

Scarborough Borough Council

Proposal for designation of a Selective Licensing scheme for “Scarborough Central”

CONSULTATION REPORT
October 2018



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1. Overview

In May 2018, approval was given by the Cabinet of Scarborough Borough Council to undertake formal consultation on the proposal to designate parts of the Castle and Central wards of Scarborough as a selective licensing area under Section 80 of the Housing Act 2004. This is the second of 3 separate areas that the Council is looking to designate for selective licensing in the Borough. The first area, which covered parts of the Castle and North Bay wards in Scarborough, was designated in 2017, and is known as “Scarborough North”. The proposed area has been called “Scarborough Central” to distinguish it from the other areas.

This report provides details of the result of the formal consultation and also provides information on the consultation programme and how it was undertaken.

The consultation commenced on June 11th 2018 and ran for a period of 12 weeks up to September 3rd 2018. The consultation consisted of the following:

- A resident and business questionnaire, which was hand delivered to approximately 1840 households and businesses within the proposed area
- A landlord questionnaire, which was sent out to 300 landlords and managing agents operating in the Borough
- A series of community drop in events within the proposed area
- A series of stakeholder events and meetings with individual stakeholders

170 completed questionnaires were received from residents and businesses representing a response rate of 9%. In addition 22 completed landlord questionnaires were received, representing a response rate of 7% from landlords. A combined total of 191 completed questionnaires were received out of 2140 representing an overall response rate of just under 9%.

100 (58.8%) of completed questionnaires of the residents/business respondents either strongly agreed or agreed with the proposal that the Council should introduce a Selective Licensing scheme for privately rented properties within the proposed area, whilst 34 (20.0%) either disagreed or strongly disagreed. The remaining 36 respondents (21.2%) neither agreed nor disagreed or did not answer the question.

5 (22.7% of completed questionnaires) of landlords either agreed or strongly agreed with the proposal that the Council should introduce a Selective Licensing scheme for privately rented properties within the proposed area, whilst 14 (63.6%) either disagreed or strongly disagreed. The remaining 3 (13.6%) respondents neither agreed nor disagreed with the proposal.

2. The Consultation Programme

Part 3, Section 80 (9) of the Housing Act 2004 states that before considering making a designation for Selective Licensing the local housing authority must:

- a) Take reasonable steps to consult persons who are likely to be affected by the designation: and
- b) Consider any representations made in accordance with the consultation and not withdrawn

The procedural document for selective licensing: *Approval steps for additional and selective licensing designations in England* published by the Department of Communities and Local Government (DCLG) sets out the following requirements for the consultation:

“LHAs will be required to conduct a full consultation. This should include consultation of local residents, including tenants, landlords and where appropriate their managing agents and other members of the community who live or operate businesses or provide services within the proposed designation. It should also include local residents and those who operate businesses or provide services in the surrounding area outside of the proposed designation who will be affected. LHAs should ensure that the consultation is widely publicised using various channels of communication.

During consultation, LHAs must give a detailed explanation of the proposed designation, explaining the reasons for the designation, how it will tackle specific problems, the potential benefits etc. For example, in the case of selective licensing, LHAs must be able to demonstrate what the local factors are that mean an area is suffering from low demand and/or anti-social behaviour, how those factors are currently being tackled, and how the selective licensing designation will improve matters. Affected persons should be given adequate time to give their views, and these should all be considered and responded to.

Once the consultation has been completed the results should then be published and made available to the local community.”

The consultation programme was therefore based on meeting the requirements set out by the DCLG guidance and to ensure that it was as robust and meaningful as possible.

As mentioned previously the consultation commenced on June 11th 2018 and ran for a period of 12 weeks up to September 3rd 2018. This exceeded the minimum period required for consultation by DCLG, which is 10 weeks.

The consultation took the following format:

All local residents and business premises within the proposed area: A total of 1840 questionnaires were hand delivered to every household and business premise within the proposed area, complete with a proposal document and prepaid return envelope to encourage a high response rate.

The questionnaire was also posted on the Council's website and respondents were also able to complete the questionnaire on-line

A number of community drop-in sessions were also held at various locations within the designated area, which enabled local residents to find out more about the proposal. Details of the drop-in sessions were provided with the consultation documentation.

All private landlords, letting agents and estate agents who own and manage properties within the proposed area: A total of 300 questionnaires were sent out to all private landlords, letting agents and estate agents on the Council's database by direct mail. This also included details of the proposal and prepaid return envelope to encourage a high response rate.

The landlord questionnaire was also posted on the Council's website and respondents were able to complete the questionnaire on-line.

Landlords were also invited to any of the community drop-in sessions. Details of the drop-in sessions were provided with the consultation documentation.

Community drop-in sessions: A series of community drop-in sessions were held in Scarborough Town Hall over the course of the consultation.

Key Stakeholders: Individual meetings were held with particular key stakeholders who would be most affected or may have an involvement in the scheme, as follows:

Safer Communities Team
North Yorkshire fire and Rescue Service

Other stakeholders: Other local stakeholders were invited to attend a stakeholder consultation session, which was held on June 21st 2018.

A presentation was also given at the local Homelessness Forum which is regularly attended by a wide range of local stakeholders.

All stakeholders were also contacted to make any comments regarding the proposal.

Council Members: The local members for the Castle and Central wards were consulted with on the proposal through both direct meetings with some members and members attending consultation events.

Local MPs: The Member of Parliament for Scarborough and Whitby, Robert Goodwill was consulted with on the proposal.

Other Scarborough Council Services: Key internal council services that may be affected in some way by the proposal were invited to comment on the proposals. These included Safer Communities, Environmental Health, Environmental Protection, Planning, Economic Development, Housing Benefits, Cleansing etc.

Other means of consultation: The main means of consultation was via the questionnaires to residents, businesses and landlords and also via the various consultation sessions and presentations.

In addition the consultation and both resident and landlord questionnaires were also published on the consultation page of the Council's website for the duration of the consultation period. Respondents were able to complete the questionnaire on-line.

Communication

The main forms of communication of the consultation were through the questionnaires to residents, business and landlords and also via the various consultation sessions and presentations.

Other means of communication were as follows:

Scarborough Borough Council website: A press release was issued on the Council's website at the commencement of the consultation. Details of the consultation, community drop-in sessions and how to respond remained on the website during the duration of the consultation period. In addition regular social media alerts were put on the website advising of community drop-in sessions and consultation deadlines.

Posters/Leaflets: Posters and leaflets were produced advertising details of community drop-in sessions, where to find more information on the proposal and how to respond to the proposal. Posters were placed at prominent locations within the proposed area and posters and leaflets were also provided for local stakeholders, community groups and other agencies for display and to pass on to persons with an interest.

3. Resident and Business Questionnaire Responses

170 resident and business completed questionnaires were received over the course of the consultation period out of 1840 issued representing a 9% response rate. Of these 164 were completed on the hand delivered forms and 6 were completed on-line.

The responses to each of the questions are outlined below. In most cases, the number of responses to each question added up to either more or less than the overall number of completed questionnaires. This was due to two reasons as follows:

- i. Not all respondents answered every question
- ii. For some questions more than one answer was given

Question 1: Are you a?

Type Household	Number of responses	% of responses
Private Tenant	55	29.7%
Housing Association Tenant	9	4.9%
Owner Occupier	87	47.0%
Business	17	9.2%
Landlord	13	7.0%
Other	4	2.2%
Total	185	100%

Almost half of the responses came from owner occupiers (47.0%) whilst over a quarter (29.7%) were from private tenants. This contrasts with the household profile of the area, which is 54% privately rented and just 35% owner occupied.

16% of responses were from non-residential (businesses and landlords) respondents.

Question 2: What type of property do you live in?

Property type	Number of responses	% of responses
House or Bungalow	86	52.8%
Flats or Bedsit	77	47.2%
Room in Shared House	0	0.0%
Other	0	0.0%
Total	163	100%

All respondents lived in either a house or bungalow (52.8%) or flat or bedsit (47.2%). This contrasts slightly with the actual property composition for the area, which is 64% flats or bedsits.

Question 3: What street do you live on?

Street	Number of Responses
Victoria Road	16
Westwood	14
Nelson Street	12
Hoxton Road	11
Valley Road	9
York Place	7
Cambridge Street	6
Victoria Street	6
Albemarle Crescent	5
Westwood Road	5
Westborough	5
Aberdeen Walk	5
Other streets (4 or less responses)	51
Outside area or not answered	18
Totals	170

Note that 10 responses were not answered

The table shows all the streets where there were more than 5 responses received. 104 responses (65.4%) were received from the Castle ward and 48 (30.2%) were from the Central ward. Of the 18 responses from outside the proposed area 7 responses were from adjoining streets within the North Bay ward.

62 (39%) of responses were received from 5 streets (Victoria Road, Westwood, Nelson Street, Hoxton Road and Valley Road). All together responses were received from 34 out of the 44 streets included in the consultation. The only streets where there was no response were all streets with a very small number of properties (residential and business).

Question 4: Have you had any problems with privately rented properties in your area in the last 2 years?

Yes	93	54.7%
No	67	39.4%
Not answered	10	5.9%
Totals	170	100.0%

Just over half (54.7%) of respondents who answered this question had experienced problems with privately rented properties in the last 2 years.

54% of respondents from within the proposed area had experienced problems with privately rented properties within the last 2 years. All 7 respondents from adjoining streets in the North Bay ward had experienced problems with privately rented properties in the last 2 years.

Question 5: If yes (to Q4), what problems have you experienced?

Type of problem	Number of responses	% of total responses (170)
Nuisance and anti-social behaviour (including noise)	78	45.9%
Poor condition of properties	50	29.4%
Poorly managed properties	40	23.5%
Rubbish dumping	785	45.9%
Empty properties	25	14.7%
Other	15	8.8%

Over 40% of all respondents had experienced problems with both nuisance and ASB and with rubbish dumping from privately rented properties. Almost 30% had experienced problems with poor condition of properties and just under a quarter had experienced problems with poorly managed properties.

Although only 15 respondents ticked the “Other “box to this question, 47 respondents actually provided comments on “other” problems they had experienced.

The most common problems that were highlighted in the comments were:

- Fly Tipping
- Drug dealing and drug/alcohol abuse
- ASB problems from Housing Association properties
- Dog fouling/barking
- Problems with bins

Question 6: If you are a tenant of a privately rented property do you have any concerns regarding any of the following?

Concern	Number of respondents	% of private tenants responding
Lack of basic amenities	2	3.6%
Inadequate fire safety	5	9.1%
Overcrowding	1	1.8%
Poor management of property	9	16.4%
Poor state of repair of property	13	23.6%

The number of respondents to this question was very low, partly due to the fact that only 55 private rented tenants had responded to the questionnaire in total.

Question 7: Do you agree or disagree with the proposal by SBC to introduce Selective Licensing for privately rented properties in the proposed area?

	Number of respondents	% of respondents
Strongly Agree	64	37.6%
Agree	36	21.2%
Neither Agree nor Disagree (or not answered)	36	21.2%
Disagree	5	2.9%
Strongly Disagree	29	17.1%
Totals	170	100%

58.8% of respondents either strongly agreed or agreed with the proposal, whilst 20.0% either strongly disagreed or disagreed with the proposal.

89 of respondents (58.6%) from within the proposed area either strongly agreed or agreed with the proposal whilst 27 (17.8%) strongly disagreed or disagreed with the proposal.

6 out of 7 respondents from James Street and Oxford Street in North Bay ward which adjoined the proposed area strongly agreed with proposal, whilst 6 of the 11 respondents from other areas outside the proposed area strongly disagreed or disagreed with the proposal.

Only in 2 streets (York Place and Somerset Terrace) did more respondents disagree with the proposal than agree.

Question 8: Do you think that Selective licensing will improve management standards?

Yes	116	71%
No	47	29%
Totals	163	100%

Over 70% of respondents thought that Selective Licensing would improve management standards.

Where respondents stated no to Question 8, they were asked to state why not. The responses to this question are listed in Appendix x of this report.

Question 9: Do you think that Selective Licensing will improve the condition of properties?

Yes	108	68%
No	50	32%
Totals	158	100%

Over two thirds of respondents thought that Selective Licensing would improve the condition of properties.

Where respondents stated no to Question 9, they were asked to state why not. The responses to this question are listed in Appendix x of this report.

Question 10: Do you think that Selective Licensing will reduce anti-social behaviour and nuisance in the area?

Yes	88	56%
No	70	44%
Totals	158	

Over half (56%) of respondents though that Selective Licensing would reduce anti-social behaviour and nuisance in the area.

Where respondents stated no to Question 10, they were asked to state why not. The responses to this question are listed in Appendix x of this report.

Question 11: Do you think that Selective Licensing will improve the area?

Yes	95	63%
No	55	37%
Totals	150	100%

Almost two thirds of respondents thought that Selective Licensing would improve the area.

Where respondents stated no to Question 11, they were asked to state why not. The responses to this question are listed in Appendix x of this report.

Question 12: Do you have any further comments on the proposed Selective Licensing scheme?

76 respondents provided further comments on the proposed scheme

A summary of the comments identified the following most common themes raised:

- Fees too high/will increase rents
- Rubbish and bin problems
- Won't address ASB
- ASB caused by visitors/night time economy not local residents
- Will require enforcing
- Just a money making exercise
- Will penalise good landlords

A full list of the comments received is included in Appendix x of this report. Included with this are a number of comments and suggestions made by other local residents outside of the questionnaires.

1. Landlord Questionnaire Responses

12 completed landlords questionnaires were received over the course of the consultation period out of 300 issued representing a 7% response rate. Of these 9 were completed on the printed forms sent out to landlords and 13 were completed on-line.

The responses to each of the questions are outlined below.

Question 1: Are you a?

Type	Number of responses	% of responses
Landlord	20	91%
Managing Agent and/or Estate Agent	1	4.5%
Other	1	4.5%
Total	22	100%

The overwhelming majority of responses 20 out of 22 were from landlords with just 1 received from a managing agents and/or estate agent.

Question 2: Do you own or manage privately rented property within the proposed area for Selective Licensing?

Yes	17	77.2%
No	5	22.8%
Totals	22	100%

Over three quarters (75%) of respondents owned or managed privately rented property within the proposed area.

Question 3: What type of property do you own/manage?

Property type	Number of responses	% of responses
House or Bungalow	8	36.4%
Flats or Bedsit	10	45.5%
Shared House	0	0%
Not answered	4	18.1%
Total	22	100%

The split between flats/bedsits and house/bungalows that are owned or managed by landlords is almost equal, which is in contrast to the property types within the proposed area where there is a higher proportion of flats.

Question 4: Do you think there are problems with privately rented properties in the proposed area?

Yes	7	31.8%
No	13	59.0%
Not answered	2	8.9%
Totals	22	100%

A higher proportion of landlords (59%) think there are no problems with privately rented properties in the proposed area.

Question 5: If yes (to Q4), what are those problems?

Type of problem	Number of responses	% of total responses (22)
Nuisance and anti-social behaviour (including noise)	6	27.2%
Poor condition of properties	5	22.7%
Poorly managed properties	3	13.6%
Rubbish dumping	6	27.2%
Empty properties	2	9.1%
Other	0	

Just over a quarter of all respondents thought that there were problems with nuisance and anti-social behaviour and with rubbish dumping in the proposed area. Just under a quarter of respondents also thought that there were problems with poor condition of properties in the proposed area.

If other was ticked on the questionnaire, respondents were asked to specify. The list of comments in response is listed in Appendix x of this report.

Question 6: Do you agree or disagree with the proposal by SBC to introduce Selective Licensing for privately rented properties in the designated area?

	Number of respondents	% of respondents
Strongly Agree	2	9.1%
Agree	3	13.6%
Neither Agree nor Disagree (or not answered)	3	13.6%
Disagree	1	4.5%
Strongly Disagree	13	59.1%

Totals	22	100%
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Almost two thirds (63.6%) of all respondents either strongly disagreed or disagreed with the proposal to introduce Selective Licensing for privately rented properties in the designated area, whilst just under a quarter (22.7%) either strongly agreed or agreed with the proposal to introduce Selective Licensing for privately rented properties in the proposed area.

Question 7: Do you think that Selective Licensing will improve management standards?

Yes	8	36.6%
No	14	63.4%
Totals	22	100%

Almost two thirds of landlords do not think that Selective Licensing will improve management standards.

Where respondents stated no to Question 7, they were asked to state why not. The responses to this question are listed in Appendix x of this report.

Question 8: Do you think that Selective Licensing will improve the condition of properties?

Yes	9	42.9%
No	12	57.1%
Totals	21	100%

Just under 60% of landlords do not think that Selective Licensing will improve the condition of properties

Where respondents stated no to Question 8, they were asked to state why not. The responses to this question are listed in Appendix x of this report.

Question 9: Do you think that Selective Licensing will reduce anti-social behaviour and nuisance in the area?

Yes	3	14.3%
No	18	85.7%
Totals	21	100%

Over 85% of landlords do not think that Selective Licensing will reduce anti-social behaviour and nuisance in the area.

Where respondents stated no to Question 9, they were asked to state why not. The responses to this question are listed in Appendix x of this report.

Question 10: Do you think that Selective Licensing will improve the area?

Yes	5	22.7%
No	17	77.3%
Totals	22	100%

Over three quarters of landlords do not think that Selective Licensing will improve the area.

Where respondents stated no to Question 10, they were asked to state why not. The responses to this question are listed in Appendix x of this report.

Question 11: What support and/or incentives do you think could be provided to landlords to ensure they manage their properties to a high standard?

19 comments, representing the majority of respondents, were received by landlords on what support and/or incentives could be provided to landlords to ensure they manage their properties to a high standard.

The most common issues raised were:

- Have staged payments and/or discounted fees
- Grants for improvements
- Provide training and advice

All of the comments are listed in Appendix x of this report.

Question 12: Do you have any further comments on the proposed Selective Licensing scheme?

13 further comments, representing 60% of respondents, were received by landlords on the proposed scheme.

Most common issues raised were:

- Penalising good landlords
- Will raise rents
- Have discounts for landlords using professional managing agents

All the comments are listed in Appendix x of the report.

5. Community Drop in sessions

Four community drop in sessions were held at Scarborough Town Hall and were open to residents, landlords and stakeholders. The outcome of each of the drop-in sessions is provide below.

Monday 26th June: This was the first of the drop in sessions and was attended by 10 persons as follows: 7 landlords and 3 residents.

The issues raised were:

- Has licensed property in existing SL area. Concern over condition of alleyway behind property including dumping of rubbish by nearby residents
- Concern that licensing won't bring any benefits for landlord.
- Concern about ASB from neighbouring properties on and by individuals visiting the area. Been problems with people from neighbouring streets defecating in the street. Also want to know if alcohol ban is still in force in the street.
- Resident has big concern about rubbish dumping, especially fly tipping from business vans on her street.
- Has property licensed in existing scheme and was positive about the impact so far
- Came to check if her property within area. Confirmed it was outside area
- Lives outside proposed and existing scheme. Having problems with neighbouring property, which she thinks is an "HMO"

Wednesday 28th June: This was the second of the drop-in sessions. 3 persons attended the session of which 2 were landlords and 1 was a stakeholder.

The issues raised were:

- Landlord with property in proposed area enquiring about process and fees
- Stakeholder enquiring about coverage of the proposed schemes and impact to date of current scheme
- Landlord with licensed property in current scheme and one in proposed scheme Raised issue about fees on current scheme and not being entitled to discount. Also raised issue of Planning/Building Control not being aware of need for window restrictors.

Monday 9th July: This was the third of the drop-in sessions. 5 persons attended of which 3 were landlords and 2 were residents.

The issues raised were:

- Landlord has 2 properties within proposed area, asking what form of fire/smoke detection would be required. Both 3 storey properties, which would require interlinked smoke alarms.

- Residents who have experienced ASB from neighbours in rented properties either side of them in past, though not problems currently. Wanted to know what we could do about ASB from private rented properties under Selective Licensing if it happened again.
- Resident also mentioned problems of drug dealing at the bottom of the street and have had problems with rubbish dumping in rear alleyway. Currently free of rubbish but is overgrown.
- Landlord with 2 properties in existing area which have been licensed. Wanting to know when they will be inspected as not heard anything since licence was issued

Wednesday 11th July: This was the fourth and final drop in session. It was attended by 4 landlords.

The main issues raised were:

- Landlord with 2 properties within proposed area. Problems currently with tenant not paying rent in one property. Also issues with tenants have been removing batteries from smoke alarms.
- HMO Landlord couple: required clarification on whether Selective Licensing applied to licensed HMOs. Also unable to be Associate Member of NLA at present. Want to know if this option still exists.

6. Stakeholder Consultation Events

A number of specific stakeholder events were held and presentation made to various stakeholder groups and forums as follows:

Landlord Forum: A presentation was delivered at the Landlords Forum on 3rd May 2018, which included a review of the existing designation to date and an overview of the proposed scheme and consultation to follow. Approximately 50 landlords attended the event and main issues raised were:

- Major concerns expressed over anti-social behaviour (ASB) from housing association properties within the existing selective licensing area and how unfair it was that housing associations were exempt from selective licensing
- Landlords were particularly concerned about the high levels of ASB from 2 properties in the existing area managed by one particular housing association and wanted to see steps taken to address these problems

Homelessness Forum: A presentation on the proposed scheme and consultation was provided at the Homelessness forum on 16th May 2018. The Forum was attended by 16 people with representatives from local agencies involved in homelessness, housing associations and SBC Housing Benefit and Housing Options Team.

The main issues and questions raised at the Forum were as follows:

- How is the initial scheme working and has there been any discernible impact yet?
- Will Selective Licensing apply to Housing Associations?

Safer Communities Team: A meeting was held on 14th June 2018 with Sandra Rees, SBC Safer Communities Manager and Jo Ireland, SBC Customer, Communities and Partnerships Manager.

The main issues raised were around the wording of the proposed licensing condition for Safeguarding and operational implications for the wider Community Impact Team and the Council's Customer First Team.

North Yorkshire Fire and Rescue Service: A meeting was held with Eddie Head and Graeme Casper from North Yorkshire Fire and Rescue Service on 18th June 2018.

They stated that there had been a slight increase in workload since the existing scheme had commenced but it had produced no significant workload implications. A number of fire safety issues in some properties had been brought to light as a result of the existing scheme and they welcomed the proposal for the further area.

Stakeholder Event: This was the main stakeholder event for the consultation. Over 60 local stakeholders were invited to the event, which was held on 21st June 2018. A formal presentation was done at the event followed by a question and answer and discussion session. 4 people attended the event from the following organisations:

SBC: Tourism
Scarborough Job Match
North Yorkshire Fire and Rescue Service
Local Landlord

The main issues raised were:

- Concern over impact of some HMOs on guest accommodation and recent changes from guest accommodation to HMOs/residential property
- Impact on rents for vulnerable tenants

7. Landlord Meetings

A number of individual meetings were held with individual managing agents and landlords on request. A number of key issues emerged from these meeting as follows:

- Landlords currently have very tight margins and quite a number of landlords currently looking to sell properties.
- Cumulative effect of a range of changes affecting private rented sector has caused this and Impact of Selective Licensing is that it may push landlords working on margins into selling
- Concern that some of SL requirements can have big effect on landlord. Cited requirement for hard wired fire alarm systems for properties of 3 or more storeys. Could have big impact on properties in Nelson Street/Hoxton Road area.
- Also concern that this advice is sometimes at odds with Fire Service advice for this type of property (single household in properties of 3 or more storeys)
- Management service provided by professionally licensed managing agents ensures compliance with many of the licensing conditions required, e.g. Gas safety certificates, EPC's, smoke alarms, tenancy agreements and references. In addition compliance checks were carried out by managing agents on a regular basis. As a result consideration should be given for further discount to be provided where the landlord has a professional managing agent providing a management service
- The one-off fee for landlords on tight margins is prohibitive and consideration should be given to staged payments or paying by Direct Debit on an annual basis.

8. Landlord Association Responses

Formal responses were received from both the Residential Landlords Association (RLA) and the National Approved Lettings Scheme (NALS) in respect of the proposal. The specific issues raised by both organisations in relation to the proposals are reproduced below. Copies of their full responses are contained in the appendices.

Residential Landlords Association

Consultation response: Selective 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 in the areas of Castle and Central wards totalling 900 properties, the RLA is opposed to the scheme and has many general objections to Licensing overall, which are attached as an appendix to this letter.

Additional Cost

We understand that Scarborough's Council Housing Strategy 2015-2021 wants to improve the quality of private sector housing and supporting Neighbourhood Renewal. However, these schemes do little but alienate lawful landlords by burdening them with additional costs, while criminal operators continue to ignore regulations and avoid these additional costs.

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. The proposed standard licensing fee of £550, even with the discounts, is an unnecessary financial burden to put on landlords. Should the scheme go ahead, the RLA welcomes the discounted fees, however there is a late application fee and incomplete fee as part of the fee structure. The power to charge a fee is set out in s63(3) and s87(3) of the Housing Act 2004, with the fee charging power being limited by s63(7) or s87(7). These simply state that a fee must reflect the cost of running a scheme, with the local authority not being permitted to make a profit. The fee can be used for the operation of the scheme itself, necessary inspections, promoting education and all enforcement activity to ensure the scheme is effective. In addition, fees are only chargeable in respect of the application itself, and not in respect of ancillary matters.

Therefore, no other charges can be implemented under the licensing regime, a point confirmed by the RPT (as was) in *Crompton v Oxford City Council* [2013]. Because of this, Oxford amended its fee structure to reflect this ruling. While we appreciate the need of local authorities to use their resources efficiently this does not extend to the charging of fees that are not lawfully permitted.

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.

The Council already has the necessary tools to tackle poor housing management and conditions in the PRS. Rather than introduce a bureaucratic licensing scheme that will see scarce resources wasted processing applications, it should continue to direct these limited resources at identifying private rented properties and taking effective enforcement action, where necessary.

Pressure on non-selective licence 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.

Pat Testing and Electrical Safety

The statement in the consultation documents which states there is a mandatory condition for electrical appliances to be tested is legally incorrect, as it is simply required for appliances to be safe. A discretionary/additional condition requiring PAT testing annually could be considered illegal, as seen in *Brown v Hyndburn Borough Council*, where it was ruled unlawful for a local authority to require a landlord to provide and maintain a carbon monoxide detector and a valid Electrical Installation Condition Report (EICR) as part of the licensing conditions.

It is recommended that this condition should not be taken forward in the Council's proposals.

Existing Enforcement Powers

Councils should fully use the enforcement powers already granted to them by the Housing and Planning Act 2016, ranging from civil penalties, rent repayment orders, banning orders and the introduction of a database for rogue landlords and letting agents, rather than rely on Licensing Schemes to regulate landlords in addition to these powers. The Council has also not taken into consideration the amount of informal enforcement activity undertaken between local authorities and private landlords.

Additionally, Scarborough Council has access to the Controlling Migration Fund, which allows local authorities to tackle local service pressures associated with any recently increased migration, which includes tackling rogue landlords and driving up standards. The Tenant Fees Bill will also introduce a lead enforcement authority to provide guidance and support to local authorities regarding the enforcement of letting agent requirements.

Monthly Inspections

The requirement for monthly and quarterly inspections of HMO and proposed selective licensed properties is excessive, and potentially breaches Quiet Enjoyment that a tenant is entitled to. Such a condition should be removed from the licensing conditions the council are proposing.

Brown v Hyndburn Borough Council

Section 90(1) Housing Act 2004 is clear that a licence "may include such conditions as the local authority consider appropriate for regulating the management, use or occupation of the house concerned." In contrast to s67 Housing Act 2004, the equivalent provision in Part 2 of the Act, no mention is made in s90(1) HA of the use of conditions to regulate the "conditions and contents" of the property. This was emphasised in the recent Court of Appeal case of *Brown v Hyndburn Borough Council* [2018] EWCA Civ 242.

Following the Court of Appeal's reasoning in *Brown*, any licence condition is unlawful that seeks to regulate the condition or contents of the house and the local authority has no power to impose such a condition. Any such conditions should be removed.

Likewise, In *Brown v Hyndburn* Mr Justice Hildyard confirmed that the s90(5) of the Housing Act 2004 is not itself a source of any power, residual or otherwise permitting the local authority to include licence conditions that seek to identify, remove or reduce hazards. These are covered by Part 1 of the Act and should be enforced using Part 1 powers, and the Housing Health and Safety Rating System. Councils should not rely on Part 3 licensing powers to enforce Part 1.

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.

National Approved Lettings Scheme (NALS)

SCARBOROUGH COUNCIL'S SELECTIVE LICENSING PROPOSALS

A RESPONSE TO THE CONSULTATION FROM THE NATIONAL APPROVED LETTING SCHEME (NALS) – AUGUST 2018

SCARBOROUGH COUNCIL'S PROPOSALS - SPECIFIC ISSUES

Proposed Licensing Area

We welcome the targeted nature of the licensing proposals, as we believe that, in some other localities around the country, the implementation of licensing has moved far beyond what the government originally intended when the legislation was introduced.

Payment of License Fees

We would strongly suggest that the council take account of the recent case of "*R (Gaskin) v Richmond-upon-Thames LBC [2018] EWHC 1996 (Admin)*" In our view, the judgement handed down in this case probably means that licensing fees must be charged in two stages – an application fee to cover only the costs of obtaining authorisation under the scheme, and a licence fee levied only on successful applicants to cover the remaining costs of administration and enforcement etc.

Fee Structure

We are concerned that Scarborough Council has not published or consulted on the exact fee structure that will apply. **We are, therefore, concerned that the fee**

structure may not include any discounts for agents that are members of NALS. We would urge Scarborough Council to consider offering fee discounts to landlords who engage agents that are members of NALS.

There are examples of this approach around the country, including Liverpool City Council. In Liverpool, co-regulation partners such as NALS accredit agents, who then qualify for discounted fees – see liverpool.gov.uk/business/private-landlords/licences-and-standards/landlord-licensing/

- Thanet City Council (engagement of an agent who is a member of a recognised body entitles landlords to a discount on licence fees)
<https://www.thanet.gov.uk/your-services/housing/selective-licensing-scheme/selective-licensing-schemes,-an-introduction/>
- Newcastle –upon-Tyne (Reduction in fee for membership of the NLA or other nationally recognised accreditation scheme)
<https://www.newcastle.gov.uk/housing/private-housing/selective-licensing>

Although each of these schemes differs in detail, all of them offer discounts to accredited agents (and/or landlords engaging an accredited agent) as follows:

LOCAL AUTHORITY	STANDARD FEE	ACCREDITED FEE	% DISCOUNT
Thanet	£587	£385	34
Liverpool	£400/£350	£200	50/43
Newcastle	£550	£450	18

We would further point out that, in Wales, the Welsh Government has recently recognised the importance of membership of specified bodies such as NALS and is offering discounted fees to members as a consequence
<https://www.rentsmart.gov.wales/en/>

We feel that a discount in respect of NALS membership (or similar) would act as an incentive to the adoption of voluntary good practice, in line with the council’s aim of encouraging landlords and agents to improve their property and management standards. We would suggest that NALS members and the landlords who engage them are less likely to be non-compliant and that, as a result, there would be reduced costs to the council.

We would also suggest that NALS membership mitigates the need for compliance visits to be carried out by the council. For example, the timing and content of these visits could be risk based, recognising that the risk of non-compliance is much lower in the case of properties managed by NALS agents.

In our detailed comments below we point out some of the areas where compliance with key standards is an inherent part of the NALS scheme. These are the areas where we think promotion of NALS membership through license fee discounts could ultimately save the Council money, as well as increase the take up of voluntary accreditation.

COMMENTS ON THE LICENCE CONDITIONS

Tenant Referencing

We are strongly supportive of the requirement to obtain references for prospective tenants, as NALS is actively involved in promoting good practice in tenant referencing.

Property Management

NALS agents are expected provide and fill in a tenancy agreement on behalf of the landlord. They will always make sure the terms of the tenancy are fair and help the tenant to understand the agreement.

They will always provide clear information to the tenant about any pre-tenancy payments and what these cover. They will explain any requirement for a guarantor and what the guarantor role entails.

At the end of a tenancy, they will always serve the tenant with the correct period of notice as set out in the tenancy agreement.

Under NALS' service standards, agents are required to take a deposit to protect against possible damage. They are required to explain the basis on which the deposit is being held and the purpose for which it is required, as well as to confirm the deposit protection arrangements. When joining NALS, agents are asked to provide details of the number and value of the deposits they have registered with the approved scheme.

They are asked to authorise NALS to contact the scheme to verify this information. During the course of a tenancy, NALS agents will check the condition of the property and draw up a schedule to outline any deductions to be made from the tenant's deposit. They will return the deposit in line with timescales and processes required by the statutory tenancy deposit schemes.

NALS agents are also required to:

- Have a designated client account with the bank
- Operate to strictly defined Accounting Standards
- Be part of a Client Money Protection Scheme.

These requirements provide additional security for client monies held, over and above the requirements of the Scarborough licensing scheme. Again, this is an area where increased NALS membership would be of benefit to the Council and local tenants.

Licence Conditions Relating to the Property

We welcome Scarborough Council's drive to improve property standards. We believe that NALS' standards go a long way to ensuring compliance with licence conditions.

Under NALS' service standards, NALS agents are expected to visit any property to be let with the landlord and advise on any action needed before letting the property. This includes any repairs and refurbishments needed to put it into a fit state for letting. They will also go with possible new tenants to view unoccupied property. Tenants can, therefore, be confident that NALS agents have provided advice to the landlord concerning any repairs or refurbishments which are necessary.

NALS agents are expected to explain both the landlord's and the tenant's the rights and responsibilities. To guard against misunderstandings, they will arrange for the preparation of a schedule of the condition of the property.

NALS agents are required to ensure that tenants are provided with copies of safety certificates on gas and electrical appliances before they commit to the tenancy. They will provide details of the condition of the property, plus a list of its contents. The property will have undergone all required safety checks on furnishings, and gas and electrical services.

Thereafter, NALS' standards require agents to carry out property inspections periodically, as agreed with the landlord, in line with normal good practice. NALS and our firms would anticipate inspections to be carried out every 6 months as a minimum, to identify any problems relating to the condition and management of the property. In line with common practice, records of such inspections would contain a log of who carried out the inspection, the date and time of inspection and issues found and action(s) taken. Under a licensing scheme, this information could be shared with the council in an appropriate format.

Tenants will be fully aware of access arrangements. NALS agents are expected to arrange in advance a time for access, in order to inspect the condition of the property in accordance with the tenancy agreement. NALS agents will arrange to have routine maintenance work carried out, up to a limit agreed with the landlord. The agent will refer expenditure above that limit to the landlord.

Training

We welcome the reference to training in the license conditions.

Membership of NALS means that agents already have access to an extensive training package, engagement with which should reduce the need for the local authority to intervene. Although not a *condition* of NALS membership, NALS offers accreditation through an online foundation course as well as qualifications such as BTEC Level 3 in Lettings and Management practice.

NALS offers training to those who have been involved in lettings and management for some time as well as those who are just starting out. Training is available for principals of firms as well as employees. Thus, NALS' Virtual Learning Environment (VLE) is designed to cater for a wide range of professional development needs. Training is easily accessible and can be undertaken when it suits the trainee. Any candidate completing the NALS Foundation Lettings Course

successfully also has the opportunity to use the designation 'NALS Qualified'. NALS Foundation Lettings Course (Wales) is also approved training recognised by Rent Smart Wales, the Welsh Government's regulatory body as meeting the requirements for agents to have complying with their licensing requirement.

One advantage of this approach is that it makes it easy to ascertain (through on line monitoring) that accreditees have in fact undertaken the required training, prior to or immediately after accreditation.

Modules available cover:

- Pre-tenancy issues
- Responsibilities and liabilities
- Setting up a tenancy
- During a tenancy
- Ending a tenancy
- General law concepts, statute vs contract
- Relationships
- Obligations
- Process
- Considerations for corporate tenants
- Continuing Professional Development (CPD)

In addition, NALS provides mini online courses designed to cover a number of elements in more detail, as appropriate to the learner's role, include topics such as:

Assured Shorthold Tenancies (ASTs)
Client Money
Consumer Protection Regulations (CPRs)
Deposits
Disrepair
Electrical Appliances & Safety
Gas Appliances & Safety
Houses in Multiple Occupation (HMOs)
Housing, Health & Safety Rating System (HHSRS)
Inventories and schedules of condition
Joint Tenancies
Notice Requiring Possession

We would suggest that discounted fees for NALS agents would provide an incentive to positive engagement with training that is fully compatible with the requirements of the licensing scheme.

Anti-Social Behaviour

We note that there are distinctive issues around crime and Anti-Social Behaviour (ASB) in the licensing area. However, we do have concerns about the assumed link between the amount of PRS accommodation in the neighbourhood and the incidence of ASB.

There may be some *correlation* between incidences of ASB and the prevalence of PRS accommodation on the area. However, correlation does not imply *causation*. The *causes* of ASB are many and varied. It is not, in our view, reasonable to expect agents and landlords to play a disproportionately large part in tackling them.

Furthermore, we would strongly advise against any proposals which imply a parity of approach between the PRS and the social rented sector. Social landlords are publically funded (and regulated) to develop and manage housing on a large scale. Their social purpose brings with it wider responsibilities for the communities in which they work. As private businesses, PRS landlords and their agents, whilst having clear responsibilities to manage their properties professionally cannot reasonably be expected to tackle wider social problems.

We note that the license conditions state that “the Licence Holder and/or their nominated managing agent are required to undertake an investigation of any complaints regarding their tenants”. In our view, it would be useful if the license conditions could reference Lettings & Management Agents’ in house complaints procedures. Many issues can be resolved using this mechanism, or indeed via informal approaches to the managing agent.

Suitability of Licence Holder

Looking at the consultation documents, we are not sure whether the council would only issue a licence if it was satisfied that the proposed licence holder is a ‘fit and proper’ person. We would support such a measure, as we believe that such requirements highlight the importance of lettings and management agents belonging to recognised accrediting bodies like NALS, who themselves apply a fit and proper person test.

All principals, partners and directors of a NALS firm are asked to make the following declaration on application:

– “I confirm that: for a period of 10 years prior to this application I have had no conviction for any criminal offence (excluding any motor offence not resulting in a custodial sentence) nor have I been guilty of conduct which would bring the Scheme or myself into disrepute; I am not an undischarged bankrupt nor is there any current arrangement or composition with my creditors; I am not nor have I been a director of a company which has within the period of 10 years prior to this application entered into liquidation whether compulsory or voluntary (save for the purpose of amalgamation or reconstruction of a solvent company) nor had a receiver appointed of its undertaking nor had an administration order made against it nor entered into an arrangement or composition with its creditors; nor have I at any time been disqualified from acting as a Director of a company nor subject to a warning or banning order from the Consumer Markets Authority or the Department for Business, Enterprise and Regulatory Reform.

If I am subject to any current claim or am aware of any impending claim for professional negligence or loss of money or if I have been the subject of any investigation by the Consumer Markets Authority and/or local Trading Standards Office, full details of the circumstances are set out in a report enclosed with the application; all information provided by me in connection with this application is, to the best of my knowledge, correct”

We believe this certification is broadly in line with Scarborough Council's licensing conditions and is another example of where promotion of NALS membership through discounts could help to ensure compliance.

Complaints

As we point out in our response on ASB above, all NALS firms are required to have a written Customer Complaints Procedure, available on request. Our guidance sets out how the first step for complainants is to ask the firm they are dealing with for a copy, which will outline the method by which they can seek to resolve any issues.

In line with statutory requirements, all NALS members must also be members of a recognised redress scheme. Firms are required, at the request of the complainant, to refer the complaint to a redress scheme once their in-house procedure has been exhausted. They are also required to comply with any award determined by the redress scheme, within the timescale prescribed.

Under co-regulation schemes elsewhere in the UK, NALS has undertaken to review any complaints that have been adjudicated upon by any of the redress schemes. Under such an arrangement, NALS can report to the Council on the number of complaints reaching this stage and on the adjudications made. Non-compliance with a redress scheme's adjudication would eventually lead to disqualification of the agent from NALS. We would be happy to come to a similar arrangement with Scarborough.

CONCLUSION

It seems to us that many of the licencing requirements in the Scarborough scheme highlight how important it is for landlords to work with reputable agents such as NALS members. Offering a discount to licence holders who work with a NALS accredited agent would help to promote this.

NALS would welcome a collaborative approach with Scarborough Council, based on shared objectives. We believe that agents who are members of a recognised body are more likely to embrace Selective Licensing and less likely to generate complaints or breaches of their licence. Discounted fees for NALS members would be a significant incentive to positive engagement by agents. In return, the Council would experience reduced administration and compliance costs

9. Other Responses

Yorkshire Coast Homes: The following response was provided by Yorkshire Coast Homes who own and manage housing stock within both the existing and proposed selective licensing areas.

“YCH welcome selective licencing in relation to private rented accommodation. Registered (Social Housing) Providers are rightly, strictly regulated, to ensure that the accommodation provided is of a sufficiently high standard; to ensure that people’s needs are met appropriately and they have a safe, healthy and hygienic home to live in, which is well maintained and repaired. We feel that in Scarborough Borough Council extending the selective licencing boundary across more private accommodation this will ensure that it at least meets a minimum standard, particularly in relation to health, hygiene and safety, as well as ensuring access to repairs.”

Kevin Bradshaw: Yorkshire Coast Homes

10. Summary of key issues arising from the consultation

The following section provides a main summary of the key issues raised by residents, businesses, landlords and stakeholders over the course of the consultation through the questionnaires, drop in sessions, events, meetings and formal responses.

Key issues raised by residents/businesses

Whilst the majority of residents were in support of the proposal, there were a number of key issues raised by residents, which need to be considered as follows:

Fees will be passed on through rent increases to tenants: There was a concern amongst a lot of residents that the licence fee would be simply passed on by landlords to their tenants through increased rents. A number of tenants, in particular, expressed the concern that the landlord would simply increase the rent and this could put them into financial difficulties

Selective Licensing won’t address ASB problems: Concern was expressed that the scheme would do little or nothing to stop anti-social behaviour in private rented properties and that it was really the job of the Police and other agencies to tackle anti-social behaviour rather than individual landlords.

Concerns were also expressed that anti-social behaviour was mainly caused by social housing tenants, including “halfway house” properties in the proposed area, As Selective Licensing did not extend to social housing tenants, then they could not see the scheme being able to effectively tackle anti-social behaviour in the proposed area.

Drug dealing and alcohol abuse within the area were also seen as a major problem and a major source of ASB, some of which came from social housing tenants. A number of respondents commented on the problems caused by pubs and other licensed premises within the area and that this was the source of most of the ASB within the area.

Comments were also made that most of the problems from pubs and other licensed premises was caused by visitors to the area, either holidaymakers or people passing through the area at night, and that Selective Licensing wouldn't stop this problem.

Need for effective enforcement: Residents expressed concern that unless there was effective enforcement of landlords then Selective Licensing wouldn't resolve problems in private rented properties.

Concern was also expressed that the scheme would penalise the good landlords who are managing their properties professionally and would not capture the "bad" landlords.

Rubbish/bins overflowing: This was a major concern raised by a significant number of residents and businesses with almost 50% of respondents citing it as a problem from privately rented properties on the questionnaire.

Residents mentioned a variety of problems including overflowing bins out on the streets, rubbish being dumped, fly tipping (particularly in rear alleyways) and general littering by residents and visitors to the area.

Other Issues: Other issues mentioned by residents included that it was merely a money making scheme for the Council to raise revenue; problems with dog fouling and barking in the area, and that the Council already have the necessary powers to address problems in private rented properties.

Key issues raised by Landlords:

As the majority of landlords disagreed with the proposal, there were a wider range of concerns and issues raised by landlords. These are outlined below as follows

Fee Issues: Landlords raised a number of issues in respect of fees. Many landlords pointed out that they are already subject to a wide variety of operational costs including high management costs and maintenance costs and the added cost of the licence could have a significant impact on the viability of their business.

A particular issue raised by a number of landlords and local managing agents that landlords who employed a professional managing agent to manage their property were already paying out management fees to receive a service that ensured their property met all current regulatory requirements. It was stated that managing agents also met many of the licensing conditions required by the Council and also undertook regular inspections of the property.

Landlords and managing agents were also concerned about paying the licence fee in full at the time of application. This could have a detrimental effect for many smaller landlords who operated on small operating margins and would struggle to meet the full cost in one go. It was suggested that staged payments and/or annual direct debit be provided as an option for landlords.

A number of landlords also stated that the license fee would most likely to be passed on to tenants through increasing the rent.

Blanket Approach: Penalising the good landlords: This was also an issue raised by a large number of landlords. The feeling was that the good landlords were being asked to pay for dealing with the bad landlords.

The view of many landlords was that the Council should know who the bad landlords are, and which the problem properties in the area are, and that the Council should concentrate their resources on tackling the rogue landlords and leave the good landlords alone.

Won't solve anti-behaviour: It was a major concern of many landlords that Selective Licensing would not solve anti-social behaviour. It was felt by many landlords that whilst many tenants did cause anti-social behaviour and nuisance, it was not necessarily the role of landlords to tackle anti-social behaviour and that landlords were not at fault.

The powers for tackling anti-social behaviour were seen as being in the hands of the Police/Council/Courts and other agencies and these organisations were in the best position to tackle anti-social behaviour as opposed to landlords.

As with residents there was also concern that the scheme won't extend to social housing tenants, which was seen as the source of a lot of anti-social behaviour within the proposed area.

Landlords will sell up properties: This was raised by both landlords and managing agents and agent stated there a number of landlords within the proposed area had put their properties on the market since the announcement of the proposal.

Agents stated that some landlord who they managed properties for had stated that selective licensing was the reason they had put their property up for sale.

Key Issues raised by Landlord Associations:

The Residential Landlords Association (RLA) and National Approved Lettings Scheme (NALS) raised a number of issues within their responses.

Licence Fees: Both the RLA and NALS expressed concerns about aspects of the licence fee. The RLA challenged the inclusion of the late application fee and incomplete fee penalties on the grounds that fees can only be used "for the operation of the scheme itself, necessary inspections, promoting education and all enforcement activity to ensure the scheme is effective." They stated that no other charges can be implemented under the licensing regime and therefore the charging of the late application fee and incomplete fee penalties could be deemed unlawful.

NALS stated that in the light of a recent legal case ("R (Gaskin) v Richmond-upon-Thames) that licensing fees should be charged in two stages.

1. An application fee to cover only the costs of obtaining authorisation under the scheme

2. A licence fee levied only on successful applicants to cover the remaining cost of administration and enforcement etc.

Fee Structure: NALS were concerned that the fee structure may not include any discounts for agents that are members of NALS and wanted to see a fee discount offered to landlords who engage agents that are members of NALS.

Overall NALS stated that they would welcome a collaborative approach with the Council based on shared objectives, and see the introduction of discounted fees for NALS members as a significant incentive to positive engagement by agents. NALS provided a list of their Service Standard Requirements for members and how they relate to licensing conditions. These can be found within their full response which is included as Appendix x of this report.

Landlord's ability to deal with anti-social behaviour: NALS expressed concern about the assumed link between the amount of PRS accommodation in the proposed area and incidences of ASB in the area. Whilst accepting there may be some correlation between incidences of ASB and the prevalence of PRS accommodation, it does not imply causation. NALS in their response also noted that it would be unreasonable *"to expect agents and landlords to play a disproportionately large part in tackling them"* (i.e. ASB). They were concerned that private landlords and agents cannot reasonably be expected to tackle wider social problems including ASB on the scale and approach taken by social landlords.

NALS also stated that it would be useful if the license conditions could reference Lettings and Management Agents in house complaints procedures.

Licensing Conditions: The RLA highlighted a couple of licensing conditions which they stated should be removed.

Firstly they challenged the inclusion of the condition for the requirement for the landlord to undertake annual PAT testing and to provide a valid Electrical Installation Certificate (EICR) deeming it illegal following the recent *Brown v Hyndburn Borough Council* case.

Secondly they deemed the requirement for monthly and quarterly inspections of HMOs and Selective Licensing properties to be excessive and be a potential breach of "Quiet Enjoyment" that a tenant is entitled to.

Use of Existing Enforcement Powers: The RLA stated that the Council should be making full use of the new enforcement powers granted by the Housing and Planning Act 2016 rather than relying on Licensing Schemes to regulate landlords.

The RLA also mentioned the Controlling Migration Fund, which allows LA's to tackle local service pressures, in relation to recently increased migration, which includes tackling rogue landlords and driving up standards. They also mentioned the Tenant Fees Bill, which will also introduce a lead enforcement authority to provide guidance and support to LA's regarding the enforcement of letting agent requirements.

Implications of Brown v Hyndburn Borough Council: The RLA also highlighted the recent Court of Appeal case, which reasoned that any licence condition is unlawful that seeks to regulate the condition or contents of the house, and the LA has no power to impose such a condition.

In effect this relates mainly to hazards under the Housing Health and Safety Rating System (HHSRS), which are covered by Part 1 of the Housing Act 2004. Licensing conditions, which come under Part 3 of the Act should not be used to enforce Part 1 and separate powers under Part 1 are in place to enforce HHSRS hazards.

11. Recommendations

Taking all the consultation responses into account including the questionnaire responses, consultation events and formal stakeholder responses, there are a number of recommendations that can be made as follows:

Recommend the designation for the proposed area (Scarborough Central) for Selective Licensing

The majority of resident and business respondents (59%) support the proposal to designate the area for Selective Licensing as opposed to 20% who oppose the proposal. In addition, key local stakeholder such as North Yorkshire Fire and Rescue Service, SBC Safer Communities team and Yorkshire Coast Homes also support the proposal.

By contrast the majority of private landlords who responded (64%) were opposed to the proposal to designate the proposed area for Selective Licensing.

The overall view of the two landlord bodies falls between the two opposing viewpoints. The Residential Landlords Association (RLA), is generally opposed to the introduction of the licensing scheme on the grounds that the *“these schemes do little but alienate lawful landlord by burdening them with additional costs, while criminal operators continue to ignore regulations and avoid these additional costs”*

The National Approved Lettings Scheme (NALS) is generally supportive of the proposal stating *“We welcome the targeted nature of the licensing proposals, as we believe that, in some localities around the country, the implementation of licensing has moved far beyond what the government originally intended when the legislation was introduced.”*

In view of this and the issues raised by all parties the report makes a number of further recommendations.

Recommend a wide range of fee options to minimise the impact to landlords and tenants

The cost of the proposed licence fee was a major issue raised primarily by landlords but also by some residents who feared that it would mean an increase in rents.

In addition some landlords and managing agents advocated that where a professional managing agent was used by the landlord and provided a comprehensive management service, which met some of the licensing requirements, that this should be reflected within the licence fee.

It is therefore recommended to offer the following range of discounts:

Early Bird Discount: Provide a discount for landlords who apply prior to the start date of the designation. This would be available in the 3 month period immediately prior to the designation start date.

Multiple Applications: Provide a discount to landlords who are applying for more than one licence. The discount would apply to the second and all subsequent licence applications

Membership of Landlord Associations: Provide a discount to landlords and managing agents who are members of either the National Landlords Association (NLA), Residential Landlords Association (RLA), National Approved Letting Scheme (NALS), Association of Residential Letting Agents (ARLA) or are accredited landlord through the Scarborough Borough Council Landlord Accreditation Scheme.

Consider a staged approach to fee payments

A staged approach to fee payments was advocated by landlords and managing agents as it was considered that paying the full license fee as one payment was very burdensome for smaller landlords in particular. The introduction of an annual Direct Debit was also advocated.

The RLA also advised that in the light of the recent "*R (Gaskin) v Richmond on Thames*" case, there is now a legal requirement for the license fee to be in two stages, the application fee and a licence fee levied only on successful applicants. Legal advice needs to be initially sought to determine whether it is lawful to charge the payment in full at the point of application.

In terms of staged payment to mitigate the impact on landlords, this would result in extra administrative burdens and potentially increased costs, which may include an allowance for bad debts. However, the setting up of a Direct Debit system for licence fees may mitigate these issues to some extent and may be less burdensome administratively. It is recommended that the feasibility of this option be further explored.

Ensure that any penalty fees are legally chargeable

The RLA advised that penalty fees for late applications and incomplete applications should not be charged as they are not part of the operation of the scheme. However, it can be demonstrated within the current selective licensing scheme that considerable work has been undertaken as part of the operation of the scheme to identify landlord who have failed to apply for a licence.

It is recommended therefore to have just one penalty charge, a Finders Fee, which would only apply to landlords who fail to apply at least 3 months after the introduction of the scheme and where extra work has been undertaken to identify that landlord.

Ensure there are sufficient resources to undertake effective enforcement

It was a major concern of residents and landlords alike that the scheme would lack effective enforcement and that the “bad” landlords would not be sufficiently dealt with. As the income generated from the license fees can only be used for the administration and running of the scheme and not for enforcement, then there was a fear that enforcement would not be carried out effectively.

A Selective Licensing scheme without effective enforcement would effectively be a waste of time, effort and resources for everyone concerned. A number of steps will be and have been taken that support a robust and effective approach to enforcement as follows:

- A comprehensive inspection programme of all licensed properties to be undertaken in the first two years of the licensing period, which will identify properties requiring enforcement action
- A recent restructuring of the Environmental Services department, which led to the creation of a new Residential Regulation Team and provides more resources within the team for housing enforcement.
- The scheme will be delivered in conjunction with the multi-agency Community Impact Team, based in Safer Communities at the Council and includes representatives from North Yorkshire Police and North Yorkshire Fire and Rescue Service. Where required joint inspections with the Police and the Fire and Rescue Service will be undertaken of certain properties. In addition, the Community Impact team will be able to utilise a wider range of powers, such as Community Protection Notices, which will augment the housing enforcement approach.

Ensure there is a co-ordinated approach to tackling anti-social behaviour and nuisance throughout the proposed area

Another major concern raised by both residents and landlords was that the scheme would not solve anti-social behaviour. There was particular concern from many landlords that they have little influence over their tenant's behaviour and ability to control anti-social behaviour by their tenants.

Selective Licensing in itself is not the panacea to reducing anti-social behaviour in the proposed area. However, Selective Licensing has an important role to play in tackling anti-social behaviour in the area as part of a co-ordinated approach involving all partners.

The partnership with the Community Impact team, mentioned previously, will be crucial to tackling anti-social behaviour. This will include joint inspections of some licensed properties and any other joint approach and/or information sharing on problems identified in licensed properties.

Support for landlords is also crucial in helping to tackle anti-social behaviour in the area. Proposed new discretionary licensing conditions include a range of measures in respect of anti-social behaviour and the management of properties. Partners have a role to play in supporting landlords to meet these conditions, including the provision of specific advice and training where required for landlords on dealing with anti-social behaviour.

Other partners also have a role to play in tackling anti-social behaviour throughout the proposed area. Concerns were raised by respondents that much of the anti-social behaviour in the proposed area is caused by social housing tenants. The importance of social landlords, including Yorkshire Coast Homes, Sanctuary and Foundation Housing, working with and being part of the Community Impact team, is crucial to demonstrating that anti-social behaviour is being effectively tackled across all tenures in the area.

Ensure there is effective monitoring and review of the scheme once it is implemented

The high profile nature of Selective Licensing means that it will be subject to a high degree of scrutiny from a wide range of parties and interests including landlords and landlord bodies, residents, SBC members and others.

Strong and robust monitoring mechanisms need to be put in place once it is implemented, which will monitor the effectiveness and impacts of the scheme (both positive and negative) and enable changes to the scheme to be made during the licence period as and when required.

Key performance indicators will need to be established and agreed upon for the scheme and regular monitoring reports produced, both for SBC members and for other interested parties.

Ensure that the Licensing Conditions do not undertake Part 1 powers of Housing Act 2004

In the light of the Brown v Hyndburn Borough Council case, highlighted by the RLA, the licensing conditions will be reviewed to ensure that they do not include anything which should be covered by Part 1 powers of the Housing Act 2004.

Include James Street and Oxford Street within the proposed area

It was suggested by stakeholders that James Street and Oxford Street, which adjoin the proposed area and are also adjacent to the current Selective Licensing scheme be included within the proposed area.

As result, households in these streets were also consulted on the proposal. All bar one response from these two streets supported the proposal and all respondents from the two streets stated that they had experienced problems from private rented properties, including nuisance and anti-social behaviour.

The inclusion of James Street and Oxford Street would have little impact on the overall resourcing of the scheme and their inclusion would fit with the profile for the proposed area.

Exclude York Place and Somerset Terrace from within the proposed area

These were the only two streets where the majority of respondents disagreed with the proposed scheme. The majority of properties on these two streets are commercial in nature and there are few residential properties. In addition they are located on the boundary of the proposed area.

As a result it is proposed to exclude York Place and Somerset Terrace from the designation.