



NORWICH City Council

Committee Name: Cabinet
Committee Date: 06/07/2022
Report Title: HMO Licensing Policy

Portfolio: Councillor Jones, Cabinet member for safer, stronger neighbourhoods

Report from: Head of planning and regulatory services

Wards: All Wards

OPEN PUBLIC ITEM

Purpose

To consider adoption of a revised House in Multiple Occupation Licensing Policy following extensive consultation.

Recommendation:

To adopt the HMO Licensing Policy attached at Appendix 1.

Policy Framework

The Council has five corporate priorities, which are:

- People live independently and well in a diverse and safe city.
- Norwich is a sustainable and healthy city.
- Norwich has the infrastructure and housing it needs to be a successful city.
- The city has an inclusive economy in which residents have equal opportunity to flourish.
- Norwich City Council is in good shape to serve the city.

This report meets the people live independently and well in a diverse and safe city corporate priority

Background

1. A House in Multiple Occupation (HMO) is defined under sections 254 and 257 of the Housing Act 2004. An HMO can be a building or part of a building if it is:
 - a) occupied by persons who form more than one household and where those persons share (or lack) one or more basic amenity, such as a toilet, bathroom and cooking facilities
 - b) a converted building containing one or more units of accommodation that do not consist entirely of self-contained flats. (There is no requirement that the occupiers share facilities).
 - c) a converted building consisting entirely of self-contained flats, where the building work undertaken in connection with the conversion did not comply with the 1991 Building Regulations and more than one third of the flats are occupied under short tenancies.
2. The Housing Act 2004 requires mandatory licensing of properties fitting certain criteria.
3. There are approximately 1200 HMOs in Norwich which are required to be licensed under the national mandatory scheme. There is no statutory requirement to publish an HMO licensing policy although it is good practice to do so.

The Housing in Multiple Occupation Licensing Policy

4. The Council has set out a corporate aim: 'People live well and independently in a diverse and safe city'. The HMO policy will ensure that the conditions and standards of properties let out are more effectively regulated which in turn will improve the quality of accommodation within this sector. The policy also aims to improve transparency and accountability for both landlords and the Council and is a demonstration of good practice.
5. The most significant proposed change to the way in which the HMO sector is regulated in Norwich is the introduction of 5 year licences for landlords with a good record of compliance and properties in suitable condition for habitation.
6. The introduction of a 5 year licence will provide stability and certainty for those landlords who maintain and manage their properties in a suitable condition with adherence to relevant legislation. This will ultimately reduce the regulatory burden upon those within this category enabling resources to be diverted to those landlords who are less than adequate and supporting staff to focus on the properties of most concern.

Consultation Process

7. The Council originally decided to produce a new HMO licensing policy in December 2020. It has been through extensive consultation. The Licensing Committee considered a 1st draft of the policy in July 2021 and supported consultation on it. This consultation took place between August and November 2021, with 50 responses received

8. Following consideration of these responses a number of changes were made to the policy. However, a number of further modifications were also proposed that were not included in the previous consultation. These included specifying criteria to determine the length for which a licence would be issued and introducing an inspection before a licence may be issued. It was considered that these changes necessitated further consultation.
9. This consultation took place between 28 February and 28 March 2022. No new representations were received from the public and stakeholders during this period.
10. The Licencing Committee met virtually on an informal basis on 16 June to consider the policy. They requested some minor clarifications to the document that have been incorporated into the policy which is attached as appendix 1, and they indicated that they were content for the policy to be recommended to Cabinet for adoption.

Summary

11. The policy is attached at Appendix A for committee agreement. Assuming it is approved it will come into force on 1 September 2022.
12. The policy seeks to re-focus the Council's activities regarding HMOs on improving and driving up housing standards, whilst also reducing administrative tasks.
13. Following formal adoption, the policy will remain in force for a 5-year period after which it should be reviewed and formally adopted for a further five-year period, and so on. However, the Council will reserve the right to review the policy sooner should it be required, or make such revisions to their policy, at such times as considered appropriate, following a further consultation exercise.

Implications

Financial and Resources

14. Any decision to reduce or increase resources or alternatively increase income must be made within the context of the council's stated priorities, as set out in its Corporate Plan and Budget.
15. The Housing Act 2004 allows the local authority to charge fees related to the costs of administering licences; and that the authority should have regards to the cost of licensing in the setting of fees. This is further reinforced by caselaw which has established that in undertaking licensing functions, councils may only legitimately levy the administrative costs of processing applications and the costs of monitoring costs with licensing terms. Further information on the setting of fees is included in Section 6 of the HMO policy on page 6.
16. Any extra resource required to administer the policy if implemented, would be funded by a review of the licence fees to ensure the continued cost neutrality. The current level of fee income for HMO licensing is £0.150m; with the additional costs of the new post together with a share of management and

overhead costs being offset by the scale fee charges set out in the policy which is estimated to increase the overall income budget by around £0.05m.

17. A revision to the fees charged for HMO licences has already been established by officers to align to the requirement to maintain cost neutrality. This will come into force on 1 September alongside the new policy. Fees will be set at a level where it is anticipated the cost of administering the new policy will be fully covered. This includes making provision for a new dedicated HMO Inspections officer on the establishment at an estimated full year cost of c£35,000 (subject to recruitment), enabling the inspection of premises to be undertaken before licences are issued.

Legal

18. The requirement to licence HMO's is established by the Housing Act 2004 (as amended). S.55(5) of the Act requires authorities to make arrangements to ensure that HMO licensing is effectively implemented in its area. Whilst there is no formal requirement to produce a HMO licensing policy, the policy framework supports the Council in ensuring licensing is conducted in an effective and consistent manner, and thus complying with the duty set out above under s.55.
19. The HMO licensing policy has been produced with reference to the requirements of the 2004 Act.

Statutory Considerations

Consideration:	Details of any implications and proposed measures to address:
Equality and Diversity	<p>An equality and diversity impact assessment of the policy has been carried out.</p> <p>There were no matters raised through the EQIA for consideration at this stage.</p>
Health, Social and Economic Impact	The statutory requirement to licence certain HMO's is intended to ensure that certain housing standards are met in the private rented sector, particularly in relation to health, welfare and wellbeing of the occupants. Implementation of a policy on administration and inspection of licensed properties will underpin this requirement and ensure standards are maintained.
Crime and Disorder	Implementation of a policy in relation to HMO administration and inspection of licensed properties is not considered to have any implications for crime and disorder, but this will be reviewed more fully following the proposed consultation with stakeholders, including the Police.
Children and Adults Safeguarding	The statutory requirement to licence certain HMO's is intended to ensure that housing

	standards are met in the private rented sector, particularly in relation to health, welfare and wellbeing of the occupants, including adults and children. Implementation of a policy on administration and inspection of licensed properties will underpin this requirement and ensure standards are maintained.
Environmental Impact	Implementation of a policy in relation to HMO administration and inspection of licensed properties is not considered to have any implications regarding environmental impact, but this will be reviewed more fully following the proposed consultation with stakeholders.

Risk Management

Risk	Consequence	Controls Required
If a policy is not implemented the Licensing Authority is not able to set out its approach to fulfilment of its statutory licensing function	Inconsistency in approach to administering the licensing regime, confusion with stakeholders with regard to their expectations, leading to dispute from applicants and costly tribunal appeals.	Agree and implement policy

Other Options Considered

20. As previously outlined in the report the policy broadly reflects the current practices, with one exception - a move from annual licensing to up to 5-year licensing. Shorter term licensing has been considered and is currently being used. However, this creates an administration burden and diverts fee income from inspections of the properties to support the administration function, making it difficult to ensure licensing/housing standards are being maintained or improved. If short term licensing were to be maintained, licensing fees would need to be reviewed and likely increased, potentially making licensing prohibitively expensive, which would either drive up rents for the tenants or encourage landlords to evade licensing, resulting in more enforcement work.

Reasons for the decision/recommendation

Following extensive consultation and engagement it is recommended that cabinet formally adopt the policy which will take effect from 1st September 2022.

Background papers:

Office of the Deputy Prime Minister HHSRS operating guidance:-
[80858-ODPM-Housing-PFI-Cover \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/80858-ODPM-Housing-PFI-Cover)

Appendices:

Appendix 1 – HMO Policy DRAFT

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Adopted July 2022

HMO Licensing Policy



NORWICH
City Council

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1. Introduction

1.1. Under Part 2 of the Housing Act 2004 there are two types of licensing schemes that relate to Houses in Multiple Occupation (HMOs), the national Mandatory HMO Licensing scheme and Additional Licensing of HMOs.

1.2. Under the national Mandatory HMO Licensing scheme all properties that meet the following criteria will require a mandatory HMO licence, which is defined in section 4 Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018:

- Is occupied by five or more persons
- Is occupied by persons living in two or more separate households; and meets:
 - the standard test under section 254(2) of the Act (*Housing Act 2004*):-
 - a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
 - b) the living accommodation is occupied by persons who do not form a single household (see section 258);
 - c) the living accommodation is occupied by those persons as their only or main residence, or they are to be treated as so occupying it (see section 259);
 - d) their occupation of the living accommodation constitutes the only use of that accommodation;
 - e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
 - f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.
 - the self-contained flat test under section 254(3) of the Act (*Housing Act 2004*) but is not a purpose-built flat situated in a block comprising three or more self-contained flats:-
 - a) it consists of a self-contained flat; and
 - b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

or

- the converted building test under section 254(4) of the Act (*Housing Act 2004*).
 - a) it is a converted building;
 - b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

- c) the living accommodation is occupied by persons who do not form a single household (see section 258);
- d) the living accommodation is occupied by those persons as their only or main residence, or they are to be treated as so occupying it (see section 259);
- e) their occupation of the living accommodation constitutes the only use of that accommodation; and
- f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

1.3. Additional licensing of HMOs covers those HMOs that are not licensed under the mandatory scheme but where the council has used its power to designate areas of the city subject to additional licensing of HMOs.

1.4. This document sets out the structure of the scheme and the fees and charges and criteria the council will apply to all licences in relation to the Mandatory HMO Licensing schemes.

2. HMO licensing in Norwich

2.1. The council has a responsibility under Section 55 of the Housing Act 2004 to secure the licensing of all mandatory HMOs and has been implementing its scheme in response to this duty since 2006.

2.2. The council does not currently undertake any additional licensing but reserves the right to consider implementation of a scheme of additional licensing at any point in the future. This would be subject to further consultation.

2.3. The HMO Licensing scheme in operation in Norwich therefore covers only mandatory licensable HMOs and all licence applications are to be accompanied with a fee determined by the council. Once a licence is issued it is not transferable to another person or property.

2.4. The council has exercised its powers to charge under Section 63(3) and (7) of the Housing Act 2004 and does so taking into account the Provision of Services Regulations 2009, which themselves implement the EU Services Directive.

2.5. Under Part 2 of the Housing Act 2004, an HMO is required to be licensed unless:

- a temporary exemption notice is in force in relation to it under section 62, or
- an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

2.6. The council must take all reasonable steps to secure that applications for licences are made to them in respect of HMOs in their area which are required to be licensed under this Part but are not.

3. Legislation

3.1. Below is the key legislation covering housing related licensing:

- Housing Act 2004
 - Main provision for licencing - set out under Parts 2 & 3.
 - Provisions to allow Local Housing Authorities (LHA) to charge for administering licensing under Parts 2 & 3.
 - Definition of a House in Multiple Occupation (HMO)
- Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018
 - Amendment of the definition of an HMO required to be licenced (effective as of 1st October 2018).
- Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006
- Licensing of Housing in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018
- Management of Houses of Multiple Occupation (England) Regulations 2006
- Housing, Health & Safety Rating System Enforcement (England) Regulations 2005
- Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012

4. Consultation and adoption of policy

4.1. The Housing Act 2004 and other associated HMO licensing regulations do not set out a formal process or list of statutory consultees for adoption of a policy.

4.2. Before adopting a policy, the council consulted with the following:

- Chief officer of police
- Existing licence holders
- Trade organisations
- One or more persons who appear to the authority to represent the interests of persons operating Houses in Multiple Occupation, such as local estate agents, managing agents, UEA Homerun.
- One or more persons who appear to the authority to represent the interests of persons likely to be affected by the exercise of the authority's licensing functions under the Housing Act 2004, such as the National Residential Landlords Association

4.3. Prior to formal adoption of the policy consultation responses have been reviewed by the licensing committee.

4.4. This policy was formally adopted at a meeting of the cabinet on 6 July 2022.

4.5. The policy will be reviewed at least every 5 years, or sooner if deemed necessary by the council as local housing authority.

5. Interaction with other regulation, policies and strategies

- 5.1. The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for the council to act in a way that is incompatible with a convention right. Particular regard will be given to the following relevant provisions of the European Convention on Human Rights in respect of its licensing responsibilities:
- Article 6 that in determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law
 - Article 8 that everyone has the right to respect for their home and private life, and
 - Article 1 of the First Protocol that every person is entitled to the peaceful enjoyment of their possessions, including for example the possession of a licence.
- 5.2. In addition to the requirements of the council to promote the licensing objectives, there is a statutory duty under the Equality Act 2010 to:
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between different communities.
 - Eliminate discrimination, harassment and victimisation, which are all prohibited conduct in the Equality Act 2010.
- 5.3. So far as possible, the council will avoid duplication with other regulatory regimes, and will not use its powers under the Housing Act 2004 and associated licensing regulations to achieve outcomes that can be achieved by other legislation and other enforcement agencies.
- 5.4. In particular, the council's licensing functions will be discharged separately from its functions as the local planning authority.
- 5.5. The council's planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency. Applications for HMO licences should normally be from operators with relevant consents for the property concerned. However, applications for licences may be made before any relevant planning permission has been sought or granted by the planning authority. It should be noted that licensing decisions are not bound by decisions made by a planning committee, and vice versa.
- 5.6. The granting of any variation of a licence which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission or building control where appropriate. Premises operating in breach of their planning permission may be open to enforcement action under planning law.
- 5.7. If other statutory requirements apply to the operation of a licenced property, the licence holder is responsible for complying with these. It is not a requirement of any licensing decision to address other regulatory matters, it is necessary for the licensee to conform with all relevant legislation.

6. Licence fees

- 6.1. Section 63 of the Housing Act 2004 permits the council to require any application for a licence under Part 2 to be accompanied by a licence fee and that this fee may properly cover all costs incurred by the council in carrying out its functions.
- 6.2. In developing its fee structure, the council has had regard to the European Court of Justice ruling in *R (Hemming) V Westminster City Council* (Case C-316/15) and the High Court decision in *R (Gaskin) v LB Richmond Upon Thames* (2018) EWHC 1996 (Admin) which held that the EU's Provision of Services Directive, which is enshrined in UK law as the Provision of Services Regulations 2009 should apply to property licensing fees and the processes involved in implementing and delivering such schemes.
- 6.3. The Services Directive in particular should be interpreted as precluding charging in advance for costs other than those directly related to the authorisation process of the scheme. In other words, the council is not permitted to demand fees in advance for anything other than the costs of administering the application for a licence even if it makes it clear that unsuccessful applicants are provided with a refund of the remaining part of the fee. The council may legitimately recover its wider costs, over and above those relating to the administration of applications, but this should be at the point at which the council has determined that a licence is to be granted.
- 6.4. The judgements in *Hemming* and *Gaskin*, which require the overall licence fee to be paid in two stages, has therefore had the effect that the fee for a licence under Part 2 of the 2004 Act must be levied in two separate parts.
- 6.5. The council is not allowed to demand fees in the Stage 1 process for anything other than the costs of administering and processing the application for a licence. Furthermore, this element of the fee is non-refundable should the application be unsuccessful. See also para. 6.12 below.
- 6.6. In the case of Stage 2 payments these can only be requested if the initial application is successful and will be charged to cover the costs of running and enforcing the scheme.
- 6.7. As such the council, when setting its fees, has adopted the two-stage approach. Fees and charges will be reviewed and set on an annual basis by the head of planning and regulatory services and will be published on the council's website.
- 6.8. Under Section 67 (5) of the Housing Act 2004 the council has the power to impose a restriction/ obligation on a particular person. In accordance with this power the council will require the licence holder to pay the Stage 2 fee in advance of the draft licence being issued, this will be required as part of the application process.

6.9. In addition, the council will attach a condition to all HMO licences requiring this Stage 2 payment to be made. This approach is consistent with that set out in the Hemming case.

6.10. Failure to make the Stage 2 payment will result in the council taking action through, either the revocation or refusal of the licence or by enforcing the non-compliance of the licence condition associated with the making of the Stage 2 payment.

6.11. The licence fees include the average costs of administering applications and inspection of the HMO before a licence is issued and/or during the period of the licence, where applicable. If hazards, management failures or failures to comply with any licence conditions are identified during the licensing inspection the cost of any follow-up work by the council will not be included in the licence fee. This is because there are other ways for us to recover our costs directly from the landlord of a non-compliant HMO, without passing that cost to all licence holders.

Refunds

6.12. The fees charged at stage 1 and stage 2 are designed to reflect the council's costs in administering the licence application process, including property inspections. Under some circumstances a refund of monies amounting to the costs not yet incurred by the council may be appropriate. Further details will be included in the council's published fees and charges for HMO licensing.

7. Making an application and communication

7.1. The primary communication medium for the application will be assumed to be electronic unless alternative prior arrangements are made.

7.2. Application forms will be available and completed via the council's website, and applicants must provide an email address and telephone number to facilitate ongoing communication. All necessary documentation needed to support the application should be submitted in an electronic format, and licences/draft licences will be also sent electronically.

7.3. Printed copies of licences etc. can be provided upon specific request.

8. Licence criteria

8.1. A valid application will include:

- An application form and all supporting information submitted including details of the following:
 - The proposed licence holder, as per the requirements set out in paragraph 11.6

- The proposed manager, as per the requirements set out in paragraph 11.6
 - Bank or mortgage company if there is an existing mortgage on the property
 - Any additional owners or any other interested parties' details
 - A layout plan of each floor of the property¹
 - The property itself including:
 - the extent of any existing fire precautions
 - the types of soft furnishings
 - the number and type of each room (eg, how many bedrooms)
 - the size of habitable rooms
 - the number of occupants
 - The number and type of amenities (eg, baths, cookers etc)
 - The energy rating of the house, where applicable, (from the energy performance certificate) and type of heating
 - Servicing information and safety certification for gas appliances, the electrical installation and the fire detection system
 - Stage 1 payment
 - Signed declaration returned
- A layout plan of each floor of the property¹

Once a valid application is received the council will assess each application on its own merits against relevant criteria. The council has discretion to offer a one, three or five year licence.

¹ This will only apply to certain properties where specifically requested by the Licensing Team. Plans should be of a scale 1:100, showing the locations of all doors, windows, fire doors, fire and emergency related features, fixed furniture and the relevant amenities as set out in the Private Sector Housing Amenity Standards document at Appendix A

9. Processing the application

9.1. Under the Housing Act 2004 the council can either grant or refuse a licence. In determining whether to grant or refuse a licence the council must satisfy itself of the following:

- That the property is reasonably suitable for occupation by a maximum number of people; and
- That the proposed licence holder and manager of the HMO is a fit and proper person and the most appropriate person to hold the licence; and
- That there are satisfactory management arrangements in place or that such arrangements can be put in place by the imposition of conditions in the licence.
- That no banning order under section 16 of the Housing and Planning Act 2016 is in force against a person who— (i) owns an estate or interest in the house or part of it, and (ii) is a lessor or licensor of the house or part of it.

Tests for fitness etc. and satisfactory management arrangements

9.2. The council must be satisfied that “the proposed management arrangements are satisfactory” before granting an HMO licence. Those arrangements include (but are not limited to) consideration of whether:

- the persons¹ proposed to be involved in the management of the premises have a sufficient level of competence to be involved
- the persons proposed to be involved with the management of the premises are actually involved in the management
- those persons are 'fit and proper', and
- the proposed management structures and funding arrangements are suitable.

9.3. If there are minor concerns about how the property is proposed to be managed as an HMO, for example, provision of bins, procedures for ASB etc, and these can be overcome by the imposition of appropriate conditions, then such conditions will be imposed 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.

9.4. It is for a council to determine whether a person has sufficient competence to be involved in the management of HMOs and, of course, the level of competence required will in some measure be determined by the complexity of the management challenges posed. The council will therefore be looking at the applicant's experience and track record of managing HMOs and, in particular where they are the existing manager, the premises to which the application relates, and whether they belong to a recognised trade association or are a member of an accreditation scheme.

9.5. The management structures must be such that the manager is able to comply with any licence conditions and deal with the day-to-day operation 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 as to whether the systems in place are sufficient to enable the manager to comply with any condition of a licence or if such systems can be put in place through a condition of a licence to ensure compliance
- evidence of the systems for dealing with:
 - emergency repairs and other issues
 - routine repairs and maintenance to the premises and its curtilage
 - cyclical maintenance
 - management and the provision of services (if any) to the building and its curtilage
 - management of tenancies or occupants
 - management of the behaviour of tenants, occupant's and their visitors to the premises
 - neighbourhood issues (including disputes)
- evidence of structures for engagement with the local authority, police, and other agencies, where appropriate

¹ Persons – may include: owner, landlord, letting agent or other person

- 9.6. The manager or a competent representative will need to operate within a reasonable proximity to the HMO, so that they can attend to matters promptly and retain an overview on the condition of the premises and the management of the tenancies. Consideration of reasonable proximity will be taken on the merits of each individual case, however within the county boundary may be a reasonable guide. A competent representative may be an individual who is not necessarily part of a letting or estate agency but should be able to deal with or have knowledge of the matters set out in paragraph 9.5 in representing the property manager.
- 9.7. The council must also be satisfied that the financial arrangements relating to the HMO are suitable. In that regard the manager must be sufficiently funded or have access to funding to carry out their obligations under the licence and their general management functions.
- 9.8. The council can vary or revoke a licence at any time during the licence period if there is sufficient evidence to support these decisions. Unannounced visits of licensed properties may therefore be undertaken during the licence period to check for compliance with the licensing and management regimes which apply. This is consistent with the powers provided under Section 239 of the Housing Act 2004.
- 9.9. Breach of any such legislation is a strict offence for which further action will be taken. The Housing, Health and Safety Rating System (HHSRS) also applies to rented properties and (if appropriate) remedial works can be enforced via The Housing Act 2004, which will be separate to the powers provided under the licensing scheme.

The Fit and Proper Test

- 9.10. In deciding to grant a licence the council must be satisfied that the proposed licence holder “is a fit and proper person to be the licence holder ...” and that “the proposed manager of the house is a fit and proper person to be the manager of the house ...”
- 9.11. This requirement is to ensure that those responsible for operating the licence and managing the HMO are of sufficient integrity and good character to be involved in the management of the particular residential premises to which the application relates and as such they do not pose a risk to the health, safety or welfare of persons occupying and visiting the HMO.
- 9.12. When considering whether a person is ‘fit and proper’ the council will have regard to any wrong doings of the relevant person concerned. This is evidence that the person has:
- committed any offence involving fraud or other dishonesty, violence or drugs and sexual offences
 - practised unlawful discrimination on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and motherhood, race (which can be in reference to race, colour, nationality or ethnic or national

origins) religion and belief, sex or sexual orientation, in connection with the carrying out of business

- contravened any provision of housing or landlord and tenant law; or
- acted otherwise than in accordance with an approved code of practice.

9.13. The above list is not exhaustive, and the council can and will consider whether a relevant person has committed other relevant wrong doings, for example, discrimination under Regulation 5 of the Equality Act (Sexual Orientation) Regulations 2007. A relevant person will not be deemed unfit, simply because of poor management, although this is highly relevant to determining any question of suitability or competence.

9.14. The council do not adopt a blanket policy with its consideration of factors under a fit and proper person test. Each case will be considered on its own merits and regard will be had to information provided / omitted from an application form; historical information already held by the council relating to the premises and / or any relevant person connected with the licence application.

9.15. In an application for a licence the applicant must provide details of the following in relation to themselves and the proposed manager (if the applicant is not to be the licence holder):-

- unspent convictions
- any findings of a court/tribunal that the person has practised unlawful discrimination
- any judgement entered against that person in relation to a contravention of housing or landlord and tenant law (and, in so far it relates to the housing or landlord and tenant law, any contravention of any enactment relating to public or environmental health)
- any control order made in respect of any HMO under their management or ownership (and in respect of any former HMO they owned or managed);
- any enforcement action in respect of any house or HMO under their management or ownership (and any former HMO or house they owned or managed) under the housing health and safety rating system in Part 1 of the Housing Act 2004 so far as that enforcement action related to a category one hazard
- details of any refusal to grant a licence, or details of the revocation of a licence granted for non-compliance of a condition or conditions in respect of any house or HMO under their management or ownership (and in relation to any former HMO or house they owned or managed) and
- details of any interim or final management orders made by an LHA in respect of any house or HMO under their management (and in respect of any former HMO or house they owned or managed).

9.16. An applicant for a licence must disclose any wrong doings which relate to themselves, the proposed manager, and any other relevant person, if any. The council should therefore have sufficient information to decide a person's fitness based on the application.

- 9.17. If the council is not satisfied that it has sufficient information (being that supplied in connection with the application) to make a determination, it may require the applicant to provide further details and / or undertake their own further enquiries with other relevant council departments and external bodies as it deems necessary, including for example a Standard Disclosure and Barring Service checks (DBS check), provided at the applicant's expense.
- 9.18. The completion and signing of the licence application form will be taken as an agreement to any such action and the sharing of information between other local authorities for all relevant persons associated with the property and application.
- 9.19. Checks may also be made internally with other council departments such as licensing, Trading Standards, planning, building control, council tax and housing benefit.
- 9.20. The council are also able to request information on criminal convictions, and although this is not undertaken as a matter of routine a DBS check will be requested where there is sufficient evidence to suggest that this is necessary.
- 9.21. Such reasons for requiring a DBS check may include that:
- The council have evidence of a history of complaints or problems with the landlord (which in themselves might not amount to 'evidence' of unfitness to meet the test), but further investigation may be required
 - the applicant has been evasive or untruthful in their application for a licence
 - the applicant, or proposed manager, is unknown to the council and has not demonstrated any history or competence of managing HMOs or other private rented properties
 - The council has reasonable grounds to suspect that the applicant, or the proposed manager, has committed an offence which is relevant to the determination of any question of their fitness; or
 - The premises provide accommodation mainly to vulnerable persons. In deciding whether a misdemeanour (including a criminal offence) is relevant to the determination of a person's fitness a council may wish to consider the following factors:
 - the relevance of the misdemeanour(s) in relation to the person's character and integrity to manage residential premises and in particular the type of premises to which the licence relates
 - the seriousness of the misdemeanour(s) in terms of impact, or potential impact, upon the residents and the wider community, including if more than one misdemeanour has been carried out the cumulative impact
 - the length of time since any misdemeanour; and
 - any mitigating circumstances.

Consideration of ‘persons associated or formerly associated’ with the proposed licence holder or manager

- 9.22. If there is evidence that a person associated, or formally associated, with the person proposed to be the licence holder or manager of the HMO, 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 themselves an unblemished record).
- 9.23. The purpose of this requirement is to ensure that only fit and proper persons hold licences or are in any way involved in the management of licensed HMOs. 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 they were not fit, would not be entitled to be the manager or licence holder.
- 9.24. An example might be that of a husband and wife, where the husband is the landlord (or indeed both partners are joint landlords), but only the wife has applied for the licence. If there is evidence that the husband has committed wrongdoings and those wrongdoings are relevant to the wife’s management of the property or licence, then the council may refuse to grant a licence.
- 9.25. Likewise, if a landlord with an unsatisfactory record nominated a “manager” who had a clean record but had acted for them whilst the wrongdoings were committed, the council may consider the managing agent by association to be unfit too.

10. Amenity standards and licence conditions

- 10.1. All licensed Houses in Multiple Occupation need to be supplied with amenities such as heating, insulation, kitchen facilities, washing facilities and toilets. The number and type of amenities depend on the type and size of the house.
- 10.2. In considering an application for a licence the council must be satisfied that the property is reasonably suitable for occupation by the number proposing to live there. Some standards are prescribed in the Licensing and Management of Houses in Multiple Occupation (Miscellaneous Provisions) (England) Regulations 2006(SI2006/373).
- 10.3. Minimum room sizes are also set out in The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018.
- 10.4. The council also has power to specify other standards, and these are laid out in the Private Sector Housing Amenity Standards document attached at Appendix A.

- 10.5. This document outlines those standards which should be interpreted as guidance to landlords as to what the local authority is likely to consider reasonable taking account of property type and layout. It should also be noted that a Local Authority may consider, in certain justified circumstances that a higher standard than specified in this guidance is required and landlords are advised to discuss their specific property with council officers prior to carrying out alterations.
- 10.6. Licences will be issued with all relevant mandatory conditions set out in the Housing Act 2004 and associated regulations, as well as conditions chosen on a case-by-case basis to ensure wellbeing and protection of occupiers. As well as the amenity standards attached at Appendix A, the council also provides guidance on fire precautions and further details are available on our website.
- 10.7. Every licence issued will have conditions attached. The conditions can vary from property to property, but the majority of licenses issued by the council will have conditions attached covering the following:
- 10.7.1. number of occupiers
 - 10.7.2. room sizes
 - 10.7.3. changes to the licensed property or licence holder
 - 10.7.4. fit and proper person
 - 10.7.5. fire protection
 - 10.7.6. electrical installation
 - 10.7.7. gas supply
 - 10.7.8. amenities
 - 10.7.9. furniture and appliances
 - 10.7.10. appearance
 - 10.7.11. refuse and waste
 - 10.7.12. terms of occupation
 - 10.7.13. anti-social behaviour

11. Issuing a licence

- 11.1. All new HMOs subject to licensing will be inspected prior to the issuing of a draft licence, to ensure that the HMO is reasonably suitable for occupation by the number of people being requested on the licence application, and to ensure that there are satisfactory management arrangements are in place.
- 11.2. Properties requiring a renewal of a licence may also need inspecting prior to the issuing of a draft licence, where there has not been a recent inspection during the period of the previous licence, or there are outstanding concerns or compliance matters requiring addressing.
- 11.3. All HMOs will also remain subject to further inspections during the lifetime of the licence to check compliance with licence conditions, management responsibilities and minimum standards. Frequency of inspection will be driven by a risk assessment of all the data relevant to the property and/or licence holder/manager.

- 11.4. In certain cases, the council may decide to carry out such inspections without prior notice being given to the owner, licence holder and /or manager. This is consistent with the powers set out in Section 239 of the Housing Act 2004.
- 11.5. Where the inspection has been pre-arranged then licence holders, or applicants where applicable, will be required to provide access to all rooms in the HMO at a suitably arranged appointment.
- 11.6. All contact with the licence holder and relevant person(s) will be made using the contact information provided by the applicant on the original application – the primary medium for this will be electronic as set out in paragraph 7.1 of this document. Accordingly, it is the licence holder's responsibility to ensure that all contact details are up to date, and you must notify the council of any change in details. The council will not be held responsible for any delay in communication if it is as a result of any contact information changing.
- 11.7. Where it is deemed appropriate to issue a draft licence, the stage 2 payment will be requested, upon receipt of which, the draft licence with all relevant conditions will be sent to all relevant persons and interested parties for consultation.
- 11.8. The relevant persons will have an opportunity to make any representations, and these must contain all the relevant information to be considered by the authority. No further opportunities will be extended to add to or make further representations.
- 11.9. Representations must be submitted to the HMO Licensing Team within 21 days of the date the draft licence is sent. Representations received outside of this period will not be considered.
- 11.10. Representations will be considered by a suitably qualified/experienced member of the licensing team; and the licence modified or issued as necessary.
- 11.11. Where the inspection has been pre-arranged then licence holders, or applicants where applicable, will be required to provide access to all rooms in the HMO at a suitably arranged appointment. When this process is complete a full licence with the conditions will be issued. Again, copies will be sent to all interested parties.
- 11.12. If the licence holder is still dissatisfied with the conditions or terms of the licence, they will have an opportunity to appeal to the First-tier Property Tribunal. The details of how this appeal can be made will be provided with the licence.

12. Renewal applications

- 12.1. The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012 set out amendments to "renewal applications", which reduces the burden on landlords applying for the renewal of a licence.

12.2. In the case of renewal applications an applicant must provide a complete application form and sign the declarations provided.

12.3. It is important to note that the regulations define a “renewal application” as “an application for a licence under section 63 of the Act where, at the time the application is made a licence of the kind applied for is already held by the applicant and has effect in respect of the HMO or house”.

12.4. The effect of this part of the Regulations is that in order for the council to treat any application as a “renewal” the application must be made during the active period of the current licence. If a renewal application is received after expiry of the previous licence, then the application will be treated as refused and a new licence application will need to be submitted, along with the appropriate fee.

It is important to note that it is the licence holder’s responsibility to apply to renew the licence at the appropriate time. The council may send reminders prior to the expiry of any current licence, but these should not be relied upon to prompt a timely application.

13. Revocation or variation of a licence

13.1. If circumstances regarding the HMO change during the licence period, the licence holder must notify the council directly so the licence can be re-assessed and varied if the HMO is considered suitable to accommodate the variation request.

13.2. The types of change requiring a variation to the licence would be:

- there is a change in the number of kitchens (including bedsits) or bathrooms provided
- there is a change to the design or layout of the property
- there is a change of management or ownership
- there is a change of mortgage provider.

13.3. Similarly, if the HMO is no longer going to be occupied as an HMO or the licence holder changes, then the licence holder must make an application for the licence to be revoked. Any remaining period of the licence will be forfeited and a there will be no right to refund of the original payment.

13.4. Where there is a change of licence holder, there is no facility to transfer the licence to another party. A new licence application must be submitted, and the old licence revoked.

13.5. As well as voluntary revocation set out above, The Housing Act 2004, s.70 and s.70A also set out other circumstances where the council may take action to revoke a licence. This action falls mainly into two categories:

13.5.1. Circumstances relating to licence holder or another person, such as:

- where the authority considers that the licence holder or any other person has committed a serious breach of a condition of the licence or repeated breaches of such a condition
- where the authority no longer consider that the licence holder is a fit and proper person to be the licence holder; and
- where the authority no longer consider that the management of the house is being carried on by persons who are in each case a fit and proper person to be involved in its management.
- Where a banning order is made under section 16 of the Housing and Planning Act 2016 against the licence holder, or a person who— (i) owns an estate or interest in the house or part of it, and (ii) is a lessor or licensor of the house or part of it.

13.5.2. Circumstances relating to HMO concerned, such as:

- where the authority considers at any time that, were the licence to expire at that time, they would, for a particular reason relating to the structure of the HMO, refuse to grant a new licence to the licence holder on similar terms in respect of it.

14. Licence period

14.1. HMO licences will be granted for 1, 3 or 5 years. Where there are no concerns regarding the property, applicant or management controls, then a licence would normally be issued for 5 years.

14.2. Where there are relevant concerns, but it is not appropriate to refuse a licence, a licence will be issued for 1 or 3 years depending on the severity of the issues. The following is a list of matters that may be taken into consideration when determining the period for which an HMO licence is granted. This list is not exhaustive, and each case will be considered on its own merits.

1 year licence

- Operating without voluntarily applying for a licence
- Existence of significant hazards at the property – such as those classified as Category 1 under the Housing Health and Safety Rating System (HHSRS)
- Serious failure to comply with the conditions of a previous or current licence – particularly those relating to tenant safety.
- Serious failure to comply with HMO management regulations - particularly those relating to tenant safety.
- Serious concerns raised by the police or other enforcement agency
- Serious non-compliance with building regulations - particularly those relating to tenant safety.
- No provision of written tenancy or licence agreements

3 year licence

- Failure to comply with the conditions of a previous or current licence
- Failure to comply with HMO management regulations
- Failure to comply with planning requirements
- Council tax payment not up to date
- History of substantiated complaints in respect of the property
- Non-compliance with building regulations
- Previous failure to provide up-to-date certificates on time
- The existence of hazards at the property
- Concerns raised by the police or other enforcement agency

14.3. Upon determining the renewal of a licence, it is unlikely that it would be considered appropriate to progress direct from a 1 year to a 5 year licence term. However, if the circumstances are appropriate, and the criteria for a 1 year licence apply, a previous 5 year licence term may be reduced to a 1 year term upon renewal.

15. Fire risk assessments for licensed HMOs

15.1. Having a fire risk assessment for certain classes of licensed HMO is a legal requirement under the Regulatory Reform (Fire Safety) Order 2005, which is enforced by Norfolk Fire and Rescue Service.

15.2. The duty is placed on the 'responsible person' who could be the landlord/licence holder or an agent with full management control. The assessment must be 'suitable and sufficient', and assistance from an appropriately competent person should be sought as necessary to achieve this.

15.3. The council will accept a signed self-certification form declaring that a suitable and sufficient fire risk assessment is in place for the HMO, however the Council may request and audit the fire risk assessment, where applicable, and other records at any time during the lifetime of the licence and may be requested during an inspection of the premises prior to determining an application. If any documents requested cannot be provided within 7 days of the request, the Council may revoke the licence.

15.4. The acceptance of a fire risk assessment/self-declaration does not protect the responsible person from any action required by Norfolk Fire and Rescue Service.

15.5. Further information and guidance on completing a fire risk assessment is available from the Chief Fire Officers Association and www.gov.uk.

16. Decision making - delegation of authority

16.1. All decisions regarding the grant, refusal, modification and revocation of HMO licences are delegated to the post of head of planning and regulatory services, or any

subsequent post fulfilling the responsibilities of overseeing the HMO licensing function.

17. How long will it take to process an application?

- 17.1. Upon receiving a valid application, the council will aim to provide a decision as soon as is reasonably practicable. However, each case will require different processes to be completed before issuing a decision and will be dependent on the applicant supplying the required information and necessary payments within timescales, and that no representations are made. Where information or payments are late, or representations made, then this could extend the time it takes to process your application.
- 17.2. It is therefore the council's aim to process all valid applications and provide the relevant persons with a decision within 20 weeks of receipt. This will require the full co-operation of the applicant with the council's requirements for determining a licence application.
- 17.3. Tacit consent does not apply to HMO licence applications. It is in the public interest that we check that the HMO meets the prescribed standards, which may include arranging a full property inspection, before a licence can be granted.

18. Public registers

- 18.1. A register of HMO licences is available on the council's website. Full details are also available by request to the HMO licensing team.

19. Appeals

- 19.1. If an application for an HMO Licence is refused, or the terms of a licence granted are disputed, there is a right to appeal this decision within 28 days to the First-tier Tribunal (Property Chamber - Residential Property). The details of this will be provided with the relevant documentation relating to the refusal or granting of the licence.

Appendix A

Private sector housing amenity standards booklet

Council website link:

https://www.norwich.gov.uk/downloads/file/2252/amenity_standards_booklet



If you would like this information in another language or format such as large print, CD or Braille please visit www.norwich.gov.uk/Intran or call 0344 980 3333

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