



National Landlords Association:

Response to Hammersmith and Fulham Council proposal for Selective and Additional Licensing

September 2016

Introduction:

1. The National Landlords Association (NLA) exists to protect and promote the interests of private residential landlords.
2. The NLA represents more than 62,000 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 (PRS).
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 NLA would like to thank Hammersmith Council for providing the opportunity to comment on the Selective and Additional Licensing consultation.

Executive Summary:

5. Having considered the evidence presented and having undertaken its own evaluation of the circumstances faced by the residents of Hammersmith, the NLA's position can be summarised by the following brief points:
 - Landlords have very limited authority to deal with matters related to anti-social behaviour (ASB).
 - You fail to provide evidence or a link between recorded housing crime and the private rented sector.
 - The scheme will lead to a further displacement of problem tenants in the Hammersmith area.
 - The documentation provided also fails to indicate that sufficient funding will be available to support the functions necessary to support licensing.
 - Why have the Council gone ahead with the consultation on additional licensing prior to the Government ruling on the definition of HMO.
 - How will the Council prevent malicious ASB claims being made that could potentially result in tenants losing their tenancies?
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 (if permissible), ensuring engagement with all relevant stakeholders.

General Feedback on Proposals:

7. The ability to introduce licensing is a powerful tool. If used correctly by Hammersmith Council it could resolve specific issues. The NLA has supported many local authorities when licensing schemes have been introduced, if they will benefit landlords, tenants and the community.
8. The legislation in relation to Selective and Additional Licensing clearly states that the introduction of licensing has to be evidence based. This evidence must support the argument presented by the

Council, but the NLA would argue that there is no real case for the introduction of licensing as proposed. You present an argument about criminal activity but this is not expressly linked by the evidence to the private rented sector. Indeed, you make an assumption without any real evidence about the link between criminal activity and the private rented sector.

9. The NLA believes that any regulation of the private rented sector needs to be balanced. Additional regulatory burdens should focus on increasing the professionalism of landlords, the quality of the private rented stock and driving out the criminal landlords who blight the sector. These should be the shared objectives of all the parties involved to facilitate the best possible outcomes for landlords and tenants alike and, as such, good practice should be recognised and encouraged in addition to the required focus on enforcement activity. This is not the case here.
10. In addition, the proposal does not take into account rent to rent, or those that exploit people (tenants and landlords), as criminals will always play the system. There is no provision for those landlords who have legally rented out a property, which is then illegally sublet. The Council is not allocating resources to tackle the problems that criminals will cause; landlords are often victims just as much as tenants. The Council has not taken into account either how Newham Council reorganised their council service and allocated additional resources to help tenants and landlords. However, here, the Council is saying that the schemes can be delivered within the fees of the scheme, but this has been shown across the country not to work. Therefore, unless the Council is willing to allocate resources, the scheme cannot deliver what it hopes to achieve.
11. Landlords are usually not experienced and do not have a professional capacity that would allow them to be able to resolve mental health issues or drug and alcohol dependency. If there are allegations about a tenant causing problems (ASB), even if the tenant has the above issues, a landlord ending the tenancy will have dispatched their obligations under the discretionary licensing scheme. This moves the problems around Hammersmith but does not actually help the tenant, who could become lost within the system. There is no obligation within discretionary licensing for the landlord to solve the ASB allegation, rather a landlord has a tenancy agreement with the tenant and this is the only thing they can legally enforce.
12. Hammersmith 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 Hammersmith with the problem or problems in question”. The use of these powers listed below by the Council shows that the Council already has powers that can be used to rectify the problems and hence the ability to tackle many of the issues that they wish to overcome in all 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;
 - h) Powers under the Noise Act 1996 to serve fixed penalty notices or to confiscate equipment (Sections 8 and 10);
 - i) The power to require rubbish to be removed from land under Sections 2–4 of the Prevention of Damage by Pests Act 1949.
13. Landlords will outline to tenants at the start of the tenancy their obligations in relation to noise, just as they do with waste and what they have to do to comply with the relevant laws and with a view to respecting their neighbours. The landlord can only manage a tenant based on the contract for living in the rented property. In the case of noise, the council would need to inform the landlord that the tenant's noise is in excess. The power that a landlord has then is either to warn the tenant or to end the tenancy. If the allegation is false or disingenuous, how is the landlord to know? If the same allegation is made on more than one occasion, the landlord may still be ending the tenancy on the basis of an unproven allegation. This does not solve the problem but rather moves the problem around the Borough. The same applies to waste and ASB issues.
14. The risk of introducing licensing is likely to increase the costs for those renting, along with not resolving the problems that the Council wishes to resolve, and likely moving the issue around the Borough. The issues are thus not fully dealt with but instead are displaced to new landlords, as none of the issues are recoded as crimes or will result in ASB orders, so the issue will not show up in references. If Hammersmith were to take a more erudite approach with regard to nuisance issues and developed a separate policy to tackle criminal landlords, this would be more applicable and more likely to result in resolving the issues.

Negative Impacts of Discretionary Licensing:

15. One of the dangers of the proposed Additional and Selective Licensing scheme is that the costs will be passed on to tenants, thus increasing the costs for those who rent in Hammersmith, along with increasing the Council's costs. The increasing costs to Hammersmith residents would particularly hit hard the most vulnerable and least able to tolerate a marginal increase in their cost of living. Also, the Council has failed to explain that, as well as the Council's costs for the licence, the landlords costs will likely be covered by a rise in rents. The failure to explain this shows a lack of understanding of how the private rented sector works.
16. The Council is already placing people out of the Borough, and by introducing such a scheme, which will see an increase in costs for renting, a further displacement of tenants across the southeast is likely. Has this been explained to members and to the public?
17. Areas that have been subject to the introduction of Additional and Selective Licensing have seen lenders withdraw mortgage products, reducing the options to landlords reliant on finance. Downstream, this increases landlords' overheads and subsequently the costs for tenants rise. The current consultation documentation does not appear to reference this possibility or to invite contributions from financial institutions to address this aspect. As affected stakeholders, this would appear unwise and potentially damaging to the application process and scheme implementation.

18. Hammersmith Council, by proposing the introduction of licensing, is implying that there are social problems that could deter investment in the area. However, there is no acknowledgement of the impact that the stigmatisation of discretionary licensing would likely have on the effected locality. This should be explored and detailed in the evidence case supporting this application. The NLA would assert that failure to provide such information is an indication of a substandard and ultimately superficial consultation exercise.

Resources

19. Often cited as an exemplar, Newham Council has spent an additional £4 million outside what the licence fee brings in on additional staff, which has resulted in a prosecution rate of >1% of landlords. However, while the London Borough has <37,000 registered landlords, it has so far only banned 18, and prosecuted only 560 landlords and 600 tenants. It operates a joined-up approach with police and drills down to a street-by-street basis. Does Hammersmith Council propose adopting a similar approach? If not, how will their approach be different and more successful?
20. Often when tenants near the end of their contract/tenancy and they are in the process of moving out, they will dispose of excess waste by a variety of methods, which often includes 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 private rented sector properties in areas. This is made worse when councils will not allow landlords to access municipal waste collection points. The NLA would be willing to work with the Council to help them develop this strategy.
21. The social housing sector has made many efforts to remove problem tenants (2/3rd of all court evictions were from the social sector). How does the Council expect landlords to solve the issues of these tenants when the professional sector has failed?

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 easily misunderstood. A landlord is expected to give the tenant a “quiet enjoyment”, failure to do so could result in a harassment case being brought against the landlord. Thus, the law that landlords have to operate within is not fully compatible with the aims that the Council hope for. A landlord keeping a record of a tenant could be interpreted as harassment.
23. The introduction of licensing is to tackle specific issues, where 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 and not to just blame one group – landlords. The NLA is willing to work in partnership with the Council and can help with developing tenant information packs, assured short hold tenancies, 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 would deliver results immediately – why instead does the Council wish to do this over five years? Adopting a targeted approach on a street-by-street approach, targeting the specific issues and working in a joined-up fashion with other relevant agencies, such as the Council, community groups, tenants and landlords, would have a much greater impact.
25. The NLA agrees that some landlords, most often due to ignorance rather than criminal intent, do not use their powers to manage their properties effectively. A more appropriate response therefore would be to identify issues and to assist landlords. This could allow Hammersmith Council to focus on targeting the criminal landlords – where a joint approach is required.
26. The NLA would also like to see Hammersmith Council develop a strategy that could 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 alike, while still leaving the criminal able to operate under the radar. Many of the problems are caused by mental health and drink and drug issues, these are issues that landlords cannot resolve and will require additional resources from the Council.
27. The Council should consider alternative schemes, such as the Home Safe Scheme in Doncaster and SEAL in Southend. Both schemes offer alternatives that the Council has not reviewed.

Consultation Critique:

28. In relation to ASB reduction and 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 they will need to 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) is 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 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. 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.
29. At no point in the document does the Council illustrate their argument for either Additional or Selective Licensing with examples of cases where a landlord has refused to engage with authorities after being approached and being made aware that there is an issue to be investigated in relation to their tenants. In this respect, the Council has relied purely on inferring a correlation between a crime and the private rented sector, but at no point does it provide any evidence. 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 benefit those on fixed incomes. 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.

Requests for Supplementary Information:

31. The NLA is extremely concerned about the gaps in evidence and justification that occur throughout the licensing proposal.
32. 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 the licensing of private property will succeed. Could the Council provide evidence to support this assumption, especially given they have not committed the extra resources required as evidenced in Newham?
33. Newham has allocated money from the general fund for enforcement and received money from central government, how much money does the Council envisage will be required for these new services?
34. Clarification on the Council's policy, in relation to helping a landlord when a Section 21 notice is served, is required within 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 to outline the Council's position in helping landlords remove tenants who are causing anti-social behaviour.
35. The NLA would like further explanation on how the Council will work with landlords to mitigate the issue of tenants leaving a property early but where they still have a tenancy. If a landlord has challenges with a tenant, how will the Council help the landlord?
36. With the requirement for formal referencing ahead of new tenancy contracts, delays are likely for prospective tenants, along with the inevitable difficulty some people will have in 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 Hammersmith Council? Also, how have neighbouring councils reacted in response to the proposed requirement to provide references?
37. What provision is there for people who are first-time renters and who will thus 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?

38. Could the Council provide a breakdown of the ASB? Could this also be sub-divided into ASB that is proven to be housing related?