



**North  
Herts**  
Council

# Policy for Licensing Houses in Multiple Occupation (HMOs)

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## PART 1 - INTRODUCTION

### 1.1 The policy

- 1.1.1 This document sets out how North Hertfordshire District Council (the Council) will exercise its functions regarding the regulation of houses of multiple occupancy (HMOs) that fall within the mandatory licensing provisions.
- 1.1.2 The aim of this policy is to ensure that existing licence holders, applicants and the public are familiar with how the Council undertakes the regulation of licensed HMOs in North Hertfordshire.
- 1.1.3 A separate policy exists for HMOs that fall outside the remit of the mandatory licensing provisions.
- 1.1.4 This policy is to be read in conjunction with the Council's Policy for Housing Standards and Regulation in Houses in Multiple Occupation.

### 1.2 Policy duration and amendments

- 1.2.1 This policy will be kept under review and amended as and when necessary to reflect changes in legislation, case law, national guidance, best practice, and other relevant Council policies.
- 1.2.2 Administrative amendments to this policy such as, but not restricted to, those required by virtue of:
- legislative changes
  - revised national guidance and/or best practice
  - Council restructure
  - administrative processes
  - clarification of policy
  - amendments required by virtue of changes to other relevant Council policies

may be made by the licensing and community safety manager in consultation with the relevant Executive Member and Chair of the Licensing and Regulation Committee. Amendments under this section are restricted to those required to accurately reflect the current legal or administrative position, and fall outside the remit of sub-section 1.2.4, rather than amendments that change the focus of local policy.

- 1.2.3 The policy will be periodically reviewed to ensure it remains fit-for-purpose and amended where necessary in accordance with the delegations authorised by this section. Every five (5) years, the Licensing and Regulation Committee will be asked to formally review the Policy unless this is agreed to be unnecessary by the licensing and community safety manager in consultation with the relevant Executive Member and the Chair of the Licensing and Regulation Committee.
- 1.2.4 In the event of any significant amendment to the policy, a full public consultation will be undertaken prior to consideration by the Licensing and Regulation Committee. For the purpose of this section, a significant amendment is defined as one that:

- (a) will have significant financial impact on applicants, licence holders or the public;
- (b) will have a significant procedural impact on applicants, licence holders or the public; or
- (c) may not be perceived by the trade or the public to be consistent with the licensing principles set out in this policy.

### **1.3 Departure from policy**

1.3.1 In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this policy and the objectives set out therein.

1.3.2 Notwithstanding the existence of this policy, each application or enforcement measure will be considered on its own merits with regard to the licensing objectives. However, it is likely that departures from policy will be restricted to exceptional circumstances, not used to circumvent the reasonable requirements of the policy.

#### 1.3.3 Substantial departure from policy

Where it is necessary for the Council to depart substantially from this policy, clear and compelling reasons for doing so must be given. The licensing and community safety manager, in consultation with the relevant Executive Member and Chair of the Licensing and Regulation Committee, may authorise a departure from the Policy in accordance with this section if they consider it necessary in the specific circumstances. All such decisions will be advised to Councillors via the Members Information Service (MIS).

#### 1.3.4 Minor departure from policy

Where an applicant or licence holder can demonstrate that a minor departure from this policy, based on the specific individual circumstances, would still ensure that the policy objectives are achieved, the licensing and community safety manager may authorise such a departure.

### **1.4 Delegations**

#### 1.4.1 Authorised officers

All officers of the Council, duly authorised under the Council's Scheme of Delegation and supported by specific written delegations, are responsible for the day-to-day operation of this policy, save for any issues reserved for the licensing and community safety manager or the Licensing and Regulation Committee.

#### 1.4.2 Licensing and community safety manager

The following powers are specifically reserved to the licensing and community safety manager (or in their absence, any officer delegated to act in the licensing and community safety manager's absence):

- (a) the management of the Council's authorised officers as detailed in section 1.4.1
- (b) minor departures from policy in accordance with section 1.3.4
- (c) varying or excluding standard conditions, or adding special conditions

- (d) suspension or revocation of existing licences
- (e) refusal to renew existing licences
- (f) refusal to grant new applications
- (g) minor amendments to Policy in accordance with section 1.2.2; and
- (h) substantial departures from policy in consultation with the relevant Executive Member and Chair of the Licensing and Regulation Committee in accordance with section 1.3.3
- (i) formal enforcement actions including, but not limited to, financial penalties, simple cautions or prosecutions
- (j) interim management orders

## PART 2 – LICENSING PRINCIPLES AND POLICY OBJECTIVES

### **2.1 The need for good quality houses of multiple occupation in North Hertfordshire**

- 2.1.1 Houses in multiple occupation (HMOs) form a vital part of the housing stock in North Hertfordshire and nationally.
- 2.1.2 In 2019-20, the Council carried out a study to identify HMOs in the district and explore associated issues and solutions. Addresses of actual and potential HMOs were gathered from various sources and mapped to help target future action to apply existing legislation. An analysis was also undertaken regarding complaints/service requests received regarding HMOs.
- 2.1.3 The study confirmed that there are relatively few HMOs in North Hertfordshire, insufficient to meet local housing need, and there had been few complaints. The combined data revealed that of the 55,000 or so dwellings in North Hertfordshire, only around 200 were believed to be HMOs.
- 2.1.4 The Council's Housing Strategy and Strategic Housing Market Assessment (SHMA) both forecast a growing need for HMOs in the District.<sup>1,2</sup>
- 2.1.5 The Housing Strategy describes housing affordability problems in the district, in terms of the ratio of housing prices to average earnings, and high demand for a limited supply of smaller affordable housing, making the private rented sector, and HMOs, increasingly important.
- 2.1.6 The SHMA found that many people living in HMOs can only afford shared accommodation.

<sup>1</sup> North Hertfordshire District Council. Housing Strategy 2019-24. March 2019

<sup>2</sup> [Opinion Research Services. Stevenage and North Hertfordshire SHMA Update: Volume 2-Establishing the need for all types of housing. August 2016.](#)

## 2.2 The need for regulation of houses in multiple occupation

- 2.2.1 Although many of our privately rented dwellings and HMOs are of a high standard, local and national surveys have found that the privately rented sector compares unfavourably with other tenures in terms of energy efficiency and housing conditions.<sup>3,4,5</sup>
- 2.2.2 Enforcement powers in Part 1 of the Housing Act 2004 allow hazards to be tackled in all dwellings regardless of size or tenure. The Council's Corporate Enforcement Policy sets out how these powers will be used.<sup>6</sup>
- 2.2.3 However, some HMOs are not suitable for the number of people living there, and can contain additional risks, such as from poor management, increased risk of harm in the event of fire,<sup>7</sup> or problems with sharing amenities and increased refuse production.
- 2.2.4 Therefore, there are legal requirements in addition to the general powers, in order to manage risks in HMOs. This HMO Licensing Policy should be read in conjunction with the Council's Policy for Housing Standards and Regulation in Houses in Multiple Occupation. Together they detail how the Council will apply the housing legislation relating to all HMOs, whether they fall within the remit of mandatory licensing or not.

## 2.3 Policy objectives

- 2.3.1 The Council is committed to supporting landlords and tenants in the housing sector and its policy objectives are:
- (a) ensuring licensed HMOs are safe
  - (b) encouraging an appropriate HMO provision within North Hertfordshire
  - (c) reinforcing or exceeding national standards in North Hertfordshire
  - (d) ensuring a transparent approach to licensing and enforcement of HMOs

## 2.4 Relevance to the Council's Housing Strategy

- 2.4.1 The Council's current Housing Strategy<sup>8</sup> contains two priorities for improving standards in HMOs:
- To seek to ensure that all HMOs that require licensing are licensed, and
  - To revise and update the Council's HMO Policy periodically and use this to ensure that good standards are achieved in all licensed HMOs.

The Housing Strategy gives priority to meeting statutory obligations in respect of HMOs falling within the scope of mandatory licensing.

<sup>3</sup> MHA (2007) Private Sector Housing Stock Condition Survey 2006/7

<sup>4</sup> Cambridge Centre for Housing & Planning Research (2015) Private sector housing in North Herts: a secondary data analysis

<sup>5</sup> [Ministry of Housing, Communities and Local Government. English House Condition Survey 2006 to 2007; English Housing Survey 2008 onwards.](#)

<sup>6</sup> [North Hertfordshire District Council. Corporate Statement of Enforcement Policy 2022](#)

<sup>7</sup> ENTEC. Fire risk in houses in multiple occupation: research report. Department of the Environment, Transport & the Regions. Stationery Office, London. 1998

<sup>8</sup> [Housing Strategy 2019 – 2024](#)

2.4.2 Whilst this policy outlines the Council's approach to licensing HMOs, a separate policy for Housing Standards and Regulation in Houses in Multiple Occupation details the Council's approach to regulatory functions which apply to HMOs falling outside the mandatory licensing remit.

## 2.5 Equality and diversity

2.5.1 The Council is committed to promoting equality of opportunity in its services for all and will endeavour to ensure that all landlords, applicants and tenants are treated fairly and without discrimination.

## 2.6 What is a house in multiple occupation (HMO)?

2.6.1 In simple terms, an HMO is a building (or part of a building) occupied by three or more people, in two or more households, as their only (or main) residence, where there is some sharing (or lack of the sole use) of basic amenities. This includes houses containing bedsits, hostels, and shared houses.

2.6.2 The full legal definition is given under [sections 254-259](#) and [Schedule 14](#) of the Housing Act 2004 and it is that definition that is used throughout this policy.

## 2.7 Which HMOs need a licence?

2.7.1 Legislation makes it mandatory for HMOs, as defined in section 2.6, with five or more occupiers to obtain a licence.

2.7.2 Exemptions exist for HMOs owned by:

- [registered](#) providers of social housing
- the police
- health authorities

2.7.3 Buildings that are converted into fully self-contained flats are also exempt. However, if an amenity for any flat is not located within the flat itself, even if not shared, the exemption does not apply, and a licence will be required.

## 2.8 HMO declarations

2.8.1 The Council may declare a building (or part of a building) to be an HMO if it is used for some other purpose, but the living accommodation is also occupied by persons as their main residence, who do not form a single household, and this constitutes a significant use of that accommodation.<sup>9</sup>

2.8.2 The purpose of serving such a declaration, would be to remove any doubts about a property's status, and make it clear that the building will be regarded as an HMO for the purposes of the Housing Act 2004

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<sup>9</sup> [Housing Act 2004 \(legislation.gov.uk\)](#)

## **2.9 What is a household?**

- 2.9.1 A household is where members of the same family are living together.
- 2.9.2 People who are not related to each other by blood, marriage, or an equivalent cohabiting relationship will be considered as separate households.
- 2.9.3 For example:
  - (a) Three friends sharing together under a shared tenancy are considered three households
  - (b) A married couple sharing with another person are considered two households

## **2.10 Identifying HMOs**

- 2.10.1 The Council will use a variety of methods to actively identify HMOs in North Hertfordshire in particular to identify those which require a licence.
- 2.10.2 This will facilitate the achievement of the licensing objectives to ensure an adequate supply of safe HMOs meeting the Council's published standards.
- 2.10.3 Once an HMO is identified as needing, or potentially needing, a licence the Council will, where practicable engage with and advise the property owner to allow a licence application to be made.

## **2.11 Action against tenants**

- 2.11.1 Due to the nature of HMO accommodation, there is an increased risk that issues may arise between tenants from different households living in the same property. Landlords are responsible for ensuring that the behaviour of their tenants does not cause detriment to other tenants, neighbours, or the wider community.
- 2.11.2 If the Council has to intervene with tenant-related problems, the housing team and environmental health team should be consulted and/or engaged in the process.

## **2.12 Housing consultancy service**

- 2.12.1 The Council encourages constructive dialogue with landlords and provides a chargeable advice service to all landlords who are either renting or looking to rent out their property in North Hertfordshire. This may include, for example, outlining legal requirements, discussing the landlord's plans and concerns with them and their builder, or assisting with making an HMO licence application.
- 2.12.2 Initial basic advice, limited to one hour, will be free thereafter chargeable on a cost recovery basis in accordance with published fees and charges. The advice recipient will be notified of such charges before they become applicable.

## **2.13 Overcrowding in HMOs**

- 2.13.1 The legislation relating to overcrowding is complex and is explained in this policy, specifically Appendix A. Where HMOs are licensed, overcrowding is controlled by



specifying in the licence the maximum number of occupiers or households allowed to occupy the HMO.

- 2.13.2 The number of occupiers permitted by the licence will be calculated based on the standards set out in Appendix A.

## **2.14 Management of HMOs**

- 2.14.1 The Management of Houses in Multiple Occupation (England) Regulations 2006 sets out the duties place on managers of all HMOs.<sup>10</sup>

## **2.15 Enforcement and licensing of HMOs**

- 2.15.1 In North Hertfordshire, HMOs subject to mandatory licensing are the responsibility of the licensing team. This policy sets out how the licensing process will operate, and Part 3 sets out the application process in more detail.

- 2.15.2 HMOs not subject to mandatory licensing are the responsibility of the environmental health team in accordance with a separate policy.

## **2.16 Safeguarding**

- 2.16.1 The Council strongly believes that all licence holders have a responsibility to ensure that safeguarding is a key priority in respect of staff, occupants, and any person in the vicinity.

- 2.16.2. All licence holders and management should sufficiently understand safeguarding matters including, but not limited to:

- gangs and knife crime
- county lines
- modern day slavery
- child Sexual Exploitation
- supply, distribution or taking of illegal substances

to enable them to spot warning signs of any safeguarding matter and know who to report it to. Information and training materials can be found on the websites of Hertfordshire County Council and Hertfordshire Police.

# **PART 3 – LICENSING OF HOUSES IN MULTIPLE OCCUPATION**

## **3.1 Types of HMO licensing**

- 3.1.1 The Housing Act 2004<sup>11</sup> introduced three different types of licensing, two of which apply specifically to HMOs.

<sup>10</sup> [The Management of Houses in Multiple Occupation \(England\) Regulations 2006](#)

<sup>11</sup> [The Housing Act 2004](#)

## **3.2 Mandatory licensing**

- 3.2.1 The most important of these is mandatory licensing which, since it was implemented in 2006, has helped identify larger HMOs and has improved management, safety, and amenities in this sector.
- 3.2.2 Originally, mandatory licensing had only applied to properties with three or more storeys, however in 2018 the Government extended mandatory licensing to include all HMOs with five or more occupiers.
- 3.2.3 Under Part 2 of the Housing Act 2004, an HMO with five or more occupiers is required to be licensed unless a temporary exemption notice, or an interim or final management order, is in force in relation to it.
- 3.2.4 The Council must take all reasonable steps to ensure that applications for licences are made to them in respect of HMOs in their area which are required to be licensed but are not.<sup>12</sup>
- 3.2.5 Ensuring HMOs that require licensing are licensed, and ensuring that good standards are achieved, are priorities within the Council's Housing Strategy. The Council will carry out pro-active work to further publicise the licensing requirements, and to engage with landlords who have not yet applied for a licence.
- 3.2.6 Local housing authorities have a statutory duty to satisfy themselves, as soon as is reasonably practicable, that there are no Part 1 Housing Act 2004 (housing conditions) functions that ought to be exercised by them in relation to HMOs for which they have received a licence application and must do so within 5 years of the application.<sup>13</sup>

## **3.3 Additional licensing**

- 3.3.1 Local councils have discretion to introduce additional licensing of other types of HMOs which are not subject to mandatory licensing. This may be in a defined geographical area or across the whole of a council's area.
- 3.3.2 These schemes are aimed at dealing with problems, such as unmet safety standards or poor management, that cannot be improved by any other means.
- 3.3.3 Now that mandatory licensing has been extended to include all HMOs with five or more tenants, additional licensing schemes have less scope than when introduced by the Housing Act 2004. They can apply to privately rented HMOs occupied by three or four people (including children) who form two or more households, and to poorly converted self-contained flats (also known as section 257 HMOs after the section in the Act which defines them).
- 3.3.4 An additional licensing scheme can only be introduced if the Council is satisfied that a significant proportion of the HMOs are being poorly managed and are giving rise, or likely to give rise, to problems affecting the occupiers or members of the public.

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<sup>12</sup> [Section 61\(4\) of the Housing Act 2004](#)

<sup>13</sup> [Section 55 \(5\) of the Housing Act 2004](#)

- 3.3.5 The Council must be satisfied that there are no other courses of action that might provide an effective remedy and that the introduction of a licensing scheme will significantly assist in dealing with the problem.
- 3.3.6 Any decision to implement a selective or additional licensing scheme must be consistent with the Council's Housing Strategy and must be part of a coordinated approach for dealing with homelessness, empty homes and anti-social behaviour.<sup>14</sup>
- 3.3.7 Currently, there is not the considerable amount of evidence required to demonstrate that additional licensing is necessary or appropriate, nor that it would be effective to tackle problematic housing in North Hertfordshire.
- 3.3.8 There are no proposals to introduce an additional licensing scheme in North Hertfordshire.

### **3.4 Selective licensing**

- 3.4.1 Local authorities have discretionary powers to introduce selective licensing of privately rented homes, not just HMOs, to address problems in the area.
- 3.4.2 A selective licensing designation may be made if the area to which it relates is one experiencing one or more of the following conditions:
- low housing demand (or is likely to become such an area)
  - a significant and persistent problem caused by anti-social behaviour
  - poor property conditions
  - high levels of migration
  - a high level of deprivation
  - high levels of crime.<sup>15</sup>
- 3.4.3 Only where there is no practical and beneficial alternative to a designation should a scheme be made.<sup>16</sup>
- 3.4.4 Currently there is no evidence that any of the above criteria apply in North Hertfordshire, therefore selective licensing is not an available option to the Council.
- 3.4.5 There are no proposals to introduce a selective licensing scheme in North Hertfordshire.

### **3.5 HMOs subject to mandatory licensing that are discovered to be unlicensed**

- 3.5.1 Failure to apply to license an HMO which requires a licence may result in an unlimited fine or a financial penalty of up to £30,000.<sup>17</sup> In addition, the landlord may be ordered to repay up to twelve months' rent and any housing benefit paid during that period.
- 3.5.2 More information on financial penalties and rent repayment orders can be found in the Council's Corporate Enforcement Policy.

<sup>14</sup> Housing Act 2004, sections [57](#) & [81](#)

<sup>15</sup> [The Selective Licensing of Houses \(Additional Conditions\) \(England\) Order 2015](#)

<sup>16</sup> [Selective licensing in the private rented sector: a guide for local authorities March 2015 issued by the Department for Levelling Up, Housing and Communities](#)

<sup>17</sup> [Housing Act 2004 section 72](#)

- 3.5.3 Where a licensable HMO has been operating without a licence the Council will, depending on the individual circumstances, normally give the opportunity to apply for a licence before considering formal action such as a Simple Caution, civil penalty, or prosecution.
- 3.5.4 If the Landlord has pro-actively approached the Council for a licence, an informal approach will be adopted so long as a complete application is duly made within twenty-one days of the need for an application becoming known. Exceptional circumstances that have resulted in a delayed application will be considered by the licensing and community safety manager.
- 3.5.5 A licence would not be required for the property if it is:
- managed by a registered social housing provider
  - managed by a health service body
  - occupied by the owner and their family, with no more than two lodgers
  - owned and managed by one of the other national organisations exempt from HMO licensing

### **3.6 How to apply for a mandatory HMO licence**

- 3.6.1 Councils are required to effectively implement the licensing regime,<sup>18</sup> therefore the Council encourages applications to be made online at [HMO licence application](#). Where an applicant prefers to make a paper application, there may be a higher set fee to reflect the increased administration costs.
- 3.6.2 All HMO applications must include the following:
- complete application form, signed and dated, accompanied by the correct fee
  - a plan of the property showing room numbers, room dimension measurements in metric, location of automatic fire detection/fire alarms, fire doors, and emergency lighting
  - fire safety risk assessment
  - emergency lighting test certificate (if emergency lighting is installed)
  - landlord's gas safety certificate (issued within the preceding 12 months)
  - electrical installation test certificate (issued within the preceding 5 years)
  - automatic fire detection test certificate
  - portable electrical appliance test certificate
  - proof of the applicant's address (utility bill, bank statement, driving licence, passport)
  - tenancy agreement
  - any relevant building control document
  - proof of planning permission (where planning permission is needed)
  - furniture fire safety statement of compliance
- 3.6.3 Applicants should endeavour to supply all required documentation at the time of application. The minimum required to enable the application process to commence is:
- complete application form, signed and dated, accompanied by the correct fee
  - proof of the applicant's address

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<sup>18</sup> [Housing Act 2004 section 55\(5\)\(a\)](#)

- two passport type photographs of the applicant
- tenancy agreement

3.6.4 The applicant is also required to declare they are a fit and proper person and that there are no legal measures pending that would impact this status; failure to confirm such a declaration renders the application invalid.

3.6.5 Where plans are not provided, the Council will ordinarily produce appropriate plans and the applicant will be responsible for the costs incurred.

3.6.6 Where the other required documentation, such as gas or electrical safety inspection certification, or automatic fire detection or emergency lighting commissioning certification, are not provided, these will ordinarily be required through a condition on the licence.

3.6.7 Continued failure to provide the minimum requirements will be regarded as a failure to apply for a licence and legal proceedings may be commenced in line with the Council's Corporate Enforcement Policy.

### **3.7 The licensing process**

3.7.1 Once a complete application has been received, the licence will be granted where:

- the property is reasonably suitable for occupation as an HMO, or it can be made suitable by the imposition of licence conditions
- the management arrangements are satisfactory
- the licensee and manager are fit and proper persons to hold the licence

3.7.2 The applicant must be the most appropriate person to hold the licence.

3.7.3 The 'person managing' is defined in section 263 (3) of the Housing Act 2004<sup>19</sup>.

3.7.4 The licensing process is lengthy and complex, the legal procedures and requirements being set out in Part 2<sup>20</sup> and Schedule 5<sup>21</sup> of the Housing Act 2004, along with associated regulations and amendments.

### **3.8 HMO inspections**

3.8.1 The Act and its associated guidance do not require a physical inspection of the property prior to issuing a licence, and therefore as a minimum the Council may base its decision upon an assessment of the licence application, the accompanying property plan, and any other documents provided by the applicant, along with its internal checks.

3.8.2 However, a Council officer will ordinarily visit before licensing an HMO to assess compliance with the licensing requirements and the number of people the HMO should be licensed for.

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<sup>19</sup> [Section 263 \(3\) of the Housing Act 2004](#)

<sup>20</sup> [Part 2 of the Housing Act 2004](#)

<sup>21</sup> [Schedule 5 of the Housing Act 2004](#)

### 3.9 Assessment of management arrangements

3.9.1 In deciding whether the proposed management arrangements for the property are satisfactory, the council must consider whether:

- any person proposed to be involved in the management of the property has a sufficient level of competence
- any person proposed to be involved in the management of the property is a fit and proper person
- any proposed management structures and funding arrangements are suitable

3.9.2 Licence applicants are required to complete a questionnaire as part of the application form, giving details of how they propose to manage the property, and how essential repair work and routine maintenance is undertaken and funded. From this information, it will usually be possible to make a reasonably informed decision as to whether satisfactory management arrangements are in place.

### 3.10 Fit and proper person

3.10.1 The Council must satisfy itself that the proposed licence holder and the manager (if they are different people) are fit and proper persons to hold a licence or to manage a licensable property. The test is applied to:

- the licence holder
- any person managing the property
- any director or partner in a company or organisation which owns or manages the property

3.10.2 A person will ordinarily be considered fit and proper if the Council is satisfied that they:

- have no unspent convictions<sup>22</sup> relating to offences involving fraud, dishonesty, violence or drugs, or sexual offences
- have no unspent convictions relating to unlawful discrimination on grounds of sex, colour, ethnic or national origins, race or disability
- have no unspent convictions relating to housing or landlord and tenant law
- have no unspent convictions for breaches of planning, compulsory purchase, environmental protection or other legislation enforced by local authorities
- have not been refused an HMO licence, been convicted of breaching the conditions of a licence, or have acted otherwise than in accordance with the approved code of practice under section 233 of the Act (regarding the management of HMOs) within the last five years
- have not been in control of a property subject to an HMO Control Order, an Interim Management Order (IMO) or Final Management Order (FMO) or had work in default carried out by a local authority
- do not have a banning order under section 16 of the Housing and Planning Act 2016 in force against them

This is not an exhaustive list, and the Council may take into account other matters, for example where it has been identified that a landlord is or has been in council tax arrears,

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<sup>22</sup> [Rehabilitation Periods](#)

or where there is a history of non-compliance with any of the Council's requirements. Fit and proper person checks will be carried out with other council departments, including housing advice and benefits teams.

- 3.10.3 The Council will have regard to whether the proposed licence holder or manager has received a Civil Penalty for housing offences within the previous five years. This will not usually preclude them from being considered fit and proper but may do so if the Civil Penalty has not been fully paid within the prescribed time (including after an appeal has been finally determined and the charge upheld) depending on circumstances, such as the level of harm and culpability. The Council will consider each case on its own merits including the reasons for the penalty and the extent of the person's involvement in any property under consideration.
- 3.10.4 Since 2014 it has been a legal requirement for all letting agents and property managers to belong to a government approved redress scheme.<sup>23</sup> Any property manager who is not a member of such a scheme will not be considered to be a fit and proper person. Failure to be a member of an approved scheme is also an offence with fines of up to £5000.
- 3.10.5 In 2018, the Department for Levelling Up, Housing and Communities launched the rogue landlord database. Every application received will be checked against the rogue landlord database and, if necessary, the Council will contact the enforcing local authority to gather more information.
- 3.10.6 The applicant is required to complete a fit and proper person questionnaire and declaration during the application process. The applicant must also sign the form on behalf of all joint licence holders and the manager and must ensure that those persons do not have any offences that must be declared.
- 3.10.7 It is an offence to give false or misleading information. Where no issues are identified, a self-declaration together with our internal checks, will ordinarily be accepted as sufficient evidence of all relevant persons' fit and proper status.
- 3.10.8 Where an applicant indicates that one or more issues applies to them, or where other information comes to light, then further information must be disclosed in order for the Council to assess whether this is of relevance to that person's ability to be regarded as being fit and proper to hold a licence. Applicants may be contacted by the Council with a view to establishing the exact circumstances of the matter. The Council may require a DBS (Disclosure and Barring Service) disclosure or a PNC (Police National Computer) disclosure. Declarations of any unspent conviction will not necessarily mean that the applicant is not a fit and proper person to hold a licence.
- 3.10.9 Wherever possible, applicants who are assessed as not being fit and proper will be encouraged to propose an alternative person or company, who has no personal connection with the refused person, to act as the licence holder on their behalf. The Council will actively work with the initial proposed licence holder to assist in this process wherever possible.
- 3.10.10 In such cases, if a more suitable licence holder is not found, the final decision as to whether a person is to be regarded as not being fit and proper will be made by the licensing and

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<sup>23</sup> [The Redress Schemes for Lettings Agency Work and Property Management Work \(Requirement to Belong to a Scheme etc\) \(England\) Order 2014](#)

community safety manager. Applicants will be invited to state their case in writing as appropriate. If a licence is refused, then the Council must take on the management of the property by making an Interim Management Order.

- 3.10.11 The Council attaches great importance to safeguarding issues. Therefore, where accommodation is, or is likely to be, occupied by vulnerable persons the applicant will be required to support their declaration by obtaining a basic disclosure certificate from the Disclosure and Barring Service (DBS). Existing certificates to this or a higher level will be acceptable, provided they are no more than twelve months old. This applies to supported accommodation housing persons with a background of dependency issues, mental illness, on probation, those under the age of 18, and any other persons considered to be vulnerable.
- 3.10.12 In certain cases, particularly larger hostel-type premises accommodating persons with drug/alcohol dependency, or persons who are still under supervision by the Probation Service, there may be other agencies who would wish to have their views or concerns taken in to account as part of the licensing process, such as the Police or Probation Service. Such concerns may indicate that the proposed licence holder is failing to take reasonable steps to control the behaviour and activities of the occupiers, and this may have an impact upon the local community. As such, the competency of the proposed licence holder or manager may be questioned, even though they may not have declared any outstanding issues and may have a clear DBS Disclosure. The Council will actively work with all such agencies and will consider their views as part of the decision-making process for the licence application, and whether any specific licence conditions are required.
- 3.10.13 In all cases, the proposed licence holder must have a permanent address within the United Kingdom before they can be regarded as being suitable to hold a licence.

### **3.11 Assessment of the suitability for occupation**

3.11.1 The Council must be satisfied that licensable premises are reasonably suitable for occupation by the specified maximum number of persons or households.<sup>24</sup>

#### **3.11.2 Facilities and amenities**

3.11.2.1 Regulations require that the Council takes into account the adequacy of provision of:

- means of space heating in each unit of living accommodation
- toilet, personal washing, and bathing facilities
- kitchen facilities
- fire precautions and equipment<sup>25</sup>

3.11.2.2 Councils may set their own standards accordingly and the Council's guidance at Appendix A has been developed in partnership with other authorities in Hertfordshire and Bedfordshire. The guidance is applied with a degree of flexibility having regard to the use, layout, and occupancy of each property, and therefore is one of the reasons why a property inspection is usually carried out prior to issuing a draft licence.

<sup>24</sup> [Housing Act 2004, section 65](#)

<sup>25</sup> [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 \(Additional Provisions\) \(England\) Regulations 2007](#)



### 3.11.3 Room sizes

3.11.3.1 The government introduced absolute minimum sizes for bedrooms in HMOs where a mandatory licence has been approved on or after 1<sup>st</sup> October 2018.<sup>26</sup> These are cited in Appendix C.

3.11.3.2 When calculating the usable floor area, any area of the room where the ceiling height is less than 1.5m is disregarded.

3.11.3.3 In deciding whether a bedroom for a single adult can be reduced from 8 square metres, the Council must consider the occupier's health. This would include aspects such as mental and social space and the facility to dry clothes outside of the bedroom.

3.11.3.4 The Council has allowed a smaller room size than 8 square metres where the following facilities have been provided either to the occupier or within the house:

- additional exclusive room for the occupier
- additional shared room in the property e.g., a lounge
- a dining space that is separate from the kitchen which provides space for a sofa or tables and chairs
- an area designated within the kitchen which allows the occupier to sit and eat a meal which does not impact on the use of the kitchen

Other options could include:

- where a conservatory is provided, and this is adequately heated
- a suitably sized utility room is provided so this could be used as a place to dry washing

3.11.3.5 Where an HMO licence was in force prior to 1<sup>st</sup> October 2018, the new room sizes will apply to the property when the licence is renewed. This may see a reduction in occupiers allowed within the property.

### 3.11.4 Wash hand basins

3.11.4.1 Where 5 or more persons occupy an HMO, a wash hand basin with hot and cold water and a tiled splashback should generally be provided, where reasonably practicable, within each letting (unless a sink is already provided in the letting), of sufficient size to allow personal washing.<sup>27</sup>

3.11.4.2 Where these are lacking, the Council will undertake an assessment of the property to evaluate the practicalities of the installation of additional wash hand basins in bedrooms. Factors that are taken into consideration include the location of the water source (hot and cold), waste disposal and the size of the bedroom in relation to the likely installation cost.

3.11.4.3 As a guide, if it is not reasonably practicable to provide a wash hand basin within each letting, then where 5 or 6 occupiers are sharing 2 wash hand basins in a property, e.g., the

<sup>26</sup> [The Licensing of Houses in Multiple Occupation \(Mandatory Conditions of Licences\) \(England\) Regs 2018](#)

<sup>27</sup> [Schedule 3 of The Licensing & Management of Houses in Multiple Occupation and Other Houses \(Miscellaneous Provisions\) \(England\) Regulations 2006](#)

bathroom and separate WC (or second bathroom with wash hand basin) the Council will look to require an additional wash hand basin to be installed in at least 2 bedrooms.

3.11.4.4 The Council will normally specify which rooms require the installation of a wash hand basin but will consider alternative proposals from the landlord so long as the room size meets the Council's standard. In exceptional circumstances, with the Council's approval, this licence condition may be completed at the change of a tenancy.

3.11.4.5 If the property is being converted to an HMO, then the Council will expect wash hand basins to be installed at the time of the conversion.

### 3.11.5 Fire alarm systems

3.11.5.1 The Council and Hertfordshire Fire and Rescue Service have adopted and periodically reviewed a joint protocol to improve fire safety, which includes an agreement as to consultation procedures and as to which enforcing authority will lead in different situations, thus avoiding duplication of enforcement action. This applies to all HMOs, whether or not they are licensable, and is therefore referred to in both the general and licensing HMO policies.

3.11.5.2 The fire precaution standards expected in North Hertfordshire are in accordance with the guidance given by the Local Authority Coordinators of Regulatory Services (LACoRS), developed in association with the Chief Fire Officers Association and the Chartered Institute of Environmental Health "Housing – Fire Safety." <sup>28</sup>

3.11.5.3 A guide has been produced in liaison with the Hertfordshire Fire and Rescue Service and the local authorities within Hertfordshire.<sup>29</sup> The guide, attached as Appendix B, helps landlords meet the standards of fire precautions normally required in various types of HMO, without the need for intervention by the local authority. The Council will however carry out an HHSRS assessment when determining actual legal requirements for each specific dwelling, and the requirements may therefore vary from the guide depending on the circumstances.

3.11.5.4 The Council will consider the use of wireless controlled fire alarm systems so long as they have been approved by the Hertfordshire Fire and Rescue Service.

## 3.12 **Issuing a draft licence**

3.12.1 A Notice of Intention to Grant, including a copy of the draft licence, must be served on all interested parties allowing a minimum of fourteen days for representations before granting the actual licence.

3.12.2 The Council will consider the individual circumstances of any representations having regard to this policy before making a decision and issuing a final licence.

3.12.3 Where the draft licence contains conditions requiring works to be carried out, or where the permitted number of occupiers or households is to be less than the number applied for, the officer may offer the applicant a meeting to discuss the conditions and their implications, thus providing the opportunity to pre-empt and consider representations.

<sup>28</sup> [LACORS Housing-Fire Safety Guidance on fire safety provisions for certain types of existing housing](#)

<sup>29</sup> [Guide to Fire Safety in Houses in Multiple Occupation](#)

3.12.4 Licences will specify the maximum number of occupiers or households. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities. When assessing the number of households and occupiers, regard will be given to the prescribed standards and the good practice guide developed by the Council in partnership with other Herts and Beds authorities, attached as Appendix A.

### 3.13 Licence fees

3.13.1 The Council requires the licence application to be accompanied by a fee fixed by the Council. The fee takes into account all reasonable costs incurred by the Council in carrying out its HMO licensing functions, and the Act permits certain costs incurred in carrying out functions in relation to Interim and Final Management Orders to also be taken into account.<sup>30</sup>

3.13.2 Following the decision of the Supreme Court in *R. (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council* and the subsequent referral of one point of law to the European Court of Justice, clarity has been given to the implementation of the EU Services Directives on licensing fees through the Provision of Services Regulations 2009.

3.13.3 The law now precludes any requirement at the time of application for the payment of a fee relating to anything other than the authority's cost of processing and determining the application. The authority's costs of enforcement and ongoing management of a licence should be subject to a separate fee which becomes payable once the licence has been granted and prior to the licence being issued. This does not preclude an applicant from paying both parts of the fee at the time of application however the authority is precluded from making this a requirement.

3.13.4 *R (Gaskin) v LB Richmond Upon Thames*<sup>31</sup> 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.

3.13.5 The Council will now split licence fees into two parts as follows:

#### Application fee

Payable at the time of application representing the authority's costs in processing and determining the application. This fee would not ordinarily be refundable should an application be unsuccessful. Only in exceptional circumstances, such as discovering that a property was not licensable at the time of application, would the application fee be refunded.

#### Licence fee

Payable upon the grant of the application, but prior to the issue of the licence, representing the authority's costs of ongoing enforcement and maintenance of the licensing regime. This fee would be refundable, where paid in advance, if the application was not successful.

<sup>30</sup> [Section 63\(3\) and \(7\) of the Housing Act 2004](#)

<sup>31</sup> [\[2018\] EWHC 1996 \(Admin\)](#)

- 3.13.6 It is important to note that once the application has been processed to the point that it can be granted, the licence will not be issued until the licence fee has been paid.
- 3.13.7 The licence fee becomes due when the Notice of Intention to Grant a Licence is served. If a change in circumstances comes to light after this stage, a refund of the licence fee may be given if the final licence and Notice of Decision to Grant a Licence have not yet been served.
- 3.13.8 There is no entitlement to a refund after the licence has been granted and all associated documentation has been appropriately served.

### **3.14 Amending or varying licences**

- 3.14.1 If there is a change of circumstances in an HMO since it was licensed, the Council can vary the licence. Rather than risk prosecution for breach of licence conditions, the licence holder should apply for a variation if the change might affect the licence. This would include proposed changes of their address or manager, and any proposals to change the layout or amend the number of people on the licence.
- 3.14.2 There is no fee for amending or varying a licence however, a licence is non-transferable. A new licence application will need to be submitted if the licence holder is to change.

### **3.15 Tacit consent**

- 3.15.1 The concept of tacit consent came from an EU Directive,<sup>32</sup> given effect in the UK by the Provision of Services Regulations 2009, which after leaving the EU continue effectively unchanged.<sup>33</sup>
- 3.15.2 One of the requirements of the Directive is that applicants should be provided with a guarantee that their application will be dealt with as quickly as possible and within a reasonable, publicly stated fixed period once all documentation has been received. This period may be extended for a limited time due to issues of complexity provided the applicant is notified before the fixed period for determination has expired.
- 3.15.3 Failing a response within those time periods, authorisation will ordinarily be deemed to have been granted (tacit approval), unless there are overriding reasons relating to the public interest, including a legitimate interest of third parties.
- 3.15.4 Having considered the above Directive, Regulations, and case law, the Council has determined that **tacit consent will not apply to HMO licensing**, as it is in the public interest that applications should be fully processed before a licence can be granted. This is because the licence process determines whether the applicant is a fit and proper person to hold the licence and whether the property is suitable to be multi-occupied, and the licence contains appropriate conditions which are required to be met.
- 3.15.5 After an application for a licence has been submitted, the landlord is able to operate a house in multiple occupation as if they have a licence until the Council has processed the application. Councils are required to determine licence applications within a reasonable

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<sup>32</sup> [Directive 2006/123/EC of the European Parliament and of the Council](#)

<sup>33</sup> [The Provision of Services \(Amendment etc.\) \(EU Exit\) Regulations 2018](#)

time.<sup>34</sup> The Council aims to process complete applications as quickly as possible, ordinarily within 20 weeks of receipt, and to keep applicants informed of progress at regular intervals.

### **3.16 Licence conditions**

- 3.16.1 All licences have generic licence conditions ensuring compliance with Appendix A, which are listed at Appendix D.
- 3.16.2 In many cases there will also be conditions specific to the property such as to provide more amenities for the number of occupants and minimum room sizes.
- 3.16.3 Where works are required to comply with a condition, timescales for compliance are provided as part of the condition.

### **3.17 Breaches of licence conditions**

- 3.17.1 Failure of the licence holder to comply with any licence conditions imposed when the licence was granted is a criminal offence.
- 3.17.2 Breaches of licence conditions will be investigated in line with the Council's Corporate Enforcement Policy, and each case will be judged on its own individual merits.
- 3.17.3 A letter will ordinarily be sent to the licence holder requesting immediate compliance.
- 3.17.4 Informal action may be taken in relation to minor breaches of licence conditions, for example not producing certificates on time, provided that the breaches have not significantly affected a person's health, safety, or welfare.
- 3.17.5 Formal action will be considered where there have been serious and/or persistent, or repeated breaches of licence conditions. The result may be to offer a Simple Caution, impose a Civil Penalty, or to seek prosecution, and may also be grounds to revoke the licence.

### **3.18 Breaches of occupancy limits**

- 3.18.1 Under section 72 (2) of the Housing Act 2004, it is an offence, punishable by prosecution or Civil Penalty, for a person having control of, or managing, a licensed HMO to knowingly permit it to be occupied by any additional person or persons so as to exceed the maximum number of persons or households authorised by the licence.
- 3.18.2 Cases may arise where other persons move into a licensed HMO at the invitation of existing occupiers (usually as friends or relatives), and the licence holder or manager may have no knowledge that this has taken place. If this is discovered, the situation will be brought to the attention of the licence holder or manager, and a period of 28 days will be given to allow the licence holder or manager adequate time to take appropriate action to require the additional person or persons to vacate the premises.
- 3.18.3 The Council's housing team may provide assistance and advice on alternative housing options to those persons affected. A person who has no tenancy or licence agreement will

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<sup>34</sup> [Housing Act 2004, section 55\(5\)\(b\)](#)

be regarded as an occupier for these purposes once they have remained in continuous occupation for a period of 28 days or more.

- 3.18.4 If work is undertaken to extend the property, or to increase the number of occupiers, then a variation of the licence will be required to increase the permitted numbers. The responsible person will normally be invited to, and given adequate opportunity to, apply for a variation to the HMO licence. Failure to then apply for a variation of the licence will result in a visit to the property, and an investigation into the number of occupants and any non-compliance with the licence conditions, which may lead to legal proceedings, or a Civil Penalty being pursued.

### **3.19 Register of licensed HMOs**

- 3.19.1 The Housing Act 2004 requires councils to publish a register of their licensed HMOs<sup>35</sup> containing information prescribed by Regulations made under the Act.<sup>36</sup> This includes the requirement to publish the address and certain details of the HMO, and the name and address of the licence holder and manager.
- 3.19.2 The register must also include particulars of any Temporary Exemption Notices and Management Orders.
- 3.19.3 The [register](#) can be viewed on the Council's website.

### **3.20 Management orders**

- 3.20.1 Where there is no reasonable prospect of a licensable HMO becoming licensed, or where the health, safety and welfare of occupiers is placed at serious and imminent risk (known as the '*health and safety condition*') the Act requires that the Council use its interim management powers to apply for an Interim Management Order (IMO).
- 3.20.2 The Council may also apply for an Interim Management Order (IMO) for non-licensable properties where the health and safety condition applies, or where there are significant and persistent problems of anti-social behaviour with respect to a particular property.
- 3.20.3 This enables the Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. This may be followed by a Final Management Order (FMO) for a further five years.
- 3.20.4 The Council reserves the right to contract an appropriate third party to manage HMOs where there is a need to implement interim management powers.
- 3.20.5 The Council will make full use of the range of management order powers in appropriate cases, but this will always be regarded a last resort. Officers will work in partnership with other council departments, and statutory enforcement agencies and voluntary organisations as necessary, in order to secure improvements to property management standards with the aim of protecting the health, safety, and well-being of residents.

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<sup>35</sup>[Section 232 of the Housing Act 2004](#)

<sup>36</sup>[Licensing and Management of Houses in Multiple Occupation and Other Houses \(Miscellaneous Provisions\) \(England\) Regulations 2006, regulation 11.](#)

### **3.21 Temporary exemption from licensing**

- 3.21.1 The Council may serve a Temporary Exemption Notice (TEN) where a landlord is, or shortly will be, taking steps to make an HMO non-licensable.
- 3.21.2 The circumstances in which a TEN may be served are limited. Where a licensable HMO is not licensed, and no application for a licence has been made, the landlord cannot serve notice to quit until the HMO is licensed.
- 3.21.3 A landlord may wish to apply for a TEN for example where they are proposing to convert a licensable HMO into self-contained flats, thereby excluding the premises from any licensing requirements under the mandatory scheme. In such cases, evidence that the proposed conversion has planning consent and building regulation approval must be produced before consideration will be given to granting a TEN.
- 3.21.4 A TEN can only be granted for a maximum period of three months, however a second three-month TEN can be served in exceptional circumstances.
- 3.21.5 If at the end of the TEN period the property is still licensable, the landlord must apply for a licence immediately to avoid enforcement action for running an unlicensed HMO.
- 3.21.6 A TEN may also be granted if the licence holder dies while the licence is in force.

### **3.22 Revocation of a licence**

- 3.22.1 If there is a serious breach, or there are repeated breaches of the licence conditions, or the licensee or manager are no longer fit and proper persons, the licence can be revoked.
- 3.22.2 The licence can also be revoked if the property is no longer a licensable HMO, or if the condition of the property means it would not be licensable were an application made at the later time.
- 3.22.3 Any remaining period of the licence will be forfeited, and there will be no right to a refund of any part of the original payment.

### **3.23 Duration of licences**

- 3.23.1 Licences will ordinarily be valid for five years from the date the licence was required, i.e., from when evidence has demonstrated to the satisfaction of the Council that the property first became a licensable HMO with the current owner. This ensures there is no incentive to delay making an application.
- 3.23.2 To avoid impractically short licence periods, the minimum period of such a licence will ordinarily be 2 years.
- 3.23.3 Where there is evidence of previous poor management, or the planning status for HMO use is unconfirmed, the duration of the licence will ordinarily be limited to two years.
- 3.23.4 Properties held by an applicant under a lease with an unexpired term of less than five years will be granted a licence for no more than the remaining unexpired term.

### **3.24 Assessing hazards under the Housing Health and Safety Rating System (HHSRS)**

- 3.24.1 HMOs will be prioritised for assessment under the Housing Health and Safety Rating System<sup>37</sup> within five years of the licence being granted. However, subject to available resources, the Council aims to carry out all such assessments within two years of the licence being granted, and in many cases will do so before granting the licence.
- 3.24.2 When a licence is issued, information will be made available to the applicant to help them identify and deal with Category 1 hazards under the HHSRS.

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<sup>37</sup> [Housing Health and Safety Rating System \(HHSRS\): guidance for landlords and property-related professionals](#)