

## **Report to the Cabinet**

**Report reference: C/019 /2006-07.**

**Date of meeting: 10 July 2006.**



**Epping Forest  
District Council**

**Portfolio: Housing**

**Subject: Housing Act 2004 – Inspection and Mandatory Licensing of Houses in Multiple Occupation.**

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### **Recommendations:**

- (1) That the policy for the licensing of houses in multiple occupation be approved;**
- (2) That the fees for 2006/07 be as follows:**
  - (a) basic fee (5 units): £550; and**
  - (b) units above 5 units: £50 per additional unit;**
- (3) That, as they relate to the licensing of houses in multiple occupation, the Constitution be amended to include the relevant sections of the Housing Act 2004 into the areas of responsibility of the Licensing Committee;**
- (4) That Officers be granted delegated authority to issue licences in accordance with the policy;**
- (5) That an inspection and assessment regime be introduced;**
- (6) That the establishment be increased by 1 FTE Environmental Health Practitioner from 1 September 2006; and**
- (7) That, in order to enable the above appointment, a supplementary CSB estimate in the sum of £38,000 be recommended to the Council for approval.**

### **Background:**

1. The purpose of the report is to inform the Cabinet of the provisions of the Housing Act 2004 with regard to the licensing of houses in multiple occupation (HMOs) and the statutory duties placed upon the Council.
2. The Housing Act 2004 came into force on 6 April 2006 and changes the approach in England and Wales to improving the quality of homes in the private sector, whether owner occupied, tenanted or leased. The Act has replaced the Housing Act 1985 (as amended) provisions relating to unfit homes, disrepair, overcrowding and provisions in relation to HMOs including control orders and HMO registration. It introduces significant changes affecting private accommodation including:

- a new definition of a HMO;
- a mandatory HMO licensing scheme;
- additional HMO licensing schemes - allowing local authorities to extend licensing to cover other classes of HMO not covered in the mandatory scheme;
- provision for prohibition orders;
- the provision for emergency remedial action; and
- the provision for the service of management orders.

**New provisions:**

3. As of April 2006 all HMOs of three or more storeys, with five or more residents forming two or more households will be subject to mandatory licensing. The aim of HMO Licensing is to ensure that those properties, which potentially pose the highest risk to their occupants are identified, particular issues of safety and management are recognised and that deployment of resources can be prioritised.
4. The Epping Forest House Condition Survey (HCS) was completed in October 2005, and provides a comprehensive review of current stock conditions in the private sector. The report indicates that:
  - most dwellings (78.9%) are houses occupied by a single-family group and are occupied as built;
  - 19% of dwellings are purpose built flats, flats above shops and singly occupied converted flats, with no shared amenities; and
  - of the remaining 2.1% most (2.0% - 890) are HMOs.
5. Under the new definition of HMO, it is estimated that 2.6% of the housing stock nationally can be considered to be HMOs. Of the 890 estimated HMOs in the District, the survey suggests that approximately 420 are bedsit, B&B or hostel type HMOs (these types are what are more traditionally considered as HMOs), 350 are predominantly converted flats with common parts or shared facilities and an estimated 120 shared house type HMOs. Of the 120, a maximum of 55 to 60 could be considered licensable under the new definition of HMO as they do not comprise solely self-contained flats and are not exempt in some other way. Only a detailed inspection of each of these identified premises will determine whether their internal arrangements and rental would lead the buildings to be classified as mandatory licensable HMOs. A survey of all three storey potential HMOs is currently being undertaken, in order to identify those that will need to be licensed. Early indications are that there may be less than 30 licensable HMOs in Epping Forest. Of the remaining properties there remains a duty to inspect/assess approximately 500 of them.
6. The legislation requires that the Council considers whether the landlords, managers and others will be 'fit and proper persons' to manage and carry out related functions at the property. It has to take account of evidence of involvement in fraud, violence, drug and sexual offences, discrimination, and housing related offences like harassment, illegal eviction, etc. In approving a licence the Council must:
  - ensure that the management arrangements for the HMO are satisfactory. These include issues of management structures, managers, employees, competence and funding;
  - determine whether the HMO is suitable for occupation by the number of persons stated in the application form. If the arrangements are unsatisfactory, then a license can be approved for a lesser number, or

- licence conditions imposed requiring execution of specified works within a prescribed time; and
  - ensure that any published Government standards are adhered to. The Government has published draft proposed minimum standards for licensable HMOs. They prescribe, amongst other things, minimum amenity levels and room sizes for each category of HMO. They require a bath/shower and separate sanitary accommodation on a ratio of one for every five occupiers and hand washing facilities to each letting. They also lay down the range of facilities to be provided in shared kitchens, fire precautions in common areas etc.
7. The Government has permitted local authorities to devise their own application forms to suit their specific needs. However, it has indicated that some basic information, such as details of unspent convictions and other residential property owned which must be licensed, must be demanded in all cases. In addition to the compulsory questions the application form will seek details of the management arrangements, a simple sketch plan of the property and copies of gas and electrical safety reports etc.
  8. The Council may charge a licence fee for the cost incurred in carrying out its licensing function. The Government has indicated that Councils should work with housing providers and not to seek to penalise them by excessive charging. However the processes involved in determining licence applications will be complex, and this must be reflected in the fee. The proposed scale of fees is set out in the Appendix and will form part of the policy. The fee scale is intended to reflect, as far as possible, the costs incurred in dealing with the applications.
  9. Mandatory Licensing is a statutory requirement of the Council for those HMOs within its remit. Enforcement powers in relation to mandatory licensing of HMOs take effect from 7 July 2006. Breaches of licence conditions may result in enforcement action by way of prosecution or by the imposition of a management order. However the principles of the Council's enforcement policy will be observed when determining the appropriate course of action.
  10. The majority of landlords within the District operate in an able and responsible manner, providing safe, decent accommodation. Where this is not the case, the Council is required under the new legislation to make an Interim Management Order (IMO). An Interim Management Order is made where:
    - A licensable HMO is incapable of being licensed by virtue of its condition or there is an issue over the landlord or manager not being a "fit and proper" person; or
    - The local authority intends to revoke an existing HMO licence and there is no prospect of a new licence being issued.
  11. Once an IMO is in force the Council takes over most of the landlord's rights and responsibilities including the right to possession. It is required to apply proper management standards to the property and resolve any risks that the HMO presents to the health, safety and welfare of the occupiers or people living in the area. The Council can discharge this function either directly or through a third party such as a Registered Social Landlord or management agent.
  12. Ideally, the making of an IMO will lead to a proper long term management solution for the HMO. However if that is not possible the Council may have no alternative but to make a Final Management Order (FMO). A FMO makes a

local Authority responsible for securing the proper management of the house over a timescale of five years.

13. The Department for Communities and Local Government (DCLG) is currently putting in place a data collection system to monitor the impact of HMO Licensing to which the Council will have to supply data. The data will be compiled nationally by the DCLG and a National Register of Licensed Houses in Multiple Occupation will be accessible for the purpose of implementation of licensing and developing our housing strategies.
14. The maximum duration of a licence is five years, and once issued a licence cannot be transferred to any other person. There may be circumstances when a shorter period should be considered. Decisions regarding licence periods of less than 5 years will be made on the basis of the information available and in accordance with the Licensing Policy.
15. The Council may grant a Temporary Exemption Notice (TEN) from licensing where it is satisfied that the applicant is, or will shortly be, taking the HMO out of the remit of licensing. A TEN lasts for a maximum of three months, but in exceptional cases may be succeeded by a second TEN. No more than two consecutive TENs may be granted on the same HMO. In the event of the death of a licence holder a three month exemption is automatically granted.
16. The Housing Act 2004 requires that registers be maintained to include licensed HMOs, TENs and Management Orders. They are to be made available for public inspection at the Councils office. The Government will be introducing regulations, which will define the information that must be recorded in the register.

**Statement in Support of Recommended Action:**

17. The mandatory Licensing of Houses in Multiple Occupation is a statutory requirement under the Housing Act 2004.

**Other Options Considered and Rejected:**

18. The Council can decide not to charge for licensing. However, existing resources are not sufficient to cover these processes and the other new provisions of the Housing Act 2004. Therefore a charging regime for these functions is recommended in common with other Local Authorities in Essex.
19. The Housing Act 2004 allows Local Authorities to extend licensing schemes (Additional Licensing and Selective Licensing) to cover other classes of HMO. Such schemes need approval from the DCLG. It is considered that given the current HMO profile of the District that there is no need for additional HMO licensing schemes.

**Consultation undertaken:**

20. Essex Private Sector Housing Group with regard to the formulation of the policy.

**Resource implications:**

**Budget provision:** £38,000 CSB.

**Personnel:** One full time Environmental Health Practitioner as from 1 September 2006.

**Land:** The licensing of certain HMOs in the District.

**Community Plan/BVPP reference:** N/A.

**Relevant statutory powers:** Housing Act 2004.

**Background papers:** None.

**Environmental/Human Rights Act/Crime and Disorder Act Implications:** None.

**Key Decision reference:** None.

**Epping Forest District Council**  
**Houses in Multiple Occupation**  
**Licensing Policy**

## **Introduction**

Much of the HMO licensing regime is legally prescribed. This document deals with those areas where the Council has discretion as to how it administers HMO licensing. It sets out EFDC's HMO Licensing policy.

## **Property Standards**

In approving a licence the Council must determine whether the HMO is suitable for occupation by the number of persons stated in the application form. If the arrangements are unsatisfactory, then a licence may be approved for a lesser number, or a licence imposed requiring that specified works are to be carried out.

The Standards to be considered include those for bathrooms, showers, WCs, wash hand basins, cooking facilities and living space. The Government is introducing minimum statutory standards for amenities but not for space. In the meantime the Council will apply the Essex approved code of practice, amenity standard for HMO's

## **Fit and Proper Person**

The Council is required to assess whether the applicant and any manager and any person associated with them or formerly associated with them are fit and proper persons to own or manage an HMO.

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

- (i) they have no unspent convictions relating to offences involving fraud, dishonesty, violence or drugs, or sexual offences.
- (ii) they have not practiced unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business.
- (iii) they have no unspent convictions relating to housing or landlord and tenant law offences.
- (iv) they 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 within the last five years.
- (v) they 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 works in default carried out by a local authority within the preceding five years.
- (vi) they have not been subject to legal proceedings by a local authority for breaches of planning, compulsory purchase, environmental protection legislation or other relevant legislation.
- (vii) there is no evidence of any offence referred to above having been committed within the previous five years.

An unspent conviction or other failure is not necessarily automatic grounds for refusing a licence, other circumstances e.g. training undertaken by the landlord or subsequent co-operation with the local authority will be taken into account.

Where there is evidence of a problem, we will invite applicants to submit an explanation of their actions. The applicant will be required to account for the failure to comply with legislation, and satisfy the Council that this will not recur.

## Management Arrangements

We will expect the licensee to have satisfactory arrangements for the management of the HMO. We will apply conditions requiring that:

- a system for tenants to report defects, including in emergencies, be in place
- arrangements for periodic inspections to identify where repairs or maintenance are needed to be in place
- arrangements to respond to defects reported by tenants and found during periodic inspections to be in place
- a protocol for dealing with anti-social behaviour occurring within the HMO by tenants or their visitors is formulated
- where the licence holder is a managing agent, the clear delegation of authority to make decisions (including those related to expenditure) on all matters concerning health, safety and well being of occupiers and good management is identified
- tenants are provided with a written tenancy agreement
- proper standards of management and maintenance of facilities and equipment are attained and maintained. In particular, the licence will require compliance with the statutory Management Regulations within 3 months of them coming into effect or of the date of issue of the licence as appropriate.
- Owners or managers provide copies of reports of fire detection, alarm system and emergency lighting testing, annually
- Owners or managers provide a copy of the current landlord gas safety certificate, confirming that the installation meets the current regulations;
- compliance with the amenity standard
- the above specified documents be made available to tenants for viewing on request
- a copy of the licence document and the licensee or manager's name, address and telephone number be displayed in a common area of the property
- The licence holder informs the Council immediately or as soon as is practicable of any change in circumstances that would affect their status as a 'fit and proper person'
- a current electrical inspection report as to the safety of the electrical installation be provided on request
- a written list of all occupants be provided on request to the Council.

We will expect the licensee to have arrangements in place for ensuring that employees, contractors and others having occasion to visit the HMO in connection with the management and/or maintenance are fit and proper persons for the function they carry out.

We may specify conditions restricting occupation of parts of the house on the grounds of lack of amenities or usable space as appropriate.

A licence may be varied once it has been issued, either with or without the agreement of the licence holder. Variations without the licence holder's consent are subject to a right of appeal to a Residential Property Tribunal.

A licence may be revoked if the Council considers that the licence holder is no longer a fit and proper person, or where it considers that the HMO would not have been licensable in its current condition. Again, revocation is subject to a right of appeal to a Residential Property Tribunal.



## Licence Applications

We will encourage landlords to apply for licences using a variety of methods including:

- Publicising the HMO licensing provisions
- Sending letters and reminders to all landlords (when contact details are known)
- Providing application forms
- Assisting with completion of the forms
- Sending letters warning of prosecution and the applicant of rent repayment orders.

A valid application for an HMO licence shall comprise of:

- a fully completed application form
- relevant test certificates relating to gas and electrical safety, fire alarm and emergency lighting servicing and furniture safety
- the relevant fee.
- a basic Criminal Records Bureau check dated within the last 12 months.
- a plan of the premises.

All information presented on the application form will be subject to verification as required. This will take the form of site inspections, interdepartmental liaison etc.

## **Licence Approval, Conditions and Duration**

An HMO licence will normally run for a period of five years from the date of approval. The Council may, however, issue a licence for such lesser period as it considers appropriate, having regard to any management deficiencies, the need for works to be carried out to put the house in a satisfactory condition, or concerns as to fit and proper person status of the relevant person (s). The HMO licence applicant will be consulted about our concerns prior to approving a licence for such shorter period as considered appropriate.

Where a shorter licence is granted, subject to satisfactory performance, a further licence will be issued. The duration of the first and second licence periods will be for five years in total. No additional fee will be required for the second licence.

## **Temporary Exemption Notices (TENs)**

The Council may grant a TEN where:

- the owner of a licensable HMO states in writing that they are acting to make it a non-licensable; and
- the Council is satisfied that it will be non-licensable within three months of the date of receiving the written notice.

We will only look to grant a second TEN in exceptional and unforeseen circumstances.

**Licence Fees**

An HMO licence will normally run for a period of five years from the date on which it is granted and shall be subject to the prescribed fee that will be subject to annual review.

Appendix (i)

## **DEFINITION OF HMO IN THE HOUSING ACT 2004**

**Section 254** provides that a building or part of a building is a "house in multiple occupation" if:-

- (a) it meets the "the standard test";
- (b) it meets the "self contained flat test";
- (c) it meets the "converted building test";
- (d) an HMO declaration under S255 is in force; or
- (e) it is a converted block of flats to which s257 applies.

A building or part of a building meets the **Standard Test** if:-

- it consists of one or more units of accommodation (not self contained flat or flats);
- the accommodation is occupied by persons who do not form a single household;
- the accommodation is occupied as their main residence;
- their occupation is the sole use of the accommodation;
- rent or other consideration is payable; and
- two or more households occupying the living accommodation share one or more basic amenities or the living accommodation lacks one or more basic amenities.

A part of a building meets the **Self Contained Flat Test** if:-

- it consists of a self contained flat; and
- all the conditions set out above for the standard test except the first apply

A building or part of a building meets the **Converted Building Test** if:-

- it is a converted building;
- it contains one or more units of living accommodation not self contained flat or flat(s); and
- all the conditions set out above for the standard test except the first apply

"Basic amenities" means a toilet, personal washing facilities or cooking facilities.

**Schedule 14** to the Act excludes a number of buildings that would fall within the definition but for their ownership or type of occupation. These include properties owned by local authorities, RSLs, health, police and fire authorities etc together with student halls of residence, certain religious communities and properties where two households comprise two people.

**Section 259** specifically states that a person is to be treated as occupying a building or part of a building as their main residence if they are a full time student or resident in a refuge.

A local authority may make a **HMO declaration** in respect of a building or part of a building where they are satisfied that, whilst the occupation in a manner which otherwise meets the requirements of the three tests is not the sole use of the building or part of a building, it does constitute a significant use of the accommodation or flat.

Property owners can appeal to the Lands Tribunal. A local authority can revoke an HMO declaration if they consider that it now longer applies. **Section 260** provides that there is presumption that the conditions of sole use or significant use are met unless the contrary is shown.

The 2004 Act also states that certain converted blocks of self contained flats are within the definition of "house in multiple occupation":-

- (a) Where the building work associated with the conversion did not comply with appropriate building standards if not exempt at the time (if conversion before 1 June 1992 the Building Regulations 1991 or otherwise Section 1 of the Building Act 1984); and
- (b) Less than two thirds of the flats are owner occupied (by person(s) with a lease over 21 years or a freehold estate)

The 2004 Act makes the meaning of "person not forming a single household" in **Section 258** by stating that persons do not form a single household unless:-

- (a) they are all members of the same family,
- (b) their circumstances fall within descriptions given in regulations which the Act empowers appropriate national authorities to make.

Section 258 also sets out particular circumstances where person are to be regarded as members of the same family.