National Landlords Association:

Response to Oldham Metropolitan Borough Council proposal for Selective Licensing

September 2014
1. The National Landlords Association (NLA) exists to protect and promote the interests of private residential landlords.

2. With more than 22,000 individual landlords from around the United Kingdom and over 100 Local Authority associates, we provide a comprehensive range of benefits and services to our members and strive to raise standards within the private rented sector.

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.

Overview

4. The National Landlords Association (NLA) would like to thank Oldham Metropolitan Borough Council for providing the opportunity to comment on licensing.

5. The ability to introduce Licensing is a powerful tool. If used correctly by Oldham Council it can resolve specific issues. The NLA has supported many Local Authorities when the introduction of a licensing scheme has been introduced, as it will benefit landlords.

6. The legislation in relation to Selective Licensing clearly states that the introduction of licensing has to be evidence based. This is either through anti-social behaviour or low housing demand. The evidence that is presented does not support the argument made, this will be developed in later sections.

7. Following the judgment from the judicial review of Thanet Councils introduction of Selective Licensing the question how much resources will the council be putting in per year of the licensing proposal,
   a) What additional resources will the council be committing to tackle anti-social behaviour as licensing alone will not resolve the issues – Thanet Council incurred a cost of £500,000.00

8. We also wish to understand how the council believes increasing costs will increase demand. In an area of low demand how will increasing costs increase demand. This poor understanding of economics worries the NLA.

9. In the Government procedural document - 'Approval steps for Additional and Selective Licensing Designation in England', it states that in order to apply for Selective Licensing a local housing authority "will have to show how such a designation will be part of the overall strategic borough wide approach, and how it fits with existing policies on Homelessness, Empty homes, Regeneration and Anti-social behaviour." Could you provide the NLA with a copy of this strategy? How will it benefit landlords and what specific resources will the council allocate in the specific areas? What additional resources will be allocated?

10. This condition is also highlighted in the 'Explanatory note to Housing Act 2004, paras 26-28', which states: "In order for a scheme to be approved, such a selective licensing scheme must be shown to be
co-ordinated with an authority’s wider strategies to deal with anti-social behaviour and regeneration.” Could you provide the NLA with a copy of these strategies?

11. One of the dangers of the proposed Selective Licensing scheme could be the costs are passed through to tenants, thus increasing cost for those who rent in an area, along with the cost of the council. Thus increasing costs to Oldham residents especially the most vulnerable. This could be seen as increasing the cost of living for residents of Oldham.

12. The cost of the license will be passed through to tenants. Thus increasing the cost for those who wish to rent in Oldham.

13. We have concerns on how the council has worked out yields within the private rented sector. The ways that the council has done this is wrong and is not an accepted method.

14. What actions have the council taken in light of Hemming v Westminster Council case into account, and the European Union Licensing directive on which the case was based in relation to costs?

15. The NLA does not believe that increasing costs to landlords and subsequently tenants will remove low demand. Power and Mumford (1999) in their book The Slow Death of Great Cities, set out the nature of the problem, demonstrating how ‘low-demand’ and vacancies at the neighbourhood level arose from a set of related features of housing, population and economy:

- Structural weaknesses and chronic unemployment in some regional economies;
- Excess housing provision in relation to demand in the city or sub-region;
- Poor management of some neighborhood’s;
- Abandoned properties, difficulties in letting or selling, housing taken up by the most desperate households;
- Disorder, weakening of informal social controls, despair, leading people to leave, and;
- A high proportion of vacant dwellings exacerbating management problems & conditions.

The NLA does not believe that the case provided by the Council demonstrates how discretionary licensing will combat the caused identified above. Consequently, the Association believes that Oldham Council has failed to make a comprehensive case addressing the question of how it will be addressing low demand.

16. Areas that have seen the introduction of selective licensing have seen mortgages withdrawn, (Nat West and RBS), and costs for tenants rise. This will have an impact on tenancies.

17. Oldham council by proposing introducing licensing are implying that there is low demand which could push investment away.

18. The council should not mistake the crash in house prices following the banking crisis in 2007/8 with low house pricing. The current trend is for house prices to have rebounded, to costs circa 2006/7 before the crash.
In addition to young professionals and students, migrants make up an important part of the shared housing market in the UK. For obvious economic reasons and for flexibility, shared housing is an important source of housing for these groups. However, demand is not static. Recent research suggests that emigration out of the UK by economic migrants is increasing\(^1\). Thus the impact of these policies will have an impact on the lower economic groups within Oldham. What measures are the council taking to mitigate the issues.

The use of Selective Licensing which is landlord/property based, will not resolve many of the issues which are caused by tenants – they are tenant based issues. Landlords have limited powers in addressing these as any direct action by the landlord to address issues such as ASB can be stated as being harassment by the tenant.

The introduction of Selective Licensing is not a solution in itself; resources need to be allocated by Oldham Council as well. Other councils who have introduced licensing schemes that have not allocated the adequate resources to resolve the problems still have the problems. We have reservations with the proposals as no new resources have been identified.

One of the aims of the council is to increase tenancies length; the policy being proposed by the council will have the direct opposite and decrease the length of tenancies. The ending of tenancies

Can the council provide a copy of the equalities diversity impact assessment for Selective Licensing?

The NLA believes that any regulation of the private rented sector needs to be balanced. Additional regulatory burdens must focus on increasing the professionalism of landlords, the quality of private rented stock and driving out the criminal landlords – who blight the sector. It should be the shared objectives of all parties involved to facilitate the best possible outcomes for landlords and tenants and as such good practice should be recognised and encouraged in addition to the required focus on enforcement activity. In light of the current economic climate. The last thing good landlords need is regulations or licensing schemes; particularly where there appears to be limited direct and immediate benefit to landlords or tenants.

The housing market suffered a collapse in 2007. This has meant that many who bought houses prior to the collapse could be subject to negative equity, thus preventing them from selling. Consequently renting the property out is the only option, if they have to move due to their job\(^7\). Low interest rates have supported many people, during the banking crisis that hit UK housing market. With an increase in interest rates predicted by many, include Mark Carney (Governor Bank of England). An increasing in running costs courtesy of the Council’s licensing fees is not only inappropriate, but could be a hammer blow to the housing market in Oldham.

The NLA disputes the Council’s use of house price statistics in justifying the case for licensing of private rented accommodation. To compare house prices at the height of the housing bubble and the price after the bubble bursts, without taking into account the collapse shows that the

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\(^1\) Finch et al, ‘Shall We Stay or Shall We Go? Re-migration trends among Britain’s immigrants’, IPPR, 2009

consultation is not balanced for the proposed introduction of Selective Licensing. This does not demonstrate a thorough analysis of the local housing market, or a credible use of economic data.

27. The low demand for housing is a consequence of the lack of job opportunities and the relatively poor options available to people in Oldham. This is not only a North South divide, but a sub-region divide. Growth in neighbouring areas is outstripping Oldham. To increase demand for housing there has to be driver, this must be rooted in wider demand side factors and competition.

28. The structural failure of housing in north of England (Oldham) saw the government launch the housing market renewal programme in 2002, one of the reason cited was due to low demand.

29. The ‘Northern Way’ think tank highlighted that there were 400,000 unsustainable’ dwellings in need of demolition, not on the basis of poor condition, but rather their location and type\(^3\). The national audit office\(^4\) estimated 880,000 homes in England were affected by low demand.

30. Pathfinder projects were set up to build new communities, (estimated cost £2.2 Billion) and to fix failing housing markets in the north of England\(^5\).

31. Thus the NLA would like to understand the Council’s reasoning. Given that successive governments have attempted to address the issue of low-demand, using significant resources to underpin structural causes, it seems unreasonable to contend that licensing of private property will succeed.

**Resources**

32. A key concern over the creation of licensing schemes is the question of Oldham Borough Council’s resources. It is well known that in this time of austerity, Local Authorities are being asked to do more by central government with fewer resources. The administration of a Licensing scheme is costly in terms of both officer time and a financial commitment. This is especially true around the additional resources that the council will have to deploy around issues such as anti-social behaviour. The passing of Selective Licensing by Local Authorities too often does not have the support that is required to resolve the issues. With the decisions in Thanet’s Judicial Review and Hemming v Westminster Council the NLA would like to know what additional resources have been committed and how they will be paid for.

33. The increase in the activity will increase the demand on the council what provision has the council made and how much additional resources has the council allocated?

34. At a time when Oldham Borough Council is reducing department budgets, we believe that the remaining resources should be allocated to targeted enforcement against the worst, criminal landlords. An example, in 2009 Swansea City and Borough Council spent approximately £272,000 on its mandatory and discretionary licensing schemes (of which approximately £243,000 came from

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\(^4\) National Audit Office, Department for Communities and Local Government: housing market renewal, 2007, page 10

\(^5\) [http://www.insidehousing.co.uk/pathfinder-delays-hit-stock-values/6513918.article](http://www.insidehousing.co.uk/pathfinder-delays-hit-stock-values/6513918.article)
landlords paying the application fee). This caused a shortfall of £29,000 for the Local Authority and we would argue this money could have been better spent employing additional Environmental Health Officers to target sub-standard and poorly-managed properties. How many additional staff will Oldham be employing and how much additional resources has the council budgeted for per year over the next five years?

35. Leeds City Council through the process of introducing Selective Licensing incurred a cost of around £100k to the taxpayers of Leeds. We have already mentioned Thanet Council incurred a cost of £500,000.00. Newham has allocated money from the general fund for enforcement and received money from central government, how much money has the council envisaged will be required for these new services?

36. The introduction of Licensing will require resources to be allocated to the area it works i.e. tenant information officers, landlord liaison officers, anti-social behaviour staff, community workers and enforcement staff. This will create added cost to Oldham Borough Council which cannot be met through licensing fees. The NLA would be willing to work with the council with the provision of Tenant Information Packs, Assured Short Hold Tenancies, support services for landlords and Green Deal packages to improve the efficiency of the homes in the area. But this would need to be complemented by resources by the council to tackle the issues the council has highlighted.

37. How has the council budgeted for a national register, (if introduced after the next election) and a refund to landlords is required, how much money is the council setting aside for this?

38. Many other councils who have introduced licensing fail to inspect properties and seek out those that have not registered. In Newham and other Councils who have cited similar cases, they have taken on additional staff how many additional staff is the council proposing to take on?

39. Newham Council have spent over £4 million which has resulted in a prosecution rate of 0.5% of landlords. Is this the best use of money? A targeted approach would be better value for the taxpayer.

40. The changes to welfare allowances and the reduction in housing couples with a rising rents, how much resources has the council allocated to help vulnerable residents with increased costs due to these policies?

41. Clarification on the council's policy, in relation to helping landlords when a Section 21 notice is served is required, with the proposed Selective Licensing scheme? It would be useful if the council could put in place a guidance document which would outline the council's position in helping landlords remove tenants who are causing anti-social behaviour.

42. The NLA would like further explanation on how the council will work with landlords to mitigate the tenants that leave a property early but where they still have a tenancy, thus the tenant is liable for

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6 Response from Swansea City and Borough Council on 31 March 2010 to an NLA request under the Freedom of Information Act
7 http://www.publications.parliament.uk/pa/cm201314/cmselect/cmcomloc/50/5006.htm#a13
council tax but the property is empty? If a landlord has challenges with a tenant, how will the council help the landlord?

43. Of even more concern is the fact that the Council has failed to provide a road map on how licensing will interact with other Council polices of renewal in the city. Such a lack of synergy is disconcerting and will further affect investor confidence, potentially destabilising demand to an even greater extent – thus negating any potential positive impact of the policy.

44. A social economic restructure has taken place in the United Kingdom over the last 50 years which has created a divide between the North and South (primarily centred around London). In the last 10-15 years Oldham has also had the challenge of a resurgent Manchester to compete with on a sub-regional basis. Manchester is growing quicker than the surrounding area which will add to low demand in Oldham, as Manchester becomes more attractive to investment and employers. These changing conditions are already reflected in average incomes across the regions. This will impact the options for housing.

**Powers/enforcement**

45. Licensing can have a role, but Licensing in itself will not resolve the issue; the use of enforcement where the law is being broken is required. This requires an allocation of resources; can the council provide a breakdown of resources they will be allocating for the five year period of the license?

46. Oldham Borough 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 dealing with the problem or problems in question”. The use of these powers as listed below give a Oldham Borough Council the ability to tackle many of the issues that they wish to overcome in all the 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 confiscate equipment (sections 8 and 10);
   i) The power to require rubbish to be removed from land under section 2 – 4 of the Prevention of Damage by Pests Act 1949.

47. The current proposals by the government in Parliament include reducing the threshold from which complaints can be generated that can be classified as anti-social behaviour. This would allow for the nuisance of one person to be classified as antisocial behaviour, this includes someone reading the
bible out in the street. As this will increase the ability of neighbours to complain how much additional resource has the council allocated to tackle these issues?

48. With references required for tenancies and the threshold being reduced this could lead to delays for prospective tenants, along with people having difficulty getting a tenancy. Could you provide the equalities and diversity assessment that the council has undertaken into referencing? What communication has the council had with RSL’s being able to provide referencing along with social housing providers that neighbour Oldham?

49. What provision is there for people who are first time renters who will not be able to get a reference?

50. This change proposed by the council will reduce secure tenancies and increase the cost for tenants; it could also increase homelessness (how will they get a reference) with people being unable to secure a tenancy due to references.

Processing the license

51. The paperwork of a License can be reduced; the rationalisation of processing of licensing forms needs a review. The requirement to complete a form for each property needs to be reviewed. The process can be simplified along with costs that are incurred by Oldham Borough Council and to the landlord. We would be willing to work with the Council on how this can be done.

52. A failure of Oldham Borough Council to have joined up standards between departments is also a problem for landlords. The Planning Control Departments often has different standards to that of the Environmental Health Departments, which would issue the Licence. This causes problems for landlords and creates a bizarre situation where landlords will not be complying with one of the Councils departments to comply with another. How will the council be rectifying this?

Waste

53. One of the many reasons raised by Oldham Borough Council has proposed for the introduction of Licensing is due to litter and fly-tipping. Landlords will outline to tenants at the start of the tenancy their obligations in relation to waste and what they have to do to comply with in relation to waste disposal. This in many cases this is the waste services provided by Oldham Borough Council, if the tenant does not comply with the waste collection then the tenant is responsible and the Council can take action against the tenant – Licensing is not the appropriate regulation to address this issue.

54. In many situations fly-tipping or excessive litter is due to the tenant not understanding the waste service. The non-collection of waste/recycling by the Council can increase fly-tipping and litter in an area. The non-collection of recycling due contamination within the recycling bin will result in the tenant having to dispose of the recycling/waste; this can lead to fly-tipping or overflowing bins/litter. Neither of these can be resolved through Licensing. What additional resources will the council allocate to resolve this issue as the current resources do not seem adequate?
55. Often when tenants near the end of the contract/tenancy and they are moving out they will dispose of excess waste in a variety of methods, this does include putting it out on the street for the Council to collect. A waste strategy for the collection of waste at the end of term needs to be considered by local authorities which have further education establishments. This is made worse when Council will not allow landlords to access the municipal waste collection points. The council does not have a strategy in place to tackle the problem of waste from housing that is rented out and appropriate waste collection bins provided for the accommodation. The NLA would be willing to work with the council in developing this strategy.

Legislation

56. There are currently over 100 pieces of legislation that a landlord has to comply with. An understanding of the laws that the private rented sector has to comply with can be misunderstood. A landlord is expected to give the tenant a “quiet enjoyment”, failure to do so could result in harassment case brought against the landlord. Thus the law that landlords have to operate within is not fully compatible with the aims that the council wish. A landlord keeping a record of a tenant can be interpreted as harassment.

57. The ability for a landlord to enforce the law against the tenant that is causing anti-social behaviour is through the civil court where the burden of evidence is different to that of a criminal court. Although this is lower, the length of this process will often exceed the period of the tenancy. Why will a landlord continue to prosecute a person who is no longer a tenant? A landlord also risks the tenant causing damage to their property if they start legal proceedings against the tenant. Equally if a landlord has started a process, this will not appear on any council document, thus how will the council expect to measure this? This could cost the council additional resources in management, of landlords sending in letters and correspondents. His will not be able to be recovered within the licensing fee.

58. The introduction of licensing is to tackle specific issues, many of these are tenant related and not to do with the property/landlord. Thus the challenge is for local authorities to work with all the people involved not to just blame one group – landlords. The NLA is willing to work in partnership with Local Authorities and can help with tenant information packs, assured short hold tenancies, Green Deal and accreditation of landlords, along with targeting the worst properties in an area.

59. 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 will deliver results immediately – why does the council wish to do this over five years. A targeted approach on a street by street approach, targeting the specific issues and joined up between agencies, the council, community groups, tenants and landlords will have a greater impact.

60. 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 would be to identify issues and assist landlords to develop the required knowledge and skills to improve the
sector through schemes such as the NLA Accredited Landlord Scheme. This can allow Oldham Borough Council to target the criminal Landlords – a joint approach is required.

61. The NLA would also like to see Oldham Borough Council to develop a strategy that can also include action against any tenants that are persistent offenders. These measures represent a targeted approach to specific issues, rather than a blanket licensing scheme that would adversely affect the professional landlords whilst still leaving the criminal able to operate under the radar.

62. You propose that landlords will need to get references, there are many legal conditions that have to be complied in filling in a reference, and equally you cannot be negative in a reference. Thus many people will not be able to be housed which will increase the costs on the council. Equally will the council be able to provide references for those that were in social housing?

\section*{Anti-social behaviour}

63. The NLA would also like to see Oldham Borough Council to develop a strategy that can also include action against any tenants that are persistent offenders. These measures represent a targeted approach to specific issues, rather than a blanket licensing scheme that would adversely affect the professional landlords whilst still leaving the criminal able to operate under the radar.

64. The council admits that it is impossible to directly link all anti-social behaviour to the private rented sector, could the council provide mapping similar to that in the consultation document for social housing and owner occupied to compare and contrast?

65. The data that has been presented does not distinguish between owner occupied, social or private rented. They are based on perception – not evidence? In the same document you claim not to know where all the private rented sector is, thus how can you claim problems emanate from one sector of housing over the other?

66. The English housing survey says the PRS represents circa 18%, yet you claim it represents circa 12%, could you explain the difference. This appears that there is a shortage of rented housing.

67. Could the council provide a breakdown of data relating to anti-social behaviour based on tenure?

68. Could the council provide a breakdown of the ASB? Could this also be subdivided into anti-social behaviour that is housing related?

69. The length of time that a landlord will take to prosecute a tenant and cost if prohibitive to landlords. A course of action that landlords have taken in other areas where Licensing has been introduced which requires referencing is the landlord only granting a short tenancy i.e. 6 months and when a landlord is informed of anti-social behaviour, terminating the tenancy. Thus making tenancies less sustainable.
70. A person who’s tenancy has been shortened or expired due to anti-social behaviour but no prosecution has been made would still have a perfect reference. Why would a landlord continue a prosecution of a tenant who has moved out?

71. How will a landlord be able to get a reference from someone who is being housed by a third party i.e. the Home Office (refugee)?

**Conclusion**

72. The NLA would like to see Oldham Borough Council present what will be achieved by the introduction of Licensing along with a clear outline of the services that will and will not be introduced along with a timeline.

73. We would like clarity on the anti-social behaviour, costs and resources being allocated by Oldham Borough Council. Recent court cases show that the council will have to commit resources and that these need to be targeted to resolve the issues that the council highlight.

74. The aims of the Council has i.e. removing nuisance, ASB, waste etc. can be achieved through existing legislation that Licencing will not and cannot achieve. The risk of introducing Licencing is likely to increase the costs for those, along with not resolving the problems that the Council wishes to resolve. Thus a more erudite approach to dealing with nuisance and a separate policy to tackle the criminal landlords would be more applicable in resolving the issues.

75. Again, the NLA would like to thank Oldham Borough Council for the opportunity to respond to this consultation and hope you find our comments useful.