

<b>Subject:</b>	<b>Private Rented Sector Discretionary Licensing Scheme: The evidence and next steps</b>		
<b>Date of Meeting:</b>	<b>16 November 2016</b>		
<b>Report of:</b>	<b>Executive Director Economy, Environment &amp; Culture</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Andy Staniford</b>	<b>Tel: 01273 29-3159</b>
	<b>Email:</b>	<b>andy.staniford@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE****1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 A key Housing Strategy theme has been the significant growth in private rented sector (PRS) housing in Brighton & Hove. While many landlords operate responsibly, there are concerns that a significant number do not and as a result issues continue to be raised in relation to the management, standards and quality of homes in this expanding sector.
- 1.2 On 13 January 2016 Housing & New Homes Committee delegated authority to the Acting Executive Director for Environment, Development & Housing to explore the necessity or otherwise of the introduction of further discretionary licensing in all or part of the local authority area and report the findings and any resulting recommendations back to a future Committee.
- 1.3 Subsequently, independent research was commissioned which has concluded that there is sufficient evidence to demonstrate a significant proportion of HMOs are being managed sufficiently ineffectively to support the introduction of citywide Additional HMO Licensing to smaller houses in multiple occupation, and of poor property conditions and significant and persistent anti-social behaviour that supports the introduction of Selective Licensing to all other private rented properties in the worst affected areas.
- 1.4 This report:
  - presents the findings of independent research commissioned to seek evidence that would support, or reject, the need to implement a further discretionary licensing scheme across the whole, or part(s), of the private rented sector in Brighton & Hove (3.20-3.40)
  - reviews the existing Brighton & Hove HMO licensing schemes (3.45-3.54)
  - alerts Members to new government consultation on extending mandatory HMO licensing (3.58-3.62)
  - seeks Member approval to carry out formal consultation on the preferred option for extending licensing across Brighton & Hove (Section 6)

## **2. RECOMMENDATIONS**

2.1 That Housing & New Homes Committee notes the findings of the Mayhew Harper Associates Ltd research that evidences the need for a citywide approach to discretionary licensing (Appendix 1).

2.2 That Housing & New Homes Committee approves 12 weeks of consultation (to commence once a revised fee structure has been agreed by Members) on the preferred option for private rented sector discretionary licensing across Brighton & Hove with persons who are likely to be affected by the designation (Sections 3.36-3.44, Section 6):

(1) Citywide Additional HMO Licensing covering all properties defined as HMOs under the Housing Act 2004 that are not covered by mandatory licensing

(2) Selective Licensing on all non-HMO private rented sector homes in the 12 worst affected wards (as currently delineated) where the evidence demonstrates a clear link between poor property conditions and anti-social behaviour with the private rented sector:

- 1 St. Peter's & North Laine
- 2 Regency
- 3 Moulsecoomb & Bevendean
- 4= Hollingdean & Stanmer
- 4= Queen's Park
- 6 Hanover & Elm Grove
- 7= Brunswick & Adelaide
- 7= East Brighton
- 9 South Portslade
- 10 Central Hove
- 11 Westbourne
- 12 Preston Park

2.3 That Housing & New Homes Committee requests the findings of the consultation and appropriate recommendations be brought back to a future committee for Member consideration.

## **3. CONTEXT/ BACKGROUND INFORMATION**

3.1 A key theme of the city's housing has been the significant growth in private rented housing in Brighton & Hove. In 2011, the Census reported that the Private Rented Sector stood at 37,518 homes, 31% of all housing stock in the City and the 9<sup>th</sup> largest in England and Wales.

3.2 The sector increased by 46%, an extra 10,691 homes, between the 2001 and 2011. Three wards have half or more than half of households in homes rented through private landlords or lettings agents. The city also has the sixth highest proportion of converted dwellings or shared houses (houses in multiple occupation and bedsits) in England & Wales.

- 3.3 In 2011, 17 of our 21 wards exceed the regional and national average of 15% of households living in private rented homes and the sector is expected to have grown in the 5 years since 2011:

<b>Ward (Ranked by Percent of Ward being Private Rented)</b>	<b>Total Dwellings</b>	<b>PRS Dwellings</b>	<b>PRS as a Percent of Ward</b>
Regency	5,730	3,400	59%
Brunswick & Adelaide	5,875	3,436	58%
Central Hove	5,377	2,863	53%
St. Peter's & North Laine	8,609	4,227	49%
Goldsmid	7,955	3,393	43%
Queen's Park	7,982	3,025	38%
Hanover & Elm Grove	6,501	2,348	36%
Westbourne	4,626	1,553	34%
Preston Park	6,497	2,137	33%
Moulsecoomb & Bevendean	5,892	1,420	24%
Wish	4,125	959	23%
East Brighton	6,561	1,497	23%
Rottingdean Coastal	6,359	1,435	23%
Withdean	6,308	1,413	22%
Hollingdean & Stanmer	5,290	965	18%
South Portslade	3,903	661	17%
Hove Park	4,086	641	16%
<b>Private Rented National Average</b>	<b>x</b>	<b>x</b>	<b>15%</b>
Hangleton & Knoll	6,010	682	11%
Patcham	5,797	644	11%
North Portslade	4,133	434	11%
Woodingdean	3,924	385	10%
<b>Total</b>	<b>121,540</b>	<b>37,518</b>	<b>31%</b>

*Source: 2011 Census Table DC4101EW. PRS is Sum of Private Rented: landlord or letting agency, other private rented, living rent free*

- 3.4 The growth in the sector brings the benefits of a flexible housing market response to meet accommodation needs in the city. However, while many landlords operate responsibly, issues continue to be raised in relation to the management, standards and quality of homes in the expanding private rented sector.
- 3.5 The 2004 Housing Act introduced mandatory licensing of larger HMOs and contained provisions for further 'discretionary licensing'. HMOs are defined as properties with three or more occupiers who form two or more households and who share a kitchen, bathroom or toilet. This does not include live-in landlords with 2 or fewer lodgers (unless that dwelling is itself within an HMO). Certain HMOs are exempt from licensing under Schedule 14 of the Act, such as those managed by local authorities, registered providers and educational establishments.
- 3.6 HMOs of three or more storeys with five or more occupiers are subject to mandatory licensing, and all such HMOs in England and Wales must be licensed.

3.7 There are two types of discretionary licensing for private rented sector homes:

- (a) **Additional:** where a council can impose a licence on other HMOs in its area which where the council considers that poor management and standards of the properties is causing problems either for the occupants or the general public.
- (b) **Selective:** covering all privately rented property in areas which are experiencing one or more of the following conditions<sup>1,2</sup>:
- low housing demand
  - significant and persistent anti-social behaviour
  - poor property conditions
  - high levels of migration
  - deprivation
  - crime

Local authorities must obtain express confirmation from the Secretary of State for any Selective scheme(s) which cover more than 20% of their geographical area or affect more than 20% of their private rented sector.

3.8 Under licensing, landlords have to:

- Meet appropriate and professional standards of conduct;
- Demonstrate their properties meet health and safety standards including fire and electrical safety;
- Exercise appropriate management and supervision of the buildings to help reduce any adverse impact on neighbourhood

3.9 The different licensing schemes bring different responsibilities and requirements on the landlords and council:

Licensing Scheme Differences	Mandatory HMO	Additional HMO	Selective
<b>Property Type</b>	Larger HMOs (3 or more storeys, 2 or more households, and 5 or more people)	Smaller HMOs (2 or more households, 3 or more occupiers, share kitchen, bathroom or toilet)	All other private rented homes
<b>Scheme Duration</b>	Ongoing (but 5 year licences)	5 years max	5 years max
<b>Fit and proper person test</b>	Yes	Yes	Yes
<b>Initial property inspection</b>	Yes (but not statutory)	Yes (but not statutory)	Risk based (but not statutory)
<b>Conditions can be</b>	Yes	Yes	No

<sup>1</sup> As amended by The Selective Licensing of Houses (Additional Conditions)(England) Order 2015

<sup>2</sup> Selective licensing in the private rented sector: A Guide for local authorities, Department for Communities & Local Government 2015:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418551/150327\\_Guidance\\_on\\_selective\\_licensing\\_applications\\_FINAL\\_updated\\_isbn.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418551/150327_Guidance_on_selective_licensing_applications_FINAL_updated_isbn.pdf)

<b>Licensing Scheme Differences</b>	<b>Mandatory HMO</b>	<b>Additional HMO</b>	<b>Selective</b>
<b>attached to require upgrades to heating, fire safety etc</b>			
<b>Can specify no of occupiers</b>	Yes	Yes	Yes
<b>Consultation requirements</b>	None	Must consult all likely to be affected for 10 weeks minimum	10 weeks but 12 weeks if Secretary of State application
<b>Designation criteria</b>	None	Ineffective HMO management and standards	Low demand, migration, deprivation, poor quality, anti-social behaviour
<b>Secretary of State confirmation needed</b>	No (legislative requirement)	Done via general consent if guidance followed	Yes if scheme exceeds 20% of area or 20% of PRS stock

- 3.10 Councils are able to recover their costs associated with the administration of licensing schemes through licensing fees. Landlords who operate a designated property without a licence may be subject to criminal prosecution and/or a rent repayment order.
- 3.11 Concerns about the impact of HMO's on tenants and communities led to the introduction of Additional Licensing of smaller HMO's, with the first scheme launching in 2012 covering 5 Lewes Road wards (Hanover & Elm Grove, Moulsecoomb & Bevendean, St Peter's & North Laine, Hollingdean & Stanmer, Queen's Park) and a second scheme launching in 2015 covering city centre and coastal wards (Brunswick & Adelaide, Central Hove, East Brighton, Goldsmid, Preston Park, Regency, Westbourne).
- 3.12 Evidence from Mandatory Licensing and Additional Licensing of HMOs in Brighton & Hove has highlighted that in almost 9 in 10 (88%) current cases<sup>3</sup>, the properties required improvements to ensure they are fit and safe for occupation. Whilst these improvements are benefitting an estimated 13,000 tenants, the city's licensing only covers 9% of the private rented sector.
- 3.13 The vast majority of the city's private rented sector (4 in 5 PRS homes, 81%) does not come under a current licensing scheme beyond the mandatory scheme for larger HMOs. Where we have introduced Additional Licensing, in the older Lewes Road wards licensing scheme, 77% of private rented homes are not covered and in the newer City Centre & Coastal scheme, 97% of private rented homes are not covered:

<sup>3</sup> 2,629 of 3,004 licensed properties as of 19 October 2016

Ward	Private Rented Sector Dwellings	Additional Licensing	Licensed HMOs	Percent of PRS <u>Not</u> Licensed
Moulsecoomb & Bevendean	1,420	2012	863	39%
Hollingdean & Stanmer	965	2012	306	68%
Hanover & Elm Grove	2,348	2012	736	69%
St. Peter's & North Laine	4,227	2012	630	85%
Queen's Park	3,025	2012	218	93%
Preston Park	2,137	2015	115	95%
Regency	3,400	2015	95	97%
East Brighton	1,497	2015	62	96%
Goldsmid	3393	2015	68	98%
Westbourne	1553	2015	25	98%
Central Hove	2,863	2015	48	98%
Brunswick & Adelaide	3,436	2015	58	98%
Wish	959	x	9	99%
South Portslade	661	x	6	99%
Withdean	1,413	x	10	99%
Rottingdean Coastal	1,435	x	5	100%
Hove Park	641	x	2	100%
Woodingdean	385	x	1	100%
Hangleton & Knoll	682	x	1	100%
Patcham	644	x	0	100%
North Portslade	434	x	0	100%
<b>Total</b>	<b>37,518</b>	<b>x</b>	<b>3,258</b>	<b>81%</b>
2012 Lewes Road Wards Additional Licensing Area	11,985	2012	2,753	77%
2015 City Centre Wards Additional Licensing Area	18,279	2015	471	97%
<i>(PRS from Census 2011, HMO fully licensed properties [mandatory &amp; additional] as at 5 Oct 2016)</i>				

- 3.14 Concerns about housing quality in the private rented sector were supported by respondents to the consultation for the Housing Strategy 2015, the Private Sector Housing Scrutiny Panel 2015 and more recently, the Fairness Commission Report 2016 which all call for the council to take action to improve the quality of homes and management across the private rented sector.
- 3.15 The benefits of discretionary licensing include development of a proactive and consistent council-led approach towards identifying, and tackling complex issues of management, standards and anti-social behaviour across the area to the benefit of tenants, responsible landlords and the local community:
- **Responsible landlords** will gain from the improved clarity of their role in raising property and tenancy management standards while action is taken to tackle those who flout their legal responsibilities.
  - **Tenants** will be clear on what they can expect from both the home that they rent and the landlord that they rent it from, with implementation of minimum standards resulting in better managed, quality and safer homes. Any repairs

and improvements will be required by the council rather than a tenant complaining and subsequently fearing loss of their tenancy, taking tension out of the landlord and tenant relationship.

- **Communities** benefit from a consistent approach towards proactively assessing and improving housing conditions across an area and knowing who is responsible for the management of properties that are rented out.
- 3.16 Any designation made by a local housing authority for discretionary licensing must ensure that the exercise of the power is consistent with their overall housing strategy; and seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector as regards combining licensing with other action taken by them or others.
- 3.17 The Housing Strategy 2015 is a key chapter of the Community Strategy and a fundamental piece of evidence to support the City Plan, our Local Housing Investment Plan and other housing related funding opportunities enabling us to continue our impetus to help address the housing needs of the city and provide a consistent drive towards achieving our priorities.
- 3.18 Priority 2 of the Housing Strategy 2015 is to Improve Housing Quality. Themes within this priority include the Private Rented Sector and HMOs. A large majority of respondents to the consultation wanted us to introduce a register of all private sector landlords and take action to improve quality and standards.
- 3.19 The Homeless Strategy 2014 identifies that homelessness from the private rented sector is consistently the single biggest cause of homelessness in the city. Improving the standards of accommodation and management in the private rented sector is seen as one of a number of tools to help reduce homelessness from this sector.

#### **The case for extending discretionary licensing**

- 3.20 On 13 January 2016 Housing & New Homes Committee delegated authority to the Acting Executive Director for Environment, Development & Housing to explore the necessity or otherwise of the introduction of further discretionary licensing in all or part of the local authority area and report the findings and any resulting recommendations back to a future Committee.
- 3.21 Mayhew Harper Associates Ltd (MHA), headed by Professor Les Mayhew, were appointed to independently research and report on the evidence that would support, or reject, the need to implement a further discretionary licensing scheme across the whole, or part(s), of the private rented sector in Brighton & Hove. The report is attached as Appendix 1 and the main points are summarised below.
- 3.22 In analysing the evidence, it is important to link incidents of disrepair and anti-social behaviour with privately rented homes. Without this connection, whilst there may be evidence of problems in an area with a large private rented sector, it is not possible to say whether these are linked to those homes or other owner occupied or social rented homes. However, there is no formal database that identifies which homes are privately rented.

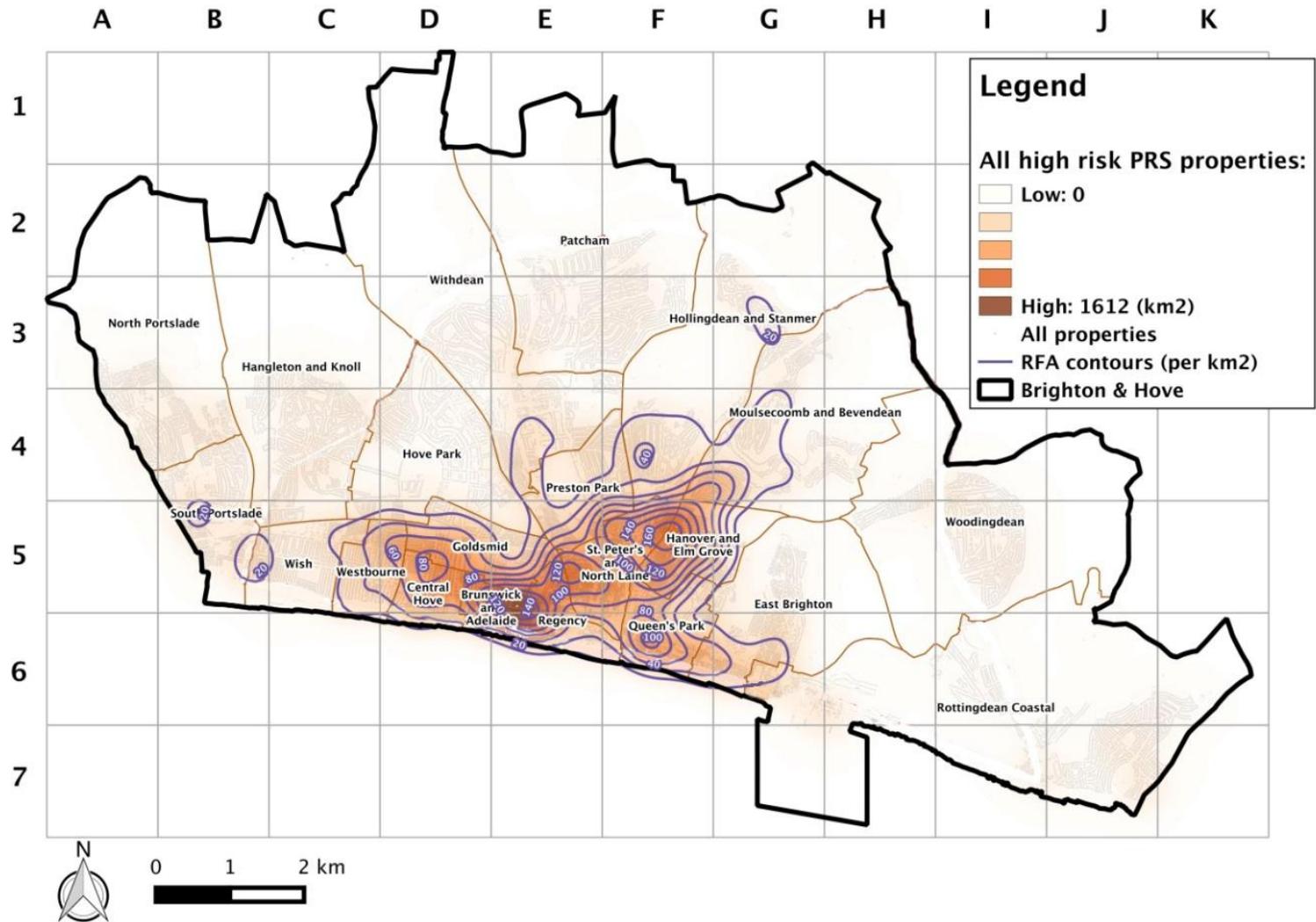
- 3.23 MHA were selected to carry out the research as they presented a unique methodology to predict which properties are most likely to be private rented dwellings. This methodology used a combination of indicators after discounting social housing, such as looking for three or more surnames at an address, frequent changes in occupiers, and housing benefit claims to predict whether homes were likely to be houses in multiple occupation, single family private rented dwellings or otherwise owner occupied homes.
- 3.24 The resultant property list then allowed them to analyse address level incidents to determine whether privately rented homes were more or less likely than other tenured housing to be associated with these problems. Their report outlines this methodology in more detail.
- 3.25 Of the criteria that may demonstrate a need for Selective Licensing, a number were discounted as they do not apply in Brighton & Hove sufficiently or there are insufficient means to link them to the private rented sector:
- low housing demand
  - high levels of migration
  - deprivation
  - crime
- 3.26 The MHA research focussed on poor property conditions and significant and persistent anti-social behaviour (ASB), analysing a number of data sources:
- Police ASB
  - Council ASB
  - Noise complaints
  - Pest control
  - Requests for Assistance (RFAs) to the council's private sector housing team regarding property disrepair
  - Waste complaints
  - Dwelling and HMO Fires
- 3.27 On analysing the data, the evidence shows that:
- Where a property is known to be a HMO (i.e. licensed):
- a Request for Assistance is 13.2 times more likely than other properties
- When combining known and predicted HMOs:
- a Request for Assistance is 3.9 times more likely than other properties
  - a noise complaint is 2.8 times more likely than other properties
- Where a property is predicted to be a single family private rented dwelling:
- a Request for Assistance is 2.4 times more likely than other properties
  - a noise complaint is 1.5 times more likely than other properties
- 3.28 The much higher rate of requests for assistance related to already licensed HMOs could be due to a number of reasons, which all demonstrate the need for the ongoing licensing of these properties:
- Tenants having more confidence to report issues once property licensed
  - Higher tenant turnover impacting on dwelling quality
  - Level of proactive property management

3.29 A geographical density analysis shows the ward level correlation between high concentrations of private rented homes and Requests for Assistance (RFAs).

3.30 As can be seen the density of PRS properties and RFAs are seen to coincide very closely, demonstrating the close links that exist between private renting and poor housing conditions.

3.31 This allows the research to be done at ward level with an analysis of the properties that were previously identified as being highly likely to be in the private rented sector compared to nuisance and ASB.

**Geographical density analysis: Private Rented Sector & Requests for Assistance**



3.32 Each ward has then been ranked according to the size of the PRS from high to low (1 being the highest ranked ward and 21 the lowest). Each of the 8 indicators is ranked similarly. A final column provides an overall ranking based on the eight indicators in order to derive an overall assessment of the risk factors in each:

**Wards table comparing the size of the PRS with housing conditions and ASB**

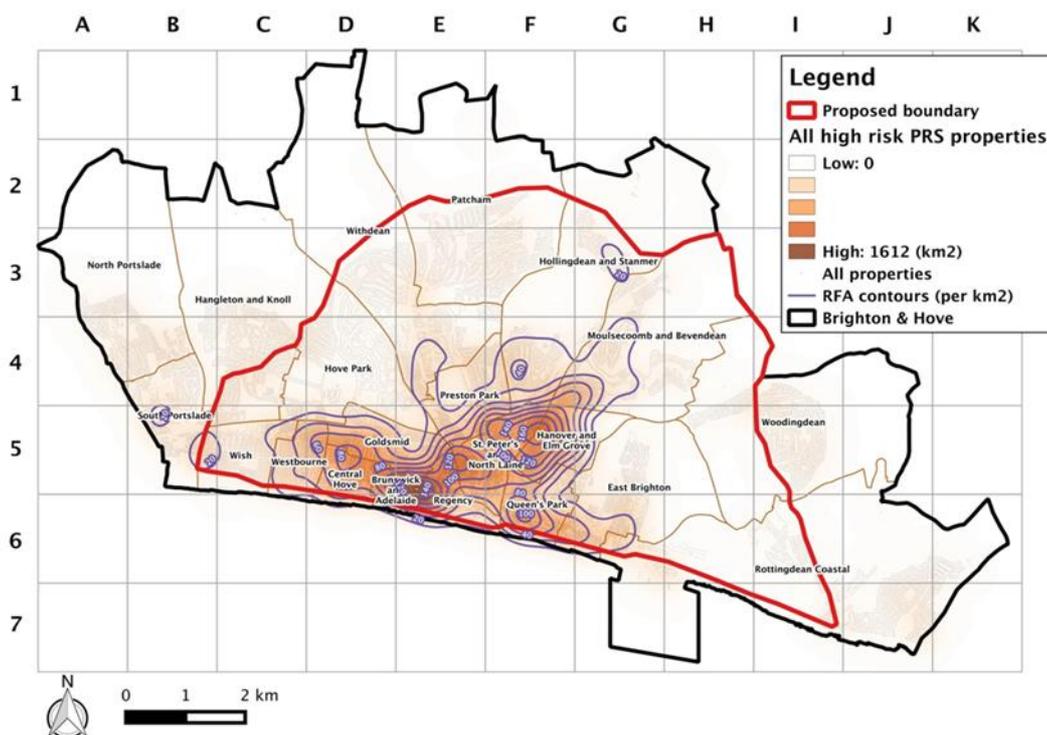
Ward name	Additional Licensing	PRS size	Police ASB	Council ASB	Noise complaints	Pest control	RFA	Waste	Dwellin g Fires	HMO Fires	Rank of ranks (1=worst)
St. Peter's & North Laine	2012	1	2	1	1	7	1	2	2	4	1
Regency	2015	3	1	2	2	15	4	8	6	2	2
Moulsecoomb & Bevendean	2012	12	6	9	6	8	3	1	5	15	3
Hollingdean & Stanmer	2012	14	4	6	4	10	6	5	8	13	4=
Queen's Park	2012	5	3	3	3	19	8	10	3	7	4=
Hanover & Elm Grove	2012	7	10	7	5	17	2	3	7	9	6
Brunswick & Adelaide	2015	2	8	5	8	20	5	17	4	1	7=
East Brighton	2015	10	5	13	7	16	12	4	1	10	7=
South Portslade	No	17	9	4	15	1	14	6	14	14	9
Central Hove	2015	6	7	8	9	21	7	16	12	3	10
Westbourne	2015	9	19	12	13	14	9	7	9	5	11
Preston Park	2015	8	13	20	10	12	10	11	13	8	12
Wish	No	15	12	10	14	9	13	15	20	12	13
Goldsmid	2015	4	17	18	12	18	11	18	11	6	14=
Hangleton & Knoll	No	16	11	11	11	13	17	12	18	18	14=
Woodingdean	No	21	14	15	18	4	19	9	17	19	16
North Portslade	No	20	16	14	17	11	16	14	10	19	17
Patcham	No	18	15	16	16	2	21	13	15	19	17
Withdean	No	13	20	19	20	6	15	21	16	11	19
Rottingdean Coastal	No	11	18	17	19	5	18	19	19	16	20
Hove Park	No	19	21	21	21	3	20	20	21	17	21
Correlation with PRS			0.49	0.47	0.71	-0.69	0.78	0.15	0.65	0.92	0.62

- 3.33 It is important to note that almost all of the worst affected areas are ones that currently include Additional Licensing, with 5 of the worst 6 being the wards with the longest running scheme. The 2012 Lewes Road wards Additional HMO Licensing scheme is the largest and oldest, covering 2,753 HMOs in both the Additional and Mandatory schemes which represent 23% of the private rented sector in those wards. This demonstrates that whilst Licensing is leading to improvements to the quality of those homes to the benefit of those estimated 13,000 tenants, it has not had a significant overall impact on overall private rented sector property conditions and ASB in those areas.
- 3.34 There is generally a medium to high positive correlation between the relative size of the PRS in each ward and the relative incidence of risk factors including poor housing conditions and ASB such as RFAs, noise complaints and dwelling fires. The ward results confirm that the core area of Brighton & Hove centred on the seafront contains most of the risk factors although there are at least two important outliers such as Moulsecoomb & Bevendean and Hollingdean & Stanmer.
- 3.35 The research concluded that there is significant variation in housing conditions and anti-social behaviour (ASB) among Brighton & Hove wards and so while there is a case for extending Additional Licensing to all wards, the case for a Selective Licensing Scheme (SLS) in every ward is not as strong. This suggests an option to introduce SLS only in the worst affected areas in terms of poor housing conditions and ASB in which there are high concentrations of private renting and extend Additional Licensing elsewhere.
- 3.36 The research has presented 4 options for consideration:
- Option 1: Selective Licensing citywide
  - Option 2: Introduce a Selective Licensing Scheme in the worst affected wards and extend Additional Licensing city-wide
  - Option 3: Selective Licensing in the worst affected areas bounded by an artificial barrier (such as roads) and extend Additional Licensing city-wide
  - Option 4: Selective Licensing in a small area within the 20% limits set by the Secretary of State and extend Additional Licensing citywide
- 3.37 **Option 1: Selective Licensing citywide.** This option has the advantage that it includes the whole private rented sector in Brighton & Hove. This would make licensing much clearer to landlords and tenants and have the biggest impact. This option would require an application to the Secretary of State for approval. However, it includes areas that do not fully meet the discretionary licensing criteria so it runs the risk of being rejected by the Secretary of State and neither does it allow us to attach special conditions to HMOs to require improvements.
- 3.38 **Option 2: Introduce a Selective Licensing Scheme in the worst affected wards and extend Additional Licensing citywide.** It would contain the whole private rented sector in the worst affected areas and HMOs in outlying areas and can be demonstrated to be meeting our strategic aims. This would not include single family private rented homes in outlying areas which risks the targeting of areas that do not require licenses for expansion of the sector. This option would require an application to the Secretary of State for approval. The 12 worst affected wards are (rank 1 = worst):
- 1 St. Peter's & North Laine

- 2 Regency
- 3 Moulsecoomb & Bevendean
- 4= Hollingdean & Stanmer
- 4= Queen's Park
- 6 Hanover & Elm Grove
- 7= Brunswick & Adelaide
- 7= East Brighton
- 9 South Portslade
- 10 Central Hove
- 11 Westbourne
- 12 Preston Park

**3.39 Option 3: Selective Licensing in the worst affected areas bounded by an artificial barrier (such as roads) and extend Additional Licensing city-wide.**

This option contains the whole private rented sector in the worst affected areas and HMOs in outlying areas and can be demonstrated to be meeting our strategic aims. The wider boundary allows the scheme to cater for future growth and expansion in the private rented sector. This would not include single family private rented homes in outlying areas which risks the targeting of areas that do not require licences for expansion of the sector. This option would require an application to the Secretary of State for approval, however, the guidance is unclear as to whether we could include wider boundaries to allow for growth. One example is presented in the research report, although this does exclude South Portslade which is the 9<sup>th</sup> worst affected ward and includes 4 of the least affected wards so could be potentially modified for consultation:



**3.40 Option 4: Selective Licensing in a small area within the 20% limits set by the Secretary of State and extend Additional Licensing citywide.** This option would contain the whole private rented sector in a small targeted area and HMOs across the rest of the city. Secretary of State approval would be gained via the

General Consent rather than an application, as long as the legislation and guidance is followed. The report acknowledges that this option is more illustrative as it would not tackle all those areas with an identified need. Whilst benefiting those specific areas, it would not have as much of a citywide impact and as such does not fully meet our strategic aims. When looking at the 12 worst affected wards, this scheme exceeds the 20% threshold very quickly unless some of the larger wards (Moulsecoomb & Bevendean and Hollingdean & Stanmer) are excluded. With this option an Additional Licensing scheme and Selective scheme must start/finish at the same time as properties falling out of Additional would come under Selective in those areas which could result in the 20% threshold being exceeded:

Wards ranked by housing conditions and ASB	Ward	Ward area (km <sup>2</sup> )	Cumulative area as % of B&H	Cumulative single family as % of PRS	Wards covered by AL*
1	St. Peter's & North Laine	1.43	1.7	3.7	Y
2	Regency	0.95	2.8	5.8	Y
3	Moulsecoomb & Bevendean	5.83	9.6	7.4	Y
4=	Hollingdean & Stanmer	7.42	18.3	9.2	Y
4=	Queen's Park	1.28	19.8	11.9	Y
6	Hanover & Elm Grove	1.41	21.5	14.1	Y
7=	Brunswick & Adelaide	0.56	22.1	16.3	Y
7=	East Brighton	4.10	26.9	18.4	Y
9	South Portslade	1.92	29.2	20.0	
10	Central Hove	0.80	30.1	22.1	Y
11	Westbourne	1.00	31.3	24.0	Y
12	Preston Park	1.67	33.2	25.8	Y

(\*) AL = Additional Licensing

### Proposed fee structure

- 3.41 As part of the consultation on introducing or extending licensing, the council must include the proposed fee structure and likely charges. The current fee structure was reviewed and agreed by Housing Committee in June 2015, and implemented on 1 August 2015. This current fee structure does not include Selective Licensing since we do not have such a scheme in the city.
- 3.42 In setting fees for licences, the council is entitled to take into account all its costs in carrying out its functions in relation to administering any scheme. Fees cannot be set at a level designed to make a profit. Proposed fees are set at a level reasonably expected to cover the costs of providing the service for the licensing scheme. The fees are based on officer time and associated costs involved in processing the applications, inspections and monitoring including the relevant overheads. The majority of the costs involved relate to staff time. All costs included are allowable within the guidance for calculation of licence fees.

- 3.43 With the potential for a the proposals outlined in this paper encompassing a significant number of homes, it is important that the fee structure encourages landlords to apply promptly and also ensure their homes meet the required standard with minimal intervention from the council. This would minimise the fees for compliant landlords and also reduce pressure on the council in managing the scheme. As with previous discretionary licensing schemes, resources would have to be weighted to ensure are the greatest demand for licenses at or around scheme commencement can be managed.
- 3.44 If Committee approve the preferred option and decision to consult, we will review the existing fee structure and bring this to Members for approval prior to the consultation commencing.

### **Review of the existing Licensing Schemes**

- 3.45 **Mandatory HMO Licensing:** As of 5 October 2016 we have licensed, or have active applications for 1,094 larger HMOs in the City (those over three storeys and five people) under the current national mandatory licensing scheme. Details are in the table below.

<b>Ward Name</b>	<b>Properties</b>
St. Peter's & North Laine	244
Hanover & Elm Grove	234
Queen's Park	111
Moulsecoomb & Bevendean	113
Hollingdean & Stanmer	78
Preston Park	66
Regency	58
Goldsmid	33
Brunswick & Adelaide	41
Central Hove	30
East Brighton	22
Westbourne	16
South Portslade	6
Rottingdean Coastal	5
Wish	9
Withdean	10
Hove Park	2
Hangleton & Knoll	1
Woodingdean	1
Ward not listed	14
<b>Total</b>	<b>1,094</b>
<i>(as of 5 Oct 2016)</i>	

3.46 **Lewes Road Additional HMO Licensing:** This scheme was introduced in 2012 in response to extensive consultation and robust evidence that a significant proportion of the smaller HMOs in the Lewes Road wards (Hanover & Elm Grove, Moulsecoomb & Bevendean, St Peter's & North Laine, Hollingdean & Stanmer, Queen's Park) were being managed sufficiently ineffectively as to give rise to one or more particular problems either for those occupying the HMOs or for members of the public. This 5 year scheme applies to smaller HMOs of two or more storeys and three or more occupiers.

3.47 As of 7 October 2016, the council has received 2,365 valid additional licence applications (some of these are new owners re-applying on the same property) and checked and issued 2,264 draft licences, of which 1,996 have been followed up with full licences (issued on condition that any work required is carried out within an agreed period):

Ward Name	Applications Received	Draft Licences Issued	Full Licences Issued
Hanover & Elm Grove	569	571	507
Hollingdean & Stanmer	276	264	229
Moulsecoomb & Bevendean	901	874	763
Queen's Park	133	123	107
St. Peter's & North Laine	459	432	390
<b>Total</b>	<b>2,365</b>	<b>2,264</b>	<b>1,996</b>
<i>(as of 7 Oct 2016)</i>			

3.48 **City Centre Additional HMO Licensing:** This scheme was introduced on 2 November 2015 in response to evidence and consultation that the smaller HMOs in city centre and coastal wards (Brunswick & Adelaide, Central Hove, East Brighton, Goldsmid, Preston Park, Regency, Westbourne) were being managed sufficiently ineffectively as to give rise to one or more particular problems either for those occupying the HMOs or for members of the public. This 5 year scheme applies to smaller HMOs of two or more storeys and three or more occupiers.

3.49 This scheme is relatively new so the number of licenses issued is comparatively small, but this will grow over time. As of 7 October 2016, the council has received 260 valid additional licence applications and checked and issued 237 draft licences, of which 205 have been followed up with full licences (issued on condition that any work required is carried out within an agreed period):

Ward Name	Applications Received	Draft Licences Issued	Full Licences Issued
Preston Park	62	59	49
Goldsmid	39	38	35
Regency	46	41	37
East Brighton	51	45	40
Brunswick & Adelaide	23	21	17
Central Hove	25	22	18

Ward Name	Applications Received	Draft Licences Issued	Full Licences Issued
Westbourne	14	11	9
<b>Total</b>	<b>260</b>	<b>237</b>	<b>205</b>
<i>(as of 7 Oct 2016)</i>			

3.50 **Benefits:** In addition to the mandatory conditions that all landlords of licensed HMO properties must adhere to, housing quality issues identified during property inspections have led to 12,619 special conditions being attached to licences that are resulting in improvements in 2,629 homes, benefitting an estimated 13,000 tenants:

Special Conditions	Mandatory HMO Licensing	Additional HMO Licensing (Lewes Road Wards)	Additional HMO Licensing (City Centre Wards)	Total
<b>Total Special Conditions applied</b>	1,823	9,992	804	<b>12,619</b>
<b>Fully Licensed Properties with Special conditions applied</b>	538	1,904	187	<b>2,629</b>
<b>Percent of Fully Licensed Properties with Special conditions</b>	67%	95%	91%	<b>88%</b>
<b>Estimated number of tenants benefitting (at 5 per HMO)</b>	2,690	9,520	935	<b>13,145</b>
<i>(as at 19 Oct 2016)</i>				

3.51 The conditions applied cover a range of housing quality issues with 75% complied with in the Lewes Road scheme and 23% in the new City Centre scheme:

Special Conditions	Mandatory HMO Licensing	Additional HMO Licensing (Lewes Road Wards)	Additional HMO Licensing (City Centre Wards)	Total Conditions
<b>Other Fire Works</b>	300	1,995	156	<b>2,451</b>
<b>Management / Repairs</b>	380	1,738	164	<b>2,282</b>
<b>Structural Fire Works</b>	358	1,696	160	<b>2,214</b>
<b>Fire Alarms</b>	160	1571	111	<b>1,842</b>

Special Conditions	Mandatory HMO Licensing	Additional HMO Licensing (Lewes Road Wards)	Additional HMO Licensing (City Centre Wards)	Total Conditions
Ventilation	99	842	64	1,005
Electrical Works	143	682	68	893
Loft Insulation	27	739	48	814
Additional Facilities	252	481	20	753
Enlargement Of Bedrooms	21	158	7	186
Enlargement of Kitchens	46	61	3	110
Gas Certificates	37	28	3	68
Enlargement of Dining Room	0	1	0	1
<b>Total</b>	<b>1,823</b>	<b>9,992</b>	<b>804</b>	<b>12,619</b>
<i>(as at 19 Oct 2016)</i>				

3.52 **How proposals affect existing discretionary licensing schemes:** The current Lewes Road Scheme comes to an end in November 2017 and City Centre Scheme in November 2019. Should the council implement Selective Licensing in all or part of these wards, these properties would come under that scheme once the Additional Licensing Scheme expires and the landlords of those properties would need to apply for Selective Licenses. It is also worth noting that this could push a small Selective Licensing Scheme above the 20% threshold that would require an application to the Secretary of State for approval.

3.53 Alternatively, as the evidence from MHA shows the disproportionate level of poor property conditions in HMOs and anti-social behaviour suggesting a significant proportion are being managed ineffectively, the council could look to designate a new Additional HMO Licensing Scheme in these wards. The advantages and disadvantages of these options are outlined in the table below:

Options on expiry of Lewes Road Additional HMO Licensing Scheme	Advantages	Disadvantages
Have no scheme in these areas	No licence fee for landlords	Does not meet strategic aims as evidence supports need for a scheme
Renew Additional	Can require property improvements to HMOs not in earlier scheme	More complex to administer
Bring under area Selective	Simpler to administer	Not able to attach special conditions to require improvements to fire safety etc

Options on expiry of Lewes Road Additional HMO Licensing Scheme	Advantages	Disadvantages
Bring under Citywide Additional	Can require property improvements to HMOs not in earlier scheme	None

- 3.54 It is recommended to consult those likely to be affected on the option to bring these properties under a citywide Additional HMO Licensing scheme rather than Selective Licensing. The proposed fee structure will consider the likely reduced level of resources required in relation to administering the scheme for landlords / agents relicensing properties that were licensed under the existing schemes.

### Outline Timeline

- 3.55 Subject to Housing & New Homes Committee permission to consult:
- Dec 2016 / Jan 2017 - procure consultation provider
  - Jan / Mar 2017 - Committee report on proposed fee structure
  - April / June 2017 - Consultation (12 weeks)
  - July / Sept 2017 - Committee report on consultation findings
- 3.56 If further discretionary licensing is subsequently proposed and approved by Committee:
- Aug / Oct 2017 - Secretary of State application (if necessary)  
- formal notice of scheme
  - Nov 2017 / Jan 2018 - potential scheme live
- 3.57 Any selective licensing scheme time-line could be subject to extension if Secretary of State approval is required. The time-line may also be affected by any challenge to proposals or process through judicial review.

### New Government Consultation: Houses in Multiple Occupation and residential property licensing reforms<sup>4</sup>

- 3.58 The Government has recently launched consultation on reforms to HMO licensing covering:
1. Extending the scope of mandatory HMO licensing
  2. National minimum room sizes in licensed HMOs
  3. Impact assessment
  4. Fit and proper person test
  5. Refuse disposal facilities
  6. Purpose built student housing
- 3.59 The main proposed change is to bring more HMOs into the Mandatory Licensing scheme:
- Remove the storey rule so all houses (regardless of how many floors) with 5 or more people from two or more households are in scope

<sup>4</sup> Consultation: Houses in Multiple Occupation and residential property licensing reforms, DCLG, October 2016:  
[https://www.google.co.uk/url?url=https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/560774/161018\\_HMO\\_CONSULTATION.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwj366u gvOnPAhVLBsAKHdifC7AQFggUMAA&usg=AFQjCNFMPaMIauPBUu55Cd4yibFcuKM7ow](https://www.google.co.uk/url?url=https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/560774/161018_HMO_CONSULTATION.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwj366u gvOnPAhVLBsAKHdifC7AQFggUMAA&usg=AFQjCNFMPaMIauPBUu55Cd4yibFcuKM7ow)

- Extend mandatory licensing to some flats above and below business premises (regardless of the number of storeys)
- Set a minimum room size of 6.52m<sup>2</sup> in line with the existing overcrowding standard (Housing Act 1985) to close a loophole recently created by an upper-tier tribunal ruling which is enabling some landlords to let rooms far too small for an adult to legally occupy.

3.60 For the first time, these proposals include flats, but only where there are commercial or other non-residential premises in the building and it is a converted building or purpose built with up to two flats. Purpose built blocks comprised entirely of flats, or purpose built blocks with commercial/non-residential space and three or more flats are excluded, but the consultation states that local housing authorities will retain the flexibility to license such flats under an additional licensing scheme.

3.61 If the government implements these changes as proposed, more properties in Brighton & Hove would be covered by the mandatory licensing scheme. However, this would still leave a substantial number of dwellings in our proposed additional licensing scheme (primarily those smaller shared homes of 3-4 occupiers forming two or more households whether houses or flats, plus all HMO flats in purpose built blocks forming two or more households with three or more occupiers) rather than remove the need for the scheme.

3.62 The consultation closes in December 2016 and any resulting changes are likely to be implemented later in 2017. Their impact on our existing and any proposed licensing scheme, will be considered as and when they are published. The council will be making representations to this consultation based on the needs of Brighton & Hove.

#### **Revised HMO Standards**

3.63 Officers have been working in partnership with authorities across Sussex to review the HMO Standards.

3.64 The standards apply to shared houses with two or more storeys to make sure the homes have enough facilities such as washing, cleaning, cooking and living space for the intended number of occupiers. These should be seen as a minimum and reassure tenants that a licensed property offices a certain level of suitability and also provides useful guidance to landlords on what they need to be providing to look after their asset and tenants.

3.65 Officers are reviewing the changes made to the Sussex standards to determine their relevance to Brighton & Hove. Alongside this, officers are also considering the implications of the new government HMO consultation and its proposed minimum room sizes.

3.66 Should a view be taken that the local existing standards require amendment, then these will be brought to Members for consideration prior to the potential consultation on expanding licensing across the city.

#### 4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 When considering whether to make a licensing designation a local housing authority must consider whether there are any other courses of action available to it that would achieve the same objective or objectives as the proposed scheme without the need for the designation to be made.
- 4.2 Only where there is no practical and beneficial alternative to a designation should a scheme be made. If the local housing authority decides there is no practical and beneficial alternative to the scheme, it must only make the designation if it is satisfied that the scheme will significantly assist it in achieving its objective or objectives, with other actions the local housing authority may be taking.
- 4.3 Five possible alternative options for tackling problem housing in the city were identified and are set out below:
- A. Do nothing
  - B. Use existing reactive powers
  - C. Targeted use of Management Orders
  - D. Area-based voluntary accreditation
  - E. Informal area action
- 4.4 The Strengths and Weaknesses of each option highlight that none are expected to be able to bring about the scale of improvement that the evidence suggests is required. A more detailed options appraisal would be completed following stakeholder consultation to help Members make an informed decision:

<b>Option A: Do nothing</b>		
<b>Option Description</b>	<b>For</b>	<b>Against</b>
This option would involve the council doing nothing to intervene in the sector, leaving the housing market as the driver for landlords carrying out improvements to their properties	<ul style="list-style-type: none"> <li>• No additional resource costs</li> <li>• Housing market determines the quality of accommodation</li> <li>• Meets aspiration for many landlords for self-regulation</li> </ul>	<ul style="list-style-type: none"> <li>• Would not meet statutory obligations</li> <li>• Community concerns not addressed</li> <li>• Concerns of people renting not addressed</li> <li>• Reliance on the current market may not yield widespread housing improvement</li> </ul>
<b>Option B: Use existing reactive powers</b>		
<b>Option Description</b>	<b>For</b>	<b>Against</b>
This option envisages council intervention in the sector being limited to a 'complaint response' service with action by other departments and agencies on a largely ad hoc basis	<ul style="list-style-type: none"> <li>• Responds to tenants' expressed concerns</li> <li>• Ensures council meets basic statutory responsibilities towards standards in rented housing</li> <li>• If pursued rigorously sends a strong signal to the erring landlord, may</li> </ul>	<ul style="list-style-type: none"> <li>• Reliance on the market may not yield widespread housing improvement in the current climate</li> <li>• Reactive intervention not strategic</li> <li>• No impact beyond the subject property</li> <li>• Wider issues in rented</li> </ul>

<p>using powers such as the Anti-Social Behaviour Crime and Policing Act 2014; injunctions using Section 222 of the Local Government Act 1972; directions regarding the disposal of waste (for example under section 46 of the Environmental Protection Act 1990); and Powers under the Noise Act 1996</p>	<p>lead to subsequent voluntary improvement</p> <ul style="list-style-type: none"> <li>• Should produce worthwhile improvements in neighbourhood environment, external appearance, structural integrity, fire safety in cases where these tackled</li> </ul>	<p>stock not addressed</p> <ul style="list-style-type: none"> <li>• Most Planning, Building Regulations enforcement powers would not reach longer-established stock where need is greatest</li> <li>• Key issues (amenities, space, health and safety) would be overlooked</li> <li>• Underreporting due to fear of retaliatory eviction</li> <li>• Labour-intensive, so costly</li> <li>• Council funded</li> <li>• Falls short of meeting Housing Strategy goals</li> </ul>
<p><b>Option C: Use of Interim Management Orders and Final Management Orders</b></p>		
<p><b>Option Description</b></p>	<p><b>For</b></p>	<p><b>Against</b></p>
<p>Interim and Final Management Orders are for non-licensable HMOs or Special Interim Management Orders with regard to anti-social behaviour if problems are associated with a small number of properties. Once made, the Order is implemented until the property was fit either to be handed back to the landlord or if necessary, sold to a Registered Provider</p>	<ul style="list-style-type: none"> <li>• An effective response to the most serious problems;</li> <li>• Local Authority taking control means work done to proper standard, management issues resolved optimally</li> <li>• Action sends a strong message that poor standards will not be acceptable</li> </ul>	<ul style="list-style-type: none"> <li>• Powerful reactive enforcement action, not designed to secure overall stock improvement</li> <li>• Strict statutory criteria for use of the power; these will apply to a small proportion of the overall stock</li> <li>• Highly resource-intensive for council</li> <li>• Lengthy legal processes leads to delay</li> <li>• Minimal impact on the overall level of poor-quality rented housing</li> <li>• Council funded</li> <li>• Not a proportionate response</li> </ul>
<p><b>Option D: Area-Based Voluntary Accreditation</b></p>		
<p><b>Option Description</b></p>	<p><b>For</b></p>	<p><b>Against</b></p>
<p>Accreditation schemes are a set of standards (or codes) relating to the management or physical condition of</p>	<ul style="list-style-type: none"> <li>• Accreditation's proven track record in parts of the country</li> <li>• Easy set-up through access to existing local and national</li> </ul>	<ul style="list-style-type: none"> <li>• Accreditation would tend to attract the responsible landlord, be ignored by the irresponsible</li> <li>• No particularly strong</li> </ul>

privately rented accommodation that recognise and reward landlords who manage their properties to a good standard	<p>Accreditation models</p> <ul style="list-style-type: none"> <li>• Infrastructure for further Accreditation exists through the current scheme</li> <li>• Rewards responsible landlords for their efforts</li> <li>• Prospective tenants signposted to quality accommodation run by responsible landlords</li> </ul>	<p>incentive for poor agents/landlords to join</p> <ul style="list-style-type: none"> <li>• Brighton and Hove is a high demand area – impact of area based accreditation likely to be minimal</li> </ul>
<b>Option E: Informal Area Action</b>		
<b>Option Description</b>	<b>For</b>	<b>Against</b>
A non-statutory Action Area zone, would be declared. The impetus for housing improvement would come from a combination of the council's activity in the area (a mixture of advisory surveys, council-landlord-agent dialogue and, where necessary, the threat of follow-up enforcement action), landlord peer pressure, and the prospect of an enhanced and thus more credible sector	<ul style="list-style-type: none"> <li>• Targeted Action</li> <li>• Choice of area can be need and risk-based</li> <li>• Tailored solutions to area's housing and other problems possible</li> <li>• Should lead to comprehensive area improvement</li> <li>• Concentration of resources can lead to economies of scale</li> <li>• Message that the council is active in an area gets around, this facilitates resident co-operation, promotes voluntary landlord action</li> <li>• Partnership working to resolve management problems</li> <li>• Utilises existing frameworks</li> </ul>	<ul style="list-style-type: none"> <li>• Informality of approach can result in extended timescales</li> <li>• Traditional, resource-intensive enforcement the only available response to non-cooperation</li> <li>• Additional funding or resources needed to implement, particularly if working city-wide</li> <li>• Pulls resources away from other areas</li> <li>• Will not tackle issues of disrepair or health and safety concerns</li> <li>• Relies on agents / landlords participation</li> <li>• Not all landlords/agents will participate which may leave some tenants vulnerable</li> </ul>

## 5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 The need to take action to improve conditions in the private rented sector has come from a range of local consultation and engagement, such as the Housing Strategy 2015, Private Rented Sector Scrutiny Panel 2015 and also the Fairness Commission 2016. In addition to this, there are specific consultation requirements that must be met before Additional or Selective licensing can be introduced in an area.
- 5.2 Before introducing an Additional HMO Licensing Scheme, the council must comply with the specific requirements set out within sections 56 and 57 of the Housing Act 2004. This includes being satisfied that a significant proportion of

the HMOs proposed under the additional scheme are being managed sufficiently ineffectively. Consultation must also take place and the scheme must be consistent with the authority's overall Housing Strategy. Provided the criteria are met then an application to the Secretary of State for permission is not required.

- 5.3 To implement a Selective Licensing Scheme, Section 80(9) of the Housing Act 2004 states that when considering designating an area the local housing authority must:
- take reasonable steps to consult persons who are likely to be affected by the designation, and,
  - consider any representations made in accordance with the consultation.
- 5.4 Local housing authorities are required to conduct a full consultation. This should include consultation of 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. It should also include local residents and those who operate businesses or provide services in the surrounding area outside of the proposed designation that could be affected. Local housing authorities should ensure that the consultation is widely publicised using various channels of communication.
- 5.5 If the designation does not require the confirmation of the Secretary of State because of its extent the local housing authority must consult on the proposed scheme for at least 10 weeks. The guidance recommends that if the scheme requires confirmation the local housing authority should aim to consult for at least 12 weeks unless there are special reasons for not doing so.
- 5.6 The consultation should be informative, clear and to the point, so the proposal is readily understood. It should inform local residents, landlords, letting agents and businesses about the proposed designation, giving the reasons for proposing it, why alternative remedies are insufficient, demonstrating how it will tackle specific problems together with other specified measures, and describing the proposed outcome of the designation. It should also set out the proposed fee structure and level of fees the authority is minded to charge (if any). Consultees should be invited to give their views, and these should all be considered and responded to.
- 5.7 Once the consultation has been completed the results should then be published and made available to the local community. This should be in the form of a summary of the responses received and should demonstrate how these have either been acted on or not, giving reasons.
- 5.8 This report is recommending to consult on the preferred option in accordance with the requirements of the Secretary of State for a period of 12 weeks.

## **6. CONCLUSION**

- 6.1 Evidence from the research carried out by Mayhew Harper Associates provides a strong case for citywide additional licensing and the introducing selective licensing of all private rented properties in the worst affected wards in the city. It is noted that the evidence does not fully support city-wide selective licensing (Option 1) and that a smaller scheme within the 20% thresholds set by the

Secretary of State (Option 4) would not make as much impact on the scale of need identified.

- 6.2 In considering legislative requirements and those of government guidance, the introduction of citywide additional licensing and selective licensing in the worst affected wards or areas (Options 2 & 3) seem a proportionate, reasonable and strategic response to the issues with management, standards and antisocial behaviour affecting some of the city's private rented sector that existing (or other potential) interventions have not been able to resolve, nor is there any indication that they could resolve the problems experienced by so many of the city's residents.
- 6.3 Option 2 is the closest fit with the requirements of the Secretary of State and whilst Option 3 allows for effective management of future expansion of the private rented sector, it is not clear whether the boundaries we suggest would be permitted. Whilst this option is not being actively pursued, as part of any proposed consultation, stakeholders in adjoining areas to a proposed Selective Licensing scheme would be asked their views which will be considered as part of any final analysis. This could result in a final scheme proposal that goes beyond the boundaries of the worst affected wards to cover the worst affected areas and allow for some growth in the private rented sector.
- 6.4 It is recommended to consult stakeholders for 12 weeks on Option 2, Citywide Additional HMO Licensing and Selective Licensing on the other private rented sector homes in the 12 worst affected wards:
- 1 St. Peter's & North Laine
  - 2 Regency
  - 3 Moulsecoomb & Bevendean
  - 4= Hollingdean & Stanmer
  - 4= Queen's Park
  - 6 Hanover & Elm Grove
  - 7= Brunswick & Adelaide
  - 7= East Brighton
  - 9 South Portslade
  - 10 Central Hove
  - 11 Westbourne
  - 12 Preston Park
- 6.5 The proposed Additional Licensing scheme would cover all properties defined as HMOs under the Housing Act 2004 that are not covered by mandatory HMO licensing or exempt under Schedule 14 of the Act (such as those managed by local authorities, registered providers and educational establishments). This scheme would include all properties with three or more occupiers who form two or more households and who share a kitchen, bathroom or toilet. This would not include live-in landlords with two or fewer lodgers (unless that dwelling is itself within an HMO). This proposed scheme goes beyond the current Additional Licensing scheme to include single storey HMOs (flats).
- 6.6 The Selective Licensing scheme would include all other private rented homes in the designated areas. The landlord who would be required to obtain the licence, not the occupiers. Again, this would not include live-in landlords with two or fewer

lodgers, unless that landlord is private renting themselves (in which case the landlord of the flat will be required to obtain the licence).

- 6.7 In addition to the consultation on preferred options, the authority is required to publish and consult on the proposed fee structure and any changes to the HMO Standards as part of this.
- 6.8 It should be noted that if the consultation supported the introduction of further licensing as per Option 2, then before a Selective Licensing scheme could be introduced, permission must be sought from the Secretary of State.

## 7. FINANCIAL & OTHER IMPLICATIONS:

### Financial Implications:

- 7.1 The cost of undertaking a joint consultation exercise for both the additional licensing and selective licensing schemes is estimated as £0.030m. If the council consulted on the additional scheme only (recommendation 2.2 (1), then this would cost an estimated £0.025m, for the selective scheme only (recommendation 2.2 (2)), costs are estimated as £0.020m. The consultation exercise will be carried out by independent consultants, procured through a competitive process. These costs are one-off and will be met from 2016/17 underspends within the Housing Strategy service. It is difficult to quantify the financial implications of any final scheme at this stage because the costs will be defined by the size and nature of the scheme which will be determined following consultation with stakeholders and reported to this committee.

*Finance Officer Consulted: Monica Brooks*

*Date: 04/11/2016*

### Legal Implications:

- 7.2 The criteria and procedures for the introduction of additional and selective licensing in parts 2 and 3 respectively of the Housing Act 2004 are very prescriptive. Failure to adhere to the requirements may leave the council vulnerable to challenge by way of judicial review in the High Court. A number of local authorities, such as Hyndburn, Thanet and Enfield have found their decisions to introduce licensing schemes challenged in this way.
- 7.3 **Additional Licensing:** Local housing authorities may designate either an area within their district or the whole district as being subject to additional licensing. A designation may apply to certain descriptions of HMOs or to all HMOs (other than those subject to mandatory licensing) in the designated area. An authority may not make an additional licensing scheme unless it has identified that a significant proportion of the HMOs of the description to which the scheme is intended to apply are being managed sufficiently ineffectively so that they are causing, or have potential to cause, particular problems either for the occupiers of the HMOs or members of the public (including anti-social behaviour). An authority must ensure that the decision to make a designation is consistent with its overall housing strategy. In particular, it must, ensure that the making of the designation is co-ordinated with its approach to combating homelessness, anti-social behaviour and empty homes in the private rented sector and the measures available to it to deal with those problems, as well as the work of other agencies

(such as the police, the voluntary sector and ASB practitioners, social services etc) in tackling those matters.

- 7.4 **Selective Licensing:** A selective licensing designation may only be made if the area to which it relates satisfies one or more of the following conditions - low housing demand; a significant and persistent problem caused by anti-social behaviour; poor property conditions; high levels of migration; high level of deprivation; high levels of crime. In considering whether to designate an area for selective licensing on the grounds above on property conditions, migration, deprivation and crime the local housing authority may only make a designation if the area has a high proportion of property in the private rented sector. When considering whether to make a selective licensing designation a local housing authority must first identify the objective or objectives that a designation will help it achieve. In other words it must identify whether the area is suffering problems that are caused by or attributable to any of the criteria for making the designation and what it expects the designation to achieve - for example, an improvement in property conditions in the designated area. Secondly, it must also consider whether there are any other courses of action available to it that would achieve the same objective or objectives as the proposed scheme without the need for the designation to be made. If the problems of anti-social behaviour are only associated with a small number of properties a local housing authority should consider making a Special Interim Management Order, rather than a selective licensing designation covering properties with regard to anti-social behaviour. Only where there is no practical and beneficial alternative to a designation should a scheme be made. If the local housing authority decides there is no practical and beneficial alternative to the scheme, it must only make the designation if it is satisfied that the scheme will significantly assist it in achieving its objective or objectives, with other actions the local housing authority may be taking. Any designation made must ensure that the exercise of the power is consistent with the council's overall housing strategy and seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector as regards combining licensing with other action taken by them or others.
- 7.5 **Consultation:** Before introducing either sort of scheme, the council is statutorily required to take reasonable steps to consult persons who are likely to be affected by the designation. Case law has determined that to be proper, the consultation should be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken. The Secretary of State's Guide for local authorities on "Selective licensing in the private rented sector" interprets those principles, and advises that, " The consultation should be informative, clear and to the point, so the proposal is readily understood. It should inform local residents, landlords and letting agents and businesses about the proposed designation, giving the reasons for proposing it, why alternative remedies are insufficient demonstrating how it will tackle specific problems together with other specified measures, and describing the proposed outcome of the designation."

- 7.6 **Confirmation or General Approval:** The designation of an area as subject to additional licensing or selective licensing cannot come into force unless it has been confirmed by the appropriate national authority (the Secretary of State) or it falls within a description of designations in relation to which the Secretary of State has given a General Approval. The current general approval is “The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of other Residential Accommodation (England) General Approval 2015.” For additional licensing schemes, local authorities can rely on the General Consent provided that the consultation period with persons who are likely to be affected is at least 10 weeks. At least 10 weeks consultation is required under the General Consent for selective designations, but that is only available where the authority is designating less than 20% of its geographical area, or the designation affects less than 20% of privately rented homes in the local authority area.

*Lawyer Consulted: Liz Woodley*

*Date: 01/11/2016*

Equalities Implications:

- 7.7 In seeking to tackle poor management, quality standards and anti-social behaviour, it is expected that any licensing scheme would have a positive impact on tenants including those with protected characteristics. A full equalities impact assessment would be undertaken in relation to any discretionary licensing scheme recommended to Housing & New Homes Committee for approval. This assessment would incorporate the relevant findings of the stakeholder consultation to help inform decision making.

Sustainability Implications:

- 7.8 The evidence has identified poor property conditions in the private rented sector. Action to tackle this is expected to improve the quality of the city’s housing stock, thereby improving its sustainability.

Crime & Disorder Implications:

- 7.9 The evidence has identified anti-social behaviour linked to properties in the private rented sector. Action to tackle this is expected to reduce anti-social behaviour and nuisance associated with these properties.

Risk and Opportunity Management Implications:

- 7.10 Should the stakeholder engagement support the need for further discretionary licensing across Brighton & Hove, the scale of such a scheme would require careful planning in terms of making sure the fees structure reflected the need for sufficient staffing and resources are in place to effectively implement and manage the scheme.

Public Health Implications:

- 7.11 Poor housing conditions, management and anti-social behaviour impact negatively on health. Improvements to housing quality and management will have a positive health impact on tenants and neighbours.

Corporate / Citywide Implications:

- 7.12 The long term impact will be a higher quality and better managed private rented sector to the benefit of owners, tenants and neighbours. Improvements sought in

management and standards and reductions in anti-social behaviour related to private rented homes will have wider beneficial impacts identified in the report.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. The case for an extension to discretionary property licensing in Brighton & Hove, Mayhew Harper Associates, 2016

### **Documents in Members' Rooms**

None

### **Background Documents**

1. Update on Private Rented Sector Scrutiny Panel Recommendations, Housing & New Homes Committee, 21 September 2016: <http://present.brighton-hove.gov.uk/mgconvert2pdf.aspx?id=100151>
2. Brighton & Hove Fairness Commission Report 2016: <https://www.brighton-hove.gov.uk/sites/brighton-hove.gov.uk/files/Report%20-%20Fairness%20Commission.pdf>
3. Scrutiny Panel Report on Private Sector Housing, Housing & New Home Committee, 17 June 2015: <http://present.brightonhove.gov.uk/ieListDocuments.aspx?CId=884&MId=5928&Ver=4>
4. Report on Private Sector Housing (PSH) Discretionary Licensing Update, Housing & New Homes Committee, 13 January 2016: <http://present.brighton-hove.gov.uk/mgconvert2pdf.aspx?id=91179>
5. Brighton & Hove Housing Strategy 2015: <http://www.brighton-hove.gov.uk/content/housing/general-housing/housing-strategy-2015>
6. Selective licensing in the private rented sector: A Guide for local authorities, Department for Communities & Local Government 2015: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418551/150327\\_Guidance\\_on\\_selective\\_licensing\\_applications\\_FINAL\\_updated\\_isbn.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418551/150327_Guidance_on_selective_licensing_applications_FINAL_updated_isbn.pdf)
7. Consultation: Houses in Multiple Occupation and residential property licensing reforms, DCLG, October 2016: [https://www.google.co.uk/url?url=https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/560774/161018\\_HMO\\_CONSULTATION.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwj366ugvOnPAhVLBsAKHdifC7AQFggUMAA&usg=AFQjCNFMPaMlauPBUu55Cd4yibFcuKM7ow](https://www.google.co.uk/url?url=https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/560774/161018_HMO_CONSULTATION.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwj366ugvOnPAhVLBsAKHdifC7AQFggUMAA&usg=AFQjCNFMPaMlauPBUu55Cd4yibFcuKM7ow)