

National Landlords Association  
Skyline House (2nd Floor)  
200 Union Street, London, SE1 0LX  
Telephone: 020 7840 8900  
Email: [info@landlords.org.uk](mailto:info@landlords.org.uk)

## ***Response to Tower Hamlets Council's proposal for additional licensing***

***April 2018***

- The National Landlords Association (NLA) exists to protect and promote the interests of private residential landlords.
- More than 72,000 individual landlords from around the United Kingdom are members of our organization. We provide a comprehensive range of benefits and services to our members and strive to raise standards within the private rented sector.
- The NLA seeks a fair legislative and regulatory environment for the private rented sector while aiming to ensure that landlords are aware of their statutory rights and responsibilities.

### **Overview**

1. The ability to introduce additional licensing is a powerful tool. If used correctly by Tower Hamlets Council, it could resolve specific issues. By introducing the scheme, you are indicating that it will eliminate all the problems that you identified.
2. This proposal should be put on hold until after the roll out of the mandatory extension by government in October this year, which will be within the same period as the council's, to avoid confusion.
3. One of the dangers of the proposed additional licensing scheme is that the costs may be passed on to tenants, thus increasing costs to Tower Hamlets residents, especially the most vulnerable, along with the Council's costs.
4. In many places, such as Newham, Oxford and Bath, where an article 4 direction was introduced in addition to the additional licensing, the result has been a reduction in the amount of shared housing that is available. This has resulted in councils looking to house many local people outside their boundaries, increasing costs for tenants and for the councils.
5. This policy could also have an impact on house prices in the area, with the market placing a premium on those with permitted development rights. This has been seen in other areas of the country. This

policy will benefit those landlords already in place and prevent new entries into the market, as demand increases. Equally it will discourage those with shared housing stock to move to family renting as they will not have shared housing status reappointed. This policy will crystallise the housing stock rather than allowing landlords to position their properties to support the need of the communities.

6. The scheme does not take into account Airbnb or those who practice rent-to-rent. These matters have to be addressed, if the scheme is to work. Subletting is a problem for landlords. What policies will the council put in place to support landlords who are the victims of tenants who sublet or who permit overcrowding to take place?
7. With civil enforcement powers the council can remove the criminals and poor landlords and keep the money within the council. This approach would be more appropriate, delivering results and punishes those breaking the law.

## Resources

8. Areas that have seen the introduction of additional licensing have also seen mortgages being withdrawn (by the Nat West and RBS). This will have an impact on future mortgage applications as a negative comment will appear on the landlords credit history. This could have an impact on the housing market, as the housing type could become stigmatised. It could increase the cost to tenants and the council in those areas where it is maintained, and those on low income will be priced out along with those who are in receipt of welfare. The council will incur additional costs in housing people; this can already be seen in the council's homelessness budget. What analysis of this has been undertaken, and of the potential effect on the council's homelessness budget?

## Societal impact

9. In addition to young professionals and students, migrants make up an important part of the shared housing market in Tower Hamlets. For obvious financial reasons and for flexibility, shared housing is an important housing segment for these groups. However, demand is not static. The impact of these policies will have an impact on the less well-off within Tower Hamlets. What measures are the council taking to mitigate these issues (including increases in housing costs)?
10. The issue of overcrowding is difficult for a landlord to manage. A landlord will tell a tenant how many people are permitted to live in the property, and that the tenant is not to sublet it or to allow additional people to live there. This is spelt out in the contract. Beyond that, how is the landlord to manage this matter without interfering with the tenant's welfare? Equally, how will the council assist landlords when this problem arises? It is impractical for landlords to monitor tenants' household activities every day, or their sleeping arrangements. Where overcrowding does take place, they know what they are doing and are criminals, not landlords.
11. The cost to rent via local housing allowance in Tower Hamlets is already very difficult. A policy such as this will further limit supply at the same time as it prices out local people.
12. Schemes such as additional licensing have put houses that are shared at a premium; that added value depends on them remaining shared. The council's policy will prevent new entries into the market, thus creating a monopoly. Properties that have shared usage will have a higher value than those that do not. Landlords will be disinclined to return them to family use, as they have higher value in shared usage and landlords will wish to preserve that status.

13. The use of additional licensing that is landlord/property-based will not resolve many of the issues that are caused by tenants – they are tenant-based issues. Landlords have limited powers to address them, as any direct action by the landlord to address issues such as ASB can be considered by the tenant to be harassment.
14. The NLA believes that any regulation of the private rented sector must be balanced. Additional regulatory burdens must focus on increasing the professionalism of landlords and the quality of private rented stock, and driving out the criminals who blight the sector. The shared objectives of all parties should be to facilitate the best possible outcomes for landlords and tenants. As such, good practice should be recognised and encouraged in addition to the required focus on enforcement activity. In the current economic climate, the last thing that good landlords need is yet more regulations or licensing schemes, particularly where there appear to be limited direct or immediate benefits to landlords or to tenants.

### Creating tension in relationships

15. In relation to ASB reduction and the authority landlords have to tackle such activity within their properties, it should be pointed out that landlords and agents can only enforce a contract. They cannot manage behaviour (ref: House of Commons briefing note SN/SP 264, paragraph 1.1). In most circumstances, the only remedy available to landlords who are confronted with cases of serious ASB in one of their properties will be to seek vacant possession and, in many instances, they will need to serve a Section 21 notice, rather than a Section 8 notice which identifies the grounds for possession. The former is simpler and cheaper and repossession (at present) is more certain. No reason need be given for serving a Section 21 notice and, in this case, the perpetrator tenant can hypothetically approach the local authority for assistance to be re-housed (ref: Homelessness Guidelines cl 8.2). Crucially, no affected party needs to offer evidence against an anti-social householder, thereby reducing the risk of intimidation, harassment and, ultimately, unsuccessful possession claims. The issue of ASB will thus not appear as a factor in the repossession. However, in providing evidence to support a licensing application, the document should clarify, for the respondents, the position of all the relevant issues under landlord and tenant law.
16. Landlords are usually not experienced in the management of anti-social behaviour and do not have the professional capacity to resolve tenants' mental health issues or drug and alcohol dependency. If there are allegations about a tenant causing problems (e.g. ASB), even if the tenant has any of the above issues, a landlord ending the tenancy will have complied with their obligations under the additional licensing scheme. This moves the problems around Tower Hamlets but does not actually help the tenant, who could become lost within the system. There cannot be an obligation within additional licensing for the landlord to solve an ASB allegation. Rather, a landlord has a tenancy agreement with the tenant, and this is the only thing that the landlord can legally enforce.
17. This was reaffirmed in February 2017 when the House of Commons library published a briefing paper entitled 'Anti-social neighbours living in private housing (England)'. This explains: 'As a general rule, private landlords are not responsible for the anti-social behaviour of their tenants.'<sup>1</sup>
18. It would be useful if the council could clarify its policies and put in place a guidance document which would outline the council's position on helping landlords to remove tenants who are causing anti-social behaviour. This is worse in shared housing, when a tenant has to share parts of the house with other tenants.
19. The ability of a landlord to enforce the law against a tenant who is causing anti-social behaviour comes from the civil court, where the burden of evidence differs from that of a criminal court. Although the

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<sup>1</sup> <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01012>

burden is lower, the length of this process will often exceed the period of the tenancy. Why would a landlord continue to pursue a case against a person who is no longer a tenant? A landlord also risks the tenant causing damage to the property by starting legal proceedings against the tenant. The fact that a landlord has started such a process will not appear on any council document, so how will the council expect to measure this?

## **Conclusion**

20. The NLA agrees that some landlords, most often due to ignorance rather than criminal intent, do not use their legal powers effectively in the management of their properties. A more appropriate response would be to identify issues and help landlords to develop the required knowledge and skills to improve the sector through schemes such as the NLA Accredited Landlord Scheme. This would enable Tower Hamlets Council to target criminals, where a joint approach is required.
21. The introduction of additional licensing could further reduce the amount of shared housing. This would probably increase the costs for those who rent, as it would prevent new entries into the market. A more erudite approach to dealing with nuisance, and a separate policy to tackle criminals, would be a better way to resolve the issues. Enforcement is required against those landlords who do not meet housing standards. The proposed policy will increase the council's costs along with that of tenants.
22. Again, the NLA thanks Tower Hamlets Council for the opportunity to respond to this consultation. We hope you find our comments useful.

Hello,

I have been reading about the proposals to introduce landlord license schemes to Bromley by bow.

I was wondering why housing associations are not having to apply for licenses like the private landlords. As in many developments across Tower hamlets it is often the socially housed tenants causing the antisocial behaviour as opposed to private tenants.

Our concierge provides data to support this and I would like it to be considered during the consultation. Private landlords will simply pass on the bill to private renters.

kind regards





Dear Sir / Madam,

I would like to object to the introduction of the above scheme on three grounds:

1. The consultation process has been flawed
2. There is significant relevant information missing both from the relevant reports for councillors and from the consultation
3. The logic behind the key report for councillors to make a decision on is flawed

In respect of the first ground, I attended the 'drop in' session at Canary Wharf having prepared by reading all of the various reports. Unfortunately, it turned out that I was the only one to have done so and those leading the consultation had not even read the detailed materials or been trained on the scheme. Key to the scheme is the report by Dr Les Mayhew, but none of those leading the consultation had read the report or were able to ask any questions on it. Without access to people who have the detailed information on the scheme, the consultation must be considered flawed and many councils have failed to implement their schemes on the back of a flawed consultation.

In respect of the second point, there is significant data conveniently missing from Dr Les Mayhew's report, i.e.:

- i. In FOI: 9361066, the council states that there have been no enforcement actions at all by the housing or legal teams in respect to housing in either Island Gardens or Canary Wharf wards, so how can it be justified to introduce additional bureaucracy and costs to landlords where the council have had no cause to move to enforcement in either ward?
- ii. In FOI: 9205969, the council states that only 3-4% of all complaints from tenants about private rental properties were related to HMOs. This hardly makes a case for additional licensing;
- iii. In FOI 6829336, the council admit that they have not issued any Interim Management Orders (IMOs) under the Housing Act 2004 – nor Final Management Orders or emergency action. In fact, in 2015/16, only 21 improvement notices were issued, which is two per ward – hardly an epidemic.

There is an additional FOI request that has been submitted to the council to break down the data in FOI: 9205969 by ward which will show exactly where these issues exist and it is likely that they could be addressed through including only a small number of wards and not the whole borough.

In respect of my third point, I now address the report by Dr. Mayhew. It's very strange that in a report for LBTH just two years earlier, he stated:

*we also note that because the distribution of HMOs and single family rented properties appear to be similar there is no need for Additional or Selective licensing schemes*

Source: executive summary - [https://www.towerhamlets.gov.uk/Documents/Housing/Housing-provision/Landlord-accreditation/The\\_private\\_rented\\_sector\\_asb.pdf](https://www.towerhamlets.gov.uk/Documents/Housing/Housing-provision/Landlord-accreditation/The_private_rented_sector_asb.pdf)

Frankly, I am shocked that the author of the report can change his position completely in two years whilst nothing has fundamentally changed within the borough – in fact with the introduction of the private rental charter and increased funding for enforcement in trading standards, things are much better than they were two years ago when the report was written. Whilst Dr Mayhew is well respected in his profession as a statistician, let's remember the Mark Twain comment about 'lies, damn lies and statistics' and remember that statistics can be used to prove almost anything given the right motivation or fee.

And this is evident in the new report itself which has some questionable logic in it. A few of the highlights are below:

- a. Table 1 – shows that the number one issue in LBTH is fly tipping but as is clear from recent data, LBTH has initiated no prosecutions for fly tipping *this decade*. This data is later explored on page 15, but ignores the reality of lack of prosecution / moral hazard and simply looks at the numbers as a rather naive approach;
- b. Page 16 – Dr. Mayhew addresses the number of missed food collections. The reality though is that those living in flats (which are less likely to be HMOs) do not have access to food recycling and hence the data is flawed and should not be used. Someone understanding the area would have that information, but Dr. Mayhew is not familiar with the area – only its data which without understanding can give the wrong root cause of any issue;
- c. Table 2 – takes into account 'garden and food waste', but in Canary Wharf ward, the number of people who have access to these services are tiny as they are not available to flats;
- d. Table 2 – takes into account THEOs, but a recent FOI request shows that THEOs are skewed and not distributed evenly with Island Gardens ward only having a small fraction of THEO time and hence the statistics here are once again skewed without an understanding of them;
- e. Section 3.4 links deprivation and the PRS, but this is massively over-simplistic. In the Canary Wharf ward, there are thousands of high end flats renting for several thousand pounds per month which break that hypothesis – in fact it shows it as simply over-simplistic and hence one scheme for the whole of the borough is not appropriate;

However, the main culprit for statistical vandalism is table 3. What table 3 actually shows is that of the 9,000 homes with 3+ adults, 85% have no issues at all, i.e. it is only a small minority causing an issue and the licensing of the whole borough is simply not justified but the same data has been presented to show the exact opposite.

I would very much welcome an opportunity to speak at council when this matter is debated and explain how statistics without and explanation have been used to reverse the conclusions of only two years ago by the same academic.

Best regards,