



Charnwood

Houses in Multiple Occupation Licensing Policy

Draft Consultation document

Houses in Multiple Occupation Licensing Policy (HMO)

Introduction

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

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 licensing scheme.

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 separate households and who share a kitchen, bathroom or toilet.

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

Mandatory Licensing

From 1st October 2018 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 separate households, sharing an amenity regardless of the number of storeys, to be licensed.

Additional Licensing

Part 2 of the Housing Act 2004 provides for Local Housing Authorities to introduce an Additional Licensing scheme for HMOs for example, in a particular area or the whole Borough for those HMOs not covered by Mandatory Licensing, where the relevant legal criteria can be satisfied.

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 as being 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 the self-contained flats are let and occupied by tenants.

Licence Fee

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

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

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

The licence fee will be levied in two parts:

- The first part of the licence fee is for the assessment and processing of the application to the point of issuing the decision as to whether to grant or refuse a licence. The first part of the fee will be paid at the time that the HMO licence application is submitted.
- The second part of the HMO licence fee is for the property compliance inspection, management assessment and associated communications. The second part 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 part of the licence fee will be issued with the draft licence.

The fee must be paid in full in order for the licence application to be considered as having been duly made and, if it is not, then the application will not be considered, and a licence cannot be granted. In the event of any significant delay in payment of the second part of the licence fee and any indication to the contrary, the application will be returned.

Charnwood Borough Council works in partnership with the Decent and Safe Homes (DASH) Landlord Accreditation Scheme to improve housing conditions in the private sector. 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. In recognition of this and to encourage membership of DASH a reduced fee is available for DASH 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 license fees:

Description	Fee	Comments
Basic Licence Application Fee	1 st payment £395 2 nd payment £305 Total Payment £700	Fee for a new licence or a renewal application submitted after the expiry date of the previous licence 1 st payment on application 2 nd payment due when draft licence issued
Basic Licence Application Fee - DASH Accredited Licence Holder	1 st payment £395 2 nd payment £220 Total Payment £615	Fee for a new licence for a DASH Accredited Licence Holder 1 st payment on application 2 nd payment due when draft licence issued
Renewal Licence Application Fee	1 st payment £395 2 nd payment £220 Total Payment £615	Where the application is received by the Council prior to the expiry of the existing licence 1 st payment on application 2 nd payment due when draft licence issued
Additional Fees	£10 per additional room	Fee per additional bedroom over 6 bedrooms applies to all applications Payment due when the draft licence is issued
Part 1 Housing Act 2004 Enforcement Action	Current hourly officer rate (with on-costs) for all stages of enforcement as detailed in section 49 of the Housing Act 2004	Not all costs can be recovered from the licence fee. Under Part 1 of the Housing Act 2004 the Council can charge for relevant costs linked to enforcement work.

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 usually be provided in the following situations, when 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.

If the Council is satisfied as to the following then they may grant a licence to the Applicant or other agreed person:

- the proposed licence holder is a fit and proper person(s) and the most appropriate person(s) to hold the licence; and
- there is no banning order
- the proposed manager either has control of the house or is an agent or employee of the person who has control
- that the proposed manager is a fit and proper person to be the manager of the house
- that the proposed management arrangements for the house are otherwise satisfactory.

On receipt of a duly made 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 a decision. Therefore, this could extend the time it takes to process the application.

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

The Council will always propose the granting of a licence by way of a Decision Notice and a draft Licence followed by the issuing of the final Licence upon receipt of the second part of the HMO licence fee and completion of the consultation period, which allows for representations to be made.

It is an offence contrary to Section 95 to not have a licence where one is required.

Fit and Proper Person Test

The Council **must** be satisfied that both the proposed licence holder and manager of the property are fit and proper persons to hold a licence and/ 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 and/or welfare of persons occupying and visiting the property.

The Council assesses whether or not a person is 'fit and proper' on a case by case basis. 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 considering whether a person is 'fit and proper', in addition to the evidence of the matters in Section 89 (2) and (3) the Council will have regard information such as whether the person is listed on the Rogue Landlord Database, any relevant information held on council records and the person's conduct in relation to this application.

An applicant for a licence must disclose any conduct matters 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 determine the application, it may require the applicant to provide further details and/or undertake their own further enquiries with other relevant Council services (Licensing, Planning, Building Control, Council Tax and Housing Benefit) and external bodies as it deems necessary, including for example the Disclosure and Barring Service (DBS) and the Police.

Satisfactory Management Arrangements

The Council may only grant a licence if satisfied, amongst other things, that "the proposed management arrangements are satisfactory". 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 or to issue a licence for a 1 year period in order to monitor the suitability of management arrangements.

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 by the particular property.

The following is a non-exhaustive list of factors that the Council will take into account in addition to the statutory requirements when considering whether or not the management arrangements are satisfactory:

- the applicant's experience and track record of managing the property and, in particular where he or she is the existing manager,
- the premises to which the application relates.

- Landlords who are members of an Accreditation Scheme are more likely to be regarded as having the necessary competence to be involved in the management of the premises than those who are not because, 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 operational 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:

- Systems 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
- Effective management of:
 - 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)
- History of 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.

A licence may be varied, for example, where new information is discovered which could impact on the number of households or occupiers that are appropriate as the maximum.

A licence may be revoked, for example, as a result of a serious breach of a licence condition or repeated breaches of such a condition, or in cases where the Council no longer considers that the licence holder is a fit and proper person.

Visits of licensed properties may therefore be undertaken during the licence period to check for compliance with the licensing and management regimes which apply. The visits can be unannounced in certain circumstances. This is consistent with the powers provided under Section 239 of the Housing Act 2004. Breach of any such legislation is an offence for which further action could be taken.

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 and/or manager of the property is responsible for any conduct that would result in the potential licence holder and/or manager not being considered fit and proper then the Council is also entitled to take this conduct into account when determining the application if satisfied that it is relevant.

Issuing a Licence

All HMOs will be inspected during the lifetime of the licence to check compliance with licence conditions, management responsibilities and minimum standards as well as inspections under Part 1 of the Act. The visits can be unannounced in certain circumstances.

Where the inspection has been pre-arranged then all applicants/tenants will be required to facilitate access to all rooms in the HMO at a suitably arranged appointment.

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

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 applicant/licence holder’s responsibility to ensure that all contact details are up to date and they 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 findings from this inspection. The draft licence 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 officer handling the application and where appropriate the Private Sector Housing Manager.

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

If the applicant/licence holder is still dissatisfied with the conditions of the licence, they have an opportunity to appeal to the First-tier Property Tribunal.

Renewal Applications

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

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

It is important to note that the regulations define a “renewal application” as “*an application for a licence under section 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 in order for the Council to treat any application as a “renewal” the application must be made during the active period of the current licence. If a renewal application is received 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 Strategic and Private Sector Housing Service 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 an HMO or the licence holder changes, then the licence holder must make an application for the licence to be revoked. Any remaining period of the licence will be forfeited and there will be no right to refund of the original payment.

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 the Leicestershire Fire and Rescue Service.

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

The Council will accept a signed self-certification form declaring that a suitable and sufficient fire risk assessment is in place for the HMO; however the Council may request and audit the fire risk assessment 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 the Leicestershire Fire and Rescue Service.

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

Public Registers

A public register of HMO Licences is available online and further details can be obtained by sending a formal, written request to private.housing@charnwood.gov.uk.

Appeals

If an application for an HMO licence is refused, there is a right to appeal this decision within 28 days to the First-tier Tribunal (Property Chamber - Residential Property).

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