

PROPOSALS FOR AMENDMENT OF THE FEES STRUCTURE FOR THE SELECTIVE LICENSING SCHEME (PRIVATE SECTOR HOUSING) FOR MULTI-DWELLING BLOCKS.

Key Decision No. NH P88

CABINET MEETING DATE (2018/19)

16th October 2019

CLASSIFICATION:

Open report

Appendix 2 Exempt

WARD(S) AFFECTED

Brownswood, Cazenove and Stoke Newington

CABINET MEMBER

Philip Glanville, Mayor of Hackney
Cllr Sem Moema, Mayoral Adviser for Private Renting and Housing Affordability

KEY DECISION

Yes

REASON

Affects more than two wards

CORPORATE DIRECTOR

Kim Wright, Group Director, Neighbourhoods and Housing

1. CABINET MEMBER'S INTRODUCTION

1.1 The number of private renters in Hackney has grown significantly over the last decade to 34,000 or nearly one in three households – a result of the wider housing crisis which means that, for people on low and even middle incomes, renting privately is often the only option for finding a home.

1.2 While most landlords provide good-quality homes and treat their tenants fairly, far too many private renters suffer from poor conditions and management. Our research estimates that 11% of privately rented homes suffer from serious hazards or disrepair - rising to almost 20% in the worst affected areas and in Houses in Multiple Occupation (HMO) properties borough-wide.

1.3 Through our #BetterRenting campaign we're tackling these issues by pushing government to introduce measures to make renting fairer, giving private renters in Hackney the advice and support they need, working with good landlords, and doing everything we can to tackle rogue landlords in our borough.

1.4 Our property licensing measures are a key part of this - they will ensure that private renters in homes where they are most likely to suffer from serious hazards or mistreatment get the protection they deserve, and that we can take tougher action against landlords that don't comply.

1.5 With enforcement of our additional licensing for HMO properties already in place, the changes recommended in this report, to the application and fee processes for selective licensing, will mean enforcement against rogue landlords of all homes in the Brownswood, Cazenove and Stoke Newington wards - where conditions in privately rented homes are at their worst - can begin.

1.6 I commend this report and its recommendations to Cabinet.

2. GROUP DIRECTOR'S INTRODUCTION

2.1 In October 2018 the Council introduced a pilot selective licensing scheme in three wards of the Borough, Brownswood, Cazenove and Stoke Newington, with the aim of improving property conditions and housing management standards in the Private Rented Sector.

2.2 Following the introduction of the scheme, a representation was received from a landlord of a privately rented block of flats covered by the scheme regarding the process for applying for licenses for the block, the fees charged for processing licence applications and the structure of the licences subsequently issued. This report recommends changes to these processes as they apply to privately rented blocks of flats where all the flats are in the same ownership and under the same management control. The recommended changes are in response to the representation received and are being made to ensure full compliance with legislation. The representation concerns complex and untested interpretation of the legislation that required careful consideration. The changes recommended in this report take into account such consideration.

2.3 While the representation is considered, the determination of licence applications under the selective licensing scheme has been put on hold and no licences have been issued. Approval of the recommendations in this report will enable these applications to be determined and issued, and for the scheme to become fully operational. It will also allow a programme of inspections to begin with the five-year objective of inspecting all rented homes in the three wards covered by the scheme. Alongside this, enforcement activity will begin in earnest for those landlords who have failed to apply for licences.

3. RECOMMENDATIONS

Cabinet is recommended to approve the amendment of the Selective Licensing application and approval process as follows:

3.1 The Council will accept, in certain circumstances, an application for a single licence in respect of a block of flats or in respect of a combination of flats within a block, where all of the flats covered by the application are:

- (i) in the same building,**
- (ii) all under the same ownership and management control, and**
- (iii) all are let on tenancies or licences which are not exempt tenancies¹ or licences.**

Cabinet is also recommended to approve and note the following:

3.2 The functions of the Mayor and Cabinet under Part 3 of the Housing Act 2004 (designation of discretionary licensing area and licensing relating to it) be delegated to the Director of Regeneration and the Head of Private Sector Housing, with each of those officers being authorised to further delegate those functions to officers within the Private Sector Housing Team, as they deem appropriate from time to time, subject to the Director of Regeneration or the Head of Private Sector Housing briefing

¹ Exempt tenancies and licences as set out in Section 79(3) and the Selective Licensing of Houses (Specified Exemptions)(England) Order 2006

the Mayor and Lead Member on any exercise of those functions when they relate to a change to the discretionary licensing scheme.

3.3 The London Borough of Hackney's Designation of an Area for Selective Licensing 2018 that is dated 10 May 2018 and which came into force on 1 October 2018.

4. REASONS FOR DECISION

4.1 Every property falling within the scope of the selective licensing scheme must be licensed².

4.2 A person commits an offence if they are a person having control of, or managing, a property, which is required to be licensed under any of these schemes, but is not so licensed. An application is not duly made if it is an incomplete application or the licence fee has not been paid as part of the application.

4.3 In common with most other local authorities that operate selective licensing schemes, the Council's intention at the time of the introduction of the scheme was, in respect of blocks containing more than one dwelling, to require an individual licence application and to issue an individual licence for each dwelling rather than one composite application and one composite licence for the whole block. There are very good reasons for this approach as set out below.

4.3.1 A dwelling may be sold without affecting the licences for other dwellings in the building;

4.3.2 A dwelling may be let on an exempt tenancy without affecting the licences for other dwellings in the building;

4.3.3 A dwelling may be left vacant, for example to allow refurbishment, without affecting the licences for the other dwellings in the building;

4.3.4 A landlord can change managing agent for one of the dwellings, or make physical alterations to a particular dwelling, without affecting the licences of all the other flats in the block.

4.3.5 Enforcement action may be taken in respect of a particular dwelling e.g. a Prohibition Order being made, without affecting the licences for other dwellings in the building.

² Section 79(1) of the Housing Act 2004

4.3.6 There is very little benefit in landlords seeking a single application for a block, as the application process will require all the same documentation and application details for each of the flats as for individual applications. The Council's on-line application system for individual licences makes applications quick and easy.

4.4 Following designation of the selective licensing scheme³, the Council received a representation from a landlord of a large block of flats covered by the scheme. The representation challenged the legitimacy of the individual dwelling licence policy. In response, a review of the policy was undertaken. This review concluded that for the reasons in 4.3 above it will always be preferable to seek individual dwelling applications and grant individual dwelling licences for such blocks. However, the legal framework to selective licensing in Part 3 of the Housing Act 2004, does not permit the Council, in certain circumstances, to refuse a single application or refuse the granting of a single licence for an entire block or part of a block containing more than one flat.

5. BACKGROUND

5.1 This section outlines the background to the review of the policy for licensing of multi-dwelling blocks under the selective licensing scheme, based on Counsel's opinion.

5.2 For selective licensing schemes made under Part 3 of the Housing Act 2004, the requirement to licence a property is to be found in section 79(1) of the Act, which provides for "Part 3 houses" to be licensed. However, difficulties arise with the definition of what constitutes a "Part 3 house" as defined in section 79(2) of the Act. The drafting of this Part of the Act is complex and unclear. After seeking clarification it is believed that the way the Act is drafted means that in the case of a block of multiple dwellings, a "Part 3 house" can be interpreted as being any one, or all, of the following:

- each of the individual dwellings can be a "Part 3 house",
- any combination of dwellings can be a "Part 3 house",
- the block itself can be a "Part 3 house".

5.3 An illustrative example of these interpretations can be seen in the shape of a block containing three flats; Flat A, Flat B and Flat C.

5.4 Even in this relatively simple scenario, there are seven different interpretations of "Part 3 houses" which are as follows:

- Flat A, Flat B and Flat C are each a "Part 3 house",
- Flats A and B together are a "Part 3 house",

³ London Borough of Hackney, Designation of an area for Selective Licensing, section 80 Housing Act 2004: date 10 May 2018.

- Flats A and C together are a “Part 3 house”,
- Flats B and C together are a “Part 3 house”,
- The entire block is a “Part 3 house”.

5.5 As such the legislation places the Council in an unenviable position in responding to the representation it has received. Therefore, it is recommended that the safest way to proceed is to operate the selective licensing scheme in relation to multiple-dwelling blocks, such that, in certain cases, single-block licence applications can be accepted and single-block licences can be issued. To continue a policy of only accepting licence applications on an individual dwelling basis presents the risk that, if challenged, the scheme may be found to be unlawful. Therefore, the recommendation of this report is to adopt a policy for selective licensing of blocks containing multiple dwellings.

5.6 For blocks containing multiple dwellings, while the Council for the reasons set out in paragraph 4.3 will usually prefer a separate licence for each flat, if approved, it will now consider an application for a single licence in respect of a block of flats or in respect of a combination of flats within a block, where all of the flats covered by the application are:

- (i) in the same building,
- (ii) all under the same ownership and management control, and
- (iii) all are let on tenancies or licences which are not exempt tenancies or licences.

6. IMPLICATION OF AMENDED POLICY FOR LICENCE FEES

6.1 The Council is empowered under section 87 of the Housing Act 2004 to require an application for a selective licence to be accompanied by a fee. The fee can be set at a level that covers the Council’s costs in setting up and administering the licence application process, including the processing and issuing of licences. The fee cannot be set a level that produces a surplus. The Council has calculated these costs as set out in Appendix 1.

6.2 The average cost to the Council of processing an application for a selective licence that relates to a block containing more than one dwelling is, pro-rata per dwelling, only marginally lower than the cost attributable to processing separate applications for the same number of dwellings. This is because, in both scenarios, all the same stages of processing the application need to be carried out in respect of each dwelling to ensure that:

- the proposed licence holder is a fit and proper person to be the licence holder, and is, out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence holder;
- that the proposed manager of the house is either the person having control of the house, or a person who is an agent or employee of the person having control of the house;
- that the proposed manager of the house is a fit and proper person to be the manager of the house; and

- that the proposed management arrangements for the house are otherwise satisfactory.

6.3 The costs of processing an application for a block containing multiple dwellings are therefore multiplied when compared to a single-dwelling application. These costs will therefore need to be reflected in the level of fee charged for multi-dwelling applications. As a result there will be no financial detriment to landlords who submit individual dwelling applications for each dwelling within such a block compared with those who submit whole-block applications.

6.4 The current selective licensing fee is set at a level that is lower than the average cost attributable to processing an application for a licence; see Appendix 1. As such, the marginal cost saving referred to in paragraph 6.2 in processing whole-block applications, compared to individual dwelling applications, will not result in a lower fee than that approved by Cabinet in March 2018, because this fee is less than the costs the Council incurs in either scenario.

6.5 Following recent court decisions⁴, the representation the Council has received and the comments in 6.4 above, the Council intends to review the fee structures for its property licensing schemes to ensure they comply with the Court decisions and reflect the actual costs incurred in processing licence applications. The Council does not currently charge within the licence fee the costs of enforcement against non-compliant landlords. As part of the proposed review of fees, consideration will be given to the levying of an additional fee at the time of granting a licence in respect of the costs of enforcement action under the schemes. The proposals resulting from this review will be brought to Cabinet at a later date.

6.6 Until the review of licensing fees referred to in 6.5 above is completed, the Council's current fees for selective licensing will remain unchanged, as follows:

- Single dwelling applications; £500 per dwelling,
- Where a single application relates to a block containing more than one dwelling, the fee will be £500 multiplied by the number of dwellings covered by the application.
- There will be a discount of £75 per individual dwelling in each scenario where landlords are accredited under approved landlord accreditation schemes, as set out on the Council's website

7. DECISION MAKING PROCESS UNDER THE COUNCIL'S CONSTITUTION AND SCHEMES OF DELEGATION

⁴ R(Hemming t/a Simply Pleasure Ltd) v Westminster City Council; Supreme Court 19/07/17 R(Gaskin) v Richmond-upon-Thames LBC; 31/07/18

7.1 Cabinet is requested to confirm that under the Scheme of Delegations within the portfolio of the Group Director Neighbourhoods and Housing, the powers under *The Housing Act 2004, Part 3, 'Designation of a selective licensing area and licensing powers relating to it'*, can be made by the Director of Regeneration and the Head of Private Sector Housing, who will brief the Lead Member and Mayor accordingly.

8. Equality Impact Assessment

8.1 An equalities impact assessment was included in the report to Cabinet in March 2018 and the recommendations in this report do not affect or alter that assessment.

9. Sustainability

9.1 Selective licensing schemes are designed to be cost neutral to the Council in so far as the costs of setting up and administering the licence application process, including the processing and issuing of licences. These costs can be recovered through licensing fees over the five-year duration of the scheme.

9. Risk Assessment

9.1 A risk assessment for the recommendations in this report is included in Appendix 2 to this report.

10. COMMENTS OF THE CORPORATE DIRECTOR OF FINANCE AND RESOURCES

10.1 The recommendations in the report should have minimal financial impact.

11. COMMENTS OF THE DIRECTOR OF LEGAL SERVICES

11.1 The Housing Act 2004, Part 3 sets out the legal requirements to be followed in setting up a selective licensing scheme. It includes things such as: designation and conditions, requirements for Part 3 houses to be licensed and exemptions, grant or refusal of licences, variation and revocation of licences, procedure and appeals and enforcement.

11.2 The power for the Council to charge a fee with an application is provided under s.87(3) of the Housing Act 2004.

11.3 Prior to designation of the selective licensing scheme the Council undertook extensive consultation in line with legal requirements. The original proposed fee structure within the selective licensing scheme was one of four issues raised within a potential challenge against the Council by a landlord of a block of flats affected by the scheme and its original fee structure. As a result of this potential challenge and the subsequent advice sought, the option of a revised fee structure has been proposed in this report in which case there would be two categories of application fee;

- i) an application fee where the licence would relate to a single dwelling and
- ii) an application fee where the licence would relate to more than one dwelling.

11.3

Currently the Mayor's scheme of delegation reserves to the Mayor and Cabinet, the –'Designation of discretionary licensing area and licensing relating to it' with regards to the Housing Act 2004 ('HA 2004'), Part 3 (page 16 of the Mayor's Scheme). This would mean that all decisions falling within the remit of HA 2004 part 3 are reserved to the Mayor and Cabinet.

11.4 Within the Scheme of Delegation of Neighbourhoods and Housing it provides that the 'Designation of selective licensing area and licensing powers relating to it' (set-out within NH532, page 127 of this Scheme) can be made by the Director of Regeneration and the Head of Private Sector Housing. It would therefore, on the face of it, appear that the function of designations and the powers relating to them (within the remit of the HA 2004 Part 3) are delegated. However, for absolute completeness and clarity this report seeks to delegate this power to the Director of Regeneration and Head of Private Sector Housing.

APPENDICES

Appendix 1: Summary cost calculation for licence fees under the Selective Licensing Scheme.

Appendix 2: Assessment of risk related to the proposals in this report .

BACKGROUND PAPERS

None applicable

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