

## **Houses in Multiple Occupation (HMO) Licensing Policy**

### **1. Background and legislation**

This Policy sets out the criteria Hounslow Council will apply to all licences in relation to the Mandatory and Additional HMO Licensing schemes.

The Housing Act 2004 “the Act” requires Local Housing Authorities to licence mandatory licensable HMOs and allows the licensing of other HMOs through an additional licensing scheme.

From 1st October 2018 mandatory licensing broadly speaking requires an HMO occupied by 5 or more persons in 2 or more separate households, sharing an amenity regardless of the number of storeys, to be licensed.<sup>1</sup>

From 1<sup>st</sup> October 2020 additional licensing was introduced in Hounslow which applies across the borough. This followed Cabinet approval on <sup>2</sup>17<sup>th</sup> March 2020 for the operation of a borough wide additional HMO Licensing scheme which extends the national mandatory scheme to include;

- All HMOs as defined by section 254 Housing Act 2004, which are occupied by 3 or more persons in 2 or more households sharing bathroom, toilet and or kitchen facilities, but to exclude purpose-built flats situated in a block comprising 3 or more self-contained flats: and
- All HMOs, as defined in section 257 of the Housing Act 2004, which consist of converted flats, but only where all the units are privately rented, and where the building and all the flats in the building are either in the same ownership or considered by the housing authority to be effectively in the same control.

### **2. Purpose and Scope**

The council aims to use HMO licensing to assist in the delivery of the council’s wider housing and related strategies and in particular the Corporate Plan outcome “People Live in Good Homes and Pleasant Neighbourhoods”

The Council will use discretionary powers as per the Act to guarantee just and reasonable enforcement and to ensure that all HMOs are not overcrowded and do not pose risks to the health or safety of occupiers or blight the local communities in which they are located. The Council will decide the best waste collection method for a HMO property on a case-by-case basis and this decision will be agreed at the planning application stage or HMO licence application stage. The property must have appropriate space to store the required bins and containers. A waste and recycling education pack will be provided to the landlord to explain their responsibilities and to give educational posters and leaflets for use in the property.

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<sup>1</sup> The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

<sup>2</sup> CEX 451 Proposals for a Borough-wide Additional Licensing Scheme for Houses in Multiple Occupation (HMOs)  
<https://democraticservices.hounslow.gov.uk/ieListDocuments.aspx?CId=571&MIId=11010&Ver=4>

Arrangements must be in place for dealing with general tenancy issues and anti-social behaviour at the property. Properties must also be suitable for the number of occupants and meet all the relevant health and safety regulations. The council will be working alongside and exchanging information with other enforcement and regulatory authorities to administer and enforce licensing.

### **3. Legal Requirements**

Licences must be granted if the council is satisfied that:

- The HMO is reasonably suitable for occupation by the number of persons permitted under the licence as set out in the Council's adopted HMO standards
- the proposed licence holder is a fit and proper person
- the proposed licence holder is the most appropriate person to hold the licence
- the proposed manager, if not the licence holder, is fit and proper
- the proposed management arrangements are satisfactory, including that the person involved in the management of the house is competent and
- the funding for management is suitable.

### **4. Duration of licences**

Where the Council determine that a licence should be granted, there is no prescribed duration period except insofar that the licence period should not exceed 5 years [section 68 of The Act]

If there are no concerns about a person being Fit and Proper and the Management Arrangements are satisfactory the Council will normally grant a 5-year licence from the date the application was submitted.

Where the Council determines that a licence should be granted, it may decide that a full-term licence is not appropriate. In such cases, it will normally grant a licence for a reduced term of one year or vary an existing licence to that shorter licence period.

The grant of a reduced term licence or variation to a reduced term will in all cases reflect concerns that the Council has regarding a person and/or property management arrangements to the extent that a full-term licence is not appropriate. The shorter licence period will mean that the landlord will need to submit a new licence application on expiry of the reduced term licence after one year. However, the grant of the licence will enable the HMO to be legally rented, allowing the landlord to remedy the issue that gave rise to the reduced term licence.

In the event that concerns regarding a licence holder or manager would warrant a reduced term licence or outright refusal, it would normally be possible for a full term licence to be granted if an intermediary third party manager was identified who would also act as licence holder [Where a licence was already in place, a new application would need to be made as licences are not transferrable – section 68 of the Act].

<sup>3</sup>Government Guidance encourages local authorities to ensure that planning permission has been granted before a licence is issued and wherever possible consents should be processed in parallel to resolve any issues as early as possible.

Whilst communication between the planning and housing teams is key in ensuring that this works, the Council will adopt a sensible and pragmatic approach when considering licence applications where an HMO is operating without the appropriate planning permission.

In these circumstances the Council may either limit the maximum number of households or persons in respect of an application to the number permitted by planning legislation or grant a short-term licence to enable the landlord to regularise the use of the premises.

For example, small HMOs with between three to six tenants are classified as 'C4 Houses in Multiple Occupation' and unless Article 4 Directions is in place, planning permission is not required. Where we receive applications for large HMOs of seven or more that do not have the appropriate planning permission, we may limit the maximum number to six. The Council will expect the landlord to regularise the use of the property as a condition of the licence either by obtaining the necessary consent or taking steps to reduce the numbers. If planning permission is subsequently granted for a larger number of persons, the HMO licence may be varied accordingly.

Where an Article 4 Direction is in force or where the HMO consists of self-contained flats the Council may consider the grant of a reduced term licence to enable the landlord to regularise the use of the premises during the term of that granted licence. The Council will expect this to be achieved either by obtaining the necessary consent or by taking steps to remedy the breach [e.g. by returning an unauthorised HMO to single family usage]. This will include, if necessary, the landlord being able to obtain possession of the property through the service of a s21 notice [Housing Act 1988] to bring about necessary changes in occupation or physical changes to the building.

In the event that the Council decides that the landlord has not taken all possible steps to regularise an unauthorised use, it would usually not grant a further licence on expiry of the reduced term licence, in accordance with the judgement in *LB of Waltham Forest v Khan* [2017] UKUT 153.

Where the Council has determined to refuse an application, it will consider granting up to 2 Temporary Exemption Notices [TENs] in situations where a landlord is unable to obtain possession other than by taking proceedings in the County Court.

A reduced term licence may also be appropriate in circumstances where there are Identified failings against the fit and proper person criteria or management arrangements. In determining the issue of any subsequent licence, the Council will take account of the extent to which the landlord complies with their legal obligations during this period.

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<sup>3</sup> Houses in multiple occupation and residential property licensing reform: guidance for local housing authorities 2018

## **5. Fit and proper person' Criteria [section 66 of the Act]**

### **Overview**

The Council is required to assess whether the applicant and any manager or person associated with them or formerly associated with them are fit and proper people to own or manage an HMO. In making the fit and proper person assessment, the Council will consider factors that indicate whether those responsible for operating the licence and managing the property are of sufficient integrity and good character to be involved in the management of the particular property, and as such they do not pose a risk to the welfare or safety of persons occupying the property.

The Council will assess whether a person is 'fit and proper' on a case by case basis. Each case will be considered on its own merits and regard will be had to

- Information provided/omitted from an application form and the person's conduct in relation to the application
- Historical information held by the Council or other sources in relation to the premises and or any relevant person connected with the licence application.

The Council has to be satisfied that it has sufficient information (supplied in connection with the application) to determine the application. It may require the applicant to provide further details and/or undertake their own further enquiries with other relevant Council services (Licensing, Planning, Building Control, Council Tax and Housing Benefit) and external bodies as it deems necessary, including for example the Police and Fire Service.

### **Assessment of 'associated persons'**

If there is evidence that a person associated, or formally associated, with the person proposed to be the licence holder or manager of the property, has committed any wrongdoings, that evidence may be taken into account in determining the proposed licence holder's or manager's fitness (even if that person has himself or herself an unblemished record). It would not be appropriate for a licence to be granted to someone, or for someone to be the manager of a property, if that person was merely acting as a 'front' for someone else who, if he or she were not unfit, would be entitled to be the manager or licence holder.

A refusal to grant a licence in these circumstances will normally only be made if:

- there is actual evidence of misconduct by the associated person and
- the associate's fitness is directly relevant to the applicant or proposed licence holder's fitness to manage the property or hold the licence.

### **Tests for fitness etc. and satisfactory management arrangements**

The Council will have regard to the following prescribed criteria in Section 66 of the Housing Act 2004 when deciding on a licence application

- Any previous convictions relating to offences involving violence, sexual

- offences, drugs, or fraud.
- Whether the proposed licence holder has contravened any laws relating to housing or landlord and tenant issues.
  - Whether the person has been found guilty of unlawful discrimination practices
  - Whether the person has managed HMOs otherwise than in accordance with any approved code of practice.

### **Wider considerations - assessment process**

When deciding the Council will consider, among any other relevant things, the following:

- The nature of any convictions – Convictions relating to fraud, violence, running an unlicensed HMO or serious and persistent breaches of licence conditions such as overcrowding, failing to provide gas and electrical safety certificates, failing to maintain fire safety precautions, failure to address serious ASB issues, failure to address property management issues resulting in substantial disrepair and hygiene hazards are likely to be relevant. An administrative or technical breach of a provision is unlikely to carry any significant weight in determining ‘fit and proper’ status
- The weight of convictions – multiple contraventions or convictions will normally carry more weight than isolated or one-off incidents, unless the single breaches are particularly serious

### **Other relevant Fit and Proper considerations**

This section of the policy sets out other relevant matters that the Council will have regard to and consider when assessing whether the applicant or manager is fit and proper and the duration of the licence. These factors are not intended to be exhaustive and the Council will assess whether a person is ‘fit and proper’ on a case by case basis.

Our assessment will consider the following:

#### Investigation of complaints about operating unlicensed HMOs and HMO management issues

The person’s track record and cooperation with the Council when investigating complaints will be considered a relevant factor. Instances that are likely to indicate a relevant failing may include

- Where an application was only submitted after multiple warning letters or formal enforcement
- Where a landlord tried to obstruct an investigation by preventing access or providing false information
- Where tenants’ complaints or Council intervention has resulted in harassment and or retaliatory eviction.

- Where there was little or no action taken to remedy breaches of HMO Management Regulations or Licence conditions where significant problems were identified such as overcrowding, failing to maintain fire safety precautions, failure to address serious ASB issues, failure to address property management issues resulting in substantial disrepair and hygiene hazards,
- Persistently failing to comply with the Council's waste and recycling requirements; large accumulations of waste in external areas; evidence of pest infestations.
- Failure to supply valid gas and electrical safety certificates on request will be considered a significant health and safety failing. A similar failure to maintain annual safety checks once a licence is in place may result in the revocation of that licence.

### Previous History of Enforcement

Historical information already held by the Council relating to the premises and or any relevant person connected with the licence application will be considered a relevant factor. The existence of formal action, whether that be a legal notice, work in default or prosecution, is likely to indicate a relevant failing. However, regard will be given to the nature and status of any formal actions:

The service of an Improvement Notice or Prohibition Order under part 1 of the Act or a planning enforcement notice for unlawful conversion, would normally be afforded significant weight. The service of Notices requiring information, such as those issued under section 235 Housing Act 2004 or section 16 Local Government [Miscellaneous Provisions] Act 1976 may be afforded less weight unless non-compliance led to legal proceedings and/or obstruction of an investigation.

The existence of a successful prosecution will, in all cases, be afforded significant weight. Regard will be had, however, to the nature of the offence and the time that has elapsed since the offence. Spent convictions will generally not be considered.

The existence of any work in default of the landlord, completed or otherwise, will in all cases be afforded significant weight. Any work in default carried out with the agreement of the landlord, is likely to be afforded less weight but is still likely to reflect upon their ability to manage and maintain their property.

Financial 'civil' Penalty Notices issued using powers introduced through the Housing and Planning Act 2016 or any other relevant legislation. Financial penalties imposed in respect of a relevant Housing Act offence are an alternative to criminal prosecution proceedings and should therefore be afforded a similar weight as a prosecution in determining a licence application or reviewing a licence that is already in force.

The volume of any formal actions taken is also relevant. Multiple actions relating to the referred address or to other addresses in the same ownership and/or

management, will usually carry more weight than an isolated formal notice or prosecution.

#### Any previous licensing history

Regard will be had to any previous decision to refuse a licence or to grant for a shorter-term licence. Each such case would be treated on its merits and any decision to refuse a licence or grant for a reduced term would be based upon the circumstances of the previous decisions and the time period that has elapsed since the original actions.

#### Payment of charges or fines

In the situation where charges have been levied against the landlord [for example, in respect of a notice served under Part 1 Housing Act 2004] or a fine has been imposed by the Court following conviction or through a Fixed Penalty Notice, the Council will take into account whether or not these fines/charges have been settled. Any other significant monies owed to the Council, such as Council Tax payments, will also be considered. Each such case would be treated on its merits and on the individual circumstances of the case.

At the conclusion of the assessment process, and having regard to this policy guidance, a decision will be made as to whether to grant or refuse a licence application or, where a licence is to be granted, the duration of that licence. If the assessment process has highlighted issues such as those described under the above section, the licensing officer allocated the case should discuss and agree the proposed decision with their Team Manager. Following a review of any highlighted issues relating to the proposed licence holder and any separate manager, the Council's decision will reflect one of the following:

- a) A full-term licence should be issued - The issues flagged against the address are not such as to prevent the granting of a property licence for the full term; or
- b) A reduced term licence should be issued – The Council has confirmed some significant issues in respect of the proposed licence holder and/or manager [or an associated person]. The Council does not consider that these failings are sufficient to conclude that the person fails the 'fit and proper person test' outright. In such cases, a shorter licence period of one year should be given. Sufficient detail should be provided in order that the decision notice is able to confirm the grounds relied upon for the shorter licence period granted.
- c) The licence should be refused – The Council has confirmed significant issues that mean that a relevant person cannot be regarded 'a fit and proper person'. As a result, this must result in the refusal of the licence application. Sufficient detail should be provided in order that the decision notice is able to confirm the grounds relied upon for the proposed refusal of the licence.

A similar process should be followed in respect of addresses where licences are already in place and new issues come to light or arise. The relevance and weight of these issues should be assessed, and a decision made as to whether the licence or licences should be varied or revoked, involving the Team Manager.

## 6. Satisfactory Management Arrangements

The Council may only grant a licence if satisfied, amongst other things, that “the proposed management arrangements are satisfactory”. These arrangements include (but are not limited to) consideration of whether the:

- persons proposed to be involved in the management of the premises has a sufficient level of competence to be involved
- persons proposed to be involved with the management of the premises are actually involved in the management
- persons are ‘fit and proper’ (which is discussed above) and the proposed management structures and funding arrangements are suitable.

If the Council has concerns about the competencies and structures in place to manage then conditions can be imposed on the licence to ensure that the necessary arrangements are in place. However, if such conditions will still not be possible or practical to impose then it may be necessary to refuse to grant a licence or to issue a licence for a 1 year period in order to monitor the suitability of management arrangements.

It is for a Council to determine whether a person has sufficient competence to be involved in the management of the property and the level of competence required will in some measure be determined by the complexity of the management challenges posed by the particular property.

The management structures must be such that the manager is able to comply with any licence conditions and deal with the day to day operational management issues that arise as well as being able to deal with longer term management issues. In considering whether the structures are appropriate the Council may take account of the following evidence of systems:

Effective management of:

- emergency repairs and other issues
- routine repairs and maintenance to the premises and its curtilage
- cyclical maintenance
- maintenance and upkeep of building services such as provision of gas, electric and water supplies
- maintenance of external areas within the curtilage of the property to ensure gardens, yards, outbuildings and boundary walls, railings and fences are in good repair and a clean and tidy condition free from overgrown vegetation refuse and litter
- management of tenancies or occupants
- management of the behaviour of tenants, occupants, and their visitors to the premises
- management of occupant’s waste and recycling ensuring all appropriate containers, bins and educational material are provided.
- neighbourhood issues (including disputes)
- History of engagement with the Local Authority, Police and other agencies, where Appropriate

The Council must be satisfied that the financial arrangements relating to the property are suitable. In that regard the manager must be sufficiently funded or have access to funding to carry out his obligations under the licence and his or her general management functions.

## **7. HMO Licence Conditions**

The Housing Act 2004 as amended requires certain mandatory conditions to be applied to all HMO licences (Part 4, Section 67)<sup>4</sup>. The Council also has discretion to impose other conditions as per Part 2, Section 67 of the Housing Act 2004. On the 17<sup>th</sup> March 2020 Cabinet approved discretionary conditions which will be applied to all licences in addition to the mandatory conditions.<sup>5</sup>

## **8. Overseas Landlords**

Hounslow Council will not normally issue a licence to a person who is not a resident within the jurisdiction of the UK Courts. The reason is that the licensing scheme requires a person or company who is legally accountable for the licence.

The licence puts responsibility on the licence holder for the proper management of the rented property, for preventing nuisance or antisocial behaviour by the residents and for keeping the property safe and in good order. Every licence contains legally binding conditions that govern these issues.

Therefore, the Authority will only issue a licence to a person based abroad if a signed legal undertaking is in place with a person / company based in the UK is in place for them to take responsibility for ensuring compliance to the Licence Conditions

### **Right of Appeal**

If a landlord feels that the Council has made a decision that is unfair, in the first instance we would request that they contact the Council at [housing.enforcement@hounslow.gov.uk](mailto:housing.enforcement@hounslow.gov.uk) so that we can explain the reasons for our decision and hopefully resolve the problem. If, however, the landlord still feels that the Council has acted unfairly by: 1. Refusing to grant a licence. 2. Imposing certain conditions on a licence. 3. A decision to vary a licence. 4. A decision to revoke a licence. The landlord can appeal to the First Tier Tribunal (FTT). The FTT is an expert independent tribunal that act in the same way as the County Court to confirm, vary or overturn the council's decision. For more information on the FTT, go to [www.justice.gov.uk/tribunals/residential-property](http://www.justice.gov.uk/tribunals/residential-property).

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<sup>4</sup> The Licensing of HMO (Mandatory Conditions of Licences) (England) Regulations 2018 and the Housing Act 2004.

<sup>5</sup> CEX 451 Proposals for a Borough-wide Additional Licensing Scheme for Houses in Multiple Occupation (HMOs)  
<https://democraticservices.hounslow.gov.uk/ieListDocuments.aspx?CId=571&MId=11010&Ver=4>