National Landlords Association:

Response to Kingston-upon-Thames Council’s proposal for additional licensing

August 2017
• The National Landlords Association (NLA) exists to protect and promote the interests of private residential landlords.

• More than 72,000 individual landlords from around the United Kingdom are members of our organization. We provide a comprehensive range of benefits and services to our members and strive to raise standards within the private rented sector.

• 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

1. The ability to introduce additional licensing is a powerful tool. If used correctly by Kingston-upon-Thames Council, it could resolve specific issues. By renewing the scheme, you are indicating that the previous scheme did not work satisfactorily, or that it has not eliminated all the problems that you identified. Why are you renewing the scheme, when a different approach would be more appropriate if problems are persistent?

2. As well as this, your scheme is currently due to end this year. This proposal should be put on hold until the government has unveiled its proposal, which will be within the same period as the council’s, to avoid confusion.

3. One of the dangers of the proposed additional licensing scheme is that the costs may be passed on to tenants, thus increasing costs to Kingston-upon-Thames residents, especially the most vulnerable, along with the Council’s costs.

4. In many places, such as Newham, Oxford and Bath, where an article 4 direction was introduced in addition to the additional licensing, the result has been a reduction in the amount of shared housing that is available. This has resulted in councils looking to house many local people outside their boundaries, increasing costs for tenants and for the councils.

5. This policy could also have an impact on house prices in the area, with the market placing a premium on those with permitted development rights. This has been seen in other areas of the country.

6. The scheme does not take into account Airbnb or those who practice rent-to-rent. These matters have to be addressed, if the scheme is to work. Subletting is a problem for landlords. What policies will the council put in place to support landlords who are the victims of tenants who sublet or who permit overcrowding to take place?

Resources

7. Areas that have seen the introduction (perpetuation) of additional licensing have also seen mortgages being withdrawn (by the Nat West and RBS). This could have an impact on the
housing market, as the housing type could become stigmatised. It could increase the cost to tenants and the council in those areas where it is maintained, and students will price out those who are in receipt of welfare. The council will incur additional costs in housing people; this can already be seen in the council’s homelessness budget. What analysis of this has been undertaken, and of the potential effect on the council’s homelessness budget?

8. The council should consider schemes such as the Home Safe scheme in Doncaster and SEAL in Southend. Both offer alternatives which the council has not reviewed. This involves management of the landlords and tenants, and thus management of the whole situation, which would be a more appropriate outcome. This would also save the council money.

Societal impact

9. In addition to young professionals and students, migrants make up an important part of the shared housing market in Kingston. For obvious financial reasons and for flexibility, shared housing is an important housing segment for these groups. However, demand is not static. Thus, the impact of these policies will have an impact on the less well-off within Kingston-upon-Thames. What measures are the council taking to mitigate these issues (including increases in housing costs)?

10. The issue of overcrowding is difficult for a landlord to manage. A landlord will tell a tenant how many people are permitted to live in the property, and that the tenant is not to sublet it or to allow additional people to live there. Beyond that, how is the landlord to manage this matter without interfering with the tenant’s welfare? Equally, how will the council assist landlords when this problem arises? It is impractical for landlords to monitor tenants’ household activities every day, or their sleeping arrangements. Where overcrowding does take place, they know what they are doing and are criminals, not landlords.

11. The cost to rent via local housing allowance in Kingston-upon-Thames is lower than in central London. A policy such as this will further limit supply at the same time as it prices out local people, but shared housing will still be available in inner London boroughs due to the higher rate available to them.

12. Schemes such as additional licensing have put houses that are shared at a premium; that added value depends on them remaining shared. The council’s continuation of the policy will prevent new entries into the market, thus creating a monopoly. Properties that have shared usage will have a higher value than those that do not. Landlords will be disinclined to return them to family use, as they have higher value in shared usage and landlords will wish to preserve that status.

13. The use of additional licensing that is landlord/property-based will not resolve many of the issues that are caused by tenants – they are tenant-based issues. Landlords have limited powers to address them, as any direct action by the landlord to address issues such as ASB can be considered by the tenant to be harassment.
14. The NLA believes that any regulation of the private rented sector must be balanced. Additional regulatory burdens must focus on increasing the professionalism of landlords and the quality of private rented stock, and driving out the criminals who blight the sector. The shared objectives of all parties should be to facilitate the best possible outcomes for landlords and tenants. As such, good practice should be recognised and encouraged in addition to the required focus on enforcement activity. In the current economic climate, the last thing that good landlords need is yet more regulations or the continuation of licensing schemes, particularly where there appear to be limited direct or immediate benefits to landlords or to tenants.

Creating tension in relationships

15. In relation to ASB reduction and the authority 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 who are 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 which identifies the grounds for possession. The former is simpler and cheaper and repossession (at present) is more certain. No reason need 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 to 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.

16. Landlords are usually not experienced in the management of anti-social behaviour 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. ASB), even if the tenant has any of the above issues, a landlord ending the tenancy will have complied with their obligations under the additional licensing scheme. This moves the problems around Kingston-upon-Thames but does not actually help the tenant, who could become lost within the system. There is no obligation within additional licensing for the landlord to solve an ASB allegation. Rather, a landlord has a tenancy agreement with the tenant, and this is the only thing that the landlord can legally enforce.

17. This was reaffirmed in February 2017 when the House of Commons library published a briefing paper entitled ‘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.'

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1 [http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01012](http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01012)
18. It would be useful if the council could clarify its policies and put in place a guidance document which would outline the council’s position on helping landlords to remove tenants who are causing anti-social behaviour. This is worse in shared housing, when a tenant has to share parts of the house with other tenants.

19. The NLA would like further explanation of how the council will work with landlords to mitigate the losses when tenants leave a property early, but where they still have a tenancy. If a landlord has problems with a tenant, how will the council help the landlord?

20. The ability of a landlord to enforce the law against a tenant who is causing anti-social behaviour comes from the civil court, where the burden of evidence differs from that of a criminal court. Although the burden is lower, the length of this process will often exceed the period of the tenancy. Why would a landlord continue to pursue a case against a person who is no longer a tenant? A landlord also risks the tenant causing damage to the property by starting legal proceedings against the tenant. The fact that a landlord has started such a process will not appear on any council document, so how will the council expect to measure this?

Conclusion

21. The NLA agrees that some landlords, most often due to ignorance rather than criminal intent, do not use their legal powers effectively in the management of their properties. A more appropriate response would be to identify issues and help landlords to develop the required knowledge and skills to improve the sector through schemes such as the NLA Accredited Landlord Scheme. This would enable Kingston-upon-Thames Council to target criminals, where a joint approach is required.

22. Any continuation of additional licensing could further reduce the amount of shared housing. This would probably increase the costs for those who rent, as it would prevent new entries into the market. A more erudite approach to dealing with nuisance, and a separate policy to tackle criminals, would be a better way to resolve the issues. Enforcement is required against those landlords who do not meet housing standards. The proposed policy will increase the council’s costs.

23. Again, the NLA thanks Kingston-upon-Thames Council for the opportunity to respond to this consultation. We hope you find our comments useful.