



SUPPLEMENTARY DESPATCH - EXECUTIVE 12 MARCH 2015

9. Designation of Areas for Additional Licensing of Houses in Multiple Occupation

Addendums A, B & C to Appendix 2

Enquiries to : Philippa Murphy
Tel : Tel: 020 7527 3184 Email: Philippa.murphy@islington.gov.uk
E-mail : democracy@islington.gov.uk
Despatched : 4 March 2015

1.



This page is intentionally left blank

Additional Licensing of Houses in Multiple Occupation (HMOs) - Questionnaire

Please tell us what you think about our proposals to introduce an Additional HMO Licensing scheme by completing this short survey. There are eight questions in total and it should take 10-15 minutes to complete.

Q1 Please provide your name and contact details:

Name (required)	<input type="text"/>
Organisation	<input type="text"/>
Address (required)	<input type="text"/>
Post code (required)	<input type="text"/>
Email	<input type="text"/>
Phone number	<input type="text"/>

These details are required so that we can share details of the consultation with you. We will not identify any individual in the results or share personal details with any third parties. Any personal information you have given us will be held securely for Council purposes. To find out more please visit www.islington.gov.uk/fairprocessing.

Q2 Which of the following best describes you?

- | | |
|--|--|
| <input type="checkbox"/> Private tenant in Caledonian Road | <input type="checkbox"/> Housing association tenant in Caledonian Road |
| <input type="checkbox"/> Private tenant in Holloway Road | <input type="checkbox"/> Housing association tenant in Holloway Road |
| <input type="checkbox"/> Private tenant elsewhere in Islington | <input type="checkbox"/> Housing association tenant elsewhere in Islington |
| <input type="checkbox"/> Landlord in Holloway Road | <input type="checkbox"/> Council tenant in Caledonian Road |
| <input type="checkbox"/> Landlord in Caledonian Road | <input type="checkbox"/> Council tenant in Holloway Road |
| <input type="checkbox"/> Landlord elsewhere in Islington | <input type="checkbox"/> Council tenant elsewhere in Islington |
| <input type="checkbox"/> Letting/managing agent in Holloway Road | <input type="checkbox"/> Owner occupier in Caledonian Road |
| <input type="checkbox"/> Letting/managing agent in Caledonian Road | <input type="checkbox"/> Owner occupier in Holloway Road |
| <input type="checkbox"/> Letting/managing agent elsewhere in Islington | <input type="checkbox"/> Owner occupier elsewhere in Islington |
| <input type="checkbox"/> Other – please specify: | |

Q3 Typically, the following problems have been found in privately rented shared accommodation. Do you agree that these problems occur in privately rented shared properties in Islington?

	<i>Agree</i>	<i>Disagree</i>	<i>Neither agree/disagree</i>
Rogue/problem landlords	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Poor internal repair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Inadequate fire safety e.g. no working fire alarms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Poorly managed properties e.g. dirty/unsafe communal areas, no management arrangements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overcrowding	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rubbish/fly- tipping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Problem tenants e.g. non payment of rent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anti-social behaviour/petty crime	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scruffy/poor external property appearance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q4 Through our street survey, the council has found issues of poor management and disrepair in HMOs along **Caledonian Road**. Have you experienced any of the following problems with shared accommodation in buildings along this road?

	<i>Yes</i>	<i>No</i>
Dampness, disrepair	<input type="checkbox"/>	<input type="checkbox"/>
Lack of fire safety measures eg no working fire alarms	<input type="checkbox"/>	<input type="checkbox"/>
Lack of basic amenities (baths, showers, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
Too little space/too many people	<input type="checkbox"/>	<input type="checkbox"/>
Dirty shared facilities, e.g. kitchens, bathrooms	<input type="checkbox"/>	<input type="checkbox"/>
Dirty common staircases, hallways	<input type="checkbox"/>	<input type="checkbox"/>
Poor or expensive heating	<input type="checkbox"/>	<input type="checkbox"/>
Poor or lack of property management	<input type="checkbox"/>	<input type="checkbox"/>
Noise eg traffic noise, other tenants	<input type="checkbox"/>	<input type="checkbox"/>
Poor letting practices (e.g.no tenancy agreement, poor response to repair requests)	<input type="checkbox"/>	<input type="checkbox"/>
Harassment and/or illegal eviction	<input type="checkbox"/>	<input type="checkbox"/>

Q5 Through our street survey, the council has found issues of poor management and disrepair in HMOs along **Holloway Road**. Have you experienced any of the following problems with shared accommodation in buildings along this road?

	<i>Yes</i>	<i>No</i>
Dampness, disrepair	<input type="checkbox"/>	<input type="checkbox"/>
Lack of fire safety measures e.g. no working fire alarms	<input type="checkbox"/>	<input type="checkbox"/>
Lack of basic amenities (baths, showers, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
Too little space/too many people	<input type="checkbox"/>	<input type="checkbox"/>
Dirty shared facilities, e.g. kitchens, bathrooms	<input type="checkbox"/>	<input type="checkbox"/>
Dirty common staircases, hallways	<input type="checkbox"/>	<input type="checkbox"/>
Poor or expensive heating	<input type="checkbox"/>	<input type="checkbox"/>
Poor or lack of property management	<input type="checkbox"/>	<input type="checkbox"/>
Noise eg traffic noise, other tenants	<input type="checkbox"/>	<input type="checkbox"/>
Poor letting practices (e.g.no tenancy agreement, poor response to repair requests)	<input type="checkbox"/>	<input type="checkbox"/>
Harassment and/or illegal eviction	<input type="checkbox"/>	<input type="checkbox"/>

Q6 Additional licensing is one of the things the council can do to improve the management and conditions of privately rented shared properties. Do you agree or disagree with each of the following statements?

	<i>Agree</i>	<i>Disagree</i>	<i>Neither agree/disagree</i>
Poorly managed private rented properties have a negative impact on an area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I would like to see an improvement in the way these properties are managed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Islington Council should intervene and support areas where problem housing has been identified	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Additional licensing could be an effective way to improve conditions, safety standards and property management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
An additional licensing scheme could have a positive impact on the local area	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Additional licensing could help improve the reputation of the private rented sector in Islington	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q7 Do you agree with Islington Council's proposal to introduce an area based Additional HMO licensing Scheme?

- Yes
- No
- Don't know/no opinion

Q8 Islington Council is proposing [a licensing fee of £260 per letting in a shared house or flat and £650 per building containing flats](#) . The fee is purely to cover the costs associated with processing the license application. There will also be discounts available to applicants for being accredited landlords and preferential rates for early applications. These concessions are designed to provide a financial incentive for good landlords affected by the introduction of the scheme.

a) Do you agree that a fee of £260 per letting is fair?

- Yes
- No
- Don't know/no opinion

b) Do you agree that a fee of £650 per building containing flats is fair?

- Yes
- No
- Don't know/no opinion

c) Do you agree that offering discounts to the licence fee is fair?

- Yes
- No
- Don't know/no opinion

Q9 Licences can be issued for a maximum of five years period. Licences will be granted for this period where landlords have maintained good property standards, demonstrated good management practices and have a good compliance record with the council. Licences will be issued for much shorter periods (such as a one year minimum period) where there is a history of non-compliance, poor property management and late/incomplete houses in multiple occupation (HMO) applications. This will enable the council to focus on these properties to ensure that adequate management practices and standards are in place.

Do you agree that shorter licence periods should be applied on this basis?

- Yes
- No
- Don't know/no opinion

Q10 Please use the space provided to make any other comments

Thank you for completing this survey. All responses will be taken into consideration before the scheme is finalised.

ADDENDUM B

By Email: Torben.Wood@islington.gov.uk



RESIDENTIAL LANDLORDS
ASSOCIATION

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: [@RLA_News](https://twitter.com/RLA_News)

Friday 9th January 2015

Dear Sir/Madam,

Islington – Proposals for an Additional Licensing Scheme for Houses in Multiple Occupation (HMOs).

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 additional licensing scheme in Islington.

The RLA objects to the proposed designation, on the following basis:

- 1. The fee structure and the projected budget may be contrary to the European Services Directives and the ruling of the *Hemming (t/a Simply Pleasure) Limited v Westminster City Council* Court of Appeal case**

The decision of the Court of Appeal in the Westminster Sex Shop Fees case (*Hemming (t/a Simply Pleasure) Limited v Westminster City Council*¹) has radically altered the landscape so far as fixing fees for regulatory authorisations such as for HMO and selective licensing is concerned.

The court case looked at the way in which the European Services Directive (ESD) operates to curtail the ways in which domestic UK legislation provides for fees to be charged by local authorities to landlords for such licences.

When setting licensing fees the following principles should now apply:

- 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 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.

¹ <http://cases.icr.co.uk/Subscr/search.aspx?path=WLR%20Dailies/WLRD%202011/wlr2013-203>

- 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.
- A formula can be used to set charges so long as it is based on the cost of the actual authorisation process (plus monitoring costs).

The Council must act lawfully and in accordance with any guidance given to it by the Court as to how the fee is to be determined. If it is necessary as a result for the Council to re-determine a fee then the same principles apply in relation to the re-determination.

Furthermore, it was always clear that costs associated with enforcing the Housing Health and Safety Rating System which operates alongside licensing could not be recovered via licensing fees.

A number of local authorities charge extra fees if an application is submitted late. This has always been highly questionable as a disguised penalty but it would appear that this would now be largely outlawed by the ESD. Discounted fees are often allowed for early applications. It may now have to be shown that the normal application fee is no more than the actual processing cost so that fees for an early application would have to be genuinely discounted. However, any discounts for applicants in the first year of the scheme may not be permissible as per the ESD.

It should also be noted that any element of the fee that cannot be recovered must fall on the Council Tax payer, i.e. the Council's general fund; not the general body of licensed landlords.

The ESD also deals with the time to be taken in processing applications. It requires local authorities to publically state the time to be taken to process the application. There is provision for extending the time limit in a case involving complexity. Subject to this if the authority failed to process the application within the stated time then the applicant can automatically assume that the application is granted.

Finally, should Islington Council chose to ignore the ESD and implement a HMO additional licensing scheme based on a proposed budget that does not adhere to the ESD, any impermissible overcharge can be recovered by way of a claim for restitution. The time limit for such a claim is six years and the normal three month time limit which applies to judicial review does not apply in this instance. As part of the process the Council may have to re-determine what is a reasonable charge in line with any guidance given by the Court. The amount overpaid will then have to be calculated. Giving credit by way of carry forward does not apply to an impermissible overcharge so it has to be refunded. Interest is payable in addition.

2. The RLA has a number of general concerns about mandatory licensing

The RLA has several areas of concern in regards to HMO additional 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 care; rather it is being used by the back door to regulate the PRS.
- iv. The level of fees which are ultimately passed on to tenants to pay is a major worry so far as it affects landlords.
- v. Despite high fee levels local authorities still lack the will and resources to properly implement licensing.
- vi. Little has been done to improve property management. Opportunities to require training have been ignored. As always it has become an obsession with regard to physical standards with very detailed conditions being laid down. No action is taken against criminal landlords.
- vii. We believe that a significant number of landlords are still operating under the radar without being licensed.
- viii. As always it is the compliant landlord who is affected by the schemes. They pay the high fees involved but do not need regulation of this kind.

- ix. Licensing is not being used alongside regeneration or improvement of the relevant areas. Insufficient resources are being employed to improve the areas.
- x. Where areas are designated for additional or selective licensing this highlights that they can be "sink" areas. This could well mean it would be harder to obtain a mortgage to buy a property in these areas.
- xi. Schemes are not laying down clear objectives to enable decisions to be made whether or not these have been achieved. Proper monitoring is not being put into place to see if schemes are successful or not.
- xii. There is little use of "fit and proper person" powers to exclude bad landlords.

3. RLA critique of Islington Council Additional HMO Licensing consultation documents and proposals

The RLA commends Islington Council in their objectives to improve living standards of under-performing properties, and limiting the scheme to two roads may improve chances of proposals succeeding. However, the RLA questions the methodology presented in consultation documents and the current level of enforcement throughout the area.

Consultation documents state that mandatory licensing is not being enforced properly: how can the Council be confident the scheme will work when enforcement of mandatory licensing is ineffective?

- In the "HMO Street Survey Report 1" consultation document on page 3, the Council says that they found six HMOs "whose owners were breaking the law by operating without a licence as required by the existing mandatory licensing scheme".
 - o This calls into question enforcement throughout the district. If the scheme is intended to improve standards, how will this be enforced and subsequently carried out? The Council should look to resolve issues of enforcement before implementing any further requirements.
 - o Can the council provide an outline as to why proposals will improve the sector or these properties in question?

On Page 1 of the "Additional Licensing Scheme FAQs" consultation document the council state: "Licensing places more emphasis on landlord to come forward and meet requirements through the licensing process. It also criminalises those landlords who do not licence and enables the council to focus its full range of powers on those criminal landlords."

RLA Response:

- What about an Additional HMO licensing scheme will compel criminal landlords to register when nationally mandatory licensing has not (see above)?
- Criminal landlords are exactly that because they operate outside of the law. Good landlords who wish to provide quality accommodation will sign up to this scheme whilst the criminals operate unabated while the council goes through administration of licensing applications.
 - o There is no clear methodology on enforcement of licensing, giving further confidence to criminal landlords to operate without licences.

The council doesn't appear to know how many HMOs are in the area, but has already assessed a large number of properties that require improvements. While this is good work by the council, it would make more sense for the council to improve these properties before moving onto other unknowns under the pretence that there could be issues.

Other specific issues that the RLA has found within the consultation documents include:

Fees: The RLA feels that the fees proposed are far too high for the scheme described. The RLA estimates that the scheme will generate anywhere from between £500,000 and £1million. This money can only be used for administration of licensing fees, and with the low level and quality of enforcement evident in Islington, this seems unnecessary for a licensing scheme limited to two roads within the Borough.

Conditions: The consultation documents regarding expected conditions are not only confusing but also onerous.

- Proposed kitchen conditions exemplify these critiques: the terminology around 'exclusive use' is confusing and other conditions go beyond legislation.

Best practice and minimum standards should be expected but the consultation documents presented as proposals for the basis of the scheme are overly complicated.

4. Conclusion

The RLA is opposed to the proposed HMO additional licensing scheme for the reasons outlined in this response. However, the Association is very keen to work with Islington 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,

[Redacted]

Residential Team
Public Protection Division
222 Upper Street
London N1 1XR

[Redacted]
Residential Landlords' Association
1 Roebuck Lane
Sale
Manchester
M33 7SY

T 020 7527 3327
E jill.ellenby@islington.gov.uk
W www.islington.gov.uk

Our ref:
Your ref:

This matter is being dealt with by:
Jill Ellenby

Date: 22 January 2015

Dear [Redacted]

Response to consultation on Islington's proposals for an additional licensing scheme for houses in multiple occupation (HMOs)

Thank you for providing the RLA's response to the Council's proposals to introduce an additional HMO licensing scheme in Caledonian Road and Holloway Road.

Your objections are noted and our response is as follows:

1. Fees and budget

You state the fee structure and projected budget may be contrary to the European Services Directive and the ruling in the Hemming (t/a Simply Pleasure Ltd) v Westminster City Council case. When designing the proposed scheme we looked carefully at the implications of this case and the requirements of the European Services Directive and have followed the "Open for business" guidance provided by the Local Government Association (LGA) on locally set fees.

If adopted, we will be charging for granting and monitoring the compliance of licensed properties. In calculating the fee we will not include the costs of enforcement against unlicensed properties. We will not be charging additional fees for late applications or offering discounts for early applications. We will, however, offer discounts to accredited landlords

2. General concerns

We have noted your general concerns regarding the setting up and operation of additional licensing schemes.

3. Effective implementation and enforcement

Our consultation documents make no reference to mandatory licensing not being enforced properly. The street surveys in the proposed areas of Caledonian and Holloway Roads identified six licensable HMOs operating without a mandatory licence and the Council has taken appropriate enforcement action in each case. We propose using an intelligence led approach, if adopted, to find HMOs where applications have not been made and then taking appropriate action against any identified properties.

We are putting forward the scheme for consideration as we are confident that the licensing scheme, alongside our rigorous approach to enforcement, will improve the private rented sector properties in this area. We will undertake inspections of HMO properties where applications have been made and take enforcement action where we find non-compliance with licensing requirements, housing and environmental health legislation. Licensing will, at the same time, enable identification of compliant landlords and allow them to self-regulate using our risk-based approach.

4. Conditions/Standards

Islington's HMO Standards document provided as part of the consultation reflect the type of housing found in the borough and the way in which HMO accommodation is used. The standards are clear and long established. They are applied flexibly and with consideration to alternative options presented by landlords and tenants.

Conclusion

The RLA's feedback on the scheme proposals is appreciated, particularly where this has focussed on the operation of this scheme rather than the more general objections to licensing. Comments and observations emphasising the need for effective identification of criminal landlords and enforcement are particularly welcomed. Your letter and this response will be included with the report submitted to our Executive when they consider adoption of the scheme.

Yours sincerely

Jill Ellenby

Service Manager – Residential Environmental Health

If you would like this document in large print or Braille, audiotape or in another language, please telephone 020 7527 2000.