



Options for improving housing standards in proposed Selective and Additional Licensing Areas

Many Local Authorities are using or considering the declaration of licensing schemes under either the additional provisions for HMOs or the selective provisions for all the PRS.

This document provides guidance to the statutory requirements for declaration using examples of published consultation documents. Also provided are suggestions for other measures that will assist in the achievement of their objectives.

Part 1: Licensing

Selective Licensing

The declaration of a selective licensing area requires that either one of two sets of general conditions are satisfied in a proposed area.

Legislation: Other Measures

The first set of general conditions are —

- (a) that the area is, or is likely to become, an area of low housing demand; and*
- (b) that making a designation will, **when combined with other measures** taken in the area by the local authority, or by other persons together with the authority, contribute to the improvement of the social or economic conditions in the area.*

The reference to social or economic conditions suggests that these other measures go beyond the regulation and improvement of housing conditions and management.

❖ Requirement to take other measures

Other measures to improve socio-economic conditions must be in place and part of the plan for area improvement.

It is necessary to demonstrate that other measures are being taken as there is an explicit requirement to deal with the low housing demand by addressing the social and economic conditions by other methods. The implication being that the low housing demand is brought about or exacerbated by the socio-economic factors and that the demand for housing is linked to the availability of persons who can afford to rent or buy in the area. If these measures are not in place the selective licensing should not be declared, not only is it liable to be challenged it is highly probable that it will also fail to raise housing demand.

Most consultation documents seen do not emphasise or demonstrate the other measures taken in detail and some are silent on other measures. Most give details on other measures to improve housing conditions. There has not been a successful challenge on this basis and it may be that in practice it is not such a demanding requirement.

Legislation: Low Housing Demand

In deciding whether an area is, or is likely to become, an area of low housing demand a local housing authority must take into account (among other matters)—

- (a) the value of residential premises in the area, in comparison to the value of similar premises in other areas (whether in terms of types of housing, local amenities, availability of transport or otherwise);*
- (b) the turnover of occupiers of residential premises;*
- (c) the number of residential premises which are available to buy or rent and the length of time for which they remain unoccupied.*

❖ Requirement for statistical analysis

A statistical analysis of low housing demand as set out in the act is required.

These measures are mandatory and must be shown to have been done before the consultation process. It clearly sets out the minimum statistical analysis of demand required and ensures that values are compared with similar areas so that other factors affecting value are taken into account. Such indicators

can only be provided by statistically valid survey. It will not be necessary to assess every property but to a high enough level of sampling will be required to achieve a statistically valid result.

Example: London Borough of Waltham Forest

This Council has given a detailed breakdown of the private rented sector including

- housing conditions
- occupancy
- tenure
- distribution

It gives a summary using descriptions, tables and graphs to give a clear indication of the statistical analysis of housing demand. Information was provided by a detailed statistical analysis of the housing market immediately prior to the draft proposals - the Strategic Market Assessment of the Housing Market.

Legislation: Anti-Social Behaviour

The second set of general conditions are —

- (a) that the area is experiencing a significant and persistent problem caused by anti-social behaviour;*
- (b) that some or all of the private sector landlords who have let premises in the area (whether under leases or licences) are failing to take action to combat the problem that it would be appropriate for them to take; and*
- (c) that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, lead to a reduction in, or the elimination of, the problem.*

The CLG Guidance provides that an area can be deemed to be suffering from significant and persistent anti-social behaviour if it suffers from:

- **Crime:** tenants not respecting the property in which they live and engaging in vandalism, criminal damage, burglary, robbery/theft and car crime.
- **Nuisance neighbours:** intimidation and harassment; noise, rowdy and nuisance behaviour; animal related problems; vehicle related nuisance. Tenants engaged in begging; anti-social drinking; street prostitution and kerb-crawling; street drugs market within the curtilage of the property.
- **Environmental crime:** tenants engaged in graffiti and fly-posting; fly-tipping; litter and waste; nuisance vehicles; drugs paraphernalia; fireworks misuse in and around the curtilage for their property.

❖ Requirement for Statistical Analysis

A verifiable statistical analysis of anti-social behaviour with a comparison to a similar area must be completed prior to consultation.

Reports to the Police and any other public bodies of such behaviour must clearly show that a problem exists. The evidence need not be confined to Police complaints and the fire authority may provide statistics on the number of fires set on purpose or the number of false calls to the emergency services made.

Example: London Borough of Enfield

This Borough uses the increase in the PRS as evidence of increasing demand and associated ASB. Their consultation document provides considerable local statistics on ASB providing levels of complaints and the trends. Several case studies were included which detailed initiatives taken to combat the problem. The link of ASB to the PRS was made by statistical analysis of the rates of complaints across tenures and a map of the distribution of both the ORS and ASB complaints gave a graphic illustration of the link.

The proposal in Enfield is for additional and selective licensing designation of the entire borough, the arguments are not separated out and it appears to have been successful.

Example: Southend

Southend provided a comprehensive analysis of ASB in all its forms from various sources dealing with different aspects of ASB.

Fire Service: tables and maps were provided showing the total number of fire incidents attended by Essex County Fire and Rescue Service within the proposed Selective Licensing areas over the previous three year period. Whilst fire is not included within the definition of anti-social behaviour, incidents attended included vehicle fires, deliberate fires and other calls caused by anti-social behaviour.

Environmental Health Department: Evidence of all related complaints reported to Environmental Health and Private Sector Housing (PSH) for the two year period prior to consultation was provided. This included complaints relating to residential premises with regard to issues such as noise nuisance, nuisance animals and the like which all fall within the definition of anti-social behaviour. This data was received for individual property addresses were cross referenced to a list of tenure of those properties to assess whether the complaints have been made against known privately rented or owner occupied properties.

The Street Scene Department: This service deals with issues such as incidents of fly-tipping, rubbish accumulations and animal fouling. Data was provided relating to the roads under consideration for the selective licensing scheme.

The maps and tables show the total number of incidents reported to Street Scene at Southend Borough Council with regard to issues which fall within the definition of anti-social behaviour for a two and a half year period prior to consultation within the areas highlighted for inclusion within the selective licensing scheme.

Example: Blackpool

Blackpool has used similar evidence from the Fire Service Statistics, Ambulance Service statistics together with the reported crime figures to build up a consistent picture of crime and emergency call outs in the designated area.

❖ Requirement for Evidence

Once a problem of ASB has been shown it is necessary to provide evidence that landlords are failing to deal with the problem.

Such indicators include

- the number of evictions for ASB
- the number of references taken up for tenants
- the number of referrals taken up for tenants
- the number of referrals or incidence of assistance sought from ASB teams or Community Police.

The standard of the evidence required should be considered and if valid statistical evidence is not available case studies and examples should be given.

❖ Requirement of landlords' appropriate action

The appropriate actions of landlords must be stated

The action that landlords are expected to take to deal with the ASB must be stated and their failure to do so must be demonstrated. This may include

- a lack of requiring reference for tenants
- failure to consult or cooperate with the authorities dealing with ASB
- failure to take proceedings for lawful possession when appropriate

Such statistical evidence is usually not available and most proposal documents seen rely on anecdotal evidence and that provided by analysis of local initiatives and perceptions of local services.

Example: Thanet District Council.

The proposal document stated the experience of Community Safety Officers indicated that many private landlords had not been considering ASB. They do not appear to be requiring references and were not considering the suitability of tenants for a property. Some landlords are unwilling to deal with their anti-social tenants when contacted by the Council and Police.

❖ **Requirement of Coordinated Approach with Other Measures**

For selective licensing to succeed there must be a co-ordinated approach to deal with the anti-social problems in the area.

Improvement of the housing standards can only contribute, to a variable extent to improving the anti-social problems in the area.

The above considerations relate directly to this requirement, this does emphasise that in preparing the consultation document and evidence it is necessary to relate all previous activity to a coordinated effort by the authorities to deal with ASB over the years. In practise this is not difficult as most activities are taken in a wider context.

Example Case Law: Thanet District Council

In the case of [*Southern Landlords Association, R \(on the application of\) v Thanet District Council*](#) [2012] EWHC 3187 Mr Justice Cranston has ruled in the council's favour. The Southern Landlords Association contended that there was a failure to properly consider other courses of action to achieve the objectives selective licensing was intended to achieve. It was accepted that the council would have been aware of the issues through local knowledge and being informed by the reports about the area over the previous decade and they made a judgment about the benefits of selective licensing.

The judgement referred to previous measures taken which had not been successful in regeneration of the area which were reviewed in the proposal document.

Example: Blackpool Borough Council

Blackpool have provided extensive consultation documents for their proposals which

- Included a description of the works carried out by the ASB Officer in their proposed area with case studies to support their argument
- Provided figures for the enforcement activity within the area

Legislation: Consultation

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 which were not withdrawn.

This process takes place after the consideration of the above and the local authority must give consultees precise information as to the proposed area of designation, together with details of proposed license conditions and reasons why the authority regards it as appropriate to impose a designation.

❖ **Requirement**

Reasonable steps must be taken to consult those likely to be affected by the designation.

This includes those outside the proposed area. The details of the proposal must be consulted on and not just on the general principle of licensing.

Case Law: Peat vs Hyndburn District Council

Local landlords issued proceedings for judicial review, seeking to quash the designation. They argued that:

- (i) the authority had not properly consulted in accordance with the Act, or the guidance in Approval Steps;
- (ii) the consultation was stale with the passage of time; and,
- (iii) the authority had misrepresented the nature of the consultation to the Secretary of State.

The consultation must therefore take place on the basis of a precise identification of the area to be designated and its consequences, so that the extent of the impact on persons in that area can be appreciated. In addition, it required consultees to be given details of the proposed license conditions. Further, the authority must give some reasons why they are seeking to impose a designation. None of these had been done in the Hyndburn case.

Additional Licensing

Legislation: Ineffective Management

The authority must consider that a significant proportion of the HMOs in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.

The requirements to deal with ASB as detailed in the selective licensing considerations in this document are relevant.

Evidence from House Condition Surveys and enforcement which demonstrate poor housing conditions can be used as evidence of ineffective management.

Example: Nottingham City Council

The inefficient management of HMOs is demonstrated by

- Housing disrepair
- Overcrowding;
- Anti-social behaviour
- Noise complaints;
- Refuse accumulations; Bins on the street;
- Land/buildings detrimental to the amenity
- Landlord/tenant/neighbour disputes

Example London Borough of Enfield

A report and analysis from the tenancy relations officer of illegal evictions and harassment was provided as evidence of poor management. Several case studies were included.

Legislation: Anti-Social Behaviour

In this Act "anti-social behaviour" means conduct on the part of occupiers of, or visitors to, residential premises—

- (a) which causes or is likely to cause a nuisance or annoyance to persons residing, visiting or otherwise engaged in lawful activities in the vicinity of such premises, or*
- (b) which involves or is likely to involve the use of such premises for illegal purposes.*

The Act provides a definition of ASB for the purposes of additional licensing designation. The significance of the definition is that it is caused by residents and visitors of the HMOs. The link must be demonstrated in the submission. The examples given above demonstrate this relationship.

Legislation: Coordinated approach

The authority must also seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector, both—

- (a) as regards combining licensing under this Part with other courses of action available to them, and*
- (b) as regards combining such licensing with measures taken by other persons.*

The matters of homelessness, empty properties and ASB are not required to be dealt with by the proposed licensing scheme must this must be part of a coordinated approach to dealing with these specified matters. Reference to how this works with the other initiatives and activities seems to be required. This is often obtained from Corporate Policy and Strategy documents although not always specifically referred to in proposal documents.

Legislation: Other Measures

The authority must not make a particular designation under section 56 unless—

- (a) they have considered whether there are any other courses of action available to them that might provide an effective method of dealing with the problem or problems in question, and*
- (b) they consider that making the designation will significantly assist them to deal with the problem or problems (whether or not they take any other course of action as well).*

All proposal documents reviewed have included this consideration. This is not a difficult requirement to satisfy as most authorities have usually tried many initiatives prior to consideration of additional licensing. If this is not the case other methods should be tried first.

Example: Nottingham City Council

The Council has operated a range of schemes and initiatives to improve property conditions and management of HMO properties for a number of years including:

- The Good Landlord Scheme.
- HMO registration.
- Accreditation schemes, including a reference to the approved Codes of Practice under Sec 233 as required by the act.
- Established teams to deal with increasing issues of anti-social behaviour and environmental crime.
- Developed 'Community Protection' a joint service between the Council and Nottinghamshire Police. Working in neighbourhoods across the city, dealing pro-actively and reactively with ASB and engaging with communities on a local level.
- Creation of HMO Action zones in three areas with high concentrations of HMOs dealing with mandatory HMO licensing, improving the external appearance and housing conditions.
- Targeted work in the proposed area with Migrant Impact Fund (MIF) monies to improve housing conditions and access to relevant information, services and facilities for migrant workers in the area.
- Provision of information and advice to students.

Part 2: Improving Housing Standards in a designated area

This Section of Policy Briefing specifically relates to those activities that are designed to improve housing standards. They may be used in conjunction and coordination with other activities including Selective Licensing and are a limited contribution to the total of activities necessary to achieve the overall objectives of area improvement.

Identification of the area

Although a general idea of the geographical boundaries of the area to be improved is usually agreed, this needs to be defined and a map with a contour line drawn and a street list prepared. The consultation area should extend beyond the boundaries of the proposed area.

Description of Area

A general profile of the housing conditions and other related issues within the defined area should be prepared. This would include a description of the housing conditions as well as other socio-economic indicators which could be derived from the following sources:

- House Condition Survey
- Neighbourhood Area Statistics
- Crime Statistics
- Health Statistics
- Household Statistics

Housing Conditions

An analysis of the housing conditions will provide evidence of the regulatory, enforcement and advisory resources required to improve them. It will also give an indication of the regulatory impact on the PRS. Defining the housing conditions will enable the determination of the resources necessary to achieve the goals of the area improvement. These assessments can be compared with other parts of the district. It is unlikely that the survey will provide detail down to the level of the area being considered but it will give a good indication of the area.

The following methods can be used to define the housing conditions.

- ❖ House Condition Survey Disrepair Assessment
- ❖ Worst Housing Conditions: From the house condition survey assess the highest level of disrepair within the housing stock that is the condition of the worst houses and the number of them. This will provide evidence of the problems within the area.
- ❖ Average Housing Conditions: The average level of disrepair in the area can be assessed.
- ❖ HHSRS Conditions: Where possible identification of the top 5 Cat 1 Hazards in area from House Condition survey will provide valuable information. The information may not be available for the consultation area therefore this may have to be for a larger area or the entire district. If there are any reasons to believe the most frequent hazards vary from the stock condition survey ensure the reasons are stated.

Analysis of HHSRS Hazards

The monitoring all Category 1 hazards assessed in all dwellings within the proposed area provides useful information. This can be done using the database such as Flare or stand-alone spreadsheets.

A graphic representation of the most common hazards and their frequency of occurrence can then be made. Comparing this to the stock condition survey can demonstrate worse housing conditions in the proposed area.

Analysis of common problems

It may be useful to monitor other deficiencies including

- Prevention of Damage by Pests Act
- Environmental Protection Act nuisances
- Building Act drainage notices,
- Building Act dangerous structure notices
- Public Health Act Section 78 alley way notices,
- Public Health Act Section 79 noxious materials,
- Town and Country Planning Sect 215 detrimental to the amenities of the community notices

Analysis of complaints

Other problems identified by local knowledge and concerns should be considered. There is generally a political request for licensing which is driven by local concerns in some areas, particularly those with a large immigrant community. These often result in complaints of overcrowding, congregation on the streets, litter, accumulations in yards and gardens. Such complaints must be substantiated by evidence and a statistically valid comparative analysis with similar parts of the district made.

Compare the complaints to the total for the district and identify trends from the analysis.

Regulatory Impact

The effect on the area of increased regulatory activity must be considered.

Costs of repair

The cost of repairs required will give an indication of the resistance to regulation and the resources that will be required to achieve the aims of the area improvement. From the most recent housing condition survey determine the average costs of repair for properties in the area. If this level is high this will seriously impact on the sustainability of the area and the outcome of regulatory activity.

Ascertain the average cost of repairs and improvements required for the common house types in the area. Also determine the rate of non-decency in the area and of the typical stock within that area.

Example: Sheffield City Council

Costs of making house decent

Small terraced house	£12,700
PRS	£11,600
Pre 1919	£15,200
Area being considered	£14,500
Rate of non-decency	45.4%
Pre 1919 stock	28.3%

The average costs of repair will guide regulatory policies.

Means of achieving Improvements without enforcement

Advice, Guidance and Assistance

Most local authority's web sites provide guidance for the PRS; ensure these are well publicised and referred to in literature and correspondence. Promote locally recognised accreditation scheme and Landlords Associations to landlords.

Target the most prevalent problems by preparing a prescriptive document which identifies the five top hazards and other identified problems and the remedial action necessary. Circulate this to all known landlords and letting agents in the area and ensure availability on Internet.

Introduce a range of actions to include measures to improve quality and management including tenancy support, incentives, bonds, property checks, improvement loans.

There are many means of assisting landlords to provide affordable warmth. Coordination with the local energy advisory service is essential. Identify the ECO schemes available in the area and provide contact details or means of accessing such assistance.

Establish a local landlord's forum. If there is a local landlords association it is best to consult with them and get their support. It is important to do this at an early stage so that lines of communication can be established. Confidence and trust can also be established.

Provide a voluntary system registration of landlords and declaration of portfolio.

There are many examples of Good Landlord Schemes. Ensure there are incentives for landlords to participate in the scheme such as significant reductions in licence fees. This should be coordinated with any accreditation schemes operating in the area, verification of accredited landlords' properties should be request from the Scheme Operator, and similarly any properties declared buy the landlord should be referred to the Scheme Operator.

Consideration should be given to establishing a system where the landlord can provide self-assessment. A compliance check can be made for those registering prior to licensing. A reasonable fee can be charged to make this process self-financing.

Review Enforcement Policy

For those landlords that do not participate in the voluntary scheme modify enforcement policy to enable notices in the first instance a while after arrangements have been in place.

Ensure the enforcement policy allows for immediate service of notices in the worst instances. Ensure that notices can be charged for at the true cost of enforcement.

