Blackpool Council
PO Box 4
Blackpool
FY1 1NA

8th June 2018

Dear Sir or Madam,

Consultation response: Selective licensing proposal

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

We have read through your consultation documents, and though we appreciate the issues that the Council have mentioned and the effect they can have on tenants, landlords and the housing market in the areas of Talbot, Brunswick and Bloomfield.

The RLA is opposed to the scheme and has many general objections to Licensing overall, which are attached as an appendix to this letter.

Additional Cost

We understand that the draft Blackpool's Council Housing Strategy 2018 presents the Council's approach the housing issues within the borough by setting out a vision and priorities to support the delivery of the Council's plan to make Blackpool a great place to live in. However, these schemes do little but alienate lawful landlords by burdening them with additional costs, while criminal operators continue to ignore regulations and avoid these additional costs.

Good landlords will apply for licences and, likely, 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 proposed standard licensing fee of £775 for one household, even with the discounts, is an unnecessary financial burden to put on landlords.

Raising Standards

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 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.

Pressure on non-selective licence areas

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.

Anti-social behaviour

In the Management/Anti-Social Behaviour section (pp.78), one of the conditions on landlords is to provide *"A written action plan to the Council outlining procedures for dealing with anti-social behaviour at the time of the application, to be reviewed each year and submitted on request*". Such a condition cannot be imposed on a landlord and it should not be required for a landlord to do this, as they will already have their own procedures on dealing with anti-social behaviour for tenants and visitors to their property, which they will cooperate with police and the council accordingly on.

Regular inspections

Under part 15 pp. 79 requiring landlords to "*make regular (at least monthly) inspections of the property to ensure that the property is in a decent state of repair and that the occupiers are not in breach of tenancy terms and conditions"* is a potential breach of Quiet Enjoyment under the Protection from Eviction Act 1977, which promises that the tenant will be able to possess the premises in peace. Quiet Enjoyment is a right to the undisturbed use and enjoyment by a tenant or landowner. The requiring of landlords to make monthly inspections would breach Quiet Enjoyment and would leave a landlord open to possible legal action being taken against them. Such a proposal, therefore, cannot be imposed and would be unlawful.

Compliance inspections

Under part 18 pp.81 requiring "*The license holder must allow the Council to undertake compliance checks. Council Officers will give the licence holder 24 hours' notice of these checks and produce valid authorisation at the time of visit*". Imposing such a short time frame for landlords is not lawful, as the statutory notice for landlords to notify tenants of visits to a property is 24 hours. A tenant can also refuse access to the property, and under the proposed license conditions, the landlord would have breached their license if the compliance checks had not been carried out by a council officer.

Brown v Hyndburn Borough Council

Section 90(1) Housing Act 2004 is clear that a licence "may include such conditions as the local authority consider appropriate for regulating the management, use or occupation of the house concerned." In contrast to s67 Housing Act 2004, the equivalent provision in Part 2 of

the Act, no mention is made in s90(1) HA of the use of conditions to regulate the "conditions and contents" of the property. This was emphasised in the recent Court of Appeal case of Brown v Hyndburn Borough Council [2018] EWCA Civ 242.

Following the Court of Appeal's reasoning in Brown, any licence condition is unlawful that seeks to regulate the condition or contents of the house and the local authority has no power to impose such a condition. Any such conditions should be removed.

Likewise, In Brown v Hyndburn Mr Justice Hildyard confirmed that the s90(5) of the Housing Act 2004 is not itself a source of any power, residual or otherwise permitting the local authority to include licence conditions that seek to identify, remove or reduce hazards. These are covered by Part 1 of the Act and should be enforced using Part 1 powers, and the Housing Health and Safety Rating System. Councils should not rely on Part 3 licensing powers to enforce Part 1.

In conclusion, rather than expanding 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.

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.
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.

Yours faithfully,

Samantha Watkin
Policy Officer
Residential Landlords Association
Samantha.Watkin@rla.org.uk

Appendix

The RLA has several areas of concern regarding licensing, namely:

i. Worrying trends are emerging in the case of discretionary licensing. Licensing entails a huge bureaucracy and much time, effort and expense are 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 regarding 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 in place to see if schemes are successful or not.