

Appendix B

Additional Licensing of Smaller HMO properties

The Housing Act 2004 (and the secondary legislation made under it) provides local housing authorities (LHAs) with a range of tools with a view to encouraging private sector landlords to improve management, amenity and safety standards of their properties, and to tackle anti-social behaviour, which in turn will help to improve living standards and improve areas of low demand. The provisions include:

Mandatory licensing of certain Houses in Multiple Occupation (HMOs)

Discretionary licensing of other HMOs and other privately rented property (including section 257 HMOs)

Mandatory and discretionary powers to take over the management of HMOs and other privately rented properties, through the management order regime in part 4 of the Act.

Section 56 of the Act gives powers to LHAs to designate areas, or the whole of the area, within their district, as subject to additional licensing in respect of some or all of the HMOs in its area that are not already subject to mandatory licensing.

Guidance produced by the DCLG states that, to introduce an additional licensing designation for a particular type of HMO, a local authority must-

- (a) Consider that a significant proportion of the HMOs of that description are being managed sufficiently ineffectively as to give rise, or be likely to give rise, to one or more particular problems either for occupiers or members of the public.
- (b) Have regard to any information regarding the extent to which any codes of practice under S233 have been complied with by persons managing HMOs in the area in question.
- (c) Consider whether there are any other courses of action available to them of whatever nature that might provide an effective method of dealing with the problem(s) in question.
- (d) Consider that the making of the designation will significantly assist them to deal with the problem(s) (whether or not they take any other course of action as well).

(e) Consult the persons likely to be affected by the designation.

The LHA must also ensure that the exercised power is consistent with its overall housing strategy, and seek to adopt a co-ordinated approach with regard to dealing with homelessness, empty properties and ASB affecting the PRS as regards combining licensing with other action taken by them or others.

Examples of properties being managed sufficiently ineffectively, and as a result having a detrimental affect on a local area, include;

- Those whose external condition and curtilage (including yards and gardens) adversely impact upon the general character and amenity of the area in which they are located.
- Those whose internal condition, such as poor amenities, overcrowding etc, adversely impact upon the health, safety and welfare of the occupiers and the landlords of these properties are failing to take appropriate steps to address the issues.
- Those where there is a significant and persistent problem of anti social behaviour affecting other residents and/or the local community and the landlords of the HMOs are not taking reasonable and lawful steps to eliminate or reduce the problems.
- Those where the lack of management or poor management skills or practices are otherwise adversely impacting upon the welfare, health or safety of residents and/or impacting upon the wider community.

The above examples are not exhaustive, nor are the categories mutually exclusive. An area may suffer from a mixture of the problems identified and individual properties may suffer from a combination of them.

When considering designating an area as either an additional or selective licensing designation the LHA 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.

LHAs will be required to conduct a full consultation. This should include consultation of local residents, including tenants, landlords and where appropriate their managing agents and other members of the community who live or operate businesses or provide services within the proposed designation. It 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. LHAs should ensure that the consultation is widely publicised using various channels of communication.

The consultation should inform all of the groups above about the proposed designation, giving the reasons for proposing it, why alternative remedies are insufficient, demonstrate how it will tackle specific problems, and describe the potential benefits.

Consultation will need to be held over a period of 10 weeks. Once the consultation has been completed the results should then be published and made available to the local community.

Consultation will have to consist of a wide range of methods including meetings / consultation events; E-mail shots; drop in events; on-line questionnaires; door step surveys; written responses; and the distribution of flyers.

Experience of other authorities would lead us to expect any proposals to introduce additional licensing to be challenged by a number of the groups listed above, and not just landlords and agents and their professional associations. It also seems likely that requests for a judicial review of any proposals would be made, also involving the submission of Freedom of Information requests with regard to the evidence used to determine the proposals.

The Residential Landlords Association has challenged a number of schemes, using some common arguments. They also request Councils look at alternatives such as a voluntary approach working with all stakeholders, including local residents, linked to an accreditation scheme.

The introduction of additional licensing will have major staffing and resource implications for the Housing Standards Team.

It is estimated that 3.8 additional staff will be required to deal with the inspection, licensing and administration of the scheme.

Additional Licensing is tailored to run for five years to address the issues identified, and local authorities should have clear goals for the scheme and an exit strategy for when the scheme comes to an end. According to the guidance, a local authority should not consider licensing as a long-term strategy.