



Cambridge City Council

Houses in Multiple Occupation Licensing Procedure

March 2011

1. Statement
2. Fit & Proper Person
3. The following types of buildings will require a mandatory license.
4. What counts as three storeys?
5. The following types of buildings are exempted from the definition of a HMO
6. Complying with license conditions.
7. Rent Repayment Orders.
8. Management Orders.
9. HMO Register
10. Appeals
11. Temporary Exemption Notice
12. HMO declarations
13. Fees
14. Re-licensing HMO's
15. Powers of Entry
16. Landlord Training

Appendices

1. Tests for defining a HMO under Housing Act 2004
2. Schedule of mandatory conditions
3. Other legislation relating to Houses in Multiple Occupation
 - Planning permission
 - Council tax
4. Licensing enforcement procedure

1 Statement.

1.1 All Houses in Multiple Occupation (HMOs) occupied by five or more persons forming two or more households over three or more floors, and otherwise not exempted, require a license. (See Appendix 1 “The tests for defining an HMO”).

1.2 A person owning or managing an HMO, which is required to be licensed, must make a full application to the Council for that property unless a Temporary Exemption Notice (TEN) has been applied for or is in force. The Council must grant a license if it is satisfied that the proposed licensee is a fit and proper person (see paragraph 2.1 below) and that the HMO is reasonably suitable for occupation by the number of persons permitted under the license having regard at least to the minimum prescribed standards of amenities and facilities. These include the number, type and quality of shared bathrooms, toilets and cooking facilities. Following receipt of the application an enforcement officer will contact the applicant to make an appointment to inspect the property to ensure that it is reasonably suitable for occupation. This will include an assessment of the kitchens, bathrooms and fire precautions.

1.3 Once the Council is satisfied that the property is reasonably suitable for occupation by a given number of people a licence will be granted with appropriate conditions attached, tacit consent will apply until such time as the application is granted or refused. The Council aims to issue a license within 8 weeks of receipt.

1.4 Properties that are part of the Cambridge City Landlord Accreditation Scheme or landlords who join the scheme will qualify for a 50% reduction in the application fee. Any property that reaches the accreditation standard within six months from the date of receipt of completed licensing application and payment will be entitled to a 50% refund. The Accreditation Officer will advise the Licensing Manager so that the appropriate refund can be made.

1.5 A license will contain a set of conditions some of which are mandatory as required by the Housing Act 2004 and possibly some that are discretionary which will be related to the provision of documentation or the provision of works required to bring the property up to standard, that will be time related, for example the provision of an appropriate fire alarm system or attending an approved landlord training scheme.

1.6 If the Council refuses to issue a license it must tell the applicant why and include the right of appeal to the Residential Property Tribunal. The applicant can also appeal against the imposition of discretionary conditions to the Residential Property Tribunal.

1.7 Although it is the responsibility of the landlord to apply for a licence, there is an onus on the Council to ensure that applications are made. Copies of the application packs are available on request or to download from the Council website (weblink to be inserted at later date).

1.8 HMO licences are not transferable. Provisions exist to vary a license if appropriate or in the event of a licence holder's death and/ or to treat the licence as a Temporary Exemption Notice for a period of 3 months. During that three-month period, the representatives of the licence holder may request an extension of time of three months. If this is agreed then a notice to this effect will be served.

1.9. When landlords are identified who are illegally operating an HMO without a license the Council will take appropriate enforcement action.

1.10 It is an offence to operate an HMO without a licence with a maximum fine of up to £20,000 on conviction. If a person is so convicted it could mean that he will be considered unfit to hold a license or manage any HMO.

1.11. Following conviction it may be possible for occupiers/tenants to apply to the Residential Property Tribunal (RPT) for a Rent Repayment Order to be made against the convicted person for repayment of all rent paid during the period that the property was unlicensed up to a maximum of 12 months.

1.12 The Council are required to keep a public register of all HMO's, which can be viewed by appointment during office hours at Customer Service Centre Mandela House. (weblink to be inserted at later date).

2 Fit & Proper Person

2.1 Before granting an 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. In deciding whether the person is fit and proper, the Council must have regard, amongst other matters:

- to any previous convictions relating to violence, sexual offences, drugs or fraud;
- whether the proposed licence holder has contravened any laws relating to housing or landlord and tenant issues;
- whether the person has been found guilty of unlawful discrimination practices;
- whether the person has managed HMOs otherwise than in accordance with any Approved Code of Practice.

2.2 It is a matter for the Council to determine the relevance of these considerations (or other matters it considers to be relevant) in deciding whether or not the person is fit and proper. It may be a requirement of application that reference is made to the Criminal Records Bureau (CRB) in relation to the proposed licence holder. The level of disclosure the Council may require is described as 'enhanced disclosure'.

2.3 If a landlord is successfully prosecuted it is unlikely that they would be considered a fit and proper person and may not be able to hold such a license in future. Any licenses the landlord holds in respect of other licensable HMO's

would need to be reviewed in order to decide whether they should be revoked.

3 The following types of buildings will require a mandatory license.

The Council will require the following types of properties to be licensed.

- Buildings that are 3 storeys or more and occupied by 5 persons or more that comprise two or more households.
- Converted residential buildings that are more than two floors or more in multiple occupation above commercial or other separate residential premises.

The following specific points clarify the Councils approach to self contained flats and student accommodation

3.1 Buildings comprising of self contained flats.

Buildings comprising entirely of self-contained flats are not licensable under the mandatory HMO Licensing regime.

However the flats within those buildings may need a license if they are over three storeys or more.

3.2 Converted self-contained flats

The Council will require two-storey converted flats in multiple occupation above other residential or commercial ground floor premises to be licensed, where the building that are located in comprises three storeys or more.

Note: this will include purpose built two storey houses that are in multiple occupation above a separate self contained basement flat e.g. basement garden flat. The separate garden flat will not require licensing.

3.3 Educational establishments that are not otherwise exempted e.g. 6th form colleges and language schools.

Buildings that satisfy the basic criteria for licensing and are not otherwise exempted will need to be licensed where the educational establishment provides full time further or higher education e.g. 'A' levels and higher, and where none of the students are undertaking secondary education.

This will mean that a private boarding school where there is a mixture of secondary and tertiary students attending are not required to be licensed.

3.4 ANUK registered student properties managed by private providers.

The Housing Act 2004 contains an exemption within schedule 14 (4) (1) (*Buildings Occupied by Students*) that exempts certain student accommodation from mandatory HMO licensing. The buildings must be occupied by students who are undertaking a full time course of further or higher education at a specified educational establishment and where the person managing or having control of it is the specified educational establishment. Currently within the City of Cambridge only Anglia Ruskin

University and all of the Colleges within the University of Cambridge are listed in the appropriate national Regulations. (See 5.3 below)

Buildings operated as HMOs by any other providers of student accommodation will not be exempted from licensing even where they have been accepted as full members of the ANUK/Unipol Code of Standards and signed up to code of management standards. This includes private providers of student accommodation who are signed up to, The Accreditation Network UK/Unipol Code of Standards for Larger Developments for Student Accommodation Not Managed and Controlled by Educational Establishments

The Council will require any HMO and self contained flat appropriately located in a building to hold a mandatory licence

This is a change of procedure as to date the Council have exempted this type of property from licensing. National guidance has clarified that licensing is still required in this case, the appropriate discounted fee will be charged as less work is required in order to licence such properties.

3.5 Purpose built self-contained flats in multiple occupation on a single storey in a three storey or more block.

These type of purpose built cluster flats generally satisfy the 1991 Building Regulations and are located on a single floor of a purpose built block that shares a central staircase.

The Council will not require these types of cluster flat to obtain a licence.

4 What counts as three storeys?

When counting how many storeys a property has you must include:

- Any basement used or constructed/converted/adapted wholly/partly for living accommodation, if it is being used as an integral part of the HMO or it is the principal entry point from the street.
- Any attic used or constructed/converted/adapted wholly/partly for living accommodation or being used as an integral part of the HMO.
- Any other premises above or below the living accommodation however occupied.
- Any mezzanine floor used wholly/partly for living accommodation or being used as an integral part of the HMO.
- Any other storey used wholly/partly for living accommodation or being used as an integral part of the HMO

See the diagram in appendix 6 attached. What counts as a property of 3 or more storeys in height?

5.0 The following types of buildings are exempted from the definition of a HMO (see Schedule 14 of the Housing Act 2004).

5.1 Buildings controlled or managed by public sector bodies.

5.2 Any building, which is occupied by two persons who form two households.

5.3 Buildings occupied by students undertaking a full time course of further or higher education where the accommodation provider is a specified educational establishment that is also a signed up to either of the two codes of practice listed below. In Cambridge this exempts only those properties owned or managed by Anglia Ruskin University (ARU) or the Colleges in the University of Cambridge, and privately owned properties that are leased to the these providers for at least three years.

The two codes of practice that exempt these educational establishments are

- (a) The Universities UK/Standing Conference Of Principals Code of Practice for the Management of Student Housing.
- (b) The Accreditation Network UK/Unipol Code of Standards for Larger Developments for Student Accommodation Managed and Controlled by Educational Establishments and

5.4 Buildings occupied by religious communities where the building is occupied principally for the purposes of a religious community whose principal occupation is prayer, contemplation education or the relief of suffering.

5.5 Buildings occupied by owners that have up to two lodgers

6.0 Complying with license conditions.

6.1 Breaches of licence conditions will be investigated in line with current enforcement objectives and priorities.

6.2 Informal action will be taken in relation to minor breaches of the licence conditions, for example not producing certificates on time as long as the breaches have not significantly affected a person's health safety or welfare.

6.3 Formal action will be considered where there have been serious and or persistent breaches of licence conditions for example failure to install a fire alarm system with the period conditioned.

6.4 Each case will be judged on its own merits and regard will be taken of the Council's Enforcement Policy as well as the Code for Crown Prosecutors and Home Office Guidance on Simple Cautions.

7 Rent Repayment Orders.

Under section 73 of the Act a landlord or managing agent who receives housing benefit in relation of an unlicensed HMO may be ordered to repay that benefit to the Council for up to a maximum of 12 months.

8 Management Orders.

8.1 Legislation

Under Part 4 of the Act the Council has a duty to implement Interim Management Orders (IMOs) in certain circumstances. Section 102 (2) states

2) The authority must make an interim management order in respect of a house if

(a) it is an HMO or a Part 3 house which is required to be licensed under Part 2 or Part 3 (see section 61(1) or 85(1)) but is not so licensed, and

(b) they consider either—

(i) that there is no reasonable prospect of its being so licensed in the near future, or

(ii) that the health and safety condition is satisfied (see section 104).

An IMO enables the Council to take any immediate steps which may be necessary to protect the health, safety and welfare of persons occupying the property or persons having an estate or interest in any premises in the vicinity. It also enables the Council to take any further action which may be appropriate to secure the proper management of the property.

An interim management order can be for a maximum of 12 months.

8.2 Interim Management Order (IMO)

An Interim Management Order (IMO) can be made to ensure that certain steps are taken with respect to the management of a HMO, which is required to be licensed.

An IMO allows the Council to takes steps to protect the health, safety or welfare of occupiers of the house, or of neighbours or people having an interest in neighbouring properties, or any other management steps considered appropriate pending the grant of a license or issue of a final management order.

The Council will make an IMO where the property is a HMO, which is required to be licensed but is not and it is considered that there is no reasonable prospect of it being licensed in the near future, or that the health and safety condition is satisfied.

Whilst an IMO is made, the Council will collect rents and can deduct from this income any relevant expenditure and sums due in compensation to a third party. Any residual income, with interest if relevant, must then be paid to the

landlord or other recognised recipient at a frequency determined by the Council.

The Council will arrange with an approved housing management body to carry out this management function on its behalf.

An IMO may be varied if considered appropriate.

An IMO may be revoked where the house ceases to be a HMO, a licence is subsequently issued, a Final Management Order is made or where considered appropriate.

An IMO when in force is a local land charge.

Note the Council would not become liable for any mortgage payments, these would remain the responsibility of the owner even though they may be receiving no income or reduced income from the property

8.3 Final Management Order (FMO)

The Council will make a Final Management Order (FMO) to secure the long-term management of a house in accordance with a management scheme detailed in the order.

A FMO can be for a maximum duration of 5 years.

A FMO when in force is a local land charge and the Council can apply to the Chief Land Registrar for the entry of an appropriate restriction in the register in respect of the order.

If it is necessary to protect the health, safety and welfare of the occupants and neighbours on a long term basis, FMOs will be made to replace IMOs on their expiry, whether the property is required to be licensed but cannot be licensed or if it is not required to be licensed.

New FMOs will be made to replace existing ones under the same circumstances.

An FMO will contain a management scheme for the property.

When a FMO is made the Council will take appropriate steps in relation to the long term management of the property. The Council will periodically review the order and the management scheme contained in it and consider whether keeping the order in force is the best course of action.

Following the review the order may be varied or revoked, or a licence can be issued in respect of the property.

When a FMO is in place the Council have the right to:

- Take possession of the house
- Do anything, and authorise a delegated person to do, anything which a person having an interest in the house would be entitled to do.
- Create a leasehold or occupancy licence. Such tenures cannot extend beyond the period of the FMO, nor can the notice to quit or termination be more than 4 weeks.
- Create an assured shorthold tenancy as long as it starts more than 6 months before the expiry of the order.

The time elements in items 3 and 4 can be waived with the written consent of the person who would be managing the property if the order was not in force.

The Council does not acquire an interest in the house and therefore cannot sell or otherwise dispose of it.

8.4 Appeals to the Residential Property Tribunal. (RPT)

Once a management order is in force a relevant person may appeal against the making of the order or its terms must be made to the RPT normally within 28 days.

At a hearing the Tribunal will either confirm or quash the order.

9. HMO Register

The Council will maintain registers of Licences, Temporary Exemption Notices, Interim and Final Management orders. These registers will contain all the relevant information required by regulation as well as any other information we consider relevant.

The information will be stored electronically with the ability to be transcribed when required.

The information will generally be made available to the public subject to the provisions of the Data Protection Act and the Freedom of Information Act.

Personal callers will be advised of the availability of any paper versions of the relevant registers for inspection. This will be during office hours at the council building housing the offices of the department responsible for the management of the HMO licensing scheme.

10 Appeals

Applicants and licence holders have a right of appeal to the Residential Property Tribunal where they are dissatisfied with decisions made in relation to the issue of licences, HMO declarations, notices or orders (IMO/FMO) , including variations, revocations or refusals.

The Council will consult with the relevant persons at all stages of involvement to work to a satisfactory solution to the situation at hand.

Relevant persons will be made aware at all appropriate points where there is a right of appeal, and will be told of the procedure, including time limits, of lodging an appeal. This will normally take the form of notes appended to notices or orders.

The Council will give the appeal tribunal all the information and assistance they may require in order to assist them in making their decision.

Where the Council is dissatisfied with the outcome of an appeal, it may consider the implications of making an appeal to the Lands Tribunal or the Court of Appeal as appropriate.

Note: Action for IMO/FMO would be reconsidered if at any point landlords placed their property under the management and control of another suitable person or agent such that the Council considers it would place the property under suitable control and undertake suitable measures in a reasonable timescale.

11 Temporary Exemption Notice

Temporary Exemption Notices (TEN) can be issued where the manager or person having control of an unlicensed HMO (which should be licensed) notifies the Council of his intention to take the necessary steps to secure that the house is no longer required to be licensed.

A TEN will be valid for an initial period of 3 months. A second TEN for a 3 month period can be issued at the discretion of the Council under exceptional circumstances. No further TENs can be issued on expiry of the second TEN.

Where a TEN is not issued, the Council must inform the manager or person having control by way of a notice, stating the decision and why it has been made, and providing details of rights of appeal.

Where a licence holder dies the license has the effect of being a TEN until the future of the property is determined (within the same time constraints of a TEN)

12 HMO 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.

If an owner or manager does not agree that the building should be subject to an HMO Declaration he can appeal against the Council decision to a

Residential Property Tribunal. On appeal the tribunal must either confirm the declaration or revoke it.

13. Fees

The following schedule of fees and discounts will apply for all applications as of 1st April 2011, and will be reviewed every three years.

Full fee for initial application	£620:00
Renewal fee	£310:00
Fee for registered charities	£70:00
Fee for members of ANUK	£70:00
Variation fee per application.	£30:00

50 % Discount for members of Cambridge City Accreditation scheme for the initial applications only and not renewals. (See appendix 4)

The reduced fee for registered charities only applies where the rent is collected by a charity registered in the UK.

14 Re-licensing HMO's.

At the end of a 5-year licensing period HMOs will require re-licensing. The renewal fee will apply provided the ownership or management are the same as on the original license as they are non transferable. The new license will commence the day after the expiry of the existing licence so there is no lapse in the license period, irrespective of the date that the application is received. This will not give any advantage to a late application over a prompt application.

15. Powers of entry.

The Housing Act 2004 provides for powers of entry to HMOs where officers are investigating offences in relation to the licensing of HMO's. e.g. failure to license. Authorised officers are entitled to enter a building at any reasonable time without giving any prior notice.

Any obstruction of an officer carrying out his duties in accordance with the relevant powers of entry is an offence and the Council will consider legal action in accordance with its Enforcement Policy for such obstruction.

16. License holder competence.

The Council considers that it is important for private landlords to be trained or to prove competency in property management.

The following methods of proving competence will be considered acceptable.

- Pass an approved landlord training course, for example one offered by the National Landlords Association or the Residential Landlords Association
- Have the HMO accredited with the Cambridge Accreditation Scheme.
- Have the property managed by a manager or agent who is a member of approved trade organisation. e.g. ARLA or ARMA or accredited with National Approved Lettings Scheme (NALS).

If a landlord cannot demonstrate competence by satisfying any of the above criteria the Council will attach a condition to any HMO licence. Such a condition will require the landlord to achieve a level of competency expected of a reasonable landlord by attending relevant training within a specified period of time. It is hoped that this will ensure that landlords of licensable HMO's are competent to be license holders.

Approval of this policy

This Policy was approved on 17th March 2011 by the Executive Councillor for Housing.

Appendix 1

The tests for defining an HMO

To satisfy the definition of 'house in multiple occupation', a building, or part of it, must meet at least one of the following tests

- It meets the 'standard test'
- It meets the self-contained flat test
- It meets the converted building test
- It is declared to be a HMO, or
- It is a block of flats subject to section 257 of the Act.

The Standard Test

To satisfy the Standard test, the building (or part) must fulfil six criteria:

- It consists of one or more units of living accommodation which are not self-contained flats,
- The living accommodation is occupied by persons who do not form a single household,
- They occupy the living accommodation as their only or main residence, or they are treated as such,
- Their occupation of the living accommodation constitutes the only use of that accommodation,
- Rent is payable by virtue of at least one of the occupants of the living accommodation occupation of the accommodation (or there is some other agreed form of consideration in lieu of rent), and
- Two or more of the households occupying the living accommodation share one or more basic amenities, or the living accommodation is lacking in one or more basic amenities.

The Self-contained Flat Test

This can only apply to a self-contained flat within a particular building part of a building.

The part must be a self-contained flat and the criteria of the Standard Test are fulfilled, with the exception of the first item.

The Converted Building Test

To satisfy this test, six criteria are to be fulfilled:

- It must be a converted building
- It contains one or more units of accommodation which are not self contained flats (even though it may contain such flats too)
- The living accommodation is occupied by persons who do not form a single household,
- They occupy the living accommodation as their only or main residence, or they are treated as such,

- Their occupation of the living accommodation constitutes the only use of that accommodation, and,
- Rent is payable by virtue of at least one of the occupants of the living accommodation occupation of the accommodation (or there is some other agreed form of consideration in lieu of rent).

Only or Main Residence

Where a person occupies a building (or part) whilst undertaking a course of full time further or higher education, or is a refuge, or under other circumstances to be determined by regulation, it is deemed to be their main residence.

A refuge includes buildings managed by voluntary organisations providing temporary accommodation to those who have left their homes as a result of real or threatened physical violence or mental abuse from current or former co-habiting partners.

Appendix 2

Schedule of Mandatory Conditions

Conditions requiring the following requirements must be included in this Schedule.

- If gas is supplied to the house, to produce to the Authority annually for their inspection a gas safety certificate obtained in respect of the house within the last 12 months
- To keep electrical appliances and furniture made available by the licence holder in the house in a safe condition
- To supply the Authority, on demand, with a declaration by the licence holder as to the safety of the appliances and furniture detailed in condition 2
- To ensure that smoke alarms are installed in the house and to keep them in proper working order
- To supply the Authority, on demand, with a declaration by the licence holder as to the condition and positioning of the smoke alarms detailed in condition 4
- The licence holder to supply to the occupiers of the house a written statement of the terms on which they occupy it.

Other Conditions

The authority may include other conditions that it considers appropriate in the schedule under the general headings of

- To regulate the management, use and occupation of the house concerned e.g .requiring landlord and manager training
- To regulate the condition and contents of the house
- Conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it e.g prohibiting the use of undersized rooms as bedrooms.
- Conditions requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house
- Conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed under section 65 e.g. installation of bathrooms, toilets, kitchens etc.
- Conditions requiring such facilities and equipment to be kept in repair and proper working order
- Conditions requiring, in the case of any works needed in order for any such facilities or equipment to be made available or to meet any such standards, that the works are carried out within such period or periods as maybe specified in, or determined under, the licence.

Appendix 3

Other legislation relating to Houses in Multiple Occupation

Planning permission

The changes in legislation in October 2010 apply to Cambridge. Planning permission is not required for change of use between a dwellinghouse (C3) and HMOs (C4) or for a change of use between a HMO (C4) to a dwellinghouse (C3). However larger HMO's, those over 7 or occupiers may require a change of use to a HMO

If large concentrations of HMOs exist in parts of Cambridge and there are known problems, the Council could investigate the possibility of implementing an Article 4 direction in order to remove permitted development rights and require planning permission for changes of use (in either direction) between C3 and C4. The Council will also be able to review its planning policy position in the future when the development plan is updated and can consider an appropriate policy framework to control large concentration of HMOs.

The full Government guidance can be obtained from the Department for Communities and Local Government website

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1759707.pdf>

Council tax HMO definition

The following legislation relates to Council Tax Liability for Non Resident Owners in establishing HMO status for Council Tax purposes.

Liability for Owners

Part 3, Section 8 Regulation 2 Class C of Statutory Instrument 1992/551 (as amended) defines Houses in Multiple Occupation from the 1 April 1993:

Class C - Houses in Multiple Occupation (HMO)

- a) Is a property originally constructed or subsequently adapted for occupation by persons who do not constitute a single household; or ("and" prior to 1 April 1995)
- b) Is inhabited by a person who, or two or more persons each of whom is either: -
 - I The tenant of, or has a licence to occupy, part only of the dwelling; or

ii Has a licence to occupy, but is not liable (whether alone or jointly with other persons) to pay rent or a licence fee in respect of the dwelling as a whole.

Regulation 2A states: -

1) In relation to a dwelling within Class C shall effect as if, for the reference to the owner, there were substituted a reference to -

a) The person who has a relevant material interest which is not subject to a relevant material interest inferior to it; or, if there is no such person -

b) The person who has a freehold interest in the whole or any part of the dwelling.

2) In Paragraph (1) "relevant material interest" means, a freehold or leasehold interest in the whole of the dwelling.

Appendix 4

The Cambridge City Landlord Accreditation Scheme

One of the incentives of the landlord accreditation scheme is a 50% discount in the licensing fee for properties that reach the approved standards.

All HMO licensing applications will need to be accompanied by the full fee of £620:00. Any application where a reduced fee is submitted will be returned to the applicant requesting the full fee to be submitted.

Any property that reaches the accreditation standard within six months from the date of receipt of completed licensing application and payment will be entitled to a 50% refund. The Accreditation Officer will advise the Licensing Manager so that the appropriate refund can be made.

Appendix 5

Licensing Enforcement Procedure.

The offence for failure to license a HMO in Section 72 of the Housing Act 2004 states that :

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1)

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding £20,000.

Landlords who are known to operate unlicensed HMO's should be given an opportunity to apply for a license.

Before any enforcement action is taken reference should be made to the corporate enforcement policy to ensure that enforcement action is fair, reasonable and proportionate.

1. A mandatory licensing application pack and covering letter should be sent by the Licensing Team advising the landlord/agent that the application form and fee should be returned within 14 days. In the first instance the landlord may be sent a landlord accreditation pack.
2. If no reply has been received after 14 days a second pack and covering letter should be sent. This letter must highlight the range of sanctions that may be applied for failure to apply for a license.
3. If the application form is not received after 14 days then a final reminder should be sent out with a Local Government (Miscellaneous Provisions) Act 1976 s16 notice enclosed (Requisition for Information). This letter should advise that if an application form and fee is not received and s16 is not returned within a further 14 days then a report will be prepared recommending legal action for failure to license the HMO.

4. Landlords or managing agents who have a history of non-compliance and have already been given opportunities to apply should be sent a final letter outlining the range of sanctions and a section s16 notice, provided that it can be shown that every opportunity has already been taken to ensure that the properties become licensed.

Evidence gathering.

If after all the necessary letters have sent out, a landlord who has failed to make an application may face legal action. The gathering of current evidence will be necessary to prove that the property still requires a mandatory HMO license.

The Council will need to prove 'beyond reasonable doubt' that the landlord failed to license that property and that he had no 'reasonable excuse'

For example

- Establish that the property is a HMO that requires a license.
- Identifying the person having control or the manager.
- Showing that no license or (temporary exemption notice) has been applied for.

Gathering this evidence will require a site visit to establish the current mode of occupation and the number of occupiers etc.

LG Regulation guidance may be referred to on gathering evidence to prove that a property is unlicensed.

Formal Action

All enforcement will follow the principles set out in the Cambridge City Council Enforcement Policy and the following documents.

- The Regulators Compliance Code (as it will relate to the licensing of HMO's)
- The Legislative and Regulatory Reform (Regulatory Functions) Order 2007 SI 3544
- The Code for Crown Prosecutors (November 2007)

The following options should be considered once it has been concluded that legal action is required against a landlords for operating an unlicensed HMO.

- Simple cautions
- Prosecution
- Rent Repayment Orders
- Interim or final Management Orders

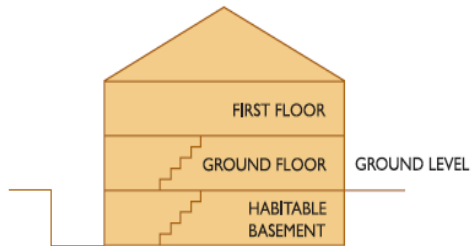
If a prosecution is considered appropriate a file should be prepared and all relevant evidence enclosed prior to submitting to HSM and HOS for signature and passing to Legal Services.

Appendix 6

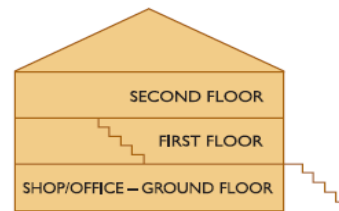
What counts as a property of 3 or more storeys in height?

The following examples are the most likely types of property which will be counted. This list is not exhaustive and other properties may also be licensable.

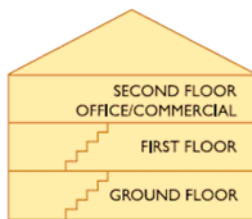
Updated March 2011



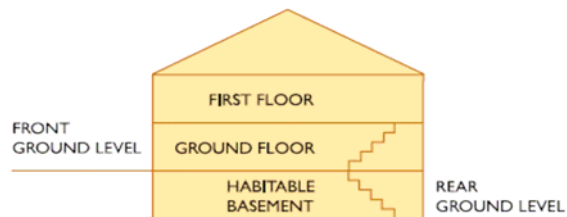
House with 2 floors above ground and a habitable basement



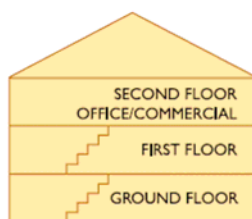
Property with three or more floor levels and a shop or other commercial use on the ground floor and living accommodation above.



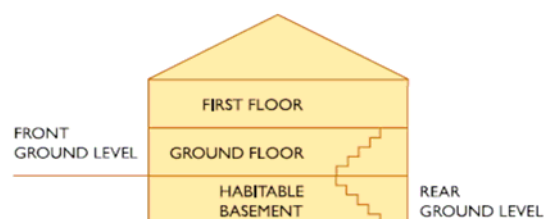
Property with 3 or more floor levels. Living accommodation on the lower 2 levels and commercial use above.



House on a sloping site with 2 floor levels at the front and 3 at the back



Property with 3 or more floor levels. Living accommodation on the lower 2 levels and commercial use above.



House on a sloping site with 2 floor levels at the front and 3 at the back

The following are not currently counted as 3 or more storeys:

