

Response to Call in of decision to approve a public consultation on the proposed introduction of an additional and selective licensing schemes

Reason why decision is being called in:

1. The report (key Decision 4870) reviewing the private rented sector in Enfield and proposing to go out to public consultation on a licensing scheme is being called in because the evidence base does not justify the scope of the proposals. The proposed extent of (i) the selective system, which would cover the majority of the wards in Enfield or (ii) in the case of HMOs the whole of the Borough, is unfair to the many private landlords who comply with their legal obligations.

Response:

In any area in which there is a significant amount of private rented sector accommodation, there will be some landlords who comply with their various legal and contractual obligations and others who do not. Parts 2 and 3 of the Housing Act 2004, which govern additional and selective licensing, are concerned principally with areas not individuals. The two schemes proposed in the report are strongly supported by the body of evidence collected in the course of the review of the private rented sector generally in Enfield and take into account good practice amongst landlords as well as bad. That evidence base, and the application to it of the statutory requirements of the Housing Act and associated guidance and case law, informs and supports the recommendations contained in the report.

In order to introduce a selective licensing scheme, certain statutory criteria must be met. These include poor property conditions, high deprivation and significant and persistent anti-social behaviour. Whereas the evidence base shows that ALL wards in the borough meet the criteria for poor property conditions, it was felt that a targeted approach to the problem would, for the time being at least, be a more appropriate and proportionate response. Consequently, 14 of the borough's wards in all have been identified as having sufficiently poor housing conditions and high levels of deprivation and anti-social behaviour to justify designation. This is the proposed selective licensing scheme.

With regards to the proposed additional HMO licensing scheme, the evidence base shows that HMOs are spread throughout the borough and have high levels of poor property conditions and anti-social behaviour and are not effectively managed.

Reason why decision is being called in:

2. Government advice on licensing schemes is very clear that they should be used sparingly because they discriminate against the majority of landlords who comply with their legal obligations to their tenants. There is therefore a very high threshold of proof required before a licensing scheme can be implemented. A selective scheme requires the approval of the Secretary of State.

Response:

The report acknowledges both the high evidential threshold for a designation to be made and the need for Ministerial approval.

Non-statutory guidance¹ published by the DCLG in 2015, to which regard has been had, states in paragraph 39 that “Local housing authorities must also ensure that selective licensing complements other measures. It should only be used where existing measures alone are not sufficient to tackle the underlying housing problems of a specific area. Local authorities should also carefully consider any potential negative economic impact that licensing may have on their area – particularly the risk of increased costs to landlords who are already fully compliant with their obligations. These additional costs can reduce further investment and are frequently passed on to tenants through higher rents.”

Consistent with that guidance, the report identifies and discusses at paragraphs 4.1-4.5 possible alternative measures to designation concluding in each case that it would not achieve the desired outcome.

The evidence to justify the proposed licensing schemes has been independently analysed and quality assured, and in addition has been reviewed by counsel who is satisfied that the legal thresholds have been met.

As more than 20% of the private rented sector in the borough would be covered by the proposed selective licensing scheme, the approval of the Secretary of State (Ministry of Housing, Communities and Local Government) would be required. The application would be submitted to the Secretary of State if the Council decides to introduce a selective licensing scheme following the public consultation.

Reason why decision is being called in:

3. The report states (para 5.5) that one of the benefits of the proposals is that the high level of evictions from the PRS in Enfield will be reduced because landlords of licensed properties cannot use section 21 (so called no-fault eviction notices) of the Housing Act 1988. No mention is made in the report that earlier this year, the Government announced that s.21 notices would be abolished, and landlords will no longer be able to evict tenants unless a breach of the tenancy agreement has been demonstrated.

Response:

Only Parliament can “abolish” section 21 notices. The Government announced on 15 April 2019 that it intends to consult upon the proposal to do away with “no fault” evictions as they are thought to be a major cause of family homelessness. The proposals outline that landlords will be required to provide concrete reasons for seeking to end a tenancy. At present it is not known whether these proposals will be implemented, and if so in what form, and it would be wrong therefore for the report to proceed on the basis that section 21 notices will be abolished. The Council will monitor the position and act in accordance with any changes to the law.

Reason why decision is being called in:

4. The licensing fee proposed of £120 p.a. for the selective scheme and £180 for the additional scheme would inevitably be passed onto the tenants. There is no guarantee that the licensing fee would not be raised further in future.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418551/150327_Guidance_on_selective_licensing_applications_FINAL_updated_isbn.pdf

Response:

The proposed licence fees of £600 (selective licensing) and £900 (additional licensing) would be for the full 5-year lifespan of the proposed licensing scheme. These fees equate to £10 and £15 per month respectively.

As the report notes (at paragraph 5.50), Article 13(2) of the EU Services Directive 2006/123/EC (implemented into domestic law by regulation 18 of the Provision of Services Regulations 2009) requires that the license fee paid by the applicant must be “reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures”, and fee-setting has been carried out with that obligation well in mind. Like other aspects of any scheme, fees would be reviewed from time to time to ensure that they remain reasonable and proportionate.

Despite what is said in paragraph 39 of the 2015 non-statutory guidance (see above), a government review of selective licensing schemes published on 25 June 2019 contains the finding that there is no substantive evidence that the cost of licence fees is passed onto tenants, or that licensing schemes increase rent levels². Analysis of Valuation Office Agency rent levels found that increased rents are a result of housing market conditions.

Reason why decision is being called in:

5. The Council already has powers under a wide range of legislation to take enforcement action against rogue landlords for sub-standard property conditions, overcrowding, harassment, etc. Enfield CAB estimates that it receives over 1000 complaints from tenants each year. A report last year in the Guardian Newspaper identified 53 councils, including Enfield, who had failed to prosecute any private landlords following complaints from tenants between 2015 and 2017.

Response:

The Council has a wide range of powers to enforce poor property conditions and non-compliance in private rented accommodation, as the report acknowledges, and they are used. Indeed, as the article in the Guardian newspaper acknowledges, the Council has served an unprecedented number of enforcement notices since 2015. The article did not acknowledge, however, that the Council instigated three criminal prosecutions in 2018 for sub-standard private rented accommodation and unlicensed HMOs resulting in fines being imposed of over £34,000.

The legislation is clear, and the report acknowledges, that selective licensing can be used where existing measures (including existing enforcement powers) are insufficient on their own to tackle the underlying housing problems. Despite unprecedented levels of enforcement notices issued, the underlying poor housing conditions, deprivation and anti-social behaviour remain a significant problem and so licensing is considered necessary and proportionate as an additional means of ensuring the large-scale improvement needed.

Reason why decision is being called in:

6. The licensing fee is legally required solely to cover the cost of administration, i.e. the salaries, etc of the 30 or so inspectors (according to officers) who would be employed by the

² Paragraphs 9.39 and 9.40

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812879/Selective_Licensing_Review_2019.pdf

Council. No information is provided in the report about the current cost of enforcement and whether the Council is sufficiently resourced to actually enforce breaches of the proposed licensing conditions for private landlords. The evidence from the Guardian and others is that enforcement in Enfield is weak or non-existent and a licensing scheme will not change that in any material way

Response:

Under both domestic and European Law the fees charged to landlords under additional and/or selective licensing schemes may lawfully include a contribution towards the costs of enforcing compliance provided that any such contribution is not required to be made “up front” upon the application being made, and is only charged to those landlords whose application for licensing is successful. The revenue generated by any such contributions would help finance necessary enforcement procedures thereby enhancing the effectiveness of the schemes.

Enforcement is an essential tool and will, it is anticipated, be adequately resourced. However, the value of a team of inspectors, in terms of achieving the purposes of the proposed schemes, should not be understated. Inspections can, and it is hoped often would, ensure compliance without the need for subsequent enforcement action.

The Guardian article, referred to above, only focused on one enforcement outcome (prosecutions) between 2015 and 2017, and did not report on other enforcement interventions such as notices issued or prosecutions undertaken in 2018. In the period 2015-2017 the Council served 345% more notices on private rented properties than the preceding 3 year period. In particular, the Council has served an unprecedented number of Prohibition Orders (to cease use), and high levels of Improvement Notices and Hazard Awareness Notices. This is not a Council that has weak or non-existent enforcement, as the report fully acknowledges.

Reason why decision is being called in:

7. The new criteria for licensing schemes required by Government is indicative only. Rogue landlords are more likely to operate in areas where levels of poverty, poor housing quality and anti-social behaviour are most acute. Depending on local circumstances, many London councils who have introduced licensing schemes have restricted them to either selective schemes or to additional schemes. Also, in the case of selective schemes (which cover all private rented properties), the designated areas are often restricted to individual streets or neighbourhoods. The evidence in the report does not support the blanket approach proposed.

Response:

The new criteria for selective licensing schemes are neither guidance nor indicative. They are prescribed in legislation³.

Far from adopting a blanket approach, the report makes clear that the proposal has only selected those areas in the borough where there is sufficient evidence of:

- *significant poor housing conditions that are not effectively managed*
- *high levels of deprivation and*
- *anti-social behaviour*

that meet the legislative requirements for licensing.

³ Housing Act 2004 and the Selective Licensing of Houses (Additional Conditions)(England) Order 2015

By way of comparison with other London Boroughs:

- *40% of London Boroughs (13 of the 32) currently operate a selective licensing scheme. Of these:*
 - *3 have borough-wide schemes*
 - *4 have large scale schemes (e.g. covering between 12 and 19 wards)*
 - *6 have smaller scale schemes (e.g. covering between 3 and 8 wards)*

- *66% of London Boroughs (21 of the 32) currently have an additional licensing scheme. Of these:*
 - *18 have borough-wide schemes*
 - *3 have non-borough wide schemes (e.g. covering between 2 and 12 wards)*

- *In addition, 3 London boroughs are currently in consultation on proposals to increase their existing (or implement new) selective licensing schemes, and 1 London Borough is consulting on increasing their additional licensing scheme by 6 extra wards.*

Comparison with other boroughs is appropriate but not conclusive, not least because there will be different considerations and challenges from borough to borough, as the report makes clear. For example, the report notes at paragraphs 5.5 and 5.7 that the eviction rate in the private rented sector in Enfield is the highest in London, and the borough has the highest number of private renters on Housing Benefit in London, and the second highest in the UK.

With some of Enfield Council's neighbouring or near-neighbouring boroughs having implemented their own licensing schemes, the report discusses at paragraph 5.2 the potential problem of displacement.