

Multi – year HMO Licences – Eligibility Criteria

When granting an HMO licence, under the Housing Act s66 the Council must be satisfied that the proposed licence holder is a fit and proper person and there are satisfactory management arrangements in place and must consider, amongst other things:

- Whether the licence holder (or manager) has contravened¹ any provision of the law relating to housing or of landlord and tenant law (s66(2)(c));
- Whether any person proposed to be involved in the management of the house has a sufficient level of competence to be so involved (s66(6)(a));
- Whether any proposed management structures and funding arrangements are suitable (s66(6)(c));.

The licence can be refused if the Council is not satisfied the above criteria have been met. However, there are likely to be cases where serious concerns are raised and it is felt that refusal is not proportionate to the concerns raised.

When granting an HMO licence, the council must also be satisfied that the HMO is suitable for the maximum number of occupants, having regard to the test for suitability (s65). Conditions can also be added to the licence to make the house suitable for occupants or to regulate the management, use, occupation, condition and content (s67(1)(2)).

The Housing Act 2004 s68(4) states that a licence must not be in force for more than five years (i.e. the maximum length is five years). With regard to HMOs, the default is that licences are issued for one year unless the HMO is suitable and the licence holder and manager demonstrate good management. Issuing HMO licences for one year allows:

- Outstanding fit and proper person concerns regarding contraventions of housing or landlord and tenant law to be resolved;
- Work to be completed so that the HMO is made suitable for the number of occupants;
- The licence holder and / or manager to demonstrate they have the necessary competence and that satisfactory management arrangements are in place.

The non-exhaustive criteria used to determine the appropriate licence length having regard to fit and proper person concerns, suitability for occupation, management arrangements and competence is shown in the table below. This is similar to the criteria used in 2015 however it is now clearly stated that planning permission and building control are an explicit criteria – in 2015, this was covered under “good history with council departments”. This follows a 2017 Court of Appeal² ruling that planning permission is considered under “use” of an HMO and it is permissible to limit the length of a licence where planning permission is not granted. With the rise in number of HMOs, it is important that planning permission is gained. This also makes it much clearer to landlords that we consider this criteria, this reflects feedback from the consultation and generally that landlords may think a licence and planning permission is the same.

¹ Contraventions – this does not mean a conviction. A contravention is where there evidence a law / regulation has been broken – this may not result in a conviction. It may be that an enforcement notice has been served or a caution or fine issued.

² London Borough of Waltham Forest V Khan Neutral Citation Number: [2017] UKUT 153 (LC)
<http://www.bailii.org/uk/cases/UKUT/LC/2017/153.html>

Appendix 5

<p>Non – exhaustive criteria applied when deciding on licence length, for both new and renewal licence applications.</p> <p>For agencies, a judgement is made based on general portfolio management and the specific property</p>			
Factor	1 year	2 year	5 year
<p>Fit and Proper Person Concerns</p>	<ul style="list-style-type: none"> • Civil penalty issued; • Open investigation for failure to comply with housing or landlord and tenant law e.g. illegal eviction, failure to comply with management regulations • Prohibition Order or Improvement Notice served on property that is not yet complied with; 	<ul style="list-style-type: none"> • No concerns 	<ul style="list-style-type: none"> • No concerns
<p>Suitability for occupation as an HMO</p>	<ul style="list-style-type: none"> • Conditions requiring fire precaution work (minor work may be allowed for two year) • Conditions requiring amenities and facilities to be installed • Serious health and safety / disrepair conditions e.g. trip / fall hazards; heating requirements; windows need replacing • Conditions not completed on time (either at revisit but before new licence or conditions carried over) 	<ul style="list-style-type: none"> • Minor repair work e.g. decorative work or minor fire precaution work e.g. adjust / fit self-closer, fire blanket not wall mounted 	<ul style="list-style-type: none"> • No additional conditions

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Non – exhaustive criteria applied when deciding on licence length, for both new and renewal licence applications.

For agencies, a judgement is made based on general portfolio management and the specific property

Factor	1 year	2 year	5 year
Competence and satisfactory management arrangements	<ul style="list-style-type: none"> • 3 or more justified³ complaints received over the last two years regarding the licence holder and / or property demonstrating poor management; • Application history is poor – application form, declaration and fee not submitted on time. • Reminder needed after initial request for application form, fee and declaration • Stage two fee is not paid as requested • Certificates not submitted with new application or they have expired on a renewal licence • Concerns raised by other departments or partner authorities • Difficulty arranging inspections or “no show” inspections or access prevented to some rooms – need to go back 	<ul style="list-style-type: none"> • 1 or 2 justified service request • Application submitted as stated on first request (i.e. application form, declaration and fee submitted on time) • Certificates submitted with application / as per licence conditions • Stage Two fee paid as requested • Fire Risk Assessment provided / declared • Two year licence declaration submitted (this is expected to be part of the new online form system) 	<ul style="list-style-type: none"> • No justified service requests • Licence holder or manager is accredited⁴ • Otherwise, as two year criteria • Five year licence declaration submitted (this is expected to be part of the new online form system)

Non – exhaustive criteria applied when deciding on licence length, for both new and

³ Justified complaint is one where the council have investigated and have evidence that supports the allegation and / or had to take action to resolve the issue.

⁴ Acceptable accreditation schemes will be published. Either the licence holder or a managing agent with full management control can be accredited.

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renewal licence applications.			
For agencies, a judgement is made based on general portfolio management and the specific property			
Factor	1 year	2 year	5 year
Planning Permission / Building Control – this relates both to fit and proper person concerns to comply with housing law and suitability for occupation	<ul style="list-style-type: none"> • Evidence the property does not have planning permission for current use or open planning enforcement investigation⁵; • Outstanding work requiring building control approval 	<ul style="list-style-type: none"> • Planning permission granted, certificate of lawful use granted or clear historic use • All building work requiring building control approval properly certified 	<ul style="list-style-type: none"> • As two year criteria
Benefits to landlords, tenants and community	<ul style="list-style-type: none"> • Yearly inspections from council to ensure property is maintained (increased inspection fee) • Demonstrates poorly managed properties are the focus of attention 	<ul style="list-style-type: none"> • Reduced fee • Reduced inspection regime • Demonstrates property is well-managed and there is confidence in the landlord / licence holder • Property inspected once every five years • Local authority support still needed to ensure property is maintained / managed 	<ul style="list-style-type: none"> • Reduced fee • Reduced inspection regime • Demonstrates property is well-managed and there is confidence in the landlord / licence holder • Accredited landlords / agents under audit regime (See below) - self-regulation approach and minimal support given

5 year audit scheme

⁵ London Borough of Waltham Forest V Khan Neutral Citation Number: [2017] UKUT 153 (LC)
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- For landlords, properties checked once every five years – where a landlord owns multiple properties, then a mix of inspection and self-audit declarations will apply

Number of properties owned	Number inspected (over five years)
One	One – if selected as part of random sample otherwise a self-audit is required
Two to Six	Two
Seven to Ten	Three
Above Eleven	Four

- For agencies, two or three properties will be audited and inspected every six months. Self-audit declarations required on other properties not visited within the last five years (council will supply a list of properties requiring self-audit declarations)

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