

Report to Cabinet

Subject: Selective Licensing Implementation in the Netherfield Ward

Date: 8 March 2018

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Wards Affected

Netherfield ward

Purpose

To consider the results of the 12 week public consultation following Cabinet's resolution of 12 October 2017 in relation to a proposal to designate the Netherfield ward for selective licensing for a period of 5 years.

To approve the designation of the Netherfield Ward shown outlined in red at Appendix 1 to this report as being subject to Selective Licensing with effect from 1 October 2018.

To approve the licence conditions to be attached to licences issued under the Selective Licensing Scheme as set out at Appendix 2 to this report.

To authorise the Director of Health and Community Wellbeing to publish a Notice of Designation in accordance with the Housing Act 2004

To approve the licensing fees as set out in Table 1 of paragraph 4.2 of this report.

To authorise a review of the scheme in 18 months, the outcome of the review will be reported back to Cabinet.

To note the financial implications of implementing a selective licensing scheme including the operational staff structure.

Key Decision

This is a key decision because it is likely to have a significant impact on the whole of the Netherfield ward and has potential implications for the private rented sector in the rest of the Borough and Landlords living inside and outside the Borough who hold properties in the Netherfield ward.

Background

1.1 Legislative background

Section 80 of the Housing Act 2004 allows local authorities to introduce selective licensing of private rented properties in a designated area. The Secretary of State's guidance for local authorities issued by the Department of Communities and Local Government in 2015 requires that a designated area for selective licensing must have a high proportion of private rented accommodation (over 19%). Where the designated area covers over 20% of the local authority area or over 20% of the housing stock in the local authority area, the authority to designate must be granted from the Secretary of State. Below the 20% threshold the local authority has the power to designate the area.

1.2 The Secretary of State's guidance describes that a local authority can designate an area for selective licensing where one or more of the following conditions exist:

- I. low housing demand (or is likely to become such an area)
- II. a significant and persistent problem caused by anti-social behaviour
- III. poor property conditions
- IV. high levels of migration
- V. high levels of deprivation
- VI. high levels of crime

In order for the Council to make a designation it must:-

- a) be satisfied that one or more of the statutory grounds for making a scheme are met
- b) have taken reasonable steps to consult persons likely to be affected by the designation and have considered any representations
- c) ensure that any exercise of the power is consistent with the authority's overall housing strategy
- d) seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour both as regards combining selective licensing with other courses of action available to them and measures taken by other persons

The Council must not make a designation unless:-

- a) it has considered whether there are any other courses of action available to it that might provide an effective method of achieving the objective(s) that the designation would be intended to achieve, and;
- b) it considers that making the designation will significantly assist it to achieve that/those objective(s)

- 1.3 The purpose of local authorities licensing all private landlords in a designated area is to ensure that a minimum standard of property management is achieved. The explanatory notes to Part 3 of the Housing Act 2004 makes it clear that selective licensing is strongly linked into the Government's anti-social behaviour agenda. Registered Social Landlords and their properties are exempt from selective licensing
- 1.4 Prior to designating an area for selective licensing the local authority must have conducted a public consultation for a minimum period of 10 weeks.
- 1.5 In areas designated for Selective licensing all rented properties must be licensed by the council with the exception of those already subject to mandatory HMO licensing or those managed or owned by Registered Social Landlords. All private landlords will be required to hold a licence in order to rent out a property. The licence last for up to five years.
- 1.6 To qualify for a licence a landlord must be able to demonstrate that they are acting within the law and taking adequate steps to manage their properties and keep them safe. Prior to issuing a licence, council officers will inspect every private rented property to ensure they meet minimum standards and will comply with the licence conditions. In addition, a 'fit and proper' person test will be applied to test the landlord's suitability to manage the tenancy.
- 1.7 If a decision is made to approve the designation, a public notification period of 3 months is required before implementation of the scheme in order to communicate the decision to consultees and the public.
- 1.8 At it's meeting of 12 October 2017 Cabinet noted the scheme of Selective Licensing as outlined in the 'Proposal to Declare a Selective Licensing Designation within the Private Rented Sector of the Netherfield Ward' ("the Proposal") and gave approval for a 12 week consultation on the scheme to be carried out. The report including the draft "Proposal" are available via the councils webpage or clicking [here](#).
- 1.9 As outlined to Cabinet in the "Proposal" the statutory grounds upon which the Council would rely for the designation of the Netherfield Ward are; a

significant and persistent problem caused by anti-social behaviour, poor property conditions, high levels of deprivation and high levels of crime. These grounds, along with the other statutory requirements listed above, were fully evidenced in the “Proposal” considered by Cabinet at the meeting of 12 October 2017.

1.10 Fees

Part 3 of the Housing Act 2004 outlines that the Authority may require the selective licensing application to be accompanied by a fee fixed by the authority. As detailed in the statutory consultation responses, the majority of landlords and agents indicated the proposed fee for the selective licensing designation area was too high and should contain a larger reduction for those landlords accredited through a relevant scheme.

1.11 The fees are calculated on a cost recovery basis. A review of Selective Licensing fees nationally have found that there is a broad range in fee ranging from £250 to £900 for a licence.

1.12 Officers have approached Ashfield District Council who are the only Council in Nottinghamshire to have implemented Selective Licensing, to learn of their experiences and the level of staffing resource they have employed to administer their scheme. Ashfield charge £250 for Accredited landlords and £350 for non-Accredited landlords. However, it is noted that Ashfield are reviewing their fees with the view to increasing them for their next schemes, they are also in the process of buying an IT system to receive and process licence applications (this cost has already been factored into Gedling’s proposal). The Financial Implications Section of this report outlines the amendments to the scheme following the public consultation and further research.

1.13 Breaches of conditions and fines

The key purpose of selective licensing is to improve management conditions, therefore if the scheme is introduced, the key actions by Council officers will be to ensure that the landlords rectify problems in their properties. Those who do not apply to get a licence or breach licence conditions could, as a last resort, be prosecuted and receive an unlimited fine. The Housing and Planning Act 2016 introduced the concept of civil penalties for certain housing related offences, officers are in the process of drafting a policy to implement this legislation. The income generated through civil penalties is to be spent on private housing services in the council’s area.

1.14 Exemptions of the requirement to licence a property are as follows:

- Local Housing Authorities or Registered Social Landlords tenancies
- Holiday lets
- Where a family member rents the property from you (proof required)
- Long lease tenancies (21 years)
- Business tenancies
- Properties where the council has taken action to close the property down.

1.15 Results of the Public Consultation

The public consultation on selective licensing in Netherfield was held between 16th October 2017 and 5th January 2018. To bring the consultation to the attention of stakeholders and seek their views the Council used the following methods:

- 2 rounds of leaflet drops to every residential property in the Netherfield ward, businesses on Victoria Road, and a series of posters in public noticeboards in the vicinity.
- 2 public briefings for residents and the St Georges Centre, Victoria Road, Netherfield. These briefings were attended by 22 residents.
- A briefing event for landlords and managing agents at Gedling Borough Council Chamber. This briefing was attended by 38 landlords and managing agents.
- A press release and photo opportunity at a private rented property in the Netherfield ward that was covered by local media including the Nottingham Post and Gedling Eye
- Tweets and Facebook Posts on the Councils Corporate Social Media platforms.
- A mailshot was sent to over 100 landlords and agents known to own and manage properties in Netherfield ward according to Housing Benefit and environmental health records
- An article in the autumn edition of Contacts magazine that was sent to every resident of the borough.
- An independent meeting with representatives from the National Landlords Association (NLA) and the East Midlands Property

Owners Group (EMPO).

- A meeting with Nottinghamshire Police Local Inspector and Police Sargent for the ward.
- A meeting with representatives from Nottinghamshire County Council Public Health Department.
- A meeting with representatives from the Netherfield Steering group which includes local Councillors, Service Providers, and representatives from the Netherfield community.

1.16 The consultation questionnaire was hosted on the Council's website and Cabinet are required to take into consideration the responses raised in the consultation before reaching a decision. 83 responses were received via the website and a further 4 written representations were received directly by the Council. A summary of the headline statistics from those responding to the online survey are attached in Appendix 3.

1.17 83% of respondents own, live in or manage a home in Netherfield and are stakeholders in the area. There is good level of public support for introducing a scheme with 63% of residents and local service providers in support of the proposal to introduce a selective licensing scheme.

1.18 Appendix 4 shows a summarised log of the issues raised during the consultation process and how the council has responded.

Some of the comments in support of the proposal include the following:

"there is definitely an issue in Netherfield"

"there are a number of rented properties where we live and most of them are scruffy looking from the outside, the windows and curtains are filthy, the gardens are a mess. If the tenant is not going to keep the property neat and tidy the landlord should be made to do so. There is also a lot of anti-social behaviour from these properties. Nobody knows who to complain to."

"there are large pockets of deprivation in Netherfield. Some property investors see this a great opportunity for high gain returns. The downside is that people on low incomes are affected and have to live in poor housing conditions. There are properties in Netherfield that have single glazed windows, damp and no central heating or hot water. This shouldn't be tolerated. It's clear that this area needs to be regulated and improvements need to be done."

"housing quality and the safety of citizens has strong and clear links to improved outcomes for people. This is a key step in the right direction to

adding some control to a rental sector within which there have been clear historical issues.”

“I believe the introduction of licensing will help prevent the exploitation of low income tenants and improve the quality of housing that is available to residents of Netherfield. The system will help regulate what’s going on in the private sector and we full support Gedling Borough Council’s proposals. Everyone deserves a safe and secure home. Being a landlord or a property investor should be seen as a business and NOT a investment.”

- 1.19 52% of all respondents were landlords or managing agents, and as anticipated many of these are not supportive of the proposal to introduce licensing which will include checks on properties to ensure minimum standards are achieved and a licence fee. Many respondents reported comments that the licence fee is too high and are concerned that costs will be passed on to tenants.

Accordingly it is proposed if the scheme is to go ahead that the licence fees will be reduced from the initial proposal prior to the consultation. A greater fee reduction will be offered for Accredited landlords – these fee reductions have been calculated by reducing the staffing resource based on feedback from Ashfield District Council’s experience of implementing a similar scheme.

Landlord Accreditation is a practical way to improve the quality of private rented accommodation by setting out standards for their members. Most schemes with into three general models, either, property based, management standard based or a hybrid involving a combination of inspection and landlord management standards. Joining Accreditation schemes are voluntary but can achieve a number of benefits for landlords such as access to advice, support and training, as well as gaining a market advantage for tenants who want assurance their landlord operates professionally.

- 1.20 Other comments in the consultation both in support and against the proposal indicated that if the scheme is to go ahead that it should apply to other areas in addition to Netherfield.

Netherfield has been selected as there is clear evidence supporting the introduction of Selective Licensing. If this report is supported it is proposed that a further review is carried out within 18 months of the introduction of a scheme to evaluate the learning and benefits of the introduction of a scheme to Netherfield and consider whether there is evidence to support extending a Selective Licensing scheme to other areas of the borough.

- 1.21 As outlined in para 1.15 above a dedicated meeting was held with both main landlord associations in the Nottinghamshire area; EMPO and NLA. Both organisations also attended the landlord and managing agents briefing event and submitted written responses to the consultation.
- 1.22 EMPO offered general support for the proposal recognised it as an effective tool to improve housing conditions and that it is a targeted and focused scheme, however they have raised concerns around the fee level being too high and advised a fee set at the right level is an important part of the scheme. EMPO also briefed their members about the scheme at their local meeting on 9th November 2017.
- 1.23 NLA were less supportive of the proposal and submitted a written letter to the Council not via the website. NLA comment that the council's proposal is flawed, they disagree that landlords have any responsibility for antisocial behaviour of their tenants outside their property and their only course of action can be to serve notice to evict their tenant.
- 1.24 NLA consider that the introduction of selective licensing will lead to the displacement of tenants and migrant labour and will stigmatise Netherfield. NLA have requested further supplementary information supporting the council's proposal which has been responded to as a freedom of information request.
- 1.25 Cabinet are asked to note the comments by NLA but recognise that there are counter arguments to all of the comments raised by NLA. Selective licensing is outlined by Government in their explanatory guidance (issued when the powers were created) as an important part of their strategy to tackle and address antisocial behaviour. Guidance released by Government "*problems are known to arise when landlords let properties to anti-social tenants and then fail to take the action that is open to them to deal with the tenants' behaviour. The problems of vandalism, empty properties, drugs, crime and general disorder have a significant impact on the quality of life of people living in the neighbourhood of these properties*" Selective Licensing was created as a mechanism to work in collaboration with other powers to address these issues.
- 1.26 In the experience of the Public Protection Service and Nottinghamshire Police, landlords can play a key role in engaging tenants in behavioural change. Selective licensing will enable enforcement partners to engage with landlords at an early stage as they will be identified by the licensing regime. This is not currently the case and as commented in para 1.18, above the community doesn't know who owns private rented homes and who to complain to. Engaging with absent landlords is a challenge for the Police, Council and other partners. Enforcement agencies consider the displacement of problematic tenants as an effective deterrent and tool in addressing and bringing about behavioural change associated with

criminal and antisocial behaviour.

- 1.27 The NLA and other respondents to the consultation who suggest landlords have a limited role in addressing crime and ASB also fail to recognise the role of the council and partners in investigating and identifying criminal and ASB issues which will be enhanced through the inspection process, presence in the ward, and more informed decision making due to the information available to the council as a result of the licensing regime. Furthermore the council will directly address any criminal landlords identified in the area if they fail to licence their properties or provide accommodation below the minimum legal standards.
- 1.28 It is considered that the introduction of selective licensing will enhance the Netherfield area as the Council and partners will work together to address the issues of crime, ASB, poor housing conditions and deprivation as evidenced in the proposal document.
- 1.29 Regard must also be had to the Council's duty under the Equality Act 2010 to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between protected groups, including consideration of the Equality Impact assessment attached at Appendix 5 to this report. The assessment reflects the material comments that have been expressed and the different sectors of the community that have responded to the consultation. Cabinet must consider what impact of the proposals will be on the needs of those with protected characteristics and whether the need to introduce a Selective Licensing Scheme and potential positive outcomes of the Scheme outweighs the potential negative outcomes.

Proposal

- 2.1 It is proposed that Cabinet approve the designation of the Netherfield Ward shown outlined in red at Appendix 1 to this report as being subject to Selective Licensing with effect from 1 October 2018.
- 2.2 It is proposed that Cabinet approve the licence conditions to be attached to licences issued under the Selective Licensing Scheme as set out at Appendix 2 to this report.
- 2.3 It is proposed that Cabinet authorise the Director of Health and Community Wellbeing to publish a Notice of Designation in accordance with the Housing Act 2004.
- 2.4 It is proposed that Cabinet approve the licensing fees as set out in Table 1 of paragraph 4.2 of this report.
- 2.5 It is proposed that Cabinet authorise a review of the scheme in 18 months, the

outcome of the review will be reported back to Cabinet

- 2.6 It is proposed that Cabinet note the financial and staffing implications associated with the Selective Licensing Scheme.

Alternative Options

- 3.1 Legally, it is required that Councils, before they implement any selective licensing scheme, must have considered any other course of action that might provide an effective method of achieving the objectives that such a scheme would bring.
- 3.2 This may include voluntary measures such as accreditation and giving the opportunity for local landlords to prove that they are committed to ensuring the quality of the private rented sector. Such a voluntary scheme does bring a set of standards relating to management or physical condition of privately rented accommodation and, in that, it does recognise and rewards landlords who manage their properties to a good standard. It does not, however, bring a *mandatory* test of a landlord being a fit and proper person to be the licence holder or a *mandatory* requirement to comply with licence conditions.
- 3.3 Officers also considered not seeking a scheme for selective licensing in the district but this was not pursued as it would not address poor housing conditions and improve property management and address crime and antisocial behaviour in the Netherfield ward.
- 3.4 Officers also considered introducing a district-wide scheme but this was not taken forward at this stage because the evidence is not yet sufficient to consider the whole district and therefore such an application is unlikely to be supported by the Secretary of State (who has to agree to the implementation of a significantly larger scheme). However it is the Council's intention to collect data and review this position once the proposed designated scheme can be evaluated, it may also consider other ward based or smaller areas for selective licensing.

Financial Implications

- 4.1 As outlined in the results of the consultation detailed in the background section of this report, concerns were raised through the consultation about the level of fees and the costs being passed onto tenants. Suggestions were also put forward to pay the licence fees by instalments. Guidance issued by the Local Government Association in 2017 recommends recovery of licence fees in two parts; the first part is associated with processing the licence application and the second part is charged only to those applicants who receive a licence and covers the costs associated with compliance and enforcement of the licence.

The introduction of 2 part fees will go some way to addressing the concerns

raised in the consultation about meeting the fee costs and will spread the costs for landlords. The part 2 fee will need to be paid once the Council has processed the application, inspected the property and is ready to issue the licence. Issuing the licence will be conditional to the applicant paying both parts of the fee, without which they will be operating without a licence which is a criminal offence.

It is not recommended for this scheme to introduce payment by annual instalments for the following reasons:

- it will introduce confusion for landlords over the correct fee due to the variety of fee levels that would be required for Accredited and Non-Accredited landlords and the 2 part fee system as recommended by the LGA.
- It will place additional burden and costs on the council to manage payment plans and direct debits and continually check the income receive throughout the 5 year period of the scheme
- It will increase the risk for the council of not collecting the full level of income required to provide the service. Landlords could cancel their direct debit arrangements or not pay future instalments and the Council would then need to carry out enforcement to recover the costs.

This recommendation is consistent with the Council’s Financial Regulations which recommend collection of income in advance to avoid the time and cost of administering debts.

4.2 The total proposed licence fees have been reduced from £650 for accredited landlords and £675 for non-accredited landlords to the new proposed fees set out in the table below:

Table 1

Landlord type	Part 1 fee	Part 2 fee	Total	Number of Properties	
Accredited Landlords	£360	£130	£490	254	(estimated 40% Accredited)
Non Accredited Landlords	£475	£165	£640	381	(estimated 60% Non-Accredited)
			Total	635	

4.3 To accommodate the reduced licence fees as outlined above the staffing resource has been reduced to maintain full cost recovery of the service. Prior to consultation it was proposed to have the following:

Table 2

Original Staffing proposal prior to consultation
One Senior EHO Band 10 (permanent) One Deletion Environmental Health Officer Band 9 One Housing Improvement Officer Band 8 (permanent) Two Housing Improvement & Enforcement officers (Band 7/8 2yr fixed term)

- 4.4 Following the consultation, taking into account the views of stakeholders about the fees and learning from the experience and resources utilised at Ashfield District Council the proposed staffing structure is outlined in table 3 below. The proposal is that there will be three temporary Band 8 posts (rather than one permanent and two temporary). Initially an existing EHO will be recruited through a competitive process into a new Senior EHO for a period of 2 years with an option to extend for a further year. 18 months after the commencement of the scheme a review will be completed which will include consideration of the staffing resources and fees and whether to create any permanent positions. This will allow the service to accommodate any variance from the projected income level. The costs of the new structure are outlined in the following table:

Table 3

Proposed Staff structure following consultation
Establish Senior EHO position through an honorarium to an existing EHO for initial 2 year period with option to extend.
Two temporary Housing Improvement & Enforcement Officers 2yr Fixed Term - Band 8, employed in years 1 & 2
One temporary Housing Improvement and Enforcement Officer Band 8 (2yr), employed in years 2 & 3

The proposed staffing structure has reduced the overall costs of the scheme as 4 temporary positions will be created which will be kept under review as the scheme proceeds.

- 4.5 The table 4 over the page outlines the 5 year projected costs and income. The IT costs have increased from the original proposed costs to include training and running costs of the mobile hardware devices to be used by the service. The original proposed only included the setup costs for the web-based

application processing system and the hardware costs.

Table 4

Selective Licencing Scheme Costs and Income							
	Year 1	Year 2	Year 3	Year 4	Year 5	Total	
	£	£	£	£	£	£	
Additional Staff Costs	82,200	123,100	45,400	5,400	5,500	261,600	
DASH Membership Fees	5,300	5300	5300	5300	5300	26,500	
IT Costs	35,000	0	0	0	0	35,000	
Other Expenses	15,000	0	0	0	0	15,000	
Total Costs	137,500	128,400	50,700	10,700	10,700	338,100	
Licencing Fee Income	(272,200)	(95,000)	0	0	0	(367,200)	
Total Net Contribution to Overheads	(134,700)	33,400	50,700	10,700	10,700	(29,100)	

It should be noted that the number of properties used to calculate income has been based on the most current information possible. There is a risk that the number of properties, and therefore income, may be lower than expected, however scheme costs will be managed to match the demand for the service ensuring no adverse financial impact to the Council.

- 4.6 The previous tables show how the scheme is expected to perform over a five year period, the years shown do not currently reflect financial years. If this report is supported the scheme is proposed to start from 1st October 2018 however the years of the scheme stated in the table will cross over 2 financial years. Budgets will be adjusted once we have a greater understanding of when income is expected to be received and in which financial years.
- 4.7 Cabinet are asked to note the headline budget allocations in table 4 above and the staffing structure and implications in table 3. The budgets required for the selective licencing scheme have been included in the Gedling Plan 2018/19 report considered by Cabinet on 15 February 2018 and recommended to Council on 5 March 2018. Should Cabinet approve this report the staffing implications will implemented via a separate report to the Chief Executive who will approve the establishment of post in accordance with delegated authority.

Appendices

- 5.1 Appendix 1 – designation and map
- 5.2 Appendix 2 – licence conditions

- 5.3 Appendix 3 – results of consultation
- 5.4 Appendix 4 – summary of issues raised
- 5.5 Appendix 5 – Equalities Impact Assessment

Background Papers

- 6.1 Secretary of State’s guidance Selective licensing
- 6.2 October Report including draft proposal

Recommendation(s)

That Cabinet :

- 7.1 approve the designation of the Netherfield Ward shown outlined in red at Appendix 1 to this report as being subject to Selective Licensing with effect from 1 October 2018.
- 7.2 approve the licence conditions to be attached to licences issued under the Selective Licensing Scheme as set out at Appendix 2 to this report.
- 7.3 authorise the Director of Health and Community Wellbeing to publish a Notice of Designation in accordance with the Housing Act 2004
- 7.4 approve the licensing fees as set out in Table 1 of paragraph 4.2 of this report
- 7.5 authorise a review of the scheme in 18 months, the outcome of the review will be reported back to Cabinet
- 7.6 note the financial and staffing implications associated with the Selective Licensing scheme.

Reasons for Recommendations

The Council considers that the general conditions required to designate the Netherfield ward under Section 80(6) of the Housing Act 2004 are satisfied.

Selective licensing is an important component of the Councils strategy to improve the Netherfield ward which is a priority ward for the Council. It is the only option available to the local authorities that compels landlords to look at how they manage their rented properties and where required, make improvements to their management practices. It is important that this scheme will support the work of the Council and partners in improving the physical environment and economic conditions of the area.