[2026] EWHC 1731 (Admin)

Case No: AC-2025-LON-003256

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice, Rolls Building,
Fetter Lane, London, WC4A 1NL

9 July 2026

Before :

MR JUSTICE BRIGHT

- -

Between :

THE KING **on the application of** **HOWARD DE WALDEN ESTATES LIMITED**	**Claimant**
- and -	
WESTMINSTER CITY COUNCIL	**Defendant**

- -
- -

Jonathan Manning (instructed by Charles Russell Speechlys) for the Claimant
Kuljit Bhogal KC and Riccardo Calzavara (instructed by Bi-Borough Legal Services) for the Defendant

Hearing date: 1 July 2026

- -

Approved Judgment

This judgment was handed down remotely at 10.00am on 9 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

....

Mr Justice Bright:

A: Introduction

1. This judgment is concerned with the application of the Claimant ("HdWE") for judicial review of the designation by the Defendant ("the Council") of parts of the City of Westminster as a selective licensing area, under Part 3 of the Housing Act 2004.

2. HdWE is a company which operates as a large landowner and landlord of land and properties within a contiguous estate of approximately 95 acres ("the HdW Estate"), most of which is within the Council's Marylebone ward and a portion of which is within its West End ward.

3. HdWE and the HDW Estate were affected by Westminster City Council Designation for Areas for Selective Licensing 2025 No 2 ("Designation 2"), which was made on 24 June 2025 and came into effect on 24 November 2025. Designation 2 was in respect of seven wards within the City of Westminster, including the Marylebone and West End wards. It was subject to a limited number of exceptions, none of which applies to HdWE. It was for a period of five years.

4. A separate designation was made in respect of eight other wards within the City of Westminster ("Designation 1"). My understanding is that the difference between them is that the wards covered by Designation 1 were said to experience high levels of poor housing conditions; whereas the wards covered by Designation 2 were said to experience both high levels of poor housing conditions and significant and persistent problems caused by anti-social behaviour ("ASB").

5. HdWE seeks to quash Designation 2. Its claim form, seeking judicial review, was issued on 25 September 2025, raising a number of grounds.

6. Permission to apply for judicial review was granted by Deputy Judge Simon Tinkler, on 28 January 2026. His order limited HdWE to the argument that the Council failed lawfully to consider the appropriate boundaries of Designation 2, in the light of the evidence before it and the requirements of the statutory scheme and, in particular, section 81 of the Housing Act 2004.

7. The result is that, before me, it was not open to HdWE to argue that it was wrong in principle for any licensing designation to be made under Part 3 of the Housing Act 2004. HdWE's case had to be, and was, confined to points about the boundaries chosen by the Council.

8. HdWE's revised Statement of Facts and Grounds therefore advances a single ground; namely, that the Council failed lawfully to consider the appropriate boundaries of Designation 2, in the light of:

   (1) the evidence before it;

   (2) the requirements of the statutory scheme; and, in particular,

   (3) Section 81 of the Housing Act 2004.

9. In practice, given the context, this meant that HdWE's case was in substance that the Council acted unlawfully and/or irrationally in relation to Designation 2 in one or both of the following respects:

   (1) Designation 2 should not have included the Marylebone ward or the West End ward.

   (2) Designation 2 should not have related to entire wards, it should have been more selective and should have designated more limited areas within wards – for example, specific streets. At any rate, it should have excluded the HdW Estate.

10. Mr Manning, for HdWE, helpfully confirmed that this was an accurate summary of his case.

B: The evidence before me

11. HdWE's case was supported by a witness statement dated 24 September 2025 made by Julian Best, its Executive Property Director.

12. In response, the Council served a witness statement dated 2 October 2025 made by Geraint Maddocks, its Property Licensing Team Manager.

13. Following the grant of limited permission on 22 January 2025, and service of HdWE's revised Statement of Facts and Grounds, in March 2026 the Council served three further witness statements:

   (1) A witness statement dated 16 March 2026 made by Allison Forde, who was formerly employed by an external consultancy business specialising in local government/public sector activities, Cadence Innova Limited ("Cadence").

   (2) A witness statement dated 19 March 2026 made by Russell Moffatt of Metastreet Limited ("Metastreet"), a company specialising in housing data analysis.

   (3) A second witness statement made by Mr Maddocks, dated 19 March 2026.

14. The Council used the services of both Cadence and Metastreet in relation to Designation 2. Their role is explained in more detail in Section D below.

15. HdWE initially objected to some of the evidence in Mr Maddocks' first witness statement, and to all of the three witness statements served in March 2026, on the basis that they were said to be expert opinion evidence for which there was no permission from the court. This objection was essentially resolved by agreement: one limited part of the evidence in Mr Maddocks' second witness statement, and one of its exhibits, were not relied on.

16. Beyond this, HdWE withdrew its objection to the additional evidence but maintained that it was entitled to serve responsive expert evidence, in the form of a report from Jacqui Long, a director of Savills (UK) Limited dated 19 June 2026. It sought permission to rely on responsive expert evidence by an application dated 16 June 2026 (i.e., the application pre-dated the production of the expert report for which it sought permission).

17. I refused permission for the report of Ms Long, for two reasons. The first is that permission was sought on the basis that HdWE should be entitled to respond to the expert opinion evidence said to be relied on by the Council, within the second witness statement of Mr Maddocks and the witness statements of Ms Forde and Mr Moffatt. HdWE detailed the specific passages in these witness statements that were said to be, in truth, expert opinion evidence. I regard this argument as wholly misplaced:

    (1) Only two of the passages in the statement of Ms Forde could properly be said to be expert opinion evidence, rather than evidence of fact. Ms Long's report did not, in fact, respond to them. They were not of great significance, and I was able to tell Mr Manning that I would treat them as having no weight, being untested and untestable.

    (2) Four passages in the statement of Mr Moffatt could properly be said to be expert opinion evidence, rather than evidence of fact. The first two were essentially common ground. The other two concerned matters that were spoken to by Mr Maddocks, in his second witness statement (see below). In any event, none of them was addressed by Ms Long.

    (3) Mr Maddocks is not an expert. Therefore, nothing he said could properly be characterised as expert opinion evidence. Nearly all of the passages to which HdWE sought to object were, in truth factual: they related to the Council's thinking and reasoning at the time and were relevant to the views that it formed when making Designation 2, this all being crucial to the matters in issue before me. Accordingly, even in so far as some passages in his second witness statement set out the Council's opinions on various points at various times, this was not sufficient to make the evidence objectionable. On the contrary, it was all factual evidence, which was highly relevant and admissible.

18. The second reason relates to timing. The factual witness statements said to have prompted HdWE to obtain expert evidence from Ms Long were served in March 2026. Her report was not served until 19 June 2026, very shortly before the hearing. It was reasonably lengthy, complex and detailed, covering substantial ground. HdWE delayed for far too long to produce it and so did not leave the Council sufficient time to deal with it, had I admitted it.

C: The statutory framework

19. Local authorities such as the Council obtain their power to designate an area for selective licensing from Part 3 of the Housing Act 2004. Part 3 is concerned with the licensing of houses that are occupied under a single non-exempt tenancy or under multiple non-exempt tenancies in respect of different dwellings within a house. In summary, it applies to residential premises in the private rented sector ("PRS") that are not houses in multiple occupation ("HMOs") although in some cases it may also apply to HMOs that are not licensable under Part 2.

20. Section 80 (1)-(2) and (7) of the Housing Act 2004 provide as follows:

> "(1) A local housing authority may designate either—
> (a) the area of their district, or
> (b) an area in their district,

as subject to selective licensing, if the requirements of subsections (2) and (9) are met.
"(2) The authority must consider that—
(a) the first or second set of general conditions mentioned in subsection (3) or (6), or
(b) any conditions specified in an order under subsection
(7) as an additional set of conditions, are satisfied in relation to the area."
…
"(7) The appropriate national authority may by order provide for any conditions specified in the order to apply as an additional set of conditions for the purposes of subsection (2)."

21. The general conditions set out in s.80(6) are as follows:

> "(6) The second set of general conditions are—
> (a) that the area is experiencing a significant and persistent problem caused by anti-social behaviour;
> (b) that some or all of the private sector landlords who have let premises in the area (whether under leases or licences) are failing to take action to combat the problem that it would be appropriate for them to take; and
> (c) that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, lead to a reduction in, or the elimination of, the problem."[1]

22. The Secretary of State has made an Order specifying additional conditions for the purposes of s.80(2)(b) and (7). The Selective Licensing of Houses (Additional Conditions) (England) Order 2015/977 (the "2015 Order") provides at Article 3, so far as relevant, as follows:

> "*3.— Conditions specified for the purposes of section 80(2)(b) of the 2004 Act*
> "(1) The following conditions are specified as additional conditions for the purposes of section 80(2)(b) of the 2004 Act, which a local housing authority must consider are satisfied in relation to the area before making a selective licensing designation under this provision—
> (a) that the area contains a high proportion of properties in the private rented sector, in relation to the total number of properties in the area;
> (b) that the properties referred to in sub-paragraph (a) are occupied either under assured tenancies or licences to occupy; and
> (c) that one or more of the sets of conditions in articles 4 to 7 is satisfied."

[1] There is then a definition of "private sector landlord", the meaning of which is uncontroversial and irrelevant to the issues I have to decide. It was common ground before me that HdWE is a private sector landlord.

23. Article 4 provides:

> "*4. — Conditions in relation to Housing Conditions*
> "The first set of conditions is—
> (a) that having carried out a review of housing conditions under section 3(1) of the 2004 Act, the local housing authority considers it would be appropriate for a significant number of the properties referred to in article 3(1)(a) to be inspected, with a view to determining whether any category 1 or category 2 hazards[2] exist on the premises;
> (b) that the local housing authority intends to carry out such inspections as referred to in paragraph (a), with a view to carrying out any necessary enforcement action; and
> (c) that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, including any licence conditions imposed under section 90 of the 2004 Act, contribute to an improvement in general housing conditions in the area."

24. Neither the Housing Act 2004 nor the 2015 Order contains any provision dictating the process by which an authority should select an area, nor does either of them define the size of area that an authority may designate. The limits placed on the power are those arising from the conditions in the legislation, including the second set of conditions in section 80(6) – referred to before me as "the ASB Conditions" – and the additional conditions imposed in Articles 3 and 4 of the 2015 Order – referred to before me as "the Housing Conditions". The authority can only make a designation if it considers that at least one such condition is satisfied, in relation to the relevant proposed area.

25. Also of great relevance is section 81(4) of the Housing Act 2004, not least because of the terms on which permission was granted by Deputy Judge Tinkler. Section 81(4) provides as follows:

> "(4) The authority must not make a particular designation under section 80 unless–
> (a) they have considered whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of achieving the objective or objectives that the designation would be intended to achieve, and
> (b) they consider that making the designation will significantly assist them to achieve the objective or objectives (whether or not they take any other course of action as well)."

26. While section 81(4) requires the authority to consider whether any other courses of action were available, it does not provide that the authority can only make a designation if there are no other courses of action available. In principle, an authority might, rationally, consider that it should make the designation rather than pursuing any such other course of action. I was referred to the judgment of Stewart J in *R (Rotherham*

[2] Category 1 and category 2 hazards are defined in section 2(1) of the Housing Act 2004.

Action Group Ltd) v Rotherham Metropolitan Borough Council [201] EWHC 1216 (Admin), at [30], with which I agree.

27. Finally, the Secretary of State has issued non-statutory guidance (the "Guidance") as to the making of selective licensing designations: *Selective licensing in the private rented sector: a guide for local authorities*, updated 16 December 2024 and in force from 23 December 2024. In relation to section 81(4) and the requirement it imposes on the authority to consider other courses of action, paragraphs 16 to 18 provide as follows:

> "16. … [the authority] 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. For example, if the area is suffering from poor housing conditions, is a programme of renewal a viable alternative to making the designation? In areas with anti-social behaviour, where landlords are not taking appropriate action, could an education programme or a voluntary accreditation scheme achieve the same objective as a selective licensing designation?
> "17. If the problems of anti-social behaviour are only associated with a small number of properties a local housing authority should consider making a Special Interim Management Order, rather than a selective licensing designation covering properties with regard to anti-social behaviour (see Annex below).
> "18. Only where there is no practical and beneficial alternative to a designation should a selective licensing scheme be made."

28. I was also referred to the Annex to the Guidance, which expands on the significance of the availability of Special Interim Management Orders:

> "It will not be appropriate to make a selective licensing designation to address isolated individual problems of anti-social behaviour which nevertheless seriously impact upon the local community. In such cases local housing authorities should consider making a Special Interim Management Order (SIMO) under Part 4 of the Act.
> "A Special Interim Management Order transfers the management of a residential property to the local housing authority for a period of up to 12 months and can only be made if approved by the First Tier Tribunal (Residential Property). The tribunal may not authorise a Special Interim Management Order in respect of a property unless, in the case of non-Houses of Multiple Occupation, there is anti-social behaviour emanating from the property, the landlord is failing to take appropriate action to deal with the problem, and it is necessary to make the order to protect the health, safety or welfare of persons occupying, visiting or engaged in lawful activities in the locality of the house."

29. The Guidance is, of course, non-statutory. It cannot alter the true meaning of the provisions of the Housing Act 2004; cf. *Wathen-Fayed v Secretary of State for Housing,*

Communities and Local Government [2025] UKSC 32, per Lord Hamblen JSC at [60]. However, it provides a helpful, objective yardstick as to the steps that might well be considered reasonable, and the absence of which might well be considered to demonstrate a failure to take reasonable steps. In saying this, I merely echo the comments made by McCombe J in *R (Peat) v Hyndburn BC* [2011] EWHC 1739 (Admin) at [53].

D: Factual summary

30. The Council issued a Cabinet Report dated 19 May 2025 ("the Cabinet Report") which recorded the Council's approval of the decision to make Designation 2 and set out the background to that decision. Most of the key facts can be taken from this Cabinet Report, including its appendices.

31. The Cabinet Report noted that the Council had experience of licensing schemes in respect of HMOs, and that the licensing of HMOs led to significant improvements, raising the standards of poor-quality accommodation in HMOs and protecting renters from illegal practices in the borough. The Council was committed to continuing this work through selective licensing in the PRS, using lessons learnt from the existing (HMO) licensing schemes.

32. The Cabinet Report stated at paragraph 3.7 that the Council intended to achieve this by:

> "… targeting specific areas where additional oversight in the private rented sector is needed. This approach will allow the Council to focus resources on areas with higher incidences of poor property conditions and ASB."

33. On 16 October 2024, the Council approved a decision to undertake statutory consultation on proposals to introduce a selective licensing scheme. That consultation took place between 28 October 2024 and 19 January 2025 and was carried out for the Council by Cadence. Appendices 2, 3 and 4 to the Cabinet Report were prepared by Cadence and summarised the consultation process, including the responses received. Mr Manning made no criticism of the consultation, of the contents of these Appendices or of the way they were addressed in the Cabinet Report itself.

34. HdWE responded to the statutory consultation by a letter dated 17 January 2025. In this letter HdWE did not object in principle to the proposals, but it noted that their effect had to be considered in conjunction with the Renters' Rights Bill (now the Renters' Rights Act 2025). This point was addressed in the Cabinet Report, at paragraph 6.21.

35. In conjunction with the statutory consultation, Cadence was engaged by the Council to support it in assessing the feasibility of introducing a selective licensing scheme under Part 3 of the Housing Act 2004 and to work with the Council's officers to shape proposals so as to enable the Council to select the most effective options for improving PRS housing standards. As explained in a witness statement made by Ms Forde (who was employed by Cadence at the relevant time), the purpose of the feasibility study was to provide a structured, evidence-led appraisal of the options, to inform the Council's consideration of its statutory powers. This included summarising relevant evidence and describing the implications of potential designation options and their implementation.

36. This was set out by Cadence in its Selective Licensing Scheme Implementation Evidence Report dated April 2025 ("the Cadence Evidence Report"), which formed Appendix 1 to the Cabinet Report.

37. Prior to this, the Council had engaged Metastreet to undertake a review of housing conditions within the borough. As explained in witness statements made by Mr Moffatt of Metastreet and by Mr Maddocks of the Council, the purpose was to determine whether sufficient evidence existed to support the introduction of a selective licensing scheme within the City of Westminster. This ultimately led to Metastreet producing its Westminster PRS Housing Stock Conditions and Stressors Report ("the Metastreet HSCS Report") dated May 2024, which formed Appendix 5 to the Cabinet Report, and which was also an appendix to the Cadence Evidence Report.

38. The Metastreet HSCS Report summarised the aims of Metastreet's task as follows:

> "The main aim of this review was to investigate and provide accurate estimates of:
> • Current levels of private rented sector (PRS) properties and tenure change over time.
> • Levels of serious hazards that might amount to a Category 1 hazard (Housing Health & Safety Rating System (HHSRS))
> • Other housing related stressors, including antisocial behaviour (ASB), service demand, population and deprivation linked to the PRS.
> • Assist the council to make policy decisions, including the possible introduction of property licensing schemes under Part 2 and Part 3 of Housing Act 2004"

39. Metastreet was not asked to and did not go about this by conducting physical inspections or surveys. It has developed a stock-modelling approach based on metadata and machine-learning to provide insights about the prevalence and distribution of a range of housing factors.

40. Metastreet was provided with a large volume of property-related council-held data, which it combined with open source and property-specific data (as set out in the Metastreet HSCS Report) to form a dataset. At the level of individual properties, the dataset provided information relevant to housing conditions and ASB incidents.

41. Metastreet's predictive modelling was then engaged to predict the incidence of housing hazards in PRS properties (as well as other models), at ward level. As just noted, and as the Metastreet HSCS Report itself stated in its explanation of the methodology used, this was based on data in respect of individual properties:

> "Known stressors linked to individual properties have been modelled to calculate population level incidences and rates."

42. The models produced by Metastreet for the Council were bespoke products, which reflected not only the dataset available to Metastreet but input from the Council. This was addressed in the Cadence Evidence Report, which referred to qualitative insights from Council officers with localised knowledge, who were familiar with the local area

and with conditions within individual wards. A number of specific instances of the contributions made by Council officers were given in the evidence of Mr Maddocks.

43. The Metastreet HSCS Report then went on to note that predictive modelling cannot be 100% accurate as modelling inevitably involves some level of error. Known outcomes from the dataset were used as training data, and to test the accuracy of the predictive modelling (as explained in Appendix 2 of the Metastreet HSCS Report). Mr Moffatt's evidence, at paragraph 20 of his witness statement, was:

> "The predictive capacity of each model was assessed using a D^2 test, which provides a measure of the overall predictive performance of the model and is an accepted method for evaluating the predictive capacity of this type of model. Higher values indicate stronger predictive capacity.
> a. The Owner-Occupier model achieved a predictive capacity of 81%.
> b. The PRS model achieved a predictive capacity of 94%.
> c. The HHSRS hazard model achieved a predictive capacity of 85%."

44. It is the PRS model that is particularly relevant for present purposes.

45. The Metastreet HSCS Report set out its detailed findings in section 2. It first provided data in relation to the number and percentage of PRS in each ward, before going to set out its detailed findings in relation to housing conditions and then in relation to ASB. As explained above, the findings in relation to housing conditions concerned predictions as to the likely distributions of PRS properties with housing conditions hazards, based on the predictive modelling.

46. The findings in relation to ASB reflected reported incidents gleaned from the dataset, rather than predictions. The data for ASB mostly came from the Council and mostly related to reports/complaints. However, some data came from police records in relation to domestic burglaries.

47. These findings were summarised in the conclusions in section 3 of the Metastreet HSCS Report. In relation to housing conditions and ASB, Metastreet's conclusions were as follows:

> "2,894 burglaries were reported to the Metropolitan Police in Westminster between May 2022 – April 2024. Lancaster Gate (257) and Marylebone (228) wards have the highest number of burglaries (Figure 8).
>
> There are 6,764 private rented properties in Westminster that are likely to have at least one serious housing hazard (Category 1 and high scoring Category 2, HHSRS). PRS properties with serious hazards are distributed across all wards. Lancaster Gate (661) and West End (603) have the highest number of properties with at least one Category 1 and/or high scoring Category 2 hazard (Figure 19 & Map 4). Category 1 and/or high scoring Category 2 hazards in the PRS are distributed across

Westminster with no clear geographical concentrations of hazards (Map 4). The rates of Category 1 and/or high scoring Category 2 HHSRS hazards per 100 PRS properties reveals a wide distribution across Westminster (Figure 18 & Map 5). Lancaster Gate (16.9 per 100) and Harrow Road (15.3 per 100) have the highest rates of predicted PRS properties with serious hazards. The national average for Category 1 hazards in the PRS is 12%.

Complaints and service requests made by PRS tenants to the council about poor property conditions and inadequate property management are a direct indicator of low quality PRS. Westminster recorded 3,805 complaints and service requests from private tenants and others linked to PRS properties over a 5-year period (Figure 19). Properties in Lancaster Gate (381) and Bayswater (325) were subject to the most private tenant service requests and complaints by private tenants and others to the Council (Figure 19 & Map 6).

It has been calculated using the matched addresses that 10.1% of PRS properties in Westminster have an E, F, and G rating. 1% of PRS properties have an F and G rating (Figure 22). Extrapolated to the entire PRS, 553 PRS properties are likely to fail the MEES statutory requirement. Westminster has 4,765 PRS EPC ratings that are E, F, & G. EPC ratings E, F, & G represent properties with the least energy efficiency. West End (512) and Marylebone (481) have the highest number of EPC rating E-G (Figure 22). Queen’s Park (13.6) PRS stock has the largest difference between current and potential energy efficiency score (Figure 24).

Westminster uses a range of statutory housing and public health notices to address poor housing standards in the PRS. Interventions can be a result of a complaint being made by a tenant about their accommodation or as a result of a proactive inspection. Over a 5-year period (2018-23) Westminster served one or more housing and public health notices on 356 unique residential premises; this equated to 583 notices in total (Figure 25). Properties in Harrow Road (79) and Hyde Park (59) received the highest number of statutory notices for housing and public health related issues (Figure 25 & Map 7).

The council has recorded a total of 20,640 incidents related to noise anti-social behaviour (ASB) linked to 8,927 PRS properties over the past five years. Lancaster Gate (2,346) and Bayswater have the highest levels of PRS ASB incidents (Figure 26 & Map 8). Properties subject to repeat ASB incidents (2 or more incidents) begin to demonstrate a lack of tenancy management or other underlying issues. Lancaster Gate (323) has the highest number of properties with repeat noise ASB incidents (Figure 27).

Other ASB includes all other types of ASB (excluding noise), including waste, smoke, odours and fly tipping and is investigated and recorded by Westminster's City Inspectors. The council has recorded a total of 4,601 incidents related to other anti-social behaviour (ASB) linked to 3,302 PRS properties over the past five years. Marylebone (547) has the highest number of other ASB incidents (Figure 28 & Map 9). Marylebone (92) has the highest number of properties with repeat other ASB incidents (Figure 29).

Looking at total ASB (combining noise and other ASB), there have been 3,956 distinct properties in the PRS with repeat ASB incidents over the past 5 years, and Lancaster Gate (389) has the highest number of properties with overall repeat ASB."

48. The Marylebone and West End wards both feature several times in these conclusions, which were followed by this table (which I understand to concentrate solely on housing conditions):

Appendix 1 – Ward summaries

Table 3. Ward PRS summary overview (Source Ti 2024)

Wards	Number PRS dwellings	% PRS	PRS with predicted serious hazards
Abbey Road	3,320	45.6	507
Bayswater	3,810	49.9	568
Church Street	1,606	30.6	208
Harrow Road	1,873	34.5	293
Hyde Park	4,059	54.1	399
Knightsbridge & Belgravia	3,009	34.6	386
Lancaster Gate	3,912	51.6	661
Little Venice	2,701	47.1	313
Maida Vale	2,466	44.4	344
Marylebone	4,904	49.7	581
Pimlico North	2,326	35.8	324
Pimlico South	2,285	38.1	180
Queen`s Park	1,509	28.3	217
Regent`s Park	3,919	47.1	441
St James`s	4,188	45.2	309
Vincent Square	2,688	38.9	239
West End	5,153	46.6	603
Westbourne	1,546	29.7	191

49. The table shows that both the West End and Marylebone wards were said to have both high numbers and relatively high percentages of PRS dwellings. It also shows that, for both wards, the number of PRS dwellings with predicted serious hazards was in excess of 10% of the number of PRS dwellings in the ward. This was not the case for Pimlico

South, St James's or Vincent Square, which were the only wards not designated either by Designation 1 or by Designation 2.

50. These conclusions, and the matters underlying them, were reflected in the Cadence Evidence Report (along with references to outcomes from the statutory consultation). Sections 6 and 7 dealt directly with compliance with the relevant legislative criteria – respectively, the Housing Conditions and the ASB Conditions. Cadence carefully set out the criteria required by section 80(6) of the Housing Act 2004 and by Articles 3 and 4 of the 2015 Order, and what the Council must show/consider in order to justify making a designation under those provisions. Mr Manning did not suggest that Cadence's approach to this was legally incorrect.

51. In relation to each criterion that Cadence identified, sections 6 and 7 then set out data supporting the view that the relevant criterion was satisfied largely on the basis of the Metastreet HSCS Report. In particular, the Cadence Evidence Report noted at section 6.2 (i.e., in the context of the Housing Conditions) that:

> "All of the 15 wards in the two designations have levels of category 1 housing hazards that are above the national average of 10%. … From the experience of council officers, these properties are also highly likely to also have at least one category 2 hazard."

52. The Cadence Evidence Report noted at section 7.1 (i.e., in the context of the ASB Conditions) that:

> "The 7 wards in designation 2 [i.e., including the Marylebone and West End wards] are all experiencing significant and persistent levels of anti-social behaviour (ASB) specifically related to private rented properties and its occupants, or its immediate vicinity. When this type of ASB is carried out by tenants, the council expect a landlord to help address the issues with them."

53. Details of ASB incidents by ward were then set out in section 7.2 (reflecting the Metastreet HSCS Report).

54. The Cabinet Report referred to the Cadence Evidence report, when recommending that the Council's Cabinet should approve the decision to implement Designation 2. It also considered possible alternatives, which were given detailed consideration in Appendix 4 to the Cabinet Report. These matters were addressed in the body of the Cabinet Report, in particular, at paragraphs 4.14 to 4.20:

> "4.14. As detailed in the [Cadence Evidence report]**,** it is proposed that all private rented property licence applications will receive a desk-based risk assessment. Compliance inspections will be undertaken in at least 60% of licensed properties equating to approximately 20,000 compliance inspections undertaken over the life of the scheme. It is anticipated that this will lead to at least 10,000 properties being improved via compliance

inspections alone and subsequent enforcement action where required.

4.15. As well as reactively responding to complaints, through this inspection regime the Council will ensure that any Category 1 and 2 hazards identified are remediated and licence conditions complied with. This will achieve a general improvement of property conditions in both Designation 1 and Designation 2 within the lifetime of the scheme.

4.16. The [Cadence Evidence report] also sets out how the council intends to deliver a reduction in ASB in Designation 2 by working proactively with landlords and owners of properties to prevent ASB and, where necessary, dealing with ASB in their properties. This will be achieved through a combined effort as a local authority working in partnership with other agencies. Attention is drawn to the findings in the [Cadence Evidence report] that the 7 wards in proposed designation 2 are all experiencing significant and persistent levels of ASB specifically related to privately rented properties and occupants or its immediate vicinity. That report also evidences that some landlords in this category are failing to take action to combat this problem.

4.17. The operation of a selective licensing scheme will ensure that landlords are required to have a more hands on approach to tenancy management in their privately rented homes. Through the granting of licences under the selective licensing scheme, standard licence conditions will be imposed that require licence holders to meet obligations relating to the letting and effective proactive management of their rented homes.

4.18. Guidance and advice will be provided to landlords on managing tenants who are involved in ASB, particularly where there is evidence of serious ASB which necessitates formal action in the Courts.

4.19. Officers shall work collaboratively with multidisciplinary teams alongside internal and external stakeholders including the Police to identify properties of concern to improve property conditions and reduce ASB.

4.20. Having carefully considered the consultation representations there are no alternatives identified that would, individually or collectively, be capable of delivering the scheme objectives that the Council would achieve through the introduction of the proposed selective licensing scheme. Making the designations combined with other measures taken by the Council will significantly assist the council to achieve the proposed objectives to reduce poor housing conditions in Designation 1, and to reduce poor housing conditions and

achieve a reduction or elimination of the significant and persistent problems caused by ASB in Designation 2."

55. On 19 May 2025, per the Cabinet Report issued on that date, the Council resolved to designate certain parts of the City of Westminster as selective licensing areas. As I have already said, Designation 2 was in fact made on 24 June 2025 and came into effect on 24 November 2025.

E: Legal principles

56. When making Designation 2, the Council purported to rely on both the Housing Conditions, which arises under Articles 3 and 4 of the 2015 Order, and the ASB Conditions, which arises under section 80(6) of the Housing Act 2004.

57. For the Housing Conditions to be satisfied, the authority must consider that:

(1) The area contains a high proportion of properties in the PRS, in relation to the total number of properties in the area.

(2) Those PRS properties are occupied either under assured tenancies or licences to occupy.

(3) It would be appropriate for a significant number of those PRS properties to be inspected, with a view to determining whether any category 1 or category 2 hazards exist on the premises.

(4) The authority intends to carry out such inspections, with a view to carrying out any necessary enforcement.

(5) Making a designation will, when combined with other measures taken in the area, contribute to an improvement in general housing conditions in the area.

58. My understanding was, and Mr Manning helpfully confirmed, that it was not in issue that the Council could rationally be satisfied as to the conditions I have set out as (1), (2) and (4). However, he said that the Council had unlawfully failed to have regard to the conditions I have set out as (3) and (5), and/or it was irrational for the Council to be satisfied as to them, in relation to all or some of the area covered by the boundaries of Designation 2 – specifically, the Marylebone and West End wards and, above all, the specific area of the HdW Estate.

59. For the ASB Conditions to be satisfied, the Council must consider that:

(1) The area is experiencing a significant and persistent problem caused by ASB.

(2) Some or all of the area's PRS landlords are failing to take appropriate action to combat the problem.

(3) Making a designation will, when combined with other measures taken in the area, lead to a reduction in, or the elimination of, the problem.

60. My understanding was, and Mr Manning helpfully confirmed, that his main attention was the condition I have set out as (1). However, he said that it was unlawful and/or

irrational for the Council to be satisfied as to (2), in relation to all or some of the area covered by boundaries of Designation 2 – once again, specifically, the Marylebone and West End wards and, above all, the specific area of the HdW Estate.

61. Both the Housing Conditions and the ASB Conditions are also subject to the requirement under section 81(4) that the authority must have considered whether other courses of action are available. In this regard, Mr Manning's contention was that the Council should have considered an alternative to designating by wards; it should have considered a designation that would have excluded the HdW Estate.

62. In criticising the Council as having acted irrationally, Mr Manning meant that the Council's designation was completely absurd, a decision so unreasonable that no reasonable authority could have made it – i.e., what is often referred to as *Wednesbury* unreasonableness, after *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223; see also *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, per Lord Diplock at p. 410:

> "… a decision so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

63. The Council suggested that the court should have regard to what Ms Bhogal KC said was general principle of deference, or margin of appreciation, underlying the *Wednesbury* jurisdiction. I do not consider that, in a case of this kind, it is either necessary or helpful to put any gloss on the decision of the Court of Appeal itself, in particular [1948] 1 KB 223 per Lord Greene MR at p. 230:

> "It is clear that the local authority are entrusted by Parliament with the decision on a matter which the knowledge and experience of that authority can best be trusted to deal with. The subject-matter with which the condition deals is one relevant for its consideration. They have considered it and come to a decision upon it. It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That, I think, is quite right; but to prove a case of that kind would require something overwhelming, and, in this case, the facts do not come anywhere near anything of that kind. I think Mr. Gallop in the end agreed that his proposition that the decision of the local authority can be upset if it is proved to be unreasonable, really meant that it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body could have come to. It is not what the court considers unreasonable, a different thing altogether."

64. In so far as Mr Manning's argument was that Council's actions were unlawful, as distinct from irrational, I understood him to mean simply that the Council failed to act within the powers given to it by section 80 of the Housing Act 2004. I found this argument difficult to follow, given the fact of the careful treatment of those powers and the criteria to be established for their lawful use, in sections 6 and 7 of the Cadence

Evidence Report, and given the fact that the Cadence Evidence Report provided the evidential basis for the Cabinet Report and for the Council's decision.

65. Mr Manning explained in supplemental written submissions that his argument in relation to unlawfulness related primarily to the question whether the section 81(4) requirement to consider alternatives had been complied with; although he said that HdWE also contended that the Council had failed to consider the need for the area being designated to satisfy the necessary conditions – i.e., the Housing Conditions and the ASB Conditions.

F: Why Designation 2 was made by reference to wards

66. Given the limited permission granted by Deputy Judge Tinkler, and given the way that HdWE's case was developed by Mr Manning, it is critical to all these issues to understand why Designation 2 was made by reference to wards, rather than some other geographical boundaries - for example, specific streets.

67. HdWE suggested that this was for the mere administrative convenience of the Council, because ward boundaries provide a convenient administrative boundary; and that this was not a sufficient basis for a ward-based designation to be rational. I am not satisfied that this can be right, or must be right. If a body such as a local authority has always conventionally made decisions of this kind, affecting the use of particular areas within its jurisdiction, by reference to wards, that could well provide a rational basis, particularly if this really means that such boundaries are well-understood and observed, so that using them provides clarity that would otherwise be difficult to achieve.

68. Initially, the Council's evidence indeed focused upon administrative convenience and clarity. In his first witness statement, Mr Maddocks explained that, although the assessment (i.e., the Metastreet analysis) was conducted using property-level data, the information was aggregated and reported at ward level. He explained this as follows, at paragraphs 28 and 30 to 33:

> "28. The Claimant criticises the way the borough has been divided up into wards. Ward level data is an entirely appropriate way of splitting up the borough and has been used by several London local authorities; it provides operational clarity and ease of boundary definition."
> …
> "30. … Wards are established, legally recognised administrative areas which provide clear boundaries, ensure transparency for landlords and tenants, and are consistent with the requirements of the Housing Act 2004 for selective licensing designations to be made in respect of defined areas. Presenting data at ward level allows for clarity of communication and enforcement, while still being firmly grounded in robust property-level analysis.
> "31. The use of wards provides a proportionate and rational method of defining areas. It avoids ambiguity or disputes over boundaries, and aligns with the approach adopted by other London local authorities when introducing selective licensing schemes. While some variation at a more granular level within

wards is inevitable, there was no evidence to suggest that any specific sub-area should be excluded from the designation.

"32. The only known exception in London where a more localised exclusion was applied occurred in Newham, in respect of a new housing development within the Olympic Park[3]. That exclusion arose solely because there was no data available to assess those properties, as they were vacant and yet to be occupied. This is entirely distinct from the present case, which concerns established housing stock, predominantly pre-1900, and comprising a mix of freehold and leasehold dwellings.

"33. Furthermore, members of the public, including tenants and landlords, know which ward they are in and who their ward councillors are; it is a well-established means of dividing a borough and provides clarity."

69. Mr Maddocks expanded on this in his second witness statement, in terms that went well beyond mere administrative convenience, at paragraphs 43 to 49 and 52 to 54:

> "43. During my time working at the City of Westminster, alternative approaches to selective licensing have also been explored. This has included consideration of whether more localised designations, such as specific problematic blocks of flats, streets, or areas experiencing persistent waste management issues could be targeted. Such exploration often arises from local community concerns or member-led requests. However, in practice, these issues are not confined to isolated buildings or micro-locations, but are more widely distributed across wards.
>
> "44. Selective licensing is intended to address broader, area-based issues and therefore requires a sufficiently wide and coherent geographic scope to be effective. A more localised approach in a conurbation such as Westminster would, in effect, result in dozens of small, fragmented designations. Furthermore, localised problems are often transient in nature and can shift from place to place. For example, issues may arise where an unscrupulous managing agent takes control of a number of flats within a large mansion block. This is a relatively common occurrence in Westminster, where managing agents oversee the day-to-day operation of property portfolios, often on behalf of offshore entities.
>
> "45. The council did not present ward level data merely for administrative convenience. Although conclusions were presented at ward level, the underlying evidence base included property-level analysis, enabling examination of patterns and concentrations within wards.
>
> "46. In assessing proportionality and targeting, officers also considered the operational reality that selective licensing is a regulatory framework intended to drive improved management standards across an area, rather than solely to address a small

[3] In subsequent evidence it became apparent that there was, at least arguably, a further exception in Hammersmith. However, it is clear that designation by reference to wards is by far the most common approach.

number of isolated addresses. The council concluded from an early stage, when the draft Metastreet data was provided, that ward-based designations were justified by the combination of: (i) high concentrations of PRS properties; (ii) indicators of management concerns and ASB associated with the PRS; (iii) housing conditions risks; and (iv) the council's wider enforcement and regulatory objectives when combined with other measures.

"47. The use of wards provides a proportionate and rational method of defining designation areas. Wards are clearly defined, publicly recognised boundaries and align with the approach adopted by many other London local authorities introducing selective licensing schemes. While variation at a more granular level within wards is inevitable, there was no evidence demonstrating that any discrete sub-area should be treated as distinct nor excluded from designation. As Metastreet built a data warehouse as part of the analysis, officers were able to analyse property and intra-ward information using GIS software, an example of such is evidenced on page 103 of the OPH bundle which illustrates serious hazard prediction distribution across Marylebone ward.

"48. Excluding or carving out pockets within wards based on marginally different indicators would risk inconsistency, confusion and a fragmented regulatory approach. Wards provide clearly identifiable boundaries that are understood by tenants and landlords and are consistently used in digital mapping and service delivery datasets. In addition to undermining clarity and transparency for landlords, tenants and residents, using alternative boundaries would have required arbitrary line-drawing between adjoining streets and buildings that share the same building typologies, tenure patterns, and environmental stressors. It would also risk creating small, isolated pockets where unscrupulous landlords or agents could concentrate their activities to avoid regulatory focus, thereby undermining the intended protections and enforcement outcomes.

"49. The use of wards also enables alignment with wider council policy and operational structures. Many services, including within the Public Protection & Licensing directorate, ASB teams and public health initiatives, are delivered on an area-based or ward-based model. Selective licensing is therefore capable of being integrated into existing multi-agency, ward-focused approaches to local problem-solving, rather than operating in isolated pockets."

…

"52. I am aware that some local authorities have adopted more geographically narrow selective licensing designations, for example designating individual streets, small clusters of streets, or Lower Layer Super Output Areas ("LSOAs") where evidence demonstrated highly localised concentrations of deprivation, crime, or poor housing conditions. Others have used LSOAs as

> designation units where statistical indicators (e.g. Index of Multiple Deprivation scores, crime rates, or empty property levels) were sharply concentrated within those micro-areas.
> "53. Westminster is materially different in character. It is a dense, continuous urban conurbation in central London. There are no physically separate housing estates in the sense seen in some regional towns. The housing stock is predominantly converted Victorian and Georgian buildings or purpose-built mansion blocks. Building typologies, tenure patterns, and environmental stressors are widely distributed and interspersed across wards. Privately rented properties are not clustered in isolated streets that can easily be ring-fenced. Rather, PRS properties are dispersed throughout mixed-use neighbourhoods alongside commercial premises, short-term lets, owner-occupied flats, leasehold subletting arrangements, and blocks under mixed management structures.
> "54. Westminster experiences extremely high residential turnover, intense housing demand, and significant pressure on stock. These characteristics are not confined to a handful of streets but are systemic across the area as a whole."

70. I accept this evidence as factually correct. More important, I accept it as representing the approach in fact taken by the Council, in relation to Designation 2 and more broadly. Taken together, it provides a complete answer to HdWE's criticisms in respect of designation by reference to wards. This practice was not irrational, it was a deliberate and considered choice, made for logical reasons. Other approaches were considered but were rejected on the basis that designation by wards would be the best approach.

71. The Council also relied on evidence to similar effect from Ms Forde (which I did not think advanced matters) and from Mr Moffatt, which I found of some assistance but was not necessary for my decision on this point as it was essentially confirmatory. Mr Moffatt said at paragraph 32:

> "32. In my experience, assessing evidence at ward level is by far the most common approach, particularly in London. The most common reason for using wards is that the boundary lines often follow natural geographical features within a borough that can be explained and regulated, and ward-level geography is widely understood by stakeholders, including residents, Councillors, officers and landlords."

72. Taken together, this evidence not only demonstrates a logical reasoning-process behind the decision to designate by reference to ward, but also it is consistent with the relevant statutory words. In particular, in the context of the Housing Conditions, Article 4 of the 2015 Order provides as follows:

    (1) It specifies at (a) that the authority must consider that it would be appropriate for "a significant number" of the properties in the designated area to be inspected. There is no indication as to what is meant by "a significant number", and this accordingly must be one of the matters for the authority to consider. However, ex hypothesi it must be less than the totality of the properties in the

designated area. I see no reason in principle why numerical significance cannot be assessed either in absolute terms or in relative (i.e., percentage) terms, or both. I note that the Cabinet Report stated at paragraph 4.14 that inspections would be undertaken of at least 60% of licensed properties, equating to approximately 20,000 compliance inspections. Mr Manning did not seek to persuade me that this was not "a significant number".

(2) Article 4 specifies at (c) that the authority must consider that designation (etc.) will contribute to an improvement "in general housing conditions in the area". Because this is a generalisation, it follows that there may be some properties within the area – perhaps many properties – where housing conditions will not be improved; perhaps because they are not within the significant number that require inspection, but are among the exceptions from that significant number, which do not require inspection and need no improvement. This does not matter, as long as general housing conditions in the area as a whole will be improved.

73. Similar points could be made about the ASB Conditions. Section 80(6) refers at (b) to "some or all" of the PSR landlords in the area. And when section 80(6)(c) refers to a reduction in, or elimination of, the problem, it is clear from the context that this refers to the designated area as a whole.

74. There is, therefore, no a priori reason why an authority that decides to designate a selected area within its district, rather than the entirety of that district, should not do so by reference to wards. This is so even though some parts of some wards may not be affected by poor housing conditions or by ASB.

75. No doubt if a particular ward could be seen not to suffer materially from poor housing conditions or ASB, it would be anomalous for an authority to designate by reference to wards and to do so including that particular ward. However, this was not what happened in relation to Designation 2.

76. In this regard, the evidence given by Mr Maddocks at paragraphs 42 and 80 of his second witness statement is particularly relevant:

> "42. … With the exception of open parks, given the dense urban environment throughout Westminster there is a continuous spread of residential accommodation across the borough with no defined areas within wards defining uniquely different areas. Furthermore, I am confident that other than naturally expected variation in housing conditions and ASB data there is no defined area within any of the wards that stood out suggesting the need for special consideration. By way of example, an overlay showing the distribution of properties predicted to contain significant hazards across the Marylebone ward is presented as exhibit GM04[4]. It will be seen both that the prevalence of hazards exists throughout the ward and, in particular, that it exists throughout the Claimant's estate."
>
> …

[4] Attached to this judgment as Appendix 1

> "80. There appears to be some misunderstanding in the Claimant's analysis suggesting that ASB assessment was conducted only at ward level. The data used for modelling comprised real-world intervention data recorded at individual property level. Whilst the detailed evidence exists at specific address level, for decision-making purposes the results were presented in broader ward categories. By way of example, Exhibit GM05[5] shows the spatial distribution of ASB interventions across Marylebone and West End Ward."

77. These diagrams show that both predicted housing conditions hazards and repeated ASB incidents were reported by Metastreet, across the Marylebone and West End wards; and that, at least in relation to predicted housing conditions hazards, this included the HdW Estate.

78. Mr Maddocks also gave evidence concerning the possibility of a designation that excluded the HdW Estate, in his second witness statement at paragraphs 100 to 105:

> "100. The council could not assess individual landlords, freeholders or portfolio owners across the designated wards. In practical terms, it is not possible to identify with complete accuracy the ownership and management arrangements of all privately rented properties within the borough prior to licensing. The private rented sector is characterised by complex ownership structures, frequent changes in control, the use of managing agents, leasehold/freehold layering, and corporate entities. Comprehensive and reliable ownership intelligence is typically obtained only through the licensing application process itself. Complex ownership structures are common in the borough with a large proportion of properties owned by offshore entities. Ownership arrangements include freehold–head-lease arrangements, blocks with multiple intermediate landlords, properties operating under "rent-to-rent" arrangements, and buildings where long leaseholders sub-let to PRS tenants through corporate or letting-agency intermediaries. These models create fragmented responsibility. Even if the council was in a position to assess individual portfolios, it would need to consider every landowner and portfolio-holder and would need to draw a line on where to stop.
> 101. Whilst individual landlords were able to make representations during the statutory consultation, and some did so, the designation decision is required to be made by reference to the statutory conditions relating to the area as a whole rather than by reference to the conduct of specific landlords. The statutory scheme under Part 3 of the Housing Act 2004 does not require the authority to demonstrate that every landlord is failing, nor does it provide for designation to be confined only to landlords of a particular scale or reputation.

[5] Attached to this Judgment as Appendix 2

> 102. The council did consider whether mechanisms could be introduced to recognise landlords with demonstrably strong management standards, including the possibility of accreditation-style recognition or fee differentiation for those able to evidence a consistently high standard of compliance. Such approaches are commonly explored by authorities when renewing or extending an existing scheme, at a stage when substantial inspection data and operational intelligence have been gathered over time.
>
> 103. At the point of designation, however, the council had not yet undertaken a borough-wide inspection programme under selective licensing. In particular, in relation to housing conditions, the purpose of the scheme is to enable inspection of licensed properties to determine whether Category 1 or Category 2 hazards exist. Prior to undertaking that inspection activity, it would not have been possible to draw reliable conclusions as to the condition of individual portfolios or estates across a five-year licensing period.
>
> 104. The council was also mindful that any form of blanket exemption or "gold standard" designation at the outset would risk creating a false sense of assurance. Property condition and management standards are not static. Ownership may change, managing agents may be replaced, and physical deterioration can occur over time. A determination that a property or landlord met a particular benchmark at one point in time would not guarantee continued compliance throughout the five-year duration of a licence. There was concern that exempting particular landlords or portfolios could inadvertently suggest to tenants that such properties were hazard-free or subject to lighter oversight, when that could not be guaranteed.
>
> 105. It was therefore concluded that a uniform application of the licensing requirement across the designated area was the most proportionate and administratively workable approach at the outset of the scheme. This does not preclude the council from developing differentiated approaches, fee adjustments, or recognition schemes in future phases once sufficient inspection evidence and compliance data have been gathered to support evidence-based distinctions between different categories of landlord."

79. Taking the whole of the evidence together, I am satisfied that designation by reference to wards had a rational basis and was carried out lawfully, by reference to the requirements of the Housing Conditions and the ASB Conditions.

G: The use of predictive modelling

80. HdWE criticised the Council's reliance on the predictive modelling conducted by Metastreet, noting that it had not been checked by physical inspections and asserting that its accuracy therefore was unproven.

81. I accept that the assertions made by Mr Moffatt as to predictive capacity (94%, in the case of the PRS model) relate to theoretical validation, not real-world empirical observation.

82. However, it is important that the predictive modelling was based on a property-level dataset which, overall, related to far more properties and contained far more data than would have been achievable by physical inspections. Mr Moffatt explained why relying on physical inspections is problematic, and why many authorities now favour predictive modelling of the kind provided by Metastreet, at paragraph 7 of his witness statement:

> "7. Historically, councils attempted to review their housing stock and identify property tenure through physical inspections and neighbourhood surveys. While these techniques could generate intelligence, they were labour intensive, costly and unreliable when applied across an entire borough. One of the reasons these techniques are unreliable is related to the difficulties in gaining access to enough properties to produce a representative sample, and there is resistance from landlords and tenants to grant access to properties that are in poor condition or a source of Anti-Social-behaviour (ASB), which can bias borough level results when extrapolated."

83. Mr Maddocks gave similar evidence in his second witness statement, from the perspective of the Council. In paragraphs 27 and 28, he set out the Council's reasons for deciding to rely on predictive modelling rather than physical inspections:

> "27. The council considered alternative evidential approaches but concluded that predictive modelling provided the most robust and proportionate method for assessing housing conditions and management standards across a borough of this scale. This approach has been adopted by a number of other local authorities in support of large-scale licensing designations including the nearby authorities of Brent, Enfield, Haringey, Lambeth, Southwark and Merton. In the case of these authorities, a similar Housing Stock Condition and Stressors report produced by Metastreet forms part of the evidence supporting the designation and is attached to the relevant governance decision.
>
> "28. By contrast, seeking to inspect a large random sample of properties and extrapolate the results would have been less reliable and operationally infeasible. Physical inspections are resource-intensive, frequently hampered by access difficulties, and particularly challenging where properties are occupied by vulnerable tenants or by landlords who have not previously engaged with council services. The modelling drew upon a combination of a substantial volume of statutory notices, real life inspection records and intervention data, giving confidence that the model reflects real-world housing conditions across the borough."

84. Indeed, one of the benefits of designation is that it permits the Council then to conduct widespread physical inspections of precisely the kind that HdWE say should have been undertaken prior to designation, but which it would in fact have been impractical to undertake without designation. Thus, by the end of the five-year period of Designation 2, the Council will have the real-world empirical evidence that HdWE says is essential. No doubt the information gained from these inspections will have a considerable bearing on any future designation decisions in relation to the relevant wards, including the Marylebone and West End wards. I note that this is reflected in the evidence given by Mr Maddocks at paragraph 105 of his second witness statement, which I have already set out in Section F above.

85. The process of deciding on the methodology for assessing which wards or other areas may be suitable for designation is part of the process of giving consideration to the matters that the Housing Conditions and the ASB Conditions require the authority to consider. In the phrase used by Lord Greene MR in *Wednesbury*, it is “a matter which the knowledge and experience of that authority can best be trusted to deal with”.

86. In all the circumstances, I do not see that the Council’s decision to engage Metastreet to provide predictive modelling, and to use the results of this predictive modelling to gauge (in particular) the likely incidents of hazardous housing conditions, is something that can challenged.

H: Anti-social behaviour

87. Section 80(6) of the Housing Act 2004 requires at (a) that the area be experiencing a “significant and persistent” problem caused by ASB. There is no statutory definition of “significant and persistent”. I was referred to *Summers v London Borough of Richmond Upon Thames* [2018] EWHC 782 (Admin), where May J stated at [27] that such wording “excludes one-off activities, or those which might occur more than once, but rarely” and referred to *Ramblers' Association v Coventry City Council* [2008] EWHC 796, where Supperstone J stated at [21] that “persistent” is an ordinary English word “commonly understood to mean 'continuing or recurring, prolonged'”.

88. In relation to the ASB Conditions, HdWE made specific criticism of the fact that the Metastreet HSCS Report (and, thus, the Cadence Evidence Report and the Cabinet Report) treated any individual property as having persistent ASB if, over a five-year period, it had been subject to more than one complaint in relation to noise or more than one complaint in relation to other types of ASB. HdWE made the point that this approach would capture a property where one tenant’s behaviour gave rise to a noise complaint, but that tenant thereafter behaved properly; and then a subsequent tenant’s behaviour gave rise to a second complaint some years later. HdWE’s case was that this would represent two separate one-off activities, not something continuing or recurring. HdWE also said, for similar reasons, that this could not justify the view that the landlords of such properties were failing to take appropriate action.

89. HdWE also noted that that a complaint may or may not be made out; and that the police hardly recorded any ASB in either the Marylebone or West End wards.

90. The objection to focussing on properties with more than one complaint might have force if Metastreet’s work had yielded only a limited number of such properties. If that had been the case, it might have been fruitful for HdWE to suggest that the existence of

properties with more than one complaint did not justify either (i) the inference that there was a problem that was significant and persistent or (ii) the related inference that some PRS landlords were failing to take appropriate action.

91. However, the presence of so many such properties, as set out in the Metastreet HSCS Report[6], makes it reasonable for the Council to have made these inferences. Indeed, the Marylebone and West End wards had (respectively) 274 and 247 properties with two or more noise ASB incidents (third and fourth highest in the City of Westminster), and 92 and 53 properties with two or more other ASB incidents (highest and sixth highest). I acknowledge that both are wards with high numbers of PRS properties compared to others, but this arguably makes it even more important for PRS properties to be licensed in these wards.

92. Mr Maddock's evidence was that ASB generally does not reach the threshold for a criminal offence and so does not appear in police statistics. The Council therefore took the view that its own records were the most reliable guide as to the distribution and prevalence of ASB.

93. Furthermore, although Metastreeet's analysis in fact focused on individual properties, the statute does not require persistent ASB affecting a single property, but within the area as a whole. In this respect, Metastreet's approach was arguably conservative.

94. I therefore do not accept that the Council's approach to the matters I have set out as elements (1) and (2) of the ASB Conditions can be challenged.

<u>The consideration of available alternatives</u>

95. Section 81(4) requires the authority to consider whether other courses of action are available. The Guidance arguably goes further, especially in its annex. However, it is clear that both are positing alternatives to designation. In this case, the limited permission given by Deputy Judge Tinkler means that it was not open to HdWE to contend that the Council should have done something other than make a designation.

96. Mr Manning therefore confined this aspect of his argument to the contention that the Council should have considered alternative boundaries – whether by designation not by reference to wards but by reference to other geographical features, or otherwise by designating in a way that did not include the HdW Estate.

97. However, Mr Maddocks' evidence is that such consideration was given, but the Council's view was that designation by wards, as was actually carried out, was best: see in particular paragraphs 42 and 43 of his second witness statement, set out in Section F above.

98. I should add that there was also extensive consideration given to alternatives in the sense of alternatives to designation. This was set out in Appendix 4 to the Cabinet Report (at section 12), and in paragraphs 4.10 to 4.20 of the Cabinet Report itself.

[6] And in Mr Maddocks' exhibit GM05, Appendix 2 to this judgment.

Conclusion

99. There is nothing to the HdWE's case that the Council acted unlawfully in relation to Designation 2. With assistance from Cadence, the Council carefully identified the relevant criteria for the Housing Conditions and the ASB Conditions, gave consideration to each of them and concluded that each was satisfied.

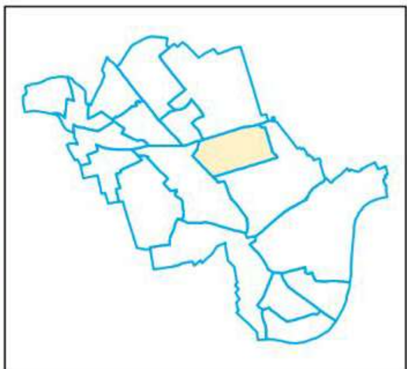
100. There is also nothing to HdWE's case that the Council thereby acted irrationally.

101. The application therefore fails and the claim is dismissed.

Exhibit GM04 – Overlay of properties at a postcode level with predicted significant housing hazards

City of Westminster

Marylebone Ward



Key

Ward Boundary effective from May 2022

Map produced by:
GIS & Location ServicesTeam

Date: **18/10/2021** | Ref: **SR-128453**

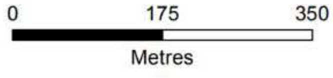


Exhibit GM05

All ASB service requests 2018-2023 – (linked to predicted PRS properties – Noise/waste/general ASB)

48.76	34.00
Marylebone ASB Service Requests per 100	West End ASB Service Requests per 100

ASB Service Requests by Postcode