Licensing Procedure

of

Houses in Multiple Occupation
Licensing of Houses in Multiple Occupation

Introduction

The Housing Act 2004 (The ‘Act’) introduces a mandatory requirement for certain specified types of Houses in Multiple Occupation (HMOs) to be licensed by the Council. Full definitions in relation to HMOs and the licensing regime are contained in the Act and associated Regulations.

From April 2006, certain HMOs, as prescribed by Regulations, must be licensed by Local Authorities. The Act also enables a Local Authority to introduce additional and/or selective licensing if considered appropriate.

The licensing system commenced on 3 July 2006.

Ryedale District Council has consulted with Regional and Sub-regional colleagues other bodies in the development of its policy for HMO licensing.

Mandatory HMO Licensing

An HMO must have a licence if it consists of three or more storeys and is let to five or more persons who consist of two or more households. Certain properties are exempt from the licensing regime, including certain blocks of self contained flats and properties owned or managed by prescribed public sector landlords.

Who must apply for a Licence?

The Council considers that responsibility for HMO licensing rests with the person having control of the property, unless another person can show to the satisfaction of the Council that they are a more appropriate person to hold the licence. The person in control is the person entitled to receive the rent for a property (whether on his/her own account or as agent or trustee of another person).

Licence Fees

The Act enables each Local Authority to set an appropriate level of fee to administer HMO licensing. The level of fees for this Council is shown below:-

<table>
<thead>
<tr>
<th>Property Band</th>
<th>Permitted Occupants</th>
<th>Re-licensing Fee</th>
<th>Licensing Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Band A</td>
<td>5 / 6 Permitted Occupants</td>
<td>£351</td>
<td>£632</td>
</tr>
<tr>
<td>Band B</td>
<td>7 / 9 Permitted Occupants</td>
<td>£423</td>
<td>£761</td>
</tr>
<tr>
<td>Band C</td>
<td>10 / 14 Permitted Occupants</td>
<td>£476</td>
<td>£860</td>
</tr>
<tr>
<td>Band D</td>
<td>15 or More Permitted Occupants</td>
<td>£515</td>
<td>£928</td>
</tr>
</tbody>
</table>

In order to set the fees, the Council consulted neighbouring Local Authorities.

The level of fees were determined based upon the administration and enforcement costs associated with the licensing regime.

These fees are reviewed annually.
Procedure for Issuing a Licence

An applicant must complete the Council’s HMO Application form. Once the Council has received a complete application, it will be passed to a Case Officer. An inspection of the property will be undertaken to determine the suitability and condition of the property.

The Council will also consult with the North Yorkshire Fire & Rescue Service as Statutory Consultees in the licensing process.

If a licence is to be granted, the Council will first serve a notice with a copy of the proposed licence. This will allow the proposed licence holder to make any representations to the Council within 14 days.

The Council will then consider any representations received, and if further modifications have been made to the proposed licence, will issue a further ‘Intention Notice’.

The licence will be granted subject to the requirements of the notice procedure.

If a licence is to be refused, the Council will first serve a notice. The Council will then further consider any representations before making a final determination to refuse a licence.

The granting or refusal of a licence will be subject to the Appeals procedure under Schedule 5 Part 3 of the Housing Act 2004.

Determination of Length of Licence

The maximum period for which a licence can be issued is 5 years.

This period may be reduced if the Council is concerned that:-

- there is a history of problems at the property with regard to conditions or facilities or disrepair;
- there is a history of statutory enforcement action against the owner or manager;
- there are concerns about the proposed management arrangements for the property;
- the owner, licence holder or manager has unspent convictions other than those considered in the fit and proper person assessment;
- the owner or manager has failed to meet their statutory obligation, ie failed to make a licence application as required.
- the owner or manager has only made the application as a result of a written warning letter from the Council.
- If an application has been made for the Renewal of a Licence and the conditions of the existing licence have not been met at any relevant time during the period of the licence.
- If an application has been made for the Renewal of a Licence and Statutory Enforcement Action has been taken at any relevant time during the period of the existing licence.
Consideration of Fit & Proper Person

The Council is required to assess whether the proposed licence holder and the proposed manager of the house (if different) are fit and proper people to be a licence older/manager of the house.

In deciding whether a person is a fit and proper person, the Council will take into account the following:

- unspent convictions relating to offences involving fraud, dishonesty, violence, drugs or sexual offences;
- evidence of unlawful discrimination practices on the grounds of sex, colour, race or ethnic or national origins or disability in connection with the carrying out of any business;
- evidence of contraventions of any laws relating to housing or landlord and tenant issues, including but not limited to unspent convictions and legal proceedings;
- unspent convictions for breaches of planning, compulsory purchase, environmental protection or other legislation enforced by Local Authorities;
- previous refusal of an HMO licence or unspent conviction for failing to licence an HMO or breaching the conditions of a licence;
- being in control of a property subject to a Control Order, Interim Management Order or Final Management order;
- failure to comply with a Statutory Notice served by the Authority within the last five years;
- have had works in default carried out on a property they own or manage by any Local Authority in the last five years;
- any outstanding charges on the property as a result of action taken by the Council.

In addition to the criteria listed above, if the applicant or manager is a Director or Company, the Council will also consider whether they are or have been disqualified or are insolvent.

The Council will take into account any evidence that a person associated or formerly associated with the applicant or proposed manager has carried out anything listed above if the Council determines that the evidence is relevant to whether the applicant or the proposed manager is a fit and proper person.

If as a result of the declaration or it is revealed that an applicant or Manager has an unspent conviction, the Council will consider whether this prevents them from being a fit and proper person for the purpose of HMO licensing. To aid this decision, the Council may consult the Multi Agency Public Protection Agreement group (MAPPA) for an independent professional recommendation. This recommendation may then be considered in the determination.

The Council will consider each case on its merits and information not referred to above will be taken into account if it is deemed relevant. Evidence of one or more of the above will not automatically result in a person not being considered fit and proper and the Council will take into account all relevant factors when making its decision.
Contents of Licences

(a) General

The licence will specify the length of time for which the licence is valid. This can be for a maximum of five years.

The licence will also specify the maximum number of occupiers and/or households.

(b) Mandatory Conditions

Conditions as contained in Schedule 4 of the Housing Act 2004 specify conditions which must be included in licences. These conditions are:-

- to provide copies of the gas safety certificate annually (if gas is supplied to the property);
- to keep electrical appliances and furniture in a safe condition and supply a declaration to that effect on demand;
- to ensure smoke alarms are provided and kept in proper working order and supply a declaration as to their condition and positioning on demand;
- to provide tenants with a written statement of the terms on which they occupy the property.

(c) Discretionary Conditions

These can also be included on a licence.

The Council may apply Conditions to a licence to ensure:-

- any works to the property are undertaken to meet the licensing standard within a reasonable period of time as specified by the Council.
- the management arrangements for the property are suitable.

The Council may also apply additional conditions if they are relevant to a particular property.

Temporary Exemption from Licensing Requirements

The Council may grant a Temporary Exemption Notice (TEN) where:-

(a) the person having control or managing the licensable HMO states in writing the steps he intends to take to ensure the house is no longer required to be licensed; and

(b) the Council is satisfied that it will be non-licensable as a result of taking these steps within 3 months of the date of receiving the written notice.

In deciding whether to issue a TEN, the Council will have regard to the steps proposed, including Planning and Building Regulation issues, the status of any such Planning or Building Regulation applications, and confidence in whether such steps would be taken by the person in control or managing the property in relation to such issues.
Previous actions by the person in control or managing the property may be taken into account to assess such confidence.

Further considerations will also be made to the arrangements for meeting the needs of occupiers including those likely to be displaced.

A further (and final) TEN can only be granted in exceptional circumstances, which would normally be unforeseen.
Enforcement Procedure

In order to ensure landlords make an application for a mandatory licence, the Council will:-

- Send letters and reminders to known landlords and to owners of properties which may need a licence (where contact details are known).
- Provide guidance to assist in the completion of application forms.

The Housing Act 2004 lays down a number of offences and penalties regarding mandatory licensing. These include:-

1. The operation of a licensable HMO without a licence, when a TEN is also not in force.
   Maximum fine £20,000.

2. Allowing a HMO to be occupied by more persons than a licence specifies.
   Maximum fine £20,000.

   Maximum fine £5,000.

4. Supplying false or misleading information to the Council.
   Maximum fine £5,000.

5. Obstructing any authorised officer from performing their duties under the Act.
   Maximum fine £2,500.

In addition, a landlord who operates an unlicensed HMO can be made the subject of a Rent Repayment Order (RRO) by a First Tier Property Tribunal. If awarded, the RRO can require the repayment of rent (or Housing Benefit) received by the landlord over a period of up to 12 months.

Where a landlord fails to licence a licensable HMO, the Council can take a prosecution. The Council will base any decision to take a prosecution in line with the principles laid down in the Enforcement Concordat and the Private Sector Housing Enforcement Policy.

Where a person has committed an offence of failure to licence an HMO, the Council may apply to the First Tier Property Tribunal (FTPT) to make a Rent Repayment Order, requiring up to 12 months of Housing Benefit to be repaid to the Council. The Council will also advise tenants of their rights, which may include that of applying for a Rent Repayment Order in respect of non-Housing Benefits rental payments.

Where there is no prospect of an HMO being licensed, the Act requires the Council to serve an Interim Management Order (IMO). This enables the Council to make arrangements to take over the management of a HMO and become responsible for running the property and collecting rent for up to a year. Further action may be taken at the end of this period.
If after 3 July 2006, the Council becomes aware of a property which it believes should have a Licence and no such application has been made, the following action will be taken:-

1. An inspection of the property will be undertaken in accordance with Parts 1 and 2 of the Housing Act 2004.

2. The owner and/or Manager will be advised in writing that the Council considers a Licence is required for the property and be provided with an application pack. There will be a period of 14 days specified to make the application.

This action does not prejudice any other action which may be taken under Part 1 of the Housing Act 2004.

3. If a complete application is not received within the 14 day period, then formal proceedings will be commenced.

The Council may issue a Notice to declare the building or part to be a House in Multiple Occupation, as specified under S.255 of the Act. The Notice will be subject to the Statutory Appeals procedure in the Act. If no Appeal is brought, or the Notice is confirmed upon appeal, then the Notice will come into force.

4. There will be a further consideration as to whether the property is licensable. If considered licensable, the owner and/or manager will be advised to make a complete application for a licence within 14 days.

5. If the owner and/or manager fails to make an application within the 14 day period, prosecution proceedings may be instigated against the owner and/or manager. An application for a Rent Repayment Order may also be made either at this time or upon successful prosecution.

**Enforcement of Conditions**

All Licences will be subject to mandatory conditions as specified in the Act, and may be subject to discretionary conditions where appropriate.

The Council will ensure that regular monitoring will be carried out to ensure licence holders are complying with conditions.

The Council will also ensure that where a condition specifies that works are to be undertaken by a certain date, that a visit is made to check whether the works have been completed.

If it is found that a licence holder is failing to comply with any of the conditions, the following action will be taken:-

(1) The licence holder will be advised in writing that he is failing to comply with a condition, and given a maximum of 14 days to ensure compliance. This period may be reduced if there is a significant risk posed to the occupants as a result of the breach.

(2) If the licence holder fails to comply with the condition within 14 days, (or shorter period as specified) a final written warning will be issued to the licence holder giving a maximum of 7 days to comply with the condition. This period may be reduced if there is a significant risk posed to the occupants as a result of the breach.
(3) If the licence holder fails to comply with the conditions following the final warning period, then prosecution may be considered.

(4) If a successful prosecution has been made for a breach of a licence condition which is considered to be serious, or a repeated breach of such a condition, the Council may consider revoking the HMO Licence.

**Variation or Revocation of Licences**

The Act enables the Council to vary or revoke an HMO Licence either with or without the agreement of the licence holder. The Act specifies the procedure which must be followed should variation or revocation be considered.

**Management Orders (Interim and Final)**

The Council is under a duty to make an Interim Management Order (IMO) if:

1. it is an HMO which is required to be licensed, but is not so licensed and either:
   
   (a) there is no reasonable prospect of it being licensed or
   
   (b) the health and safety condition under S.104 of the Act is satisfied
   
   OR
   
   2. The HMO licence has been revoked.

The Council may also apply to the Residential Property Tribunal to make an IMO in other specified circumstances.

If an IMO is made or granted, the Council will effectively be given authority to manage the property and collect any rent due.

An IMO can be in force for a period of up to 12 months. After this period, the Council can make a Final Management Order (FMO) which can be in force for a period of 5 years.

If an IMO or FMO is made, the Council may seek the services of a third party to help administer the duties imposed by such an order.