

October 2021

Summary of the results of public consultation about new property licensing schemes conducted from May to August 2021

Introduction

6. Hammersmith & Fulham Council conducted a public consultation from May to August 2021 about a proposal to introduce new property licensing schemes from June 2022 for 5 years, focussing on the types of properties and streets where there are the most significant problems, as follows:
 - a. Additional Licensing for Houses and Flats in Multiple Occupation (“HMOs”) which are outside the scope of Mandatory HMO Licensing
 - b. Selective Licensing for rented dwellings in 24 specified streets
7. The [public consultation](#) documents are on the council’s website.
8. The consultation was publicised by:
 - a. Emails sent to 2,900 landlords and agents who had applied for a property licence between 2017 and 2021
 - b. Emails to the following organisations representing private tenants: Flat Justice; Justice 4 Tenants; Advice for Renters; The Tenants Voice; Renters Rights London; London Tenants Federation; Generation Rent; London Renters Union
 - c. Emails to CAB; Hammersmith Law Centre; East European Resource Centre; Glass Door Homeless Charity; Hammersmith & Fulham Advice; Hammersmith & Fulham Foodbank; Hammersmith & Fulham MIND; Maggie’s Cancer Caring Centres; Shelter; Shepherd’s Bush Families Project & Children’s Centre
 - d. West London Chambers of Commerce (Ealing, Hounslow and Hammersmith & Fulham)
 - e. Leaflets distributed to 13,000 addresses in the 23 roads proposed to be part of the Selective Licensing scheme, combined with a press release the same weekend (22/23 May 2021)
 - f. Leaflet emailed to all H&F councillors for them to forward to constituents
 - g. Commissioned advertising on the London Property Licensing website and newsletter; notification to neighbouring boroughs
9. In contrast to landlords, privately renting tenants have a high level of support for licensing schemes (around 80%).

10. In addition, a survey of licence holder landlords was conducted in September / October 2020 and received 250 responses. The survey found that nearly two thirds of the landlords and agents who responded believe licensing schemes make little difference in improving standards and are regarded by them as unnecessary and an unwelcome financial burden on landlords. Preliminary findings from the current consultation are that a similar number of landlords do not agree with the proposal to renew Additional HMO Licensing and three quarters do not agree with renewed Selective Licensing.

11. However, one third of landlords believe licensing schemes help to raise standards and enable Councils to deal with rogue landlords who fail to apply for licences.

12. A survey of private renting tenants in the borough from December to February 2021 received 99 responses. Although the satisfaction levels among tenants were more positive than negative, it is a cause for concern that there were significant minorities of tenants who were dissatisfied with their landlords and / or stated deficiencies in safety or amenity standards in their rented property.

Key points

We received 462 online responses plus three responses direct.

There were more than three times as many responses from landlords compared to tenants, so the data has been divided into all responses, landlords only and tenants only, as there are differing views between landlords and tenants.

A simple majority of respondents to the consultation do not support the council's proposals, but most of those who object are landlords. When taking the views of tenants alone, there is wide support for the proposals.

There is general consensus that:

- **changes should be made to the existing selective licensing scheme;**
- **some streets should be removed from selective licensing; and that**
- **additional HMO licensing is necessary in addition to Mandatory licensing for larger HMOs.**

Landlords generally disagreed and tenants agreed with the following questions:

- **Should the council renew its selective licensing scheme? (Q1)**
(74% of landlords disagree; 84% of tenants agree)
- **Should selective licensing apply to all rented properties? (Q2)**
(9% of landlords agree; 70% of tenants agree)
- **Should a new set of streets be included in the selective licensing scheme? (Q5)**

(15% of landlords agree; 65% of tenants agree)

- **Should council flats be used as homes in multiple occupation? (Q6)**
(Two times as many landlords said yes rather than no; more tenants said no than yes)
- **Should the council extend the additional HMO licensing scheme for five years? (Q7)**
(65% of landlords disagreed; 79% of tenants agreed)
- **Is Additional HMO licensing necessary in addition to Mandatory HMO licensing? (Q8)**
(20% of landlords agreed; 74% of tenants agreed)
- **Should all flats and houses with three or four people sharing be included, or just some? (Q9)**
(More landlords said just some rather than all; twice as many tenants said all rather than just some)

	All online respondents (462)		Landlords' and agents' online responses (296)		Private tenants' online responses (86)	
Q1 - Do you agree that the council should renew its selective licensing scheme for five more years, from June 2022?	40% Yes	59% No	25% Yes	74% No	84% Yes	15% No
Q2 - Should selective licensing apply to <u>all</u> rented properties in the borough, or just those where problems are greatest?	24% All	17% Just those with problems	9% All	17% Just those with problems	70% All	15% Just those with problems
Q3 - Do you agree that changes should be made to the existing selective licensing scheme to focus on streets and properties in most need?	32% Yes	8% No	19% Yes	7% No	67% Yes	17% No
Q4 - Do you agree that the streets in Appendix 3 should be removed from the selective licensing scheme?	23% Yes	9% No	16% Yes	3% No	37% Yes	30% No

Q5 - Do you agree that streets in Appendix 4 should be included in the selective licensing scheme?	29% Yes	3% No	15% Yes	3% No	65% Yes	2% No
Q6 - Should council flats be used as homes in multiple occupation?	16% Yes	16% No	13% Yes	6% No	28% Yes	38% No
7 Should the council extend the additional HMO licensing scheme for five years from June 2022?	46% Yes	52% No	33% Yes	65% No	79% Yes	20% No
8 Is extra licensing necessary in addition to regular licensing for larger HMOs with five or more occupants?	34% Yes	12% No	20% Yes	13% No	74% Yes	6% No
9 Should all flats and houses with three or four people sharing be included, or just some?	25% All	22% Just some	13% All	21% Just some	57% All	23% Just some

Representative examples of narrative responses

Landlords

A costly and unnecessary burden on landlords

Most landlords are straightforward and honest

The online application form is long and difficult to use

My accommodation is good standard and my tenants do not cause ASB

Some parts of the road need licensing but not the whole road

Not necessary in a fully managed block

Existing regulation is sufficient – no need for licensing as well

Does not deter rogue landlords as they will just avoid licensing

There are other ways to deal with rogue landlords

HMO licensing is needed but not a small flat with one tenant

Limits housing supply and rents have gone down recently

Deregulate and reduce the burden on tenants who end up paying for these regulations.

I believe that it is extremely important that tenants are protected from unscrupulous landlords.

It is and really good for Health and Safety of any house.

Tenants

Not enough follow up inspections or enforcement

By denying licenses, you'll be forcing residents into other areas, just hiding the problem rather than addressing it.

It should be reviewed every year as rent in the borough is horrible

Licensing has a positive effect on improving safety standards and management standards of the occupants. There are significant issues with the management and safety measures for properties on these streets

The moment regulations are relaxed, landlords might not look to maintain standards or engage with their rentals in good faith. This will ultimately affect the tenants with regards to fire safety and electrical safety.

Property licensing yields better property conditions for tenants and benefits the private rented sector as a whole. The more properties that require a license the better.

The problems that selective licensing aims to solve still exist on many of these streets, but also on neighbouring streets which are not even on the scheme.

The Grampians has very low rate of anti-social behaviour and police attendance. The blocked is owned by residents. We have: 24 hours portage, entry phone and the presence of staff during the day.

Much council stock is not really appropriate for use as an HMO, they are well laid out for family use.

As council flats are typically in more densely populated buildings anyway, further increasing that would not be beneficial to this residents nearby

The growth of HMOs has had a negative impact on housing stock quality in the area and the use of council flats as HMOs means collective property is being used up and wasted sooner.

I have seen some ridiculously small bedrooms - basically cupboards - being held out as proper rooms.

Additional and Selective Licensing has shown to improve standards for Private Sector Housing in local communities by providing tenants with further rights and ensuring Professional Landlords and safe and suitable housing is being provided.

People in most private rented HMOs are mostly migrants or desperate. Most don't know their rights and don't know where to report abusive and antisocial behaviour.

Specific Consultation Responses

In relation to the additional licensing scheme, the report indicates just 170 properties have been inspected, which equates to about one in twenty licensed properties. Section 55 of the Housing Act 2004 places an obligation on the council to ensure there are no serious hazards in licensed HMOs. Without inspecting properties, it is unclear how the council can comply with this duty. We could find no data on the number of selectively licensed properties inspected.

Few properties have been inspected and just four prosecutions and three civil penalty notices issued over four years. This indicates inadequate resourcing for inspection and enforcement activity.

Response – the licence fee does not include a fee for an inspection, if that were the case the licence fee would be higher (similar to Mandatory HMOs) because we would need to employ more staff to do the inspections. We believe the number of Additional HMOs we have inspected is a representative sample and showed consistent similarities. Section 55 goes on to say “For the purposes of subsection (5)(c) (b) the authority may take such steps as they consider appropriate (whether or not involving an inspection) to comply with their duty under subsection (5)(c) in relation to each of the premises in question, but they must in any event comply with it within the period of 5 years beginning with the date of the application for a licence”.

In our view there are other ways of establishing that there are no Part 1 functions that ought to be exercised in relation to licensed HMOs and to inspect them all routinely is wasteful of the council’s resources and imposes unnecessary burdens on landlords and tenants.

There is no similar obligation in relation to Part 1 powers on the council in relation to Selectively Licensed houses and flats.

DCLG guidance (2015) says councils: “...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.” We note that within the evidence base, the council have acknowledged: “Some flats of three people are three friends sharing, or a couple and a friend. These are less likely to be a problem. They could be made exempt, but this would be difficult to implement.” This indicates a misunderstanding of the legislation as this is a simple issue to address.

Response: We are aware we can make only 4 person HMOs licensable under the Additional scheme in the designation – the question is whether that is necessary or desirable. The problem with doing so is that it makes a single class of HMO not licensable – those with 3 occupiers – which makes the scheme more confusing to the public. It is also not clear that the safety risks are any less in a 3 person HMO rather than a 4 person HMO. Some HMOs may

move between 3 and 4 occupiers on a regular basis, for example where two people share one room.

It is vital that the council establishes and maintains a well-resourced and effective enforcement team to take action against those landlords and agents that seek to evade the licensing scheme. Without effective enforcement, new regulatory burdens will fall solely on those that apply for a licence whilst the rogue element of the market continue to evade the scheme and operate under the radar. This creates unfair competition for landlords who seek to comply with all their legal responsibilities. They are saddled with extra costs associated with the licence application process and compliance, whilst others evade the scheme completely.

Response: We have 11 full time posts in the Private Sector Housing team plus a manager. Despite initial difficulties processing licences promptly, we have for some time been up to date and our performance target is to issue a licence within 12 weeks of a valid application being submitted. Current performance is below 6 weeks – a little longer if an inspection is deemed necessary prior to licence issue because there is a potential problem with the layout or amenities identified in the application.

Two additional considerations were raised during the consultation phase, which warranted specific analysis. One is the question of privately owned purpose-built large blocks of flats managed by a professional management company. The other is whether a specific class of HMO namely buildings poorly converted into flats– “section 257 HMOs” – should be included in the designation for Additional HMO licensing. These matters are discussed in detail in Appendices 5 and 6.

Privately owned purpose-built blocks of flats

The issue

1. Officers received consultation feedback from some landlords and building managers, that large private purpose-built blocks located in the proposed Selective Licensing streets, should be exempt from Selective Licensing
2. The argument is that Selective Licensing is intended to ensure privately owned flats let to tenants (including flats in a purpose-built block) are in good condition, well managed and not causing noise, litter or anti-social behaviour problems for the neighbourhood; and that if there is a management company managing the building, the occupiers are less likely to be causing ASB or nuisance problems.
3. There are anomalies with some large blocks, such as blocks like Churchfield Mansions, part of which is licensable as it is on New King's Road, and part of it is not because it is in Christowe Road around the corner, or Kings Court which appears to be on King Street but is actually in Hamlet Gardens so is not licensable.

Discussion

4. The purpose of the scheme, which is to improve conditions in the neighbourhood generally, not in specific blocks or addresses, could be undermined. Whilst an individual block may already be a high standard, there is no guarantee that the same landlords or tenants will still be resident or responsible, in five years' time.
5. There may be a potential adverse negative impact on landlords of property in council owned properties compared to the treatment for landlords of property in high-end privately-owned premises or blocks.
6. It would make the Selective Licensing scheme more complicated and difficult to manage and administer; and for landlords, tenants and others to understand.
7. H&F's proposed scheme is already focussed on specific streets, rather than wards or the whole of the borough. Exempting blocks would focus it further, but potential arbitrary decisions as to which blocks and addresses are chosen for exemption, could be seen as inconsistent and/or unfair.

Conclusion

8. The Council has decided not to exempt specific purpose-built blocks of flats, for the reasons above.

Buildings poorly converted into flats – “section 257 HMOs”

- a. A section 257 HMO is a building which has been converted into self-contained flats and building work in connection with the conversion did not comply with the appropriate building standards and still does not comply with them; and less than two-thirds of the self-contained flats are owner-occupied.
- b. “Appropriate building standards” means Building Regulations 1991 (S.I. 1991/2768), if the work was completed before 1st June 1992, or Building Regulations in force at the time of the conversion if completed after that date.
- c. Clearly, section 257 HMOs are different to other types of HMO, as the units of accommodation are self-contained, and they are not covered by Mandatory HMO Licensing, although they are covered by The Management of Houses in Multiple Occupation Regulations 2007.

It is, therefore, a decision to be made whether or not to include them in Additional HMO licensing. There are persuasive reasons for and against.

Reasons for licensing section 257 HMOs

- d. Hammersmith & Fulham has thousands of houses converted into flats, where many are unlikely to have been converted in line with 1991 Building Regulations if converted before that date. Even more recent conversions may not have complied with Building Regulations.
- e. There are circumstances where a particular type of section 257 HMO may be worthy of more intensive regulation. For example, where a landlord has converted a property into cramped and poorly designed studio flats entirely for private rental without any planning and building regulation approval.
- f. Many such converted buildings are occupied by tenants, who may be unaware of fire safety risks and other housing hazards.
- g. Proactively campaigning for these converted houses to be licenced will raise awareness and have a big impact on housing conditions when landlords come forward to licence.

Reasons against licensing section 257 HMOs

- h. Some are owned (freehold) by a right-to-manage company, and each of the flats within it is owned (leasehold) by a different owner and let to tenants. In that case, the RTM company would have to contact each leaseholder separately, to get the information about how their flat is let, before they can submit the application. Once granted, the RTM would have to ensure that the individual leaseholders comply with the Conditions.
- i. Difficulty experienced by letting agents in knowing when a property was converted and whether the conversion satisfies the relevant building standards.

- j. In situations where there is a freeholder and separate long leaseholders, the situation is further complicated by the need to determine whether less than two thirds of the flats are owner-occupied. Only the freeholder may possess this information and the tenure of each flat may vary over time. If one of the flats is owner occupied but then becomes let to tenants, it may become a s.257 HMO because less than two thirds of the flats are owner occupied. If the owner occupier moves back in, it ceases to be a s.257 HMO.
- k. Problems for long-leasehold owner-occupiers who find their flat is within a licensable building. The licensing fee may push up their service charge and could cause difficulties with their mortgage lender. As the licence would need to be disclosed to a prospective purchaser, some mortgage lenders may be reluctant to lend on a residential mortgage for a flat within a licensed HMO, thus adversely impacting on the property's value.
- l. Difficulty consulting with long leaseholder owner occupiers and explaining the implications of licensing section 257 HMOs.
- m. Overlap with Selective Licensing – where a section 257 HMO is in a Selective Licensing street, the landlord would only have to apply for a single HMO licence for the whole building rather than a Selective Licence for each rented flat in the building (assuming none of the flats are themselves HMOs or “flats in multiple occupation”). This is an anomaly as another landlord with a converted house in the same street which is not a section 257 HMO because the conversion was fully compliant with Building Regulations would have to apply for a Selective Licence for each flat in the building – this is not fair on the more compliant landlord.

Conclusion

For the reasons stated above, the council's decision is that section 257 HMOs should be included in Additional HMO Licensing but only if the following additional criteria are met:

- None of the flats within the building are owner-occupied, and
- The building is not owned or managed by two or more of the leasehold owners of individual flats within it, either acting individually or through a management company of which they are directors or officers, and
- The address of the building is not in a street which is designated for Selective Licensing under a Selective Licensing Scheme which the Council has designated under Part 3 Housing Act 2004 (and which is currently in force).

Rationale

What we are intending to convey here is that we do not see a need to HMO licence a s.257 HMO where at least two of the leaseholders own a share of the freehold, or have formed a Right to Manage company. The main reason

is that even if all the flats are let to tenants, if one or more tenants have cause to complain about the conditions of their flat(s) or the common parts, they would do so to their landlord who also shares a part of the freehold or is represented by a RTM company and is therefore at least in part the responsible party for the repairs. It cannot be guaranteed that all of the leaseholders have purchased a share of the freehold which is why we said “at least two”. The target of enforcement powers under Part 1 Housing Act would be clear, should the council need to use them.

Conversely, if the freehold of the s.257 HMO is owned by a different entity (or is owned by an entity who owns one flat in the building whether or not they live there), if tenants have cause to complain to their landlord, the person responsible for repairs or maintenance (especially of common parts) may be the freeholder who may be unresponsive. The scenario may be that the freeholder has converted the building into flats not in accordance with building regulations and there may be hazards arising, despite leases on individual flats having been sold on. If an HMO licence is required, the licence conditions would put additional pressure on the freeholder to repair and maintain and mean that any Improvement Notice would be served on the licence holder under Schedule 1 HA 2004, which is particularly useful if the freeholder resides overseas or is an overseas company. This is because we try to ensure that all licence holders of HMOs are UK based, even if the freeholder is overseas.

- (2) The address of the building is not in a street which is designated for Selective Licensing under a Selective Licensing Scheme which the Council has designated under Part 3 Housing Act 2004 (and which is currently in force).

The reason for this is relatively simple, in that a converted house in a Selective Licence street would be required to have each flat licensed under Part 3, and there could be a large number of flats. We do not see it as desirable to incentivise a landlord to “self-declare” the building to be a s.257 HMO by pointing to deficiencies in compliance with Building Regulations, in order to obtain a single HMO licence rather than multiple Selective Licences. It would be an anomaly of Selective Licensing (for example in whole borough schemes or whole wards) that licensing of s.257 HMOs could relieve a landlord who owns a building and all the flats within it of the obligation to licence all his or her flats, and we want to avoid that.

Crookham Road

In July to August 2021, the council undertook additional consultation with residents in Crookham Road SW6. Officers dealing with a service request from a resident in this road discovered a high level of litter, poor rubbish storage and fly tipping, coupled with a high level of privately rented accommodation with all the houses in the road converted into flats.

Leaflets were posted through letter boxes at every address in the street, inviting responses to an online consultation. Although only 7 responses were received, 6 were in favour of licensing.

On that basis a decision was made to include Crookham Road in the Selective Licensing scheme.

Survey of landlords and agents about the licensing schemes September 2020

In September 2020, the Council sought feedback on its schemes to licence rented residential properties in the borough from 2,600 landlords and property managers who have at least one flat or house in a Property Licensing Scheme in Hammersmith & Fulham. About 10% (250) replied to the survey.

1. There were several positive responses received such as:

- One third of responses said licensing has made improvements to the private rented sector
- Most landlords (75%) have made improvements to rented properties
- Most responses were not concerned about antisocial behaviour by tenants or visitors (89%), or in the neighbourhood (72%)
- Most responses (74%) were not concerned about noisy neighbours
- Small majority (55%) had little concern about rubbish or litter in the neighbourhood
- Strong positives around provision of waste bins (85%), knowledge of waste collection arrangements (76%) and encouragement of tenants to keep property clear of litter and refuse (87%)

2. There were, however, some less positive responses, such as:

- Two thirds of responses said licensing has not made improvements to the private rented sector
- Three quarters (77%) said fees charged for licensing are unreasonable
- Over a quarter of responses expressed concern about antisocial behaviour in the neighbourhood and noisy neighbours
- Nearly half expressed concern about rubbish or litter in the neighbourhood
- A significant minority (15%) of responses indicated lack of awareness of the need to provide enough refuse bins and 24% expressed lack of awareness of the refuse collection arrangements including dates and times of collections

Survey of privately renting tenants December 2020 to February 2021

General		Yes	No
Are you satisfied with your landlord?		68%	32%
At the start of tenancy, were you supplied with:		Yes	No
A Tenancy Agreement		96%	2%
An inventory of furnishings		69%	29%
A statement of the terms of the tenancy deposit scheme used (only if you paid a deposit)		84%	16%
Repairs	Sometimes	Yes	No
Are the following kept in good repair and proper working order: Drain pipes and gutters; Supplies for water, gas and electricity; Sinks, baths, showers, basins and WCs; Heating and hot water	42%	49%	8%
Safety		Yes	No
Has your landlord given you a current gas safety certificate (if there is gas)?		73%	27%
Is there a carbon monoxide detector (if there is gas or open fireplace)		82%	18%
Are any smoke alarms provided in your property?		95%	4%
	Don't know	Yes	No
Are smoke alarms in working order?	23%	75%	2%
Space		Yes	No
Do you think there is enough space in the property for the number of people residing there?		79%	20%
Do you think the size and standard of kitchen is adequate?		71%	27%
Do you think the size and number of bathrooms, showers and toilets are adequate?		84%	16%

Anti-social behaviour	Yes	No
Are you concerned about antisocial behaviour in your street?	20%	79%
Are you concerned about noisy neighbours in your street?	22%	77%
Are you concerned about rubbish or litter in your street?	37%	62%
Rubbish and refuse	Yes	No
Do you have enough waste bins ?	63%	37%
Are you aware of the refuse collection arrangements including dates and times of collections?	82%	17%

Summary

It is reassuring that for all questions the majority of responses were more positive than negative. However, it is a cause for concern that there were significant minorities of tenants who:

- Were dissatisfied with their landlord (1 in 3)
- Were not given an inventory (3 in 10)
- Were not given information about deposit protection (1 in 7)
- Were not given a gas safety certificate (1 in 4)
- Had no carbon monoxide detector (1 in 5.5)
- Had no smoke alarms (1 in 25)
- Thought the property was too small (1 in 5)
- Thought the kitchen was too small (1 in 4)
- Thought the bathrooms were insufficient (1 in 6)
- Were concerned about antisocial behaviour in the street (1 in 5)
- Were concerned about noisy neighbours (1 in 5)
- Were concerned about rubbish or litter in the street (1 in 3)
- Said they did not have enough waste bins (1 in 3)
- Said they were not aware of refuse collection arrangements (1 in 6)