

Appendix 3: Fit and Proper Person and Management Arrangement

Fit and Proper Person and Management Arrangement Criteria for Selective Licensing

The Housing Act 2004, part 4 outlines that, when deciding whether to grant a licence or not the Local Authority (the “Authority”) is required to look at three aspects of the management of the property (the “Property”) and if these are satisfactory then it must grant a licence;

The proposed licence holder (the “Licence Holder”)

The proposed manager (the “Manager”) (if a different person from the Licence Holder)

The proposed management arrangements (the “Property Management Arrangements”)

The application will be checked to determine if:

The proposed license holder is a fit and proper (“Fit and Proper”) person to be the license holder, and, out of all the persons reasonably available to be the license holder in respect of the house, the most appropriate person;

The proposed manager of the house is either – the person having control of the house, or a person who is an agent or employee of the person who controls of the house;

The proposed manager is a fit and proper person;

The proposed property management arrangements for the house are satisfactory.

All persons involved in the management of the property are to be identified and assessed under the ‘Fit and Proper’ person criteria.

The Authority will ensure that:

Each case will be determined on its own merit;

Each specific offence, incident or issue will be considered in terms of its relevance to the holding of a license or to management and will take into account the gravity of the offence. Where the information contained in the initial application is insufficient to determine suitability, we may contact the applicant to request further information. Where no other information is available or forthcoming, the Authority can refuse to grant the license on grounds of insufficient evidence.

Definition of Fit and Proper Person Criteria

A Fit and Proper person means that they are morally suitable.

In determining whether a person is ‘Fit and Proper’, the Housing Act 2004 Section 89 outlines the test. This includes assessing whether there has been any;

Offences involving fraud, or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offenders Act 2003

Unlawful discrimination on grounds of sex, colour, race, ethnic or national origins, or disability

Breaches of housing or landlord and tenant law

When determining if the person is 'Fit and Proper' the Authority will consider the following;
They are without any significant and relevant convictions, cautions, reprimands and warnings

If involved in managing the house, they have the necessary experience and/or managerial skills and competence to successfully manage the property

They are aware of, and sensitive to, the needs of all sections of society;

They are willing to engage with the Authority in the licensing procedure.

They have suitable management arrangements and funding arrangements

Application process - How to determine whether a person meets Fit & Proper Test

The license holder and manager will be assessed under each of the following categories to determine whether they meet the Fit and Proper person requirements.

They are without any significant and relevant convictions, cautions, reprimands and warnings:

The applicant is to provide copy photo identification, such as Passport or Driving license of the proposed license holder.

Any significant and relevant convictions, cautions, reprimands and warnings showing will not necessarily mean that an application for license will be refused. However, the nature of some offences will be viewed more seriously than others. Offences have been categorised into

"Category 1", "Category 2" and "Category 3", where category 1 is to be regarded as the most serious.

Due regard to the full circumstances surrounding the offence will be given.

If involved in managing the house, they must have the necessary experience and/or managerial skills and competence to successfully manage the property in accordance with management standards:

Investigations will be made with other departments within the Council in addition to other Local Authorities, this checks the applicant, in handling disrepair complaints, dealing with anti-social behaviour, compliance with legal notices and identifies any concerns relating to management arrangements.

The applicant is to provide information relating to out of hours emergencies, anti-social behaviour, tenancy deposits, lettings and repairs reporting procedures.

And,

That the management of their property does not contravene relevant legislation and standards, such as the Race Relations Act and Statutory Code of Practice on Racial Equality in Housing.

They have suitable management structures and funding arrangements:

The license holder must reside within the United Kingdom.

In addition to those financial responsibilities outlined in the Property Management Arrangement, the Authority would expect a successful license applicant to have suitable funding arrangements in place to effectively deal with repairs when they arise.

As part of the application process, potential license holders will have to show that they have suitable financial management procedures in place to ensure contingency funds are available for any repair or emergency remedial works needed. Further investigation, for example credit reference checks or examination of bank account statements may be required.

They are willing to engage with the Local Authority in the licensing procedure:

In addition to assessing compliance with current and previous license criteria, the Local Authority will take into account the way in which the applicant has engaged with any previous licensing or enforcement procedures.

Property Management Arrangements

The license holder and manager are to ensure that there are satisfactory property management arrangements in place, below are the standards the Local Authority require for each property.

Standard 1 – Letting Practices

Actively encourages applicants from all backgrounds and makes clear that prospective tenants will not be discriminated against due to their race, colour,

gender, religion, sexual orientation, ethnicity, disability or national origin or age.

Provides clear information to prospective tenants about the property including rent levels, due dates and increase dates, deposits, receipts, the terms and conditions of the tenancy, charges (including service charges), a rent book and payment methods.

Includes referencing procedures. These procedures should not merely be credit references, but should include character references to indicate their suitability as a tenant. Wherever possible references should be obtained from the previous two landlords, or, where this is not possible, from an employer, educational professional or other responsible person who knows the prospective tenant well.

Provides clear information on who has responsibility for the payment of all utility charges and Council Tax.

Provides clear information about how deposits are to be held under the Tenancy Deposit Scheme, which was introduced by Part 6 of the Housing Act 2004.

Ensures prospective tenants are made aware of the standard operating procedures, such as emergency repairs, hours of contact etc.

Provides the tenant, on receipt of a deposit, with an inventory describing the state of the property and contents. Where practicable, photographic evidence should be included.

Standard 2 – Creating the tenancy

The Tenancy Agreement issued must comply with current legislation. All parties included in the Tenancy Agreement should be aware of their rights and responsibility under the agreement and landlords should be able to demonstrate that they have made every reasonable effort to ensure the tenants awareness.

This could include providing clear, written descriptions of:

The terms on which the property is to be occupied.

An address in England or Wales for the tenant to use to serve notice.

Contact details for the landlord, agent or representatives, including emergency and 'out of hours' information.

Repair-reporting procedures including maximum response times.

Local facilities and amenities, including refuse collection/recycling.

Provision of alley gate keys where applicable.

The tenancy should contain acceptable behaviour clauses. Tenants should be provided with clear information about the level of behaviour expected of them whilst in the tenancy and their responsibilities both to the property and to their new neighbours and wider community. The information should also include examples of behaviour constituting antisocial behaviour and nuisance, as well as explaining clear consequences of displaying such behaviours.

Standard 3 – Managing the Tenancy

They must make every possible step to ensure their tenants are able to live peacefully within their property. More specifically, they must: ensure any repairs are undertaken within a reasonable timescale; ensure the property is free from disrepair

Carry out quarterly checks of the property

promptly tackle any antisocial or nuisance behaviour emanating from the property, whether perpetrated by the tenants or people visiting or living with them; and

Respect the privacy of the tenant, for example by giving adequate notice and ensuring permission is given (usually no less than 24 hours) before access to the property is needed. Tackle any breaches of the tenancy agreement promptly, and take any necessary action.

Standard 4 – Tackling Antisocial Behaviour

The tenancy should contain acceptable behaviour clauses. Tenants should be provided with clear information about the level of behaviour expected of them whilst in the tenancy and their responsibilities both to the property and to their new neighbours and wider community. The information should also include examples of behaviour constituting antisocial behaviour and nuisance, as well as explaining clear consequences of displaying such behaviours. Ensure there is a clear procedure for dealing with ASB, including warning letters, home visits and an escalation process.

Landlords and Agents should seek advice from the Authority as soon as they become aware of nuisance or antisocial behaviour being perpetrated by their tenants or people visiting or living with them.

The Authority and partners will work with landlords, managers and agents to develop an appropriate course of action for each case. This could include referral to mediation services, requesting action to regain possession of the property, the provision of a support service to the tenant. Where complaints against the property continue, license holders and managers will be requested to demonstrate measures undertaken to address the issues.

Good references for tenants that have caused ASB should not be provided, in order to move a tenant on. Landlords, Managers and agents must always provide accurate and honest references to other landlords or agents on request.

Standard 5 – Ending a Tenancy

License Holder or Manager must be able to demonstrate a satisfactory understanding of relevant legislation and procedures.

Unless a tenant clearly surrenders the property or the tenancy is ended by mutual agreement evidenced in writing, the correct legal notice must be served in order for the landlord to regain possession of the property. If the tenant fails to leave the property following the granting of a possession order, a Bailiff's Warrant must be obtained in order to evict the tenant.

The authority expects applicants, license holders and managers to be able to evidence that: They will comply with current legislation in order to gain possession of the property. Tenants are issued with clear information regarding the arrangements for bringing the tenancy to an end. This information must include clear guidance regarding the condition of the property expected at the end of the tenancy and the consequences of failing to meet this standard

That the Tenancy Deposit Scheme is used to promptly and efficiently return deposits and that any deductions are justified with evidence of expenditure, made available to the tenant.