

Newport City Council
Civic Centre
Godfrey Road
Newport
NP20 4UR

16th January 2019

To whom it may concern,

Additional 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 proposed, the RLA is opposed to the proposed Additional Licensing Scheme.

Additional Cost

We understand that the Council's Corporate Plan 2017-2022 wants to support the mission of improving people lives in the city, and the overall Improvement Plan Objectives of delivering a "Safer City".

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. To avoid financial difficulties, the council, if it goes ahead with the scheme, should increase the level of discount available to landlords.

Gaskin v Richmond 2018 & Fees

In *R(Gaskin) v LB Richmond Upon Thames* (2018) EWHC 1996 (Admin) the High Court overturned a prosecution against Mr Gaskin and gave substantial guidance on fees and other points associated with HMO licensing and by implication selective licensing, schemes under the Housing Act 2004.

Mr Gaskin had been prosecuted for not having a proper HMO licence for his property. He was of the view that he had made a proper application and that this had been unreasonably rejected by Richmond. Mr Gaskin was applying for a renewal of his licence and refused to provide the full list of information that the local authority was seeking such as names of current tenants and the terms of their tenancy agreements. The requirements for a renewal

licence were amended and simplified in 2012 by the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012. The High Court agreed with Mr Gaskin and found that the only information that could be sought on a licence renewal application was that set out in the amended regulations.

As you will be aware, the *Gaskin* case was specifically focused on the fees charged for a licence. The outcome was that a fee should just be for the application and there should not be additional charges, such as late application fees, or a fee to transfer a licence. We hope that the council takes into consideration the findings of this court case, and only asks for information set out in the relevant regulations, and nothing else. This includes taking the licence fee in 2 parts, one part on receiving the application, and the other part payable to the council once the licence is granted. The council, if it chooses to continue with Additional licensing, should revise its fee structure to reflect the findings of *Gaskin v Richmond*.

Disclosure and Barring Service requirement

As part of the council's criteria for an acceptable HMO application process, it is required that a basic disclosure obtained from The Disclosure and Barring Service be submitted to qualify the landlord or proposed licence holder as a "fit and proper person". It is not unreasonable for the council to ask for such documentation, but this should not be an additional cost to the landlord, as the cost should be included in the licence fee. The council can carry out the disclosure themselves and add the cost to the licensing fee, but it is unreasonable for the council to request the landlord to do this in addition to paying the £937.04 for the licence fee as well.

Impact of Welfare Reform

According to research done by RLA PEARL, 61% of landlords that let to tenants on Universal Credit have experienced their UC tenants going into rent arrears in the past 12 months. This is over double from 27% of landlords in 2016, and a significant increase from the previous year where it was 38% of landlords. PEARL also found out that the amount owed by Universal Credit tenants in rent arrears has increased by 49% in comparison to the previous 12 months. This has increased from £1,600.88 in 2017 to £2,390.19. Rent arrears for Universal Credit tenants are likely to be driving homelessness, with 28% of landlords regaining possession of their property from a UC tenant and the primary reason being rent arrears (77% of landlords).

The significant increase in rent arrears for both 'UC' tenants and 'legacy' Housing Benefit tenants also points to much wider issues than just the implementation of Universal Credit. The findings suggest that the freeze to LHA rates since 2016 and that LHA rates had not increased with market rents between 2010 and 2016 is likely to be driving the increase in rent arrears for tenants that claim benefits. More and more landlords are planning to sell properties in the next 12 months. This now stands at 22% and is up three percentage points since 2016. While the proportion of landlords looking to buy properties has continued to decline, and more landlords are planning to sell than buy. This indicates a chronic undersupply of privately rented homes in the future.

Many landlords may be in a situation where they are not able to pay both licensing fees, Rent Smart Wales registration fees, possible increase fees from the introduction of banning

of agency fees, reduction in mortgage relief tax and deal with rent arrears on their properties, resulting in financial difficulties for landlords, and may lead to an increase of demand on council services as they consider leaving the sector.

Variation of a licence charge

The charge for “change of occupancy” **£84.24** could very well be classed as a variation of the licence, which cannot be charged by the council. The power to charge a fee is set out in s63(3) of the Housing Act 2004 and is limited by s63(7). These state that a fee must reflect the cost of running the scheme. The fee is however allowed to reflect all the costs including the operation of the scheme itself, education about the scheme, and the necessary inspections and enforcement activity to make the scheme effective. No charge can be made in respect of any other function under the licensing regime, such as a variation of a licence, a Temporary Exemption notice or anything else.

Pressure on non-licensed 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.

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.

Furthermore, the Renting Homes (Wales) Act 2016, will seek to introduce a new universal standard for renting in Wales. The legislation will seek to grant one, simple to use piece of legislation for reference on what will be required of Private Sector Landlords. The use of further continuing licensing schemes would be seen to undermine the Welsh Government's work as well reducing the overall effectiveness of the provisions relating to Fitness for human habitation (FFHH) which will replace HHSRS.

The matters considered are those similar to HHSRS with prescribed and considered matters.

There will be two types of matters to consider as to whether a property is suitably fit, these are categorised as:

Prescribed Matters

- Prescribed Matters relate to electrical safety, smoke alarms and CO2 alarms.
- Electrical safety will generally cover the inspection of all electrical outlets and ensure that they are set to a British Standard (BS7671).
- Smoke alarms, the consultation sought to seek clarification of the position on whether the smoke alarms should be hardwired or interlinked
- Carbon Monoxide alarms should be provided when gas burning applications are being used.

Considered Matters

- The considered matters to which will determine that the dwelling is FFHH are based on the 29 matters and circumstances from the House Health and Safety Rating System (HHSRS). Examples are as follows:
- Damp and mould growth
- Asbestos and manufactured mineral fibres
- Biocides
- Carbon monoxide and fuel combustion products
- Lead
- Domestic hygiene, pests and refuse
- Un-combusted fuel gas

When considering Prescribed Matters, if it is found that any of these three matters aren't met, then no matter how many of the considered matters have been met, the home will not be considered fit for human habitation. A landlord who rents a dwelling which is not FFHH, or who fails to rectify an issue causing the dwelling to be unfit, may risk having their landlord licence revoked under Rent Smart Wales and possible breach of contract in the courts.

We believe that the measures contained in the Renting Homes (Wales) Act 2016 will be sufficient to improve housing standards.

Rent Smart Wales also requires landlords to complete training and registration, which increases the standards of knowledge that Landlords have in Wales, which has gone in a long way to increasing and professionalising the sector.

Overall there are several mechanisms already in place to improve standards, we would recommend enforcing these laws instead of further licensing. Especially considering our recent research conducted by our research arm PEARL into enforcement by local authorities. We found that out of all of the complaints made between 2012/13 – 2017/18 to local councils in Wales only 7% resulted in some sort of action made against the landlord. Newport council has received over 14,000 complaints from tenants in 2017/18, which indicates that there is a lack of enforcement of the current laws. We would rather see an

investment in enforcement rather than further licencing schemes that do nothing more than prosecute for not being licensed rather than for failing to adhere to standards.

Conclusion

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,



Douglas Haig
Vice Chairman of the RLA
Managing Director of the RLA Wales