



DISCRETIONARY LICENSING ENFORCEMENT POLICY

Leicester City V1

2022 – 2027

Full Council Adopted 7/7/22

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1.0 Introduction

This policy has been provided to give guidance to officers and members of the public under Section 80 of the Housing Act 2004.

Leicester City Council has the power to designate areas of the district subject to discretionary Licensing.

The selective licensing scheme will relate to all privately rented properties within designated areas.

The areas are within parts of the Wards of Stoneygate (East Cluster); Westcotes, Fosse, Braunstone Park & Rowley Fields (West Cluster); Saffron (South Cluster). (Covering less than 20% of Leicester's geographical area and less than 20% of privately rented homes in the local authority area).

Leicester City Council has exercised these powers and designated the following areas of the authority as subject to Selective Licensing.

This document sets out the structure of the scheme and the fees and charges and criteria Leicester City Council will apply to all licences in relation to its Discretionary Licensing schemes.

Figure 1 - Map of Selective Licensing areas.

Map Showing Selective Licensing Scheme Areas - Leicester City

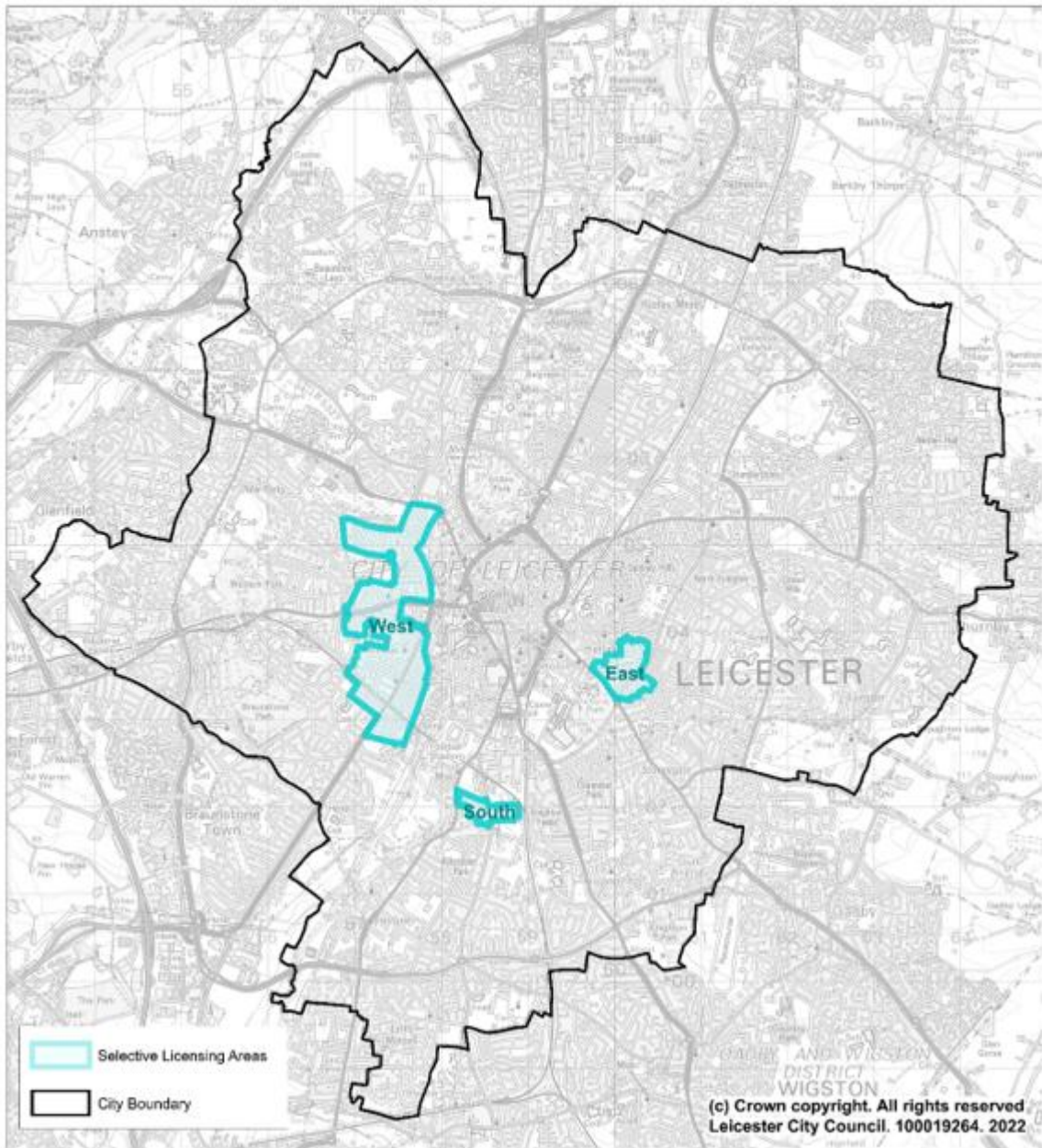


Table 1 – List of Roads in Selective Licensing areas

Street Name	Included Part Street
Abingdon Road	
Abingdon Walk	
Alma Street	
Arundel Street	
Ashleigh Road	
Balfour Street	
Barclay Street	
Bartholomew Street	
Bassett Street	
Battenberg Road	
Beaconsfield Road	
Beatrice Road	
Beckingham Road	
Biddulph Ave	1 -9 not 1A
Biddulph Street	
Bisley Street	
Blue Fox Close	
Bolton Road	
Bonchurch Street	
Borlace Street	
Bosworth Street	
Bramley Road	
Briton Street	3 - 43 odd and 8 - 38 even
Brooksby Street	
Browning Street	
Bruce Street	
Cambridge Street	
Canterbury Terrace	
Carlisle Street	
Catesby Street	
Cavendish Mews	
Cavendish Road	
Cedar Road	
Celt Street	
Central Road	
Chandos Street	
Chartley Road	
Street Name	Included Part Street
Chaucer Street	
Cherryleas Drive	
Church Avenue	
Clifford Street	
Clifton Road	
Compton Road	
Connaught Street	
Cranmer Street	
Cromer Street	

Street Name	Included Part Street
Daneshill Road	
Dannett Street	
Dannett Walk	
Danvers Road	
Dashwood Road	
Denton Street	1 -3 odd and 2 - 4 - even
Devana Road	1- 63a odd and 2 -10a even
Draper Street	
Dulverton Road	
Dunster Street	
Dunton Street	
Eastleigh Road	
Empire Road	
Equity Road	
Evington Footway	
Evington Place	
Evington Road	1 -159 odd and 2 - 118 even
Flora Street	
Fosse Road Central	
Fosse Road North	
Fosse Road South	1 -281 odd and 2a - 256 even
Franche Road	
Gaul Street	
Glenfield Road	1 -89 odd and 2 - 50 even
Glenfield Road East	
Guilford Street	
Haddenham Road	3 -135 odd and 2 - 130 even
Hamilton Street	
Hardwick Court	
Harrow Road	
Hawthorne Street	
Henton Road	
Herschell Street	
Hinckley Road	7 -265 odd and 2 - 238 even
Hoby Street	
Hopefield Road	
Hughenden Drive	
Imperial Avenue	3 -37 odd
Ingle Street	
Ivanhoe Street	
Ivy Road	
Kate Street	

Street Name	Included Part Street
Kimberley Road	3 -49 odd and 2 - 74 even
King Richards Road	
Kirby Road	
Knighton Fields Road West	7 -103 odd and 2 - 138 even
Lambert Road	
Latimer Street	
Laurel Road	
Lavender Road	
Linkway Gardens	
Livingstone Street	
London Road	148a - 220 even
Lonsdale Street	
Lothair Road	
Luther Street	
Lyme Road	
Mantle Road	
Marlow Road	1 -37 odd and 2 - 36 even
Marshall Street	
Mayfield Road	
Merton Avenue	
Minehead Street	
Mostyn Street	
Mountcastle Road	
Narborough Road	1 -259 odd and 2 - 330 even
New Park Road	
Newport Street	
Noble Street	
Mundella Street	
Muriel Road	
Myrtle Road	
Narborough Road	1 -259 odd and 2 - 330 even
New Park Road	
Newport Street	
Noble Street	
Noel Street	
Nook Street	
Norfolk Street	11 -61 odd and 94 - 96 even
Norman Street	
Nugent Street	
Nutfield Road	
Oban Street	
Oliver Street	

Street Name	Included Part Street
Onslow Street	
Oxford Avenue	
Paton Street	
Pool Road	
Porlock Street	
Raymond Road	
Repton Street	
Ridley Street	
Ripon Street	
Rivers Street	
Roman Street	
Roslyn Street	
Rowan Street	
Ruby Street	
Ruding Road	
Ruding Terrace	
Rugby Street	
Saffron Hill Road	
Saffron Lane	179 -233 odd and 182 - 216 even
Saxon Street	
Shaftesbury Road	
Shakespeare Street	
Sheffield Street	
Sheridan Street	
Skipworth Street	
St Albans Road	
St Dunstan Road	
Tudor Close	
St James Road	
Tyndale Street	
Tyrrell Street	
Upperton Rise	
Upperton Road	1 -181 odd and 6 - 118 even
Vaughan Street	
Vernon Street	
Victoria Terrace	
Walton Street	
Warren Street	
St James Road	
St James Terrace	
St Pauls Road	
St Peters Road	25 -87 odd and 36 – 88a even
St Stephens Road	
Stephenson Drive	138 - 150 even
Storey Street	
Stretton Road	

Street Name	Included Part Street
Stuart Street	
Sutherland Street	
Sweetbriar Road	
Sykefield Avenue	
Sylvan Street	
Taunton Road	
Tennyson Street	
Tetuan Road	
Tewkesbury Street	
Thackeray Street	
Warwick Street	

Street Name	Included Part Street
Wentworth Road	
Westcotes Drive	1 -105 odd and 2 - 186 even
Western Road	3 -251a odd and 122a - 278 even
Westleigh Avenue	
Westleigh Road	
Wilberforce Road	
Wilmington Road	
Winchester Avenue	
Wolverton Road	
Woodgate	2 - 88 even

Selective Licensing covers all private rented houses within the designated areas and all licence applications are to be accompanied with a fee determined by the Council. Once a licence is issued it is not transferable.

2.0 Selective Licensing in Leicester City

Under the “Leicester City Council Areas (TBC) Designation for Selective Licensing 2022” which will come into force on the 10 October 2022 most privately rented homes in the Designated area will be required to have a property licence.

The Council has exercised its powers to charge under Section 87(3) and (7) of the Housing Act 2004 and does so taking into account the Provision of Services Regulations 2009.,

Under Part 3 of the Housing Act 2004, a house is required to be licensed if:

- The whole of it is occupied under a single non-exempt tenancy or licence.
or
- The whole of it is occupied under two or more non-exempt tenancies or licences in respect of different separate dwellings within the building.

In the event that a building has multiple dwellings contained within it the Council will require a separate application and fee for each of the dwellings within the building. The Council will consider each application and will take the following factors into account before deciding to issue a multi property licence or not:

- Each of the dwellings are separate dwellings (usually self-contained flat,) which are contiguous to one another in the same building.
- Each of the dwellings are occupied under non-exempt tenancies.
and
- Each of the dwellings within the same building are within common ownership and management control.

Where the Council is satisfied that individual property licences should be granted, it will give notice of this to the applicant and every relevant person. There is a right to appeal this decision to the First Tier Tribunal (Residential Property Chamber), notwithstanding the grant of these licences.

In cases of a registered `not for profit` charity or an individual housing provider, such as a private landlord or organisation who is assisting the Council by offering permanent accommodation to meet our homelessness duties applications will be accepted, for the particular property being provided without a fee being payable. An assessment of the organisation will then be carried out and if appropriate the Council will determine the application and issue a licence without requiring any fee. Each case will be considered on its merits based on the type of individual or organisation submitting the application and the removal of the fee requirement will only be applied to the licence for the house being provided for homelessness purposes.

3.0 Licence Fees

Section 87 of the Housing Act 2004 permits the Council to require any application for a licence under Part 3 to be accompanied by a licence fee and that this fee may properly cover all costs incurred by the Council in carrying out its functions.

In developing its fee structure the Council has had regard to the European Court of Justice ruling in R (Hemming) V Westminster City Council (Case C-316/15) and the High Court decision in R (Gaskin) v LB Richmond Upon Thames (2018) EWHC 1996 (Admin) which held that the EU's Provision of Services Directive, which is enshrined in UK law as the Provision of Services Regulations 2009 should apply to property licensing fees and the processes involved in implementing and delivering such schemes.

The Services Directive should be interpreted as precluding charging in advance for costs other than those directly related to the authorisation process of the scheme. In other words, the Council is not permitted to demand fees in advance for anything other than the costs of administering the application for a licence even if it makes it clear that unsuccessful applicants are provided with a refund of the remaining part of the fee. The Council may legitimately recover its wider costs, over and above those relating to the administration of applications, but this should be at the point at which the Council has determined that a licence is to be granted.

The judgements in Hemming and Gaskin have therefore had the effect that the fee for a discretionary Licence under Part 3 of the 2004 Act must be levied in two separate parts.

The Council is not allowed to demand fees in the Stage 1 process for anything other than the costs of administering and processing the application for a licence. Furthermore, this element of the fee is non-refundable should the application be unsuccessful.

In the case of Stage 2 payments these can only be requested if the initial application is successful and will be charged to cover the costs of running and enforcing the scheme. As such the Council, when setting its fees, has adopted the two-stage approach. All fees and charges will be reviewed on an annual basis and the following tables set out those fees for July 2022 – June 2023.

Table 1- Fees and Charges

Stage	Type of Licence	Fee
Stage 1 Fee – Payable at the time of making the application	5 Year Licence	£869
Stage 2 Fee – Payable once the Council has determined the to grant a licence	5 Year Licence – where the landlord is licensing a property without being identified as part of the councils proactive enforcement	£217
Total Fee		£1086
Stage	Type of Licence	Fee
Stage 1 Fee – Payable at the time of making the application	1 year licence	£695
Stage 2 Fee – Payable once the Council has determined the to grant a licence	1 Year Licence – where the landlord is licensing a property without being identified as part of the councils proactive enforcement	£174
Total Fee		£869
Stage	Type of Licence	Fee
Stage 1 Fee – Payable at the time of making a renewal for end of scheme licensing application	Renewal of licence – subject to criteria	£522
Stage 2 Fee – Payable once the Council has determined the to grant a renewal of a licence	Renewal of licence	£130
Total Fee		£652

Under Section 90 (6) of the Housing Act 2004 the Council has the power to impose a restriction / obligation on a particular person (with their consent). In accordance with this power the Council will require the licence holder’s consent to pay the Stage 2 fee in advance of the licence being issued, this will be required as part of the application process.

In addition, the Council will attach a condition to all licences requiring this obligation to be met i.e. to pay the Stage 2 fee. This approach is consistent with that set out in the Hemming case. Failure to make the Stage 2 payment will result in the Council taking action through, either the revocation or refusal of the licence or by enforcing the non-compliance of the licence condition associated with the making of the Stage 2 payment.

4.0 Processing the Application

Under the Housing Act 2004 the Council can either grant or refuse a licence. In determining whether to grant or refuse a licence the Council must satisfy itself of the following:

- That the proposed licence holder or manager of the property is a fit and proper person to be a licence holder or manager
- 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.

5.0 Tests for Fitness etc. and Satisfactory Management Arrangements

Leicester City 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:

- the person(s) proposed to be involved in the management of the premises has/have a sufficient level of competence to be involved.
- the person(s) proposed to be involved with the management of the premises is/are actually involved in the management.
- the person(s) is/are ‘fit and proper’ (which is discussed below).
and
- the proposed management structures and funding arrangements are suitable.

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 in place. However, if such conditions are not possible or practical to impose then it may be necessary to refuse to grant a licence.

It is for a Council to determine whether a person has sufficient competence to be involved in the management of a premise and, of course, the level of competence required will in some measure be determined by the complexity of the management challenges posed. The Council will, 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. In most cases landlords who belong to a recognised trade association or are members of an accreditation scheme will be regarded as having the necessary competence to be involved in the management of the premises because, at such organisations can be called upon for advice and assistance where necessary.

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 take account of the following:

- evidence as to whether the systems in place are sufficient to enable the manager to comply with any condition of a licence or if such systems can be put in place through a condition on the licence to ensure compliance.
- 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.
and
 - neighbourhood issues (including disputes)
- evidence of structures for engagement with the local authority, police and other agencies, where appropriate.

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.

Leicester City 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 properties will therefore be undertaken during the licence period to check for compliance with the licensing and management regimes which apply. This is consistent with the powers provided under Section 239 of the Housing Act 2004.

Breach of any such legislation is a strict offence for which further action will be taken. The Housing, Health and Safety Rating System (HHSRS) also applies to rented properties and (if appropriate) remedial works can be enforced via this legal mechanism separately to the powers provided under the licensing scheme.

6.0 The Fit and Proper Test

In deciding to grant a licence Leicester City 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”.

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 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.

When considering whether a person is ‘fit and proper’ Leicester City Council will have regard to any misdemeanours (wrong doings) of the relevant person concerned. This is evidence that the person has:

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

The above list is not exhaustive, and Leicester City Council can and will consider whether a relevant person has committed other relevant misdemeanours, for example, discrimination under the Equality Act 2010. A relevant person will not be deemed unfit, simply because of poor management, although this is highly relevant to determining any question of suitability or competence.

Leicester City Council do not adopt a blanket policy on 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; historical information already held by Leicester City Council relating to the premises and / or any relevant person connected with the licence application. 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):

- unspent convictions.
- any findings of a court/tribunal that the person has practised unlawful discrimination.
- 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).
- any control order made in respect of any House in Multiple Occupation (HMO) under his/her management or ownership (and also in respect of any former HMO he/she owned or managed).
- 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 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.
- 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 he owned or managed).
and
- details of any interim or final management orders made by a Local Housing Authority in respect of any house or HMO under his management (and also in respect of any former HMO or house he owned or managed).

An applicant for a licence must disclose any misdemeanours which relate to themselves, the proposed manager, and any other relevant person, if any. Leicester City Council should therefore have sufficient information to decide a person's fitness based on the application.

If Leicester City Council are 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, including for example Disclosure & Barring

Service checks (DBS) and Trading Standards. The completion and signing of the Licence application form will be taken as an agreement to any such action.

Checks will also be made internally with other Council departments such as Licensing, Planning, Building Control, Council Tax and Housing Benefit.

Leicester City Council are also able to request information on criminal convictions, and although this is not undertaken as a matter of routine a Police National Computer (PNC) check will be requested where there is sufficient evidence that this is necessary. A PNC check may also be requested for the purposes of officer safety during the course of the licensing application should this also be considered necessary.

Such reasons for a PNC check may include that:

- Leicester City Council have 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), but further investigation may be required.
- the applicant has been evasive or untruthful in their application for a licence.
- the applicant, or proposed manager, is unknown to Leicester City Council and has not demonstrated any history or competence of managing HMOs or other private rented properties.
- Leicester City 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
- the premises provides accommodation mainly to vulnerable persons.

In deciding whether a misdemeanour (including a criminal offence) is relevant to the determination of a person's fitness Leicester City Council will consider the following factors:

- the relevance of the misdemeanour(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.
- the seriousness of the misdemeanour(s) in terms of impact, or potential impact, upon the residents and the wider community, including if more than misdemeanour has been carried out the cumulative impact.
- the length of time since any misdemeanour.
and
- any mitigating circumstances

7.0 Consideration of 'Persons Associated or Formerly Associated' with the Proposed Licence Holder or Manager

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 misdemeanours, that evidence maybe 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.

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 misdemeanours and those misdemeanours are relevant to the wife's management of the property or licence, then the Council may refuse to grant her a licence.

Likewise, if a landlord with an unsatisfactory record nominated a 'manager' who has a clean record, but had acted for him whilst the misdemeanours were committed, Leicester City Council may consider the managing agent by association to be unfit too.

8.0 Issuing a Licence

All properties subject to an annual property licence will be inspected prior to the issuing of a draft licence to ensure that the property meets the required standards and the necessary and appropriate management arrangements are in place.

Where the licence holder and manager have satisfied the requirements for a longer licence the licence will be issued after an initial inspection being completed. All properties will however remain subject to further inspections during the lifetime of the licence to check compliance with licence conditions, management responsibilities and minimum standards. In certain cases the Leicester City Council may decide to carry out such inspections without prior notice being given to the owner, licence holder and /or manager.

Where the inspection has been pre-arranged then all applicants will be required to provide access to all rooms in the house at a suitably arranged appointment.

All contact with the licence holder and relevant person(s) will be made using the contact information provided by the applicant on the original application. Accordingly, it is the licence holder's responsibility to ensure that all contact details are up to date and you must notify the Landlord Licensing Team of any change in details. The Landlord Licensing Team will not be held responsible for any delay in communication if it is as a result of any contact information changing.

A draft licence with conditions will be issued based on the findings from this inspection. The draft licence (known as an Intention Notice) will be emailed to all relevant persons and other interested parties for consultation.

The relevant persons will have an opportunity to make any representations, which will be considered.

When this process is complete a full licence with the conditions (known as the Decision Notice) will be issued. Again, copies will be sent to all interested parties.

If the licence holder is still dissatisfied with the conditions of the licence, they will have an opportunity to appeal to the First-tier Property Tribunal. The details of how this appeal can be made will be provided with the Licence.

All properties will be inspected at least once during the period of the licence to check conditions have been complied with. Failing to comply with any conditions on a licence is an offence under Section 95(2) of the Housing Act 2004 and, if found guilty the licence holder could face a prosecution or be issued with a Civil Penalty of up to £30,000.

In cases where the licence is being issued to or on behalf of a new landlord who has never licensed a property before the first licence will run for one (1) year, and the licence must be renewed before it expires. After the first year, the opportunity will be provided to apply for a longer licence, provided all the relevant criteria is met.

The Council considers this approach is justified in furtherance of the overriding public interest of improving the standard of rented properties and their management.

The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012 set out amendments to “renewal applications”, which reduces the burden on landlords applying for the renewal of a licence.

9.0 Renewal Applications

In the case of renewal applications where a one year licence has been issued the applicant must:

- supply with the application, completed and signed declarations of the works undertaken required in the licence that have been attended too to allow for application for a complete application for a Selective Licence.
- supply in addition a completed and signed declaration that notification has been given to all interested parties that a complete selective licence application is to be made.
and
- in either case, a signed application form will be required by the Council.

The form of declaration mentioned above will be available for applicants to sign as part of any renewal application.

The regulations define a “renewal application” as “an application for a licence under section 87 of the Act where, at the time the application is made a licence of the kind applied for is already held by the applicant and has effect in respect of the HMO or house”.

The effect of this part of the Regulations is that in order for the Council to treat any application as a “renewal” the application must be made during the active period of the current licence. If a renewal application is received on or after expiry of the current licence, then the application will be treated as a new application and the appropriate fees above will apply.

10.0 Application for a Revocation or Variation of a Licence

If circumstances regarding the property change during the licence period, for example a change in the number of letting units, the licence holder must notify the Discretionary Licensing Team directly so the licence can be re-assessed and varied if the premise is considered suitable to accommodate the variation request.

Similarly, if the premises are no longer going to be occupied as a rented property or the licence holder changes, then the licence holder must make an application for the licence to be revoked. Any remaining period of the licence will be forfeited and there will be no right to a refund of the original payment.

11.0 Licence Criteria

One Year Licence Application Criteria

Annual licences are normally issued to properties where issues have arisen that in the opinion of the officer the issue may be resolved in the short term or where they have recently acquired or converted their property into a licensable property. This licence will be issued for a probationary period of 12 months and will be subject to the inspections process described earlier.

Upon renewal the landlord/licence holder will be able to apply for a longer licence and, subject to meeting the relevant criteria, may be issued with a 5 year or “end of scheme” licence. In cases where the landlord/licence holder is not able to meet the qualifying criteria an annual licence will be issued as a renewal.

It is important that a renewal application is submitted before expiry of the current licence otherwise it may be determined that this is a new application and additional information will be required. A different fee may also apply to reflect the increased time involved in processing the application.

Annual licences will automatically be issued to those landlords who are found to be operating an unlicensed property through proactive visits carried out by the Council. In cases such as these it is likely that the landlord may also be subject to a formal investigation by the Council – given that they have been found to be operating an unlicensed property. This may affect their eligibility as licence holder or manager so they will be required to nominate an alternative competent person to be licence holder/ manager.

Upon renewal the landlord/licence holder will be able to apply for a longer licence and, subject to meeting the relevant criteria, may be issued with a 5 year or “end of scheme” licence. In cases where the landlord/licence holder is not able to meet the qualifying criteria an annual licence will be issued as a renewal.

In all cases the applicant must:

- Complete a valid application within 12 weeks of the property being licensable.
- and
- Comply with all licence conditions before the licence is due for renewal.

Five Year / End of Scheme Licence Application Criteria

All applicants that meet the criteria set out below will be eligible for a ‘five-year’ licence (granted for 5 calendar years or up to the expiry date of the operating scheme).

The criteria for such a license is as follows:

- Valid renewal application completed promptly before or within 2 weeks of being sent the first renewal reminder.
- In the case of new applications, a complete application form.
- Fee paid.
- Declaration signed.
- and
- Five-year licence self-certification forms signed by the licence holder and (if applicable) managing agent.

All parties involved in the licensing and management of the property must also have a good history with the Council. When determining the compliance with this element of the criteria the Council will take the following into account:

- All licence applications made on time.
- No outstanding licence conditions.
- No recent complaints about the property we have taken action to resolve.
- All certificates provided up to date and satisfactory.
- No issues with other departments within the council i.e., planning/environmental health.
- Have suitable maintenance arrangements in place with suitably qualified and competent tradespeople for the upkeep of the property.
and
- Adhere to the principles set out in the **Private Rented Sector Code of Practice**.

Managing Agents (with sole or joint management responsibility) must meet the following additional criteria:

- 50% or more of the company's employees are suitably qualified in residential property management.
- All employees carry out regular continued professional development (CPD).
and
- The company is registered with a recognised professional association.

Should any issues arise, or new information be discovered after the licence is issued, Leicester City Council reserves the right to revoke the licence. If any relevant person is found to have provided false or misleading information or made a false declaration, we may take enforcement action against them separately.

It is the responsibility of the proposed licence holder and manager(s) to meet all of the eligibility criteria for the licence and provide all necessary evidence when requested. If all requested documentation is not provided in time, the Council will automatically assess the application based on the evidence we hold and issue a licence accordingly, which will generally be an annual licence.

12.0 Will Tacit Consent Apply?

In deciding whether tacit consent applies the Council has taken into consideration the recent High Court decision in the case of *R(Gaskin) v Richmond LBC [2018] EWHC 1996 (Admin)*.

The Gaskin case says that the Provision of Services Directive applies to licensing schemes in full and that regulators should set out how long it will take to carry out a licensing approval process and if they do not meet that timeline then approval (tacit consent) should happen automatically.

Upon receiving a valid application, the Council will aim to provide a decision as soon as is reasonably practicable, however each case will require different processes to be completed, for example if an inspection of the property is necessary then the Council will be required to complete this before issuing you with a decision. This could therefore extend the time it takes to process your application.

It is therefore the Council's aim to process all valid applications and provide the relevant persons with a decision within 12 weeks of receipt. This will require the full co-operation of the applicant with the Council's requirements for determining a licence application.

If a decision about a licence application has not been received after this period, then tacit approval may apply but the proposed licence holder should not assume they will automatically have been granted a licence.

As mentioned, the target completion period for issuing a decision and a licence is subject to many factors and as such applicants should check with the Council on the status of their application. By the Council setting out and displaying publicly their licensing processing time, the Council considers this will instil confidence in local landlords and help to keep them informed about the process.

13.0 Public Registers

A register of property Licences is available online and details of this can be obtained by sending a formal, written request to the Discretionary Licensing team.

14.0 Appeals

If an application for a property Licence is refused, there is a right to appeal this decision within 28 days to the First-tier Tribunal (Property Chamber - Residential Property). The details of this will be provided with the Decision Notice.

15.0 Discretionary Licensing Enforcement

Discretionary Licensing is a regulatory tool under Part 3 of the Housing Act 2004 which provides a discretionary power for Local Authorities to introduce selective licensing of privately rented homes within a designated area. This is based on specific indicators of low housing demand, problems with anti-social behaviour, and concerns relating to one or more of the following - levels of crime, deprivation, migration and housing conditions.

Discretionary Licensing contributes to confidence in the private rented sector and encourages landlords to increase accountability for the management of their property and tenants. Generally, good responsible landlords will benefit from the additional support with unscrupulous landlords finding it a less appealing proposition.

This policy sets out the broad principles and processes which Officers will follow within the Discretionary Licensing Scheme when delivering landlord licensing in line with the requirements of The Housing Act 2004, and other appropriate housing legislation to ensure the approach is fair and consistent and that it will stand up to scrutiny.

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement of licensing schemes, which improve regulatory outcomes without imposing unnecessary burdens.

Enforcement in the context of this policy is not limited to formal enforcement action such as serving notices or prosecution but includes the inspection of premises to check for compliance with the scheme and relevant legislation and the provision of advice, support and guidance. It sets out what owners, landlords, their agents and tenants of private sector properties can expect from Leicester City Council and the types of enforcement action that can be taken and considered.

16.0 Overall Enforcement Policy

The Discretionary Licensing Team will endeavour to work with landlords to provide support and guidance to improve housing standards and practices within the private rented sector.

Any enforcement action considered will be based on risk and will also have full regard to any statutory duty. Assessment of risk will be based on current legislation and specific guidance.

In response to the enforcement concordat (note¹) the Discretionary Licensing Team consider the following principles as the basis for undertaking fair and balanced enforcement:

Openness

- We will provide information to the public in plain language and if possible, avoid any jargon.
- We are open and honest about how we do our work and in particular how we set our charges for enforcement.
- We will always discuss general issues, specific failures or problems with anyone who we have enforced against.
- We will try to ensure that people understand what is expected from them as well as making them aware of what they can expect from us.

Helpfulness

- Our staff will provide a courteous, efficient and helpful service.
- All staff visiting properties will identify themselves by name and carry identification cards.
- We will provide a contact point and telephone number for further dealings with Officers.

Proportionality

- Where possible, we will endeavour to minimise the costs of compliance with notices by ensuring the action we take is proportionate to the risks.
- We will work with those required to take action so that they can meet their legal obligations without unnecessary expense.
- Any sanctions we impose will take account of the seriousness of the offence.

Note 1

The Legislative and Regulatory Reform (Regulatory Functions) (Amendment) Order 2014 ("the 2014 Order") amends the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 ("the 2007 Order"), which specifies regulatory functions which are within the scope of the better regulation principles and the Regulators' Code. The Order updates the 2007 Order by adding and removing specific regulatory functions

Consistency and fairness

- Officers will carry out their duties in a fair and consistent manner. To achieve this, we will develop and put in place procedures for the range of enforcement activities we carry out and ensure that Officers follow such procedures.

Although Officers have to exercise judgment in individual cases, we will ensure that procedures, wherever possible, are the same and people are treated equitably. It must be stressed that as a rule we believe in gaining the desired result through effective engagement with the parties involved. However, we will take enforcement action if the criteria of the enforcement policy have not been satisfied.

Service complaints

The Council has a corporate complaints system that enables the public to provide their views on our services. Details of the procedure can be found online by visiting the Council's website at <https://www.leicester.gov.uk/contact-us/comments-compliments-and-complaints/#:~:text=You%20can%20also%20write%20to,us%20on%200116%20454%201000>.

We will respond promptly to complaints received about the service.

Principles of enforcement and enforcement decisions

When discharging its duties in relation to the discretionary Licensing Schemes, the Council will follow the principles of good enforcement and ensure that enforcement decisions are made, and actions are taken in line with the provisions of the following legislation:

- The Human Rights Act 1998
- Regulators Compliance Code
- Criminal Procedures and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- The Crime and Disorder Act 1998
- The Anti-social Behaviour Crime and Policing Act 2014
- The Police and Criminal Evidence Act 1984 (as amended)
- Civil penalties under the Housing and Planning Act 2016

Partnership working

We will engage in partnership working with other enforcement agencies where there is a shared enforcement role, or where it is in the public interest to share matters concerning non-compliance with enforcement actions taken. For example liaising with; the Police, the Fire and Rescue Service and other Council Services.

Enforcement action will be based on risk and will have full regard to any statutory duty. Assessment of risk will be based on current legislation and specific guidance. The Council will seek to ensure it recovers appropriate costs from those landlords who are not being proactive in managing or letting properties.

Actions available broadly divide into two categories:

- Informal action
- Formal action

Once we have established that action needs to be taken to resolve an issue, wherever possible an informal approach will be adopted having regard to either the Code or the Concordat.

However, in certain cases there will be no alternative but to take formal action.

Consideration will be given to:

The impact of interventions on economic progress; especially within small businesses and whether the benefit justifies the costs and poses the minimum burden to achieve the objective. Whether informal action may compromise the objective or whether there is a serious breach of legislation. For example, where an imminent risk to public health exists and removal of the risk is only guaranteed through a formal approach.

Any relevant history in relation to the case, in particular, officers will consider whether any action has been taken in the past, the recipient's response and the ability and willingness of the recipient to keep to agreed timetables of work.

Whether an act or omission is serious enough to warrant formal action, or whilst there is no infringement of legislation, a positive benefit from informal action can be derived.

The initial decision to take informal or formal action will be made by the enforcement officer. The decision will be agreed with the relevant line manager; however, overall responsibility for officers' actions rests with the Director for Neighbourhood and Environmental Services

Informal Action

Informal action includes but is not exhaustive to:

- Issuing verbal advice or instruction,
- Working in partnership with key agencies,
- The provision of advisory written information; examples are schedules of work in relation to required property repairs and informal warning/reminder letters to submit a licence application/information.
- Guidance, information and advice to licence holders advising them of their responsibilities, including an online document library and landlord support pages.

Formal Action

If informal engagement fails, or it is not appropriate to adopt an informal approach as certain circumstances require immediate formal action, formal action will be taken.

The Council will use both formal and informal actions when dealing with contraventions and the use of any measure will depend on the circumstances of each case.

Authorisation of Officers

By exercising its powers of delegation, the Council has authorised officers within the Landlord Licensing Team to carry out enforcement action. Only officers who the Council have determined as competent will be authorised to take enforcement action. Any enforcement action will be initiated by suitably qualified and experienced enforcement officers.

Officers will have sufficient training and understanding of this enforcement policy and their area of work to ensure a consistent approach to their duties. We undertake to monitor officers' actions to ensure they are always in accordance with our policies.

All officers will carry identification and an authorisation. They are required to show these if asked.

Delegation of Authority

The Director for Neighbourhood and Environmental Services and the Service Manager have delegated authority under this policy to authorise appropriately qualified Enforcement Officers.

Licence Holder

Licence holders must ensure their properties are well managed, safe and comply with all of the licence conditions attached to the discretionary Licence.

If the Council receive concerns about a particular property, licence holder, manager or a breach of the licence conditions they will investigate to determine the best course of action.

The Council may take into consideration the following factors when determining the most appropriate course of action:

- The number of properties in the licence holders portfolio
- The length of time the person has been a landlord, manager, or licence holder
- Their willingness to engage and address issues at their properties
- Confidence in the management to tackle the issues raised by the Council
- The seriousness of the event.
- Previous history

There are criminal offences under discretionary Licensing relating to failure to comply with the licensing requirements:

It is a criminal offence to manage or have control of a property which is required to be licensed under Part 3 and is not so licensed. On summary conviction, a person found guilty of such an offence may be given an unlimited fine.

Where a licence holder, or person who has agreed to be bound by the licence, then breaches a condition of a licence without a reasonable excuse they will be guilty of an offence and may be fined under the Civil Penalty scheme under the Housing Act 2004.

A person commits an offence if s/he knowingly supplies any information in respect of Part 3 licensing, to the Council or another person which is false or misleading or is reckless as to whether it is false or misleading. On summary conviction, a person found guilty of such an offence may receive an unlimited fine.

Unlicensed Properties

It is an offence for a landlord to rent a property in a designated area without applying for a discretionary Licence. The Council will investigate and take enforcement action if/or when necessary, and this will be carried out in accordance with this Policy and the C Enforcement Concordat. The Council may take action under the Civil Penalties scheme for such offences or take proceedings in the relevant Court.

After promotion of the scheme, it is expected landlords will make an application for a licence in a timely manner. Where applications are not made or where properties are found to be unlicensed mid scheme, the Council will investigate those properties which there is reason to believe should be licensed but are not and will be charge a late application fee – See Fees and Charges.

An unannounced property inspection that may include the Police/Immigration/Fire may be undertaken to all properties where no licence application is received to determine the standard and use of accommodation. The Council views the offence of failing to ensure that a rented home was licensed under its discretionary licensing schemes as a significant issue, meaning that the tenants and wider community are not protected by the additional regulatory controls afforded by licensing. It may also affect any decision regarding existing or future licenses both in South Wigston and within other local authorities.

Other actions may be taken if concerns about the property are revealed during an investigation, e.g. a safety inspection under part 1 of the Housing Act 2004, to deal with category 1 or 2 hazards that have been identified during the inspection. Action may also be taken against the tenant in relation to anti-social behaviour or refuse concerns.

Currently the Council charges where it has to serve statutory notices under this legislation such as improvement notices, or prohibition orders (see fees and charges for details). Any such action may impact on decisions regarding suitability to hold a licence in the future.

Unlicensed properties may result in one or more of the following:

- A caution
- The application of a civil penalty charge as an alternative to prosecution.
- A prosecution against the landlord/agent being considered.

Following any action for an unlicensed property the property the landlord will be required to apply for a licence for the term of the scheme. The enforcement action may result in the premises being managed by a managing agent due to the landlord not being a “fit and proper person”.

The following will be taken into consideration in determining which method of action to undertake:

- There must be sufficient evidence to give a realistic prospect of conviction.
- Is this the first time this landlords property has been uncovered as operating without a licence or are their previous similar offences.
- How long has the potential offence been committed for. Have there been complaints in relation to the property/landlord that have impacted on the tenants or local community.
- Is the landlord new to the area, an existing licence holder, known to the Landlord Licensing Team and for what reason, their history of compliance, willingness to comply.
- Is there evidence of intentional non-compliance, neglect, recklessness or ignorance.
- Does the owner/landlord have a reasonable excuse for failing to apply?
- Is it in the public interest to pursue a prosecution?
- Landlord/owner confidence, experience, training.
- What would be the outcome/impact of a prosecution versus a civil penalty/caution (this is not an exhaustive list).

Failure to Comply with and Provide Information to Confirm Licence Condition Compliance

All Licence Holders renting out properties within the designated licensing area are expected to comply with the conditions of their licence under part 3 of the Housing Act 2004. Any licence holder, found to be in breach of their licence will be investigated by the Landlord Licensing Team.

There are many different examples that could be deemed as a licence holder breaching the terms of their licence which may include but is not limited to:

- Failing to carry out repairs to property, as instructed by the Local Authority (this breach may result in the serving of an improvement notice under part 1 of the Housing Act)
- Failure to provide requested information e.g., valid gas safety certificate and a satisfactory electrical installation condition report with the annual review or at any other time when requested.
- Failing (when requested by the Council) to provide other information on request such as copies of tenancy agreements or evidence of reference checks for new tenant’s or proof of correspondence regarding issues of anti-social behaviour.

The Council will work to support licence holders who breach their licence for minor offences, they will provide support, education and guidance to help them comply with the licence conditions. However, the Council will consider revoking a licence where a licence holder is found to be in breach of their licence on more than one occasion.

Any licence holder who fails to comply with the terms of their licence could experience difficulties in securing future landlord licenses both in Leicester City and with other Local Authorities. It is a criminal offence to breach the conditions of a discretionary licence.

Every effort will be made by the Council to prevent a licence holder from breaching any of the conditions of their licence. However, it is the licence holder's responsibility to ensure the property is being managed effectively and in accordance with the licence. Consideration will be given to a formal prosecution and/or the issue of a civil penalty charge for repeated breaches of licence conditions.

If the requested information is not received and/or the Council suspect that an offence has been committed the licence holder or landlord/agent will be invited to attend a formal interview under caution under the Police and Criminal Evidence Act 1984 (PACE). PACE interviews are conducted under caution and are recorded, suspects have the opportunity to have legal representation present. The record of interview is admissible as evidence in any subsequent prosecution. Copies of the recorded interview may be provided to the suspect at the end of the interview or as soon as reasonably practicable afterwards. The Council will use the information provided by suspects in the PACE interview to help consider if further action is required, and what the course of action might be.

Simple Cautions

Under certain circumstances, a Simple Caution may be used as an alternative to prosecution and will usually be considered before making a decision to prosecute. A caution is a serious matter. It may be used to influence any decision whether or not to prosecute should the individual, organisation or business offend again, and it may be referred to in any subsequent court proceedings. Simple cautions remain on record for a period of 3 years.

If a Simple Caution is offered but not accepted the Council may take the case to Court for prosecution

Cautions are intended to:

- Deal quickly and simply with certain, less serious offences.
- Avoid unnecessary appearance in criminal courts.
- Reduce the chance of offenders re-offending.

Before issuing a caution, the following matters will be taken into account when deciding whether a caution is appropriate:

- There must be sufficient evidence to give a realistic prospect of conviction.
- The offender must understand the significance of the formal caution and admit the offence by signing a declaration.
- The seriousness of the offence, as a caution is not suitable for serious offences.

Decisions to issue a caution will be notified to all known interested bodies, including tenants, managers, freeholders, leaseholders and mortgagees. Where an individual chooses not to accept a simple caution the Council will consider other options such as a civil penalty or a prosecution. Simple Cautions are viewed as valuable enforcement tools because they can be cited in court if the same

person or organisation, within three years of the original offence, commits similar offences and typically saves officer time and reduces the burden placed upon the court system.

Prosecution

The Council will use discretion in deciding whether to bring a prosecution and generally will only commence proceedings when it is considered to be in the public interest. The decision to prosecute lies with the Service Manager.

Before deciding to prosecute there must be sufficient evidence for a realistic prospect of conviction, taking into account any defence that may be available. In certain circumstances, prosecution without prior warning may take place.

The decision to prosecute will always take into account the criteria laid down in the Code for Crown Prosecutors issued by the Crown Prosecution Service i.e., the Evidential Test and the Public Interest Test.

Each case that we deal with is unique and must be considered on its own facts. In deciding whether to issue a Simple Caution or proceed with a prosecution, the initial decision will be made by the enforcement officer in consultation with the line manager. Having collected and collated evidence, officers will produce a case file and forward this to the manager to review prior to it being forwarded to the Head of Law and Democracy to consider and review the merit of the proposed action.

Civil Penalties

As an alternative to prosecution a civil penalty can be issued for the offences committed under Part 3 of the Housing Act 2004 (section 95). The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016 and came into force on 6 April 2016.

In the first instance, local authorities must have sufficient evidence to initiate a prosecution, but the liable person can be issued with a civil penalty of up to £30,000 per offence as an alternative to prosecution. The liable person has a right to appeal to the First-Tier Tribunal (Residential Property Tribunal) following the issue of a Civil Penalty. Any enforcement action will be taken in accordance with this Enforcement Policy and each case will be judged on its own merit. Please refer to the Private Sector Housing Team - Housing and Planning Act Policy and Financial Penalty Guidance for more information

Other Sanctions available to the Local Authority

In addition to the above, there are other enforcement options and sanctions which the Council have at their disposal, including but not limited to:

The Housing Health and Safety Rating System (HHSRS)

HHSRS is the statutory approach to the evaluation of potential risks to health and safety from any deficiencies identified in dwellings. The underlying principle of the HHSRS is that any residential premises should provide a safe and healthy environment for any potential occupier or visitor.

For the purposes of the HHSRS, it must be pointed out that the assessment is solely about the risks to health and safety. The feasibility, cost or extent of any remedial action is irrelevant to the assessment. For example, some deficiencies, such as a broken stair tread or a leaking pipe, may be quickly, easily and cheaply remedied, but while such deficiencies are present, the threat to health or safety can be considerable.

The Council has a duty under the Act, to take action if a Category 1 hazard is discovered in a property, and a discretionary power to take action to deal with a Category 2 hazard.

The first step will be to approach the landlord (or agent) informally, however the amount of leeway allowed to a landlord (or agent) informally will be at the officer's discretion. The officer will have regard to the requirements of the Regulators' Compliance Code and the Enforcement Concordat, whichever one is applicable.

If the landlord does not respond within a reasonable time, formal action is likely, which may include any of the following:

- Service of an Improvement Notice (requires that the hazard is removed within a set time)
- Make a Prohibition Order (prohibits the use of all or part of the dwelling)
- Service of a Hazard Awareness Notice (for minor hazards, the notice simply advises and does not carry any formal sanctions)
- Taking Emergency Remedial Action or making an Emergency Prohibition Order (if a category 1 hazard exists and is so serious that it represents an 'imminent risk of serious harm' to the occupants. Such a notice allows the Council to enter the premises and take urgent action to deal with the hazard. The Council can charge owners for the costs of this work, but the owners have a right of appeal against the notice and the costs involved).
- Make a Demolition Order.
- Declare a Clearance Area.

Even without using emergency powers, the Council can, with or without the agreement of the owner, carry out the works required in a notice and charge accordingly. Alternatively, the owners can be prosecuted or issued with a civil penalty charge for failing to comply with an Improvement Notice or Prohibition Order.

The Act also gives the Council the power to charge to recover the costs of any enforcement action: any such charge must be reasonable and only covers the Council's actual costs.

In addition, the Council can and will levy a notice service charge in respect of each relevant statutory notice it serves, even if such a notice is later revoked or not acted upon by the Council the notice charge will remain.

Statutory Notices

A wide range of legislation contains provisions for the use of statutory notices, which legally require the execution of works, the removal of statutory nuisances or the protection of public health and/or safety. Only officers specifically authorised are permitted to serve statutory notices. All notices contain detailed notes that explain the effect of the notice and the recipient's right of appeal.

The Council will always be willing to discuss the works specified in the notice, as well as timescales given and the reason for the service of the notice. In emergency circumstances the Council is authorised to carry out works without the service of a notice; normally when this would cause an undue delay.

In other situations, there is a presumption that notices will be served if the criteria set down in the legislation are met. However, this presumption can be rebutted depending on the circumstances of the case. As cases vary so much it is difficult to be prescriptive about when notices will not be served.

Each case is looked at individually and the following factors taken into account:

- informal action has not achieved the desired effect.
- there is a lack of confidence that the individual/company will respond to an informal approach.

- there is a history of non-compliance with informal action.
- standards are generally poor with little management awareness of statutory requirements.
- the consequences of non-compliance could be potentially serious to the health and safety of the public.

If the recipient fails to comply with the notice, the Council has various sanctions it can impose including; carrying works in default, prosecution, caution or the use of emergency powers. Statutory notices may also be served in conjunction with prosecutions.

Having regard to statutory powers, and where the law allows, a charge will apply when issuing a statutory notice. All charges will be levied on the person upon whom the notice is served and will be made at a level fixed within the Council's agreed fees and charges policy having regard to a written record assessing costs reasonably incurred. In all cases the Council will instigate debt recovery action.

Where a notice is not complied with by the expiry date, a prosecution or the issue of a civil penalty charge maybe considered appropriate. In these circumstances a report, in accordance with the Constitution, will be made to decide what further enforcement action is appropriate.

Works in Default

In some circumstances, failure to comply with a notice may result in the Council arranging for the necessary works to be carried out (works in default). The cost to the owner will usually be more than if the owner carried out the works themselves as they will be charged for officer time on visits, carrying out schedules of work and any other reasonable costs incurred by the local authority.

In determining whether carrying out works in default is the most appropriate course of action, we will consider the following:

- The effects of not carrying out the work on the health and safety of the residents concerned.
- The reason for the work not being carried out in the first place
- Whether the benefits of doing the works justify the costs and pose the minimum burden to achieve the objective.

It should be noted that carrying out works in default does not necessarily exclude the Council from either issuing a formal caution or prosecuting the offender. The Council are legally entitled to ensure that the work is carried out and will also consider if it is appropriate to take further action.

The Council will actively pursue debts incurred. Enforced sale of empty properties will be considered where appropriate in line with The Law of Property Act 1925 where a debt has been incurred for example following works undertaken to an empty home in the owner's default. Until the debt is cleared it will remain registered on the local Land Charges Register as a financial charge. Once it is registered the charge will accrue interest.

Rent Repayment Orders

Rent repayment orders (RROs) are a mechanism under the Housing Act 2004 by which rent or Housing Benefit can be recovered from landlords found to be renting a property without a licence where one is needed.

The Council can also apply to the First Tier Tribunal – Residential Property Tribunal to recover Housing Benefit paid in respect of a property during any period when it ought to have been licensed

but was not. The maximum that an authority may claim is twelve months Housing Benefit, during any period that a dwelling was not licensed.

In addition, an occupier (or former occupier) may also be able to apply for a rent repayment order in respect of rent paid (less any Housing Benefit). To make an application for a rent repayment order, a tenant needs to submit a claim to the First Tier Tribunal which sets out the reasons for the claim and the dates to which it relates and includes:

The offence must relate to housing that was occupied by the tenant at the time of the offence; and the application for a rent repayment order must be made within 12 months of the date that the offence was committed.

Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences, described below:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition Order (section 32 of the Housing Act 2004)
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016
- Using violence to secure entry to a property (section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (section 1 of the Protection from Eviction Act 1977)
- Failure to obtain a licence (section 85 of the Housing Act 2004)

A rent repayment order can also be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty. The Council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

Restrictions on Terminating Tenancies under Section 21 of the Housing Act 1988:

Discretionary Licensing requirements can restrict the termination of assured shorthold tenancies. Under Section 21 of the Housing Act 1988, a landlord may serve a notice (known as a Section 21 notice) on an assured shorthold tenant, giving two months' minimum notice that the landlord intends to apply for possession. Provided that the statutory requirements are met, a court must make an order granting possession to the landlord. No element of tenant default is required. However, a landlord may not give a Section 21 notice to a tenant of a property that is required to be licensed under a Discretionary Licensing Scheme, but that is not so licensed.

Interim and Final Management Orders

Where a licence has not been obtained, or where the licence conditions have not been complied with, the Council may, apply to take over the management of the property for an appropriate period of time, or use a managing agent. This provision is detailed under Part 4 of the Housing Act 2004.

Interim Management Orders (IMO)

An interim management order is made for the purpose of securing any action that the Council considers necessary, to protect the health, safety and welfare of the occupants. There are specific circumstances when the Council will have a statutory duty to make an IMO on a licensable property (under Part 2 or Part 3 of the Act) including:

Where a property that should be licensed but is not so licensed, and there is no reasonable prospect of it becoming licensed in the near future.

When a property that should be licensed but is not so licensed, and there are serious health, safety or welfare concerns that cannot be dealt with adequately by using the statutory powers available under Part 1 of the Act (e.g. Improvement Notices);

When the Council have revoked the licence from a licensable property and there will be no reasonable prospect of it becoming licensed again in the near future.

When the Council have revoked the licence; on a property and there will be (on the revocation date), serious health, safety or welfare concerns that cannot be dealt with adequately by using the statutory powers available under Part 1 of the Act (e.g., Improvement Notices).

Interim management orders are in place for a maximum of one year.

Final Management Orders (FMO)

Final management orders (FMOs) are orders which may only be made after the making of an IMO. FMOs are similar to IMOs but provide for a longer-term solution and can be in place for up to five years. An FMO must include a "management scheme" that sets out how the Council would manage the property while the FMO is in place. A management scheme must be in two parts, including:

Part 1 of the scheme must contain a plan giving details of the way in which the Council proposes to manage the house.

Part 2 must describe, in general terms, how the Council intends to address the matters which caused them to make the FMO. Under an FMO, the Council has the power to issue assured shorthold tenancies without obtaining permission from the landlord.

Any costs incurred by the Council during the course of the management orders (IMO or FMO) will be recovered by the Council from the rental income. The Council may also decide to use the property to meet its own housing need and will follow its own allocations policy to re-let the property. The Council will assume full managerial responsibility for the property

Mandatory Duty to make a Final Management Order

If the Council has made an IMO in respect of a property that is required to be licensed under Parts 2 or 3 of the Act (HMO and Selective Licensing) and it is of the opinion that on the expiry of the IMO there would be no prospect of it being able to grant a licence, it must make an FMO to replace the IMO prior to its expiry.

If the reasons for the service of the management orders remain e.g., not a fit and proper landlord the Council would be obliged to make a further FMO.

Discretionary Power to make a Final Management Order

If the Council has made an IMO in respect of a property that is not required to be licensed under Parts 2 or 3 of the Act (HMO and selective licensing), but it is of the opinion that there is a longer term need to protect the health, safety and welfare of residents and neighbours, it may make an FMO to replace the IMO prior to its expiry.

If the reasons for the service of the management Orders remain e.g., not a fit and proper landlord and the above conditions were to apply again prior to the expiry of the first FMO, the Council would be obliged to make a further FMO.

Anti-Social Behavioural (ASB)

Anti-social behaviour is defined as acting in a way that is capable of causing nuisance or annoyance to anyone. There are many issues which can affect a person within their own homes and can be categorised as anti-social behaviour including, but not exclusively:

- Loud noise from neighbours
- Harassing behaviour such as verbal abuse or threats
- Vandalism, property damage and graffiti
- Fly-tipping, dumping rubbish and abandoned cars
- Animal nuisance including persistent dog barking and dog faeces

Anti-Social Behaviour Powers

The Anti-Social Crime and Policing Act 2014 provides for a absolute ground for possession by private landlords where a tenant or member of their household or visitor has met one of the following conditions:

- Is convicted of a serious criminal offence
- Is found by a court to have breached an Injunction to Prevent Nuisance or Annoyance (IPNA)
- Is convicted of breach of a Community Behaviour Order (CBO)
- Is convicted for breach of a Noise Abatement Notice
- Tenants property closed under a Closure Order

If a landlord applies to the court after serving the relevant notice then the court **MUST** grant possession provided the correct procedures have been followed. The courts discretion to suspend possession is restricted to 14 days or 6 weeks in exceptional circumstances.

Partnership Working to Tackle ASB

The Council's Landlord Licensing Team will take a lead role in improving partnership working by providing education and support for landlords in the management of tenants who cause anti-social behaviour. The Council will work in partnership with other agencies as well as the Police to tackle issues of ASB including supporting landlords through the eviction process should it become necessary to seek possession.

If a landlord suspects criminal activity, s/he will immediately notify the appropriate authorities, including the anti-social behaviour officer or the police. The landlord must also participate in any case conferences or multi agency meetings that take place to address ASB associated with their property as detailed in the licence conditions.

Powers of Entry

The Discretionary Licensing Scheme under the Housing Act 2004 gives authorised officers, on production of their authority, the power to enter premises at any reasonable time. These far-reaching powers of entry allow access to ascertain whether or not a statutory nuisance exists; or for the purpose of taking any action, or executing any work, authorised or required by law. This may include inspections or the taking of samples, photographs, and recordings.

Notice of entry is not required to be given in cases where the Council consider that the premises are unlicensed and should be licensed, or where there is a suspected breach of licensing conditions.

If entry is obstructed or refused the Housing Act 2004 allows the Council to obtain a warrant from a magistrates court. A warrant permits entry at any time (by force if needed) in order to ascertain whether there is a contravention of the relevant act or to carry out remedial action.

17.0 Fee Payments

Fees will be required at the point of application. On issuing of the Licence an invoice will be raised which is required to be paid within 30 days for the enforcement element of the Discretionary Licensing fee.

Non-successful applicants **will not** be refunded the application fee. They will be advised the reasons for refusal.

18.0 Revocation of a Licence

A licence can be varied or revoked by the Council.

The Council can revoke an application on its own initiative, on further application from the licence holder or their legal representative e.g. “any person who has an estate or interest in the house or part of it (but is not a tenant under a lease with an unexpired term of 3 years or less), or any other person who (but for the order) would be a person managing or having control of the house or part of” where an application to do so is made by the licence holder or their legal representative, or where the Council consider that:

- The licence holder has seriously breached a condition of the licence, or repeatedly breached a condition of the licence or is no longer a fit and proper person.
- The management of the house is being carried on by someone who is not a fit and proper person.
- The property ceases to be one that requires a licence.
- The property is granted a licence as an HMO (under part two of the Housing Act 2004).

Incomplete licence applications

Where an application is missing information that is required as part of the application process, one opportunity will be offered to supply the correct information (administration charge payable).

Where information is still not supplied as required to comply with the requirements of an application the application will be returned. The applicant will be deemed to have not made a valid application and may be at risk of further investigation for failing to licence the property.

This policy will be reviewed on an annual basis to maintain accuracy, in order to secure the level of service given to the public