
SELECTIVE LICENSING IN CLIFTONVILLE WEST AND MARGATE CENTRAL

To: **Overview and Scrutiny Panel – 15 December 2015**

Main Portfolio Area: **Community Services**

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

Classification: **Unrestricted**

Ward: **Cliftonville West and Margate Central**

Summary: **The council's existing selective licensing designation, which applies to certain parts of Cliftonville West and Margate Central, is due to expire on 20 April 2016. This report highlights the proposal to make a further five-year designation in respect of a substantially similar area.**

For Recommendation

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.
- 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 current designation came into force on 21 April 2011 and is due to expire on 20 April 2016. However, the decision to designate 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 Having considered a proposal to make a further five-year selective licensing designation in respect of a substantially similar area, Cabinet (30 July 2015), authorised officers to undertake a 10 week public consultation to ascertain public opinion in respect of the proposal. Cabinet further agreed to receive a report in January 2016 to consider the results of the public consultation and determine whether to make a further designation.

2.0 The current selective licensing scheme

- 2.1 As of 01 November 2015, 2,029 dwellings were subject to a selective licence or a valid licence application, and a further 132 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 successful prosecution (the highest fine being £20,000).

- 2.2 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. For example, there have been significant improvements in gas and electrical safety. Over 600 licence holders have been subject to reminders or enforcement action, owing to their failure to supply gas and/or electrical safety documentation on time.
- 2.3 As of 01 November 2015, the council had inspected 943 licensed properties. Almost two-thirds (66%) of inspections have revealed concerns that require council intervention as a consequence of licensing breaches and/or health and safety hazards. Some 584 breach of condition notices have been sent to licence holders since September 2013. Since the start of the scheme, 681 homes have been made safe from health and safety hazards. Housing conditions are therefore improving.
- 2.4 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.
- 2.5 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 01 October 2015 revealed that this percentage has fallen to 6.7%. While this figure remains high when compared to the Thanet average (2.8%), the trend is very much downward.
- 2.6 The designated area suffers from a range of issues that arose out of many years of socio-economic change. Selective licensing 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.
- 2.7 Delivering the current scheme has been challenging, having regard to the judicial review and the level of 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.
- 2.8 The council has published two selective licensing progress reviews, which set out the position as at 01 October 2014 and 01 April 2015. These can be viewed or downloaded from the council's website.

3.0 Changes to selective licensing legislation

- 3.1 Before any council can consider making a selective licensing designation, it must first ensure that the area in question meets 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:
 - It is, or is likely to become, an area of low housing demand; or
 - It has a significant and persistent problem with anti-social behaviour where the inaction of private landlords is a contributory factor; or

- 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
 - It has experienced a recent influx in migration, and where the migrants are primarily occupying privately rented accommodation (NEW TEST); or
 - It suffers from a high level of deprivation which particularly affects the occupiers of privately rented accommodation (NEW TEST); or
 - It suffers from a high level of crime that affects residents and businesses in the area (NEW TEST).
- 3.2 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.
- 3.3 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. Government approval must now be sought for any scheme over certain size thresholds. Owing to the relatively small size of the proposed designation, it is not affected by this newly introduced restriction.

4.0 Results of the public consultation

- 4.1 The council undertook a wide-ranging 10 week (and one day) public consultation between 17 August 2015 and 26 October 2015.
- 4.2 Throughout the consultation period, the council's website featured an obvious pictorial link on its homepage which guided interested persons to the public consultation press release. This page included links to the consultation document, available in web format or downloadable as a PDF, and the online survey. The consultation survey included six key questions and gave the option to make other comments. Responses could also be made in writing separately to a freepost address or by email.
- 4.3 The consultation was publicised by various means to ensure maximum publicity. In addition, to help ensure that all persons likely to be affected by the proposed designation were fully consulted, the council wrote directly to the following:
- Property owners in the proposed area, both freehold and leasehold;
 - Current selective licence holders and named managers;
 - Addresses in the proposed area, both residential and commercial;
 - Residents and businesses in roads surrounding the proposed area;
 - All known letting/managing agents operating in Thanet.
- 4.4 Each letter included a colour leaflet explaining the proposal and a hard copy of the consultation survey.
- 4.5 Around 5,800 letters addressed to residents and businesses in and around the proposed area were hand-delivered by council staff on Friday 14 August 2015. Over 4,000 further letters addressed to property owners, licence holders/named managers, and letting/managing agents were posted by Royal Mail on the same day.

Summary of consultation results

- 4.6 The consultation prompted 384 survey responses, and 20 other separate written responses received either by post or by email. As such, there were 404 responses in total.

- 4.7 To consider varying opinions, the survey asked respondents to identify their interest in one of seven ways. The table below sets out the extent to which these groups were represented in the survey.

Table 1: Number of survey responses received by respondent group

No.	Respondent Group	Number	Percentage
1	A private landlord with properties in the proposed area	71	18.5%
2	A private landlord with no properties in the proposed area	7	1.8%
3	A tenant renting from a private landlord in the proposed area	57	14.8%
4	A housing association or council tenant living in the proposed area	16	4.2%
5	An owner-occupier living in the proposed area (not a landlord or tenant)	156	40.6%
6	A resident living in Margate, but outside the proposed area	48	12.5%
7	Other	29	7.6%
	Total:	384	100%

- 4.8 The survey asked six key questions. These are identified in the table below, together with the overall results of the survey.

Table 2: Survey questions and overall results

No.	Question	Yes	No	Don't Know	Totals
1	Do you think anti-social behaviour is a problem in the proposed area?	292 (76.0%)	44 (11.5%)	48 (12.5%)	384 (100%)
2	Do you think crime is a problem in the proposed area?	268 (69.8%)	41 (10.7%)	75 (19.5%)	384 (100%)
3	Do you think the proposed area suffers from poor housing conditions?	300 (78.1%)	40 (10.4%)	44 (11.5%)	384 (100%)
4	Do you think the proposed area is a desirable place in which to live?	115 (29.9%)	224 (58.3%)	45 (11.7%)	384 (100%)
5	Do you think the council should be taking action to improve the management of privately rented homes in the proposed area?	319 (83.1%)	37 (9.6%)	28 (7.3%)	384 (100%)
6	Do you think a further five year Selective Licensing Scheme would benefit the area?	283 (73.7%)	66 (17.2%)	35 (9.1%)	384 (100%)

- 4.9 The majority of survey respondents were in support of a further selective licensing designation, with 73.7% in favour and 17.2% against. Public support for selective licensing appears to be getting stronger. The public consultation carried out for the current designation in 2010 revealed that while there was public support, it was less obvious, with 49% in favour and 44% against. The following table highlights increased support from landlords and residents living in the area.

Table 3: Support for selective licensing – Comparison of survey results 2010/2015

	All landlords			Residents living in proposed area		
	For	Against	Don't Know	For	Against	Don't Know
Public Consultation 2010 Survey responses: 579	15.1%	82.1%	2.8%	67.4%	22.3%	10.3%
Public Consultation 2015 Survey responses: 384	26.9%	61.5%	11.5%	85.2%	6.1%	8.7%

- 4.10 Of the 384 respondents, 279 (72.7%) made further written comments in addition to answering the survey questions. Therefore, including the 20 separate written responses submitted, the council received 299 written representations during the public consultation.
- 4.11 The 20 separate written responses were received from a variety of respondents as shown in the table below.

Table 4: Number of separate written responses received by respondent group

No.	Respondent Group	Number	Percentage
1	Thanet Landlords' Focus Group	1	5%
2	Landlord Association (NLA, RLA and SLA)	3	15%
3	Public agency (Margate Task Force and Kent Fire & Rescue Service)	2	10%
4	Private landlord with properties in the proposed area	7	35%
5	Managing agent	1	5%
6	Owner-occupier in proposed area	2	10%
7	Resident in nearby road	1	5%
8	Unclear	3	15%
Total:		20	100%

4.12 The responses received varied in length and nature. With some, it was not clear as to whether the respondent was in support of selective licensing or not. As such, each of the 20 responses were placed into one of six categories, namely:

- Clearly in favour;
- Inclined to favour;
- Clearly against;
- Inclined to be against;
- Mixed (qualified support with some uncertainty);
- Unclear (no indication either way).

4.13 The following table illustrates the nature of support for selective licensing among those who submitted a separate written response.

Table 5: Nature of support for selective licensing among respondents who made a separate written response

Respondent Type	Clearly in Favour	Inclined to Favour	Clearly Against	Inclined to be Against	Mixed	Unclear
Thanet Landlords' Focus Group	0	0	0	0	1	0
Landlord Association (NLA, RLA and SLA)	0	0	2	0	1	0
Public agency (Margate Task Force and Kent Fire & Rescue Service)	2	0	0	0	0	0
Private landlord with properties in the proposed area	0	2	4	1	0	0
Managing agent	0	0	0	0	0	1
Owner-occupier in proposed area	2	0	0	0	0	0
Resident in nearby road	0	0	0	0	0	1
Unclear	2	0	0	0	0	1
Total Count:	6 (30%)	2 (10%)	6 (30%)	1 (5%)	2 (10%)	3 (15%)

4.14 When viewed together, the separate written responses reveal a relatively balanced viewpoint, with broadly equal numbers being for and against the proposed designation.

4.15 The results of both the survey and the separate written responses may be combined to provide an overall indication of the level of support for a further selective licensing designation. For this purpose, the separate written responses which were clearly in favour, or inclined to favour, have been deemed to be in support of selective licensing. Those which were clearly against, or inclined to be against, have been deemed to be not in support of selective licensing. Unclear responses have been deemed to be "Don't know", as have mixed responses.

- 4.16 Therefore, 291 respondents (72%) were in support of selective licensing, 73 (18%) were against, and 40 (10%) were unsure.

Conclusion

- 4.17 The results of the public consultation have given the council a clear mandate to consider making a further selective licensing designation. A final proposal document has been prepared and is annexed to this report. It sets out the case for selective licensing in Cliftonville West and Margate Central and discusses the consultation responses in more detail.

Key issues identified during the consultation

- 4.18 All 299 written representations received during the public consultation have been carefully considered by the council. The key themes identified were:
- Waste problems – rubbish, bins, litter, fly-tipping, dog fouling, vermin, and discarded furniture such as mattresses and sofas;
 - Crime and ASB – drugs, alcohol abuse, theft, noise, and loitering groups;
 - Housing conditions in the private rented sector – disrepair, unsafe homes, poor management and maintenance, appearance, and overcrowding;
 - Rogue, neglectful, and absentee landlords;
 - Desire to see more enforcement action and property inspections;
 - Problem tenants who lead chaotic lifestyles;
 - Licence fees and administrative burdens – costs to landlords, whether good or bad, and further costs associated with preparing applications and bringing properties up to standard.

Response to key issues

- 4.19 In preparing the final proposal, the council has endeavoured to take into account the representations received during the consultation.

Waste, ASB and crime

- 4.20 Significant numbers of respondents cited waste, ASB and crime issues. Waste issues were cited more than any other concern. As a consequence, the discretionary licence conditions used by the council under the current scheme will be carefully reviewed and where possible strengthened to help tackle these concerns.

- 4.21 Moreover, in view of these specific concerns, the council's enforcement capabilities have been reviewed. It is now proposed that the number of officers authorised to enforce selective licensing is significantly increased. Currently, officers within the Housing Regeneration Team are responsible for enforcement, with specialist support provided, as necessary, by other teams. However, it is now proposed that officers working in other relevant areas will now themselves be able to take direct enforcement action under selective licensing, including staff from Street Scene Enforcement (Waste), Community Safety (ASB), and Environmental Health (Noise).

- 4.22 The council's free Tenant Referencing Scheme, which aims to help landlords make informed letting choices, will be continued in the event of a new scheme. The scheme provides applicants with a red, amber or green rating for various matters, including ASB and criminal activity.

Housing enforcement

- 4.23 The council accepts that there are many landlords who fail to take their management responsibilities seriously. In the last two years, the council has robustly enforced the scheme, serving nearly 600 breach of condition notices and taking over 20 successful prosecutions against rogue landlords. In the event of new designation, the council would continue to prioritise enforcement. It also recognises that inspections are

essential to providing effective and meaningful results and so proposes to continue with a rolling routine inspection programme.

Licence fees and administrative burdens

- 4.24 In preparing the consultation proposal, the council fully acknowledged that landlords would want fees set at the lowest possible level. It therefore proposed significantly reduced licence fees. Currently, the fee for a typical licence, for a non-accredited landlord, is £587 for a five year licence. To renew such a licence in the proposed scheme would cost only £395 (if an early application was made). However, if the landlord was accredited, this would be further reduced to £345, which equates to £1.33 per week. For landlords making a single application for a whole building containing flats, the additional flats would only cost £136 each. This is around half the current fee of £267. The proposed fees were reduced as much as was reasonably possible. Any further reduction would jeopardise the council's ability to undertake its statutory functions under selective licensing. As such, no further fee reductions are proposed.
- 4.25 Good landlords should already have their properties up to standard, so the council does not believe there to be additional costs for such landlords in providing safe homes. However, the council accepts that the application process, primarily owing to legislative requirements, can be time-consuming. The council would therefore explore ways of making the renewal process less burdensome in the event of a new designation.

5.0 Reasons for making a further designation

- 5.1 Selective licensing provides additional powers to help the council tackle poorly managed privately rented property. Better management standards in this sector should contribute to an overall improvement in conditions in the proposed designated area. In particular, the council would expect a further designation to contribute to:
- An improvement in the social and economic conditions in the area;
 - A reduction in anti-social behaviour;
 - An improvement in general housing conditions;
 - A reduction in the level of deprivation; and
 - A reduction in crime.
- 5.2 Such improvements should lead to the area becoming more desirable. In the longer term, this should reveal itself in higher property and rental values, and a more stable community with less resident turnover.
- 5.3 Selective licensing alone cannot regenerate the proposed area overnight. It can only be part of a longer term solution. It can, however, contribute to a joined-up and holistic response to the problems faced and help increase the chances of community regeneration in the Cliftonville area.

6.0 Options

- 6.1 The panel may wish to recommend to Cabinet that a further selective licensing designation is made in respect of certain parts of Cliftonville West and Margate Central as set out in the annexed proposal document.
- 6.2 Alternatively, the panel may wish to make representations to Cabinet regarding the proposal.

7.0 Corporate Implications

7.1 Financial and VAT

- 7.1.1 Should a selective licensing designation be made, 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.
- 7.1.2 The council's permanent staff engaged in housing enforcement activities would continue to support the scheme and its enforcement as a normal function of their role.
- 7.1.3 There would be no additional burden on existing budgets should a further designation be made.

7.2 Legal

- 7.2.1 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). The evidence presented by the council in the consultation document supports a designation based on five of the six criteria.
- 7.2.2 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.
- 7.2.3 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.
- 7.2.4 Thanet comprises an area of 10,329 hectares (39.9 square miles). The area proposed for designation 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 geographical size.
- 7.2.5 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 would affect more than 2,830 privately rented homes. The area proposed for designation includes approximately 2,500 privately rented homes, of which around 2,300 would require a selective licence. These estimates are accurate as the council has compiled a tenure record of every dwelling within the proposed area. As such, Secretary of State approval would not be required owing to the number of private sector homes affected.
- 7.2.6 The general approval is subject to the requirement to undertake a minimum 10 week public consultation on any proposed scheme. A comprehensive 10 week (and one day) public consultation took place between 17 August 2015 and 26 October 2015.
- 7.2.7 As the proposed designation has been subject to a public consultation of not less than 10 week duration and neither of the size thresholds would be exceeded, the council has general approval to make a designation without requiring Secretary of State approval.

7.2.8 Any designation made by the council must specify a date on which it comes into force. That date must not be earlier than three months after the date on which the designation is made. For a continuous selective licensing scheme to be achieved, the council must make the designation on or before 20 January 2016.

7.2.9 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 would 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 diminished.

7.3 Corporate

7.3.1 Selective licensing links to the following corporate priorities:

- Priority 1: A clean and welcoming environment.

A selective licence may include discretionary licence conditions relating to property management. Current selective licences include a condition which requires licence holders to put in place suitable arrangements for the storage and disposal of waste. Selective licensing can therefore help the council tackle waste problems associated with privately rented property. In the event of a new designation, it is proposed that such a condition is incorporated into all new licences.

- Priority 2: Supporting neighbourhoods.

Selective licensing helps the council ensure that dwellings in the private rented sector are effectively managed and maintained in a safe condition. This increases the quality of housing stock available to the residents of Thanet. Licence conditions may also require licence holders to appropriately manage anti-social behaviour, should it ever originate from their property. This condition is in current use, and its continued use is proposed. As housing and health are inextricably linked, improvements in the home environment can contribute to a reduction in health inequalities.

7.4 Equity and Equalities

7.4.1 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. Residents who do not have English as their first language may also find it more difficult to access services. Selective licensing often involves safeguarding the health, safety and welfare of such residents. Therefore, selective licensing, particularly through its proactive inspection programme, can help to minimise disadvantage and contribute to the needs of some Protected Characteristics.

7.4.2 A full Equality Impact and Customer Needs Analysis has been undertaken and is annexed to the proposal document.

8.0 Recommendation

8.1 That the panel recommend to Cabinet that a further selective licensing designation is made in respect of certain parts of Cliftonville West and Margate Central as set out in the annexed proposal document.

9.0 Decision Making Process

- 9.1 This is a key decision to go to Cabinet on 19 January 2016. This is an urgent decision and so will not be subject to call-in by the Overview and Scrutiny Panel. The decision is urgent because, if Cabinet decide to make a designation, it must, owing to statutory requirements, be confirmed on or before 20 January 2016 if a continuous selective licensing scheme is to be achieved. Calling in the decision would delay the making of a designation and prejudice the council's interest in particular and that of the public in general.
- 9.2 This report seeks the recommendations of the Overview and Scrutiny Panel for inclusion in the Cabinet report.
- 9.3 The Cabinet decision is a key decision as it is significant in terms of its effects on communities living or working in an area of the district comprising two or more wards.

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Reporting to:	Bob Porter, Interim Head of Housing Services

Annex List

Annex 1	Draft "Proposal to make a further selective licensing designation"
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Background Papers

Title	Details of where to access copy
None	N/A

Corporate Consultation Undertaken

Finance	Nicola Walker, Finance Manager – HRA, Capital and External Funding
Legal	Ciara Feeney, Head of Legal Services & Deputy Monitoring Officer
Communications	Hannah Thorpe, Interim Head of Communications