

# **Thurrock Council**

## **Licensing policy for**

### **Houses in Multiple Occupation (HMO)**

**Private Housing Team.**

**February 2021.**

## About this document

<b>Title</b>	Licensing policy for houses in multiple Occupation (HMO)
<b>Purpose</b>	To set out how the Thurrock Private Housing Team will administer the licensing of those prescribed Houses in multiple occupation
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<b>Who should read</b>	All authorised Private Housing Officers who have the delegated powers to license Houses in Multiple Occupation.
<b>Access</b>	Via Private Housing Service, Main Council Office, Electronic internet access
<b>Consulted with</b>	Private Sector Housing and ASB Manager, Council Housing ASB Manager, Thurrock Council Private Landlord/Agent Forum, Senior Housing Management Team, Environmental Protection Team, Legal Services
<b>Approved by</b>	Corporate Director for Adults, Housing and Health.
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# 1. Introduction

- 1.1. This policy is written in the context of the Private Housing Team –Enforcement Policy.
- 1.2. The council aims to maximise the availability of private rented accommodation in Thurrock and ensure that it is of a decent standard to protect the health and safety of tenants. The availability of good quality houses in multiple occupation (HMO) helps sustain the availability of affordable housing, particularly for those more vulnerable residents who access the Housing Needs and Social Services.
- 1.3. This policy sets out the way Thurrock will carry out the requirements of the Housing Act 2004 in relation to HMO licensing. The aim of this policy is to clearly state:
  - the procedure by which a landlord can apply for licensing
  - the licensing fee that a landlord will have to pay to licence an HMO
  - the tools available for HMO enforcement
  - how the system will operate in practice

# 2. Background

## HMO definition

- 2.1. The definition of a HMO continues to remain the same under Section 254 of the Housing Act 2004 (The standard test). A dwelling will be considered to be in multiple-occupation if it contains 3 or more occupiers who do not form a single household and it is their main place of residence. One or more of the basic amenities must be shared. The definition includes houses containing bedsits, hostels, and shared houses. A list of exemptions are contained within Section 14 of the Housing Act 2004.

## Mandatory licensing

- 2.2. The Housing Act 2004 introduced mandatory licensing for certain HMOs in April 2006. This included properties containing 3 or more storeys with 5 or more people in 2 or more households. The Housing and Planning Act 2016 then extended the definition in April 2018 to include all premises occupied by 5 or more people in 2 or more households regardless of the number of storeys. Thurrock Council has so far licensed 100 properties under the mandatory licensing scheme.

## Additional licensing

- 2.3. On 1 June 2019, the council introduced an Additional HMO licensing Scheme requiring all HMOs with 3 or 4 persons to have a licence. The scheme covers the following wards in Thurrock:
  - Grays Riverside
  - Grays Thurrock
  - Little Thurrock Blackshots
  - Stifford Clays
  - Aveley and Uplands
  - Belhus
  - Ockendon
  - West Thurrock and South Stifford

- Chadwell St Mary
- Tilbury Riverside and Thurrock Park
- Tilbury St Chads

2.4. The aim of the scheme is to tackle smaller HMOs and the problems associated with them such as poor management and antisocial behaviour. A public consultation was held between landlords, managing agents and tenants. So far 10 properties have been licensed within the additional scheme and approximately 3,000 new alleged HMOs are being investigated.

### **3. Licensing procedure**

#### **Legal requirement and submitting applications**

3.1. Under Section 72 of the Housing Act 2004 it is the responsibility of persons managing or having control of a licensable HMO to submit an application to the council. This includes property owners, managing agents and anyone who receives a rack rent for the premises.

Applications can be submitted online via the Thurrock Council website. Paper forms can be sent to applicants upon request to complete. All sections of the application must be thoroughly completed and the declaration dated and signed.

Certain enclosures must be provided including the gas safety certificate, electrical installation condition report and a scale floor plan.

Applications shall not be considered duly-made by the council under the Housing Act 2004 unless they contain this information and the appropriate part 1 fee. Incomplete applications shall be returned to the applicant for completion. Enforcement action shall be taken if a duly-made application is not returned.

#### **When a licence can be granted**

3.2. Licences will be granted where:

- the house is deemed reasonably suitable for occupation as an HMO
- the management arrangements are satisfactory
- the proposed licence holder and manager are deemed fit and proper persons

The applicant must be the most appropriate person to hold the licence. An officer from the Private Sector Housing Team shall visit before issuing the licence to assess for compliance with the Essex HMO Amenity Standards. Bespoke HMO licence conditions shall then be made.

#### **Draft licence consultation**

3.3. Once part 2 of the licence fee is paid a draft HMO licence is produced and sent to all interested parties for a 14-day consultation. This contains the maximum number of occupiers and households permitted to occupy the property along with mandatory and discretionary licence conditions.

The Interested parties include freeholders, leaseholders and anyone with a financial interest such as mortgagees. It does not include the occupiers of the HMO. The council has a statutory duty to hold this consultation.

Copies of the draft licence are sent to the Planning department, Council Tax department, Housing Benefit department and the Essex Fire and Rescue Service. Representations received are considered by the Private Sector Housing Team before a final licence is granted. If appropriate, a modified HMO licence shall be produced and sent to each interested party for a further 14-day consultation.

## **Final licence**

- 3.4. Following the expiry of the consultation period a final HMO licence shall be produced and served to all of the interested parties. The licence becomes operative after 28 days. The interested parties have 21 days in which they can appeal any of the terms of the HMO licence to the First Tier Residential Property Tribunal. The details of the licence are placed on the council's public register of licensed HMOs which it is obliged to update and publish.

## **Licence conditions**

- 3.5. The licence conditions are monitored for compliance throughout the duration of the licence. The interested parties may submit an application to the local authority to either vary or revoke the licence at any time. There is no fee for varying a HMO licence.

## **Duration of licence**

- 3.6. A licence will be valid for 5 years, unless revoked, and will specify the maximum number of occupiers. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities. A HMO licence cannot be transferred from one person to another, a new application has to be made.

## **Timescale for processing applications**

- 3.7. The target timescale for processing a HMO licence application from start to finish is 12 weeks although this may vary depending upon the demands on the Private Sector Housing Team and the level of staffing.

# **4. 'Fit and proper' persons**

## **Requirement to assess applicants**

- 4.1. 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.

If a person associated or formally associated with the applicant or any manager, has done any of the things stated in 4.2 below, the council will only take these issues into account if they are relevant to the applicant or manager being a fit and proper person to manage the house.

## **Fit and proper persons test**

- 4.2. A person will be considered fit and proper if the council is satisfied that:
- they have no unspent convictions – where the penalty is a fine and is spent after 5 years – relating to:
    - offences involving fraud, dishonesty, violence or drugs, or sexual offences

- unlawful discrimination on ground of sex, race, or disability
- housing or landlord and tenant law
- breaches of planning, compulsory purchase, environmental protection or other legislation enforced by local authorities
- 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 Section 197 of the Act within the last five years
- they have not been in control of a property subject to a HMO Control Order, an Interim Management Order (IMO) or Final Management Order (FMO) or had work in default carried out by a local authority

## **Revoking a HMO licence**

- 4.3. The council shall review a HMO licence if it comes to light that the licence holder or named manager cease to be fit and proper persons. The council shall serve a notice of proposal to revoke a HMO licence on all the interested parties giving a 14-day consultation.

After this date a final notice of decision to revoke a HMO licence shall be served on the interested parties. The interested parties then have 21 days in which to appeal the decision to the First Tier Residential Property Tribunal.

## **What happens after a licence has been revoked**

- 4.4. If a HMO licence is revoked it is the responsibility of the persons managing or having control of the property to submit an application for a new HMO licence. The proposed licence holder and manager must not be directly associated to the person who has committed the offence and is no longer deemed to be fit and proper.

The local authority may take enforcement and apply for an interim management order if a new application is not submitted.

## **5. HMO licensing fees**

### **How the fee is paid**

- 5.1. Thurrock Council breaks down its HMO licensing fees into 2 parts. Part 1 of the fee is payable at the application stage and part 2 of the fee is payable before a draft HMO licence is served for consultation. The fees must be paid all in one go, instalments are not excepted

### **Setting the fees**

- 5.2. The licence fees are variable depending upon the number of rooms within the HMO. Discounts are given to applicants who are accredited landlords or to properties which are owned or managed by accredited landlords. Once paid the licence fee is non-refundable.

### **Reviewing the fees**

- 5.3. The licence fees cover the council's cost of processing and administering the HMO licence application, no additional profit can be made. All of the licence fees are reviewed on an annual basis. The most recent up to date fees are displayed on the HMO licensing page of the Thurrock Council website.

## **6. Housing Health and Safety Rating System (HHSRS)**

- 6.1. The HHSRS will apply to any unit of residential accommodation and to all landlords, and will be the principal tool in assessing physical conditions in HMOs under the licensing system.
- 6.2. Following licensing, HMOs will be prioritised for assessment under the Housing Health and Safety Rating System (HHSRS). With reference to the Private Housing Team Enforcement Policy, the private housing team will consider both Category 1 hazards, such as dangerous electrics, and moderate Category 2 hazards, such as defective roof covering.
- 6.3. The enforcement regime contained within the Enforcement Policy details the most practical course of action which will be taken, dependent on the severity of the housing hazards identified. An improvement notice will be the most practical remedy for most hazards; repair or renewal is generally the most cost-effective because of the value of property in Thurrock. Prohibition notices may be required on part or all of a dwelling, however – for example, where there is no fire escape from the top floor.
- 6.4. Where part 1 action is taken this can either be against the person managing or the person having control of the HMO. Normally it is the same person as the licence holder. A HMO licence shall not contain any conditions to remedy a category 1 hazard identified under HHSRS.

## **7. HMO management regulations**

- 7.1. The Management of Houses in Multiple Occupation (England) Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 apply to HMOs.

These regulations place several duties on persons managing and having control of HMOs to display information about the manager and to maintain the living accommodation, common parts, equipment and facilities. They apply to all HMOs licensable and non-licensable. Contraventions are outright offences and the Private Sector Housing Team may prosecute or issue Civil Penalty Notices for them.

## **8. Enforcement powers**

### **Civil Penalty Notices**

- 8.1. The Housing and Planning Act 2016 introduced civil penalties as an alternative to prosecution. Part1 (HHSRS), parts 2 and 3 (Licensing) and management regulation offences are included as CPN offences.

The Private Sector Housing Team adopted CPNs in April 2019 and developed their own statement of principles and fine matrix. These have been challenged at First Tier Tribunal and currently at Upper Tribunal Level. The preference in the majority of cases is to issue a CPN rather than to prosecute in the magistrate's court.

### **Rent Repayment Orders**

- 8.2. The Housing and Planning Act 2016 changed rent repayment order provisions under the Housing Act 2004 from April 2018. Applications can be made prior to conviction for a range of offences including failure to licence and breach of part 1 enforcement notices.

The Private Sector Housing Team shall aim to recover any housing benefit or universal credit payments made to landlords of unlicensed HMOs. The Private Sector Housing Team shall also assist tenants to make their own applications where relevant

## **Banning Orders**

- 8.3. The Private Sector Housing Team may apply to the First Tier Residential Property Tribunal for a banning order if the landlord or agent has committed 2 or more criminal offences within a 12-month consecutive period. The order prevents individuals and companies from owning or letting rentable properties in the UK. If a banning order is granted the council must place the details of the landlord on the national rogue database

## **Interim Management Orders**

- 8.4. Where there is no prospect of an HMO being licensed, the Act requires that the council use its interim management powers. The council must make an interim management order (IMO) if it is satisfied that either:
- a) there is no reasonable prospect of the property being licensed in the near future
  - b) the health and safety condition applies

The health and safety condition applies when an IMO is necessary to protect the health, safety and welfare of the occupiers of the property and/or residents and/or owners of properties in the vicinity.

The council has the discretion, but not the duty, to treat a threat to evict the occupiers in order to avoid the licensing requirements as a threat to the welfare of the occupiers. If general action using the Housing Health and Safety Rating Scheme (HHSRS) is needed to deal with a category 1 hazard then the health and safety condition is not met.

An IMO is in force for 12 months and the council must:

- a) take immediate steps to protect health, safety and welfare, if appropriate
- b) take steps to manage the property pending the grant of a licence, the making of a final management order or the ending of the IMO

The IMO allows the council to manage the property with all rights of a landlord and to collect rent and expend it on work to the property. Any balance must be paid to the landlord. However the council cannot create any interests – for example, grant tenancies – without the written permission of the owner.

The IMO must contain the date upon which it ceases to be in force, being no more than 12 months from its creation, and there are provisions to vary, revoke and appeal against an IMO. The IMO ceases to have effect if a licence is granted within its duration.

In Thurrock, before such action can be taken, arrangements need to be sought to appoint a preferred partner to manage HMO's subject to management orders.

## **Discretionary Interim Management Order**

- 8.5. The council also has the discretion to apply to the First Tier Residential Property Tribunal for an IMO in other circumstances. The power is available if the property concerned is an HMO, which does not come within the licensing remit.

The tribunal can only grant this IMO if it is satisfied that the health and safety condition applies and must take into account any past compliance on the part of the landlord with any codes of practice (the Management Regulations).

The conditions in which discretionary IMOs will be available can be used to tackle isolated problems of anti-social behaviour. The aim is to allow the council to tackle individual problems without having to draw up a full Additional Licensing Scheme.

## **Final Management Order**

- 8.6. In extreme cases, management orders can be extended to five years, with the council also having the power to grant tenancies. Final management orders (FMO) are designed to secure the proper management of a house in the longer term and as a replacement for the short term IMO. In order to do this the council must put in place a management scheme.

## **HMO declaration**

- 8.7. Where it is unclear whether the households are occupying the building as their only or main residence, the council can declare the building to be an HMO to remove any doubt. The council must serve a notice on the person managing or controlling the property within 7 days of deciding to make the declaration stating:

- a) the date of the council's decision to serve the notice
- b) the date on which the notice will come into force (which must not be less than 28 days from the date the notice is served)
- c) the recipient's right to appeal to the Residential Property Tribunal within 28 days of the council's decision

If no appeal is made within 28 days, the notice comes into force on the day stated in the notice and the person managing or controlling the premises will have to apply for a licence if the dwelling is of the type where one is mandatorily required.

## **9. Temporary Exemption Notices**

- 9.1. A person managing or having control of a licensable HMO may apply to the council for a temporary exemption notice (TEN). Once a TEN is granted the property becomes exempt from HMO licensing for 3 months whilst steps are being taken to remove it from the licensing criteria.

A maximum of 2 TENs can be granted, which each last for a maximum of 3 months. A second TEN begins from the expiry of the first so the maximum exemption period is 6 consecutive months.

- 9.2. The Private Sector Housing Team has produced a TEN Policy which is available to view on the HMO section of the Thurrock Council website. The policy sets out what must be included with an application and gives specific examples of when a TEN will not be considered appropriate applications can be submitted for free using the online form.

## **10. HMO standards**

- 10.1. Minimum national standards to be applied to licensable HMOs have been set under Schedule 3 of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006.
- 10.2. The Private Housing Team will determine the number of people an HMO is licensed for in accordance with compliance with the Essex Approved Code of Practice for amenity and fire standards.
- 10.3. The intention of this Code of Practice is to accord with national standards and to offer local interpretation both with regard to the minimum standards required for HMO licensing and to meet the ideal provision to be expected under requirements to meet the Housing Health & Safety Rating System (HHSRS).