

Operational Model for the Proposed New Additional Licensing Scheme 2019

Highlight Summary

- An estimate 1800 properties will be licensable.
- Reviewed team structure.
- Reviewed fee structure.
- Reviewed fee payment methods
- Reviewed Licence Conditions
- Requirement for landlords to be proactive in managing their properties.
- Aligning the HMO licensing schemes.
- Pass porting of licences.
- Overhanging applications and licences.
- Online applications system.
- Signposting for benefits beyond licensing i.e. trading standards, planning, fuel poverty and access to other support.

Background

The introduction of new additional licensing scheme will bring an estimated 1,800 privately rented HMO properties into the licensing framework over the 5 year period of the scheme.

The current Additional Licensing scheme has approximately 2200 properties licenced. With the imminent legislative changes to mandatory licensing coming in to force on the 1st October 2018 it is likely approximately 600 properties licenced under the Council's current additional licensing scheme will passport into mandatory licensing.

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 <http://www.legislation.gov.uk/ukxi/2018/221/contents/made>.

Approximately 100 properties currently licenced under the Additional Licensing scheme will become licensable under the Selective Licensing scheme these are properties such as flats occupied by one or two persons and/or families.

It is suspected that approximately 1000 properties remain unlicensed under the current Additional Licensing scheme. A more robust fee structure will incorporate extra enforcement officers to proactively tackle rogue landlords and those who fail to licence for whatever reason. The Council wants to recognise good and compliant landlords who apply as and when required to do so and proactively manage their properties to a high standard and reduce the burden on these businesses.

The operational delivery of additional licensing will be delivered by the Community Protection Environmental Health, Housing Licensing and Compliance (HLC) Team under the umbrella of Safer Housing. The HLC team deals with the licensing of houses in multiple occupation, compliance and enforcement of these licences. This team is established and will continue to undertake the additional licensing and mandatory licensing work. Licensing (Additional & Mandatory) will fund new four officers to identify, investigate and take enforcement action where failure to licence is suspected. The Safer Housing is responsible for responding to citizen complaints about poor properties, illegal eviction, and rogue landlord along with supporting landlord's tenants, partners and community in matters relating to the provision of a quality private rented sector.

The proposed Additional Licensing scheme will operate on the basis of issuing licences mainly based on the information contained in the application form and the applicant's self-declaration. This will require the applicant (usually landlords) to provide a fee and a good quality application containing all

of the required information and documents, including, amongst other things, certificates (e.g. the current gas safety certificate and an electrical safety reports) and annotated property plans.

The Council will undertake a desk top assessment, putting the onus on the applicant to provide the appropriate information necessary to allow the Council to determine the application and either issue or refuse the licence. The objective is to issue licences efficiently so that licence conditions (and hence controls) are in place. Compliance with licence conditions will secure improved housing standards and management. Where deemed necessary following the desk top risk assessment an inspection may be made before the licence is issued. “Less compliant landlords”¹ and those who have deliberately avoided making an application will be inspected prior to any licence being issued.

The Council will contact occupiers to make them aware that a licence has been granted (and about how to make a complaint should there be concerns that the licence holder or manager is not meeting their legal duties or the property is not up to standard. Licence holders will be required to provide a copy of the licence to the occupiers detailing the conditions the licence holder has to comply with and this must be displayed and available in the property at all times.

Licence holders will be notified and warned when they receive their licence that they should be proactive in managing their properties, that they should visit and assess their house and take action to prevent and remove hazards to protect the safety and health of the tenants. The licence conditions will require landlords to be proactive in managing their properties and will require them to have written procedures and processes in place, good tenancy management arrangements and will require production of safety certificates to ensure safety and adequate management.

This robust system will allow the Council to focus resources on less-compliant and more criminal rogue landlords to ensure that appropriate action is taken when necessary. Properties operated by these landlords are likely to be the worst managed and maintained properties, which operate under the radar and pose the greatest risks to the tenants. This operation model will ensure a robust new scheme that should be supported by those good landlords who want to see the whole sector improve.

Processing licences efficiently and effectively coupled with appropriate enforcement of the licence conditions through risk based compliance inspections and robust enforcement against those not applying are vital to the success of the scheme and to modify some less compliant behaviours.

¹ A “Less compliant Landlord” is one that is a misinformed, unaware or accidental landlord who operates without proper knowledge of legislative requirements and who may only comply with requirements once prompted and guided.

Additional Licensing Scheme Duration - 1st January 2019 to the 31st December 2023

Table 1 demonstrates the scheme is for five years and there will be a cycle of activity throughout that period as indicated in grey. The staffing structure will reflect these priorities and be flexible to support changes as they occur during the scheme and activities shall be continuing until the last licence expires, should they continue to be issued up to the end date of the newly proposed scheme. Bi-annual scheme reviews will be undertaken.

Table 1: Proposed scheme priorities

Year	Promote	Process	Engage	Enforcement	Compliance	Review
1						
2						
3						
4						
5						

Aligning the Schemes & Proposed Operational Changes

To ensure that the current scheme of Additional Licensing and the newly proposed scheme of Additional Licensing are aligned to run back to back, a number of changes will need to be implemented to ensure a seamless transition. Legislative changes have also been factored in.

Mandatory Licensing is changing, The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 20182 ('the Prescribed Description Order 2018') amends the description of a Mandatory licensable HMO to include all HMOs with 5 or more persons comprising of two or more households regardless of the number of storeys in the property. A significant number (approximately 600) of premises licensed under the Council's current Additional Licence scheme will now be classed and treated as mandatory Licensable HMOs.

A second statutory instrument, the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 ('the Mandatory Conditions Regulations 2018') amends Schedule 4 of the Act, introducing new conditions that must be included in licences that have been granted under Part 2 of the Act. The Council's conditions will be amended to effect these changes when they come into force on 1st October.

These are:

- Mandatory national minimum sleeping room sizes; and
- Waste disposal provision requirements.

Passporting of Licences

Licences issued under the current designation of Additional Licensing are already issued under the same Part of the Housing Act 2004 ("the Act") and are subject to the same standard conditions as licenses issued under the Mandatory scheme. As such the change from Additional to Mandatory licensing will be of minimal effect and the 'passporting' to Mandatory Licensing is in name only to No 'fee' will be chargeable.

It is proposed that any current pending or new applications received in the period up to 31st December 2018 will be processed and either passported as appropriate into Mandatory Licensing (for those

applications received before 1st October where the premises meet the definition in the 2018 Order) or, if approved, into the proposed new scheme of Additional Licensing.

Removal of Section 257 HMOs

It is proposed that Section 257 HMOs will be exempt from the new scheme of Additional Licensing. Where rented out the individual self-contained flats within section 257 HMOs, may however be required to be licenced under either Selective or Mandatory licensing, depending on the nature of their occupation and, for Selective Licensing, whether they are located within the Designation. The number of s257 HMOs is not high and should any new applications fall to be considered in the last few months of the current Additional Licence scheme they will be redirected for consideration under the relevant alternative scheme.

Overhanging Licences

Licences that have a period of licence remaining after the end date of the current Additional Licensing scheme (31st December 2018) are referred to as 'overhanging licences'. It is proposed that they will be passported into the proposed new Scheme of Additional licensing, if approved. These licences will continue to remain in force until their expiration date. The Licence Holders will not be required to take any action at this stage and they will be contacted at an appropriate point in the future regarding their renewal application.

Extensions by Agreed Variation

For a period during the current scheme of Additional Licensing it was the Council policy to only grant licences for a period ending on the expiry of the scheme. This policy was subsequently reviewed and revised following a tribunal decision.

There are a number of licences granted under this former policy which are due to expire on 31 December 2018 and which ordinarily would have been granted for a full 5 year period.

It is proposed that these Licences be assessed as to whether they are suitable for a Variation on a case by case basis. Where appropriate Licence Holders will be offered a Variation to extend their licence duration in order to give them a full five year period of licence commencing from the application 'duly made' date subject to them agreeing to be bound by the revised licence conditions for the new scheme. They will then become "overhanging licences" as described above and treated in the same way. This proposal only applies to those licences due to expire on 31 December 2018 and **not** to any other licences where the Council exercised its discretion to grant a licence for a shorter term due to concerns about the property or its management. If the licence holder does not agree the variation then these licences will expire on 31 December 2018 and a new application must be made under the new scheme (if approved)

Review of the Fee Structure

A separate Board Report has been submitted containing greater detail in regards to the fee setting and review. The proposed fees have been calculated using an updated Local Government Association (LGA) toolkit to ensure value for money, but also to ensure that all allowable costs are recovered. Based on these proposals the Mandatory and Additional Schemes have been presumed to be running in parallel, the fee has been calculated and based on costs for a forecast of 4,800 licences applications being received over a five year period (Mandatory is estimated to receive 3000 applications and Additional 1800 licences). The teams will continue to work together and have costs proportionally allocated across the two schemes. Separate scheme budgets and reporting will continue to be maintained.

Scheme Outcomes & Reviews

The new additional licensing scheme is anticipated to be in force for 5 years from the 1st January 2019 and it is likely to take the entire 5 years to reap the full benefits of the scheme. Time will be

needed for robust enforcement action to be taken against rogue landlords and for behavioural change to be achieved and recognised.

Governance, and robust monitoring will be in place and formal reviews will take place during the scheme, as per the requirements of the Housing Act 2004.

Staffing

The outcome of the fee modelling; forecasts that the service requires 27 staff members, processing and carrying out compliance work with an additional 4 staff members for enforcement, making a total of 31 for Additional and Mandatory Licensing.

The current team structure is for 25 posts, and is currently made up of 23 staff members of varying grades for the processing and compliance activity, there are currently a number of vacancies as detailed in table 2. Approval to recruit and fill posts as a result of the fee review will be subject to separate approval, with the recruitment exercise scheduled for late September 2018. All staffing costs are recovered from the licencing fee.

It is estimated that the staffing number requirement for Additional Licensing will be on average 11.5 at a cost over five years of £2,217,395 if all posts were filled for the entire scheme.

This is based on receiving on average 360 Additional licence applications each year. However depending on the profile spread of applications coming in and the quality of applications made, staffing numbers may increase and decrease as the scheme moves forward.

Table 2 Current and Proposed staffing.

	Designation	Current	Proposed
Management	Operations Manager	1	1
	Principal Environmental Health Officer	2	3
	Licensing Support Team Leader	1	1
Processing and compliance	Environmental Health Officers (EHO)	2	5
	Regulatory Compliance officer	1	2
	Enforcement Officer	9	10
	Licensing Supervisors	1	1
	Licensing Support Officers	6	4
Enforcement	Enforcement Officers	0	2
	Environmental Health Officers	0	2
Vacant	Environmental Health Officers	2	0
Total		25	31

The income will not be received uniformly throughout the five year period. An earmarked reserve will be created to be drawn down on as required.

Applications Form & Payments

The proposed staffing structure will enable applications to be processed in a reasonable time. The Council will aim to determine licence applications within 6 months of a duly made valid application being received. Depending on volume and rate of applications received per year this will be challenging and will be kept under review. The staffing and recruitment plan is flexible with potentially changing numbers of officers and roles required over the five years.

Staffing levels will be monitored to ensure applications will be processed in a reasonable time. It is anticipated that there will be an initial spike in the number of applications received next year. If there is a spike in applications early on staff numbers will have to be increase to ensure adequate resource are available to process these and then reduce down over the latter parts of the 5 year scheme to balance this out. There will be a budget impact on overheads etc. that is incorporated into the 5 year budget plan and fees.

The operational plan (including staffing and fee) is based on a totally online application process. The IT solution of online applications and an interactive customer delivery focussed system is critical in delivering and ensuring licences are issued in a reasonable time and the Council's Firmstep application form will be used for this purpose.

It has been recognised that a paper based application form will need to remain available and this will be freely available on the website for citizens to download and print off themselves at no extra charge. An additional charge will be made if the Council is requested to print and post a paper application form, and a further charge for manual processing the paper application will also apply.

Fee payments will become due as detailed in Appendix 1 of the "Housing Licensing Houses in Multiple Occupation (HMO) Revised Fee Structure 2018" Executive Board Report of 17 September 2018. Payments made by Cheques or Bankers Cheques will not be accepted after the 31st December 2018. Card Payments can now be taken over the phone and BACS payments will be available from the 1st January 2019. Other electronic payments facilities are being explored.

Reviewed Licence conditions

To ensure the scheme meets the aims it sets out to achieve the licence conditions proposed in the appendix 3 "Proposed Licence Conditions for Houses in Multiple Occupation (HMO)" have been further reviewed and will be implemented in combination with the change of fee.

Some of these are statutory conditions required by the Housing Act 2004 and others are proposed conditions that have been developed to ensure improved housing standards and determine landlord competency, pro-active management, and to reduce anti-social behaviour. The conditions also include reference to other guidance and information directing licence holders to relevant duties and obligations imposed by other legislation. The conditions will be subject to review during the course of the scheme.

Specific licence holder and/or manager may have property specific conditions with specified time scales for completion may also be added should it be felt to be appropriate; all of these conditions will contribute to providing safer well managed properties and achieving the scheme aims.

Issuing of Licences

HMO licences may be granted and valid for up to 5 years. Council There may be times when a shorter licence duration is more appropriate and in the following cases a 1 year licence may be considered to allow the Council to closely monitor the management and compliance of the licence or to allow the landlord to seek to ensure that appropriate the correct permission(s) or authorisations are in place:-

- the property does not appear to have the appropriate planning permission or contractual lenders consents.
- the application follows a request or investigation made by the Council, when it should have been licensed previously.
- there is evidence of previous poor management and ongoing concerns in regards to the management of a HMO.

The process once an applications is received:

- The application processed and is accepted as duly made or rejected and returned to the applicant.
- Review the properties compliance history to determine the appropriate fee is paid
- Applications are risk rate and inspections carried out, when identified as high risk
- An assessment is made to assess if the landlord, proposed licence holder and managers are all fit and proper.

- The amenities and space standards are assessed to see if they are suitable for multiple occupation
- All safety certificates and documents are checked and verified.
- Licence conditions are considered and any specific conditions that may be required over and above the standard conditions are added. These are key to achieving improvements in property conditions and management.
- Issue the licence with the standard conditions and additional conditions and then enforce the condition through compliance or;
- Refuse licences or reduce the licence period if there are concerns about the property, proposed licence holder and or management arrangements. This allows the Council to monitor the performance of management, ensure legal duties are met and review property conditions as appropriate.

Once the licence is issued;

- Encourage and require landlords to adhere to the licence conditions and to take proactive action to prevent hazards to health at the property.
- Encourage and require landlords to be proactive to prevent extra intervention and enforcement by the Council becoming necessary.
- Carry out compliance checks and hazards safety assessment, taking enforcement action as appropriate.
- Improve landlord knowledge, awareness and behaviours through requirements for training.
- Cascade important information to landlords when possible by digital platforms such as email and social media.
- Regularly communicate with tenants during the scheme to seek tenant's views on property standards and management.
- Engage, advice and support landlords and tenants.
- Proactively find and tackle landlords and those who fail to licence.
- Proactively engage with licence holder where ASB is identified.
- Proactively find and deal with criminal rogue landlords.
- Work with partners and stakeholders to achieve added value and benefit for citizens.
- Continue to support, liaise with and advise, landlords, tenants and communities.

Nottingham Landlords

Licensing has identified that there are essentially three groups of landlords operating and managing HMOs within the city. The resources required to identify, assess, process and manage the application along with the determination of the licences application, compliance and enforcement for these three groups can vary considerably and this has been reflected in the proposed revised fee structure.

The three groups comprise of: -

- Good Landlords, who are essentially aware of their legal responsibilities, provide properties that are of good quality that are compliant with standards and well managed. This group will proactively seek to licence during the transition period for licensing or plan for the introductions of new schemes and some of these Landlords will go on to take up accredited but not all.
- Less compliant, misinformed, unaware or accidental landlords, who operate without the proper knowledge of legislative requirements, leads to a mixed and often poor standard accommodation (particularly in relation to fire safety and management) once prompted and guided they usually comply with requirements and submit relevant documentation but this can be a long and intensive process sometimes resulting in multiple visits and enforcement activity.

- Rogue landlords, who deliberately avoid making licence application, offer a very poor standard of accommodation combined with a poor management and who put profit before safety. They will have little regard for tenant safety, welfare and pay no regard to the legal eviction procedures. Upon threat of enforcement action they will either finally make a very poor attempt to licence with the application taking many months to process or look for ways to avoid licensing such as removing tenants and sealing off rooms. Enforcement action is usually associated with this group.

Proactive Enforcement

Appropriate enforcement will be taken against those not licensing their properties. A team will be in place to support enforcement of the scheme and undertake intelligence lead, proactive, risk based investigations, working with partners to target unlicensed properties.

Where licenced properties or their management is causing a problem appropriate enforcement action will be undertaken this will include review of any current licences and/or any other appropriate enforcement action. This will help ensure a robust scheme is maintained and continues to develop and acts as a deterrent for those rogue landlords that fail to co-operate.

Risk Based Compliance

Once licences are granted, a desktop assessment and risk based inspection programme will be used to check compliance with the licence conditions. This risk based inspection will target resources at areas with the highest levels of ASB, crime, deprivation, poor property conditions and where there are complaint received and where there is a concern about poor management practice.

Where standards fall below the appropriate level at compliance inspections, enforcement action is likely to be taken and extra inspections may be necessary. There will be a charge for missed inspections. During the compliance process a hazard assessment under part 1 of the Housing Act 2004 is likely to be undertaken (although this cannot be charge for in the application fee). The Council will move automatically to enforcement action where properties are unsafe and contain serious hazards affecting the health, safety or welfare of the occupants.

Failure to comply with licence conditions or provide satisfactory property conditions and/or management of the property will lead to a licence review and possible revocation or reduction in licence term. Undertaking inspections as part of the licensing process has and will continue to help improve property conditions and ensure that the properties are safer for the occupants. The Council will expect works to be completed within appropriate timescales following advice or service of a legal notice/order. Where there is evidence of non-compliance the Council will use the appropriate compliance and enforcement option as detailed in the Housing Enforcement and Compliance Guidance document.

Some costs for inspection, compliance and enforcement are covered in the licence fee, some are not and are borne by the Council or are charged back to the landlord as detailed below in the proposed fee structure.

The Nottingham Standard Accreditation Scheme

Accreditation of private rented sector properties has been in place in the City for a number of years and is now branded as the 'Nottingham Standard'. The accreditation schemes that meet the Nottingham Standard are managed outside of the Council and form a voluntary and market driven approach for improving and recognising good housing standards and landlord's that go above and beyond the legal minimum.

If an applicant is accredited a licence will be issued as the Council accepts that the training, checks and inspections in place as part of the accreditation scheme should adequately meet its requirements for safety and good management. The Council regularly meets with accreditation providers and keeps a record of their property inspections.

The Council will only make inspections of properties licensed by accredited applicants if they are asked to do so by the accreditation provider or if there are complaints. By way of audit the Council expects to inspect about 20% of properties licensed by accredited landlords during the 5 year cycle of the new scheme,(if approved) so as to ensure consistency and compliance amongst accredited landlords whilst recognising that they pose a lower risk.

Applicants that are accredited under the Nottingham Standard will normally pay a discounted fee for the discounted accredited licence fee of £990, this is determined on a case by case basis. The fee model details the lowest cost that is possible for issuing the licences and securing compliance. The current scheme sees 38% of properties accredited and claiming the discount.

Where accredited landlords fail to meet their licensing requirements, the Council will work closely with its partners to consider whether or not they should continue to be an accredited member as well as considering whether the licence should be reviewed. Accredited landlords will not be offered a discounted fee, if they have paid the finder fee and this will be reported to the appropriate scheme provider. Landlords will be required to maintain membership of the relevant scheme for the full duration of the licence term to receive the discount. The consultation outcomes for Selective Licensing and the more recent consultation on Additional Licensing recommended the widening of greater cost differential between the licence fee for accredited and non-accredited applicants and the reviewed fee proposals reflect this.

A full review will be carried out over the next twelve months formalising the standards that accreditation schemes are required to satisfy in order to meet the Nottingham Standard with a view to additional organisations being eligible for accreditation status.

Performance Reviews of the Current Scheme

The delivery of all aspects of the current scheme have been regularly monitored and a report on operational delivery completed. The current scheme has been formally reviewed November 22nd 2016 published here <http://committee.nottinghamcity.gov.uk/mgAi.aspx?ID=15258#mgDocuments> during the 5 year cycle and again at the end of last year 2017 for the evidence gathering and proposal for the proposed new scheme.

These reviews have shown

- 2389 applications had been received
- 2204 licences had been issued
- 61% of properties were visited prior to the licence being granted
- 63% of licences issued had extra condition applied
- 159 licences had been refused
- 106 licences had been revoked
- 219 licences had been varied
- 11% of application had the finder fee applied
- 3356 safety documents had been inspected and verified
- 1067 properties had compliance visits
- 939 HMO amenity standards were not satisfactory at the time of the first visit

Proposed Review for Performance Delivery

A Governance Structure has been established to oversee delivery and outcomes. A performance framework covering, income and expenditure, delivery against purpose, review and development as well as risk will be in place. The Governance will be tiered to including Portfolio Holders, Senior Officers and those involved with delivery.