

Appendix 1

Advantages and Limitations of Selective Licences Conditions - Setting Expectations

The Selective licensing regime itself, provides very limited additional powers above what is available in existing legislation.

The additional powers are;

The Licence - forces owners and managers of residential lettings in an area to identify themselves and makes it an offence not to declare and licence their rented properties. In England this requirement only exists within a Selective Licence designation and is one of the main advantages of the scheme.

Licence Conditions – The current scheme has 35 licence conditions which can be seen on the council's website along with other detail about the scheme. Rotherham's scheme licence conditions (Typical Licensing Conditions – Rotherham Metropolitan Borough Council), which supplement existing powers under the Housing Act 2004.

The power to revoke a licence causing a landlord to find a more suitable manager for a property or for the council to take over the management of the property (via a magistrates order) and remedy all repair or poor management issues at their own expense, though they can claim any rents.

Rotherham now has experience of two schemes, in order to set realistic expectations for what a selective licensing declaration might deliver, it is also important to understand the limitations of the key licence conditions.

Licence Conditions regarding Anti-Social Behaviour and Criminality

The designation of a Selective Licensing area does not offer any new or additional powers to allow those involved in anti-social behaviour to be sanctioned or evicted. Traditional Police and council powers remain the main tools however, the licence conditions require the landlord to assist the authorities in this area of work.

Empty properties

Empty properties are exempt from licensing and the scheme has no direct influence over the number or condition of empty properties within its boundaries.

Licence Conditions requiring Tenant references.

Requiring tenant references has practical limitations. Many tenants wishing to live in typical Selective Licensing areas, may not have credit or formal references. This leaves landlords with a dilemma, they either wait for a prospective tenant who has full references, perhaps leaving a property vacant for extended periods, or accept

substandard references. Leaving properties empty in typical selective licensing areas presents other problems for the area.

Fit and proper person test

It is not unreasonable to assume the power to refuse licences to those not deemed fit and proper would be a strong tool to control poor landlords and so influence ASB. The power to reject applicants on these grounds specifically relates to an applicant having previous convictions relating to violence, sexual offences, drugs, fraud; Housing offences and unlawful discrimination.

Unfortunately, the ability to effectively and uniformly subject applicants to vigorous scrutiny via criminal record checks was removed by government in 2006 when selective licensing applicants were excluded from the Disclosure and Barring Service (DBS) system.¹

Licence revocations or refusals.

Revocations and refusals can be invoked at application stage or during the period of licensing, where criminal action is proven which is relevant to the fit and proper test. The full implication of this action must be understood before a license is removed. The local authority is under a duty to apply to the Court for a Management Order to take over and run / repair a property at the Council's expense, if no suitable alternative licence holder is put forward. This can have significant financial, reputational, and practical difficulties for the Council.

Where a landlord proposes an alternative licence holder, it is possible for them to name a relative or friend without a police record as the new proposed licence holder. This can allow them to retain actual control of the property which is fronted by others.

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<http://webarchive.nationalarchives.gov.uk/20100418065544/http://asb.homeoffice.gov.uk/members/article.aspx?id=8008>