

## Appendix 5 - Statement of Principles –

### Fit and Proper Person and Cause for Concern

The Housing Act 2004 Part 2 & 3, 'the Act', introduces property licensing of residential accommodation. One of the key functions of licensing is to tackle the negative consequences of poor tenancy and property management through regulatory powers that are introduced through mandatory and discretionary licence conditions and the wider enforcement provisions of the legislation. Licensed properties and landlords are also required to be on a public register.

Landlords who are found to be letting a property in breach of the licensing requirements commits an offence punishable by an unlimited fine upon successful conviction or a financial penalty fine of up to £30,000 per offence as an alternative to prosecution. The Act also prevents a landlord from using the s.21 possession notice procedure if he does not have a valid licence. This means tenants have additional safeguarding in protection from eviction. Furthermore, local housing authorities and tenants can claim up to 12 months' rent back from a landlord for the period in which the property was not licensed (see below).

Gloucester City Council only operates the mandatory HMO licensing scheme and does not currently operate any discretionary licensing schemes.

### Mandatory HMO licensing

A Mandatory HMO licence is currently required for HMOs with five or more occupiers living in two or more households sharing some amenities or facilities such as a kitchen or bathroom.

### Discretionary licensing

The Housing Act 2004 empowers Councils to have the discretion to bring into force licensing of other residential accommodation, as defined by parts 2 and 3 of the Act. There are two types of discretionary licensing. Additional licensing may be appropriate where a large number of HMOs in an area are not being managed effectively and causing particular problems for the people who live in these HMOs or members of the public. Selective licensing may be appropriate where that the area contains a high proportion of properties in the private rented sector and there are issues in relation to; housing condition, migration, deprivation, or crime.

### Licence Conditions

The Act requires that every licence must include certain mandatory management conditions. Gloucester City Council also has the power to include other discretionary conditions which we consider appropriate for tackling the negative issues which affect the private rented sector (PRS) in the City. Once a licence has been issued

the licence holder is bound by the conditions. Where a breach of any one or more of the conditions is witnessed the licence holder commits an offence and upon summary conviction is liable for an unlimited fine per offence, or a financial penalty of up to £30,000 as an alternative to prosecution.

If a licence holder knowingly permits a licensed property to be occupied by more than the permitted maximum number of occupiers determined in the licence conditions, he/she commits an offence and upon conviction is liable for an unlimited fine or a financial penalty of up to £30,000 as an alternative to prosecution.

The licence conditions allow the use of early intervention both through education and enforcement to successfully manage and eradicate problems of nuisance, anti-social behaviour and poor property management. They will provide the framework to ensure that tenancy management is the clear and proper responsibility of the landlord and enables enforcement resources to be delivered efficiently in a prioritised risk-based approach.

## **Licence Duration**

The Housing Act 2004 allows for licenses to be issued for a period of up to 5 years. Where the authority is not satisfied that suitable management arrangements are in place and that the proposed licence holder or manager is a 'person of concern' then a licence will only be granted for 1 year. During this period the property management standards will be monitored, and the property inspected to ensure it is compliant with the required standards and licence conditions.

If a landlord or agent has let a Licence expire and has failed to submit a valid renewal application and fee in time, then, upon receipt of a valid new application and fee, a new licence will only be granted for 3 years. During this period the property management standards will be monitored, and the property inspected to ensure it is compliant with the required standards and licence conditions.

## **Refusal/Revocation/Variation of a licence**

The most important sanction available to authorities is the refusal or revocation of a licence. This prevents the landlord from letting the property unless the authority is satisfied that suitable management arrangements are in place and that the proposed licence holder/managing agent is a fit and proper person and 'not of concern' (has had no previous convictions and contraventions of relevant legislation).

Where a landlord is deemed not to be 'fit and proper' they have the option of putting alternative management arrangements in place, e.g. a professional and suitable local managing agent. A new licence will only be granted for 3 years. During this period the property management standards will be monitored, and the property inspected to ensure it is compliant with the required standards and licence conditions. Where no alternative management arrangements can be found and the property is occupied and there is no likelihood of it becoming licensed, the authority is required to consider making a Management Order (covered below).

Where a licence has been granted for a property but upon inspection the local authority has identified that misleading information has been provided to obtain the licence or that new evidence has identified that the licence holder is a person of concern or not fit and proper a number of enforcement options can be considered. The licence can be revoked (see above) or the licence can be varied reducing the licence duration to 1 year and impose additional discretionary licence conditions.

The supplying of misleading information to obtain a licence is an offence punishable by an unlimited fine upon successful conviction.

## Rent Repayment Order

A rent repayment order (RRO) enables the local authority or tenant to recover up to 12 months Housing Benefit and rents paid in respect of an unlicensed property. The maximum a local authority may claim is up to twelve months of Housing Benefit, during any period that a dwelling was not licensed and this action can be taken with or without a successful prosecution.

Tenants can make an application to the First Tier Tribunal provided that the 'offence' relates to housing occupied by the tenant at the time of the offence and the application is made within 12 months of the date of the offence.

## Interim Management Orders (IMO)

A local authority can take management control (not legal interest) of a property away from a rogue landlord by making an interim management order (IMO), lasting for a maximum of 12 months. An IMO is taken when either there is no reasonable prospect granting a licence for a licensable property or where there is no likelihood of a property becoming licensed. An IMO requires immediate steps to be taken to protect the health, safety and welfare of the persons occupying the property. An IMO may also specify any other steps that the authority thinks appropriate to secure the proper management of the property pending a license being granted, or the making of a final management order (FMO).

While an IMO is in force the authority can spend rent and other payments on 'relevant capital expenditure' in relation to the property but the remaining balance must be paid to the relevant landlord. The authority must account for any income and expenditure.

## Final Management Orders (FMO)

Final management orders (FMOs) take full control of an unlicensed property away from a landlord and can be made as soon after an IMO as necessary in order to secure the proper management of properties on a long-term basis. FMOs last for no longer than 5 years.

While an FMO is in force the authority can spend rent and other payments on 'relevant capital expenditure' in relation to the property but the remaining balance

must be paid to the relevant landlord. The authority must account for any income and expenditure.

## Other Powers

Other powers to deal with criminal activities and housing conditions including hazards and disrepair remain available when required.

## Fit and Proper Person and Person of Concern Policy

In deciding to grant a licence the 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’.

The licence may be refused, varied or revoked where the Council no longer considers that the licence holder is a fit and proper person to be the licence holder or there is cause for concern with the management of the property.

This is to ensure that those responsible for the licence and managing the property are of sufficient integrity and good character to be involved in the management of the property and as such they do not pose a risk to the welfare or safety of persons occupying or visiting the property(s).

The application of the fit and proper person and cause for concern tests allows Gloucester City Council to reduce the regulatory impact of licensing on good compliant landlords and introduces a framework to increase the level of engagement and education and monitoring of properties managed by poor landlords and agents.

Under section 66(6) of the Housing Act 2004 (for HMO licensing) and section 89(6) (for selective licensing) the Council must consider whether:

- (a) A person involved in the management of the house has a sufficient level of competence,
- (b) any other person involved is fit and proper, and
- (c) management structures and funding arrangements are suitable.

This means the Council must consider licence holders, managers and others, including key-holders. The licence holder and the manager can be two different people. Where this is the case, a decision must be made for each individual about whether they are a fit and proper person. When making this decision, the Council will take into account their fitness to hold the licence or to manage the property.

When making the decision, the Council must ask the following:

- What are the management arrangements?
- Who is involved in the management?

- What precautions have been taken to ensure those involved in the management are fit and proper?

This statement of principles is not intended to be exhaustive and the Council is entitled to take into account other factors in so far as they are relevant to the fitness and proprietary of the relevant person. In other words, the misconduct has to be relevant to the person's fitness to hold a licence and/or manage the particular residential building, and in regard to criminal offences the Council must only have regard to unspent convictions but will also consider simple cautions.

## Fit and Proper Person(s) and Cause for Concern Tests

The fit and proper person and cause for concerns tests will be applied when a licence application is being considered and at any time while a licence is in force following a change in circumstance and new information being made known the council.

When considering whether a person is 'fit and proper' or there is a Cause for Concern with the management of a property the Council must have regard (among other things) to whether the applicant has:

- any previous convictions involving fraud or other dishonesty or violence or drugs and sexual offences,
- practised unlawful discrimination on the grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with the carrying out of any business,
- contravened any provision of housing or landlord and tenant law,
- acted otherwise than in accordance with an approved code of practice,

When deciding, the following should be considered:

- Nature of convictions – convictions relating to fraud, running unlicensed HMOs or part 3 houses or violence may well affect someone's status as fit and proper. A conviction based on the existence of a category 1 hazard would give some indication of an applicant's approach to health and safety in a property. The relevance of each conviction and number of convictions must be considered in relation to the management of the HMO or part 3 house.
- Weight of convictions – the number and type of convictions and time of occurrence will be considered.
- Nature of contraventions – specifically officers' views on these. An administrative or technical breach of the Management Regulations, for example, may not in an officer's opinion affect a person's status as fit and proper but may impact on the Cause for Concern test.
- What are the management arrangements for the property.
- Who is involved with the management of the property.
- History of complaints, contraventions and behaviour at the property or those involved with the management of the property.

A conviction is the verdict that results when a court of law finds a defendant guilty of a crime.

A contravention is to act contrary to a rule, order, regulation or law, or of not fulfilling an obligation, promise or agreement.

Under sections 64 (HMO licensing) and 88 (selective licensing) of the Act, both the proposed licence holder and the proposed manager must be fit and proper persons.

The Council would not normally consider a landlord with a criminal record for unlawful evictions and harassment of tenants to be fit and proper person. In contrast, evidence of contraventions of housing or landlord and tenant law need not result in an adverse fit and proper person decision but may result in the landlord being considered under the Cause for Concern test. Evidence of any specified misconduct does not necessarily lead to the conclusion that the person is not a fit and proper person.

Discretion may be appropriate if an offence is isolated and there are mitigating circumstances. Multiple offences or a series of offences and contraventions over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which should be taken into account. A particularly serious view may be taken where the victim of any offence is vulnerable.

The Council will adopt a common sense approach, exercising its discretion reasonably and proportionately, taking into account relevant considerations and disregarding irrelevant considerations.

Where a potential licence holder or a manager has a relevant unspent conviction or contravention, in deciding whether they are fit and proper the Council will take into account the following factors:

- the relevance of the conviction/contravention in relation to the person's character and integrity to manage an HMO or part 3 house.
- the severity of the conviction/contravention in terms of impact, upon residents and the wider community.
- whether the person is accredited or has been trained to manage an HMO or part 3 house.
- any other relevant matter.
- any mitigating circumstances.
- whether the proposed manager is fit and proper.
- whether the proposed licence holder fit and proper.
- whether there are satisfactory management and financial arrangements.
- who is involved in the management.
- what precautions have been taken to ensure those involved in the management are fit and proper.

These points should form the basis of the decision made to refuse to grant a licence, grant a licence for a reduced duration, or vary an existing licence. Any decision

statement should consider each point and each case must be considered on its own merits.

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 wrongdoings, 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). The purpose of this requirement is to ensure that only fit and proper persons hold licences or are in any way involved in the management of licensed properties. 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.

If someone is found not to be fit and proper the licence may be refused or issued for a 1-year duration and this will normally remain the case for 5 years. If a licence application is submitted within that period the Council will reconsider a person's fit and proper status on the merits of that application.

If someone is found to be Cause for Concern a licence will only be granted for a 1-year duration. During this time the licence holder, manager and property will undergo an increased level of scrutiny and monitoring.

## Consideration of Convictions and/or Contraventions & evidence

The following examples afford a general guide to the action which might be taken where convictions/contraventions and cautions are disclosed or where offending behaviour is proved to the satisfaction of the Council. Where convictions or contraventions are not disclosed but are evidenced through further investigations the consideration of contraventions under s.238 of the Act will inform any decision.

### Have they been convicted or contravened housing law or landlord and tenant law.

Careful consideration should be given to an application or existing licence where a person who has made a fit and proper person declaration has contravened housing law or landlord and tenant law, evidence of poor management, previous history, prosecutions, simple cautions. In particular, consideration should be given to contraventions under, but not exclusively to:

- The Public Health Acts of 1936 and 1961
- The Building Act 1984
- The Environmental Protection Act 1990
- The Town and Country Planning Act 1990
- The Prevention of Damage by Pests Act 1949

- The Protection from Eviction Act 1977
- The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976
- The Housing Grants, Construction and Regeneration Act 1996
- The Local Government and Housing Act 1989
- The Housing Act 2004 and supplementary Regulations

Contraventions of one or more of the above Acts could result in informal action where a person is asked to complete works, formal action where a legal notice is served, remedial action or work in default, or a prosecution/financial penalty. The number and nature of the contravention(s), the relevance to the management of a rented house and the potential harm caused must all be considered. Each case will be considered on its own merit.

## Have they committed any offences involving fraud.

In particular an application will normally be refused where the person has a conviction for an offence where the victim has been deprived of money, property or other benefit by misrepresentation/deception on the part of the offender including:

- Theft
- Burglary
- Fraud
- Benefit fraud (particularly where tenants are on Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception

Weight should be given to the circumstances of the offence and any evidence showing good character since the date of conviction. Each case will be considered on its own merit.

## Have they committed any offences involving violence.

Fit and proper person status will normally be refused where the person making a fit and proper person declaration has a conviction for the offence of:

- Murder
- Manslaughter
- Arson
- Malicious wounding or grievous bodily harm
- Grievous bodily harm with intent
- Actual bodily harm
- Grievous bodily harm
- Robbery
- Racially aggravated criminal damage
- Common assault
- Common assault which is racially aggravated
- Assault occasioning actual bodily harm
- Possession of an offensive weapon

- Possession of a firearm

Weight will be given to the circumstances of the offence and any evidence showing good character since the date of conviction. Each case will be considered on its own merit.

### **Have they committed any offences involving drugs.**

Careful consideration should be given to an application where a person making a fit and proper person declaration has committed a drug related offence. Consideration should be given to the nature of the offence and what bearing it could have on the management of a licensable HMO or part 3 house. Each case will be considered on its own merit.

### **Have they committed any offences involving sexual offences.**

Fit and proper person status will normally be refused where a person making a fit and proper person declaration has a current conviction for an offence contained in schedule 3 of the Sexual Offences Act 2003. Each case will be considered on its own merit.

### **Have they practiced unlawful discrimination.**

Careful consideration should be given to an application where a person making a fit and proper person declaration has practiced unlawful discrimination. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable HMO or part 3 house. Each case will be considered on its own merit.

Other factors for consideration, but not exclusively, include:

- there being an adverse change in circumstances which would warrant variation or revocation of the licence or a licence being granted with additional conditions
- there being antisocial behaviour,
- there being significant Council tax arrears or debts owed to the Council,
- the premises no longer being effectively managed,
- there being breaches of the licence conditions,
- the management of the house no longer being carried on by persons who are all fit and proper persons,
- there being a contravention of housing, public health, environmental health or landlord and tenant law,
- there being evidence that the applicant and/or proposed licence holder have not disclosed previous contraventions/convictions or has knowingly provided misleading and/or fraudulent information to obtain a licence.

Where the evidence shows there is a significant increased likelihood of the events referred to above occurring/occurred or a licence application discrepancy, the premises involved, licence holder and Managing agent (where applicable) would require a raised level of monitoring and scrutiny on the part of the Council. Any such raised level of monitoring and scrutiny would require additional resources to the council. Costs which are part of the formalities of the licensing process may be recovered by means of licence fees. Costs which are not part of the formalities such as enforcement costs cannot (see the Provision of Services Regulations 2009 and accompanying government guidance).

The application of the cause for concern test allows Gloucester City Council to reduce the regulatory impact of licensing on good compliant landlords and introduces a framework to increase the level of engagement and education and monitoring of properties managed by poor landlords and agents that fail the fit and proper person or cause for concern tests.