

APPENDIX 5

Tower Hamlets response to questions, comments and suggestions received as part consultation on the future of the current Selective Licensing

In general, there were similar comments, feedback, concerns and suggestions across all three virtual consultation sessions. Therefore, we have grouped the views expressed, suggestions made, and concerns raised in several themes to provide a clear, concise, and full response to what we have heard.

In addition, we have received written submissions of support from the Local Police Force as well as detailed comments and helpful suggestions from Safeagent (formally NALS) and the National Residential Landlords Association (NRLA). Both submissions raised some pertinent points and concerns, whilst overall they agree and understand the need for the Council's intervention in ensuring rule of law applies and the sector is cleared of rogue elements. They have also made some helpful suggestions which we have and will take onboard if the Scheme is renewed. The concerns and comments they have raised are reflected in our thematic response below.

Theme 1 – General overview

There is an overall agreement with the licensing goals of catching rogue landlords, and driving them out of the sector, tackling Anti-Social Behaviour and encouraging better property management, but views differs on whether the Selective Licensing Scheme was an effective way of achieving this. As expected, this to a great extent is a polarised view from Landlords / Agents and their representatives who feel this should be done differently whilst agreeing with its objectives and goals. On the other hand, the tenants and tenant support groups, other Statutory organizations (the police, Fire Authority) and the voluntary sector organizations firmly believe that the only way to regulate the sector to the scale required is though locally designed licensing Schemes. Another or a key point of contention is the fee charged or cost of running a licensing scheme which again there is strong belief in one side that ; this is only right that the sector bears the costs of regulating it whilst the other side sees it as another form of tax or cost which is totally unnecessary .

Theme 2 – Why you include the new builds “My building is 5 years old. It meets all standards, fire, gas, everything. I feel that we are being punished. I agree with the Scheme, because we need to get the rogue landlords out of the system 100%. But I feel like I am being punished”. “you need to police them, but you can't not cope but punishing us”

A key and very important part of creating a vibrant, professional and good standard of Private Rented Sector (PRS) is having a high standard of property management –

regardless of the age of the property. Having a robust property management that is compliant with statutory rules and best practices is equally important to old and new buildings.

Good property management means:

- Landlords (L/L) or Managing Agents (MA) would carry out the required background checks by seeking appropriate references and financial check to prevent the tenant becoming problematic for both the L/L and the local area.
- Tenants are issued with appropriate contracts that set out the rights and responsibilities of both parties.
- The tenants are fully informed as to who the responsible person for the property is, how to contact them and all communication and transactions are done openly, and action is carried out promptly if they require anything done.
- The L/L or the responsible person schedules a timely inspection of properties to ensure the property is not used for illegal activity.
- Maintenance and Safety requirements are carried out effectively and appropriately.
- In conjunction with authorities take appropriate action to deal with any ASB.

The above are some examples of a required level of property management to ensure this hugely important sector is of benefit to all – the investors, occupiers and the society as whole.

In essence, property licensing aims professionalises the sector as whole. We accept that a reasonable proportion of L/L or MAs operate at an acceptable level, but a good proportion do not and would want to operate totally under the radar. The sector, which is home to over 41% of the population has a huge importance in term of health, wellbeing, educational attainment and Social Mobility. It is therefore very important to be able to regulate in a way that ensures of supply of a good reliable homes with all the required safeguards which licensing requires.

Additionally, the main objective of licencing is to legitimise and professionalise the sector, reduce anti-social behaviour, and in order to drive out those who exploit the vulnerable, young starters, and those who are not in a position to question bad practices, including but beyond the condition of the housing. While it could be said that maybe most of the L/Ls or Agents are law abiding and legal businesses operating to the best of their abilities, unfortunately, there are some who do everything possible to remain under the radar. This is often known as the shadow operating model – with those responsible only caring about making money or channelling moneys through this sector for the purpose of tax evasion. In these cases, it is difficult to identify or hold to account those responsible who often hide their identity. Licensing exposes these types of operations by their absence from the Scheme.

New build properties are not immune from this therefore are included in the Scheme.

Theme 3 – The Council should take more targeted approach. “You cannot / have not effectively found the rogue / bad landlords and dangerous properties as your figure clearly shows.” The Scheme should be targeted rather than blanket geographically

The Government review into Selective Licensing which was published in 2019 states that in 91% of cases this led to improvement. Considering the size of the sector and the lack of a cohesive and fit for purpose regulation, Licensing is the most effective way to:

- achieve mass/widespread improvement
- reduce anti-social behaviour
- scale up the Council intervention in improving the sector
- drive out the rogue element operating in shadows
- empower tenants to act
- support good and responsible L/Ls and Agents

As mentioned above, given the size of the sector which in some cases increased 10-fold in recent years (over 41% - 43% housing in Tower Hamlets) licensing is shown to be the most effective approach. Licensing enables the council to improve housing and renter behaviour at a far greater scale than inspection. Even with a greatly expanded number of trained Environmental Health Officers, it would not be able to cover a sufficient proportion of the sector. To start with, there, is no list of rented properties anywhere.

Although housing is the fundamental determinant of health, wellbeing, and social mobility, it remains the only business without proper regulation (not even a list of such properties). It is a lottery as to whether a local Council becomes aware of a rented property, and often only after contact from a tenant raising related issues.

Considering the rapid growth of PRS in recent years and the limits on current legislation, no Council would be able to allocate the level of funding required to address issues in the sector. It is estimated that around, 41% of housing stock in Tower Hamlets is in PRS.

Local authorities across the land have a statutory duty to investigate and act when they find Category 1 Hazards in a privately rented property. This is done under Part 1 of the Housing Act 2004 which was conceived in late 1980s/90 and eventually replaced much of the old Housing Act 1985. However, the relevant part of this legislation is out of date given the size of the sector as well as technical determinations of what constitutes Category 1 Hazards. This is recognised by all relevant housing experts. Although in 2018 some addition legal power was introduced that in combination with Licensing Scheme enables the Council to take a more effective enforcement action.

Through licensing the Council can consolidate the requirements of a range of regulations which are otherwise disparate across government and local authorities' jurisdictions and almost impossible to effectively address individually. For example, Gas safety requirements are regulated by the Health and safety Executive, Energy

Performance Certificate (EPC) by Trading Standards, and Tenancy Contracts by Civil Law, anti-social behaviour laws. All of these are brought under the licence conditions which, in our view, helps the good landlord, tenants and – crucially – catches those who are inclined to break the law.

Theme 4- How Council uses the Licence Fees collecting. “I think us landlords have not seen that transparency, we signed up for it. You are telling me this is what it’s spent on. I would like to see a breakdown of where my money is going. £3.5million is a lot of money. How many of these rogue landlords have you identified?... but there’s a huge amount of this £3million that are to my mind unaccounted for and landlords should receive in return a breakdown of exactly how this money is being spent?”

As required by the law, licensing schemes should neither cost the local authority nor the local authority make any money from it. In Tower Hamlets, accordingly, the Licensing fee is calculated based on the cost of running the Scheme.

We have worked hard to streamline the process to achieve one of the lowest levels of licence fees in London. We understand that the sector plays a key role in housing Tower Hamlets’ residents which is growing year on year, and we want a thriving, professional and healthy sector with a good reputation. We believe licensing rented properties where needed certainly helps with this aim. By contributing the modest amount of £100 per year (for 5 Years) or £2.00 per week to help the Council in turn safeguards investment and provides a return of good and law-abiding L/Ls (Landlords).

Theme 5 – Lack of clear and consistent information and expectation. What landlord should expect for licensing their properties?

We accept that we can, and we must, improve our communication. There is always room for improvement, and we are striving to get better at it and welcome working with stakeholders; particularly those who participated in our virtual consultation sessions. We intend to programme in a quarterly stakeholders’ forum meeting either virtually or when allowed physically. We really appreciate this is hugely important in delivering on shared objectives. It is vitally important for L/Ls, MAs, tenants and everyone who has an interest in this and/or affected by it understand the Council’s position, ability and constraints within which it operates.

In short, we need to listen to one another and engage in a much grander and greater way. Our promise is that we have listened, we are going to review our processes, communication channels and methods, materials and aim to arrange our first meeting in June/July 2021 to hopefully agree a terms of reference for engagement going forward to address any concerns and issues together.

Theme 6 – The Cost of licence for renewing is high – “At the same time the figure for the renewal should be a little less to encourage people to renew I think it could be reduced a bit more, more welcoming to landlords especially in

COVID which has not only affected tenants but also landlords' income with reduced rent, and everything else."

We have listened and reviewed our cost and managed to reduce the renewal fee which considering the rate of inflation, it is a significant reduction. Tower Hamlets has one of the lowest licence fees in London and the Country. The fee in real term cover the 10-year cycle of the licensing scheme. Although the maximum length of licence are normally 5 years, given the staggered nature of the scheme, even if the Scheme ceases to exist after the 5 years, the cases that have licenced in the fifth year will have valid licence and therefor cost associated to it.

We believe the level of fee we charge is at the level which would not cause undue hardship to the Landlords whilst enabling the Council to have required level regulatory intervention to deter and remove the rogue elements.

Theme 7 – This is not helping to create a level playing field “ As an agent I welcome and support a renewal of the Scheme. But why stop at the three areas? I think it should be across the borough.” “If the Scheme is as you describe it so important, why wouldn't you cover the whole borough with it?”

We are actively looking at the possibility and evidence base for expanding this and will be starting the conversation to look at the data. However, given that the Government is currently so preoccupied by this pandemic and its after effect, there is a very little opportunity for them to consider any application for expanding the Selective Licensing at present.

Furthermore, in 2019 we introduced a borough wide Additional Licensing which covers smalls HMOs that are not covered by the national Mandatory HMO Licensing. We believe this covers most of the higher risk rented properties across the borough. We will be reviewing the Additional HMO Licensing Scheme in a couple of years towards the end of it 5 years period. This will also help us to evaluate and determine the most appropriate way forward to ensure we continue with our work of improving the sector which could mean introduction of Selective licensing to other part of the Borough.

Theme 8 - How many of these rogue landlords have you identified? This was the main objective of your initiation of selective licensing scheme, is to identify who these rogue landlords are.” “£3M, 5 years... caught 14 people? ”You should be held to task about why there aren't more landlords who have been asked to register and chasing them up.”

The low number of formal Enforcement Action, in a way indicates the success of the scheme and the Council's overriding principle of working with its local business and residents and linking in with other Services such as the Noise Team. To further explain this, there are three key factors that should be considered. These are:

- We have received considerably more applications than our estimated number of potential licensable properties. This could be construed that the greatest majority of those who should have licensed have come forward and applied,

were issued with licence. This has therefore meant there are potentially very few unlicensed properties remaining to be found. For example, our initial data analysis estimated that there would be around 6,000 licensable properties within the three areas. However, to-date we have licensed around 7,500 properties.

- The initial surge of applications had meant that in the first 2 years we concentrated on licence applications and prioritised those requiring urgent visits. Considering that all licenses were accompanied with the licence conditions, we found a good proportion of L/Ls or MAs who used the licence conditions to address all the regulatory requirements and therefore removed the need for any enforcement.
- Thirdly and more importantly, the ethos of Council's interventions; be it through the licensing or otherwise, is to work with its local businesses, first and foremost. Enforcement has an important role but is and has always been the measure of last resort. These factors demonstrate the Councils overriding objective, which is to improve its resident's homes, and that the council has tried to achieve this by working with local L/L and MAs. As illustrated with the data provided at the session, from March 2020 we began ramping up the new power of issuing large fines under the Civil Penalties Power (CPN) given to the Council recently. We believe this is very effective alternative to prosecution which are often protracted, complex and more importantly whilst in progress often fails to improve the substandard condition tenants are living in.

Unfortunately, our drive to issue CPNs coincided with the current pandemic which has slowed and largely stopped our progress in this area. Nevertheless, we will take robust action when required. If the Mayor agrees to approve a renewal of the Scheme, we will prioritise finding those who have not come forward yet to licence their properties as there could be no excuses after nearly 5 years. Given the data and information we have gathered so far combined with the experience / learning from the first 5 years we intend to concentrate in ramping up our enforcement action against non-compliance. Those found in breach will feel the full force of the law.

Theme 9 – Some implementation, administrative and technical suggestion

We have received some helpful suggestions about a range of implementation and administrative points which we are undertaking to incorporate in the implementation stage should the proposal be agreed. As part of the process we have received detailed feedback in relation to the Licence Condition which we took onboard and revised the document.

In addition, as detailed in Theme 5, if the scheme is renewed we intend to create a quarterly stakeholders' forum meeting made up from a cross section of stakeholders to ensure we deliver on effective partnership working to achieve our shared objectives.

Responses to Suggestions for Tower Hamlets as it considers the future of the Scheme

Suggestions to make the current Scheme more effective:

- Provide more resources to educate landlords about property standards to help them comply with them

Response - As always, we will review our approach in finding the most effective way to improve the PRS and education all is key to this. We hope to include this in our future discussions with stakeholders to find the most effective approach.

- Set up an endorsement scheme for agents to help landlords work with experienced and qualified agents

Response – There are various voluntary accreditation Schemes which may work in some settings, but experience shows this may not worth the efforts considering the size of the sector

- Introduce a rating scheme for landlords (this suggestion was discussed at the event and felt to be unworkable as it was open to abuse with fake ratings)

Response as above

- Include a letter with the Council Tax bill chasing unregistered landlords

Response - Good idea and has been tried

- Target the 20% limit on selective licensing on older/substandard properties

Response - There appears to be misunderstanding regarding 20%. This is threshold for designating Selective Licensing by the local authorities, this means if the area designated and number of PRS in that area is more than 20% the Council can not authorise the designation. And it must go to the Housing Secretary of State for approval.

- Track bad landlords by complaints received e.g., noise and poor property maintenance

Response - We work closely with colleagues across the board in this respect.

- Make agents responsible for standards rather than landlords

Response - Legally whoever receive the rent has the primary responsibility.

- Introduce flexible length licenses

Response - There are legal issues with this. We will consult our legal colleagues.

However shorter licences may be issued to those landlords that are found in breach of conditions

- Produce clear, unambiguous reports on progress made by the Scheme in targeting bad landlords: e.g., number of civil penalty notices, prosecutions, rent repayment orders etc.

Agree, we will endeavor to publish our progress and performance on a regular basis

- Publish plans on how the Council plans to target bad landlords in the future.

Response – The Council publishes strategic objectives in priorities and plans such as Strategic Plan 2020 – 2023. In relation to this issue, we must be aware of operational

issues as well as compliance with all data protection and confidentiality regulations as well as compromising the operational integrity.

Suggestion to replace the Scheme:

- Put Council resources into educating, encouraging and supporting tenants to make complaints about housing conditions and so increase the likelihood of identifying unregistered landlords.

Response – Absolutely, very important to empower tenants and we must do more in this respect

Management of the Scheme

- What will Tower Hamlets do to address the peak demand for licenses at the start of the Scheme that led to delays in licenses being issued in the first edition of the Scheme?

Response – If the renewal of the Scheme is approved, we will create a flexible and agile structure to meet the peaks and troughs of the initial renewal period and then increase the number of staff with required skills to carry out more inspections. Clearly the experience / learning from the implementation will be very valuable for a more efficient and effective delivery.

- Are you holding private sector landlords to different standards than those for the social housing sector?

Response - The short answer is No. The Social Housing Sector normally expect to achieve a higher standard.

- Why do license holders have to be UK residents?

Response - If they provide details of a UK resident who will accept to be responsible by signing a declaration, we will accept issuing license to non-UK residents

- Why do you ask questions about Managing Agents when the property owner might not have control over who they are e.g., no idea about criminal records?

Response - We are reviewing the application and we will take out any unnecessary questions

- If 6 people want to stay in a 2-bedroom flat and they are totally happy with it, why is Tower Hamlets coming in and saying no we must kick three people out?

Response – As explained at the session that we work with L/L in such scenario. The room sizes requirement has recently been introduced through a primary legislation. This not Tower Hamlets introduced rule. There was 18 months implementation period for exiting tenants

- Is overcrowding an issue in the social sector too?

Response – we believe there are issues of overcrowding in all tenure, including in owner occupation settings.

- Are those properties that you target (for inspections) inside or outside the selective area?

Response – We priorities inspection based on potential risks; the figures stated relates to Selective licensing area.

- When you do the surveys when you go around the blocks. Are you also knocking on the door of license holders because surely that’s a waste of time?

Response – Not knowingly. We only go to licensed properties as part of our planned survey

- Funding tackling antisocial behaviour and green spaces, should that not come from the general funds and licensing funds should be ring fenced?

Response - the fee is ring fenced to cover the cost of licensing Scheme,

- If the Scheme is so important why have only around 16% of the licensed properties been surveyed?

Response – As detailed under Theme Two response

Fees

- Why can’t fees be refundable if you are renting a property for less than 5 year?
- Is this not another tax on landlords?

Response- this is to cover the cost of the Scheme which we believe is to the benefit of the sectors as explained in detail above

Impact of the Scheme

- Do you have any evidence that it is our (private rented sector) tenants causing any of this ASB?

Response - Our Evidence is set out in the Mayhew report. Generally, they are based on the correlation between PRS and ASB

- How have properties been improved? The difference between the number of licences and surveys?

As explained above, the license condition when applied the property becomes compliant with the regulations and therefore it is improved

How much revenue have you raised?

Response - The term revenue is misleading. The fee we charge is covering the cost of operating the Scheme which we will publish at the end of financial year

- On the licensing could Tower Hamlets tell me, how many rogue landlords do you have today. Scheme has been running for 4 and a bit years. How many rogue landlords have you identified?

Response – There is neither a definitive figure on this nor the “rogue landlord “is legal term. This term in recent years has been used for those L/L or agents who regularly and continuously breaking the law in respect of PRS.

- What is the number of rogue landlords who have paid a fine?

The fine we stated in our presentation related to L/Ls and Agents

- How many private rented sector properties are estimated to be in the Selective License area, how many left to licence?

Response - We are not sure, these are estimates, we believe there are around 9000 Private rented properties in the Selective Area, we have licensed 7500 with some application yet to be determined

- Will the council provide a detailed and comprehensive breakdown of how much money has been raised and how the money raised has been spent?

Response - This is available as part of the open and transparent public Account requirement

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