



Property Licensing

The Cause for Concern Test

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1.0 Purpose of this Guidance Note

1.1 The purpose of this guidance note is to provide a basis for deciding how to deal with licensed premises where:

- (a) the persons involved pass the fit and proper person test, and
- (b) there are satisfactory management arrangements, and
- (c) there is evidence that:
 - (i) There are or have been contraventions of housing, landlord and tenant law or other law at the premises (see paragraph 6.4.1 below), or
 - (ii) there is a past history of one or more of the persons involved with the management of the premises, their associates or former associates,

that indicates that there may be an increased likelihood of a licence application discrepancy or one or more of the events detailed in paragraph 1.3 occurring during the term of the licence.

1.2 A licence application discrepancy means a discrepancy between the details provided in a licence application submitted and:

- (a) The actual physical layout, design, size, construction or condition of the premises concerned, or
- (b) The actual facilities, amenities and fire precaution provided at the premises, or
- (c) Verifiable information relating to the premises and their management arrangements (including previous contraventions involving the premises and persons involved in their management)

1.3 The events referred to in paragraph 1.1 are:

- (1) there being an adverse change in circumstances which would warrant variation of the licence
- (2) there being antisocial behaviour
- (3) the premises no longer being effectively managed
- (4) there being breaches of the licence conditions
- (5) the licence holder no longer being a fit and proper person
- (6) the management of the house no longer being carried on by persons who are all fit and proper person is to be involved in its management
- (7) there being a contravention of housing, public health, environmental health or landlord and tenant law

- 1.3 An increased likelihood will be considered in the context of a comparison with well-managed properties, where all those involved are very competent in property management, and have no relevant criminal record or history of breaches of housing, public health, environmental health or landlord and tenant law.
- 1.4 A change in circumstances for the purposes of paragraph 1.3(1) above would include new information coming to the attention of the authority such as a discrepancy with the licence application.

2.0 Cause for Concern

- 2.1 Where there is a significant increased likelihood of a licence application discrepancy or the events referred to in paragraph 1.3 occurring the premises involved would require a raised level of monitoring and scrutiny on the part of the Council. Any such raised level of monitoring and scrutiny would entail an additional cost to the authority.
- 2.2 Premises with a significant increased likelihood of a licence application discrepancy or such events occurring are referred to in this guidance note as premises giving cause for concern.
- 2.3 The cause for concern test set out in this guidance note is a formal framework which the Council will utilise to identify premises where there is a significant increased likelihood of a licence application discrepancy or the events referred to in paragraph 1.3 occurring. It will form a basis for the decision-making which will trigger an increased level of monitoring and scrutiny together with shorter licence durations and increased licence fees in appropriate cases. 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).

3.0 The Need for Increased Monitoring

- 3.1 The primary reasons for increased monitoring where there is cause for concern are to:
 - (a) inform the decision-making process relating to the licence application
 - (b) establish if there are any changed circumstances which warrant the variation of licence conditions, in particular discrepancies with an application

- (c) establish if there are changed circumstances which warrant the revocation of a licence, in particular discrepancies with an application
- (d) minimise antisocial behaviour
- (e) ensure that premises continue to be effectively managed
- (f) protect the health and safety of the occupants
- (h) detect offences and breaches of licence conditions

3.2 Under the provisions of section 69 of the Housing Act 2004 (HMO licensing) and section 92 (selective licensing) the Council may vary a licence if there has been a change in circumstances since the time when the licence was issued. For this purpose, “change of circumstances” includes the discovery of new information.

3.3 Under the provisions of section 70 of the Housing Act 2004 (for HMO licensing) and section 93 (for selective licensing) the Council may revoke a licence:

- (a) where the authority considers the licence holder or any person has committed a serious breach of a condition of the licence or repeated breaches of such a condition;
- (b) where the authority no longer consider that the licence holder is a fit and proper person to be the licence holder;
- (c) where the authority no longer consider that the management of the house is being carried on by persons who are in each case fit and proper person is to be involved in its management

4.0 What Will Increased Monitoring Involve?

4.1 Increased monitoring will involve an enhanced level of site inspections and record checks.

4.2 Primarily site inspections will inform the licensing process and establish whether any licence conditions based on the details in the application form are fully applicable to the premises as seen. Significant inconsistencies may warrant variation or revocation of the licence. In addition the inspections will monitor compliance with licence conditions, and ascertain whether the property is being effectively managed, if there is any evidence of antisocial behaviour, breaches of housing, public health, environmental health or landlord and tenant law or risk to the health and safety of the occupants.

4.3 Record checks will verify whether information provided in an application is correct and monitor whether certain documents and records that licence conditions require to be kept are being kept and that there is no information relating to the management of the property which may warrant the variation or revocation of a licence.

5.0 When will the cause for concern test be carried out?

- 5.1 The cause for concern test will generally be carried out when an application is being considered and prior to a licence being issued. However the test may also be carried out at any time while a licence is in force, following a change in circumstances (including new information) becoming available to the Council.

6.0 Matters to be considered

- 6.1 In reaching a decision as to whether there is cause for concern in relation to any premises the matters which will be considered are:
- (a) What are the management arrangements?
 - (b) Who is involved in the management?
 - (c) Is there any history of offences, contraventions or behaviour at the premises or on the part of those involved in the management of the property, their associates or former associates, which indicates that there is a significant increased likelihood of a licence application discrepancy or any of the events outlined in paragraph 1.3 above occurring during the duration of the licence?
- 6.2 The seriousness of a contravention?
- 6.2.1 The fit and proper person test should always be carried out before the cause of concern test. Where a contravention or contraventions are of a serious nature it may well be that person will fail the fit and proper person test. In such cases the cause for concern test will not be applicable.
- 6.3 The following examples afford a general guide to matters which are relevant considerations where convictions and cautions are disclosed or where offending behaviour is proved to the satisfaction of the Council.
- 6.4 Have they contravened housing law or landlord and tenant law?
- 6.4.1 Careful consideration should be given to an application where a person has contravened housing law or landlord and tenant law, or there is evidence of poor management, previous history, prosecutions, or simple cautions.

In particular, consideration should be given to contraventions under:

- 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
- Prevention of Harassment Act 1997

6.4.2 Contravention of one 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. The nature of the contravention, its relevance to the management of a rented house and the potential harm caused must all be considered. Also to be considered are the circumstances of the contravention, the number of contraventions and evidence to show good character since the date of the contravention. Each case will be considered on its own merit.

6.5 Have they committed any offences involving fraud or theft?

6.5.1 Licence holders and anyone else who is involved in the management of a licensable HMO or part 3 house are in a position of trust. The nature of their role means they will enter the property on occasion and will be engaged in financial dealings with their tenants, so there may be opportunities for fraud or theft.

6.5.2 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.

6.6 Have they committed any offences involving violence?

6.6.1 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.

6.7 Have they committed any offences involving drugs?

6.7.1 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. The nature, quantity and class of drugs will be taken into account. Each case will be considered on its own merit.

6.8 Have they committed any offences involving sexual offences?

6.8.1 As licence holders, managers and anyone else who is involved in the management of a licensable HMO or part 3 house will on occasion visit tenants in their homes, careful consideration will be given to sexual offences. Each case will be considered on its own merit.

6.9 Have they practiced unlawful discrimination?

6.9.1 Careful consideration should be given to an application where a person has practiced unlawful discrimination. Unlawful discrimination can include findings of an Industrial Tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act. 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.