

## **HOUSING AND SELECTIVE LICENSING POLICY**

### **Licence applications made under Part 3 Housing Act 2004**

#### **1.0 Background/Introduction**

- 1.1 Waltham Forest Council has exercised its powers under section 80 Housing Act 2004 (“HA 2004”) and has designated the whole of the borough as an area subject to selective licensing. Under the ‘London Borough of Waltham Forest Designation for an Area for Selective Licensing 2014’, which came into force on 1 April 2015, most privately rented homes in the borough are required to have a property licence (“Property Licence”)
- 1.2 Sections 1 to 4 of this document sets out the Council’s policy in relation to the licensing of properties under Part 3 HA 2004. It should be read in conjunction with the document ‘Determining Licence Applications made under Parts 2 and 3 Housing Act 2004’, which details the factors that the Council will take into account in determining an application for a Property Licence and situations where a Licence that is in force might be varied or revoked.
- 1.3 The Council’s policy recognises that the legislative provisions contemplate circumstances in which a single Property Licence may relate to more than one separate dwelling in the same building (“a multi-Property Licence”). However, for the reasons outlined below, the Council will usually decide that each separate dwelling in a building has its own, individual Property Licence (“an individual Property Licence”). The aim of this policy is to provide clarity for both landlords and tenants and to recognise the wider duties of the Council to promote the health and safety of tenants under HA 2004. The Council considers it is of benefit to both landlords as well as tenants. For landlords, it provides the benefits of a clearer and less bureaucratic scheme, facilitating changes to managing agents, the carrying out of major works, or the sale of individual flats in buildings. For tenants, it removes ambiguity where the Council is required to enforce landlord obligations and duties owed to them.
- 1.4 This document also outlines the Council’s policy as regards the levying of Part 3 licence fees and the discounts available to landlords who make applications for Property Licences for more than one separate dwelling in the same building, at the same time. The Council has exercised its powers to charge under section 87(3) and (7) HA 2004 and does so taking into account the Provision of Services Regulations 2009, which themselves implement the Services Directive.

## **2.0 Conditions that must be met to enable the grant of a multi-Property Licence**

2.1 The Council accepts that under Part 3 HA 2004 it is possible for it to grant a multi-Property Licence which covers more than one separate dwelling, where the following conditions are met:

- Each of the dwellings are separate dwellings (usually self-contained flats), which are contiguous to one another in the same building; and
- Each of the dwellings are occupied under non “exempt tenancies”; and
- Each of the dwellings are within common ownership and management control.

2.2 Accordingly, it is open to an applicant (which is usually, but not invariably, the landlord) to apply for a multi-Property Licence where the applicant considers that each of these conditions is met. Where such an application is made to the Council it may grant such a multi-Property Licence where it is satisfied that:

- The conditions set out in paragraph 2.1 are met; and
- There are no other contra-indications that would mean that such a Licence should not be granted, such as those detailed in the ‘Determining Licence Applications - Fit and proper person checks and associated issues’ policy document

2.3. The Council will consider each such application having regard to the additional considerations set out in paragraph 3 below, taking into account any representations made by the applicant as to why the Council should exercise its discretion to grant a multi-Property Licence.

2.4 If the Council decides not to exercise its discretion, but is otherwise satisfied that individual Property Licences should be granted, it will give notice of this to the applicant and every relevant person. There is a statutory right of appeal, notwithstanding the grant of these individual Property Licences.

## **3.0 Property licences – Additional considerations**

3.1 Central to the usual approach for each separate licensable dwelling to hold an individual Property Licence is the Council’s belief that this approach provides important clarity, certainty and benefits to all parties impacted by the administration and enforcement of the licensing regime.

3.2 Under Part 3 HA 2004, a ‘house’ falls to be licensed if:

- The whole of it is occupied under a single non-exempt tenancy or licence; or

- The whole of it is occupied under two or more non-exempt tenancies or licences in respect of different separate dwellings within the building.
- 3.3 In the event that a multi-Property Licence is granted, and there is then a change in circumstances which results in there being more or fewer dwellings in the building that met the conditions described in paragraph 2.1, this would result in the granted licence no longer reflecting the 'house' now present. In such circumstances, the existing Licence would need to be revoked and a new application made that reflects the 'house' now defined by the dwellings let in accordance with the conditions in paragraph 2.1.
- 3.4 The Council's usual approach, of granting individual Property Licences, avoids this unnecessary consequence. It provides clarity and certainty to the licensing regime and means that the duration and operation of individually granted licences are not impacted by changes in the letting and occupation of other separate dwellings within the same building as would be the case if a multi-Property Licence has been granted
- 3.5 As stated above, the Council considers that its usual approach of granting individual Property Licences has clear benefits for both landlords and tenants.
- 3.6 For landlords who own two or more individually licensed dwellings in the same building, the individual Property Licence approach will mean that:
- A dwelling may be sold without affecting the licence[s] granted in respect of any other dwellings in the building;
  - A dwelling may be let on an exempt tenancy without affecting the licence[s] granted in respect of any other dwellings in the building;
  - A dwelling may be left vacant [for example, to allow major refurbishment] without affecting the licence[s] granted in respect of any other dwellings in the building;
  - Enforcement action may be better, and more proportionately, targeted on the individual, non-compliant dwelling, without affecting the licences granted in respect of other dwellings in the building. This includes cases where, for example, the Council considers it necessary to serve a Prohibition Order to preclude the use of an individual dwelling for human habitation or where it has identified planning breaches in relation to an individual dwelling.
- 3.7 For a tenant of a specific dwelling in a building, the Council's usual approach should provide greater certainty and clarity that their individual dwelling is duly licensed, notwithstanding the licensing status of other dwellings in the same building. Furthermore, by virtue of knowing that a specific licence had been granted in relation to their particular dwelling, the tenant would also have the reassurance that any necessary Gas Safe Certificate would have been

provided at the application stage and declarations made regarding key fire safety measures pertaining to their own rented home.

- 3.8 Under the Council's licence fee schedule, there will be no financial disadvantage to an applicant who applies for and/or is granted, individual Property Licences, as explained in paragraph 4.

#### **4.0 Licence fees**

- 4.1 Section 87 HA 2004 permits the Council to require that any application for a licence under Part 3 is accompanied by a licence fee and that this fee may properly cover all costs incurred by the Council in carrying out its Part 3 functions. The current fee for an individual Property Licence is £650. The Council considers that some £250 of this reflects the costs of processing and determining the application for a licence, with the balance of £400 covering the wider management and enforcement costs it is permitted to recover through the fee, in accordance with section 87(7).
- 4.2 The Council has had regard to the European Court of Justice ruling in *R (Hemming) v Westminster City Council* (Case C-316/15), which holds that the Services Directive should be interpreted as precluding charging in advance for costs other than those directly related to the authorisation process. The Council understands this to mean that it is not permitted to demand fees in advance for anything other than the costs of administering the application for a licence, even if it makes clear that unsuccessful applicants will be reimbursed the remaining part of the fee. The Council may legitimately recover its wider costs, over and above those relating to the administration of applications, at the point at which it has been determined that a licence is to be granted
- 4.3 Since the introduction of Selective Licensing in April 2015, the Council has sought to keep the running costs of the scheme to a minimum, such as to minimise the levied licence fee. The judgment in *Hemming*, which envisages the payment of the required licence fee in two stages, has the clear potential to increase the administrative and financial burden on the Council, for example in handling double the previous amount of licence payments as part of a two-stage process, with the resultant pressure to increase licence fees.
- 4.4 The requirement to charge a two-stage fee does not sit well with the statutory provisions. Nonetheless, the Council has decided that it will proceed as follows:
- To provide that the making of an application under section 87(1) is subject to the following published requirements:
    - The payment of a fee for the consideration of an application for an individual Property Licence in the sum of £250, which is payable regardless of outcome.

- The payment of a further fee of £400 for an individual Property Licence, which is payable by a successful applicant prior to the grant of a Licence.
- That the full £650 fee is payable when the Council proposes to grant a Licence, and serves notice to that effect on the applicant under paragraph 1 to Schedule 5 HA 2004. If the applicant does not pay the £650 fee within 14 days of that notice, the application will cease to have been duly made under section 87, and no Licence will be granted.
- In the situation where the Council proposes to refuse to grant a Licence, it will serve notice to that effect under paragraph 5 to Schedule 5 HA 2004. If the Council subsequently refuses to grant a licence, a £250 fee to cover the cost of determining that application is payable at that point. If the applicant does not pay that fee within 28 days of the refusal, the Council reserves the right to taken enforcement action to recovery the fee payable.
- Where, as the result of considering representations made to a paragraph 5 notice, the Council changes its mind, and proposes to grant a Licence, the same procedure in the third bullet point applies.
- That where an application for a multi-Property Licence is made or granted, the fees will be as follows:
  - The initial application fee will be £250 for the first dwelling, with £150 payable for each of the other dwellings in the building, to be subject to that Licence;
  - The further fee payable when the Council gives notice of its proposal to grant such a Licence, is to be £400 multiplied by the numbers of dwellings that are to be subject to that Licence.
- To inform applicants that the above are requirements of making applications under section 87.
- Failure to pay the fees within the required periods will result in applicants having failed to make applications in accordance with the Council's requirements under section 87(2) and (3) HA 2004, and render them liable to enforcement action in accordance with its Housing and Licensing Team Enforcement Policy.

- 4.5 The Council recognises that where the same applicant seeks licences in respect of more than one dwelling in the same building, there will be some efficiencies in respect of the necessary checks that are required to be carried out in relation to the building, the proposed licence holder and any other interested parties. As a result, the Council will offer a discount on the £250 element of the licence fee for eligible properties where the licence[s] is [are] applied for at the same time:
- £250 remains payable for the first dwelling in the building
  - £150 is payable for each subsequent dwelling in the same building
- 4.6 This discount will apply equally to cases where an application is made for a series of individual Property Licences as it will where an application is made for a multi-Property Licence. It will also apply whether or not the dwellings are contiguous to one another, so long as they are all in the same building.
- 4.7 So far as concerns the £400 fee, this element is payable, per dwelling, and even where a multi-Property Licence is granted. For example, if an applicant with 4 contiguous flats applied for, and was granted, one multi-Property Licence, the total fee payable would be £250 + £150 + £150 + £150 (i.e. £700) for the making of the application, and £400 + £400 + £400 + £400 (i.e. £1600) when notified of the proposal to grant such a licence.
- 4.8 The Council has considered whether it would be fair or appropriate to charge a fee of less than £400 per dwelling where an applicant has more than one dwelling in the same building (however they may be licensed). It has decided not to do so. This is because the Council's experience is that the wider management and enforcement costs it is permitted to reflect in this part of the fee are similar per dwelling, when viewed across the borough. It also considers this is the fairest and simplest way to divide the fee amongst the thousands of Property Licence holders.

## **Licence applications made under Part 2 Housing Act 2004**

### **5.0 Licence fees**

- 5.1 Section 63 HA 2004 permits the Council to require that any application for a licence under Part 2 is accompanied by a licence fee and that this fee may properly cover all costs incurred by the Council in carrying out its Part 2 functions. The current fee for an application for a Part 2 licence varies depending upon the size of the HMO, with a flat rate fee payable in respect of HMOs of up to six bedsits and a fee payable per additional bedsit room thereafter. In determining licence applications under Part 2, and in contrast to applications to licence under Part 3, the rented HMO property is routinely inspected prior a decision to grant or refuse a licence. The up-front cost to the

Council for a licence under Part 2 is therefore higher than for a Part 3 licence application and the fee structure for an application made under Part 2, with higher fees for larger properties, also reflects the additional officer time required to determine such an application.

- 5.2 The judgment in *R (Hemming) v Westminster City Council* (Case C-316/15), referenced in paragraph 4.2 above, applies equally to an application to licence a property under Part 2 Housing Act 2004.
- 5.3 As with Part 3 licence applications, the requirement to pay Part 2 licence fees in two-stages has the clear potential to increase the administrative and financial burden on the Council with the resultant pressure to increase licence fees
- 5.4 The requirement to charge a two-stage fee does not sit well with the statutory provisions. Nonetheless, the Council has decided that it will proceed as follows:
  - To provide that the making of an application under section 63(1) is subject to the following published requirements:
    - The payment of a fee for the consideration of an application for an individual HMO Licence in the sum of 50% of the relevant variable licence fee as described in paragraph 5.1 above, which is payable regardless of outcome.
    - The payment of a further fee equating to 50% of the relevant variable licence fee as described in paragraph 5.1 above, which is payable by a successful applicant prior to the grant of a Licence.
    - That the full fee is payable when the Council proposes to grant a Licence, and serves notice to that effect on the applicant under paragraph 1 to Schedule 5 HA 2004. If the applicant does not pay the fee within 14 days of that notice, the application will cease to have been duly made under section 63, and no Licence will be granted.
    - In the situation where the Council proposes to refuse to grant a Licence, it will serve notice to that effect under paragraph 5 to Schedule 5 HA 2004. If the Council subsequently refuses to grant a licence, a fee equating to 50% of the relevant variable licence fee to cover the cost of determining that application is payable at that point. If the applicant does not pay that fee within 28 days of the refusal, the Council reserves the right to taken enforcement action to recovery the fee payable.

- Where, as the result of considering representations made to a paragraph 5 notice, the Council changes its mind, and proposes to grant a Licence, the same procedure in the third bullet point applies.
- To inform applicants that the above are requirements of making applications under section 63.
- Failure to pay the fees within the required periods will result in applicants having failed to make applications in accordance with the Council's requirements under section 63(2) and (3) HA 2004, and render them liable to enforcement action in accordance with its Housing and Licensing Team Enforcement Policy.