

Appendix B

Additional Licensing Scheme 2019

Public Consultation Responses

The following letter was received from Gwent Police in response to the consultation:



Chief Inspector Richard Blakemore
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16th December 2018

Nicola McGrath
Principal Environmental Health Officer Housing
Newport City Council
Room 716
Civic Centre
Newport
NP20 4UR

Dear Ms McGrath

**Re: The Housing Act 2004: House in Multiple Occupation Additional Licensing
Public Consultation.**

I would like to formally acknowledge support for the HMO (House in Multiple Occupation)
Additional Licensing scheme.

Reducing anti-social behaviour in HMOs will support one of the aims within the Safer Newport
element of the City Wellbeing Plan. In addition the provision of good quality, safe
accommodation supports resilient communities and protects individuals which will assist with
the strategic aims within One Newport.

Yours sincerely

A handwritten signature in black ink that reads 'R. J. Blakemore' with 'Ms.' written below it.

**Chief Inspector Richard Blakemore
Neighbourhood Support**

The results of the online questionnaire are as follows:

1. Which of the following best describes you?

	Number of people	Percentage of people
An owner-occupier of a property in Newport	13	37.14%
A tenant renting housing in Newport	7	20.00%
A landlord operating a property in Newport	7	20.00%
An agent letting or managing rented properties in Newport	2	5.71%
A business operating in Newport	0	0.00%
A community group or charity operating in Newport	1	2.86%
Other	5	14.29%
Total responses	35	

Comment on results: A surprising number of owner occupiers responded to the questionnaire.

2. To what extent would you support the proposal to continue to operate Additional Licensing in Newport?

	Number of people	Percentage of people
Fully support	10	28.57%
Partially support	1	2.86%
Do not support	24	68.57%
Do not know / not sure	0	0.00%
Total responses	35	

Comment on results: 92% of owner occupiers said they did not support the proposal. This was surprising as those categorising themselves as owner occupiers were presumably not landlords or tenants, and these individuals would not normally have a strong reason to oppose HMO licensing.

When it came to tenants, 43% said they supported the proposal, while the remainder said they did not.

Of the 9 responses from landlords and managing/letting agents, 78% said that they did not support the proposal.

3. What impact, if any, do you feel continuing Additional Licensing in Newport would have on you?

	Number of people	Percentage of people
A positive impact	8	22.86%
No impact	3	8.57%
A negative impact	23	65.71%
Don't know / not sure	1	2.86%
Total responses	35	

The same owner occupiers who said they were opposed to the proposal said they felt that the scheme would have a negative impact on them. No reasons were provided for this.

The one owner occupier in support of the proposal said that they felt there would be a positive impact and gave the following reason: *“There are a large number of hmo properties near me and I would be very concerned if licensing were removed as the standard of the accommodation would fall and tenants would be put at risk.”*

Those tenants that did not support the proposal said that they felt there would be a negative impact on them, but no reasons were provided for this.

The landlords provided the following reasons for their views on the impact of the scheme:

“Landlords are currently being bombarded with additional legislative changes which are very expensive to comply with and are together draining any profit from landlords with mortgages. Section 24 of the Finance Act has a huge impact on profitability is a primary cause of landlords selling up and thereby reducing the number of PRS homes available at a time when rental demand is growing. The HMO licences fee is excessive. The Rent Smart Wales scheme vets the suitability (in a more in depth manner) of all landlords and any managing agent and as such negates the need for an individual Welsh council to do so. The Environmental Health dept is already geared up to deal with complaints, surely that is all that is required?”

“I had 4 young men staying in a large house. They kept the place immaculate, including the gardens. Additional licensing forced me to change to renting to a professional family. Since then the place is a tip, they do not open windows and for the first time ever there is mould in some areas. The wear and tear plus damage has been terrible. The gardens are over grown and I have had to pay for remedial works. Such is the problem that I am seriously considering serving a Section 20 on them, before the property becomes uninhabitable.”

“I believe that licencing raises the standard of properties”

“Depending on the detail it has the potential to: - improve standard of housing - allow increased rent for better quality of housing - address rogue landlords It may also: - drive landlords out of the PRS due to micro management - drive landlords out of the PRS due to unsustainable costs - ignore and push rogue landlords further under ground as resources on focussed on administrating the already 'decent' landlords”

4. Do you think that the type of HMO properties targeted by the scheme are correct?
(See the Review and Proposal document for details)

	Number of people	Percentage of people
Yes	9	25.71%
No	23	65.71%
Do not know / not sure	3	8.57%
Total responses	35	

Of those respondents that said no, the following reasons were given:

“It would be more understandable for 3 storey properties plus where there are additional safety requirements, but to force licensing on 2 storey 3/4 bedroom properties is heavy handed.”

“My experience leads to believe this catch additional licensing is more about revenue raising than raising standards.”

5. Given the data presented in the Review and Proposal document, do you agree that Additional Licensing in Newport has maintained or improved standards in this type of private rented housing?

	Number of people	Percentage of people
Yes	8	22.86%
No	24	68.57%
Do not know / not sure	3	8.57%
Total responses	35	

Of those that responded no or don't know/not sure, the following reasons were given:

“Possibly in the past but my view has changed since the introduction of Rent Smart Wales.”

“I cannot comment on other properties but I do not believe that Additional Licensing has improved the 'standard' of the properties that I let. As a decent landlord with a conscience I have always tried to provide decent accommodation (despite tenants occasionally destroying my properties that were provided to them in a decent condition). The only difference now is that I pay NCC to prescribe how I do that and to ensure that I have carried out what they prescribe.”

Of those that responded yes, the following reasons were given:

“Tenant living standards are improved and their safer in their homes”

“I believe substandard properties have been forced to comply”

“I believe it has maintained and improved standards in housing”

“Based on figures.”

6. To what extent do you feel the Licensing fees are reasonable or unreasonable? (See the Review and Proposal document for details)

	Number of people	Percentage of people
Totally reasonable	5	14.29%
Fairly reasonable	4	11.43%
Fairly unreasonable	2	5.71%
Totally unreasonable	21	60.00%
Don't know / not sure	3	8.57%
Total responses	35	

Comment on results: Of the 23 respondents that felt the fees were fairly or totally unreasonable, 4 were landlords, 2 were letting/managing agents and surprisingly 12 were owner occupiers. 4 were tenants.

The following reasons were provided from those respondents:

“The cost of the licence eats a big hole in an already reducing profitability. If the council's intention is to drive more landlords out of the PRS then they might well get their wish. Will be interesting to see how they go onto house the hundreds/thousands of additional people unable to find a home they can afford who then turn to the council for assistance.”

“The year on year increase exceeds both RPI and CPI, which is unjustifiable. Also, I do not believe that my properties cost as much as the Licensing Fee charges for NCC to manage and administer. I believe that I am paying more than the actual cost so that money goes into a pot to fund other work of NCC with regards to HMOs and the Licensing. This should not be the case. Just because I am landlord, I should not be expected to pay towards other landlord or PRS related issues any more than any other member of the Newport community. I should be expected to pay for my properties only and if further money is required for further resourcing within the department then it should come from central NCC funding and/or council tax from everyone.”

Of the 9 respondents that felt that the fees were fairly or totally reasonable, 1 was an owner occupier, 3 were tenants, 3 were landlords, 1 was the Fire & Rescue Service and one did not specify. 2 of the landlords who said the fees were fairly reasonable were those that said they did not support the proposal to continue the licensing scheme.

The following reasons were provided by the respondents who felt that the fees were fairly or totally reasonable:

“Not as high as some councils.”

“I do think it is on the expensive side and would hate for landlords to be seen as a cash cow as this will have a negative effect on tenants”

7. Do you feel that the standard licensing conditions are reasonable and improve the standard of this type of private rented housing? (See the Review and Proposal document for details)

Comment on the results: Unfortunately it appears that this question was often mis-read, as 67% of those who said that they did **not** support the proposal **not** to continue with Additional

Licensing, were those that earlier in the questionnaire said they did **not** support the scheme continuing.

As this question was often mis-read, the reasons given for some of the responses must be read with caution, however they were as follows:

“This would be the wrong direction to take as it is only via licensing that standards are maintained. Tenants are often too intimidated to make complaints and the general public are not aware of what is required so may not realise that this option is available”

“Why penalise decent landlords with hefty and unnecessary licence costs when they are providing good quality accommodation?”

“I would fully support such a move. I have always tried to keep my properties at a standard where I would be happy to live in them myself. Please remember that there are rogue tenants too.”

“Having provided decent accommodation within the NCC area for over 15 years I have spent substantial time and finances conforming to what at times has been constantly changing and whimsical policy regarding HMO and Additional Licensing. To remove Additional Licensing now would render all that time and money wasted and allow unregulated properties to enter the market, most probably at a lower rental price point and you would possibly see a race to the bottom.”

“Needs additional licensing”

8. What impact, if any, do you feel NOT operating an Additional Licensing Scheme would have on you?

	Number of people	Percentage of people
A positive impact	13	37.14%
No impact	5	14.29%
A negative impact	11	31.43%
Don't know / not sure	6	17.14%
Total responses	35	

The following reasons were given for some of the responses to this question:

“Property standards would fall and hmo properties would not be managed as well as they are now”

“Well for one thing I'd have more money available to spend on my properties! £850 would buy a new kitchen for my tenants!”

“In my case I could have continued to offer a home to 4 nice lads who kept the house and gardens immaculately. Now the place although complying with the law, is a disgrace.”

“Less fees to pay”

“It would lead to less safe, poorer quality, unregulated properties entering the market. Quality of property would reduce as corners were cut in order to offer cheaper rents and increase profits.”

“No scope for improvement”

9. If you have any suggestions on how the Council can improve HMO properties in the private rented sector, please tell us in the box below.

The following comments were made:

“More inspections of hmos”

“More help to tenants as we hardly hear from you”

“Make the standards they have to obtain stricter to ensure the properties are safe healthy homes for residents”

“Carry out compulsory purchase of properties left void, unmanaged or dilapidated.”

“Encourage empty floors above shops to be utilised as accommodation.”

“Give them bigger bins - more households in a property = more rubbish.”

“You have no option with mandatory licensing. You do have an option with additional licensing to prevent travesties like my case.”

“Focus the majority of resources upon rogue landlords, not chasing the minor detail with what are essentially decent landlords.”

Comment: The views relating to compulsory purchase of empty properties and encouraging the use of empty floors above shops are outside of the scope of Additional Licensing.

10. If you have any further comments on the proposal, please use the box below.

The following comments were made:

“Write to tenants more often deliver tenant factsheets with advice Work with benefits as they have records of private tenants to liaise with tenants and send info out via email regular on standards expected in housing so we know who to contact if your home differs!”

“I believe the council should make more effort identifying those landlords, HMO and otherwise, not registered with RSW and penalise them. I have reported 2 RSW unlicensed landlords to RSW but no action has been taken. RSW unlicensed landlords are the ones most likely to be providing shoddy/dangerous accommodation.”

“As with anything, the devil is in the detail. Additional Licensing is in theory a good thing, as long as it addresses the basics such as fire regs, safety, minimum living standards etc. Once it starts to prescribe anything other than the basics then it becomes both intrusive, unsustainable and ineffective. Also of major importance is that NCC puts responsibility upon the tenant (where appropriate) as to their part within the PRS and HMO. Unless officially identified as a vulnerable person then a tenant is a grown responsible adult that is as much a part of society as anyone else, and should not be portrayed or assumed to be the victim in the landlord/tenant equation. As such, NCC should pursue and enforce against tenants as and when they are the problem.”

The following letter was received from the Residential Landlords Association.

Comment: This letter was received after the consultation had closed. It makes a number of interesting points, which have been considered carefully before setting out the Preferred Option set out in the Cabinet Member Report to which this is an appendix.



Newport City Council
Civic Centre
Godfrey Road
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NP20 4UR

16th January 2019

To whom it may concern,

Additional Licensing Proposal

Thank you for the opportunity to respond to the above consultation.

We have read through your consultation documents, and though we appreciate the issues that the Council have mentioned and the effect they can have on tenants, landlords and the housing market proposed, the RLA is opposed to the proposed Additional Licensing Scheme.

Additional Cost

We understand that the Council's Corporate Plan 2017-2022 wants to support the mission of improving people lives in the city, and the overall Improvement Plan Objectives of delivering a "Safer City".

Good landlords will apply for licences and, likely, pass the cost on to tenants in the form of increased rents, doing nothing to address affordability, while the worst landlords – the criminal operators – will simply ignore the scheme, as they do many other regulations. To avoid financial difficulties, the council, if it goes ahead with the scheme, should increase the level of discount available to landlords.

Gaskin v Richmond 2018 & Fees

In *R(Gaskin) v LB Richmond Upon Thames* (2018) EWHC 1996 (Admin) the High Court overturned a prosecution against Mr Gaskin and gave substantial guidance on fees and other points associated with HMO licensing and by implication selective licensing, schemes under the Housing Act 2004.

Mr Gaskin had been prosecuted for not having a proper HMO licence for his property. He was of the view that he had made a proper application and that this had been unreasonably rejected by Richmond. Mr Gaskin was applying for a renewal of his licence and refused to provide the full list of information that the local authority was seeking such as names of current tenants and the terms of their tenancy agreements. The requirements for a renewal

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licence were amended and simplified in 2012 by the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012. The High Court agreed with Mr Gaskin and found that the only information that could be sought on a licence renewal application was that set out in the amended regulations.

As you will be aware, the *Gaskin* case was specifically focused on the fees charged for a licence. The outcome was that a fee should just be for the application and there should not be additional charges, such as late application fees, or a fee to transfer a licence. We hope that the council takes into consideration the findings of this court case, and only asks for information set out in the relevant regulations, and nothing else. This includes taking the licence fee in 2 parts, one part on receiving the application, and the other part payable to the council once the licence is granted. The council, if it chooses to continue with Additional licensing, should revise its fee structure to reflect the findings of *Gaskin v Richmond*.

Disclosure and Barring Service requirement

As part of the council's criteria for an acceptable HMO application process, it is required that a basic disclosure obtained from The Disclosure and Barring Service be submitted to qualify the landlord or proposed licence holder as a "fit and proper person". It is not unreasonable for the council to ask for such documentation, but this should not be an additional cost to the landlord, as the cost should be included in the licence fee. The council can carry out the disclosure themselves and add the cost to the licensing fee, but it is unreasonable for the council to request the landlord to do this in addition to paying the £937.04 for the licence fee as well.

Impact of Welfare Reform

According to research done by RLA PEARL, 61% of landlords that let to tenants on Universal Credit have experienced their UC tenants going into rent arrears in the past 12 months. This is over double from 27% of landlords in 2016, and a significant increase from the previous year where it was 38% of landlords. PEARL also found out that the amount owed by Universal Credit tenants in rent arrears has increased by 49% in comparison to the previous 12 months. This has increased from £1,600.88 in 2017 to £2,390.19. Rent arrears for Universal Credit tenants are likely to be driving homelessness, with 28% of landlords regaining possession of their property from a UC tenant and the primary reason being rent arrears (77% of landlords).

The significant increase in rent arrears for both 'UC' tenants and 'legacy' Housing Benefit tenants also points to much wider issues than just the implementation of Universal Credit. The findings suggest that the freeze to LHA rates since 2016 and that LHA rates had not increased with market rents between 2010 and 2021 is likely to be driving the increase in rent arrears for tenants that claim benefits. More and more landlords are planning to sell properties in the next 12 months. This now stands at 22% and is up three percentage points since 2016. While the proportion of landlords looking to buy properties has continued to decline, and more landlords are planning to sell than buy. This indicates a chronic undersupply of privately rented homes in the future.

Many landlords may be in a situation where they are not able to pay both licensing fees, Rent Smart Wales registration fees, possible increase fees from the introduction of banning

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of agency fees, reduction in mortgage relief tax and deal with rent arrears on their properties, resulting in financial difficulties for landlords, and may lead to an increase of demand on council services as they consider leaving the sector.

Variation of a licence charge

The charge for "change of occupancy" **£84.24** could very well be classed as a variation of the licence, which cannot be charged by the council. The power to charge a fee is set out in s63(3) of the Housing Act 2004 and is limited by s63(7). These state that a fee must reflect the cost of running the scheme. The fee is however allowed to reflect all the costs including the operation of the scheme itself, education about the scheme, and the necessary inspections and enforcement activity to make the scheme effective. No charge can be made in respect of any other function under the licensing regime, such as a variation of a licence, a Temporary Exemption notice or anything else.

Pressure on non-licensed areas

Landlords, especially those with properties outside the licence area will become risk-averse in terms of the tenants they let to. Tenant problems such as anti-social behaviour are impossible for the landlord to address alone and landlords will not wish to risk a breach of licensing conditions that may affect their ability to let properties elsewhere. Some may seek to evict already challenging tenants. This could mean additional costs to other council services, as they pick up the pieces created by the disruption to the lives of already vulnerable tenants.

Raising Standards

There is little evidence that licensing schemes improve housing standards. The focus of staff becomes the processing and issue of licences, while prosecutions centre on whether a property is licensed or not, rather than improving management standards and property conditions. Additionally, the decent homes standard is a measure of the standard of housing and has no legal applicability to PRS housing. The Housing Health and Safety Rating System (HHSRS) is the relevant standard for the PRS.

Furthermore, the Renting Homes (Wales) Act 2016, will seek to introduce a new universal standard for renting in Wales. The legislation will seek to grant one, simple to use piece of legislation for reference on what will be required of Private Sector Landlords. The use of further continuing licensing schemes would be seen to undermine the Welsh Government's work as well reducing the overall effectiveness of the provisions relating to Fitness for human habitation (FFHH) which will replace HHSRS.

The matters considered are those similar to HHSRS with prescribed and considered matters.

There will be two types of matters to consider as to whether a property is suitably fit, these are categorised as:

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Prescribed Matters

- Prescribed Matters relate to electrical safety, smoke alarms and CO2 alarms.
- Electrical safety will generally cover the inspection of all electrical outlets and ensure that they are set to a British Standard (BS7671).
- Smoke alarms, the consultation sought to seek clarification of the position on whether the smoke alarms should be hardwired or interlinked
- Carbon Monoxide alarms should be provided when gas burning applications are being used.

Considered Matters

- The considered matters to which will determine that the dwelling is FFHH are based on the 29 matters and circumstances from the House Health and Safety Rating System (HHSRS). Examples are as follows:
- Damp and mould growth
- Asbestos and manufactured mineral fibres
- Biocides
- Carbon monoxide and fuel combustion products
- Lead
- Domestic hygiene, pests and refuse
- Un-combusted fuel gas

When considering Prescribed Matters, if it is found that any of these three matters aren't met, then no matter how many of the considered matters have been met, the home will not be considered fit for human habitation. A landlord who rents a dwelling which is not FFHH, or who fails to rectify an issue causing the dwelling to be unfit, may risk having their landlord licence revoked under Rent Smart Wales and possible breach of contract in the courts.

We believe that the measures contained in the Renting Homes (Wales) Act 2016 will be sufficient to improve housing standards.

Rent Smart Wales also requires landlords to complete training and registration, which increases the standards of knowledge that Landlords have in Wales, which has gone in a long way to increasing and professionalising the sector.

Overall there are several mechanisms already in place to improve standards, we would recommend enforcing these laws instead of further licensing. Especially considering our recent research conducted by our research arm PEARL into enforcement by local authorities. We found that out of all of the complaints made between 2012/13 – 2017/18 to local councils in Wales only 7% resulted in some sort of action made against the landlord. Newport council has received over 14,000 complaints from tenants in 2017/18, which indicates that there is a lack of enforcement of the current laws. We would rather see an

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investment in enforcement rather than further licencing schemes that do nothing more than prosecute for not being licensed rather than for failing to adhere to standards.

Conclusion

In conclusion, rather than expanding an ineffective licensing scheme, the council should use cross-departmental and multi-agency working and effective use of existing housing legislation to support tenants and landlords in maintaining tenancies, housing condition and management standards.

We also support the use of the council tax registration process to identify private rented properties and landlords. Unlike licensing, this does not require self-identification by landlords, making it harder for so-called rogues to operate under the radar. There are alternatives to licensing. The RLA supports a system of self-regulation for landlords whereby compliant landlords join a co-regulation scheme which deals with standards and complaints in the first instance, while those outside the scheme remain under the scope of local authority enforcement. More information can be supplied if required.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'D Haig', with a long horizontal flourish extending to the right.

Douglas Haig
Vice Chairman of the RLA
Managing Director of the RLA Wales

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