

HMO POLICY

TENDRING DISTRICT COUNCIL

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1. POLICY OVERVIEW

1.1 INTRODUCTION

The Tendring area includes a number of coastal towns (Clacton-on-Sea, Jaywick Sands, Harwich, Frinton-on-Sea, Walton-on-the-Naze and Brightlingsea) as well as other small towns and villages. Tendring is no different from many other coastal areas in the UK and has seen over the years that a number of guest houses and other traditional tourist accommodation have become private rental establishments. Many of these former guest houses have become Houses in Multiple Occupation (HMO's) and provide accommodation for often the most vulnerable residents in the district. HMO's, with their shared facilities, tend to provide cheaper accommodation than self-contained flats and are primarily the only accommodation available to people under the age of 35 who are on low incomes or benefits.

It should be recognised that whilst some of the HMO's in the district provide good quality, well-managed and cost-effective accommodation, many others have become hotbeds of anti-social behaviour and criminality and have blighted the lives of neighbours, the wider community and some of the residents in the properties themselves. Poor management standards, poor quality accommodation and the actions of some of the residents in the HMO's and their visitors have created additional burdens on the Council and other statutory partners such as the Police, Fire Service, NHS and Social Care.

There is an increasing demand for low cost housing from households threatened with homelessness and this is likely to increase during and after the Covid-19 pandemic. For many single homeless people, a placement in a HMO is the only viable and cost-effective housing option. If households cannot access a placement in a HMO or other lower cost establishment, there is a likelihood that those households will have no option but to sleep rough and this will cause issues for the wider community and adversely impact on the health and well-being of the individuals themselves.

Following concerns about the proliferation of HMO's, in May 2013, the Council adopted a district-wide Article 4 Direction to ensure that no new HMO's could operate unless planning permission was obtained. This Article 4 Direction remains in force so any person wanting to change the use of a property to a HMO or develop a new property as an HMO must seek planning permission. There are also additional requirements in respect of housing conditions and management and, in some cases licensing, which must be met by the owner.

Our Corporate Enforcement Strategy adopted in September 2017 stresses our approach to enforcement will be one of an initial proactive engagement, to discuss issues, in a positive manner. If initial approaches are unsuccessful then a firm but fair stance will be adopted which will address issues quickly and transparently, whilst protecting members of the community and the environment. It is therefore essential that the approval of and management of HMO's meet our expectations to protect the wider community and the residents who reside in HMO's themselves.

1.2 AIMS OF THIS POLICY

The aim of this HMO Policy ("the Policy") is to set out the Council's approach to and requirements for HMO's in the district from both a planning and housing perspective and explains how HMO's can meet the housing needs of some of the district's residents.

1.2 LINKS TO THE COUNCIL'S CORPORATE AIMS

This policy supports the Council's corporate aims which are set out and can be viewed at www.tendringdc.gov.uk/council/performance-spending/councils-corporate-plan

1.3 EQUALITY & DIVERSITY

The Council is committed to promoting equality of opportunity in all service areas and has procedures in place to ensure all applicants for housing, tenants and leaseholders are treated fairly without unlawful discrimination.

The Equality Act 2010 provides a legislative framework to ensure Council services are not provided in a discriminatory manner by having due regard to eliminating discrimination, harassment and victimisation, advancing equality of opportunity and fostering good relations.

1.3 POLICY STATEMENT

The Council accepts that there is a need for good quality HMO's in the district to meet the needs of residents on low incomes and some of our most vulnerable residents. However, this has to be balanced with the impact that some HMO's can have on the lives of neighbours, the wider community and statutory services. **Regular inspections of higher risk properties will be undertaken to ensure compliance with housing and planning legislation and policy.**

This policy will be reviewed and updated periodically to ensure it reflects the current position.

2.0 WHAT IS AN HMO?

A property is an HMO if both the following apply:

- at least three tenants live there, forming more than one household and;
- the occupiers share essential living accommodation such as a kitchen, toilet or bathroom.

A household consists of a single person or members of the same family who live together. A family includes people who are:

- married or living together – including people in same sex relationships or;
- relatives or half-relatives, for example, grandparents, aunts, uncles or siblings or;
- step-parent's and step-children .

Common examples of HMO's would include house or flat shares, bedsit type accommodation with shared facilities and B&B type accommodation for persons who have no other home, where that is the predominant use. Converted blocks of flats, as defined in Section 257 Housing Act 2004, are HMO's if they do not meet the Building Regulations standards that were in force in 1991.

Large HMO's are HMO's where at least five tenants live there forming one of more households and essential living accommodation is shared such as a kitchen, bathroom or toilet. Large HMO's are required by law to be licensed by the Council.

3. PLANNING REQUIREMENTS

3.1 THE ARTICLE 4 DIRECTION

There is a district wide Article 4 Direction in operation in the Tendring area. The Article 4 Direction came into force in May 2013. This means that the creation of HMOs and bedsits in the district (in the majority of cases) requires planning permission in line with national planning regulations. Generally, and in other parts of England, the conversion of a 'dwelling house' (Use Class C3) to an HMO in Use Class C4 can take place without the need for planning permission **except in locations where the Local Authority has made an 'Article 4 Direction'** to remove this permitted change. Tendring District Council has made an Article 4 Direction removing this permitted change in all parts of the District and therefore any proposal involving the creation of an HMO or bedsits in the Tendring District will require planning permission. Tendring District Council is not unique in applying an Article 4 Direction in its area and other seaside towns such as Blackpool, Bournemouth, Hastings and Margate currently have Article 4 Directions in place.

HMOs with between three and six bedrooms fall under Class C4 of the Use Classes Order. HMOs with seven or more bedrooms are classed as 'sui generis'. Each individual bedroom within an HMO is classed as a 'tenancy unit'. A property under Class C4 that does not meet the criteria for mandatory licensing (see below) may still require planning permission.

Bedsits are dwelling houses that consist of a single room containing living accommodation and dedicated, but often basic, cooking and washing facilities (such as a cooker, microwave oven and sink). Sometimes bathroom and toilet facilities are shared by a number of bedsit occupiers. Bedsits form part of Use Class C3.

3.2 THE REASONS FOR THE ARTICLE 4 DIRECTION.

The Council adopted the Article 4 Direction because of concerns about the impact that an increasing number of HMOs and bedsits, both new-build proposals and the conversion of existing properties, will have on the health of residents, the economy of the District and the physical character of our towns and villages. An increasing number of large residential properties, hotels and guesthouses and former care homes in central parts of our seaside towns have been lost to HMOs and bedsits, which will result in the permanent loss of valuable visitor accommodation, essential to the tourism economy, and poor living conditions and resultant health problems for tenants.

Furthermore, the concentration of low-cost accommodation within town centre areas can result in a high proportion of people with personal, financial or health issues moving into the area (sometimes from outside of the District) and being concentrated together in one area. This can place undue pressure on the public services within those areas (such as doctors' surgeries) The proliferation of HMO's can detract from the public perception of the area (which is all important for the purposes of attracting visitors, tourists and investors to spend money in the local economy).

Owners of houses, hotels and guesthouses within the area could consider converting their premises into HMOs and bedsits, for rental income, rather than retaining them in their existing use. This trend is not sustainable for the long-term health and prosperity of the District and the economy of our town centres and tourist areas.

3.3 THE REQUIREMENTS TO OBTAIN PLANNING PERMISSION FOR AN HMO.

The necessary requirements to obtain planning permission for an HMO are contained in Policy LP11 (HMO AND BEDSITS) in the emerging Local Plan. This is designed to ensure that any proposal for HMOs or bedsits does not result in an unhealthy concentration of such accommodation in any one particular area and to ensure that any HMOs or bedsits that are permitted will meet minimum standards of room size, facilities, design and layout to ensure that occupiers can enjoy decent living standards and to minimise any detrimental impacts on the physical appearance of the area. The space standards set out in the policy are based on the minimum space standards prescribed in Section 326 of the Housing Act 1985.

Policy LP11 in the emerging Local Plan states that all proposals involving the creation of Houses in Multiple Occupation (HMOs) or bedsits (including new-build, subdivisions and conversions) will require planning permission and will only be permitted within defined town centres where all of the following criteria are met:

- a) that within a 100 metre radius of the property or site in question (drawn as a circle from the centre of the property or site), the total number of existing and proposed HMO tenancy units and bedsits, as a proportion of all residential accommodation (tenancy units plus bedsits and dwelling houses that are not HMOs), would not exceed 10%;
- b) that the proposed tenancy units have a minimum internal floor area of 12 square metres and bedsits have a minimum internal floor area of 16 square metres;
- c) that each individual tenancy unit or bedsit has direct physical access to communal facilities without the need to rely on access via another tenancy unit or bedsit;
- d) that no more than six tenancy units or bedsits will be served by a single in door communal facility such as a living room, dining room or kitchen;
- e) that a minimum of 1 off-street car parking space per tenancy unit or bedsit is provided and each parking space must be capable of being used independently of one another;
- f) that all residents of the HMO or block of bedsits have access to adequate space for the storage of waste and recycling bins which will be provided within the curtilage of the block;
- g) that all external alterations to existing buildings are in keeping with the character of the building and the wider area; and
- h) that an area of communal open space is provided that has sufficient space and facilities for drying clothes.

Owners of former hotels or care homes will need to demonstrate that it is no longer viable for the establishment to operate in its current format and the Council will require evidence that the property has been subject to a marketing exercise of at least 6-12 months.

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Furthermore, if a property is listed, it will not only need to obtain planning permission but also listed building consent and comply with building regulations.

Any person wishing to convert a property into an HMO or develop a new property as an HMO is strongly advised to seek advice from the Council's Planning Department. Advice can be obtained by e-mailing planning.enforcement@tendringdc.gov.uk

Planning consent must be obtained before setting up an HMO. Failure to do so will lead to investigation and enforcement action. The views of the Housing and Environmental Department will be sought on any requests to convert a property into an HMO or to develop a new property as an HMO.

4. HOUSING & LICENSING REQUIREMENTS

4.1 THE HOUSING MARKET

The private rented sector plays an important role on the national and local housing market. It is estimated that 1 in 5 households in England live in the private rented sector. The most recent Strategic Housing Market Assessment for the district published in December 2015 estimated that just under 13,000 households live in the private rented sector in Tendring (approximately 20% of all households). Given that there are approximately 5500 affordable rented homes in the district, it is clear that the private rented sector, including HMO's, plays a vital role in meeting the housing needs of our local residents.

4.2 SAFETY

By their nature, HMO's pose a much higher risk in respect of fire safety than single occupancy housing. The sharing of kitchens and the often transient nature of tenants means that additional fire safety measures must be in place. The exact measures required depend on the construction of the property and the level of risk posed by the anticipated tenant group and can include protected fire escape routes, fire separation between rooms, fire detection and warning systems, fire doors and sprinkler systems.

The Council's Private Sector Housing Team can provide advice on the level of fire precautions required. The landlord will also need to undertake their own fire risk assessment.

An additional requirement is for landlords to undertake electrical safety inspections, fire alarm tests and gas safety checks and to submit them to the Council when requested.

As already highlighted, HMO's often provide much needed accommodation for vulnerable persons. Sometimes these individuals may have mental health illnesses and/or alcohol and drug dependencies. It is the behaviour of some of these individuals that can lead to problems within HMO's and for the immediate neighbourhoods around them. Landlords must be cognisant of this when setting up their HMO and deciding who to offer tenancies to. They must be equipped with the skills to manage the tenant groups they offer accommodation to.

Before an HMO is brought into use, the appropriate conversion works and fire safety measures must be installed and approved by the Council's Private Sector Housing Team.

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4.3 HMO MANDATORY LICENSING

Mandatory HMO Licensing was first introduced in Part II of the Housing Act 2004 and came into force in 2006. The rules on HMO licensing were amended in October 2018 and now, a

HMO must be licensed if it accommodates **at least 5 people in 2 or more different households**. The changes were made to the HMO licensing regime following extensive consultation and concerns about some landlords letting sub-standard properties. It is a legal requirement for a landlord to obtain a licence from the Council in order to lawfully let the property if the mandatory licensing conditions are met. There are currently 34 HMO's in the Tendring district that require a mandatory licence.

In order to issue a licence for an HMO, the Council must be satisfied that the property is, amongst other things, suitable for occupation by a specified maximum number of people and/or households. Regulations entitled the 'The Licensing and Management of Housing in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 have been issued which prescribe minimum standards that each local authority must have regard to in terms of:

- Washing and toilet facilities
- Kitchen facilities
- Heating and;
- Fire precautions.

More recently, The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 brought in minimum standards regarding room sizes and waste disposal.

Before issuing a licence, the Council needs to be satisfied that the management arrangements for the property are satisfactory and that person involved in the management of the property is a 'fit and proper person' and competent to manage the property. There also needs to be sufficient funds available to carry out day to day maintenance. Management arrangements can differ depending on the age, size and type of property and the number and type of tenants residing in the property but as a minimum, there should be:

- A procedure for tenants to report repairs;
- A procedure for ensuring any repair work or maintenance work is carried out in a timely and professional manner;
- Sufficient funds available to enable emergency and routine repairs to be carried out;
- A procedure for checking the emergency lighting and fire detection systems are in working order;
- A procedure for ensuring the tenants are aware of fire safety and proper use of fire safety installations;
- Arrangements for ensuring fire escape routes are clear from obstruction;
- Arrangements for ensuring that the gas (where applicable) and electrical installations are kept in working order and that relevant safety certificates are up to date;
- Arrangements are in place to ensure the common parts of the building such as kitchens, bathrooms, toilets and hallways are kept clean and in good order;
- Arrangements are in place for the storage and collection of refuse and;
- Arrangements are in place to ensure the outside areas and fencing are tidy and in good order.

Tenancies should be created and ended in accordance with the law. If a rental deposit is taken, this should be safeguarded and placed in a custodial scheme. The owner or manager must make arrangements for the payment of Council Tax.

4.4 REGULATORY POWERS

Some significant regulatory powers are in place in respect of HMO's, whether licensable or not, and these reflect the high levels of risk to the safety of tenants if a property is not correctly designed or managed. Landlords must ensure they are aware of the laws they must comply with before they embark on setting up an HMO. The Council proactively inspects HMO's and will take enforcement action where breaches of legislation are discovered.

It is an offence if the landlord or other person in control of the HMO either fails to apply for a licence for a licensable property, or allows a property to be occupied by more people than are permitted under the terms of the licence without reasonable excuse. A civil penalty or an unlimited fine upon conviction may be imposed. It is also an offence to break any of the licence conditions without reasonable excuse and again, a civil penalty or unlimited fine upon conviction may be imposed.

It is an offence for a landlord to fail to comply with Management Regulations in respect of HMO's, specifically The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007. A civil penalty or unlimited fine upon conviction may be imposed in respect of breaches. It is important to note these regulations must be complied with at all times.

Other civil remedies are available to the Council such as Interim Management Orders, Final Management Orders, Rent Repayment Orders, Prohibition Orders and Emergency Prohibition Orders. In the last 18 months, the Council has issued prohibition orders on two HMO's in Clacton-on-Sea leading to the suspension of the HMO licence and has issued one Emergency Prohibition Order on another HMO leading to the revocation of the licence and civil penalties being imposed totalling £70,000 in respect of breaches of management regulations.

The Council must keep a register of mandatory licensable HMO's in the district and this must be made available for inspection by any member of the public. There is a fee payable to obtain a licence for an HMO in the district and this currently costs £718.90 with an additional charge of £20.54 per room for properties with over six rooms. The licence will generally last for five years.

4.5 NON- LICENSABLE HMO'S

As stated in Section 2 of this Policy, not all HMO's are required to be licensed which applies to properties where at least three but less than five tenants live in a property forming more than one household and where some essential living accommodation such as a kitchen, bathroom or toilet are shared. Such properties are deemed to be less risk than those HMO's that require a mandatory licence but whilst, a licence is not required by law, the properties are still required to meet standards as set out in the Housing Health and Safety Rating System which was introduced in Part I of the Housing Act 2004.

7.

Tendring District Council is also signed up to the Essex Amenity Standards which is a pan-Essex agreement to ensure consistent management and conditions standards in all HMO's across the County. There are an estimated 149 non-licensable HMO's in the district.

Any person seeking advice on whether a property needs to be licensed or the standards required for HMOs in the district should contact the Council's Private Sector Housing Team at PShousing@tendringdc.gov.uk

5. MEETING HOUSING NEEDS

5.1 THE SHARED ACCOMMODATION RATE

HMO's can provide a role in providing cheaper accommodation for single people on low incomes or benefits. As amenities are shared, HMO accommodation tends to be cheaper than self-contained accommodation. Single people in receipt of benefits, be they unable to work, unemployed or on a low wage, are paid a "shared accommodation rate" of local housing allowance or universal credit housing costs. The shared accommodation rate was originally introduced in 1996 and applied to claimants under the age of 25. In April 2012, new regulations were introduced to extend the age to under 35. There are some claimants who are exempt from the rule such as lone parents, people in receipt of Personal Independence Payments for care and care-leavers up to the age of 22. The current shared accommodation rate in the district is £71.34 per week and the current rate for a person who is 35 or over and can rent a one bedroom flat is £120.82 per week.

5.2 THE HOMELESSNESS REDUCTION ACT 2017

In April 2018, the Homelessness Reduction Act came into force and the Act imposed new duties on the Council in terms of tackling and assessing homelessness. The Council now has a duty to prevent or relieve homelessness for each person who approaches for assistance. The prevention duty can last up to 56 days and if homelessness cannot be prevented, the Council then owes the person a homelessness relief duty. This means that the Council has to actively work with each and every client to source accommodation and this is regardless of whether the person will be owed a full housing duty (i.e the person has a priority need for accommodation and is unintentionally homeless). The lack of affordable housing in the district means that the Council has to source accommodation in the private sector and for those under the age of 35 and subject to the shared accommodation rate referred to above, a placement in an HMO is the only viable option.

In the financial year 2018-19 (the first year of the Homelessness Reduction Act), 344 single people without children made a formal homelessness approach to the Council and were owed a prevention, relief or full housing duty. This was a significant increase on numbers compared to previous years but not unexpected as the terms of the Homelessness Reduction Act require the Council to treat every approach for assistance as a formal application.

At the time of writing this Policy, the country is in the midst of the Covid-19 pandemic. Whilst the government has brought in measures to temporarily halt evictions (for example, from August 2020, private landlords are now required to give at least six month's notice unless there has been a serious breach of the tenancy), there is a likelihood that many residents in the district will face financial hardship or unemployment and as a result become threatened with homelessness.

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In the quarter April-June 2020, the Council owed a homelessness relief duty to 80 single person households, 38 of whom were under the age of 35 and therefore subject to the shared accommodation rate.

5.3 ROUGH SLEEPING

The Government has committed to half rough sleeping numbers in England by the end of 2022 and to eliminate rough sleeping numbers all together by 2027. Whilst the numbers sleeping rough in the district have been low compared to other areas, there is the potential for rough sleeping numbers to increase as more people become threatened with homelessness during and after the pandemic.

The Council is keen to work with landlords to prevent homelessness and source accommodation for our residents. If landlords wish to work with the Council to meet housing needs in the district, they can e-mail housingmail@tendringdc.gov.uk

6. LINKS TO LEGISLATION, STRATEGIES AND POLICIES

- Housing Act 1985
- Housing Act 2004
- Equality Act 2010
- Homelessness Reduction Act 2017
- The Licensing and Management of Housing in Multiple Occupation and Other Houses (Miscellaneous) (England) Regulations 2006
- The Licensing and Management of Housing in Multiple Occupation (Additional Provisions) (England) Regulations 2007
- The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018
- The Housing Benefit (Amendment) Regulations 2011
- Town & Country Planning Act 1990
- Planning (Listed Buildings & Conservation Areas) Act 1990
- Tendring District Council Article 4 Direction adopted May 2013
- Tendring District Council emerging Local Plan 2013-2033 and beyond
- Strategic Housing Market Assessment published in December 2015
- Corporate Enforcement Strategy 2017
- Essex Amenity Standards (reviewed in 2018)
- Council's Corporate Plan 2020-2024
- Homelessness Reduction and Rough Sleeping Strategy 2020-2024

7. CONCLUSIONS

The Council recognises that HMO's are a part of the local housing market. It is absolutely vital that HMO's are correctly set up and run and that landlords take full responsibility for them. Setting up and running an HMO is not something to be taken on lightly – full commitment is required in order to sustain a successful and safe business.

The need for HMO's to meet housing need must not be underestimated and balanced against the impact that a high concentration of larger HMO's can have on a neighbourhood.

Planning policies should ensure an appropriate distribution of HMO's in areas where they may be needed.