

Selective Licensing – Procedure and Approach

Housing and Environmental Enforcement

1. Background

1.1 West Lindsey District Council is committed to ensuring that private rented sector properties within the district are safe, secure and well-managed. Part 3 of the Housing Act 2004 enables Local Housing Authorities to introduce selective licensing for a period of up to five years in areas which meet statutory criteria and, once introduced, requires that all affected private rented sector properties within a designated area must be licensed by the Local Authority.

2. Policy Statement

2.1 The following document sets out the Council's approach to discretionary licensing, and seeks to provide a clear, fair and consistent approach in the licensing and enforcement of selective licensing in order to improve the standards of property conditions and management in private rented properties which fall within a designated selective licensing area.

2.2 This document should be read in conjunction with the Council's other policies, specifically the Housing Enforcement Policy, and Civil Penalty Policy. The Council's overall approach to enforcement is set out in the Corporate Enforcement Policy.

3. Houses which are required to be licensed

3.1 Properties which fall within the scope

3.1.1 Once a designation has been made, all private rented sector properties within the designated area must be licensed, unless:

- A Temporary Exemption Notice (TEN) is in force, or;
- A management order is in force under the Housing Act 2004, or;
- A statutory exemption from the scheme applies.

3.2 Temporary Exemption Notices

3.2.1 The Housing Act 2004 provides that a landlord can apply for a temporary exemption from the licensing scheme for a period of three months, in cases where they are taking steps to ensure that the affected property will not require a licence at the end of this period. For example:

- Where a sale is agreed to someone who intends to live in the property themselves;
- Where the owner is moving back into the property, or;
- Where there are current conversion works to change the use of the property into commercial premises.

3.2.2 An application can be made for a TEN on the Council's website, in most instances the Council will require evidence of the circumstances which have led to the application being made. In exceptional circumstances, a further TEN of an additional three months may be granted.

3.2.3 Following the expiry of the temporary exemption notice, if the property is now exempt from licensing due to a change of circumstances no action will be required. If a TEN was issued and the property is still licensable following expiry, and no application for a further TEN has been received, or one has been received but has been refused, a valid application for a selective licence must be submitted without delay. Failure to apply for a selective licence when required to do so may result in further formal action through use of the Council's enforcement powers, as outlined below.

3.3 Statutory Exemptions from Selective Licensing

3.3.1 There are some statutory circumstances where properties which fall under the scope of selective licensing are exempt from there scheme:

- The property is subject to a current prohibition order
- The property is being used for business premises
- The property requires another type of licence (e.g. a HMO licence)
- The property has a tenancy for agricultural buildings
- The property is controlled by a local housing authority, a policy authority, metropolitan police authority, a fire and rescue authority or a health service body
- The property is solely occupied by students undertaking a full-time course of further or higher education and where the person managing or in control of it is the educational establishment
- The tenancy agreement has been granted for more than 21 years, and where the agreement does not contain a provision allowing the landlord to end the tenancy (other than through forfeiture) earlier than the term of the lease. (The house or dwelling must be occupied by the original person who was granted the tenancy or any members of their family).
- The tenant is a member of the landlord's family. (The house must be the occupier's main residence. The person granting the occupancy must be the freeholder or leaseholder, which is for a period of more than 21 years. This lease must not contain provision allowing the landlord to end the tenancy (other than through forfeiture) earlier than the term of the lease.
- The tenancy or licence is granted for the occupancy of a holiday home, or
- The occupier shares the accommodation with the landlord or licensor, or a member of the landlord or licensors family.

3.3.2 Where property owners believe their premises are statutorily exempt, they are encouraged to submit an application for a full exemption in order to formally notify the Council of their property circumstances at the earliest available opportunity. Failure to do this may result in enforcement action being taken.

3.4 Securing Licence Applications

3.4.1 The Council will take reasonable steps to secure applications by identifying licensable properties within the area, seeking to notify identified landlords and taking appropriate enforcement action where required licence applications are not made.

3.4.2 It should be noted that landlords are ultimately responsible for ensuring they meet their obligations in respect of their private rented sector properties and should proactively seek to learn of any licensing schemes which may affect their premises.

4. Applications for a Selective Licence

4.1 Applications must be made to the Council in accordance with such requirements as the authority may specify. This includes provision of information as necessary for the Council to determine any application, the provision of payment in line with the scheme's fee structure, and safety certificates, including:

- A valid Energy Performance Certificate evidencing the Minimum Energy Efficiency Standard (MEES) has been met
- A valid gas safety certificate for properties with gas, no more than one year old, and;
- A 'Satisfactory' graded Electrical Installation Condition Report no more than five years old.

4.2 Where applications are missing an essential element and therefore cannot be considered to be 'duly made' by the Council, the properties will be treated as being unlicensed.

4.3 Payments

4.3.1 The licence fee is set at such a level as to cover costs incurred by the Council in carrying out its functions under Part 3 of the Housing Act 2004.

4.3.2 Consideration has been given to the precedent set by the European Court of Justice in R (Hemming) v. Westminster City Council which outlined that the EU Provision of Services Regulations 2009 apply to property licensing schemes and associated fees, and therefore requires that the overall licence fee should be paid in two stages:- Part 1 to assess and process

the application to the point of issuing the decision and where applicable, the licence documentation, and Part 2 for any inspection, management and associated communications.

- 4.3.3** Part 1 must be paid at the time of the licence application submission, and the application will not be considered 'duly made' by the Council until such a time as this element of the payment is received, alongside any further application requirements.
- 4.3.4** Part 2 will become payable at the time the Council is proposing to grant the licence, and the request for this payment will be made at the time of issue of the draft licence documentation. The fee must be paid within the timescales specified.
- 4.3.5** Landlords will be given the option at the time of application to pay both parts of the fee if they wish.
- 4.3.6** Part 3 of the Housing Act 2004 includes provision to enable the Council to impose a restriction/obligation on a particular person (with their consent). Licence holders will be required to consent to pay the Stage 2 fee in advance of the licence being issued, this will be required as part of the application process.

4.4 Refunds

- 4.4.1** Where payment of a licence fee has been received, no refund will be given except in circumstances where either; a licence application has been made and the house was not required to be licensed at the time of payment, or; in cases where a licence fee has been calculated incorrectly at the point of application and an overpayment has been made. A request for a refund should be made in writing to the Council.

4.5 Determination of licence applications

- 4.5.1** Once an application has been deemed complete, the Council will consider the information and documentation provided with the application, and any other information available in order to assess whether the licence should be granted or refused. The Council must be satisfied that:
- The proposed licence holder and manager of the property are fit and proper persons, and;
 - The that the proposed licence holder is the most appropriate person to hold the licence, and;
 - There are satisfactory management arrangements in place or that such arrangements can be imposed through licence conditions.

4.6 Fitness and management

4.6.1 Each applicant must demonstrate that they are a fit and proper person as part of the licence application. This will involve providing identification, and a declaration to confirm their status in respect of relevant criminal offences and enforcement history. The Council will consider any evidence that the person applying for the licence (or who is otherwise known to be involved in the management of the property) has any previous convictions or enforcement activity relating to:

- Violence
- Sexual offences
- Drugs of fraud
- Any relevant housing or landlord and tenant legislation
- Unlawful discrimination practices

4.6.2 The Council will also consider whether the financial arrangements for the property are appropriate, including whether there are measures in place for repairs to the licensable property. Where the Council is aware of significant unpaid debt, this may be considered as part of their determination.

4.6.3 Where the Council has reason to query an applicant's fit and proper status, further measures may be required such as the provision of a recent DBS check or the imposition of more stringent licence conditions.

4.6.4 Where an applicant is deemed not to be fit and proper, the Council may agree alternative arrangements that another person may hold the licence if they can demonstrate a suitable degree of control over the property. The fit and proper criteria also applies to persons with an association to someone who has been determined not fit and proper, and for that reason, close family members are unlikely to be accepted as licence holders for an applicant who has been deemed unsuitable for that reason.

4.6.5 The Council must also make a determination as to whether a person has sufficient competence to be involved in the management of the property, and will consider their experience and track record of managing the property in making a determination. Consideration will also be given to the Applicants and/or Managers geographical proximity to the property, and the impact this may have on the management arrangements.

4.6.6 In considering the management arrangements for the property, the Council will also determine whether there appears to be adequate arrangements for dealing with:

- Emergency repairs and other issues

- Routine repairs and maintenance
- Management of tenancies and occupants
- Management of the behaviour of tenants, occupants and their visitors
- Neighbourhood issues (including disputes)

4.6.7 Where the Council has concerns that the proposed management arrangements are not suitable, or someone who is considered not 'fit and proper' is involved in either the licence or the management of the property, it may be necessary for the licence application to be refused.

5. Licences

5.1 Licences last for a maximum duration of five years, running from the day on which the licence is granted. The Council has discretion to issue a licence for a shorter period where appropriate.

5.2 Licence Conditions

5.2.1 A copy of the licence conditions can be found in **Appendix 1**, and outline the mandatory and discretionary conditions which licence holders (and any persons who have agreed to be bound by the conditions) will be required to adhere to over the duration of the scheme

5.3 Transfer of Licence

5.3.1 A licence cannot be transferred to a third party, even where a property is sold. A licence holder must notify the Council so that the licence can be revoked in circumstances where they cease to be in control of the property and a new one issued if appropriate and a new application is received from the new owner.

5.3.2 In the event of the death of a licence holder, the licence is automatically terminated and the property will be exempt from licensing for a period of three months from the date of death, as though a TEN had been granted for the property. If further time is needed after three months, a further three month period can be granted, as referred to above.

6. Inspections

6.1 The Council intends to inspect 50% of the licensable properties over the course of the scheme. Where possible, inspections will be prioritised based on any information the Council holds to help them assess risk level at the property. The higher risks properties will be the focus of inspections (i.e. properties that are unlicensed, where disrepair reports have been received or where information relating to the tenant or the landlord suggests the risk is higher).

6.2 In some cases, twenty-four hours' notice may be given to owners and occupiers of the intended inspection, however, this is not a requirement where the purpose of the inspection is to ascertain whether an offence has been committed in connection with selective licensing and therefore unannounced visits and licence condition spot checks may take place over the course of the scheme.

7. Public Register

7.1 The Council is required to develop, maintain and make available a register relating to any licences, TENs and Management Orders in force over the duration of the scheme. The register will contain such details as:

- The address of the licensed property
- The name and address of the licence holder
- The name and address of the property manager
- The start date and duration of the licence

8. Enforcement

8.1 Where landlords and managers do not meet their obligations under the selective licensing scheme, the Council will review enforcement options available and consider these in line with the Housing Enforcement policy.

8.2 Failure to Licence

8.2.1 It is a criminal offence to operate a licensable property within a designated selective licensing area without applying for a licence or exemption. Where further action is considered appropriate, the Council is able to instigate prosecution proceedings or commence civil penalty proceedings in respect of the offence.

8.3 Breach of Conditions

8.3.1 It is a criminal offence to fail to comply with the condition of a selective licence. Where further action is considered appropriate, the Council is able to instigate prosecution proceedings or commence civil penalty proceedings in respect of the offence.

8.4 Revocation or Variation of Licence

8.4.1 Where a licence holder or relevant persons conduct over the duration of a licence gives the Council cause to believe the fitness and management may be impacted, a licence can be varied or revoked by the Council on its own initiative without the agreement of the licence holder.

8.5 Rent Repayment Orders

8.5.1 In cases where the Council can evidence that one of the above offences has been committed, an application may be made to the First-tier Property Tribunal for an order to reclaim any monies paid over the duration of an offence up to a period of one year.

8.6 Banning Orders

8.6.1 Where a banning order offence has been committed in connection with the selective licensing scheme, the Council is able to apply to the First-tier Property Tribunal for an order to ban the landlord or property manager from letting or managing the property in the future – further information is outlined in the Council's Banning Order policy.

8.7 Interim and Final Management Orders

8.7.1 The Council has the power to make interim and final management orders in respect of unlicensed premises which it is appropriate to do so. Such orders enable the Council to take control of the residential premises the order relates to.

8.8 Property Standards

8.8.1 The Council retains all of its other statutory powers to regulate standards in selective licensing areas.

9. Empty Properties:

9.1 Empty properties are not required to be licensed under a selective licensing scheme, however, the Council is able to support in bringing empty homes back into use through the provision of advice and through our funded partnership work with the third sector. From time to time, the Council also has funding to run grant initiatives and schemes.

9.2 Although empty properties fall outside of the scope of selective licensing schemes and are therefore not bound by the licence conditions, where an empty property is problematic in an area, the Council will try and engage with the owner and use other statutory powers to address issues where appropriate.