

Appendix Eight: Responses to written comments from the consultation

Service responses to the written consultations.

In this document, we have responded to the general points made by organisations and individuals that provided a written submission to the consultation.

Resources raised by Propertymark.

Response: Resourcing qualified and experienced staff to undertake inspections for the Health and Housing Team has been a challenge and is regionally. This was also impacted by the pandemic. There is an ongoing recruitment to secure more staff for the Team. We use various process of permanent staff, fixed term contracts and agency staff to maintain our staffing levels.

It must be noted that enforcement is lengthy, if we rely on the Housing Act 2004 Part 1, which cost significantly more than a licence does, due to the charge imposed when issuing an enforcement notice to the landlord. A landlord may receive multiple notices. Whereas a licence has a flat fee and a prescriptive set of property conditions such as set occupation levels for the size of the property, requirement for gas and electrical certificates to be in place, having adequate fire safety alarm systems, disposal of waste etc. Ensuring the manager and licence holder are aware of what is needed with regards to property conditions.

The licence acts as a preventative measure and gives all licence holders guidance on what the expected standards are to rent out properties. The scheme helps to decrease formal enforcement.

Identifying non- registered properties

For a scheme on this scale, we are disappointed that there is no clear strategy on how the council will identify properties that have not been registered within the proposed scheme. Turning back to our concern that complaint landlords will pay for the scheme while rogue landlords will operate under the radar, we advocate using council tax records to identify tenures used by the private rented sector and those landlords in charge of those properties. Unlike discretionary licensing, landlords do not require self-identification, making it harder for criminal landlords to operate under the radar. With this approach, the council would not need to seek permission from the UK Government and would be able to implement it with no difficulty. Propertymark.

Response: Environmental Health has a clear strategy in place to identify unlicensed residential properties across the scheme. This includes:

1. Engagement with Agents.
2. Engagement with Social Landlords in the Borough to identify and provide a list of leaseholders who are subletting their properties. A number of the RSLs have provided the required data and the identified leaseholders have been written to submit a licence
3. Media publicity campaign in the East End Life newspaper

4. Publicity banners in local parks
5. Advertisements in Idea stores
6. Use of Council Tax data, for any owner who has alternative correspondence address registered with Council tax.
7. Door-step surveys
8. Use of the Rent Repayment Orders to encourage licensing.
9. Use of enforcement processes.
10. Investigation of complaints

Fees – concerns on the level set.

Response: The licence fee is set annually through the corporate fee setting process, it is not appropriate to compare our fees to other Authorities in the North of the country as cost the base varies. The fees are set fairly to enable the Council to administer and enforce the scheme ensuring that a burden is not placed on the landlord or renter.

Impact of cost-of-living and landlords - Propertymark

Response: The cost of the licence for Tower Hamlets reflects the administration and enforcement of the scheme. The fees are ring fenced to the scheme. Some elements of the scheme will assist in lowering costs for renters.

The cost of living is a national issue to everyone, it will affect everyone at various levels and the licence fee is set at a level to have a minimal impact.

Impact on supply of homes – Propertymark

Response: Over the period of operating the current licensing scheme, we have not identified landlords leaving the market. The private rented sector in Tower Hamlets is about 38-40% - 38,000 properties. Other external influences may encourage landlords to leave the market – its unlikely this scheme will.

Current enforcement

Tower Hamlets is experienced in the implementation of Additional Licensing Scheme with the current scheme expiring in April 2024. We would be grateful for some clarity on the performance of previous schemes. For example, how many working days did it take for a typical additional licence application to be processed and issued? The council also highlight some of the key statistics on their enforcement activity including warning letters, prosecutions, and civil penalties issues. We would be grateful if this data could be broken down by years and whether the action was within a selective licensing scheme area or from general enforcement. We would also be grateful for clarity on the reasons for issuing civil penalties for example, how many were for overcrowding, banning orders or for simply not obtaining the correct license. Propertymark

Response: The analysis carried out by Mayhew Harper Associates includes some of the data regarding processing times. The consultation did include our current enforcement data at the time of the consultation.

We will review whether to publish more details on the enforcement action undertaken on our schemes on the website. However, our intention is not to punish landlords or agents but to encourage compliance to property conditions.

Formal action is published on the Greater London Authority Rogue Landlord Checker.

Engagement with landlords and letting agents

For most cases of substandard accommodation, it is often down to landlord's lack of understanding rather than any intent to provide poor standards. Tower Hamlets have made efforts to engage with landlords in the local area including support of landlord accreditation schemes and engagement via the local authority's landlord forum. However, there is no due regard in encouraging landlords or property agents to be members of an accredited membership scheme such as Propertymark.

To strengthen this engagement, we would be very happy to support the council in engaging with our members and local property agents. A licensing scheme is a very reactive mechanism, and it is far more beneficial to have a programme of education to engage with landlords on helping them improve before a situation gets worse. We would welcome clarity on what training opportunities the council will provide to landlords and agents to help them understand their responsibilities and improve standards. We recognise the council have made strong efforts in this in the past with engagement via the council's Landlord Forum and an accreditation scheme for local landlords. However, engagement is more credible over a longer more embedded period. Propertymark has a network of Regional Executives and a series of Regional Conferences that take place throughout the year.⁸ We would be very happy to work with the council to engage with local agents over a virtual roundtable discussion on how standards can be improved. Propertymark.

Response:the Council would welcome greater education of landlords and Agents operating in the borough. We are willing to review how this can be achieved via the Forums that we hold.

Tackling Anti-social behaviour (ASB)

Landlords are not the best equipped to deal with anti-social behaviour and certainly do not have the skills or capacity to deal with some tenants' problems such as mental health or drug and alcohol misuse. As one example, if a landlord or their agent had a tenant that was causing anti-social behaviour, the only tool that the landlord or agent could use would be to seek possession from the tenant under a Section 8 notice. While this would remedy the problem in the short-term, the tenant is likely to still occupy this behaviour and all that has been achieved is that the anti-social behaviour has moved from one part of Tower Hamlets to another. Propertymark

Response: The responsibility to deal with ASB from renters is a shared one between the landlord and local authority. We do not feel that the landlord should abdicate all responsibility. Landlords are required as part of the conditions to obtain a reference

before granting agreements to any tenant. This should reduce the numbers of anti-social tenants occupying HMOs in the borough.

Information about the outcomes of the scheme

If the scheme is approved, the council should consider providing an annual summary of outcomes to demonstrate to tenants, landlords and letting agents behaviour improvements and the impact of licensing on the designated area over the scheme's lifetime. This would improve transparency overall. Propertymark has a shared interest with Tower Hamlets Council in ensuring a high-quality private rented sector but strongly disagrees that the introduction of the proposed measures is the most effective approach to achieve this aim both in the short term and long term. Propertymark.

Response: The council aims to demonstrate transparency in all its services and welcome this recommendation. We will work to add data on the numbers inspected per annum, enforcement actions taken for each licence scheme, following the renewal of the scheme.

Impact on supply of homes

Exiting the market is especially a concern for smaller landlords who are more likely to sell their properties and further shrink the supply of PRS properties leaving remaining private tenants with higher rents. Our research on the shrinkage of the PRS⁴ found 53% of buy to let properties sold in March 2022 left the PRS and that there were 49% less PRS properties to let in March 2022 compared with 2019. In addition to these concerns, those landlords who remain in the market, often have less money to improve conditions from increased costs. If the decision to operate an additional licensing scheme across the whole of Tower Hamlets is approved, then there is a concern that landlords currently operating within Tower Hamlets could invest in neighbouring local authority areas or exit the market altogether. This could result in fewer housing options for people living in Tower Hamlets meaning some people might be forced to find housing options outside the area, change employment or break social ties within the community. Propertymark

Response: We have not recognised that this is an issue – however external factors may have an impact on landlords exiting the market rather than a licensing scheme.

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to engage with landlords on helping them improve before a situation gets worse. We would welcome clarity on what training opportunities the council will provide to landlords and agents to help them understand their responsibilities and improve standards. We recognise the council have made strong efforts in this in the past with engagement via the council's Landlord Forum and an accreditation scheme for local landlords. However, engagement is more credible over a longer more embedded period. PropertyMark has a network of Regional Executives and a series of Regional Conferences that take place throughout the year.⁸ We would be very happy to work with the council to engage with local agents over a virtual roundtable discussion on how standards can be improved. PropertyMark

Response: The Council would welcome greater education of landlords and agents, we will consider this request, however we would not necessary promote an individual a scheme.

Evidence base

We note that a summary of the evidence base is merged in with the scheme evaluation by Mayhew Harper, plus a 'Statistics by Ward' document. The latter document was very brief, comprising just four pages.

The statistics by ward document contained three years of data on service requests and noise complaints recorded against properties with an additional licence. There is no commentary to explain what this signifies, and no baseline data to compare it to.

We would urge the council to look again at the supporting evidence base to ensure the legal tests for implementing a new scheme have been met.

What the report doesn't explain is the rationale for extending the additional licensing scheme borough wide. In the west of the borough, small HMOs occupied by three or four people and all single family lets are already licensed under the council's selective licensing scheme. The council renewed that scheme just 18 months ago.

The advantage of the current approach is that selective licences provide flexibility for properties to alternate between single family and HMO use according to the needs of the market without having to apply for a different licence. If the selective licensing scheme is overlaid with additional licensing, that flexibility will be lost.

There is a further complication. If the additional licensing scheme is introduced in the west of the borough, landlords and agents who have correctly obtained a selective licence will find themselves in breach of the law. As licences cannot be transferred, new licence applications will be required to eliminate the risk of enforcement action and rent repayment orders. Our concern is not simply the extra licensing fee, but also the time taken to relicence a portfolio of properties. This seems unfair and unnecessary and will be a confusing message to convey to landlords and agents. We would encourage the council to reflect on these unintended consequences and retain the current licensing scheme boundary. Safe Agent

Response: Properties already licensed under selective licence will not be required to re-apply on the renewal of the Additional Licensing HMO scheme, until their current

licence expires. We do not expect properties to hold two licences. If we issue a selective licence to a property that subsequently becomes licensable the additional licensing scheme, the existing licence continues. S.91(3)(b) provides that the licence continues in force for the period for which it is issued unless terminated or revoked. S.91(5) provides that the licence continues even if the house ceases need a selective licence or becomes an HMO to which additional licensing applies. If the scheme is extended the Council will take all reasonable steps to secure that applications are made in respect of HMOs that need to be licensed under the additional licensing scheme or selective licences are reviewed. It is expected that if the selective licence has a considerable term to run i.e. years, a conversion will be made at no extra cost but the new licence will not exceed the length of the current selective licence term.

Section 257 HMOs (certain converted blocks of flats)

The consultation proposal does not explain whether the proposed scheme would include section 257 HMOs.

We have concerns about including such properties within the additional licensing scheme due to the difficulty experienced by letting agents in knowing when a property was converted and whether the conversion satisfies the relevant building standards. It is not something that is reasonable for a letting agent to assess.

In situations where there is a freeholder and separate long leaseholders, the situation is further complicated by the need to determine whether less than two thirds of the flats are owner-occupied. Only the freeholder may possess this information and the tenure of each flat may vary over time.

This would make it extremely difficult for a safeagent letting agent to assess whether a licence is required, despite their best endeavours. For example, it may be that the building did not require a licence when a flat was rented out, but subsequently requires licensing because another leaseholder in the building has rented out their flat. As such, a letting agent could find themselves committing an offence of managing a flat in a licensable building without a licence, simply because another flat had been rented out without their knowledge.

Bringing section 257 HMOs within the additional licensing scheme could also be problematic for long-leasehold owner-occupiers who find their flat is within a licensable building. The licensing fee may push up their service charge and could cause difficulties with their mortgage lender. As the licence would need to be disclosed to a prospective purchaser, some mortgage lenders may be reluctant to lend on a residential mortgage for a flat within a licensed HMO, thus adversely impacting the property's value.

It is also the case that the 2015 general approval to introduce an additional licensing scheme only applies if the council has consulted persons likely to be affected by the scheme designation. Without actively consulting long leaseholder owner occupiers and explaining the implications of licensing section 257 HMOs, the conditions in the

general approval would not be met and the additional licensing scheme could not be introduced without Secretary of State approval.

Whilst we are opposed to the idea of including all section 257 HMOs within the additional licensing scheme, we recognise that there are circumstances where a particular type of section 257 HMO may be worthy of more intensive regulation. For example, where a landlord has converted a property into cramped and poorly designed studio flats entirely for private rental without any planning and building regulation approval.

In such circumstances, the additional licensing scheme could be restricted to section 257 HMOs where the whole building and all the individual flats within it are in single ownership or considered to be effectively under the same control. In response to our feedback, several councils have adopted this approach.

Other councils such as Westminster City Council, Newham Council and the Royal Borough of Kensington and Chelsea have listened to our feedback and excluded all section 257 HMOs from their additional licensing schemes.

We would encourage Tower Hamlets Council to give this further thought and either narrow the section 257 HMO licensing criteria or remove them entirely from the scheme. Safe Agent

Response: The Housing Act 2004 details the types of properties that fall within the definition of section 257 HMOs. Prior to the introduction of the Additional HMO scheme in April 2019, these types of HMOs would not have required licensing unless they fell within the Councils Selective Wards.

To leave the enforcement of fire containment to part 1 of the Act, is not a positive approach. The composition of these properties consists of multiple flats and in the event of a fire, the fire spread to all because of fire breaks and early detection systems. It is our intention to include these properties, which we expect are low in number.

Licence Conditions

We have studied the proposed list of standard licence conditions in the consultation report.

We have made some suggestions to help improve and fine tune the wording of the conditions. This in turn will help landlords and agents to understand and comply with the requirements.

As a general comment, we noticed some licence conditions require information to be provided within 21 days and some require information within 7 days. We think 7 days is too short a period except for critical / urgent issues. We think 14 or 21 days is more appropriate. It allows time for the licence holder to liaise with the property manager, collate the information and respond in writing. It also ensures the licence holder does not find themselves in breach of the licence if they take a one week holiday and miss the deadline. We would also request the wording is adjusted to state 'within ## days of a written request'. We don't think this should apply to verbal requests where there could be confusion about exactly what information has been requested and for what

purpose. This is also important for GDPR compliance, as it provides an audit trail to show why information has been disclosed. Safe Agent

Response: We have reviewed the comments made by Safe Agent with regards to the conditions and have amended them where we feel it is appropriate.

Accommodation and Amenity Standards for Private Rented Sector Housing

Appendix 3 accompanying the consultation document contains accommodation standards dated September 2022. It is unclear from the introduction whether this is guidance applicable for all private rented properties that are risk assessed under the Housing Health and Safety Rating System or is intended as guidance on additional requirements for licensed properties.

We would encourage the council to explain in the introduction that each property will be risk assessed and considered on its merits having regard to the use, layout and occupancy of the property. We understand the Upper Tribunal have indicated local guidance should not be viewed as legally enforceable minimum standard as it needs to be interpreted with a degree of flexibility. Safe Agent

Response: the accommodation and amenity standards for the private rented sector is guidance to landlords and agents on the standards the Council expects property to maintain. It is recognised that this is a baseline and these will be interpreted on a case by case basis.

Student accommodation

There is a request that certain student accommodation should be exempt from additional licensing. Affordable Accommodation for Student Association Limited.

Response: Legal advice was sought on the application of the exemption to Licensing offered under schedule 14 of the Housing Act 2004 for organisations such as 'Affordable Accommodation for Students Association Limited' who are registered charity or co-operative society under the 2014 Act or its predecessor. The legal advice is that providers such as your organisation, must meet 'All' of the conditions stated in schedule 14 of the Housing Act 2004 in order to be exempted from licensing.

London Renters Union

The comments from the London Renters Union (LRU) concerning the additional licensing scheme were generally positive – they recognised that the scheme can improve standards in the private rented sector, charge a fee to landlords and get additional powers to enforce standards.

However, not all the comments made were relevant to this current consultation.

1. Extend licensing schemes and use the extra powers and funding

Councils should:

- ***Introduce full borough-wide selective licensing that covers all private rented homes.***

- *Use new capacity to ensure that landlords meet the licence terms through regular inspections.*
- *Use licensing schemes to maximise resources available for enforcement and issue Civil Penalty Notices to landlords that do not respect renters' rights.*
- *Collaborate with Justice for Tenants, who provide toolkits and training regarding how councils can build their capacity to use their powers to issue Civil Penalty Notices and increase enforcement without over-burdening frontline staff.*
- *Demonstrate to landlords that not having a license results in immediate enforcement action.*

2. Hold landlords accountable to drive up standards

The council should:

- *Develop a new enforcement policy using a more proactive approach and the recommendations put forth in our response.*
- *Develop and publish a strategy on energy efficiency in the private rented sector, and obtain data on non-compliant properties.*
- *Set targets for the percentage of cases escalated to formal enforcement action, the number of inspections carried out, and improvement notices issued as a proportion to the number of renters in the borough.*
- *Ensure that enforcement actions are recorded and linked to landlords, not just renters, in order to stay on top of landlords who repeatedly break the law.*

Response: the proposed extension of the additional licensing scheme will provide additional powers to meet the objectives of the LRU. We do issue Civil Penalty notices, inspect properties and work with Justice for Tenants to support the objectives of the scheme. The current enforcement policy and practice permits escalation to formal action.

We will review what information we can provide on our website with regards to actions we have taken. Formal action is published on the Greater London Authority rogue landlord checker.

We consider the point made above by LRU are valid and we will consider how and when to build them in with the new scheme if it is approved.