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Dear Sir/Madam

**Brighton and Hove Council Additional and Selective Licensing Proposals –
Consultation Response**

Thank you for the opportunity to respond to the above consultation.

We understand the pressure local authorities are under to show their commitment to controlling the private rented sector and cracking down on so called 'rogue' landlords. However, these schemes do little but alienate lawful landlords, burdening them with additional costs, while criminal operators continue to ignore regulations and avoid these additional costs.

The RLA believes that the Council is premature in bringing forward proposals. The Housing and Planning Act 2016, which commenced on 6th April, and with further measures to be introduced in October, gives 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 or additional licensing.

The RLA is opposed to the schemes and has a number of general objections to licensing, which are attached as an appendix to this letter. 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.

The cost of the additional licence is also a matter of concern for the RLA. The proposed charges of up to £1,330 for a new licence is similar to the cost of a typical licence in London. This seems excessive. Fees must be reasonable and proportionate, limited to the costs of administering the licensing scheme but not the cost of enforcing the scheme, i.e. investigating and prosecuting those who operate premises without the required licence. We cannot help but notice that this consultation comes at a time of considerable funding challenges to the Council.

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 improving management standards and property conditions. Additionally, the decent homes standard is a measure of the standard of social

housing and has no legal applicability to PRS housing. The Housing Health and Safety Rating System (HHSRS) is the relevant standard for the PRS.

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 scarce resources wasted processing applications, it should continue to direct these limited resources at identifying private rented properties and taking effective enforcement activity, where necessary.

We would like to remind the Council that there is good reason that the Secretary of State's permission is required should the licensing proposals exceed 20% of the PRS housing stock, or of the area of the borough.

However, you have designated 12 wards for Selective Licensing. To identify a particular area for the introduction of licensing highlights a belief that the area has numerous issues, potentially blighting the reputation of the area. There is also a danger that the issues that the scheme seeks to address are simply moved elsewhere, as difficult or vulnerable tenants are moved on.

Landlords, especially those with properties outside the licence area will become risk averse in terms of the tenants they let to. Tenant problems such as anti-social behaviour are impossible for the landlord to address alone and landlords will not wish to risk a breach of licensing conditions that may affect their ability to let properties elsewhere. Some may seek to evict already challenging tenants. This could mean additional costs to other council services, as they pick up the pieces created by the disruption to the lives of already vulnerable tenants.

Likewise, if licensing costs are passed on to tenants in the form of rent increases, then some tenants may struggle, particularly those on benefits, affected by welfare reform and frozen housing allowances.

The lack of compelling evidence provided to support the council's case for licensing is startling. No analysis of the impact of the current Additional Licensing scheme has been provided, only bare statistics regarding conditions applied. This fails to provide assurance to tenants and landlords that extending it is the best decision for Brighton and Hove.

Though the authority has supplied the reasons behind the proposed Selective Licensing (low housing demand, ASB, high levels of crime and deprivation, and high levels of inward migration), little data has been provided to prove these statements. The data supplied for ASB alludes to houses merely 'predicted' to be rental properties.

For a licensing scheme to be successful it is vital that a local authority thoroughly plans the enforcement and organisation of the scheme. Without giving details of your plan to interested parties it is difficult to respond to this consultation constructively.

We have issue with several of the additional conditions for both Selective and Additional proposals;

Additional Licensing

Room sizes: These cannot be prescribed. They can only be guidance and each property assessed as to its suitability. To regard a child as a full occupant also contradicts the space standards of the 2005 Act.

1.1 – We appreciate the authorities' interpretation of this condition. Though we advise our members that requesting references is good practice, the system is open to abuse and we hope the local authority will show support for landlords whose tenants do not adhere to tenancy conditions despite references.

3. – The landlord has limited control over how tenants choose to live and if the tenants start to sub let the Landlord loses even more control of the property. The only thing a landlord can do if the tenant starts to sublet illegally is evict them.

This can be timely and costly to the landlord who has not colluded in any way with the tenants who have effectively taken over the property. Landlords who are victims of this sort of scam should also be supported by the Local Authority.

Selective Licensing

10.2 – It is unreasonable to expect landlords to take responsibility for the tidiness and appearance of tenants own gardens, unless agreed as part of the tenancy.

12. - With the Council's focus on refuse and recycling in the consultation documents we would like to remind them that it is not the responsibility of the license holder to make adequate alternative arrangements for the collection of additional refuse and recycling or monitor when their tenants move their bins. It is the tenant's responsibility to dispose of their own rubbish and the local authority's responsibility to provide adequate (e.g. wheelie bins, civic amenity sites) and regular (e.g. weekly bin collection) means to do so. It is the responsibility and duty of the Local Authority to respond positively to tenants requests for more rubbish facilities.

The RLA would like to make the Council aware that this condition may breach the findings of Leeds City Council vs. Gordon Hoyland Spencer (1999). We would like to remind the council that it is not the responsibility of the license holder to make adequate alternative arrangements for the collection of additional refuse and recycling or monitor when their tenants move their bins.

Conclusion

Rather than an ineffective licensing scheme, the council should use cross-departmental and multi-agency working and effective use of existing housing legislation to support tenants and landlords in maintaining tenancies, housing condition and management standards.

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.

Yours Faithfully,

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Appendix – RLA General Licensing Concerns

The RLA has several areas of concern in regards to 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.