

Strategy for Houses in Multiple Occupation



March 2006



Telford & Wrekin
COUNCIL

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1. Background

Houses in Multiple Occupation (HMO's) provide a valuable source of affordable accommodation at the lower end of the private sector housing market. This accommodation is predominately accessed by young single people, students and asylum seekers. But often HMO's are associated with poor living conditions, poor housing management and anti-social behaviour.

In response to the problems the government has introduced new legislation, The Housing Act 2004, which will enable local authorities to licence HMO's. There are two forms of licensing, mandatory and discretionary.

1.1 Mandatory Licensing

Will apply to HMO's with 3 or more storeys, with five or more residents comprising of two or more households. This category has been targeted because :

- Physical conditions can be very poor
- There is a significantly increased risk of dying or being seriously injured in a fire. The fatality rate in HMO's of 3 storeys or more is four times higher than for one or two storey HMO's.
- Poor conversion or structural conditions unsuitable for the number of occupants can seriously affect the health, safety and general welfare of occupants.
- Housing Management is often poor, especially where amenities are shared.
- Tenants are often vulnerable and have no access to other housing options.

1.2 Additional Licensing

Where certain types of HMO's are badly managed or causing problems either to tenants or the surrounding neighbourhood local authorities will be given discretionary powers to implement additional licensing schemes. These schemes will require central government approval.

1.3 Function of licensing

Licensing will ensure that:

- Landlords are 'fit and proper persons' or employ agents who are
- The standards of tenancy relations management and property management are employed by a landlord or agent are adequate.
- Authorities have measures available to ensure that landlords are encouraged to cooperate with licensing.
- Where landlords are unwilling or unable to meet the required criteria authorities can step in to manage properties.
- Vulnerable tenants can be protected

2. Aims and Objectives

The main aim of the HMO strategy is

To advise, educate and intervene in the HMO market to ensure the health, safety and general welfare of tenants and local residents, working in partnership with other agencies to support vulnerable people and regenerate and sustain local neighbourhoods.

The overall aims of the strategy are therefore to:

- Meet our legislative obligations for HMO licensing under the Housing Act 2004.
- Raise HMO property standards to an acceptable level of safety and quality.
- Encourage greater professional tenancy and property management standards by HMO landlords and agents.
- Inform HMO tenants of what they can expect as minimum standards of housing management and what they can do if these are not being met.
- Support the retention of a well managed, good quality, private HMO market and encourage its expansion where appropriate.

We therefore see our HMO strategy as having two main drivers:

- **Regulation** through licensing and other powers to improve the quality of current shared accommodation and to eliminate poor quality property and management standards.
- **Promotion and Support** to protect supply levels and enhance opportunities for expansion in the supply of good quality shared accommodation , particularly in the private sector.

The strategy identifies nine main areas for development:

- Identifying all HMO's in the borough
- Prepare procedures for licensing.
- Prepare procedures for determining 'fit and proper'.
- Prepare procedures for Interim and Final Management Orders.
- Identify and set up a preferred housing management partner to take control of properties subject to an interim or final management orders.
- Revise Telford and Wrekin Council's HMO standards.
- Prepare an inspection protocol with Shropshire Fire and Rescue Service (SFRS)
- Develop a HMO database using the I.T systems available.
- Develop an education and publicity programme for landlords and tenants.

2.1 The principles underlying the HMO Strategy

The core of the strategy towards the HMO sector is based on the operation of an appropriate and effective licensing scheme. That scheme as described below is based on the following broad principles:

- Council Regulation of the sector must not impose undue or unreasonable burdens on landlords but must ensure that tenants live in healthy, safe, good quality accommodation.
- The licensing scheme must be clear to those affected by it, well publicised, understandable, fair and contain effective complaints and appeals procedures
- The various services of the council involved with HMO licensing must work together and apply the scheme consistently across the Borough.
- The licensing scheme must be as simple and user friendly as possible.
- The licensing scheme should be reviewed on a regular basis.

3. HMO Licensing

3.1 What is a HMO?

The Housing Act 2004 sections 254 – 260 provides a new definition of HMO.

3.2 Definition of a HMO

House in Multiple Occupation” means a building, or part of a building:

- Which is occupied by more than one household sharing an amenity such as bathroom, toilet or cooking facilities; (**the standard test**) or
- Which is occupied by more than one household, which is a converted building which does not entirely comprise self contained flats (whether or not they are sharing amenities); (**the self contained flat test**) or
- Which comprises entirely of converted self contained flats and the standard conversion does not meet that required by the 1991 Building Regulations and more than 1/3 of the flats are occupied under short tenancies. (**the converted building test**)

3.3 Link with Housing Health and Safety Rating System (HHSRS)

HMO licensing is directly linked to the HHSRS which replaces the current fitness standard. There is a duty on local authorities to ensure that there are no category 1 or 2 hazards in a HMO.

3.4 Exemptions from HMO definitions

Certain types of buildings will not be HMO's for the purpose of the Act, other than for HHSRS, and therefore not subject to licensing. These include buildings:

- Managed or owned by a public body (such as the NHS or police) or a local housing authority or a Registered Social Landlord
- Where the residential accommodation is ancillary to the principle use of the building e.g. religious establishments, conference centres etc
- Entirely occupied by freeholders or long leaseholders and their households
- Occupied by no more than two households each of which comprise a single person (i.e. two person flats).

3.5 HMO declarations

Where the local authority is satisfied that a building or part of a building is being occupied by persons as their only or main residence but has a mixture of uses it can declare the building a HMO.

3.6 Temporary Exemptions from Licensing

A local authority may grant a Temporary Exemption Notice (TEN) where it is satisfied the owner is taking steps to stop using the property as a HMO e.g. if the owner has applied for planning permission to convert the property back into a single family dwelling.

A TEN can be granted for a maximum of three months but in exceptional circumstances may be granted for a further three months. No more than two consecutive TEN's can be granted.

3.7 Conditions for obtaining a licence

A person owning or managing a HMO which is required to be licensed must apply to the local authority a licence for each property.

A local authority must grant a licence if it is satisfied that:

- The HMO is reasonably suitable for occupation by the number of persons permitted under the licence;
- The licence holder is a fit and proper person;
- The proposed licence holder is the most appropriate person to hold the licence;
- The proposed manager, if not the licence holder is fit and proper and;
- The proposed management arrangements are satisfactory; including that the person involved in the management of the house is competent and the structures and funding for the management are suitable.

3.8 Fit and Proper Person

In deciding whether a license holder or agent is fit and proper the LA must have regard amongst other matters to –

- Any previous convictions relating to violence, sexual offences, drugs or fraud
- And whether the proposed license holder has contravened any laws relating to housing or landlord and tenant issues
- And whether the person has been found guilty of unlawful discrimination practices
- And whether the person had managed HMO's otherwise in accordance with any approved Code of Practice.

Relevant convictions do not automatically mean a person cannot be deemed fit and proper. The LA must give consideration to any convictions alongside landlord taking training or engaging with LA initiatives.

3.9 Refusal of licence

If a LA is not satisfied that it cannot grant a licence under the above conditions then it must refuse to grant the licence and make an Interim Management Order. However the La must give the applicant reasons in writing and allow 14 days for representations.

3.10 Appeals

All appeals against licensing, fit and proper person, TEN's and HMO declaration will go to the Residential Property Tribunal which is part of the Lands Tribunal.

An appeal may be made if the LA

- Refuse to grant a licence
- Grant a licence but impose conditions
- Vary a licence
- Revoke a licence
- Refuse to vary or revoke a licence
- 28 days to appeal

3.11 Contents of a License

A HMO License will specify the maximum number of occupants who may occupy the HMO.

It will always include conditions requiring the license holder to:

- Produce a Gas Safety Certificate on an annual basis
- Keep electrical appliances and furniture in a safe condition and supply on demand to LA a declaration to that effect
- Ensure smoke alarms and any other fire detection is kept in proper working order and supply on demand a declaration as to the condition and positioning of alarms
- Supply the occupier with a written statement of terms on which they occupy the property

A licence may also include conditions relating to

- The management of the house, including taking such steps as are reasonable to deal with anti-social behaviour of the occupants and people visiting the property
- The condition of the house, its contents and the amenity standards (other than HHSRS)
- A requirement to carry out specific works or actions within such time as is specified in the licence

- A requirement for the landlords to attend training courses relating to the Code of Practice
- Management regulations setting out general requirements as to the management of properties. (Where there are hazards in the HMO these will be dealt with by the HHSRS provisions rather than licensing).

3.12 Breaches of Licence Conditions

The licence holder or manager of a HMO who allows it to be occupied by more persons than the licence permits commits an offence and is liable to a fine up to £20 000. Breaching licence conditions is also an offence and fines are up to a maximum of £5000. Prosecution of these offences is without prejudice to the LA's power to revoke the licence.

3.13 Duration of licence

A licence will normally last for 5 years but can have a 12 month licence where there are management or structural issues to be resolved.

3.14 Variation/revocation/cessation of licences

Variations may be done by agreement but the LA may not impose higher or different standards than the original licence except if new amenity standards are prescribed by regulations. Licences may be revoked by agreement and automatically cease after 5 years or specified period.

A licence ceases to be in force on the death of the licence holder and for the first three months following their death. Unless the HMO ceases to be licensable within that period or the LA grants a TEN the HMO must be relicensed or an Interim Management Order made in respect of it.

Other than in those circumstances a licence may be revoked if:

- There has been a significant breach of licence conditions
- Or the licence holder and others involved in the management of the house are no longer fit and proper persons
- Or the property ceases to be a HMO subject to licensing
- Or the LA would not have granted a new licence for the HMO at the time it terminates the licence because of reasons relating to the structure of the HMO which would render the property unsuitable for licensing on similar terms.

On revocation of a licence (unless this is because the HMO no longer requires licensing) the LA must grant another licence or make an Interim Management Order.

3.15 Interim Management Order (IMO)

The LA takes over management and repairs of a HMO for a period of 12 months. In this period the LA becomes responsible for collecting rent, carrying out repairs, terminating tenancies, finding new tenants and providing new tenancy agreements. The LA shall use an IMO where they refuse to grant or revoke a HMO licence.

The LA as soon as is practicable after making the order take any steps it believes necessary to protect the health, safety or welfare of the occupants or the immediate vicinity.

The LA shall keep full accounts of income and expenditure in respect of the house and make these accounts available for verification to any relevant person. The surplus (if any), with any interest, must be returned to the relevant person at the end of the order.

Telford and Wrekin Council will be employing a preferred housing management partner to take responsibility for the management of houses subject to IMO's.

Appeals against IMO's must be made to the Residential Property Tribunal within 28 days of service. The tribunal may confirm, quash or vary the order or may direct the LA to grant a HMO licence.

The LA shall, as soon as is practicable, after the making of an IMO in relation to a licensable HMO grant a licence in relation to the house or make a Final Management Order.

3.16 Final Management Order (FMO)

Similar powers to an IMO except that the LA must apply to the County Court for a FMO which lasts 5 years. The LA must make a FMO where an IMO is in force and it considers the making of a FMO is the best alternative to it.

The Act makes it a condition that the making of a FMO is necessary to protect the health, safety and welfare of persons occupying the house, or persons occupying, or having an estate or interest in any premises in the vicinity.

The LA shall keep full accounts of income and expenditure in respect of the house and make these accounts available for verification to any relevant person. The surplus (if any), with any interest, must be returned to the relevant person at the end of the order. Again the LA or its agent can collect rent, carry out repairs and commence and terminate tenancies.

The LA shall replace an existing FMO with a new FMO if it feels that making the new order is the best alternative to it. Appeals to the Residential Property Tribunal within 28 days of service.

3.18 Rent Repayment Orders

Where a landlord is convicted of failure to licence and the rent is paid by Housing Benefit, the Council will apply to the Residential Property Tribunal for a Rent repayment Order (RRO) and will advise tenants to do the same.

The council intends to use its powers under the Act to seek RRO's for repayment of twelve months Housing Benefit or for the period since the landlord was required to licence the HMO, if less. We will provide other tenants with the information of how to apply for a RRO.

4. HMO Standards

Telford and Wrekin Council has adopted the categories of HMO developed by the Chartered Institute of Environmental Health and accepted by the Department of the Office of the Deputy Prime Minister (ODPM).

Each of the categories requires standards specific to its type and Telford and Wrekin Council's HMO standards address each type of HMO.

Under the Housing Act 2004 management standards have been made by the Secretary of State (The Management of Houses in Multiple Occupation (England) Regulations 2006). Where the T&W Council's standards are higher they will apply.

T&W Council HMO standards will set out space standards for all types of HMO's whether they will be subject to licensing or not. Licensable HMO's will be subject to maximum permitted numbers as part of the licence. Overcrowding in HMO's not subject to licensing will be dealt with using overcrowding notices.

These standards will also specify amenity levels in each category of HMO and will include standards on energy efficiency for the first time. Other issues that have been identified locally such as recycling facilities and provision for the washing and drying of clothes will be included.

The categories are as follows;

Category A - 'Bedsits'

Houses occupied as individual rooms, bedsits and flatlets which are considered to have a number of rooms for exclusive occupation, not necessarily behind one door, with some sharing of amenities usually bathroom and/or toilet and maybe a kitchen. In such a house, each occupancy would be separately rented.

Category B - Shared Houses

Houses occupied on a shared basis. These would normally be occupied by students where for certain activities the shared occupiers might live as a single household unit, but for others do not. Usually the house will be let to a defined group and occupation, not to individuals. The house is most likely, but not exclusively, to be shared by more than six people and although most common amongst students it is increasingly found to be occupied by groups of people coming together in the house who share certain amenities as they wish but have certain individual facilities such as a bedroom.

Category C – Lodgers

Houses occupied on a shared basis. These would normally be occupied by students where for certain activities the Shared occupiers might live as a single household unit, but for others do not. Usually the house will be let to a defined group and occupation, not to individuals. The house is most likely, but not exclusively, to be shared by more than six people and although most common amongst students it is increasingly found to be occupied by groups of people coming together in the house who share certain amenities as they wish but have certain individual facilities such as a bedroom.

Category D – Hostels

Houses generally referred to as 'hostels' or guest houses. Bed and Breakfast accommodation, which provide accommodation for people with no other permanent place of residence (as distinct from a hotel which provides accommodation for visitors to the area for a short time). The category includes hostels and bed and breakfast establishments used by local authorities to house homeless families, or similar establishments which provide accommodation for single people whose only financial support is state benefit and who would otherwise be homeless. This category includes hostels, used for such accommodation even on a casual basis where there is a mixture of homeless households and short term visitors.

Category E – Registered Homes

Houses which are hostels and require registration under the Registered Homes Act 1984. These residential homes provide board and personal care for persons in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder. These houses provide **permanent** accommodation for people with nowhere else to go; and is their only home and includes a level of support not normally present within Category D accommodation which only provides a home for the time-being.

Category F – Common Access Flats

Most houses or buildings which by erection or conversion contain dwellings which are self-contained, and all such dwellings comprising accommodation which is behind one access door off a common area. The dwellings would normally contain all the standard amenities, although it would be possible for some to be unimproved self-contained flats lacking one or more standard amenities. There would be no sharing of amenities with occupiers of other dwellings.

5. Fire Safety in HMO's

Research indicates that certain types of HMO's present significantly greater health and safety risks to tenants than comparable single occupancy dwellings. Risk assessment carried out by ENTEC (*DETR (1998) "Fire Risk in Houses in Multiple Occupation : Research Report"*) for the DETR concluded that in all houses converted into bedsits, the annual risk of death per person is 1 in 50 000 (six times higher than in comparable single occupancy houses). In the case of bedsit houses comprising of three or more storeys the risk is 1 in 18 600 (sixteen times higher).

The Housing Act 2004 places a duty on LA's to consult with Fire Authorities in relation to fire safety in HMO's. This consultation can take various forms and can rely on information already known regarding certain types of local construction and building types.

The development of domestic sprinkler systems will have an impact on the specification of fire precautions in HMO's. Some authorities have already begun to specify domestic sprinkler systems alongside fire detection systems relaxing physical protection measures.

It will be the policy of Telford and Wrekin Council to consider each HMO on its merits and design fire precaution and detection measures for individual properties based on local and national guidance, local knowledge of building types and officer experience.

Consultation with Shropshire Fire and Rescue Service (SFRS) will be carried out as laid down in the Inspection protocol agreed by both organisations.

6. HMO Stock Profile

In the last quarter of 2004 a desk top HMO survey was carried out. A total of 617 HMO's were identified. This process was based on existing records and information gathered from council tax records and two of the largest managers of HMO's, the Wrekin Housing Trust and Harper Adams College.

As expected the survey shows a concentration of HMO's in Newport and the surrounding villages associated with Harper Adams Agricultural College. There were also a large number of shared access flats owned by the Wrekin Housing Trust.

A borough wide HMO survey has never been carried out.

Street surveying has begun in the Wellington and Hadley areas where there is a presumption that a number of three storey HMO's exist. Also housing stock in these areas is predominately pre1919 and the government have indicated that older stock should be prioritised.

It is estimated that 10% of the known HMO stock will be licensable. The majority of which will need to be inspected jointly with Shropshire Fire and Rescue Service.

7. Developing the HMO strategy

The Housing Act 2004 is the biggest change to housing law in some 50 years. It will introduce a new method of inspection, risk assessment and enforcement for all private sector stock. Along with this radical change of inspection and enforcement the Act introduces mandatory licensing of HMO's. This is the first time a statute has been enacted to control any part of the private rented sector.

We now await secondary legislation to enable us to introduce these changes on a local level. For this reason this strategy will be a live working document and will be subject to change at regular intervals in the short to medium term. The objectives listed in chapter 2 are those identified from the Act and consultation documents released. These objectives need to be fluid and will be influenced by secondary legislation and promised guidance.

The following objectives will be implemented and the Service developed as follows:

a. Identifying HMO stock

This is an ongoing objective building on the knowledge gained from the desk top survey. The database created will be constantly strengthened with knowledge gained from sources such as street surveying, planning and building control lists and complaints to the housing enforcement service.

b. Procedures for licensing

A number of procedures will be required for licensing. There will be no prescribed forms but there will be information that local authorities have to collect as part of licensing. Development of a licensing procedure and the administrative processes will be need. The following documents will need to be produced:

- i. Licence Register
- ii. Application Form
- iii. Landlord information booklet
- iv. Tenant information booklet
- v. Inspection process
- vi. Consultation process with SFRS
- vii. Consultation with Planning and Building Control.
- viii. Consultation with Housing Benefit
- ix. Appeals Procedure
- x. Enforcement Procedure

c. Procedure for determining 'Fit and Proper'

Given the definition of 'fit and proper' (see chapter 3) this procedure will require a consultation process with the Police. No guidance on how to determine 'fit and proper' has been produced. There will be issues surrounding data protection and freedom of information to be taken into account.

d. Procedures for Interim and Final Management Orders

The procedure for service and enforcement of IMO's and FMO's needs to be in place for the commencement of licensing. The Housing Act is clear that if a HMO cannot be licensed then the LA must serve an IMO.

It is clear that the LA does not have the resources to manage property that has been subject to an IMO or FMO so a preferred housing management partner will need to be sort. Ideally this will be a locally based RSL.

e. HMO standards

T&W Council's HMO standards will need to be updated and improved to meet the new challenges of HMO licensing and the HHSRS. Again we wait for secondary legislation on HMO management regulations and amenity standards.

f. Protocol with SFRS

A protocol with SFRS for the inspection of HMO's will need to be agreed prior to licensing. A final draft has been produced and is awaiting agreement from Shropshire Fire and Rescue Service..

g. Developing I.T systems

The council currently uses the UNIFORM system that records individual premises and then sets up a property history under a unique property reference. The system should be capable of creating a separate HMO register and this needs to be developed. In the long-term we would look at the I.T. system to generate inspections and programme work for officers.

h. Publicity and Education

The government has issued some national publicity for mandatory HMO licensing. Onus is placed on the owners to register and it is an offence not to do so. We will require a local publicity and education strategy to make owners, tenants and the general public aware of the new licensing regime. The Wrekin Landlords Association will be a good source of promotion but it is the owners of HMO's that are not known to us that we need to reach so local papers and radio are going to have to be utilised.

8. Monitoring

As mentioned above the HMO strategy will be constantly improved as new legislation and guidance is released by central government. Review dates will match the release of any new legislation or guidance.

Budget monitoring will also be important as there has been no extra funding allocated for the task of HMO licensing.

Consultation with landlords, tenants, partners and other interest parties will take place at regular intervals.