

To: Cabinet
Date: 9 September 2020
Report of: Head of Regulatory Services and Community Safety
Title of Report: Improving the private rented sector - proposal to implement selective licensing

Summary and recommendations	
Purpose of report:	To inform Cabinet of the review of the housing conditions undertaken to inform a decision for the implementation of a selective licensing scheme
Key decision:	Yes
Cabinet Member:	Councillor Alex Hollingsworth, Cabinet member for Planning and Housing Delivery
Corporate Priority:	More Affordable Housing.
Policy Framework:	Housing and Homelessness Strategy
Recommendations: That Cabinet resolves to:	
<ol style="list-style-type: none"> 1. Consider the Review of Housing Conditions and other factors affecting the private rented sector and note its findings; 2. Resolve that the Review indicates that a significant proportion of the private rented sector should be inspected to determine whether any category 1 and 2 hazards exist; 3. Instruct Officers of the Council to proceed with a statutory 10 week public consultation; and 4. Request a future report in setting out the results of the statutory consultation and to consider and determine if the proposed scheme should be made and submitted to the Secretary of State for Housing, Communities and Local Government for conformation 	

Appendices	
Appendix 1	Private Rented Sector – Housing Stock Condition & Stressors Report July 2020
Appendix 2	Example of Poor conditions
Appendix 3	Licence Conditions Proposal
Appendix 4	Fee proposal
Appendix 5	Risk Register
Appendix 6	Equality Impact Assessment

Introduction and background

1. At the meeting on the 27th January 2020, the Council resolved to adopt a motion supporting the introduction of a city wide licensing scheme to ensure all Oxford landlords are fit and proper and that properties let to residents meet minimum standards and are a safe place to live.
2. The introduction of selective licensing to improve the private rented sector and protect private tenants across the city is a key action of the council's aim to "deliver more affordable housing", contained in the Council Strategy 2020-2024. The scheme would mean that all non- exempt privately rented properties would require a licence to operate within the defined area.
3. The current private rented stock is estimated to be in the order of 49% (30,508 properties) of the total number of residential properties (61,896 properties) in the city including 5240 Houses in Multiple Occupation (HMOs) see Appendix 1. Oxford has one of the largest private rented sectors in any housing authority in England.
4. The objective of Selective licensing is to improve living conditions within the private rented sector and, through ensuring an improvement in management practices of the poorer performing landlords, an improvement in the surrounding community. The scheme will also contribute to a reduction in anti – social behaviour related to the private rented sector. Selective licensing is not a standalone tool and will enable more partnership working to be undertaken to address issues in these areas.

Key Findings from the Review

5. A review of the housing conditions within the private rented sector was undertaken by an external consultant (Metastreet) to provide evidence for the proposal to introduce a selective licensing scheme.
6. The review used Tenure Intelligence (Ti) which uses council held data and publicly available data to identify tenure and analyse property stressors, including property conditions and anti – social behaviour (ASB) complaints.
7. Mathematical algorithms are used to analyse trends in the data at the property level. This helps to predict the tenure of individual properties using factors such as occupant transience and housing benefit data. Metastreet worked with the council to create a residential property data warehouse which included linking millions of cells of council and externally held data to 61,896 unique property reference numbers (UPRN).

8. Predictions were then made for each property as to the tenure and property condition, these predictions were then tested on a sample of known tenures and outcomes which were supplied by the council. The results were analysed to produce a summary of housing stock tenure, predictions of Category 1 hazards (HHSRS) and other related stressors.
9. It is important to note that this approach can never be 100% accurate as all statistical models include some level of error. A more detailed description of the methodology and the specific factors selected to build bespoke predictive models for the review can be found in Appendix 1
10. The evidence suggests
 - a. The percentage of privately rented homes in Oxford is much higher than the national average, with all wards having more than 20% of dwellings being privately rented.
 - b. The growth of the private rented sector in the city has been significant in recent years, rising from 20.8% in 2001 to 49.3% in 2020
 - c. Affordability is a challenge not only in the owner occupied sector but also in the rental market, with median rents ranging between 51% and 83% higher than the English average depending on bedroom categories.
 - d. Over 6200 properties are predicted to have a serious home hazard, this equates to 20.4 % of private rented homes, meaning that 1 in 4 privately rented homes is likely to have a serious home hazard
 - e. Over 4000 investigations were carried out between 2015 and 2019 into Anti – social behaviour concerns including noise and waste management issues, linked to private sector properties.
 - f. 3360 complaints were received from those renting in the private sector between 2015 and 2019. This equates to just over 1 in 10 families living in privately rented homes who felt the conditions were poor and their landlord was not responding to their request. The complaints related to 2990 properties and following inspection this resulted in 2723 serious housing hazards (category 1 and 2) being identified. See Appendix 2
 - g. Holywell ward has the lowest number of predicted category 1 hazards in the city.

Legal Implications

11. Selective licensing was introduced by the Housing Act 2004 (the Act) along with two other forms of property licensing schemes. All of the schemes have statutory exemptions for certain types of property or where property is owned by certain organisations e.g. registered social landlords.
 - a. Mandatory Licensing – this currently applies to HMOs occupied by 5 or more unrelated people in 2 or more households
 - b. Additional HMO licensing – this can be applied to HMOs as determined by the Council in an area determined by the Council

12. The legal framework for the designation of selective licensing is contained in Part 3 of the Act and also in The Selective Licensing of Houses (Additional Conditions) (England) Order 2015.
13. Local Authorities are required to obtain confirmation from the Secretary of State for Housing, Communities and Local Government for any selective licensing scheme which would cover 20% of their geographical area or would affect more than 20% of the privately rented homes in the local authority area.
14. The Council will need to apply to the Secretary of State for approval of the scheme as the proposed scheme will cover more than 20% of the geographical area of the city and would affect more than 20% of the privately rented homes. This approval will be required even if certain wards are excluded.
15. For a selective licensing scheme to be considered, the legislation requires that one or more of the six statutory grounds must be met. These six grounds are:
 - a. The area is of low housing demand (or is likely to become such an area)
 - b. The area suffers from or has significant and persistent problems caused by anti – social behaviour
 - c. The area is experiencing poor property conditions
 - d. The area is experiencing or has recently experienced an influx of migration
 - e. The area is suffering a high level of deprivation or
 - f. The area suffers from high crime levels

The grounds c - f can only be applied where the area has a high proportion of properties in the private rented sector, which is determined by the Council in accordance with guidance. The area is not defined under the legislation and the council could decide to exclude areas which do not meet the grounds for selective licensing i.e. wards which are not experiencing poor housing conditions.
16. There is evidence that the city has a high proportion of properties in the private rented sector and as the report in Appendix 1 highlights there are significant problems with poor property conditions within the sector. The Council therefore has the evidence that a selective licensing scheme can be considered to address the issues in the private rented sector.

Proposed conditions

17. There are a number of conditions which must be applied to all licences when granted, these are known as mandatory conditions and are prescribed by schedule 4 of the Housing Act 2004.
18. The Council can also apply other standard discretionary conditions to the licence which are not property specific and it is proposed that these will also be applied to all licences. This ensures fairness and consistency in the obligations placed on all licence holders in regulating the private rented sector. This is common practice amongst local authorities operating such schemes where inspections are not carried out routinely before licences are issued.
19. The proposed conditions have been benchmarked with 31 other Local Authorities to identify if similar conditions are being used in selective licensing

schemes, and if they are in accordance with best practice and industry guidance. See Appendix 3.

20. Conditions attached to selective licences have been limited by a Court of Appeal ruling that limits conditions to operational matters in relation to the management of the property. This differs to conditions attached to HMO licences and in practice, means that the improvement or upgrading of the property and installation of new equipment or facilities cannot be required as a condition of the licence. The Council will therefore need to take action under Part 1 of the Housing Act, using the Housing, Health and Safety Rating system (HHSRS) to assess any hazards in the property.

Other considerations of proposed scheme

21. The Council's strategic approach to housing can be seen in the corporate plan 2016-20 and the Council Strategy 2020-24. The corporate plan outlined the council's aim to improve Oxford's resident's access to affordable and high quality homes irrespective of tenure. A headline action of the strategy is to **implement selective licensing to improve standards in the private rented sector**. Selective licensing compliments other council priorities including ensuring that residents are living in safe and secure homes, reducing anti-social behaviour and helping to building a flourishing community. Selective licensing can also help towards building a strong local economy as seen with the additional licensing with added investment in the sector through landlords improving their rented homes.
22. Such a scheme would also bring benefits to landlords and the private rented sector in general: the reputation and image of landlords and the private rented sector (PRS) will improve as standards rise and poor performers leave the market.
23. The designation can only be made for a maximum of 5 years. This would be the preferred length to allow for the scheme to be implemented and be effectively monitored and reviewed. As with all licensing schemes the council has a duty to review the scheme from time to time.

Consultation

24. The council must undertake a full public consultation for a minimum of 10 weeks. The consultation must, where possible, be with those persons likely to be affected by the proposal and includes neighbouring authorities which may be affected. The consultation should be informative, clear and to the point, so that the full details of the proposal can be readily understood.
25. The consultation will be undertaken by an external agency to include:
 - a. Details of the proposed area(s)
 - b. Details of why the council considers there is a need for selective licensing and the likely effect of the scheme
 - c. The process and proposed standard conditions
 - d. The fee structure
26. The council must fully consider the responses made to the consultation, the supporting evidence and any other relevant information prior to any decisions being made regarding the submission of the proposal to the Secretary of State.

Other options considered

27. The council is required to consider, prior to making a designation for selective licensing, whether there are any other courses of action which may be available to address the problems identified. Whilst the council has in the past worked with landlords to address the issue of poor conditions in the private rented sector these have had limited success and have been dependent on grant funding from central government.
28. In the past 10 years the additional HMO licensing scheme has been successful in improving standards and management practices in the HMO sector of the city, however it is acknowledged that there is still non-compliance. Without the additional HMO licensing scheme, these improvements would not have been achieved. However there continues to be a large number of properties in the non HMO private rented sector as demonstrated by the recent Review that have category 1 and high scoring category 2 hazards, see Appendix 1. A more robust approach, allowing proactive inspections to the non HMO stock would see improvements in compliance as seen in the licensable HMO stock in recent years.
29. The council operates an Accreditation Scheme which currently has 141 accredited landlords and agents and although this scheme is open to all landlords, 86% of landlords who are accredited are HMO licence holders. Therefore this voluntary scheme, whilst worthwhile in a small number of cases cannot, in isolation, be used to raise standards across the non HMO private rented stock.
30. The council could decide not to pursue a selective licensing scheme, however the evidence presented in Appendix 1 suggests that there is a problem with the conditions within the private rented sector across the whole city and that there is a clear need for such a scheme to address the problems. If the scheme was not pursued such conditions would continue and would still need to be addressed on a reactive basis following complaints made to the council. Without selective licensing, 1 in 4 families are at risk of living in unsafe, poorly managed homes in the private rented sector.

Scope of Scheme

31. Selective licensing can be applied to the whole of the city or to parts of it. A scheme covering all the wards in the city is the preferred option at this stage. This would provide a clear framework for all private landlords and tenants across the city. However borough-wide licensing schemes have been controversial in the past, resulting in the legislation being amended in 2015 and the introduction of the 20% rule. There is detailed scrutiny of every application by MHCLG and a number of applications for borough-wide licensing schemes have been rejected.
32. As the level of privately rented homes is above the national average across the city there would have to be a good reason to exclude a part of the city, such as a low number of complaints or an area where there does not appear to be a problem with housing conditions.
33. From the evidence provided, one ward, Holywell, does not share all the characteristics found in the PRS in the other wards. The ward has a high level of privately rented properties and therefore meets the 20% threshold, however

the total housing stock in the ward is small, there are low numbers of properties containing serious home hazards and correspondingly very few complaints about housing conditions.

34. The majority of the privately rented properties in the ward are university or college owned and managed and as such they are exempt from any licensing requirement under the Housing Act. One consideration could be to exclude Holywell ward from the proposed licensing scheme as it is unlikely that licensing interventions will lead to improvements. This would ensure that the designation is focussed as tightly as possible on the areas in the city with a high level of privately rented homes which are experiencing poor property conditions.
35. There is a concern that excluding areas from licensing may lead to private landlords moving their business to the area to avoid the licensing regime, however this is unlikely in the case of Holywell due to the nature of the stock.

Financial implications

36. The predicted income from the scheme over the 5 years is £6.64m. This figure is based on current costs and using the knowledge and experience the council have gained in operating the HMO licensing schemes. The income and costs will be reviewed regularly to ensure that the scheme is operating on a cost neutral basis. The current predictions are based on a standard licence fee of £480 for 5 years if made within 6 months of the start of the scheme. See Appendix 4
37. The scheme must be self-funding, with any income used to operate and manage the scheme.
38. Costs to administer the scheme have been included in the licence cost: These costs include:
 - a. Salary costs to operate the scheme
 - b. Processing costs for the licence applications including quality control
 - c. Enforcement and compliance costs
 - d. Training of staff and landlord events
 - e. Inflation
39. The set up costs for the council to introduce the scheme, which are estimated to be in the order of £60K will be funded from reserves.
40. The income forecasts have been calculated using a licensable stock of 12,000 properties and assumed that 75 % of applications will be received within the first 6 months, this assumption is based on results from similar schemes and the council's experience with the additional HMO licensing scheme. If these predictions are found to be incorrect staffing and resource level will be amended accordingly.
41. If the government approve the application to introduce the scheme, there must be a period of 3 months prior to the introduction, which would allow time for the recruitment and training of staff to process the applications. The staffing of the scheme will be kept under review as the scheme progressed to ensure that the scheme is operating within budget and that applications are processed in a timely manner.

42. The figures include a number of discounted fees for those landlords who provide a completed application in the first 6 months of the scheme and for those who are accredited with a recognised body.
43. There is an opportunity to investigate whether a discounted application fee can be offered to landlords and charities who are working with the council to provide accommodation to those who would otherwise be homeless as incentive for landlords to offer properties for such use.

Level of risk

44. The current COVID-19 pandemic has raised many issues, including a degree of uncertainty in the private rented sector, which may result in a reduced appetite for government regulation in the short term. The need for good quality housing has been highlighted by the COVID -19 outbreak, which has seen a correlation between poor housing and poor health, with many localised outbreaks occurring in areas often with substandard housing
45. There are always concerns raised in relation to rental increases whenever discretionary licensing schemes are introduced. However the recent Independent review of the Use and Effectiveness of Selective Licensing commissioned by MHCLG determined that there was no substantive evidence of rent rises being passed onto tenants due to the introduction of selective licensing schemes and that analysis of data from the Valuation Office Agency did not support the claim that licensing has had a demonstrable effect on rent levels. However alongside delivering the many benefits of a selective licensing scheme, the council will also need to closely monitor its impact on the market to ensure the design and implementation of the scheme does not result in rental inflation which could impact on affordability and homelessness.
46. The Risk Register is attached as Appendix 5.

Equalities impact

47. The Equalities Impact Assessment is attached in Appendix 6.

Conclusion

48. The review of the private sector stock has highlighted that there is a problem with housing conditions in the sector, and without a proactive approach, the occupiers of such accommodation, who are often families with young children, will not be protected from the poor housing conditions which are prevalent in the private rented sector in the city.

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Selective Licensing

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/833217/Selective_Licensing_Review_2019.pdf

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