

Regulatory Committee

9.30am, Monday, 28 February 2022

Houses in Multiple Occupation – Raising HMO Standards

Executive/routine
Wards
Council Commitments

1. Recommendations

- 1.1 The Regulatory Committee is asked to:
 - 1.1.1 Note the advice contained in this report and agree that officers should develop a best practice guide for licence holders and agents;
 - 1.1.2 Agree to separately consult on whether conditions 011 and 012 of the House in Multiple Occupation (HMO) standard conditions should be amended to require licence holders, and agents acting on their behalf, to provide adjoining properties with emergency contact details annually; and
 - 1.1.3 Note that a further report reviewing the existing HMO licence application fee structure and a future work programme for the Committee to consider its priorities will be developed and submitted to a future meeting following the local government elections.

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Executive Director of Place

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Houses in Multiple Occupation – Raising HMO Standards

2. Executive Summary

- 2.1 On [28 October 2021](#), the City of Edinburgh Council agreed a motion from Cllr Neil Ross, with respect to a number of elements of Houses in Multiple Occupation (HMO) licensing - where standards applying to landlords could be raised and best practice amongst letting agents could be encouraged. This report sets out the work that the Licensing Service intends to carry out in order to fully respond to the motion.
- 2.2 In August 2021, Committee agreed that a review should be undertaken in respect of the existing HMO licence application fee structure. This report also provides an update on this review.

3. Background

- 3.1 The Council is required to license HMOs where three or more individuals or families live in a property and share facilities therein. The Council charges a fee to cover the costs of operating and enforcing this licensing scheme.
- 3.2 HMO licence fees are based on occupancy capacity, with an option of a one or three-year licence. New HMO licences are normally granted for one year, with a minimum period of six months. Existing licence holders applying for a subsequent licence, for an individual property, are afforded the flexibility of requesting a one or a three-year licence.
- 3.3 The current standard conditions for HMO licences were adopted on 9 March 2012 and are well established within the sector. Local authorities are also required to have regard to statutory guidance issued by Scottish Government. The guidance, last updated in 2012, covers areas such as the administration of a licensing scheme, licensing conditions and enforcement and complaints handling. A link to the guidance is provided at section 8 of this report.

4. Main report

4.1 On 28 October 2021, the City of Edinburgh Council agreed a motion relating to specific areas of HMO Licensing in the city (Appendix 1). In particular, the motion referred to three areas:

4.1.1 The issue of application notices to residents;

4.1.2 The issue of emergency contact details to residents; and

4.1.3 The problem of fly-tipping and/or abuse of residential waste facilities by contractors employed by landlords or agents.

4.2 As a result of the issues raised, the motion requested a report on ways to raise standards amongst landlords and to encourage best practice amongst letting agents. Furthermore, the motion asked officers to look at any other areas where improvements can be made to HMO licensing via changes to the standard conditions, application process or any other means.

Application Notices to Residents

4.3 The requirements for HMO licence applicants to display a site notice are set out in Schedule 4, paragraph 2 of the Housing (Scotland) Act 2006 (the 2006 Act). The schedule defines the requirements of a notice and states that the applicant "...must cause a notice...to be displayed on or near to the living accommodation concerned". The 2006 Act also states that the site notice must be displayed for a period of 21 days.

4.4 Complaints have been received by the Council from neighbouring residents to HMO properties which allege that site notices are often not easily seen. The motion suggests that residents would be better informed if they received a paper or electronic copy of an application.

4.5 The Council currently processes on average 4,000 HMO applications per year, but the total processed in certain years can vary due to the existence of three-year licences.

4.6 Any application which receives an objection or representation is referred to the Licensing Sub-Committee for determination. This includes applications about which there have been complaints from residents that a site notice was not displayed in the required manner. On average, the Sub-Committee considers approximately 2% of the total number of HMO applications as a result of an objection or representation. Whilst acknowledging that a number of objections mention problems with a site notice, there is little evidence that this is a widespread problem.

4.7 Consideration of any policy change must be within the context of the legislation and guidance. Any augmentation to the current statutory requirements could carry an element of risk as it could be argued that the Council is acting beyond its powers in terms of the 2006 Act.

4.8 Provisions in the 2006 Act deal with site notices which have not been displayed appropriately. This includes the power to require an applicant to redisplay a site

notice, and there is a procedure for dealing with such circumstances at the Sub-Committee.

- 4.9 It may therefore be considered that any additional requirements placed on applicants in respect of site notices may risk going beyond the Council's powers. Additionally, these could be disproportionate given the lack of evidence of a problem. The Licensing Service propose to carry out further work in this area by developing a best practice guide which will seek to reduce the number of complaints received and will bring a further report back to the Committee for consideration.

Emergency Contact Details to Residents

- 4.10 Conditions HMO11 and HMO12 of the Council's standard conditions for HMO licences set out the requirements to be met by licence holders in relation to the provision of contact details to residents:
- 4.10.1 **HMO11** - *An emergency contact telephone number for the licence holder and/or management shall be available and notified to the Council for 24-hour contact purposes for emergencies or antisocial behaviour from the property.*
- 4.10.2 **HMO12** - *The licence holder shall give a neighbour notification to every occupier in the same building as the licence holder's premises, and any adjoining premises within 28 days of the licence holder's receipt of the licence document. This will advise of the name of the licence holder or managing agent, a contact address, daytime telephone number and an emergency contact number.*
- 4.11 The motion suggests that the requirement to provide a neighbour notification to every occupier in the same building as the licence holder's premises, and any adjoining premises, could be improved by making this an annual requirement. This refers to a decision to allow three-year HMO licences where the applicant meets all the required standards and there are no complaints. Therefore, any new neighbours moving into a building may not be aware of who to contact should the need arise. Currently licence holders are only required to do this within 28 days of receipt of their licence, this typically being only every three years.
- 4.12 As with the proposed changes to site notice notification above, any changes to emergency contact requirements (whether via guidance, conditions or otherwise) should be evidence-based. There is a risk that any changes to the current HMO standard conditions and subsequent refusal of an application on that basis could result in a legal challenge, unless the Council can demonstrate evidence of need. Any changes to the standard conditions would require a period of public consultation to ensure a robust basis for making this change and to defend any appeal.
- 4.13 HMO licence holders, and agents acting on their behalf, are expected to ensure that their contact details are kept up to date throughout the licence period and that any changes to contact details are communicated to neighbours.

- 4.14 It is therefore recommended that the Council consults formally on this proposed change. The Licensing Service will also carry out work on advice for licence holders and agents in this area as part of any best practice guide which is developed.

Fly Tipping and Residential Waste Facilities

- 4.15 The motion also explores the Council's increased use of enforcement action and the issuing of fixed penalties to businesses and landlords found to have illegally dumped waste in the street, or abused residential waste facilities, which suggests that a new HMO condition requiring adherence to acceptable waste disposal practices is required. Ordinarily, tenants or tradespersons who present waste would be liable for such, and care must be taken not to make licence holders and agents responsible for those situations. Legal responsibility lies with the person who presents waste. Therefore, a new HMO condition which requires acceptable waste disposal practices on part of the HMO licence holder would impose a duty beyond the regulations concerning waste disposal. The Council would be at risk of legal challenge if the HMO standard conditions were amended or if an application was refused on that basis.
- 4.16 As an alternative, the Licensing Service will work with colleagues in the Street Enforcement team so that any issues relating to fly-tipping or abuse of residential waste facilities are properly identified and addressed. Guidance on appropriate waste disposal will also be included in any best practice guidance brought to Committee for approval. If Committee were to approve a best practice guide, a licence holder's compliance with such would form part of the consideration of their licence application, in relation to whether they are fit and proper.
- 4.17 In conclusion, a review of the current conditions of licence and HMO policy would be a significant piece of work. Given the operational demands upon the service and the need to introduce a short term let licensing system in the next financial year, there is limited capacity to undertake a review beyond the proposed measures set out above.

Review of Licence Application Fees

- 4.18 In August 2021, Committee agreed that a review of the current HMO application fee arrangements would take place, to consider whether any changes are required to reflect the current costs to the Council of dealing with an application. Committee is asked to note that officers are currently engaged with colleagues from other Council services to identify the impact of the existing fee structure and what impact any proposed changes may have. A report which will set out any findings of the review will be presented to the Committee following the local government election.

5. Next Steps

- 5.1 If agreed, officers will commence work on developing advice on areas of best practice for HMO licence holders and agents with the outcome being reported to Committee.

- 5.2 If agreed, officers will also bring a report back to Committee to set out the findings of a formal consultation on conditions HMO11 and HMO12.
- 5.3 Officers will continue work to review the existing HMO licence fee structure, with any outcomes being reported to Committee

6. Financial impact

- 6.1 At present there will be no financial impact to the Licensing Service, as the current HMO fee structure will remain unchanged.

7. Stakeholder/Community Impact

- 7.1 The Licensing Service will ensure that any change to the current HMO processes, guidance or conditions will be widely communicated to HMO licence holders and agents. This will be achieved by emailing all HMO licence holders and agents to notify them, as well as using the Licensing Service Twitter account to update those affected. Officers will also continue to meet with HMO agents to provide them with relevant updates and discuss any issues that may affect the trade.

8. Background reading/external references

- 8.1 [Housing \(Scotland\) Act 2006](#)
- 8.2 [Licensing of Houses in Multiple Occupation: Statutory Guidance for Scottish Local Authorities](#)

9. Appendices

- 9.1 Appendix 1 – Motion by Councillor Neil Ross – Raising HMO Standards
- 9.2 Appendix 2 – Standard HMO Licensing Conditions

Raising HMO Standards – Motion by Councillor Neil Ross

a) Deputation – Marchmont and Sciennes Community Council

A written deputation was presented on behalf of Marchmont and Sciennes Community Council.

The deputation raised concerns about the high percentage of student flats in the Marchmont and Sciennes area which were HMO's and in particular with complaints from residents over bad behaviour, noise and waste dumping. The deputation were in agreement with the proposal to raise the standards for HMO Licensing and hoped that there would be some positive and beneficial changes to the current situation.

b) Deputation – Southside Community Council

The deputation indicated that their main concerns were about the number of HMOs in any one stair at one time, the way in which properties were converted and maintained, the availability of contact details for property agents/owners and the proper factoring of properties. They suggested that a register for logging complaints be set up by the Council with the costs for this being covered within the licence fee for HMOs.

c) Motion by Councillor Neil Ross

The following motion by Councillor Neil Ross was submitted in terms of Standing Order 17, and verbally altered in terms of Standing Order 22.5:

“Council:

Notes there are a number of elements of HMO licensing where standards applying to landlords could be raised and best practice amongst letting agents could be encouraged, for example,

1) The issue of application notices to residents -

The regularity of complaints by neighbouring residents that the site notice relating to an HMO application is often not easily seen during the required period of 21 days suggests that residents would be better informed of HMO licence applications if they were given a copy of the site notice, either paper or electronic.

2) The issue of emergency contact details to residents –

Changes in the residents neighbouring HMO licenced properties over the three year period of a licence mean that the current requirement for landlords and agents to provide contact details, including 24/7 emergency contact details, to every occupier in the same building as the licence applicant's premises and any adjoining premises could be improved by making this an annual requirement.

3) The problem of fly tipping and/or abuse of residential waste facilities by contractors employed by landlords or agents –

The increasing use by the Council of enforcement action and the issue of fixed penalties to businesses and landlords found to have illegally dumped waste in the street or abused residential waste facilities suggests that a new HMO condition requiring adherence to acceptable waste disposal practices by landlords, and agents and sub-contractors acting on their behalf, might discourage this behaviour by contractors employed by landlords or agents. Therefore, requests a report to the Regulatory Committee in two cycles on ways to raise standards amongst landlords to improve the conditions of tenants, to provide clarity for neighbours and to encourage best practice amongst letting agents, in particular, to address the matters highlighted above but also other areas where improvements can be made either via changes to HMO conditions or the HMO application process or by other means, both compulsory and voluntary. The report should also outline how HMO conditions, standards and guidance might be updated to reflect legislative changes and should reference the current HMO Licensing context, where relevant.

Motion

To approve the motion by Councillor Neil Ross

Moved by Councillor Neil Ross, seconded by Councillor Osler

Amendment

To retain the opening sentence of the motion by Councillor Neil Ross up to “encouraged” and replace remainder as follows:

“And:

- 1) To note that the HMO licensing conditions displayed on the council website date from 2012, reflecting the last issue of statutory guidance from the Scottish Government, and that there had been significant change in legislation since then.
- 2) To recognise the breach of HMO conditions may give rise to criminal offence so conditions were framed in that light.
- 3) To recognise that raising standards among landlords and letting agents should have, as its primary purpose, the improvement of conditions for tenants; as well as better information for neighbours on matters such as notification of licence applications; regular communication of landlord and agent details; and mis-use of domestic waste by landlords, agents and contractors.
- 4) To therefore agree a report be submitted to Regulatory Committee in two cycles outlining how HMO conditions, standards and guidance might be updated to reflect legislative and good practice change; improvements for tenants; and greater clarity for neighbours.

Moved by Councillor Staniforth, seconded by Councillor Booth

In accordance with Standing Order 21(12), the amendment was adjusted and accepted as an amendment to the motion.

Decision

To approve the following adjusted motion by Councillor Neil Ross:

To note there were a number of elements of HMO licensing where standards applying to landlords could be raised and best practice amongst letting agents could be encouraged, for example,

1) The issue of application notices to residents -

The regularity of complaints by neighbouring residents that the site notice relating to an HMO application was often not easily seen during the required period of 21 days suggested that residents would be better informed of HMO licence applications if they were given a copy of the site notice, either paper or electronic.

2) The issue of emergency contact details to residents -

Changes in the residents neighbouring HMO licenced properties over the three year period of a licence meant that the current requirement for landlords and agents to provide contact details, including 24/7 emergency contact details, to every occupier in the same building as the licence applicant's premises and any adjoining premises could be improved by making this an annual requirement.

3) To recognise that raising standards among landlords and letting agents should have, as its primary purpose, the improvement of conditions for tenants; as well as better information for neighbours on matters such as notification of licence applications; regular communication of landlord and agent details; and mis-use of domestic waste by landlords, agents and contractors

4) The problem of fly tipping and/or abuse of residential waste facilities by contractors employed by landlords or agents –

The increasing use by the Council of enforcement action and the issue of fixed penalties to businesses and landlords found to have illegally dumped waste in the street or abused residential waste facilities suggested that a new HMO condition requiring adherence to acceptable waste disposal practices by landlords, and agents and sub-contractors acting on their behalf, might discourage this behaviour by contractors employed by landlords or agents. Therefore, to request a report to the Regulatory Committee in two cycles on ways to raise standards amongst landlords to improve the conditions of tenants, to provide clarity for neighbours and to encourage best practice amongst letting agents, in particular, to address the matters highlighted above but also other areas where improvements could be made either via changes to HMO conditions or the HMO application process or by other means, both compulsory and voluntary. The report should also outline how HMO conditions, standards and guidance might be updated to reflect legislative changes

Standard HMO Licensing Conditions

Housing (Scotland) Act 2006

Standard HMO Licensing Conditions – Adopted 9 March 2012

HMO1	The licence holder must take steps to ensure that the property, fittings and furniture, including fire precautions, plumbing, drainage, gas and electrical installations, are maintained throughout the period of the licence to the standard required. The HMO owner should have a system in place which provides for continuity of safety certification.
HMO2	The licence holder must ensure that advice to occupiers on action to be taken in the event of an emergency is clearly and prominently displayed within the living accommodation.
HMO3	The licence holder must ensure that the physical standards for HMO living accommodation assessed as suitable by the local authority when approving the licence application are met at all times.
HMO4	The licence holder must ensure that the number of persons residing in the premises shall not exceed [insert number] when operating as an HMO.
HMO5	The licence holder must make the Licence, including any conditions, available to occupiers, or prospective occupiers, within the premises where it can be conveniently read by residents.
HMO6	The licence holder must ensure that actions to secure repossession must be only by lawful means.
HMO7	The licenceholder must provide each tenant with a clear statement, in a form they can understand and keep for reference, of what is expected of them and what they can expect from the licenceholder. The agreement must accurately describe the subject of let, the start and end dates of the agreement, rent to be paid, period of written notification of intention to enter the property (which shall not be less than 24 hours), and where the agreement is in the form of a lease and the licence holder intends to retain a key for the property, the agreement will specify how the tenant will grant explicit permission for the key to be used.
HMO8	The licenceholder must act lawfully and reasonably in requiring any advanced payments, handling rents, returning deposits, and making deductions from deposits.
HMO9	The licenceholder must comply with all relevant legislation affecting private sector residential tenancies, including participation in any communal repairs and maintenance, as per the Tenements (Scotland) Act 2004.

HMO10	The licenceholder must manage the property in such a way as to seek to prevent and deal effectively with any anti-social behaviour by tenants to anyone else in the HMO and in the locality of the HMO.
HMO11	An emergency contact telephone number for the licenceholder and/or management shall be available and notified to the Council for 24-hour contact purposes for emergencies or antisocial behaviour from the property.
HMO12	The licenceholder shall give a neighbour notification to every occupier in the same building as the licenceholder's premises, and any adjoining premises within 28 days of the licence holder's receipt of the licence document. This will advise of the name of the licenceholder or managing agent, a contact address, day time telephone number and an emergency contact number.
HMO13	The use of the premises shall be as authorised from time to time by the City of Edinburgh Council in terms of the Building (Scotland) Act 2003.
HMO14	Adequate facilities must be provided for the storage and disposal of refuse, and recycling. The licenceholder shall make the tenants fully aware of their responsibilities.
HMO15	The licence holder must ensure that Liquefied Petroleum Gas (LPG) shall not be used or stored on the premises.
HMO16	The licence holder shall comply with the current regulations regarding maximum re-sale prices of gas and electricity supplied, as appropriate.
HMO17	Where the agreement between a tenant (or group of tenants) and the licence holder gives those tenants exclusive access to specified rooms in the premises, the licence holder should ensure those rooms are fitted with a lever latch and secured with a suitable lock and thumb turn mechanism or other appropriate locking mechanism.
HMO18	Any chimneys/flues that are in use must be maintained/cleaned annually or in accordance with the manufacturer's instructions, or, where the flue is covered by a Gas Safety Inspection, at a period determined by a Gas Safe registered engineer.