

SELECTIVE LICENSING POLICY

Licence applications made under Part 3 Housing Act 2004

1. **Background/Introduction**

- 1.1 Nottingham City Council has exercised its powers under section 80 Housing Act 2004 ("HA 2004") and has designated a significant amount of the City to be subject to selective licensing. Under the 'Nottingham City Council Designation of an Area for Selective Licensing 2017', which came into force on 1 August 2018, most privately rented homes in the city are required to have a property licence ("Property Licence")
- 1.2 Sections 1 to 4 of this document sets out the Council's policy in relation to the licensing of properties under Part 3 HA 2004. The Council's policy recognises that the legislative provisions contemplate circumstances in which a single Property Licence may relate to more than one separate dwelling in the same building ("a Block Licence"). However, for the reasons outlined below, the Council prefers separate dwellings in a building to have their own, individual Property Licence ("an individual Property Licence") but does recognise that in certain circumstances and depending on the building it may be beneficial to offer the ability for landlords to apply for and have in place a Block Licence to cover the entirety of a building where certain conditions are met.
- 1.3 For some landlords and tenants, an individual Property Licence (for an individual dwelling) would be beneficial as it provides for a clearer and less complicated scheme. For landlords, individual licences are more flexible and more responsive to changes in managing agents, the carrying out of major works, or the sale of individual flats in buildings for example; and for tenants, it removes ambiguity where the Council is required to enforce landlord obligations and duties owed to them. However, for some buildings where, the management and control of the entire building is under common control and management, covers all or a number of individual dwellings, all common parts and areas, and where the management and control is anticipated to remain static over an extended period of time, it may be more beneficial for landlords to apply for a Block Licence.
- 1.4 This document also outlines the Council's policy as regards the levying of Part 3 licence fees. The Council has exercised its powers to charge under section 87(3) and (7) HA 2004 and does so taking into account the Provision of Services Regulations 2009, which themselves implement the Services Directive.

2. **Conditions that must be met to enable the grant of a Block Licence**

- 2.1 The Council accepts that under Part 3 HA 2004 it is possible for it to grant a Block Licence which covers more than one separate dwelling where the following conditions are met:
- each of the dwellings are separate dwellings (usually self-contained flats), within the same building; and
 - each of the dwellings are occupied under non "exempt tenancies"; and

- the entire building which contains the separate dwellings must be under common control and management.

The above conditions do not apply to Houses in Multiple Occupation (HMOs) which are licenced in accordance with requirements set out in Part 2 HA 2004, where Section 68(1) is clear that a licence may not relate to more than one HMO and also that under Part 2 - Section 85(1) of HA 2004, HMO licensing takes precedence over Part 3 – Selective Licensing.

2.2 Accordingly, it is open to an applicant (which is usually, but not invariably, the landlord) to apply for a Block Licence where the applicant considers that each of these conditions is met. Where such an application is made to the Council it may grant such a Block Licence where it is satisfied that:

- The conditions set out in paragraph 2.1 are met; and
- There are no other contra-indications that would mean that such a Licence should not be granted, after considering the matters required by Section 88 (3) of the Housing Act 2004.

2.3. The Council will consider each such application having regard to the additional considerations set out in paragraph 3 below, taking into account any representations made by the applicant as to why the Council should exercise its discretion to grant a Block Licence.

2.4 If the Council decides not to exercise its discretion, but is otherwise satisfied that individual Property Licences should be granted, it will give notice of this to the applicant and every relevant person. There is a statutory right of appeal, notwithstanding the grant of these individual Property Licences.

3. Property licences — Additional considerations

3.1 Central to the usual approach for each separate licensable dwelling to hold an individual Property Licence is the Council's belief that this approach provides important clarity, certainty and benefits to all parties impacted by the administration and enforcement of the licensing regime.

3.2 Under Part 3 HA 2004, a 'house' falls 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.

3.3 In the event that a Block Licence is granted, and there is then a change in circumstances which results in there being more or fewer dwellings in the building that met the conditions described in paragraph 2.1, this would result in the granted licence no longer reflecting the 'house' now present. In such circumstances, the existing Licence would need to be revoked and a new

application made that reflects the 'house' now defined by the dwellings let in accordance with the conditions in paragraph 2.1 .

3.4 The Council's usual approach, of granting individual Property Licences, avoids this unnecessary consequence. It provides clarity and certainty to the licensing regime and means that the duration and operation of individually granted licences are not impacted by changes in the letting and occupation of other separate dwellings within the same building as would be the case if a Block Licence has been granted.

3.5 As stated above, the Council considers that its usual approach of granting individual Property Licences has clear benefits for both landlords and tenants.

3.6 For landlords who own two or more individually licensed dwellings in the same building, the individual Property Licence approach will mean that:

- A dwelling may be sold without affecting the licence[s] granted in respect of any other dwellings in the building;
- A dwelling may be let on an exempt tenancy without affecting the licence[s] granted in respect of any other dwellings in the building;
- A dwelling may be left vacant [for example, to allow major refurbishment] without affecting the licence[s] granted in respect of any other dwellings in the building;
- Enforcement action may be better, and more proportionately, targeted on the individual, non-compliant dwelling, without affecting the licences granted in respect of other dwellings in the building. This includes cases where, for example, the Council considers it necessary to serve a Prohibition Order to preclude the use of an individual dwelling for human habitation or where it has identified planning breaches in relation to an individual dwelling.

This is also relevant where enforcement concerns a particular tenancy or where the issue has arisen as a result of the relationship between the landlord and a specific tenant beyond the condition of the property.

3.7 For a tenant of a specific dwelling in a building, the Council's usual approach should provide greater certainty and clarity that their individual dwelling is duly licensed, notwithstanding the licensing status of other dwellings in the same building. Furthermore, by virtue of knowing that a specific licence had been granted in relation to their particular dwelling, the tenant would also have the reassurance that any necessary Gas Safe Certificate would have been provided at the application stage and declarations made regarding key fire safety measures pertaining to their own rented home.

3.8 Notwithstanding the above paragraphs, the Council further recognises that it is feasible within the City to have buildings that contain multiple dwellings that have in place common management and control arrangements that are likely to be static and consistent over an extended period of time. In these circumstances it may be beneficial for both Landlords and Tenants to know that a licence is in place which covers the entirety of the Building covering

multiple dwellings and the common shared areas. For the Council it also offers, where relevant, the possibility of additional licence conditions relating to the management arrangements for the Block Building.

4.0 Licence fees

4.1 Section 87 HA 2004 permits the Council to require that any application for a licence under Part 3 is accompanied by a licence fee and that this fee may properly cover all costs incurred by the Council in carrying out its Part 3 functions. The current fee for an Individual Property Licence is:

| Individual Property Licence | |
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| <p>Standard Fee</p> <p>This fee is applicable to applications made by non-accredited landlords</p> | <p>1st payment (Part A) £520</p> <p>2nd payment (Part B) £370</p> <p>Total £890</p> |
| <p>Accredited Landlord Fee</p> <p>This fee is applicable where the proposed Licence Holder is accredited with the Nottingham Standard (through either Unipol, ANUK or DASH)</p> | <p>1st payment (Part A) £485</p> <p>2nd payment (Part B) £185</p> <p>Total £670</p> |

The Council considers that some of the Part A fees reflects the costs of processing and determining the application for a licence, with the Part B fees representing the remaining balance covering the wider management and enforcement costs that the Council is permitted to recover through the fee, in accordance with section 87(7).

4.2 The Council has had regard to the European Court of Justice ruling in R (Hemming) v Westminster City Council (Case C-316/15), which holds that the Services Directive should be interpreted as precluding charging in advance for costs other than those directly related to the authorisation process. The Council understands this to mean that it 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 clear that unsuccessful applicants will be reimbursed the remaining part of the fee. The Council may legitimately recover its wider costs, over and above those relating to the administration of applications, at the point at which it has been determined that a licence is to be granted.

4.3 The judgment in Hemming, which envisages the payment of the required licence fee in two stages, has the clear potential to increase the administrative and financial burden on the Council, for example in handling double the amount of licence payments as part of a two-stage process.

4.4 The requirement to charge a two-stage fee does not sit well with the statutory provisions. Nonetheless, the Council has decided that it will proceed as follows:

- To provide that the making of an application under section 87(1) is subject to the following published requirements:
- The payment of the Part A fee for the consideration of an application for an individual Property Licence, which is payable regardless of outcome and shall be paid at the time of application;
- The payment of a further Part B fee for an individual Property Licence, which is payable by a successful applicant prior to the grant of a Licence.
- That the remaining Part B fee is payable when the Council proposes to grant a Licence, and serves notice to that effect on the applicant under paragraph 1 to Schedule 5 HA 2004. If the applicant does not pay the Part B fee within 14 days of that notice, the decision to grant a licence will be reviewed. Depending on the outcome of this review the licence may be proposed to be refused instead of granted.
- Where, as the result of considering representations made to a paragraph 5 notice, the Council changes its mind, and proposes to grant a Licence, the same procedure in the third bullet point applies

4.5 That where an application for a Block Licence is made or granted, the total fees applicable will be tiered in accordance to the amount of dwellings within a particular Block Building licence application. The Part A fee comprises of an initial base fee which is then added to a total 'per dwelling' fee. The total 'per dwelling' fee is calculated by multiplying it by the amount of dwellings within the building which are to be subject to the licence.

So far as concerns the Part B fee, this element is again calculated by adding together the 'base fee' to the 'per dwelling fee'. The 'per dwelling fee' is calculated by multiplying the fee by the amount of dwellings within the building which are to be subject to the licence.

| Block Licence | |
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| <p>Standard Fee</p> <p>This fee is applicable to an applicant who wishes to apply for a Block Licence,</p> | <p>Standard Initial Block Base Licence Fee - £2,720 which comprises of the following:</p> <p>1st payment (Part A) - £1,195</p> |

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| <p>but who is not an accredited Landlord by one of the Council's recognised providers.</p> | <p>2nd payment (Part B) - £1,525</p> <p>Standard Fee payable for each dwelling within the building to be subject to the licence is £425 which comprises of:</p> <p>1st payment (part A) - £260 per flat</p> <p>2nd payment (part B) - £165 per flat</p> |
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| <p>Fee for Accredited Landlord</p> <p>This fee is applicable where the proposed Licence Holder is accredited with the Nottingham Standard (through either Unipol, ANUK or DASH).</p> | <p>Accredited Landlord - Initial Block Base Licence Fee - £2,025</p> <p>1st payment (Part A) - £1,195</p> <p>2nd payment (Part B) - £830</p> <p>Standard Fee payable for each dwelling within the building to be subject to the licence is £385 which comprises of:</p> <p>1st payment (part A) - £255 per flat</p> <p>2nd payment (part B) - £130 per flat</p> |
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| Worked Examples Block Licence Fee Structure |
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| Standard (non-accredited landlord) |
| <p>One building comprising 10 separate self-contained dwellings:</p> <p>Part A Fee Initial Base fee - £1,195 Per dwelling fee £260 x 10 = £2,600 Add together Base Fee and Per dwelling fee = <u>£3,795</u> (Part A fee payable on application)</p> <p>Part B Fee Initial Base fee £1,525 Per dwelling fee £165 x 10 = £1,650 Add together Base Fee and Per dwelling fee = <u>£3,175</u></p> |

Total Licence Fee

To get the total cost of the Block Licence add together the Part A and Part B fees. **Part A = £3,795 add Part B £3,175 = £6,970 total fee for a Block Licence covering 10 individual self-contained dwellings**

One building comprising 90 separate self-contained dwellings:

Part A Fee

Initial Base fee - £1,195

Per dwelling fee £260 x 90 = £23,400

Add together Base Fee and Per dwelling fee = **£24,595** (Part A payable on application)

Part B Fee

Initial Base fee £1,525

Per dwelling fee £165 x 90 = £14,850

Add together Base Fee and Per dwelling fee = **£16,375**

Total Licence Fee

To get the total cost of the Block Licence add together the Part A and Part B fees. **Part A £24,595 add Part B £16,375 = £40,970 total for a Block Licence covering 90 individual self-contained dwellings**

Accredited Landlord

One building comprising 10 separate self-contained dwellings:

Part A Fee

Initial Base fee - £1,195

Per dwelling fee £255 x 10 = £2,550

Add together Base Fee and Per dwelling fee = **£3,745**

Part B Fee

Initial Base fee £830

Per dwelling fee £130 x 10 = £1,300

Add together Base Fee and Per dwelling fee = **£2,130**

Total Licence Fee

To get the total cost of the Block Licence add together the Part A and Part B fees. **Part A £3,745 add Part B £2,130 = £5,875 total for a Block Licence covering 10 individual self-contained dwellings**

One building comprising 90 separate self-contained dwellings

Part A Fee

Initial Base fee - £1,195

Per dwelling fee £255 x 90 = £22,950

Add together Base Fee and Per dwelling fee = **£24,145**

Part B Fee

Initial Base fee £830

Per dwelling fee £130 x 90 = £11,700

Add together Base Fee and Per dwelling fee = **£12,530**

Total Licence Fee

To get the total cost of the Block Licence add together the Part A and Part B fees.

Part A £24,145 add Part B £12,530 = £36,675 total for a Block Licence covering 90 individual self-contained dwellings

- 4.6 The Council recognises that where the same applicant seeks licences in respect of more than one dwelling in the same building, there will be some efficiencies in respect of the necessary checks that are required to be carried out in relation to the building, the proposed licence holder and in the administration of the licence documentation. This fee structure recognises the efficiencies where a Block Licence could be granted by the Council.
- 4.7 The Council has also considered whether to apply a flexible fee structure to individual property licences where an applicant has more than one self-contained dwelling within a Block Building. It has decided not to do so. This is because the Council's experience is that the wider management and enforcement costs it is permitted to reflect in the fee are similar per dwelling, when viewed across the city. Some of the efficiencies in offering a Block Licence are gained due to the fact that the entire building is under common control and management. The Council also draws comparison with where an applicant may have a number of individually licenced properties across the city. In these circumstances the fairest and simplest way to calculate the fee is to divide it amongst the thousands of Property Licence holders. The current fee structure also provides for a discount for accredited landlords. Where landlords have become accredited, including those with larger or multiple property portfolios and those who own an entire block of dwellings do benefit from a reduction in the licence fee.