

Middlesbrough Council

6th December 2020

Dear Sir or Madam,

Selective Licensing Consultation Process

The NRLA is a newly formed association following the completed merger of the National Landlords Association and the Residential Landlords Association. Our membership represents over 83,000 landlords and agents, by far the largest organisation in the sector. Members own and manage around 10% of the PRS, equating to half a million properties.

Thank you for the opportunity to respond to the above consultation for the renewing of a Selective Licensing Scheme in Middlesbrough.

The NRLA objects to the relevance of Selective Licensing schemes by Local Authorities. Although we sympathise with the aims of Middlesbrough Council, we believe that Licensing does not align with the successful completion of these aims. The NRLA 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.

Main Objections

Statistical evidence supporting licensing

The council highlights identified hazards and breaches from the previous scheme. Many of these hazards and violations identified can be tackled using existing enforcement powers, rather than relying on property licensing to enforce standards in the PRS. The council does not need a licensing scheme in place to regulate the private rented sector in Middlesbrough.

Waste management in tenancies

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 but not limited to, putting waste out on the street for the council to collect. This is in the hope of getting their deposit back and made worse when the council does not allow landlords access to municipal waste collection points. Local authorities with many private rented properties need to consider a strategy for the collection of excess waste at the end of a tenancy in place of selective licensing.

Additional fee for licence instalments

The council is proposing a £100 administrative fee should the landlord choose to pay the second part of the licence fee in instalments over the course of 6 to 12 months. Although this is a kind

gesture aimed towards landlords, a fee for administering these instalments is potentially unlawful as it would be classed as an additional fee. The power to charge a fee is set out in s63(3) and s87(3) of the Housing Act 2004, with the fee-charging power 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. Also, 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. Should the scheme move forward and be approved, the council should not go ahead with the administrative fee.

Antisocial behaviour in tenancies

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. Suppose there are any allegations about a tenant causing problems, and a landlord ends the tenancy. In that case, the landlord will have fulfilled their obligations under the selective licensing scheme, even if the tenant has any of the above issues.

This moves the problems around Middlesbrough Council but does not help the tenant, who could become lost in the system, or worst moved towards the criminal landlords. They will also blight another resident's life.

Regarding the reduction of antisocial behaviour and that landlords must tackle such activity within their properties, landlords and agents can only enforce a contract; they cannot manage behaviour.

Criminal Activity

The proposal does not consider 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 license holder can end the tenancy (of the superior tenant, the subtenants have no legal redress) and support the local authority in criminal prosecution. Often, landlords are victims, just as much as tenants. What support will the council provide for landlords to whom this has happened? Will the council support an accelerated possession order?

The issue of overcrowding is complicated 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.



NATIONAL RESIDENTIAL
LANDLORDS ASSOCIATION

212 Washway Road, Sale
Manchester M33 6RN

0300 131 6400

info@nrla.org.uk

www.nrla.org.uk

Tenancy Management

Licensing is introduced to tackle specific issues, with many of these issues related to the tenants which the council has identified. The main challenge for local authorities is to work with all the parties involved and not squarely blame one group, e.g. landlords. At the commencement of a tenancy, the landlord outlines the tenant's obligations concerning 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 the tenant's activities in the street outside the property for matters such as parking spaces, noise complaints or fly-tipping/waste disposal. The ending of a tenancy will be a way for a landlord to resolve an allegation- this will not resolve the issue of high tenancy turnover; it will merely exacerbate it.

Conclusions and alternatives

The NRLA advocates using council tax records to identify tenures used by the private rented sector and those landlords in charge of those properties. Unlike discretionary licensing, this does not require self-identification by landlords, making it harder for criminal landlords to operate under the radar and continuing to provide a low standard of housing.

It would be a more effective method of targeting these criminals and rooting them out of the sector using existing enforcement powers granted by the Housing Act and the Housing and Planning Act 2016 and generate funds for the council via this method as opposed to licensing fees. The NRLA believes that local authorities need a healthy private rented sector to complement the other housing in an area. This provides a variety of housing types and can be flexible around meeting the needs of both residents and landlords in the area. The sector is regulated, and enforcement is an essential part of maintaining the sector from criminals who exploit landlords and tenants. An active enforcement policy that supports good landlords is crucial as it will remove those who use others and create a level playing field. It is essential to understand how the sector operates as landlords can often be victims of criminal activity with their properties exploited for illicit purposes.

Furthermore, the council should consider if the scheme is approved providing an annual summary of outcomes to demonstrate to both tenants and landlords' improvements of behaviour and the impact of licensing on the designated area over the lifetime of the scheme. This would improve transparency overall.

The NRLA has a shared interest with Middlesbrough council in ensuring a high-quality private rented sector in Liverpool but disagrees that another selective licensing scheme is the most effective approach to achieve this aim.

Yours Sincerely,

Samantha Watkin
Policy Officer
National Residential Landlords Association
Samantha.Watkin@nrla.org.uk