EMPO's Overview of Private Rented Sector Regulation

There is a huge amount of housing legislation councils can rely on to undertake enforcement and notify tenants of their rights when dealing with non-compliant landlords. Legislation includes the Housing Health & Safety Rating System (HHSRS) regulations, The Deregulation Act, 2015, The Management of Houses in Multiple Occupation (England) Regulations 2006, EPC Regulations, the Housing Act 2004, The Tenant Fee Act, The Homes (Fitness for Human Habitation) Act and the Housing and Planning Act 2016 in respect to repayment orders, banning orders and the failure to comply with improvement notices and management regulations in respect to HMOs and Offences of contravention of an overcrowding notice.

For discretionary licensing schemes to be successful, a robust case, a properly costed budget, and adequate resources to undertake a widescale inspection and enforcement scheme are key to ensuring the good landlord community is onboard. It is recognised discretionary licensing will only work in an area where there is some intense application of resources from external agencies including the council itself. Therefore, a fully costed and detailed report is required at the consultation stage outlining where monies and resources will come from; to ensure problems including anti-social behaviour, crime, low housing demand and deprivation will be tackled effectively by the proposed scheme.

Part of the council's due diligence process should also include evidence that other options other than licensing have been properly considered by the council. Under the HHSRS for example, where any formal notice is issued, the council can keep the monies to help towards general enforcement costs. Another initiative to improve landlord management can come from providing professional landlord training courses, again like HHSRS a less costly alternative to implementing a costly licensing scheme.

Furthermore, councils can develop active regimes for enforcing breaches of housing legislation such as the Tenant Fees Act, missing EIRC certificates and components contained in the Housing & Planning Act. This will all provide enforcement funding and have a more direct impact on tenant welfare and landlord management than the implementation of discretionary licensing schemes. In fact, as has been demonstrated in Newham for example, for a discretionary licensing scheme to be effective it will require considerable funding above and beyond that recovered from licensing fees to fund an effective detection and enforcement process to identify dwellings that should be licensed and to deal with them.

It is important to recognise as Nottingham has shown, (where additional HMO & selective licensing has been operating since 2014 & 2018 respectively) rents and homelessness have increased significantly, placing unmanageable demand on social housing providers. Nottingham City Council (NCC) has been unable to provide evidence to suggest anti-social behaviour or crime has improved in the areas where discretionary licensing schemes operate. During the scheme's consultations NCC made a big fanfare about how licensing would reduce crime and anti-social behaviour, in fact, owner occupiers have triggered at least two community trigger meetings in areas of Nottingham where high density discretionary licensing schemes exist to discuss persistent issues with rising crime and anti-social behaviour.

Despite the huge cost associated with the implementation of discretionary licensing schemes, and the inability of councils to demonstrate strong outcomes or efficient delivery in addressing rising rents, rising homelessness and landlord relationship damage, schemes tend not to be approved for renewal after the initial five years period. The MHCLG cites failures by councils to put forward sufficiently strong arguments in the following key areas for this:

- in providing robust evidence that standards of private rented accommodation improve under discretionary licensing.
- in providing an up-to-date comprehensive housing strategy, outlining how discretionary licensing has and will continue to strengthen and deliver the overall objectives of improving private sector housing.

Croydon, Hastings, and Liverpool, Stoke on Trent have all had their applications for renewal of discretionary licensing schemes denied.

Croydon generated £6 million in licence fees in the first year of its scheme, according to the council's own figures, in 2016-2017 the council completed 3,473 inspections of private housing. Yet for all those visits, according to a Freedom of Information response, Croydon's inspectors did not record any information on the number of Category 1 hazards – the type which might have resulted in a prosecution – in private rental properties. Overall, the scheme raised £22million, according to the council's 2019-2020 accounts, but auditors Grant Thornton were unable to say with any certainty how that money had been spent.

Under another Freedom of Information request in respect to Charnwood Borough Councils (CBC) additional HMO and selective licensing schemes in Loughborough that went live in April 2022, it was discovered CBC had issued no civil penalties in the licensing areas. Furthermore, since January 2017

CBC has issued just 1% of all rental properties in Loughborough with an improvement notice.

Another council, Gedling Borough Council is proposing to extend their selective licensing scheme to cover more wards. When asked by the professional landlord community to provide details on the number of improvement notices issued in the proposed wards over recent years the council response was as follows:

"During the period you mentioned no improvement notices were served. One improvement notice is currently being considered for an ongoing case. In previous years four improvement notices, one hazard awareness notice and one emergency prohibition order were served. The council regularly receives service requests in the proposed selective licensing areas which evidence poor housing conditions and the current reactive approach is not delivering the level of improvements the council would like to see."

In the GBC justification report for the extended scheme, it is claimed 86% of properties inspected have contained hazards requiring remedial works under the HHSRS. However, the report and council cannot provide any categorization of these hazards to present a convincing argument to landlords that further licensing is required.

Viewpoints about licensing from the professional landlord community

I currently let a property which will fall under the new scheme. The tenant receives Housing benefit from the council, therefore as I will have to increase their rent to cover the additional cost then the council's costs will increase. The alternative is I replace the tenant with a non-benefit tenant and let the council re-house the tenant which will most likely be more expensive for them. Have they built these costs into their model? Second aspect is that since the additional HMO licensing was introduced, we have purchased three properties in other towns therefore taking private investment out of the area

Mr C- EMPO Landlord

Viewpoints from professional agents about discretionary licensing schemes

At a time when the private rental sector is seeing massive challenges, it is short-sighted of the council to perceive selective licensing as having a positive impact in any capacity. In the proposed area for scaled up licensing, we have encountered landlords disposing of

good quality housing stock over the last two years as a direct effect of selective licensing.

David James Estates

Call the EMPO office on 0115 950 2639 for any advice or guidance on licensing schemes.