

## CABINET – 10TH MARCH 2022

### Report of the Head of Strategic and Private Sector Housing Lead Member: Councillor Mercer

#### Part A

#### ITEM PRIVATE SECTOR HOUSING LICENSING SCHEMES

##### Purpose of Report

To endorse the work completed to date, approve the Houses in Multiple Occupation and Selective Licensing Policies and Conditions, approve the publication of the Public Notices for the two designated schemes for three months and the implementation of the schemes thereafter.

##### Recommendations

That Cabinet:

1. Endorse the work completed to date to implement the two new discretionary licensing schemes.
2. Approve the Houses in Multiple Occupation and Selective Licensing Policies (Appendix 1 and 2).
3. Approve the Licence Conditions for the Houses in Multiple Occupation and Selective Licensing Schemes (Appendix 3 - Houses in Multiple Occupation Licensing Scheme Licence Conditions and 4 - Selective Licensing Scheme Licence Conditions).
4. Approve the publication of the Public Notices for the two designated schemes for three months and give delegated authority to the Head of Strategic and Private Sector Housing for the implementation of the schemes thereafter.
5. That delegated authority be given to the Head of Strategic and Private Sector Housing in consultation with the Lead Member for Housing to update or make minor amendments to the Licensing Policies and Conditions subject to there being no financial or human resource implications arising from the proposals.

##### Reasons

1. To enable the Cabinet to consider and endorse the work completed.
2. To enable the Cabinet to consider and approve the final Houses in Multiple Occupation Policy and Selective Licensing Policy.
3. To enable the Cabinet to consider and approve the final Licence Conditions for the Houses in Multiple Occupation and Selective Licensing Schemes.

4. To enable the required publication of the Public Notices for the two designated schemes for three months, and for the implementation of the schemes thereafter.
5. To ensure that the Licensing Policies and Conditions remains relevant and responsive during the lifetime of the Policies.

#### Policy Justification and Previous Decisions

The Scrutiny Management Board considered the findings and recommendations of the Managing Student Occupancy Scrutiny Panel at its meeting held on 19th March 2014 and the Cabinet subsequently considered the report on 10th April 2014. The Board then received three reports on the implementation of decisions taken following Scrutiny recommendations. The final report, considered on 28th October 2015, showed that the implementation of all Cabinet resolutions was sufficiently complete and no further monitoring was required.

However, the Board resolved to make two further recommendations to the Cabinet (detailed in Part B of this report).

At its meeting held on 15th November 2015, having considered the report of the Scrutiny Management Board, the Cabinet resolved the following:

1. *that the Head of Strategic and Private Sector Housing further investigate the potential to implement a Loughborough Accreditation Standard in partnership with the Loughborough Students Union;*
2. *that the Head of Strategic and Private Sector Housing consider the submission from the Loughborough Student Advisory Service of complaints data from 2014/15 and evaluate this alongside the evidence that has already been collated;*
3. *that the Head of Strategic and Private Sector Housing submit a report to a future meeting of the Cabinet to provide updates on the evidence gained and the actions taken in relation to resolutions 70.1 and 70.2, above.*

#### Reasons

1. *If this can be achieved, it will assist in improving standards in the student Private Rented Sector and raise awareness among students about some of the risks associated with poor housing standards.*
2. *To determine whether there are further options for investigation.*
3. *To enable the Cabinet to consider the evidence gained and the potential for further initiatives.*

#### **The Cabinet meeting on the 17<sup>th</sup> January 2019 resolved:**

1. That the evidence gathered to date and the impact of the implementation of the

Government's expansion of the Mandatory Licensing of HMOs in the Borough be noted;

2. That further investigations being undertaken to gather evidence (as referred to in paragraph 61 of Part B of the report of the Head of Strategic and Private Sector Housing) to establish the case for the introduction of an Additional or Selective Licensing Scheme be approved;
3. That it be noted that a Borough wide Accreditation Scheme with the Students Union will not be taken forward.
4. That the report of the Overview Scrutiny Group be noted.

#### Reasons

1. To enable the Cabinet to consider the evidence gained.
2. Further information and evidence is required for Cabinets consideration and the consultation process required to introduce an Additional or Selective Licensing Scheme.
3. Resources were no longer available from the Student Union to take a Scheme forward.
4. To acknowledge the work undertaken by and the views of the Overview Scrutiny Group.

#### **The Cabinet meeting on the 16<sup>th</sup> January 2020 resolved:**

1. That the proposals for Private Sector Licensing be noted;
2. That the supporting evidence and risks be noted;
3. That the proposal for a consultation exercise be approved, as required by Section 56(3) of the Housing Act 2004 for Additional Licensing and Section 80(9) of the Housing Act 2004 for Selective Licensing;
4. That a one-off budget of up to £30,000 be approved to be funded from the Reinvestment Reserve in 2019/20 to undertake the consultation exercise;
5. That the report of the Scrutiny Commission be noted.

#### Reasons

- 1&2. To enable the Cabinet to consider the information and evidence gathered.
- 3&4. To use the Reinvestment Reserve to fund the statutory consultation to support the implementation of an Additional and Selective Licensing Scheme in consultation with the respective Lead Members.
5. To acknowledge the work undertaken by and the views of the Scrutiny Commission.

### **The Cabinet meeting on the 10<sup>th</sup> December 2020 resolved:**

1. That the outcome of the Discretionary Private Sector Housing Licensing consultation exercise be noted;
2. That the proposal to declare Charnwood Borough as an area for Additional Licensing to be implemented from April 2021 be approved;
3. That the proposal to declare the two wards Hastings and Lemyngton an area for Selective Licensing to be implemented following approval from the Secretary of State be approved;
4. That the proposed draft licence conditions for both schemes, attached as Appendix 1 to the report, and for a consultation exercise to be undertaken for a period of 6 weeks from the 18th January 2021 to the 26th February 2021 be approved;
5. That an initial budget for £65k to set up the two schemes and commence recruitment of staff to deliver the two licensing schemes until the licence fees are received be approved;
6. That the report of the Scrutiny Commission be noted.

### **Reasons**

1. To enable the Cabinet to consider the information and evidence gathered.
2. The scheme will cover all HMOs, irrespective of the number of storeys that are occupied by 3 or 4 unrelated persons and all Section 257 HMOs (buildings converted into self-contained flats) where the building is wholly occupied by tenants.
3. The scheme will cover all Private Sector Rented properties in the two wards Hastings and Lemyngton other than those licensed through the Mandatory HMOs Licensing Scheme or the proposed Borough Wide Additional Licensing Scheme for HMOs.
4. To allow feedback on the draft licence conditions.
5. To allow the schemes to be set up and the recruitment of officers to implement the two proposed licensing schemes in advance of the licence fees being received.
6. To acknowledge the work undertaken by and the views of the Scrutiny Commission.

### **The Cabinet meeting on the 1<sup>st</sup> July 2021 resolved:**

1. that the outcome of the Additional and Selective Licensing Scheme Licence Conditions consultation exercise (Appendix 1 and 2 to the report) be noted.

2. that the Licence Conditions for the new Additional and Selective Licensing Schemes (Appendix 3 to the report - Houses in Multiple Occupation Licensing Scheme Licence Conditions and 4 to the report - Selective Licensing Scheme Licence Conditions) be approved.
3. that the use of the Houses in Multiple Occupation Licensing Scheme Licence Conditions for all Mandatory Houses in Multiple Occupation licence applications and renewals be approved;
4. that the report of Scrutiny Commission be noted.

### Reasons

1. To enable the Cabinet to consider the information and evidence gathered.
2. The licence conditions will be introduced and implemented when the Additional and Selective Licensing Schemes are introduced in January 2022.
3. To align the existing Mandatory Licence Conditions for Houses in Multiple Occupation with the new Additional Licensing Scheme for Houses in Multiple Occupation from January 2022.
4. To acknowledge the work undertaken by and the views of the Scrutiny Commission.

### Implementation Timetable including Future Decisions and Scrutiny

Following Cabinet's approval of the final Houses in Multiple Occupation and Selective Licensing Policies, and the respective Licence Conditions, the following actions will be taken:

- A Public Notice will be published to advise of the implementation of the Borough wide Additional Licensing Scheme and the Selective Licensing Scheme in the two wards of Hastings and Lemyngton. The Selective Licensing Notice will provide the details of all the streets in the two wards that will be covered.
- The Notices will be published for a period of three months prior to the implementation of the Schemes.

For information, the area covered by the Selective Licensing Scheme in the two current wards of Loughborough Hastings and Loughborough Lemyngton will be fixed, and will not be affected by the proposed ward changes due to come into effect in May 2023.

### Report Implications

The following implications have been identified for this report:

#### *Financial Implications*

The schemes will be implemented three months after the publication of the Public Notices when applicants will have to apply and pay for their licence fee prior to the approval of their licence. The licence fee is paid in two parts.

Set up costs were approved in the December 2020 Cabinet report and staff need to be in place to implement the scheme from January 2022.

The exact number of licences issued will not be known until the schemes are operational.

### *Risk Management*

The risks associated with the decision Cabinet is asked to make and proposed actions to mitigate those risks are set out in the table below.

Risk Identified	Likelihood	Impact	Overall Risk	Risk Management Actions Planned
Landlords legally challenge the decision making process to implement a licensing scheme – cost to the Council to defend and time delay.	Very Likely (4)	Major (4)	High (16)	Make sure the decision making/consultation process meets legislative requirements to not encourage a legal challenge.  Develop an effective Communication Strategy.
The resources to run a successful scheme are more than forecasted.	Very Likely (4)	Major (4)	High (16)	This has been the experience of some LAs due to the lack of cooperation from Landlords and additional staff required to work on the issues raised.
Landlords fail to apply or obtain a licence.	Very Likely (4)	Major (4)	High (16)	The Council can issue Civil Penalties (up to £30K) or prosecute for non-application and or continuing to operate after a licence is refused.  Council would need to act swiftly and publicise.  Landlords refused a licence would have to vacate the property and leave the property empty or a find a suitable Managing Agent.

Risk Identified	Likelihood	Impact	Overall Risk	Risk Management Actions Planned
Relationships breakdown between the Council and Landlords.	Likely (3)	Serious (3)	Moderate (9)	<p>Consultation and Communication Strategies must be effective.</p> <p>Commitment to the implementation of the Scheme.</p>
Landlords increase rental charges to cover the costs of the licence fee.	Very Likely (4)	Unlikely (2)	Moderate (8)	<p>The impact of this would be delayed for the tenants with an existing tenancy.</p> <p>If tenants cannot afford to stay this could increase homelessness. Impact on the Council additional homeless applications to process and the increased use of temporary accommodation.</p> <p>This could increase the number of empty homes across the Borough; Landlords would be impacted by the Council Tax premium.</p> <p>Consultation and Communication Strategies must be effective.</p>

Key Decision: Yes

Background Papers: Cabinet, 1<sup>st</sup> July 2021 – Agenda Item 13.  
Cabinet, 10<sup>th</sup> December 2020 – Agenda Item 7 and Minute 61.  
Cabinet, 16<sup>th</sup> January 2020 – Agenda Item 7 and Minute 67.  
Cabinet, 17<sup>th</sup> January 2019 – Agenda Item 8 and Minute 75.  
Overview Scrutiny Group, 14<sup>th</sup> January 2019 – Agenda Item 6B and Minute 47.  
Scrutiny Management Board, 18<sup>th</sup> March 2015 – Agenda Item 8 and Minutes 53.2 and 53.3.  
Scrutiny Management Board, 8<sup>th</sup> October 2014 – Agenda Item 8 and Minute 26.

Cabinet, 10th April 2014 – Agenda Item 6 and Minute 120.

Scrutiny Management Board, 19th March 2014 – Agenda Item 8 and Minute 51.

Cabinet Report, 19th November 2015 – Referral from Scrutiny – Managing Student Occupancy Scrutiny Panel – Agenda Item 6 and Minute 24.

Agendas and notes of the Managing Student Occupancy Scrutiny Panel meetings, available on the Council's website at:

[http://www.charnwood.gov.uk/committees/managing\\_student\\_occupancy\\_scrutiny\\_panel](http://www.charnwood.gov.uk/committees/managing_student_occupancy_scrutiny_panel)

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## **Part B**

### **Background**

1. The Cabinet considered a report of the Scrutiny Management Board on 19th November 2015 when it was resolved that the Head of Strategic and Private Sector Housing should further investigate the potential to implement a Loughborough Accreditation Standard in partnership with the Loughborough Students Union; and consider the submission from the Loughborough Student Advisory Service of complaints data from 2014/15 and evaluate this alongside the evidence that had already been collated in relation to potentially introducing an Additional or Selective Licensing Scheme.
2. The Cabinet considered a report from the Head of Strategic and Private Sector Housing on the 17th January 2019 when it was resolved that further investigations be undertaken to gather evidence (as referred to in paragraph 61 of Part B of the report of the Head of Strategic and Private Sector Housing – see Background papers) to establish the case for the introduction of an Additional or Selective Licensing Scheme be approved.
3. The Cabinet considered a report from the Head of Strategic and Private Sector Housing on the 16<sup>th</sup> January 2020 when it was resolved that a consultation exercise be undertaken, as required by Section 56(3) of the Housing Act 2004 for Additional Licensing and Section 80(9) of the Housing Act 2004 for Selective Licensing.
4. The Cabinet considered a report from the Head of Strategic and Private Sector Housing on the 10<sup>th</sup> December 2020 when it was resolved to declare Charnwood Borough as an area for Additional Licensing and the two wards Hastings and Lemyngton an area for Selective Licensing. Approved the proposed draft licence conditions for both schemes, a consultation exercise to be undertaken for a period of 6 weeks from the 18th January 2021 to the 26th February 2021 be approved.
5. The Cabinet considered a report from the Head of Strategic and Private Sector Housing on the 1<sup>st</sup> July 2021 when it was resolved to approve the Licence Conditions for the Additional and Selective Licensing Schemes and that the conditions would be used for all Mandatory Houses in Multiple Occupation licence applications and renewals.
6. The implementation of the two schemes has been delayed due to the pandemic and this report sets out the work completed to date and requests the approval of the Houses in Multiple Occupation and Selective Licensing Policies and Licence Conditions and the next steps to the implementation of the schemes thereafter.

### **Houses in Multiple Occupation and Selective Licensing Scheme Policies**

7. The draft Policy documents formed part of the 2020 consultation exercise in determining the justification for the schemes and how they would be implemented.

8. The Policies have been amended to reflect the licence fee of £700 detailed in the table below:

Application Type	First Payment	Second Payment	Total Fee
Basic Licence Application Fee	£395	£305	£700
Re-licence application (where the application is received by the Council prior to expiry of the existing licence)	£395	£220	£615
<b>Fees for DASH Accredited Licence Holders</b>			
Basic Licence Application Fee where the proposed Licence Holder is DASH Accredited	£395	£220	£615
Re-licence application	£395	£220	£615
<b>Additional Fees for HMOs (applied to all applications)</b>			
Extra Bedroom Fee (fee per additional bedrooms over 6 bedrooms)	Not Applicable	+ £10 per additional room	+ £10 per additional room

9. The licence fee will be £700 for a 5 year period. The Council's proposed fee structure consists of two payment stages. The first covers the receipt, assessment, and processing of the application. The second covers the costs incurred in a property compliance and inspection, together with management assessment.

### Licence Conditions

10. A Delegated decision (DD014 2022) was approved to make minor amendments to include the correct definitions page in the Selective Licensing Conditions and minor amendments to the Licence conditions following additional comments received from Letting Agents and DASH.
11. Following the amendments the Council sought further legal advice for the conditions for the new schemes. The licence conditions will be published on the Council's website once the Public Notices have been issued.

### Next Steps

12. Public Notices will be published to advise of the implementation of the Borough wide Houses in Multiple Occupation and the Selective Licensing Scheme in the two wards of Hastings and Lemyngton. The Selective Licensing Notice will

provide the details of all the streets in the two wards that will be covered.

13. The Notices will be published for a period of three months prior to the implementation of the Schemes. The Schemes will be implemented thereafter.
14. For the Mandatory Houses in Multiple Occupation Licensing Scheme the new Licence Conditions will be implemented for all new applications and renewals from April 2022.

### Appendices

- Appendix 1 Houses in Multiple Occupation Licensing Policy
- Appendix 2 Selective Licensing Scheme Policy
- Appendix 3 Houses in Multiple Occupation Licensing Scheme Licence Conditions
- Appendix 4 Selective Licensing Scheme Licence Conditions

# Houses in Multiple Occupation Licensing Policy

February 2022

## **Introduction**

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

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

Types of housing licensing are:

- Mandatory Licensing
- Additional Licensing

Under Housing Legislation, an HMO is an entire house or flat that is let to 3 or more tenants who form 2 or more households and who share a kitchen, bathroom, or toilet.

For a property to be classed as a HMO, it must be used as the tenants only or main residence and it should be used solely or mainly to house tenants.

### **Mandatory Licensing**

Mandatory Licensing under Part 2 of the Housing Act 2004, broadly speaking requires an HMO occupied by 5 or more persons in 2 or more households, sharing an amenity regardless of the number of storeys, to be licensed.

Prior to the 1<sup>st</sup> October 2018, only HMOs of 3 or more storeys, occupied by 5 or more persons in 2 or more households required a licence.

### **Additional Licensing**

The Housing Act 2004 provides a power for Local Authorities to licence HMOs which are not covered by Mandatory Licensing. Part 2 of the Housing Act provides for Additional Licensing of HMOs for example, in a particular area or the whole borough for those not covered by Mandatory Licensing.

The Act permits Additional Licensing of HMOs covers those HMOs that are not licensed under the Mandatory Scheme but where the Council has used its power to subject HMOs across the Borough to Additional Licensing.

This Policy sets out the structure of the scheme and the fees and charges and criteria Charnwood Borough Council will apply to all licences in relation to the Mandatory and Additional HMO Licensing schemes.

## Houses in Multiple Occupation (HMOs) Licensing

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.

On the **(Date to be confirmed)** Charnwood Borough Council designated the whole of the Borough subject to Additional Licensing in respect of the following types of HMOs:

- HMOs of any size of building that are occupied by 3 or 4 persons; and
- Section 257 HMOs where all of the self contained flats are let and occupied by tenants.

## Licence Fee

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 cover all costs incurred by the Council in carrying out its function.

In developing the Council's 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.

A fee is charged for each individual HMO that is required to be licensed under the Housing Act 2004.

The judgements in *Hemming* and *Gaskin*, requires the overall licence fee to be paid in 2 stages, has therefore had the effect the fee for a Licence under Part 2 of the 2004 Act must be levied in 2 separate parts.

The first element of the licence fee is for the assessment and processing of the application to the point of issuing the decision and where applicable the licence. The first element of the fee must be paid at the time of the HMO licence application submission.

The second element of the HMO licence fee is for the property compliance inspection, management assessment and associated communications. The second element of the fee will only be applicable in respect of applications where a decision is reached to grant the licence and a draft licence is issued.

The request for payment of the second element of the licence fee will be issued with the draft licence and the fee must be paid within the timescales specified.

Charnwood Borough Council works in partnership with the Decent and Safe Homes (DASH) Landlord Accreditation Scheme. Dash promotes good housing so that Tenants of DASH Accredited Landlords can expect:

- responsible Landlords with better housing standards
- quick repairs and maintenance
- fair tenancy agreements

Landlords benefit from a market advantage, resource materials and training, as well as inclusion on the DASH register of accredited landlords.

A reduced initial HMO licensing fee is offered to DASH Accredited Landlords (as detailed in the following table).

The table below details the breakdown of the licence fees:

Application Type	First Payment	Second Payment	Total Fee
Basic Licence Application Fee	£395	£305	£700
Re-licence application (where the application is received by the Council prior to expiry of the existing licence)	£395	£220	£615
<b>Fees for DASH Accredited Licence Holders</b>			
Basic Licence Application Fee where the proposed Licence Holder is DASH Accredited	£395	£220	£615
Re-licence application	£395	£220	£615
<b>Additional Fees for HMOs (applied to all applications)</b>			
Extra Bedroom Fee (fee per additional bedrooms over 6 bedrooms)	Not Applicable	+ £10 per additional room	+ £10 per additional room

Under Section 67 (5) of the Housing Act 2004 the Council has the power to impose a restriction/obligation on a particular person (with their consent). 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 required as part of the application process.

The Council will attach a condition to all HMO licenses requiring this obligation to be met ie 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.

Applicants will be entitled to a refund of licence fee payments in the following situations:

- on review of an application, it is decided that the property does not need a licence at the time of application (for example, it falls under one of the exemptions);
- a duplicate application is made.

Fees are not connected to the length of a licence. If a licence is no longer required the licence holder must request a revocation to cancel the licence before it expires, the Council will not give a refund for any unused time.

Refunds will not be provided in the following situations the:

- property needs to be licensed at the time of application;
- property is subsequently sold at any point during the application process;
- Council refuses the application and does not grant a licence;
- application is withdrawn at any point during the application process;
- Council revokes (takes away) the licence;
- Council varies the licence and reduces the amount of time it remains operationally valid;
- the property is refused planning permission.

### **Processing the Licence 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 proposed licence and manager of the HMO is a fit and proper person and the most appropriate person to hold the licence; and
- there are satisfactory management arrangements in place or that such arrangements can be put in place by the imposition of conditions in the licence.

### **Test for Fitness and Satisfactory Management Arrangements**



The Council must be satisfied that “the proposed management arrangements are satisfactory” before granting a 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;
- persons proposed to be involved with the management of the premises are actually involved in the management;
- persons are ‘fit and proper’ (which is discussed above) and the proposed management structures and funding arrangements are suitable.

If the Council has concerns about the competencies and structures in place to manage 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 or she is the existing manager, the premises to which the application relates. In most cases landlords who are members of an accreditation scheme will 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 of systems:

1. In place that 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.
2. 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)

3. Structures for engagement with the Local Authority, Police, and other agencies, where appropriate

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

The Council can vary or revoke a licence at any time during the licence period if there is sufficient evidence to support this decision.

Unannounced visits of licensed properties will 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.

### **Fit and Proper Person Test**

The Council must be satisfied that the Licence applicant and the manager are fit and proper persons to hold a Licence or to manage a HMO.

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' the Council will have regard to any misdemeanors (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 listed in the Sexual Offences Act 2003, Schedule 3;
- been involved with any unlawful discrimination on the grounds of sex, race, ethnic or national origins or disability, in connection with the carrying out of business;
- contravened any provision of Housing, Public Health or Landlord and Tenant law (including Part 3 of the Immigration Act 2016); or acted otherwise than in accordance with an approved code of practice.

The above list is not exhaustive, and the Council can and will consider whether a relevant person has committed other relevant misdemeanors, 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.

The Council does not have 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 Charnwood Borough Council relating to the premises and or any relevant person connected with the licence application.

When making 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;
- findings from a court/tribunal that the person has practiced unlawful discrimination;
- judgements 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 or 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 1 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;
- any interim or final management orders made by an LHA in respect of any house or HMO under his management and any former HMO or house he owned or managed).

An applicant for a licence must disclose any misdemeanors which relate to themselves, the proposed manager, and any other relevant person, if any.

The Council has to be satisfied that it has sufficient information (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 (Licensing, Planning, Building Control, Council Tax and Housing Benefit) and external bodies as it deems necessary, including for example Disclosure and Barring Service checks (DBS).

The 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.

The Council can request information on criminal convictions where applicable, a Police National Computer (PNC) check will be requested where there is sufficient evidence that this is deemed necessary.

## **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 misdemeanors, 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 licenses 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 misdemeanors and those misdemeanors 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 misdemeanors were committed, the Council may consider the managing agent by association to be unfit too.

## **Issuing a Licence**

The Council may decide to complete an inspection 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 in place.

All HMOs will be inspected during the lifetime of the licence to check compliance with licence conditions, management responsibilities and minimum standards.

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 all applicants 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 the Strategic and Private Sector Housing service 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 application or the application and the findings of a completed inspection. The draft licence (known as an Intention Notice) will be emailed to all relevant persons and other interested parties for consultation.

The relevant persons will have an opportunity to make any representations, which will be considered by the Strategic and Private Sector Housing service.

When this process is complete a full licence with the conditions (known as the Decision Notice) will be issued and will be emailed to all relevant persons and other interested parties for consultation.

If the licence holder is still dissatisfied with the conditions of the licence, they 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 and 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 87 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 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 on or after expiry of the current licence, then the application will be treated as a new application and the appropriate fees above will apply.

### **Application for a revocation or variation of a licence**

If circumstances regarding the HMO change during the licence period, for example a change in the number of letting units, the licence holder must notify the Property Licensing Team directly so the licence can be re-assessed and varied if the HMO is considered suitable to accommodate the variation request.

Similarly, if the HMO is no longer going to be occupied as a 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.

### **Fire risk assessments for licensed HMOs**

Having a fire risk assessment for a licensed HMO is a legal requirement under the Regulatory Reform (Fire Safety) Order 2005, which is enforced by East Midlands Fire and Rescue Authority.

Depending on the size, layout, and occupancy of the property the Licence Holder may need to go over and above the legal minimum standards to adequately protect the tenants from. When doing this the Licence Holder should have regard to the current Building Regulations; and the LACORS Fire Safety Guide. The LACORS Fire Safety guidance is available at: <https://www.cieh.org/media/1244/guidance-on-fire-safety-provisions-for-certain-types-of-existing-housing.pdf>.

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 and other records at any time during the lifetime of the licence. 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 East Midlands Fire and Rescue Authority.

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

### **Will tacit consent apply?**

The Council has taken into consideration the recent High Court decision in the case of *R(Gaskin) v Richmond LBC* [2018] EWHC 1996 (Admin) when deciding whether tacit consent applies.

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.

On receipt of 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, for example if an inspection of the HMO is necessary then the Council will be required to complete this before issuing you with a decision. Therefore, this could extend the time it takes to process your application.

The Council's aim to process all valid applications and provide the relevant persons with a decision within 130 days of receipt.

If a decision about a licence application has not been received within this period, then tacit approval may apply but the proposed licence holder should not assume they will automatically have been granted a licence.

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.

### **Public Registers**

A register of HMO Licenses is available online and details of this can be obtained by sending a formal, written request to the Property Licensing team.

### **Appeals**

If an application for a HMO Licence is refused, 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 Decision Notice.

# Selective Licensing Policy

February 2022



## Introduction

Under Section 80 of the Housing Act 2004 Charnwood Borough Council has the power to designate areas of the Borough subject to Selective Licensing of certain types of rented houses.

The Council has exercised this power and designated the following areas of the Borough as subject to Selective Licensing.



Lemyngton Ward



Hastings Ward

Selective Licensing covers all private rented houses within the designated areas and all licence applications are to be accompanied with a fee determined by the Council.

Once a licence is issued it is not transferable.

This document sets out the structure of the scheme and the fees and charges and criteria Charnwood Borough Council will apply to all licenses in relation to its Selective Licensing schemes.

## **Selective Licensing**

Under the “Charnwood Borough Council, Leymington and Hastings Ward Designation for Selective Licensing 2022” which will come into force on the **(Date to be confirmed)**, most privately rented homes in the Borough are required to have a property licence.

The Council has exercised its powers to charge under Section 87(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 3 of the Housing Act 2004, a house is required to be licensed if the whole of it is occupied under:

- a single non exempt tenancy or licence; or
- 2 or more non exempt tenancies or licenses in respect of different separate dwellings within the building.

In the event that a building has multiple dwellings contained within it the Council will require a separate application and fee for each of the dwellings within the building.

The Council will consider each application and will take the following factors into account before deciding to issue a multi property licence or not each of the dwellings:

- are separate dwellings (usually self contained flat,) which are contiguous to one another in the same building;
- are occupied under non exempt tenancies; and
- within the same building are within common ownership and management control.

Where the Council is satisfied that individual property licenses should be granted, it will give notice of this to the applicant and every relevant person. There is a right to appeal this decision to the First Tier Tribunal (Residential Property Chamber), notwithstanding the grant of these licenses.

## **Licence Fee**

Section 87 of the Housing Act 2004 permits the Council to require any application for a licence under Part 3 is accompanied by a licence fee and that this fee may cover all costs incurred by the Council in carrying out its function.

In developing the Councils 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 judgements in *Hemming* and *Gaskin*, requires the overall licence fee to be paid in 2 stages, has therefore had the effect the fee for a Selective Licence under Part 3 of the 2004 Act must be levied in 2 separate parts.

The first element of the licence fee is for the assessment and processing of the application to the point of issuing the decision and where applicable the licence. The first element of the fee must be paid at the time of the licence application submission.

The second element of the licence fee is for the property compliance inspection, management assessment and associated communications. The second element of the fee will only be applicable in respect of applications where a decision is reached to grant the licence and a draft licence is issued.

The request for payment of the second element of the licence fee will be issued with the draft licence and the fee must be paid within the timescales specified.

Charnwood Borough Council works in partnership with the Decent and Safe Homes (DASH) Landlord Accreditation Scheme. Dash promotes good housing so that Tenants of DASH Accredited Landlords can expect:

- responsible Landlords with better housing standards
- quick repairs and maintenance
- fair tenancy agreements

Landlords benefit from a market advantage, resource materials and training, as well as inclusion on the DASH register of accredited landlords.

A reduced initial licensing fee is offered to DASH Accredited Landlords (as detailed in the following table).

The table below details the breakdown of the licence fees:

Application Type	First Payment	Second Payment	Total Fee
Basic Licence Application Fee	£395	£305	£700
Re-licence application (where the application is received by the Council prior to expiry of the existing licence)	£395	£220	£615

<b>Fees for DASH Accredited Licence Holders</b>			
Basic Licence Application Fee where the proposed Licence Holder is DASH Accredited	£395	£220	£615
Re-licence application	£395	£220	£615

Under Section 90 (6) of the Housing Act 2004 the Council has the power to impose a restriction/obligation on a particular person (with their consent). 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.

The Council will attach a condition to all licenses requiring this obligation to be met ie 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.

Applicants will be entitled to a refund of licence fee payments in the following situations:

- on review of an application, it is decided that the property does not need a licence at the time of application (for example, it falls under one of the exemptions);
- a duplicate application is made.

Fees are not connected to the length of a licence. If a licence is no longer required the licence holder must request a revocation to cancel the licence before it expires, the Council will not give a refund for any unused time.

Refunds will not be provided in the following situations the:

- property needs to be licensed at the time of application;
- property is subsequently sold at any point during the application process;
- Council refuses the application and does not grant a licence;
- application is withdrawn at any point during the application process;
- Council revokes (takes away) the licence;
- Council varies the licence and reduces the amount of time it remains operationally valid;
- the property is refused planning permission.

### **Processing the Licence 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 proposed licence and manager of the property is a fit and proper person and the most appropriate person to hold the licence; and
- there are satisfactory management arrangements in place or that such arrangements can be put in place by the imposition of conditions in the licence.

### **Test for Fitness and Satisfactory Management Arrangements**

The Council must be satisfied that “the proposed management arrangements are satisfactory” before granting a licence. These arrangements include (but are not limited to) consideration of whether the:

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

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

It is for a Council to determine whether a person has sufficient competence to be involved in the management of the property and the level of competence required will in some measure be determined by the complexity of the management challenges posed. The Council will, therefore, be looking at the applicant’s experience and track record of managing the property and, in where he or she is the existing manager, the premises to which the application relates. In most cases landlords who are members of an Accreditation Scheme will 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 of systems:

1. In place that 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;
2. 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)

3. Structures for engagement with the Local Authority, Police, and other agencies, where appropriate

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

The Council can vary or revoke a licence at any time during the licence period if there is sufficient evidence to support this decision.

Unannounced visits of licensed properties will 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.

### **Fit and Proper Person Test**

The Council must be satisfied that the proposed licence holder and manager of the property are fit and proper persons to hold a Licence or to manage the property.

This requirement is to ensure that those responsible for operating the licence and managing the property are of sufficient integrity and good character to be involved in the management of the particular 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 property.

When considering whether a person is 'fit and proper' the Council will have regard to any misdemeanors (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 listed in the Sexual Offences Act 2003, Schedule 3;
- been involved with any unlawful discrimination on the grounds of sex, race, ethnic or national origins or disability, in connection with the carrying out of business;

- contravened any provision of Housing, Public Health or Landlord and Tenant law (including Part 3 of the Immigration Act 2016); or acted otherwise than in accordance with an approved code of practice.

The above list is not exhaustive, and the Council can and will consider whether a relevant person has committed other relevant misdemeanors, 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.

The Council does not have 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 Charnwood Borough Council relating to the premises and or any relevant person connected with the licence application.

When making 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;
- findings from a Court/Tribunal that the person has practiced unlawful discrimination;
- judgements 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 property or Houses in Multiple Occupation (HMO) under his/her management or ownership or any former property or HMO he/she owned or managed);
- any enforcement action in respect of any property or HMO under his/her management or ownership and any former property or HMO 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 1 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 property or HMO under his/her management or ownership;
- any interim or final management orders made by an Local Housing Authority in respect of any property or HMO under his management and any former property or HMO he owned or managed).

An applicant for a licence must disclose any misdemeanors which relate to themselves, the proposed manager, and any other relevant person, if any.

The Council has to be satisfied that it has sufficient information (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 (Licensing, Planning, Building Control, Council Tax and

Housing Benefit) and external bodies as it deems necessary, including for example Disclosure and Barring Service checks (DBS).

The 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.

The Council can request information on criminal convictions where applicable, a Police National Computer (PNC) check will be requested where there is sufficient evidence that this is deemed necessary.

### **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 property has committed any misdemeanors, 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 licenses or are in any way involved in the management of licensed property. 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 misdemeanors and those misdemeanors 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 misdemeanors were committed, the Council may consider the managing agent by association to be unfit too.



## **Issuing a Licence**

The Council may decide to complete an inspection prior to the issuing of a draft licence to ensure that the property meets the required standards and that there are satisfactory management arrangements in place.

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 the applicant will be required to provide access to the property 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 the Strategic and Private Sector Housing service 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 to applicants either based on the application or the application and the findings of a completed inspection. The draft licence (known as an Intention Notice) will be emailed to all relevant persons and other interested parties for consultation.

The relevant persons will have an opportunity to make any representations, which will be considered by the Strategic and Private Sector Housing Service.

When this process is complete a full licence with the conditions (known as the Decision Notice) will be issued and will be emailed to all relevant persons and other interested parties for consultation.

If the licence holder is still dissatisfied with the conditions of the licence, they 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) (England) Regulations 2006 and 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 and 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 87 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 house or HMO.*”

The effect of this part of the Regulations is that 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 on or after expiry of the current licence, then the application will be treated as a new application and the appropriate fees above will apply.

### **Application for a revocation or variation of a licence**

If a property is no longer going to be occupied as a rented property 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.

### **Will tacit consent apply?**

The Council has taken into consideration the recent High Court decision in the case of *R(Gaskin) v Richmond LBC* [2018] EWHC 1996 (Admin) when deciding whether tacit consent applies.

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.

On receipt of 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, for example if an inspection of the property is necessary then the Council will be required to complete this before issuing you with a decision. Therefore, this could extend the time it takes to process your application.

The Council’s aim to process all valid applications and provide the relevant persons with a decision within 130 days of receipt.

If a decision about a licence application has not been received within this period, then tacit approval may apply but the proposed licence holder should not assume they will automatically have been granted a licence.

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.

### **Public registers**

A register of property Licenses is available online and details of this can be obtained

by sending a formal, written request to the Strategic and Private Sector Housing service.

### **Appeals**

If an application for a property licence is refused, 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 Decision Notice.

# **Houses in Multiple Occupation Licence Conditions**

**January 2022**

# Houses in Multiple Occupation Licence Conditions

This document constitutes Appendix 1 of any Licence granted by Charnwood Borough Council under either the mandatory licensing of Houses in Multiple Occupation, or the additional licensing of Houses in Multiple Occupation designation applicable in the borough of Charnwood.

It includes both the conditions specified in Schedule 4 of Housing Act 2004, together with additional conditions which Charnwood Borough Council consider appropriate for regulating the management, use and occupation of the house which is to be licensed, and its contents and conditions, and are imposed under sections 67 and 68 of the Housing Act 2004.

## **Important Notice**

It is the Licence Holder's responsibility to ensure compliance with the requirements of all the Licence conditions set out in this document. Failure to do so may result in prosecution for breach of Licence conditions, service of a civil penalty of up to £30,000 in respect each Licence condition breach; and/or the revocation of the Licence.

The Licence Holder, as the person to whom this Licence has been granted, is responsible for ensuring compliance with its conditions at all times, and that any person acting on their behalf in the management of the house is made aware of, and complies with, the obligations and responsibilities set out in this document.

It is your responsibility to ensure that you have any other necessary permissions or consents in place to enable the property to be used as a house in multiple occupation. The granting of a licence does not override any other private or public law provisions in this respect.

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## Part I PERMITTED OCCUPATION

### Condition 1 – Maximum Permitted Occupancy per Bedroom/Bedsit (Appendix 2)

1. The Licence Holder must ensure that:
  - 1.1 The Authority are notified of any bedroom in the HMO with a floor area of less than 4.64 square metres. The maximum occupancy limit per bedroom shall be as follows, in accordance with the Authority's adopted Guidance Standards for Licensable Houses in Multiple Occupation.

#### Maximum permitted occupancy per bedroom/bedsit

Room Number	Location	Maximum occupancy (units)
Room 1	Ground floor front bedroom	X
Room 2	Ground floor middle bedroom	X
Room 3	Ground floor rear bedroom	X
Room 4	First floor front bedroom	X
Room 5	First floor rear right hand bedroom	X
Room 6	First floor rear left hand bedroom	X

*(Please note: References to left right, front, and back are as if the viewer is inside the house looking towards the street.)*

**Regardless of the number of persons occupying individual rooms, the total number of persons and households occupying the dwelling must not exceed the permitted number as shown on this licence.**

Please note:

- 0.5 units = 1 person under the age of 10 years old
  - 1 unit = 1 person over the age of 10 years old
- 1.2 The Licence Holder must supply to the occupiers of the house a written statement of the terms on which they occupy it.

### Condition 2 - Requirement for Works to be Carried Out

2. The Licence Holder must ensure that:
  - 2.1 If the Authority specify any works as necessary to be carried out as a condition of the grant of this Licence, then such works are carried out within the time period so specified.

## **Part II PROPERTY MANAGEMENT**

### **Condition 3 - Gas Safety**

3. The Licence Holder must ensure that:
  - 3.1 If gas is supplied to the HMO a copy of the current gas safety certificate obtained in respect of the HMO within the last 12 months is provided to the Authority annually for their inspection, to cover both and all the residentially occupied and the common parts of the HMO.
  - 3.2 The certificate states that it covers the complete gas installation including: supply pipes, flues, gas appliances and that they are safe to be operated.
  - 3.3 That each year an annual inspection of the HMO is undertaken by a suitably qualified and experienced gas engineer in accordance with the requirements of the Gas Safety (Installation and Use) Regulations 1998, or any subsequent amended regulations. Any defects noted on the certificate must be promptly rectified and certified as satisfactory.

### **Condition 4 – Electrical Installation and Safety**

4. The Licence Holder must ensure that:
  - 4.1 Every electrical appliance which is provided by the Licence Holder for the use of a tenant is, and always remains in, a safe condition and the Licence Holder shall ensure that a record of visual inspections and tests is maintained
  - 4.2 The Licence Holder shall supply to the Authority within 7 days of its demand the record of visual inspections and tests.
  - 4.3 The Licence Holder shall supply to the Authority within 7 days of its demand a declaration as to the safety of electrical appliances.
  - 4.4 The Licence Holder shall ensure that every fixed electrical installation is inspected and tested at intervals not exceeding five years by a person competent to undertake such inspection and testing.
  - 4.5 The Licence Holder shall obtain from the person conducting that inspection and testing a report specifying the results of the inspection and testing.
  - 4.6 The Licence Holder shall supply to the Authority within 7 days of its demand any such report.
  - 4.7 The electricity supply to the fire detection and emergency lighting system at the HMO is neither disconnected, nor threatened with disconnection, due to the non-payment of any money owing to the relevant supplier.



## **Condition 5 - Furniture and Furnishing**

5. The Licence Holder must ensure that:
  - 5.1 Every item of upholstered furniture, including: sofas, chairs, children's furniture, beds, upholstered headboards, or garden furniture; together with all soft furnishings, including mattresses, seat pads, cushions or pillows which are supplied to a tenant must comply with the relevant safety tests as prescribed under the Furniture and Furnishings (Fire Safety) Regulations 1988 (as amended), or any later amended regulations.
  - 5.2 Upon receiving a demand by the Authority to provide a declaration as to the safety of such furniture and soft furnishings, such is provided within 14 days.

## **Condition 6 - Storage and Disposal of Household Waste**

6. The Licence Holder must ensure that:
  - 6.1 Arrangements are made that comply with any scheme which the Authority adopt in connection with the storage and collection of household waste at HMOs pending collection.
  - 6.2 Where no such scheme has been adopted, that suitable refuse and re-cycling containers are provided on a scale sufficient for the number of tenants.
  - 6.3 Any necessary supplementary arrangements for the disposal or refuse and re-cyclable materials from the HMO are made having regard to the services provided by the Authority.
  - 6.4 If within the curtilage of the HMO there is insufficient space to store refuse, waste and re-cyclable materials, adequate arrangements for extra collections of such are made.
  - 6.5 Each tenant is informed in writing, at the start of their tenancy, of the days on which refuse, and re-cycling collection happens, and this information is displayed in a prominent position in the HMO.

## **Condition 7 - Pests**

7. The Licence Holder must ensure that:
  - 7.1 Reasonable precautions are taken to ensure that the HMO, together with its curtilage and garden are, so far as is practicable, kept free from pest infestation.
  - 7.2 Within 7 days of becoming aware of any pest infestation, adequate steps are taken with a view to effectively controlling such infestation.

## **Condition 8 - Water Supply and Drainage**

8. The Licence Holder must ensure that:

- 8.1 Adequate measures are taken to ensure that there is no unreasonable interruption in the supply of water to the HMO.
- 8.2 Sufficient steps are taken to ensure that the HMO's drainage system is kept free of obstructions.

### **Condition 9 - External Areas**

9. The Licence Holder must ensure that:
  - 9.1 Any garden, forecourt, yard, or passageway within the HMO's curtilage is kept in a reasonably clean and tidy condition.
  - 9.2 If a tenant, or a member of their household, or their visitor causes a breach of condition 9.1 above, steps are immediately taken to address the matter including a written warning being given to the tenant within 14 days of it coming to the attention of the Licence Holder.
  - 9.3 No items of discarded furniture, bedding, clothing, toys, refuse, or rubbish are left outside the HMO, or on the public highway, or on third party private land except where this occurs in anticipation of a pre-arranged collection.
  - 9.4 All domestic rubbish and refuse is stored in suitable bins pending its collection.
  - 9.5 A copy of any written warnings that have been given to a tenant are provided to the Authority within 7 days of a request being made to see the same.

### **Condition 10 - Emergency Escape Lighting**

10. The Licence Holder must ensure that:
  - 10.1 Where emergency escape lighting is provided within the property it is maintained in working order, tested regularly and that a full system test, inspection and service is completed annually by a competent person in line with the current British Standards or any which subsequently replace these.
  - 10.2 The Licence Holder shall obtain from the person conducting such inspection and testing a certificate specifying the results of the inspection and testing.
  - 10.3 The Licence Holder shall supply to the Authority within 7 days of its demand any such certificates.

## **Part III TENANCY MANAGEMENT**

### **Condition 11 - Tenancy Agreements**

11. The Licence Holder must ensure that:
  - 11.1 At the start of each tenancy, or licensed period of occupation, the tenant is provided with a written agreement which clearly sets out the terms upon which the tenant is permitted to occupy the HMO.

### **Condition 12 - Terms of Occupation**

12. The Licence Holder must ensure that:
  - 12.1 Occupancy levels at the HMO do not exceed those set by the Licence.
  - 12.2 If occupancy levels exceed those permitted by the Licence then, upon becoming aware of this, all reasonable lawful steps are taken to ensure that the number of occupiers is reduced to the permitted level as soon as is reasonably practicable.

### **Condition 13 - Tenants' Rights**

13. The Licence Holder must ensure that each tenant's legal rights are observed, which includes but is not limited to:
  - 13.1 Giving reasonable notice to complete repairs, and 24 hours notice prior to inspections of the premises within the HMO which are occupied by the tenant.
  - 13.2 Terminating a tenancy or licensed period of occupation in a lawful manner.
  - 13.3 Ensuring utilities serving the HMO are not disconnected, nor unreasonably interrupted.

### **Condition 14 - Licence Holder/Manager Details**

14. The Licence Holder must ensure that:
  - 14.1 A notice giving the name, address, telephone number and e-mail address, together with the emergency contact telephone number of the person managing the HMO is clearly and prominently displayed in the common parts of the HMO.
  - 14.2 If any of the above details change the notice is amended from time to time so that the correct up to date information is given.

### **Condition 15 – References**

15. The Licence Holder must ensure that:

- 15.1 References are demanded for new occupiers before entering into any occupancy agreement with them or allowing them to occupy the premises. Where obtained, copies of these references shall be kept for the duration of this licence and made available to the Authority within seven (7) days of the Authority's demand.

### **Condition 16 - Complaints Procedure**

16. The Licence Holder must ensure that:
- 16.1 They have a written complaints procedure concerning the management and conditions of the HMO, a copy of which is given to each tenant at the start of their tenancy.

### **Condition 17 - Anti-social Behaviour and Damage**

17. The Licence Holder shall ensure that:
- 17.1 All reasonable and practicable steps are taken to prevent or reduce anti-social behaviour or criminality by the tenants or occupiers of the property, together with their visitors.
- 17.2 In particular, if acts of anti-social behaviour occur at the HMO in breach of the terms of the tenancy or licence agreement, they take appropriate steps to address this which may, in the case of serious or repeated anti-social behaviour, mean possession proceedings.
- 17.3 Records are kept of what action is taken which are provided to the Authority within 7 days of a request to see them.
- 17.4 Appropriate notices are prominently displayed in the common parts of the HMO reminding tenants of their obligation not to act in an anti-social manner, nor to cause a nuisance or annoyance to other occupiers or neighbouring residents, and to take reasonable care to avoid causing damage to property.

## **Part IV FIRE SAEFTY**

### **Condition 18 - Smoke Alarms**

18. The Licence Holder must ensure that:
- 18.1 The Licence Holder shall ensure that at all times a suitable fire detection and alarm system is installed in the property, maintained in proper working order, tested, and serviced in accordance with the current British Standards or any which subsequently replace these.
  - 18.2 The Licence Holder shall obtain from the person conducting such inspection and testing a certificate specifying the results. The certificates must be completed and issued by a competent person and must demonstrate that the complete installation has been fully checked and serviced.
  - 18.3 The Licence Holder shall supply to the Authority within 7 days of its demand any such certificates.
  - 18.4 There must be at least one smoke alarm installed on each storey of the house on which there is a room used wholly or partly as living accommodation. For these purposes a bathroom or lavatory is a room used as living accommodation.
  - 18.5 The Licence Holder shall supply to the Authority within 7 days of its demand a declaration as to the condition and position of any smoke alarms/detectors in the HMO.

### **Condition - 19 Fire Precautions**

19. The Licence Holder must ensure that:
- 19.1 Adequate and sufficient fire precaution facilities and equipment are provided at the HMO in accordance with any relevant British Standard, Building Regulations' approval, or other guidance and advice document issued by any competent authority in respect of fire precaution facilities and equipment.
  - 19.2 All means of leaving and escaping from the HMO in the event of a fire are kept free from any obstructions, and that fire precautions are maintained which includes informing tenants of this obligation.
  - 19.3 All tenants are made aware of the procedures which are to be followed in the event of a fire at the HMO, including the routes out of, and means of escape from, it.

### **Condition 20 - Carbon Monoxide Alarm**

20. The Licence Holder must ensure that:
- 20.1 A carbon monoxide alarm is installed in any room in the HMO which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance.
  - 20.2 Such an alarm is kept in proper working order; and

20.3 The authority is supplied with, on demand, a declaration by them as to the condition and positioning of any such alarm.

### **Condition 21 - Fire Risk Assessment**

21. The Licence Holder must ensure that:

21.1 A fire risk assessment is carried out at the HMO, and that all known risks and hazards noted by such assessment are, in so far as is reasonably practicable, documented and minimised.

21.2 Fire risk assessments to be reviewed if there is a change in legislation and or layout of the property.

## **Part V GENERAL**

### **Condition 22 – General**

22. The Licence Holder must ensure that:

- 22.1 The HMO's common parts are kept clean, in a good state of repair and periodically maintained.
- 22.2 All tenants are made aware that smoking is not allowed in any of the common parts of the HMO by virtue of the Health Act 2006 and associated regulations.

### **Condition 23 - Changes and Alterations**

23. The Licence Holder must ensure that:

23.1 In respect of any change to the:

- Licence Holder's residential address or contact details, or where the Licence Holder is a business, if the business address has changed.
- Freehold or leasehold ownership.
- Management arrangements at the HMO.
- Licence Holder or manager's circumstances which may impact upon their status as a fit and proper person including but not limited to cautions, criminal conviction for an offence concerning either dishonesty, fraud, violence, misuse of drugs, discrimination, or housing regulations.

such change is reported in writing to the Authority within 21 days of it occurring (or any such lesser period that is specified in any relevant regulation).

23.2 Any proposed changes to the construction, layout or amenity provisions at the HMO that may affect the licence or licence conditions must be reported to the Authority before the work is carried out, as this may require a licence variation.

### **Condition 24 – Training (Appendix 3)**

24. The Licence Holder must ensure that:

24.1 Where the Licence Holder has not attended relevant training in the previous three (3) years, they must as a minimum attend suitable training on the law and legal requirements relating to managing privately rented housing including HMOs within 12 months of the date the licence is granted.

### **Condition 25 - Display of HMO Licence**

25. The Licence Holder must ensure that:

25.1 A copy of the HMO Licence is displayed at all times in a prominent place in the HMO.

### Definitions

In these proposed Licence conditions, the following words are defined below:

“Authority” refers to Charnwood Borough Council acting in its capacity as a local housing authority.

“Additional Licensing designation” means the designation of the borough of Charnwood as the area in respect of which all HMOs are required to be licensed under Part 2 of the Housing Act 2004.

“BS” means British Standard.

“Discretionary Conditions” means licence conditions imposed by the Authority under sections 67 and 68 of the Housing Act 2004.

“Electrical Installations” has the meaning given to those words in regulation 2(1) of the Building Regulations 2010.

“HMO” refers to the building (or part of it), or such part of it, as is licensed under Part 2 of the Housing Act 2004.

“House” refers to any HMO.

“Licence” means the licence granted by the Authority under Part 2 of the Housing Act 2004 pursuant to an application made by the proposed Licence Holder.

“Licence Holder” refers to:

- (i) the person to whom the Authority has granted the Licence, and
- (ii) from the date of his or her consent, any other person who agrees to comply with the Licence conditions, restriction and obligations that follow.

“Mandatory Conditions” means the licence conditions specified in Schedule 4 of Housing Act 2004 which must be imposed upon a Licence granted under Part II.

“Tenant” includes a licensee or any other occupier of the HMO.



### **Condition 1 - Maximum Permitted Occupancy per Bedroom/Bedsit**

The assessment of the number of people sharing will take into account both babies and children, with each having their own allocation of space.

Everyone aged over the age of 10 years old must be able to occupy sleeping accommodation so that they do not have to share with someone who is not a close relative, or with someone of the opposite sex unless they are living together/co-habiting. For the definition of close relative, this means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece, or cousin.

Only the useable floor space will be included in calculating a room's floor area after having deducted: corridors, toilet compartments, bathrooms, shower-rooms, and chimney breasts.

The ceiling height must be a minimum 1.9 metres over at least half of the floor area, and any area with a ceiling height of less than 1.5 metres shall not be counted as part of the habitable floor area.

No staircase or landing, nor any room which has been designed or appointed as either a kitchen, or as a bathroom, shall be deemed as suitable for sleeping accommodation.

Please refer also to the Authority's adopted Guidance Standards for Licensable Houses in Multiple Occupation.

## Condition 24 - Training

The training requirement in conditions 24 is a minimum requirement and depending on the level of responsibility and complexity of properties involved the Licence Holder should consider undertaking further relevant training in line with the extent of their liabilities.

This requirement for condition 24 can be satisfied by the completion of a one-day training course or online equivalent covering the law and legal requirements relating to managing privately rented houses.

Once completed, submit a certificate or other confirmation to the Authority following this training.

The following are recognised as providing a suitable course to satisfy this condition.

DASH Services Landlord Development Course [www.dashservices.org.uk](http://www.dashservices.org.uk)  
linda.cobb@derby.gov.uk 01332 641111

East Midlands Property Owners (EMPO) Basic Law for Lettings:  
[www.empo.co.uk/trainingcourses.html](http://www.empo.co.uk/trainingcourses.html) [www.empo.co.uk/contact-us.html](http://www.empo.co.uk/contact-us.html), telephone 0115  
9502639

National Residential Landlords Association (NRLA) Landlord/Agent/HMO Fundamentals  
eLearning and eClassroom Courses: <https://www.nrla.org.uk/training-academy/core-courses>;  
telephone 0300 131 6400

**Failure to comply with any licence conditions is an offence****Prosecution/Enforcement Action**

It is the Licence Holder's responsibility to ensure compliance with the requirements of all the Licence conditions set out in this document. Failure to do so may result in prosecution for breach of Licence conditions; service of a civil penalty of up to £30,000 in respect each Licence condition breach; and/or the revocation of the Licence.

The Licence Holder, as the person to whom this Licence has been granted, is responsible for ensuring compliance with its conditions at all times, and that any person acting on their behalf in the management of the house is made aware of, and complies with, the obligations and responsibilities set out in this document.

**Limitations of the Licence Transfer**

This Licence is personal to the Licence Holder and cannot be transferred to another person, organisation or property.

**Registered Companies**

If the Licence Holder is a registered company and it is dissolved while the licence is in force, the licence ceases to be in force on the date of dissolution.

**Property Condition**

This property licence is not proof or evidence that the house is safe and free from hazards and defects. The property licence does not prevent criminal or civil legal action being taken against the Licence Holder, or anyone else with an interest in the property, if any hazards or nuisances are found or any other problems discovered in relation to the condition of the property.

**Building Control**

This property licence does not grant any Building Control (Development Control) approvals, consent, or permissions, retrospectively or otherwise. This property licence does not offer any protection or excuse against any enforcement action taken by the Building Control (Development Control) Department.

**Planning Permission**

This property licence does not grant, any planning approvals, consents or permissions under the Town and Country Planning Act 1990 or any related planning legislation, retrospectively or otherwise. You should check the Authority's website to ensure the correct planning permissions are in place. This property licence does not offer any protection or excuse against any enforcement action taken by the Planning Services.

## Variation

No changes may be made to the use, layout, or maximum occupancy level of the property without the Authority's prior written consent. Where the Licence Holder or a relevant person applies to vary a licence they should do so at the earliest opportunity and there may be a charge for any variations to a Licence. The original licence stays in force until the variation is determined and comes into effect a person making unauthorised changes may be liable to prosecution or other forms of enforcement action.

## Leasehold Agreements

It is your responsibility to check the terms of any lease that you hold to ensure that operating the property as a House in Multiple Occupation does not breach the terms of your lease.

## **Guidance Information**

These do not form part of the licence conditions, but you may still be under an obligation to comply with them.

### **Consumer Rights and Unfair Practices**

The Office of Fair Trading's (OFT) guidance on unfair contracts when conducting their business, drawing up tenancies, contracts, or the service of notices on tenants and/or agents. The Licence Holder must act in good faith and must not conduct actions which would be considered a misleading action or omission. Full information should be supplied to any prospective tenant including details of this licence.

Further advice can be found here: <https://www.gov.uk/government/publications/unfair-contract-terms-cma37> <https://www.gov.uk/government/publications/unfair-terms-in-tenancy-agreements--2>

### **Gas Safety**

If gas is supplied to the house the Licence Holder shall ensure the Gas Safety (Installation and Use) Regulations 1998 (or any Regulations which subsequently replace these) are complied with. Details of competent Gas Safe engineers can be found at [www.gassaferegister.co.uk](http://www.gassaferegister.co.uk).

### **Electrical Safety**

The Licence Holder shall ensure that the Electrical Equipment (Safety) Regulations 1994 (or any Regulations which subsequently replace these) are complied with. Certificates must be in the format recommended in the British Standards. All electrical checks, works, and certification must be carried out by a competent person being a suitably qualified electrical contractor who should be registered / member of an approved scheme such as NICEIC, ECA, NAPIT etc. or registered to undertake electrical works in accordance with Part P of the Building Regulations (unless exempt works).

### **Smoke Alarms, Fire Detection Systems and Emergency Escape Lighting**

Depending on the size, layout, and occupancy of the property the Licence Holder may need to go over and above the legal minimum standards to adequately protect the tenants from fire and undertake a risk assessment. When doing this the Licence Holder should have regard to the current Building Regulations; and the LACORS Fire Safety Guide. The LACORS Fire Safety guidance is available at: <https://www.cieh.org/media/1244/guidance-on-fire-safety-provisions-for-certain-types-of-existing-housing.pdf>.

### **Competent Person**

A competent person is someone who has sufficient training and experience or knowledge and other qualities that allow them to assist you properly. The level of competence required will depend on the complexity of the situation and the particular help you need.

[www.competentperson.co.uk](http://www.competentperson.co.uk).

## Furniture Safety

The Licence Holder shall ensure that the Furniture and Furnishings (Fire Safety) Regulations 1988 (or any Regulations which subsequently replace these) in respect of any upholstered furniture supplied by them, including chairs, sofas, beds, upholstered headboards, mattresses, cushions, seat pads, pillows and upholstered garden furniture etc. are complied with. Further information on the requirements can be found in this guide: <https://www.fira.co.uk/images/FIRA-Flammability-Guide.pdf>.

## Deposits

The Licence Holder shall ensure that any deposit taken as security for a tenancy is protected as appropriate by placing it in an approved tenancy deposit scheme. The tenant must be given the prescribed information about the scheme being used in a specified time.

## Right to rent

Only people with permission or a right to be in the UK have a right to rent property. As a landlord, you have a responsibility to restrict illegal immigrants accessing the private rented sector. If you are found letting to someone who does not have the right to be in the UK, and you cannot show that you have made right to rent checks, then you could face a penalty of £3,000. For more information visit [www.gov.uk/check-tenant-right-to-rent-documents](http://www.gov.uk/check-tenant-right-to-rent-documents).

## Energy Performance Certificates (EPCs)

Licence Holders shall ensure they comply with relevant legislation, ensuring tenants have sight of a current EPC for the property at the appropriate time. From 1st April 2018 domestic properties in England and Wales must have an EPC certificate with a minimum E rating for energy efficiency.

## Redress Scheme

Where the Licence Holder is also a letting agent or property manager, they shall be a member of a relevant property redress scheme. More information is available at [www.gov.uk/government/publications/lettings-agents-and-property-managers-redress-schemes](http://www.gov.uk/government/publications/lettings-agents-and-property-managers-redress-schemes).

## Information Commission Office

Every organisation or sole trader who processes personal information needs to pay a data protection fee to the ICO unless they are exempt'. Organisations can find guidance, pay the fee or search the register by visiting [Data protection fee | ICO](#).

In general: The UK data protection regime is set out in the Data Protection Act 2018 and the UK GDPR and applies if you have information about people for any business or other non-household purpose. The law applies to any 'processing of personal data', and will catch most businesses and organisations, whatever their size. Further information and guidance on what the regime requires organisations to do, and how to comply with its duties can be found on the Information Commissioners Office website - [ico.org.uk](http://ico.org.uk).

# Selective Licensing Scheme Conditions

January 2022

# Selective Licensing Scheme Conditions

This document constitutes Appendix 1 of any Licence granted by Charnwood Borough Council under the selective licensing of Private Sector Rented Houses designation applicable to the Hastings and Lemyngton wards in the borough of Charnwood.

It includes both the conditions specified in Schedule 4 of Housing Act 2004, together with such additional conditions which Charnwood Borough Council consider appropriate for regulating the management, use and occupation of the house which is to be licensed and are imposed under sections 90 and 91 of the Housing Act 2004.

## **Important Notice**

It is the Licence Holder's responsibility to ensure compliance with the requirements of all the Licence conditions set out in this document. Failure to do so may result in prosecution for breach of Licence conditions, service of a civil penalty of up to £30,000 in respect each Licence condition breach; and/or the revocation of the Licence.

The Licence Holder, as the person to whom this Licence has been granted, is responsible for ensuring compliance with its conditions at all times, and that any person acting on their *behalf* in the management of the house is made aware of, and complies with, the obligations and responsibilities set out in this document.



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## Part I PERMITTED OCCUPATION

### Condition 1 - Requirement for Works to be Carried Out

1. The Licence Holder must ensure that:
  - 1.1 The Licence Holder must ensure that if the Authority specify any works as necessary to be carried out as a condition of the grant of this Licence, then such works are carried out within the time period so specified.

## **Part II PROPERTY MANAGEMENT**

### **Condition 2 - Gas Safety**

2. The Licence Holder must ensure that:
  - 2.1 If gas is supplied to the House a copy of the current gas safety certificate obtained in respect of the House within the last 12 months is provided to the Authority annually for their inspection.
  - 2.2 The certificate states that it covers the complete gas installation including: supply pipes, flues, gas appliances and that they are safe to be operated.
  - 2.3 That each year an annual inspection of the House is undertaken by a suitably qualified and experienced gas engineer in accordance with the requirements of the Gas Safety (Installation and Use) Regulations 1998, or any subsequent amended regulations. Any defects noted on the certificate must be promptly rectified and certified as satisfactory.

### **Condition 3 - Electrical Installation and Safety**

3. The Licence Holder must ensure that:
  - 3.1 Every electrical appliance which is provided by the Licence Holder for the use of a tenant is, and always remains in, a safe condition and the Licence Holder shall ensure that a record of visual inspections and tests is maintained.
  - 3.2 The Licence Holder shall supply to the Authority within 7 days of its demand the record of visual inspections and tests.
  - 3.3 The Licence Holder shall supply to the Authority within 7 days of its demand a declaration as to the safety of electrical appliances.
  - 3.4 The Licence Holder shall ensure that every fixed electrical installation is inspected and tested at intervals not exceeding 5 years by a person competent to undertake such inspection and testing.
  - 3.5 The Licence Holder shall obtain from the person conducting that inspection and testing a report specifying the results of the inspection and testing.
  - 3.6 The Licence Holder shall supply to the Authority within 7 days of its demand any such report

### **Condition 4 - Furniture and Furnishing**

4. The Licence Holder must ensure that:
  - 4.1 Every item of upholstered furniture, including: sofas, chairs, children's furniture, beds, upholstered headboards, or garden furniture; together with all soft furnishings, including: mattresses, seat pads, cushions or pillows which are supplied to a tenant must comply with the relevant safety tests as prescribed under the Furniture and Furnishings (Fire Safety) Regulations 1988 (as amended), or any later amended regulations.

- 4.2 All items of furniture supplied are, and remain, labelled to show that they comply with the relevant safety tests.
- 4.3 Upon receiving a demand by the Authority to provide a declaration as to the safety of such furniture and soft furnishings, such is provided within 14 days.

### **Condition 5 - Storage and Disposal of Household Waste**

- 5. The Licence Holder must ensure that:
  - 5.1 Arrangements are made that comply with any scheme which the Authority adopt in connection with the storage and collection of household waste at Houses pending collection.
  - 5.2 Where no such scheme has been adopted, that suitable refuse and re-cycling containers are provided on a scale sufficient for the number of tenants.
  - 5.3 Any necessary supplementary arrangements for the disposal or refuse and re-cyclable materials from the House are made having regard to the services provided by the Authority.
  - 5.4 If within the curtilage of the House there is insufficient space to store refuse, waste and re-cyclable materials, adequate arrangements for extra collections of such are made.
  - 5.5 Each tenant is informed in writing, at the start of their tenancy, of the days on which refuse, and re-cycling collection happens.

### **Condition 6 - Pests**

- 6. The Licence Holder must ensure that:
  - 6.1 Reasonable precautions are taken to ensure that the House, together with its curtilage and garden are, so far as is practicable, kept free from pest infestation.
  - 6.2 Within 7 days of becoming aware of any pest infestation, adequate steps are taken with a view to effectively controlling such infestation.

### **Condition 7 - Water Supply and Drainage**

- 7. The Licence Holder must ensure that:
  - 7.1 Adequate measures are taken to ensure that there is no unreasonable interruption in the supply of water to the House.
  - 7.2 Sufficient steps are taken to ensure that the drainage system at the House is kept free of obstructions.

### **Condition 8 - External Areas**

- 8. The Licence Holder must ensure that:

- 8.1 Any garden, forecourt, yard, or passageway within the curtilage of the House is kept in a reasonably clean and tidy condition.
- 8.2 If a tenant, or a member of their household, or their visitor causes a breach of condition 8.1 above, steps are immediately taken to address the matter including a written warning being given to the tenant within 14 days of it coming to the attention of the Licence Holder.
- 8.3 A copy of any written warnings that have been given to a tenant is provided to the Authority within 7 days of a request being made to see the same.

## **Part III TENANCY MANAGEMENT**

### **Condition 9 - Tenancy Agreements**

9. The Licence Holder must ensure that:
  - 9.1 At the start of each tenancy, or licenced period of occupation, the tenant is provided with a written agreement which clearly sets out the terms upon which the tenant is permitted to occupy the House.

### **Condition 10 - Terms of Occupation**

10. The Licence Holder must ensure that:
  - 10.1 Occupancy levels at the House do not exceed those set by the Licence.
  - 10.2 If occupancy levels exceed those permitted by the Licence then, upon becoming aware of this, all reasonable lawful steps are taken to ensure that the number of occupiers is reduced to the permitted level as soon as is reasonably practicable.
  - 10.3 The occupiers of the house are supplied with a written statement of the terms on which they occupy it.

### **Condition 11 - Tenants' Rights**

11. The Licence Holder must ensure that each tenant's legal rights are observed, which includes but is not limited to:
  - 11.1 Giving reasonable notice to complete repairs, and 24 hours notice prior to inspections of the premises which are occupied by the tenant
  - 11.2 Terminating a tenancy or licensed period of occupation in a lawful manner.

### **Condition 12 - Licence Holder/Manager Details**

12. The Licence Holder must ensure that:
  - 12.1 An information pack is given to all new tenants providing the name, address, telephone number and email address, together with the emergency contact telephone number of the person managing the property at the start of the tenancy.
  - 12.2 If any of the above details change, the notice is amended from time to time so that the correct up to date information is given.

### **Condition 13 - Complaints Procedure**

13. The Licence Holder must ensure that:
  - 13.1 They have a written complaints procedure concerning the management and conditions of the property, a copy of which is given to the tenant at the start of their tenancy.

## Condition 14 - Anti-Social Behaviour and Damage

14. The Licence Holder shall ensure that:
  - 14.1 All reasonable and practicable steps are taken to prevent or reduce anti-social behaviour or criminality by the tenants or occupiers of the property, together with their visitors.
  - 14.2 In particular, if acts of anti-social behaviour occur at the property in breach of the terms of the tenancy or licence agreement, they take appropriate steps to address this which may, in the case of serious or repeated anti-social behaviour, mean commencing possession proceedings.
  - 14.3 Records are kept of what action is taken which are provided to the Authority within 7 days of a request to see them.

## Condition 15 – References

15. The Licence Holder must ensure that:
  - 15.1 References are demanded for new occupiers before entering into any occupancy agreement with them or allowing them to occupy the premises. Where obtained, copies of these references shall be kept for the duration of this licence and made available to the Authority within seven (7) days of the Authority's demand.

## **Part IV FIRE SAEFTY**

### **Condition 16 - Smoke Alarms**

16. The Licence Holder must ensure that:
  - 16.1 There must be at least one smoke alarm installed on each storey of the property on which there is a room used wholly or partly as living accommodation. For these purposes a bathroom or lavatory is a room used as living accommodation.
  - 16.2 Each smoke or heat detector and alarm system is periodically inspected so as to ensure that they are maintained in proper working order.
  - 16.3 Within 14 days of receipt of a demand by the Authority to see copies of any inspection or maintenance certificates, or confirmation of the location and positioning of the smoke or heat detectors and alarm system, such are provided within 14 days of the demand.

### **Condition 17 - Carbon Monoxide Alarm**

17. The Licence Holder must ensure that:
  - 17.1 A carbon monoxide alarm is installed in any room in the property which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance.
  - 17.2 Such an alarm is kept in proper working order; and that the authority is supplied with, on demand, a declaration by them as to the condition and positioning of any such alarm.
  - 17.3 Adequate checks are carried out before each tenancy commences so as to ensure that each combustion appliance is in proper working order on the day the tenancy begins.

### **Condition 18 - Fire Safety Compliance**

18. The Licence Holder must ensure that:
  - 18.1 The House complies with the current version of the Local Authorities Coordinators of Regulatory Services ("LACORS") Fire Safety Guidance or demonstrates to the satisfaction of the Authority that a reasonable and suitable alternative is in place.
  - 18.2 No deviation from the LACORS' Fire Safety Guidance which lowers the protection afforded at the House takes place before the Authority have agreed that such proposed deviation provides a reasonable and suitable alternative.

### **Condition 19 - Fire Risk Assessment**

19. The Licence Holder must:
  - 19.1 Arrange for a fire risk assessment to be carried out at the House, and that all known risks and hazards noted by such assessment are, in so far as is reasonably practicable, documented, and minimised.



19.2 Fire risk assessments to be reviewed if there is a change in legislation and or layout of the property.

## **Part V GENERAL**

### **Condition 20 - Changes and Alterations**

20. The Licence Holder must ensure that:

20.1 In respect of any change to the:

- Licence Holder's residential address or contact details, or where the Licence Holder is a business, if the business address has changed
- Freehold or leasehold ownership
- Licence Holder or manager's circumstances which may impact upon their status as a fit and proper person including but not limited to cautions, criminal conviction for an offence concerning either dishonesty, fraud, violence, misuse of drugs, discrimination, or housing regulations

such change is reported in writing to the Authority within 21 days of it occurring (or any such lesser period that is specified in any relevant regulation).

### **Condition 21 – Management**

21. The Licence Holder must ensure that:

21.1 They comply with all the requirements of the Housing Act 2004 and all other secondary legislation which concerns the regulation and management of Houses subject to Part 3 licensing.

### **Condition 22 - Training (Appendix 2)**

22. The Licence Holder must ensure that:

22.1 Where the Licence Holder has not attended relevant training in the previous three (3) years, they must as a minimum attend suitable training on the law and legal requirements relating to managing privately rented housing within 12 months of the date the licence is granted. See Appendix 2 for Training Providers.

## Definitions

In these proposed Licence conditions, the following words are defined below:

“Authority” refers to Charnwood Borough Council acting in its capacity as a local housing authority.

“BS” means British Standard.

“Electrical Installations” has the meaning given to those words in regulation 2(1) of the Building Regulations 2010.

“House” refers to:

- “dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling
- “house” means a building or part of a building consisting of one or more dwellings

and references to a house include (where the context permits) any yard, garden, outhouses, and appurtenances belonging to, or usually enjoyed with, it (or any part of it).

“Licence” means the licence granted by the Authority under Part 3 of the Housing Act 2004 pursuant to an application made by the proposed Licence Holder.

“Licence Holder” refers to:

- (i) the person to whom the Authority has granted the Licence, and
- (ii) from the date of his or her consent, any other person who agrees to comply with the Licence conditions, restriction and obligations that follow.

## Condition 22 - Training

The training requirement in Condition 22 is a minimum requirement and depending on the level of responsibility and complexity of properties involved the Licence Holder should consider undertaking further relevant training in line with the extent of their liabilities.

This requirement for Condition 22 can be satisfied by the completion of a one day training course or online equivalent covering the law and legal requirements relating to managing privately rented houses.

Once completed, submit a certificate or other confirmation to the Authority following this training.

The following are recognised as providing a suitable course to satisfy this condition.

DASH Services Landlord Development Course [www.dashservices.org.uk](http://www.dashservices.org.uk)  
linda.cobb@derby.gov.uk 01332 641111

East Midlands Property Owners (EMPO) Basic Law for Lettings  
[www.empo.co.uk/trainingcourses.html](http://www.empo.co.uk/trainingcourses.html) [www.empo.co.uk/contact-us.html](http://www.empo.co.uk/contact-us.html), telephone\_0115  
9502639

National Residential Landlords Association (NRLA) Landlord/Agent/HMO Fundamentals  
eLearning and eClassroom Courses: <https://www.nrla.org.uk/training-academy/core-courses>;  
telephone 0300 131 6400

## Failure to comply with any licence conditions is an offence

### Prosecution/Enforcement Action

It is the Licence Holder's responsibility to ensure compliance with the requirements of all the Licence conditions set out in this document. Failure to do so may result in prosecution for breach of Licence conditions; service of a civil penalty of up to £30,000 in respect each Licence condition breach; and/or the revocation of the Licence.

The Licence Holder, as the person to whom this Licence has been granted, is responsible for ensuring compliance with its conditions at all times, and that any person acting on their behalf in the management of the house is made aware of, and complies with, the obligations and responsibilities set out in this document.

### Limitations of the Licence Transfer

This Licence is personal to the Licence Holder and cannot be transferred to another person, organisation, or property.

### Registered Companies

If the Licence Holder is a registered company and it is dissolved while the licence is in force, the licence ceases to be in force on the date of dissolution.

### Property Condition

This property licence is not proof or evidence that the house is safe and free from hazards and defects. The property licence does not prevent criminal or civil legal action being taken against the Licence Holder, or anyone else with an interest in the property, if any hazards or nuisances are found or any other problems discovered in relation to the condition of the property.

### Building Control

This property licence does not grant any Building Control (Development Control) approvals, consent, or permissions, retrospectively or otherwise. This property licence does not offer any protection or excuse against any enforcement action taken by the Building Control (Development Control) Department.

### Planning Permission

This property licence does not grant, any planning approvals, consents or permissions under the Town and Country Planning Act 1990 or any related planning legislation, retrospectively or otherwise. You should check the Authority's website to ensure the correct planning permissions are in place. This property licence does not offer any protection or excuse against any enforcement action taken by the Planning Services.

## Variation

Where the Licence Holder or a relevant person applies to vary a licence, they should do so at the earliest opportunity and there may be a charge for any variations to a Licence. The original licence stays in force until the variation is determined and comes into effect a person making unauthorised changes may be liable to prosecution or other forms of enforcement action.

## Leasehold Agreements

It is your responsibility to check the terms of any lease that you hold to ensure that renting the property does not breach the terms of your lease.

## Guidance Information

These do not form part of the licence conditions, but you may still be under an obligation to comply with them.

### Consumer Rights and Unfair Practices

The Office of Fair Trading's (OFT) guidance on unfair contracts when conducting their business, drawing up tenancies, contracts, or the service of notices on tenants and/or agents. The Licence Holder must act in good faith and must not conduct actions which would be considered a misleading action or omission. Full information should be supplied to any prospective tenant including details of this licence.

Further advice can be found here: <https://www.gov.uk/government/publications/unfair-contract-terms-cma37> <https://www.gov.uk/government/publications/unfair-terms-in-tenancy-agreements--2>

### Gas Safety

If gas is supplied to the house the Licence Holder shall ensure the Gas Safety (Installation and Use) Regulations 1998 (or any Regulations which subsequently replace these) are complied with. Details of competent Gas Safe engineers can be found at [www.gassaferegister.co.uk](http://www.gassaferegister.co.uk).

### Electrical Safety

The Licence Holder shall ensure that the Electrical Equipment (Safety) Regulations 1994 (or any Regulations which subsequently replace these) are complied with. Certificates must be in the format recommended in the British Standards. All electrical checks, works, and certification must be carried out by a competent person being a suitably qualified electrical contractor who should be registered/member of an approved scheme such as NICEIC, ECA, NAPIT etc. or registered to undertake electrical works in accordance with Part P of the Building Regulations (unless exempt works).

#### Smoke Alarms, Fire Detection Systems and Emergency Escape Lighting

Depending on the size, layout, and occupancy of the property the Licence Holder may need to go over and above the legal minimum standards to adequately protect the tenants from fire and may also need to undertake a risk assessment. When doing this the Licence Holder should have regard to the current Building Regulations; and the LACORS Fire Safety Guide. The LACORS Fire Safety guidance is available at: <https://www.cieh.org/media/1244/guidance-on-fire-safety-provisions-for-certain-types-of-existing-housing.pdf>.

### Competent Person

A competent person is someone who has sufficient training and experience or knowledge and other qualities that allow them to assist you properly. The level of competence required will depend on the complexity of the situation and the particular help you need.

[www.competentperson.co.uk](http://www.competentperson.co.uk).

## Furniture Safety

The Licence Holder shall ensure that the Furniture and Furnishings (Fire Safety) Regulations 1988 (or any Regulations which subsequently replace these) in respect of any upholstered furniture supplied by them, including chairs, sofas, beds, upholstered headboards, mattresses, cushions, seat pads, pillows and upholstered garden furniture etc. are complied with. Further information on the requirements can be found in this guide: <https://www.fira.co.uk/images/FIRA-Flammability-Guide.pdf>.

## Deposits

The Licence Holder shall ensure that any deposit taken as security for a tenancy is protected as appropriate by placing it in an approved tenancy deposit scheme. The tenant must be given the prescribed information about the scheme being used in a specified time.

## Right to Rent

Only people with permission or a right to be in the UK have a right to rent property. As a landlord, you have a responsibility to restrict illegal immigrants accessing the private rented sector. If you are found letting to someone who does not have the right to be in the UK, and you cannot show that you have made right to rent checks, then you could face a penalty of £3,000. For more information visit [www.gov.uk/check-tenant-right-to-rent-documents](http://www.gov.uk/check-tenant-right-to-rent-documents).

## Energy Performance Certificates (EPCs)

Licence Holders shall ensure they comply with relevant legislation, ensuring tenants have sight of a current EPC for the property at the appropriate time. From 1st April 2018 domestic properties in England and Wales must have an EPC certificate with a minimum E rating for energy efficiency.

## Redress Scheme

Where the Licence Holder is a letting agent or property manager, they shall be a member of a relevant property redress scheme. More information is available at [www.gov.uk/government/publications/lettings-agents-and-property-managers-redress-schemes](http://www.gov.uk/government/publications/lettings-agents-and-property-managers-redress-schemes).

## Information Commission Office

Every organisation or sole trader who processes personal information needs to pay a data protection fee to the ICO unless they are exempt'. Organisations can find guidance, pay the fee or search the register by visiting [Data protection fee | ICO](https://ico.org.uk/Data-protection-fee).

In general: The UK data protection regime is set out in the Data Protection Act 2018 and the UK GDPR and applies if you have information about people for any business or other non-household purpose. The law applies to any 'processing of personal data', and will catch most businesses and organisations, whatever their size. Further information and guidance on what the regime requires organisations to do, and how to comply with its duties can be found on the Information Commissioners Office website - [ico.org.uk](https://ico.org.uk).