

Responses from Trade Bodies

Date	Name	Method – phone / letter / email	Query / Comment / Response
31.05.2017	RLA	Email	<p>Thank you for the opportunity to respond to the above consultation.</p> <p>The RLA is surprised that the City Council is pursuing selective licensing so adamantly having abandoned it previously and citing it as 'ineffective'. We would disagree that you have made a strong enough case throughout any of your consultations to prove that your original stance on selective licensing was ill-founded.</p> <p>The RLA believes that the Council is premature on bringing forward proposals. The Housing and Planning Act 2016 gives local authorities substantial new powers to tackle breaches of housing legislation and drive the criminal operators from the sector. The council should wait until the impact of these new powers can be assessed before pressing on with more regulation in the form of selective licensing.</p> <p>After reviewing the documents supplied on the consultation pages, the RLA is confused as to why the council has taken the effort to set up three separate consultations and only supplied one set of documentation and information. Each proposal is a discrete licensing scheme and each should be subject a full individual consultation, accompanied by easily accessible documentation of evidence pertinent to that proposal. There is no detail, explanations, or justifications for each individual scheme, which is what is expected from a fair and well conducted consultation. The consultations are almost identical, despite them being in different and varied areas of Greater Manchester, which has made responding to them in a way that will benefit the council and its landlords, challenging.</p> <p>Supplying no details on the proposed standards, fees, or decision making behind this particular scheme, that may differ to your past consultations, does not convince that Moston and Old Moat, specifically, need this licensing. It seems like the City Council is going through the motions giving generic blanket evidence, rather than making cases for each individual area, doing nothing to correct the 'ineffectiveness' of the national selective licensing standards.</p> <p>It would have been interesting to know how the council came to the decision to band Moston and Old Moat together in one consultation and how these two areas could benefit from the same scheme or relate to each other in terms of PRS.</p> <p>The RLA is opposed to the scheme and has a number of general objections to Licensing, which are attached as an appendix to this letter. Licensing schemes rarely meet their objectives. Good landlords will apply for licences and, in all likelihood, pass the cost on to tenants in the form of increased rents, doing nothing to address affordability, while the worst landlords – the criminal operators – will simply ignore the scheme, as they do many other regulations.</p> <p>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 management standards and property conditions.</p>

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 staff time wasted processing applications, it should continue to direct its limited resources at effective enforcement activity.

To identify a particular area for the introduction of licensing highlights a belief that the area has numerous issues, potentially blighting the reputation of the area. There is also a danger that the issues that the scheme seeks to address are simply moved elsewhere, as difficult or vulnerable tenants are moved on.

Landlords, especially those with properties outside the licence are will become risk averse in terms of the tenants they let to. Tenant problems such as anti-social behaviour are impossible for the landlord to address alone and landlords will not wish to risk a breach of licensing conditions that may affect their ability to let properties elsewhere. Some may seek to evict already challenging tenants. This could mean additional costs to other council services, as they pick up the pieces created by the disruption to the lives of already vulnerable tenants.

Likewise, if licensing costs are passed on to tenants in the form of rent increases, then some tenants may struggle, particularly those on benefits, affected by welfare reform and frozen housing allowances.

Rather than an ineffective licensing scheme, the council should use cross-departmental and multi-agency working and effective use of existing housing legislation to support tenants and landlords in maintaining tenancies, housing condition and management standards.

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. More information can be supplied if required.

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 so-called rogues to operate under the radar.

You will be aware that the association has written to Ms Farrah Ehsan, City Solicitor, over a possible judicial review of Manchester City Council's licensing proposals due to inadequacy of these consultations. This response should not be considered an endorsement of this consultation process.

Appendix – RLA General Licensing Concerns

The RLA has several areas of concern in regards to selective licensing, namely:

- i. Worrying trends are emerging in the case of discretionary licensing. Licensing entails a huge bureaucracy and much time, effort and expense is taken up in setting up and administering these schemes; rather than spending it on the ground and flushing out criminal landlords.
- ii. Increasingly, discretionary licensing is being misused to fund cash strapped housing enforcement services. The recent Westminster sex shop Court of Appeal (*Hemming (t/a Simply Pleasure) Limited v Westminster City Council*) has brought such funding into

			<p>question).</p> <p>iii. Discretionary licensing is not being used for its intended purpose of a short period of intensive care; rather it is being used by the back door to regulate the PRS.</p> <p>iv. The level of fees which are ultimately passed on to tenants to pay is a major worry so far as it affects landlords.</p> <p>v. Despite high fee levels local authorities still lack the will and resources to properly implement licensing.</p> <p>vi. Little has been done to improve property management. Opportunities to require training have been ignored. As always it has become an obsession with regard to physical standards with very detailed conditions being laid down. No action is taken against criminal landlords.</p> <p>vii. We believe that a significant number of landlords are still operating under the radar without being licensed.</p> <p>viii. As always it is the compliant landlord who is affected by the schemes. They pay the high fees involved but do not need regulation of this kind.</p> <p>ix. Licensing is not being used alongside regeneration or improvement of the relevant areas. Insufficient resources are being employed to improve the areas.</p> <p>x. Where areas are designated for selective licensing this highlights that they can be “sink” areas. This could well mean it would be harder to obtain a mortgage to buy a property in these areas.</p> <p>xi. Schemes are not laying down clear objectives to enable decisions to be made whether or not these have been achieved. Proper monitoring is not being put into place to see if schemes are successful or not.</p> <p>xii. There is little use of “fit and proper person” powers to exclude bad landlords.</p>
02.06.2017	NLA	Email	<p>Introduction</p> <p>1. The National Landlords Association (NLA) exists to protect and promote the interests of private residential landlords.</p> <p>2. The NLA represents more than 62,000 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 (PRS).</p>

3. The NLA seeks 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. The NLA would like to thank Manchester Council for providing the opportunity to comment on the Selective Licensing consultation.

Summary

5. Having considered the evidence presented and having undertaken its own evaluation of the circumstances faced by the residents of Manchester, the NLA's position is still maintained from the first consultation and can be summarised by the following brief points:

☒ Landlords have very limited authority to deal with matters related to anti-social behaviour (ASB).

☒ You fail to provide evidence or a link between recorded housing crime and the private rented sector.

☒ The scheme will lead to a further displacement of problem tenants in the Manchester area.

☒ The documentation provided also fails to indicate that sufficient funding will be available to support the functions necessary to support licensing.

☒ How will the Council prevent malicious ASB claims being made that could potentially result in tenants losing their tenancies?

General Feedback on Proposals

6. The ability to introduce licensing is a powerful tool. If used correctly by Manchester Council, it could resolve specific issues. The NLA believes that this proposal should be delayed until the implementation of the previous scheme has been implemented and lessons learnt.

7. The NLA believes that any regulation of the private rented sector needs to be balanced. As we said in the previous consultation additional regulatory burdens should focus on increasing the professionalism of landlords, the quality of the private rented stock and driving out the criminal landlords who 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 and, as such, good practice should be recognised and encouraged in addition to the required focus on enforcement activity. This is not the case here, as lessons from the previous scheme wont have been learnt to implement in this scheme.

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8. In addition, the proposal does not take into account rent to rent or those that exploit people (tenants and landlords), as criminals will always play the system. For instance, there is no provision for those landlords who have legally rented out a property that is then illegally sublet. The Council is not allocating resources to tackle the problems that criminals will cause; landlords are often victims just as much as tenants are.

9. Landlords are usually not experienced and do not have the professional capacity that would allow them to be able to resolve tenants' mental health issues or drug and alcohol dependency. If there are allegations about a tenant causing problems (e.g. ASB), even if the tenant has the above issues, a landlord ending the tenancy will have dispatched their obligations under the discretionary licensing scheme. This moves the problems around Manchester but does not actually help the tenant, who could become lost within the system. There is no obligation within Selective Licensing for the landlord to solve the ASB allegation; rather, a landlord has a tenancy agreement with the tenant and this is the only thing they can legally enforce.

10. Manchester Council has many existing powers. Section 57 (4) of the Housing Act 2004 states that a local authority "must not make a particular designation ... unless (a) they have considered whether there are any other courses of action available to them ... that might provide an effective method of Manchester with the problem or problems in question". The use of these powers listed below by the Council shows that the Council already has powers that can be used to rectify the problems and, hence, the ability to tackle many of the issues that they wish to overcome in all parts of the city:

- a) Use of Criminal Behaviour Orders;
- b) Crime Prevention Injunctions;
- c) Interim Management Orders;
- d) Empty Dwelling Management Orders;
- e) Issuing improvement notices to homes that don't meet the decent homes standard;
- f) Directions regarding the disposal of waste (for example, under Section 46 of the Environmental Protection Act 1990);
- g) Litter abatement notices under Section 92 of the Environmental Protection Act 1990;
- h) Powers under the Noise Act 1996 to serve fixed penalty notices or to confiscate equipment (Sections 8 and 10);
- i) The power to require rubbish to be removed from land under Sections 2–4 of the Prevention of Damage by Pests Act 1949.

11. Landlords outline to tenants at the start of the tenancy their obligations in relation to noise, just as they do with waste and what they have to do to comply with the relevant laws and with a view to respecting their neighbours. The landlord can only manage a tenant based on their contract for living in the rented property. In the case of noise, the Council would need to inform the landlord that the tenant's noise is in excess. The power that a landlord has then is 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 still be ending the tenancy

based on an unproven allegation. This does not solve the problem but rather moves the problem around the 4

Borough. The same applies to waste and ASB issues. The tenant would then be guilty under the reference condition of selective licensing of noise nuisance. An accusation from which has not been tested in a court, but a guilty judgement has been given.

12. The risk of introducing licensing is likely to increase the costs for those renting, along with not resolving the problems that the Council wishes to resolve, and likely moving the issue around the Borough. The issues are thus not fully dealt with but instead are displaced to new landlords. If Manchester were to take a more erudite approach with regard to nuisance issues and instead developed a separate policy to tackle criminal landlords, this would be more applicable and more likely to result in resolving the issues.

13. The NLA would also argue that a problem encompassing a few poorly managed and/or maintained properties would not be appropriately tackled by a licensing scheme, which is not proportional. In many situations, the Council should consider Enforcement Notices and Management Orders. The use of such orders would deliver results immediately – why instead does the Council wish to do this over five years through a licensing scheme? Adopting a targeted approach on a street-by-street approach, targeting the specific issues and working in a joined-up fashion with other relevant agencies, such as the Council, community groups, tenants and landlords, would have a much greater impact.

14. The NLA agrees that some landlords, most often due to ignorance rather than criminal intent, do not use their powers to manage their properties effectively. A more appropriate response therefore would be to identify issues and to assist landlords. This could allow Manchester Council to focus on targeting the criminal landlords – where a joint approach is required.

15. In relation to ASB reduction and the authority a landlord has 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 (ref: House of Commons briefing note SN/SP 264, paragraph 1.1). In most circumstances, the only remedy available to landlords confronted with cases of serious ASB in one of their properties will be to seek vacant possession, and 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 needs 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 re-housed (ref: Homelessness Guidelines cl 8.2). Crucially, no affected party needs offer evidence against an anti-social householder, thereby reducing the risk of intimidation, harassment and ultimately unsuccessful possession claims. The issue of ASB will thus not appear as a factor in the repossession. However, in providing evidence to support a licensing

			application, the document should clarify for the respondents the position of all the relevant issues under landlord and tenant law.
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Drop In Events

In addition to the above representations the following common queries were noted at the consultation drop-in events:

- Cost and duration of the licence
- Enforcement procedures
- Assistance for landlords who may just have one property and are struggling with the changes in the market (students commanding better standards and more choice for them
- "Students and Landlords don't pay Council Tax" is a big gripe for residents in the area.