

Policy submission

Private Sector Housing Enforcement

Policy for the Regulation of Housing
Standards and for the Licensing of
Houses in Multiple Occupation

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Appendices

- I Standards for Licensable Houses in Multiple Occupation
- II Schedule of Conditions for Houses in Multiple Occupation

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1 Introduction

1.1 Background to the Act

The Housing Act 2004 radically overhauls the way the Council regulates standards in private housing. It introduces compulsory licensing of certain houses in multiple occupation (HMO - See 2.1 below for definition) and enables Local Authorities to introduce further Selective Licensing to cover other types of privately rented housing.

The Act also changes the way housing fitness is assessed with the introduction of the Housing Health & Safety Rating System (HHSRS.) There are also new powers for Councils to take over the management of long-term vacant property or badly managed HMO's. These changes came into force in April 2006.

1.2 The Wider Picture

This policy is written in the context of Lewisham's Private Sector Housing Strategy (PSHS).

You can view this at :-

<http://www.lewisham.gov.uk/Housing/HousingImprovementAndRepairs/HousingGrants/PrivateSectorStrategy20042006.htm>

Lewisham's PSHS links to the Council's Corporate vision to make Lewisham the best place in London to live, work and learn.

The Borough has some very good but also some poor private rented housing. 15.7% of these are unfit for habitation (the previous standard) and housing conditions generally are poorer in the private rented sector than in any type of tenure in the borough. Dwellings in poor condition can affect the health and safety of occupants, the quality of the 'street' environment and the sustainability of local communities.

The Government has set a target for 70 percent of private sector homes, occupied by vulnerable people, to meet the Decent Homes Standard by 2010.

Improving the condition of the borough's private sector housing stock is an important priority for the London Borough of Lewisham (otherwise known as "the Council") and this policy is key in addressing the following objectives of the Council's Private Sector Housing Strategy (PSHS) 2004-2006:

- To improve the quality of private sector homes and reduce the number of non-decent homes occupied by vulnerable people.
- To ensure tenants can obtain safe, good quality and affordable accommodation in the private rented sector.

The Council is keen to promote a thriving private rented sector as it has a key role to play in providing affordable accommodation. This policy is intended to ensure that:

- As a regulator the Council meets its obligations to enforce housing standards;
- Resources are used in the most effective way possible to ensure the health and safety of residents;
- Officers make decisions based on a professional approach to problem solving;
- That there is a consistent and transparent approach to decision making;
- We inform the public of the principles by which enforcement action is arrived at and undertaken.

2 HMO Licensing

2.1 Houses in Multiple Occupation (HMOs)

The aim of HMO licensing is to ensure the poorest properties in the private rental market meet the legal standards and are properly managed. In particular:

- To ensure that those properties potentially posing the highest risk to occupants are identified and dealt with.
- That in particular the issues of safety and management are recognised.
- That the deployment of appropriate resources can be identified.

To achieve this aim the Council will:

- Use all available data to identify relevant properties;
- Assess whether a licensable HMO is being managed well;
- Visit those properties that we believe are not being run so well or that we have not visited before;
- Work with landlords and tenants to achieve better standards.

In summary a HMO is a building occupied by more than one household where there is a degree of sharing of facilities. The definition includes houses containing bedsits, hostels, shared houses and some flats. The Housing Act 2004 defines a household as a family, including single persons and cohabiting couples (whether or not of opposite sex). This has clarified past confusion and means that shared houses, such as the type traditionally occupied by students, will always be HMOs. The definition excludes most self-contained flats.

Mandatory licensing applies to HMOs of three or more stories, which contain five or more residents. Premises subject to mandatory licensing are those that we would consider to be the highest risk premises, in that they are large premises occupied by un-related individuals who may share some common amenities. Statistics demonstrate that the risk of fire, injury and ill health is higher in these types of premises.

The Council wants to focus its resources on taking action in premises, which are poorly run, and in an unsafe condition. By focusing resources on the worst HMOs we will be contributing towards the governments target of reducing the number of vulnerable people living in non-decent homes. This is a key target under PSA 7 and Lewisham's Private Sector Housing Strategy.

2.2 Licensing Principles

Applications for licences will only be considered to be complete where:

- It is made on the current application form issued by the council.
- All necessary information has been provided.
- Any inspections or further enquiries deemed necessary by the council have been undertaken.

- All required supporting documentation required by the council has been received.
- The forms are signed by the person(s) making the application.
- The requisite fee has been paid.

Licences will be granted where:

- The house is reasonably suitable for occupation as a HMO.
- The management arrangements are satisfactory AND
- The licensee and manager are fit and proper persons.

The applicant must be the most appropriate person to hold the licence. A member of the Council's Private Sector Renewal Unit may visit before licensing a HMO to assess compliance with the licensing requirements and the number of people the HMO should be licensed for.

The council is required to assess whether the applicant, any manager and any person associated with them or formerly associated with them are fit and proper people to own or manage an HMO.

A person will be considered fit and proper if the council is satisfied that:

- They have no unspent convictions relating to offences involving fraud, dishonesty, violence or drugs, or sexual offences
- They have no unspent convictions relating to unlawful discrimination on grounds of sex, race, or disability
- They have no unspent convictions relating to housing or landlord and tenant law
- They have not been refused a HMO licence, been convicted of breaching the conditions of a licence or have acted otherwise than in accordance with the approved code of practice under S197 of the Act within the last five years
- They have not been in control of a property subject to an HMO Control Order an Interim Management Order (IMO) or Final Management Order (FMO) or work in default carried out by a local authority
- They have not been subject to legal proceedings by a local authority for breaches of planning, compulsory purchase, environmental protection legislation or other relevant legislation.

In general, it will be sufficient for an applicant to sign the declaration on the licence application form to indicate that they meets the criteria set out above. However, where there is any reasonable ground for concern, the Council may carry out further checks with other authorities, agencies, and the Criminal Records Bureau, or require the applicant to provide additional evidence.

Licences will be valid for five years and will specify the maximum number of occupiers or households. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities.

2.3 Licensing Conditions

Licences will be valid for five years and will specify the maximum number of occupiers or households. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities.

The following mandatory conditions must be applied to all licences:-

- Requiring gas safety certificates to be provided annually;
- For keeping electrical appliances and furniture in safe condition;
- Requiring evidence that any fire warning system is properly maintained;
- That licence holders supply evidence of tenancy agreements;

A licence may also include such conditions as the local housing authority consider appropriate for regulating the management, use or occupation of the house concerned. This may include restricting the use of parts of the house and conditions relating to anti social disorder. A licence may also include conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards and conditions requiring such facilities and equipment to be kept in repair and proper working order.

Lewisham has deemed it to be desirable and necessary to include discretionary conditions in the interest of maintaining management standards.

A full list of mandatory and discretionary conditions is attached as **appendix 1** together with the pro forma Licence.

2.4 Licensing Standards

The Government has produced national standards for the provision of amenities (WC's, washing facilities, facilities for storage, preparation and cooking of food, refuse disposal arrangements) in licensable HMO's. Councils have the power to specify local standards that must not be lower than the national standards. The standards have been adopted following extensive consultation with landlords and agents and are not dissimilar to standards adopted by other Councils up and down the country. A copy of the Councils standards can be found at **Appendix 2**.

Where a licensable HMO does not comply with the appropriate amenity or space standard at the time of application for a licence, the council may reject the application.

Alternatively the council may at its absolute discretion issue a licence subject to a condition that the property will comply with the appropriate standards within an agreed period of the grant of the licence.

Following licensing, HMOs will be prioritised for inspection and assessment under the Housing Health and Safety Rating System (HHSRS – see below) in accordance with established risk assessment methodology. The owner must deal with all identified hazards in accordance with the principles laid out in this policy (see section 3.2) . If they do not, then the council is expected to use their enforcement powers to improve the property to render them suitable for occupation.

2.5 Temporary Exemption Notices (TEN)

Where notice is given in writing of an intention of a person to take steps to secure that the property is no longer required to be licensed, then the following factors will be taken into account in deciding whether a Temporary Exemption Notice (TEN) will be given:

- That the property will be used as a single family house;
- That the property will be converted into self-contained flats.

A TEN will only be granted where the applicant is in a position to ensure that the property to which the application refers, will no longer be licensable.

In certain circumstances we can intervene to take over the management of a HMO:

- Where we believe that the premises is being inadequately managed or the manager or landlord is not a fit and proper person;
- Where an owner or landlord fails to apply for a licence.

2.6 Legal Matters

After the 6th July 2006 it becomes a summary offence to operate an HMO of a type included in the mandatory or any other extended scheme, without having a licence. Additionally, an offence is committed by a licence holder if they knowingly permit the HMO to be occupied by a number of occupants exceeding that specified on the licence. The maximum fine for these offences is £20,000.

The Council will continue to actively promote HMO Licensing and encourage applications in all cases where they believe that a licence is required. An extensive campaign to raise awareness of HMO licensing amongst residential landlords and agents took place leading up to the introduction of the scheme. The council consider it unlikely that persons involved with letting residential accommodation remain oblivious of the new requirements.

Lewisham will actively pursue all such landlords and prosecute where there are no reasonable grounds for excuse or mitigation. Each case will be judged fairly and in line with the Council's adopted Enforcement Concordat and policies.

Where a landlord is convicted for failure to license a HMO, the Council can apply to the Residential Property Tribunal* (RPT). The RPT additionally has the power to request that up to 12 months rent is repaid to the council where a tenant is on housing benefits. Tenants can also apply to the RPT for repayment of any rents they have paid.

If we believe that a property is not being managed properly or where it cannot be managed properly we will consider issuing an Interim Management Order (IMO).

An IMO lasts for up to one year and allows the Council to manage or appoint its own manager to carry out all the functions usually carried out by an owner or landlord, i.e. collect rents and carry out repairs to reduce hazards etc.

At the end of the IMO, if it is considered that the manager or owner or landlord is still unable or unsuitable to properly manage the property, the Council can make a Final Management Order (FMO), which can last for up to five years and allows for new tenancies to be created.

A licence may be revoked at any time if the council consider that the licence holder is no longer a fit and proper person, or where it considers that the HMO would not have been licensable in its current condition..

2.7 Standards in HMOs not subject to mandatory licensing

Many HMOs in Lewisham will not be licensable. These include houses containing self-contained flats and smaller HMOs. Many of these still pose some degree of risk to occupying tenants or have a history of being badly managed. Regulation of such HMOs will be achieved under the newly introduced HMO Management Regulations and by the application of the HHSRS which applies to all dwellings irrespective of whether they are an HMO

In determining the suitability of such accommodation for multiple occupation, reference will be made to the relevant standards for licensable HMOs, together with the current operating guidance for the HHSRS. Where the HMO is found not to be suitable for the number of occupants then the appropriate control measures will be used. These control measures could include the service of an overcrowding notice under Part 4 or the service of a notice under Part 1. Regulation of the management of such HMOs will be achieved under the newly introduced HMO Management Regulations.

3 Housing Health and Safety Rating System

3.1 HHSRS and the Enforcement Regime

The previous 'Fitness Standard' which has been the measure of a dwellings suitability for occupation for many years has been replaced by the Housing Health and Safety Rating System (HHSRS). This assesses the risk to the health & safety of occupiers posed by certain specified housing related hazards. The HHSRS is more complex than the fitness standard. It involves the assessment of 29 potential hazards and scoring of their severity to decide whether improvements are needed. Assessed hazards are banded Category 1 or Category 2 depending on the seriousness of the risk. Where Category 1 hazards are found the council has a duty to require the owner to remedy the defect. If less serious Category 2 hazards are found, the council has discretionary power to require action.

The process of can be summarised as:

Stage 1 - Determine hazards present.

Stage 2 - Assess hazard score.

Stage 3 - Power or duty to take action?

Stage 4 - Determine what is the most appropriate way of dealing with the hazard(s)

When considering our enforcement options we will take into account the following with regard to the current occupation:

- The risk posed to the current occupants and any regular visitors of the dwelling. If occupants are vulnerable then we would be more likely to take enforcement action.
- Whether certain vulnerable groups, such as drug and alcohol dependant people in a hostel, occupy the premises.
- The nature and severity of the problem
- Views of Occupiers
- Tenure
- Availability of other forms of Housing Assistance

The Government have issued detailed guidance both on the operation of the new HHSRS and on the use of the new enforcement framework. This replaces all previous advice. Lewisham will at all times have regard to available government guidance before taking enforcement decisions.

The enforcement regime involves a new set of powers and corresponding notices to deal with identified HHSRS hazards. These can require the improvement or prohibition of the use of the dwelling or its parts. Powers to require demolition also remain.

The formal notices available are similar to those previously used under the Housing Act 1985 except that a Prohibition Notice can now be served to prohibit the use of part of a dwelling or use by a description of persons. This could be used for example to protect those of a certain age or vulnerability. This was not possible under the previous 'Closing Order' procedure.

The full range of legal powers available to Local Authorities for alleviating unacceptable HHSRS Hazards are:

- Improvement Notice (s.11 + s.12)*

- Prohibition Order (s.20 + s.21)*
- Emergency Remedial Action Notice (s.40 + s.41)
- Emergence Prohibition Order (s.43)
- Demolition Order (Housing Act 1985)
- Clearance Areas (Housing Act 1985)
- Management Orders / Interim Management Orders.
- Hazard Awareness Notice (s.28 + s.29)

*Improvement Notices and Prohibition Notices can be 'Suspended' in appropriate circumstances.

3.2 Health and Safety Rating Policies

For **Category 1** hazards the Council will carry out its statutory duty to resolve all such hazards identified and will **always** take appropriate enforcement action where properties are tenanted. Where properties are owner occupied the local authority will take enforcement action but the nature of the enforcement action may vary on a case by case basis.

For **Category 2** hazards the Council will not generally take action except under the following circumstances

- Where **Category 2** hazards in bands D to F are found alongside **Category 1** hazards then action will be taken to address all hazards
- Where certain vulnerable groups such as drug and alcohol dependant people, occupy the premises and there is a **Category 2** hazard in the scoring band D to F. We would consider taking action because of the greater risk of certain hazards such as fire occurring.
- Where a **Category 2 hazard** or hazards are found in a property subject to ongoing neglect. e.g. in cases where it is likely that further structural deterioration will occur over the next two years then preventative action may be taken so as to prevent the occurrence of a **Category 1 hazard**.
- Maintaining equitable minimum standards in Lewisham's HMO accommodation. (Fire Safety and amenity)

All notices and orders will have a statement of reason attached to them. The statement will state why one type of enforcement taken was taken instead of another. Considerations will be given to the views of owners, landlords and tenants before formal action is taken except in very urgent cases. Where the proposed notice is to include a schedule of works, then this will be sent to all interested parties asking for their views, prior to the notices being formally served.

Section 10 of the Housing Act 2004 requires consultation with the local fire and rescue authority in respect of fire hazards in HMOs or common parts of buildings containing flats. The 'London Fire Safety Guidance for Houses in Multiple Occupation' will form the basis for these consultations in Lewisham.

All notices will clearly state what is required to be done to remedy the hazard, and when it has to be done by.

3.3 Charges for notices

We are entitled to charge a reasonable amount for our expenses in connection with inspection of the premises, subsequent consideration of action and service of notice. No cap is set. We will charge for any costs involved in gaining access to the property including obtaining a warrant and costs associated with forced entry and making the premises secure after. We will charge when we serve Improvement or Prohibition Notices or Emergency Prohibition Orders or when taking Emergency Remedial Action. However we will suspend this charge if works are completed within the time limits set by the notice. This policy will act as an added incentive for landlords to comply with notices within the time limits and will ensure that we recover costs from those landlords who take up more of our officer time by failing to comply.

We will always inform recipients of notices and orders on how to appeal to the Residential Property Tribunal (RPT) if they believe we have served a legal document in error or if the recipient believes our proposed course of action is unjustified.

3.4 Prosecutions and Works in Default

Where property owners knowingly fail to comply with the requirements of a statutory notice, the Council will always consider further legal action to secure compliance. In considering what course of action is most appropriate we will have regard to the seriousness of the offence and any immediate risk to posed to occupiers.

Work in Default may be carried out where Improvement Notices alone have failed to alleviate serious hazards that continue to place occupiers or other persons at risk.

Prosecution of the person responsible for non-compliance will be pursued where this believed to be in the public's interest. Account will be taken of the seriousness of the offence, any mitigating circumstances and past history. Certain offences, such as the intentional breach of a Prohibition Notice or persistent negligence in management will always be prosecuted.

3.5 Action against owner occupiers

Other than in exceptional cases, the council expects owner-occupiers, including long leaseholders, to invoke the terms of their lease to remedy problems of disrepair or nuisance themselves.

Owner-occupiers and other occupiers with repairing obligations are in a strong position to invoke the terms of their lease, whereas short-term tenants of private landlords have no direct control and can risk eviction as a result of complaining about disrepair and related housing matters. Grants are available to some owner-occupiers and long leaseholders for repairs, heating improvements and insulation works. These are already targeted to address the Decent Homes Standard and this will mean that Category 1 hazards are addressed as by definition a decent home is one without a

Category 1 Hazard. Grants are means tested to ensure that such assistance goes to those least able to afford necessary repairs and improvements. The Councils Private Sector Housing Assistance Policy will be reviewed to further in the light of experience of HHSRS enforcement. It is envisaged that the majority of enforcement work will be carried out in dwellings owned by private landlords or housing associations. This will be as a result of complaints received from tenants or from the identification of hazards during proactive inspection of rented accommodation. However there will be exceptional circumstances where enforcement is necessary within other tenures.

Where it is considered appropriate to carry out housing enforcement measures on Owner Occupiers or long lease holders then this action must first be endorsed by the Residential Services Manager or a Senior Residential Services Officer in their absence.

Examples of when this might be appropriate are:

- The degree of risk is so significant that the Council is bound to ensure the hazard is addressed.
- The person having control of the property is considered to be particularly vulnerable.
- The hazard places third parties at risk.
- The hazard is of a type being targeted by the Council as part of a wider initiative.

This list is not exhaustive and each case will be considered on its merits.

3.6 Public Housing

The Councils aim is for Housing Standards enforcement across the Borough to be tenure neutral. However as the Council itself enforces the relevant statutes, the Residential Services Team has no formal powers to deal with Council owned dwellings. Complaints regarding the Councils own stock are redirected to the appropriate Housing management team.

The Housing Department have been made aware of the new HHSRS assessment framework and this is being used as part of their routine stock appraisal process.

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