

**To:** Cabinet  
**Date:** 10 March 2021  
**Report of:** Head of Regulatory Services and Community Safety  
**Title of Report:** Proposal for a Selective Licensing Scheme for privately rented homes

<b>Summary and recommendations</b>	
<b>Purpose of report:</b>	To inform Cabinet of the results of the consultation exercise carried out into the proposal to introduce a selective licensing scheme in the city. Following the consultation it is proposed that a selective licensing scheme is introduced, however there have been some proposed changes to the scheme based on the feedback received. If the recommendations are approved, a submission to the Secretary of State for Housing, Communities and Local Government will be required for confirmation before the scheme can be implemented.
<b>Key decision:</b>	Yes
<b>Cabinet Member:</b>	Councillor Alex Hollingsworth, Cabinet member for Planning and Housing Delivery
<b>Corporate Priority:</b>	More Affordable Housing.
<b>Policy Framework:</b>	Housing Strategy
<b>Recommendations:</b> That Cabinet resolves to:	
1	<b>Consider</b> the outcome of the consultation process detailed in the report (Appendix 1), in particular the representations received and the Council's consideration and response to these ( Appendix 3);
2	<b>Approve</b> the designations as outlined in Appendix 5A and 5B as being subject to selective licencing and confirm that Cabinet is satisfied : <ul style="list-style-type: none"> <li>a. That the statutory grounds and requirements outlined in this report to introduce a selective licensing scheme have been met</li> <li>b. That it has considered other courses of action available to it that might provide an effective method of achieving the objectives that the designation intends to achieve , and</li> <li>c. That it considers that making the designations will significantly assist it to achieve those objectives</li> </ul>

3	<b>Agree</b> that a submission be made to the Secretary of State for Housing, Communities and Local Government requesting confirmation of the designations;
4	<b>Delegate</b> , subject to recommendation 3, to the Head of Regulatory Services and Community Safety and the Head of Law and Governance in consultation with the Cabinet member for Planning and Housing Delivery, responsibility for agreeing the final documentation requesting confirmation of the scheme to the Ministry of Housing, Communities and Local Government (MHCLG);
5	<b>Agree</b> to the proposed fee structure for licence applications at Appendix 7;
6	<b>Agree</b> the proposed licence conditions that would accompany any granted selective licence at Appendix 4; and
7	<b>Agree</b> the proposed eligibility criteria as detailed in Appendix 6
<b>Appendices</b>	
Appendix 1	Executive Summary -Consultation Report
Appendix 2	Consultation Methods Comparison
Appendix 3	Response to Consultation
Appendix 4	Licence Conditions Proposal
Appendix 5	Designations
Appendix 6	Eligibility Criteria
Appendix 7	Fee Proposal
Appendix 8	Risk Register
Appendix 9	Equality Impact Assessment

## Introduction and background

1. On 9<sup>th</sup> September 2020, following a report presenting evidence that there were poor property conditions within the private rented sector across the city, Cabinet agreed to carry out a statutory consultation exercise on the proposal to introduce a selective licensing scheme under Part 3 of the Housing Act 2004. The report also outlined the importance of selective licensing in the wider Housing Strategy of tackling poor conditions and poor management practices in the private rented sector, and contributing to the Council's priority of "meeting housing needs".
2. The Council initially commenced the consultation on the 10<sup>th</sup> September 2020 for a period of 12 weeks, but this period was extended due to the COVID-19 pandemic and November lockdown, concluding on the 31st December 2020 after a total period of 16 weeks.
3. This report confirms the outcomes of the completed consultation exercise and makes recommendations in relation to the proposed designation and

introduction of a selective licensing scheme in the city. The Executive summary report of the consultation exercise and findings are attached in Appendix 1

4. The Council still believe that the case for a scheme of selective licensing remains strong. The case presented to the Cabinet meeting in September 2020 highlighted that there is a problem with poor housing conditions in the private rented sector in the city – in particular, a significant number of properties with Category 1 and/or 2 hazards requiring inspection - and that the proactive approach that selective licensing will introduce will protect occupiers living in the sector from such poor conditions.
5. In the event that Cabinet agree to the proposed designation of a selective licensing scheme, this will be subject to confirmation by the Secretary of State for Housing, Communities and Local Government in accordance with the *Housing Act 2004: Licensing of HMOs and Selective Licensing of Other Residential Accommodation (England) General Approval 2015*.

### **Key findings from the Consultation exercise**

6. The council appointed an independent research consultant to undertake the exercise required by section 80(9) of the 2004 Act. The exercise covered the proposal to introduce a selective licensing scheme and the renewal of the HMO licensing scheme, which is subject to a separate report on the agenda.
7. The initial consultation exercise was extended due to the second national lockdown being introduced in November 2020. The exercise was extended until the 31<sup>st</sup> December which allowed for more time for respondents to give feedback and for a further online event for landlords and agents to be undertaken.
8. A range of techniques were used for the consultation which included an online questionnaire, stakeholder interviews, resident and tenant interviews and 4 events for landlords and agents. Paper questionnaires were also available, with 138 sent out. Unfortunately, due to the restrictions in place in relation to the COVID-19 pandemic, face to face interviews / forums were not undertaken as part of the exercise; however meetings were held using a digital platform and were well attended.
9. An analysis of the methods used by other authorities undertaking similar consultation exercises prior to the COVID 19 pandemic, and the responses to their consultations, has been undertaken. It can be seen that the consultation undertaken by the Council has had comparable, if not better, responses with the methods used in its consultation. See Appendix 2
10. In total the Council received 1,987 questionnaires and 53 written submissions. The breakdown of the respondents via the questionnaire is shown in Table 1 below. There were 4 virtual events for landlords and agents which were attended by 148 participants. 10 local tenants and residents recruited from across the city, attended a virtual focus group and 11 in depth interviews were undertaken with stakeholder organisations.
11. The Housing and Homelessness Panel meeting on the 3<sup>rd</sup> September 2020 recommended that the council should adapt its approach to ensure the views of vulnerable tenants were not overlooked in the consultation. Feedback is often skewed towards the most engaged group, which is usually landlords when consulting on licensing schemes, and this is clear in the number of responses received from landlords and agents. However it must be noted that there were

764 residents who also responded, and of these, 598 responded to a further question relating to their tenure, with 284(37%) privately renting in the city.

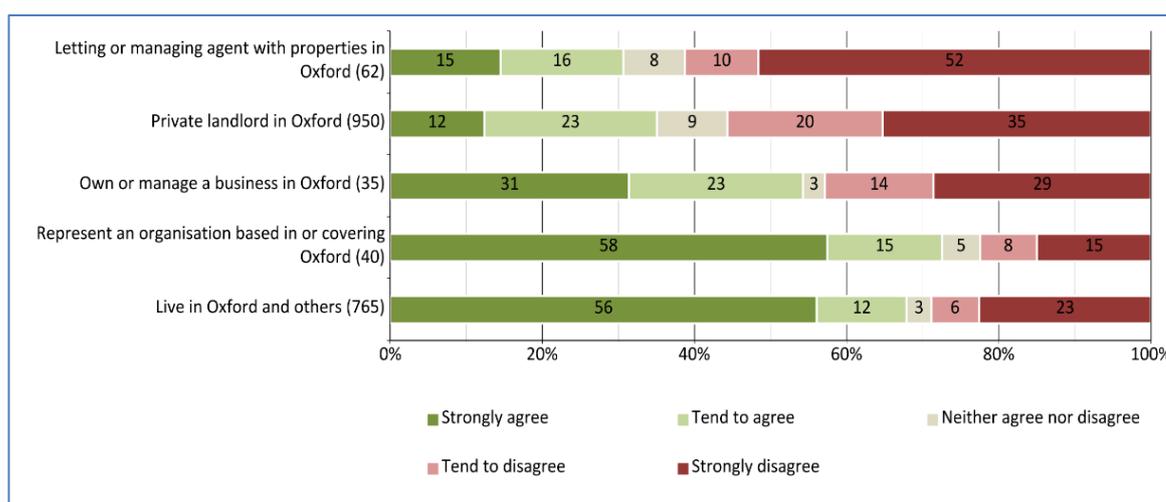
12. To reach private tenants, letters were sent twice to those in receipt of housing benefit, informing them of the consultation and that paper applications were available. The Council also contacted a number of agencies across the city who represent and support vulnerable residents, this resulted in a number giving their feedback to the proposals via in-depth interviews and written submissions.

**Table 1: Consultation questionnaire completions by type of respondent (Note: Percentages may not sum to 100% due to rounding)**

Stakeholder type	Count	% Valid responses
Letting or managing agent with properties in Oxford	70	4%
Private landlord in Oxford	1,012	51%
Own or manage a business in Oxford	38	2%
Represent an organisation based in/covering Oxford	41	2%
Live in Oxford	764	38%
Other respondents	62	3%
<b>Total responses</b>	<b>1,987</b>	<b>100%</b>

13. Roughly a third of landlords (35%) and agents (31%) agreed with the principle of introducing a selective licensing scheme, with 55% of landlords and 62% of agents disagreeing. However the principle was more widely supported among the other groups, particularly by organisation representatives (73% agreeing) and residents and other respondents (68% agreeing), as well as by around half of those who own or manage a business. See Figure 1 below

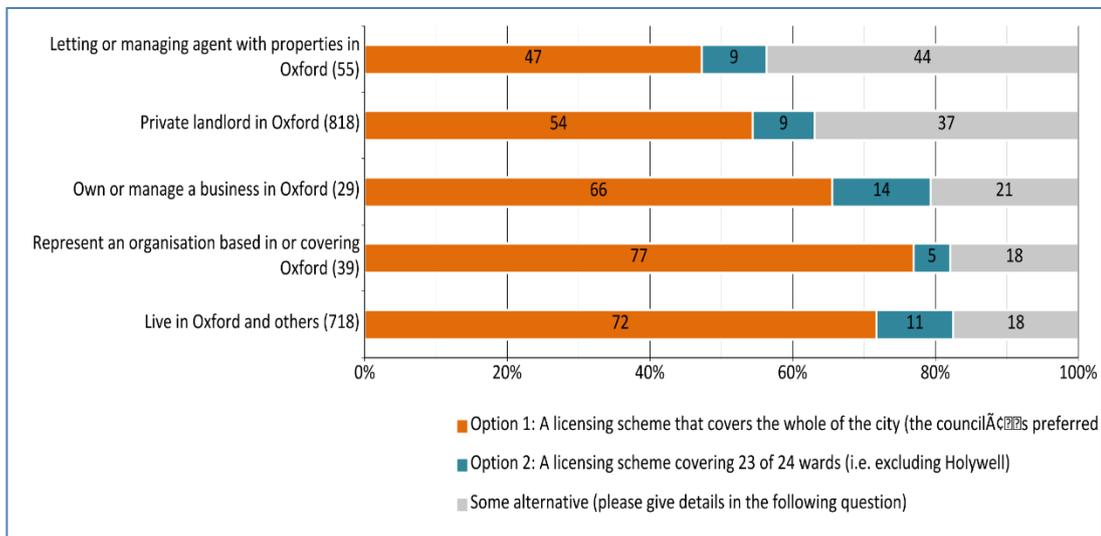
**Figure1: To what extent do you agree or disagree with the principle of introducing some form of selective licensing scheme?**



14. Whilst it can be seen that the majority of landlords and agents do not agree with the proposal to introduce a selective licensing scheme, if it was to be introduced,

more would prefer a scheme covering the whole of the city, rather than only covering 23 out of the 24 wards - see Figure 2 below:

**Figure2: Summary of what respondents indicated would be their first choice, in the event of a selective licensing scheme being introduced**



15. The Council must consider any responses received in relation to the consultation, in accordance with section 80(9) of the 2004 Act. Having carefully considered the responses the Council's formal response is provided in Appendix 3. This covers the response to both the proposal to introduce selective licensing and the renewal of the Additional HMO licensing scheme.

16. A number of changes, laid out below, have been made to the proposed selective licensing scheme following the feedback received in the consultation exercise:

#### *Licence 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. 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.

18. It must be noted that conditions applied to selective licences have been limited by a Court of Appeal ruling, *Brown v Hyndburn Borough Council*. It was held "management" related to operational matters (i.e. what actually happens at and to the property) and not to improving or upgrading houses or installing new facilities and equipment.

19. It is appropriate to add certain conditions to all selective licences to ensure landlords are taking a minimum level of "management". The reason for introducing selective Licensing is that there are poor property conditions in a significant number of properties within the non HMO private rented sector, with a high percentage of rented homes having a Category 1 hazard, meaning the property is hazardous to its occupants and needs repair. The Council will

therefore 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. Whilst some respondents to the consultation exercise have raised the limitation of not imposing conditions relating to the improvement of property in a selective licensing scheme. The Council believe that the advantages of licensing outweigh such limitations; in that the licence holder must be fit and proper, the licensed property must meet certain minimum health and safety standards, and that there is a responsibility placed on licence holders to proactively manage the property.

20. Concerns were raised in the consultation by both landlords and tenants regarding certain proposed licence conditions

- Requirement for references - Landlords referred to an “overstep” of powers and they should have the choice whether to request a reference and must be free to choose who they want as tenants. Tenants were concerned this could negatively impact their ability to find accommodation. The Council understands these concerns, however as this is a mandatory condition then the Council must add this condition to all selective licences. The wording of the condition is taken directly from the Housing Act 2004.
- Waste Management - Landlords generally raised concerns about requirements being “complicated” and suggested guidance and templates are provided for landlords. Conditions relating to waste management in HMOs are mandatory conditions and must be applied to all HMO licences issued. A similar selective licensing condition would be comparable. The condition has been reworded following the comments received. The condition requires that the licence holder ensures that tenants have adequate waste disposal and that storage is available. The licence holder must ensure that tenants understand the days of collection, and how to present waste for collection.
- Anti-social behaviour – the requirement to include a condition in tenancy agreements has been removed as has the standard discretionary condition relating to anti- social behaviour. The Council will include a condition if required at a specific property.

21. A number of discretionary licence conditions have been reworded to reflect concerns raised, including the provision of templates for landlords to use to help comply with conditions – see Appendix 4. Feedback also suggested that landlords wanted clear information concerning actions they need to take to comply with the scheme. This will be provided if the scheme is introduced, to assist landlords, agents and tenants with their rights and responsibilities.

22. In total, 23 standard discretionary licence conditions will be used in each licence. Whilst this may be considered a large number, it is comparable to other authorities operating selective licensing, as benchmarking found other similar schemes had an average of 27 licence conditions with a minimum of 8 conditions and a maximum of 44 conditions.

### *Scheme Outcomes*

23. The primary aim of the selective licensing scheme is to improve property conditions within the non HMO private rented stock by helping the Council to eliminate Category 1 and 2 hazards using its powers under both Part 1 and Part 2 of the 2004 Act. Feedback from landlord representatives suggested that there

should be more transparency in reporting whether this aim has been achieved. In response to this the Council will develop a suitable monitoring report of actions taken to meet this aim.

24. The Council has considered the length of the proposed scheme and if agreed, it will be on the basis that the scheme will operate for 5 years. The 5 year designation is considered both necessary and proportionate as it is less likely, that the Council will be able to achieve its strategic objectives in a shorter timeframe.

#### *Fees*

25. The feedback received concerning the fees has been broadly accepted and incorporated into the proposed fees in Appendix 7. This is dealt with in detail in the financial implications section of the report. The Council has had careful regard to the Court of Appeal's decision in *R (Gaskin) v Richmond upon Thames LBC* and has structured the proposed fees accordingly.

#### *Eligibility criteria*

26. When granting a licence the council must be satisfied :

- that the proposed licence holder is a fit and proper person, and
- that there are satisfactory management arrangements in place.

The Council must consider, amongst other things:

- Whether the licence holder (or manager) has contravened<sup>1</sup> any provision of the law relating to housing or of landlord and tenant law.
- Whether any person proposed to be involved in the management of the house has a sufficient level of competence to be so involved.
- Whether any proposed management structures and funding arrangements are suitable.

27. Where the Council is not satisfied as to the fit and proper person or management arrangement tests, then the licence application can be refused. However, there are likely to be cases which are "borderline", where concerns are raised, but it is considered that refusal is not proportionate or that the applicant would be likely to succeed if they appealed.

28. The Housing Act 2004 s.91(4) states a licence must not be in force for more than five years i.e. the maximum licence length is five years. The default for the proposed selective licensing scheme is for licences to be issued for five years. However, in those "borderline" cases, then a licence may be issued for a year to allow:

- Outstanding fit and proper person concerns regarding contraventions of housing or landlord and tenant law to be resolved

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<sup>1</sup> Contraventions – this does not mean a conviction. A contravention is where there evidence a law / regulation has been broken – this may not result in a conviction. It may be that an enforcement notice has been served or a caution or fine issued.

- The licence holder and / or manager to demonstrate they have the necessary competence and that satisfactory management arrangements are in place.

It would be expected that these concerns can either be resolved in the year and the landlord can then renew the licence and be granted a five year licence, or that the concerns would not be resolved, resulting in the renewal application being refused or an alternative licence holder / manager being found or that the property no longer requires a licence. This approach has been taken by other Councils operating selective licensing and is similar to criteria for HMO licensing. A list of examples that may lead to a one year licence being issued under the scheme is provided in Appendix 6

29. During the consultation both letting agents and landlords wanted wider eligibility for the accreditation status. The Council will increase the number of eligible accreditation schemes. The Council recognises that its own accreditation scheme has resource limitations and that there are advantages to having greater eligibility for the better landlords as long as quality is not compromised. It is proposed that a wider range of organisations are accepted and the proposed changes are contained in Appendix 6. Simply being a member of a landlord or trade organisation is not sufficient and there has to be a training element to the accredited status. As other schemes may subsequently be considered suitable and existing schemes less so, upon review, it is considered that delegated powers to add to and remove schemes from the list should be delegated to the Head of Regulatory Services and Community Safety, subject to approval by the Head of Law and Governance who can consider the potential legal issues arising from such decisions.

#### *Alternatives to selective licensing*

30. A number of alternatives have been suggested in the feedback received. These have mainly been voluntary schemes, such as landlord accreditation, property MOTs, exempting properties managed by agents, and landlord registration. Whilst such schemes are worthwhile, they are not supported by a robust enforcement regime and rely on landlords' and agents' engagement, which has not been forthcoming with the Council's current accreditation scheme.

31. A further suggestion was to increase the use of the current powers that the Council has to tackle poor conditions in the private rented sector. This suggestion would rely on private tenants complaining to the Council, experience has shown that tenants often "put up" with poor living conditions rather than complaining to the Council. Private tenants are often unaware that they are able to complain or are reluctant to do so as they can be fearful of retaliatory eviction. A more robust approach, coupling current powers with those of selective licensing, allowing proactive inspections such as those undertaken in licensable HMOs, would see improvements in property condition and compliance with minimum standards in the non – HMO stock. Further, unlike Part 1 of the 2004 Act, Part 3 engages all licensees proactively in improving the safety of their properties, for example by fitting smoke and carbon monoxide alarms, and obliges them to manage complaints, such as complaints about disrepair, proactively.

32. A number of respondents suggested that the scheme was not required and that the sector was being managed adequately without the need for intervention by

the Council. However the evidence considered by Cabinet at the meeting on the 9<sup>th</sup> September 2020 (Private Rented Sector: Housing Stock Condition and Stressors Report 2020 – Metastreet) suggests that there is a significant problem with the conditions within the private rented sector across the whole city, in particular with the number of Category 1 and 2 hazards in such properties, and that there is a clear need to inspect and address the problems. If the selective licensing scheme was not pursued such conditions would continue and would still need to be addressed on a reactive, rather than a proactive, basis following complaints made to the council. Without selective licensing, the evidence suggests, 1 in 4 families are at risk of living in unsafe, poorly managed homes in the private rented sector.

33. It is clear from a number of comments received that there is support for enforcement of the proposed scheme; and that this needs to be consistent and fairly applied to those landlords who choose to evade their responsibilities.
34. After consideration of the alternatives identified through the consultation process, the Council concludes that none would, individually or collectively, be capable of delivering the scheme objectives that the Council would deliver through the operation of a selective licensing scheme.

### **Implications and impact of covid-19**

35. Current Government guidance recommends that local housing authorities continue work on pending (licensing) designations having regard to local circumstances, but consider pausing them at an appropriate moment if it is necessary i.e. the process may need to be paused if it conflicts with the latest advice or if officer resource is required elsewhere in response to the pandemic.
36. The start of the consultation exercise was initially delayed due to the first national lockdown and then once started the consultation was extended for a further 4 weeks. This allowed extra time for respondents to complete the questionnaire and an extra (virtual) landlord/agent event which was well attended.
37. Criticism was made during the consultation that it was not appropriate to consult on such a scheme at this time – for example, one comment suggested it was *“wholly improper and unreasonable, and is preventing a large number of people from raising their concerns and from putting forward their objections”*. Concerns were also raised regarding cash flow and payment of fees due to the pandemic.
38. An analysis of the methods used by other authorities and responses undertaking similar consultation exercises prior to the COVID 19 pandemic has been undertaken. It can be seen that the consultation undertaken by the Council has had a comparable level of response and engagement, if not better with the methods used in its consultation. See Appendix 2
39. If a designation is approved by Cabinet, it will be subject to confirmation by the Secretary of State, in accordance with section 82 of the 2004 Act and the 2015 General Approval. The Council will need to prepare a submission to the Secretary of State, which can be continued in the current circumstances. After submission, there will be considerable time before determination – therefore, if confirmed, the start of a scheme will not be until 2022. This will give time for the impacts of COVID to decrease and improved cash-flow for payment of fees. The

Council will, nonetheless, review the commencement of the designation in light of current circumstances.

## Legal Issues

40. Selective licensing was introduced by the Housing Act 2004 (the Act) along with two other forms of property licensing schemes. The Act gives local authorities the discretionary power to introduce selective licensing schemes, applying to privately rented properties. Schemes can be applied to all or part of the Council's area, and will impose conditions on landlords for minimum standards of management.
41. Section 80 of the Housing Act 2004 and the Selective Licensing of Houses (Additional Conditions) (England) Order 2015 sets out the criteria and considerations that the Council must be satisfied are met when considering designating a selective licensing area. The Council relies on the conditions set out in Articles 3 and 4 of the 2015 Order, namely a designation on the ground of housing conditions.
42. Any scheme which would cover more than 20% of the Council's geographical area or that would affect more than 20% of privately rented homes in their area as subject to selective licensing must be confirmed by the Secretary of State. If the designation is confirmed by the Secretary of State, it cannot then come into force until the expiry of three months from the date of confirmation.
43. The Council has carefully considered the provisions of the 2004 Act, the 2015 Order, the 2015 General Approval and the DCLG's 2015 guidance, *Selective licensing in the private rented sector: a guide for local authorities*. It is satisfied that it has met the considerations set out in the legislation to make a submission to the Secretary of State for confirmation of a selective licensing scheme in that:
  - The Cabinet at its meeting on the 9th September 2020 concluded that the Private Rented Sector: Housing Stock Condition and Stressors Report July 2020 (Metastreet) evidenced that in each ward across the city there was a high proportion of properties in the private rented sector, compared to the total number of properties, and that a significant number of those properties contained a serious housing hazard, which the Council would wish to inspect and address.
  - The Council is satisfied that these properties are occupied either under assured tenancies or licences as required by Article 3 of the 2015 Order, not least because, by section 19A of the Housing Act 1988, assured shorthold tenancies are the default tenancy under which private rented sector properties are let.
  - For the reasons mentioned briefly above, among others, the Council is also satisfied, that a selective licensing designation, both alone and when combined with other measures taken by the Council, will contribute to an improvement in general housing conditions in the area.
  - The Council is, therefore, satisfied that the statutory ground that the area is experiencing poor property conditions is established, in accordance with Articles 3 and 4 of the 2015 Order.

44. A statutory consultation has been undertaken with landlords, letting agents, tenants and their representatives, residents and other stakeholders. The consultation complied with the requirements of the 2015 General Approval, with the DCLG's 2015 Guidance and with other legal requirements. In accordance with section 80(9) of the 2004 Act, the representations made have been considered and the Council's response to them forms part of this report.
45. The Council has also been mindful of its obligations under section 81 of the 2004 Act. In particular, the Council is satisfied that a selective licensing designation would be consistent with its overall housing strategy, and would dovetail effectively with its approach to addressing homelessness, empty properties and anti-social behaviour. In that regard, in summary, the Council's strategic approach to housing can be seen in the Housing and Homelessness Strategy 2018-21. There are a number of priorities including making the best use of private sector accommodation which sets out a range of actions including regulating the private sector and introducing selective licensing. The Council Strategy 2020-24 outlined the council's aim to improve Oxford's residents' 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.
46. Selective licensing compliments other council priorities including ensuring that residents are living in safe and secure homes, reducing anti-social behaviour – not least by imposing conditions where appropriate to manage its occurrence - and helping to building a flourishing community. It also assists the Council to fulfil its duties to the homeless, for example by increasing the protection available to private rented sector residents, reducing the likelihood of homelessness, reducing the pressure on public resources and facilitating the discharge of the Council's duties with offers of safe accommodation in the private rented sector. Selective licensing can also help towards building a strong local economy as seen with the Additional HMO licensing scheme with added investment in the sector through landlords improving their rented homes.
47. The Council has considered alternative courses of action in relation to selective licensing to deal with poor property conditions within the privately rented stock, which formed part of the September report and this report. For the reasons mentioned briefly above, among others, the Council is satisfied that none of these alternatives, whether individually or collectively, would be adequate to meet the Council's strategic objectives, and that selective licensing is both a necessary and proportionate measure to enable it to do so.

### **Scope of the Scheme**

48. The consultation exercise confirmed that there was support for the proposed scheme to be citywide with 62% of overall respondents preferring this option. 72% of those living in Oxford were in favour of this along with 54% of private landlords. The comments received were mainly around the need for simplicity. Some were also concerned that landlords would move into the Holywell area to avoid licensing.
49. Whilst most landlords and agents did not agree with the Council's proposal to introduce a selective licensing scheme, in the event of a selective scheme being introduced, more would prefer a scheme covering the whole of the city, rather than a scheme covering 23 out of 24 wards (i.e. excluding Holywell). Around half

of business representatives (51%) agreed with the Council's preferred option for a selective scheme covering the whole city, and this preferred option was widely supported by organisation representatives (71% agreeing) and residents and other respondents (68% agreeing). There was also a widespread view among these groups that, if a selective scheme was to be introduced, then a citywide scheme would be preferable to one covering 23 of the 24 wards, or to some other alternative.

50. Notwithstanding the comments received in the consultation exercise, the Council recognises that there are material differences in the housing stock within the Holywell Ward. Whilst the ward has a high level of privately rented properties and therefore meets the 20% threshold, there is less evidence of poor property conditions and there are low numbers of properties containing serious home hazards. 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 2004 Act. It is therefore less likely that licensing intervention will lead to improvements in this area, compared with others. It is also unlikely that landlords would move into this area to avoid licensing given the ownership of the stock.
51. Given the need for confirmation of the designation by the Secretary of State, and the need for robust evidence to support a city-wide designation, it is recommended that two designations are submitted for confirmation in the alternative, one which would cover the whole City – the Council's preferred option - and one which would cover the whole city excluding Holywell ward – the alternative. See Appendix 5 This would enable the Council to present a compelling case for confirmation of both designations, but also allow the Secretary of State to consider each on its own merits. This approach has been used in the past by other Local Authorities and maximises the likelihood that the benefits of selective licensing will be secured.

### **Financial implications**

52. The proposed fees are set out in Appendix 7.
53. Through the statutory consultation, the Council confirmed that it was intending to charge a licence fee in respect of an application to licence a property in the selective licensing scheme. The proposed fees had been calculated on the basis that the scheme would be cost-neutral to the Council, with licence fees covering the Council's costs of administering, managing and enforcing the scheme and meeting the scheme objectives.
54. The licence fee can only cover the costs incurred by the council under Part 3 and Chapter 1 of Part 4 to the 2004 Act, in respect of management orders, in so far as they are not recoverable under Part 4. It must be cost neutral. As with the HMO licensing scheme, the fee is charged in 2 parts and both parts must be paid for a licence to be issued. Stage 1 covers the cost incurred in processing the application and Stage 2 covers the costs of operating and enforcing the scheme which can be charged as part of the licence fee. During processing, the stage 2 fee will be determined, based on the information provided at application stage. Requests were made in the consultation for more information on what was charged in the fee, this information is detailed in Appendix 7
55. 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

3 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. These predictions have been made on the standard, early bird and accredited applications only. It is not possible to forecast in detail the applications benefiting from a charitable discount or block licence.

56. The predicted income includes an inflationary rise of 3% each year which will be applied to fees as part of the budget process if required. As these figures are predicted any excess income received from this type of application will be placed in a reserve account at the end of the financial year.

57. The predictions are based on the experience of HMO licensing and will need to be reviewed regularly and in light of the number of applications received and any other unforeseen work required in the scheme. Fee levels will be reviewed on an annual basis.

Year	1	2	3	4	5
Number of Applications	7200	1512	1140	998	570
<i>costs</i>					
Applications Processing etc	£ 2,160,804	£ 411,648	£ 311,527	£ 280,853	£ 165,249
General Costs - Representations/ variations /withdrawn applications	£ 111,600	£ 14,369	£ 10,524	£ 9,485	£ 5,583
General Enquiries & Service Requests	£ 295,200	£ 38,007	£ 27,838	£ 25,089	£ 14,767
Enforcement - non compliance	£ 712,290	£ 91,707	£ 67,171	£ 60,537	£ 35,631
landlord Liaison/promotion	£ 47,524	£ 6,119	£ 4,482	£ 4,039	£ 2,377
Travel/ICT	£ 98,640	£ 12,700	£ 9,302	£ 8,383	£ 4,934
<b>Total Cost</b>	<b>£ 3,426,059</b>	<b>£ 574,549</b>	<b>£ 430,843</b>	<b>£ 388,387</b>	<b>£ 228,541</b>
<b>Income</b>	<b>£ 2,678,400</b>	<b>£ 760,572</b>	<b>£ 668,820</b>	<b>£ 602,774</b>	<b>£ 354,776</b>

58. The total income predicted over the 5 years of the scheme is £5,065,342 and the total costs predicted are £5,048,379.

59. A concern raised in the consultation was that the scheme, to be successful, had to be adequately resourced. Staffing for the proposed scheme has been assessed based on the number of applications expected. The staffing required will be kept under review throughout the scheme, with temporary staff being used to accommodate peaks in demand. As the work in relation to property licensing is carried out by two teams, the staffing has been divided accordingly.

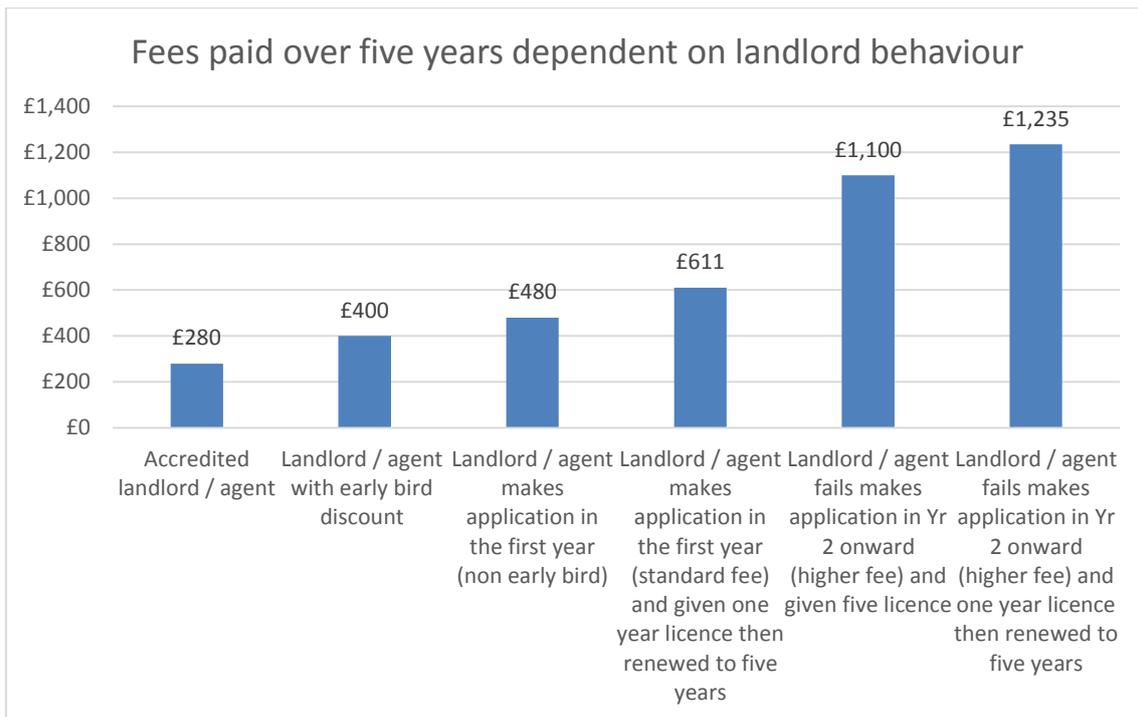
Team	Number of additional FTE required	Permanent/Temporary
Customer Services (Applications Team )	26	10 permanent plus 16 temporary in Year 1

Enforcement Team	11	Permanent
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60. 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 progresses to ensure that the scheme is operating within budget and that applications are processed in a timely manner.
61. Following the feedback received, the Council are investing in back-office improvements to increase efficiencies and to ensure that the operational challenges of administering the predicted large number of applications are met. This should lead to improvements for the applicant in the application process.
62. Enforcement costs in relation to the legal action taken using Part1 of the Housing Act 2004, i.e. improvement and prohibition notices and costs in relation to applying financial penalties have not been included in the expenditure forecasts. This work will be the main source of funding for future private housing enforcement and is recharged to the recipient of the notices and financial penalties to cover costs, similar to the costs awarded as part of a prosecution case.

#### *Fee Levels*

63. Concerns were raised during the consultation that the standard fee is too high and could lead to increased rent. A standard fee of £480 equates to 26p per day. Although it is accepted this cost is paid upfront, the fee is in two parts. An independent study carried out in 2019 by MHCLG found that the impact of other factors such as market forces were the primary reasons for rent rises and not licensing schemes. In addition, benchmarking in early 2020 established the average non-London fee for a selective licence is £630, with only 30% authorities charging under £500. To demonstrate that the fee scheme is designed to ensure compliant landlords are not financially penalised compared to non-compliant landlords, the chart below shows different landlord behaviour and fees payable



64. Suggestions were made during the consultation to offer part – payment or payment of fees by instalments. Reasons cited included the fee being high and the impact of COVID-19 on cash-flow. The fee is charged in two parts, as per legal requirements, and there is some time between the two payments being made. The first part is paid when the application is made and the second following the notice of intention, once the application has been processed. Given the scheme will not be introduced until at least 2022, the impact of COVID-19 on cash flow would hopefully have ceased. However, further payment by instalment (e.g. direct debit) is not considered practical as it would add to processing costs by increasing administration.

65. Suggestions were made in the consultation that when a new application is made in the latter years of the scheme because a landlord has just acquired the property, that a reduced fee should be charged. However, licences will be granted for five years as standard and therefore the cost remains the same. Even if the scheme expires, the licence and the conditions applied to it remain until the licence itself expires.

#### *Discounts*

66. The Council proposed a number of discounts in the consultation. Some respondents felt that the fee structure was over-complicated and therefore these discounted fees have been reviewed. The simplest fee structure would be to charge one fee for all applications – however, this would mean that compliant landlords pay more towards enforcement costs than non-compliant landlords. This is not considered to be fair or in keeping with the experience the Council has with operating the HMO licensing scheme.

67. The consultation demonstrated overwhelming support for discounts to be applied where landlords and agents who fully managed properties were accredited. In response to this an accreditation discount will be applied throughout the scheme. “Accredited landlords” will be defined as per the HMO licensing scheme. Eligibility for this has been widened to include more

accreditation schemes rather than just the Council operated scheme. Comments were made that when a landlord uses an accredited agent to fully manage their properties, they are paying a management charge and then a licence charge. We have reviewed the fees and been able to offer a small reduction on the fee charged for accredited applications.

68. The “early bird” discount fee was also positively received. This fee will be available for the first 3 months of the scheme to incentivise applications. This is seen as good practice and is a method successfully used in other large licensing schemes. The standard fee will be applicable after this time.
69. To qualify for the early bird discount or accreditation discount, certain documents will need to be supplied with the application. When making an application, the legally required items are the application form, declaration and fee. The Council requests additional documents at the time of application to demonstrate the landlord has met other legal requirements that apply to rented homes. Providing the documents at the time of application reduces the enforcement time needed later on and therefore allows a discount to be applied. The Council is conscious the requirement to provide the requested documents cannot be too onerous or difficult for landlords to fulfil, therefore documents are limited to legally required certificates and self-declarations for certain mandatory licence conditions. See Appendix 7.
70. Feedback received during the consultation suggested that the higher rate application fee should not be introduced too quickly as this is a new scheme. The fees have therefore been designed and income predictions made on the basis that the higher application fee will not be introduced until the scheme has been in operation for 12 months, i.e. year 2 of the scheme.
71. A discount was proposed as part of the consultation exercise, to incentivise landlords to work with the Council to provide accommodation for homeless households. Following feedback received, which supported such a discount, it is intended to undertake further work with Housing Services to provide such discounts if the submission is successful. These would be available to registered charities and landlords who are working with the Council to provide accommodation for homeless households that the Council is supporting to find a home. The proposed discount will be in line with the accredited application rate.
72. The consultation proposed a discount for new – build properties. From the responses, there was no overall consensus in relation to this proposal, – with 50% of agents and just over two fifths of landlords (42%) agreed, but roughly a third in each group (31% and 33% respectively) disagreed. Where there is a newly built rental property then the accredited application rate will be given where:
  - The property has never been lived in before;
  - The first tenants moved in within last 12 weeks;
  - 10-year building warranty and insurance cover from NHBC, or similar;
  - Building Regulations completion certificate supplied;
  - All required documentation is submitted with the application and documents are satisfactory;This discount will apply as new-build properties are built to current standards, and therefore should be free from Category 1 hazards, thereby reducing the number of complaints of “disrepair” made to the Council.

73. The consultation proposed a discount for licences where there are a number of properties requiring a licence within the same block of accommodation, under the same management control i.e. a block of self-contained flats. There was support for this in the consultation with 48% of landlords and 48% of agents agreeing with the discount. The criteria for this is attached in Appendix 6. It must be noted that HMO licensing takes precedence over selective licensing and so this discount only applies to non-HMO blocks of self-contained flats. Purpose built student accommodation that is not owned or managed by a University requires licensing under both regimes and it is intended that the same light touch approach that is taken for HMO licensing will be used should selective licensing be introduced. There is further work to be undertaken to establish how many properties may fall under this discount category; and modelling to evaluate the impact of discounts on the overall fee structure.

#### *Refunds*

74. Comments were made in the consultation regarding refunds. Regulations pertaining to the Housing Act 2004 states that a full refund must be given when, at the time the fee was paid that the house was did not require a selective licence and has continued to be a house that was not required to be licensed. The Council is not legally obliged to refund fees when the house did require a licence at the time of the application and since that time, the house has been sold or is no longer required to be licensed. However, a refund criteria was developed under the HMO licensing scheme and so a similar refund criteria will operate, detailed in Appendix 7.

#### **Level of risk**

75. 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 Council has had careful regard to Government guidance about the making and operation of licensing designations during the pandemic. However 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 and poorly managed housing. The Council considers that, on balance, selective licensing is likely to have beneficial rather than a detrimental effect on the private rented sector during the pandemic, not least by offering greater protection and security to those living in the sector, and reducing the prospect of homelessness at a particularly challenging time.

76. The Risk Register is attached as Appendix 8.

#### **Equalities impact**

77. The Equalities Impact Assessment is attached in Appendix 9. Overall private tenants will be positively affected by any designation for property licensing as selective licensing will place additional requirements on licensed landlords to be “fit and proper”, to provide a written tenancy and statutory management arrangements. Additionally, landlords without licences are unable to use the mandatory grounds for possession (s21) in the County Court.

78. Generally selective licensing will ensure landlords/licence holders responsibly manage their properties proactively, therefore this should lead to better quality

accommodation and greater community stability for groups who are unable to access social housing or homeownership. This can lead to tackling exclusion and assisting with community cohesion.

79. Improved management of properties in the private rented sector can also improve the quality of life of many other residents not living in the sector, as they can be impacted by poorly managed properties e.g. by low level neighbourhood anti-social behaviour such as fly tipping and noise, which licensing will help to alleviate.

## **Conclusion**

80. The proposed designations meet the criteria set out in the Housing Act 2004, in the 2015 Order and in the 2015 General Approval; and the Council has paid careful attention to Government guidance. In particular:

- There is a high concentration of privately rented accommodation in all wards within the city.
- That accommodation is let under either assured tenancies or licences, with assured shorthold tenancies being the default tenure, by operation of section 19A of the Housing Act 1988.
- There is high level of poor property conditions within the private rented sector, which the Council intends to inspect.
- The Council is satisfied that selective licensing is both a necessary and proportionate means to achieve its strategic objectives, is consistent with its housing strategy, and co-ordinates effectively with its approach to tackling homelessness, empty homes and anti-social behaviour.
- The Council is further satisfied that none of the available alternatives to selective licensing, whether individually or collectively, would be adequate to achieve those objectives.

81. Further, the Council has undertaken and responded to the required consultation, in accordance with section 80(9) of the 2004 Act, the 2015 General Approval, Government guidance and other legal requirements.

82. In order to make a selective licensing designation, the Council is required to submit evidence to the Secretary of State that the scheme is compliant with these criteria; and the Secretary of State must confirm the designation before it can come into force.

83. Whilst the Council believes that a city-wide selective licensing scheme is the fairest and most effective approach, and is the preferred option of both the Council and the majority of consultation respondents, it is recognised that the Council's evidence does not show that privately rented homes in Holywell ward are in as poor a condition as homes elsewhere in the City. For this reason, it is appropriate to make two separate selective licensing designations which can be considered in the alternative and considered by the Secretary of State on their own merits.

84. The private rented sector accounts for nearly half of the city's housing stock. It is vital therefore the Council takes action to ensure the standards within it are adequate and properties are managed to a reasonable standard. It is proposed that the scheme if agreed, will be for 5 years, as it is unlikely that the Council will

be able to meet its objective of improving property conditions in the private rented sector in a scheme of shorter duration.

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<b>Background Papers:</b>
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