

## **Response to Call In**

### Summary

This briefing note is prepared in response to the Call In of the Cabinet's Executive decision number KD3886 on the proposed introduction of Licensing of Private Sector Landlords operating in the borough of Enfield.

The original report was compiled following:-

- Extensive independent led consultation and engagement activity
- The commissioning of specialist independent research, statistical analysis and data modelling
- Consideration of a range of helpful comments and feedback on the potential design and operation of the scheme
- Advice from leading Counsel
- A number of discussions with other Councils
- External checks on the financial assumptions

The 'call-in' paper suggests that the Cabinet report contradicts itself; however this is refuted, as great diligence has been taken to ensure that the facts and issues are set out in a balanced way to allow an informed decision, cognisant of the complex factors involved to be taken. This rightly includes aspects that may be perceived to be both advantages and disadvantages to the recommendations made.

There may of course be differences of view as to the eventual decision, or perhaps how the evidence should be weighed, however officers involved have undertaken extensive work, supported by a range of external expertise, to develop the recommendations made.

This briefing paper will now seek to address each of the points in the 'call-in' paper; in the order they were raised.

### 1. Statistical Correlation

It is openly acknowledged that it is not possible to secure a definitive data set that can empirically prove beyond question, a direct causal link between anti-social behaviour (ASB) and Private Rented Sector properties in every instance.

In the absence of such absolute data, the Council has used independent experts to carry out the data modelling and analysis, their conclusions are quoted directly in the report to Cabinet, Appendix 4, para 5.3

Leading Counsel has provided advice on the introduction of the scheme which included consideration of the evidence base used to determine whether there was a link between ASB and the private sector. Counsel considered that the report was balanced and demonstrated a sufficient correlation between ASB and the private rented sector.

Whilst there may be differences of view on this, it is clearly reasonable to make a decision based on best available data, underpinned by legal advice supporting the adequacy of that correlation, as a matter of law.

## 2. Anti-Social Behaviour (ASB)

Whilst the report evidences clear improvements in tackling ASB in recent years, it also makes clear that the problem of certain types of ASB, including environmental and housing related issues is at a level that remains of concern both to the Council and to local residents.

Given all that has been done to date, new and different approaches, such as licensing and the intelligence led interventions will enable the Council with other public bodies, to be more successful in tackling ASB, in the growing private rented sector, in future.

For this reason we have recommended this new initiative on a borough wide basis in order to achieve the level of impact required to deal with the ASB issues and prevent the problems merely moving to another area within the borough.

## 3. Benefits of the Scheme

The scheme design is intended not to be bureaucratic for landlords and the Council intends to involve landlord representatives at the testing stage. Service modelling has taken into account the development, implementation and delivery aspects with an emphasis on an on-line application and payment process. On line licence applications will take no longer than 30 minutes to complete per property thus minimising the administrative burden for landlords.

Para 4.24 of the Cabinet report set out a range of improvements and suggestions from feedback to our consultation on ways to make the scheme work and commits to involve landlords in the scheme design process.

The introduction of the licensing scheme will benefit key stakeholders; specifically tenants, landlords and the wider community. For tenants, it will provide clear minimum standards for the letting of property in the Borough which clearly establish both the tenant's responsibilities when renting in the private rented sector, and the minimum service standard that can be expected from their landlord. Licensing will also enable the Council to identify and take action against landlords responsible for creating poor housing conditions and environments and who neglect to deal with tenancy related issues such as ASB. For landlords, the scheme aims to encourage the best possible standards of property and tenancy management and provide a bench mark standard for letting property in the Borough. The Council and partner

agencies will provide increased support for landlords around nuisance tenants, through the creation of a Landlord Support Team and thus, in time, reduce demand on public services.

Collectively, it is envisaged that these actions will raise standards in the private rented sector and along with improved neighbourhood appearance, will facilitate an enhanced sense of community cohesion in the borough, of which 84% of individuals living in Enfield strongly or tend to agree with the proposed scheme. (Cabinet Report, S4.14)

Other boroughs that have responded to these same challenges and who are either actively considering or currently implementing licensing schemes are;

- LB Newham – implemented a borough wide Additional and Selective Licensing scheme on 1<sup>st</sup> January 2013
- LB Waltham Forest – progress report submitted to March Cabinet. Decision on borough wide additional and selective licensing to be made in coming months.
- LB Brent – decision taken to implement additional Licensing on a borough wide basis with further work being done to bring forward recommendations on selective licensing in coming months.
- LB Barking and Dagenham – borough wide additional and selective licensing scheme agreed by Cabinet in February 2014.

One of the factors that may have influenced the timing of decisions of some Councils is that historically the approval of the Secretary of State was formally required, whereas under this Government's recent Localism legislation, Councils now have the ability to make a designation without seeking prior approval of the Secretary of State.

#### 4. The Anti-Social Behaviour and Policing Act 2014

The implementation of the Scheme will enhance and complement the Council's existing projects and activities in dealing with ASB. In anticipation of the Anti-Social Behaviour, Crime and Policing Act 2014 enacted mid-2014, Enfield set up an ASB Action Group (ASBAG). This group meets monthly and addresses all ASB complaints made to the Council using the criteria within the legislation. Most of the Act is not yet in force and is untested in the Courts. At this early stage, it is not known what impact this legislation will have and whether it will have a greater impact on tackling ASB than the legislation it is intended to replace. We therefore consider the licensing scheme as an additional measure which will work in parallel to this legislation and intend to invite landlords whose properties are the locus of ASB to join this multi-agency team where appropriate.

## 5. Enforcement

Determining the identity of landlords and having the necessary evidence available is fundamental to taking effective enforcement action. Licensing clearly increases the Council's ability to know who landlords are and through an inspection process, gather evidence which will complement existing enforcement capabilities.

The proposed implementation and delivery programme for the scheme, has been considered when determining the level of inspection and enforcement activity which will be required. A core team will be established, to deal with the property inspection work which is a key component of the proposed scheme in Enfield.

In terms of enforcement activity, the scheme will enable the authority to carry out a proactive, intelligence led and coordinated approach to target those landlords who are non-compliant, or not easily identifiable. The joint working with external partners such as the Police and the Border Agency will assist in this objective.

The existing measures are not considered sufficient to identify and deal with those landlords who are not interested in managing their properties and tenants. In the future, the use of the information required as part of the licensing process will be used to clearly set the Council's expectation that landlords will manage their properties and tenancy conditions, and where this does not occur the Council will work with partners to take a proactive approach to tackling the ASB associated with the property and/or tenancy.

## 6. Enforcement costs

Enforcement activity has not been costed in the financial model for the licensing scheme, the guidance available clearly sets out that Council is not allowed to cover the cost of any enforcement action taken against a landlord, from the revenue raised as a result of licensing. These funds must only be used for the administration of the scheme. However, it is incorrect to assume that no consideration has been made to the resource capacity required and associated with, dealing with enforcement.

It is a key requisite for implementing the scheme, that the Council is satisfied that there is adequate resource to deliver the scheme. There has been considerable 'activity based analysis' undertaken to understand the administrative tasks associated with the scheme design, with the costs of these elements extrapolated to cover the cost of the scheme. This information was used to set the fee - with assumptions made for the volumes of landlords benefiting from the 'early bird' fee and the numbers of subsequent full fee payers.

The introduction of licensing will see a key shift in the current approach from the a reactive service - which seeks to intervene once a situation has developed and moved towards crisis - towards a proactive service which sets the standards across

the sector and is better able to identify risks and take action quickly, when a situation develops. This new approach to enforcement activity will be intelligence led and targeted, delivering a holistic housing and environmental improvement. In addition, the reasonable costs associated with enforcement action taken under Part 1 of the Housing Act 2004 can also be recovered from the landlord. (Cabinet report, para 7.15)

The Housing Enforcement Team has received over 2,061 service requests from private rented sector tenants between April 2012 to March 2014. This is in direct contrast to the 1,746 requests received between April 2010 to March 2012. These figures highlight the increasing demand for the service.

The Housing Enforcement Team has been able to resolve over 370 Category 1 hazards within the private rented sector in Enfield during this period. These results have enabled vulnerable occupants to remain in their homes and prevent homelessness. Although the use of existing powers has enabled the service to resolve some of the service requests, powers have proven limited in other areas.

The information and evidence available through the proposed licensing scheme will enable more efficient enforcement activity through the better use of existing resources and the reduced time taken to compile the evidence necessary to take effective action.

## 7. Licensing Costs

As with any financial modelling a number of assumptions have to be made. The assumptions are based on the cost of running the scheme for 29,000 licenses over the life of the scheme from 2015-2020.

The majority of the scheme costs are staffing and these will be flexed in accordance with applications received – for example it is anticipated that the core staffing complement will have to be enhanced to deal with the initial wave of work associated with setting up the scheme. Overall the scheme must be cost neutral over the life of the scheme with the financial modelling showing that surplus income generated in year 1 & 2, will be required to be managed in such a way as to cover the scheme costs in years 3, 4 & 5.

There is no current evidence to support speculation that the scheme will influence landlords to raise rent levels to cover the licensing fee. The adoption of the 'early bird' fee of £250 for applications made before 1<sup>st</sup> April 2015, is aimed to assist responsible landlords. This equates to a fee of 96p per week over the 5 year period. (Cabinet report, para 4.36)

Appendix 4 of the Cabinet Report, para 4.36 illustrates an example of affordability for a landlord, based on the proposed licence fees. It should also be noted that the fees are a tax deductible expense incurred and associated with the letting of the property.

## 8. Keys Risks - Non Compliance

The key risks regarding landlord non-compliance have been reviewed thoroughly in preparation for the potential administration of the scheme.

It is acknowledged that the non-compliant landlords are likely to be more reluctant to license. However, work already done as part of the modelling of the evidence base will help target likely private rented sector properties and their non-compliant landlords. Intelligence led and targeted visits will be critical in identifying these landlords who may be unintentionally failing to license their properties. It is assumed that most landlords failing to register will have done so by mistake, with only the minority wilfully being non-compliant and therefore open to prosecution.

Additionally, tenants and landlords will be able to inform the Council if a property is unlicensed. (Details of registered properties will be available on the Public Register).

With regard to the National Scheme in Scotland; Part 8 of the Anti-Social Behaviour etc. (Scotland) Act 2004, requires authorities to maintain a public register of all private landlords in their area. The Scottish scheme is governed by Scottish legislation which already includes powers to take action against landlords in respect of ASB of their tenants and therefore the requirements of the Act in relation to licensing differ from the licensing powers afforded to English authorities by the Housing Act 2004. Therefore, it is not considered that the Scottish licensing scheme is a viable benchmark.

This additional briefing has addressed the specific issues raised in the call-in. It needs to be considered alongside the comprehensive report to Cabinet that clearly set out the extensive work undertaken and supported by specialist independent experts, leading to the original recommendations.