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## Response to Lewisham Council's proposal for selective licensing

August 2018

### Introduction

1. The National Landlords Association (NLA) exists to protect and promote the interests of private residential landlords.
2. The NLA represents individual landlords from around the United Kingdom. We provide a comprehensive range of benefits and services to our members and strive to raise standards within the private rented sector.
3. We seek a fair legislative and regulatory environment for the private rented sector, while aiming to ensure that landlords are aware of their statutory rights and responsibilities.
4. We thank Lewisham Council for providing us with the opportunity to comment on the selective licensing proposal.

### Executive summary

5. Having considered the evidence presented, and having undertaken our own evaluation of the circumstances faced by the residents of Lewisham, our position can be summarised by the following brief points:
  - Landlords have very limited authority when dealing with matters related to antisocial behaviour, especially if it happens outside the curtilage of the property.
  - The council fails to provide evidence of a direct link between recorded housing crime and the private rented sector.
  - The scheme will lead to further displacement of problem tenants in and around Lewisham.
  - The documentation provided fails to indicate that sufficient funding will be available to support the introduction of licensing. Adult social care will have to be involved as many tenants have mental health, alcohol, or drug related illnesses.
  - The council fails to say how it will prevent malicious claims of antisocial behaviour being made, which could result in tenants losing their tenancies. Can this be provided?
  - The document says that Lewisham Council will use all its legal powers. However, if it were to use the powers it already has, it would solve the issues and would not require selective licensing.
  - The council has not published its strategy for dealing with chaotic and antisocial tenants. This should run in conjunction with the current proposal.
  - Selective licensing will require other council strategies to be put in place if it is to tackle anti-social behaviour, these are currently missing.
  - The council fails to say how the proposal will tackle rent-to-rent and subletting, or even Airbnb.
6. We contend that the flaws in the process and proposals, as outlined above, must be rectified before this application is progressed. Furthermore, once the necessary data has been identified and provided, this consultation exercise should be then be repeated to ensure engagement with all relevant stakeholders with the new evidence, solutions and council policies.

## General feedback on proposals

7. Licensing is a powerful tool. If used correctly by Lewisham Council, it could resolve specific issues. We have supported many local authorities in the introduction of licensing schemes that benefit landlords, tenants and the community. In this case, the council's lack of evidence does not support its arguments for the introduction of licensing.
8. The council, by implementing selective licensing, will be further fuelling the cost of renting. While the costs associated with the council will be passed through so will the landlords costs. With a lack of affordable housing in the South East, Lewisham is appealing to landlords to help place tenants. The introduction of licensing will make it more difficult.
9. House prices are already high in Lewisham and in some cases, renting is the only option, this has to be taken into consideration, with the introduction of a scheme. The impact of a licensing scheme will not be only on landlords, but it will also tenants.
10. This will also affect insurance, as premiums will increase for everyone now that the council says that antisocial behaviour is a significant problem. This will add costs to those renting as well as to owner-occupiers.
11. We believe that any regulation of the private rented sector must be balanced. Additional regulatory burdens should focus on increasing the professionalism of landlords, improving the quality of private rented stock and driving out the criminals who act as landlords and blight the sector. These should be the shared objectives of all the parties involved, to facilitate the best possible outcomes for landlords and tenants alike. Good practice should be recognised and encouraged, in addition to the required focus on enforcement activity. This is not the case here.
12. In addition, the proposal does not take into account rent-to-rent or those who exploit people (both tenants and landlords). Criminals will always play the system. For instance, there is no provision for landlords who have legally rented out a property that has later been illegally sublet. The council will need to allocate resources to tackle these problems that criminals cause. Often, landlords are victims, just as much as tenants. What support will the council provide for landlords to whom this has happened?
13. Newham reorganised its council services to deliver its licensing scheme. A joined-up coordinated approach within the council will be required. Additional costs in relation to adult social care along with children's services and housing will be incurred if the council's goal is to be achieved. Yet there is no evidence from the council that this will be done – can this be provided?
14. The issue of overcrowding is difficult for a landlord to manage if it is the tenant that has overfilled the property. A landlord will tell a tenant how many people are permitted to live in the property, and that the tenant is not to sublet it or allow additional people to live there. Beyond that, how is the landlord to manage this matter without interfering with the tenant's welfare? Equally, how will the council assist landlords when this problem arises? It is impractical for landlords to monitor the everyday activities or sleeping arrangements of tenants. Where overcrowding does take place, the people involved know what they are doing and that they are criminals, not landlords. The council already has the powers to deal with this. It also raises concerns for the NLA as this is not currently being undertaken by the council.
15. The proposal fails to address the link between homelessness and the effect that licensing will have on tenants in Lewisham. This impact on tenancies due to a selective licensing scheme is absent from the document.
16. Landlords are usually not experienced in the management of antisocial behaviour and do not have the professional capacity to resolve tenants' mental health issues or drug and alcohol dependency. If there are allegations about a tenant causing problems (e.g. antisocial behaviour) and a landlord ends the tenancy, the landlord will have dispatched their obligations under the selective licensing scheme, even if the tenant has any of the above issues. This moves the problems around Lewisham, but does not actually help the tenant, who could become lost in the system. They will also blight another resident's life. There is no obligation within selective licensing for the landlord to resolve an allegation of antisocial behaviour. Rather, a landlord has a tenancy agreement with a tenant and this is the only thing that the landlord can legally enforce.
17. Referencing will not resolve the issue, as a landlord can provide a reference where no offence has been prosecuted, and it is an allegation. If a landlord puts this allegation in a reference, they could be sued by the tenant for something that has not been proved but was an allegation that was untrue. Equally, a credit reference would only show the credit history of a tenant, not anything else.
18. Lewisham Council has many existing powers. Section 57(4) of the Housing Act 2004 implies that a local authority must not make a designation 'unless (a) they have considered whether there are any other courses of action available to them [...] that might provide an effective method [for Lewisham Council to deal] with the problem or problems in question'. The council already has powers that can be used to rectify the problems and, hence, the ability to tackle many of the

issues that it wishes to overcome in all parts of Lewisham. These include:

- criminal behaviour orders
- crime prevention injunctions
- interim management orders
- empty dwelling management orders
- improvement notices (for homes that do not meet the Decent Homes Standard)
- litter abatement notices (section 92 of the Environmental Protection Act 1990)
- fixed penalty notices or confiscation of equipment (sections 8 and 10 of the Noise Act 1996)
- directions regarding the disposal of waste (e.g. section 46 of the Environmental Protection Act 1990)
- notices to remove rubbish from land (sections 2–4 of the Prevention of Damage by Pests Act 1949).

19. We would argue that Lewisham is failing to use its existing powers. It would be better if the council were to use the powers that already exist to solve issues that it claims exist before undertaking licensing. Licensing is not a solution in itself; the council will fall back on existing powers for enforcement, which it is failing to use currently.

20. At the commencement of a tenancy, the landlord outlines the tenant's obligations in relation to noise (and other matters such as waste disposal, compliance with relevant laws and having consideration for their neighbours). The landlord can manage a tenant only to the extent of their mutually agreed contract for living in the rented property – not for a tenant's activities in the street outside the property or neighbouring streets. In the case of a noise complaint, the council would have to inform the landlord that the tenant was being excessively noisy. The landlord then has the right either to warn the tenant or to end the tenancy. If the allegation is false or disingenuous, how is the landlord to know? If the same allegation is made on more than one occasion, the landlord may end the tenancy based on an unproven allegation or because the council says that there is a problem. This does not solve the problem but rather moves it around the borough. The same applies to household refuse and other antisocial behaviour issues. The tenant could be labelled as guilty without having faced a trial. Under the reference condition of selective licensing, a guilty judgment can be made without an accusation being tested by their peers in a court of law.

21. The ending of a tenancy will be a way for a landlord to resolve an allegation of antisocial behaviour, waste mismanagement or even a malicious complaint. This will not resolve the issue of high tenancy turnover; it will exacerbate it.

22. The introduction of licensing is likely to increase costs for tenants without solving the problems that the council is trying to target. It will likely move the issues around Lewisham and neighbouring areas and displace them to new landlords. The issues would be better resolved by a more erudite approach to dealing with nuisance and a separate policy to tackle criminals acting as landlords.

23. Often when tenants are nearing the end of their contract/tenancy and are in the process of moving out, they will dispose of excess household waste by a variety of methods. These include putting waste out on the street for the council to collect. This is made worse when the council does not allow landlords access to municipal waste collection points. Local authorities with a large number of private rented sector properties need to consider a strategy for the collection of excess waste at the end of tenancies. We would be willing to work with the council to help develop such a strategy. An example is the Leeds Rental Standard, which works with landlords and landlord associations to resolve issues.

24. One of the arguments the council has put forward is that selective licensing is being introduced due to the size of the PRS. Can the council clarify: a) is it the council's policy to reduce the PRS in these areas; and b) where does the council wish to see PRS grow in Lewisham?

25. We also have concerns over how a scheme will interact with the current government consultation on Section 21. The change to how tenancies will end and a move to a more adversarial system, will mean landlords will become more risk adverse to take tenants that do not have a perfect reference and history.

26. One of the dangers of the proposed selective licensing scheme is that the costs will be passed on to tenants. This would increase costs both for those who rent in Lewisham and for the council. The increased costs to Lewisham residents would particularly hit those most vulnerable and least able to tolerate a marginal increase in their cost of living. Also, the council has failed to explain that, as well as the council's costs for the licence, landlords will likely cover their increased costs by raising rent prices. The failure to explain this shows a lack of understanding of how the private rented sector works. This could mean that landlords will look for tenants from other councils, as they are offering incentives (e.g. Haringey is offering £4,000 plus the Central London Local Housing Allowance rate). We know they are placing tenants in in any London borough and elsewhere in the country, which a policy such as this will escalate.

27. Areas that have been subject to the introduction of selective licensing have seen lenders withdraw mortgage products, thereby reducing the options available to landlords who are reliant on finance. Downstream, this increases overheads for landlords and tenants. When lenders withdraw mortgage availability from a landlord, that decision appears on that landlord's credit history. Other mortgage lenders will see this credit score and put a higher cost on mortgage/landlord, which will ultimately reach the tenant through rent.

28. Defining areas of Lewisham as problem zones in the consultation will not encourage lending or investment into those areas. The stigmatisation will be reflected in property values within them. Lewisham Council, by proposing to introduce licensing, is implying that there are social problems that could deter investment in those areas. The council does not acknowledge the impact that the stigmatisation of discretionary licensing will likely have. It will likely increase all car and house insurance premiums, but the council has not told Lewisham residents about this. We assert that failure to provide such information indicates a substandard and, ultimately, superficial consultation exercise.

29. The social housing sector has made many efforts to remove problem tenants (see table below). How does the council expect landlords to solve these tenants' issues when the social sector has failed? Many of the tenants who have been removed from the social sector are now living in the private rented sector without any support. This selective licensing policy will have a greater impact on those people who are evicted from social housing, as they will not be able to access the PRS as they will fail the reference check (mandatory condition).

### Mortgage and landlord possession statistics 2016<sup>1</sup>

Year (calendar)	Landlord type		Claims issued
	Private*	Social	
2016	54,583 (39.7%)	82,789 (60.3%)	137,372 (100%)
*includes all accelerated claims			

#### Current law

30. A landlord currently has to comply with over 130 pieces of legislation, and the laws with which the private rented sector must comply can be easily misunderstood. A landlord is expected to give the tenant a 'quiet enjoyment' of the property. Failure to do so could result in a harassment case being brought against the landlord. The law within which landlords must operate is not always fully compatible with the aims of the council. For example, a landlord keeping a record of a tenant could be interpreted as harassment.

31. Licensing is introduced to tackle specific issues. Many of these are related to tenants, which the council has identified. The challenge for local authorities is to work with all the people involved and not simply to blame one group – e.g. landlords. We are willing to work in partnership with the council to develop tenant information packs, assured shorthold tenancies and accreditation of landlords, along with targeting the worst properties in a given area.

32. We would also argue that problems that are restricted to only a few poorly managed and/or poorly maintained properties would not be appropriately tackled by a licensing scheme – it is not proportionate. In many situations, the council should consider enforcement notices and management orders. The use of such orders would deliver immediate results. Why, instead, does the council wish to address them over a period of five years and through a licensing scheme? A targeted, street-by-street approach, working on specific issues in a coordinated manner with other relevant agencies, such as community groups, tenants and landlords, would have a much greater impact.

33. We would also like to see the council develop a strategy that includes action against any tenants who are persistent offenders. These measures represent a targeted approach to specific issues, rather than a blanket licensing scheme that would adversely affect all professional landlords and tenants alike, while leaving criminals able to operate covertly. Many of the problems are caused by mental health or drink and drug issues. Landlords cannot resolve these issues and will require additional resources from the council.

34. In relation to the reduction of antisocial behaviour and the authority that landlords have to tackle such activity within their properties, it should be pointed out that landlords and agents can only enforce a contract; they cannot manage behaviour (NB: House of Commons briefing note SN/SP 264, paragraph 1.1). In most circumstances, the only remedy available to landlords who are confronted with serious antisocial behaviour in one of their properties will be to seek vacant possession. In many instances, they will need to serve a section 21 notice, rather than a section 8 notice, identifying the grounds for possession. The former is simpler and cheaper and repossession (at present) is more certain. No reason need be given for serving a section 21 notice and, in this case, the perpetrator tenant can hypothetically approach the local authority for assistance to be rehoused (NB: Homelessness Guidelines cl 8.2). Crucially, no affected party needs to offer evidence against an antisocial householder, thereby reducing the risk of intimidation, harassment and, ultimately, unsuccessful possession claims. The issue of antisocial behaviour will, thus, not appear as a factor in the repossession. However, when providing evidence to support a licensing application, the document should clarify the position of all the

<sup>1</sup> [www.gov.uk/government/statistics/mortgage-and-landlord-possession-statistics-october-to-december-2016](http://www.gov.uk/government/statistics/mortgage-and-landlord-possession-statistics-october-to-december-2016).

relevant issues under landlord and tenant law.

#### Requests for supplementary information

35. We are extremely concerned about the gaps in evidence and justification that occur throughout the licensing proposal.

36. We would like clarification on the council's policy in relation to helping a landlord when a section 21 notice (or future notice as currently being consulted upon) is served, the property is overcrowded or the tenant is causing antisocial behaviour, as per what the council says in the consultation. What steps will the council take to support the landlord? It would be useful if the council were to put in place a guidance document before the introduction of the scheme, to outline its position regarding helping landlords to remove tenants who are manifesting antisocial behaviour.

37. We would like a breakdown of antisocial behaviour complaints over the last five years, subdivided into antisocial behaviour that has proven to be housing-related and for the different housing sectors (owner-occupied, social providers and private rented).

38. We would like to know what consideration the council has given to homelessness, where these tenants cannot access the private rented sector.

39. The council fails to say what additional services will be provided for mental health. This will have an impact on adult social care budgets for the county council – and this budget is already under pressure. How much money has been allocated from the county to meet this?