



National Landlords Association:

Response to Tower Hamlets Council proposal for Selective Licensing

July 2015

Introduction:

1. The National Landlords Association (NLA) exists to protect and promote the interests of private residential landlords.
2. The NLA represents more than 50,000 individual landlords from around the United Kingdom; we provide a comprehensive range of benefits and services to our members and strive to raise standards within the private rented sector.
3. 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.
4. The National Landlords Association (NLA) would like to thank Tower Hamlets Council for providing the opportunity to comment on the Selective Licensing consultation.

Executive Summary:

5. Having considered the evidence presented and undertaken its own evaluation of the circumstances faced by the residents of Tower Hamlets the NLA's position can be summarised by the following brief points:
 - While there is evidence to suggest that ASB is not satisfactorily dealt with in the area, no such data has been provided linking the issues to the PRS.
 - Landlords have very limited authority to deal with matters of ASB.
 - Discretionary licensing is not an appropriate reaction to the cited issues as it provides no further facility or powers to deal with ASB.
 - The consultation paper fails to provide sufficient evidence to support claims made to justify the associated application.
 - The documentation provided also fails to indicate that sufficient funding will be available to support the functions necessary to support licensing.
 - There are a large number of unanswered questions posed by the Council's proposals.
6. The NLA contends that the flaws outlined below in the process and proposals must be rectified prior to making any attempt to progress this application. Furthermore, once the necessary data has been identified and provided this consultation exercise should be repeated, ensuring engagement with all relevant stakeholders. We are also concerned around whether the scheme is in breach of the government's 20% threshold.

General Feedback on Proposals:

7. The ability to introduce Licensing is a powerful tool. If used correctly by Tower Hamlets Council it could resolve specific issues. The NLA has supported many local authorities when the introduction of a licensing scheme has been introduced, as it will benefit landlords, tenants and the community.
8. The legislation in relation to Selective Licensing clearly states that the introduction of licensing has to be evidence based. On the basis of the evidence that is presented by the council the NLA would argue that there is no case for the introduction of licensing as proposed.
9. The NLA believes that any regulation of the private rented sector needs to be balanced. Additional regulatory burdens must focus on increasing the professionalism of landlords, the quality of private rented stock and driving out the criminal landlords – who blight the sector. It should be the shared objectives of all parties involved to facilitate the best possible outcomes for landlords and tenants and as such good practice should be recognised and encouraged in addition to the required focus on enforcement activity. In light of the current economic climate. The last thing good landlords need is regulations or licensing schemes; particularly where there appears to be limited direct and immediate benefit to landlords or tenants.
10. The housing market suffered a collapse in 2007. This has meant that many who bought houses prior to the collapse could be subject to negative equity, thus preventing them from selling. Consequently renting the property out is the only option, if they have to move due to their job¹. Low interest rates have supported many people, during the banking crisis that hit UK housing market. An increasing in running costs courtesy of the Council's licensing fees is not only inappropriate, but could be a hammer blow to those at the lower end of the economic scale as costs will be passed through.
11. Tower hamlets Council has many existing powers. Section 57 (4) of the Housing Act 2004 states that a local authority "must not make a particular designation ... unless (a) they have considered whether there are any other courses of action available to them ... that might provide an effective method of dealing with the problem or problems in question". The use of these powers as listed below give a Tower hamlets Council the ability to tackle many of the issues that they wish to overcome in all the parts of the city:
 - a) Use of Criminal Behaviour Orders;
 - b) Crime Prevention Injunctions;
 - c) Interim Management Orders;
 - d) Empty Dwelling Management Orders;
 - e) Issuing improvement notices to homes that don't meet the decent homes standard
 - f) Directions regarding the disposal of waste (for example under section 46 of the Environmental Protection Act 1990);
 - g) Litter abatement notices under section 92 of the Environmental Protection Act 1990;

¹ <http://www.independent.co.uk/money/mortgages/millions-face-becoming-mortgage-prisoners-as-rise-in-interest-rates-could-trap-to-23m-homeowners-9399137.html>

- h) Powers under the Noise Act 1996 to serve fixed penalty notices or confiscate equipment (sections 8 and 10);
- i) The power to require rubbish to be removed from land under section 2 – 4 of the Prevention of Damage by Pests Act 1949.

12. The paperwork of a license can be reduced; the rationalisation of processing of licensing forms needs a review. The requirement to complete a form for each property needs to be simplified for landlords with multiple properties. The process can be simplified along with costs that are incurred by Tower Hamlets Council and to the landlord. We would be willing to work with the Council on how this can be done.
13. One of the many reasons raised by Tower hamlets Council for the introduction of Selective Licensing is the impact of litter and fly-tipping. Landlords will outline to tenants at the start of the tenancy their obligations in relation to waste and what they have to do to comply with in relation to waste disposal. This in many cases this is the waste services provided by Tower hamlets Council, if the tenant does not comply with the waste collection then the tenant is responsible and the Council can take action against them directly – licensing is not the appropriate response to address this issue
14. The aims of the Council has i.e. removing nuisance, ASB, waste etc. can be achieved through existing legislation that Licensing will not and cannot achieve. The risk of introducing Licensing is likely to increase the costs for those who live in Tower Hamlets, along with not resolving the problems that the Council wishes to resolve. Thus a more erudite approach to dealing with nuisance and a separate policy to tackle the criminal landlords would be more applicable in resolving the issues.

Negative Impacts of Discretionary Licensing:

15. One of the dangers of the proposed Selective Licensing scheme could be the costs are passed through to tenants, thus increasing cost for those who rent in Tower Hamlets, along with the cost of the Council. Thus increasing costs to Tower Hamlets residents, especially the most vulnerable and least able to tolerate a marginal increase in their cost of living.
16. Areas that have been subject to the introduction of Selective Licensing have seen lenders withdraw mortgage products, reducing the options to landlords reliant on finance. Downstream this increases landlords' overheads and subsequently costs for tenants rise. The consultation documentation does not appear to reference this possibility or invite contributions from financial institutions. As affected stakeholders this would appear unwise and potentially damaging to the application process and scheme implementation?
17. Tower Hamlets Council, by proposing the introduction of licensing is implying that there are social problems, which could deter investment in the area. However, there is no acknowledgement of the impact that the stigmatisation of discretionary licensing is likely to have on the effected locality. This should be explored and detailed in the evidence case supporting this application. Once again the

NLA would assert that failure to provide such information is an indication of a substandard and ultimately superficial consultation exercise.

Resources

18. The introduction of Selective Licensing is not a solution in itself; resources need to be allocated by Tower Hamlets Council as well. Experience indicates that other councils, which have introduced licensing schemes that have not allocated the adequate resources to resolve the problems, still suffer those very same problems. We have reservations with the proposals as no new resources have been identified and would recommend the Council consult a range of third party authorities which have considered, implemented and rejected licensing proposals in order to obtain a better overview of the requirements.
19. Often cited as an example to other authorities, Newham Council has spent over £4 million on additional staff, which has resulted in a prosecution rate of 1% of landlords. However, while the London Borough has registered over 20,500 landlords, it has so far only banned 18, and prosecuted 243. A targeted approach such as those adopted by Leeds and Manchester would be better value for the taxpayer. How much money has been allocated from the general fund to cover costs of the introduction of the licensing scheme?
20. Often when tenants near the end of the contract/tenancy and they are moving out they will dispose of excess waste in a variety of methods, this does include putting it out on the street for the council to collect. A waste strategy for the collection of excess waste at the end of tenancies needs to be considered by local authorities with a large number of PRS properties. This is made worse when councils will not allow landlords to access the municipal waste collection points. The Council does not have a strategy in place to tackle the problem of waste from housing that is rented out and appropriate waste collection bins provided for the accommodation. The NLA would be willing to work with the Council in developing this strategy.
21. The costs of enforcement may not be recouped, raising the question of what resources the council intends to allocate to support the objectives of this licensing proposal should be addressed.

Current Law

22. There are currently over 100 pieces of legislation that a landlord has to comply with. The laws that the private rented sector has to comply with can be misunderstood. A landlord is expected to give the tenant a "quiet enjoyment", failure to do so could result in harassment case brought against the landlord. Thus the law that landlords have to operate within is not fully compatible with the aims that the Council wish. A landlord keeping a record of a tenant can be interpreted as harassment.
23. The introduction of licensing is to tackle specific issues, many of these are tenant related and not to do with the property/landlord. Thus the challenge is for local authorities to work with all the people involved not to just blame one group – landlords. The NLA is willing to work in partnership with the Council and can help with tenant information packs, assured short hold tenancies, green deal and accreditation of landlords, along with targeting the worst properties in an area.

24. The NLA would also argue that a problem encompassing a few poorly managed and/or maintained properties would not be appropriately tackled by a licensing scheme, which is not proportional. In many situations the Council should consider Enforcement Notices and Management Orders. The use of such orders will deliver results immediately – why does the Council wish to do this over five years. A targeted approach on a street-by-street approach, targeting the specific issues and joined up between agencies, the Council, community groups, tenants and landlords will have a greater impact.
25. The NLA agrees that some landlords, most often due to ignorance rather than criminal intent, do not manage their properties effectively. A more appropriate response would be to identify issues and assist landlords to develop the required knowledge and skills to improve the sector through schemes such as the NLA Accredited Landlord Scheme. This can allow Tower Hamlets Council to target the criminal Landlords – a joint approach is required.
26. The NLA would also like to see Tower Hamlets Council to develop a strategy that can also include action against any tenants that are persistent offenders. These measures represent a targeted approach to specific issues, rather than a blanket-licensing scheme that would adversely affect the professional landlords and tenant whilst still leaving the criminal able to operate under the radar.

Consultation Critique:

27. Although central government approval is no longer a pre-requisite for implementation of a discretionary licensing scheme, a threshold of 20% is set. The NLA has grave concerns about this consultation process, the evidence upon which it is based and therefore the ability of third parties to properly contribute. The following paragraphs outline these concerns and potential flaws.
28. In relation to ASB the authority a landlord has 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 confronted with cases of serious ASB in one of their properties will be to seek vacant possession and in many instances will serve a section 21 notice rather than a section 8 notice identifying the grounds for possession. The former is simpler and cheaper and repossession (at present) more certain. No reason needs be given for serving a section 21 notice and the perpetrator tenant can then hypothetically approach the local authority for assistance to be re-housed (ref: Homelessness Guidelines cl 8.2). Crucially, no affected party need offer evidence against an antisocial householder, 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. In providing evidence to support a licensing application the document should clarify for respondents the position of all relevant under landlord and tenant law.
29. At no point in the document does the Council illustrate their argument for Selective Licensing with examples of cases where a landlord has refused to engage with authorities after being approached and made aware that there is an issue to be investigated in relation to their tenants. In this respect the Council has relied purely on a quantitative statistical approach inferring significant correlation. It is submitted that this approach is wholly inappropriate for the consultation process as it does not

empower participants to give truly informed responses. We would therefore contend that the required consultation process is irrevocably faulty.

30. It is also worrying how little reference to the economic impact of increasing the cost of housing provision will have on the local community. We wish to understand how the Council believes increasing said costs would increase demand. The logic of this assertion is not clearly explained and will arguably lead to incorrect conclusions on the part of those stakeholders relying on the Council to inform their input into this consultation. This at a time with a further reduction in benefits.
31. In the Government procedural document - 'Approval steps for Additional and Selective Licensing Designation in England', it states that in order to apply for Selective Licensing a local housing authority *"will have to show how such a designation will be part of the overall strategic borough wide approach, and how it fits with existing policies on Homelessness, Empty homes, Regeneration and Anti-social behaviour."* These should be made public as a matter of urgency, with reference to the funding available for each policy strand.
32. This condition is also highlighted in the 'Explanatory note to Housing Act 2004, paras 26-28', which states: *"In order for a scheme to be approved, such a Selective Licensing scheme must be shown to be co-ordinated with an authority's wider strategies to deal with anti-social behaviour and regeneration."*

Requests for Supplementary Information:

33. The Council claims that one of the benefits to landlords is – "Support for landlords when dealing with anti-social tenants". It would be useful if this could be expanded, what help, when and how?
34. You also make the claim that the introduction of Selective Licensing will take the tension out of the landlord tenant relationship. Can you provide the evidence?
35. The NLA would like to understand the Council's reasoning on how charging people more to live in rented accommodation will improve housing? Given that successive governments have attempted to address the issue of anti-social behaviour, using significant resources to underpin structural causes, it seems unreasonable to contend that licensing of private property will succeed. Could the Council provide evidence to support this assumption?
36. At a time when Tower Hamlets Council is reducing department budgets, we believe that the remaining resources should be allocated to targeted enforcement against the worst, criminal landlords. How many additional staff will Tower hamlets be employing and how much additional resources has the council budgeted for per year over the next five years?
37. Leeds City Council through the process of introducing Selective Licensing incurred a cost of around £100k to the tax payers of Leeds². Thanet Council incurred a cost of £500,000.00. Newham has

² <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmcomloc/50/5006.htm#a13>

allocated money from the general fund for enforcement and received money from central government, how much money has the Council envisaged will be required for these new services?

38. In Newham and other Councils which have cited similar cases, additional staff have been required, how many additional staff is the Council proposing to employ?
39. Clarification on the Council's policy, in relation to helping landlords when a Section 21 notice is served is required, with the proposed Selective Licensing scheme? It would be useful if the council could put in place a guidance document before the introduction of the scheme which would outline the council's position in helping landlords remove tenants who are causing anti-social behaviour.
40. The NLA would like further explanation on how the Council will work with landlords to mitigate the tenants that leave a property early but where they still have a tenancy. If a landlord has problems with a tenant, how will the Council help the landlord?
41. Licensing can perform a role, but licensing in itself will not resolve issues; the use of enforcement where the law is being broken is required. This requires an allocation of resources; can the Council provide a breakdown of resources they will be allocating for the five year period of the license?
42. With the requirement for formal referencing ahead of new delays are likely for prospective tenants, along with the inevitable difficulty some people will have getting a tenancy. Could you provide the equalities and diversity assessment that the Council has undertaken into referencing? What communication has the Council had with RSL's concerning the provision of referencing, including social housing providers that neighbour Tower Hamlets? Also how have neighbouring Councils reacted in response to the proposed requirement to provide references?
43. What provision is there for people who are first time renters who will not be able to get a reference to access decent housing? Will the Council undertake to fill the supply gap created by private landlords complying with licensing requirements?
44. Waste is a common issues associated with licensing proposals and ASB. In many situations fly-tipping or excessive litter is a result of the tenant not understanding the waste service. The non-collection of waste/recycling by the Council can increase fly-tipping and litter in an area. The non-collection of recycling due to contamination within the recycling bin will result in the tenant having to dispose of the recycling/waste; this can lead to fly-tipping or overflowing bins/litter. Neither of these can be resolved through licensing. What additional resources will the Council allocate to resolve this issue as there is no indication provided that the current resources will prove adequate?
45. Could the Council provide a breakdown of the ASB? Could this also be sub divided into ASB that is proven to be housing related?