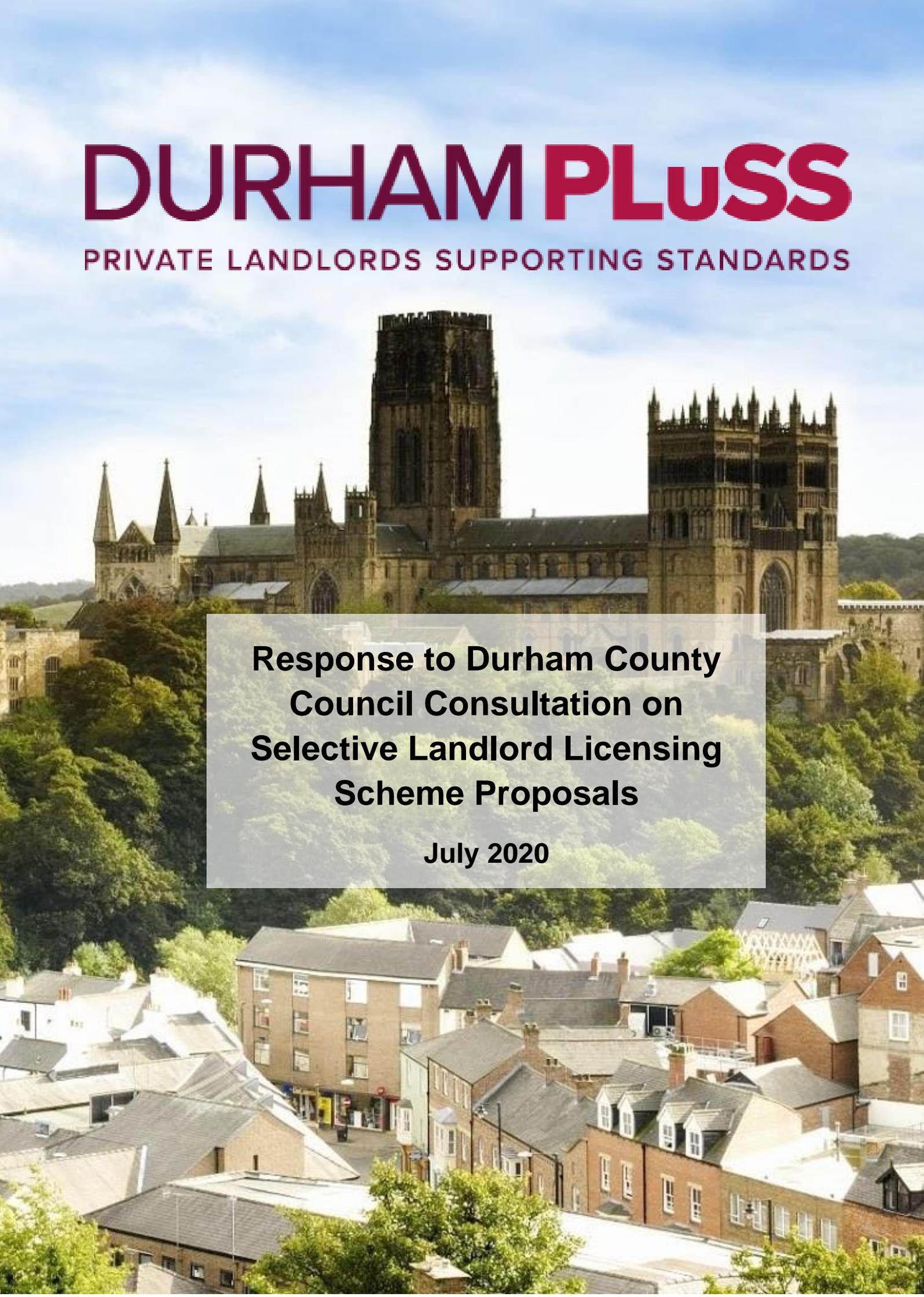


DURHAM PLUSS

PRIVATE LANDLORDS SUPPORTING STANDARDS

A high-angle photograph of Durham, UK, featuring the prominent Durham Cathedral with its tall, dark stone tower and spires. The cathedral is set against a blue sky with light clouds. Below the cathedral, a dense residential area with various brick and stone buildings is visible, interspersed with green trees. The overall scene is bright and clear.

**Response to Durham County
Council Consultation on
Selective Landlord Licensing
Scheme Proposals**

July 2020

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1. Introduction to the Respondents; DURHAM PLuSS

“It is difficult to imagine a less appropriate time to be drafting comments on a licensing proposal, for Durham’s Private Landlords or for anyone else. Yet, here I am, setting aside health concerns and family matters to be sure that over 500 landlord members, and many more landlords over the county, have a collective voice in the consultation process. A clear voice, and hopefully one that is heard, in a consultation over a licensing scheme they do not need, want nor deserve.

To be fair, the consultation began long before the Corona Virus impinged massively on our lives. Like the Officers who launched the consultation, I can only do my best. Unlike the Officers, I find the proposal totally unacceptable. It is ill-conceived, unfairly presented to consultees and is likely to do harm, at great expense. At best it will serve to generate work in its administration, at a cost that will become a tax on tenants that nobody can afford. It will add to empty homes and the number of rental properties available and on balance, it is more likely than not to diminish the quality of tenancy management generally and for vulnerable tenants in particular.

DURHAM PLuSS (Durham Private Landlords Supporting Standards) is a large and growing group of private Durham Landlords, managing more than 10% of private rented housing in Durham County. We are firmly opposed to the proposal to introduce an expensive, unnecessary and unworkable Selective Landlord Licensing Scheme across Durham. We think such a scheme will be bad for landlords, bad for tenants and bad for County Durham.

DURHAM PLuSS will continue opposing this scheme as far as the Civil Courts if necessary, via the deliberations of the Secretary of State. We have many jobs, thousands of tenancies and multi-million pounds in assets invested in the Durham County economy, through the supply of rented accommodation. In the current climate of uncertainty, economic insecurity and public concern, we urge Durham County to stop this proposal, in favour of urgent talks to arrive at a partnership approach to secure a joint agreement on a realistic way forward.”

Signed –



Suzy Chivers
Chair of DURHAM PLuSS

2. Preface

It is important to be clear about the scope of our response. We have many reservations about the proposals and we have encouraged individuals to respond directly to the on-line process. As an organised group we will focus our collective response on our related core concerns; matters that strike at the heart of this initiative and we believe fundamentally undermine the legitimacy of any further work to progress the Licensing proposal. The first concern relates to the unfairness and inaccuracy of the communication surrounding the consultation process, the second to the scheme's justification and non-compliance with legislation. Our response will also challenge the more questionable assumptions heavily relied upon in the DCC case for the proposed licensing scheme.

The core concerns central to our response are –

- (a) That Officers have put forward unfounded and unreasonable statements purporting to explain the factual context of the licence proposal. (See [Appendix 1](#)). They also fail to outline any planned new, additional measures Durham expects to accompany designation. There may be no additional resources or new measures yet clearly there is an expectation evident in the Act that there will be

and

- (b) That the DCC case for a Selected Licensing Scheme has provided no credible evidence linking the proposed designation, to a reasonable prospect of *improved social or economic conditions of the area*, as required under the Housing Act 2004 Part 3; Selective Licensing of Other Residential Accommodation,

There are also several assumptions the Council appears to rely upon to justify the proposed licensing regime. Our response explains why we believe the most common of these assumptions to be unfounded, how the actual impact of the proposed scheme will worsen the situation for tenants and how the assumptions will cause unexpected outcomes that may well have serious cost implications for Durham County Council.

In our genuine belief, the proposed scheme fails to clearly set achievable goals and to explain how or why the desired designation areas are likely to benefit from the scheme, or the legal powers, potential penalties and excessive costs and charges it will bring about.

3. Executive Summary

There are many ways to tackle property related anti-social behaviour. Where incidents are related directly to empty homes, the wasted resource of under-occupation compounds the impact of criminal behaviour adding another dimension to the social costs involved. With only a minority of Durham households in the private rented sector, we believe the Council needs to show a strong *causal* link between incidents of ASB and the private tenant, the private Landlord or privately rented property to make the case that licensing should be introduced for this sector. We believe Durham has failed to do this.

Durham County Council and the District Councils preceding it, share a reputation for accountability and openness in their relationship with local people. When engaging with residents to arrive at a way forward, the Council Officers and Members have preferred transparency, consultation and partnership to coercion, manipulation or imposed schemes.

It is against this backdrop that this licensing initiative and the related consultation stands out as such a contradiction; a particularly unworkable version of a Landlord Licensing Scheme has been blatantly 'marketed' to every Durham household. The entire process is more of an exercise in persuasion and promotion rather than consultation, ([Appendix 1](#)). It is hard to envisage the process resulting in credible, informed support for Selective Licensing when so little balanced or objective information has been made available to residents.

A further, related concern is that Officers' are proposing a scheme that fails to meet important demands of the relevant legislation. The scheme lacks evidence of a causal link between the proposed licensing scheme and specific desired outcomes for the areas where it is expected to operate. The Council must be satisfied that the proposed regime will get results. The law requires that "***making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, contribute to the improvement of the social or economic conditions in the area***"¹ The proposal fails to show how this is the case or why it should be expected when existing measures are claimed to be ineffective. It also lacks reference to any new resources or additional measures "by the local housing authority or by other persons" referred to in the legislation. One reference to securing and modernising a very small number of houses cannot be taken to be 'new resources or additional measures' to bring about change.

¹ Housing Act Section 3 para 80 (3)b www.legislation.gov.uk/ukpga/2004/34/part/3/data.pdf

The following assumptions appear to have led to the proposed licensing regime, our full response explains how they are misguided and unfounded. Briefly they are -

- I. ASSUMPTION “Licensing will reduce the number of empty properties”.
Empty private sector rented homes will almost certainly increase under the proposals. Many very good landlords will leave the market because the licence fees proposed are excessive. The scheme can levy total charges amounting to over £25 million.
- II. ASSUMPTION “The Scheme is affordable and self-financing”.
Assumptions about levels of participation in the scheme are not realistic. The assumptions about fee income without subsidy relate directly to scheme costs.
- III. ASSUMPTION “The Scheme will have positive, desirable outcomes”.
The proposals will have unrecognised consequences and we believe if it is imposed it will fail. A failed initiative will be seen as a ‘Housing Officer employment scheme’ that Durham residents and the wider electorate simply cannot and should not afford.
- IV. ASSUMPTION “The Scheme will improve tenant management”.
Durham has provided no evidence of poor tenant management causing the problems they seek to remedy. We believe the experienced good landlords, who co-operate (as we do) faced with high licence costs and tighter margins, will leave the sector. Inexperienced new owners, and some pure speculators, will enter the market with uncertain management skills leading to unpredictable consequences.
- V. ASSUMPTION “The Scheme will tackle bad landlords”.
The poorly performing or ‘irresponsible landlords’, those the council currently are unable to tackle effectively, will avoid registering as they did successfully in other areas². The proposed scheme will do little more than inspect the properties of the landlords who cooperate and do nothing about the minority of poorly performing landlords and their properties - homes that the council claims it can improve.
- VI. ASSUMPTION “The Scheme will improve management standards and reduce ASB”.
The proposal documents fail to identify what the “poor standards” are, what success looks like and exactly what criteria it is based upon. ASB targets are not defined.
- VII. ASSUMPTION “The Scheme will benefit tenants”.
Landlords in difficult areas have severely limited margins and their tenants can often have multiple personal and economic problems. Licence costs will raise rents - the ‘Durham tenant tax’ will increase rent arrears and associated evictions.

² www.nottinghampost.com/news/nottingham-news/selective-licensing-blamed-nottingham-reaching-3435063

The poorest, most vulnerable tenants will be unnecessarily compromised. Costs not recovered in fees levied will have major spending implications for Durham County Council.

DURHAM PLuSS have proposed a better alternative to the scheme as planned. We remain keen to discuss a more cooperative and deliverable programme for the future. This could build on the significant potential for success we believe lies within the existing Private Landlord Accreditation Scheme operated by the Council. We believe DURHAM PLuSS can shape a new approach that builds membership and realises the potential to harness the existing powers and opportunities that lie within the reach of Durham County Council.

4. Full response to Durham County Consultation

(a) Misleading Information, Fake Facts and Speculative Predictions

The entire consultation process is more of an exercise in persuasion and promotion rather than a genuine exercise designed to secure the views of Durham residents ([Appendix 1](#)) and the landlords who offer accommodation. It is hard to imagine that the outcome will reflect any degree of credible informed support for Selective Licensing when so little balanced or objective information has been made available to consultees.

So, what went wrong? The consultation preamble delivered to every household, unreservedly offered the proposal as a ‘solution’ to problems without any evidence of affordability or clarity over how and why it would work. The ‘consulting’ went down-hill from that point onwards.

Durham has launched a consultation while trying in the same exercise to gain public support for a “business case”. The introduction to the Evidence Report (February version) document written by Durham Officers, could hardly be any more clearly stated, it is predicting the outcome of the consultation it introduces, before the consultation has taken place. It states –

“This is the evidence base for public consultation which will support the proposal of a business case for the introduction of selective licensing within County Durham”. The evidence document continues with similar efforts to persuade consultees, with the comment on page 16, under the heading “Our Proposal for Selective Licensing”

“There are many benefits linked to selective licensing including providing tenants with a greater choice of safe, good quality and well managed homes,

better community and cross tenure relations, reduced antisocial behaviour, and help to stabilise and improve local neighbourhoods.

This will be achieved by focussing on improving management standards of properties through establishing clear minimum physical and management standards which can be controlled through the licensing framework. This will be supported by proactive enforcement action taken against both unlicensed properties and/or where there are breaches to the licensing conditions with a 'light touch' for good professional landlords who are operating effectively."

The first paragraph is an opinion and the second merely a prediction, an aspiration and certainly in neither case are these statements of fact. A statement of evidence should have proven facts underpinning content. The case for Selective Licensing is again and again, repeatedly presented as the best, if not the only way forward. The evidence document summary even concludes with the bold assertion –

"Selective licensing will help tackle issues in the private rented sector by raising management standards which in turn will provide greater confidence to prospective tenants. Private tenants can expect a better-quality home with robust monitoring of the set standards."

If this was a proven fact it would be difficult to argue against and those attending 'consultation' meetings must surely wonder why there is a need to consult at all. Such a positive and unequivocal endorsement should at some point be qualified or explained as what it is; an opinion and optimistic speculation. It is 'hoped for' rather than assured as an outcome.

If the Durham County proposal is progressed, following a biased exercise of misinformation, the proposed scheme will almost certainly be challenged in law. It is unreasonable. It is unworkable. It unwisely confronts the wrong property owners with a 'tax' that has no prospect of achieving the assumed aims, against the views of a majority of landlords and many tenants too. The scheme should be stopped.

"It is vitally important that employees of the Council act impartially, that they avoid maligning other groups in society and those actively contributing to the local community in particular, without presenting firm evidence to support what they say. Where some tenants live in poor standards of accommodation officers should be clear that this is the exception not the norm. Where poor standards prevail, officers should also be able to say in detail why the existing powers of the authority are insufficient to remedy this and why."

Stephen Hare

Durham Landlord and Organiser of DURHAM PLUSS

While officers have given unqualified support for an adversarial approach and controls through licensing, there are alternative ways forward. The Councillors of Durham County have been more positive about the role of the private sector in providing homes and so have the local MPs we have spoken to. If housing shortages are to be tackled and quality homes made available where serious need clearly exists, we believe this will require a much greater focus on co-operation and mutual respect rather than questionable consultation, unaffordable fees and a licensing regime with unpredictable outcomes.

The existing Private Landlord Accreditation Scheme illustrates a basis on which issues can be addressed collectively. Landlords have shown willingness to pay to be involved in the scheme though the benefits are as yet, limited. We believe that participation could be extended and improved if incentives to engage with the council were reviewed but the possibility of this cannot be realised while a licensing scheme and the associated 'tax' hangs over the sector's future. Private landlords are keen to work on solutions to housing related problems rather than see their role depleted by sanctions and structures aimed at control.

"Private rented accommodation is an important and growing part of our housing market. We recognise the valuable role private landlords' play and we wish to work with landlords to support and promote the private rented sector."

Councillor Shaw

Portfolio Holder for Housing, Durham County Council

Foreword to the Private Landlord Accreditation Scheme leaflet still in use³

(b) Durham's Failure to Show How Licensing Will Bring Area Improvements

The DCC case for a Selected Licensing Scheme has provided no credible evidence linking the proposed designation, to a reasonable prospect of improved social or economic conditions of the area, as required under the Housing Act 2004 Part 3; Selective Licensing of Other Residential Accommodation.⁴

To do so would require detailed scrutiny of the areas chosen to show what the problems are and in what ways the social or economic conditions need improvement. This would lead to an intelligence led programme of measures being delivered to

³ www.durham.gov.uk/media/21663/Private-Landlord-Accreditation-Scheme/pdf/PrivateLandlordAccreditationScheme.pdf?m=636634548966600000

⁴ Housing Act Section 3 para 80 (3)b <http://www.legislation.gov.uk/ukpga/2004/34/part/3/data.pdf>

address needs. The aim would be to bring about sustainable changes to the way people and organisations act in the areas targeted. As measures are implemented over time they would be monitored and evaluated, varied and adjusted to maximise positive outcomes. None of this work has been done and no further programme of similar activity has been published. In common with the calculation of scheme costs, if work has been carried out it has been kept confidential. Several pages are devoted in the statistical information report, to bar charts illustrating a variety of statistics that include a mix of historic information and speculative projections. They fail to objectively inform. At times they reflect apparent trends but they fail to link planned actions to outcomes. They also fail to link perceived problems to the assumed cause; the private rented sector.

The Intended Outcomes (or Improvements)

Durham County Council intend to include 51,187 privately rented properties in the proposed licensing scheme designated areas. All of these homes will attract a fee of between £390 and £500. Understandably, landlords will be asking *what is the expected gain* from paying such a significant fee per property.

From the documentation, Evidence Report p34 (February 2020 version), there appear to be 4 outcomes. These are listed as –

*“• **Improving Management Standards** – some landlords are simply not aware of the minimum requirements or their responsibilities as providers of housing and selective licensing will allow us to support and assist these landlords, provide training and share good practice which will lead to an improvement in the overall quality and management of these properties.*

*• **Improvement of property standards** - selective licensing would allow the authority to access properties and ensure necessary improvements around disrepair and unfitness removing the need for the tenant to make a complaint. DCC will continue to inspect all HMOs but will also inspect a significant proportion of other private rented properties, with a targeted approach – risk based.*

*• **Reduction in anti-social behaviour** – through the licence conditions landlords will be responsible for responding to complaints of anti-social behaviour within their properties.*

*• **Promotion of the private rented sector** – encouraging landlords to let property to a higher standard. We propose to deliver training, as required, to support landlords in adopting good practice.”*

For a multi-million-pound scheme funded by fees levied on other people, one might have expected a little more than **12 lines** from the Council to elaborate on outcomes

to be anticipated in return for over £25 million of expense. No target dates are given, no explanation about delivery mechanisms, no % reductions specified for ASB, no clarity on training delivery “as required” and no proof of any anticipated improvements, where they will appear and when. If this was written as a bid for central government funding, or even a voluntary sector grant, the application would be thrown out. The brevity is bordering on offensive and it serves to confirm the lack of understanding of what is being proposed.

This is more than just an administrative oversight. The law requires that Durham be satisfied that the scheme has the capacity to deliver the changes the council are setting out to achieve. To do so requires at the least a set of clear objectives, with a strong narrative backed by clear factual evidence, possibly even evidence of what has worked in similar circumstance and why it is more likely than not to bring improvements in the specific areas selected.

Reducing Ant-Social Behaviour (ASB), higher property standards and improved management

We share these broad aims and as far as we know these are currently aspirations that already lie behind the work of Durham’s private sector housing team.

Low demand for housing and the resulting empty homes, ASB and poor standards could believably result from poorly managed property and/or tenants. Low demand, ASB and other problems can also be caused by many other factors. These can include low incomes, high numbers of Right to Buy homes situated in ‘sink’ estates, poorly funded social care or a general lack of investment in the public realm i.e. low demand and ASB can result from poor lighting, too many potholes, broken pavements and vandalised street furniture. None of these factors have a reason to change beneficially under Selective Licensing.

In addition, empty homes that remain vacant for long periods are often bought and brought back into use by private sector landlords, creating homes in low demand areas. The added costs of licensing may well impact negatively to cause landlords to exit the market and other landlords to avoid property purchases. The result being more homes for sale for longer and fewer experienced landlords. In this situation, licensing will have made matters worse.

(c) Anti-Social Behaviour

Durham have plotted statistics for three types of aggregated ASB incidents, from three sources (police, fire service and council) for 39 locations with various levels of Private Rented Sector Properties (PRSs) page 27 Evidence doc., graph 4 and Statistical Data document pages 6 to 17. When presented on a scatter gram, the line-of-best -fit seems to show a correlation between the 2 Axis i.e. PRS homes and ASB, look connected. However, this may well be a spurious correlation. For example, the apparent connection may not mean there is a causal link, there may be another factor responsible, such as mobile phone contract prevalence, making the reporting of ASB incidents cost free, where in other areas a call uses up pay-as-you-go minutes. Alternatively, some areas may have gardens, making dog ownership more common, leading to more dog-barking complaints. Interestingly, 51% of Durham's own estimated year-3 ASB figure consisted of barking dog complaints.

Put simply, many statistical pictures are misleading. The statistical presentations from DCC are not well explained and prove very little. Durham's data may well satisfy the need to show a low demand for property for example, but the statistics say nothing about how landlord licensing will beneficially affect demand for properties, how it can reduce ASB or if it will lead to real improvements in the environmental or economic character of the areas chosen. To say this will all happen as a result of introducing training "as required" or unspecified visits to inspect housing is at best naive.

In addition, the legislation requires the authority to show how existing powers are insufficient to bring about the control that is being sought (Housing Act 2004 Part 3 s81)⁵. Despite the problems claimed to be evident across the County, Durham has been unwilling or unable to take advantage of the significant legal powers they have to act against ill-behaved tenants or the minority of poor performing private landlords. There are potentially many reasons for this, not least the costs involved balanced against the limits of local government finance. However, this is a requirement of the legislation that Durham do not evidence having complied with.

Research has confirmed Durham are not alone in this respect; – in 2017/18 two thirds of councils had not commenced any prosecutions against private landlords. In the same year, 89 per cent of councils reported they had not used new powers to issue Civil Penalties against private landlords for a range of offences. Over half, 53 per cent, did not have a policy in place to properly use the power. (Simcock, T.J., Nov. 2018

⁵ <http://www.legislation.gov.uk/ukpga/2004/34/part/3/data.pdf> S81(4) "The authority must not make a particular designation under section 80 unless (a) they have considered whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of achieving the objective or objectives that the designation would be intended to achieve";

Blog report, NRLA 'The Postcode Lottery of Local Authority Enforcement in the Private Rented Sector'⁶)

In summary of the ASB evidence - the statistical base is questionable; the evidence of exhausting other measures, required by law, is totally absent and although the analysis shows a correlation of some sort, it proves no ASB causal link to private landlords or anything they are failing to do. Private sector landlords consequently should not be assumed to be responsible for ASB in the 39 chosen areas any more than other landlords active in the same areas. ASB at its worst, is criminal activity and particularly where this is organised, rather than merely opportunistic, the benefits to the criminal are significant. We believe landlords are keener than most to stop this taking place and do not fail in their duty to intervene where safe to do so. Policing ASB by Durham Police has in fact reduced the scale of ASB related crime. This is confirmed in the council's selective licensing evidence report, Crime Section page 32.

(d) Empty homes, homeless people and DCC Homelessness Strategy

Similarly, there can be many reasons for empty homes that have no causal link to management standards prevailing in the private rented sector. We see no plausible argument to show that landlords are the cause of empty homes per se when occupied homes are Landlords' single most important source of revenue.

Applying logic to the private renting sector situation quickly shows that any empty homes are at odds with the interests of both landlords and the Authority. This is notably the case under the Authority's legal obligations in relation to homelessness. For landlords, escalating council tax charges also hit empty homes hard – forming a major incentive to let homes quickly. Private sector landlords therefore share a common need with DCC to see habitable homes fully occupied. Surprisingly, the 2019 draft Homelessness Strategy, which extends to 22 pages, at no time makes reference to a Selective Landlord Licensing Scheme, how such a designation of several areas might tackle empty homes, or help to boost accommodation for homeless people. Landlords do get mentioned briefly; p14 and 15 under the heading 'Supply of accommodation issues and what will be delivered by the strategy' it reads -

⁶ <https://research.rla.org.uk/report/the-postcode-lottery-of-local-authority-enforcement-in-the-private-rented-sector/>

Key Findings para. 3.

"The postcode lottery of local authority enforcement in the private rented sector is further evidenced through the low take up of new Civil Penalty powers. 89% of Local Authorities reported they had not used the new powers, and 53% reported that they did not have a policy in place to use the powers."

“One of the major challenges in relation to supply is finding accommodation that households can afford, where landlords are willing to accept households who are homeless and where support is available if needed. Also -

*(Durham will) Increase existing supply by **working with organisations and landlords** to utilise empty properties for example: the ongoing models with National Association for the Care Resettlement of Offenders (NACRO) and County Durham Housing Group”*

Evidently Officers see a relatively minor role for all landlords including the private sector, in addressing homelessness. No reference is made in the Durham County 2019 draft of the Empty Property Strategy, to Private Landlord Licensing bringing private homes back into use in Durham. The other key document, the Homeless Strategy, shows clearly the 3 most common causes of homelessness in Durham are financial hardship, domestic abuse and ‘asked to leave by parents’ (appendix 6). It is reasonable to conclude that the proposed licensing regime is not a means of reducing empty homes for occupation by homeless people.

We agree.



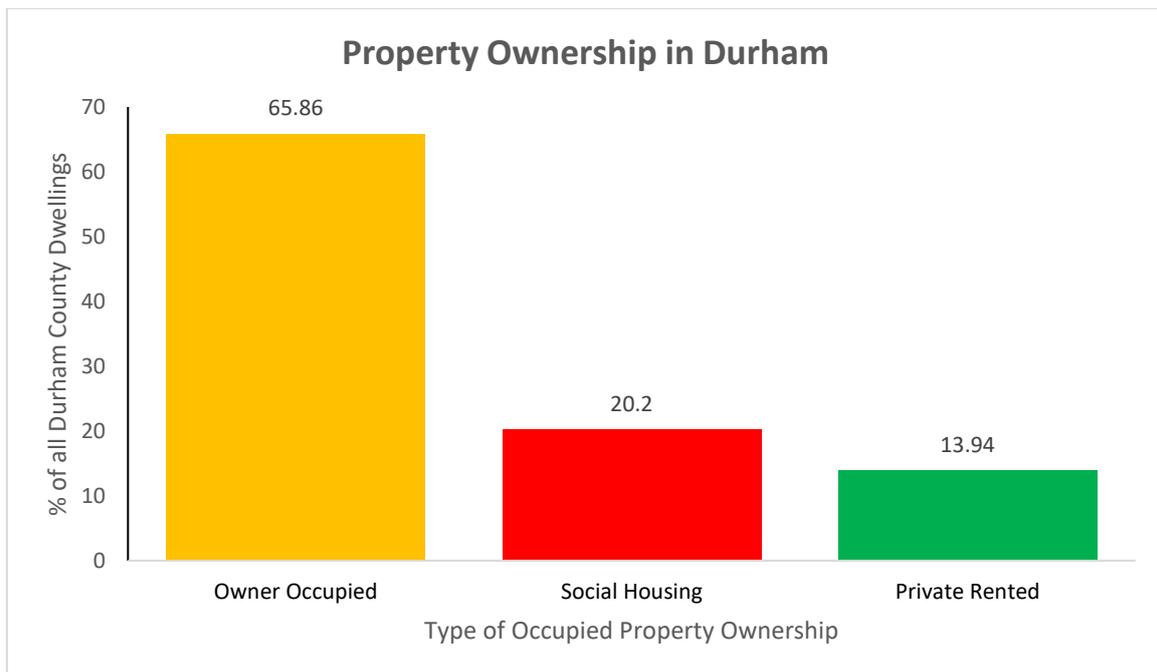
(e) Context – Who Owns and Controls Housing in County Durham?

Durham County is a large and diverse area. In housing terms, the diversity is reflected in contrasting areas of high and low value property, often in close proximity. The Authority refers to the housing market as “granular” saying market viability in Durham can be “more challenging than in other parts of the Country.” Durham County has a substantial proportion of stock in the social rented sector and a majority of homes – 65.6%, are in owner occupation. Less than 14% of homes are private rented. Clearly, the vast majority of homes in Durham County remain outside the scope of a Selective Landlord Licensing Scheme.

The council's Homeless Strategy 2019-2022 (para 3 page 5) and the council's Strategic Housing Market Assessment (SHMA) documents, both confirm the County has 239,685 dwellings and 226,322 households.

Although Durham's statistics do vary (see note below) both documents give the following breakdown for home ownership -

- 65.86% of properties are owner-occupied
- 20.20% are in the social sector and
- **13.94% are private rented.**



With more than 85% of properties NOT in the private rented sector it is difficult to conclude that private rented ownership and control of housing is a major factor in housing related anti-social behaviour (ASB), or that private landlords directly or otherwise allow or facilitate problems with unoccupied homes. In reality, as Durham confirm in their own evidence report "Overall 59% of authority ASB complaints were categorised 'Personal' and "51% of noise complaints were for barking dogs" (p. 27).

Perhaps even more damning is the fact that Durham's ASB data is between 3 and 5 years out of date and involves a questionable comparison "the DCC ASB (data) was extracted from a new system which came online in July 2016". The "Police ASB, data covering 2015/16 to 2017/18 was used to enable comparisons against the region, as regional data was not available for 2018 – 2019 at the time of the analysis" (February 2020) p.25 Evidence Report.

Note: Private rented homes as a percentage of all rented homes

[\(Appendix 2\)](#) Durham produced 2 versions of the document titled ‘Selective Licensing Evidence Report and Proposal for County Durham’, one in **November 2019** and another in **February 2020**. In November 2019 it claimed the percentage of private rented homes (as % of all rented homes) had risen from 12.6% in 2011 to **23.3%** in 2019. Three months later they claimed in the second version, the February version, that this was now an even higher increase; with a new estimated level greater than the social rented stock, at **28.4%** of all rented properties being privately rented. The council bought in a company (Metastreet) over the winter months who used electronic estimating software systems to enhance the council’s statistical picture with ‘machine learning’. Both figures cannot be correct. We tend to believe the figure based on census data – the November figure used by Durham in their most recent policy documents, for Empty Homes and their current Homelessness Strategy; the unembellished one that they deemed correct in November 2019, that is **23.3%**

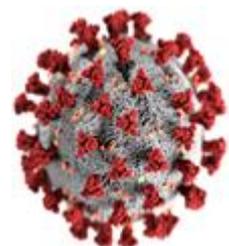
(f) Serious Cost Considerations at a Difficult Time

People often believe that private landlords are by definition extremely affluent. Some individual landlords and UK companies are wealthy, but things have changed in recent times. With “buy-to-let” mortgages, low interest rates, ‘Right to buy’ and council housing in decline, privately rented homes are owned by a much wider less wealthy group of people. The property market has changed. Managing tenants in a second home or an inherited family property is increasingly common, particularly if the home is hard to sell or has negative equity.

In Durham County, private rents are very low. After taking management costs into account, margins are tight with no guarantee of profitability. The capacity to pay rent will not be enhanced by licensing landlords and currently the North East region has the lowest rents in the UK. The median UK private rent is £700 a month. In Durham it is £450 – the same as Middlesbrough and Darlington. This is not an area where a rent surplus can be generated easily, for the payment of licensing fees.

Added to this situation we have the COVID-19 measures; constraints on the income of tenants, on actions in the courts and a total freeze on property valuations and sales. We live in difficult times.

Against this challenging background, we are confident most landlords will survive with homes still available and standards maintained. We would however ask that the Authority recognise the difficult situation our local economy is in, the threats and uncertainty faced by all of us and take the necessary decision to reconsider the licensing proposal.



COVID-19 VIRUS

(g) Background Assumptions by Durham County Council

In responding to the consultation, we now wish to correct assumptions that we believe are underpinning the proposed licensing regime. The assumptions are misguided and wrong.

- I. ASSUMPTION “Licensing will reduce empty properties”.
Empty housing will almost certainly *increase* under the proposals. Some level of empty homes is a facet of all tenure types. In the private rented sector, some very good landlords will leave the market because the licence fees proposed are excessive. The scheme can levy total charges amounting to over £25 million. This will hit hardest those likely to cooperate - those least likely to have contributed to housing decline or to have shown indifference to tenant misconduct. Fees are in Durham’s case perceived as a tax on good landlords to fund unspecified measures to tackle the relatively small number of less reputable private landlords.
- II. ASSUMPTION “The Scheme is affordable and self-financing”.
Implied assumptions about levels of participation in the proposed scheme are not realistic. It is difficult to know how the fee level has been set from Durham’s limited published information but we believe the scheme will apply to more than 51,000 properties managed by several hundred landlords. Registration issues have seriously undermined similar proposals initially seen as a panacea by other councils. We believe the fee proposed – up to £500 per property - will seriously undermine participation. Durham County will consequently not secure the take-up required to cover costs. This will have major implications for Durham County Council and the council taxpayer.

To make matters worse, this will potentially happen when public sector spending may face the biggest financial squeeze in living memory.

Given the rapid and unplanned escalation of scheme costs in other areas – notably this year’s rise for Nottingham, where fees have risen sharply (from £780 to £890 in March 2020) - Durham cannot assume funds will simply turn up as and when required.⁷ In Durham the costs will be similarly excessive and difficult to control. Even the costs and availability of experienced licensing staff will be a major difficulty according to David Smith of the RLA “a recent report highlighted that a shortage of skilled council officers to set up and deliver a licensing scheme is developing” he also confirmed that substantial elements of enforcement and management activity cost cannot be built into the license fee. “Schemes may have to be dropped and, worse for councils, they may have to refund licences already paid for”. RLA news 2018.⁸

⁷ <https://news.rla.org.uk/nottingham-licensing-scheme-a-farce/> November 2019

⁸ news.rla.org.uk/blog-gaskin-hmo-case-could-have-far-reaching-implications-for-licensing-schemes/

III. ASSUMPTION “The Scheme will have positive, desirable outcomes”.

The proposals will have unrecognised consequences and we believe if it is imposed it will fail. A failed initiative with attendant employee costs will be seen as a ‘Housing Officer employment scheme’ that Durham residents and the wider electorate simply cannot and should not afford. We believe experienced and supportive landlords will leave the market (see 4 below). The very least we can confidently predict is broken trust between DCC and the private sector, unwanted rent increases and a reluctance for empty properties to be bought and taken back into use by investors. Landlords will be faced with ‘selective intervention’ by council officers trying to ‘help the landlords’ to improve how they manage their own assets. This is neither realistic nor desirable.

IV. ASSUMPTION “The Scheme will improve tenant management”.

The best landlords manage difficult tenants sensitively and well. As experienced *good landlords* face new licence costs and tighter margins, they will leave the sector. More homes will be offered for sale in a saturated, unstable market, where demand is not buoyant. Empty homes will stand empty for longer or remain unsold. Where they sell for rent, several inexperienced, possibly well-intentioned new owners, and some pure speculators, will enter the market with unpredictable implications. Improvements to the management of people or property will be much less likely and far harder to afford.

V. ASSUMPTION “The Scheme will tackle *bad landlords*”.

The poorly performing or ‘irresponsible landlords’, those the council currently are unable to tackle effectively, will avoid registering as they did successfully in other areas. The proposals seek in effect to tax good landlords to pay for attempts to deal with property-neglect and anti-social behaviour, when the Authority has powers to do this already. The Council should use existing powers in partnership with others including Durham Police who have an outstanding reputation, landlords already signed up to the Private Landlord Accreditation Scheme and the Fire Service, to affect positive change. Criminal landlords should face prosecution. Enforcement should be fully funded with support for vulnerable tenants, from public funds not rental income.

VI. ASSUMPTION “The Scheme will improve management standards and reduce ASB”.

The proposal documents fail to identify in detail what the “poor standards” are, what success looks like and what criteria it is based upon. Officers make no evidenced link to private sector management standards, but they do list 5 vague outcomes that are not measurable nor are they shown to be likely to be achieved, when and why. There is no evidence to show that the scheme will improve standards of management, either in relation to difficult tenants, to empty homes or private property for rent.

VII. ASSUMPTION “The Scheme will benefit tenants”.

Durham’s proposal has one undisputable implication; it will cost a lot of money; potentially £25,000,000. If this were the cost, and if the license fees were collectable, costs will ultimately fall on tenants through higher rents. Landlords in difficult areas have severely limited margins and their tenants can often have multiple personal and economic problems. Landlords do not want rent increases; finding good tenants can be difficult enough. The poorest, most vulnerable tenants will be unnecessarily under even more pressure. As explained above, any failure to collect this new ‘Durham tenant tax’ will almost certainly have cost implications for Durham County Council.

Assumption: “Licensing will reduce the number of empty properties”



“Without a detailed assessment of the stock of empty homes, including their location and conditions, it is not possible to estimate the extent to which long term private sector empty homes could meet national housing need”

“Local, tailored, incentive and support driven schemes to reduce social sector under-occupation should be pursued instead of disproportionate, punitive, national measures”

Shelter Policy: Briefing ‘Taking Stock’⁹

⁹ https://england.shelter.org.uk/_data/assets/pdf_file/0008/346796/Shelter_Policy_Briefing_-_Taking_Stock.pdf

“It must be noted that selective licencing does not work as a stand-alone initiative. At the time the three areas were first licenced, the council had other forms of intervention ongoing e.g. group repair and external works” (para19)

“In the current context of reducing funding for Council services, further extension of selective licensing in the County would only be considered if additional external funding could be identified to financially support their introduction” (para 22)

“(Fee) income partially funds the cost of administering the scheme but would never be self-financing. Selective licensing is therefore costly to deliver and within the current financial context, further roll out appears unlikely” (para 26)

Durham County Council: Cabinet report of 19th November 2014¹⁰

5. A better way forward

There are fortunately other ways to make progress and DURHAM PLUSS have proposed a better alternative to the scheme as planned. We remain keen to discuss a more cooperative and deliverable programme for the future. We are confident that this could easily build on the success of other schemes in the North and start from the existing potential of the current Private Landlord Accreditation Scheme operated by Durham County Council. Reflecting the essence of two excellent alternative schemes; Stockton PLUSS and Leeds Rental Standard would provide a relatively inexpensive option that would avoid the threats inherent in the proposed Durham scheme.

In the words of Stockton-Upon-Tees Council in October 2019 -

“Stockton are now working in partnership with a group of landlords who have come together to form Private Landlords Supporting Stockton (PLUSS)... [But] for landlords and agents who do not choose to join PLUSS and work cooperatively with the Council, we are taking a targeted approach to drive up standards. (Continued)

Non-members should expect to have their properties inspected and assessed by an officer from the Council’s Private Sector Housing team... Should such an inspection and assessment reveal unacceptable conditions then the Council will take appropriate enforcement action including serving Notices. When Notices are served the Council will charge the landlord or agent for expenses incurred, for the time taken to undertake the inspection and assess the property and for the preparation and service of the Notice”¹¹

... and the Council have recruited staff specifically to target non-PLUSS-member properties.

¹⁰ <https://democracy.durham.gov.uk/documents/s45651/Supporting%20Private%20Rented%20Housing%20FINAL.pdf>

¹¹ <https://www.pluss.me.uk/wp-content/uploads/2019/10/stockton-council-new-prs-approach-pluss.pdf>

6. Conclusion

With such a poor evidence base, an imbalanced, unfair consultation and no external resources, the proposed scheme will fail to deliver more than a broken relationship between Durham County Council and Durham private landlords. It will cost too much and produce only more problems – wasted money chasing non-compliance and no successful outcome.

Rather than introducing or imposing an ill-defined, over-large, expensive and unworkable licensing scheme, the council should use cross-departmental and multi-agency working to effectively deploy the powers and opportunities they already have to promote the best possible standards of accommodation and tenant support.

It would serve Durham County Council well to note the outcome of research already in the public domain, including possible benefits of a more cooperative approach (Appendix 10 – report from York Centre for Housing Policy 2018) and the Government review of issues that schemes have faced (Appendix 11 - MHCLG review 2019). In addition, the Council might spare time to note the media reports backing many of our concerns, including reference to the fact that tax changes in particular have greatly increased the number of landlords leaving the sector. Homes for rent will certainly reduce in number if the scheme is implemented.

The Council should aim higher; reflecting the success of DURHAM PLuSS; attracting affiliation from the owners of more than 10% of Durham's private stock – and a body that believes in reviving, rebuilding and reinvigorating the Durham Landlord Accreditation Scheme. See also Appendix 9; Stockton PLuSS and Comments by Stockton Council Housing) Although a smaller scheme Stockton have shown what can be done.

Existing housing legislation should be used to help tenants and assist the majority of private sector landlords who are keen to improve the accommodation offered and the quality of management in every housing sector. Where landlords cooperate actively with their local council this should be rewarded by advantageous access to premium services, to achieve higher standards and more stable, secure tenancies. Bridges need to be built with the private sector landlords rather than broken.

The proposed scheme will not work. Durham can do better.

Appendix 1 – Matters of opinion

Durham PRS Selective Licensing Evidence Report and Proposal document Examples of questionable evidence

Page 5

“Since 2001, the rental market In County Durham has changed significantly and the PRS has now replaced social housing as the second largest tenure in the county”

Comment - *This is an opinion. It is based partly on estimates using a model chosen by Durham Officers, with data selectively and unaccountably incorporated. The assumptions attached to the model are not shared, the massive amount of selected data is then processed via machine learning to update the outdated facts about tenure type given in the last census, 2011. The company who carried out the modelling were paid to do so by Durham County Council. The data used to update the last actual evidence spans only the most recent 5-year period (unexplained). Also, projections are given for the County, but the data on changes in tenure for example, and also anti-social behaviour, will be heavily skewed by the known rapid expansion of students in Durham City MSOA where 66% of households are in the PRS. Despite Durham city MSOA area being excluded from the proposed scheme, it significantly influenced estimates.*

Page 9

“Central Government is encouraging Local Authorities to provide alternate housing options, including setting up a local letting agency (LLA). Selective licensing will assist with the delivery due to the increased engagement and partnership working with landlords, as this will increase properties available to people in housing need and will contribute towards the prevention of homelessness and rough sleeping”.

Comment - *Selective licensing will alienate landlords and cause a major reduction in partnership working between landlords and the council. Properties ‘up for sale’ will increase as landlords leave the sector. Fewer homes will be available to rent.*

Page 9

“If selective licensing is introduced, early intervention should increase with landlord’s ability to highlight tenancy issues and additional support needs”.

Comment - *Landlords have little difficulty highlighting issues or support needs, they do however have difficulty on many occasions securing help from other agencies.*

Page 11

“The current Housing Strategy places an emphasis on regeneration and the improvement of localities across the County; and selective licensing has an integral and important role to play in meeting this objective, by helping to drive up standards, improve property standards and increase landlord and tenant accountability. This coupled with investment and partnership working will lead to the longer-term regeneration of our communities”

Comment - *More unfounded speculation about what the scheme might do. No regeneration initiative or pre-funded project is identified, let alone one that has selective licensing playing “an integral and important role”. Pure wishful thinking. We all welcome regeneration initiatives, most bring new money to invest in areas of great potential. Programmes tend to be linked to positive partnerships and targeted intervention rather than general aspirations and speculative estimates.*

The degree to which selective licensing “has an integral and important role to play in meeting this objective, by helping to drive up standards, improve property standards and increase landlord and tenant accountability“ directly depends on the degree to which one accepts, as Durham clearly does, that poor standards and property standards specifically are caused by the failings of the private rented sector. This is unproven and unfair. There is also an assumption here that both landlords and tenants are in need of greater accountability, presumably to Durham County Council officers. At least the section ends by recognising the need for investment and partnership. With the proposed scheme, Durham are likely to attract neither.

Page 27

“Although Police ASB rates in County Durham has fallen slightly, the data shows that over this three-year period there have been increases in local authority ASB and noise complaints, and secondary fires.” “Overall, 59% of authority ASB complaints were categorised under ‘Personal’, 51% of noise complaints were for barking dogs, 64% of Police ASB were around nuisance incidents and 53% of secondary fire incidents were around loose refuse fires”

Comment - *So, Durham has a problem with ASB. Police rates of ASB are falling and Durham estimate their own complaints to include 51% attributable to dog barking. We are obliged to ask if this sounds like a situation that needs a £25 million response, funded from the income of a minority of Durham property owners?*

Page 34

“Owner occupiers may be prepared to stay in the area if they can see the improvements in the PRS with issues being addressed and preventing the area falling into further decline.

For investors it will create a level playing field, regulation will encourage landlords to raise their standard, with those unwilling to do so potentially leaving the market.”

Comment – *Owner occupiers leave an area as a last resort. They usually sell, occasionally to landlords, and they rarely make such a life-changing move due to dog barking or discarded bin bags. New buyers do however notice if an area is stigmatised and designated areas will be perceived as problematic. Criminal ASB is being tackled effectively and is in decline. Licensing landlords would do more to prompt rent increases and fewer homes occupied than prompt improvements. In terms of investment the better landlords will leave the market – those supporting difficult tenants. Those with little surplus income to pay fees to fund council officers.*

Appendix 2 – The 2 versions of Evidence produced by DCC

<https://www.durham.gov.uk/media/32256/Selective-licensing-evidence-report/pdf/SelectiveLicensing-EvidenceReport.pdf?m=637>

(February 2020 Version)

<https://democracy.durham.gov.uk/documents/s117585/4%20Selective%20Licensing%20Evidence%202%20Report.pdf>

(November 2019 Version)

Appendix 3 - Existing Private Landlord Accreditation Scheme

www.durham.gov.uk/media/21663/Private-Landlord-Accreditation-Scheme/pdf/PrivateLandlordAccreditationScheme.pdf?m=636634548966600000

Appendix 4 - Cabinet Report 2014 calculating the cost of SLL

<https://democracy.durham.gov.uk/documents/s45651/Supporting%20Private%20Rented%20Housing%20FINAL.pdf>

Appendix 5 - Lowest PS rental income for any UK region, Office of Nat Stats

<https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/indexofprivatehousingrentalprices/march2020#uk-private-rental-prices>

“13th Dec 2019. The median monthly private sector rent was £700 for England, Durham is £450 the same as Darlington and Middlesbrough, the joint lowest in the North East; which has the lowest rents by region”

March 2020 - "The lowest annual rental price growth was in the North East where rental prices increased by 0.7% in the 12 months to March 2020, followed by the North West, which increased by 1.0%."

Appendix 6 - Homeless Strategy DCC page10 Figure 1

<https://www.durham.gov.uk/media/26852/Homelessness-Strategy/pdf/HomelessnessStrategyv2.pdf?m=636858435425270000>

Page 10 - Research showed in 2017/2019 the main reasons why people contacted Housing Solutions in 2017/18 for housing advice were **868 financial hardship**, **535 domestic abuse** and **249** were "asked to leave by parents". None of these causes are cited a focus of the planned Landlord Licensing Scheme. The document goes on to say "These reasons have remained consistent over the last three years. The research highlighted a slight decrease in clients presenting due to rent arrears, a slight increase in clients sleeping rough and an increase in clients contacting due to fuel poverty".

Appendix 7 – Unintended Consequences and Media Interest

Estimated 1/2 of Landlords in Nottingham still not signed up

<https://www.nottinghampost.com/news/nottingham-news/around-half-rented-properties-still-3411426>

Zoopla – Rental Market report - October 2019. "At 5.4%, Nottingham has seen the highest rental (price) growth in the past year, with Leeds and Bristol in second place, both at 4.5%"

<https://www.zoopla.co.uk/discover/property-news/rents-rise-at-just-half-the-level-of-earnings/>

"Nottingham has seen the highest percentage rise in rent compared to anywhere else in the country - with a controversial licensing scheme being blamed for the hike."

<https://www.nottinghampost.com/news/nottingham-news/selective-licensing-blamed-nottingham-reaching-3435063>

A landlord licensing scheme in Nottingham has so far managed to issue full licences to fewer than three per cent of the applications received.

In August 2018, Nottingham City Council introduced a Selective Licensing Scheme across many parts of the city as a key part of its efforts to address the quality and management of private rented housing.

[Figures](#) provided to the Council's Overview and Scrutiny Committee however show that by August 2019, whilst 17,523 applications for a licence had been received, just 472 final licences had been issued. The council estimates a total of 24,000 applications are eventually likely to be received.

No inspections - The RLA points out the issuing of a Nottingham licence is not linked to any form of property inspection by the council, meaning tenants cannot be sure that because their landlord is licensed the property meets all the required standards.

In addition, because there is no way of checking whether or not a licence application has been made, tenants cannot tell if their landlord has applied and is simply waiting for the council to process the application or is flouting the law altogether.

Appendix 8 – Research Backing a Cooperative Approach

'The Evolving Private Rented Sector: Its Contribution and Potential' a report by Julie Rugg and David Rhodes, University of York Centre for Housing Policy 2018

http://eprints.whiterose.ac.uk/135787/1/Private_Rented_Sector_Report.pdf

- Recommends working with landlords instead- with a register and redress scheme and having a property MOT
- London's PRS dominates the narratives that sit around renting, but the capital is not the only story. Renting is configured differently in different types of area: problems are not the same, and solutions have to be flexible enough to accommodate difference.
- No publicly available, independent evaluation has been published which assesses the value of selective licensing in effecting sector improvement. The programme has not been subject to ongoing monitoring and indeed, in 2018, the Housing, Communities and Local Government Private Rented Sector report recommended that monitoring should be in place, overseen by the Secretary of State.²⁰² Of largely overlooked importance is the fact that discussion of the licensing regime largely overshadows the fact that much of the PRS is located outside areas where selective licensing scheme might be applied, and in property that cannot be defined as a HMO. In this regard, the PRS lacks effective, overarching scrutiny.
- Some commonly iterated themes emerge from general discussion of the scheme-making process. The first relates to cost. The process of developing and applying for permission to introduce schemes are considered prohibitive for many authorities, particularly since those costs can escalate: national landlord groups routinely offer support to local landlords to co-ordinate legal challenges to proposed schemes. Landlord resistance reflects dissatisfaction with the costs of compliance. In 2015, it was reported that amongst 20 local authorities responding to a Freedom of Information request, selective licensing fees ranged from £100 to £750, covering – ostensibly – the same administrative process.
- A second major theme relates to the value of combining 'hard' and 'soft' enforcement. Review discussion with scheme-making local authorities indicated that the task of licensing directs attention away from the largely compliant licenced landlords and towards landlords that remain unlicensed, and it is these landlords who are more likely to have properties that fail to meet the required standards. Mandatory and SL regimes open a dialogue between the local authority and local landlords, which local authorities can use to implement 'soft' enforcement through advice and support on property condition. A negotiated and less combative relationship is regarded as being more productive of material improvement in property conditions.

Appendix 9 - Stockton PLUSS and Leeds Rental Standard

Leeds Rental Standard

<http://www.leedsrentalstandard.org.uk/>

The Leeds Rental Standard aims to bring unity to accreditation in the city and continues to raise the standards in professional and student lets. Started May 2017.

Good landlords are recognised by potential tenants and rewarded through financial discounts and benefits.

The Leeds Rental Standard is a badge developed by Leeds City Council that establishes an overarching minimum standard for privately rented accommodation across the city.

The Leeds Rental Standard operates under the following existing schemes:

- **Residential Landlords Association Accreditation Scheme**
- **National Landlords Association (NLA)**
- **Unipol Code**
- **ANUK / Unipol National Code (for larger student developments)**
- **RLA <https://news.rla.org.uk/rla-launches-new-accreditation-scheme/> (Leeds scheme)**

Offering licensing discounts and the opportunity to self-regulate, the Leeds Rental Standard accreditation mark has been created to establish a single overarching standard for privately rented accommodation across the city.

“It will bring all the recognised accreditation schemes in Leeds under one umbrella – and landlords who are already accredited through the RLA, Unipol or the NLA can use the Leeds Rental Standard accreditation badge immediately.

In addition to the licensing discounts and self-regulation, the accreditation mark will also offer landlords expert advice and guidance from council officers and access to the city council’s Private Tenant Letting Scheme, which can help find tenants for empty homes.

Membership also means landlords can advertise homes in ‘Leeds Homes’, can dump tenants’ rubbish at council tips and apply for residents’ parking permits”.

Stockton P_LU_{SS}

<https://www.pluss.me.uk/#predesigned>

- P_LU_{SS} is an association run by landlords and agents in Stockton-on-Tees together with Stockton-on-Tees Borough Council.
- The organisation aims to ensure all private rented properties in the Borough are well managed and of high quality and to do this by working together, raising standards by helping one another. SBC and Stockton P_LU_{SS} are playing important roles, working together in tackling anti-social behaviour and crime, directly helping tenants and indirectly advantaging all other residents.

<https://www.thenorthernecho.co.uk/news/17906340.stockton-on-tees-borough-council-launches-crackdown-unfair-landlords/>

Appendix 10 - Media Concerns and Housing Supply Issues

[Has George Osborne's tax bombshell killed off the buy to let dream? Thousands of landlords are set to sell their properties in the coming months](#) Mail Online

[Landlord numbers fall to seven-year low after government clampdown](#) Yahoo Finance

[Chancellor must use budget to 'halt decline' in rental supply](#) 24 Housing

[RLA: Action required to stop fall in rental housing supply](#) Mortgage Introducer

[Slash Capital Gains Tax on rental sales, Chancellor urged](#) Letting Agent Today

[Government Tax Changes Contradict Housing Plans](#) Today's Conveyancer

[Calls for CGT waiver for landlords selling to tenants](#) Mortgage Strategy

[Feature: Clampdown on Airbnb-style holiday lets](#) Mortgage Strategy

Appendix 11 – Ministry of Housing Communities Local Government – An Independent Review of the Use and Effectiveness of Selective Licensing, June 2009

<https://www.gov.uk/government/publications/selective-licensing-review>

Review of case studies; indicated evidence of selective licensing schemes being successful was “inconclusive”

- When implemented in isolation, the effectiveness of selective licensing is often limited. Schemes appear to be more successful as part of a wider, well planned, coherent initiative with an associated commitment of resources
- The process of making a designation is perceived to be highly complex and unnecessarily bureaucratic, requiring significant time, money and other resources. However, the importance of thorough consultation was stressed by numerous stakeholders.
- **Size of the scheme; as schemes get larger, any problems caused by unanticipated circumstances are magnified. Many costs cannot be set directly against the licence fee (e.g. landlord training, tenant support, increased workload for the legal department)** and the larger a scheme is, the more problematic resourcing such services can prove. Larger schemes also tend to suffer particular difficulties with recruitment and retention of staff. Any inadequacies in initial fee setting can be severely exposed.
- An attempt to measure the success of outcomes was inconclusive – EG crime stats can be influenced by numerous factors including Police activity

“it is again unclear whether this (improvement) can be ascribed to licensing specifically or other factors (e.g. improved policing) “
- Authorities often have difficulty identifying rented sector properties.

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