

The Legal Department

Great Yarmouth District Council

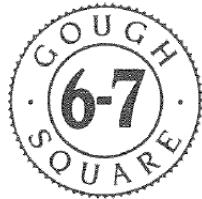
Town Hall

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Great Yarmouth

NR30 2QF

11 February 2026



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Dear Sir/Madam

**Letter Before Claim – R (Eastern Landlords Association Limited) v Great Yarmouth District Council**

I am writing, under Public Access rules of the Bar, on behalf of Eastern Landlord Association (“ELA”) in respect of a proposed claim for judicial review challenging the designation made by the Great Yarmouth District Council (“the Council”) of a selective licensing scheme in Nelson Ward, Central and Northgate Ward, Southdown and Cobholm Ward and eight streets in Yarmouth North Ward (“the Wards”) dated 10 December 2025 (“the Scheme”).

Please regard this letter as a letter before claim in accordance with the Pre-Action Protocol for Judicial Review.

**Preliminaries**

**To:** Great Yarmouth District Council, Town Hall, Hall Plain, Great Yarmouth NR30 2QF

**The Claimant:** Eastern Landlords Association Limited, 1 Spowston Road, Norwich NR3 4QL

**Defendant's reference details:** We do not have the Council's reference details apart from URN: 25-120.

**Details of the Claimant's legal adviser:** Are as set out in the heading to this letter.

## **The details of the matter being challenged**

1. On 2 December 2025, the Council's Cabinet approved the designation of the Scheme ("the Designation"), which was announced on 10 December 2025.
2. The Claimant challenges the Council's decision to approve the Designation ("the Decision") for the reasons set out in this letter before claim ("the Claim").

## **The Legal Background**

3. Part 3 of the Housing Act 2004 ("the Act") is titled '*Selective licensing of other residential accommodation*'. Section 80(1) empowers a local housing authority to designate an area in its district (or the areas of its district) as subject to selective licensing.
4. Section 80 prescribes two sets of "*general conditions*" (in subsections (3) and (6) respectively), either of which the authority must consider is "*satisfied*" in relation to the area(s) in question. Section 80(7) empowers the Secretary of State to provide, by Order, additional sets of conditions. The intention is that where additional conditions are specified by Order an authority may rely upon any of these in addition to, or in substitution for, either of the two general conditions prescribed by section 80. If the authority is so satisfied, and has also engaged in prior consultation (see section 80(9)) a designation may be made by it: section 80(1).
5. In exercise of this power, the Secretary of State has made The Selective Licensing of Houses (Additional Conditions) (England) Order 2015 ("the 2015 Order"). The effect of the 2015 Order is to provide for four additional (but disjunctive) sets of conditions in Articles 4 to 7, any one of which may form the basis for a designation under section 80.
6. Article 3 provides as follows:

***"Conditions specified for the purposes of section 80(2)(b) of the 2004 Act***

*(1) The following conditions are specified as additional conditions for the purposes of section 80(2)(b) of the 2004 Act, which a local housing authority must consider are satisfied in relation to the area before making a selective licensing designation under this provision -*

*(a) that the area contains a high proportion of properties in the private rented sector, in relation to the total number of properties in the area;*

- (b) that the properties referred to in sub-paragraph (a) are occupied either under assured tenancies or licences to occupy; and
- (c) that one or more of the sets of conditions in articles 4 to 7 is satisfied.”

7. Article 4 provides:

**“Conditions in relation to housing conditions**

*The first set of conditions is -*

- (a) that having carried out a review of housing conditions under section 3(1) of the 2004 Act, the local housing authority considers it would be appropriate for a significant number of the properties referred to in article 3(1)(a) to be inspected, with a view to determining whether any category 1 or category 2 hazards exist on the premises;
- (b) that the local housing authority intends to carry out such inspections as referred to in sub-paragraph (a), with a view to carrying out any necessary enforcement action; and
- (c) 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, including any licence conditions imposed under section 90 of the 2004 Act, contribute to an improvement in general housing conditions in the area.”

8. Article 6 of the 2015 Order provides:

**“Conditions in relation to deprivation**

*(1) The third set of conditions is*

- (a) that the area is suffering from a high level of deprivation, which affects a significant number of the occupiers of properties referred to in article 3(1)(a); and
- (b) 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 a reduction in the level of deprivation in the area.

(2) In determining whether an area is suffering from a high level of deprivation, the local housing authority may have regard to the following factors in relation to the area

- (a) the employment status of adults;
- (b) the average income of households;
- (c) the health of households;
- (d) the availability and ease of access to education, training and other services for households;
- (e) housing conditions;
- (f) the physical environment; and
- (g) levels of crime."

9. In this letter I refer to the conditions in Articles 4 and 6, when read with Article 3, as the "Article 4 Conditions" and the "Article 6 Conditions" respectively.
10. I would note the following points about the Article 4 Conditions and the Article 6 Conditions. First, it follows from the express words of Article 3 that an authority "*must consider*" that each of the relevant conditions are satisfied "before making a selective licensing designation" (emphasis added) under Article 3. This means that not only must the authority be satisfied that the two conditions in Article 3(1)(a) and (b) are satisfied before making a designation, but also that each of the three conditions in Article 4(a), (b) and (c) and the two conditions in Article 6(1)(a) and (b) respectively are satisfied. This follows from the plain meaning of Article 3. It also follows from the only proper interpretation of section 80(2)(b) of the Act.
11. Second, Article 4 sets out a very specific set of conditions, of which the authority are required to have been satisfied of, before making a selective licensing designation. They include the authority having carried out a review of housing conditions pursuant to its section 3 duty, and having given specific consideration to the need for inspection of properties for housing hazards under Part 1 of the Act etc. Article 4 does not empower an authority to make a designation simply where it considers – in a general sense – that the conditions of properties are "poor". That is not its function. Although "poor property conditions" may be a useful shorthand for what Article 4 is looking at, it cannot be a substitute for considering the specific sub-conditions of which an authority must be satisfied before making a designation.
12. Third, Article 6 sets out two very specific conditions, of which the authority are required to have been satisfied, before making a selective licensing designation. They are that the area is suffering from a high level of deprivation, which affects a significant number of the occupiers of properties in the private rented sector and making a designation will, when combined with other measures taken by the authority, contribute to a reduction in the level of deprivation in the area.

13. Section 81 sets out further matters which an authority must consider when making a designation. These include the requirement, under section 81(4), that an authority may 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, and*

*(b) they consider that making the designation will significantly assist them to achieve the objective or objectives (whether or not they take any other course of action as well).”*

14. The duty imposed by section 81(4)(a) was considered in *R (Rotherham Action Group Ltd) v Rotherham MBC [2015] EWHC 1216 (Admin)*. Stewart J said, at [30]:

(1) There is a mandatory duty on an authority to consider other available courses of action that might be effective.

(2) If the authority does so consider then it may make a designation even if there are other courses of action that might be effective,

(3) In making that decision which is a discretionary one for the authority, the authority must not act perversely or irrationally. Whether a decision is perverse or irrational will depend on the circumstances of the case. Having regard to the way the statute is drafted, those circumstances are likely to include (i) that there is an identifiable advantage in a mandatory scheme over a voluntary scheme which might achieve the desired objective and (ii) in the presence of such a voluntary scheme a mandatory scheme should be a proportionate measure to achieve that objective.

15. The Secretary of State has issued non-statutory guidance entitled *Selective Licensing in the private rented sector – A Guide for local authorities* (updated 16 December 2024) (“the Guidance”). As stated in its Introduction, the purpose of the Guidance is to explain the criteria for making a selective licensing scheme and discuss the type of evidence needed to support a designation. It also explains the processes that need to be complied with before a designation can be brought into force.

16. Paragraphs 29-32 of the Guidance are concerned with “*Poor housing conditions*”, this being the ‘shorthand’ used in the Guidance for the Article 4 Conditions (see footnote 6 in paragraph 12). The guidance in these paragraphs is necessarily directed towards local authority decision-making *before* a designation is made by that authority and states:

*“Local housing authorities can address poor housing conditions through their powers in Part 1 of the Act, which are extensive. As mentioned below a local housing authority should not use its Part 3 powers (selective licensing) where it is appropriate to tackle small numbers of properties which are in disrepair directly and immediately under Part 1. There may, however, be circumstances in which a significant number of properties in the private rented sector are in poor condition and are adversely affecting the character of the area and/or the health and safety of their occupants. In that case, as part of a wider strategy to tackle housing conditions, the local housing authority may consider introducing a selective licensing scheme so that it can prioritise enforcement action under Part 1 of the Act, whilst ensuring through licence conditions under Part 3 that the properties are properly managed to prevent further deterioration.*

29. *Local housing authorities are required to consider the following factors to aid them in determining whether there are poor housing conditions in their area:*

- *Whether a high proportion are in the private rented sector (this is a statutory requirement)*
- *Whether following a review of housing conditions under section 3(1) of the Act, the authority considers a significant number of properties in the private rented sector need to be inspected in order to determine whether any of those properties contain category 1 or 2 hazards. In this context “significant” means more than a small number, although it does not have to be a majority of the private rented stock in the sector. It would not be appropriate to make a scheme if only a few individual properties need attention. It is a prerequisite to making a scheme that such a review has been carried out.*

30. *Local housing authorities may also consider carrying out an age and visual appearance check of properties in the area.*

31. *The scheme should state what action the authority intends to take under Part 1 of the Act if it identifies there are serious deficiencies with properties, including the timescale for taking the appropriate action and its enforcement plan for non-compliance with improvement notices or prohibition orders it serves.*

32 *The outcome of the designation, when combined with other measures, should be a general improvement of housing conditions in the designated area within the lifetime of the designation.*

17. Paragraphs 38 to 42 of the Guidance are concerned with “*High levels of deprivation*”, this being the ‘shorthand’ used in the Guidance for Article 6 Conditions (see footnote 8 in paragraph 12). The guidance in these paragraphs is necessarily directed towards local authority decision-making *before* a designation is made by that authority and states:

*38. A local housing authority may make a designation if the area is experiencing a high level of deprivation. It must, however, be clear that by making the scheme it will, together with other measures as (part) of a wider strategy, improve housing conditions in the private rented sector in that area.*

*39. In deciding whether to make a designation because the local authority considers the area suffers from a high level of deprivation, the local housing authority should consider the following factors when compared to other similar neighbourhoods in the local authority area or within the region:*

- \* the employment status of adults;*
- \* the average income of households;*
- \* the health of households;*
- \* the availability and ease of access to education, training and other services for households;*
- \* housing conditions;*
- \* the physical environment; and*
- \* levels of crime.*

*40. It is a matter for the local housing authority, having regard to the above factors, to determine whether the area is suffering from a high level of deprivation. Should the area meet the criteria, the local housing authority can then only make a designation if there is a high proportion of private rented housing in the area, occupied either under assured tenancies or licences.*

*41. The scheme should state what actions the local housing authority intends to take to combat housing problems associated with deprivation: including, for example, through licence conditions to ensure properties are managed properly, and can contribute to an improvement in the well-being of the occupants and wider community.*

*42. The outcome of the designation should be (together with other measures) a reduction of the problems with housing in the private rented sector contributing to the high level of deprivation.*

## **Relevant Facts**

18. The ELA is a professional members' organisation, which exists to represent landlords' views at central and local Government, aid landlords to run their businesses properly, and keep landlords up to date with appropriate information etc. Its members own and let out more than 200 properties and up to 1000 properties in the affected areas. The ELA clearly has sufficient interest and standing for maintaining the Claim.
19. On 22 January 2025, the Council carried out an Equality Impact Assessment under the Public Sector Equality Duty in section 149 of the Equality Act 2010 in relation to selective licensing. The result was positive for the protected characteristics of age, disability, pregnancy and maternity and race and for deprivation/socio economic disadvantage, which is not a protected characteristic. There was no impact on the protected characteristics of gender reassignment, marriage and civil partnership, religion or belief, sex, sexual orientation.
20. On 3 June 2025, there was a Cabinet meeting of the Council, following a selective licensing feasibility study, which approved a 11 week statutory consultation of residents and stakeholders from 16 June 2025 to 1 September 2025.
21. On 13 June 2025, Building Research Establishment ("BRE") prepared a report for the Council on integrated dwelling level housing stock and database for the Council ("the BRE Report"). BRE conducted modelling exercises on the housing stock in Great Yarmouth based on local land and property gazetteer, tenancy deposit scheme data, selective licensing and HMO data and energy performance certificate data, Experian and ordnance survey data, postcode age and gas network data. A stock modelling approach was used by BRE based on 2018/2019 English Housing Survey.
22. The headline results of the BRE Report were that there were 49,548 dwellings in Great Yarmouth, 65% owner occupied, 20% private rented and 15% social rented. 17% of the owner occupied and private rented properties (private sector) were estimated to have category 1 Housing Health and Safety Rating System ("HHSRS") hazards. 18% in the private rented sector were estimated to have category 1 HHSRS hazards. The three wards with the highest concentration of all HHSRS hazards in the private sector were Fleggburgh, Flegg and Ormesby. The three wards with the highest concentration of fuel poverty in the private sector were St Andrews, Southdown and Cobholm and Central and Northgate. The three wards with the highest concentration of excess cold were Fleggburgh, Ormesby and West Flegg. The average Simple SAP rating for all private sector dwellings in Great Yarmouth was 56 (56 for owner occupied and 57 for private rented), which was worse than England and East of England (64). The total cost

of mitigating category 1 hazards in Great Yarmouth private sector stock was estimated to be £29m (£22.5m for owner occupied and £7.3m for private rented). 10% of private sector dwellings and 8% of private rented dwellings in Great Yarmouth were estimated to have an EPC rating below E.

23. Between 16 June 2025 and 1 September 2025, the Council launched a consultation on its proposal for a selective licensing scheme in Nelson ward (47% of dwellings private rented), Southtown and Cobholm ward (38% of dwellings private rented) and Central and Northgate ward (42% of dwellings private rented) and a small part of Yarmouth North ward. The proposed fees for Part A (cost of processing the application and payable with the application) was £117 and Part B (contribution to administration and enforcement of the Scheme and payable on grant of the licence) was £667. The Scheme was stated to be self-financing, but not profit making.
24. The consultation was designed to seek views from all those that were likely to be affected by the proposed Scheme both within and outside the borough including residents, private tenants, private landlords, letting agents, managing agents, businesses and other stakeholders. Three question and answer drop-in sessions were held at the Town Hall, attracting an estimated 200 people. There were two pre-booked online Teams meetings for landlords on 8 and 28 August 2025. The tenant-focused online Teams meeting on 11 August 2025 was cancelled due to no tenants expressing an interest in attending.
25. There was an online survey form with a series of leading questions.

- Do you live or work in any of the affected wards?
- Are you aware of poor housing conditions in the named wards?
- To what extent are you aware of deprivation?
- Do you agree with the proposed licence conditions?
- Do you agree that the proposed licence fee of £784 for the 5 years is reasonable?
- Do you agree that a selective licensing scheme would contribute towards the Council's objectives of reducing poor housing conditions and deprivation?
- Do you have any concerns about the selective licensing scheme?

There was also a voice survey, which allowed respondents to record their answers to the above questions, including translations from various European languages.

26. On 28 July 2025, there was a meeting between ELA and the Council. ELA produced a 14 page response to the proposed Scheme. There was also a meeting between the National Residential Landlords Association.

27. In the consultation, 273 responses were received from individuals, of which 72% were landlords, 17% were tenants, 7% were residents, 4% were managing agents and 1% was business. The responses were to a very high extent in disagreement with the proposal (between 83% and 94%). The level of disagreement was consistent between landlords and tenants. As a result of the consultation, the Council changed the proposed licence condition that landlords inspect homes every three months to six months.

28. On 2 December 2025 at a meeting of the Council's Cabinet, the designation of the Scheme was approved. A report was prepared for that meeting. In paragraph 1.4 of that report, it was stated:

*"Although the Council has a range of existing powers to deal with all these problems, selective licensing offers the following benefits:*

- a) The requirement to have an identified person who is the most appropriate person to hold the licence makes it clear who is responsible for the property and makes any subsequent enforcement considerably more straightforward...*
- b) It allows the Council to refuse a licence if the proposed licensee or manager ... is not considered to be a 'fit and proper person', the proposed manager is not considered to have a sufficient level of competence or where the proposed management structures and funding arrangements are not considered to be suitable...*
- c) Licence conditions provide clear obligations on the licence holder in relation to the management, use and occupation of the property...*
- d) It enables the Council to take a systematic, pro-active approach to inspecting licensed properties and requiring improvements rather than having to react to an individual problem, usually following a complaint...*
- e) As with other types of licensing, a fee can be imposed to ensure that the costs of regulation are borne by the sector rather than the general Council Taxpayer. This ensures that sufficient resources are available to support a higher level of intervention."*

29. On 12 January 2026, ELA wrote to the Council about the unlawful implementation of the Scheme.

### **Grounds of Challenge**

#### **Ground 1**

30. In relation to subsection 81(4)(a) of the 2004 Act, the Council has not considered properly whether there are any other courses of action available to the Council (of whatever nature) that might provide an effective method of achieving the objective or objectives that selective licensing in the Wards would be intended to achieve.

31. In paragraph 4 on page 11 of the report to Cabinet on 2 December 2025, it is stated:

***“4. Other Options Considered”***

*4.1 Other options have been considered as an alternative to licensing including:*

- a) The use of existing and new powers*
- b) The funding of increased activity through civil penalties*
- c) Additional HMO licensing*
- d) The offer of financial assistance to landlords under the Regulatory Reform (Housing Assistance) Order 2002*
- e) Accreditation*

*4.2 It is not considered that any of these alternatives, either on their own or in combination, would sufficiently address the problems identified in the proposed area.”*

32. There is no explanation or analysis of why these other options, on their own or in combination, would not provide an effective method of achieving the objective or objectives that the Designation was intended to achieve. The Council was under an obligation to consider these options carefully and in detail, explaining its reasoning, even in summary form, as to how it has complied with the statutory requirement under section 81(4)(a) of the Act. It was a clear error of law for the Council to simply list in a generic way other options alternative to selective licensing and not to analyse and explain why the other options did not provide an effective method of achieving the objective or objectives that the Designation was intended to achieve

**Ground 2**

33. In paragraph 5 on page 12 of the report to the Cabinet on 2 December 2025, the scheme objectives are set out at paragraph 5.1 and how those objectives will be achieved is set out at paragraph 5.2. The statutory issue under section 81(4)(b) of the Act is whether the Council considers that making the designation will “significantly assist them to achieve the objective or objectives”.

34. There is no analysis as to how the activities in paragraph 5.2 will significantly assist the Council in achieving its objectives in paragraph 5.1, in particular in circumstances where Nelson Ward had completed a 5 year selective licencing scheme for poor housing conditions, which had not, in the Council’s own view, improved housing conditions. In the light of this experience, the Council should have considered whether the actions in paragraph 5.2 would significantly assist the Council in achieving its objectives in paragraph 5.1 and how each action in paragraph 5.2 and the actions in paragraph 5.2 taken together would actually significantly assist the Council in achieving its objectives in paragraph 5.1. It

was a clear error of law for the Council to list the objectives in paragraph 5.1 and list the activities in paragraph 5.2 without analysing how the activities significantly assisted the Council in achieving its objectives in the light of its previous experience in Nelson Ward of the objectives not being achieved.

#### Ground 3

35. The Decision was irrational and/or perverse and/or it was Wednesbury unreasonable of the Council to proceed with the Scheme in the face of such high levels of opposition in the consultation from all consultees as shown in the graphs at paragraph 2.12 on page 6 of the report to the Cabinet on 2 December 2025.
36. At paragraph 2.2 of the report to the Cabinet on 2 December 2025, it is stated that members were required to conscientiously take into account the consultation responses before making a final decision about whether to make a selective licensing designation.
37. It appears to be the case that the Council has simply ignored the results of the consultation. A rational authority would not have proceeded with a selective licensing scheme in the face of such high levels of local opposition from all stakeholders. There is no basis set out in the report to the Cabinet on 2 December 2025 as to why selective licensing should proceed to designation in the face of such consistent and large scale opposition from all stakeholders.

#### Ground 4

38. In paragraph 3.3 on page 11 of the report to the Cabinet on 2 December 2025, it is stated that privately rented homes in the Wards contain a significantly higher proportion of category 1 hazards than the English average of 12%. In paragraph 3.4, it was stated that the three wards all fell within the 20% most deprived areas in England.
39. The Council used the modelling data to support its assertion of poor housing conditions from 2018/2019 EHS data (see footnote 2 on page 3 of the BRE report dated 13 June 2025). The English Housing Survey 2023 to 2024 (<https://www.gov.uk/government/collections/english-housing-survey-2023-to-2024-headline-findings-on-housing-quality-and-energy-efficiency>) states that there was a decrease in the prevalence of category 1 hazards in the private rented sector from 14% in 2021 to 10% in 2023 with the prevalence of Category 1 hazards remaining unchanged across all tenures between 2019 and 2021 (see the third Key Finding). This represents a 29% reduction in category 1 hazards between 2019 and 2023/2024 in the private rented sector. The information in paragraphs 3.3 of the report to the Cabinet on 2 December 2025 was based on data in the BRE report, which was out of date and unreliable and cannot support the conclusion of “*poor conditions*” in paragraph 3.6.

## Ground 5

40. There is insufficient evidence that the Wards are suffering from a high level of deprivation, which affects a significant number of the occupiers of properties in the private rented sector. The analysis of deprivation in the Wards on pages 8 and 9 of Appendix 1 to the report to the Cabinet on 2 December 2025 (such as it is) relates solely to poor or inadequate housing conditions. The concept of deprivation is much wider than housing conditions and includes employment, income, health, access to education, the physical environment and levels of crime as well as housing conditions.
41. The Council has unlawfully elided alleged poor housing conditions in the Wards with deprivation in the Wards and not assessed whether there is a high level of deprivation in the Wards affecting a significant number of properties in the private rented sector, which is the statutory test under Article 6(1)(a).

## Ground 6

42. The Council has failed to explain how the Designation will, when combined with other measures taken by the Council in the Wards, contribute to a reduction in the level of deprivation in the Wards.
43. At the bottom of page 9 of Appendix 1 to the report to the Cabinet on 2 December 2025, it is stated:

*“Deprivation is a complex matter, and selective licensing should only be considered as a contribution to tackling the problem along with work that is being carried out by (the Council) and other agencies on other factors such as education and employment opportunities. It is not proposed that it will solve deprivation in and of itself, but the council does consider that it will make a significant impact on the lives and wellbeing of private sector tenants living in the area by tackling poor housing conditions”.*
44. This statement betrays a complete lack of understanding of the statutory test in Article 6(1)(b). Reducing levels of deprivation in an area is completely different from *“making a significant impact on the live and wellbeing of private sector tenants living in the area”*. It shows the unlawful elision of alleged poor housing conditions in the Wards with deprivation in the Wards (see para 41 above).
45. There is no analysis of what the other measures taken by the Council and other persons taken with the council are that will, when combined with selective licensing, contribute to a reduction in the level of deprivation in the Wards. Other

agencies, in this context, must be acting “*together with*” the Council and not independently of the Council.

### Ground 7

46. Likewise with the statutory test in Article 4(c). There is no analysis or explanation as to how selective licensing, when combined with other measures taken in the Wards by the Council and other persons together with the Council, will contribute to an improvement in general housing conditions in the Wards.

47. It is plainly insufficient to state in paragraph 12.2 on page 17 of the report to the Cabinet on 2 December 2025:

*“If made, the designation will provide the tools and resources to enable poor housing conditions in the area to be tackled in a systematic and pro-active manner.”*

48. The statutory test is one of “*contribute to an improvement in general housing conditions in the area*”, not tackling poor housing conditions in a systematic and pro-active manner. Tackling does not equate to improvement, as was demonstrated by the previous selective licensing scheme in Nelson Ward.

### Ground 8

49. In paragraph 1.4 of the report to the Cabinet on 2 December 2025, it is stated:

*“e) As with other types of licensing, a fee can be imposed to ensure that the costs of regulation are borne by the sector rather than the general Council Taxpayer. This ensures that sufficient resources are available to support a higher level of intervention.”* (underlining added)

It is an improper use of selective licensing to use it as a means to fund enforcement activities that would otherwise have to be funded by the Council out of its general funds. This is acknowledged in paragraph 2.14 of the report to the Cabinet on 2 December 2025:

*“The Council is not allowed to make a surplus. The fee has been calculated to cover the costs of running the scheme”*

It appears to be the Council’s wish to impose selective licensing on the Wards so as to shift the “*costs of regulation*” into a scheme that is funded by landlords (and potentially their tenants because of consequential increases in rent) and away from the Council’s general funds. This is an impermissible and unlawful purpose for a selective licensing scheme.

### **The details of the action that the defendant is expected to take**

50. The Council is required to withdraw the Designation and confirm that it will not come into force on 1 April 2026, or at all.
51. If the Council is not prepared to do that, at this stage, ELA requests that the Council delay the coming into force of the Designation for a further minimum period of 6 months, whilst this claim is resolved including (if necessary) through litigation.
52. If the Council declines to do this, ELA will refer to this request at Court should any attempt be made by the Council to argue that it has incurred costs in preparing for the Designation coming into force (whether staffing, publicity, taking applications etc), which would be relevant to questions of relief or discretion. It is in the Council's hands not to incur any of these costs by agreeing to a sensible delay.

### **ADR Proposals**

53. If the Council considers that it might be useful in this case, ELA would be content to consider ADR, most likely a 'without prejudice' meeting with legal advisers in attendance to be held either in person at the Council's offices or remotely as is considered most convenient for the attendees.

### **Details of information/documentation sought**

54. We ask for a complete copy of the following, within 14 days:
  - (1) Data and full details of the discussion/analysis of the alternative options considered in the implementation of a selective licensing scheme), including specially the reasons these were dismissed as unsuitable.
  - (2) Data and full analysis of how the alternatives considered would not, in combination address the problems of poor housing conditions and deprivation
  - (3) Detailed analysis of how the scheme will assist the council to reduce deprivation and improve housing conditions
  - (4) Data and detailed analysis of the previously completed Nelson Ward selective licensing scheme including evidence (if any) of how the scheme improved housing conditions. It is stated on page 8 of the report to the Cabinet on 2 December 2025:

*"We believe that the previous selective licensing scheme did bring about significant improvements in housing conditions"*

This statement is qualified by paragraph 3.8 on page 11 of the report:

*"Evidence from the first scheme showed that, whilst there was an improvement in housing conditions, this was not maintained in many properties by the time of the second and third round of inspections."*

There must be data and analysis as a basis for these statements.

(5) Details of the other measures taken in the area by the Council and the licence conditions (still as yet unpublished) which will contribute to an improvement in general housing conditions in the area (based on current (not 2019) housing conditions in the area) (Article 4(c)).

(6) Details of the other measures taken in the area by the Council (still as yet unpublished) which will contribute to a reduction of deprivation in the area (Article 6(1)(b)).

(7). Details of the meeting/discussion and analysis regarding the objections to the Scheme and the justification for pressing forward in the face of such overwhelming objections from all stakeholders.

(8) The reasoning/basis of the decision not to request that the BRE data was updated to include the 2023/2024 housing survey data, readily available to the Council before the consultation period (see paragraph 39 above).

(9) Details of the research and review work completed by the Council to establish the level of actual category 1 hazards in the proposed areas outside of the BRE report, including inspections required under Article 4.

(10) Details of the reasoning for excluding the wards with the most deprivation, and the most category 1 hazards according to the outdated BRE data (see paragraph 22 above).

(11) Detailed analysis of the reasoning and discussions and communications surrounding the claimed poor housing conditions in the Wards and what the council have done to combat this in the Wards to date, and, if poor housing conditions persist, despite these available powers, the reason why these issues persist.

(12) The review completed by the Council under Article 4 of the housing conditions including the number of properties inspected to determine if those properties actually contain category 1 or 2 hazards, and the number of Category 1 and 2 hazards found in those inspected properties. It is a pre-requisite of the scheme that this review is carried out and that this review must evidence the number of hazards being more than a 'small number'

(13) A breakdown of how the licence fee of £694 (lower than the proposed fee of £784 in the consultation) is calculated.

55. This is a proportionate and fair request for disclosure and information. These documents, in so far as they exist, and the information sought should be readily at hand as they would have come into existence over the past few months, ELA has put the Council on notice of its challenge to the Scheme and the Council has anticipated a judicial review challenge to the Scheme (see paragraph 10.3 on page 15 of the report to the Cabinet on 2 December 2025). Although it

probably does not need saying, we would remind of what was said in *R v Lancashire County Council ex p Huddleston* [1986] 2 All ER 941: judicial review “is to be conducted with all the cards face upwards on the table”. The Civil Procedure Rules and the pre-action protocol process have heightened defendants’ obligations to make prompt disclosure.

**Address for reply and service of court documents**

56. The reply and documents should be sent to me by email to [jgc@goughsq.co.uk](mailto:jgc@goughsq.co.uk). I cannot accept service of court documents. Please serve any court documents on ELA at 1 Spowston Road, Norwich NR3 4QL

**Proposed Reply Date**

57. Please provide your substantive reply as well as the information/documents requested by 25 February 2026. ELA is not prepared to extend time because the Designation will be coming into force in April 2026, and a swift response is therefore called for. In any event, 14 days is manifestly reasonable in this case.

Yours faithfully



Julian Gun Cunningham

Regulated by the Bar Standards Board