



## APPENDIX 4

### Introduction

#### What is Discretionary Licensing?

1. The Housing Act 2004 granted powers to local authorities to designate all or part of their area subject to discretionary licensing where landlords could be compelled to register and licence their rented residential property.
2. Initially licensing schemes required the approval of the Department for Communities and Local Government (DCLG).
3. In March 2010 a general consent was issued to allow Local Authorities to introduce discretionary licensing without DCLG approval subject to conditions.
4. In March 2015, Brandon Lewis MP as Minister of State for Housing and Planning varied the general consent to limit selective licensing schemes to 20% of the number of Private Rented Sector (PRS) letting or 20% of the local authority area. Any larger proposal will have to be referred to DCLG for approval.

#### The reasons for proposing these schemes?

5. The Council believes that a borough wide additional licensing scheme and targeted selective licensing scheme will help improve the quality of accommodation and the management of private rented properties in Southwark. It will help to:-
  - Provide greater confidence in the operation of Southwark's private rental market for both tenants and landlords;
  - Work closely with both landlords and tenants to address anti-social behaviour in specific areas where the behaviour links to the private rented sector;
  - To identify and take action regarding our increasing concerns about small HMOs where overcrowding, poor quality conversions and subdivision are increasing;
  - Drive up standards of tenancy management;

- Ensure that there is a consistent level of responsible property management among private landlords and take action against those landlords who persist in providing a poor standard of accommodation or whose tenants are causing persistent anti-social behaviour;
- Create a level playing field and promote an understanding among tenants about what they can reasonably expect from their landlord so they can make an informed choice.

### **What was the Council consulting on?**

The Council consulted on three proposals relating to private sector housing. These were contained within the consultation documentation which can be found by following this link - <http://www.southwark.gov.uk/talkrent>

The proposals were:-

- The introduction of a borough wide additional licensing scheme. Additional licensing relates to all properties of less than three storeys which are let to three or more households. For example a two bedroom flat with a sitting room which is let as three separate rooms and the occupants share the kitchen and bathroom.
- The introduction of selective licensing in specific areas. Selective licensing relates to properties which are let as single family or single person dwellings. For example, a two bedroom flat let to a family.
- The revision of the current standards which the council sets for all HMOs in Southwark to improve the quality of all privately let properties. This also includes HMOs which are three storeys or more and require a mandatory licence.

### **Why did the Council have to consult?**

6. The Housing Act 2004 and the general consent require the Council to consult people who might be interested in the proposal or affected if it is approved.
7. By section 56(3) (of the Housing Act 2004) (additional licensing) and section 80(9) (selective licensing) consultation with specified groups must be undertaken by the local authority before any designation may be made. Section 56(3) provides: -

"(3) Before making a designation the authority must-

- take reasonable steps to consult persons who are likely to be affected by the designation; and
- consider any representations made in accordance with the consultation and not withdrawn"

So far as its material, section 80(9) is in identical terms.

8. In addition, in February 2010, the Secretary of State also issued Guidance on the steps to be taken by authorities prior to making designations. The guidance (Approval steps for additional and selective licensing designation in England) states that consultation should

"...also include local residents and those who operate businesses or provide services in the surrounding area outside of the proposed designation who will be affected".

9. On 1 April 2010, the Secretary of State issued a general approval (the "General Approval") to all local housing authorities in England which includes at paragraph 4 a requirement for the consultation to last for at least 10 weeks.

#### **What is required from the consultation?**

10. Consultation is intended to be a way for the Council to find out what people think about its proposals. It is not a referendum or a voting process and the intention is not just to gauge support or opposition to a particular proposal.
11. The Council was also keen to hear what people think of its proposals, what changes they would like to see in the proposals and if there are any better solutions to the problem officers are seeking to address.
12. After consultation the Council analysed and considered the responses and this paper is a part of that process. From this, officers will decide whether to go forward with the original proposal, modify it or decide not to proceed. The paper explains what was decided and why.

#### **What is this consultation report?**

13. This report is intended to record the views we received from all the different consultation activities.
14. Officers collected views in a variety of ways. Consequently, the report will show results in the different formats to help the reader understand the views presented and give some context to how the consultation was captured.

#### **The process of consultation**

##### **Who was consulted, when and how?**

15. In order to comply with the requirements of 7 and 8 above officers planned a consultation intended to reach as many people who might be affected by the proposals as possible. In addition, officers identified a long list of organisations and individuals who could be expected to have an interest in the PRS or represent and champion the interests of those who are involved with rented homes.
16. The initial plan was to consult from the 29<sup>th</sup> September to the 19<sup>th</sup> December 2014. However on the 11<sup>th</sup> December 2014 the case of Regas V Enfield was heard in the High Court. It was held that the duty to consult parties likely to be affected by the proposal included those who may live or trade beyond the boundaries of the borough proposing the scheme.
17. Following on from 16 above, officers reviewed the consultation plan and decided that the judgement established new guidance which applied to Southwark's proposal. As a result the consultation was extended to the 14<sup>th</sup> of March 2015 and the area of consultation extended to include all London boroughs and those landlords and letting agents that officers knew operated across London.

18. Officers used a wide range of methods for consultation all of which led people to the core consultation pages on the Council website where all the papers, maps, evidence and appendices were available.
19. The responses and views were compiled from the following sources:-
- An eform linked to the main consultation webpage
  - A prepaid response card which was handed out at a variety of events (listed below);
  - A prepaid response card which was posted to the residents in and around the selective licensing area;
  - A prepaid response card sent to addresses which were indicated by our data to be occupied by residents with a profile that matched those in private rented property;
  - A prepaid response card for students which was distributed at local higher education establishments;
  - Community meetings and events in Southwark, including community councils, area housing forums, street consultation events and focus groups for some minority groups;
  - Landlord representative events, including Landlords Forum, Landlords focus group and Southwark's Homeowners Forum for Leaseholders;
  - Emails to a wide range of national, regional and local stakeholders;
  - Advertising in local publications, street adverts on buses and bus shelters and electronic media;
  - A dedicated email address for responses;
  - Publicity on a landlord information website.

## **Summary of responses from the consultation**

### **Public and Community Meetings**

#### **Community Councils**

20. Southwark conducted a wide range of consultative, information and local decision making meetings. Community Councils represent an opportunity for local people to hear what the Council and other community organisations are doing, be informed on new proposals and issues and make decisions. These are regular public open meetings with considerable numbers attending.
21. We made presentations on licensing at 5 community councils and had an information stand at a sixth. Each community council was attended by local councillors, residents, business operators, local business and community leaders. Most meetings attract an audience of between 50 to 100 people. The presentations on licensing were well received by local residents who were concerned with the problems they see arising from private rented property. The issues mentioned included noise, waste disposal, generally inconsiderate behaviour and overcrowding.
22. There were a range of questions about the scheme, these focussed on how ASB would be identified and dealt with, how the scheme would be funded and how the Council would measure the effects of the scheme.

#### **Area Housing Forums**

23. Area Housing Forums are smaller meetings with local representatives who focus on housing issues. The meetings have a focus on Council owned property and estates including leasehold and sublet properties.
24. The representatives were keen to get into the detail on the proposals asking a wide selection of questions.
25. The concerns raised most often were ASB, poor management, poor quality conversion of dwellings to HMO's and overcrowding. There was strong support for increased intervention in this market largely by helping landlords to understand what they need to do to become good landlords and for the Council to be more robust with landlords who do not take their role seriously.

### **Public Events**

26. Officers set up information stands at a number of locations during the consultation period. These were staffed by Council Officers who work in the environmental health teams who currently regulate the PRS.
27. The main events were:-
  - Peckham Square Consultation Event
  - Tenant Conference
  - Chinese Community Focus Group
  - Latin American Community Event
28. The events allowed people to speak to officers informally about the PRS and personal issues came up quite frequently.
29. Officers took the opportunity at all events mentioned in this section to distribute prepaid response cards and signpost those interested to the main consultation pages on the Council website.

### **Meetings with stakeholder groups**

#### **Landlords Focus Group**

30. The meeting was part of a regular series of meetings facilitated by the temporary accommodation manager in the Housing Dept. It is usually attended by about 20 local landlords and property managers including a representative from the National Landlord Association (NLA).
31. Views were mixed but some landlords were quite positive about the proposal, particularly from the viewpoint of bearing down on the worst landlords who undercut and undermine legitimate landlords.

#### **Landlords Forum**

32. The meeting was attended by approximately 80 people. Of these the majority were private landlords or letting agents. These meetings are part of a regular series of annual or biannual events facilitated by the temporary accommodation manager. The invitation list of around 250 landlords and agents includes those responsible for a substantial number of PRS lettings. An agenda is produced and all invitees are advised of the matters to be discussed.
33. Landlords (at this meeting were of a similar view to those at the focus group 31 above) were not particularly positive about the proposals, however, they supported the need for increased regulation of poor landlords. They also accepted the proposal was carefully drafted and clearly linked to the problems of the PRS in Southwark.
34. Key objections related to the burden of regulation on good landlords and of the cost, both of which were considered to be unfair.

### **Meeting with stakeholder representatives**

35. These meetings arose from specific invitations to organisations that represent various stakeholder groups.
  - NLA - acknowledged the care and time taken in drafting the Scheme, however, they oppose the fees and additional licensing on the grounds it will affect good landlords as well as bad.
  - ARLA – ARLA Board member who attended was very supportive of the proposal in all regards.
  - Meeting with student housing reps:-
    - London University - generally positive, some concerns about costs being passed on. Keen on increasing attention devoted to letting agents' bad practices.
    - Crisis - very positive
    - St Mungo's – very positive
    - Shelter – strongly supportive of the proposals
    - Generation Rent – expressed strong support for proposals and signed up for a guest blog on their website.
    - Stall in students union to target students.
    - South Bank University
    - Camberwell College

### **Web site eform**

36. This is the most detailed and complete set of responses in that we asked a series of questions based on the whole proposal.
37. The Council received 489 responses, 2 of which were tests conducted by officers to ensure the recording was functioning.
  - 385 responses gave a tenure type, 221 private tenants (57.5%), 129 owner occupiers (33.5%) and 35 Council tenants (9%). 66 responses came from private landlords (17%).
  - 285 (58%) responses supported selective licensing and 177 (36%) were against.

- 219 (45%) supported selective licensing the larger pink area and 92 (19%) the smaller red area. 36% did not express a view
  - 287 (58.5%) supported additional licensing, 144 (29%) were against and 49 (10%) didn't know.
  - When asked if their support would continue if licensing resulted in a rent increase, 147 (30%) agreed, 248 (50%) would not support and 72 (15%) didn't know.
38. When asked what rent increase the respondent would be prepared to accept to have the benefits of licensing (of those who answered 217), 114 (52%) said £1, 62 (28.5%) said £5 and 41 (19%) said £10.
39. The narrative opinions expressed ranged from criticism that officers had not proposed a scheme that covered every PRS property in the borough to opposition to the proposal. The clear majority of comments were positive but opposition was not limited to landlords and there were clear concerns about the effectiveness of licensing and the danger of landlords passing on costs to tenants.

#### **Selective Licensing Prepaid response cards**

- We received 150 responses to this card out of 17 329 sent out
  - Of these 86 (57%) were in favour and 48 (32%) against selective licensing
  - 66 (40%) responses supported the pink zone and 14 both, so of those who answered this question 80 (53%) supported the larger area. 10 responses favoured the smaller red zone.
  - 57 (38%) were private tenants, 10 (6%) were landlords and 63 (44%) 'other'.
  - Of the landlords half were in favour of the selective proposal.
40. Respondents were approximately 2:1 in favour of selective licensing. A clear majority were in favour of the larger pink area to be included in selective licensing. Landlords were split on the issue.

#### **Community prepaid response card**

- There 434 responses out of 38 132 cards sent out.
  - 282 (65%) agreed with the proposal, 53 (11%) disagreed and 85 (19%) were not sure.
  - 298 (69%) were private tenants, 27 (6%) were landlords and 87 (20%) 'other'
  - Of the landlords, 12 (44%) agreed with the proposal.
41. It is not possible to carry out a summation of all responses received as the questions asked were different. It is, however, clear that the majority of respondents supported the proposal to introduce additional and selective licensing. Of those who responded there was a majority who supported the wider pink area for selective licensing.
42. There was a wide range of comment in the narrative responses. When asked what the issues were for private tenants the responses could be grouped into several themes:
- Rents

The majority of comments were about high rents and fees charged. Several people thought rents are exploitative.

- Management of tenancies and rental service

There were a number of comments about poor management, lack of response and the perception that a number of landlords and managing agents took advantage of the imbalance between demand and supply.

- There were requests for the Council to intervene and take a role in levelling the playing field for tenants.
- Poor property condition and lack of maintenance

A substantial number of responses mentioned poor standards of repair in rental properties.

- Some respondents mentioned that terms of PRS tenancies were unfair, with uncertain tenancy length and lack of security as key comments.

43. When we asked what the Council could do to improve renting in Southwark the key themes were as follows-

- Market intervention

Most responses expressed a desire for the Council to take action to resolve the problems listed above. There was clear support for rent control and interventions that made the market fairer.

- Increase supply

A number of respondents saw the Council as having a role in increasing the supply of rented property, either directly in the construction of new council houses or facilitating new rental property.

- Intervention and regulation

Several respondents wanted the Council to take a role in resolving problems by direct intervention including licensing, addressing maintenance and condition issues, regulating landlords and letting agents and helping renters resolve tenancy issues.

### **Student prepaid response card**

44. Responses were as follows:-

- There were 59 responses collected from two events conducted at local university sites.
- 50 (85%) agreed with our proposal, 3 (5%) were against and 6 (10%) were not sure,
- The narrative questions were the same as in paragraph 42 above except from a student perspective.

- The responses very much followed the same themes of high rents, poor services and maintenance. A number of students felt that the rental relationship was only about the rent passing from the landlord's viewpoint I don't understand what this sentence means.
- When asked what we could do to improve things, students supported reduced rents, intervention, inspection and licensing.

### **Landlord response card**

45. Responses were as follows:-

- This was only used at one event, the Landlords Forum, which had approximately 80 people in attendance. The majority of attendees were landlords or letting agents.
- 9 responses were collected at the end of the event and though some cards were taken away none were subsequently posted in
- Of the responses, 3 agreed with the proposal, though one response only supported additional licensing. 4 were against all types of discretionary licensing. 2 landlords were not sure,
- Of the 9 respondents, 6 let property in Southwark.

46. The narrative responses gave a variety of opinion, mostly concerned with the need for licensing and the costs. Some sought greater support and facilitation from the council for improving services. One commented that they would seek better regulation for bad landlords and another would like more effective intervention from regulatory teams.

### **Response emails and attached papers.**

47. The Council received 17 responses as emails or papers. They were from representative groups like Crisis and the landlords' organisations, RLA and NLA. The remainder were from landlords and focussed on both the licensing proposal and our draft HMO standards.

48. Crisis are in support of the proposals for licensing and our draft HMO standards. They recognise that the growth of the sector, changing demographics and poor condition were factors in the problems with standards and management.

49. The Residential Landlords Association (RLA) provided a paper detailing their view. The paper covered a wide range of issues and was, in general, opposed to the proposals. However there was a desire to work with the Council to develop responses other than licensing.

50. In terms of specific comments on Southwark's proposed scheme the issues raised by the RLA were as follows:-

- The extent of the scheme;
- The fee structure and compliance with the Hemmings v Westminster ruling;
- The effectiveness of licensing in addressing ASB;
- Denigration of licensed areas and tackling low demand;
- Measurement of outcomes;
- Monitoring;

- Displacement effects;
- Use of decent homes data.

In addition there were concerns relating to additional licensing:-

- Sustainable neighbourhoods;
- Impact of scheme on landlords and tenants;
- Effectiveness of licensing schemes.

51. The NLA's response covered a similar range of issues and indicated a clear willingness to work with the Council to refine and develop our proposals. The concerns raised were as follows:-

- Passing of costs onto tenants;
- Reduction in supply of rented property;
- Limited evidence on the effectiveness of licensing;
- Resources;
- Concerns about the assistance the Council will give to landlords facing ASB issues;
- Relationship between planning and enforcement functions;
- Administrative burdens;
- Landlord/tenant tensions regarding waste disposal.

52. A large portfolio landlord operating in the borough made a written submission. Officers met with the management team during the consultation and visited a representative sample of their stock to give advice and guidance about our proposals. Their response raised several concerns:-

- Effective and responsible landlords feel that the scheme is unnecessary and is an administrative and financial burden;
- Accredited landlords should be exempt or if not, be offered fee discounts. It is unfair to expect good landlords to pay fees to improve the regulation of poor property managers.
- Some landlords will pass the fees on to tenants;
- There were some procedural questions about how we would structure and fund the various elements of the scheme.

53. The Homeowners Council (HOC) is a representative group sponsored by the Council which provides a forum for leaseholders of Council property to represent their views and be briefed on issues regarding leasehold property. This group includes a substantial number of leaseholders who have sublet their properties and are now private landlords. HOC offered support to the proposal for the following:-

- Addressing anti social behaviour;
- Dealing with 'Rogue' landlords;
- Improving property condition;

- Improving management of rented properties;
- Support for education and training;
- Supporting people in housing need and those in danger of homelessness;
- Dealing with the small number of landlords have a disproportionate effect on their residents and local communities;
- Substantial penalties for contravention of licensing legislation.

There were a number of concerns expressed:-

- The proposal is expensive and regressive;
- The new ASB powers introduced recently should be used to address the issue of ASB;
- Licensing would lead to a reduction in supply;
- Licensing inspections are intrusive and an invasion of residents privacy;
- The Council already has powers to inspect property;
- Most privately rented homes are decent and well maintained and most residents have at least reasonable satisfaction with their tenancy;
- Standards in the PRS are good and improving;
- The Council should use existing resources and powers to address the issues;
- ‘Criminal landlords’ will not apply to license;
- The proposal may stigmatise certain areas and streets;
- Mortgage lenders would decline funding applications in licensed areas, RBS and Nat West were quoted;
- The primary motivation for the Scheme is to secure a high profile flagship housing “policy” that shows them to be actively intervening in the private rental sector (in the same way as some East London councils, e.g. Newham, have recently done).

54. The HOC made a number of counter proposals:-

- Abandon licensing and adopt other more modest proposals;
- Streamline the reporting of PRS and ASB problems;
- Improve communication and co-operation between Council departments and other agencies;
- Provide more information to PRS tenants and provide training to Landlords;
- Increase the discretionary element to the revised HMO standards;
- Improve relationships with landlords;
- Provide a voluntary approved landlords scheme;

55. In conclusion the HOC were against the proposal citing that:-

- The case for licensing had not been made in their view;
- The requirements of consultation had not been complied with as in their view most landlords, leaseholders and tenants have no knowledge of the proposals;
- That the scheme is too complex, expensive and arbitrary;

56. A Council leaseholder and landlord, who sits on HOC as the representative of non resident leaseholders e-mailed I a response and a paper on behalf of non resident leaseholders.
57. The response echoed the HOC paper in that there was strong support for action to address the issues described in the proposals. However the non resident group opposes the proposals. For the following reasons:-
- Consultation with leaseholders has been insufficient;
  - Committing offences against licensing legislation results in fines and/or a criminal record and that a collaborative approach is preferred;
  - The Council already has powers to address ASB and landlords have little or no powers to address ASB in the properties they manage;
  - The scheme will reduce availability and increase costs to tenants;
  - The Council already has powers to address the issues and it is not right that tenants should be forced to allow access for inspections;
  - Most properties are well maintained and of a decent standard and most tenants are satisfied with their rental property;
  - Housing enforcement data indicates that enforcement action is relatively low and decreasing;
  - The scheme will divert attention from regulation of criminal landlords who will not licence in any case;
  - Other Councils have decided not to adopt discretionary licensing;
  - Licensed areas will be stigmatised and landlords will have increased lending or insurance costs. RBS and Nat West were mentioned as lenders who decline to lend in areas where there are selective licensing schemes;
  - The suggestions and summary followed the HOC paper in content;
58. LAS2000 (Leaseholders Association of Southwark 2000) an independent membership body representing Southwark Lease holders. LAS 2000 opposes the proposal for the following reasons:-
- There has been insufficient consultation with leaseholders;
  - The Council already has the powers required to control ASB;
  - The grounds of low demand for selective licensing are not relevant;
  - Property inspections will be intrusive and costs will be passed on to residents;
  - The proposal may not be self funding;
  - That RBS and Nat West do not offer mortgages in selective licensing areas;
  - That the scheme is not necessary and will have negative repercussions for the selective areas to be licensed;
  - That the proposals are over reaching and cumbersome;
59. An owner occupier who responded welcomed the proposal and makes the following comments:-

- The scheme seems focussed on addressing ASB and could have more focus on safety and risk in PRS property;
  - The registration process should provide proof that a gas safety certificate is in place for the property;
  - Applicants should be expected to prove that they have appropriate fire safety provision within the property. Landlords failing to provide the information should be prioritised for inspection;
  - Resources may be insufficient to properly manage the scheme particularly in the early stages and that the charges might insufficient to resource the required inputs;
  - The charging structure be considered to allow a larger upfront fee and early bird discounts;
  - To consider lower fees for properties at lower rents or higher fees for large properties;
  - Introduction should be phased;
  - The Council undertake street surveys to identify unlicensed properties and charge landlords who have not registered voluntarily;
60. A resident provided two responses on his own behalf. In his responses he raised the following concerns:-
- The evidence of ASB is insufficient to indicate a significant problem;
  - Made a comparison to discretionary licensing in Blackpool;
  - The proposal would stigmatise areas on the borough and discourage investment, citing that many lenders would be disinclined to offer finance for licensed areas;
  - There are already sufficient powers to deal with the issues.
61. A PRS tenant made the following observations;-
- He questions the relationship between ASB and HMOs and observes that the higher ASB areas are also those with higher population density;
  - The reduction in the number of regulatory notices indicates that regulation is doing a good job of controlling the sector;
  - New HMO standards requiring storage space, work surfaces and similar non-essential things will reduce supply and increase rental costs;
  - The proposal will increase homelessness and increase pressure on Council housing resources;
  - The Council should increase and expand the current regulatory team and use the existing powers to resolve issues;
62. A PRS landlord responded on her own behalf. Her objections to the proposal were as follows:-
- The proposal is burdensome and intrusive;
  - The costs will harm the poorer residents of the borough;

- The scheme is contrary to the intentions of the Housing Act 2004 and contrary to DCLG guidance;
  - The landlord suggested that the Council should address the issues by using existing powers, improving liaison between departments of the Council and by engaging with landlords and tenants.
63. A PRS tenant and property manager is opposed to the proposal for the following reasons:-
- In his experience landlords are motivated to provide good accommodation and this is achieved by careful selection of tenants;
  - The key issue with ASB is attributed to the behaviour of tenants and the inconsistent responses to issues from the Homelessness services of the Council;
  - He proposes the employment of Landlord Relation Officers to assist landlords deal with issues raised by tenants;
  - In addition the Council has sufficient powers and the scheme will increase rents and restrict supply.
64. Response from 2 residents asked some questions about the terms of the proposed scheme. The questions were about, costs and details about how the scheme will affect ASB. We responded with some advice on where the main website provided all the main consultation documents.
65. A landlord of HMO made a number of observations arising from his experience of managing HMOs.
66. Another respondent opposed the scheme on the following grounds :-
- The powers provided under licensing legislation are already available to the Council;
  - Good landlords would be inclined to agree to a registration scheme run by landlords associations rather than licensing;
  - The costs of licensing will be passed on to tenants;
  - The balance between good and bad landlords was questioned and the lack of evidence commented on;
  - The use of license fees was questioned.

### **The Council's Response to the issues raised**

68. Our consultation told us that in general the community of Southwark tenants, students and their advocacy groups were strong supporters of the proposal. Landlords and their advocacy groups and professional associations were against, though there was a general theme that landlords supported our core objectives and were keen to see increased regulation of bad landlords. The landlords did not think licensing was a solution but could produce little in the way of evidence to support their position.

69. A key element of the landlord's position was that it was unreasonable and unfair to subject good landlords to the expense and burdens of licensing when it was only needed for bad landlords. No respondent was able to suggest any method for the local authority to reliably differentiate between good and bad landlords.
70. We have thought in detail about the comments we received in consultation. Consequently, we have changed some elements of our original proposal to make the scheme easier to deal with from the landlord's viewpoint.
71. We intend to revise the approach of the scheme from regulation to compliance. We consider that our objectives will be far better achieved by working with landlords, giving advice, guidance and support.
72. The scheme will be operated with the intention of addressing non compliance, by helping landlords meet the standards, improving the condition of properties by providing achievable plans and improving management skills by mentoring and advice.
73. There will still be a place for regulation and landlords who are unwilling to work with the Council to provide suitable, safe and well managed accommodation can expect much more regulatory attention than has been the case until now.

Other changes to the original proposal are to:-

- Reduce the cost of licenses and the amount of time involved in administration particularly for portfolio landlords and letting agents. The format of inspection visits will also change and for most landlords property inspections will be limited to short compliance visits. Full property inspections will only be scheduled when we find serious issues in terms of condition or safety at initial visits.
- Change the 3 year licence proposal to one and five year licenses. One year licenses will be issued to landlords who have contravened the law, operate lettings that do not comply with the licence conditions, or refuse to take action on management issues when requested. This addresses one of the key concerns that bad landlords should receive far more active regulatory action than good landlords
- Further simplify the proposed HMO standard and increase the amount of advice and guidance that we provide in order to help landlords achieve compliance.
- Allow more flexibility in the application of the HMO standard.
- Remove the prescriptions on fire safety in the HMO standard and simply require compliance with fire safety legislation and Lacors guidance.
- Appoint lead officers to work with portfolio landlords for approach this suggests we haven't been consistent perhaps – ease of dealing with the Council and to agree action plans for compliance issues.

### **Community perspective**

74. As stated above officers met members of the public at a range of events and meetings held around the Borough. The proposal to introduce discretionary licensing was well received.
75. At most events the questions were about 'how will licensing affect:-

- Overcrowding.
  - Noisy and disruptive neighbors.
  - Careless waste disposal.
  - Poor or indifferent management of lettings.
  - Badly maintained lettings.
  - Personal experience of unfair or bad treatment by landlords or letting agents.
76. These issues were echoed in the Eform survey and response cards. There is a fairly wide perception that there are problems in the PRS and that the Council is supported in taking action to improve the situation.
77. The public were concerned:-
- That the scheme would be under resourced and have limited effect.
  - That landlords would not address the low level ASB that adversely affected neighbours and the local area.
  - The costs were not borne by the community through Council Tax.

### **Tenants' viewpoint**

78. Responses from tenants to our scheme were predominantly on the e-form and prepaid cards. A clear majority of tenants supported the licensing proposal though there were clear concerns about what would happen if we went ahead. There were also a number of responses that indicated that tenants were perfectly happy with the services provided by their landlords.

The key concerns of tenants were:-

- **Rents and Costs**
79. The highest number of responses mentioned rents and costs in PRS lettings. PRS rents in Southwark are increasing and it is increasingly difficult to find affordable accommodation in the lower end of the market.
80. There were comments about charges levied by landlords and agents which were not properly explained, notified or justified.
81. With the general upward trend of rents across London it is impossible to predict what effect licensing may have on rents and there is no evidence to draw any conclusions either way. It is likely that some landlords will pass on the costs of compliance. If the full cost was passed on then in a standard HMO we calculate the likely increase in a tenants rent would be £1/week.
82. Respondents were specifically asked if they were prepared to accept a small increase in rent in order to have better standards and improved regulation. A little over a third of respondents said they would be prepared to accept a small increase. When asked how much they would accept, out of 489 responses, 117 said £1 a week would be acceptable, 62 said £5 and 41 said £10.
- **Security of Tenure**

83. Tenants' comments about security of tenure indicated that the PRS is not a tenure of choice for many residents of Southwark, it is the only choice. Many residents complain that their ability to make settled lives in an area is compromised by having to move regularly and this has adverse effects on employment, personal community, healthcare and children's education
84. There were also comments about letting agents who have adopted the business practice of recycling assured shorthold tenancies with fixed terms rather than allowing the tenancy to become periodic as the legislation intended. Given that this practice is solely intended to generate fees and acts against the interests of both landlords and tenants it is the cause of some concern.
- **Willingness of landlords to undertake repairs**
85. A substantial number of responses indicated difficulty in getting repairs and servicing done by landlords. This was linked to a fear that tenants would be harassed or evicted if they pursued landlords too actively for repairs.
- **Landlords compliance with housing legislation**
86. There were a number of comments about health and safety issues, poor condition, limited access to landlords and long waiting times for responses. Whilst there are undoubtedly landlords who deliberately contravene the law, there is a much larger number who, by inaction or inattention do not comply with standards.
- **Effectiveness of licensing**
87. There were some comments questioning whether licensing would have the effect we are seeking.

### **Landlords concerns**

88. Considerable effort has been made to gather the views of landlords on the proposal. The Council does not hold records on who is letting in Southwark and whilst there are sources of data that are indicative of PRS occupation there is no definitive source of contacts. Therefore in addition to the broader publicity for the consultation we concentrated specifically on engaging with bodies that represent the views of landlords.
89. Taken as a whole the responses represent a good snapshot of the views of landlords. These views are in general against licensing citing a number of objections. However opposition was not universal and there is a group of landlords who admit to being prepared to accept licensing provided it is used as a tool to regulate bad landlords. These are seen as compromising the reputations of good landlords and provide them with an unfair advantage over landlords who are compliant.
90. The landlords as a group made a series of observations/objections which though expressed in differing terms can be summarised into some key areas.
- **Intrusion or interference in the PRS market where the problems are overstated.**
91. Officers comment in the licensing proposal that the majority of all PRS tenants are happy with the services provided by the landlord and the Council recognises this by

proposing to introduce Selective Licensing in discrete areas within the Borough. Only about 16% of all the PRS properties in Southwark will be subject to Selective Licensing.

92. Landlords frequently quote the statistic that 82% of PRS tenants are satisfied with their accommodation. However the results of the consultation indicate that only 41.2 % of respondents were only fairly satisfied<sup>1</sup>. A further 10.1 % were dissatisfied with their accommodation.
93. The 2013-14 report<sup>2</sup> indicates that the PRS as a tenure has the lowest compliance with the decent homes standard with 30% non compliance. This is higher than the owner occupied sector at 19% and the social sector at 15%. 16% of these dwellings fail on HHSRS grounds and most of these are hazards arising from thermal efficiency and damp and related problems.
94. In view of this, the increase in regulatory activity and deteriorating conditions witnessed by officers do not agree with the conclusion made by some landlords that the problems are minor and do not warrant intervention.
95. For many residents of Southwark the PRS is the only tenure choice available for accommodation. The lower end of the market is substantially tilted in favour of landlords and letting agents some of whom are fully aware of the power of their position and use it to avoid or delay complying with their legal obligations.
96. The borough is experiencing strong demand for all types of accommodation and for a substantial number of residents this means poor services and poor value.

- **Effectiveness of discretionary licensing.**

97. Discretionary licensing is a power that has been increasingly used by local authorities. It has been adopted in very different housing markets to address problems of poor management, overcrowding, inadequate conditions and ASB.
98. Some landlords commented about the schemes adopted by other authorities citing them as evidence that licensing was ineffective in achieving its aims. In drafting the proposals in the Southwark scheme officers have been very careful to assess the problems experienced in the Borough and the scheme is therefore clearly intended to address local issues. Landlord groups have commented that it was a well written and detailed proposal.
99. In looking at the effectiveness of other licensing schemes our proposal uses Newham as an example. It is a borough which, whilst not being the same as Southwark in terms of the PRS market, has had a scheme that has been in existence for 3 years and therefore it's impact is worth reviewing.
100. Newham is working hard to measure and assess the effects of licensing and is producing reports that are relevant to licensing in a metropolitan context. In a recent report<sup>3</sup> Newham state the following:-
  - 18 landlords banned from managing property, bringing 150 properties into professional management;

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<sup>1</sup> English Housing Survey Households report, 2012-13

<sup>2</sup> English Housing Survey Headline Report 2013-14

<sup>3</sup> Private rented property licensing in Newham – Successes of the scheme 2014

- 802 landlords receiving increased regulatory pressure through 1 year licences;
- 346 prosecutions, 162 cautions, 35 Rent Repayment Orders;
- £3110 average fine and £30k as the highest fine;
- An additional £600k in Council tax collected and it is estimated that an additional £1.3m will be collected from HMO's in 2015/16;
- PRS rents continue to compare consistently with other boroughs and the residential property market remains buoyant;
- Tenant satisfaction has doubled in licensed properties;
- Unlicensed properties have lower tenant satisfaction, higher levels of ASB, more complaints about waste disposal and fewer tenants have their deposits protected under statutory schemes.

101. The above provides compelling evidence that licensing does have the effect Southwark is seeking.

- **Administrative burden**

102. Some landlords state that licensing will provide an extra administrative burden. Southwark's proposed scheme allows registration, renewal and termination of licenses online. The site will be accessed through a personal account so there will be as little duplication of data entry as possible. Landlords will be able to licence and manage properties without repeated entry of personal data.

103. Officers have tried to streamline and reduce processes as much as possible but the objective to issue a conditional license to most landlords on initial application requires the Council to gather key data prior to payment. The intention is to be able to issue the conditional licence, in place for five years, to most landlords who do not have a history of regulatory issues.

104. All landlords holding licences will have a compliance visit during the period of the licence. Advice and guidance will be given on any minor issues and the full license will be issued. 105. If there are more serious problems a subsequent visit will be arranged and more formal action may be taken including the service of legal notices.

106. If the landlord does not address the issues or makes it difficult to achieve resolution he/she will have the license period reduced to one year.

- **Costs / Fees**

107. The change in approach allows the Council to reduce the resources required to process each individual licence application and substantially reduce licence fees. It is our objective to have consistent fees across all types and duration of license. Mandatory, selective and additional licenses will have the same charging scheme and licenses will cost the same regardless of duration.

108. Both landlords and tenants expressed concern about charges and who would meet the cost of licensing fees and compliance costs. The Council shares those concerns and has revised the proposed fees to reduce costs.

109. HMRC confirmed that license fees are a business expense that can be claimed against tax.

- **The Council already has sufficient powers to regulate the market**

110. In general the powers available to the local authority at present are of limited effect because the more serious regulatory notices and prosecutions are resource intensive to pursue. They also have a limited effect in changing the behaviour of bad landlords. Court fines are generally low and consequently are no deterrent to the bad landlords.

111. One of the key differences with licensing is that the consequences of failing to license or persistently failing to comply with license conditions are far simpler to prove and prosecute. Additionally a key deterrent is that a landlord convicted of a wide variety of offences is disqualified from holding a licence by failing the 'fit and proper' test forcing the management to be passed on to someone capable of holding a license.

112. In Newham this has been proven to have a positive effect because the worst landlords own or control numerous properties which are all badly managed. Disqualifying the worst landlords improves living conditions for a lot of people.

- **Bad landlords will avoid licensing the property**

113. Within the Council officers have access to their own regulatory records, council tax, housing benefit and leaseholder data. Officers use Experian Mosaic which uses financial profiling to identify residents in Southwark whose financial profile matches that of a PRS tenant. Using these data sources officers are confident they can identify all the PRS letting addresses within the Additional and Selective licensing areas.

## **The Council's Evidence**

### **ASB**

114. Some respondents challenged the data produced for the incidence of ASB. However none of the respondents could produce any alternative data or indicate how the data did not show the incidence of property related ASB. The Council's evidence showed that where the density of the PRS is highest (70%) there were hotspots and higher levels of ASB. These areas were along the main high streets of the borough.

### **Density**

115. Some respondents claimed that the ASB incidence coincided with the highest population density. Officers checked this with census data and whilst some of the areas proposed for selective licensing are also the most densely populated there were others that have lower housing density. These areas have a predominance of private rented dwellings with higher levels of ASB. The Council followed the evidence and made its proposals based on this. Results clearly indicated that where there was a high incidence of ASB, there was also a high density of PRS dwellings.

### **Enforcement data**

116. Some landlords challenged the enforcement data some even claiming that the enforcement data represented an improving picture of the PRS in Southwark. We have attempted to show that:-

- The number of cases being dealt with continues to increase;

- The seriousness of individual cases is increasing and more children and other vulnerable people are involved;
  - The Council increased the resources of the regulatory team. However, even though regulatory activity increased, officers were unable to keep pace with the scale of the problems presented by conditions within the PRS and the activities of Rogue Landlords.
  - Prosecution in the courts is increasingly required to address poor conditions and this is extremely resource intensive whilst having a negligible deterrent effect.
117. Officers believe that the reactive approach, dependent on complaints, conceals problems due to residents being frightened of illegal or retaliatory eviction or intimidation.

### **Damaging the PRS market, including the stigmatisation of licensable areas.**

118. There is no evidence that licensing has a damaging effect on property markets that are otherwise buoyant and rising. Rents in Southwark are increasing and predicted to continue to increase<sup>4</sup>. Officers strongly believe that other economic and market factors influence prices and rents and the effects of licensing are completely obscured by these larger factors

### **Effect on mortgage finance availability**

119. There were a number of responses that asserted that licensing schemes have a negative effect on the availability of finance for the purchase of letting properties. Both the RLA and NLA mentioned this as did the Homeowners Council.
120. Lenders were mentioned specifically. Officers contacted these lenders' 'buy to let' teams and they denied there was such a policy. We asked Landlord groups specifically to provide evidence and no response was received.
121. Officers took this matter very seriously and contacted the Council of Mortgage Lenders and in their response they confirmed that no mainstream lender had a policy of restricting lending in areas with licensing schemes.

### **Effect on ASB**

122. Some respondents challenged the role of landlords in managing ASB in their properties. The One Landlords' group particularly stated that landlords have no powers to deal with ASB in the let property. Officers take the view that this is an unsupportable position and believe that the legislative tools are in place for landlords to deal with disruptive tenants. ASB in let properties has hugely negative effects on other residents and the surrounding community. Disruptive behaviour was a consistent theme of public consultation meetings. Noise in particular affected the lives of neighbours, particularly in settled communities.
123. Landlords cannot abdicate responsibility for managing the behaviour of their residents. Social landlords and local authorities have made huge progress in dealing with these

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<sup>4</sup> Housing Market Trends Bulletin SELHP No.21 - Southwark No.47. 4th Quarter 2014/15 (Jan – Mar) April 2015  
[www.selondonhousing.com](http://www.selondonhousing.com)

issues and officers believe that effective PRS landlords are capable of managing ASB and do so without any help or support.

124. Officers readily accept that for many inexperienced landlords these are difficult issues and as part of the licensing scheme the Council will make training, guidance and support available for landlords.
125. The Council is in a position to link ASB data with licensing records and help landlords identify when a problem is developing at a letting. This allows a landlord to intervene early and remind tenants of their responsibilities under their letting agreement. In more serious cases officers can assist with helping the landlord escalate the matter in a reasonable and appropriate way.

### **Support from the Council in increasing standards and dealing with issues.**

126. Southwark has supported the London Landlord Accreditation Scheme and is a funder of the scheme. Southwark also support and encourage landlords to join representative organisations particularly where they offer accreditation or training for their members.
127. The Council has provided resources to address property management and condition, tenancy sustainment and ASB. There was a clear request from some consultees for the Council to extend its activities in relation to the PRS. However this request does not take into account the realities of local authority funding and the reduction in budgets that will have an effect in restricting new activities and may ultimately restrict existing roles.
128. Licensing is intended to be self financing and as a result is an activity that will not be affected by future budget issues. Officers therefore regard it as a way to ensure that the Council can continue to have a positive effect on the PRS market in Southwark

### **Insufficient consultation**

129. The initial consultation period was intended to end in December 2014. Just before the end of the consultation the judgment in the case of Regas V Enfield was announced. After a review it was decided to extend the consultation to the 14<sup>th</sup> March 2015. Officers also extended our consultation beyond the boundaries of Southwark to include announcements in local press in all our neighboring boroughs. All our representative stakeholders, including landlords' representatives and letting agents were advised of the extension of our consultation.

### **Other local authorities are not pursuing licensing**

130. Whilst the Council accept that some local authorities have not proceeded with licensing, officers are obliged to consider this from the perspective of Southwark, its neighbouring boroughs and the larger London rental market.

### **Licensing will use resources better applied to regulation**

131. Licensing is part of the Council's response to the problems seen in the local PRS market. There will always be an additional role for traditional regulation with landlords who are prepared to break the law and not engage with officers to resolve problems.

### **Consistency of approach in licensing by Council Officers and liaison between departments**

132. The Council accepts that the change in approach that has been proposed will require a change in outlook and development of skills by a range of officers. Officers are committed to making that happen. Officers will be assigned work specifically with portfolio landlords to make dealing with the Council easier. They will agree plans of action where property managers need to schedule of works over the medium term.

### **Summary of results**

133. The licensing proposal is planned to address the key issues of ASB, poor condition and ineffective management within the private rented sector. The consultation showed broad support for licensing from the community in general and from most tenants. Several organisations who act as champions or advocates of tenants expressed clear support for licensing.
134. In public meetings many Southwark residents were aware that badly managed and maintained PRS property has a negative effect on local communities, particularly from HMO's housing far more people than the original property was intended to house.
135. Landlords in general opposed the proposals and did not think our proposal achieve the aims of the scheme.
136. There were a group of landlords who recognized the impact of bad landlords on the market and the unfair advantage they gain through bad practice and placing people at risk. The landlords who were aware of this were more receptive to a licensing scheme provided the Council adopts a robust stance against non compliant landlords.
137. The objections raised by landlords were predominately based on opinion and very little actual evidence was provided to rebut the case we have put forward. Issues such as licensing affecting mortgage finance were put forward by several respondents but turned out in the end to have no basis as confirmed by the Council of Mortgage Lenders.