



Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

Houses in Multiple Occupation (HMO) Licensing Policy

2024

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1. Policy overview

1.1 Introduction

Cherwell District Council as Local Housing Authority has a statutory duty to effectively implement mandatory licensing of certain types of shared residential properties known as Houses in Multiple Occupation (HMOs).

This policy sets out how the Council will administer and determine HMO licence applications and carry out its associated HMO licensing functions.

1.2 Strategic aims of this policy

The Council recognises that effective regulation of the private rented sector is vital for helping to improve standards, combating poor performing landlords, and improving the health and wellbeing of Cherwell's residents. HMO licensing is an important part of housing standards enforcement, and the overarching aim of this policy is to ensure we can undertake our statutory duties efficiently, effectively and lawfully.

Through our HMO licensing activities under this policy, we also seek to:

- Ensure that HMO accommodation is safe and operated appropriately and responsibly
- Enhance the safety, health, and wellbeing of residents and contribute to reducing inequalities through improved housing conditions.
- Contribute to tackling fuel poverty and climate change by improving the energy efficiency of HMOs in the District through licensing.

1.3 Legal framework

Part 2 of the Housing Act 2004 ("the Act") provides for local housing authorities to license HMOs in their areas if they meet the definition of an HMO set out under section 55 of the Act. The Prescribed Description Order 2018¹ sets out the types of buildings that are subject to mandatory licensing. Certain buildings which are exempt from HMO Licensing are prescribed in Schedule 14 of The Act, and associated regulations².

An HMO is subject to Mandatory Licensing if:

- a. It is occupied by five (5) or more people; and
- b. The occupants are from two (2) or more separate households; and

¹ The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (No. 221)

² The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (No. 373) as amended by the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 (No. 1903)

- c. It meets either:
- i. The “standard test” under section 254(2) of the Act; or
 - ii. The “self-contained flat test” under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
 - iii. the converted building test under section 254(4) of the Act.

2. Applications for licences

Landlords of HMOs meeting the Mandatory Licensable definition must apply to the Council for a licence. To be considered a valid application, the following must be provided to the Council in an acceptable format:

- The Council’s HMO licence application form completed in full, including all information specified by Regulations³, plus any further information and documentation required by the Council,
- A declaration signed by the applicant (and also the proposed licence holder where different); and
- The specified “Stage-1” fee paid in full.

Where an HMO already has a licence in force, and a valid application is submitted before expiry and the same Licence Holder is proposed, a renewal application will be accepted, and a reduced fee applied. In all other cases, a new application form must be completed. Licences may only relate to a single HMO and are non-transferrable.

Incomplete applications will be closed after 28 days if missing information is not provided when requested, the correct fees are not paid, or arrangements to inspect the property cannot be made. A new application will need to be submitted in such cases.

3. Deciding whether to grant the licence

When the Council receives a valid application, it must decide whether to grant or refuse to grant an HMO Licence by reference to the following matters:

- The house or flat in question is reasonably suitable for occupation by the intended number of occupants and households.
- The proposed licence holder and manager are fit and proper persons.
- The proposed licence holder is the most appropriate person to hold the licence.
- The manager is either the person having control or an agent or employee of the person having control.

³ Ibid.

- The proposed management arrangements are satisfactory.

The following sections explain how the Council will reach its decisions on these matters.

3.1 Reasonably suitable for occupation

Before granting an HMO licence, the Council must be satisfied that the house or flat in question is reasonably suitable for occupation by the proposed number of occupants and households. If the Council judges the property is not currently suitable, we may decide the property can be made suitable by requiring works as licence conditions, and/or we may specify a different maximum number of occupants or households. If the Council judges that the property cannot be made suitable for occupancy, we will refuse to grant the HMO Licence.

In reaching this decision, we will principally refer to the standards set by the HMO Regulations⁴ and our adopted HMO Standards Policy. We will also give due regard to such other legislation and standards as we judge relevant to the case, such as the Building Regulations, Planning, and British Standards.

3.2 Fit and proper persons

In order to issue a licence, the Council must be satisfied that the proposed licence holder is a “fit and proper person” and the most appropriate person to hold the licence. The most appropriate person to hold the licence will generally be the owner or manager of the property. Where another person is proposed, this must be justified to our satisfaction.

The Council must also be satisfied that the proposed manager of the house is the person having control (as defined in section 263 of the Act), or is an agent or employee of the person having control of the house, and is a fit and proper person.

The Council will generally consider a person to be fit and proper unless evidence to the contrary is found.

The Council must have regard to any of the following relating to the proposed Licence Holder or proposed Manager:

- Any unspent convictions that may be relevant to their role as either licence holder or manager and, in particular, any conviction involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003.
- They have been found by a court or tribunal to have practised 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.
- They have contravened any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law (including Part

⁴ Ibid.

3 of the Immigration Act 2014) which led to civil or criminal proceedings resulting in a judgement being made against them.

- They have ever had a licence refused, been convicted of breaching the conditions of a licence under Parts 2 or 3 of the Act; or have acted otherwise than in accordance with a Code of Practice approved under section 233 of the Act that concerns a property in their ownership (whether or not in the Council's district).
- They own or have previously owned or managed property that has been the subject of an interim or final management order or a special interim management order under the Housing Act 2004.
- They require leave to enter or remain in the United Kingdom but do not have it.
- They are insolvent or an undischarged bankrupt.

We must also be satisfied that no banning order under section 16 of the Housing and Planning Act 2016 is in force against any person who has an interest in the house or part of it.

In addition, the Council may also take into account whether any other person proposed to be involved in the management of the house, plus any person associated or formerly associated with the applicant or manager has done any of these things, if we consider this information relevant.

Where any evidence of the above is subsequently found, the Council will review the person's fit and proper status and may revoke their licence.

3.3 Satisfactory management arrangements

In order to issue a licence, the Council must be satisfied that the proposed management arrangements for the house are satisfactory. In particular, the Council will expect the licence holder to have in place the following arrangements:

- A person to whom the tenants can report defects at the HMO, including an emergency contact, and for this information to be displayed in written form in the premises.
- An established system for periodically inspecting the HMO to identify any repairs or maintenance.
- The ability to finance and to undertake repairs and maintenance in an appropriately timely fashion.
- Where the manager is not the owner of the property, the manager must be able to fund and implement urgent repairs in those situations where it is not possible to obtain the owner's approval without undue delay.
- A system to deal with any anti-social behaviour caused by tenants or their visitors, which causes nuisance or annoyance to people living in the vicinity.

The Council may also consider whether any person proposed to be involved in the management of the house has a sufficient level of competence. In this regard the Council may take into account matters such as the frequency and nature of any validated complaints we receive in connection with the property or its management, and the adequacy of any required response.

3.4 Suitability of the property

The Council will seek to inspect all HMOs following receipt of a valid application and before issuing any new or renewed licence. The purpose of inspections will be to assess the suitability of the property for the proposed number of occupants and households, having regard to the standards prescribed in regulation, and the Council's HMO Standards Policy.

HMOs will also be prioritised for assessment under the Housing Health and Safety Rating System (HHSRS) to identify whether the Council needs to exercise any functions under Part 1 of the Housing Act 2004. The Council will seek to ensure that all properties are inspected at least once every five years to ensure properties are free from significant hazards and complying with the HMO Regulations.

Further inspections may be undertaken throughout the lifetime of the licence. Inspections may include (but are not restricted to) visits to check compliance with licence conditions, to assess ongoing confidence in management, or to investigate complaints.

4. Licence conditions

HMO licences must include certain conditions and may also include such conditions that the Council considers appropriate for regulating any aspect of the HMO's management, use, occupation, conditions or contents.

Licences issued by the Council will include the following categories of conditions:

Mandatory conditions

The Housing Act 2004 Schedule 4 (as amended) prescribes Mandatory Licence Conditions which must be included in all HMO licences.

Discretionary conditions (general)

The Council has determined that a set of standard conditions will be included in all HMO licences issued in Cherwell. The purpose of these general conditions is to secure the effective management of the licensed HMOs across the district. These standard conditions are attached as **Appendix 1** to this policy.

Discretionary conditions (specific)

HMO licences issued by the Council may include bespoke conditions designed to regulate specific matters relating to the management, use, occupation, conditions or contents of the licensed HMO in question.

5. Licence fees

The Council will charge a fee for each licence. Fees will be payable in two stages. Stage-1 fees must accompany the submission of the application form. Stage-2 fees are payable within 14 days of service of the draft licence (the “Intention Notice”). Both fees must be paid in full before a final licence will be issued.

The fees will periodically be reviewed and will be set in accordance with available best-practice guidance. The Council may determine that different fees will apply in different situations and may, for example, set a lower rate for licence renewals, or a higher fee for new HMOs found operating without a licence or for late payment of the Stage-2 fee. Fees will be reviewed and revised as necessary through the Council’s fees and charges setting procedures and as required by any legislative changes.

The Assistant Director for Wellbeing and Housing, in consultation with the Lead Member for Housing may determine the circumstances when fees may or may not be refunded and determine the proportion to be refunded or retained by the Council.

The Council will publish on its website details of the fees payable and the circumstances and amounts when the Council will issue refunds.

6. Issuing of licences

Applications for licences must be determined within a reasonable period of time. Our aim is to issue the final licence within 8 weeks of receiving an application.

The applicant will be given 14 days after the date of service of the Intention Notice to make any representations regarding the proposed licence and to pay the specified Stage-2 fee. Any representations received will be reviewed by a senior officer and a written response provided before the Council proceeds to issue the final licence (the “Decision Notice”).

If changes are to be made to the licence following the representations (beyond minor administrative corrections), a further draft licence (known as a “Modification Notice”) will be issued, and a further representations period of 7 days will be given.

No final licence will be issued until the full specified fee (stage-1 and stage-2) have been paid in full.

Licences will generally be issued for 5 years. For new applications, this will be from the date of issue. For licence renewals, the 5-year period will run from the expiration date of the current licence.

However, licences may be issued for shorter durations in cases where we have concerns relating to the management of the property, including non-compliance with licence conditions, breaches of the HMO Management Regulations or contraventions of other relevant legislation. In such cases, licences will generally be issued annually and the length of licence reviewed upon renewal.

Licences and notices will be served by email wherever possible.

7. Variation of licences

The Council may vary a licence either with the agreement of the licence holder or without agreement if it considers there has been a change of circumstances since the licence was granted. Change of circumstances will be taken to include the discovery of new information.

8. Revocation of licences

The Council may revoke a licence either with the agreement of the licence holder or in any of the following circumstances:

- Where the Council considers that the licence holder or any other relevant person has committed a serious breach of a licence condition or repeated breaches of a condition.
- Where the Council no longer considers that the licence holder is a fit and proper person to hold the licence.
- Where the Council considers that the management of the premises is no longer being carried out by fit and proper persons.
- Where the premises has ceased to be an HMO requiring a licence.
- Where the Council considers that, were the licence to expire at that time, it would not grant a further licence because of the structure of the premises.

The Council will seek to revoke licences at the point at which it considers it has sufficient evidence of the relevant offences or contraventions.

9. Appeals of licence decisions

The licence applicant, licence holder, anyone with an estate or interest in the premises, a person managing the premises or anyone on whom the licence would place any restriction or obligation, may appeal to the First-tier Tribunal against the Council's decision to either grant or refuse to grant a licence, or in connection with decisions in relation to revocation or variation. The appeal period is set at 28 days.

10. Temporary Exemption Notices (TENs)

Where a landlord or manager makes an application in writing, the Council may issue a Temporary Exemption Notice (TEN) for three months if we are satisfied that particular steps are genuinely being taken to ensure either that the building will cease to be an HMO, or that it will become an HMO that is no longer subject to Mandatory HMO Licensing.

A suitable step could include entering into a contract for the sale of the building with vacant possession for use other than as an HMO. However, simply putting, or proposing to put an HMO on the market for sale will not normally be sufficient for the Council to agree to issue a TEN.

TENs will be refused in cases where it appears the application has only been sought with the aim of avoiding or evading licensing, since that would be contrary to the purpose of the Act.

The Council will confirm its decision in writing by serving a Notice giving the reasons for its decision whether or not to grant the exemption. Applicants may appeal the decision to the First-tier Tribunal within 28 days.

Temporary exemption can only be granted for a maximum of three months, although in exceptional circumstances it can be renewed for a further three months on further application to the Council.

If the licence holder dies while the licence is in force the licence ceases and for three months from the death the building will be treated as having a temporary exemption notice granted. During that period the licence holder's personal representatives may apply to the Council for an extension to the exemption for a further three months whilst affairs are being sorted out. Whilst the Council does not have to grant a further extension, consent is unlikely to be unreasonably withheld in such cases.

11. Enforcement

Under the provisions of the Housing Act 2004, it is an offence to:

- Have control of or manage an HMO which is required to be licensed but is not so licensed.
- Have control of or manage an HMO which is licensed and to knowingly permit another to occupy the house with the result that the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- Be a licence holder or a person on whom restrictions or obligations are imposed under a license and fail to comply with any condition of the licence.
- Fail to comply with the HMO Management Regulations.

These offences carry a range of punitive actions which the Council may wish to pursue depending on the circumstances of the case. Any decision to pursue enforcement action will be taken in line with the relevant Enforcement Policies.

Whenever a property is unlicensed, we will seek to get the property licensed in parallel with pursuing any punitive actions such as financial penalties or prosecution. Where no licence application is made, or the proposed licence holder is not a fit and proper person, the Council may take over the management of the property via an Interim Management Order. Such action may follow the Council discovering an unlicensed HMO, following the revocation of a licence for non-compliance, or the imposition of a Banning Order under the Housing and Planning Act 2016.

12. The HMO Licence Register

The Council must maintain a register of all HMO licences, temporary exemption notices, and management orders, which are in force.

Anyone wishing to view the register can do so as follows:

- A simplified register excluding certain personal information will be available free of charge on our website.
- The full register can be made available to view at our head offices by appointment, free of charge.
- A copy of the full register can be provided on request. There is a charge for this service. This fee will be set in accordance with section 5 of this Policy.

13. Compliance with other legislation

We expect HMO landlords to comply with all their legal duties. Where we discover that a relevant person involved in the licensing or management of the property has failed to comply with any other relevant legislation, we will review the facts of the case and may vary or revoke the licence or take such other action as we judge necessary.

There is currently no legal requirement for HMO landlords to produce an Energy Performance Certificate (EPC) for each dwelling. Where a property does not have a current EPC, the Council will place conditions on the HMO landlord to obtain one. Where the EPC is below the level of a “C” rating, the Council will seek to affect improvements at the property to achieve a C rating or above, or the greatest improvement that the property can achieve.

13.1 Planning permission

Some HMO properties will require planning permission to lawfully operate as an HMO, for example *sui generis* use as a large HMO (7+ occupants in planning law). Where such permission is not in place, we will generally in the first instance grant an HMO licence with conditions requiring that either the relevant permission is sought retrospectively, or the occupancy is reduced below the relevant threshold. Such action, and any subsequent steps, will be taken in consultation with the Council’s Planning Department.

14. Policy review

This Policy will be reviewed every three years or sooner if there is a significant legislative change.

Appendix 1

Discretionary Conditions (General)

The following conditions are included in all HMO licences issued by Cherwell District Council to ensure the effective management of all licensed HMOs across the district.

1. FIRE RISK ASSESSMENT

The Licence Holder must ensure a suitable and sufficient fire risk assessment which meets all requirements of the Regulatory Reform (Fire Safety) Order 2005 is in place for the HMO. A copy of the fire risk assessment must be provided to the Council on demand.

COMPLETION:

This must be complied with from the date of the Licence.

AUTHORITY:

Section 67(1)(a) of the Housing Act 2004; the Regulatory Reform (Fire Safety) Order 2005

2. EMERGENCY LIGHTING

If emergency lighting has been installed at the house, the Licence Holder must:

1. Ensure that the emergency lighting system is kept in good working order in accordance with the relevant provisions of BS 5266; and
2. At least annually, obtain and submit a certificate or declaration stating the condition and positioning of all emergency lighting units and confirming that these have been tested and maintained regularly.

COMPLETION:

This must be complied with from the date of the Licence.

AUTHORITY:

Section 67(1)(a) of the Housing Act 2004; the Regulatory Reform (Fire Safety) Order 2005

3. INVENTORY OF HOUSE CONTENTS AND STATEMENT OF CONDITION

Supply the occupiers of the house, on the commencement of their occupancy, with:

- a) A written inventory of the contents of the house or letting, and
- b) A written statement of the condition of each room, and its fittings.

The Licence Holder must, on demand, provide the Council with a copy of these documents.

COMPLETION:

This must be complied with from the date of the Licence.

AUTHORITY:

Section 67(1)(b) of the Housing Act 2004

4. MANAGER'S DETAILS

The Licence Holder must display, in a prominent position within the house, a notice containing the name, address and telephone contact number of the person who manages the house.

COMPLETION:

This must be complied with from the date of the licence.

AUTHORITY:

The Management of Houses in Multiple Occupation (England) Regulations 2006 Regulation 3

5. DISPLAY A COPY OF THE LICENCE

The Licence Holder must prominently display a copy of the HMO Licence in the house. It shall be located adjacent to the Notice containing the name, address and telephone contact number of the person who manages the house.

COMPLETION:

This must be complied with from the date of the licence.

AUTHORITY:

Section 67(1)(a) of the Housing Act 2004

6. FIRE NOTICES

Provide a notice informing occupants about what to do in the event of a fire. The notice shall be prominently displayed and located adjacent to the Notice containing the name, address and telephone contact number of the person who manages the house.

COMPLETION:

This must be complied with from the date of the licence.

AUTHORITY:

The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006, Paragraph 5 of Schedule 3

7. KEEP FIRE ESCAPE ROUTE CLEAR

Ensure that all fire escape routes are maintained clear of obstructions, storage and potential sources of ignition.

COMPLETION:

This must be complied with from the date of the Licence.

AUTHORITY:

The Management of Houses in Multiple Occupation (England) Regulations 2006, Regulation 4(1)(a)

8. CHANGES TO ADDRESS DETAILS

The Licence Holder must advise the Council in writing of any permanent change to the address or contact details of each person (except any mortgage provider) named on the licence application form.

COMPLETION:

This must be done within one (1) month of a permanent change occurring.

AUTHORITY:

Section 67(1)(a) of the Housing Act 2004

9. CHANGES WITHIN THE HOUSE

The Licence Holder must advise the Council in writing of any change in the house (apart from the change of occupants) that is likely to affect the operation or management of the HMO.

COMPLETION:

This must be done within one (1) month of the change occurring.

AUTHORITY:

Section 67(1)(a) of the Housing Act 2004

10. CHANGES TO PERSONAL CIRCUMSTANCES

The Licence Holder must advise the Council in writing of any change to the circumstances of each person (except any mortgage provider) named on the licence application form if the new circumstances are likely to affect the ability of such a person to carry out any function concerning the operation or management of the HMO.

COMPLETION:

This must be done within one (1) month of a permanent change occurring.

AUTHORITY:

Section 67(1)(a) of the Housing Act 2004

11. PREVENTION OF ANTI-SOCIAL BEHAVIOUR

The Licence Holder must take all reasonable and practical steps to prevent or minimise any nuisance or antisocial behaviour arising in connection with the HMO.

COMPLETION:

This must be complied with from the date of the Licence.

AUTHORITY:

Section 67(1)(a) of the Housing Act 2004