

Private Sector Housing – Licensing Policy

Wider Context

The purpose of Private sector housing licensing is to ensure the highest risk properties in the private rented sector (typically occupied by some of the poorest and most vulnerable residents) meet the minimum accepted standards and are suitably managed. Licensing is aligned to our priority around ensuring residents have healthy places to live, work and enjoy leisure and cultural activities. Licensing also feeds into one of Eastleigh Borough Council's key Corporate Priorities around tackling health inequality and deprivation, ensuring our residents in most need of help are supported.

A person's home environment is a significant influence over their overall health & wellbeing and as Sir Michael Marmot's review *'Fair Society, Health Lives'* (2010) identifies the lower one's social and economic status, the poorer one's health is likely to be and in part this is related to the available access to reasonable standards of accommodation. Licensing of private sector housing, in particular Houses in Multiple Occupation (HMOs), is aimed at better regulating the standard in this part of the sector so as to lessen any widening of health inequalities for those residents.

Scope

This document outlines the policy adopted by Eastleigh Borough Council to address private sector housing related licensing and in particular the licensing of HMOs.

Legislation

Below is the key legislation covering housing related licencing:

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

Guidance

Below is the key guidance that the Council's policy will have mind to in respect to housing related licencing:

- Housing Act 2004 Explanatory Notes – chapter 35
 - Explanatory notes issued by the Office of the Deputy Prime Minister
- Housing Health & Safety Rating System (HHSRS) Operating Guidance
 - Guidance documentation issued by the Office of the Deputy Prime Minister

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- LACORs Housing - Fire Safety
 - Nationally recognised guidance on fire safety requirements in rented accommodation.
- Local Standards for Houses of Multiple Occupation
 - Standards published by Eastleigh Borough Council, setting locally adopted amenity standards, fire precautions etc. for all HMOs.

Licensing Schemes

The Housing Act 2004, parts 2 & 3, give provisions to Local Housing Authorities to operate licensing schemes to help regulate the standards and management of private rented accommodation. Three licensing schemes are available; Mandatory HMO licensing, Additional HMO licensing & Selective licensing.

All local housing authorities must operate mandatory HMO licensing. Additional & Selective licensing schemes can be brought in at the discretion of the local housing authority where the set criteria within the legislation can be demonstrated to be met.

Eastleigh Borough Council operates only Mandatory HMO licensing at present.

Additional & Selective licensing schemes have been considered previously (last in 2014) but found at that time the circumstances in Eastleigh Borough did not meet the necessary criteria within the legislation for their implementation. The Council will keep these other licensing schemes under review and reserves the right to implement either of these schemes where on review it is found the necessary criteria can be met and it is considered appropriate to do so. The Council aims to review the potential of these other licensing schemes every 5 years.

Legislation Changes

From 1st October 2018 the definition of a HMO required to be licenced under Part 2 of the Housing Act 2004 will change. The change removes any reference to the number of storeys in the property and will instead be as follows:

An HMO is of a prescribed description for the purpose of section 55(2) (a) of the Act if it –

- a) Is occupied by five or more persons;*
- b) Is occupied by persons living in two or more separate households; and*
- c) Meets:*
 - i. The standard test under section 254(2) of the Act;*
 - ii. The self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or*
 - iii. The converted building test under section 254(4) of the Act.*

This change in legislation will result in the Council going from having 4 licenced HMOs at April 2018 to a potential additional 400 properties being brought into the licensing regime. This change in legislation while having a potential to significantly increase service demand also provides an

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opportunity to update our policy and procedures to ensure we are best able to manage the increase in demand and meet our statutory obligations to implement and enforce the legislation.

Recognised landlord Associations

A small reduction in licence application fee shall be given to applicants that are members of landlord associations recognised by the Council.

This nominal reduction (as specified in the fees structure) is intended to be in recognition that members of such associations are viewing their responsibilities and legal requirements as a professional industry and operating and managing their properties as such. This professionalism is something the Council wishes to recognise and encourage across the sector.

Membership of a recognised landlord association does not guarantee a licence will be granted, nor will it preclude the landlord/manager from any enforcement action by the Council where such is necessary in relation to the property.

For landlord associations to be recognised by the Council they will need to meet the following criteria:

- Require paid membership
- Provide their members membership cards and/or hold a members register that allow an applicant's membership to be verified
- Operate either nationally or on a large regional base (no smaller than County level)
- Be considered by an authorised officer to issue appropriate guidance as to landlord's responsibilities and legal requirements.

A list of recognised associations would be made available on our website and used internally for appropriate staff to verify an association is duly recognised and therefore eligible for the discounted fee.

Both the list of recognised associations and the decision to offer any such reduction for their membership will be reviewed regularly. The Council retains the discretion to remove or add any association from the list of those recognised as well as to withdraw the reduction entirely where, upon review, it is no longer considered appropriate to offer such a discount.

Determination of applications

All licence applications will be determined by an authorised officer of the Council. Determinations will have due regard to the fit & proper person assessment, provisions for management of the property and suitability for occupation all of which will be done in accordance with the Licensing Determination procedures.

The Council aims to process, decide and (where granted) issue the licence within 9 months from receipt of a valid application.

An application will be considered duly valid at the point all the following have been received:

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- a full application submitted
- full payment of the correct fee for the application
- ALL additional paperwork as specified on the application form
 - Plan of each floor of the property
 - Building regulation approval or planning permission (where applicable)
 - gas safety certificate
 - electrical installation condition report or domestic electrical installation certificate
 - fire risk assessment
 - proof of adequate management procedures

At the point an application is duly valid, acknowledgement of this will be provided to the applicant through their preferred means of contact.

No licence will be granted without an inspection of the premises first being undertaken.

Inspections

The Council is committed to ensuring improved housing conditions for our residents and maintaining a strong stance in enforcing this commitment. For this reason, all inspections required in determining an application for an HMO licence will only be undertaken by authorised officers of the Council.

It is the Council's position that by ensuring all inspection and associated activities are retained internally we will be better able to ensure a high standard of inspections being carried out and prevent undue bias in the process. This, it is believed, is the best way to ensure good housing standards for our residents and a robust basis on which licences are determined.

Fit & Proper Person Assessment

The Council is required to assess whether the applicant and any designated manager are fit and proper people to manage the property. An authorised officer of the Council will make this assessment in accordance with our Fit & Proper Person Procedure. Where an applicant or a designated manager is found not to be a fit & proper person this will be grounds for the Council to refuse the application for a licence.

Duration of licence

A licence shall always specify a maximum number of occupiers and households who can occupy the property and will in most circumstances be issued for a 5 year period. A licence may be granted for a shorter period at the authorised officer's discretion where there are concerns about the condition of the property or the manager's status as a fit & proper person but insufficient grounds to warrant a refusal of the licence.

Licence Conditions

All licences granted will be issued with conditions attached. These conditions will be inclusive of all mandatory conditions specified in Schedule 4 of the Housing Act 2004 and all additional conditions specific to Eastleigh Borough Council listed in the EBC Licensing Conditions Reference Guide.

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Licensing Fees

Provision is given under section 63(3) of the Housing Act 2004 to charge for a licence application.

The Council shall charge a licence fee for each licensable property. The fee is required to be paid upfront at point of submission of the application form and is non-refundable. The fee shall be determined from a schedule of permitted cost items and will be structured so as to account, through the fee levied, for different sizes of HMOs. The licensing fees will be annually reviewed as part of the fees and charges report.

The permitted cost items may include, but is not limited to, the following activities:

- Responding to enquiries relating to HMO licencing or the application process
- Receipt of application forms and data entry on to back-office system for processing
- Verification checks on application form, additional certificates and paperwork submitted
- Verification of application fee payment
- Assessment of the adequacy of the supplementary paperwork and certification provided
- Fit & Proper person assessment for all relevant parties on an application
- Inspection of the property by authorised officer of the Council
- Determination on suitability of property to be occupied as HMO
- Determination on whether to grant or refuse the licence
- Preparation, production and issue of all paperwork entailed in the process to either grant a licence or refuse
- Ongoing monitoring of a licence issued and compliance to the conditions attached to the licence.
- Communication processes & documents generated in relation to promotion and education around the licensing scheme and its requirements

It must be noted that any potential costs related to enforcement is not a permitted cost item for inclusion in the licence fee. This is due to a separate provision within the Housing Act 2004 giving the ability to cover and recover costs in relation to any particular enforcement action.

The Council is committed to ensuring the licence fee is appropriately set. This will be determined with reference to; the current market and our nearest neighbouring LHAs, that it will fully cover our costs of operating the licensing scheme, due acknowledgement that a LHA is not intended to generate income through profit by the licence fees.

Monitoring & Enforcement of licenced properties

Every licensable property shall have a monitoring inspection at least once within the period the licence runs for. The inspection will be in order to check compliance with licence conditions, management regulations and assess the property under the HHSRS so as to identify any Category 1 or 2 hazards. Any variations, revocations or enforcement action in relation to a licence or the licenced property will be taken under the appropriate legislation in accordance with the licencing variation & revocation procedure or enforcement procedure respectively.

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The Council is committed to ensuring improved housing conditions for our residents and maintaining a strong stance in enforcing this commitment. For this reason, all subsequent monitoring and enforcement of the licences issued and their condition will only be undertaken by authorised officers of the Council.

It is the Council's position that by ensuring all monitoring and enforcement activities are retained internally we will be better able to ensure a consistent and high standard that licenced properties are held too. This, it is believed, is the best way to ensure good housing standards for our residents, with a robust enforcement process that helps ensure these standards by using the powers at our disposal where ever necessary.

Temporary Exemption Notices (TEN)

Where a landlord is, or shortly will be, taking steps to make a property non-licensable, the Council may exercise discretion to serve a TEN. A TEN shall apply for no longer than 3 months and only in exceptional circumstances may a second TEN be served.

A TEN will only be granted in exceptional circumstances upon receipt of a statement in writing from the owner that they are taking steps to make the property non-licensable and these will be completed within 3 months.