



1 Roebuck Lane,
Sale, Manchester M33 7SY
Tel: 0845 666 5000
Fax: 0845 665 1845
Email: info@rla.org.uk
Website: www.rla.org.uk
Facebook: [TheRLA](https://www.facebook.com/TheRLA)
Twitter: [@thelandlordman](https://twitter.com/thelandlordman)

Monday 23rd December 2013

Dear Sir/Madam,

GANNOW – A proposed Selective Licensing Scheme for HMOs in Burnley

I am writing on behalf of the Residential Landlords' Association (RLA), to make representations in response to the Council's proposal to designate an HMO selective licensing scheme in Burnley.

Summary

The RLA has a number of general concerns about licensing

The RLA has several areas of concern in regards to selective licensing, namely;

- i. Worrying trends are emerging in the case of discretionary licensing. Licensing entails a huge bureaucracy and much time, effort and expense is taken up in setting up and administering these schemes; rather than spending it on the ground and flushing out criminal landlords.
- ii. Increasingly, discretionary licensing is being misused to fund cash strapped housing enforcement services. The recent Westminster sex shop Court of Appeal (*Hemming (t/a Simply Pleasure) Limited v Westminster City Council*) has brought such funding into question (see paragraph 1).
- iii. Discretionary licensing is not being used for its intended purpose of a short period of intensive activity; rather it is being used by the back door to regulate the PRS for the sake of exercising control.
- iv. The level of fees which are ultimately passed on to tenants to pay through higher rent is a major worry so far as it affects landlords.

- The Council cannot include the costs of enforcing the licensing scheme against unlicensed landlords in the licence fee. This is prohibited by the ESD:
- A Council can only charge for HMO licensing or selective licensing for :
 - The actual and direct administrative costs of investigating the background and suitability of the landlord applicant; and,
 - The cost of monitoring the compliance by licensed landlords with the terms of their licences.
- Fees must be reasonable and proportionate.
- Under the ESD the fee must not exceed the cost of the authorisation procedures and formalities together with the monitoring costs (for licensed landlords).
- The Council can require an application to be accompanied by a fee fixed by the local authority. This is provided for under the Housing Act 2004 which stipulates that the Council, in fixing the fee, may take into account all costs incurred by the authority in carrying out their licensing functions. Importantly, however, the ESD curtails these powers.
- Surpluses and deficits for previous years in relation to permitted elements for which a fee can legitimately be charged can be carried forward, although this is questionable in the case of a standalone scheme, i.e. for discretionary licensing. Surpluses and deficits cannot be carried forward in respect of elements which are not properly chargeable.
- Fees can only cover the actual cost of the application process (plus monitoring); i.e. only the cost of processing the application and monitoring can be charged.
- Set up charges for the scheme cannot be recovered.
- Overheads and general administrative costs cannot be recovered. This means that the running and capital costs of the relevant council department cannot be charged as part of the fee.
- Fees can only be charged for the procedures themselves; i.e. steps which are followed in processing the application for a licence or for its renewal (plus monitoring of the licence holder) which means that the administrative costs involved for vetting applications and for monitoring compliance with licence terms.
- The Council is not allowed to make a profit.

As a House of Commons briefing note recently stated, "As a general rule, landlords are not responsible for the actions of their tenants as long as they have not 'authorised the anti-social behaviour. Despite having the power to seek a court order for eviction when tenants exhibit anti-social behaviour, private landlords are free to decide whether or not to take action against their tenants. The question of whether a landlord can be held liable for the nuisance of its tenants has been considered in a number of cases."³

The paper continues, "It is established that no claim can be sustained in nuisance where the nuisance is caused by an extraordinary use of the premises concerned, for example by the tenants being noisy or using drugs on the premises. The rationale behind this approach is that it is up to the victim of the nuisance to take action against the perpetrator. To found an action in negligence against a landlord the victim must show that there has been a breach of a duty of care owed by the alleged perpetrator."

The briefing paper also notes the court decision of *O'leary v London Borough of Islington*⁴ case, in which, "...it was held that a term to enforce nuisance clauses could not be implied into a tenancy agreement. This indicates that landlords cannot be sued for breach of contract unless there is an express term in the tenancy agreement that obliges him or her to "take all reasonable steps to prevent any nuisance". Even where such a clause exists, the courts have been reluctant to find the landlord in breach."

Anti-social behaviour (ASB) poses considerable problems for PRS landlords. They can rely on Section 21 to evict but only after six months. Otherwise, we have to rely on a discretionary ground and it is notoriously difficult to make a Judge make an order on these discretionary grounds. PRS landlords are also faced by problems of gathering evidence and getting people to come to Court. Your suggestion on injunctions is appropriate but this is a totally unrealistic approach in practice.

What you fail to appreciate is that you, as one half of the State, are castigating PRS landlords for failure to take action but another arm of the State, the Legal Services Commission, then gives individual tenants practically unlimited funds to defend these claims based simply on denials from tenants saying that things never happened as alleged. To compound the situation win, lose or draw the landlord has to stand his own costs in this situation because not only does the State pay to defend the tenant but also says that the landlord cannot recover his costs of doing so from the tenant (or the Legal Services Commission which has backed the case) even if the landlord is wholly successful.

Tenants who are guilty of ASB are, of course, wise to these things. Indeed, you yourselves have fallen into this trap because you suggest a licence condition restraining a landlord from entering the property on 24 hours' notice but you then expect the landlord to monitor and police ASB on the part of their tenants.

³ "Anti social neighbours in private housing" (2013) House of Commons Library, p.3, para.1.1. [SOURCE: <http://www.parliament.uk/briefing-papers/SN01012>]

⁴ *Ibid*, p.3, para.1.1.

scarce across a wider area. This is particularly important because of the Council's apparent inability to provide additional resources and deal with matters such as environmental improvements.

8. Displacement effect

We believe that there is a very real likelihood that those who are excluded from the area as a result of these measures will simply be displaced into other areas and that the problems which the Council say are apparent in this area will be transferred elsewhere to the detriment of the residents of those areas.

9. Comments on the consultation documents

Below is the RLA's review of the Burnley Borough Council's Gannow Selective Licensing consultation document.

#	Paragraph number & Consultation document quotation	RLA critique
1	44. The Council proposes designate a Selective Licensing area in the Gannow area of Burnley because the area is, or is likely to experience low housing demand and the local authority is satisfied that 'designating' the Gannow area will, when combined with other measures, lead to improved social, economic and environmental conditions.	<p>The Council are unclear what they mean with the phrase "...lead to improved social, economic, and environmental conditions'. These are implied and meant to lead the reader into a personal sense of what 'improved' social, economic and environmental standards will mean for the area.</p> <p>'Sustainability' also requires a rich diversity, which is a criteria that the PRS can help with substantially, providing affordable housing and flexibility</p>
2	47. Selective licensing is an important component of the wider regeneration strategy and is <u>the only option available to local authorities that compels landlords to look at how they manage their rented properties and where required, make improvements to their management practices.</u>	<p>Selective Licensing should be the last resort of Councils to improve the quality and neighbourhoods. Where is the evidence of poor management?</p> <p>Local authorities already have enough powers to enforce standards in the private rented sector, such as the Housing Health and Safety Rating System (HHSRS). Licensing does not empower them further. Burnley's failure to properly</p>

		inflated fees. This will not help reducing the number of empty properties.
7.	65. The profile of the housing stock in the Gannow ward means that the residents are disproportionately likely to be living in low-value homes.	The council is assuming that its housing stock is of a poor quality. In Newham, similar fears led to the local authority introducing draconian licensing measures across the entire borough. However, the RLA has been informed by the Council that in the eleven months that the scheme has been operating they have found a private rented sector that has higher standards than was previously envisaged. In other words, predetermined fears have not matched the reality of the situation.
8.	67. It is well documented how house prices in Burnley, particularly inner Burnley, have been consistently some of the lowest in the country	Council proposals for Selective Licensing do not make it clear how this will solve the issue with empty homes and poor standards. The argument is that Selective Licensing will improve the quality of homes but with the selective licensing fees it will create additional costs to prospective owners/buyers thus negating the point of selective licensing enticing people to enter the area.
9.	69. Prices continued to fall in to 2013. Median prices paid in the first quarter was only £35,750. Latest data for second quarter show prices recovering to £42,000.	This recovery questions the need for the scheme.
10.	82. The 2009 Private Sector House Condition Survey (PSHCS) for Burnley states that 17,700 dwellings were non decent. This represents 43.6% if the housing stock and is substantially higher than the national average of 36.7%	The suggestion that the housing stock that is non-decent does not automatically mean that they fall into the private rented sector. Social housing is often criticised for being a low standard and the Council would be commended to ensure that the quality of these is also at an acceptable, if not high standard. Where is the evidence of a higher than average incidence of such properties in Gannow.
11.	83. The 2009 PSHCS also shows that 28.4% of the Category 1 hazards are associated with private rented sector properties. This compares with an	It would be interesting how many private rented properties were inspected,

16.	89. As previously outlined, Burnley ranks as the 11th most deprived district out of the 354 districts in England. The three lower super output areas within the Gannow boundary rank as the 2,866th, 5,516th and 6,268th most deprived areas out of 26,593 super output areas in the country.	This statistic makes it appear much less of an issue of landlords and an issue for the area as a whole. Implementing Selective Licensing in much more affluent areas has been met with hostility and the Burnley proposed fees are very high prompting a question of why the scheme is being proposed in the first place. Incentives to invest should be emphasised rather than restrictions and increased economic burdens.
17.	94. The proportion of households in Gannow ward that are comprised of a single adult aged between 16 and 34 years of age is higher than that for the Borough and rises to over 11% in the core of the area. Indeed in this core area 42% of households are single person households. In Burnley one third of households are single person households.	Since when can landlords via selective licensing be required to introduce a second adult into a property? This smacks of social engineering.
18.	95. This is an important factor to be considered in the light of the Selective Licensing proposal. Such a concentration of single person younger adult households is usually associated with the private rented sector and a higher level of turnover of stock/tenancies. It is also potentially very important given recent changes to the Housing Benefit system, which have capped the maximum amount of benefit payable to single person households where the tenant is aged between 25 and 34 years of age.	<p>Flexibility and affordability are key facets of the private rented sector. These social conditions are a fact of life and the PRS is meant to cater for this kind of occupier.</p> <p>Where are the tenants meant to live if they are not provided for through PRS provision?</p> <p>Additionally, if Burnley wants to emphasise a modern economy it will have to cater for a modern workforce which generally prefer flexible and affordable housing which suits both tenant and landlord.</p> <p>Finally, it is not a private landlord's obligation to house tenants on housing benefits. It should be the objective of the council to ensure that there is enough quality housing for vulnerable groups and young tenants who may not be able to afford suitable accommodation on their own otherwise.</p>
19.	96. It should be noted with regard to the above there are no student only households.	Other than the perception that students are generally

		restricting it through selective licensing schemes, is imperative.
25.	109. Selective licensing can make a valuable contribution to the creation of clean and safe neighbourhoods and the strategic plan contains the specific action to "Improve condition and management systems across the private rented sector".	<p>Whilst this is an admirable objective, selective licensing does not promise any such outcome. Charging already compliant and professional landlords to continue to do their jobs will exacerbate the economic difficulties that many tenants may be experiencing because costs may ultimately be passed down to them.</p> <p>Additionally, criminal landlords who flout the law will avoid inspections and check-ups while good landlords continue to face the scrutiny of officers that have to show something is being done.</p>
26.	110. Under the Council's overarching vision are a series of objectives including to "make the Borough a place of choice" and "prompting transformational economic change for Burnley". are supported by the <u>Council's proposal for Selective Licensing in Gannow will help achieve these objectives by reducing the impact of the private rented sector in the area and making it a more attractive place to live.</u> ***	<p>There is strange wording in this point. It would be appreciated if there was clarity for what the Council means when they say 'reducing the impact of the private rented sector in the area and make it more attractive place to live'. This is a sinister phrase. It smacks of using selective licensing to make life as difficult as possible for PRS landlords without any kind of justification. Is it the intention of the Council to drive PRS out of these areas? This is how it reads despite the protestations to the contrary elsewhere in the consultation document.</p> <p>Does this mean to say that the private rented sector makes Gannow an unattractive place to live? It is widely known that a large majority of people rely on privately rented accommodation to supply their need of flexible and affordable accommodation. If the Council are as keen on having a 'modern economy' as they have suggested many times throughout the</p>

		by improving homes and living conditions. The consultation document refers to a reduced level of ASB in the area.
30.	120. The Council are clear that the private rented sector has a central role to play in meeting housing need across the borough. As owner occupation becomes increasingly more difficult to achieve it is not an option or indeed the choice for everyone. As we see a significant rise in the number of households choosing to rent privately from 9.26% in 2001 to 17.7% in 2011 (Census 2001 & 2011) it is crucial that this sector can offer a decent alternative to owner occupation or social rented housing.	The PRS is certainly one option that needs to be maximised when looking to cater to the housing needs of an expanding population and homelessness is a massive issue. However, the shortage of suitable social housing and increased regulatory and economic pressures (for example, selective licensing) on private landlords creates disincentives to invest in a sector that would otherwise be beneficially for the tenants, council and landlords alike. Each £1 spent on a licence fee is £1 less to spend on the property.
31.	125. Tackling empty homes has been an intrinsic part of the Council's wider housing strategy to address low demand for many years and is highlighted as a key priority in the Pennine Lancashire Housing Strategy. The vacant property section of this document sets out the challenges faced by the borough and there are a number of strategic initiatives that the Council use to address the problem, ranging from information and advice through to enforcement.	Incentivising investment in the PRS could be a more attractive option to potential and existing landlords than increased regulation and cost. Buy to let mortgages and other breaks to landlords could create an area of high demand for landlords creating 'decent' homes for all target groups.
32.	130. Selective Licensing will support this strategic priority by ensuring that the private rented sector makes a positive contribution to a sustainable mixed tenure neighbourhoods that offer a range of housing options for current and future residents of the Borough.	This point looks to be supportive of the PRS while the rest of the document (specifically point 110.; point 28 in the table) look to 'reduce the impact of the PRS'.
33.	131. The Council have long held the view that a positive relationship with the private rented sector is of mutual benefit to both parties and residents of the borough. Through programmes to tackle empty homes, prevent homelessness, address issues of low demand and improve housing standards the Council have worked with the private rented sector to strengthen this partnership and deliver effective solutions.	The RLA fosters these sorts of relationships and encourages them wherever possible (see the RLA Local Authority Network for proof of this), and commends Burnley Council for their hard work.
34.	132. To achieve this aim the Council supports the Private Rented Sector Forum that meet periodically to discuss issues of particular relevance to the sector and the Council also organise bi-annual Landlord evenings to engage with the wider sector, update landlords on recent developments and offer advice and assistance on a range of topical issues.	It is safe to assume that the landlords that attend these meetings are invested and engaged and can be considered to be providing a high level of service to tenants and their properties.

	544 properties.	assisting the Council with its objectives should be subjected to high fees and enforcement proposals are suffering for the actions of criminal minority.
39.	151. Whilst the number of accredited landlords continues to grow in Burnley, our experience shows that accreditation attracts a limited number of only those landlords that already provide appropriate management standards and are motivated to improve the standards and reputation of the private rented sector.	Using this stream of logic, surely one could expect these (good!) landlords to adhere to selective licensing while other landlords flout the law and continue to provide poor quality housing.
40.	152. Whilst we see GLAS and the Private Rented Sector Forum as important schemes to work with landlords and improve standards it does not have an intensive impact in any one area of the Borough, nor does it tackle the worst privately rented properties, as due to the voluntary nature the worst landlords will not engage with the Council or join the scheme. Experience shows that it is resource intensive to encourage the poorer landlord to join accreditation and when asked to make improvements due to its voluntary nature many landlords fail to comply showing that accreditation cannot tackle the worst standards of property condition and management practices within Burnley.	Creating more incentives to join the program could see numbers rise positively. Rather selective licensing is a 'catch-all' that arguably will not 'catch' the actual criminal landlords that do not engage. See point 151 from the document or point 40 In this table above.
41.	153. Accredited landlords on the scheme since 2008 is at 33.	This poor number could well reflect the lack of incentive that is being provided to landlords within the scheme...what is the benefit/reasoning for a landlord to want to be part of the program?
42.	155. Through Selective Licensing designation landlords will attend development days which cover all aspects of property management including property condition. Through training, advice and support landlords will recognise what improvements need to be made to their properties reducing the need for action under the HHSRS (Housing Health and Safety Rating Scheme)	This sounds an awful lot like training that could be supported through more beneficial and pointed accreditation? Will the sessions be mandatory? Are there penalties for not attending? We would like further clarification on this.
43.	163. There is no guarantee that landlords, especially the worst, will join the scheme and the council cannot compel them to do so. As with Management Orders the scheme does not address poor management practices as the landlord does not gain experience, advice or training during the lease meaning that once handed back management standards will once again be unsatisfactory.	Non-compliant landlords can be dealt with using existing powers without having to compel compliant landlords to join a licensing scheme.
44.	165. The alternative options do not compel a landlord to address tenant behaviour or ensure landlords seek references when allocating properties. The current selective licensing scheme has proved successful in tackling anti-social behaviour and ensuring problem tenants do not move within the designation area. Landlords will be	Though the Council will offer advice they should look to implement a tenant referencing system. Otherwise it can be assumed that the Council is

		Council will be able to work with to see if the high flow intentions are actually born out in practice when the schemes come to an end.
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10. Freedom of Information request


In view of the lack of information on Burnley's proposed budget for the proposed HMO additional licensing scheme, and the concerns outlined in paragraph 1, I would be very grateful if you could provide me with a full breakdown of the proposed budget for the scheme under the auspices of *Freedom of Information* protocol.

11. Conclusion

The RLA is opposed to the proposed HMO additional licensing scheme for the reasons outlined in this response. However, the Association is keen to work with Burnley Borough Council to promote accreditation and the Landlord Forum to local landlords, and would welcome further dialogue with the Council on this issue.

I look forward to the Council's thorough consideration of the RLA's response.

Yours faithfully,


Policy Director
Residential Landlords' Association

Email: 