

Rushcliffe Borough Council's Protocol for Assessing Fit and Proper Persons in Relation to HMO Licences 2022-2027

The aim of this document is to ensure that all licensable houses in multiple occupation (HMO's) have appropriate arrangements in place to ensure that they are satisfactorily managed by fit and proper persons in accordance with the Housing Act 2004.

Duties of a person managing an HMO

Under the provisions of The Management of Houses in Multiple Occupation (England) Regulations 2006, any person managing an HMO of any size has a duty of care in respect of providing information to occupiers, taking safety measures, maintaining water supply and drainage, maintaining gas and electricity supplies, maintaining common parts and living accommodation and providing waste disposal facilities. In addition to these requirements, any person applying for an HMO licence must be able to prove to the council that they are a fit and proper person.

The decision to issue an HMO licence

In deciding whether to issue a licence, the council must be satisfied that there are acceptable management arrangements in place or that such satisfactory arrangements can be put in place by the imposition of conditions in the licence.

In considering whether the management arrangements are satisfactory, the council must have regard to the following:

- The suitability of the proposed licence holder and manager (if different) and any other person involved in the management of the property; that is to say that they are in each case a "fit and proper person"
- The competence of the proposed licence holder/manager to manage the building
- The suitability of management structures
- The adequacy of financial arrangements

This document considers the meaning of fit and proper person, the council's approach to deciding whether a person is fit and proper and the factors that the council will take into account when making such decisions. This protocol relates to applications for new licences, as well as to existing licences and applications for their renewal.

What is a fit and proper person test?

Before issuing an HMO licence, the Housing Act 2004 states that the council must be satisfied that the proposed licence holder and manager of the property are a fit and proper person. If not, the licence must be refused unless other satisfactory arrangements can be agreed.

The test is designed to ensure that those responsible for holding the licence and managing the property are of sufficient integrity and good character to be involved in the management of an HMO and that as such, they do not pose a risk to the welfare or safety of persons occupying the property.

A licence may be revoked where the council no longer considers the licence holder to be a fit and proper person and/or that the management of the house is no longer being carried out by persons who are in each case fit and proper to be involved in its management.

What is meant by “involved in the management”?

The council must consider licence holders, managers and others involved in the management of the property.

A person involved in the management, is a person who is able to comply with any licence conditions and deal with the day-to-day issues that arise within an HMO as well as being able to deal with longer term management issues. Typically, but not exclusively, these will include such matters as:

- Emergency repairs and other issues
- Routine repairs and maintenance of the property and its grounds
- Cyclical maintenance
- The management and the provision of services to the building and its grounds
- The management of tenancies or occupants, including dealing with rent matters and tenants' enquiries
- The management of the behaviour of tenants, occupants and their visitors to the property
- Neighbourhood issues (including disputes)
- Engagement with the local authority, Police and other agencies, where appropriate.

The licence holder and the manager can be two different people. Where this is the case, a decision will be made for each of them about whether they are a fit and proper person.

How will the council decide if I am fit and proper?

Each licensing application must be accompanied by a basic disclosure certificate from the Disclosure Barring Service for each licence holder and all persons involved in the management of the licensable property.

A basic disclosure allows the council to confirm whether a licence applicant has a current criminal conviction or not. The information is taken directly from the Police National Computer and printed on an official disclosure certificate from the Disclosure Barring Service.

The licence holder and manager (if different), and any other person involved in the management of the HMO must also sign the official declaration on the HMO licensing application form.

The council may consult with other councils and with council departments and may use any information contained within the database of rogue landlords and property agents under chapter 3 of the Housing and Planning Act 2016.

The council will consider a person to be “fit and proper” if satisfied that they:

- have not committed an offence involving fraud or other dishonesty, or violence of drugs, or any offence listed under schedule 3 to the Sexual Offences Act 2003 (section 66(2)(a) of the Housing Act 2004).
- have not 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 (section 66(2)(b) of the Housing Act 2004).
- have not contravened any provision of the law relating to housing or landlord and tenant law (section 66(2)(c) of the Housing Act 2004).
- have not acted otherwise than in accordance with a code of practice under section 233 of the act (regarding management of HMOs) (section 66(2)(d) of the Housing Act 2004).
- are not subject to a banning order under section 16 of the Housing and Planning Act 2016

In addition to the above, the council will consider any contravention of legislation relevant to housing. This may include where the council has served a statutory notice, carried out works in default of a notice, taken a prosecution or issued a civil penalty.

The nature of the contravention and its relevance to the management of an HMO and the potential harm associated with the contravention will be taken into consideration.

In relation to any contravention of a provision of the law relating to housing, the council will take into account whether a proposed licence holder or manager:

- Has had a licence revoked, refused or has been convicted of breaching the conditions of a licence under parts 2 or 3 of the Housing Act 2004 or is / has operated an HMO without an appropriate licence in place.
- Owns or manages or has owned or managed an HMO or house which has been the subject of a control order under section 379 of the Housing Act 1985 in the five years preceding the date of the application; or any appropriate enforcement actions described in section 5(2) of the Housing Act 2004 (in relation to category 1 hazards).
- Owns or has previously owned a property that has been the subject of an interim or final management order whilst in their ownership, or a special interim management order under the Housing Act 2004.

- Is subject to a banning order under section 16 of the Housing and Planning Act 2016.
- Owns or has previously owned a property for which the council has taken action as described in section 5(2) of the Housing Act 2004, which includes the service of an Improvement Notice, Prohibition Order, Emergency Prohibition Order, Hazard Awareness Notice, Demolition Order or Emergency Remedial Action.

Each case will be decided on its own merits, taking into consideration the circumstances surrounding the contravention, where there has been more than one contravention, repeating nature of contraventions and of any evidence demonstrating good character since the contravention(s).

Membership of a government approved redress scheme

There is a legal requirement for all letting agents and property managers in England to belong to a government approved redress scheme. There are three approved schemes:

- Ombudsman Services Property (www.ombudsman-services.org/property)
- Property Redress Scheme (www.theprs.co.uk)
- The Property Ombudsman (www.tpos.co.uk)

Membership of an approved redress scheme will be expected for all property managers associated with licensable HMOs. Any manager who is not a member will not be considered to be a fit and proper person.

Failure to be a member of an approved scheme is also a legal offence with fines of up to £5000.

How will the council make their decision?

Where there is evidence of a relevant offence, unlawful discrimination, contravention, banning order or breach of the code of practice, the council may decide that the person is not fit and proper. Each case will be decided on its own merits and such evidence will not necessarily lead to a conclusion that a person is not a fit and proper person. The council will act reasonably, proportionately, and consistently in its approach to making a decision. It will consider those factors relevant to a person's fitness to hold a licence and/or manage an HMO and disregard those which it considers are not relevant.

Consideration of “persons associated or formerly associated” with the proposed licence holder or manager

Where there is evidence that a person associated, or formerly associated with a proposed licence holder or manager has committed any offence specified in section 66(2) of the Housing Act 2004, that evidence may be taken into account in determining the proposed licence holder’s or manager’s fitness. The purpose of this requirement is to ensure that only fit and proper persons hold licences or are in any way involved in the management of licensed properties. It would not be appropriate for a licence to be granted to someone, or for someone to be the manager of a property, if that person was merely acting as a front for someone else, who would be considered to be unfit to be the manager or licence holder.

Duration

If someone is determined by the council to fail the fit and proper person test, this will usually remain the case for a period of 5 years. However, the council may consider it appropriate (in the event of lesser offences) to apply a condition to the licence to allow the licence to operate for a reduced term, e.g., 12 months. The conduct of the licence holder can then be monitored, and this taken into consideration in subsequent licensing applications. The council will, in doing so, have regard to this document and the applicant will need to provide sufficient evidence that they are now a fit and proper person.

If the licence holder or manager is found to not be fit and proper, the council will notify them in writing.

What happens if the licence holder fails the fit and proper test during the duration of the licence?

Should the council become aware that a licence holder or manager of an HMO commits an offence or breach which would result in the failure of the fit and proper test during the duration of the licence, the council may revoke the licence. At all times the council will consider all evidence available and make decisions in accordance with this protocol.

Should the licence holder be subject to a banning order under section 16 of the Housing and Planning Act 2016 during the duration of an existing licence, the licence holder will fail the fit and proper test and the council must revoke the licence.

What to do if you feel you have been treated unfairly

If you feel you have unfairly been refused an HMO licence you may appeal to the Council, explaining exactly why you believe you should have been granted a licence. The Council will review your case and respond to you within a reasonable timespan.

Residential Property Tribunal

If you are still unhappy with the response, you may appeal to the Residential Property Tribunal. This application must be made within 28 days of the notification of the Council's decision.

Extent of any determination

Where any person involved in the management of a licensable property is deemed not to be a fit and proper person then that determination will apply not only to the licence application under consideration but to all licences to which that person is a party. This information may also be shared with other council's which may have an involvement with the persons assessed.

Data sharing

Information obtained and used for the purpose of determining whether a licence holder or manager is a fit and proper person may be shared with other councils, council department or statutory bodies. Licence applicants agree to this when they sign the application form.