

Living in Hackney Scrutiny Commission 4 th March 2019 Item 6 - Update on discretionary private rented sector licensing	Item No 6
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1. CONTEXT

- 1.1 There are over 113,000 dwellings in total in Hackney. Of these, the number of households privately renting continues to rise and has doubled in the last decade, approximately 30% are now in the Private Rented Sector (PRS); around 34,000 homes. Within this number an estimated 4,315 are Houses in Multiple Occupation (HMOs) and these are found in all parts of the Borough.
- 1.2 Over recent years the Council has been pursuing policies to improve housing conditions and quality of management in the PRS. The Council has engaged with Hackney PRS tenants and residents over a prolonged period of time. Findings from this exercise raised a range of concerns from residents concerning conditions in the PRS along with wider concerns about lack of affordability. These views and concerns were further reflected in PRS tenant focus groups independently facilitated on behalf of the Council as well as through consultation work undertaken as part of the development of the Council's housing strategy.
- 1.3 In order to gain a quantitative understanding of conditions in the PRS the Council commissioned an independent body, The Building Research Establishment Ltd. (BRE) to undertake a stock modelling exercise for the PRS in Hackney. The BRE reported in November 2017. The headline findings were that a significant proportion of PRS homes contained Category 1 hazards or disrepair (11% average across the Borough) and amongst HMOs this proportion was 20%. The three wards with the highest prevalence of Category 1 hazards and/or disrepair in non-HMO rented dwellings are Brownswood (15.4%), Stoke Newington (15.7%) and Cazenove (17.6%).
- 1.4 With a view to better tackling poor conditions, during December 2017 the Council undertook an extensive consultation exercise, on proposals to introduce discretionary licensing schemes for the PRS. Its purpose was not to undertake a referendum or vote on the Council's proposals to introduce discretionary licensing schemes, but to seek views on the design and parameters of the proposed schemes. The consultation document and the Council's response to consultation can be found on the Council's website: www.hackney.gov.uk
- 1.5 Following this exercise, in March 2018 the Council's Cabinet approved the introduction of wider (discretionary) licensing schemes for Hackney's PRS. These schemes supplement the national Mandatory Licensing Scheme for HMOs.

1.6 Formal designations for the discretionary licensing schemes were made on the 10th of May 2018 and the schemes became operational on the 1st of October 2018.

2. HACKNEY'S PROPERTY LICENSING SCHEMES FOR THE PRS

2.1 The aim of property licensing schemes is to make a real difference to Hackney tenants' lives, by requiring that all privately rented properties that fall under the schemes are licensed, that landlords and managing agents are 'fit and proper', and that poor conditions are addressed. They will also benefit good landlords, by enabling the Council to more effectively target the rogue landlords who unjustifiably tarnish the reputation of the sector.

The following property licensing schemes are operative in Hackney:

2.2 Mandatory HMO licensing scheme

This scheme applies nationally and covers properties in the following categories:

- a) Buildings occupied by five or more people comprising more than one household and at least two of the households share a basic amenity i.e. toilet, personal washing facilities or cooking facilities. This category applies regardless of the number of storeys in the building.
- b) Self-contained flats in a block of no more than two such flats. This category mirrors (a) above, except that it applies to individual flats. This includes flats above and below commercial premises and flats in converted buildings. Purpose-built flats situated in a block comprising three or more self-contained flats are *not* subject to mandatory licensing even if they are in multiple occupation.
- c) Buildings that have been converted and one or more of the converted units of living accommodation is not a self-contained flat and is occupied by five or more people comprising more than one household and at least two of the households share a basic amenity.

The Council will assess whether a building meets one or more of tests (a) – (c) and therefore falls within the Mandatory Licensing scheme. Each case will be assessed on its merits.

To fall within these categories the persons occupying the property must be occupying it as their only or main residence. Certain carers, migrant workers and seasonal workers are classed as doing so.

2.3 Additional HMO Licensing Scheme

This scheme applies Borough-wide and covers all HMOs that are not covered by the Mandatory Licensing scheme. In order for a property to fall within the Additional Licensing scheme it must fall within one of the categories (a) to (c) outlined above but the five person occupancy criterion does not apply. A

property within categories (a) to (c) and occupied by three or more people comprising more than one household where at least two of the households share a basic amenity, will fall within the Additional Licensing scheme.

This scheme also applies to houses/buildings which have been converted to self-contained flats without complying with the requirements of the Building Regulations 1991 (or more recent). These are known as section 257 HMOs or “poorly converted blocks”. Properties will only fall under this scheme if all the units in the block are privately rented but the size of the property (number of storeys) and the number of occupiers is not a relevant factor.

2.4 Selective Licensing Scheme

This scheme applies to all privately rented dwellings except HMOs but applies only in the three wards of Brownswood, Cazenove and Stoke Newington. So single household flats and houses will fall within the scope of this scheme. There are no minimum or maximum occupier number, or number of storey criteria, regarding the application of this scheme.

The Selective Licensing scheme is a pilot scheme in only three wards. Over the duration of the scheme the Council will closely monitor outcomes to determine whether to widen the scope of the scheme in the future.

3. REQUIREMENT TO LICENCE

Every property falling within the scope of any of the licensing schemes outlined above must be licensed unless a Temporary Exemption Notice is in force (see below), or it is subject to an Interim or Final Management Order made by the Council; or it is subject to certain specified exemptions.

A person commits an offence if they are a person having control of, or managing, a property, which is required to be licensed under any of these schemes, but is not so licensed. It is a defence against proceedings under this offence if the person has duly made a full application for a license under the scheme or has notified the Council that they are taking lawful steps to secure that the property no longer requires a license.

3.1 Exemptions from Mandatory and Additional HMO licensing schemes

A property falls outside the definition of HMO and is therefore exempt from the Mandatory and Additional licensing schemes if it is a building controlled or managed by a public sector body including the Council, a registered social landlord, the police authority, the fire and rescue authority or a health service body, is regulated under other certain Acts of Parliament, is a building occupied and managed by certain specific educational establishments or a building occupied by its owner (with up to two lodgers permitted).

Any building occupied by no more than two persons is also exempt.

3.2 Exemptions from the Selective Licensing scheme

A property is exempt from the Selective Licensing scheme if it is occupied under an exempt tenancy. These are specified in regulations and include those outlined in paragraph 3.1 above. The two person occupancy exemption does not apply to Selective Licensing, a single person letting will still require a licence.

4. MAKING A LICENCE APPLICATION

License applications are made on-line via the Council's website:

<https://propertylicensing.hackney.gov.uk/>

The on-line application system guides applicants through the process and helps them select the appropriate license for a particular property. Applicants who have a particular difficulty in applying on-line are advised to contact the Council's Private Sector Housing Duty Line for assistance.

4.1 Policy for overseas landlords

Property licensing schemes aim to raise and maintain standards of property management and property conditions. Licenses contain conditions which are legally enforceable and ensure there is someone legally accountable for the property. These aims can be undermined if the license holder is outside UK jurisdiction and beyond the reach of the UK Courts. There is also a risk to the landlords in being out of the Country as they cannot know what is happening in the property. For these reasons the Council will always seek a license holder who is resident in the UK. Without that, the Council cannot satisfy itself that adequate management arrangements are in place, which it must do before issuing a license.

Most landlords understand this policy but occasionally there may be a reason why an overseas landlord wants to be the license holder. The Council will, therefore consider applications from abroad but only on the condition that the landlord appoints a UK-based managing agent who is willing to sign a legal undertaking to be bound by all the conditions and obligations that come with being a license holder. Only in this way can the Council be satisfied that adequate management arrangements are in place and the person in control or managing the property can be held accountable.

4.2 Policy for Selective License applications in multi-dwelling properties

Cases do exist where a number of dwellings in a single block or house require Selective Licenses. The Council will usually prefer that each separate dwelling in a building has its own, individual license. Individual dwelling licenses provide the following safeguards for landlords:

- A dwelling may be sold without affecting the licenses for other dwellings in the building;
- A dwelling may be let on an exempt tenancy without affecting the licenses for other dwellings in the building;
- A dwelling may be left vacant, for example to allow refurbishment without affecting the licenses for other dwellings in the building;

- Enforcement action may be taken in respect of a particular dwelling e.g. a Prohibition Order being made without affecting the licenses for other dwellings in the building.;
- Landlords can change a managing agent for one of the dwellings, or make physical alterations to a particular dwelling without affecting any of the other licenses in the block.

There is very little benefit in landlords seeking a single application for a block as the application process will require all the same documentation and application details for each of the flats as for individual licence applications.

While the Council, for the above reasons, will always prefer one license per flat, it can accept multi-dwelling applications where the flats included in the license application:

- are all within the same building, and
- are all under the same ownership and management control, and
- are all let on tenancies which are not “exempt tenancies” as specified in regulations.

Where these conditions are met and an applicant makes a representation requesting such an approach, the Council may exercise its discretion and grant a multi-dwelling license, provided there are no other reasons why such a license should not be granted.

The licence fee is calculated to reflect the costs of setting up and administering the licensing scheme. This includes the cost of processing applications and carrying out inspections of the properties. The costs of processing a multi-dwelling application and inspecting multiple dwellings will be multiplied when compared to a single-dwelling application. This will be reflected in the level of fee charged for a multi-dwelling application. There is, therefore, little or no difference in the fee charged to landlords who submit a single-dwelling application compared to those who submit multi-dwelling applications.

The fee for Mandatory or Additional HMO licences is £950.

The fee for Selective licenses is £500 per dwelling. For the reasons outlined above, processing and granting a multi-dwelling application will not incur significantly lower costs per dwelling than that of a single-dwelling application, the fee will reflect those costs.

There is a £75 discount per licence for landlords who are members of a recognized accreditation scheme such as the London Landlord Accreditation Scheme (ATLAS).

The full fee is payable at the time of submitting an application and cannot be paid in instalments.

The Council does not charge the costs of enforcing against non-compliant landlords to the license fee.

5. PROCESSING LICENCE APPLICATIONS

Document Number: 21896780

Document Name: LiH PSH Licensing Schemes 04 03 19

Following receipt of a full license application, the Council will undertake checks so as to be satisfied that the property is reasonably suitable for occupation, the proposed management arrangements for the house are satisfactory and that the proposed licence holder is a “fit-and-proper person” i.e. has not committed certain specified criminal offences.

If the Council cannot be satisfied of the above it may refuse a license application although cases are expected to be rare.

If a license is refused the applicant has a right of appeal to the First Tier Tribunal.

5.1 Licensing conditions

When licenses are issued there are conditions attached. These are designed to safeguard the health safety and welfare of tenants and ensure satisfactory management arrangements are in place. It is a criminal offence to contravene license conditions.

5.2 Revocation of licenses

The Council has the power to revoke a license with the agreement of the license holder, where it considers that the license holder or any other person has committed a serious breach of a condition of the license or repeated breaches of such a condition, where the Council no longer considers that the license holder is a fit and proper person or where the Council no longer considers that the management of the house is being carried on by persons who are fit and proper persons. A person is not considered to be fit and proper if they have committed certain specified criminal offences.

If a license is revoked the licence holder has a right of appeal to the First Tier Tribunal.

5.3 Property inspections

Properties subject to licensing under all three licensing schemes will be inspected by the Council at least once during the duration of the license. The Council will risk-assess each license application against risk criteria such as the size of the property, type of occupation, history of compliance etc. Higher risk properties will be inspected prior to issue of the license whereas lower risk properties will be inspected during the period of the license. More frequent inspections may be carried out if complaints are received by the Council.

5.4 Duration of licenses

Licenses are usually issued for a duration of five years but the Council has the discretion to issue a license for a shorter duration where there are concerns about property conditions or management which can be corrected during that time. If this is the case and the property becomes compliant a renewal can be applied for on expiry of the initial license and the new license may be issued with a five year duration.

6. AFTER THE LICENCE IS ISSUED

Licenses are non-transferrable from one person to another and are not portable between one property and another.

License fees are refundable where the applicant has made a duplicate application, has made an application for an exempted property or applied for the wrong type of license. Refunds will not be given where the application is refused, the application is withdrawn, the license is revoked, or enforcement action is taken under planning legislation to revert to non-HMO use, thereby removing the requirement to license.

Where circumstances change after a license is issued meaning the property would not then need a license, the license continues to run, and have effect until its original expiry date unless the Council decides to revoke it.

If a license holder dies during the license period, the requirement to license ceases to have effect for three months as if a Temporary Exemption Notice has been served by the Council. The license holder's personal representative can apply to the Council for a further three-month exemption whilst matters are sorted out. Following that period a new license application will be required from an appropriate person.

7. PENALTIES FOR NON-COMPLIANCE

It is a criminal offence to operate a property that should be licensed but is not so licensed or to breach license conditions. Penalties can vary from a simple caution for minor offences, to Financial Penalty Notices of up to £30,000 for serious offences and criminal prosecution leading to unlimited fines for repeat offenders and for the most serious cases where the tenants' health, safety or welfare is put at risk.

7.1 Rent Repayment Orders

The Council or a tenant can apply to the First Tier Tribunal for a Rent Repayment Order where certain offences have been committed. The relevant offences are:

- Failure to license an HMO
- Failure to license a dwelling under a Selective Licensing Scheme
- Failure to comply with licensing conditions
- Breaching a Banning Order

Rent Repayment Orders require the landlord to pay back rent previously paid to them when a relevant offence is committed. Rent Repayment Orders can be granted by the First Tier Tribunal on application from the Council or from tenants. The amount of rent repayment will be assessed by the First Tier Tribunal but capped at no more than the rent paid during the 12 months prior to the offence. The rent has to be re-paid to the tenant (where they have independently paid it) or to the public purse where the rent was paid through Housing Benefit.

7.2 Banning Orders

If a landlord or managing agent has committed offences for failing to license a property, the Council can apply to the First-tier Tribunal for an order that bans that landlord from:

- Letting housing in England;
- Engaging in English letting agency work;
- Engaging in English property management work; or
- Doing two or more of those things.

Breach of a banning order is a criminal offence.

7.3 Management Orders

A Management Order enables the Council to take over the management of a privately rented property in place of the landlord. Management Orders are made to ensure that the health and safety of occupiers of the property and persons living or owning property nearby are protected. Management Orders can be made where a privately rented property is unlicensed and no suitable licence holder can be found. The Council can also make a Management Order in circumstances where a Banning Order has been breached.

7.4 Rogue Landlord and Agent Checker

The Greater London Authority publishes details of landlords and agents who have committed certain housing offences on their website. Some offences can be viewed by the public, others only by local authorities or the Fire Brigade.

8. PROGRESS ON LICENSING SCHEMES TO DATE

8.1 The licensing schemes commenced on the 1st of October 2018. In order to allow landlords to submit applications the Council has undertaken not to begin enforcement proceedings for non-compliance until the 1st of March 2019.

8.2 Data gathered by the Council prior to introducing the licensing schemes predicted that there are the following numbers of properties that will require a licence:

LICENCE TYPE	NO. OF LICENCES
ADDITIONAL HMO LICENCE	3324
MANDATORY HMO LICENCE	991
SELECTIVE LICENCE	4711

8.3 As at the 20th of February 2019 the following numbers of licence applications had

been submitted:

LICENCE TYPE	NO. OF LICENCES	INCOME (£)
ADDITIONAL HMO LICENCE	1096	£801,225.30
MANDATORY HMO LICENCE	113	£82,608.08
SELECTIVE LICENCE	925	£676,216.61
GRAND TOTAL	2134	£1,560,050

8.4 The applications submitted broken down by ward was as follows:

WARD	NO. OF LICENCES	INCOME (£)
BROWNSWOOD	327	£239,051.71
CAZENOVE	368	£269,024.55
CLISSOLD	48	£35,090.16
DALSTON	78	£57,021.51
DE BEAUVOIR	106	£77,490.77
HACKNEY CENTRAL	59	£43,131.65
HACKNEY DOWNS	68	£49,711.06
HACKNEY WICK	33	£24,124.48
HAGGERSTON	65	£47,517.92
HOMERTON	60	£43,862.70
HOXTON EAST AND SHOREDITCH	60	£43,862.70
HOXTON WEST	63	£46,055.83
KINGS PARK	68	£49,711.06
LEA BRIDGE	102	£74,566.59
LONDON FIELDS	65	£47,517.92
SHACKLEWELL	49	£35,821.20
SPRINGFIELD	14	£10,234.63
STAMFORD HILL WEST	11	£8,041.49
STOKE NEWINGTON	401	£293,149.04
VICTORIA	56	£40,938.52
WOODBERRY DOWN	33	£24,124.48
GRAND TOTAL	2134	£1,560,050

8.5 Officers from the Private Sector Housing Team are now beginning a programme of property inspections. While the main policy driver will continue to be encouraging licence applications and improving standards where appropriate,

enforcement against non-compliant landlords will commence where appropriate from the 1st of March 2019.

9. FEEDBACK FROM LANDLORDS AND MANAGING AGENTS

9.1 Feedback from callers to the Private Sector Housing duty line have been generally good.

9.2 Most common queries and comments are as follows:

- When is the submission deadline for application
- My address is not on system?
- When will my licence be issued, what is the process?
- Can I have an update on my application status?
- Specific questions about room size standards?
- Very specific questions about fire safety standards?
- Error messages on the on-line application system.
- What documentation is required with my application?

9.3 Officers respond to queries and continue to work with our IT provider (Metastreet) to resolve issues.

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