

<b>REPORT TO:</b>		URGENT CABINET DECISION	
<b>DATE:</b>		05 July 2017	
<b>PORTFOLIO:</b>		Cllr Clare Cleary - Housing	
<b>REPORT AUTHOR:</b>		Paul Gordziejewicz, Private Rented Sector Manager Fiona Goodfellow, Housing Strategy & Policy Manager	
<b>TITLE OF REPORT:</b>		Proposal to Designate a Private Landlord Selective Licensing Scheme (Parts of Accrington and Church)	
<b>EXEMPT REPORT (Local Government Act 1972, Schedule 12A)</b>	<b>No</b>	Not applicable	
<b>KEY DECISION:</b>	<b>Yes</b>	If yes, date of publication:	20 <sup>th</sup> June 2017

## 1. Purpose of Report

- 1.1 To seek Cabinet approval for a private landlord selective licensing scheme for parts of Accrington & Church.

## 2. Recommendations

I recommend that Cabinet:-

- 2.1 Considers the representations received in response to the consultation on the Council's proposals to introduce selective licensing of private landlords in parts of Accrington and Church before making a decision in respect of the proposed designation with specific reference to the following:-
- The report on the Consultation Findings that was published on the 30 June 2017 attached at Appendix 1 and
  - The detailed responses received from Hyndburn Landlords together with the Council's responses attached at Appendix 2
- 2.2 Considers whether the proposal to introduce the selective licensing of private landlords in parts of Accrington and Church is consistent with the Council's equality duty under Section 149 of the Equality Act 2010 as set out in section 6 of this report and as discussed in the Customer First Analysis attached at Appendix 7.
- 2.3 Considers whether there are other courses of action available to it that might provide an effective way of addressing low demand in the relevant parts of Accrington and Church and, following such consideration, confirms that it considers that making the proposed designation will significantly assist it to address low demand in those areas.

- 2.4 Approve the proposed designation based on low housing demand (or is likely to become such an area) as defined under Section 80(3) (a) and (b) of Part 3 of the Housing Act 2004 for the parts of Accrington and Church, shown edged red on the map attached at Appendix 3
- 2.5 Approve the proposed licence fee structure for the proposed designation attached at and within Appendix 4.
- 2.6 Approve the proposed licence conditions for the proposed designation attached at and within Appendix 4.
- 2.7 Requires the Head of Regeneration and Housing to seek the Secretary of State's approval to designate the area referred to in recommendation 2.4 above pursuant to Section 82 of the Housing Act 2004. This is required due to the high level of private rented properties within the proposed designation. Department of Communities and Local Government (DCLG) guidance states Secretary of State's confirmation is required if the proposed designation affects more than 20% of privately rented homes in the local authority area.
- 2.8 Subject to Secretary of State approval, requires the Head of Regeneration and Housing to publicise the designation in accordance with Section 83 Housing Act 2004 and to report to Cabinet if, following any future review, he considers that the designation may require revocation or amendment.

### **3. Reasons for Recommendations and Background**

#### **Determining the Designation**

- 3.1 Legislation – Section 80 (2) of Part 3 of the Housing Act 2004 requires that a private landlord selective licensing scheme must satisfy one or more of the specified statutory conditions, set out in ss80(3) and (6) of the Act namely:-
  - A That the area is, or is likely to become, an “area of low housing demand”; and that the proposed designation will contribute to the improvement of the social or economic conditions in the area when combined with other measures taken in the area by, or in cooperation with, the local authority;
  - Or
  - B. That the area is experiencing a “significant and persistent problem” caused by anti-social behaviour ('ASB'); that some or all of the private sector landlords letting premises in the area have failed to take action which it would be reasonable for them to take to combat the problem; and that the proposed designation will, when combined with other measures, lead to a reduction in or elimination of the problem.
- 3.2 Following a thorough analysis of low housing demand as evidenced in the two reports prepared by Arc4 Limited (a specialist housing need and housing market analyst):-
  - 'Identifying Areas of Low Housing Demand' (Nov 2016) – Arc4 Report No 1 (attached at Appendix 5)
  - 'Comparable Housing Market Performance Across Hyndburn' (May 2017) – Arc4 Report No 2 (attached at Appendix 6)

the Head of Regeneration and Housing is recommending that the Council create a selective licensing scheme based on low housing demand, as evidenced and established in the two Arc4 reports referred to above, for the parts of Accrington and Church, shown edged red, on the map attached at Appendix 3.

- 3.3 The Council believes that the existing selective licensing designation area for parts of Accrington and Church, alongside other measures, is starting to stabilise the housing market and make some small improvements in parts of the area, albeit the area remains in low demand. However, the Council also believes that selective licensing is not a quick fix and therefore a further designation is needed in order to achieve a more sustainable improvement in the housing market.
- 3.4 The Arc<sup>4</sup> evidence base produced for the Council shows that areas immediately adjacent to the existing designation boundary are in low demand and in some instances the market has deteriorated and therefore the Council is proposing an extended area which includes West Accrington, Accrington town centre, and additional parts of Church, Spring Hill and Peel.
- 3.5 This additional area equates to approximately 1000 additional properties, but it is estimated that only 200 of these will be licensable. The designation will be for a period of 5 years from 1 December 2017.

### **Other Considerations**

- 3.6 Legislation – Section 81 of the Housing Act 2004 and the guidance issued by DCLG (March 2015) provides further considerations the local authority needs to have regard to before determining that a designation should be made. When considering whether to make a selective licensing designation the Council must:-
- Ensure that selective licensing is consistent with its overall housing strategy and that complementary activity is being undertaken in the Borough
  - Adopt a co-ordinated approach to action undertaken in respect of homelessness, empty properties and anti-social behaviour (ASB) affecting the private rented sector
  - Consider that the designation will significantly assist the local authority to achieve its objectives
  - Consider any potential negative economic impacts that licensing may have on the area
    - Consider whether any other courses of action available to the local authority may provide an effective method of achieving the objectives that the designation intends to achieve

These factors have been fully assessed and details of the Council's considerations and the conclusions reached are contained in the Proposed Designation Report attached at Appendix 4.

- 3.7 As examined and detailed in the Proposed Designation Report, selective licensing is consistent with the Council's overall housing strategy and sits alongside other activity. The use of complementary activity is central to the Council's strategic housing approach to tackling low housing demand and regeneration and includes empty property interventions, enforcement action through the housing and planning legislation, area regeneration (existing properties and new build) and homeless initiatives. The Council also has a pro-active and partnership approach to tackling anti-social behaviour, specifically through joint working with the police and through the local Transforming Lives Panels.

- 3.8 Representations made during the consultation, particularly from landlords, referred to the potential negative financial impact that licensing would have on their businesses and that the additional costs would be passed on to tenants in the form of rent increases. The Proposed Designation Report contains a table summarising the main risks (financial and other) that can be associated with selective licensing along with details of how the risks can be reduced and/or eliminated.
- 3.9 The financial concerns have been taken into account by the Council in amendments made to the proposed licence fees to assist in mitigating the impact for landlords. These amendments are referred to in paragraph 5.7.

#### **4. Alternative Options considered and Reasons for Rejection**

4.1 Section 81 of the Housing Act 2004 states that the Council must not make a selective licensing designation unless it has considered whether there are other courses of action available to it that might prove more effective in addressing low housing demand and the Council has concluded that making the designation will significantly assist in reducing low demand, whether or not the Council also proposes to take other action to deal with the problem.

4.2 The main areas considered and the suggestions for their rejection are:-

- i) Housing Act 2004 Enforcement of Housing Standards – action is limited to disrepair and hazardous conditions particularly around health and safety issues and it does not address the wider aspects of tenancy management and conditions.
- ii) Management Orders – this is resource intensive and only deals with individual properties
- iii) Accreditation Scheme – this is voluntary and therefore not enforceable. It is also potentially resource intensive at a time of severe resource constraints.
- iv) Town and Country Planning Act 1990 specifically Section 215 – action is limited to the visual impact on an area and the external fabric of a building. It is not applicable to poor property conditions or management.
- v) Housing and Planning Act 2016 – new powers under this Act were introduced on 6th April 2017 specifically to issue ‘civil penalties’. They add a new powerful deterrent to criminal landlord behaviour through the levying of significant financial penalties of up to £30,000 for each offence committed without the need for formal prosecution proceedings. The Council is able to impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004. These powers will support selective licensing.
  - Failure to comply with an Improvement Notice (Section 30)
  - Offences in relation to licensing of HMO’s (Section 72)
  - Offences in relation to licensing of houses under Part 3 of the Act (Section 95) (Selective Licensing)
  - Offences of contravention of an overcrowding notice (Section 139)
  - Failure to comply with management regulations in respect of HMO’s (Section 234) e.g. for those involving household waste control
  - Breaching of Banning Order (Housing & Planning Act Section 23)

4.3 Whilst these courses of action on their own are considered inappropriate as a means to tackle low housing demand, they are valuable tools that the Council will use to complement selective licensing.

#### **5. Consultations**

## Legislation

- 5.1 Section 80(9) of the Housing Act 2004 and guidance requires that when considering designating an area for selective licensing the Council must:-
- i) Take reasonable steps to consult persons who are likely to be affected by the designation; and
  - ii) Consider any representations made in accordance with the consultation and not withdrawn.
- 5.2 Consequently on 4<sup>th</sup> January 2017 Cabinet approved a draft selective licensing proposal for parts of Accrington and Church for consultation.
- 5.3 The consultation undertaken for a period of 12 weeks between 23<sup>rd</sup> January and 17<sup>th</sup> April 2017 was comprehensive and widespread with residents, tenants, businesses, landlords, agents and stakeholders and included the following:-
- Questionnaires, including a summary of the proposals, to residents, tenants and businesses within the proposed designation area and to areas and neighbourhoods adjacent to the proposed designation
  - Questionnaires, including a summary of the proposals, to all known landlords and agents believed to own or manage properties in Hyndburn.
  - Questionnaires, including a summary of the proposals, to stakeholders and partners.
  - Two exhibitions / open events for residents, businesses, landlords, managing agents and stakeholders
  - '60 Minute' briefing for councillors
  - Attendance at residents and partnership meetings
  - Discussion at Hyndburn's Private Landlords Liaison Group
- 5.4 The Council received a significant amount of feedback to the consultation. Completed survey forms were received from:-
- 739 residents and businesses
  - 175 landlords and agents
  - 7 stakeholders

Many of these forms included detailed comments, observations and suggestions in addition to the questions asked.

In addition, detailed written responses were received from Hyndburn Landlords, Placefirst, the National Landlords Association and the Residential Landlords Association.

- 5.5 The Council has considered and analysed all the responses received and has published a detailed '[Report on the Consultation Findings](https://www.hyndburnbc.gov.uk/proposed-selective-licensing-designation-consultation-2017/4/)' (Appendix 1) which has been published on the Council's website. <https://www.hyndburnbc.gov.uk/proposed-selective-licensing-designation-consultation-2017/4/>
- 5.6 The report includes a detailed analysis of responses received in relation to:-
- Low housing demand

- The boundary / area to be licensed
- The licence fees
- The conditions
- Alternatives to selective licensing

along with the Council's response.

5.7 As a result of the consultation, some changes are being suggested to the proposed designation. These are detailed in the Consultation Report (pages 46-69) - in summary these are as follows:-

i) Licence Fees

- A discount of £200 on the application fee will be given if a 'complete' application is submitted within the first 3 calendar months of the designation and/or within 3 calendar months of the property being rented out for the first time. This replaces the 2 months in the consultation proposal.
- The Council has introduced a 'multiple property' discount of £50 on the application fee for landlords who make 2nd and subsequent licence applications
- Payment Methods – The Council will consider offering structured fee payment arrangements for owners of more than one licensable property (located in Hyndburn). This will require 50% of the application fee paid up front – and the remaining 50% of the application fee to be paid in monthly instalments by direct debit in the first year that the property becomes licensable.

ii) Licence Conditions - Some minor word changes have been made to a number of conditions to provide clarity and make the conditions more enforceable. Two conditions have been removed due to overlap in wording. Due to concerns from landlords about their ability to control tenants' behaviour the Council will offer training for landlords on anti-social behaviour to assist in enforcing licence conditions.

iii) Offer of training for landlords and agents on anti-social behaviour to assist in enforcing licence conditions, specifically Nos 11 and 12.

iv) The Council will investigate the introduction of an accredited agents scheme. – aimed at those managing agents who are willing and able to conduct themselves in accordance with the provisions of a locally adopted Code of Practice – thus making them eligible for further licence fee discount(s).

v) The Council will investigate with Lancashire CC the option of offering a discount on fees for the disposal of household waste for landlords between tenancies.

5.8 Other representations were made which it is not recommended that the Council accept or agree. These are summarised below, together with the reason why acceptance is not recommended:-

The main changes suggested, but not acted upon with the reasons why, are as follows:-

- i) Licence per landlord instead of per property - the legislation is clear and states that it is a licence per property, not one licence per landlord
- ii) The Council should use 'alternatives' to licensing – see 4.2. above

- iii) The removal of, or inclusion of, specific streets and areas – the housing market evidence provided by Arc4 Limited (refer to 3.2 above) shows the proposed area is in low housing demand. None of the responses, including Hyndburn Landlords, provided any evidence to show the proposed designation is not in low housing demand.
- iv) No coherent or consistent case was made for any adjustments to the proposed designation area.

## 6. Implications

<p><b>Financial implications (including any future financial commitments for the Council)</b></p>	<p>Should the Council decide, and receive Secretary of State approval, to proceed with a selective licensing designation the scheme will be self-financing through the charging of fees. Set up costs for the proposed designation in respect of staff time, supporting work (Arc4 Reports) and the consultation costs have been incurred at risk and will be recovered from the scheme when operational. It is estimated these are approximately £40,000.</p>
<p><b>Legal and human rights implications</b></p>	<p>The proposed designation is based upon one ground under Part 3 of the Housing Act 2004 in respect of proposing the designation as follows:-</p> <ul style="list-style-type: none"> <li>• Low housing demand (or is likely to become such an area – S80(3) (a) and (b)</li> <li>• That making the designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, contribute to the improvement of the social and economic conditions in the area.</li> <li>• The proposal is compliant with the Human Rights Act 1998 and is considered reasonable and proportionate on the basis of the evidence available.</li> </ul> <p>The application of the legislation to this proposal is discussed in detail in section 3 of this report. The Council has also sought Counsel’s opinion in respect of the proposed licence conditions and these have been amended to take into account this advice.</p>
<p><b>Assessment of risk</b></p>	<p>A Cabinet decision to propose a new proposed selective licensing designation does not raise any immediate operational, strategic, financial or legal risk to the Council. Any decision to designate an area for selective licensing could be subject to legal challenge but risks in this regard will be mitigated by strict compliance with legal requirements and the Government’s guidance.</p>
<p><b>Equality and diversity implications</b> A <a href="#"><i>Customer First Analysis</i></a> should be completed in relation to policy decisions</p>	<p>. The Council is subject to the public sector equality duty introduced by the Equality Act 2010. When making a decision in respect of the</p>

<p><i>and should be attached as an appendix to the report.</i></p>	<p>recommendations in this report Cabinet must have regard to the need to:</p> <ul style="list-style-type: none"> <li>• eliminate unlawful discrimination, harassment and victimisation; and</li> <li>• advance equality of opportunity between those who share a relevant protected characteristic and those who don't; and</li> <li>• foster good relations between those who share a relevant protected characteristic and those who don't.</li> </ul> <p>For these purposes the relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. To assist the Cabinet in this regard a Customer First Analysis has been carried out as part of the review process and is attached as Appendix 7 to this report. Cabinet is advised to consider the Customer First Analysis and its obligations in respect of the public sector equality duty when making a decision in respect of the recommendations contained in this report.</p>
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**7. Local Government (Access to Information) Act 1985:  
List of Background Papers**

- 7.1 Department of Communities and Local Government 'Selective Licensing in the private rented sector' A guide for Local Authorities. March 2015.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418551/150327\\_Guidance\\_on\\_selective\\_licensing\\_applications\\_FINAL\\_updated\\_isbn.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418551/150327_Guidance_on_selective_licensing_applications_FINAL_updated_isbn.pdf)
- 7.2 Housing Act 2004 Part 3 – Selective Licensing of other residential accommodation
- 7.3 Report to Cabinet 4 January 2017 – Proposal to Designate A Private Landlord Selective Licensing Scheme (Parts of Accrington and Church)  
<https://democracy.hyndburnbc.gov.uk/ieListDocuments.aspx?CId=133&MId=1078&Ver=4>

**8. Freedom of Information**

- 8.1 The report does not contain exempt information under the Local Government Act 1972, Schedule 12A and all information can be disclosed under the Freedom of Information Act 2000.