ROTHERHAM & DISTRICT RESIDENTIAL LANDLORDS' ASSOCIATION

Meeting 7.00 p.m. Monday June 24th 2019

Selective Licensing in Rotherham - Members will be informed of the Council's decision regarding selective licensing in areas of Thurcroft and Parkgate as well as undertaking consultation on the renewal of existing licensing schemes in Dinnington, Eastwood, Ferham and Maltby.

Two papers taken to Cabinet (10th June 2019)

- Selective Licensing - Consultation on future designations
- Designation of Selective Licensing Areas – Parkgate and Thurcroft

Detailed information regarding these two agenda items [9 and 10] can be found here. Further information regarding Rotherham Council's selective licensing scheme can be found here.

Selective Licensing - Consultation on future designations

Summary

The Council designated four areas for Selective Licensing in May 2015, covering parts of Maltby, Dinnington, Eastwood and Masbrough, with the aim of delivering improved conditions within the private rented sector. These designations expire on 30th April 2020. Consequently, the Council is in a position to make a decision on whether to re-designate those areas.

The current designations have delivered significant improvements to the condition of private rented housing stock, and to the health and well-being of tenants. Additionally, the scheme has contributed to tackling anti-social behaviour, high turnover of tenancies and empty properties, through driving better landlord management practices and housing quality.

This report demonstrates the successes of the current designations and identifies areas within those designations that would benefit from a continuation of the Selective Licensing scheme, to assist in tackling the deprivation within these communities. In addition, a further area within Maltby has been identified where a designation would assist in tackling significant housing condition problems.

Recommendations

1. That approval be given to a public consultation on the proposed designation areas for Selective Licensing of private rented housing.
2. That a further report be submitted to Cabinet in January 2020 on the outcome of the public consultation to consider designating Selective Licensing areas.

Designation of Selective Licensing Areas – Parkgate and Thurcroft

Summary
Cabinet and Commissioners' Decision Making Meeting on 6th August 2018, requested a public consultation to take place regarding the potential benefits of designating areas of Thurcroft and Parkgate for Selective Licensing of private rented housing.

This report provides detail of the feedback from the consultation with the majority of respondents expressing support for a mandatory selective licensing scheme. Based on the evidence of deprivation, anti-social behaviour and environmental issues in these areas, and the responses, comments and representations received, this report seeks approval from Cabinet to designate areas of Thurcroft and Parkgate as Selective Licensing areas.

Recommendations

1. Note the strong evidence and public support for the Selective Licensing of Private Rented properties in Thurcroft and Parkgate.
2. Designate the two areas in Thurcroft and Parkgate detailed in this report as Selective Licensing Areas under Part 3 of the Housing Act 2004 through the designation orders in Appendix 5, subject to confirmation by the Secretary of State for Housing, Communities and Local Government.
3. Adopt the Selective Licensing Conditions contained in Appendix 3 in the new designation orders for all new licences granted across Rotherham.
4. Further to the adoption of the Selective Licensing conditions contained as at Appendix 3, agree the proposed licence fee structure for the Thurcroft and Parkgate areas as set out in paragraph 6.1 below, and the application of this fee structure to all new Selective licences granted in Selective Licensing areas across Rotherham.
5. Require the Assistant Director, Community Safety & Street Scene to apply to the Secretary of State for Housing, Communities and Local Government to confirm the designations.

Tenants Fees Act 2019 - The presentation will cover the key changes brought in by the Act. In particular what fees Landlord's and Estate Agents can charge to their Tenants in connection with the tenancy and the penalties which will be imposed on Landlords for failing to comply with the Act.

The Tenant Fees Act sets out the government's approach to banning letting fees paid by tenants in the private rented sector and capping tenancy deposits in England.

The aim of the Act is to reduce the costs that tenants can face at the outset, and throughout, a tenancy, and is part of a wider package of measures aimed at rebalancing the relationship between tenants and landlords to deliver a fairer, good quality and more affordable private rented sector.

Tenants will be able to see, at a glance, what a given property will cost them in the advertised rent with no hidden costs. The party that contracts the service – the landlord – will be responsible for paying for the service, which will help to ensure that the fees charged reflect the real economic value of the services provided and sharpen letting agents' incentive to compete for landlords' business.

The ban on tenant fees came into force on 1st June 2019 and is related to new tenancies created from that date.

In February the Government published guidance on the Act. There are three guides in total, one for landlords, one for tenants and one for councils. Detailed information can be found here. Notes were produced and a presentation was offered to members of the Rotherham & District Residential Landlords Association in February 2019 and a copy of the notes can be found here.

General

The Act prohibits landlords and agents from charging certain fees (referred to as 'prohibited payments') in connection with a tenancy. The purpose of the law is to crackdown on the practice of charging tenants hidden and unexpected fees and therefore to make housing more affordable for those on lower incomes.

What constitutes a prohibited payment?

Essentially, all fees in connection with a tenancy will be prohibited apart from the following:

1. Rent
2. Refundable tenancy deposit (this is capped at either five or six weeks' rent, depending on whether the annual rent is £50,000 or above).
3. Refundable holding deposit of no more than one week's rent.
4. Payments in respect of changes to the tenancy, capped at £50 or the landlord's reasonable costs if higher, e.g. if the tenant wants to keep a pet at the property or install a satellite dish.
5. Payments in respect of early termination, capped at the landlord's loss, i.e. the cost to the landlord of permitting the tenant to leave early. This will likely

be the amount of the rent between the date the tenant vacates the property and the end of the tenancy or the date the property is re-let.
6. Payments in respect of utilities, council tax, communications services and TV licence fee.
7. A default fee for late payment of rent or replacement of lost key/fob, where this is explicitly required under the tenancy agreement.

Examples of banned fees would be;

- Charging for a guarantor form
- Credit checks
- Inventories
- Cleaning services
- Referencing
- Professional cleaning
- Having the property de-flead as a condition of allowing pets in the property
- Admin charges
- Requirements to have specific insurance providers
- Gardening services

Therefore, landlords cannot charge any other fees in connection with a tenancy. Broadly, a payment “in connection with a tenancy” means a payment:

1. in consideration of the grant, renewal, variation, assignment or termination of a tenancy.
2. on entry into a tenancy agreement.
3. pursuant to a provision of a tenancy agreement.
4. because of an act or default related to the tenancy.
5. in consideration of providing a reference for a former tenant.

Where a breach has occurred and a banned fee has been taken, tenants will be able to get any money wrongly paid back, via the county court. For a first offence, a fine of up to £5,000 can be charged. However subsequent breaches could see landlords and agents faced with a fine of up to £30,000.

Homes (Fitness for Human Habitation) Act 2018 - The presentation will cover when this Act came into force, the new implied obligation for Landlords to make sure that the properties that they let are fit for human habitation, the exceptions to the Act and penalties that Landlords may face if they breach this.

This is an Act to amend the Landlord and Tenant Act 1985[1] requiring that residential rented accommodation is provided and maintained in a state of fitness for human habitation; and for connected purposes.

The Act came into force on 20th March 2019. From this date any new tenancies that are created will be subject to the Act.

Detailed information to help tenants to make use of their rights under the Act and for landlords and local authorities, to enable them to be aware of it, can be found here.

Background

In **2015**, Labour MP for Westminster North, Karen Buck put forward her own legislation called the Homes (Fitness for Human Habitation) Bill.

The bill was designed to:

- Make sure that all tenancies on terms shorter than seven years are fit for human habitation. That includes council houses and privately rented homes.
- Put the obligation on landlords to make sure that the homes they rent are fit for human habitation. That includes homes where the landlord is the local authority.
- Give tenants power to take their landlord to court if there are major safety failings in the home. Tenants can already take their landlord to court if there is disrepair to the property. This would expand that power to cover health and safety concerns.

The Bill was rejected in **2016** with the government describing them as “unnecessary red tape and expensive bureaucracy” when they were proposed in the House of Lords. The Bill was reintroduced in **2017**.

On **14th January 2018**, the Housing Secretary, confirmed Government support for the Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill 2017-19.

[1] The term "fitness for human habitation" is defined in the Landlord and Tenant Act 1985; however a Briefing Paper on the Bill, published on 14 January 2018, states that:
...there is no duty on landlords to ensure that a rented dwelling is let or maintained in a condition that is fit for human habitation. Commentators make the point that there are a number of issues which tenants struggle to address by using the existing remedies. For example, a landlord’s repairing duty under section 11 of the Landlord and Tenant Act 1985 “does not cover things like fire safety, or inadequate heating, or poor ventilation causing condensation and mould growth.

The Bill did seek to amend relevant sections of the Landlord and Tenant Act 1985 by extending its obligations to cover almost all landlords and to modernise the fitness for habitation test. The Bill proposed to allow tenants to take their landlords to court if they didn't ensure their property was fit for human habitation at the beginning of the tenancy and throughout. Currently, The Housing, Health and Safety Rating System (HHSRS) introduced in the Housing Act 2004 provides for local authorities to inspect and identify hazards in residential dwellings and take enforcement action. The Bill would allow tenants to take direct legal action against their landlord.

The Homes (Fitness for Human Habitation) Bill passed its third reading on **26th October 2018** with unanimous support from MPs.

It allows tenants to take legal action to force their landlords to act if homes are in a condition unfit for habitation. Currently they are required to rely on the local authority to take action on their behalf.

The bill, as drafted, would apply across social and private rented housing with a specific 'Grenfell clause' covering the common parts of blocks of flats.

<u>The Act</u>
The Homes (Fitness for Human Habitation) Act 2018 became law when it gained royal assent on **20th December 2018**.

As was previously identified, the Act requires that all rented homes are suitable for human habitation, both at the point that they are let and throughout the subsequent tenancy. In general it is the landlord's responsibility to ensure this, although there are a small number of specific exceptions to this.

The most important exceptions are:

- the landlord isn't liable until they have been given notice of the problem
- the landlord is not responsible for problems that are caused by the tenant failing to act in a 'tenant-like manner'.

The Act implies a contractual term into each tenancy agreement. It works in a similar way to existing provisions from the Landlord and Tenant Act 1985 which create a legal duty for landlords to carry out repairs, and it is intended to complement that requirement. It will not be possible for a landlord to write a term into their tenancy agreements to override it.

Cases are likely to be heard by a county court. If the court agrees that a property is unfit for human habitation, they can issue an injunction requiring the landlord to carry out repairs or improvements to the property and/or to pay compensation to the tenant.

Landlords may wish to review and revise their repairs and maintenance policies and procedures, for example think about how you respond to complaints about condensation mould growth. If you have older properties that are susceptible to condensation, or with other design defects, you may wish to consider restructuring your long-term maintenance programmes in order to bring forward high risk properties and avoid more costly class actions.