



Mid Devon District Council

HOUSES IN MULTIPLE OCCUPATION POLICY

Environmental Services
October 2013

Foreword

This document sets out the Council's statement of policy for the licensing of houses in multiple (HMO) occupation in the District with regard to meeting the requirements of the Housing Act 2004 and how the Council intends to deal with discretionary powers under the Act

The policy supports the Council's strategic direction with regard to housing services to:

- ◆ meet affordable housing needs
- ◆ meet the needs of the homeless
- ◆ improve private sector stock condition

If you have any comments to make, or have any questions or queries about this document please:

Write to us or call us at:-

Environmental Services,
Mid Devon District Council,
Phoenix House,
Phoenix Lane,
Devon EX16 6PP

Phone: 01884 244609

Email: ehadmin@middevon.gov.uk or

Check out our website www.middevon.gov.uk

Mid Devon District Council is committed to reflecting the full diversity of the community it serves, and to promoting equality of opportunity for everyone. This document can be made available in large print, Braille, tape format, or in any other language on request.

Overview.....	3
Statement of Licensing of Houses in Multiple Occupation Policy	
1. Introduction.....	5
2 Policy Objectives	5
3 Policy considerations.....	6
4. Consultation	6
5. Suitability for Occupation.....	6
6. Licensing conditions.....	7
7. Inspection Policy.....	8
8. Enforcement.....	8
9. Existing Registration Scheme	9
10. Additional Licensing Schemes	9
11. Licence fees and charges.....	9
12. Further development.....	10
Glossary.....	11

Overview

There is a shortage of affordable private rented housing in Mid Devon and house prices are such that few people can afford to become owner-occupiers.

The Mid Devon District Council Private Sector Stock Condition Survey in 2004 identified that 13% (3587) of all households rent from private landlords, with 12% (300) of these privately rented dwellings classified as unfit, three times more than in the owner occupied sector.

The survey also suggested that 34% (9529) of all dwellings in the District failed the decent homes standard but 56% (2008) of private rented homes failed the standard predominantly due to lack of thermal comfort. The Government has set a target for 70% of private sector homes, occupied by vulnerable people, to meet the Decent Homes Standard by 2010.

From April 2006 the owners of certain types of HMOs must apply to the Council to have the property licensed. Many HMOs in Mid Devon will not fall into this higher risk category. These include some houses containing self-contained flats and smaller HMOs. However, all HMOs, other than converted blocks of flats, must still be managed in accordance with the Management of Houses in Multiple Occupation (England) Regulations 2006 and need to be free of all Category 1 hazards under the Housing Health and Safety Rating System (HHSRS) which applies to all dwellings irrespective of whether they are an HMO.

Currently all three-storey HMOs in the District are required to register with the Council and to comply with the requirements of the Management Regulations. This scheme will continue in parallel with the new mandatory licensing regime for a transitional period of three years at which time the situation will be reviewed with the option of introducing a further additional licensing scheme.

Up to March 2006 107 HMOs have been identified in the District of which it is anticipated that a maximum of 20 will need to be licensed.

This policy provides information and guidance to landlords and tenants of houses in multiple occupation on the general approach that the Council will take in terms of licensing of HMOs in the District. Although each HMO will be considered individually on its own merits, the Council in adopting this policy is indicating that wider considerations than the requirements of the Housing Act 2004 may be taken into account in making an appropriate determination.

In accordance with statutory procedures, a review of this policy will take place periodically to take into account information collated over a period of time, coupled with the outcomes of initiatives relating to HMOs at central and local government level. The Council will continue to review the housing conditions in the area with a view to identifying any action that may need to be taken.

In the preparation and publication of this policy Mid Devon District Council as the housing authority has had regard to any guidance issued by the Office of the Deputy Prime Minister (ODPM). (Superseded by The Department for Communities and Local Government (DCLG)

Nothing in this policy document should be regarded or interpreted as an indication that any requirement of licensing or other law may be overridden.

Mid Devon District Council (The Housing Authority)

Statement of Licensing of Houses in Multiple Occupation Policy

1. Introduction

1.1 This Statement of Licensing of Houses in Multiple Occupation (HMO) Policy is based upon the Housing Act 2004 ("the Act") and Regulations there under which came into force on the 6th April 2006

1.2 The policy relates to all those activities with regard to houses in multiple occupation identified as falling within the provisions of the Act.

1.3 The Housing Act 2004 radically overhauls the way local authorities regulate standards in private rented housing. It introduces a new rating system, the Housing Health and Safety Rating System (HHSRS), to identify major housing health and safety hazards and places a duty on the Council to deal with a certain category of hazards.

1.4 The term HMO applies to a wide range of housing types, mainly in the private rented sector, usually occupied by young lower-income single people, including some particularly vulnerable and disadvantaged groups. Environmental standards in certain HMOs can be poor.

1.5 The Act introduces a mandatory licensing scheme for HMOs of a description contained in Regulations. It is intended initially to apply this only to the larger higher risk HMOs of 3 or more storeys occupied by 5 or more people in more than one household. The changes came into force on 6TH April 2006 with a three month transition period for compliance. Licences will be issued for a period of five years.

1.6 The Council has the power to extend additional licensing in the District to other categories of HMO, subject to carrying out consultation and with the approval of the Secretary of State.

1.7 An existing HMO which is subject to mandatory licensing, or an additional licensing scheme, will need to obtain a licence from the Council to continue operating the property. There is no identifiable need or intention to use the additional provisions in Mid Devon at the moment.

2 Policy Objectives

2.1 The Council aims to maximise the availability of private rented accommodation and to ensure that that they are of a decent standard and to protect the health and safety of tenants.

2.2 The aim of HMO licensing is to improve housing conditions for vulnerable households and ensure the highest risk properties in the private rental market meet the legal standards and are properly managed.

2.3 In determining a licence application the overriding principle adopted by

the Council will be that each application will be determined on its merits. Mandatory conditions apply to all licenses but discretionary conditions will be tailored to the individual application and only those necessary will be applied. Conditions will not be imposed where other regulatory regimes provide sufficient protection.

3 Policy considerations

3.1 When making decisions, the Council will apply and have regard to the Council's Enforcement Policy.

4. Consultation

4.1 Before determining this policy statement Officers have consulted with the landlords association and proper weight was given to the views of all consulted prior to this policy statement taking effect.

4.2 The policy statement will remain in existence for a maximum period of 5 years and will then be subject to review and consultation.

5.Suitability for Occupation

5.1 A licence must be granted providing the HMO is suitable for occupation by the number of occupiers, that the licence holder is a fit and proper person and that the proposed management arrangements are satisfactory.

5.2 The Act provides for statutory criteria to determine suitability but also allows discretion for Council's to apply criteria when making an assessment.

5.3 Overcrowding and Space Standards

The Council will determine the number of people an HMO is licensed for, in accordance with compliance with the relevant HMO Regulations and Codes of Practice.

5.4 Fit and Proper Person

5.4.1 Before granting a HMO Licence the Council must be satisfied that the licence holder, manager and any other person involved in managing the HMO are fit and proper. Apart from meeting statutory requirements, in any assessment the Council may also take into consideration whether the applicant has:

- ◆ been refused an HMO licence or been convicted of breaching the conditions of a licence
- ◆ been in control of a property where work in default was carried out by a local authority and the debt is outstanding
- ◆ been convicted of Housing Benefit fraud or subject to legal proceedings by a local authority for breaches of planning, compulsory purchase, environmental protection legislation or other relevant legislation;
- ◆ any outstanding debt with the Council in relation to Housing Services
- ◆ unsuitable management arrangements (e.g. long distance)

- ◆ not been deemed fit and proper by another Local Authority
or
- ◆ not been compliant with the Tenancy Deposit scheme (new national scheme).

5.4.2 Assessment of fit and proper person

In deciding whether a potential licensee or manager of a HMO is a fit and proper person the council will consider the self declaration on the application form, its own records and if appropriate the records of other local authorities.

If there is evidence of a contravention which needs confirmation or where the applicant has been evasive or untruthful the council may require a Basic Disclosure (obtained from Disclosure Scotland).

[Note: This requirement does not apply to applications which are being passported from the existing Registration Scheme.]

6.Licensing conditions

6.1 Licensing relates to the control and management of premises within the terms of the Act and any conditions which may be attached to licences will focus on matters falling within the control of individual licensees.

6.2 Mandatory conditions:

An HMO licence will specify the maximum number of occupants who may occupy an HMO. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities. It will also include conditions requiring the licence holder to:

- ◆ to produce gas safety certificates annually
- ◆ to keep electrical appliances and furniture safe and supply, on demand to the local authority, a declaration to that effect
- ◆ to ensure that smoke alarms are installed and to keep them in proper working order
- ◆ a declaration as to the condition and positioning of such alarms
- ◆ to supply the occupier with a written statement of the terms on which they occupy the property

6.3 Discretionary conditions:

In addition to the mandatory licensing conditions, the Council may apply other conditions where it is appropriate to regulate the management, use and occupation, condition or contents of the property and such conditions may include.

- ◆ restrictions on the use or occupation of part of the property
- ◆ steps to be taken to comply with HMO suitability standards and time limits for compliance
- ◆ requirement to attend training courses on codes of practice

- ◆ owners or managers must provide copies of up to date reports of fire detection, alarm system and emergency lighting to the Council annually
- ◆ requirement to keep records of the frequency and testing of the fire alarm system
- ◆ a requirement for regular maintenance of the property and facilities the name, address and telephone number of licensee or manager is to be displayed in the common parts of the HMO
- ◆ a copy of a valid gas safety certificate must be displayed in the common parts
- ◆ a copy of the licence must be displayed in the common parts
- ◆ that tenancy agreements must set out how owners or managers intend to deal with anti social behaviour from tenants or visitors
- ◆ that any anti-social behaviour arising in the HMO is dealt with under the terms of the tenancy agreement.

7. Inspection Policy

7.1 Officers will not always visit HMOs when an application is received, but they must inspect the property at least once within five years of the application to assess the property under the Housing Health and Safety Rating System. Each application will be risk assessed on receipt and high risk HMOs and properties not previously known to the Council will be visited as priority.

7.2 Inspections will be carried out with regard to licensing requirements. If additional licence conditions are required after an inspection of an HMO, the licence will be varied to include such conditions.

7.3 The Council will use its database of HMO's to develop a program of inspections of all known HMO's (107) and undertake detailed surveys over the next 5 years to ensure compliance with the Housing Act 2004. The program will take into consideration the known risk of the premises with the higher risk premises surveyed initially.

8. Enforcement

8.1 The Council is committed to carrying out its duties in a fair and consistent manner. It will follow the Council's Enforcement Concordat and Private Sector Housing Enforcement Policy

8.2 The approach to enforcement and standards will be based on risk assessment and standards will be proportionate, flexible and relevant.

8.3 The Council believes that enforcement alone is unlikely to have much effect on improving standards. Our ethos is to work in partnership with landlords, giving advice and assistance through financial aid where appropriate.

8.4 There is no longer a legal requirement for a prior warning notice to be served but the Council will ensure that the landlord and tenants have the opportunity to discuss any Council proposed action before a notice is served. However, where it is found to be necessary to serve formal notices under the Housing Act 2004 the Council may charge the

recipient of the notice in order to recover its reasonable costs incurred in serving the notice.

8.5 The Council will encourage owners to apply for licensing through advice and persuasion, but where they fail to apply as a result of such informal action we will take legal proceedings with a view to prosecution in the magistrates court. Similarly any breach of conditions will initially be dealt with informally, but if the breach continues legal proceedings may be pursued

9. Existing Registration Scheme

9.1 The Council already operates a Registration scheme under current housing legislation for all categories of HMO. For the purposes of this policy the Council have adopted the Chartered Institute of Environmental Health (CIEH) categorisation of HMOs.

9.2 The Registration scheme will continue as a transitional licensing scheme in parallel with the mandatory licensing regime and will last for a maximum of three years. At the end of that period the Council will review the situation to establish whether there is a need to continue with an additional licensing scheme.

9.3 Where an HMO is currently registered with the Council but is also subject to mandatory licensing it must be passported into licensing. A licence will be granted for the residual period of registration and at no cost to the licence holder.

10. Additional Licensing Schemes

10.1 The Council can make an additional licensing scheme that may apply to HMOs (other than those that are exempt from definition as an HMO or subject to mandatory licensing) in its area, or any part of it.

10.2 The additional licensing scheme may apply to such categories of HMOs as the Council considers appropriate. Before making such a scheme the Council must, among other things, consult on the proposed additional licensing scheme with those persons who are likely to be affected by it, including landlords, tenants and local recognised resident associations, and consider their representations.

10.3 Currently the Council does not intend to apply for additional discretionary powers to extend the licensing of all HMOs in a specific area where HMOs are so badly managed as to give rise to particular problems from tenants or members of the public, such as anti social behaviour. Such powers are not necessary in the District as there are no areas where several HMOs are linked to anti-social behaviour.

10.4 Similarly the Council does not intend to apply for new powers to introduce selective licensing for private sector housing (including non HMOs) in designated areas. This power is to enable Councils to license properties in an area where there is low housing demand or anti-social behaviour. These additional powers are not necessary as there are no areas of low housing demand in the District and no problems with anti social behaviour associated with particular types or

areas of housing.

11.Licence fees and charges

11.1 There is no nationally prescribed fee but Councils are advised that licensing must be self financing and the fee will be set in accordance with government guidelines which prescribe that the fees should cover the cost of processing applications, preparing and issuing licences only.

11.2 Members have already agreed that a fee £530 will be chargeable for a licence, which will be reduced to £450 if payment is made within two months of the of commencement of the Act and guidance. The fee will be renewable every 5 years.

11.3 Where applications are incorrect or incomplete, for instance due to relevant documents not being provided, and without reasonable excuse the Council may apply a charge to the applicant to cover any additional administrative costs.

11.4 Transitional arrangements apply to any HMO subject to mandatory licensing and currently in Mid Devon's HMO Registration scheme. In accordance with these arrangements properties will be passported into licensing with no fee being levied until the current registration period has elapsed

11.5 Licence fees and charges will be under constant scrutiny to ensure cost recovery

12 Further development

12.1 This policy is subject to consultation and further guidance from central Government and will be revised and reviewed as appropriate. It is linked to our private sector housing enforcement policy, our landlord grant policy and our private sector housing renewal policy

Glossary

Houses in multiple occupation	11
Definition.....	11
Exemptions.....	12
Declarations.....	12
Bed and Breakfast Hotels.....	12
Mandatory licensing.....	12
Suitability for occupation	13
A licence must be granted if the Council is satisfied that:.....	13
Management arrangements.....	13
Fit and Proper Person.....	13
Variation of licences	14
Revocation/cessation of licences.....	14
Appeals	15
Housing health and safety rating system (hhsrs)	15
Temporary exemption notices	16
Rent repayment orders.....	16
Interim and final management orders	16

Houses in multiple occupation

Definition

'House in Multiple Occupation' means a building, or part of a building (e.g. a flat):

1. which is occupied by more than one household and in which more than one household shares an amenity (or the building lacks an amenity) such as a bathroom, toilet or cooking facilities; or,
2. which is occupied by more than one household and which is a converted building which does not entirely comprise self contained flats (whether or not there is also a sharing or lack of amenities); or
3. which comprises entirely of converted self contained flats and the standard of conversion does not meet, at a minimum, that required by the 1991 Building Regulation and more than one third of the flats are occupied under short tenancies.

And is 'occupied' by more than one household:

- ◆ as their only or main residence , or,
- ◆ as a refuge by persons escaping domestic violence, or,

- ◆ during term time by students, or,
- ◆ for some other purpose that is prescribed in regulations.

And the households comprise:

- ◆ families (including foster children, children being cared for) and current domestic employees,
- ◆ Single persons
- ◆ Co-habiting couples (whether or not of the opposite sex).

Exemptions

Certain types of buildings will not be HMOs and are, therefore, not subject to licensing. These include those:

- ◆ Buildings, or parts of buildings, occupied by no more than two households each of which comprise a single person (i.e. two person flat shares').
- ◆ Buildings occupied by a resident land lord with up to 2 tenants.
- ◆ Managed or owned by a public body (such as the police or the NHS) or an LHA or a Registered Social Landlord.
- ◆ Where the residential accommodation is ancillary to the principal use of the building e.g. religious establishments, conference centres etc.
- ◆ Student halls of residence, where the education establishment has signed up to an Approved Code of Practice.
- ◆ Buildings regulated otherwise than under the Act, such as care homes, bail hostels etc, and the description of which are specified in regulations.
- ◆ Buildings entirely occupied by freeholders or long leaseholders.

Declarations

Where a building, or part of a building, is partly occupied by persons as their only or main residence, but is also partly occupied otherwise than as a residence e.g. a Bed & Breakfast establishment providing accommodation for both homeless people or asylum seekers and for holidaymakers, the Council may declare the building an HMO if it is satisfied that the occupation by persons as their only or main residence is a significant use of the building, or part of the building.

Bed and Breakfast Hotels

The Council will regard bed and breakfast hotels as HMOs if they are housing any people who use the hotel as their main residence for more than 30 consecutive days. Where this accommodation is used as a main residence, the same standards as for other HMOs should be met.

Mandatory licensing

Mandatory licensing from 6th April 2006 will include HMOs (other than those that are exempt from definition as an HMO and converted blocks) which

- ◆ comprise of three storeys or more, and
- ◆ are occupied by five or more persons, and
- ◆ it is occupied by persons living in two or more single households.

Converted blocks of flats that fall within the definition of HMO (see 3.1 above) will not be subject to mandatory licensing. The Government intends that additional licensing should be available to tackle such blocks that are problematic (see 4.6 below)

In calculating three storeys, regard should be had to attic or basement accommodation used, or capable of being used, for residential purposes. It is also intended that any part of a building not used for residential purposes, such as commercial premises on the ground or upper floor of a building, will form part of the HMO for determining the number of storeys, but shall be excluded for all other purposes. Basements in purely commercial use will not be included.

Suitability for occupation

A licence must be granted if the Council is satisfied that:

- ◆ the HMO is reasonably suitable for occupation by the number of persons permitted under the licence (The Licensing (HMOs and Other Houses) Regulations 2006 Sch 2)
- ◆ the licence holder is a fit and proper person
- ◆ the proposed licence holder is the most appropriate person to hold the licence
- ◆ the proposed manager, if not the licence holder, is fit and proper and
- ◆ the proposed management arrangements are satisfactory, including that the person involved in the management of the house is competent and the funding for management is suitable.

Management arrangements

Satisfactory management arrangements under paragraph 5.1 above should include

- ◆ a system for tenants to report defects (including emergencies) and arrangements for responding
- ◆ a system of periodic inspections to identify repair or maintenance matters
- ◆ a declaration from the owner, where he is not the manager, that adequate funding will be provided to the manager to deal with repairs.

Fit and Proper Person

In assessing whether the applicant and/or any manager and/or any person associated with them or formerly associated with them are fit and proper people to own or manage an HMO the Council must have regard to:

- a) unspent convictions relating to offences including fraud, dishonesty, violence or drugs, or sexual offences

b) unspent convictions relating to unlawful discrimination including on grounds of sex, race, or disability in connection with the carrying on of any business.

c) unspent convictions relating to housing or landlord and tenant law

d) the applicant has not been refused a HMO licence, been convicted of breaching the conditions of a licence or have acted otherwise than in accordance with the approved code of practice under S197 of the Act within the last five years

e) the applicant has not been in control of a property subject to an HMO Control Order, Interim Management Order (IMO) or Final Management Order (FMO) or work in default carried out by a local authority

f) the applicant has not been subject to legal proceedings by a local authority for breaches of planning, compulsory purchase, environmental protection legislation or other relevant legislation.

Variation of licences

A licence may be varied by the Council with the agreement of the licence holder, such as where a new manager is agreed.

The Council may vary the licence without agreement if there has been change of circumstance, such as there is need to provide additional amenities, carry out works or alter the maximum number of persons permitted to occupy the property. However, in deciding whether to vary a licence the Council may not impose higher, or otherwise different, standards than applied when it originally granted the licence, except where the standards are required to meet new amenity standards prescribed by regulations.

Revocation/cessation of licences

A licence may be revoked with the agreement of the licence holder, such as when a house ceases to be an HMO. It also ends automatically after 5 years or after the period specified in the licence (if that is different).

A licence ceases to be in force on the death of a licence holder and for the first three months following the death of that person no licence is required as if a temporary exemption notice (see para 14 below) had been issued and was in force. Unless the HMO ceases to be licensable within that period or the Council grants a temporary exemption notice on the expiry of that period the HMO must be relicensed or an Interim Management Order made in respect of it.

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

- ◆ there has been a significant breach of the licence conditions;
- ◆ or the licence holder and others involved in the management of the

house are no longer fit and proper persons;
◆ or the property ceases to be an HMO that is subject to licensing;
◆ or, if the Council would not have granted a new licence for the HMO at the time it terminates the licence because of reasons relating to the structure of the HMO which render the property unsuitable for licensing on similar terms.

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

Appeals

An appeal may be made to the Residential Property Tribunal against a decision of the Council to

- ◆ Refuse to grant a licence.
- ◆ Grant a licence, including any conditions imposed.
- ◆ Vary a licence.
- ◆ Revoke a licence.
- ◆ Refuse to vary or revoke a licence.

An appeal must normally be made within 28 days of the decision being made, but if the tribunal thinks there are good reasons to do so, it may extend the period for appeal. In considering an appeal the tribunal rehears the Council decision, but is able to take account of new evidence put forward by the appellant. In its decision the tribunal may quash the Council's decision or vary or confirm it.

Housing health and safety rating system (HHSRS)

An inspection of each licensed HMO must be carried out under the Housing Health and Safety Rating System (HHSRS), which is set out in the Housing Act 2004 and replaces the current housing fitness standard. The rating system is a risk assessment of the effect of housing conditions on the health and safety of occupiers and involves the assessment of 29 potential hazards and scoring their severity to decide whether improvements are needed. If more serious category 1 hazards are found the Council has a duty to take action. If less serious category 2 hazards are found, the Council has the discretionary power to take action.

Where category 1 or 2 hazards are found informal action will be used to encourage owners to carry out works, but if this fails enforcement action will be taken in accordance with the Act and our enforcement policy.

A licence cannot be refused where the Council have identified a hazard within the property, as defined by the HHSRS, but granting the licence does not insulate the property from enforcement action under the HHSRS in the future

This new enforcement regime involves a new set of notices to deal with these HHSRS hazards including hazard awareness notices and notices requiring either improvement, prohibition of the use of the dwelling or demolition. The

notices are similar to those currently in use except that a Prohibition Notice can be served to prohibit the use of the whole or part of a dwelling or to prohibit its use by a description of persons, for example those aged under five or over 60

An Improvement Notice is likely to be the most practical remedy for most hazards. Repair or renewal is generally cost-effective because of the high value of property in Mid Devon. The Council can also serve suspended Improvement Notices which can be used in circumstances where obtaining other consents will cause delay – an example would be where planning permission is being applied for.

Temporary exemption notices

Where a landlord is, or shortly will be, taking steps to make an HMO non-licensable, the Council may serve a Temporary Exemption Notice (TEN). A TEN can only be granted for a maximum period of three months. For example, if planning permission has been obtained for the conversion of the HMO to single family occupation. A second three-month TEN can be served in exceptional circumstances. A TEN will be served where an owner of a licensable HMO states in writing that he/she is taking steps to make an HMO non-licensable and states that the HMO will not be licensable within three months.

A second temporary exemption notice will only be allowed in exceptional and unforeseen circumstances.

Rent repayment orders

Where a landlord is summarily convicted for failure to license a HMO the Council may make application to the Residential Property Tribunal (RPT) for a Rent Repayment Order (RRO).

If rents are paid through Housing Benefit, the Council will use its powers under the Act to seek RROs for repayment of twelve months' Housing Benefit or for the period since the landlord was required to license the HMO, if less. We will also provide tenants with information about how to apply for an RRO.

Interim and final management orders

Where there is no prospect of an HMO being licensed, the Act requires the Council to make an Interim Management Order. This enables the Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended as a Final Management Order to five years with the Council also having the power to grant tenancies.

Orders can only be made with the authorisation of the Residential Property Tribunal and the Council will only use these powers in exceptional circumstances.

The Council will endeavour to develop a procedure with partner Registered Social Landlords to manage such properties on behalf of the Council.