



Proposed Additional and Selective Licensing Schemes in the London Borough of Lewisham

Safeagent Consultation Response

19 August 2019

An Introduction to safeagent

Safeagent is an accrediting organisation for lettings and management agents in the private rented sector. Safeagent (formally NALS) was established in 1999, by the Empty Homes Agency, with backing from the Royal Institution of Chartered Surveyors (RICS) the Association of Residential Lettings Agents (ARLA) and the National Association of Estate Agents (NAEA). Safeagent provides an overarching quality mark, easily recognised by consumers, with minimum entry requirements for agents.

Safeagent agents are required to:

- deliver defined standards of customer service
- operate within strict client accounting standards
- maintain a separate client bank account
- be included under a Client Money Protection Scheme

Agents must provide evidence that they continue to meet safeagent criteria on an annual basis to retain their licence. The scheme operates UK wide and has 1500 firms with over 2000 offices, including a number of agents within the London Borough of Lewisham.

Safeagent was recognised by the GLA as an approved body for the London Rental Standard. We are also a co-regulation partner with Liverpool City Council and a recognised training provider under the Rent Smart Wales scheme.

We very much welcome the opportunity to contribute to this consultation exercise.

Overview

We understand the council is seeking to introduce a second additional licensing scheme that would extend licensing to all HMOs throughout the borough.

We understand the council is also seeking to introduced a borough wide selective licensing scheme that would extend licensing to all 32,000 private rented properties in the borough. This would make the Lewisham licensing scheme one of the largest licensing schemes in the country.

In preparing this consultation response, we have studied the licensing consultation guide and evidence base for public consultation that are published on the council's website.

In summary, we do not support the council's proposals and will explain the reasons why.

We do not think the council's data supports the assertion that the same problems exist borough wide and so all properties need to be licensed. For example, figure 2 on page 14 highlights the highest concentration of private rented properties in Lewisham Central, Rushey Green, New Cross and Brockley – all above 30%. At the other end of the table is Downham with less than 16%. This ward is below the threshold in the MHCLG guidance for selective licensing.

On page 15, in estimating there are approximately 6,000 HMOs in the borough, the council has not explained what methodology was used to reach that conclusion. The colour coded map on the same page indicates many of the HMO assessments are based on a 'low confidence'.

In linking ASB and crime data to these assumed HMOs, it is acknowledged in the report (page 16) that ASB data is only attributable at ward level. It is thus unclear how incidents can be directly attributable to the occupation or management of HMOs rather than other property types and tenures.

The table on page 17 presents an even more stark picture. It highlights a wide variation in ward level data for complaints, environmental services and Police ASB records. For example, Brockley scores 1st, 5th and 5th in the league table whereas Lee Green scores 17th, 12th and 13th out of 18 wards. This illustrates that problems are not uniformly spread across the borough and so enforcement interventions should be targeted in perceived problem areas.

When the environmental services data is mapped against property tenure, it shows only slight difference between owner occupied, private rented and social housing tenures.

The evidence base includes case studies to support the case for introducing new licensing schemes. Case studies on pages 22-23 highlight problems with refuse associated with HMOs that fell below the licensing threshold. Yet this can already be dealt with under the HMO Management Regulations that apply to all HMOs whether licensable or not. Failure to comply with the regulations can result in the council issuing a financial penalty.

On page 25, we note analysis of crime data includes burglary, robbery and vehicle crime, with data aggregated at ward level. It is unclear how this is relevant. For example, street robberies near to a private rented property would not be caused by the act or default of the landlord.

The report shows a significant variation in crime levels by ward and the same four wards of Lewisham Central, Rushey Green, New Cross and Brockley are shown to have the highest crime levels.

On page 27, the report shows two thirds of wards have crime levels below the national average, which illustrates crime is a much less significant issue in those areas.

Whilst the report provides ward level data on deprivation, it is unclear how the proposed licensing schemes would address this issue. The only outcome referred to is to improve property conditions.

further reinforced in the DCLG draft guidance on Parts 2, 3 and 4 of the Housing Act 2004, published in January 2010. Whilst the guidance was never finalised, it continues to be a useful reference point and is still available on the Gov.uk website.

Firstly, section 257 HMOs are not necessarily 'poorly converted' buildings. They include, for example, properties that were converted into flats in the 1960s and 1970s and which obtained all necessary consent for the conversion at that time. When considering such historic conversions, the relevant building regulations are the Building Regulations 1991.

The DCLG draft guidance (2010) explains that it is the common parts of the building that should be assessed against the Building Regulations 1991 and the range of factors to be considered include the structure, fire safety, resistance to the passage of sound, ventilation, drainage and waste disposal, stairs, ramp and guards, access and facilities for disabled people and glazing (this is not an exhaustive list).

Thus, in order to determine if the property is a section 257 HMO, it is necessary to seek expert advice about whether the conversion works complied with the requirements in force at the time of the conversion or whether the property has subsequently been made compliant.

For properties converted since 1 June 1992, a Building Control completion certificate would satisfy this requirement. But for properties converted before that date, it would be very difficult for a layperson to assess compliance with the Building Regulations 1991 and many local authority licensing teams would struggle to make a definitive assessment. Letting agents cannot be expected to make this sort of judgement.

In situations where there is a freeholder and separate long leaseholders, the situation is further complicated by the need to determine whether less than two thirds of the flats are owner-occupied. Only the freeholder may possess this information and the tenure of each flat may vary over time.

This would make it extremely difficult for a safeagent letting agent to assess whether a licence is required, despite their best endeavours. For example, it may be that the building did not require a licence when a flat was rented out, but subsequently requires licensing because another leasehold in the building has rented out their flat. As such, a letting agent could find themselves committing an offence of managing a flat in a licensable building without a licence, simply because another flat had been rented out without their knowledge.

Bringing all section 257 HMOs within the additional licensing scheme could also be problematic for long-leasehold owner-occupiers who find their flat is within a licensable building through no fault of their own. The licensing fee may push up their service charge and could cause difficulties with their mortgage lender. As the licence would need to be disclosed to a prospective purchaser, some mortgage lenders may be reluctant to lend on a residential mortgage within a licensed section 257 HMO, thus adversely impacting on the property's value.

It is also the case that the 2015 general approval to introduce an additional licensing scheme only applies if the council has consulted persons likely to be affected by the scheme designation. Without actively consulting with long leaseholder owner

the borough. This could adversely affect groups of sharers and single people seeking shared accommodation and it is important for the council to consider this issue as part of the equalities impact assessment.

It is also important that any early bird discount period lasts for at least three months leading up to the licensing scheme start date. This is to ensure there is sufficient time for applications to be submitted before the scheme starts, to ensure compliance.

Regarding the discount for accredited landlords, we would request this is extended to include licensed properties where the designated manager is an accredited letting agent - including members of safeagent. This would help to acknowledge the benefit of using an accredited agent to ensure that licensed properties are well managed.

A similar approach has been adopted by Islington and Ealing Councils and we would encourage Lewisham Council to follow best practice and do the same.

Regarding the proposed selective licensing fees, we note the council's proposal is to vary the fee accordingly to the council tax band of each property. We think this is overly complicated, especially as almost 85% of applications would fall within the £600 to £650 price bracket.

Unless the application system is linked to the council tax system to calculate the appropriate fee, this could result in a high level of errors if the applicant has to manually select the correct band. In turn, this will create more administrative work for the council to check each fee against the council tax band and deal with refunds and additional payments if the wrong band has been selected.

For these reasons, we would encourage the council to charge a fixed fee per property for all selective licence applications. This would bring Lewisham into line with all other London Boroughs that operate selective licensing schemes.

Licence Conditions

We were unable to find any detailed information on the proposed mandatory and other locally adopted additional and selective licence conditions. We could only find a basic summary of type of conditions that can be imposed under the Housing Act 2004, but not what those conditions would be.

We think it is important for the council to consult widely on the proposed additional and selective licensing conditions that would be applied to 32,000 properties in the borough, so the proposals can be discussed and fine-tuned taking into account the views of all interested parties. We would like the opportunity to comment on the conditions in due course.

Inspection regime

We note the consultation report indicates all 32,000 private rented homes would be inspected within five years, which equates to inspecting over 120 properties per week throughout the life of the scheme.

conjunction with London Trading Standards. The toolkit can be downloaded free of charge from our website, or we can forward you a copy on request.

Should you wish to discuss any aspect of this consultation response, please do not hesitate to contact me. Can you also please confirm the outcome of the consultation exercise in due course.

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