

REPORT TO: CABINET

DATE: 1ST AUGUST 2012

PORTFOLIO: CLARE PRITCHARD, DEPUTY LEADER OF THE COUNCIL AND PORTFOLIO HOLDER FOR REGENERATION AND HOUSING

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PROPOSAL TO DESIGNATE A PRIVATE LANDLORD SELECTIVE LICENSING SCHEME (PARTS OF ACCRINGTON AND CHURCH)

1. Purpose of Report

1.1 To seek Cabinet approval for a private landlord selective licensing scheme for parts of Accrington and 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:

- i) the report on the Consultation Findings that was published on the 25th July 2012 and attached at Appendix 1.
- ii) the detailed responses received from Hyndburn Landlords and the Residential Landlords Association (RLA) together with the Council's responses and 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 Equality Act 2010 as set out in paragraph 6 of this report and as further discussed in the Customer First Analysis annexed to this report.

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 Agrees the designation of those parts of Accrington and Church shown edged red on the plan attached at Appendix 3 for the purposes of the selective licensing of private landlords pursuant to Sections 80 (1), (2) and (3) (a) and (b) Housing Act 2004 and agrees that such

designation shall be cited as the Borough of Hyndburn Designation of an Area for Selective Licensing No. 1 2012.

- 2.5 Agrees that the selective licensing designation shall come into effect on 1st December 2012 and that, unless previously revoked pursuant to section 84 (4) Housing Act 2004, the designation shall cease to have effect 5 years thereafter.
- 2.6 Confirms that the designation is made pursuant to The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2010, the Council having complied with paragraph 4 thereof by carrying out consultation in respect of its proposals for a period of not less than 10 weeks.
- 2.7 Requires the Head of Regeneration and Housing to publicise the designation in accordance with section 83 Housing Act 2004 and The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006.
- 2.8 Requests the Head of Regeneration and Housing to keep operation of the designation under regular review in accordance with Section 84 Housing Act 2004 and to report to Cabinet if, following any review, he considers that the designation may require revocation.
- 2.9 Requests the Head of Regeneration and Housing in consultation with appropriate stakeholders formulates proposals for a Landlord Accreditation Scheme that would allow landlords to migrate from selective licensing into an accreditation scheme thereby continuing to promote good management practices after selective licensing has run its course and reports back to Cabinet with such proposals in due course.

3. Background

- 3.1 On the 11th January 2012 Cabinet approved a draft selective licensing proposal for parts of Accrington and Church for consultation with all persons likely to be affected by the proposed selective licensing designation for a minimum of twelve weeks.
- 3.2 Wide and comprehensive consultation has been carried out with a range of stakeholders which is explained in more detail later in Section 7 of the report.
- 3.3 The Housing Act 2004 ('the Act') and secondary legislation, gives power to Local Housing Authorities (LHA's) to designate areas, or the whole of an area within their district, as subject to selective licensing of private rented accommodation, provided one of the following conditions are met:-
 - i) the area is one experiencing low demand (or is likely to become a low demand area) and the LHA is satisfied that making a designation will, when combined with other measures taken by the LHA, or by the LHA in conjunction with others, contribute to an improvement in the social or economic conditions in the area (Section 80(3) Housing Act 2004); or
 - ii) the area is experiencing a significant and persistent problem caused by anti-social behaviour and that some or all private sector landlords in the area are not taking appropriate action to combat the problem, and the making of a designation, when combined with other measures taken by the LHA in conjunction with others, will lead to a reduction in, or elimination of, the problem. (Section 80(6) Housing Act 2004)

- 3.4 Parts of Accrington and Church suffer from low housing demand (or are likely to become such areas) and therefore Cabinet are being invited to consider the proposed designation (Appendix 4) under Section 80 (3) of the Act as described in paragraph 3.3 i) above. Considerable evidence has been gathered to show that low housing demand exists or that low housing demand is likely to occur. The Council's low housing demand evidence base has been endorsed by an independent study of low housing demand across the Borough by housing market experts Arc4 (Appendix 5).
- 3.5 In considering whether to make a selective licensing designation, the Council must also :-
- i) exercise its selective licensing powers in a way which is consistent with its overall housing strategy;
 - ii) ensure that it takes a co-ordinated approach to dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector, in particular in terms of combining selective licensing with the other courses of action available to it and with measures that may be taken by others.
- 3.6 We already know that parts of the Borough (mainly concentrated in Accrington and Church) suffer from, or are at risk of becoming areas of low housing demand. This is the reason why the Government granted Hyndburn Housing Market Renewal Pathfinder status in 2002 and although this initiative has now been discontinued, low housing demand remains. Consequently, the Council continues with a strategic approach to addressing low housing demand.
- 3.7 The attached designation proposal (Appendix 4) explains how selective licensing can support the Council's regeneration plans in addressing low housing demand in parts of Accrington and Church including the clearance of low demand housing, new house building, treatments to terrace blocks, bringing empty homes back into uses, and creating new employment and training opportunities.
- 3.8 The proposed designation (Appendix 4), explains in detail:-
- i) the reasons why the Council is proposing to introduce selective licensing for private landlords in parts of Accrington and Church;
 - ii) how selective licensing supports the Council's wider strategy to reduce low housing demand;
 - iii) the options and other courses available that the Council considered before deciding on selective licensing;
 - iv) the evidence base used to identify the proposed designation area as an area experiencing low housing demand (or one which is likely to become such an area);
 - v) how selective licensing at neighbourhood level will support regeneration plans to address low housing demand;
 - vi) the potential for displacement and other risks and how these will be managed and mitigated;
 - vii) the specific area that will be subject to licensing and how the Scheme will be operated and managed, including monitoring and review arrangements;

viii) the steps taken to consult people who are likely to be affected by the designation, together with details of the comments received and an evaluation of (and proposed response to) those comments .

4. Reasons for Recommendations

- 4.1 The Act and subsequent general consent grants local authorities with the power to make a designation for the selective licensing of private landlords. The recommendations seek to use the general consent power in order to designate parts of Accrington and Church for the purpose of selective licensing for private landlords.
- 4.2 There are specific legal notices and time-frames that need to be followed before a designation can be implemented. These are spelt out in the recommendation.

5. Alternative Options considered and Reasons for Rejection

- 5.1 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 demand and the Council has concluded that making the designation will significantly assist it in reducing low demand, whether or not the Council also proposes to take other action to deal with the problem.
- 5.2 The main areas considered and the suggestions for their rejection are: -
- i) Housing Act 2004 Enforcement – action is limited to disrepair and hazardous conditions and therefore does not address the wider aspects of tenancy management.
 - ii) S215, Town and County Planning Act 1900 – action is limited to the visual impact on an area.
 - iii) Management Orders – is resource intensive and the power only deals with individual dwellings.
 - iv) Accreditation – it is voluntary and therefore not enforceable and potentially resource intensive.

The proposed designation concludes that selective licensing would, if approved, provide a more holistic, strategic approach to low housing demand.

- 5.3 The Council remains very interested in adopting an effective landlord accreditation scheme, recognising that a selective licensing scheme normally lasts for five years. This should allow landlords to migrate from selective licensing into an accreditation scheme thereby continuing to promote good management practices even after selective licensing has run its course.

6. Implications

Issue	Comments
<p>Financial (including mainstreaming)</p>	<p>The 2004 Housing Act provides for selective licensing to be self financing. The proposed designation has used the CIPFA licensing fee toolkit to calculate costs, income and fees. This forms the basis of the licensing budget. Over the term of the proposed designation the total costs are estimated at £1,156,262. The estimated average licence fee to cover this cost is £742.15 for a 5 year term (equivalent to £148.43 per annum). The schedule of fees proposed is attached at Appendix 6.</p>
<p>Legal (including Human Rights issues)</p>	<p>When making decisions the Council must comply with the “equality duty” set out in section 149 Equality Act 2010. This applies to people with “protected characteristics”, which are as follows: age (young and old), disability, gender / sexual orientation, gender reassignment, pregnancy, race and religion or belief.</p> <p>There are three elements to the duty and members must consider all of them. When making a decision in respect of the selective licensing proposal members must have due regard to the need to:</p> <ul style="list-style-type: none"> – Eliminate unlawful discrimination, harassment and victimisation; – Foster good relations between those who have a protected characteristic and those who don't – Advance equality of opportunity between those who have a protected characteristic and those who don't by having due regard to the need to: – Remove or minimise disadvantage suffered by people due to their protected characteristic; and – Take steps to meet the differing needs of people with a protected characteristic <p>These issues must be given a weight appropriate to the nature of the decision and to all the particular circumstances in which it is made. To assist members a Customer First Analysis has been undertaken and is annexed to this report and members are requested to consider the same before making any decision on the recommendations set out in this report.</p> <p>The law relating to the selective licensing of private landlords is set out in the Housing Act 2004 and a number of secondary regulations. The effect and implications of the legal requirements have been set</p>

	<p>out in this report and its recommendations.</p> <p>A designation will come into force three months after it has been made. The Council must publicise the designation by:</p> <ul style="list-style-type: none"> - Publishing a notice within the designated area and on the Council's website within 7 days of the date of decision to make the designation; and - Publish a notice in the next edition of 2 local newspapers and in any event within 7 days of the decision to designate (and then publish the notice again in those newspaper on 5 more occasions at intervals of between 2 and 3 weeks - Notifying all those consulted about the proposal within 2 weeks of the date of decision to make the designation, including all those who responded to the consultation; and - Within 2 weeks of the date of decision to make the designation notice must be sent to organisations representing landlords, tenants, managing agents and estate agents in the designation area and also to all organisations in the Borough providing advice on landlord and tenant matters. - The notices must be in a prescribed form.
<p>Assessment of Risk</p>	<ul style="list-style-type: none"> i) There is a risk of a Judicial Review should the proposals be approved. Should a challenge be made, based on the previous Judicial Review, the estimated cost in defending a case is estimated at between £60,000 - £70,000. To reduce this risk, the proposed designation makes a robust business case, backed up by evidence, and which has been consulted upon widely. An independent study of low housing demand endorses the Council's selection of low housing demand for selective licensing purposes. ii) The budget has been set using CIPFA estimating tool. Whilst costs are easier to predict, income is far more difficult and subject to significant variation. Whilst we believe we now have a good database of potential licence holders, this is not guaranteed. We believe the estimates are accurate, but the budget will be monitored very closely to minimise the risk of any overspend.

<p>Equality and Diversity <i>Officers should carry out a 'Customer First Analysis' to ensure that all services and policies meet the diverse needs of its residents and other services users. What were the key outcomes you're your Customer First Analysis?</i></p>	<p>Attached at Appendix 7.</p>
<p>Key Decision <i>Only applicable for Cabinet decisions.</i></p>	<p>Is the recommendation a Key Decision? Yes If yes, is it included in the current Forward Plan? Yes</p>

7. Consultations

- 7.1 The legislation 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.
- 7.2 Consequently, on the 11th January 2012, Cabinet approved a draft selective licensing proposal for parts of Accrington and Church for consultation.
- 7.3 The consultation undertaken was comprehensive, including consultation with local residents (including tenants), landlords and where appropriate their managing agents and other members of the community who live or operate businesses or provide services within the proposed designation.
- 7.4 The consultation also included local residents and those who operate businesses or provide services in the surrounding area outside of the proposed designation who may be affected.
- 7.5 The consultation was widely publicised including public notices in the press, a public notice in Accrington Library, and comprehensive information on the Council's website. An A4 four page summary of the draft proposal and questionnaire was hand delivered by Council staff to 10,000 households and businesses living or operating within and outside the proposed designation area. In addition 3,000 summaries of the draft proposal and questionnaire were posted to 3,000 landlords (and / or their agents) known to have accommodation in the Borough.
- 7.6 In addition, over 90 stakeholder organisations providing services in Hyndburn, as well as landlord and tenant representative bodies, were sent details of the full proposed designation.
- 7.7 The consultation material gave a detailed explanation of the proposed designation, explaining the reasons for the designation, how it aims to tackle specific issues and problems and the potential benefits. Specifically, the proposal identified and described areas that are suffering from low housing demand and how the proposed selective licensing designation helps to improve low housing demand.

- 7.8 Respondents were given twelve weeks in which to respond. Further information on the consultation undertaken, the responses, and analysis and findings are recorded in a comprehensive consultation report (Appendix 1). The consultation report provides qualitative and quantitative data analysis and an explanation of where the Council has made changes to the proposed designation in response to comments received and why, and in some instances why some suggested changes have not been acted upon and the reasons why.
- 7.9 This report was published on the Council's website on the 25 July 2012 and has been made available in public and community locations. Anyone responding to the consultation was posted a newsletter summarising the consultation response but also providing details of where the consultation report can be accessed.
- 7.10 Very detailed responses to the consultation were provided by Hyndburn Landlords and the Residential Landlords Association. These are annexed to the designation proposal, together with the Council's responses at Appendix 2.
- 7.11 As a result of the consultation the main changes acted upon, can be summarised as follows:-
- i) a reduction in the size of the proposed designation from an area containing 5355 residential dwellings to an area of 4850 dwellings. i.e. a reduction of 505 dwellings representing 10%.
 - ii) the main areas removed from the proposed designation include:-
 - Christchurch (Woodnook)
 - Steiner Street, Frederick Street and Portland Street area of West Accrington
 - 'Hodder Street Section' of Peel Ward
 - iii) significant amendments to the discretionary licence conditions including the removal of conditions that are covered by existing legislation. e.g. Housing Health and Safety Rating System (HHSRS).
 - iv) the introduction of a discretionary licence condition requiring all licence holders and their managers to benefit from minimum training by an approved national organisation.
 - v) allow the majority of licence holders to self declare on the Basic Disclosure requirement and therefore remove an added cost burden.
- 7.12 The main changes suggested, but not acted upon with the reason why are as follows:-
- i) phase the introduction of the designation – legislation does not accommodate a phased introduction making such an approach potentially ultra vires.
 - ii) the removal of two Peel neighbourhoods (referred to in the proposed designation as 'Addison Street Up' and 'Clarendon Street') on the grounds they are in low housing demand (or likely to become areas of low housing demand).
 - iii) the Council should use alternatives to licensing – see '5.2' above.
 - iv) reduce licence fee – the proposed fees reflect the estimated costs using the CIPFA Licensing Toolkit. The legislation allows the Council to recover all its costs associated with administering a licensing scheme.

8. Links to Corporate Priorities to be completed

Priority	Comments
Corporate Governance And Customer Focus	Residents and residents groups periodically identify private landlord's activity as a problem in neighbourhoods.
Safer Communities	Licensing can make a positive contribution towards reducing anti social behaviour.
Strong & Balanced Housing Market	The private rented sector performs a very important contribution towards the borough's housing market. Selective Licensing would support the Council's strategy for addressing low housing demand.
Thriving Economy	Where households are provided with an improved housing offer, it contributes towards a sustainable community which generates wider ranging benefits including an enhanced local economy.
Safeguarding the Environment	Improved standards in the private rented sector will have a positive impact on the street scene.
Valuing Diversity	It is important that the housing market offers a range of tenures, house types, locations and services to meet the needs of a diverse population.
Educational Attainment	Raising standards can lead to improved living standards with knock - on effects with educational improvements.
Healthier Living	Improving standards in the private sector will contribute towards improving the health of occupants.

9. Local Government (Access to Information) Act 1985: List of Background Papers

- 9.1 Part 3 Housing Act 2004
- 9.2 Report to Cabinet, 11 January 2012 – Private Landlords and Selective Licensing

10. Freedom of Information

- 10.1 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.