



National Landlords Association:

Response to Sefton Council's proposal for Selective and Additional Licensing

June 2017

Introduction

1. The National Landlords Association (NLA) exists to protect and promote the interests of private residential landlords.
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).
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 Sefton 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 Sefton, the NLA's position 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 Sefton 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?
 - The council says it wishes to use licensing to regulate landlords – this is a miss use of power by the council in relation to licensing.

General Feedback on Proposals

6. The ability to introduce licensing is a powerful tool. If used correctly by Sefton Council, it could resolve specific issues. The NLA believes that this proposal should be delayed until the council provides a map of how it will deliver these.
7. The NLA believes that any regulation of the private rented sector needs to be balanced. 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 other schemes have not been mentioned in this proposal.

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 licensing scheme. This moves the problems around Sefton, but does not actually help the tenant, who could become lost within the system. There is no obligation within 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. 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.
11. Sefton 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 Sefton 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.

12. 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 Borough. The same applies to waste and ASB issues. The tenant would then be guilty under the reference condition of licensing of noise nuisance. An accusation from which has not been tested in a court, but a guilty judgement has been given.
13. 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. This has been demonstrated in Liverpool. If Sefton were to take a more erudite approach with regard to nuisance issues and developed a separate policy to tackle criminal landlords, this would be more applicable and more likely to result in resolving the issues.
14. 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.
15. 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 Sefton Council to focus on targeting the criminal landlords – where a joint approach is required.