

Report to Licensing committee
25 March 2021
Report of Environmental health and public protection manager
Subject HMO Licensing Policy

Item

5

Purpose

For members to consider consulting on a new draft HMO Licensing Policy, in respect of Houses of Multiple Occupation licensed under the Housing Act 2004.

Recommendation

That members resolve to authorise the Environmental health and public protection manager to consult on the draft HMO Licensing Policy.

Corporate and service priorities

The report helps to meet the corporate priorities of people living well and great neighbourhoods, housing and environment.

Financial implications

Costs of consultation and implementation of a new policy will be met from existing budgets.

Ward/s: All Wards

Cabinet member: Councillor Jones - Safer, stronger neighbourhoods

Contact officers: Tony Shearman, Public protection manager 01603 989567

Background documents: None

Report

1. A House in Multiple Occupation is commonly referred to as an HMO. There are approximately 3,000 HMOs in Norwich but only certain properties are required to be licensed under the national mandatory scheme.
2. An HMO is defined under sections 254 and 257 of the Housing Act 2004. A HMO can be a building or part of a building if it is:
 - 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
 - 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).
 - 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.
3. Part 2 of the Housing Act 2004 requires Norwich City Council to license certain HMOs in the private rented sector. Licensing was introduced in April 2006 in response to growing national concern regarding the condition and management of the private rented sector, particularly larger HMOs. In October 2018, the definition of HMO requiring a licence was extended by the Secretary of State to include all HMOs with five or more occupants.
4. Licensing is intended to make sure that:
 - HMOs are managed by a 'fit and proper' person.
 - each HMO is suitable for the number occupants living in the building
 - the management of the HMO (including repairs, amenities, health and safety) is satisfactory
 - high risk HMOs can be identified and targeted for improvement.
5. Norwich city council has published a significant amount of information regarding HMO Licensing on the website [here](#), but this has never been consolidated into a policy document.
6. There is no specific requirement under the legislation for a local authority to adopt a policy, however it is considered appropriate to do so to enable the council to:-
 - Set out its approach for the benefit of operators
 - Guide and reassure the public and other public authorities
 - Ensure transparency
 - Ensure consistency
7. A draft policy has been prepared and is attached at Appendix A for members to consider authorisation for public consultation.
8. The legislation does not provide for any statutory consultees that must be consulted. It is proposed to consult 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 of Multiple Occupation
 - One or more persons who appear to the authority to represent the interests of persons likely to be affected by the exercise of the authorities licensing functions under the Housing Act 2004
9. The draft policy mainly reflects the current practices of HMO Licensing administration and inspection of properties. However there are 2 main departures from current practice that should be brought to members' attention.
- Term of licence changed from 1 year to 5 years
 - Commitment to inspect applicant property before granting an initial licence

Term of licence

10. The Housing Act 2004 allows for licences to be granted for up to 5 years. Prior to 2018, Norwich city council issued HMO licenses for the full 5 year term. At that time there were approx. 170 licenced properties. 5 year licences were then, and still are, the default position for the majority of local authorities.
11. In 2018 the regulations changed meaning that a wider group of properties were encompassed within the licensing regime, raising the number of currently identified properties requiring licensing to approx. 900.
12. At the same time a decision was reached to alter the licence term from 5 years down to 1 year. With the increase in the number of applications now being received and renewed on an annual basis, this has created an unmanageable and unnecessary administrative burden.

Inspection prior to issuing a licence

13. The council has a legal duty to ensure that properties are free from hazards and are suitable for the number of occupants - in most cases this will require at least one inspection. Norwich City council's current commitment to inspecting licensed properties is only to undertake an inspection within 5 years of the initial grant of a licence.
14. A commitment to inspecting prior to the initial grant of a licence, and again during the period of the licence, ensures that a proposed licensed premises is suitable for occupation before a decision is made, and remains so for the term of the licence if granted.
15. An initial inspection will also serve to ensure that any conditions necessary to be applied to the licence, can be properly informed and discussed with the property owner or manager prior to finalising the licence, thus cutting down on later administrative burden and possible appeals.
16. This initial inspection may also provide evidence that a shorter term licence is appropriate due to the specific circumstances of the property.

Conclusion

17. The latest draft policy is attached at Appendix A for committee approval prior to consultation. Following on from formal consultation, this policy will return to Licensing committee for final approval.
18. Following formal adoption, the policy will remain in force for a five year period after which it should be reviewed and formally adopted for a further five year period, and so on.
19. During its five year period, the licensing authority can make such revisions to their policy, at such times as considered appropriate, following a further consultation exercise.



NORWICH
City Council

HMO Licensing Policy

DRAFT

Adopted **????** 2021

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Introduction

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.

Under the national Mandatory HMO Licensing scheme all properties that meet the following criteria will require a mandatory HMO licence:

- 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;
- The self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
- The converted building test under section 254(4) of the Act.

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.

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

HMO Licensing in Norwich

Norwich city 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.

Norwich city council does not currently undertake any Additional Licensing

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.

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.

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.

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.

Legislation

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

Consultation and adoption of policy

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.

Before adopting a policy the Council will consult 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,
- One or more persons who appear to the authority to represent the interests of persons likely to be affected by the exercise of the authorities licensing functions under the Housing Act 2004, such as the National Residential Landlords Association

Prior to formal adoption of the Policy consultation responses will be reviewed by the Licensing Committee.

This Policy was formally adopted at a meeting of the Licensing Committee on **(date)**

The Policy will be reviewed after 5 years, or sooner if necessary.

Interaction with other regulation, policies and strategies

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.

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.

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.

In particular, the council's licensing functions will be discharged separately from its functions as the local planning authority.

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.

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 liable to prosecution under planning law.

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 licence decision to address other regulatory matter, it is necessary for the licensee to conform with all relevant legislation.

Licence Fees

Section 63 of the Housing Act 2004 permits the Council to require any application for a licence under Part 2 is accompanied by a licence fee and that this fee may properly cover all costs incurred by the Council in carrying out its functions.

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.

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.

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.

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.

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.

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 Norwich city council website.

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 holders consent to pay the Stage 2 fee in advance of the licence being issued, this will be required as part of the application process.

In addition, the Council will attach a condition to all HMO licences requiring this obligation to be met i.e. to pay the Stage 2 fee. This approach is consistent with that set out in the Hemming case.

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.

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.

Making an application and communication

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

Application forms will be available and completed via the Norwich city council 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.

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

Licence Criteria

A valid application will include:

- An application form and all supporting information submitted including details of the following:-
 - The proposed licence holder
 - The proposed manager
 - 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 (e.g. how many bedrooms)
 - the size of habitable rooms
 - the number of occupants
 - The number and type of amenities (e.g. 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
- Payment
- Signed declaration returned

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 any length of licence it considers appropriate, up to a maximum of 5 years.

¹ This will only apply to certain properties where specifically requested by the Licensing Team

Processing the application

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.

Norwich city 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 persons proposed to be involved in the management of the premises has 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.

If there are concerns about the competencies and structures in place to manage the HMO 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.

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 he/she is the existing manager, the premises to which the application relates. In some cases landlords who belong to a recognised trade association or are members of an accreditation scheme may be regarded as having the necessary competence to be involved in the management of the premises because, at least such organisations can be called upon for advice and assistance where necessary.

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, occupants 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

In order to be able to demonstrate much of the above evidence it is likely that the manager will need to operate within a reasonable proximity to the HMO, so that he/ she can attend to matters promptly and retain an overview on the condition of the premises and the management of the tenancies.

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 his obligations under the licence and his/her general management functions.

Norwich city 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.

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

In deciding to grant a licence Norwich city 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 ...”

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.

When considering whether a person is ‘fit and proper’ Norwich city 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 certain types of sexual offences;
- practised unlawful discrimination on the grounds of sex, colour, race, ethnic or national origins or disability, 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.

The above list is not exhaustive, and Norwich city 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.

Norwich city 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 Norwich city council relating to the premises and / or any relevant person connected with the licence application.

In an application for a licence the applicant must provide details of the following in relation to him/herself 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 his/her management or ownership (and in respect of any former HMO he/she owned or managed);
- any enforcement action in respect of any house or HMO under his/her management or ownership (and any former HMO or house he/she 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 his/her management or ownership (and in relation to any former HMO or house he owned or managed);and
- details of any interim or final management orders made by an LHA in respect of any house or HMO under his management (and in respect of any former HMO or house he owned or managed).

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

If Norwich city council are 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 & Barring Service checks (DBS check), provided at the applicants expense.

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.

Checks may also be made internally with other Council departments such as Licensing, Trading Standards, Planning, Building Control, Council Tax and Housing Benefit.

Norwich city 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 that this is necessary. A DBS check may also be requested for

the purposes of officer safety during the course of the licensing application should this also be considered necessary.

Such reasons for requiring a DBS check may include that:

- Norwich city 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 Norwich city council and has not demonstrated any history or competence of managing HMOs or other private rented properties;
- Norwich city 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 his/her 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.

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 wrong doings, 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).

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 he or she were not unfit, would be entitled to be the manager or licence holder.

An example might be that of a husband and wife, where the husband is the landlord (or indeed both he and his partner are joint landlords), but only the wife has applied for the licence. If there is evidence that the husband has committed wrong doings and those wrong doings are relevant to the wife's management of the property or licence, then the Council may refuse to grant her a licence.

Likewise, if a landlord with an unsatisfactory record nominated a "manager" who had a clean record but had acted for him whilst the wrong doings were committed, Norwich city council may consider the managing agent by association to be unfit too.

Amenity standards and licence conditions

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.

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).

Minimum room sizes are also set out in The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018.

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.

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.

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, Norwich city council also provides guidance on fire precautions and further details are available on our website.

Issuing a licence

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.

Properties requiring a renewal of a licence may also need inspecting prior to the issuing 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.

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.

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.

Failing to comply with any conditions on a licence is an offence under Section 72(3) of the Housing Act 2004 and, if found guilty the licence holder could face a prosecution or issued with a Civil Penalty of up to £30,000.

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.

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. Accordingly, it is the licence holder's responsibility to ensure that all contact details are up to date and you must notify Norwich city 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.

A draft licence with conditions will be issued based on the findings from this inspection. The draft licence will be mailed or emailed to all relevant persons and other interested parties for consultation.

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.

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.

Representations will be considered by a suitably qualified/experienced member of the licensing team, their decision will be final.

When this process is complete a full licence with the conditions will be issued. Again, copies will be sent to all interested parties.

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.

Renewal Applications

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.

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

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”.

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 holders responsibility to apply to renew the licence at the appropriate time. Norwich city council may send reminders prior to the expiry of any current licence, but these should not be relied upon to prompt a timely application.

Revocation or Variation of a Licence

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

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.

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 there will be no right to refund of the original payment.

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.

As well as voluntary revocation set out above, The Housing Act 2004, s. 70 and 70A also set out other circumstances where the council may take action to revoke a licence. This action falls mainly into 2 categories:-

- Circumstances relating to licence holder or other person, such as:-
 - where the authority consider 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 fit and proper persons 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.

- Circumstances relating to HMO concerned, such as:-
 - where the authority consider 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.

Licence Period

Generally, HMO licences would be granted for 5 years. However, the licence period may be reduced in certain circumstances. 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 the likely reduction in licence length is indicative. Each case will be considered on its own merits.

Example	Likely reduction
Failure to comply with previous/current HMO licence conditions	2 years
Failure to comply with Planning requirements	1 year
Council tax payments not up-to-date	2 years
Failure to comply with HMO management regulations	2 years
History of substantiated complaints in respect of the property	2 years
Failure to apply voluntarily for licence	3 years
Non-compliance with Building Regulations	2 years
Previous failure to provide up-to-date certificates on time	2 years
No provision of written tenancy or licence agreements	2 years
The existence of significant hazards within the dwelling	3 years

Fire Risk Assessments for Licensed HMOs

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.

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.

The Council will accept a signed self-certification forms 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.

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.

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

Decision Making - Delegation of Authority

All decisions regarding the grant, refusal, modification and revocation of HMO licences delegated to the post of Public Protection Manager, or any subsequent post fulfilling the responsibilities of managing the HMO licensing function.

Will Tacit Consent Apply?

In deciding whether tacit consent applies the Council has taken into consideration the recent High Court decision in the case of R(Gaskin) v Richmond LBC [2018] EWHC 1996 (Admin). The Gaskin case says that the Provision of Services Directive applies to licensing schemes in full and that regulators should set out how long it will take to carry out a licensing approval process and if they do not meet that timeline then approval (tacit consent) should happen automatically.

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 you with a decision. This could therefore extend the time it takes to process your application.

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.

If a decision about a licence application has not been received after this period, then tacit approval will apply from the date the application was made. It is therefore lawful for a property to operate as a licensable HMO.

As mentioned the target completion period for issuing a decision and a licence is subject to many factors and as such applicants should check with the Council on the status of their application. By the Council setting out and displaying publicly their licensing processing time, the Council considers this will instil confidence in local landlords and help to keep them informed about the process.

Although there are offences defined within the Housing Act 2004 of operating an unlicensed HMO that is required to be licensed, there is a defence against enforcement action provided that a valid application has been made to the licensing authority, meaning that a property may continue to be occupied whilst an application is considered.

Public Registers

A register of HMO licences is available on the Norwich city council website. Full details are also available by request to the HMO Licensing Team.

Appeals

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.

DRAFT



October 2018

Private Sector Housing

Amenity Standards



NORWICH
City Council

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1. Introduction

All licensed Houses in Multiple Occupation (HMO) 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.

This document contains the minimum standards required in all HMOs licensed by Norwich City Council. They form part of the licence conditions and should also be used by landlords and letting/managing agents as a guide to amenities provided in all other non-licensed HMOs, particularly those registered with the Property Registration Scheme Norwich (PRSN).

All dwellings may be subject to an assessment using the Housing Health and Safety Rating System (HHSRS) under Part I Housing Act 2004. As a result, it is possible that there will be additional requirements.

2. Definitions:

- House in Multiple Occupation (HMO) – as defined in the Housing Act 2004 section 254.
- Unit of accommodation – A living area occupied by one household eg a bedsit.
- Licensed HMO – An HMO which requires a licence under the Housing Act 2004 part 3.

3. Heating

3.0 Each unit of living accommodation must be equipped with an adequate means of space heating. The heating system must be of appropriate design and layout to heat the whole of the house adequately and efficiently.

3.1 All habitable rooms and bathrooms must be provided with a fixed heating appliance in a suitable position. The heating must be capable of maintaining a room temperature of 21°C even when the outside temperature is -1°C.

3.2 Heating must be available at all times and be under the control of the occupier. If the heating system is controlled from a central location the system must be provided with controls to allow each occupant to regulate the temperature in their unit of accommodation.

3.3 Suitable methods of heating are:

a) central heating

b) electric storage heaters. These must be a fixed installation and capable of being run on economy tariffs with minimum standards of auto charge control in accordance with Building Regulations Part LI and manual back up.

c) fixed gas heaters connected to a suitable flue and terminal outlet.

3.4 Portable heating appliances must not be provided as the main form of heating.

3.5 Any portable electrical appliance provided by the landlord must be PAT tested every 12 months. A certificate showing the results of the test must be made available to the council on request.

a) Portable heating appliances using either paraffin oil or LPG (bottled gas) must not be provided by the landlord.

3.6 The heating system must be safely and properly installed and must be maintained by a suitably qualified person.

4. Insulation and draught proofing

- 4.0** The house must be adequately insulated in order for the tenant to heat the room to an adequate temperature without excessive cost.
- 4.1** Where there is a loft there must be a minimum 270mm of loft insulation or equivalent.
- 4.2** Cavity walls must be filled (except in flats where the leaseholder is unable to insulate).
- 4.3** Attic rooms and dormer windows must be insulated to a standard equivalent to the minimum energy efficiency values set out in approved document L1B. If the current insulation does not meet this standard then additional insulation must be fitted. Care should be taken not to block any ventilation at the edges (eaves).
- 4.4** The house must be draught free and, where necessary, have draught proofing to prevent excessive draughts. This includes draught proofing of windows, doors and floors. Care must be taken where gas appliances are installed. The correct ventilation must be provided for gas use.
- 4.5** In houses of solid brick construction the external brick walls must be insulated. Where plaster and render is stripped from solid external walls the walls should be boarded with insulated dry lining board to meet the requirements of Part L1B of the Building Regulations (or an alternative agreed with building control) before finishing with a smooth skim coat of plaster. In some instances this is not possible. All bedrooms and living rooms where wall insulation is not possible must have a heating source with the capacity to ensure that the

room can be effectively heated and must be fitted with double glazing.

5. Ventilation and damp

- 5.0** There must be means to provide low level background ventilation without excessive draughts.
- 5.1** Each habitable room must have a window which is in good repair and is capable of being opened and shut.
- 5.2** Kitchens, toilets and bathrooms must have mechanical extractor fans. The mechanical extraction rate in bathrooms and toilets must be a minimum of 15 litres per second and in kitchens a minimum rate of 30 l/s (where adjacent to cookers – 60l/s everywhere else in a kitchen).

6. Bathroom facilities

- 6.0** Bathroom facilities must be available within 2 floors of each bedroom. Communal facilities must be accessible from communal areas. All facilities must be inside the building.
- 6.1** The number of facilities must be provided in accordance with the following table:
- 6.2** Minimum standards for bathroom facilities.
- a)** All baths, toilets and wash hand basins must have a smooth and impervious surface and be easy to clean.
 - b)** Each bathroom must either have a bath or a shower.
 - c)** All baths, showers and wash hand basins must provide an adequate supply of both hot and cold water. Hot water may be provided by any of the following methods:

- i. piped from a boiler
- ii. an immersion heater
- iii. a fixed gas appliance (eg a multipoint)
- iv. an instantaneous heater (only to basins and electric showers).

d) Bathrooms should be adequately heated, insulated and draught free.

e) Bathrooms and toilet compartments must have adequate ventilation. Mechanical extraction must be provided (in addition to a window to the outside air) at a minimum extraction rate of 15 litres per second.

f) If the toilet is in a separate compartment there must be a wash hand basin in the compartment.

g) The splash backs to baths, wash hand basins and sinks must extend

to at least the width of the basin or bath. All joints must be sealed and watertight. All tiling must be fixed with waterproof adhesive and joints filled with waterproof grouting.

h) In showers the tiling or splash back must extend above the head of the shower. Where a shower screen is used the tiling/splash back must extend to the edge of a fixed shower screen. Where a shower curtain is used, the tiling should extend beyond the curtain.

i) Bathroom fittings and the water supply must be installed in compliance with Building Regulations: Approved Documents G and appropriate British Standards.

j) Drainage to bathroom and toilet fittings must be installed in compliance with Building Regulations: Approved Document H and appropriate British Standards.

Washing facilities	
Provision of amenities for the number of people	
1-4 people	At least <ul style="list-style-type: none"> • one fixed bath or shower and • a toilet with wash hand basin The toilet may be located separately or may be in the bathroom
5 people	At least <ul style="list-style-type: none"> • one fixed bath or shower and • one separate toilet with a wash hand basin. This is so there is a toilet available for the occupiers when the bathroom is in use.
6-10 people	At least <ul style="list-style-type: none"> • two fixed baths or showers • two toilets with wash hand basins. At least one toilet must be located separately. This is so there is a toilet available for the occupiers when the bathrooms are in use.
11-15 people	At least <ul style="list-style-type: none"> • three bathrooms and • three toilets with wash hand basins At least one toilet must be located separately. This is so there is a toilet available for the occupiers when the bathrooms are in use.

7. Kitchens

7.1 Shared kitchens

The kitchen must be suitably located in relation to the living accommodation.

If kitchens do not have a suitable dining area space dining must be provided within one floor distance (this may be a living room,

bedsit or bedroom of suitable size). The kitchen layout and size must be adequate to enable each occupier to safely prepare food.

The table below shows the minimum requirements for shared kitchens, depending on the number sharing.

Facility	Minimum standard	Up to and including 5 people	More than 5 people
Sink	A sink with constant hot and cold water, a draining board and tiled splash back	1 sink for up to 5 people	2 sinks for 6-8 people 3 sinks for 9-12 people A dishwasher will be acceptable as a second sink
Hob	An electric or gas hob with four rings	1 hob for up to 5 people	2 hobs for 6-8 people 3 hobs for 9-12 people
Oven and grill	An oven and a grill	1 oven and 1 grill for up to 5 people	2 ovens and 2 grills or 1 oven and 1 grill plus a microwave for 6-8 people 3 ovens and 3 grills or 2 ovens and 2 grills plus a microwave for 9-12 people
Electric sockets	<ul style="list-style-type: none"> 30 amp supply for an electric cooker Dedicated sockets for the fridge and for a washing machine set at a convenient height and safe position 3 double sockets at worktop height 	3 double sockets for up to 5 people	4 for 6-12 people
Work tops for food preparation	Work tops must be secure, fixed and of an impervious material	minimum length for up to 5 people: 1m	minimum length for 6-7 people: 1.5m minimum length for 8 people: 2m minimum worktop length for 9-12 people: 2.5m

Facility	Minimum standard	Up to and including 5 people	More than 5 people
<p>Cupboards for the storage of food and cooking utensils</p> <p>The space below the sink is not counted</p>	A floor based food storage cupboard 500mm wide and standard depth and height or a wall mounted food storage cupboard 1000mm wide and standard depth and height should be provided per person	1 cupboard per person	1 cupboard per person
Refrigerators and freezers	<p>A standard fridge-freezer or</p> <p>A separate standard size fridge and a separate freezer</p>	1 fridge-freezer or 1 separate fridge and 1 separate freezer for up to 5 people	<p>2 fridge-freezers or</p> <p>2 separate fridges and 2 separate freezers for 6-10 people</p> <p>3 fridge-freezers or</p> <p>3 separate fridges and 3 separate freezers for 10+ people</p>
Appropriate refuse disposal facilities	A sufficient number of bins must be provided for the storage of refuse awaiting collection both inside and outside	minimum standard	minimum standard
Appropriate extractor fans	Extraction must be provided in accordance with approved document F under Building Regulations 2006	minimum standard	minimum standard
Appropriate fire blankets	To be supplied and sited in accordance with fire guidance*		
Appropriate fire doors	See fire guidance*		
Appropriate finishes	Kitchen floors must be able to be cleaned. Kitchen walls adjacent to cookers, sinks and food preparation areas must have impervious splash-backs. Kitchen ceilings must be in good repair.	minimum standard	minimum standard

* See Norwich City Council's Fire Guidance document.

7.2 Kitchens which are not shared

Kitchens which are not shared are usually provided within a bedsit. If the kitchen is somewhere else it must be suitably located in relation to the living accommodation. If the kitchen does not have a suitable dining area dining space must be provided within one floor distance (this may be a living room, bedsit or bedroom of suitable size).

Any portable electrical appliance provided by the landlord must be PAT tested every 12 months. A certificate showing the results of the test must be made available to the council on request.

The table below shows the minimum requirements for kitchens that are not shared.

Facility	Minimum standard
Cooker and hob	A hob with at least two rings and an oven
Sink	A sink with constant hot and cold water, a draining board and tiled splash back
Sufficient electrical sockets	4 sockets (2 doubles), plus dedicated sockets for a cooker and refrigerator Points must be set at a convenient height and safe position
A worktop for the preparation of food	At least 500mm length The worktop must be secure, fixed and of impervious material
Cupboards for the storage of food and cooking utensils. The space below the sink is not counted.	A floor based storage cupboard of 500mm wide and standard depth and height or A wall mounted food storage cupboard of 1000mm wide and standard depth and height
A refrigerator	A standard refrigerator
Refuse disposal facilities	A sufficient number of bins must be provided for the storage of refuse awaiting collection both inside and outside
Extractor fans	Extraction must be provided in accordance with Building Regulations approved document F
Appropriate fire blankets	To be supplied and sited in accordance with fire guidance*
Appropriate fire doors	See fire guidance*
Appropriate finishes	Kitchen floors must be able to be cleaned. Kitchen walls adjacent to cookers, sinks and food preparation areas must have impervious splash-backs. Kitchen ceilings must be in good repair.

* See Norwich City Council's Fire Guidance document.

8. Occupancy levels

The minimum bedroom sizes are as follows:

<p>for bedrooms with cooking facilities</p>	<p>a minimum of 13m² for one person a minimum of 20m² for two people sharing</p>
<p>for bedrooms where kitchen and dining facilities are provided elsewhere in the house</p>	<p>a minimum of 6.51m² for one person a minimum of 11.22m² for two people sharing</p>
<p>for bedrooms where there the kitchen is provided elsewhere but there are no other dining facilities provided</p>	<p>a minimum of 10m² for one person a minimum of 15m² for two people sharing</p>
<p>for people under 10 years old</p>	<p>a minimum of 4.64m²</p>



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