that landlords can cover their emergency repair liability, through insurance or servicing deals, as an alternative to landlords being able to access an emergency repair fund of £1000 per property.
  - Adopt an inspection regime that is intelligence led and risk based. This means inspecting at least one property for each landlord over the life of the scheme
- 4.25 It is clear that the consultation raised some strong views on the matter, and this included:

- a petition from an un-constituted untitled body, which was submitted in opposition to the scheme (both online and in paper),
- a large number of representations
- five FOI requests about background information.

The online petition is not due to close until April 8<sup>th</sup> 2014, and at the time of writing had 289 unverified signatories. The paper submission had 97 unverified signatories. The cover sheet to this petition can be found as Appendix 8 to this report.

- 4.26 The consultation has allowed the Council to reconsider and address a number of issues around scheme design which in turn has resulted in an opportunity to reconsider the pricing structure and to improve the proposal. However the strength of support from the local community has added support to the overall view that the implementation of additional and selective licensing is justified.

### **Service delivery and performance**

- 4.27 The consideration and design for this service has been considered alongside the wider service plan for Enfield Council as a whole. Provisional performance targets have been designed, and will cover all aspects of service delivery. It is envisaged that a service specific design solution which will deliver holistic housing and environmental improvements is created.
- 4.28 A key requisite for implementing the scheme is that the Council is satisfied that there is adequate resource to deliver the scheme. The scheme design Project Team has ensured that adequate resource has been specified for the five years of the designation. A key part of this will be an on-line licence application and payment system which can be integrated into existing council systems.
- 4.29 Licensing applications will be accepted from the scheme start date, and they will run for the 5 year period of 6<sup>th</sup> April 2015 through to March 2020, unless revoked, or if there are conditions applied for a shorter licence period. As part of a desire to work with landlords, and support them in preparation of the scheme, an early bird fee will be applied for those who obtain their licence between the proposed start of the 'early bird' period of 1<sup>st</sup> November 2014 and the formal start of the scheme on 6<sup>th</sup> April 2015.
- 4.30 The proposed implementation and delivery programme for the scheme has been considered in determining the staffing numbers required. It is envisaged that a core team will be established, augmented with the phasing of additional staffing resources, to deal with the initial wave of inspection work associated with the implementation of a borough wide scheme. Enforcement activity will be intelligence led and targeted effectively.
- 4.31 Given the potential risk to landlords of non-compliance, the Council is committing to a thorough publicity and promotion campaign, and a long lead in time to the scheme fully starting in April 2015. This will ensure that landlords are aware of the requirement to apply for a licence and also give an

opportunity to remedy any weaknesses in their current approach to property and tenancy management and ensure full compliance by the time the scheme goes 'live'.

- 4.32 An annual evaluation of the scheme will be considered against pre-defined indicators and a dashboard of performance indicators to consider and reported to Members:
- Reduction in relevant anti-social behaviour
  - Enforcement and prosecutions
  - Landlord satisfaction
  - Tenant satisfaction
  - Licensing process outputs
  - Cost effectiveness

### **Financial considerations**

- 4.33 The consultation enabled landlords and their representatives the opportunity to raise issues regarding the financing of a licensing scheme. There was a concern raised that the Council was using the legislation to raise revenue, in contrast with the National Landlord Association (NLA) which raised the point that other authorities have lost money in instances where the enforcement requirements have not been thought through; examples given for this were Swansea and Leeds Councils, both of which incurred costs above the licence income. The financial considerations of the scheme are addressed below, but it is important to acknowledge that this scheme will require front loaded investment, and the costs of licences will cover the costs associated with the administration of the licence. It is anticipated that the scheme will result in a targeted approach to enforcement, within the existing service budgets.
- 4.34 Whilst it is understandable that local landlords may view the scheme in a negative financial light, the financial model below highlights the implications. (see 7.1 below)
- 4.35 During consultation, landlords raised considerable concern about the affordability of the scheme stating that the fee was an unreasonable expense for them to bear. Much consideration has been given to this point and the Council has taken steps to reduce the fee payable. In particular the Council has adjusted the ambition to visit each private rented home over the five year period and has stated that the intention is to visit at least one property for each landlord – as part of an intelligence led, risk based and proportionate approach to inspection. This reduction in the number of properties which require an inspection in addition to other work to improve the efficiency of the administration has allowed the Council to adjust the licence fee downwards, from £575 for the five year period to £500. The early bird discount fee remains the same at £250.
- 4.36 This equates to a fee of £2.21 per week over the 5 year period if the full fee is paid at 6<sup>th</sup> April 2015, or 96p per week if landlords apply for the early bird discount fee. These fees are also fully tax deductible as an expense incurred and associated with the letting of the property.

An example of affordability of the scheme for landlords is set out below, using data available as at 28 March 2014. This example does not include the uplift in the capital value of the property, which is an inevitability of owning property in the London housing market over time.

**Table 2**

**Affordability of Licence Fee vs Gross Rental Income**

**Model of costs using a property value of £250k**

2&3 bedrooms freehold houses available in Edmonton N18 at this value (source Rightmove)

**3 Bedroom Home**

**Assuming deposit of £63k and a buy to let mortgage at 5% on £187k loan –**  
source Alexander Hall Mortgage Broker as at 28 March 2014

- Rental income based on April 14 LHA £15,756 p/a  
*assume 3 bed local housing allowance rate of £1,313 pcm (3 bedroom)*
- Average annual costs on repairs £2,000 ( source: accredited agent)
- Loan repayments annually £9,600 (interest only £781per month: source Alexander Hall)
- Assume property insurance £1500 per annum (assume as no quote available)

**Gross annual surplus £2000**

**Early bird discount annual fee £50**

**Full fee annual £100**

**2 Bedroom Home**

**Assuming deposit of £44k and a buy to let mortgage at 5% on £131k loan –**  
source Alexander Hall Mortgage Broker as at 28 March 2014

- Rental income based on April 14 LHA £12,756 p/a  
*assume 2 bed local housing allowance rate of £1,063 pcm (2 bedroom)*
- Average annual costs on repairs £2,000 ( source: accredited agent)
- Loan repayments annually £6,552 (interest only £546 per month: source Alexander Hall)
- Assume property insurance £1500 per annum (assume as no quote available)

**Gross annual surplus £2700**

**Early bird discount annual fee £50**

**Full fee annual £100**

*NB These examples exclude the uplift in the capital value of properties over time*

## **5. ALTERNATIVE OPTIONS CONSIDERED**

5.1 The following alternative options were considered prior to consultation stage, and re-assessed following consultation:

- (a) to implement an additional licensing scheme only
- (b) to implement a selective licensing scheme only
- (c) do nothing further and continue with existing schemes and approaches.
- (d) focus only on 'hotspot' areas (i.e. small designations of the schemes)

5.2 Additional licensing would focus only on houses in multiple occupation. Implementation would be a positive move, and remedy a challenge which the current mandatory licensing presents in suburban boroughs like Enfield, as mandatory licensing only refers to properties that are three stories or higher. However, the private rented stock in Enfield has mainly single household dwellings, leaving most of the private rented stock un-licenced.

5.3 Selective licensing would tackle anti-social behaviour associated with single household dwellings, which the independent research has identified as the largest property type in the private rented sector. To avoid the licensing conditions, there is a significant risk that there would be a perverse incentive for more properties to be turned over to houses in multiple occupation.

5.4 If a decision not to implement licensing was taken, and the status quo was maintained, the Council would see the negative impacts of a growing private rented sector, suffering the persistent issues associated with anti-social behaviour. Without the powers to drive up the standards of property and tenancy management, the stubborn anti-social behaviour associated with this tenure type will persist.

5.5 Consideration was given to piloting licensing in certain designated areas but this was not pursued as the independent research found anti-social behaviour, correlated with the presence of private rented sector properties, across the entire borough. In addition, representations during the consultation highlighted landlord concerns about creating 'blight' by labelling areas as 'anti-social behaviour hot spots'. There were also concerns about the risk of displacement of poor behaviour to other areas. The conclusion was drawn that this approach would not tackle the widespread issue of anti-social behaviour effectively.

## **6. REASONS FOR RECOMMENDATIONS**

6.1 Independent research has demonstrated that there is a strong correlation across the borough of Enfield of significant and persistent anti-social behaviour related to the private rented housing sector, in addition there is evidence of poor property and tenancy management across this sector.

6.2 The 2004 Housing Act gives authorities powers to licence private rented sector properties within the borough, through additional and selective schemes but only when certain conditions are met – Enfield meets the conditions related to anti-social behaviour associated with this tenure.

- 6.3 Wide ranging consultation - both qualitative and quantitative – has demonstrated significant resident support for the implementation of licensing controls across the whole borough. The consultation approach also took reasonable steps to consult those likely to be affected by the designation and highlighted a number of issues which the Council has taken care to consider. As a result changes have been incorporated into the licensing scheme design. It is worth noting that the consultation did not demonstrate a consensus of views between the constituent groups, but also did not provide evidence to prevent the proposal from moving forward.
- 6.4 The introduction of licensing will enable a significant change in the way that anti-social behaviour associated with the private rented sector is tackled. A shift towards a proactive approach to tackle these complex issues, will see benefits for both landlords and tenants, as well as local residents.
- 6.5 The Council sees this as an opportunity for **responsible landlords** to sustain and grow their businesses, while action is taken to tackle those landlords who flout their legal responsibilities. Responsible landlords will gain from the improved clarity of their role in raising property and tenancy management standards to tackle the anti-social behaviour associated with the dwellings that they own or are responsible for. In addition responsible landlords will gain support from the Council and partner agencies to deal with ‘bad tenants’, through the creation of a Landlord Support Team
- 6.6 **Tenants** will gain from the clarity of what they can expect from both the home that they rent and the landlord that they rent it from. Implementation of minimum standards – as set out in the Licence Conditions - will result in better quality and safer homes to live in.
- 6.7 The simple act of knowing who is responsible for the management of properties that are rented out, and who is responsible in the first instance for dealing with problems associated with the premises, will improve the quality of life for **local residents**.
- 6.8 The Council does not envisage that the licensing proposal will have a negative impact on good quality providers of accommodation working in Enfield. Evidence from other authorities who have already introduced licensing schemes has indicated that licensing has helped to identify rogue landlords who impact negatively on the reputation of private landlords, thus improving the rental market by raising standards of both tenancy and property management.

## **7. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

### **7.1 Financial Implications**

- 7.1.1 The financial modelling estimates the cost of the scheme to break even, over the five year life of the scheme. The financial analysis in **Appendix 7** shows

that there will be a surplus of income in the first two years of the scheme, when the majority of the income is likely to come into the Council, however the early year surpluses will be then used to fund the future year inspection, management and overhead running costs, achieving the ultimate break even position.

- 7.1.2 The fee is calculated to be £500 per licence and an early bird fee is being offered at £250 per licence, available for the first 5 months leading up to the implementation of the scheme on 1<sup>st</sup> April 2015. It is estimated that the discount will be taken up by 18,550 landlords.
- 7.1.3 There is an income risk if a larger proportion of landlords take up the early bird offer. For example if a further 1,000 landlords take up the early bird offer then the total income is reduced by £250k.
- 7.1.4 The costs of the scheme exclude the cost of enforcement; this cost is the responsibility of the Council and cannot be factored into the overall cost of the scheme, however the targeted and intelligence led approach which will guide enforcement action, will be met within the existing enforcement resources.
- 7.1.5 In addition there are a number of enforcement powers that a Local Authority can use against a landlord in certain circumstances such as disrepair. These include actions set out in Part 1 of the Housing Act 2004 including prohibition orders, rent repayment orders, interim management orders and final management orders. In addition, the reasonable costs associated with enforcement action taken under this part of the Housing Act can also be recovered from the landlord.

## 7.2 Legal Implications

Counsel has provided advice and guidance to the Council as part of the project approach and continues to work with the lead officers. The following legal implications have been prepared in full consultation with Counsel.

### Criteria for Additional Licensing

- 7.2.1 Section 56 of the Housing Act 2004 empowers a local housing authority to designate the area of their district, or an area in their district, as subject to **additional licensing** in respect of specified HMOs (other than those already subject to mandatory licensing) where it considers that a significant proportion of the properties in question are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.
- 7.2.2 Guidance published by the Department of Communities and Local Government explains that examples of properties being managed sufficiently ineffectively include:
- those whose external condition and curtilage (including yards and gardens) adversely impact upon the general character and amenity of the area in which they are located;

- those whose internal condition, such as poor amenities, overcrowding etc., adversely impact upon the health, safety and welfare of the occupiers and the landlords of these properties are failing to take appropriate steps to address the issues;
- those where there is a significant and persistent problem of anti-social behaviour affecting other residents and/or the local community and the landlords of the HMOs are not taking reasonable and lawful steps to eliminate or reduce the problems; and;
- those where the lack of management or poor management skills or practices are otherwise adversely impacting upon the welfare, health or safety of residents and/or impacting upon the wider community.

#### Criteria for Selective Licensing

7.2.3 Section 80 of the Act empowers a local housing authority to designate the area of their district, or an area in their district as subject to **selective licensing** of residential accommodation other than HMOs, either where it considers that the area suffers from low housing demand (not relevant to Enfield) or where it considers that:

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

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

(iii) that making a designation will, when combined with other measures, lead to a reduction in, or the elimination of, the problem.

7.2.4 'Anti-social behaviour' is defined in section 57(5) of the Act as "conduct on the part of occupiers of, or visitors to, residential premises - (a) which causes or is likely to cause a nuisance or annoyance to persons residing, visiting or otherwise engaged in lawful activities in the vicinity of such premises, or (b) which involves or is likely to involve the use of such premises for illegal purposes".

7.2.5 The DCLG Guidance explains that an area can be deemed to be suffering from significant and persistent anti-social behavior, if it suffers from:

- **Crime** - tenants not respecting the property in which they live and engaging in vandalism, criminal damage, burglary, robbery/theft and car crime.
- **Nuisance Neighbours** - intimidation and harassment; noise, rowdy and nuisance behaviour; animal related problems; vehicle related nuisance. Tenants engaged in begging; anti-social drinking; street prostitution and kerb-crawling; street drugs market within the curtilage of the property.
- **Environmental Crime** - tenants engaged in graffiti and fly-posting; fly-tipping; litter and waste; nuisance vehicles; drugs paraphernalia; fireworks misuse in and around the curtilage for their property.

### Mandatory requirements for additional or selective licensing

- 7.2.6 Before designating an area of additional or selective licensing, the authority must take reasonable steps to consult persons who are likely to be affected by the designation and consider any representations made in accordance with the consultation and not withdrawn.
- 7.2.7 The authority must ensure that any exercise of the power to designate areas of additional or selective licensing is consistent with the authority's overall housing strategy.
- 7.2.8 The authority must also seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector, as regards combining licensing with other courses of action available to it, or measures taken by others.
- 7.2.9 A designation cannot come into force unless it has been confirmed by the appropriate national authority, or it falls within a description of designations in relation to which that authority has given a general approval.
- 7.2.10 As soon as a designation is confirmed or made, the authority must publish a notice containing prescribed information stating that the designation has been made. The authority must also make copies of the designation and information available to the public for as long as the designation is in force.
- 7.2.11 A designation ceases to have effect no later than 5 years after the date on which it comes into force. The authority must from time to time review the operation of any designation made by them. The authority may revoke a designation and, if it does so, must publish a notice of the revocation in prescribed form.

### Grant of licences

- 7.2.12 The authority must apply a 'fit and proper person' test to applicants for licences and may include in any licence such conditions as it considers appropriate for regulating the management, use or occupation of the house concerned. In the instance of a dispute, the applicants will have a right of appeal to the Residential Property Tribunal.

### Fees

- 7.2.13 When fixing licence fees the authority may take into account all costs incurred by it in carrying out its functions under the additional and selective licensing provisions of the Housing Act 2004.
- 7.2.14 In *R v Westminster City Council ex parte Hemming and others* [2013] EWCA Civ 591, the Court of Appeal has held that the Provision of Service Regulations 2009 prevent the authority from including in licence fees the cost of enforcing the scheme.

## Challenge

7.2.15 A designation may be challenged by way of judicial review as has been the case with other authorities such as Thanet and Hyndburn. The time for seeking judicial review is within 3 months of the date the designation is made. The general legal principles of reasonableness, procedural propriety and proportionality will be applied on any such review.

### **7.3 Property Implications**

7.3.1 The proposed licensing scheme will introduce a new local regulatory environment for the private rented sector. The scheme will assist the Council in developing and maintaining a landlords' register thereby allowing transparency regarding the property and tenancy management arrangements for each address. This improved intelligence will enable the Council to notify landlords of their responsibilities and will assist the Council in responding appropriately to anti-social behaviour associated with the address. Implementation of similar schemes by other boroughs has been noted to improve the environment of neighbourhoods and reduce anti-social behaviour.

7.3.2 However, the use of additional and selective licensing which is landlord and property based, will not resolve many of the issues which are caused by 'bad tenants', however it will increase the oversight of these issues by landlords and where appropriate the use of enforcement powers where the law is being broken. In this regard, the Council proposes to ensure licensing and enforcement are complementary.

7.3.3 It is envisaged that the proposed scheme will assist in increasing the consistency of safeguards available to tenants, while improving the quality of private rented stock and tackling poor quality landlords. A desired outcome will be the effective management of their properties by private sector landlords.

### **8. KEY RISKS**

8.1 A risk register has been created as part of the project methodology to monitor the development of the proposals and their implementation should they be approved.

Key risks to be monitored include

- effective communication strategies to inform landlords that licensing will be implemented and that they are required to register,
- the robustness of IT systems to ensure that licences can be processed accurately and quickly,
- the information sharing protocols between departments to ensure that a joined up and intelligence led approach is pursued,
- the rigorous on-going testing of the financial model to maintain cost effectiveness and cost neutrality,

- that customer service standards associated with the scheme are developed, monitored and achieved.
- Legal challenge associated with both the implementation of the proposal and individual cases going forward

Each of these and other supporting areas will form the context of a risk register that will be maintained by the officer leading the scheme with support from the Council Risk Manager and incorporate best practice.

## **9. IMPACT ON COUNCIL PRIORITIES**

### **9.1 Fairness for All**

The successful implementation of a borough-wide additional and selective landlord licensing scheme will contribute positively to 'Fairness for All' by creating an environment in which all residents can expect to receive a standard of accommodation that is fit for purpose and that is located in an area where tackling anti-social behaviour is of paramount importance.

### **9.2 Growth and Sustainability**

The successful implementation of the scheme will contribute positively to growth and sustainability in Enfield by encouraging stability in our private rented sector and will ensure that landlords have a greater stake in the areas that they let accommodation in and by contributing to the physical and social wellbeing of our neighbourhoods.

### **9.3 Strong Communities**

The scheme if implemented successfully will create stronger communities in Enfield by encouraging both landlords and tenants alike to contribute more fully to the areas in which they live, recognise their civic responsibilities as such and to see themselves as part of dynamic and vibrant local areas that are committed to combating anti-social behaviour and promoting Enfield as a place that is attractive to live, visit and do business in.

## **10. EQUALITIES IMPACT IMPLICATIONS**

- 10.1 A full Predictive Equality Impact Assessment (EQIA) has been carried out on the proposal (appendix 9)
- 10.2 During the development of the proposals to introduce Additional and Selective Licensing of Private Rented Properties in Enfield, a comprehensive programme of consultation and engagement was undertaken in order to ensure full participation from stakeholders and Enfield residents.
- 10.3 Results from the formal residents' survey show some variation the strength of opinions of local residents between different age groups and employment status. However, these differences, away from the average (78%), are not statistically significant and all sub-groups were positive.
- 10.4 Currently no specific equalities monitoring of either PRS landlords or tenants is carried out as information about this sector is limited, but it is likely that both

groups , to some extent, reflect the make-up of the local population. However, the proposal to introduce a borough-wide licensing scheme is likely to benefit all tenants, landlords and residents, and therefore they will not be adversely affected on the basis of their protected characteristics (e.g. age, gender, and ethnicity).

- 10.5 It is recommended that any new service establishes comprehensive monitoring systems to assess any potential positive/adverse impacts that may be currently unforeseen and to take appropriate actions if required.

## **11. PERFORMANCE MANAGEMENT IMPLICATIONS**

- 11.1 The scheme will utilise robust performance management systems that will ensure that the scheme is effectively administered. Service Level Agreements will be enacted between relevant departments and clear timed responses throughout the process of enacting the scheme have been identified (measurable agreed targets connected to the licensing process and enforcement). These will be implemented to ensure that the scheme will operate at an optimum level and deliver on its stated objectives. Quarterly reports will be produced by the implementation team that will be considered by the relevant strategic board and on a bi-annual basis report will be presented to CMB and Members. Improvement planning contingencies underpinned by robust risk monitoring will be employed to ensure slippage is minimised.

## **12. HEALTH AND SAFETY IMPLICATIONS**

- 12.1 The Health and Safety at Work Act 1974 Section2: Duties of employers to employees. Employees must ensure the health, safety and welfare of their employees, subject only to the defence of 'so far as is reasonably practicable'. All employers must make and review a suitable and sufficient assessment of the risks of their activities to employees. Employers must also have in place such arrangements as are necessary to effectively plan, organise, control, monitor and review any preventive and protective measures.
- 12.2 The Service will ensure that risk assessment of the activities is undertaken and control measures are put in place to eliminate or significantly reduce the risks. Checks will be made of databases for known health and safety risks associated with properties to be inspected.

## **13. HR IMPLICATIONS**

- 13.1 All roles created to support this scheme will require evaluated job descriptions. Recruitment to these posts should follow the guidance detailed in the Council's Recruitment Policy and Procedure. The posts should be advertised internally initially and consideration should be given to staff that are potentially affected by the Council's re-organisation plans in the first instance.

## **14. PUBLIC HEALTH IMPLICATIONS**

- 14.1 The overarching Public Health objectives of Enfield Council will benefit from the contribution that a well-managed private rented housing sector will make by contributing to a safer healthier living environment for many of our residents, ensuring that the quality of the sector meet a minimum standard set by the Council.
- 14.2 In some HMOs the standards of management and living conditions can be poor. For example research has shown the risk in HMOs from hazards such as fire can be as much as four or more times higher than the risk in a residential property, which is occupied by a single household. This type of risk will be better managed as the conditions associated with licensing require the installation of smoke alarms with a failure to comply considered an enforcement breach. Introducing additional licensing for HMOs will allow Enfield Council to proactively identify and engage with landlords, particularly with the less responsible private landlords whose tenants are living in very poor conditions.

### **Background Papers**

1. "Understanding the relationship between private rented properties and anti-social behaviour in Enfield" report by nkm, November 2013.

### **Appendices**

- Appendix 1 – Designations and Maps (a) and (b)
- Appendix 2 – Private rented property licence conditions
- Appendix 3 – Private rented property licence fees structure
- Appendix 4 – Research findings and evidence summary
- Appendix 5 – Executive summary of consultation
- Appendix 6 – Summary of considerations
- Appendix 7 – Financial summary of Income and Costs
- Appendix 8 – Front cover of petition against licensing
- Appendix 9 - Predictive Equalities Impact Assessment