Rotherham Metropolitan Borough Council

Public Report
Cabinet

Committee Name and Date of Committee Meeting
Cabinet – 10 June 2019

Report Title
Designation of Selective Licensing Areas – Parkgate and Thurcroft

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

Strategic Director Approving Submission of the Report
Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)
Lewis Coates, Head of Service, Regulation and Enforcement
01709 823117 or lewis.coates@rotherham.gov.uk

Matthew Finn, Community Protection Manager
01709 823134 or matthew.finn@rotherham.gov.uk

Ward(s) Affected
Borough-Wide

Report Summary

Cabinet and Commissioners' Decision Making Meeting on 6th August 2018, requested a public consultation to take place regarding the potential benefits of designating areas of Thurcroft and Parkgate for Selective Licensing of private rented housing.

This report provides detail of the feedback from the consultation with the majority of respondents expressing support for a mandatory selective licensing scheme. Based on the evidence of deprivation, anti-social behaviour and environmental issues in these areas, and the responses, comments and representations received, this report seeks approval from Cabinet to designate areas of Thurcroft and Parkgate as Selective Licensing areas.

Recommendations

1. That the strong evidence and public support for the Selective Licensing of Private Rented properties in Thurcroft and Parkgate be noted.

2. That the two areas in Thurcroft and Parkgate detailed in this report be designated as Selective Licensing Areas under Part 3 of the Housing Act 2004 through the designation orders in Appendix 5, subject to confirmation by the Secretary of State for Housing, Communities and Local Government.

3. That the Selective Licensing Conditions contained in Appendix 3 in the new designation orders be adopted for all new licences granted across Rotherham.

4. That, further to the adoption of the Selective Licensing conditions contained as at Appendix 3, approval be given to the proposed licence fee structure for the Thurcroft and Parkgate areas as set out in paragraph 6.1 below, and the application of this fee structure to all new Selective licences granted in Selective Licensing areas across Rotherham.

5. That the Assistant Director, Community Safety & Street Scene be required to apply to the Secretary of State for Housing, Communities and Local Government to confirm the designations.

List of Appendices Included

Appendix 1	Area maps showing proposed designated areas
Appendix 2	Analysis of Consultation for Selective Licensing in Parkgate and Thurcroft
Appendix 3	Standard Condition review and revised Standard Conditions 2019
Appendix 4	Fee structure and payment arrangements
Appendix 5	Draft Designations for Proposed Selective Licensing Areas
Appendix 6	Equalities Impact Assessment

Background Papers
Cabinet and Commissioner's Decision Making Meeting, 6th August 2018, minute 22

Consideration by any other Council Committee, Scrutiny or Advisory Panel
No

Council Approval Required
No

Exempt from the Press and Public
No

Designation of Selective Licensing Areas – Parkgate and Thurcroft

1. Background

1.1 The quality of housing and health outcomes are inextricably linked. Deprivation in particular, has a direct impact on people's ability to choose the housing they live in and their ability to make informed choices about the housing conditions they accept.

1.2 Selective Licensing of private rented housing is a successful tool to improve management standards of property, ensuring that landlords play their part in providing safe and healthy homes. This helps to improve health outcomes by making property safer and will ultimately contribute to addressing high levels of deprivation in communities.

1.3 In August 2018, Cabinet and Commissioner's Decision Making Meeting requested that a public consultation take place to seek views on proposals to designate parts of Thurcroft and Parkgate for Selective Licensing of private rented housing. The two areas suffer from high levels of deprivation which Selective Licensing, through ensuring higher standards of private rented housing, could assist in tackling. The analysis of the available data showed that the two small areas within the Thurcroft and Parkgate localities, consisting of 407 privately rented houses, also have high levels of environmental complaints, neighbourhood anti-social behaviour and crime.

2. Key Issues

2.1 Deprivation

2.2 The Lower Super Output Areas (LSOAs) of 'Thurcroft Central and Brampton', and 'Parkgate', are ranked in the top 16% and 15% respectively of the most deprived areas in England. Both have significantly higher levels of private rented housing than the national average.

2.3 From the Indices of Multiple Deprivation the 'Thurcroft Central and Brampton' LSOA is most affected by a lack of employment, low educational attainment and poor health. 'Parkgate' is most affected by the same lack of employment, poor health and the quality of the outdoor environment.

2.4 To assess where interventions would have the greatest impact, the two LSOAs, along with Rawmarsh South (which is adjacent to Parkgate and part of the same residential locality), were analysed to identify patterns of crime and anti-social behaviour in 2015/2016 and 2016/2017. This analysis demonstrated that there is one area in Thurcroft and one area in Parkgate and Rawmarsh South, which suffer from higher levels of crime and anti-social behaviour than average. Moreover, there are clear trends, which show that these areas suffer from significant levels of environmental problems, such as fly tipping and littering.

2.5 The two areas of greatest concern have been identified on the proposed licensing area maps at Appendix 1. In the identified streets in Parkgate, 255 privately rented properties provide 61% of the housing stock. In Thurcroft, 153 properties in the area account for 64% of the housing stock. Both areas are therefore above the national average of 19.9% and meet the threshold for Selective Licensing under the deprivation criteria.

2.6 Consultation Responses

2.7 In August 2018, Cabinet and Commissioner's Decision Making Meeting requested that consultation be undertaken in respect of the proposed new designations. The consultation was open between October and December 2018, receiving a total of 366 responses with 61% of respondents supporting the introduction of Selective Licensing into areas of Thurcroft and Parkgate. Detailed analysis of the consultation is contained in Appendix 2.

2.8 Licence Fee Structure

2.9 Following a number of detailed responses and comments received about the licensing fee, a review has been carried out to ensure that the costs for the proposed scheme are appropriate and proportionate. This review recognised that good landlords, who provide safe homes and professionally managed properties, may be investing in high quality property management more than less scrupulous landlords.

2.10 It is therefore proposed that the proposed fees are changed, to reflect a more flexible fee recovery process, and to recognise the reduced regulatory burden from properties that are of a high standard.

2.11 A revised fee of £521 is proposed for a five year single occupied house Selective Licence, but with a reduction to £394 for high performing landlords. Additional fees will apply for late applications and to additional letting units in the same building. Full details of the fee structure can be found in Appendix 4.

2.12 The proposed licence fee is split, as required by legislation, into a £68 non-refundable application fee and a £453 licence maintenance fee. This is a 12% reduction in the previous full licensing costs and a 56% reduction in the non-refundable application fee element. The fee equates to as little as £3.13 per week for the maintenance element for high performing landlords, if paid monthly by direct debit over two years.

2.13 Providing an extended period for payment over two years presents a low risk to the income for the scheme. Longer payment terms would present greater risks, as income is required early in the scheme to ensure it is financially sustainable for the full five years. A longer payment period would not enable the Council to effectively plan the expenditure of the licence fee income.

2.14 Licence Conditions

2.15 The Supreme Court judgement, Brown v Hyndburn Borough Council, 2018, impacts directly on the conditions that can be applied to licences issued under a Selective Licensing designation. Critically the findings of the Court prohibit the imposition of discretionary conditions on Selective Licences relating to the safety of property, as these matters can be effectively dealt with under primary legislation.

2.16 The Supreme Court findings have been taken into account and the existing Selective Licensing conditions have been reviewed and updated. Appendix 3 provides an overview of the review of the original 49, followed by the listing of the updated 35 conditions that will be applied to new licences under the new designations.

2.17 Confirmation of the Scheme

2.18 The Council can designate areas without approval from the Government if a designation, when combined with other existing designations, covers less than 20% of the geographical area or covers less than 20% of the private rented housing in the borough. Where this threshold is reached, new designations are required to be confirmed by the Secretary of State for Housing, Communities and Local Government[1]. This process would examine the justifications and processes followed by the Council.

2.19 The existing and proposed designations together would cover 2,747 privately rented homes. Current estimates provided by research commissioned by the Council from the Building Research Establishment as part of the Council's duty to carry out an assessment of housing conditions in the borough, show that the private rented sector in Rotherham is comprised of 18,500 privately rented properties, which would mean that 14.8% of the privately rented homes in the borough would be affected by the designations.

2.20 However the Council is required to use the 12,262 privately rented homes recorded by the 2011 census as the basis for its decision when making a designation. Under this calculation, 22.4% of the privately rented accommodation would be subject to Selective Licensing if the new designations were made and therefore Secretary of State Confirmation would be required.

2.21 Alternative Approaches

2.22 An alternative approach to the scheme has been proposed by a private company, the Home Safe Scheme. The company operates as a delivery partner, bringing some reductions in costs to landlords who apply for a Selective Licence through them. The company carry out monitoring and inspection of property, ensuring properties are brought up to the required standards. Consequently, the Council would be reliant upon the company to

[1] General Approval Order for Selective Licensing Schemes, 2015
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418588/General_consent_final__2_.pdf

ensure that properties are inspected and improved. Given the level of experience of delivering a Selective Licensing scheme within the Council, the success of the current scheme, and the potential timescales for the implementation of such an arrangement, the Service do not recommend this approach (see section 3).

2.23 The National Landlords Association and Residential Landlords Association have proposed that the designations be delayed until the outcome of the Government Review of Selective Licensing is completed. However this review is not due to report until the summer of 2019, and any adjustments to the law have not been scheduled as yet. This would mean that any delay may be indefinite and there is a need for action now to tackle significant community issues and concerns.

3. Options considered and recommended proposal

3.1 Option 1 – Designate the two areas of Thurcroft and Parkgate for Selective Licensing with the new standard licensing conditions

3.2 The outcome of the consultation shows that generally respondents are in favour of licensing. Selective Licensing will provide a regulatory regime and finances to ensure properties are managed effectively to provide safe homes for tenants.

3.3 The Council has experience of managing successful Selective Licensing designations which provides a high level of confidence of success, both in terms of the licensing arrangements and enforcement outcomes.

3.4 Developing the designations for Selective Licensing in Thurcroft and Parkgate, will contribute to the Council's Housing Strategy through:

- Improving the management of houses in the private rented sector through licensing conditions and enforcement and;
- Removing Category 1 hazards in relation to falls, excess cold and general disrepair through inspections. [2]

3.5 Whilst Selective Licensing is focused on delivering health outcomes and safe homes for tenants in the private rented sector, the additional enforcement may also contribute to improving the local environment and addressing anti-social behaviour.

3.6 A formal designation ensures that the costs of both licensing and property management improvement is borne by the industry and not the Council. The proposed new designations would be self-financing in the same way that the existing designations are.

3.7 The designations would require all privately rented properties within the identified boundaries of the two areas, subject to statutory exemptions, to be licensed for up to five years and to comply with licence conditions. The conditions for the existing Selective Licensing designations, which formed part of the consultation, are enclosed with the draft designations at Appendix 5.

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[2] http://www.rotherham.gov.uk/shf/downloads/file/18/housing_strategy_2016-19, Pg24

3.8 Under this option each property would receive an initial ‘risk rating’ visit to determine the priority for further full inspections. A full inspection is then carried out as part of the licensing scheme, and further, subsequent, inspections will be made to those properties identified as high risk throughout the life of the licensing scheme.

3.9 The designations require confirmation from the Secretary of State as more than 20% of the privately rented sector would be affected by Selective Licensing.

3.10 The areas of Parkgate and Thurcroft proposed to be designated for Selective Licensing are described in Figures A and B below, with the shaded areas representing the boundary of the proposed designations:

Figure A - Parkgate Proposed Selective Licensing Area

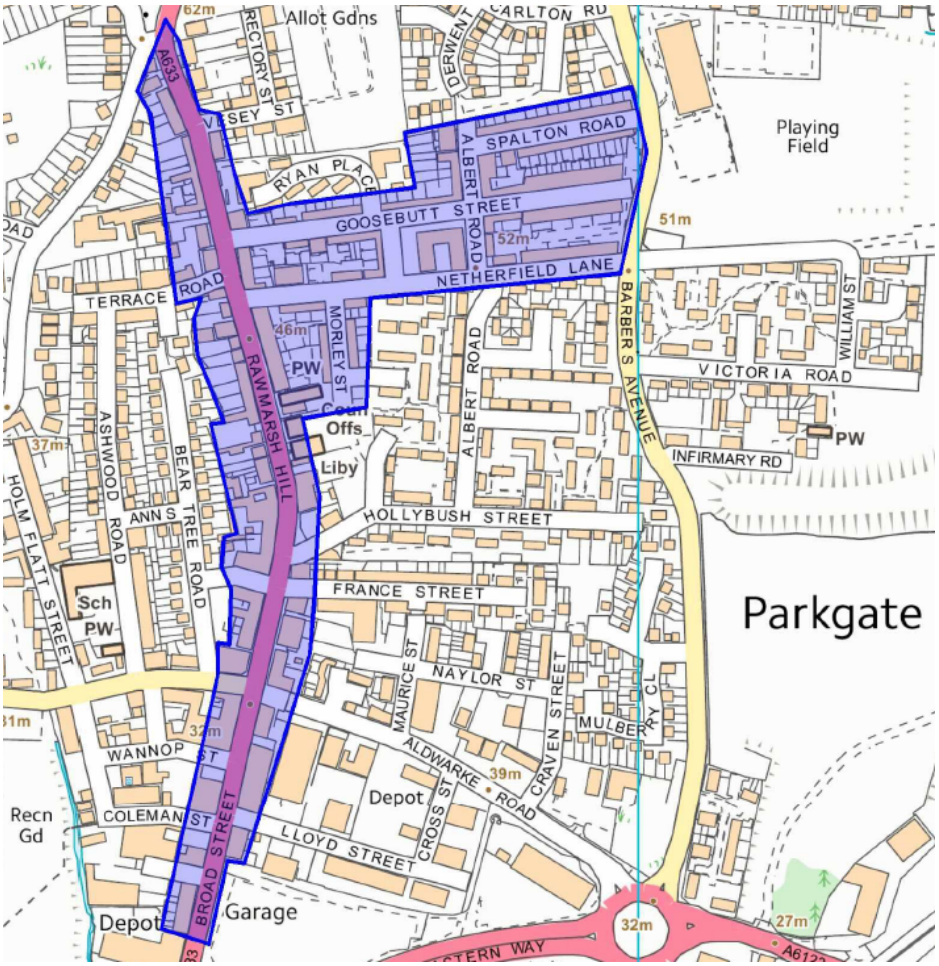
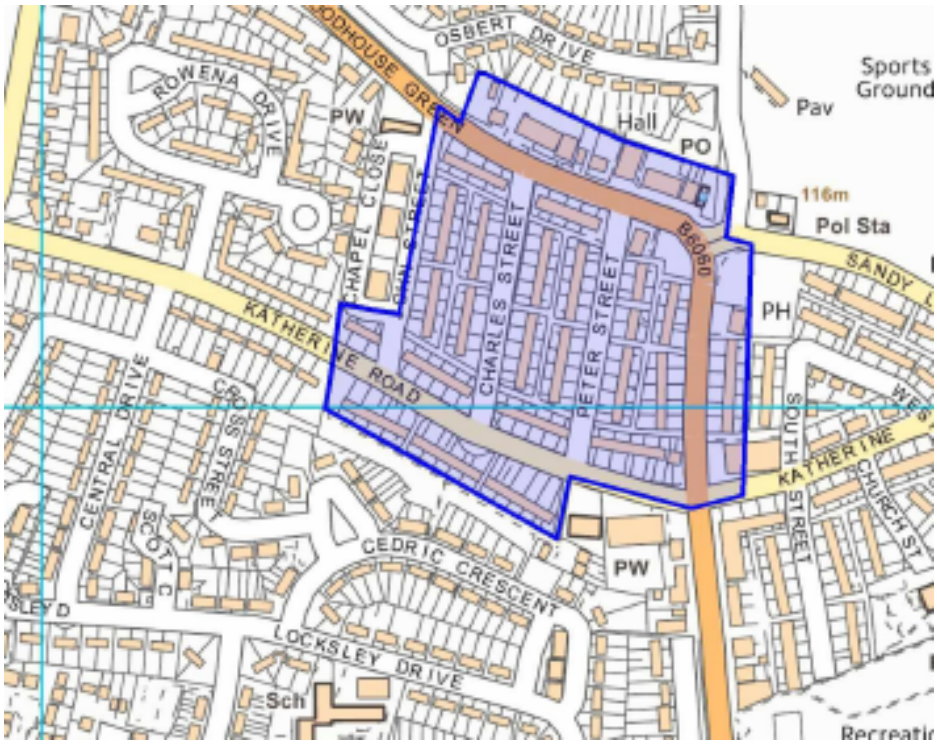


Figure B - Thurcroft Proposed Selective Licensing Area



3.11 Option 2 – Voluntary Landlord Quality Scheme

3.12 Voluntary alternatives to Selective Licensing were considered in 2014 prior to the designation of the existing Selective Licensing areas.

3.13 Whilst voluntary schemes for licensing would not require landlords to pay for licences and would prevent an additional burden on the sector, there would be concern that this approach would not deliver improvements to housing conditions, in particular because:

- There is no compulsion for landlords to register or any penalty for failing to register.
- Landlords who need to improve their properties have no obligation to join a scheme and consequently can avoid compliance until detected through routine enforcement methods.
- Previous attempts at voluntary accreditation schemes have not received sufficient take-up and have therefore been unsuccessful.
- There is a risk that this option once in operation may fail to meet the success factors required and a mandatory Selective Licensing scheme would be required.

3.14 Option 3 – Home Safe model for Selective Licensing

3.15 This option would seek to adopt proposals to operate a Home Safe style scheme, as some other local authorities have.

3.16 The Home Safe scheme typically offers fees ranging from £336 to £515 (incl. VAT) for the first property. Additional fees apply with small reductions (£10-£20) for each additional property. For landlords who fail to licence through that process or fail to abide by the scheme's terms and conditions, they would need to licence direct with the Council, attracting a full licensing fee. Breaches of Home Safe conditions may result in enforcement referrals to the Council by the scheme and a need to re-licence fully. The scheme proposes to support enforcement action for non-complaint landlords.

3.17 While this model would appear to offer landlords and the Council some benefits in terms of cheaper processing and inspections and longer payment terms for membership, any hazards found at properties would be dealt with wholly on an informal basis to begin with.

3.18 The Council's existing model benefits from a coordinated service with the existing Regulation and Enforcement teams and Police partners which would be difficult to realise with the Home Safe scheme. The Council specifies to landlords a time-limited period in which to comply with a detailed schedule of works. This approach has been highly successful in ensuring improvements are made quickly after inspections.

3.19 While the Home Safe Scheme model may have some benefits and, according to their submission, other areas have claimed improved standards, it does not appear to offer the level of assurances that the current direct Selective Licensing approach provides for Rotherham or provide a significant reduction in the costs of licensing for landlords compared with the minimum £398 fee proposed in this paper.

3.20 In addition, this scheme would require significant monitoring in terms of property inspections, assessments, quality assurance, and a degree of reality check inspections from the Council to ensure it was working appropriately. When combined with the requirement for the Council to licence a number of unknown additional properties in full, this means that the Council would not be able to fully plan for the costs of operating, with a consequent risk to the self-financing element of the service.

3.21 <u>Preferred Option</u>

3.22 It is proposed that Option 1 is the most appropriate course of action to ensure a sustainable and cost effective solution to improving management standards in the private rented sector in Thurcroft and Parkgate and to contribute to reducing deprivation in these areas.

4. Consultation on proposal

4.1 If the designations are made the full outcome of the consultation will be published. In accordance with legal requirements the respondents to the consultation will be individually notified of the outcome.

4.2 The consultation process included the following:

- A comprehensive Selective Licensing consultation web with full details of the proposals and background reports.
- Direct contact with landlords, residents and businesses in Thurcroft and Parkgate.
- Public and landlord drop in sessions in each proposed area and at Rotherham Town Hall.
- Meeting with the Rotherham & District Residential Landlords Association and the National Landlords Association at the local landlord forum.
- Direct contact with landlord associations and representatives through local meetings, and the Selective Licensing Steering Group meetings.
- Direct mail to all residential and business addresses in and around the proposed areas with an information pack pre-paid envelope and questionnaire replicating the online questionnaire.
- Direct mail to landlords (registered with Council Tax as landlord or owner or where the Regulation and Enforcement Service has contact details) who rent property in the proposed Selective Licensing areas to advise on the consultation and to seek responses online (or by post if they preferred).
- Direct mail to landlords and in the immediate area around the proposed areas to advise them of the consultation and details of how to respond.
- Emails to local letting agents, South Yorkshire Police and Rotherfed
- Emails to national interest groups such as landlord associations and Shelter;
- Social media posts and press releases to promote the consultation as widely as possible.

4.3 Local Elected Members in Rawmarsh and Rother Vale Wards have been fully involved and consulted at all stages of the process.

4.4 Overall, 61% of respondents (221 responses) supported the idea of introducing Selective Licensing in these areas, with 18% (68 responses) disagreeing with the introduction. Of those supporting the introduction 68% of residents and businesses were in favour of introducing Selective Licensing in Thurcoft and Parkgate; 65% of landlords were against the proposals.

Agree or disagree with proposals to introduce Selective Licensing in the areas						
	Landlords	**Private Tenants**	**Social Tenants**	**Owner Occupiers**	**Business**	**Total**
Agree Strongly	NA	12	19	106	12	149
Agree	9	7	12	43	1	72
Neither agree nor disagree	10	24	15	17	5	71
Disagree	35	5	3	3	0	46
Strongly disagree	NA	11	1	5	5	22
No response	0	1	1	2	2	6

4.5 Further detail in relation to the consultation and responses is can be found in Appendix 2 to this report.

5. Timetable and Accountability for Implementing this Decision

5.1 For Option 1, the designation will require confirmation by the Secretary of State for Housing, Communities and Local Government. The application for confirmation will be made within 7 days of the designation. It is estimated that confirmation process will take up to 8 weeks. Once this confirmation has been received, the designation will take effect 3 months from the date of the confirmation. This time period is the minimum for the statutory notification period after the designations are confirmed.

5.2 Public notices in local newspapers and Council offices are required within 14 days of the designation being made along with notification to consultation respondents and landlords.

5.3 All landlords of properties in the designation areas are known and will be contacted directly to invite them to licence by the date the designation comes into effect and no later than 12 weeks afterwards. Following this period, enforcement action will commence to secure licensing where landlords have not come forward.

5.4 The Assistant Director for Community Safety and Street Scene will be responsible for the delivery and implementation of the proposal.

6. Financial and Procurement Advice and Implications

6.1 The proposed fees in respect of these Selective Licensing areas are shown below:

Total licence fee per house	**£521**		
Application fee element	£68		*Non-refundable, paid with the application*
Maintenance fee element	£453		*Paid once a draft licence has been granted, can be spread by direct debit over 12 months*
Additional Unit maintenance fee	£132		*Applicable where there is an additional letting unit in the same building/house under the same ownership*
Rebate for early applications with fully compliant property	£127		*Available if the landlord applies within 12 weeks of the property being licensable, has no hazards which warrant intervention by the Council, and are found to be fully compliant with the **statutory** licence conditions (conditions 1-4).*
Late Application penalty fee	£136		*Paid with application fee - non-refundable*

6.2 These fees are consistent with the process for calculating the HMO licensing fees for 2019/20 as per the fees and charges agreed in February 2019 by Council.

6.3 The anticipated take up of the scheme along with planned spend over the period is shown in Appendix 4. All costs will be fully covered by the income generated and there is therefore no impact on Council budgets.

6.4 As the recommendation is to wholly deliver this work internally there are no direct procurement implications. However, consideration needs to be given to additional licences for existing IT systems and the purchase of minor items of equipment which must be done in compliance with the Council's own Financial and Procurement Procedure Rules.

7. Legal Advice and Implications

7.1 Part 3 of the Housing Act 2004 sets out the scheme for licensing private rented properties in a local housing authority area. Under section 80 of the Act a local housing authority can designate the whole or any part or parts of its area as subject to selective licensing. Where a selective licensing designation is made it applies to privately rented property in the area.

7.2 A selective licensing designation may be made if the area to which it relates satisfies one or more of the following conditions. The area is one experiencing:

- Low housing demand (or is likely to become such an area);
- A significant and persistent problem caused by anti-social behaviour;
- Poor property conditions;
- High levels of migration;
- High level of deprivation;
- High levels of crime.

7.3 In considering whether to designate an area for selective licensing on the grounds above on property conditions, migration, deprivation and crime the local housing authority may only make a designation if the area has a high proportion of property in the private rented sector. Nationally the private rented sector currently makes up 19% of the total housing stock in England. When considering whether to make a selective licensing designation a local housing authority must first identify the objective or objectives that a designation will help it achieve. Secondly, it must also consider whether there are any other courses of action available to it that would achieve the same objective or objectives as the proposed scheme without the need for the designation to be made. Only where there is no practical and beneficial alternative to a designation should a scheme be made.

7.4 In deciding whether to make a designation because the local authority considers the area suffers from a high level of deprivation, it is recommend that the local housing authority considers the following factors when compared to other similar neighbourhoods in the local authority area or within the region:

- Employment status of adults;
- Average income of households;
- Health of households;
- Availability and ease of access to education, training and other services for households;
- Housing conditions;
- Physical environment;
- Levels of crime.

7.5 Before making a designation, there are clear rules in relation to consultation and the Authority must fully consider any representations made during the consultation process.

7.6 Where the criteria are satisfied and a selective licensing scheme is made, a designation may be made for up to 5 years. Any designation cannot come into force until either 3 months after it is made or 3 months after it has been confirmed by the Secretary of State, where this is required. Section 83 of the Housing Act 2004 requires local housing authorities to publish a notice of the designation once it has been confirmed. A local housing authority must:

- Publish a notice within the designated area within seven days of the designation being confirmed.
- Notify all those consulted on the proposed designation within two weeks of the designation being confirmed.

7.7 If a designation is made, then Section 84 of the Housing Act 2004 requires local housing authorities to:

- Review the operation of a designation made by them from time to time, and;
- If following a review they consider it appropriate to do so, they may revoke the designation.

7.8 The Authority must ensure that the criteria for making a designation are met, before making any decision to adopt a selective licensing scheme. Where such a scheme is adopted, the Authority must ensure that it complies with all requirements set out in the legislation, including publication and reviews. As with all decisions of this nature, there is a possibility of legal challenge in the form of a judicial review; however the risk of such a challenge will be less where the Authority ensures that the legislation is complied with.

8. Human Resources Advice and Implications

8.1 There are no direct HR implications arising from these proposals. However, it will be necessary following the designation to consider the requirement for any additional staffing resources needed to implement the decision.

9. Implications for Children and Young People and Vulnerable Adults

9.1 There are no direct implications for Children and Young People and Vulnerable Adults arising from this report.

10. Equalities and Human Rights Advice and Implications

10.1 There are no equalities and human rights advice implications. An Equality Impact Assessment is attached at Appendix 6.

11. Implications for Partners

11.1 Relevant partners and Directorates will be advised of the recommendations made in this report in addition to the formal consultation process.

12. Risks and Mitigation

12.1 There is a risk that landlords may increase rents in these areas to fund licence fees. However the cost of letting property may also increase due to other cost increases for landlords, as raised by a landlord representative organisation in their response to the consultation (Appendix 2). To help reduce costs, the proposed licensing fees have been revised (6.1 and Appendix 4) to account for changes in processes within the Council and to recognise the good work of high performing landlords.

12.2 There is little risk of budgetary shortfall. The Council is aware of all the licensable property in the proposed areas and has significant experience in successfully implementing these designations and securing applications.

12.3 An application for Judicial Review is still a risk. These have been successful where councils have failed to follow the correct consultation processes or have been unable to justify part of their scheme, proposals or evidence base. Although the previous designations in Rotherham were found to be sound at the Judicial Review in 2015, and this experience has helped develop these proposals, it is possible a further review could be sought. The comprehensive data and consultation process already followed and the confirmation application mitigates against this risk.

12.4 There is a risk that the Secretary of State will not confirm the designation, however the risk is mitigated by a detailed report on the basis for the proposals and a comprehensive public consultation.

13. Accountable Officer(s)

Tom Smith, Assistant Director, Community Safety and Street Scene
Paul Woodcock, Strategic Director of Regeneration and Environment

Approvals obtained on behalf of:-

	Named Officer	Date
Chief Executive	Sharon Kemp	23/05/19
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	22/05/19
Head of Legal Services (Monitoring Officer)	Bal Nahal	21/05/19
Assistant Director of Human Resources (if appropriate)	John Crutchley	18/02/19
Head of Procurement (if appropriate)	John Crutchley	06/03/19

This report is published on the Council's website.