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## **SELECTIVE LICENSING IN CLIFTONVILLE WEST AND MARGATE CENTRAL**

To: **Cabinet – 30 July 2015**

Main Portfolio Area: **Community Services**

By: **Richard Hopkins, Housing Regeneration Team Leader**

Classification: **Unrestricted**

Ward: **Cliftonville West and Margate Central**

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**Summary:** **The council's existing selective licensing designation in Margate is due to expire on 20 April 2016. This report seeks the agreement of Cabinet to undertake a public consultation with a view to exploring the possibility of making a further five-year designation.**

### **For Decision**

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#### **1.0 Introduction and Background**

- 1.1 In 2011, the council designated certain parts of Cliftonville West and Margate Central as a selective licensing area for the maximum permitted period of five years. Unless subject to exemption, all privately rented properties in the area must be licensed with the council. As around 70% of dwellings are in the private rented sector (national average 19%), the majority of homes are affected by the designation. A map showing the designated area is provided in Annex 1.
- 1.2 Selective licensing was introduced to help tackle low housing demand, poor housing conditions and anti-social behaviour (ASB) and is part of the council's wider regeneration activities in Margate. The scheme requires all landlords to effectively manage their properties. Licences include conditions regarding occupancy restrictions and management standards, including responsibilities relating to tenant referencing; the use of written agreements for occupation; anti-social behaviour; waste management; property maintenance; and furniture, electrical, gas and fire safety.
- 1.3 The decision to designate the current scheme in 2011 was subject to judicial review in the High Court. While the claim failed, there was a significant delay in the case being heard. As such, for much of the first two years of the designation, enforcement was extremely difficult. This shortened the effective life of the scheme.
- 1.4 The current designation expires on 20 April 2016 and this report sets out the options for selective licensing going forward.

#### **2.0 The Current Situation**

- 2.1 The council has published a selective licensing progress review which sets out the position as at 01 October 2014. A second review is proposed for publication shortly.
- 2.2 As of 01 April 2015, 1953 dwellings were subject to a selective licence or a valid licence application, and a further 200 suspected licensable dwellings were under investigation. Many landlords have required considerable encouragement to make

valid licence applications and so enforcement activity has been high, with more than 20 cases resulting in prosecution.

- 2.3 Licence conditions do not place unnecessary burdens on good landlords: they should already be demonstrating compliance if they are operating sound businesses. However, they are a means by which all other landlords can be encouraged (and where necessary enforced) to improve their accommodation offer. In particular, there have been significant improvements in gas, electrical and fire safety. For example, landlords are required, upon application, to provide electrical installation condition reports that are no older than five years. Many installations that had not been checked for some time were found to be unsafe and in need of remedial action. Licence holders are also required to routinely provide gas and electrical certificates at specified intervals. Over 600 licence holders had been reminded to comply with their licence conditions, owing to their failure to supply gas and/or electrical safety documentation on time.
- 2.4 The council has inspected over 850 licensed properties. Almost two-thirds (65%) of inspections have revealed concerns that require council intervention as a consequence of licensing breaches and/or health and safety hazards. Over 500 breach of condition notices have been sent to licence holders in the last two years, and since the start of the scheme, 588 homes have been made safe from health and safety hazards. Housing conditions are therefore improving.
- 2.5 Licence conditions also require landlords to effectively manage ASB, should it ever originate from one of their properties. Since the selective licensing scheme began in 2011, there has been a 28.7% reduction in ASB within the designated area. While encouraging, ASB levels remain disproportionate when compared to Thanet as a whole. In the 2014-2015 financial year, 11.3% of all Thanet's ASB complaints emanated from the designated area, yet residents only constitute 4.9% of the Thanet population.
- 2.6 In 2010, empty homes were believed to account for 20% of the housing stock in the designated area. More recent evidence from data extracted from Council Tax records on 14 April 2015 revealed that this percentage has fallen to 6.8%. While this figure remains high when compared to the Thanet average (2.8%), the trend is very much downward.
- 2.7 The designated area suffers from myriad and multifaceted problems that are entrenched and which arose out of many years of socio-economic change. Selective licensing alone cannot guarantee wholesale regeneration, but it has proved to be a powerful legislative tool that can have a tangible impact on environmental conditions and the safety and quality of accommodation available.
- 2.8 Delivering the current scheme has been challenging, having regard to the judicial review and the level on non-compliance experienced. Nevertheless, the evidence suggests that, in combination with other measures (in particular the Margate Task Force), the scheme is having a positive effect on the designated area, and that should the designation end on 20 April 2016, it would leave much undone. The hard won gains could be lost and property management standards in the private rented sector could again decline, leading to less favourable outcomes for residents. Five years will not prove to be long enough in which to effect long-lasting change.

### **3.0 Public consultation**

- 3.1 If the council decides to consider the possibility of making a further selective licensing designation, it must first consult those who are likely to be affected and carefully consider any representations made. There is a statutory minimum consultation period of 10 weeks.

- 3.2 In law, the existing designation cannot be extended. However, a new designation could be made such that it becomes operative on the day after the existing scheme expires. This, in effect, would provide for a continuous scheme of 10 years.
- 3.3 If, following public consultation, a continuous scheme is proposed, a new designation must be made at least three months before the current scheme expires to comply with legislative requirements. As such, any new designation would need to be made in early January 2016. For Cabinet to be in a position to make an informed decision before this date, a public consultation must begin no later than 17 August 2015.
- 3.4 Therefore, if Cabinet agree to undertake a public consultation, the following schedule would need to be followed if a continuous scheme is to be achieved:

Action	Timescale
Cabinet agreement to undertake a public consultation	30 July 2015
Public consultation	17 August 2015 to 26 October 2015
Overview and Scrutiny Panel	15 December 2015
Cabinet decide whether to make a selective licensing designation or not	Early January 2016
Current designation expires	20 April 2016
New designation begins (if agreed by Cabinet)	21 April 2016
New designation expires (if agreed by Cabinet)	20 April 2021

#### 4.0 Changes to selective licensing legislation

- 4.1 Before the council could consider making a further selective licensing designation, it would need to ensure that the area in question met certain legal tests. Until 27 March 2015, an area could only be designated for the purposes of selective licensing if it met at least one of the two legal tests (known as conditions) set out in the Housing Act 2004. However, on this date the Government introduced four new sets of conditions. The council may now designate an area if:
- (i) It is, or is likely to become, an area of low housing demand; or
  - (ii) It has a significant and persistent problem with anti-social behaviour where the inaction of private landlords is a contributory factor; or
  - (iii) Following a review of housing conditions, it is believed that the area is suffering from significant housing condition problems and the council intends to inspect the dwellings concerned (NEW TEST); or
  - (iv) It has experienced a recent influx in migration, and where the migrants are primarily occupying privately rented accommodation (NEW TEST); or
  - (v) It suffers from a high level of deprivation which particularly affects the occupiers of privately rented accommodation (NEW TEST); or
  - (vi) It suffers from a high level of crime that affects residents and businesses in the area (NEW TEST).
- 4.2 There is clear evidence to support five of the six tests. The area remains an area of low housing demand, ASB while reduced remains disproportionately high, and poor housing conditions are widespread. The area is also one of the most deprived in England and crime levels are disproportionately high. However, the argument for migration is less convincing as Government guidance suggests that the migration test should relate to relatively sudden increases in migration (say 15% over a 12

month period). Movement into the area is not a new phenomenon as higher than average levels of migration have been a theme for some years.

- 4.3 While Government has increased the scope for selective licensing, it has also restricted how large schemes can be before Secretary of State approval is needed. Approval must now be sought for any scheme that is more than 20% of the geographical area of the district, or applies to more than 20% of all privately rented properties in the district. The current designation does not exceed either of the two 20% tests, and so the council has general approval to designate a similar sized area again.

## **5.0 Options**

- 5.1 Selective licensing is a discretionary power. With the current designation expiring in April 2016, there are three viable courses of action that can be taken at this time.

### **5.2 Option 1 – To do nothing further.**

- The current designation would expire on 20 April 2016 and no further licence applications would be required after this date.
- The scheme would be gradually run down and selective licensing staff would be made redundant.
- Enforcement of housing management problems in the designated area would revert to normal practices and be carried out by the five-strong team that covers the whole district.
- The additional powers provided by selective licensing would be lost.

### **5.3 Option 2 – To undertake a public consultation with a view to potentially designating an area that is substantially similar to that already designated.**

- While the currently designated area is substantially appropriate, there has always been some minor anomalies.
- In particular, two-thirds of one side of Northdown Road and one side of Trinity Square were left out of the original designation. The dwellings in these areas are similar in nature to those in the currently designated area and there would be no good reason to purposely exclude them in any future designation.
- By including these areas, there would be an additional 237 residential dwellings within the designation, of which approximately 158 (67%) are in the private rented sector. Around 27% of the occupiers of these dwellings have complained to the council about their housing conditions over the past five years, and the council's two most recent housing prosecutions concerned rented homes in this area.
- Queens Court on Queens Parade could also be set outside the designated area. It comprises 126 purpose-built flats, with very few licensable properties within. The building is almost entirely owner-occupied, and is subject to minimum age residency rules (55 and over). It is not problematic, and owing to the building's location on the sea side of the seafront road, it may naturally fall outside any designation boundary.
- The current designation encompasses around 2150 licensable dwellings, whereas this option would increase the number to 2300. A map showing the proposed designated area is provided in Annex 2.
- This proposal has been developed following consultation with relevant council departments and the Margate Task Force and is fully supported by experienced front-line officers.

5.4 **Option 3** – To undertake a public consultation with a view to potentially designating the same area.

- The same area could be considered for designation again. However, this option does not take into account the lessons learnt over the past four years and would leave minor anomalies unaddressed.
- Owing to the limited timescales available for preparing the public consultation, a continuous scheme is unlikely to be achievable if this option is taken. The public consultation would need to be postponed to allow for revised documents to be prepared.
- The currently designated area is shown in Annex 1.

## **6.0 Corporate Implications**

### **6.1 Financial and VAT**

6.1.1 The costs associated with undertaking a public consultation include writing to every resident in the area, residents in adjacent streets, and to all property owners. There would also be costs associated with placing advertisements in the local press and arranging public drop-in sessions.

6.1.2 The council received grant funding from Kent County Council in 2010 to support selective licensing and help increase housing enforcement activity in Cliftonville West and Margate Central. Around £10,000 remains uncommitted and this would be used to fund the mail-out, printing and advertising costs associated with the public consultation. As such, the estimated expenditure of £7,000 would be externally funded, and there is contingency for any unexpected costs.

6.1.3 Should a designation be made following a public consultation, the licence fee income generated would be used to fund the staffing arrangements required to administer the scheme. Staff currently working on selective licensing are on temporary contracts that are reviewed each year, having regard to available funding. Their contracts would be extended into any new scheme, with the number of contracts being made available dependent on licence fee income.

6.1.4 There would be no additional burden on existing budgets should a further designation be made.

### **6.2 Legal**

6.2.1 Section 80(1) of the Housing Act 2004 empowers the council to designate either the area of its district, or an area in its district, as subject to selective licensing. The area subject to any such designation must meet at least one of the six legal tests, known as general or additional conditions, set out in sections 80(3) and 80(6) of the Housing Act 2004 and The Selective Licensing of Houses (Additional Conditions) (England) Order 2015 (SI 2015/977).

6.2.2 The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015 empowers the council to make selective licensing designations under general approval, except when proposed schemes are over a certain size.

6.2.3 Any designation that (either by itself, or in combination with other selective licensing designations made by the council) would cover more than 20% of the geographical area of the district is excluded from the 2015 general approval. Furthermore, any designation that (either by itself, or in combination with other selective licensing designations made by the council) would affect more than 20% of privately rented homes in the district (based on census data) would also be excluded.

- 6.2.4 Thanet comprises an area of 10,329 hectares (39.9 square miles). The area proposed for designation (Option 2) is approximately 47.7 hectares (0.18 square miles) in size, which represents 0.46% of the district in terms of geographical area. The proposed designation would not therefore require approval from the Secretary of State owing to its relatively small size.
- 6.2.5 According to the 2011 Census, there were 14,151 households privately renting in Thanet. Therefore, Secretary of State approval would be required for any scheme (or schemes) in Thanet that included more than 2,830 privately rented homes. The area proposed for designation (Option 2) includes approximately 2,300 privately rented homes. As such, Secretary of State approval would not be required for the proposed designation.
- 6.2.6 The general approval is subject to the requirement to undertake a 10-week public consultation on any proposed scheme.
- 6.2.7 If a designation were to be made, the decision could be subject to judicial review, as was the case with the current designation. That judicial review was based on the opinion that the area subject to designation did not meet the two legal tests relating to low housing demand and ASB. The application failed on both counts. If a designation were to be made again, it is likely to be based on five of the six now available legal tests. As the new tests appear to be more straight-forward to prove than the original tests, the risk of judicial review appears to be much diminished.

### **6.3 Corporate**

- 6.3.1 Selective licensing links to the following corporate priorities:

Priority 2: We will tackle disadvantage across our district;

Priority 4: We will make our district a safer place to live;

Priority 7: We will plan for the right number and type of homes in the right place to create sustainable communities in the future.

### **6.4 Equity and Equalities**

- 6.4.1 Persons from vulnerable groups can sometimes have limited housing choices. In particular, families with young children, older persons and those with a disability can find themselves in poor quality rented accommodation. Selective licensing often involves safeguarding the health, safety and welfare of these Protected Characteristics (Age and Disability). Therefore, selective licensing can help to minimise disadvantage and contribute to the needs of some Protected Characteristics.
- 6.4.2 If, following public consultation, a proposal to designate is made, a Full Equality Impact Analysis will be undertaken and provided with the proposal documents.

### **7.0 Recommendation(s)**

7.1 That Cabinet:

- (i) Agree to undertake a public consultation with a view to potentially designating the area shown in Annex 2 for the purposes of selective licensing. This proposal is set out in option 2 above and relates to an area that is substantially similar to that already designated;
- (ii) Authorise officers to undertake a 10 week public consultation beginning on 17 August 2015 that sets out the proposal and seeks views;
- (iii) Agree to receive a further report in early January 2016 following the public consultation to determine whether a selective licensing designation should be made.

## 8.0 Decision Making Process

8.1 This is a non-key decision.

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Reporting to:	Bob Porter, Interim Head of Housing Services

### Annex List

Annex 1	Map of current selective licensing designation.
Annex 2	Map of proposed selective licensing designation (Option 2).

### Background Papers

Title	Details of where to access copy
None	N/A

### Corporate Consultation Undertaken

Finance	Sarah Hills, Strategic Housing Accountant
Legal	Tim Howes, Interim Head of Legal and Democratic Services & Monitoring Officer