



DERBY CITY COUNCIL

HOUSING AND SOCIAL INCLUSION CABINET MEMBER MEETING 6 OCTOBER 2006

Report of the Corporate Director – Resources and Housing

Procedure to Assess for Fit and Proper Person under House in Multiple Occupation Mandatory Licensing Scheme

RECOMMENDATION

1. To approve the attached procedure to assess for Fit and Proper Person under the House in Multiple Occupation – HMO – Mandatory Licensing Scheme.

SUPPORTING INFORMATION

- 2.1 In April 2006, government introduced Mandatory Licensing of particular HMOs, meaning the Council must issue a licence to those HMOs to which Part 2 of the Housing Act 2004 applies. To issue a licence, the Council must be satisfied that the:
 - HMO is reasonably suitable for occupation by the number of people specified on the licence
 - proposed licence holder and/or proposed manager – if applicable – is a Fit and Proper Person
 - proposed licence holder is the most appropriate person to hold the licence
 - proposed management arrangements are satisfactory
 - financial structures for the management are suitable.
- 2.2 Proposed licence holders and proposed managers – if applicable – must self-declare on the Licence Application Form that they are free from conviction of offence under the following areas:
 - fraud, dishonesty, violence, drugs, Sexual Offences Act schedule 3
 - sex, colour, race, ethnic or national origin, disability
 - Housing Act, Environmental Protection Act, Building and Planning Law, Public Health, Health and Safetyor provide details of any convictions under these headings.
- 2.3 As well as this self-declaration, we will check with other Council departments, such as Council Tax and Housing Benefits, and outside agencies such as the Police, to see whether they have any reason to think the applicants are not 'fit and proper persons'.
- 2.4 The attached procedure will provide clear guidance to allow the Council to decide in appropriate cases not to issue a licence.

For more information contact: Trish McLoughlin 01332 256414 e-mail trish.mcloughlin@derby.gov.uk

Background papers: None

List of appendices: Appendix 1 – Implications

Appendix 2 – Procedure to Assess for Fit and Proper Person under House in Multiple Occupation Mandatory Licensing Scheme

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|---------------------|
| IMPLICATIONS |
|---------------------|

Financial

1. All costs surrounding the mandatory licensing of HMOs will be met from licensing income.

Legal

- 2.1 The provisions relating to mandatory HMO licensing are contained within Parts 2 and 7 of the Housing Act 2004. Under these the local authority has a duty to license all eligible HMOs within a 'reasonable period' of valid application being made.
- 2.2 Testing for fitness is required under S66 of Part 2 of the Housing Act 2004. Should the decision be to not grant a licence, a Proposal to Refuse to Grant a Licence, under Sch 5 Para 5, will be issued to the proposed licence holder informing them of, and stating the reasons, for the decision. A consultation period of 14 days from date of service then exists. Should we then serve a Notice of Refusal to Grant a Licence, under Sch 5 Para 8, they then have 28 days to appeal to the Residential Property Tribunal Service – RPTS, the public body set up to deal with these matters. The RPTS has the power to confirm or reverse the Council's decision.
- 2.3 The application form contains a declaration under the Data Protection Act 1998, giving us permission to check the information provided by the applicant and/or proposed licence holder, with other Council departments and outside agencies. All checking of information in this way is covered by Information Sharing Agreements.

Personnel

3. None.

Equalities impact

4. The standard of private rented housing in the city impacts upon the quality of life both for tenants and for those living in the neighbourhood, impacting most heavily on the more vulnerable sectors of Derby's community.

Corporate priorities

- 2.4 This proposal will contribute to the Council's priority of working to improve the quality of life in Derby's neighbourhoods.
- 2.5 The standard of private rented housing in the city impacts upon the quality of life both for tenants and for those living in the neighbourhood, impacting most heavily on the more vulnerable sectors of Derby's community.

Fit and Proper Person

Procedure Notes

1. The Fit and Proper Person assessment is to be carried out only when a fully completed application has been returned.
2. **If 'no' has been answered to all the questions on the application form**

If **No** has been answered to all of the Fit and Proper questions in the main application form – with the exception of Q2.13a – carry out the following checks, by way of information sharing agreements where necessary ...

- Check the proposed licence holder and any associate on CitizenView.
- Check the proposed licence holder and any associate with all 40 East Midlands Authorities.
- E-mail request to the following: Building Control
Planning Control
Benefits Fraud
Derbyshire Constabulary
Housing Options Centre
to check the proposed licence holder, any associate and the property history.
- Check proposed licence holder, any associate and property history on FLARE and Notice Database.

Allow seven days for the above agencies to reply with any concerns.

3. If **any** concerns have been raised from the above checks, the case should automatically be referred to the Licensing Review Group, regardless of any 'No' responses to the questions in the Fit and Proper Person section of the application form.
4. **If 'yes' has been answered to any of the questions on the application form**

If **yes** has been answered at any stage of the Fit and Proper person section of the application form, the additional Fit and Proper person questionnaire must be completed.

When this questionnaire is returned fully completed, all of the checks listed in 2. above should be carried out, and seven days given to the relevant agencies to comment.

When all comments have been received, the case should **always** be passed to the Licensing Review Group. The Licensing Review Group's function is described in 5. below.

5. **Licensing Review Group**

Because of the individual nature of the cases and the possible offences to be considered, each case where yes has been answered in the Fit and Proper Person section of the application form **and/or** where concerns have been raised during the checks we carry out, the cases should be assessed individually by the Licensing Review Group.

The group should meet within seven days of the Licensing and Accreditation Coordinator completing the additional checks.

The group is made up a quorum of the Chair or a Deputy Chair and two of the following:

- Private Sector Housing Manager – Chair
- Housing Standards Manager – Deputy Chair (1)
- Housing Projects Manager – Deputy Chair (2)
- Improvement Programme Manager
- Licensing and Accreditation Coordinator
- Housing Standards Officer
- Licensing Officer
- Principal Solicitor.

The group may also wish to invite a representative from one of the departments listed in section 2. to attend the meeting to advise the group of their concerns.

The additional Fit and Proper Person check and any e-mail replies from the checks we carry out should be kept separately from the main licensing file, and should be kept in a lockable cabinet, the key to be retained by the Licensing and Accreditation Coordinator.

6. If the group decides to grant a licence, they should complete section 10 of the mandatory licence fly sheet – copy attached – and list their reasons for deciding to grant the licence and sign the form.
7. If the group's recommendation is that the proposed licence holder or associate do not meet the Fit and Proper Person criteria, the case will be referred to the Assistant Director for Housing and Advice Services for a final decision.

Only the Assistant Director is able to refuse to grant a licence.

Any Proposal to refuse to grant a licence or Refusal to grant a licence notices will only be served by the Assistant Director.

8. Any decision to refuse to grant a licence can be appealed by the licence applicant / proposed licence holder. The appeal must be made to the Residential Property Tribunal. Details of how to do this are provided with the relevant licensing notices.

Housing Standards Team
30 August 2006

GRANT OR REFUSAL TO GRANT A MANDATORY LICENCE

Please complete the following questions to assess if licence should be issued or refused.

| General | | | | | | | | | | |
|--|--|--|-----|--|---|--|---|--|---|---|
| 1. | Address of property to which licence relates: | | | | | | | | | |
| 2. | Is the property | a) house | n | | y | | | | | |
| | | b) flat | n | | y | | | | | |
| Building | | | | | | | | | | |
| 3. | a) | Is the building an HMO under S254 of the HA2004? Disregard a S257 HMO. | | | | | | | n | y |
| | b) | If yes, what type of HMO: | | | | | | | | |
| | | • standard test | n | | y | | | | | |
| | | • self-contained flat test | n | | y | | | | | |
| | | • converted building test | n | | y | | | | | |
| 4. | Does the building comprise of three or more storeys? | | n | | y | | | | | |
| 5. | Is the building occupied by five or more people? | | n | | y | | | | | |
| 6. | Is the building occupied by two or more households? | | n | | y | | | | | |
| 7. | Are one or more basic amenities shared? | | n | | y | | | | | |
| 8. | a) | Maximum number of households | | | | | | | | |
| | b) | Maximum number of persons | | | | | | | | |
| Amenities | | | | | | | | | | |
| 9. | Does the property meet the prescribed standards for the following: | | | | | | | | | |
| | • | heating | n/a | | n | | y | | | |
| | If no, list deficiencies: | | | | | | | | | |
| | • | washing facilities | n/a | | n | | y | | | |
| | If no, list deficiencies | | | | | | | | | |
| | • | kitchen facilities | n/a | | n | | y | | | |
| | If no, list deficiencies | | | | | | | | | |
| | • | accommodation without shared basic amenities | n/a | | n | | y | | | |
| | If no, list deficiencies | | | | | | | | | |
| | • | fire precautionary facilities | n/a | | n | | y | | | |
| | If no, list deficiencies | | | | | | | | | |
| Proposed licence holder | | | | | | | | | | |
| 10. | Has the proposed licence holder passed the Fit and Proper Person test? | | n | | y | | | | | |
| 11. | Is the proposed licence holder the most appropriate person to be the licence holder? | | n | | y | | | | | |
| Manager | | | | | | | | | | |
| 12. | Is the proposed manager: | | | | | | | | | |
| | the person having control of the house? | | | | | | | | | |
| | a person who is an agent / employee of the person having control of the house? | | | | | | | | | |
| 13. | Has the proposed manager passed the Fit and Proper Person test? | | n | | y | | | | | |
| 14. | Are the proposed management arrangements considered satisfactory? | | n | | y | | | | | |
| Grant licence | | | | | | | | | | |
| If no, state reasons for refusal to grant licence below, and refer to Housing Standards Manager for counter-signature. | | | n | | y | | | | | |
| Reasons: | | | | | | | | | | |
| Conditions applied – if yes, list overleaf | | | n | | y | | | | | |

Officer initials: _____ Signature: _____ Date: _____

Review Group Meeting date: _____ Decision to Grant ☐ Refer to AD H&AS for refusal ☐ Officer initials: _____

AD H&AS initials*: _____ Signature: _____ Date: _____

* applicable only where application is refused

Mandatory Conditions

To be listed

Discretionary Conditions

To be listed

Additional Discretionary Conditions

To be listed