



National Landlords Association

Response to Woking Council's proposal for selective licensing

April 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 72,000 individual landlords from around the UK. We provide a comprehensive range of benefits and services to our members and strive to raise standards within the private rented sector.
3. We seek 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. We would like to thank Woking Council for providing the opportunity to comment on the selective licensing consultation.

Executive summary

5. Having considered the evidence presented and having undertaken our own evaluation of the circumstances faced by the residents of Woking, our position can be summarised by the following brief points:
 - Landlords have very limited authority to deal with matters related to antisocial behaviour.
 - Woking Council fails to provide evidence of how selective licensing will improve housing, outside the powers that the council already has.
 - The country is in the middle of a housing crisis, yet the council is going to make it more difficult for those on lower income to access property.
 - A landlord who receives a complaint about a tenant will move to end the tenancy because this protects the landlord's licence. This will increase the turnover of tenants, which is the direct opposite of the council's policy aims.
 - The scheme will lead to the further displacement of problem tenants in Woking.
 - The council will need an approach to prevent malicious antisocial behaviour claims that could potentially result in tenants losing their tenancies.
6. We contend that the flaws outlined above in the process and proposals must be rectified before this application is progressed.
7. Furthermore, the council's new powers to issue civil enforcement notices will resolve the issues quickly and effectively. This change in the law gives the council the powers required to solve the problems immediately and improve property standards.
8. We believe that any regulation of the private rented sector needs to be balanced. Additional regulatory burdens should focus on increasing the professionalism of landlords, improving the quality of private rented stock and driving out criminal landlords who blight the sector. These should

be the shared objectives of all parties involved to facilitate the best possible outcomes for landlords and tenants alike. As such, good practice should be recognised and encouraged, in addition to the required focus on enforcement activity. This is not the case here.

Antisocial behaviour

9. In relation to the reduction of antisocial behaviour and the authority that landlords have 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 antisocial behaviour in one of their properties is to seek vacant possession. 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 rehoused (ref: Homelessness Guidelines cl 8.2). Crucially, no affected party needs to offer evidence against an antisocial householder, thereby reducing the risk of intimidation, harassment and ultimately unsuccessful possession claims. The issue of antisocial behaviour will thus not appear as a factor in the repossession. However, in providing evidence to support a licensing application, the document should clarify for respondents the position of all the relevant issues under landlord and tenant law.
10. Landlords are not usually experienced in antisocial behaviour management and do not have the professional capacity to resolve tenants' mental health issues or drug and alcohol dependency. If there are allegations about a tenant causing problems (e.g. antisocial behaviour) and a landlord ends the tenancy, they will have dispatched their obligations under the selective licensing scheme, even if the tenant has any of the above issues. This moves the problems around Woking but does not help the tenant who could become lost within the system. There is no obligation within selective licensing for the landlord to solve the antisocial behaviour allegation. Rather, a landlord has a tenancy agreement with the tenant and this is the only thing they can legally enforce.
11. This was reaffirmed in February 2017 when the House of Commons library published the briefing paper 'Anti-social neighbours living in private housing (England)'. This explains: 'As a general rule, private landlords are **not** responsible for the anti-social behaviour of their tenants.'¹
12. Woking 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 Woking with the problem or problems in question.' The council already has powers that it can use to rectify the problems and, hence, the ability to tackle many of the issues that it wants to overcome in all parts of Woking. These include the following:
 - criminal behaviour orders
 - crime prevention injunctions

¹ <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01012>

- interim management orders
- empty dwelling management orders
- improvement notices (for homes that do not meet the Decent Homes Standard)
- directions regarding the disposal of waste (e.g. section 46 of the Environmental Protection Act 1990)
- litter abatement notices (section 92 of the Environmental Protection Act 1990)
- fixed penalty notices or confiscation of equipment (sections 8 and 10 of the Noise Act 1996)
- notices to remove rubbish from land (sections 2–4 of the Prevention of Damage by Pests Act 1949).

These powers are complemented by civil penalty notices, which the council has the power to use.

13. At the start of a tenancy, the landlord outlines to the tenant their obligations in relation to noise, just as they do with waste, compliance with relevant laws and respecting their neighbours. The landlord can only manage a tenant based on the contract for living in the rented property, not for activities in the street or in neighbouring streets. In the case of a noise complaint, the council would need to inform the landlord that the tenant's noise is excessive. 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 end the tenancy based on an unproven allegation. This does not solve the problem, but rather moves it around the borough of Woking. The same applies to waste and antisocial behaviour issues. The tenant could be found guilty without having faced a trial. Under the reference condition within selective licensing, a guilty judgement could be given without the accusation having been tested in a court and that could result in the tenancy being ended.
14. The risk of introducing licensing is that it is likely to increase costs for those renting while not resolving the problems that the council wants to target. It will probably move the issues around the borough so they are not dealt with but instead displaced to new landlords. A more applicable and effective solution would be for the council to take a more erudite approach towards nuisance issues and develop a separate policy to tackle criminal landlords.
15. This policy will increase tenant turnover: a landlord will end the tenancy of a tenant who is perceived to be antisocial rather than lose the licence to rent out their property. The policy is harmful to tenants as it allows for malicious complaints by neighbours.

Tenants within the private rented sector

16. The social housing sector has made many efforts to remove problem tenants. Last year, nearly two-thirds of all court evictions were from the social sector. How does the council expect landlords to solve these tenants' issues when the professional sector has failed? Many of the tenants who have been removed from the social sector are now living in the private rented sector without any of the support that they need.

17. What consideration has the council given to homelessness when tenants cannot access the private rented sector? We have already seen a decline in private landlords willing to house tenants who receive local housing allowance and this policy will price them further out of the private rented sector.

Mortgage and landlord possession statistics 2016²

Year (calendar)	Landlord type		Claims issued
	Private*	Social	
2016	54,583 (39.7%)	82,789 (60.3%)	137,372 (100%)
*includes all accelerated claims			

18. We would also like to see the council develop a strategy that includes action against any tenants who are persistent offenders. These measures would represent a targeted approach to specific issues, rather than a blanket licensing scheme that would adversely affect all professional landlords and tenants alike, while still leaving criminals able to operate under the radar. Many of the problems are caused by mental health and drink and drug issues. Landlords cannot resolve these issues and will require additional resources from the council.
19. The council has failed to say what additional services it is going to provide for mental health. This will have an impact on the council's adult social care budget. We would like to know how much money has been allocated from the county to meet mental health provision, especially as this budget is already under pressure.
20. London boroughs are already housing people outside of London and Woking is an attractive proposition for many of them. Increased costs caused by the proposed licensing will make taking tenants from London even more attractive.

Waste

21. Often when tenants near the end of their contract/tenancy and are in the process of moving out, they will dispose of excess waste by a variety of methods. This often includes putting it out on the street for the council to collect. This is made worse when councils do not allow landlords to access municipal waste collection points. Local authorities with a large number of private rented sector properties need to consider a strategy for the collection of excess waste at the end of tenancies. We would be willing to work with the council to help develop this strategy.

Current law

22. A landlord currently has to comply with over 100 pieces of legislation and the laws that the private rented sector has to comply with can be easily misunderstood. A landlord is expected to give the

² www.gov.uk/government/statistics/mortgage-and-landlord-possession-statistics-october-to-december-2016

tenant a 'quiet enjoyment' of the property. Failure to do so could result in a harassment case being brought against the landlord. The law that landlords have to operate within is not always fully compatible with the aims that the council hopes for. For example, a landlord keeping a record of a tenant could be interpreted as harassment.

23. The introduction of licensing aims to tackle specific issues, many of which are related to the tenant and are nothing to do with the property or landlord. The challenge for local authorities is to work with all the people involved and not to just blame one group: landlords. We are willing to work in partnership with the council and we can help with developing tenant information packs, assured shorthold tenancies and landlord accreditation, along with targeting the worst properties in an area.
24. We also argue that a licensing scheme that is not proportional is not the best way to tackle a problem encompassing a few poorly managed and/or maintained properties. In many situations, the council should consider enforcement notices and management orders. The use of such orders would deliver results immediately, whereas the council's proposed licensing scheme would take five years. A much more effective solution would be for the council to adopt a structured approach on a street-by-street basis, targeting the specific issues and working in a joined-up fashion with other relevant agencies such as community groups, tenants and landlords.
25. We agree that some landlords, most often through ignorance rather than criminal intent, do not use their powers to manage their properties effectively. A more appropriate response would be for the council to identify issues and assist landlords. This would allow the council to focus on targeting the criminal landlords, which requires a joint approach.
26. The council should consider alternative schemes, such as the Home Safe Scheme in Doncaster and the South East Alliance of Landlords, Agents and Residents (SEAL) in Southend. Both schemes offer alternatives that the council has not reviewed or presented in its consultation.

Negative impacts of selective licensing

27. One of the dangers of the proposed selective licensing scheme is that the costs will be passed on to tenants. This would increase costs both for those who rent in Woking and for the council. Woking is the eighth most deprived district in the UK and this policy could make the situation worse. The increasing costs to Woking residents would particularly hit the most vulnerable and least able to tolerate a marginal increase in their cost of living. Also, the council has failed to explain that, as well as the council's costs for the licence, the landlords' costs for administering the licence will likely be covered by them increasing the rents. The failure to explain this shows a lack of understanding of how the private rented sector works.
28. Areas where selective licensing has been introduced have seen lenders withdraw mortgage products, thereby reducing the options to landlords reliant on finance. Downstream, this increases landlords' overheads and, subsequently, the costs for tenants rise. A landlord's credit history will show if lenders have withdrawn mortgages. Other mortgage lenders will then put a higher cost on the landlord, which ultimately increases costs for the tenant.

29. Woking Council, by proposing to introduce licensing, is implying that there are social problems that could deter investment in the area. The council does not acknowledge the impact that the stigmatisation of selective licensing could have on the area. We assert that failure to provide such information indicates a substandard and ultimately superficial consultation exercise.

Requests for supplementary information

30. We would like to understand the council's reasoning on how charging people more to live in rented accommodation will improve housing. Given that successive governments have attempted to address the issue of antisocial behaviour by using significant resources to underpin structural causes, it seems unreasonable to contend that the licensing of private property will succeed. Could the council provide evidence to support this assumption, especially given that it has not committed the extra resources required as evidenced in Newham?
31. We would like clarification on the council's policy in relation to helping a landlord when a section 21 notice is served. It would be useful if the council could put in place a guidance document before the introduction of the scheme to outline its position regarding helping landlords remove tenants who are causing antisocial behaviour.
32. We would like further explanation on how the council will work with landlords to mitigate the issue of tenants leaving a property early but where they still have a tenancy. If a landlord faces challenges with a tenant, how will the council help the landlord?
33. Finally, we would like a breakdown of the number of orders and powers listed in paragraph 12 that Woking Council has used over the past four years. Please also explain how the council has discharged the Anti-social Behaviour Crime and Policing Act 2014.