

Licensing Hackney's private rented homes

The Council's Response to Consultation

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Introduction

Between 18 September and 03 December 2017, Hackney Council consulted all residents, landlords and businesses (who live or operate) in the borough on proposals to introduce two new licensing schemes for private rented accommodation in Hackney; an Additional Licensing Scheme for all Houses in Multiple Occupation (HMOs) and a Selective Licensing Scheme for all privately rented properties in Brownswood, Cazenove and Stoke Newington wards.

A total of 291 landlords, tenants, businesses and organisations took part in the survey. The results of the survey are detailed in the document "*Licensing Hackney's private rented homes; Consultation Report*".

Consultation respondents made a number of comments supporting or opposing the proposals, made suggestions for improvements to the proposals or sought clarification on certain aspects of the proposals. Hackney's Private Sector Housing Team has considered the points made by all of the respondents and its responses are contained in this report.

The respondents' points and the Council's responses will inform the final recommendations for the proposals contained in a report to Cabinet on the 19th March 2018. That report will be publicly available on the council's website (<https://hackney.gov.uk/better-renting>) from the 12th March 2018.

Respondents to consultation

Who responded to the consultation?

- A total of 291 landlords, tenants, businesses and organisations took part in the survey.
- Landlords accounted for 44% (128) of participants, tenants accounted for 32% (93); only 6.5% (19) of participants were tenants from an HMO.
- The largest responses by postcode were: N16 – 47% (137), E5 – 15% (43) and E8 – 10% (28); N16 and E5 postcodes cover parts of the wards proposed under the Selective Licensing Scheme.

Comments from those who supported the proposals

Very few participants who supported the proposal gave a comment, making it hard to confidently understand why residents would support the proposal. The few comments that were given fell into the following themes:

1. *The need to ensure the health and safety of a property*
2. *The recognition and/or need to tackle poor housing conditions in the private rented sector*
3. *The need to tackle rogue landlords/The scheme is unfair on good landlords*
4. *The need to protect or enhance tenant rights*

The Council's responses to these supporting comments

1. *The need to ensure the health and safety of a property*
2. *The recognition and/or need to tackle poor housing conditions in the private rented sector*

Currently, for rented properties that do not fall within the scope of the national mandatory licensing scheme, there is no requirement for the landlord to register the property with the Council or any other regulatory body. It is therefore difficult for the Council to accurately locate and inspect properties for health and safety compliance and to secure the resources to do so. Under the proposals for both *Additional* and *Selective Licensing* schemes landlords would be required by law to apply for a licence. This will, over the duration of the licensing schemes develop a reliable register of licensed properties including details of all landlords and property managers.

Under both proposed schemes all properties within scope will receive an inspection either before the license is issued or during the five year duration of the scheme. Income from licensing fees will provide additional staff resources in the private sector housing team to facilitate these compliance inspections.

All licences have conditions attached, which are legally binding and have penalties attached for non-compliance. The proposed schemes include the following conditions, which are intended to ensure the health and safety of a property:

All property types:

- Gas and electrical installations to be fitted only by certified engineers,
- All facilities and equipment within the property, including all electrical appliances supplied by the landlord, are safe and maintained,

- Adequate fire safety precautions, including all furnishings meeting fire safety requirements,
- Adequate provision of cooking facilities, bath/shower rooms and toilets,
- Good standards of cleanliness, repair and general conditions,
- Repairs, maintenance and improvements to be carried out only by competent persons employed directly by the licensee or managing agent,
- Pest control measures taken where necessary,
- Rent collection may only be carried out by licensee or managing agent,
- Maximum permitted levels of occupation not exceeded,
- Emergency contact details provided to tenants,
- Provision and management of refuse/waste storage and disposal,
- Adequate home security,
- Measures to tackle anti-social behaviour relating to the property where necessary,
- Certain information to be provided to the Council on demand,
- A requirement for the landlord/manager to undertake minimum six-monthly inspections of the property,
- Exclusion of landlords/agents from being license holder or manager, where there is a history of criminal offences, unlawful discrimination, or contraventions of housing, or landlord and tenant law.

Further condition for selective licensing (Brownswood, Cazenove and Stoke Newington):

- Requirement for Energy Performance Certificates.

3. The need to tackle rogue landlords/The scheme is unfair on good landlords

The Council's proposals include dedicated, trained enforcement staff to enforce both the requirement to licence properties and the requirements to comply with licensing conditions and other regulatory requirements. Under both proposed schemes all properties within scope will receive an inspection either before the licence is issued or during the five year duration of the scheme. Properties found to be non-compliant with requirements will be referred for enforcement. Enforcement powers include Civil Financial Penalties and application to the first tier tribunal property chamber for a Rent Repayment Order requiring the landlord to repay up to twelve months previous rent. Criminal prosecution proceedings will be taken for the most serious offences. Landlords convicted of certain offences can be issued with a Banning Order preventing them from letting or managing properties in England and can have their details placed on a Rogue Landlord database. The licensing scheme provides a more effective regulatory framework and brings much of the compliance requirements into one place and aims to prevent rogue landlords undermining good landlords.

Consideration is being given to a reduced licence fee for landlords who are members of an approved accreditation scheme.

4. The need to protect or enhance tenant rights

Licensing schemes require that licenses may only be granted if the Council is satisfied that the licensee and property manager are "fit and proper" persons as defined by law. This precludes persons convicted of certain serious crimes from operating as licensees or managers of rented properties. Both proposed licensing schemes have the following conditions attached. There are penalties for non-compliance as outlined above:

- Proper tenancy agreements for tenants and a restriction on the ability to create new tenancies to the licensee or managing agent

- Tenancy deposits lodged with approved schemes and notified to tenants
- Rent collection may only be carried out by licensee or managing agent
- Maximum permitted levels of occupation not exceeded
- Licence holder details notified to tenants and the Council
- Emergency contact details provided to tenants

For those landlords or managers who have given the Council cause for concern regarding tenants rights, a licence condition may require that person to achieve competency in property management through membership of an approved Accreditation Scheme e.g. London Landlord Accreditation Scheme (ATLAS) or similar approved scheme.

More specific comments from those who supported the proposals:

In addition to comments within the above themes, some supporting respondents made specific comments or suggestions. These have been considered by the Private Housing Team who have provided the following responses:

5. Penalties for non-compliance need to be high enough to make an impact. Many landlords with multiple properties will have enormous capital and the fines do not look substantial in comparison.

The Council's Cabinet recently approved the implementation of Civil Financial Penalties of up to £30,000 for serious offences. Criminal prosecutions will be taken for the most severe offences for which fines upon conviction are unlimited. Income from Civil Financial Penalties will be retained by the Council to help fund enforcement services. The introduction of licensing schemes will provide resources for targeted and robust enforcement. Landlords and agents who are convicted of relevant offences can be issued with a Banning Order preventing them for operating in the private rented housing market and be placed on a Rogue Landlord register.

6. Why is it only for selective parts of Hackney?

The proposal for selective licensing is a three-ward pilot scheme, which will be monitored in terms of its effectiveness in raising standards and improving housing conditions. Any selective licensing scheme covering more than 20% of the housing stock requires approval from the Secretary of State and to obtain approval a robust body of evidence to demonstrate effectiveness is required. The three-ward pilot scheme will gather and assess that evidence and if it proves to be robust the Council may consider making application to the Secretary of State to extend the scheme. The three wards chosen are those with the estimated highest rates of serious hazards and disrepair as evidenced by the recent Stock Modelling Project commissioned by the Council from the Building Research Establishment.

7. Proposed licensing conditions needs further clarification

The proposed licensing conditions in the consultation document were summarized for brevity. The final proposals will contain more detail to avoid any ambiguity.

8. Professional Managing Agents who are registered with HMRC have already passed a fit and proper person test and should be "passport" through the fit and proper person test.

We think this comment is well made. However, Local Authorities must have regard to section 66 of the Housing Act 2004 when determining fit and proper person status.

9. *References to waste management need to be more emphasized and specific.*

These comments are duly noted. We will work with landlords and managing agents within any licensing scheme(s) to improve waste management in licensed properties.

Comments from those who opposed the proposals

Many more comments were given by those who opposed the proposals compared to those who supported them. Comments from this group fell into the following themes:

- 10. The costs are too high and will be passed on to tenants*
- 11. Low confidence/doubt the scheme will achieve its aim*
- 12. A feeling the scheme is unfair on good landlords*
- 13. The process is too bureaucratic (often mentioned alongside main themes above)*
- 14. The scheme is too expensive (often mentioned alongside main themes above)*

The Council's responses to these opposing comments

- 10. The costs are too high and will be passed onto tenants*
- 14. The scheme is too expensive (often mentioned alongside main themes above)*

The estimated fees are being set at a level that balances the cost of setting up and running the proposed schemes with the lowest impact on the housing market. The fees cover the entire five-year duration of the schemes and when calculated at a weekly rate are such that they are not unaffordable when compared with rental income. The schemes do not impose additional costs in terms of compliance with housing standards as the standards apply under existing legislation already. The licensing scheme provides a more effective regulatory framework and brings much of the compliance requirements into one place and aims to prevent rogue landlords undermining good landlords.

We are considering the practicalities of applying a reduced licence fee for landlords/agents who can demonstrate competency in property management through membership of an approved Accreditation Scheme e.g. London Landlord Accreditation Scheme (ATLAS) or similar approved scheme.

We are considering the practicalities of applying a reduced "Early-bird" licence fee for full applications received during a fixed period in the early stages of the schemes.

- 11. Low confidence/doubt the scheme will achieve its aim*

The schemes are being designed to include on-line application and payment facilities to provide an easy application process. Any scheme will be subject to a robust communications and publicity campaign. All properties within the scope of the schemes will receive an inspection either before the licence is issued or during the five year duration of the scheme. Properties found to be non-compliant with requirements will be referred for enforcement. Enforcement powers include Civil Financial Penalties, application to the first tier tribunal property chamber for a Rent Repayment Order requiring the landlord to re-pay up to twelve months previous rent. Criminal prosecution proceedings will be taken for the most serious offences. Landlords convicted of certain offences can be issued with a Banning Order preventing them from letting or managing properties in England and can have their details placed on a Rogue Landlord database.

13. The process is too bureaucratic (often mentioned alongside main themes above)

The schemes are being designed to include on-line application and payment facilities to provide an easy and simple application process.

More specific comments from those who opposed the proposals:

In additions to comments within the above themes, some respondents who opposed the proposals made specific comments or suggestions. These have been considered by the Private Housing Team who have provided the following responses:

15. The proposals are a waste of time and money and of no benefit to any one, the worst anti-social behaviour come from the council estates

Whilst licence conditions to combat anti-social behaviour (ASB) are a feature of licensing schemes, ASB is not the main driver for our proposals. The proposals are mainly driven by poor housing conditions in the private rented sector. Our most recent research shows there are significant problems with poor housing conditions in both the HMO and non-HMO sectors. The Council has effective services for combating ASB emanating from social housing, which falls outside the scope of these proposals.

16. The proposals are a further tax on people like myself and the government recently applied further taxes on landlords. I will be selling all of my properties.

The estimated fees are being set at a level that balances the cost of setting up and running the proposed schemes with the lowest impact on the housing market. The fees cover the entire five-year duration of the schemes and when calculated at a weekly rate are such that they are not unaffordable when compared with rental income. The schemes do not impose additional costs in terms of compliance with housing standards as the standards apply under existing legislation already. The licensing scheme provides a more effective regulatory framework and brings much of the compliance requirements into one place and aim to prevent rogue landlords undermining good landlords.

We are considering the practicalities of applying a reduced licence fee for landlords/agents who can demonstrate competency in property management through membership of an approved Accreditation Scheme e.g. London Landlord Accreditation Scheme (ATLAS) or similar approved scheme.

We are considering the practicalities of applying a reduced “Early-bird” license fee for full applications received during a fixed period in the early stages of the schemes.

17. The consultation does not mention how much it would cost to implement these schemes.

The indicative costs of implementing the schemes are given in Appendix 6 of the in-depth consultation document. More detailed costs will be submitted for Cabinet approval when the final proposals are recommended.

18. *The consultation does not outline how the fee structure was created.*

The fee structure will be determined by the costs of implementing the final proposals spread across the estimated number of licenses to be issued under the schemes.

19. *Hackney is in no position to oversee these schemes. Where in the consultation or in the Councils mandate does it state that the Council has the right to intervene to this extent in the Landlords rights to his/her property?*

The legal powers to introduce Additional Licensing schemes for Houses in Multiple Occupation are contained in Part 2 of the Housing Act 2004 and more specifically sections 55 and 57 of that Part. The legal powers to introduce Selective Licensing schemes are contained in Part 3 of the Housing Act 2004 and more specifically sections 80 and 81 of that Part. Consideration of the introduction of discretionary licensing schemes for the private rented sector was a manifesto commitment of the current Mayor of Hackney.

20. *Leasehold properties are not covered and there is even less recourse, other than via the legal system, for freeholders who do not maintain properties.*

Local Authorities do not have the legal powers to introduce licensing schemes for owner-occupied (long-leasehold) properties, only privately rented properties.

21. *The imposition of a maximum number of occupants will penalise those that need it most i.e. large families.*

Maximum occupancy levels are already imposed under the Council's adopted HMO standards, section 139 of the Housing Act 2004 (for non-licensed Houses in Multiple Occupation (HMOs)), and the crowding and space hazard under Part 1 of the Housing Act 2004. There is also a national minimum space standard for sleeping rooms in non-HMOs and the Government is proposing to extend that to licensed HMOs. Any requirement to reduce occupancy levels under the proposed schemes would not apply to tenants in situ at the time of the action, only to new lettings subsequent to the declaration of the scheme(s).

22. *A licence condition is proposed regarding measures to tackle anti-social behaviour. As a general rule, private landlords are not responsible for the anti-social behaviour of their tenants.*

For Additional HMO Licensing schemes, section 67 of the Housing Act 2004 states, and for Selective Licensing schemes Section 90 of the Housing Act 2004 states, that conditions may, in particular, include (so far as appropriate in the circumstances) conditions requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house. Any action required under these conditions will be *reasonable* and *practical*.

23. *Most of the additional measures being introduced are covered by existing legislation and enforcement powers, which are not being implemented.*

The Council's private sector housing team responds to complaints of poor housing conditions from tenants and takes enforcement action where appropriate and this service will continue. While this has brought improvements in housing conditions, the increase in the size of the PRS over recent years and changes in demand mean it is no longer the most efficient service model. Relying on tenants' complaints is inefficient, because then service delivery is not based on risk but dependent upon tenants' willingness and ability to lodge a service request. A significant proportion of HMO occupants are transient and may have limited or no knowledge of the law governing landlord/tenant relations or housing conditions. They are often unaware of their rights or alternatively may be reluctant to exercise them in order to maintain their relationship with their landlord or managing agent, or for fear of retaliatory eviction. With nearly 34,000 dwellings in the PRS (30%), the existing enforcement model cannot deal with the problem parts of the sector in a focused, risk-based way and within reasonable timescales. In order to protect and improve the health and safety of these residents and improve housing conditions and management in the PRS, the Council needs to take a more proactive approach to enforcement.

24. Excluding social housing from the licensing shows discrimination and targeting of only one sector.

Local Authorities do not have the powers to introduce licensing schemes for social housing, only privately rented properties.

25. Selective licensing of rented properties including even single person tenancies in the three wards seems totally unnecessary.

The proposal for selective licensing is a three-ward pilot scheme, which will be monitored in terms of its effectiveness in raising standards and improving housing conditions. The three wards chosen are those with the estimated highest rates of serious hazards and disrepair as evidenced by the recent Stock Modelling Project commissioned by the Council from the Building Research Establishment. We also believe the schemes will provide a level playing field and fairer market conditions for good landlords by enabling more effective enforcement and penalties for the bad landlords who undermine them.

Individual Letters in support

A total of 17 letters were received in support of the proposals (although two of these were about poor housing conditions and one letter was generally unclear – all of which were handed in along with other letters of support).

Hackney Citizens (Citizens UK)

We thank Hackney Citizens for their support for the recommended licensing schemes. We believe the introduction of the schemes, over time, will go a considerable way to lessening the extreme conditions their members report with regard their living conditions. Their support in engaging with younger people at the Cardinal Poll School event was very positive.

Deputy Mayor for Housing and Residential Development (Mayor of London)

We thank the Deputy Mayor for his strong support for both schemes. The Mayor of London's *London Boroughs Partnership* has been a very helpful addition to PRS regulation in London, bringing more consistency and support to regulation across the Boroughs. Hackney has already signed up to the Mayor of London's Rogue Landlord and Agent checker, which we believe will be a useful tool for tenants and prospective tenants as well as in the administering of the new licensing schemes by identifying rogue landlords and agents through the licensing process.

Letter from the Hackney Green Party

We thank Hackney Green Party for their support for the schemes and also for some helpful comments to which we have the following responses.

i. The Selective Licensing Scheme should cover the whole of Hackney

The proposal for selective licensing is a three-ward pilot scheme, which will be monitored in terms of its effectiveness in raising standards and improving housing conditions. Any selective licensing scheme covering more than 20% of the housing stock requires approval from the Secretary of State and to obtain approval a robust body of evidence to demonstrate effectiveness is required. The three-ward pilot scheme will gather and assess that evidence and if it proves to be robust the Council may consider making application to the Secretary of State to extend the scheme. The three wards chosen are those with the estimated highest rates of serious hazards and disrepair as evidenced by the recent Stock Modelling Project commissioned by the Council from the Building Research Establishment.

ii. Having two schemes risks creating a two-tier system whereby one bad landlord in one part of Hackney could be held to a lower standard in some parts of Hackney than in others.

The comments in response to (i) above apply but we would also add that the proposals for licensing are being made alongside a parallel proposal to undertake intelligence-based targeted enforcement for poor housing not covered by the pilot scheme.

iii. A call for greater enforcement

The Council's Cabinet recently approved the implementation of Financial Civil Penalties of up to £30,000 for severe offences. Criminal prosecutions will be taken for the most severe offences for which fines upon conviction are unlimited. Income from Financial Civil Penalties will be retained by the Council to fund enforcement services. The introduction of licensing schemes will provide resources for targeted and robust enforcement. Landlords and agents who are convicted of relevant offences can be issued with a banning order preventing them from operating in the private rented housing market and placed on a Rogue Landlord register.

The licensing schemes provide a more effective regulatory framework and bring much of the compliance requirements into one place. The two schemes will be underpinned by new dedicated enforcement resources to implement Civil Penalties, Rent Repayment Orders, Banning Orders and criminal prosecutions for the worst offenders.

We note with interest the suggested the idea of using a discount on the license fees for landlords who offer longer tenancy agreements to their tenants to encourage longer tenancies in the borough. Hackney has long campaigned for more secure tenancies and we will consider whether this idea is practical in light of an up-front fee for a five-licence and the resources needed to monitor compliance with the longer tenancies condition.

National Approved Letting Scheme (NALS) Consultation Response

We thank NALS for their very detailed responses and helpful suggestions. We believe we have covered all their points in this report and will also be replying to them individually.