

Hyndburn Borough Council's Response to Hyndburn Landlord's Formal Response to the Council's Draft Selective Licensing Scheme

1. Introduction

- 1.1 The Council welcomes and appreciates the constructive dialogue that has taken place with Hyndburn Landlords as part of the selective licensing consultation process at meetings on the 26th January 2012, the 29th February 2012 and the 22nd May 2012.
- 1.2 The Council also acknowledges Hyndburn Landlord's efforts and welcomes their feedback with their official response to the selective licensing consultation dated the 13th April 2012. In particular, the Council notes Hyndburn Landlord's in principle support for selective licensing therefore the Council want to reassure Hyndburn Landlords of its commitment to introduce a scheme which is deliverable and supports the Council's efforts to reduce low housing demand.
- 1.3 This paper is the Council's formal response to Hyndburn Landlord's Consultation response.

2. Hyndburn Borough Council's Response

- 2.1 The Council believes it has correctly followed the legal requirements for determining areas of low housing demand for the purpose of determining a draft selective licensing designation.
- 2.2 The Council is also confident that it has used a very robust methodology and evidence base in concluding the draft designation area as outlined in Section 7 of the Draft Proposal.
- 2.3 The Council rejects the suggestion that it has not considered properly the legal requirement to consider comparable areas and that errors have been made in the evidence base for determining vacancy levels and the length of time homes remain unoccupied. We will respond to the specific points on this later in this Consultation Response.
- 2.4 Section 7 of the Draft Proposed Document outlines the Council's approach and methodology for determining areas of low housing demand. Hyndburn Landlords response appears to omit or misunderstand (or misinterpret) key evidence and data within Section 7 especially in relation to the value of residential properties and comparable areas. This is disappointing bearing in mind that a significant amount of the meetings between the Council and Hyndburn Landlords has been devoted to discussing the Council's methodology, approach and evidence base for determining areas of low housing demand.
Our submission was a response to the Councils initial proposal. Whilst discussions have been held and to date have been reasonably positive, nothing has been agreed as yet which would effectively draw a line under any areas of potential disagreement. The Council will be aware that we have not discussed certain areas such as Woodnook and Springhill, simply because we are in support of their proposals for these areas. HL have reiterated at every meeting their concerns with the Councils approach to valuation and market values. However, we believe more precise issues in this regard are dealt with later in this response.
- 2.5 The Council's approach to using Ward and Lower Super Output Area (LSOA) data is wrongly criticised by Hyndburn Landlords. Ward data is used to identify areas of low housing demand across the borough and not to make comparisons for purposes of determining the proposed designation (see pages 32 and 47 of the Draft Proposal). This is an objective way of identifying potential low housing demand areas rather than make assumptions about where low housing demand exists. *Noted. However, Wards and LSOAs are predetermined areas which have no basis in an open market. Following the above clarification we accept that they may be useful at the outset in **identifying potential low demand**, but have no real use for detailed analysis.*

2.6 The Council's approach identified seven potential areas for consideration for selective licensing (page 50) i.e.

- Peel
- Barnfield
- Springfield
- Netherton
- Central
- Clayton-le-Moors
- Church

Five of the seven listed above appear in Hyndburn Landlord's list of Wards that can be described as similar for comparison purposes, with the other two on the possible list. Whilst different methodologies may have been used it is clear that we have come to almost the same answer in identifying areas for comparison and consideration. This level of consistency is very reassuring and would also indicate the Council's approach is neither fundamentally flawed nor manipulated 'to prove their own case'. **HL believes that by including better areas (which are not similar / comparable) in their proposals the Council have made areas appear worse. Generally Selective Licensing is associated with run down areas and by proposing a larger area than necessary there is a danger of creating a self fulfilling prophecy.**

2.7 In their response Hyndburn Landlords seem to have ignored the Council's proposals in relation to comparing areas which was described on page 52 and figures 19 to 27 of the Draft Proposal. However, this is an area that the Council will further develop as part of any final Proposal. **Noted. However, the issue being raised was that areas such as Baxenden and Immanuel should not even warrant a mention in the analysis.**

2.8 Hyndburn Landlord's response also encourages us to take a street by street approach. However housing markets operate on an area basis and not at individual street level. **We only partially agree with this statement. In any analysis, it starts from the bottom up, ie the component parts which comprise the whole, in this case streets. Whilst we have listed streets in our response you will note that we have not proposed isolated streets for licensing but rather clusters of streets in a similar area. This is what makes up an area, not ward boundaries. At present it appears that the Council have taken predetermined areas that have little relevance to the subject matter and attempted to make them fit. This masks problems within areas. We would also point out that within the Councils proposed document there is a statement to the effect that an area could be considered to be 50 or more dwellings, which could in theory simply relate to a single street.**

The selective licensing legislation is quite clear that we need to take an area based approach for determining low housing demand i.e. 'the value of residential premises in the area, in comparison to the value of similar premises in other areas which the authority considers to be comparable'. The Council's approach has used area based data (LSOA) to identify areas of low housing demand, which we therefore assert is consistent with the legislation and guidance. **Partly in agreement, but the Act does not define area and certainly doesn't state that the Council should use its own predefined areas.**

2.9 Hyndburn Landlord's point that the Council has not used rental values in determining low housing demand. This is a valid point that we will address when considering any final selective licensing proposal. **We believe that this is a substantial omission and should be put out to consultation of all parties, not introduced as a final proposal**

2.10 However, the Council does not accept that the 'entire document submitted to Cabinet is seriously flawed at law' for not including rental values. We used eight indicators to help identify low demand the omission of one would not significantly prejudice what is otherwise a robust dataset. **Disagree. By not considering rental values, 50 % of market evidence has**

been seemingly ignored in the Councils initial analysis, and this figure is possibly higher when considering transactions by numbers

- 2.11 Having now had the opportunity to consider rental values, they have had very limited impact on the original low housing demand findings and therefore do not detract from the Draft Proposal. We cannot agree with this statement. We believe that rental evidence is more pertinent than capital values in this exercise. The numbers of transaction are greater and trends can be spotted due to the relative transience of the Assured Shorthold Tenancy agreement. This evidence is crucial in determining low demand.
- 2.12 The Council is criticised for using the website provider 'Vizzihomes' on the basis of the quality and depth of its datasets. This is the only independent website that captures comprehensive information on landlord letting activity. The data is captured directly from landlord and agent website portals and therefore the data's accuracy reflects the accuracy of the Agents. We accept that the accuracy is only as good as the information on the individual websites, but the same would be true of any source of data. Disagree. Evidence has been provided which easily undermines the records of Vizzihomes this yet has not been rebutted. There is also the contradictory issue raised in point 2.13 below. If the Council is critical of agents historical information, how can they then place faith in a website which extracts third party information from those same agents and then publishes it? We believe that this is the result of the Council trying to obtain rental information on an expediency basis. It is not difficult to obtain the information, it is simply time consuming.
- 2.13 Hyndburn Landlords indicate that local agents are best placed to provide the relevant management information. The Council attempted to consult with local agents, 16 were sent questionnaires but only 2 were returned initially. After chasing by the Council a further 4 were returned. It is also clear from discussing this issue with Hyndburn Landlords and from the Agent returns that local agents are weak at maintaining historical data, and very much rely on anecdotal local knowledge as opposed to robust records. Unfortunately this type of information alone would not stand up to a legal test. The Council believes it has used the best independent information available. The Councils viewpoint is acknowledged. However if the Council had engaged local agents at an early stage then these problems could have been avoided. Private companies do not exist to furnish local authorities with statistics and as Directors within property companies we would say that records are kept for our own commercial purposes. It is grossly unfair for the Council to state that agents are weak at maintaining historical data simply because they did not keep records in a form which would suit the Councils purposes. Information is available, and at the outset the Council should have considered sending Officers to local agents to trawl through records to obtain information, not send questionnaires in an attempt to make other people undertake their research.
- 2.14 Hyndburn Landlords indicate that the Council's fee structure 'reflects' the running costs of the Council's Regeneration Department. This is a 'broad brush' statement without any evidence to support it. The Council's proposed costs and fees only reflect those costs that the Council will incur in carrying out the scheme. We are grateful to Hyndburn Landlords for highlighting the CIPFA Licensing Fee Toolkit and this will be used to review the proposed fees should a final Designation be considered. Please clarify the Councils stance on this. In an email from Mr Hoyle to Mr Brown, dated 2 April 2012 Mr Hoyle stated "We did refer to the CIPFA approved licensing fee tool kit before making our calculations but concluded if we followed the standard our costs would be higher. Never the less we did follow the Council's budget setting protocol for determining the draft budget." This seemingly conflicts with the statement above.
- 2.15 The Council will ensure that periodic review arrangements are in place should a final Designation be considered.

- 2.16 In their response Hyndburn Landlords are critical of us using a high proportion of rented households as an indicator of low housing demand. Whilst we acknowledge this may be the view of Hyndburn Landlords, however, the Government's guidance is quite clear that authorities should consider a high proportion of rented properties as an indicator of low housing demand. **This is factually incorrect. The Councils own paper quotes the act and states "identifies a second list of factors that a local authority may bear in mind when considering low demand" It does not say should.** This is because the government (quite sensibly) will have acknowledged that there are areas of high demand for rental, a fact which the Council still fails to understand. It is interesting to note that areas of low demand such as Fern Gore and Within Grove have been omitted simply because of the high levels of Housing Association ownership.
- 2.17 Hyndburn Landlords caution the use of Council Tax data for determining vacancy levels because vacancies sourced via Council Tax could include houses under renovation. This statement is misinformed as houses under renovation are excluded from vacancy figures for a period of 12 months. **Accepted, but the point is that not all landlords would apply or receive such exemption. For example general redecoration of a property may take several weeks, yet would not qualify as being "under renovation" for Council Tax purposes. This would not be excluded from such statistics yet would be a contributing factor in properties seemingly being empty for longer than normal.**
- 2.18 We would agree that vacancies are inevitable if not necessary for a housing market to function correctly, however, the Council has only used long term (vacant dwellings vacant greater than 6 months) as an indicator to low demand. In the circumstances, the vacancy data sourced via Council Tax is both reliable and appropriate for helping determine low housing demand.
- 2.19 In relation to turnover, we would agree that turnover data is less reliable given the current economic conditions. We will review this indicator in any subsequent Proposal.
- 2.20 Hyndburn Landlords claim that the Council has not considered displacement in any detail. However, the Draft Designation considers displacement and risks in detail (Chapter 10). The Council notes Hyndburn Landlords specific observations on Scaitcliffe and this will be considered in any subsequent Proposal. **The total extent of the Councils consideration on displacement is as follows "It is possible with the introduction of selective licensing that landlords, especially problem landlords, may decide to sell up or leave properties vacant in a licensed area and move elsewhere. The Council has tried to eliminate or at least reduce the likelihood of this occurring by carefully considering the designation area. The Council is confident that the market conditions do not exist that will accommodate large scale displacement of landlords to other areas of the Borough." We fail to see how this could be classed as "considered in detail". The Council have effectively dismissed the issue by stating that they don't think it will happen.**
- 2.21 Hyndburn Landlords suggest that the Council has no enthusiasm for other schemes indicating a political will for a Licensing Scheme. The Draft Proposal contains a comprehensive Options Appraisal (Chapter 6) with considered reasons for deciding to consult on selective licensing. **The point being made was that no scheme was considered in detail, or at least the explanations were not particularly detailed.**
- 2.22 Hyndburn Landlords put forward an alternative proposal where they indicate that the current Proposal is too large to be effective and express concern that 'there seems to be a political view that it is a cure for problems within the sector which we fundamentally disagree with'. Regular monitoring of the Scheme and periodic reviews will inform the Council if the Scheme is not effective and therefore enable the Council to make any necessary adjustments. However, the Council is very confident of its capacity to manage the Proposed Designation. There are a significant number of local authorities that have introduced selective licensing (at least 18) and therefore we are in a position to benefit from the experience of others. A larger scheme also has the benefit of controlling or omitting

displacement which is a greater risk with a smaller designation. This we believe is a risk in Peel if some streets are removed. **This statement is somewhat of a contradiction – some streets in Peel are already excluded (correctly in our view)**

- 2.23 The Council is not naïve to believe that selective licensing is a cure for problems within the private rented sector. Whilst there may be debate about the extent of the problems there is agreement problems exist and the Council believe selective licensing will raise standards and more importantly, contribute to a wider strategy for addressing low housing demand.
- 2.24 The Council notes Hyndburn Landlords observations about the Peel Ward and will review the parts of Peel included in any subsequent Proposal at the same time consider the implications including any displacement risks. **Noted. The recent subdivision of Peel into smaller bespoke areas for analysis does seem to have relevance to the issue of housing demand within certain areas and this is supported**
- 2.25 Hyndburn Landlords propose a phased introduction; however, the legislation does not appear to accommodate such an approach. The Council can advise such an approach is likely to incur higher costs to the public purse and without the economies of scale of a large area, result in higher licence fees as well as increase the risk of displacement. **Economy of scale is not criteria provided for in the act and it is unfair to penalise all for the misdemeanours of a few. There has been no discussion as to whether the larger a designation the more displacement becomes an issue, or whether the opposite is true. By having phased introductions, more detailed monitoring is possible and if positive benefits were to be subsequently supported by empirical data then this would have the support of HL**

3. Summary

- 3.1 The Council welcomes the consideration given by Hyndburn Landlords and the constructive feedback.
- 3.2 The Council also welcomes the commitment to constructive dialogue, and the Council like Hyndburn Landlords wishes to avoid litigation and hopes common ground can be found on a Proposed Scheme.
- 3.3 We reject the suggestion the Proposed Scheme is generally flawed or that we failed to present the issues in the Cabinet Paper of the 11th January 2012. The Scheme has been carefully considered with a robust evidence base and benefits from the experience of other Schemes that have been in place for a considerable period.
- 3.4 As a result of the constructive dialogue with Hyndburn Landlords and in response to their key concerns, the Council has initiated two key additional pieces of work:-
- i) An independent piece of work to identify area of low housing demand for selective licensing purposes; and
 - ii) Consultation questionnaire for local agents.

The findings from both these pieces of work will be considered as part of any subsequent Selective Licensing Proposal.

- 3.5 Despite the extensive commentary on low housing demand, Housing Landlord's conclusions on the subject do not appear to differ significantly from the Councils with the exception being parts of the Peel Ward. The Council has also carried out more work on comparable areas for considering low housing demand and this will be reflected in any subsequent Selective Licensing Proposal.

The views of HL was that some invention was always required and this has been our position since the time of the original scheme. The main issues of disagreement are:

- We would prefer a far more targeted approach with more resources concentrated on the worst areas, rather than spreading resources so thin that little is achieved
- There are substantial errors with a large number of streets in Peel incorrectly included

We consider that these differences are currently very significant.

- 3.6 We note the report authors and appreciate the time put into their response and welcome their professional input. What is not clear from the response is whether any consultation took place with the wider Hyndburn Landlord membership and therefore what mandate was obtained to submit the response on behalf of the wider membership. Whilst the governance of ourselves as a body is no business of the Council, as a committee we have a general mandate to represent landlord views. Furthermore we would advise that the paper was added to our website seeking views before it was submitted.

Hyndburn Borough Council
8th June 2012