

## **Nottingham City Council – Housing Licensing Licence Fee Policy and general administrative practices applied during determination process for licences under Parts 2 and 3 Housing Act 2004**

### Introduction

1. Nottingham City Council (“the Council”), acting in its capacity as the Local Housing Authority, operates three Housing Licensing Schemes being:
  - (i) Mandatory licensing of Houses in multiple occupation (HMO’s);
  - (ii) Additional Licensing for Houses in multiple occupation (Discretionary Scheme); and
  - (iii) Selective Licensing for privately rented properties.
2. In this document the Council has detailed its Policy relating to the application of licence fees for all three Schemes and it has further detailed some general administrative practice applied during the licence determination process under Parts 2 and 3 of the Housing Act 2004 for the following areas:
  - (i) Licence start dates – the date from which the Council calculates the duration of a **new** licence or licence **renewal**.
  - (ii) Passporting licences between Licensing Schemes – how the Council administers licences that need to ‘passport’ or ‘transfer’ between Licensing Schemes.
  - (iii) Overhanging Licences – the approach taken by the Council in relation to Licence continuation after expiration of discretionary Licensing Schemes.

### Licence Fees for applications made under Part 2 Housing Act 2004 (HMOs).

3. The Council operates both a Mandatory and Additional Houses in Multiple Occupation (HMO) Licensing Schemes. Mandatory licensing applies to HMOs that meet the prescribed description of being occupied by five or more persons living in two or more separate households; and which meets the tests under Section 254 of the HA 2004. The Council also exercised its powers under section 56 Housing Act 2004 ("HA 2004") to designate areas of the City to be subject to Additional Licensing. Under the 'Nottingham City Council Designation of an Area for Additional Licensing 2019', which came into force on 1 January 2019, all other non – mandatory licensable HMOs in the city are required to have an HMO Licence where they are occupied by three or more persons living in two or more separate households; and where they meet the tests under Section 254 of the HA 2004, but it excludes Section 257 HMOs.
4. This document outlines the Council's policy as regards the levying of Part 2 (HMO) licence fees. The Council has exercised its powers to charge under section 63(3) and (7) HA 2004 and does so taking into account the Provision of Services Regulations 2009, which themselves implement the Services Directive.
5. Section 63 HA 2004 permits the Council to require that any application for a licence under Part 2 is accompanied by a licence fee and that this fee may properly cover all costs incurred by the Council in carrying out its Part 2 functions. 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. See paragraphs 26-28 below for further information on the Council's approach to the two-stage licence fee process.

6. Nonetheless, the Council being the Local Housing Authority has decided that it will proceed as follows.

To provide that the making of an application under section 63(1) is subject to the following published requirements:

- (i) The payment of the Part A fee for the consideration of an application for an HMO, which is payable regardless of outcome and shall be paid at the time of application;
- (ii) The payment of a further Part B fee for an HMO, which 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 Schedule 5 notice, the Council reviews its decision and proposes to grant a Licence, the same procedure at 6(ii) applies.

7. Set out in the table below are the current licence fees applicable for HMO's.

| Description           | Comments   | Current Fees as Approved<br>September 2023  |
|-----------------------|--|---|
| <b>Standard</b>       | For non-accredited landlords<br>Application fee up to 9 bedrooms   | 1 <sup>st</sup> Payment (Part A) £670<br>2 <sup>nd</sup> Payment (Part B) £803<br><b>Total £1473</b>  |
| <b>Less Compliant</b> | For non-accredited landlords<br>Application fee up to 9 bedrooms   | 1 <sup>st</sup> Payment (Part A) £670<br>2 <sup>nd</sup> Payment (Part B) £1311<br><b>Total £1981</b> |
| <b>Accredited</b>     | The proposed licence holder is accredited with the Nottingham Standard (Either Unipol or Dash)<br>Application fee up to 9 bedrooms | 1 <sup>st</sup> Payment (Part A) £670<br>2 <sup>nd</sup> Payment (Part B) £453<br><b>Total £1123</b>  |

## Licence Fees - applications made under Part 3 Housing Act 2004 – Selective Licensing

8. The 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")
9. 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.
10. 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.
11. 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.

### Conditions that must be met to enable the granting of a Block Licence

12. 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:
  - (i) each of the dwellings are separate dwellings (usually self-contained flats), within the same building; and
  - (ii) each of the dwellings are occupied under non "exempt tenancies"; and
  - (iii) the entire building which contains the separate dwellings must be under common control and management
13. The above conditions do not apply to Houses in Multiple Occupation (HMOs) which are licensed 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.

14. 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 12 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.
15. The Council will also have regard to the additional considerations set out in paragraphs 17-25 below, taking into account any representations made by the applicant as to why the Council should exercise its discretion to grant a Block Licence.
16. If the Council decides not to grant a Block Licence 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.

#### Property licences — Additional considerations

17. It is the Council's belief that licensing each separate licensable dwelling under an individual Property Licence provides important clarity, certainty and benefits to all parties impacted by the administration and enforcement of the licensing regime.
18. 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.
19. Where a Block Licence is granted, and there is a subsequent change in circumstances which results in there being more or fewer dwellings in the Block, this would result in the licence no longer reflecting the current 'house'. In such circumstances, the existing Licence would need to be revoked and a new application made.
20. 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.
21. As stated above, the Council considers that granting individual Property Licences has clear benefits for both landlords and tenants.
22. 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.
23. 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.
24. For a tenant of a specific dwelling in a building, the individual Property Licence 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.
25. 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.

#### Licence fees

26. 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 fees**

| <b>Description</b> | <b>Comments</b>  | <b>Proposed fees</b>  |
|--------------------|--|---|
| <b>Accredited</b>  | The proposed licence holder is accredited with the Nottingham Standard (Either Unipol or Dash) | 1 <sup>st</sup> Payment (Part A) £219<br>2 <sup>nd</sup> Payment (Part B) £446<br><b>Total £665</b> |

| Description           | Comments  | Proposed fees  |
|-----------------------|---|--|
| <b>Standard</b>       | For non-accredited landlords  | 1 <sup>st</sup> Payment (Part A) £263<br>2 <sup>nd</sup> Payment (Part B) £624<br><b>Total £887</b>  |
| <b>Less Compliant</b> | For non-accredited landlords<br>See paragraph 60 – 63 for more details of when this may apply | 1 <sup>st</sup> Payment (Part A) £263<br>2 <sup>nd</sup> Payment (Part B) £970<br><b>Total £1233</b> |

27. 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).
28. 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.
29. 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.
30. 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.

31. 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.
32. 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   |  |
|---|--|
| <p><b>Standard Fee</b></p> <p>This fee is applicable to an applicant who wishes to apply for a Block Licence, but who is not an accredited Landlord by one of the Council's recognised providers.</p> | <p><b>Standard Initial Block Base Licence Fee - £2,684 which comprises of the following:</b></p> <p>1<sup>st</sup> payment (Part A) - £440</p> <p>2<sup>nd</sup> payment (Part B) - £2,244</p> <p><b>Standard Fee payable for each dwelling within the building to be subject to the licence is £527 which comprises of:</b></p> <p>1<sup>st</sup> payment (part A) - £145 per flat</p> <p>2<sup>nd</sup> payment (part B) - £382 per flat</p> |
| <p><b>Fee for Accredited Landlord</b></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><b>Accredited Landlord - Initial Block Base Licence Fee - £1,771</b></p> <p>1<sup>st</sup> payment (Part A) - £440</p> <p>2<sup>nd</sup> payment (Part B) - £1,331</p> <p><b>Accredited landlord Fee payable for each dwelling within the building to be subject to the licence is £512 which comprises of:</b></p> <p>1<sup>st</sup> payment (part A) - £145 per flat</p> <p>2<sup>nd</sup> payment (part B) - £367 per flat</p>           |

| Block Licence      |  |
|--------------------|--|
| Less Compliant Fee | <p><b>Less Compliant - Initial Block Base Licence Fee - £3,119</b></p> <p>1<sup>st</sup> payment (Part A) - £440</p> <p>2<sup>nd</sup> payment (Part B) - £2,679</p> <p><b>Standard Fee payable for each dwelling within the building to be subject to the licence is £532 which comprises of:</b></p> <p>1<sup>st</sup> payment (part A) - £145 per flat</p> <p>2<sup>nd</sup> payment (part B) - £387 per flat</p> |

| Worked Example<br>Block Licence Fee Structure   |
|---|
| Based on the Accredited Fee   |
| <p>One building comprising 100 separate self-contained dwellings:</p> <p><b>Part A Fee</b><br/> Initial Base fee - £440<br/> Per dwelling fee £145 x 100 = £14,500<br/> Add together Base Fee and Per dwelling fee = <b><u>£14,940</u></b> (Part A fee payable on application)</p> <p><b>Part B Fee</b><br/> Initial Base fee £1,331<br/> Per dwelling fee £367 x 100 = £36,700<br/> Add together Base Fee and Per dwelling fee = <b><u>£38,031</u></b></p> <p><b>Total Licence Fee</b><br/> To get the total cost of the Block Licence add together the Part A and Part B fees. <b>Part A = £14,940 +</b><br/> <b>Part B = £38,031</b><br/> <b>= <u>£52,971</u> total fee for a Block Licence covering 100 individual self-contained dwellings</b></p> |

33. 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.



34. 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 licensed 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 an accredited fee. 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 lower fee licence.

Applications under both Parts 2 and 3 Housing Act 2004

Other fees applicable for licensing applications

35. Applicable fees may become payable during licence application process if conditions set out in the table below are met. These fees may be collected in addition to the Part A licence fee and Part B licence fee payments. The licence application will not be considered 'duly made' until all applicable fees have been calculated and paid with the Part A licence fee payment or shall be payable upon request.

Please note the fees in this table are non-refundable.

| Description   | Fee        | Comments   |
|---|------------|--|
| Extra Bedroom Fee   | <b>£25</b> | <p>When an HMO has 10 bedrooms or more, an extra fee is applicable per bedroom.</p> <p><b>Applicable in addition to the Part A licence fee payment as shown in Table 1 above.</b></p>  |
| Extra correspondence and / or changes to the application prior to determining the licence | <b>£40</b> | <p>Where there is a requirement to enter into extra correspondence over and above the standard licensing process.</p> <p>E.g. Obtaining further information to secure a valid licence application, which has not been provided at the time of application.</p> <p>Any changes to the application should be notified immediately to the Council as delay may impact the likely charges to be applied.</p> <p>This charge will apply where there are changes to the application prior to the licence being</p> |

|   |  |   |
|---|--|---|
|   |  | <p>determined e.g. change of address, change of manager or proposed licence holder etc.</p> <p>Where the changes are so significant a new application and fee may be required e.g. for the change of applicant. This creates a significant administration burden as new assessments may be required, or the entire processing may need to be restarted.</p> <p>Changes notified that affect multiple applications at the same time (such as a change of manager or proposed licence holder) the fee will be calculated on a case by case basis proportionate to the estimated administration time required.</p> <p><b>This fee shall be payable on request.</b></p> |
| Extra copy documentation 1 – 5 documents  | <b>£30</b>                               | <p>Where a request is made for each duplicate/copy documents. The request will not be processed until the fee has been paid.</p> <p><b>This fee shall be payable on request.</b></p>  |
| Extra copy documentation 6 – 10 documents   | <b>£60</b>                               |   |
| Extra copy documentation 11 – 30 documents  | <b>£90</b>                               |   |
| Extra copy documentation 30 or more documents   | <b>Multiples of the above thereafter</b> |   |
| <b>Application under different Part of Housing Act 2004</b> Fee to move between HMO (part 2 of the Housing Act 2004) and Selective licensing (part 3 of the Housing Act 2004) and vice versa. | <b>Relevant scheme fee</b>               | <p><b>After Grant of Licence</b></p> <p>Once a licence has been granted under one Part of the Housing Act 2004 (“the Act”) and then a Licence Holder wishes to apply for a new Licence under a different Part of the Act, this will require a new application with the payment of the current licence fee for that Part applicable at the time the application is made.</p> <p>Once the Council has processed and granted a licence under the new Part, the Council will concurrently revoke the existing licence under the former Part.</p>  |

|   |                          |   |
|---|--------------------------|---|
|   |                          | <p><b>Prior to determining Licence</b></p> <p>Application made under one Part of the Act but not yet determined by the Council, where the Licence Holder informs they wish to change their application to be under a different Part of the Act, the Council will treat the first application as having been <b>withdrawn</b> by the Applicant. Please refer to the <b>Refunds Policy</b>.</p>                                     |
| Missed inspections  | <b>£50</b>               | <p>Failure to attend an agreed inspection a charge shall be levied.</p> <p><b>This fee shall be payable on request.</b></p>   |
| Paper Application Form Request  | <b>£35</b>               | <p>Paper application forms will remain available upon request. A printed application forms will be sent to a UK postal address only. A charge of £35 shall be required for each form requested.</p> <p><b>Please note that</b> the application form is available free of charge on the Council website for download and your internal printing or can be complete online.</p> <p><b>This fee shall be payable on request.</b></p> |
| Paper Application Form Processing   | <b>£65</b>               | <p>Each paper application submitted, will be charged this fee to cover the extra manual cost of processing.</p> <p><b>This fee shall be payable on request.</b></p>   |
| Fee to support people completing the application form   | <b>£40 per hour</b><br>* | <p>To assist with those who have repeatedly tried or have a significant challenge in completing the required form. (<b>*minimum charge £40</b>)</p> <p><b>This fee shall be payable on request.</b></p>   |
| <p><b>Notices and Orders served under Part 1 Housing Act 2004</b></p> <p>Please note that not all costs can be recovered from the licence fee. Under Part 1 of the Housing Act 2004 (section 49) the Council may charge for relevant costs linked to enforcement work (for example, where an Improvement Notice is served under Section 11 or Section 12 of the Housing Act 2004).</p> <p><b>NB</b> Once an invoice is issued, this charge becomes a local land charge on the property.</p> |                          |   |

### Refunds Policy

36. Applicants will be entitled to a refund of licence fee payments in the following situations:

- (i) Where on review of an application it is decided that the Property does not need a license at the time of application (for example, it falls under one of the exemptions);
- (ii) Where an application has been made for an exempt property by mistake or a duplicate application has been made.

37. Refunds will not be provided in the following situations:

- (i) the property was required to be licensed at the time of application;
- (ii) the property is subsequently sold at any point during the application process;
- (iii) the Council refuses the application and does not grant a licence;
- (iv) the application is withdrawn at any point during the application process;
- (v) the Council revokes (takes away) the licence;
- (vi) the Council varies the licence and reduces the amount of time it remains operationally valid;
- (vii) the property is refused planning permission.

38. The fees are not connected to the length of a licence. If a licence is no longer required the licence holder must request a revocation to cancel the licence before it expires, the Council cannot give a refund for any unused time.

#### Licence fees when transferring between Licensing Schemes

39. Set out in the table below are scenarios setting out how licence fees will be applied and managed when the Council receives a request to transfer between the three Licensing Schemes:

| <b>Scenario</b>               | <b>Request to move schemes</b> | <b>How is the property occupied?</b>         | <b>Will a refund be given?</b>  | <b>Process</b>  |
|-------------------------------|--------------------------------|--|---|---|
| Application for a HMO licence | Move to Selective              | Occupied as a HMO at the time of application | No refund on the Part A fee   | Application will be transferred to a Part 3 Selective Licence if the final licence has not been issued.<br><br>Applicant to pay Part B Fee for Selective Licensing. |
| Application for a HMO licence | Move to Selective Licensing    | Not occupied as a HMO                        | Yes, full refund of HMO part A fee to be given, due to the fact that the Property was not licensable as a HMO at the time of application. | Applicant to commence a new Selective Licence application and to pay the relevant fee.  |

| Scenario                            | Request to move schemes                              | How is the property occupied?   | Will a refund be given?  | Process   |
|-------------------------------------|--|---|--|---|
| Application for a HMO licence       | Move between Additional and Mandatory HMO Licensing. | Check occupation  | No refund to be given.   | No change in processing The HMO fee rate is applicable to applications under both Additional and Mandatory Licensing.                                     |
| Application for a Selective licence | Request to transfer to HMO Licence                   | Is it occupied as a HMO or intending to increase the number of occupants?<br><br>If no, continue as Selective application.<br><br>If yes, see refund column | Full refund of the Part A Selective fee, assuming no draft licence has been issued and a new HMO application is made.<br><br>No refund of Part A Selective fee if draft licence has been issued. | The Selective Licensing application would be withdrawn by the applicant.<br><br>A new application to be made for a HMO with full HMO fee rate applicable. |

#### Variations to existing licences

40. Once a licence has been granted and issued, the following variations may be applied for which no additional fees are charged. It should be noted though that under the Housing Act 2004, a licence is non-transferable. If the licence holder no longer wishes to hold the licence, they must notify the C who will revoke the licence and inform all interested parties.

| Proposed Licence Variation  | Variation Application Fee |
|---|---------------------------|
| Change of address details of any existing licence holder, manager, owner, mortgagor, freeholder, leaseholder etc. | <b>No fee</b>             |
| Change of mortgagor, owner, freeholder, and leaseholder (unless they are also the licence holder or manager)      | <b>No fee</b>             |

|   |               |
|---|---------------|
| Variation of licence instigated by the Council              | <b>No fee</b> |
| Change of manager (unless they are also the licence holder) | <b>No fee</b> |

### Standard Licence Fee

41. The standard fee will be applied as the default fee applicable for all applications. Only where the criteria are met for either the Accredited Licence Fee or Less Compliant fee will they be applicable.

### Accredited Licence Fee

42. In order to qualify for the Accredited Level of licence fee, the onus is on the Applicant to demonstrate it meets the eligibility criteria and the Applicant may be required to provide documentary support. If the Applicant is unable to provide documentation within a reasonable period, then the Council will assess the licence fee level based on the information held at that time and the corresponding Part B fee will also be applied at the assessed level.
43. The Council will take steps to check and ensure the Applicant is fully accredited at the time of making the licence application, this being the point when the Part A licence fee payment is due and will then check again at the point when the Part B licence fee falls payable. If an Applicant is not accredited at the point when the licence application is first made, but subsequently becomes accredited, the Part A accreditation fee will not be applied retrospectively. However, the Applicant may be eligible for the accreditation fee on the Part B licence fee payment upon the provision of documentary support from the provider of their accredited status.
44. In the event that the Applicant supplies false or misleading information in order to benefit improperly from a lower licence fee, the Council will investigate and may take enforcement action appropriate to the circumstances of the case. In the event that the Accredited Licence Fee is claimed incorrectly or where Accreditation lapses or is withdrawn during the life of any licence application or granted licence, it is likely that Council will take steps to recover the difference between the accredited fee and the applicable licence fee directly from the Landlord or Managing Agent.
45. In the event that the less-compliant fee is applied, this will supersede the availability of the accredited licence fee. This means that where the Council has made a decision to charge the less-compliant fee, the accreditation fee will not be available for either Part A or Part B fees.
46. The principle behind the availability of a set fee for Accredited Landlords is to recognise that these landlords should already be operating with minimum housing standards and management, thereby reducing the amount of compliance and regulation that the Council may need to undertake over the duration of the licence. A landlord is considered to be anyone who rents out a property they own, for the purpose of this policy document.

47. In order to claim the Accredited fee, the application must meet either of the eligibility criteria set out in (a) or (b) below at the time of application.
- a. Applicant Landlords must be:
    - (i) the proposed Licence Holder; and
    - (ii) hold either full accreditation status with DASH or Unipol at the point that the licence application is being made; and
    - (iii) hold the Unipol or DASH accreditation status for the duration of the licence granted.
  - b. Applicant Managing Agents shall:
    - (i) be the proposed Licence Holder or the Manager on the application.
    - (ii) be responsible for the management of the whole property;
    - (iii) hold 100% accreditation with Unipol at the point that the licence application is being made; and
    - (iv) maintain their Unipol 100% accreditation for the duration of any licence period granted;
    - (v) be a member of one of the following professional associations – such as Chartered Institute of Housing (CIH), Royal Institute of Chartered Surveyors (RICS), ARLA Property mark, Safeagent (Previously known as the National Approved Letting Scheme) and the National Association of Estate Agents or similar.

#### Unipol Accreditation

48. Unipol is an external Charity which provides assistance to students renting in the private sector. When claiming the Accreditation fee on the basis of Unipol Accreditation, the Council relies upon the declaration made by the Applicant who is the owner of the Property and is the member of the Unipol Code. This means that there is an assumption that the Property is occupied by students and that it meets the relevant Unipol criteria for accreditation. However, in the event that the Council becomes aware of non-student occupation at any stage, the Council will notify Unipol in order for the circumstances to be investigated.
49. For further detailed information on Unipol membership, affiliation and accreditation, Applicants can visit the Unipol website here prior to making a licence application: <https://www.unipol.org.uk/home>.
50. Set out in the table below are scenarios which show when the Accreditation Licence Fee will be applied to an application. Accreditation with Unipol is also conditional on the relevant Property being occupied by students and the Property being registered with Unipol. A list of Unipol members is supplied on their website <https://www.unipol.org.uk/landlords/directory>

| <b>Scenario</b> | <b>Managing Agent status</b>   | <b>Proposed Licence Holder status</b> | <b>Eligibility for Accredited Licence Fee</b>   |
|-----------------|--------------------------------|---------------------------------------|---|
| <b>1</b>        | 100% accredited Managing Agent | Accredited                            | Accredited fee available on the basis that the Licence Holder and/or Managing Agent are eligible. |
| <b>2</b>        | 100% Accredited Managing Agent | Not on the Unipol Members Directory   | Accredited Fee is available on the basis that the Managing Agent is eligible.                     |
| <b>3</b>        | Registered supporter           | Accredited                            | Accredited Fee available on the basis that the Licence Holder is accredited.                      |
| <b>4</b>        | Not on Unipol List             | Accredited                            | Accredited Fee available on the basis that the Licence Holder is accredited.                      |
| <b>5</b>        | Not on Unipol List             | Not on the Unipol Members Directory   | No Accredited Fee available (Full Part A and Part B licence fee is payable)                       |
| <b>6</b>        | Registered supporter           | Not on the Unipol Members Directory   | No Accredited Fee available (Full Part A and Part B Licence fee is payable).                      |

51. Unipol offers differing levels of membership, affiliations and accreditation to its members.

#### DASH Accreditation

52. DASH is an external, joint-working initiative with Local Authorities, property owners, landlords and tenants. DASH aims to improve housing conditions in the private sector, with particular emphasis on the private rented sector. Any landlord with private rented sector accommodation in Nottingham City is eligible to join the DASH scheme, providing they have had no legal or civil enforcement action within the last two years, and have no ongoing issues with the Local Authority. If you do not live locally to the rental property, part of the accreditation requirements will be to employ an agent or have a local contact to be on hand to resolve any issues that may arise during a tenancy. DASH Landlord Accreditation is not open to Letting Agencies/ Managing Agents; the person wishing to become accredited must own the property/ies and be in a position to commit to the accreditation process themselves.

53. To be eligible for the Accredited Licence Fee on the basis of holding DASH accreditation, the proposed licence holder must be the accredited party. A landlord who operates as an agent who manages other landlord's properties will only be eligible for the accredited licence fee on properties which they own themselves.



54. For more information on DASH Accreditation, the link below takes you direction to the DASH website: <https://www.dashservices.org.uk/>

### ANUK National Code

55. To be eligible, the proposed licence holder must be registered as an ANUK provider AND the HMO or flat must be in an ANUK registered building. The Accredited Licence Fee is not available to applications made under the Additional Licensing Schemes.
56. To be an ANUK registered building, it must have at least 15 occupants and some of those occupants, but not all, must be registered students.
57. If an ANUK registered landlord has a larger portfolio with a mix of buildings accommodating 15 or more occupants in some buildings and then smaller buildings of less than 15 occupants, they may only claim the accredited fee for the larger ANUK registered buildings. This means that the Accredited Licence fee is not available to smaller non-ANUK-registered properties.
58. Where an HMO falls to be licensed under the City's Additional Licensing Scheme which is also a building that is registered with ANUK, then it is exempt from the requirement to licence under the Scheme in Nottingham.
59. Applicants can check if a building and provider in Nottingham is registered with ANUK here: <https://www.nationalcode.org/nottingham>.

### Less compliant Licence fee

60. The less compliant fee was introduced in September 2018 and is applicable to HMOs licensed under Part 2 of the HA 2004 and has been consulted on for the proposed second selective licensing scheme.
61. The less compliant fee was introduced after consultation with landlords, HMO tenants, community groups, Nottingham City residents and other organisations as part of the HMO Additional Licensing Statutory Consultation. Respondents to the consultation were in support or strong support of a less compliant fee.
62. The less compliant fee may be applied if one or more of the following criteria apply:
- (i) a substantiated referral or complaint made to Safer Housing where a serious health and safety / disrepair / fire safety / or management regulations contravention is identified or regarding an unlicensed HMO.
  - (ii) two or more substantiated service requests (complaints to the Council by tenants or other parties about conditions in the Property).
  - (iii) Where the Council has had to chase an application and/or application has not been forthcoming and has only been made due to an intervention by the Council prompting the application.
  - (iv) poor application history, for example, the application, licence fee or documents are not submitted on time or incomplete.

- (v) one or more reminders needed after initial reminder to renew a licence or submit the outstanding documentation.
- (vi) history of enforcement action being required to obtain safety certificates or other documents when they have not been forthcoming.
- (vii) history of poor management of the Property.
- (viii) history of enforcement at the Property.
- (ix) history of Anti-Social Behavior at the Property
- (x) history of non-compliance with licence conditions;
- (xi) unjustified and repeated requests for extensions of time to complete required remedial works.
- (xii) missed pre-arranged appointments with Council Officers or failure to co-operate with Council Officers to arrange inspection(s)
- (xiii) Obstruction of officers during property inspections, including failure to facilitate inspections of the whole property
- (xiv) Further criteria may become applicable and be considered on a case by case basis.

63. In the event that the less-compliant fee is applied, this will supersede the availability of the standard or accredited licence fee. This means that where the Council has made a decision to charge the less-compliant fee, the accredited or standard fee will not be available for either Part A or Part B fees. Where the applicant has benefitted from an accredited or standard fee on the Part A fee, the Council may take steps to recover the difference. The less compliant fee is higher as there are additional compliance activities undertaken once the licence is granted such as additional monitoring and inspections of the property.

### **Administrative practices for Licence determination under Parts 2 and 3 Housing Act 2004**

[NOTE: paragraph numbers follow from Appendix 1 – these documents will be joined for ease of use after approval]

64. In the following paragraphs it sets out how the Council applies certain administrative practices when processing licences under Parts 2 and 3 of the Housing Act 2004) which are:

- (i) Licence start dates – the date from which the Council calculates the duration of a **new** licence or licence **renewal**.
- (ii) Passporting licences between Licensing Schemes – how the LHA administers licences that need to ‘passport’ or ‘transfer’ between Licensing Schemes.
- (iii) Overhanging Licences – the approach taken by the LHA in relation to Licence continuation after expiration of discretionary Licensing Schemes.

### **Licence start date – date from which durations calculated**

65. In the proceeding paragraphs, the Council has set out its rationale for using the ‘effective date’ of a licence application as the date upon which it will calculate the licence duration to commence from. As from the date of the adoption of this

administrative practice note, this is the general approach that will be applied by the LHA, but it does accept that circumstances may exist whereby it takes a different approach depending on the facts of the case. The reasons for use of the 'effective date' of application are:

- (i) Section 72 (4) & 95 (3) of the Act, states that if a person is subject to proceedings for the offence of operating an unlicensed property, that person has a defence in law, if at the material time they had submitted an application for a licence and that application had been assessed as 'duly made'. Therefore, the initial administration step for any application received by the LHA is to assess whether the application has been 'duly made'. To do so, the LHA undertakes a triage of the application to make sure the application has been properly and fully completed with all required documents and fee having been submitted. The date upon which that assessment is completed is what the LHA refers to as the 'effective date' for the licence application.
- (ii) The Act provides the LHA with the authority under sections 68 & 91 to '*grant a licence for such period as the Housing Authority may specify or determine*'. Therefore, the LHA has some discretion around how it may determine applications, the dates on which they become effective and the duration of licences. It should be noted though that a licence period cannot, in law, be longer than five years from the date the licence is granted or comes into force.
- (iii) The length of time it takes the LHA to determine an application varies and is dependent upon many factors such as the application type, particular property, a Landlord and/or Manager background, complexity of an application and also the point within which the Licensing Scheme is within its cycle of operation. By way of example, both the Additional and Selective Licensing Schemes are discretionary licensing schemes which are adopted by the Council for 5-year periods. When each Scheme is first implemented and becomes operational, or as the Schemes approach a renewal date, there is naturally a large peak in the amount of applications that have to be assessed and determined by the LHA. This peak of 'new' applications levels off during the life of the Scheme. With other licence applications, factors may exist that result in the need for extra due diligence, for example a pre-licence inspection may be required, there may be evidence of past or current poor management issues in relation to a property or across a portfolio. In these circumstances, periods of communications between the LHA and Landlord/Manager are likely to be needed to clarify application points before the licence can be determined. In examples like these it takes a longer period of time for applications to be determined and therefore the LHA states that the licence (when determined in favour of the landlord) commences on the date on which the application became effective.

66. The purpose of this statement is to be transparent on the administrative approach taken as some prospective Licence Holders may perceive an unfairness in its application. However, a Licence Holder should consider that they submitted a licence application on a particular date because generally that would be the point

in time when it was required because the Property is licensable in law. During the period between the 'duly made' application having been made, up to the point of when the licence application is determined, the Landlord is regarded in as compliant in law and has benefitted from the protection of a statutory defence against proceedings for operating a rental Property without a licence. Whereas, if the LHA applies the alternate process whereby the licence becomes effective on the date it is determined (or granted) then the licence holder in some cases will gain unfairly from an extended period of licence. From a practical point of view, there will always be a period of time between receipt of a licence application up to the point when a licence is determined because realistically a licence will never be determined by the LHA on the day it is received.

### Renewal Licences

67. On renewal of a property licence, it is expected that a 'new' application will be made in advance of the expiration of the former licence. Assuming that the LHA is of the view that the application should be determined in favour of the applicant and granted, then the commencement date for the licence will be the day after the expiration of the former licence, meaning there is no break in the continuity of the licences. If, however, an application is received and the previous licence has expired, enquiries will be made as part of the determination process to establish reason(s) for any gaps. Assuming the Council is in favour of granting the application and the property was licensable during the gap, the new licence will generally commence the day after the expiration of the former licence.

### Passporting between Licensing Schemes

68. The Council operates three licensing schemes which include Mandatory and Additional Licensing Schemes for Houses in Multiple Occupation (HMOs) and Selective Licensing for privately rented properties. If a new designation is introduced all licences that have not expired will automatically passport into the new designation if applicable or will remain in force until they expire.
69. Mandatory licensing applies to HMOs that meet the prescribed description of being occupied by five or more persons living in two or more separate households; and which meets the tests under Section 254 of the HA 2004. The Council also exercised its powers under section 56 Housing Act 2004 ("HA 2004") to designate areas of the City to be subject to Additional Licensing. Under the 'Nottingham City Council Designation of an Area for Additional Licensing, all other non – mandatory licensable HMOs in the city are required to have an HMO Licence where they are occupied by three or more persons living in two or more separate households; and where they meet the tests under Section 254 of the HA 2004, but it excludes Section 257 HMOs. The Council also implemented a Selective Licensing Scheme which applies to rental properties that are located within a designated area of the city.
70. It is recognised by the Council that changes in circumstances often occur when operating and managing rental properties. Due to the fact that there are three licensing schemes operating in Nottingham City, changes in occupation levels may mean that a Property becomes licensable under a different licensing

scheme. The Council refers to this as 'pass porting' which covers the situation where a licence needs passport (transfer) between schemes. A charge may be applicable when this occurs, see paragraph 39.

- (i) A licence holder under the Selective Licence Scheme (Part 3 of the 2004 Act) may decide they want to increase occupation levels meaning the Property is then licensable under Part 2 of the Act, or alternatively a Licence Holder may decide they no longer wish to operate and manage a HMO deciding that they would prefer to operate as a rental for a single household.

71. The Council has previously operated a separate licence fee for 'pass porting' between Parts 2 (HMO licensing) and 3 (Selective Licensing) of the 2004 Act. However, this process was found to be administratively complex because the level of documentation and information required is different depending on which licence is required. This difference is as a result of the requirements of the 2004 Act, rather than as a result of requirements set locally by the LHA. Therefore, the LHA came to the view that in the event that of a landlord needing to 'passport' between Parts 2 and 3 of the 2004 Act, a new application with the appropriate licence fee is generally required. If, however, a landlord notifies the LHA early enough in the processing of an application and before the LHA grants or refuses a draft or final licence in respect of a Property, then the LHA will manage the applicable licence fees payable in accordance with the scenarios set out in the Table at paragraph 38 above (Refunds Section).

#### Licence duration

72. Generally, when determining licences in favour of an applicant, the LHA has decided that it will grant licences for the full five years. However, the LHA may determine that circumstances exist whereby it may issue a shorter-term licence duration, this would depend on the specific circumstances of the case and full reasons would be given. For illustrative purposes only, this may be considered where there has been some history of non-compliance with management regulations or licence conditions or there are outstanding issues relating to planning permission which may need a period of time to be resolved.

#### Licence continuation after expiration of discretionary Licensing Schemes ("Overhanging Licences")

73. Following on from point 72 above, the Council generally grants licences for the full five years, even though this means that a licence will continue in its application after the expiration of the adopted Licensing Scheme. The Council refers to these licences as ‘overhanging licences’. For example, the Council’s Selective Licensing Scheme came into force on 1 August 2018 and will expire on 31 July 2023. However, licence applications that are received after the 1 August 2018 will still generally be granted by the Council for a full five-year period from the date on which the application was deemed as ‘effective’. This means that generally licences will continue after the expiration of the underlying discretionary Scheme.

### Armed Forces Covenant

74. Where the licence holder is a member of the armed forces the Council will offer a token £50 reduction in the applicable licence fee for each relevant property.

| <b>Version Control</b>   |                   |                           |                             |                            |   |
|--|-------------------|---------------------------|-----------------------------|----------------------------|---|
| <b>Version</b>   | <b>Date</b>       | <b>Approved by:</b>       | <b>Implementation date:</b> | <b>Location of Changes</b> | <b>Summary of Changes</b>                                     |
| <u>Version 1</u><br>Licence applications made under Part 2 Housing Act 2004  | 07/09/2020        | Andrew Errington          | 07/09/2020                  | Final Version              | First approved version  |
| <u>Version 2</u><br>Licence applications made under Part 3 Housing Act 2004  | 07/09/2020        | Andrew Errington          | 07/09/2020                  | Final Version              | First approved version  |
| <u>Version 3</u><br>Nottingham City Council – Housing Licensing Licence Fee Policy and general administrative practices applied during determination process for licences under Parts 2 and 3 Housing Act 2004 | 05/03/2021        | Andrew Errington          | 23/04/2021                  | Final Version              | Final approved version (4)                                    |
| <u>Version 4</u><br>Draft proposals - Updated fees for proposed second selective licensing scheme  |                   |                           |                             |                            |   |
| <u>Version 5</u>   | 2 November 2022   | Executive Board           | 20/12/22                    | Final Version              | NPRAS, Clarity on less compliant fee Armed forces covenant    |
| <u>Version 6</u>   | 19 September 2023 | Executive Board (pending) | 1/10/23                     | Final Version              | Change to fees for selective mandatory and additional schemes |