

Committee Name and Date of Committee Meeting

Cabinet – 16 September 2024

Report Title

Selective Licensing Scheme 1 (Policy)

Is this a Key Decision and has it been included on the Forward Plan?

No, but it has been included on the Forward Plan

Strategic Director Approving Submission of the Report

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Ward(s) Affected

Rotherham East

Boston Castle

Rotherham West

Rawmarsh West

Wath

Swinton Rockingham

Brinsworth

Maltby East

Thurcroft & Wickersley South

Dinnington

Report Summary

There have been two periods of Selective Licensing in Rotherham between 2015 - 2020 and 2020 – 2025. Alongside providing some of the outcomes of these schemes, this paper is to consider if the Council wishes to open a public consultation on further declarations, following the conclusion of the current schemes on the 30th April 2025.

The report describes the criteria and conditions under which Selective Licensing designations can be made, together with the proposed process to deliver a robust area-based consultation. Cabinet is asked to consider if it wishes to proceed with consultation on new selective licensing declarations.

Recommendations

1. That Cabinet note the content of the report and the outcomes to date of the existing schemes.
2. That Cabinet agrees to progress Option 3 and commence consultation within the existing areas with a view to developing further designations which would commence after the current scheme has ended, and the development of the place based plans and consultation is complete.

List of Appendices Included

Appendix 1	Advantages and Limitations of Selective Licences Conditions - Setting Expectations
Appendix 2	Common characteristics of effective Selective Licensing Schemes
Appendix 3	Map of the areas
Appendix 4	Declaration Criteria
Appendix 5	Data used to assess Selective Licence Declaration Criteria, identifying the geographical level and data source.
Appendix 6	Consultation Plan
Appendix 7	Part B Equalities Assessment
Appendix 8	Carbon and Climate Change Assessment

Background Papers

- [Housing Act 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk)
- [General Enforcement Policy 2023
https://www.rotherham.gov.uk/downloads/file/3141/general-enforcement-policy](https://www.rotherham.gov.uk/downloads/file/3141/general-enforcement-policy)
- An Independent Review of the Use and Effectiveness of Selective Licensing 2019
[Title \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
- [Selective licensing in the private rented sector: a guide for local authorities - GOV.UK \(www.gov.uk\) 2023](https://www.gov.uk)
- [Licensing Private Rented Homes \(ch1889.org\) 2024](https://www.ch1889.org)
- [Selective licensing JG 180922 19 Aug 2022.pdf \(nottinghamcity.gov.uk\)](https://www.nottinghamcity.gov.uk)
- [Scrutiny Review Recommendations – Impact of Selective Licensing REPORT TEMPLATE FOR CABINET & COMMISSIONER \(rotherham.gov.uk\)](https://www.rotherham.gov.uk)

Consideration by any other Council Committee, Scrutiny or Advisory Panel
None

Council Approval Required
No

Exempt from the Press and Public
No

Selective Licensing Scheme 1 (Policy)

1.0 Background

- 1.1 The Council has previously designated two Selective Licensing schemes following extensive consultation and due legal process. Selective Licensing is a discretionary power available under the Housing Act 2004, which allows Councils to introduce additional conditions applicable to private rented properties beyond the statutory powers contained within the Housing Act 2004. Selective Licensing can be introduced under very specific circumstances and after extensive consultation, to tackle problems in designated areas.
- 1.2 A Selective Licensing designation may be made for a maximum period of five years, if the area to which it relates satisfies one or more of the following conditions:
- a) Low housing demand (or is likely to become such an area)¹
 - b) A significant and persistent problem caused by anti-social behaviour²
 - c) Poor housing conditions³
 - d) High levels of migration⁴
 - e) High level of deprivation⁵
 - f) High levels of crime⁶
- 1.3 Where consideration is being given to designating an area on the following grounds:
- Poor housing conditions and/or
 - Migration
 - Deprivation
 - Crime
- then the local housing authority may only make a designation if the area has a high proportion of housing in the private rented sector.⁷
- 1.4 In addition, where a proposed Selective Licensing scheme would cover more than 20% of a Council's geographical area or would affect more than 20% of privately rented homes in the local authority area, then permission from the Secretary of State is required to confirm the designation.
- 1.5 Based on the 2021 census data the private rented sector in Rotherham represents 16% of the housing stock, up from 15% in the previous census. This amounts to 17,418 (including those living rent free) properties, 20% of which is 3,484. Any designations which include more properties, would require Secretary of State approval. The process of making an application to the Secretary of State is lengthy with specific requirements in respect of

¹ Section 80(3) Housing Act 2004

² Section 80(6) Housing Act 2004

³ Article 4, Selective Licensing of Houses (Additional Conditions)(England) Order 2015

⁴ Article 5, Selective Licensing of Houses (Additional Conditions)(England) Order 2015

⁵ Article 6, Selective Licensing of Houses (Additional Conditions)(England) Order 2015

⁶ Article 7, Selective Licensing of Houses (Additional Conditions)(England) Order 2015

⁷ Article 8, Selective Licensing of Houses (Additional Conditions)(England) Order 2015

the application. The length of time it can take to assess an application can vary depending on the complexity of the case and whether further information or research is required.

- 1.6 Rotherham's two Selective Licensing schemes, 2015 to 2020 and 2020 to 2025 were declared on the criteria of 'low demand' and 'deprivation' respectively. Areas of Eastwood, Ferham, Maltby and Dinnington have been subject to both schemes and have been under licence for 10 years.
- 1.7 Before considering if further declarations are desirable or justified, it is necessary to consider the outcomes of both local schemes, the national research and updated government guidance as well as the recommendations made following a scrutiny review by the Improving Places Select Commission.
- 1.8 The research overall indicates that Selective Licensing can be an effective policy tool with many schemes achieving demonstrable positive outcomes. However, it also indicates that when implemented in isolation, the effectiveness of Selective Licensing is often limited. Schemes appear to be more successful as part of a wider, well planned, coherent initiative with an associated commitment of resources and strategic approach. This is a finding entirely consistent with the aims of the Housing Act.⁸ This is furthermore a finding and recommendation of the Scrutiny review referenced in section 1.7, with a recommendation made as follows:

That a joined-up approach be sought with relevant Council strategies and services, with partner and voluntary sector organisations and with resident-led initiatives prior to any future selective licensing declaration.⁹

- 1.9 The Council will need to show how any designation will be part of an authority wide strategic approach to address problems associated with private rented property and in particular how it fits with existing policies or strategies on:
 - Neighbourhood/Place Based Working
 - Homelessness
 - Empty Homes
 - Regeneration
 - Anti-social behaviour associated with privately renting tenants.

⁸ Ministry of Housing, Communities and Local Government, 'An Independent Review of the Use and Effectiveness Selective Licensing', September 2019; Roz Spencer and Julie Rugg, 'Licensing Private Rented Homes: Insights and Experiences from Five London Boroughs', Cambridge House Research Publication, March 2024; Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government, 'Selective licensing in the private rented sector: a guide for local authorities', June 2023

⁹ [REPORT TEMPLATE FOR CABINET & COMMISSIONER \(rotherham.gov.uk\)](https://rotherham.gov.uk)

- 1.10 Before any declarations are considered, the Council must examine if there are any other courses of action available to it that would achieve the same objectives as a declaration, without the need for the designation to be made. If the local housing authority decides there is no practical and beneficial alternative to the scheme, it must only make a designation, if it can demonstrate that the proposed scheme will significantly assist it in achieving the declarations objectives.

2 Setting Expectations

- 2.1 The Selective Licensing regime itself, provides very limited additional powers above what is available in existing legislation. However, it does provide some useful tools upon which the Council might better regulate the private rented sector. In particular, mandatory licensing of properties forces owners to identify themselves with their rented properties being subject to a suite of additional conditions which supplement the powers available in the Housing Act 2004. Moreover, each licensed property is subject to inspection to check compliance with minimum legal standards, with powers available to revoke the licence where there is poor management, or the licence holder is found not to be a 'fit and proper person'.
- 2.2 There are however a number of limitations to these powers, which should be appreciated before a declaration is progressed, including revocation, empty properties, Anti-social behaviour (ASB) and criminality, tenant references and the 'fit and proper person' test. Further information on the limitations and advantages is provided at Appendix 1.
- 2.3 Having these limitations in mind, it is clear that Selective Licensing in itself is not a 'silver bullet' which allows traditional services and policing to step back. The specific powers available allow the Council to ensure that private rented properties meet minimum legal standards. Selective Licensing is an additional tool in the strategic kit bag to address areas of the Borough with high levels of privately rented housing stock where the stock condition or the private tenants contribute to social problems and poor health. The characteristics of a scheme that are critical are described in Appendix 2.
- 2.4 There is a significant strategic opportunity in the making of a Selective Licensing declaration. It should create a policy focus on an area, build on existing approaches where possible and catalyse housing and non-housing interventions by the Council and partners to improve the lives of residents and lift the area. Any designation made must ensure that the exercise of the power is consistent with the overall strategic approach of the Council. This would include, amongst other things, the Housing Strategy and adoption of a co-ordinated approach in dealing with other housing issues not directly controlled by the scheme, including homelessness, empty properties and anti-social behaviour affecting the private rented sector.
- 2.5 The research paper, 'An Independent Review of the Use and Effectiveness of Selective Licensing (2019)', demonstrated that a common characteristic of effective schemes is good joint working relationships with other Council departments and external agencies. Joint working with the fire and rescue

service, police (including specific task forces), border control/immigration, HMRC and fraud investigation services, social services and similar agencies can lead to a range of positive outcomes over and above ensuring compliance with Selective Licence conditions. The review produced a summary of common characteristics of effective Selective Licensing Schemes which is reproduced at Appendix 2.

3 Key Issues

- 3.1 Integral to ensuring the success of any Selective Licensing scheme is the strategic approach and providing a clear corporate commitment to achieving the declaration objectives within the wider corporate policy framework.
- 3.2 The previous Selective Licensing schemes have focussed strongly on the inspection of properties and enforcement. The aim being to improve the legal standards of repair and management in the private rented sector in order to protect the health of tenants. In this regard both schemes have been a great success. The first scheme identified and rectified levels of disrepair, finding Category 1 or high Category 2 hazards present on 90% of initial inspections. The current scheme has found levels of actionable disrepair or poor management in over 68% of initial inspections of properties. Working with local landlords and through significant levels of enforcement, these deficiencies have been resolved. These improvements have undoubtedly improved the health and lives of tenants.
- 3.3 Four of the six geographical areas of the current scheme were also designated in the 2015 scheme: the reducing level of disrepair in these four locations can be seen as a positive outcome of the sustained focus on these areas. It is also a testament to large numbers of landlords who have maintained improvements in both repair and management from the first scheme. In recognition, 400 landlords have received a £127 rebate from their license fee for meeting their legal obligations.
- 3.4 It should be noted that the first scheme was subject to Judicial Review, and the schemes have attracted some criticism that they have not significantly changed the appearance and culture of these areas. In addition, landlords have viewed the Licence fee as a 'stealth tax', believing that the income is used to deliver core Council services however this is explicitly not the case, with resources derived from the scheme being used solely to deliver on the scheme aims.
- 3.5 The Government recognises that licensing may have to be a long-term strategy and that it will not provide instant solutions. It also appreciates that, if in the initial phase there has been little improvement in an area, this does not necessarily mean that a designation is a failure¹⁰. Research has

¹⁰ P21 Selective licensing in the private rented sector A guide for local authorities MHCLG June 2023

concluded that it can take two 5 year declarations to begin to significantly change an area. This is the experience in Rotherham, with 68% non-compliance in the current scheme, compared to 90% in the first scheme. Whilst the level of non-compliance with minimum legal standards remains alarming, particularly given that many tenants are some of the most vulnerable in society, there is clear indications of improvement.

- 3.6 Any new declarations should seek to continue to address and improve poor housing standards, thereby improving health outcomes for those residents. Alongside targeting housing conditions, the schemes should also work to integrate into existing place-based approaches and seek to drive or influence wider planning and problem-solving approaches. This approach, subject to approval of this report, should commence immediately and will seek to scope where there are existing plans or processes in each of the identified communities and where there may be gaps, subsequently setting about addressing those gaps by working across relevant Council departments and partners. This is commensurate with the Scrutiny recommendation highlighted in section 1.8.

4 Place-based Approach

- 4.1 It is proposed that any new declaration should be informed by the consultation feedback from residents, partners and stakeholders, in addition to the data and evidence relating to the place's challenges and opportunities, which will form part of the wider place-based working approach. The criteria for the proposed Selective Licensing declaration will highlight relevant aspects of the identified problems which may be addressed through any wider partnership approach, which should also satisfy the requirement set by the Improving Places Scrutiny Commission as referred to in section 1.8.

5 Declaration Criteria

- 5.1 A Selective Licensing declaration can be made where it can be demonstrated that there is:

1. Low housing demand (or is likely to become such an area)
2. A significant and persistent problem caused by anti-social behaviour

5.2

And where an area has a high proportion of privately rented properties (PRS), which are contributing to area problems, then the following criteria can be considered:

3. Poor housing conditions
4. High levels of migration
5. High levels of deprivation
6. High levels of crime

- 5.3 The latest Stock Condition Survey is dated 2018, and whilst old, can be supplemented by data available from existing schemes to provide a picture

of current conditions and, as noted above, 68% of properties were found to have category one or two hazards. The national Indices of Multiple Deprivation were last published in 2019. Whilst this is the same data used in the current schemes, the lack of further data means this will have to be applied in order to consider any further designations at the current time.

6 Data required to consider new declarations against Selective Licensing criteria

- 6.1 When considering if the Council wishes to proceed to the consultation phase of the Selective Licensing declaration process, that decision needs to be made in the full understanding that regardless of which declaration criteria are chosen, any subsequent scheme brings with it a strategic and corporate responsibility to specifically reduce that criteria in the area, beyond that which is achievable through the Licensing scheme itself. The outcome of the designation should lead to an overall improvement in residents lives in the area and this approach is again commensurate with the Scrutiny review recommendation.
- 6.2 Any declaration must be based on sound evidence which justifies the use of a particular criteria. Failure to have the evidential base, risks a possible application for Judicial Review of any declaration. An unsuccessful Judicial Review of the first Selective licensing scheme (2015 -20) was launched by local landlords on these grounds.
- 6.3 The methodology for proposing a new declaration should begin with identifying the areas within the Borough that contain significantly higher levels of Private Rented Sector (PRS) properties than the national average. Though this is not strictly necessary for the first two declaration criteria of low demand and high levels of ASB, it is important to establish that the PRS is a significant contributor to local problems.
- 6.4 Statistical geographies can be used to present the relevant statistical data. Rotherham is divided into 170 Lower Super Output Areas (LSOA) each LSOA comprises between 400 and 1,200 households and have a resident population between 1,000 and 3,000. A Ward usually contains a number of LSOAs. Each LSOA is made up of groups of Output Areas (OAs), consisting of between 40 and 250 households and a resident population between 100 and 625 persons.
- 6.5 Data is available at OA level to identify private rented property within Rotherham. Only 173 of the 878 OAs in Rotherham, have a higher than average percentage of PRS properties than the national average of 20.5% which equates to 7884 properties. To ensure that only OAs which could be described as having significantly higher level of PRS properties are considered, a PRS figure of 34% within the OA was selected as a filter. This identified 67 of Rotherham's 878 OAs as having a higher than average number of privately rented properties, and equates to around 4,129 properties contained in 28 LSOAs. If all of these properties were included in any subsequent declarations, it would require Secretary of State approval as it would exceed 20% of Rotherham's PRS. Discussion of the declaration

criteria below and any subsequent place-based plans would be likely to reduce this figure.

6.6 Table 1 and Map 1 shows the 67 OA's and associates them by Lower Super output area and approximate Ward. These are also provided as a map at Appendix 3.

Table 1 Table 1 - Table showing Rotherham Output Areas with over 34% Private Rented Sector

oa21cd	Isoa name	BestFit Ward	Private rented	%PRS
E00168756	Town Centre	Boston Castle	148	86%
E00039311	Maltby East - Salisbury Road	Maltby East	90	85%
E00038966	Listerdale	Wickersley North	104	83%
E00038950	Listerdale	Wickersley North	94	79%
E00039354	Eastwood Village	Rotherham East	97	66%
E00038892	Moorgate West	Boston Castle	68	65%
E00038993	Wentworth & Harley	Hooper	96	62%
E00039358	Eastwood Village	Rotherham East	64	62%
E00039353	Eastwood Village	Rotherham East	58	60%
E00039079	Masbrough West	Rotherham West	93	59%
E00039352	Eastwood Village	Rotherham East	75	59%
E00039127	Brecks East	Wickersley North	72	58%
E00039074	Town Centre	Boston Castle	85	57%
E00039263	Wales South & Woodall	Wales	64	55%
E00039011	Brinsworth North East	Brinsworth	127	55%
E00039406	Parkgate	Rawmarsh West	87	54%
E00039560	Thurcroft Central & Brampton	Thurcroft & Wickersley South	70	53%
E00168755	Town Centre	Boston Castle	78	53%
E00038997	Wentworth & Harley	Hooper	30	51%
E00039097	Masbrough West	Rotherham West	64	49%
E00039344	Clifton East	Rotherham East	69	49%
E00039556	Thurcroft Central & Brampton	Thurcroft & Wickersley South	57	48%
E00168784	Town Centre	Boston Castle	71	47%
E00039298	Maltby East - Muglet Lane	Maltby East	67	47%
E00039606	Wath North	Wath	50	46%
E00039341	Clifton West	Boston Castle	67	45%
E00039451	Dinnington Central	Dinnington	62	45%
E00039089	Masbrough East	Rotherham West	49	45%
E00039289	Maltby East - Muglet Lane	Maltby East	54	44%
E00039032	Treeton West	Rother Vale	65	44%
E00039301	Maltby East - Maltby Main	Maltby East	31	43%
E00039098	Jordan	Rotherham West	61	42%
E00039285	Maltby East - Town Centre	Maltby East	44	42%

E00039443	Dinnington Central	Dinnington	58	41%
E00039080	Masbrough West	Rotherham West	52	40%
E00039185	Eastwood East	Rotherham East	48	40%
E00039071	Jordan	Rotherham West	59	40%
E00039608	Wath North	Wath	48	40%
E00039495	Swinton Central & Bridge	Swinton Rockingham	55	40%
E00039607	Wath Central & Newhill	Wath	53	40%
E00038906	Canklow North	Boston Castle	66	39%
E00038900	South Central & Boston Castle	Boston Castle	51	39%
E00038903	South Central & Boston Castle	Boston Castle	70	39%
E00039086	Masbrough East	Rotherham West	47	38%
E00039337	Eastwood Central	Rotherham East	53	38%
E00039588	Wath North	Wath	53	38%
E00039335	Clifton West	Boston Castle	29	38%
E00039404	Rawmarsh South	Rawmarsh East	50	38%
E00039436	Dinnington Central	Dinnington	50	38%
E00039351	Eastwood Central	Rotherham East	48	38%
E00039444	Laughton South & Dinnington North West	Dinnington	56	37%
E00038915	Hellaby	Bramley & Ravenfield	45	37%
E00039363	Eastwood Village	Rotherham East	46	37%
E00039547	Thurcroft Central & Brampton	Thurcroft & Wickersley South	50	36%
E00039027	Treeton West	Rother Vale	54	36%
E00038873	Aston North West	Aughton & Swallownest	31	36%
E00039282	Maltby East - Muglet Lane	Maltby East	43	36%
E00039347	Clifton East	Boston Castle	41	35%
E00039492	Swinton Central & Bridge	Swinton Rockingham	49	35%
E00039299	Maltby East - Muglet Lane	Maltby East	41	35%
E00039336	Clifton West	Boston Castle	45	34%
E00038967	West Melton South	Hooper	49	34%
E00039497	Swinton Central & Bridge	Swinton Rockingham	41	34%
E00039081	Bradgate	Rotherham West	65	34%
E00038964	Listerdale	Wickersley North	50	34%
E00039092	Town Centre	Boston Castle	52	34%
E00039446	Dinnington Central	Dinnington	70	34%
Total			4129	

Source: 2021 Census :- Tenure

6.7 It is then possible to overlay data relating to the criteria on which a selective licensing declaration might be made.

7 Declaration Criteria Analysis

- 7.1 The criteria are explored in more detail in Appendix 4. To assess the declaration criteria, it would be preferable to use Output Area (OA) level data which would tie an issue to a small locality. Unfortunately, this is not possible, as much published data is produced at Local Super Output Area (LSOA) level, to ensure anonymity of data and confidentiality. This paper will use data at both LSOA and OA level where available, supplemented by local knowledge to relate the criteria to the Private Rented properties in that area.
- 7.2 The data laid out in Appendix 4 shows that there is not one criteria that is common to all areas, indicating that the various areas are affected by varying issues which impact on the quality of life. Consequently, for areas to positively benefit, there is likely to be a need to consider different criteria for different areas and consequently make specific declarations for each area. Such an approach will allow declarations, as well as wider place based approaches, to be tailored to the needs of each community and build on existing structures such as ward plans.
- 7.3 The data indicates also that a number of communities meet all available criteria, indicating a number of issues that would need to be addressed. It should be noted that a declaration can only be made on a single criteria.
- 7.4 The Table below illustrates across the 28 LSOAs with high levels of privately rented property, the high to low ranking across the range of available declaration criteria. The LSOA data sets for each declaration criteria are discussed in the summary tables below, the data is contained in Appendix 4 & 5.

Table 2 - Summary Table showing how Rotherham's LSOAs which have high %PRS can be ranked against the different Selective Licensing Conditions

Isoa name	Existing SL Area	Condition 1 Low Demand	Condition 2 - ASB	Condition 4 - High Migration	Condition 5 - Deprivation	Condition 6 - Crime	Number of Conditions Met	Average Rank Across Conditions
Eastwood Village	Eastwood	2	2	2	2	5	5	3
Town Centre	Eastwood	5	1	1	6	1	5	3
Masbrough West	Masbrough	1	7	5	3	10	5	5
Clifton West	Eastwood	10	6	8	7	4	5	7
Eastwood Central	Eastwood	8	11	9	1	6	5	7

Eastwood East	Eas two od	6	8	7	5	11	5	7
Maltby East - Muglet Lane	Mal tby	10		4			2	7
Masbrough East	Ma sbr oug h	3	4	14	4	8	5	7
Dinnington Central	Din nin gto n	18	3	3	12	3	5	8
Jordan	Ma sbr oug h	10	10	10	9	8	5	9
East Dene North East		8			10	13	3	10
Ryecroft North		5			15		2	10
Parkgate	Par kga te	14	5	16	11	2	5	10
South Central & Boston Castle	Eas two od	14		18	8		3	13
Brinsworth North East		14		16	18	13	4	15
Swinton Central & Bridge		22	9	20		9	4	15
Wath North		23		7	16		3	15
Maltby East - Town Centre	Mal tby	14		13	17		3	15
Bradgate	Ma sbr oug h	25		11	13		3	16
Clifton East		20			14		2	17
Thurcroft Central & Brampton	Thu rcro ft	18		17			2	17
Dinnington East	Din nin gto n	14		21			2	18
Maltby East - Salisbury Road		27		12			2	19
Greasbrough North		20		22			2	21
Wentworth & Harley		22					1	22
Treeton West		27		20			2	23
Listerdale		25					1	25
Brecks East		28					1	28

7.5 The data presented demonstrates that the existing Selective Licensing areas remain prevalent in the highest ranking LSOAs across a number of Declaration Criteria.

7.6 The sources of data used to identify the 28 LSOAs with high levels of privately rented properties, together with limitations, is contained in Appendix 5. Data at OA is also included, which helps to identify potential declaration boundaries within LSOAs.

8 Options considered and recommended proposal.

8.1 **Option 1** - For Cabinet to decide not to pursue any further Selective Licensing declarations after the conclusion of the second period of declarations. This would mean that problems in areas of high private sector housing are addressed using traditional interventions available to the Council, partners and ancillary services. It is possible to adopt the place-based approach without progressing a Selective Licensing declaration.

8.2 **Option 2** – To consult on applying a Selective Licensing designation to the whole Borough, which would require an application to the Secretary of State to confirm the designation. This would generate the maximum number of licenses which, subject to analysis, might allow license fees to be kept low.

8.3 This option, however, would require the statistical evidence that the vast majority of the Borough is dominated by higher levels of private rented dwellings which are currently responsible for the problems described in at least one of the qualifying criteria. The data in Appendix 4 shows that only 173 of Rotherham's 878 OA's have higher than that national average PRS, this would not appear to support such an application.

8.4 Early discussions with the Ministry of Housing, Communities and Local Government (MHCLG) have suggested that the Council will need to be able to demonstrate strong justification to extend to the whole Borough. MHCLG advised that any application must provide evidence to support any application, adding that whilst other authorities have been successful there are others, e.g. London Boroughs with larger PRS than Rotherham, that have been unsuccessful in their bids for whole Borough schemes.

8.5 **Option 3 (Recommended)** - Of the 28 LSOAs identified with higher levels of PRS properties 22 LSOAs show data which may support a selective licensing declaration under one or more criteria. As can be clearly noted, the current areas designated remain most prevalent in the data and it is therefore proposed that consultation is commenced within these existing areas with a view to developing further designations which would commence after the current scheme has ended, and development of the place-based plans and consultation is complete.

8.6 The consultation process will also be used to identify any further local concerns which can be fed into the development of the programme for Selective Licensing alongside incorporating within existing place-based approaches.

8.7 In addition, following the first phase of consultation and potential subsequent designation in 2025, the Council will further explore the longer list of potential areas for further designations. It should be noted that this would likely exceed the thresholds for the maximum designations and would therefore require Secretary of State approval.

8.8 **Option 4** - The option would seek undertake the actions in Option 3 to develop area Action Plans for 22 LSOAs, but to delay the commencement of any formal consultation on the proposed Selective Licensing declarations until:

- The Council's Housing Strategy is refreshed.
- The 'Rotherham Private Sector Housing Options Appraisal' has reported.
- The South Yorkshire Stock Condition Survey has reported.
- The National Indices of Multiple Deprivations is published.

8.9 It is expected that this approach will delay any new declaration by 18 months following the end of the existing scheme in May 2025.

9 Consultation

9.1 Section 80 (9) of the Act 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 and not withdrawn.

9.2 Local housing authorities are required to conduct a full consultation, involving all stakeholders, this should include local residents, including tenants, landlords, landlord's associations, 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 will be affected. The Council should ensure that the consultation is widely publicised using various channels of communication.

9.3 The Council must consult on the proposed scheme for at least 10 weeks.

9.4 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 describe the proposed outcome of the designation. It should also set out the proposed fee structure and level of fees the authority is minded to charge. Consultees should be invited to give their views, and these should all be considered and responded to.

- 9.5 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.
- 9.6 It should also be noted that if the consultation is considered inadequate it can form the basis of an application for Judicial Review of the scheme.
- 9.7 Based on the evidence in Appendix 4 it is likely that some proposed declarations may include properties which have been in one or both, of the previous schemes. Anticipating some resistance to further declaration it is proposed that an independent body is commissioned to undertake the consultation and stakeholder engagement, supported by the Council's Community Protection and Environmental Health, Housing strategy, Neighbourhoods, Communications and Performance teams.
- 9.8 It is anticipated that the costs associated with an independent body undertaking the consultation will be at least £5,000 which cannot be counted in any License fee but must rather be funded through service revenue budgets.
- 9.9 An initial consultation scope is attached at Appendix 6. The format of each consultation will be designed in consultation with the Cabinet Member.

10 Timetable and Accountability for Implementing this Decision

- 10.1 The Assistant Director of Community Safety and Street Scene alongside the Head of Community Safety and Regulatory Services are accountable for implementing the decision.
- 10.2 The timing of the Consultation stage of any future selective licensing declarations is mandated by the Housing Act 2004 and associated regulations. There is no legal requirement to commence new declarations when the existing schemes come to a close on the 30th April 2025.
- 10.3 The Council can commence consultation at any point, but it must last a minimum of 10 weeks. Following consultation, the results would be presented to Cabinet for decision on if Selective Licence Declarations are to be made. Following the decision to make any declarations, there is a mandatory delay in implementation of 3 months.

11 Financial and Procurement Advice and Implications

- 11.1 The Act stipulates that the consultation phase of a selective licensing declaration cannot be funded from subsequent License fee income. The proposed Area Plan and consultation work required to define the scope of any future scheme will require a significant investment of officer time and additional resources. The current estimated cost is £15,000 in 2024/25 and £15,000 in 2025/26. This figure may vary as Area Plans develop. These costs will be accommodated within the approved revenue budget for the wider Regulation and Enforcement Service, through savings elsewhere within

the Service.

- 11.2 Licensing schemes should be self-funding but not be an undue burden on businesses. Currently in England, total scheme fees range between £600 and £950 per licence. The existing selective licensing scheme in Rotherham set its fees in 2019 at a total figure of £521 per licence, fixed for the five year period. This has proved inadequate to support the administration and enforcement costs of the scheme over its 5 year life, with the Council having to support the scheme from existing approved revenue budgets. This is in part due to the prolonged period of high inflation that has been experienced over the last few years, that could not have been foreseen at the time the scheme was being developed. High inflation has in turn led to pay award increases significantly higher than in the preceding scheme period.
- 11.3 The License revenue should cover the licencing infrastructure, including database development and the processing and issuing of licences, it can also fund direct enforcement of the licensing scheme to achieve the declaration objectives.
- 11.4 It is likely that additional funding will be required to deliver the required level of service input from across council services, partners and ancillary services, if the declaration objectives are to be achieved and to make an appreciable difference to the areas.
- 11.5 The proposed fees structure for a new declaration is difficult to predict as the specific designation proposals will dictate the size and level of activity in each area. In developing a proposed fee structure, prudent assumptions will need to be made about inflation and pay award increases, to ensure a future scheme is self-financing. This will also form part of the Consultation which will be presented to Cabinet at a future date.
- 11.6 There are no direct procurement implications associated with the recommendations detailed in this report. However, it is important to note that the reference to new licensing software at paragraph 2.13 will be the subject of a procurement process compliant with the Public Contracts Regulations 2015, or Procurement Act 2023 (whichever is the applicable legislation at the time) as well as the Council's own Financial and Procurement Procedure Rules.

12 Legal Advice and Implications

- 12.1 The legal framework which applies to selective licensing and in particular the designation of an area under the scheme is set out within the body of the report in detail. This framework is contained within Part 3 of the Housing Act 2004 and the Selective Licensing of Houses (Additional Conditions) (England) Order 2015. The Department for Levelling Up, Housing and Communities has also published a guide for Local Authorities, and although this document is not statutory guidance it clearly explains the criteria for making a designation and the type of evidence required to support a designation. It also explains the processes involved and which must be complied with to ensure any designation is compliant with legislation.

- 12.2 Section 80 of the Housing Act provides a Local Authority with the power to designate the whole or any part[s] of its area as being subject to a selective licensing scheme. This would provide the Council with additional enforcement powers in relation to those privately rented properties.
- 12.3 As set out within the body of the report, should a scheme affect more than 20% of privately rented homes or of the geographical area the Council must apply to the Secretary of State for approval of the scheme. This will also apply if the Council were to make a number of designations at the same time and cumulatively the designations cover more than 20%, in these circumstances all of the schemes would need to be submitted for approval.
- 12.4 Selective licensing designations can only be made if the area to which it relates satisfies one or more of the conditions/criteria which are set out at paragraph 2.10 of this report. In assessing whether one or more of the criteria has been satisfied the Council must use an evidence based approach, therefore using up to date data is vital in order to minimise the risk of legal challenge in respect of any designation. The Council must identify the problems affecting the area to which the designation will apply and provide evidence to demonstrate the existence of the problems before proposing a designation and embarking upon consultation.
- 12.5 Section 81 of the Housing Act 2004 sets out further considerations that the Council must take into account when exercising its power to make designations.
- 12.6 The Council must ensure that any designation is consistent with the overall housing strategy and must seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour. A designation must not be made unless the Council has considered whether there are any other courses of action available that might provide an effective method of achieving the objective[s] of the designation. Only where there is no practical or beneficial alternative to a designation should a scheme be made, and only then should it be made where the designation will significantly assist in achieving the objective[s].
- 12.7 There is a statutory consultation period of at least ten weeks in respect of the proposed designation[s]. The Gunning principles, derived from case law, have formed a strong legal foundation by which the legitimacy of public consultations are assessed and are often referred to as a legal basis for judicial review proceedings. A consultation is only legitimate when the following four principles are met:-
- 1) Proposals are at a formative stage in that a final decision has not been made or pre-determined.
 - 2) There is sufficient information to give 'intelligent consideration', the length of consultation can vary depending on the subject and the extent of the impact. In this case 10 weeks is the statutory minimum.
 - 3) There is adequate time for consultation and response.

- 4) 'Conscientious consideration' must be given to the consultation responses before a decision is made.

- 12.8 There is a significant risk of legal challenge due to the onerous nature of any scheme upon private landlords. It is therefore anticipated that any decision made could be subject to judicial review, the Council was challenged by way of judicial review in respect of the 2015 scheme, this was successfully defended but the Council incurred significant legal costs in order to do so. It is therefore vital that all options be fully assessed in terms of the risk of challenge. This has been addressed to some extent within the body of the report.
- 12.9 In adopting option 1 the risk of legal challenge regarding any designation is removed and the Council would still be in a position to utilise other enforcement powers available whilst working with partner agencies. However, the Council has seen an improvement in housing standards across the two schemes which can only be of benefit to tenants. As set out above, there is a very specific criteria to be met before a designation can be made and a scheme implemented, it would perhaps be premature at this stage to completely rule out any new designation[s] until the up to date data is available and a full assessment can be made.
- 12.10 There is no evidence to support proceeding with a consultation on applying a 'whole borough' designation. Option 2 presents the highest risk of legal challenge to the Council in the form of judicial review. If the Council then intended to proceed with such a designation following consultation it would be required to apply to the Secretary of State for approval. This will be a lengthy process and in all likelihood the application would be unsuccessful. Option 2 is not recommended in light of the fact that there is no evidence to show that the criteria for making a designation is satisfied and the subsequent risk of legal challenge, which the Council would likely find difficult to defend based upon current data available.
- 12.11 Option 3 relies upon any new designation being informed by a multi-agency area plan for each proposed area. This approach will provide detailed information as to the problems to be addressed in each proposed area with the intention being to develop the plan before and after the statutory consultation period based upon responses. Prior to proposing a designation to then consult upon, the evidence must be available that the criteria has been satisfied. Specific data in the form of the Stock Condition Survey and Indices of Multiple Deprivations will be important to provide an overall picture when considering proposed designation[s]. Any legal challenge may be based on a challenge to the robustness of the evidence should those who oppose designation take a different view to the Report.
- 12.12 The Council will always be open to potential legal challenge in respect of any designation, should one be made, due to the nature of the schemes, option 4 provides would delay the making a designation in order to gather more information. While additional evidence will better inform the Council Cabinet is able to take a view that the evidential burden is met based on the

existing information and so waiting for further information is not necessary even if it would be desirable.

13 Human Resources Advice and Implications

13.1 There are no direct Human Resources implications arising from this report.

14 Implications for Children and Young People and Vulnerable Adults

14.1 As shown from the designations to date, effective application of Selective Licensing can have a positive impact on living conditions by improving housing conditions. Poor housing conditions can contribute towards various individual and public health impacts. According to information available within the commons library, Housing conditions can impact physical and mental health in various ways. The independent Marmot Review (2010) said housing is a 'social determinant of health', meaning it can affect physical and mental health inequalities throughout life. In addition, any activities to improve the energy efficiency of homes can have a small impact on carbon alongside living expenses.

15 Equalities and Human Rights Advice and Implications

15.1 An assessment has been carried out in Appendix 7. There are no equalities or human rights implications from this report.

16 Implications for CO2 Emissions and Climate Change

16.1 An assessment has been carried out in Appendix 8. The consultation discussed in this paper has no emissions impact.

17 Implications for Partners

17.1 If Cabinet agree to advance to consultation, Partners and relevant council services would have a significant role to play in working with local areas to develop relevant plans. This will require focussed activity and cooperation from a number of departments.

18 Risks and Mitigation

18.1 Not proceeding with consultation to establish new Selective Licensing areas risks the issues identified in Appendix 4 not being adequately addressed by existing services and partner activity.

18.2 The timing of any new declaration must be seriously considered. The council should ensure that the data on which a declaration is based is as robust as possible to offer the best opportunity to defend any application for Judicial Review. It is also advisable to ensure the Councils Housing Strategy has been refreshed to acknowledge the strategic nature of declarations, which is a key element in the government guidance.

- 18.3 Any declaration should be timed to ensure that software to deliver the licensing scheme and staffing expertise is in place prior to the declarations. Failure risks a bottle neck of applications which cannot be processed and both financial and reputational damage.
- 18.4 Any proposal to make further Declaration, especially in areas where previous declarations have occurred, may evoke a hostile reaction from local landlords. This may be mitigated at the consultation stage, however, local landlords have previously challenged the Council via Judicial Review of the first scheme. This can be an expensive and time-consuming process.
- 18.5 The proposed place-based plan and consultation may raise expectations in residents who contribute to the plan. If no Declaration is subsequently made, this may generate disillusionment.
- 18.6 There is a risk of disruption to wider council services from the time and commitment necessary from council staff and partners to developing the place based plans and undertaking robust consultation.

19 Accountable Officers

- 19.1 Lewis Coates, Service Manager Regulation and Enforcement
Chris Stone, Community Protection Manager

Approvals obtained on behalf of Statutory Officers: -

	Named Officer	Date
Chief Executive	Sharon Kemp OBE	02/09/24
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	16/08/24
Assistant Director, Legal Services (Monitoring Officer)	Phil Horsfield	13/08/24

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