

**Subject:** Private Sector Housing: Discretionary Licensing Evidence

**Date of Meeting:** 15 March 2023

**Report of:** Executive Director Housing, Neighbourhoods & Communities

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**Ward(s) affected:** All

## FOR GENERAL RELEASE

### 1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The significant growth in private rented sector housing in Brighton & Hove remains a key theme for the city with just under one in three households in the city renting privately. While many landlords operate responsibly, there are concerns that a some do not. As a result issues are raised in relation to the management, standards and quality of homes in this expanding sector. Improving the quality and management of homes in the private rented sector over the period 2019-2023 has been a key area of focus in the Housing Committee Work Plan.
- 1.2 On 28 September 2022 Housing Committee was notified that consultants had been appointed and commenced the selective licensing feasibility study in September 2022.
- 1.3 Subsequently, this independent research has concluded that there is sufficient evidence to demonstrate a significant proportion of Houses in Multiple Occupation (HMO) are being managed sufficiently ineffectively to support the introduction of citywide Additional HMO licensing to smaller HMO's. It also demonstrated support for the introduction of Selective Licensing. Options for this were considered (please see 3.31 of the report) and the preferred option (Option 3) is to introduce a selective licensing designation in four wards in the city on the grounds of poor property conditions and deprivation with a further designation option in 13 wards on the grounds of poor property conditions.
- 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
  - reviews the existing Brighton & Hove Additional HMO licensing scheme
  - seeks Member approval to carry out formal consultation on the preferred option for extending licensing across Brighton & Hove.

## **2. RECOMMENDATIONS**

- 2.1 That Housing Committee notes the findings of the Private Sector Housing: Housing Stock Condition & Stressors Report that evidences the need for a citywide approach to discretionary licensing (Appendix 1).
- 2.2 That Housing Committee approves Option 3 (see 3.31), which will be subject to 12 weeks of consultation (to commence once a revised fee structure is agreed by Members) . This is:

- (1) Citywide Additional HMO Licensing covering properties which have two or more storeys and three or more tenants are living there as more than one household.
- (2) Selective Licensing on all non-HMO private rented sector homes in four wards where the evidence demonstrates a clear link between poor property conditions, deprivation and private rented homes. These wards<sup>1</sup> are: Kemptown, Moulsecoomb & Bevendean, Queen's Park and Whitehawk & Marina.

With a further option in 13 wards in the city on the grounds of poor property conditions. These wards are: Brunswick & Adelaide, Central Hove, Goldsmid, Hanover & Elm Grove, Hollingdean & Fiveways, Preston Park, Regency, Rottingdean & West Saltdean, Round Hill, South Portslade, West Hill & North Laine, Westbourne & Poets Corner and Wish.

- 2.3 That Housing Committee notes that the Budget Review Group has provided £100,000 to fund non-recoverable costs (such as consultation) needed in developing a scheme and that budget council has allocated a further £20,000.
- 2.4 That Housing Committee requests the findings of the consultation and appropriate recommendations be brought back to a future committee for Member decision.

## **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 2021, the Census reported that the Private Rented Sector stood at 39,937 homes, 32.9% of all housing stock in the city and the 11<sup>th</sup> largest in England and Wales outside of London.
- 3.2 The sector increased by 1.9%, between 2011 and 2021. Three wards have half or more than half of households in homes rented through private landlords or lettings agents.
- 3.3 17 of the new 23 wards due to come into effect in May 2023 exceed the national average of 20.3%<sup>2</sup> of households living in private rented homes (figure 1). This

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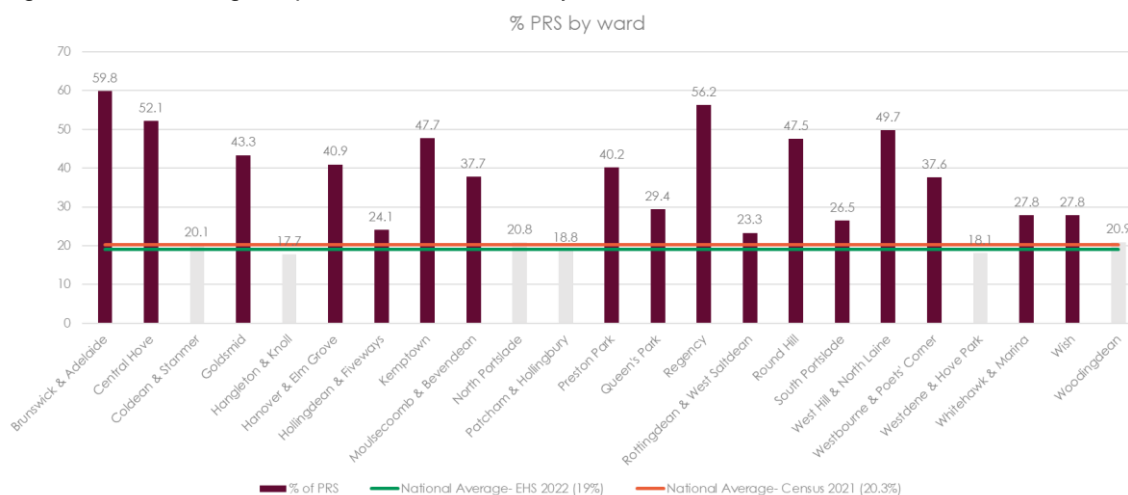
<sup>1</sup> New Brighton & Hove wards from May 2023

<sup>2</sup> Office for National Statistics Tenure type - Census 2021

means that six wards in the city can not be considered for a selective licensing scheme as they fall short of the required threshold of being above the national average.

- 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.

Figure 1 - Percentage of private rented sector by ward



- 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 with five or more occupiers consisting of two or more households 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 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 PRS or more of the following conditions<sup>3,4</sup>:

<sup>3</sup> As amended by The Selective Licensing of Houses (Additional Conditions) (England) Order 2015

<sup>4</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)

- 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 (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>Property inspection</b>	Yes	Yes	Risk based (but not statutory)
<b>Conditions can be attached to require upgrades to heating, fire safety etc</b>	Yes	Yes	No
<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	At least 10 weeks
<b>Designation criteria</b>	None	Ineffective HMO management and standards	Low demand, migration, deprivation, poor quality, anti-social behaviour, crime
<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, unlimited fines and/or a rent repayment order.
- 3.11 Concerns about the impact of HMOs on tenants and communities led to the introduction of Additional Licensing of smaller HMOs within the city. The first scheme launched in 2012 covering 5 wards near to the Lewes Road area of Brighton and a second scheme launched in 2015 covering 7 city centre and coastal wards. A third scheme covering all wards within Brighton & Hove launched in 2018 and expired on 28 February 2023.
- 3.12 A number of properties within the third scheme still require reinspecting to check that the special conditions have been compiled with. The Private Sector Housing Team are able to complete these visits within six months of the current scheme expiring and will set up a programme of visits in order to achieve this.
- 3.13 Evidence from the latest Additional Licensing of HMOs in Brighton & Hove has highlighted that in over 8 in 10 (82%) current cases<sup>5</sup>, the properties required improvements to ensure they are fit and safe for occupation. Whilst these improvements are benefitting an estimated 5,500 tenants, the city's licensing only covers 10% of the private rented sector.
- 3.14 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. Licensing has encouraged a positive interaction with landlords and allowed for any problems presented by each property to be managed on an individual basis.
  - **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 to HMO's whereby housing conditions are being proactively assessed and improved across an area. Communities also know who is responsible for the management of properties that are rented out.
- 3.15 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

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<sup>5</sup> 1,571 of 1,913 licensed properties as of 7 February 2023

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.

- 3.16 The Council Plan 2020-23 has housing as a key objective 'A city to call home'. Within this there is a focus on improving access to good quality housing, improving private rented housing and making better use of existing housing capacity. The Housing Committee work plan 2019-23 further embeds this commitment with a range of actions related to improving private rented housing.
- 3.17 The Homelessness and Rough Sleeping Strategy 2020-25 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**

- 3.18 Cadence Innova working with Metastreet, 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. A copy of [Cadence's feasibility review](#) is available on the councils' website. The Housing Stock Condition and Stressors Report outlining the evidence is attached as Appendix 1 with the main points summarised below.
- 3.19 In analysing the evidence, it is important to link incidents of disrepair and other evidence 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 database that identifies which homes are privately rented.
- 3.20 Cadence were selected to carry out the research as with Metastreet they presented a unique methodology to predict which properties are most likely to be private rented dwellings. Metastreet's Tenure Intelligence (Ti) methodology Ti uses big data and machine learning in combination with expert housing knowledge to accurately predict a defined outcome at the property level.
- 3.21 This methodology used a combination of indicators after discounting social housing to determine the likely number of privately rented homes in the city. 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 at Appendix 1.
- 3.22 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
  - crime

3.23 The Metastreet research focussed on poor property conditions, significant and persistent anti-social behaviour (ASB) and deprivation, analysing a number of data sources. These included

- Council ASB including noise complaints
- Requests for Assistance (RFAs) to the council's Private Sector Housing Team regarding property disrepair
- Licensing data
- Prosecutions and fines
- Energy Performance Certificates data
- Tenancy deposit schemes
- Indices of Multiple Deprivation

3.24 On analysing the data, the evidence shows that:

- Data from Indices of Multiple Deprivation confirm that 4 of the new wards within the city are in the 30% most deprived wards in the country (figure 2).
- There is predicted high levels of poor property conditions within HMO's and the wider private rented sector (figure 3 and 4)
- There was not sufficient evidence to link ASB to HMO's and the private rented sector.

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Figure 2: Indices of Multiple Deprivation levels by ward

IMD 2019 Decile (weighted by population)

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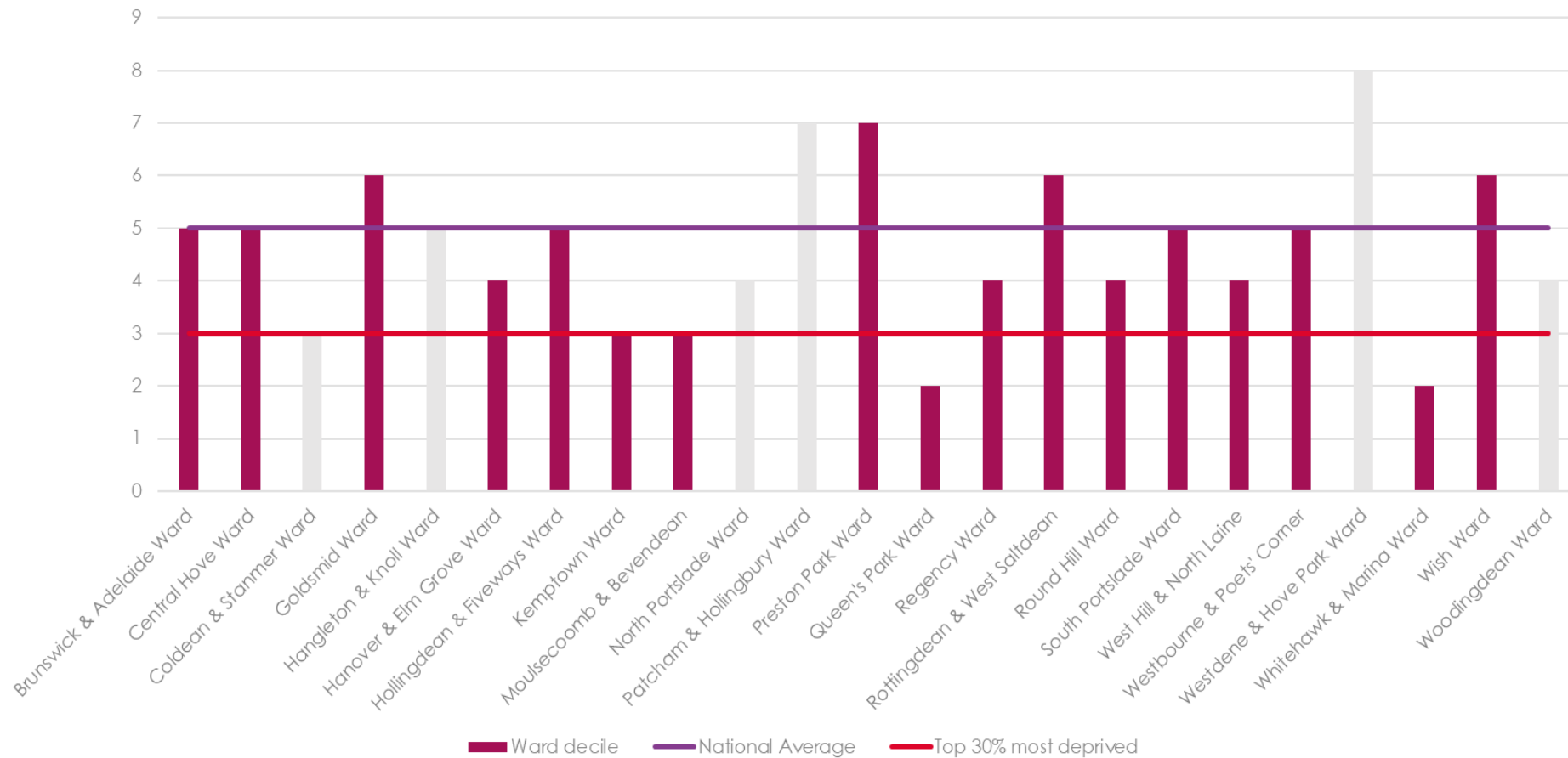




Figure 3: Predicted category 1 and 2 hazards per 100 properties by ward

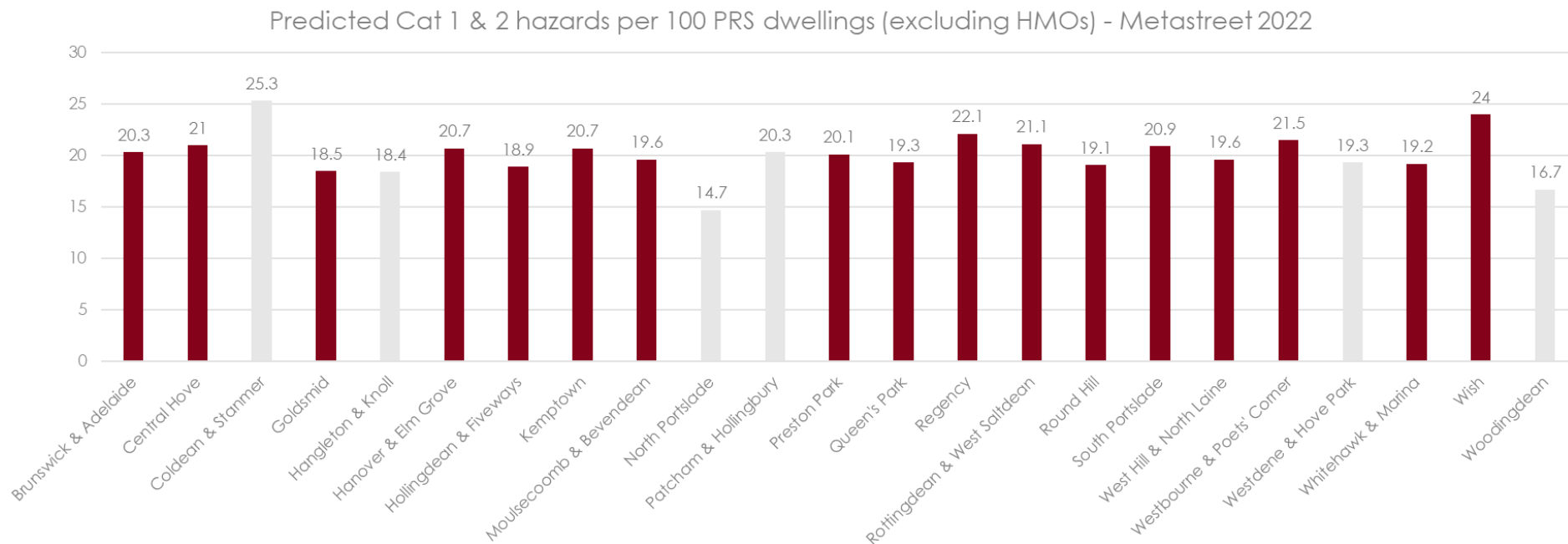


Figure 4 – HMO data by ward – levels of recorded ASB and predicted hazards

Wards (May 2023)	No. HMOs (known)	Recorded ASB	No. Cat 1 & 2 hazards (predicted)
Brunswick & Adelaide	281	11	192
Central Hove	227	18	140
Coldean & Stanmer	272	27	177
Goldsmid	218	9	128
Hangleton & Knoll	65	0	50
Hanover & Elm Grove	898	127	455
Hollingdean & Fiveways	349	50	208
Kempton	427	31	224
Moulsecoomb & Bevendean	953	113	501
North Portslade	18	1	11
Patcham & Hollingbury	73	9	40
Preston Park	307	37	176
Queen's Park	247	28	145
Regency	363	18	207
Rottingdean & West Saltdean	61	0	44
Round Hill	598	118	325
South Portslade	71	2	43
West Hill & North Laine	449	35	267
Westbourne & Poets' Corner	148	8	85
Westdene & Hove Park	107	5	59
Whitehawk & Marina	146	20	77
Wish	105	6	74
Woodingdean	41	2	27

3.25 In addition, a review of the existing citywide Additional HMO Licensing Scheme has taken place. This five-year scheme was introduced in 2018 and applied to smaller HMO's. As of 7 February 2023, the council had received 1,913 applications of which 9 were at application stage, 38 at draft licence scheme and 1,866 at full licence stage<sup>6</sup>.

3.26 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 3,759 special conditions being attached to licences<sup>7</sup>. This has resulted in improvements in 1,571 homes, benefitting an estimated 5,500 tenants. Under the previous two Additional Licensing Schemes 10,800 special conditions were applied. This difference in volume is representative of the level of improvements that were made through the initial schemes. This demonstrates the impact that licensing can have when the council is able to take a proactive approach.

<b>Special Conditions</b>	<b>Additional HMO Licensing</b>
<b>Total special conditions applied</b>	3,759
<b>Licensed properties with special conditions applied</b>	1,571
<b>Percent of Fully Licensed Properties with Special conditions</b>	82%
<b>Estimated number of tenants benefitting (at 5 per HMO)</b>	5,500

- *As of 7 February 2023*

3.27 The conditions applied cover a range of housing quality issues.

<b>Special Conditions</b>	<b>Additional HMO Licensing</b>
<b>Other Fire Works</b>	930
<b>Management / Repairs</b>	964
<b>Structural Fire Works</b>	523
<b>Fire Alarms</b>	397
<b>Ventilation</b>	189
<b>Electrical Works</b>	109
<b>Loft Insulation</b>	85
<b>Additional Facilities</b>	76
<b>Enlargement Of Bedrooms</b>	475
<b>Enlargement of Kitchens</b>	7
<b>Gas Certificates</b>	4

<sup>6</sup> During the life of the scheme more properties were licenced but when national legislation changed on the mandatory scheme in 2018 approximately 400 properties were eligible under this scheme.

<sup>7</sup> A single property have one or more special conditions attached to it.

Special Conditions	Additional HMO Licensing
<b>Total</b>	<b>3,759</b>

3.28 The council monitors compliance against conditions and inspects properties in order to ensure they have been completed. At the end of January 2023 66.3% of HMOs with special conditions had complied with these. This is an indicator that has steadily risen over a period of time and is expected to increase further as the remaining visits to sign off the conditions are completed.

3.28 During the life of the scheme 1,802 requests for assistance were made about HMO's within the Additional Licensing scheme which accounted for 11% of all requests for assistance during this period. The level of 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 resulting in hazards continuing to be identified
- Level of proactive property management is variable

A scheme is also still necessary as new HMO's continue to enter the market or there has been a change in ownership resulting in the need for the property to be licenced again. There will also be HMO's that the council are not aware of and that require licensing. Whilst the schemes to date demonstrate a substantial reduction in hazards and improvements required, improvements are still being identified. Licensing enables the council to be proactive in its involvement with the sector minimising reactive work.

## Options

3.29 Two Housing Committee member workshops were held on the 1 and 22 February 2023 to review the evidence and options for discretionary licensing in the city. The first workshop considered both an Additional Licensing Scheme and a Selective Licensing Scheme. Evidence supported an Additional Licensing Scheme for smaller HMO's on a city wide basis. Options for a Selective Licensing Scheme were based on the English Housing Survey national average percentage of private rented homes (19%). This provided options for a possible selective licensing scheme in 20 of 23 wards in the city based on poor property conditions. There was also evidence of deprivation linked to five wards but the link was unclear due to the ward boundary changes and duplication with Local Super Output Areas (LSOA). It was agreed that further work would be completed to understand the linkage with deprivation.

3.30 Further analysis of deprivation was completed with LSOA data aggregated for some wards, an approach supported by Department for Levelling Up, Housing & Communities (DLUHC). A review of average levels of PRS was also undertaken as new census data released in January 2023 increased the national average to 20.3% above the previous 19%. Applying these new metrics a new option emerged which would support a phased approach to the introduction of a

selective licensing scheme. New deprivation evidence confirmed that four wards were in the 30% most deprived wards in the country. A first phase of a scheme could include these wards on the basis of poor property conditions and deprivation. This scheme would be 16% of the private rented stock and 15.6% of the geographical area meaning that Secretary of State approval would not be required. A 2<sup>nd</sup> phase could also be considered for a further 13 wards based on poor property conditions. An application would need to be made to the Secretary of State for a second phase.

3.31 Taking this new information into account three options were considered with Option 3 the preferred option. The table below highlights the three options in more detail.

<b>Option 1:</b>		
<ul style="list-style-type: none"> <li>• <b>Selective licensing scheme in 17 wards on poor property conditions</b></li> <li>• <b>City wide Additional Licensing Scheme</b></li> </ul>		
<b>Option Description</b>	<b>For</b>	<b>Against</b>
<p>Introduce a Selective Licensing Scheme in the worst affected wards on the basis of poor property conditions. An Additional Licensing Scheme citywide.</p>	<ul style="list-style-type: none"> <li>• Includes a large proportion of private sector homes</li> <li>• It can be demonstrated to be meeting our strategic aims.</li> </ul>	<ul style="list-style-type: none"> <li>• Would require Secretary of State approval</li> <li>• Does not include link to deprivation</li> <li>• Would be a very large scheme c40,000 properties which would be challenging to introduce.</li> <li>• Significant investment required to mobilise a scheme of this scale.</li> <li>• Significant staff resources would be required to run a scheme</li> </ul>

<b>Option 2:</b>		
<ul style="list-style-type: none"> <li>• <b>Selective licensing scheme in four wards based on poor property conditions and deprivation only</b></li> <li>• <b>City wide Additional Licensing Scheme</b></li> </ul>		
<b>Option Description</b>	<b>For</b>	<b>Against</b>
<p>Introduce a Selective Licensing Scheme in the worst affected wards on the basis</p>	<ul style="list-style-type: none"> <li>• This option draws upon two criteria affecting four wards in the city and provides a stronger evidence base. It</li> </ul>	<ul style="list-style-type: none"> <li>• Does not include a 2<sup>nd</sup> phase and any future selective licensing schemes would be subject to a separate consultation</li> </ul>

<p>of poor property conditions. An Additional Licensing Scheme citywide.</p>	<p>would tackle the worst affected properties first</p> <ul style="list-style-type: none"> <li>• It would not require Secretary of State approval</li> <li>• It will cover approximately 7,900 properties which is more manageable to introduce.</li> </ul>	<ul style="list-style-type: none"> <li>• Does not reflect wider evidence of poor property conditions in other wards in the city</li> </ul>
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<b>Option 3:</b> <ul style="list-style-type: none"> <li>• Phased selective licensing scheme</li> <li>• City wide Additional Licensing Scheme</li> </ul>		
<b>Option Description</b>	<b>For</b>	<b>Against</b>
<p>Introduce a Selective Licensing Scheme on a phased basis. Phase 1 - four wards on grounds of poor property conditions and deprivation with the option for a 2<sup>nd</sup> phase of 13 wards based on poor property conditions</p> <p>An Additional Licensing Scheme citywide</p>	<ul style="list-style-type: none"> <li>• First phase draws upon two criteria affecting four wards in the city and would not require Secretary of State approval.</li> <li>• Will cover approximately 7,900 properties</li> <li>• It would allow the council to consult on the larger selective licensing scheme at the same time as the consultation for the citywide additional and the smaller selective licensing scheme in 4 wards</li> <li>• A phased approach reduces the risks in introducing a scheme</li> <li>• Provides opportunities to learn operationally before a larger scheme is introduced</li> <li>• It can be demonstrated to be meeting our strategic aims.</li> </ul>	<ul style="list-style-type: none"> <li>• 2<sup>nd</sup> phase subject to Secretary of State consent which may not be granted</li> <li>• The 2<sup>nd</sup> phase would need to be referred to the Secretary of State within a specified timeframe</li> <li>• Would become a very large scheme c40,000 properties which would remain challenging to introduce.</li> <li>• Upfront investment would be required to mobilise the scheme.</li> <li>• Significant staff resources would be required to run a scheme.</li> </ul>

### Proposed fee structure

3.32 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 2017. This current fee structure does not include Selective Licensing since we do not have such a scheme in the city.

- 3.33 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. The fee structure will be a two tier process, the application fee and if successful the licence fee.
- 3.34 With the potential for 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.
- 3.35 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.

3.36 **Outline timeframe**

Subject to Housing Committee permission to consult:

- 3 months: Recruit a Programme Manager and procure consultation provider
- Housing Committee report on proposed fee structure
- 3 months: Consultation (12 weeks)
- 2 months: Review results and compile
- Housing Committee report on consultation findings

If further discretionary licensing is subsequently proposed and approved by Committee:

- Secretary of State application (if necessary)
- 3 months: Designation notice of schemes
- Scheme go live for Additional Licensing Scheme/Selective Licensing Scheme if Secretary of State approval is not required.

- 3.37 Any selective licensing scheme timeline could be subject to extension if Secretary of State approval is required. The timeframe may also be affected by any challenge to proposals or process through judicial review.

#### 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 Four 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
- 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.

<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>• Not a viable option. If no action is taken, the significant problems with poor housing conditions will continue and are likely to increase further as the private rented sector continues to grow.</li> <li>• Community concerns not addressed</li> <li>• Concerns of people renting not addressed</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 and may lead to</li> </ul>	<ul style="list-style-type: none"> <li>• Reactive intervention not strategic</li> <li>• No impact beyond the subject property</li> <li>• Wider issues in rented stock not addressed</li> <li>• Key issues (amenities, space, health and safety) would be overlooked</li> </ul>



using existing powers	<p>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>	<ul style="list-style-type: none"> <li>• Underreporting due to fear of retaliatory eviction</li> <li>• Labour-intensive, so costly</li> <li>• Council funded</li> <li>• The absence of licensing significantly reduces the scope of the council to impose civil penalties in respect of identified housing breaches.</li> </ul>
<b>Option C: Use of Interim Management Orders</b>		
<b>Option Description</b>	<b>For</b>	<b>Against</b>
Interim Management Orders 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	<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> <li>• Removes landlord responsibilities and transfers to responsible nominated agent</li> <li>• Improves property standards</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 lead 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> <li>• Does not tackle poor management</li> <li>• Represents a last resort intervention</li> </ul>
<b>Option D: Area-Based Voluntary Accreditation</b>		
<b>Option Description</b>	<b>For</b>	<b>Against</b>
Accreditation schemes are a set of standards (or	<ul style="list-style-type: none"> <li>• Accreditation's proven track record in parts of the country</li> </ul>	<ul style="list-style-type: none"> <li>• Accreditation would tend to attract the responsible landlord, be</li> </ul>

<p>codes) relating to the management or physical condition of privately rented accommodation that recognise and reward landlords who manage their properties to a good standard</p>	<ul style="list-style-type: none"> <li>• Easy set-up through access to existing local and national Accreditation models</li> <li>• Rewards responsible landlords for their efforts</li> <li>• Prospective tenants signposted to quality accommodation run by responsible landlords</li> </ul>	<p>ignored by the irresponsible</p> <ul style="list-style-type: none"> <li>• No particularly strong incentive for poor agents/landlords to join</li> <li>• Brighton &amp; Hove is a high demand area – impact of area-based accreditation likely to be minimal</li> <li>• This requires voluntary landlord engagement. Our experience is that attendance/membership is usually only by a relatively small proportion of landlords.</li> <li>• The national membership schemes are currently available but have not had a significant uptake or provided the necessary improvements in the borough.</li> </ul>
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## 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 discretionary licensing consultations in 2017 and the Homeless and Rough Sleepers Strategy 2020-25. 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 10 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 is also important that it is accessible to landlord who may not reside in the area but have let properties in the City. 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 for a period of 12 weeks.

## **6. CONCLUSION**

- 6.1 Evidence from the research carried out by Cadence provides a strong case for citywide additional licensing and the introducing selective licensing of all private rented properties in four wards in the city with an option to phase in a second scheme (subject to Secretary of State approval).
- 6.2 In considering legislative requirements and those of government guidance, the introduction of citywide additional licensing and selective licensing in four wards seem a proportionate, reasonable and strategic response to the issues with management and standards affecting some of the city's private rented sector that existing (or other potential) interventions have not been able to resolve.

## **7. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 7.1 There is currently £0.120m one-off resources in 2023/24 to pay for the support and consultation necessary to introduce further licensing (discretionary and/or selective) in the city. A one-off £0.100m budget for 2022/23, was originally earmarked for the feasibility for an ethical lettings company has now been earmarked for this purpose by the Budget Review Group and will be carried forward to 2023/24. Budget Council 23 February 2023 allocated a further £0.020m 'to increase resources available for the consultation on Private Rented Sector licensing in 2023/24'. If the cost exceeds £0.120m, it will need to be managed within current budget resources for 2023/24. This will be monitored as part of the Targeted Budget Monitoring (TBM) process during 2023/24.

*Finance Officer Consulted: Monica Brooks*

*Date:27/2/23*

Legal Implications:

- 7.2 This is a statutory process and one which must be adhered too. As we have reached the point of consultation, this has to be carefully considered and to be fully aligned with the general principles of consultation. The consultation must be accessible to relevant persons including landlords who do not reside in the area. Failure to consult properly could lead to a judicial review. Once the consultation is completed it will have to be considered in detail and not simply be considered as a formality.

*Lawyer Consulted: Simon Court*

*Date: 28.02.23*

- 7.3 Equalities Implications:

In seeking to tackle poor management and quality standards 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 Committee for approval. This assessment would incorporate the relevant findings of the stakeholder consultation to help inform decision making.

- 7.4 Sustainability Implications:

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.

- 7.5 Crime & Disorder Implications:

None

- 7.6 Risk and Opportunity Management Implications:

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.

The proposed scheme would require Secretary of State approval which may not be successful. In addition, the proposed scheme could be challenged by landlords incurring additional costs, delays and/or schemes being rejected.

#### 7.7 Public Health Implications:

Poor housing conditions, impact negatively on health. Improvements to housing quality and management will have a positive health impact on tenants and neighbours. Adhering to standards can also lead to lower carbon emissions, improved energy efficiency and reduced fuel poverty,

#### 7.8 Corporate / Citywide Implications:

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 related to private rented homes will have wider beneficial impacts identified in the report.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Appendix 1: Private Sector Housing: Housing Stock Condition and Stressors Report, Metastreet March 2023

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

None

### **Background Documents**

1. [Selective licensing in the private rented sector: A Guide for local authorities, Department for Communities & Local Government 2015 \(last updated June 2022\):](#)
2. [Feasibility Review, Cadence Innova, March 2023](#)

