

BARNSELY RESIDENTIAL LANDLORDS ASSOCIATION

RESPONSE TO BMBC'S CONSULTATION ON SELECTIVE LICENSING (CR461)

INTRODUCTION

Barnsley Residential Landlords Association (BRLA) was founded in 1996 by a group of prominent landlords to protect and promote the interests of both tenants and landlords. We seek a fair, legislative and regulatory environment for the PRS, whilst ensuring that landlords are aware of their statutory rights and responsibilities.

This document has been produced by BRLA as a response to the Proposal Document for Selective Licensing (SL) promulgated July 2017 by BMBC.

This response is to draw attention to the inaccuracies, distortions and errors in the document. We contend that these flaws are designed to mislead, corrupt and obfuscate the recipients into making rash judgements. Councillors should also be aware that our calculations show the scheme to be loss-making, and as such, will be a burden on the residents of Barnsley. There will also be a significant impact on the poorest tenants, who will, at least, in part, fund SL through increased rents, and receive no benefit, since funds must be used for administration and not enforcement.

After extensive analysis and careful research we have presented true and authentic facts, and sought legal advice from leading lawyers in this field. We also highlight alternatives that are available to Barnsley Metropolitan Borough Council (BMBC), some of which have been on the statute books for several years, which are more effective than SL.

We contend that Department of Communities and Local Government (DCLG) guidelines have not been properly followed, nor has the Sedley Criteria been adhered to, in the drafting and research of the Proposal Document. Indeed, it has been produced without regard to fairness or high ethical standards, which should be incumbent on the Council and its members.

EXECUTIVE SUMMARY

BMBC STATED OBJECTIVES

To reduce Crime, Anti-social behaviour (ASB), improve poor quality housing up to HHSRS standard which contribute to issues of deprivation.

BRLA support these aims but consider SL will not work as envisaged, creating disastrous side effects.

KEY CONCERNS FOR OPPOSING THE SCHEME

- **After taking legal advice from Solicitors** we are aware that the Conditions are subject to various interpretations and that unless changed, and in some cases removed, we should appeal via the First Tier Tribunal (FTT).
- **BMBC have failed to establish** that ASB's are directly attributed to the behaviour of the occupiers of private rented sector (PRS) property and that landlords are failing to deal with the tenants. ASB is **not working** in Doncaster's Hexthorpe SL scheme and BMBC have not stated targets. *"You can't know what works unless defined and tracked"* Dr. Steve M. Druker.
- Crime is the responsibility of Police and the data used is misleading. **BMBC offer no help** in preventing landlords from taking in new tenants with a history of problems, yet this will be considered a breach of the SL conditions.
- **"Deprivation" as defined by BMBC** has been proved, through careful and thorough research, to have a low priority threshold so far as SL is concerned within the designated areas'.
- **Misleading and inaccurate data/statistics have been used** to justify SL, including the areas selected to be the most effective, which could lead to a maladministration charge. We understand that Goldthorpe landlords are building up a fighting fund for a judicial review.
- **Financing of the SL scheme appears to be flawed** from figures provided and could lead to a deficit. There is also failure on the part of the BMBC to understand the true financial costs to landlords, which will lead to increased rents.
- **Other alternatives have been dismissed** and the new Safer Neighbourhood Service Barnsley has not been allowed to run before considering SL, even though early success has been recorded.
- **Consequences of the scheme.** Does BMBC want these?

We have considered the evidence provided and also undertaken our own evaluation and a more detailed analysis is contained in the attached Report and Appendices.

CONCLUSION

BRLA acknowledge that it is right to tackle ASB, crime and poor quality housing in the Borough, however, SL does not follow the spirit of the legislation as it penalises good landlords.

A better way is required (See Recommended Alternative Solutions) to move forward, that tackles ASB and crime using existing legislation and the Safer Neighbourhood Service Barnsley scheme. Dealing with poor housing standards and removing category 1 hazards can also be looked at in other ways.

LEGALS

- **We have obtained a substantive Report from a leading firm of Solicitors** in relation to the SL conditions to be imposed by the Council. They have concluded that there is a host of iniquitous, unfair and unreasonable conditions which we will aggressively challenge at every stage.

- **We contend that there needs to be clear identification** between those items that are intended to be merely information notes and those which are to be binding statutory SL conditions. On the basis of this report, we are confident that the Council have serious questions to resolve.

- **It is suggested that the way forward is for BRLA** to enter into discussions with BMBC around the legal concerns that have been raised.

ANTI SOCIAL BEHAVIOUR (ASB)

- **Landlords are not responsible** A House of Commons Report (01012 Wendy Wilson 27/02/2017) states “landlords are not responsible for the actions of their tenants as long as they have not ‘authorised’ the ASB”. A Councillor concurred with this statement at a Goldthorpe Landlords & Residents (GLR) meeting at Goldthorpe Library in February 2017, and no one raised an objection. BMBC are aware problems are also caused by tenants of Council owned properties, owner occupied houses, HMO’s, but as the SL Act does not relate to these types of properties they are dismissed from relevant discussions.
- **BMBC documents fail to identify clearly which ASB’s Private Rented Sector (PRS) are responsible for** very few are house related. Others are vehicle abandoned or nuisance; rowdy or inconsiderate behaviour in a public place: littering or drugs paraphernalia; animal problems; trespass; street drinking; prostitution; nuisance noise not from neighbours; begging or vagrancy; misuse of fireworks.
Currently Part 16 of Appendix 4 SL Conditions - suggests all ASB’s, regardless of type, by people living or occupying the premises are included. This will be subject to different interpretations by different parties, and should action be taken against a landlord it could be challenged in court, and we would expect BMBC to lose, resulting in court costs etc. having to be paid out of public funds.
- **BMBC have failed to provide evidence of a “significant” link between the PRS & ASB** They only say “it is **believed** there is a significant link between PRS and ASB”. Figures for ASB’s show all types (see above) so skew the result in suggesting that the ASB’s SL will tackle, is much larger than reality. Appendix 1
- **BMBC** quote numbers of low level ASB incidents but have refused to provide any back-up details for these despite FOI and email requests. Appendix 2
- **BMBC have no quantifiable targets for ASB within SL documentation** but simply say they expect to “yield a result”, which is unacceptable as they can never be found to fail.
- **BMBC ASB figures in selected areas do not match independent police data.** Appendix 1
- **ASB figures in Doncaster show no reductions** Appendix 3. **Independent** Police figures in areas where SL has been introduced in Hexthorpe show that there is now increasing levels of ASB. This is borne out by official DMBC figures.
- **BMBC acknowledge that the Housing Option Scheme will incur extra work** if, as a last resort, landlords evict tenants’ because of rent arrears caused by increased rents.
- **Figures produced by BMBC are misleading and there are significantly worse areas** within the Borough suffering from ASB, which also have above average PRS landlords. Appendix 1

- **The potential actions required by landlords to deal with ASB are impractical** All landlords should speak or write to tenants initially, but if that fails there will be a requirement to create submissions (i.e. a diary log) for those complaining and to appear as a witness in court if challenged. BMBC have failed to say how they will prevent malicious, unproven ASB claims being made, which could result in tenants being found guilty and losing their tenancies. There is no obligation in SL for the landlord to resolve the ASB allegations. They can only legally enforce tenancy agreements, not the activities in the street or neighbouring streets. This does not solve the problem, but just moves it around the Borough. Landlords are not experienced in ASB management and do not have the professional capacity to resolve tenant's mental health issues or drug and alcohol dependency. SL will only create an extra layer of bureaucracy.
- **BMBC SL does not follow the spirit of the Home Affairs Committee position** (House of Commons Report 01012 Wendy Wilson 27/02/2017) "To target unscrupulous landlords rather than those who are victims of their tenants' behaviour".
- **BMBC have failed** to clearly state what support the PRS will be given to combat and deal with ASB in their properties. The Home Affairs Committee clearly state they recommend that Police and local authorities work together with representatives of private landlords to produce codes of conduct, expected responses **and the support they can expect from public bodies.**
- **BMBC have not engaged with BRLA or other landlords** as recommended by Improvement and Development Agency (IDeA), to consider whether SL is the appropriate response.

CRIME

- **The test for crime is “that the area suffers from high levels of crime”** as noted on page 27 of the Proposal Document. A Government published document “Selective Licensing in the PRS – A Guide for Local Authorities, page 12 item 34 reads “whether the crime rate in the (proposed SL) area is **significantly** higher than in other parts of the local authority” and in order to justify this BMBC have used Police numbers of crime detailed in Table 3 Page 18 as:

Welland Crescent

- 8 incidents in 12 months - this cannot be described as “high level of crime” when compared with nearby streets which reveal during the same period –
 - 19 incidents Welland Gardens (predominantly BMBC owned houses)
 - 123 incidents Saxton Close (predominantly private housing)
 - 14 incidents Oakenroyd Croft (predominantly private housing and flats)
 - 4 incidents Milford Avenue (predominantly private housing)

It is obvious therefore that the claim “the area suffers from high levels of crime” is not justified.

Measborough Dyke

- 211 incidents in 12 months
- This total is incorrect Appendix 4. Information obtained from the website police.uk shows that during the stated 12 month period there were 144 crimes recorded.
- Comparison with similar areas such as the Gold Street/Cemetery Road area of Barnsley, which is just across Doncaster Road from Measborough Dyke identifies 141 crimes in the same period. Appendix 4
- Another similar area, which is also only a short distance from Barnsley town centre, is the Princess Street/Spring Street area, and the police.uk website shows that during the same period 140 crimes were recorded.
- Reference to tables B, D & F Appendix 4 shows the crime incidents recorded from October 2016 to May 2017. Whilst both the Gold Street/Cemetery Road and Princess Street/Spring Street areas of Barnsley show no improvement, the Measborough Dyke area shows a significant decline in crime. This was brought to the attention of BMBC in an email to selectivelicensing@barnsley.gov.uk, who explained this by saying that 4 families had been removed from the PRS which accounted for this decline Appendix 4. This demonstrates that co-operation and dialogue between BMBC Safer Neighbourhood Team and landlords works effectively without the imposition of SL.
- We also refer to a recent newspaper report that states 4 properties (2 in the PRS and 2 BMBC owned) have had exclusion orders imposed, due to persistent criminal activity. One of the PRS landlords was referred to BRLA to obtain support in how to evict the unruly tenant. Again, this shows that co-operation between BMBC and landlords can work without imposing SL.

Again the requirements for SL have not been met.

Wombwell

- 221 incidents in 12 months.
- Checks on the police.uk website shows that this is incorrect, showing police recorded incidents of 182.
- BMBC have used comparisons on pages 27/28 of the Proposal Document, using percentages of crime within Lower Super Output Areas (LSOA's) and the Council ward areas. However, there is no information on how these percentages have been calculated, so no verification of these can be undertaken.
- These LSOA charts show that LSOA's close to the areas have worse levels of crime

Once again the criteria specified has not been met.

Goldthorpe has not been analysed.

DEPRIVATION

- **BMBC state that high levels of deprivation is one of the reasons for SL.** The following facts demonstrate that the criteria produced by BMBC is flawed, and compiled on supposition and opinion rather than researched evidence.
- **At a recent SL forum a BMBC officer was asked 'what constitutes deprivation and how does this affect the areas'?** They advised there were 3 main elements to deprivation:
 - Incidents of crime were greater than other similar areas
 - Incidents of ASB were greater than other similar areas
 - Houses in these areas suffered from low thermal efficiency

There are also other problems which affect deprivation included in the SL documentation such as:

- Low demand for housing in the area
- Low house prices compared with similar areas
- Empty and boarded up properties

Based on the above criteria the following details have been created from extensive research of the Measborough Dyke area, and it is our contention that this represents a 'template' for Welland Cresecent, Wombwell and Goldthorpe also.

- **Incidents of crime & ASB greater than other areas** Crime and ASB within the Measborough Dyke area have been referred to under other areas within this document. This shows that in comparison to other similar areas of Barnsley, such as Princess Street/Spring Street and Gold Street/Cemetery Road, Measborough Dyke has less crime and ASB, and that over the past 6 months the situation has improved significantly.

Landlords have no control or responsibility in the prevention or solving of crime. This is a matter for the police, Council and 'community leaders'. Also see House of Commons Report (01012 Wendy Wilson 27/02/2017) re ASB. It is our contention, therefore, that landlords should not be vilified or held responsible for the conduct of local residents or visitors to these designated areas.

- **Low thermal efficiency** A BMBC officer stated that many homes in the Measborough Dyke area had no roof insulation or thermal wrapping which led to low thermal efficiency, but no evidence of this has been produced.

From April 2018 the Government have decreed that all properties must achieve an Energy Performance Certificate (EPC) rating of 'E' or above, otherwise the properties cannot be offered for rent. **Surely this therefore addresses this issue?** From reference to the epcregister.com website the table shown in Appendix 5 clearly demonstrates that the majority of the properties in the Measborough Dyke area meet these new EPC standards. 11 properties fall into the 'F' category and one in the 'G' category. This represents less than 5% of properties falling outside the new standards.

It should be noted that 1 of the properties that failed to achieve the new standard is owned by BMBC. 10 other BMBC owned properties have been identified as not having EPC certificates. An EPC has been required for all new tenancies, including social housing, since 2007. A fine of up to £200 per property can be charged for not providing an EPC.

- **Low house prices** despite BMBC statements that house prices are lower than comparable areas in the Borough, Appendix 6 contradicts this statement and shows properties in the Measborough Dyke area are equal to, or better than, properties in Princess Street /Spring Street and Gold Street/Cemetery Road areas of Barnsley. Property prices in these areas also vary considerably depending on their condition at point of sale.
- **Low demand for housing** the assertion that Measborough Dyke housing is suffering from low demand is based on supposition and not researched evidence. Appendix 7
- **Empty and Boarded Up Properties in Measborough Dyke** – BMBC infer that the PRS are the main cause of empty and boarded-up properties which blight the area. Recent research Appendix 8 illustrates that this is not the case.
- **Deprivation Statistics** – BMBC go to great lengths in setting out the case that the designated areas for SL require special measures to address deprivation. Please read Appendix 9 for the true figures. The only element that landlords have control or influence over is housing, and the housing element shows that Measborough Dyke scores better than 93% of the whole of England.

From the research we have undertaken we have demonstrated that BMBC compiled their report to justify SL on flawed, misleading and inaccurate data.

FINANCIAL

- **BMBC fail to indicate that sufficient funding will be made available** to support the introduction of SL, as the business case presented shows a shortfall.....
 - From BMBC figures, in the Proposal Document, total income from SL is £303,160 over 5 years, subject to possible amendments, ie discounts etc. Appendix 10
 - Total hours per licence application = 12.5 hours @ a cost of £530 (n.b. no reference is made to the * against each work action in the document)
 - $£303,160/£530 = 572$ properties
 - $572 \times 12.5 \text{ hours} = 7150$ man hours
 - $7150/37 \text{ hours per week} = 193.24$ man weeks
 - An Officer works, say 46 weeks per year, therefore $193.24/46 = 4.2$ years for 1 Officer to complete all 572 properties
 - Officer salary is £39.11 per hour (as quoted in the document) $\times 37 \text{ hours} = £1447.07$ per week $\times 52 \text{ weeks} = £75,247.64$ per Officer $\times 4.2 \text{ years of the SL period} = £316,040.08$
 - Income for SL for 4.2 years is $303,160/5 = £60,632$ per year $\times 4.2 \text{ years} = £254,654.44$
 - $£316,040.08$ less $£254,654.44 = \mathbf{£61,385.68}$ deficit at the end of 4.2 years

Therefore –

- A deficit of £61,385.68 exists after 4.2 years
 - It will take 4.2 years for 1 Officer to complete all 572 properties – is that an acceptable timescale? Clearly this will not be the case, and several Officers will have to undertake the task of SL, but from your figures each Officer is paid £39.11 per hour $\times 37 \text{ hours} \times 52 \text{ weeks pa} = £75,247$ per annum each.
 - This assumes no wage increases for the Officer for the next 4.2 years
 - The deficit figure could be greater dependent upon the number of discounts agreed by BMBC as these will decrease their overall income figure.
- **There are also further additional significant costs on top of the above which have not been included in the BMBC figures**, ie administration and filing of all documentation to include gas and electrical certificates; chasing of outstanding paperwork; chasing of outstanding SL licences; increased costs on other departments within the Council etc. It is extremely likely that you will find under the radar landlords and HMO's that will incur extra resources.
 - **There are consequential costs** which will affect PRS by introducing SL, and as you can see from Appendix 11 these amount to £3004 over the 5 year period per house, which then begs the question how can BMBC introduce SL at a figure of £530 per house? This extra cost to landlords clearly indicates that rents will increase to cover extra costs.
 - **Worrying trends are emerging in the case of SL.** SL entails a huge bureaucracy and much time, effort and expense is taken up in setting up and administering these schemes, rather than spending it on the ground flushing out criminal landlords.

INACCURACIES WITH SL DOCUMENTATION

- **BMBC have produced incorrect and questionable statistical documentation** relating to SL ie January 2017 submission to Councillors; July 2017 SL Proposal Documentation.
- **A large percentage of FOI requests to BMBC have been refused** these have been submitted by Individual landlords to clarify points within the documentation.
- **Appendix 12 – 12.21 lists SOME of the misleading and inaccurate information** contained within the BMBC SL documentation.
- **Not all comments at drop-ins documented by BMBC.** Appendix 12.1
- **Inconsistence in naming streets, eg Osborne Mews omitted.** Appendix 12.2
- **Funds to be ring-fenced, but Old Town report states “Area officer moved in-house after SL.”**, and this is not a legally allowable use of funds under SL. Appendix 12.19 (Old Town Report Point 4.1)
- **Misleading co-mingling of HMO and single let terminology**
- **BMBC fail to quantify specific outcomes or provide evidence of targets/benchmarks to measure the success of SL** so the benefits can only be perceived benefits. “Procedural Fairness” under the Sedley criteria?
- **The disadvantages of SL are not outlined, only the benefits.** “Procedural fairness” under the Sedley criteria?
- **The questions in the questionnaire are “leading”** and biased in favour of the scheme Appendix 12.21. Does this comply with “procedural fairness” under the Sedley criteria?
- **BMBC state that they can deliver the Scheme within the Scheme’s fees** but this is not the case (see Financial Section page 10). Unless BMBC are willing to allocate sufficient resources, we believe SL cannot deliver what it states, which amounts to misrepresentation to tenants, community and landlords.
- **Double standards on translation expectations by BMBC.** In their Proposal Document they state “the licence holder must ensure that all information and documents that are provided by the landlord to their tenants are in a language/form that they can understand, yet BMBC have not adhered to this principle within the Consultation procedure. **Why?** Appendix 12.20

CONSEQUENCES

- **Rent increases** that vulnerable tenants can't pay.
- **Homelessness** increased due to non-payment of increased rents and impact that will have on BMBC to rehouse.
- **The proposal fails to address the link** between homelessness and other local authorities placing tenants in Barnsley. This practice will have an impact on SL, yet is absent from the document.
- **Ripple effect of rent increases** in surrounding areas.
- **Reduction in mortgages available** in SL areas, as SL highlights they can be "sink" areas. Appendix 15
- **Discrimination against non-English speaking tenants** due to the new conditions imposed under SL.
- **Increase of empty houses** and therefore increases in ASB and fly tipping.
- **BMBC are naive in suggesting that the SL charges will only increase rents by £2pw.** In reality the figure will also have to take account of unrented periods and costs to bring property up to any new standards. Also after taking into account SL conditions further costs will be incurred. The inevitable rent rises will lead to further hardships for vulnerable tenants. We have not taken account of increased landlord's costs as a result in tax changes around mortgages. See Appendix 11.
- **Agents will charge higher fees** because of their extra workload. Actually there is evidence to suggest that some agents will not take on property in SL areas. This too will increase rents.
- **The scheme will lead to displacement of problem tenants.** Berneslai Homes admit that tenants they evict will probably end up in the PRS. Simply moving people into other areas of Barnsley does not make sense.
- **Extra costs = increased rents** Often evictions of problem tenants results in some leaving premises in a poor state of repair and causing extra damage.
- **BMBC make no mention in the Risk Section of the Report** about "increased absentee landlords", due to local landlords selling up, and the impacts this will have.
- **As always it is the compliant landlord who is affected by SL.** They pay the high fees involved but do not need regulation of this kind.
- **Increased investment by absent landlords.** Cash rich investors, typically from London, will snap up the cheap properties as local landlords with increased costs, on top of mortgage expenses exit these areas. This will lead to issues of property management.

RECOMMENDED ALTERNATIVE SOLUTIONS

- **Section 57(4) of the Housing Act 2004** states that a local authority “must not make a particular designation unless they have considered whether there are any other courses of action available to them that might provide an effective method for the Council to deal with the problem or problems in question”. Appendix 13 shows details of the numerous existing powers BMBC have at their disposal. **Why then are these powers not sufficient?**
- **Tenants near the end of their tenancy and in the process of moving out will dispose of excess waste by a variety of methods** this often includes putting it out on the street for Council collection. Periodic provision of skips was successful in Goldthorpe, **why can't this be extended to other SL areas?**
- **The Safer Neighbourhood Partnership Barnsley is a statutory partnership set up to tackle crime and disorder on a multi-agency basis across the Borough** It has a legal requirement to develop a strategic plan to address multi-agency issues affecting the quality of life for residents. The partnership brings together community representatives from crime and safety sub-groups, and was introduced in April 2017. We understand to-date this initiative is successful, so **why has SL been proposed so soon after the implementation of this project?**
- **BMBC to innovate by producing HHSRS documentation** on their website to help educate landlords on the standards required in their properties.
- **BMBC to require landlords in receipt of Housing Benefit, or who have tenants in receipt of Housing Benefit, to join one of the Accreditation schemes available through either BMBC or BRLA.**
- **Allow landlords to use BMBC “tip sites”** to assist tenants in the disposal of their waste.
- **Target ASB in selected areas regardless of which type of house, using the Safer Barnsley Partnership and work with all willing landlords.** Use existing legislation if necessary, ie apply to court for an order to stop or prevent ASB or close premises if it is ongoing. If the landlord is complicit or unhelpful and does not evict the tenants then take over the management of the property. Community Support Officers can issue “on the spot fines”.
- **BMBC to create a database of landlords**, via a registration fee of £50 per landlord, which will give easy access to relevant information re ownership of properties when required and will help to tackle the areas covered under SL.
- **BMBC Housing Department** are proposing to implement a scheme of dialogue with landlords in the Old Town area of Barnsley, following the success of the GLR initiative, Appendix 14. **Why can't this type of initiative be rolled out across the proposed SL areas?**
- **BMBC Empty Homes Team** to focus on specific areas in the Borough to reduce the number of boarded up houses which in turn would increase the housing stock and improve the street scene.

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