RESIDENTIAL LANDLORDS ASSOC.

Great Yarmouth Council
Town Hall
Hall Plain
Great Yarmouth
NR30 2QF

Date
23rd July 2018

Dear Sir or Madam,

Great Yarmouth 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 Nelson ward area, the RLA is opposed to the scheme.

We also have general objections to licensing overall, which are attached as an appendix to this letter.

However, our main concern is with the use of a delivery support partner to operate a landlord support service.

Delivery Support Partner and Landlord Support Scheme

We are concerned that membership of the support scheme appears to be compulsory, with no reference to any alternative method of licensing directly with the council. Both the example schemes referenced in the consultation (Doncaster and West Lindsey) allow landlords to license properties directly with the council. We believe that requiring landlords to pay fees to a third party, distinct form the council, in order to obtain a licence is unlawful.

Furthermore, the council intends to appoint only one delivery partner, meaning landlords have no choice of provider, and no competition for providing the scheme services does not represent best value for either the council or landlords.

Given that the size of the contract – raising between £700,000 and £900,000 depending on take up of the payment plan – is well above the limit for tendering, we believe European procurement rules cannot be subverted by simply seeking to grant a concession.

Additionally, the council is requiring landlords to join a scheme and pay fees which incur VAT in order to obtain a licence. This is effectively charging VAT on licensing fees, which again we believe to be unlawful.

A local authority may only charge one fee - for a licence application. The scheme proposed by Great Yarmouth appears to both charge two fees and allow a third party to retain 80% of the fees charged. Again, this is unlawful.

Should a landlord be rejected by the scheme, there appears to be no route to obtain a licence. Nor does there appear to be an appeal process. Should a local authority refuse a licence, then the landlord can appeal to tribunal. It is not clear if a tribunal could hear an appeal from landlords refused membership of a third party scheme, even though this effectively denies them a licence.

The delivery partner is also required to carry out three HHSRS inspections of each property within its scheme over the lifetime of the licensing scheme. This is clearly using selective licensing to enforce Part 1 powers of the Housing Act 2004. The purpose of the inspections is seeking to use selective licensing to regulate the conditions and contents of the property. This was recently found to be unlawful in the Brown v Hyndburn case.

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, including the requirement for an Electrical Installation Condition Report, 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.

Additional Cost

We understand that Great Yarmouth's Council Housing Strategy 2018-2022 wants a Borough that has an attractive mix of housing that will be fit for purpose for all and meet both the borough's existing and future needs, with a good quality housing for all sectors of the community and workforce. 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 initial fee of £100 plus £9.50+VAT per month, even with the discounts, is an unnecessary financial burden to put on compliant 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, as it includes 29 Categories of risk, and should be enforced under Part 1 powers, not Part 3 licensing (see Brown v Hyndburn above).

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 action, where necessary.

Pressure on non-selective licence areas

Landlords, especially those with other properties outside the licence area will become risk-averse in terms of the tenants they let go. 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.

For example, borough-wide selective licensing was introduced in Newham, in November 2012. Latest figures show:

- 4,892 homeless households in Newham are living in temporary flats, B&Bs and hostels.
- The figure is the highest in London and has risen 70 per cent since the roll out of licensing.
- The cost to the council is huge with Newham paying £61million in 2016-17 to house the homeless in temporary accommodation.
- The annual bill has spiralled by 60 per cent in the five years since licensing was introduced

Landlord prosecutions and rogue landlords

As stated in the supporting consultation documents, only three landlords were prosecuted in 2015 and 2016 for failure to license and HMO offences under management regulations. Councils should fully use the enforcement powers already granted to them by the Housing and Planning Act 2016, ranging from civil penalties, rent repayment orders, banning orders

and the introduction of a database for rogue landlords and letting agents, rather than rely on Licensing Schemes to regulate landlords in addition to these powers. The Council has also not taken into consideration the amount of informal enforcement activity undertaken by local authorities and private landlords, which is not reflected in the Guardian Newspaper article referenced in the consultation documents.

Additionally, Great Yarmouth Council has access to the Controlling Migration Fund which allows local authorities to tackle local service pressures associated with any recently increased migration, which includes tackling rogue landlords and driving up standards. The Tenant Fees Bill will also introduce a lead enforcement authority to provide guidance and support to local authorities regarding the enforcement of letting agent requirements.

Conclusion

In conclusion, rather than introducing 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 underneath the radar.

We are particularly concerned about the manner in which the council intends to engage a delivery partner, many aspects of which appear to be unlawful and likely to be challenged on numerous grounds, through judicial review. The proposal is so unreasonable that no reasonable local authority would ever make it.

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.