

London Borough of  
Havering

Date  
18<sup>th</sup> September  
2019

### **Selective & Additional Licensing Consultation Proposal**

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

#### **Fee Structure & Tacit Consent**

The proposed fee of £1250 for a new application for an Additional Licence is excessively high for a landlord to pay. Landlords will apply for licences and, likely, pass the cost on to tenants in the form of increased rents to cover the cost of applying for a Licence, doing nothing to address affordability, while the worst landlords – the criminal operators – will ignore the scheme, as they do many other regulations.

The council have made no mention in the Fee Structure document if Tacit Consent applies should the processing of the licence goes beyond the advertised times, as well as not provided a timescale for the length of processing time for a licence application.

Concerning the processing time for a licence application, regulation 19 of the Provision Regulations deals with the speed of processing of applications. Specifically, they require that applications must be:

- processed as quickly as possible and, in any event, within a reasonable period running from the time when all documentation has been submitted;
- The length of the processing period must be fixed and made public in advance.
- Where an application is not processed within the advertised period, the authorisation will be deemed to have been granted automatically.

The *Gaskin* case says that the Provision of Services Directive applies to licensing schemes in full. This does a lot more than talk about fees. The transposition of this into the UK law states that regulators should set out how long it will take to carry out a licensing approval process and if they do not meet that timeline then approval should happen automatically.

The council needs to set out and display their licensing processing time publicly, and if tacit consent will apply if the processing of the application goes beyond the advertised processing timescale.

### **EICR Requirement for Selective Licence**

A proposed selective licence condition under Property Management states that *"The licence holder shall ensure that all electrical appliances provided in the property are in a safe condition. The licence holder must submit to the council, for their inspection, an electrical appliance test report in respect of all electrical appliances that are supplied by the landlord to the council within 28 days on demand"*.

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 is emphasised in the 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 that seeks to regulate the condition or contents of the house is unlawful, and the local authority has no power to impose such a condition. Any such conditions should be removed. We note that the MHCLG recently drew the attention of local authorities to this case in one of their quarterly PRS newsletters.

Likewise, In *Brown* 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.

### **Existing 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.



## **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.

Yours sincerely,

Samantha Watkin  
Policy Officer  
Residential Landlords Association  
[Samantha.Watkin@rla.org.uk](mailto:Samantha.Watkin@rla.org.uk)

**RESIDENTIAL LANDLORDS ASSOC.**

212 Washway Road, Sale, Manchester M33 6RN T +44 (0) 3330 142 998 E [info@rla.org.uk](mailto:info@rla.org.uk)  
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[www.rla.org.uk](http://www.rla.org.uk)