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South & East Lincolnshire Councils Partnership

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APPENDIX D

FIT AND PROPER PERSON: RELEVANT OFFENCES AND CRITERIA 2026 - 2029

HMO LICENSING POLICY

HOUSING STANDARDS

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DEFINITIONS

Where the term "Council" or "Authority" has been used, this refers to the relevant council applicable across the South & East Lincolnshire Councils Partnership (SELCP) being either; East Lindsey District Council, South Holland District Council or Boston Borough Council. This appendix has been adopted across the three and therefore aligns all standards and working practices.

"HMO" refers to the building or such part of it as is licensed under Part 2 of the Housing Act 2004.

"Licence Holder" refers to: (a) the person to whom the Authority has granted a licence; and (b) from the date of his or her consent, any other person who agrees to comply with the licence restrictions and obligations that follow.

"Fit and Proper Person" refers to Tests for Fitness as defined within Section 66 of the Housing Act 2004.

PRELIMINARIES

As part of the HMO licensing process the Council is required to ensure that the proposed licence holders and those involved in the management are fit and proper persons[1].

The test is designed to ensure that those responsible for holding the licence and managing the property are of sufficient integrity and good character to be involved in the management of an HMO and that as such, they do not pose a risk to the welfare or safety of persons occupying the property.

FIT AND PROPER PERSONS

Part 2 of the Housing Act 2004 specifies that when deciding whether to grant a licence the Council is required to look at whether the following conditions are met [2]:

- The proposed licence holder is a fit and proper person
- The proposed manager is a fit and proper person
- The proposed management arrangements are satisfactory

If the above are deemed satisfactory and the property is suitable for the proposed maximum occupation, then the licence must be granted.

Upon receipt of a valid application and payment of the relevant fee, the application will be processed and checked to determine whether:

- The proposed licence holder is a fit and proper person to be the licence holder and is, out of all the persons reasonably available to be the licence holder in respect of the property, is the most appropriate person to be the licence holder.

[1] Section 66 Housing Act 2004
[2] Section 64(3) Housing Act 2004

- The proposed manager is a fit and proper person to be the manager of the HMO and in this context the manager is, the person having control of the house, or a person who is an agent or employee of the person having control of the HMO.
- The proposed management arrangements for the HMO are satisfactory.

The person having control'[3] in this context is that as defined in the Housing Act 2004.

Prior to issuing a licence the Council must carry out such checks as deemed necessary and relevant to determine the fitness status of the person applying for a HMO licence (the licence holder), any person who is a named Manager, and any named associates of these persons.

Checks will include completion of such forms as determined by the Council to obtain information on a persons background and history of offences, and may include where necessary requiring the person to provide a Disclosure and Barring Service (DBS) check certificate.

Information gathered during this process may also be shared with other statutory bodies, such as other local authorities, or the police.

Where such checks indicate that a person is not suitable to be involved in the management of a HMO, the Council can refuse to issue a licence, or require that suitable alternative arrangements are made.

If during the period where a licence is in place the Council become aware that the licence holder, or named manager failed to disclose relevant information, or where offences are committed, the Council must reconsider the fit and proper status of such persons, and where relevant the issued licence may be revoked.

When determining "fit and proper" each case will be determined on its own merits; and each specific offence, incident or issue will be considered in terms of its relevance to the holding of a licence or to management and will take into account the date and gravity of the offence, the risk of reoccurrence and any risk to tenants.

RELEVANT OFFENCES

In determining whether a person is a fit and proper person to be a licence holder or manager of a HMO, section 66(2) of the Housing Act 2004 requires that the authority must have regard to any evidence which shows that the licence holder, manager, or any person associated or formerly associated with them has:

- committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c.42) (offences attracting notification requirements);
- practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;
- contravened any provision of the law relating to housing or of landlord and tenant law;

[3] Section 263 Housing Act 2004

- acted otherwise than in accordance with any applicable code of practice approved under section 233 (management of HMOs)

In relation to any contravention of a provision of the law relating to housing, the council will also take into account whether a proposed licence holder or manager:

- Has had a licence revoked or refused, or been convicted of breaching the conditions of a licence under parts 2 or 3 of the Housing Act 2004
- Owns or has previously owned a property for which the council has taken action as described in section 5(2) of the Housing Act 2004, which includes the service of an Improvement Notice, Prohibition Order, Emergency Prohibition Order, Hazard Awareness Notice, Demolition Order or Emergency Remedial Action.
- Is subject to a banning order under section 16 of the Housing and Planning Act 2016.
- Owns or has previously owned a property that has been the subject of an interim or final management order whilst in their ownership, or a special interim management order under the Housing Act 2004.

Consideration will also be had to whether the proposed licence holder resides within the UK, and their proximity to the licensed property. If resident outside of the UK or resident a substantial distance from the licensed property, suitable management arrangements will need to be demonstrated.

The Council may have regard to any other facts or matters which it considers to be relevant to the application.

DELEGATED AUTHORITY AND COMPETENCY OF OFFICERS

All officers involved with the enforcement of legislation covered by this appendix will be competent to perform their duties in accordance with the legislation and agreed internal procedures and will carry out continuous professional development to do so. The Council has delegated the authority to serve notices/orders under various Acts and Regulations where the Safer Communities Group Manager has in turn delegated the service of some of these directly to enforcement officers. All notices/orders will be served having regard to this delegation scheme.

Officers authorised under section 113 of the Local Government Act 1972, are able to carry out Council functions outside of their sovereign council.

GOVERNANCE AND REVIEW

The Council's Safer Communities Group Manager is authorised to make amendments to the policy to ensure the Policy remains up to date and to reflect statutory requirements in consultation with the Portfolio Holder.

Version Control			
Issue No	**Author**	**Issue date**	**Reason For Issue**

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1.0	Group Manager – Safer Communities		Full update of prevailing legislation, plus alignment of appendix to a single appendix across the South & East Lincolnshire Councils Partnership (SELCP)

Approval		
Issue	**Approval Authority**	**Approval Date**
1.0	(ELDC) (BBC) (SHDC)	

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