London Borough of
Brent

Date
23rd August
2019

Dear Sir or Madam,

Selective & Additional Licensing Consultation

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

Though we appreciate the issues that Brent Council have mentioned and the impact they can have on tenants, landlords and the housing market in areas proposed, the RLA is opposed to the scheme and has many general objections to Licensing overall.

Enforcement Powers

There are over 150 Acts of Parliament and more than 400 regulations affecting landlords in the private rented sector.
Councils should use the enforcement powers already granted to them by the Housing and Planning Act 2016 and Housing Act 2004 to their full extent, 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 between local authorities and private landlords.
The Tenant Fees Bill has also introduced a lead enforcement authority to provide guidance and support to local authorities regarding the enforcement of letting agent requirements.

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 focused on processing applications, the council should continue to direct these limited resources at identifying private rented properties and taking effective enforcement action.

Fee Structure charges

Finder's Fee

Only one licence fee can be charged per application. The proposed fee of £300 for "*where a licensable property was found by the Council (landlords may still be subject to prosecution by the Council for operating an unlicensed rental accommodation).*

The power to charge a fee is set out in s63(3) and s87(3) of the Housing Act 2004, with the fee-charging ability being limited by s63(7) or s87(7). These state that a fee must reflect the cost of running a scheme, with the local authority not being permitted to make a profit. The fee can be used for the operation of the scheme itself, necessary inspections, promoting education and all enforcement activity to ensure the scheme is effective. Fees are only chargeable in respect of the application itself, and not in respect of ancillary matters.

No other charges can be implemented under the licensing regime, a point confirmed by the RPT (as was) in Crompton v Oxford City Council [2013]. Because of this, Oxford amended its fee structure to reflect this ruling. While we appreciate the need of local authorities to use their resources efficiently, this does not extend to the charging of fees that are not lawfully permitted.

The council should, therefore, remove the proposed Finder's Fee.

Licence Conditions

The proposed licence conditions relating to the licence holder requesting information about previous unspent convictions goes beyond the scope of information a landlord should ask a tenant as it raises concerns of privacy. A tenant's unspent convictions should not be a barrier to a tenancy.

Amenity Standards

Appendix 1 of the document titled "Annexe B Additional Licensing Proposed Conditions" sets out the Council's Amenity and Space Standards that licence holders must ensure there are compliant. Although a local authority can produce local guidance on such standards, they cannot overrule mandatory standards set by national legislation.

The relevant case law is Clark v Manchester City Council [2015] UKUT 0129 (LC), where the landlord was appealing a decision of the First-Tier Tribunal which had upheld a refusal by Manchester to amend his HMO licence to allow six occupiers rather than five. Manchester had relied on its local room size 'standards'.

Manchester argued that it was permitted to set local standards and had been encouraged to do so by previous guidance issued by LACORS. The UT did not agree. The UT was clear that there were specific statutory standards set in regulations, which do not include room size, which central government has set out and to which any local authority must have regard. Indeed, a local authority cannot find a property suitable for licensing by a specified number of people if the statutory standards are not met.

However, local authorities cannot then set a local standard which they apply with the same force. To do so would be for a local authority to take powers to itself which Parliament has not given it. Therefore, any local authority 'standard' cannot be used as a substitute for that authority considering whether a specific property is suitable for use by a set number of occupiers. Therefore, local standards cannot be anything more than guidance as to what the local authority is likely to consider reasonable, but they must still consider the property itself.

Therefore, the RLA recommends that the council, should it go forward with licensing, amend Condition 3 to state that the Amenity and Space Standards are only guidance, and would not constitute a breach in licence should they not be complied with by the licence holder.

Conclusion

The RLA reiterates its objection to the proposed scheme.

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. 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 criminals to operate under the radar.

Table 16 of the summary of findings (page 53) show that it is not necessary for certain wards to be included in the licensing desgination. Examples primarily include designated area D4 (Alperton, Preston, Sudbury, Northwich Park, Tokyngton) which does not qualify all the elements of poor property conditions outlined. If the council were to proceed with licensing, we strongly argue that certain wards do not need to be included and the designation should be redone to reflect this.

Yours sincerely,

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