

20th January 2017

By email: propertylicensing@newham.gov.uk

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Dear Mr Dick

Newham PRS Licensing – Consultation Response

Thank you for the opportunity to respond to the above consultation. While the RLA acknowledges the effort and resource that Newham has invested in seeking to improve the private rented sector we have concerns about the borough's proposals to introduce new selective and additional licensing schemes to cover all PRS properties for a further five years.

General concerns

The RLA has a number of general objections to Licensing, which are attached as an appendix to this letter.

Evaluating the 2012-17 scheme

The onus is on Newham to demonstrate that the initial five-year licensing schemes have been successful in substantially meeting their objectives, and that a further period of licensing is necessary to fulfil these objectives, to address new issues, or that to end the scheme would undermine the outcomes delivered. If licensing has failed to deliver the anticipated outcomes and objectives, then there can be no case for seeking a further scheme.

The current Newham scheme was approved in June 2012, and introduced on 1st January 2013. Initially a small scale trial in Little Ilford was introduced in March 2010 covering 580 properties, with 257 in the PRS. The council claimed it achieved 99% compliance and success in tackling ASB. This was used to justify the borough-wide scheme – despite obvious difficulties in extrapolating similar outcomes from a such small trial.

A range of baseline figures were published in the council's 2012 report, relating to anti-social behavior (35% HMOs with ASB/management failures, 12.5% for other PRS properties; 29989 ASB incidents; Nuisance neighbours 2599 complaints; Noise 1349 complaints; 3,500 tonnes litter and waste collected). It would be fair to assume that these figures would be revisited in order to determine the success of licensing. However, in its consultation document and report to councillors, a different set of statistics has been produced, that does not allow direct comparison. For example, the first report looked at reported incidents of ASB, whilst the current consultation considers ASB notices served on licensed properties.

Standards and enforcement

More detail is contained in the report to Cabinet in May 2016. The report claims that licensing schemes are long-term strategies, but legislation is quite clear that, selective licensing in particular, should be a short-term measure.

Licensing schemes rarely meet their objectives. Good landlords will apply for licences and, in all likelihood, pass the cost on to tenants in the form of increased rents, doing nothing to address affordability, while the worst landlords – the criminal operators – will simply ignore the scheme, as they do many other regulations.

There is little evidence that licensing schemes improve housing standards. The focus of staff becomes the processing and issue of licences, while prosecutions centre on whether a property is licensed or not, rather than management standards and property conditions. This appears to be borne out in Newham, where the majority of prosecutions have been for failing to license a property. There is no way to measure impact on condition. While improvement notices have been served, it is not clear if the required work has been carried out.

Finance

With regard to the financing of licensing, the RLA has a number of concerns. According to the report at the May Cabinet meeting, the scheme has generated £11m income, and incurred £7.6 million expenditure. This leaves £3.4 million to fund the remaining period. However, the scheme will have incurred significant start-up expenditure at the outset, meaning there will likely be a substantial surplus.

This is confirmed in the report, with a proposal to use the surplus to fund the early work for the new designation. This is likely to be unlawful. The costs for the new scheme should be funded by income from fees gathered from the new designation. If the scheme is rejected either by the council or the Secretary of State, then the money for the consultation and publicity should be found from the general fund, not 2013-17 licence fees.

The new proposed fee structure gives a sharp hike for those licensing early, from £150 previously, to £450 (selective) and £850 (additional). This suggests income in the region of £20-£30 million over the 5-year period. Can this really be justified? There is also no incentive for accredited landlords (but a new condition to require some landlords to become accredited).

Conditions

There are a number of conditions that cause concern:

Condition 6 – tenancy agreement – the requirement to present to the council within 7 days of demand allows insufficient time for self-managing landlords who may, for example, be on holiday.

Condition 9 – need for references – the legislation does not require landlords to obtain references, but to demand them.

Condition 10 – landlord to require proof of single household – this requires an unacceptable level of intrusion into the private life of tenants by the landlord.

Condition 12 – deposits – the requirement for prescribed information to be given on receipt of deposit is unreasonable, given that legislation requires it to be served within 30 days of receipt.

Condition 16 – 3 monthly HMO inspection – this is onerous and may breach the tenant's right to quiet enjoyment.

Condition 15b – ASB order - licence holder to visit within 7 days – manager visit is surely acceptable?

Condition 29 – adequate waste provision – there is an inherent tension between what receptacles a local authority will provide and frequency of collection and the needs of tenants, especially in HMO properties. A landlord can only be expected to deliver what the council provides for

Option 2 – East Village

The RLA cannot see any reason for East Village properties to be excluded from a new designation should the Council look to proceed. Simply because a development is relatively new, does not guarantee property or management standards, or that those letting the property are ‘fit and proper’ persons. However, support for the inclusion of the East Village should the council succeed with its designation, should not be seen as support for the overall licensing scheme.

New legislation

The RLA believes that the Council is premature on bringing forward proposals. The Housing and Planning Act 2016 will give local authorities substantial new powers to tackle breaches of housing legislation and drive the criminal operators from the sector. The council should wait until the impact of these new powers can be assessed before pressing on with more regulation in the form of selective licensing.

The Council already has the necessary tools to tackle poor housing management and conditions in the PRS. Rather than introduce a bureaucratic licensing scheme that will see staff time wasted processing applications, it should continue to direct its limited resources at effective enforcement activity.

Alternatives

There are alternatives to licensing. The RLA supports a system of self-regulation for landlords whereby compliant landlords join a co-regulation scheme which deals with standards and complaints in the first instance, while those outside the scheme remain under the scope of local authority enforcement. More information can be supplied if required.

We also support the use of the council tax registration process to identify private rented properties and landlords. Unlike licensing, this does not require self-identification by landlords, making it harder for so-called rogues to operate under the radar.

Newham has a unique opportunity to build on the lessons of its initial licensing designation. Using the intelligence gathered, and a combination of new powers and better use of data, an effective regime of enforcement can be introduced, without the cost and bureaucracy of licensing.

Thank you for giving these concerns your attention.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'John Stewart', with a stylized flourish extending to the right.

John Stewart
POLICY MANAGER

Appendix – RLA General Licensing Concerns

The RLA has several areas of concern in regards to selective licensing, namely:

- i. Worrying trends are emerging in the case of discretionary licensing. Licensing entails a huge bureaucracy and much time, effort and expense is taken up in setting up and administering these schemes; rather than spending it on the ground and flushing out criminal landlords.
- ii. Increasingly, discretionary licensing is being misused to fund cash strapped housing enforcement services. The recent Westminster sex shop Court of Appeal (*Hemming (t/a Simply Pleasure) Limited v Westminster City Council*) has brought such funding into question).
- iii. Discretionary licensing is not being used for its intended purpose of a short period of intensive care; rather it is being used by the back door to regulate the PRS.
- iv. The level of fees which are ultimately passed on to tenants to pay is a major worry so far as it affects landlords.
- v. Despite high fee levels local authorities still lack the will and resources to properly implement licensing.
- vi. Little has been done to improve property management. Opportunities to require training have been ignored. As always it has become an obsession with regard to physical standards with very detailed conditions being laid down. No action is taken against criminal landlords.
- vii. We believe that a significant number of landlords are still operating under the radar without being licensed.
- viii. As always it is the compliant landlord who is affected by the schemes. They pay the high fees involved but do not need regulation of this kind.
- ix. Licensing is not being used alongside regeneration or improvement of the relevant areas. Insufficient resources are being employed to improve the areas.

- x. Where areas are designated for selective licensing this highlights that they can be “sink” areas. This could well mean it would be harder to obtain a mortgage to buy a property in these areas.
- xi. Schemes are not laying down clear objectives to enable decisions to be made whether or not these have been achieved. Proper monitoring is not being put into place to see if schemes are successful or not.
- xii. There is little use of “fit and proper person” powers to exclude bad landlords.