

## APPENDIX 7

### Wirral Council

#### Policy on tests for fit and proper person and satisfactory management arrangements for a HMO Licence and Selective Licence

##### 1.0 Introduction

- 1.1 Under the Housing Act 2004 is it a requirement that the proposed licence holder and manager of a licensable house/dwelling under Part 2 and/or Part 3 of the Housing Act 2004 to be a fit and proper person and the most appropriate person to hold the licence. In addition, in deciding whether a licence may be granted or not, Wirral Council (also referred to as *the Council* in this document) must be satisfied that there are satisfactory management arrangements in place or that such arrangements can be put in place by the imposition of conditions in the licence.
- 1.2 In considering whether the management arrangements are satisfactory Wirral Council will have regard to the following:
- i) the suitability of the proposed licence holder and manager (if different) (called the 'fit and proper test');
  - ii) the competence of the proposed licence holder/manager to manage the building;
  - iii) the suitability of the management structures;
  - iv) the adequacy of the financial arrangements and
  - v) any other matter considered relevant to the application.
- 1.3 A licence application will be refused if it is considered that the licence holder and / or manager are unfit.

##### 2.0 The fit and proper test

- 2.1 In deciding to grant a licence Wirral Council must be satisfied that the proposed licence holder "... is a fit and proper person to be the licence holder ..." and that "*the proposed manager of the house is a fit and proper person to be the manager of the house ...*".
- 2.2 This requirement is to ensure that those responsible for operating the licence and managing the premises are of sufficient integrity and good character to be involved in the management of the particular residential premises to which the application relates and as such they do not pose a risk to the health, safety or welfare of persons occupying and visiting the premises.
- 2.3 When considering whether a person is 'fit and proper' Wirral Council will have regard to any 'wrong doings' of the relevant person concerned. This is evidence that the person has:
- i) committed any offence involving fraud or other dishonesty, violence or drugs and certain types of sexual offences;

- ii) practised unlawful discrimination on the grounds of sex, colour, race, ethnic or national origins or disability, in connection with the carrying out of business;
- iii) contravened any provision of housing or landlord and tenant law or
- iv) acted otherwise than in accordance with an approved code of practice or the membership requirements of a recognised trade association or accreditation scheme

2.4 The above list is not exhaustive and Wirral Council can and will consider whether a relevant person has committed other relevant wrong doings, for example, discrimination under Regulation 5 of the Equality Act (Sexual Orientation) Regulations 2007. A relevant person may not be deemed unfit, solely because of poor management, although this is highly relevant to determining any question of suitability or competence.

2.5 Wirral Council do not adopt a blanket policy with its consideration of factors under a fit and proper person test. Each case will be considered on its own merits and regard will be had to information provided/omitted from an application form and information held by Wirral Council relating to the premises and/or any relevant person connected with the licence application.

2.6 In an application for a licence the applicant **must** provide details of the following in relation to him/herself and the proposed manager (if the applicant is not to be the licence holder)

- i) unspent convictions;
- ii) any findings of a court/tribunal that the person has practised unlawful discrimination;
- iii) any judgement entered against that person in relation to a contravention of housing or landlord and tenant law (and, in so far it relates to the housing or landlord and tenant law, any contravention of any enactment relating to public or environmental health);
- iv) any control order made in respect of any house or HMO under his/her management or ownership (and also in respect of any former house or HMO he/she owned or managed);
- v) any enforcement action in respect of any house or HMO under his/her management or ownership (and also any former HMO or house he/she owned
- vi) or managed) under the housing health and safety rating system in Part 1 of the Housing Act 2004 so far as that enforcement action related to a category one hazard;
- vii) details of any refusal to grant a licence, or details of the revocation of a licence granted for non-compliance of a condition or conditions in respect of

any house or HMO under his/her management or ownership (and also in relation to any former HMO or house/dwelling he/she owned or managed);

- viii) details of any interim or final management orders made by an Local Housing Authority in respect of any house or HMO under his/her management (and also in respect of any former HMO or house/dwelling he/she owned or managed).

2.7 An applicant for a licence must disclose any wrong doings which relate to themselves, the proposed manager and any other relevant person. Wirral Council should therefore normally have sufficient information to decide a person's fitness based on the application. However, if Wirral Council is not satisfied that it has sufficient information (being that supplied in connection with the application) to make a determination, it may require the applicant to provide further details and/or undertake their own further enquiries with other relevant Council departments and external bodies, as it deems necessary.

2.8 Wirral Council may require cooperation in obtaining Disclosure & Barring Service checks (DBS) information in confirmation of the above and reserve the right to carry out a full DBS check. The Council may also approach other external agencies including but not limited to local authorities, the Police Authority, Fire & Rescue Service, Office of Fair Trading, etc. for information and confirmation. The completion and signing of the Selective Licence or an HMO application form will be taken as your agreement to any such action and the sharing of information between other Local Authorities for all relevant persons associated with the property and application for a Part 2 or 3 licence. Checks will also be made internally with other Council departments such as Licensing, Trading Standards, Planning, Building Control, Council Tax and Housing Benefit.

2.9 Other reasons for further investigation may include, but are not limited to, the following:

- i) Wirral Council has evidence of a history of complaints or problems with the landlord (which in themselves might not amount to 'evidence' of unfitness to meet the test), therefore further investigation may be required;
- ii) the applicant has been evasive, untruthful or has failed to disclose a relevant fact in their application for a licence;
- iii) the applicant, or proposed manager, is unknown to Wirral Council and has not demonstrated any history or competence of managing HMOs or other private rented properties;
- iv) Wirral Council has reasonable grounds to suspect that the applicant, or the proposed manager, has committed an offence which is relevant to the determination of any question of his/her fitness or
- v) the premises provide accommodation mainly to vulnerable persons.

2.10 In deciding whether a wrong doing (including a criminal offence) is relevant to the determination of a person's fitness the Council may wish to consider the following factors:

- i) the relevance of the wrong doing(s) in relation to the person's character and integrity to manage residential premises and in particular the type of premises to which the licence relates;
- ii) the seriousness of the wrong doing(s) in terms of impact, or potential impact, upon the residents and the wider community, including if more than one incident of wrong doing has been carried out the cumulative impact;
- iii) the length of time since any wrong doing and
- iv) any mitigating circumstances.

### **3.0 Consideration of 'persons associated or formerly associated' with the proposed licence holder or manager**

3.1 If there is evidence that a person associated, or formally associated, with the person proposed to be the licence holder or manager of the property, has committed any wrong doings that evidence may be taken into account in determining the proposed licence holder's or manager's fitness (even if that person has himself or herself an unblemished record).

3.2 The purpose of this requirement is to ensure that only a fit and proper person holds the licence or involved in the management of a licensed property. It would not be appropriate for a licence to be granted to someone, or for someone to be the manager of a property, if that person was merely acting as a 'front' for someone else who, if he or she were not unfit, would be entitled to be the manager or licence holder.

3.3 An example might be that of a husband and wife, where the husband is the landlord (or indeed both he and his partner are joint landlords), but only the wife has applied for the licence. If there is evidence that the husband has committed wrong doings and those wrong doings are relevant to the wife's management of the property or licence then Wirral Council may refuse to grant her a licence.

3.4 Likewise, if a landlord with an unsatisfactory record nominated a "manager" who had a clean record, but had acted for him whilst the wrong doings were committed, Wirral Council may consider the managing agent by association to be unfit also in respect of that application.

### **4.0 Management standards**

4.1 Wirral Council must be satisfied that "*the proposed management arrangements ...are satisfactory*" before granting a licence. Those arrangements include (but are not limited to) consideration of whether:

- i) the persons proposed to be involved in the management of the premises has a sufficient level of competence to be involved;
- ii) the persons proposed to be involved with the management of the premises are actually involved in the management;
- iii) those persons are 'fit and proper' (which is discussed above) and;
- iv) the proposed management structures and funding arrangements are suitable.

4.2 If there are concerns about the competencies and structures in place to manage the premises then conditions can be imposed on the licence to ensure that the necessary arrangements are, or can be put in place. However, if such conditions will still not be possible or practical to impose then it may be necessary to refuse to grant a licence.

4.3 It is for the Council to determine whether a person has sufficient competence to be involved in the management of premises and, of course, the level of competence required will in some measure be determined by the complexity of the management challenges posed. In general the Council should, therefore, be looking at the applicant's experience and track record of managing residential premises and, in particular where he/she is the existing manager, the premises to which the application relates. The test should not, however, be set too high. Competent managers need to know their legal obligations and work within them, but it does not mean they need a formal housing or legal qualification. Where a deficiency is identified and can be addressed this should be done through a licence condition (e.g. requirement to attend a training course). In most cases landlords who belong to a recognised trade association or are members of an accreditation scheme should be regarded as having the necessary competence to be involved in the management of the premises because, at least such organisations can be called upon for advice and assistance where necessary.

4.4 The management structures must be such that the manager is able to comply with any licence conditions and deal with the day to day operational management issues that arise as well as being able to deal with longer term management issues. In considering whether the structures are appropriate the Council may wish to take account of the following:

- i) evidence as to whether the systems in place are sufficient to enable the manager to comply with any condition of a licence or
- ii) if such systems can be put in place through a condition of a licence to ensure compliance;
- iii) evidence of the systems for dealing with:
  - emergency repairs and other issues
  - routine repairs and maintenance to the premises and its curtilage
  - cyclical maintenance

- management and the provision of services (if any) to the building and its curtilage
- management of tenancies or occupants
- management of the behaviour of tenants, occupants and their visitors to the premises
- neighbourhood issues (including disputes)

iv) evidence of structures for engagement with the local authority, police and other agencies, where appropriate

4.5 In order to be able to demonstrate much of the above evidence it is likely that the manager will need to operate within a reasonable proximity to the premises, so that he/ she can attend to matters promptly and retain an overview on the condition of the premises and the management of the tenancies. The Council must also be satisfied that the financial arrangements relating to the premises are suitable. In that regard the manager must be sufficiently funded or have access to funding to carry out his obligations under the licence and his/her general management functions.

4.6 Wirral Council can vary or revoke a licence at any time during the licence period if there is sufficient evidence to support these decisions. Unannounced visits of licensed dwellings/houses and HMO's will be undertaken during the licence period to check for compliance with the licensing and management regimes which apply. Breach of any such legislation is a strict offence for which further action may be taken in accordance with the Council's own enforcement policies. The Housing, Health and Safety Rating System (HHSRS) also apply to dwellings/ houses/ HMO's and remedial works can also be enforced via this legal mechanism.

## **5.0 Making the decision**

5.1 Should Wirral Council be made aware or have information that may affect the applicant's/property manager's ability to be determined "fit and proper" and/or proposed management structures and funding arrangements are not suitable the Housing Standards "*Officer Group*" will convene and

- (i) consider evidence/information gathered and to determine if whether the applicant and/or property manager can be determined "fit and proper",
- (ii) consider evidence/information gathered and to determine if whether proposed management structures and funding arrangements for the licensable property are suitable,

5.2 The *Officer Group* to consist of:

- i) Senior Housing Standards officer,
- ii) Senior Housing Standards officer's line manager ,
- iii) appropriate representative from Legal Services (for advisory purposes only)

- 5.3 All members of the *Officer Group* need to be present to reach an agreement on whether the applicants/property managers can/cannot be determined “fit and proper” and/or proposed management structures and funding arrangements are/are not suitable.
- 5.4 In advance of the *Officer Group* meeting, both the case officer and Senior Housing Standards Officer will complete and circulate a ‘case background sheet’ to all group members, at least 7 days before the meeting. This sheet to include background information on the case being considered and the Senior Housing Standards Officer’s recommendation to the *Officer Group*.
- 5.5 At the *Officer Group* meeting the, Senior Housing Standards Officer will present the contents of the ‘evidence sheet’.
- 5.6 After consideration of all the material facts to the application, Wirral Council will either:-
- i) Grant the licence with or without conditions.
  - ii) Refuse to grant the licence.
- 5.7 A record will be kept of the *Officer Group* Meeting and include details of the matters considered and the reasoning for the decision reached

## **6.0 Granting the licence**

- 6.1 If Wirral Council propose to grant either a Part 2 or Part 3 licence, then the following procedure will be implemented:-
- 6.2 The applicant and each relevant person will be served with a notice under Schedule 5, Paragraph 1 which states that Wirral Council are proposing to grant the licence; will set out the main terms of the licence together and will confirm the date of the end of the consultation period.
- 6.3 The notices will be sent by post to the given addresses for the applicant and each relevant person. Where a valid email address has been provided by an applicant the notice will be sent to the applicant by email.
- 6.4 The consultation period is an opportunity for the applicant and each relevant person to provide further evidence to the Council if they wish, e.g. in response to any conditions outlined on the notice.
- 6.5 It is important that any representations which the applicant and relevant person(s) wish to make are made in good time ahead of the end of the consultation period. If information is not received by the end of the consultation date then the Council will make a final decision in its absence. Representations must be in writing and must be accurate and truthful.
- 6.6 The *Officer Group 2* (as defined in the Policy and Procedure for the imposition of a Civil Penalty) will meet to consider any representations. The Council will then be in

a position to make a final decision for the application. The *Officer Group 2* may have to make further checks with departments internally or externally, as with the original application, based on any further information that is provided.

- 6.7 If the Council decide to grant a licence the applicant and relevant parties will be informed of this decision.
- 6.8 If the Council decide to grant a licence with modifications in accordance with the representations made, a notice under Schedule 5, Paragraph 3 will be served on the applicant and each relevant person(s) outlining the proposed modifications, the reasons for them and the end of a further consultation period.
- 6.9 Once the end of the consultation period(s) has passed, a final decision will be made regarding the licence application.
- 6.10 If the Council decided to grant a licence, a notice under Schedule 5, Paragraph 7 will be served on the applicant and each relevant person. This notice will include a copy of the licence and will state the reasons for deciding to grant the licence, the right of appeal against the decision and the time period for the appeal.

## **7.0 Refusing to grant the licence**

- 7.1 If Wirral Council do not propose to grant a Part 2 or Part 3 licence, then the following procedure will be implemented:-
- 7.2 The applicant and each relevant person will be served with a notice under Schedule 5, Paragraph 5 of the Housing Act 2004 which states that Wirral Council are proposing to refuse to grant the licence and will set out the reasons for refusing to grant the licence and the end of the consultation period.
- 7.3 The notices will be sent by first class post or hand delivered if possible to the given addresses for the applicant and each relevant person. The notice will also be sent out by email to the applicant where a valid email address has been provided to the council.
- 7.4 The consultation period is an opportunity for the applicant and each relevant person to provide evidence to the Council to further support their application for the licence. The applicant may also decide to provide alternative information to the original application, such as the nomination of a new manager or licence holder for the Council to consider.
- 7.5 It is important that any representations which the applicant and relevant person(s) wish to make are made in good time ahead of the end of the consultation period. If information is not received by the end of the consultation date then the Council will make a final decision in its absence. Representations must be in writing and must be accurate and truthful.
- 7.6 If representations are made, the *Officer Group 2* (as defined in the Policy and Procedure for the imposition of a Civil Penalty) will meet to consider these representations. Upon consideration of any representations, the Council will then be in a position to make a final decision for the application. The *Officer Group 2* may

have to make further checks with departments internally or externally, as with the original application, based on any further information which is provided.

- 7.7 The Council may decide to grant a licence based on the additional information received and the applicant and relevant parties will be informed of this decision. However, the Council may decide that any representations provided are still not considered compliant with the requirements of the licensing regime and the licence will still not be granted.
- 7.9 Where the decision to refuse to grant a licence has been made the applicant and all relevant person(s) will be served with a notice under Schedule 5, Paragraph 8 of the Housing Act 2004. This will state the Councils decision not to grant the licence and the reasons for this decision. The notice of decision will be posted by first class post or hand delivered if possible.
- 7.10 There is a right of appeal against this decision notice to the First tier Tribunal (Property Chamber – Residential Property).

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