

## London Borough of Barnet's Fit and Proper Persons Policy

Adopted at Housing Committee 1<sup>st</sup> February 2016

### Introduction

In deciding whether a licensable property can be licensed, the Council must be satisfied that there are satisfactory management arrangements in place or that such arrangements can be put in place by the imposition of conditions in the licence.

In considering whether the management arrangements are satisfactory, the Council must have regard to the following:

- the suitability of the proposed licence holder and manager (if different); that is to say that they are in each case 'fit and proper persons'
- the competence of the proposed licence holder/manager to manage the building
- the suitability of management structures
- the adequacy of financial arrangements

This policy considers the meaning of fit and proper person, the Council's approach to deciding whether a person is fit and proper and the kinds of factors that the Council will take into account in making such decisions.

### What is a fit and proper person test?

Before the Council can issue an HMO licence, the Housing Act 2004 says that it must be satisfied that the proposed licence holder is a fit and proper person. It must also be satisfied that the proposed manager of the house is a fit a proper person to manage the house. If not, the licence must be refused unless other satisfactory arrangements can be agreed.

A licence may be revoked where the Council no longer considers the licence holder to be a fit and proper person and/or that the management of the house is no longer being carried out by persons who are in each case fit and proper persons to be **involved in its management**.

The test is designed to ensure that those responsible for operating the licence and managing the property are of sufficient integrity and good character to be involved in the management of an HMO and that as such, they do not pose a risk to the welfare or safety of persons occupying the property.

### What residential property does the policy affect?

The fit and proper person test applies to any HMO requiring a licence under Part 2, or the licensing of any other residential accommodation under Part 3 of the Housing Act 2004. In Barnet, this policy only concerns HMOs covered by the Mandatory and Additional Licensing Schemes under Part 2 of the Act.

### **What is meant by ‘involved in the management’?**

The Council must consider licence holders, managers and others involved in the management of the property.

A person involved in the management of the property, is a person who is able to comply with any licence conditions and deal with the day-to-day issues that arise with an HMO as well as being able to deal with longer term management issues. Typically but not exclusively, these will include such matters as:

- emergency repairs and other issues
- routine repairs and maintenance to the property and its grounds
- cyclical maintenance
- the management and the provision of services to the building and its grounds
- the management of tenancies or occupants, including dealing with rent matters and tenants’ enquiries
- the management of the behaviour of tenants, occupants and their visitors to the property
- neighbourhood issues (including disputes)
- engagement with the local authority, police and other agencies, where appropriate

The licence holder and the manager can be two different people. Where this is the case, a decision must be made for each of them about whether they are a fit and proper person.

### **What will the Council look at?**

The Council will consider a person to be ‘fit and proper’ if it is satisfied that:

- They have not committed an offence involving fraud or other dishonesty, or violence or drugs or any offence listed under Schedule 3 to the Sexual Offences Act 2003 (section 66(2)(a) of the Housing Act 2004)
- They have not practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in or in connection with the carrying on of any business (section 66(2)(b) of the Housing Act 2004)
- They have not contravened any provision of the law relating to housing or landlord and tenant law (section 66(2)(c) of the Housing Act 2004)
- They have acted otherwise than in accordance with a Code of Practice under section 233 of the Act (regarding the management of HMOs) (section 66(2)(d) of the Housing Act 2004)

In addition, the Council may also take into account whether any person associated or formerly associated with the proposed licence holder or manager, has done any of the things mentioned above if it considers those matters to be relevant.

Any further reference in this policy to an offence shall be construed as an offence within the meaning of section 66(2)(a), unlawful discrimination construed as unlawful discrimination within the meaning of section 66(2)(b), a contravention construed as a contravention within the meaning of section 66(2)(c), or breach of Code of Practice construed as being a breach of a Code of Practice within meaning of the section 66(2)(d), all as outlined above.

### **How will the Council make their decision?**

Where there is evidence of an offence, unlawful discrimination, contravention or breach of the Code of Practice, the Council may decide that the person is not fit and proper. Each case must be considered on its own merits and such evidence will not necessarily lead to a conclusion that a person is not a fit and proper person. The Council will exercise its discretion and act reasonably, proportionately and consistently in its approach to making a decision. It will take into account those factors considered to be relevant to a person's fitness to hold a licence and/or manage an HMO and disregard those which it considers are not relevant.

In deciding upon whether evidence should lead to the conclusion that a person is not a fit and proper person, the Council will take into account, among any other relevant things, the following: -

- the relevance of the offence, unlawful discrimination, contravention or breach of the Code of Practice in relation to the person's character and integrity and any bearing this has on the management of an HMO
- the severity of the offence, unlawful discrimination, contravention or breach of the Code of Practice, in terms of its impact on residents and the wider community
- the time the offence, unlawful discrimination, contravention or breach of the Code of Practice
- any mitigating circumstances
- any other relevant matters

A landlord with an unspent conviction for unlawful eviction or for harassment of tenants for example, would not normally be considered to be a fit and proper person. On the other hand, evidence of minor contraventions of housing or landlord and tenant law, will not necessarily lead to the conclusion that a person is not fit and proper.

Similarly, where an offence is isolated and/or mitigating circumstances can be properly shown, the Council may not decide that a person is not a fit and proper person.

Multiple offences or a series of offences over time may however demonstrate a pattern of inappropriate behaviour, which is more likely to lead the Council to conclude that someone is not fit and proper. This is also more likely to be the case where the victim of an offence is a vulnerable person.

Poor management practices are not wrongdoings for the purposes of the fit and proper test, unless those wrongdoings are in themselves an offence, unlawful discrimination, contravention or breach of the Code of Practice. A person cannot be deemed unfit, simply because of poor

management, although that may be relevant to determining any question concerning a person's competence to manage the building or the suitability of management structures.

### **Consideration of 'persons associated or formerly associated' with the proposed licensing holder or manager**

If there is evidence that a person associated, or formally associated with a proposed licence holder or manager has committed any of the wrongdoings specified in section 66(2) of the Housing Act 2004, that evidence may be taken into account in determining the proposed licence holder's or manager's fitness (even if that person has an unblemished record). The purpose of this requirement is to ensure that only fit and proper persons hold licences or are in any way involved in the management of licensed properties. It would not be appropriate for a licence to be granted to someone, or for someone to be the manager of a property, if that person was merely acting as a 'front' for someone else who, if they were not unfit, would be otherwise be entitled to be the manager or licence holder.

An example might be that of a husband and wife, where the husband is the landlord (or indeed both he and his partner are joint landlords), but only the wife has applied for the licence. If there is evidence that the husband has committed a relevant offence, then it is reasonable to assess whether or not he is a fit and proper person. The Council may then refuse to grant his wife a licence because of her association with him. Likewise if a landlord with an unsatisfactory record nominated a "manager" who had a clean record, but had acted for him whilst the wrongdoings were committed, the Council may consider the managing agent by association not to be a fit and proper person.

A further example is that of a company director 'A', who has a number of relevant unspent convictions. 'A' then works for a managing agent 'B' as an employee. 'B' may need to satisfy the Council that 'A' is a fit and proper person where 'A' is involved in the management of the property. Where the Council decide that 'A' is not a fit and proper person in these circumstances, 'B' by association may also fail the fit and proper test.

A decision that a person is not a fit and proper person and a refusal to grant a licence on that basis, will normally be made only if:

- there is actual evidence of an offence, unlawful discrimination, contravention or breach of the Code of Practice by an associated person; and
- the associate's fitness is directly relevant to the applicant, proposed licence holder or manager's fitness to manage the property or hold the licence.

In relation to an offence, only unspent convictions will be taken into consideration.

### **Duration**

If someone is found not to be a fit and proper person, this will usually remain the case for a period of 5 years. However, if a licence application is re-submitted at any time during that period, the Council will reconsider the case on the merits of the application made. The Council

will in so doing, have regard to this policy and the applicant will need to provide sufficient evidence that they are now a fit and proper person.

### **Evidence of offences, unlawful discrimination, contraventions or breaches of the Code of Practice**

As an applicant for a licence must disclose information about whether they and/or a proposed manager has committed any relevant offences, practised unlawful discrimination, contravened any provision of the law relating to housing or landlord and tenant law or breached the Code of Practice, if any, the Council should normally have sufficient information to decide a person's fitness based on the application. If the Council is not satisfied that it has sufficient information to make a determination, it may require the applicant to provide further details before it can make a decision about whether or not a person is a fit and proper person.

The following examples are intended to give guidance about the Council's approach to the fit and proper person test and the factors to be taken into account where it has satisfactory evidence of relevant wrongdoing or that such has been disclosed to them in the licence application.

*Does the contravention relate to a provision of the law relating to housing or landlord and tenant law?*

Where this is the case, careful consideration should be given to an application for a licence. Account will be taken of among others things, evidence of poor management leading to contraventions, prosecutions, simple cautions, judgements and other matters where relevant, in particular under:

- The Public Health Acts 1936 and 1961
- The Building Act 1984
- The Environmental Protection Act 1990
- The Town and Country Planning Act 1990
- The Prevention of Damage by Pests Act 1949
- The Protection from Eviction Act 1977
- The Local Government (Miscellaneous Provisions) Act 1976 and 1982
- The Housing Grants, Construction and Regeneration Act 1996
- The Local Government and Housing Act 1989
- The Housing Act 2004
- The Landlord and Tenant Act 1985

The term 'contravention' in this context could refer to a contravention following which the Council has served a statutory notice, carried out the remedial action itself by way of works in

default, or taken a prosecution. The nature of the contravention and its relevance to the management of an HMO and the potential harm associated with the contravention are factors to be taken into account.

In relation to any contravention of a provision of the law relating to housing, the Council will take into account whether in relation to a proposed licence holder or manager:

- they have had a licence refused, been convicted of breaching the conditions of a licence under Parts 2 and 3 of the Housing Act 2004
- they own or manage or have owned or managed an HMO or house which has been the subject of either a control order under section 379 of the Housing Act 1985 in the five years preceding the date of the application; or any appropriate enforcement action described in section 5(2) of the Housing Act 2004 (in relation to category 1 hazards)
- they own or have previously owned a property that has been the subject of an interim or final management order whilst in their ownership, or a special interim management order under the Housing Act 2004.

It may also be relevant to consider the circumstances surrounding the contravention, whether there has been more than one contravention, the number of them and of any evidence demonstrating good character since the contravention took place. Again, it is important to consider the merits of each individual case.

*Have any offences been committed involving a fraud?*

The licence holder or manager of an HMO occupies a position of trust and their responsibilities almost certainly include a need to enter the property from time to time, be engaged in financial dealings and/or handle a tenant's personal data.

A person will not normally be found to be fit and proper where they have an unspent conviction for an offence in which the victim has been deprived of money, property or other benefits by misrepresentation and/or deception and this includes:

- Theft
- Burglary
- Fraud
- Benefit fraud (including Housing Benefit fraud)
- Conspiracy to defraud
- Obtaining money or property by deception
- People trafficking
- Being struck off as a company director
- Any other similar offence

*Have any offences been committed that have involved violence?*

A person will not normally be found to be fit and proper where they have an unspent conviction for an offence involving violence including:

- Murder
- Manslaughter
- Arson
- Malicious wounding or grievous bodily harm with intent or not
- Actual bodily harm
- Robbery
- Racially aggravated criminal damage
- Common assault whether racially aggravated or not
- Assault occasioning actual bodily harm
- Possession of an offensive weapon
- Possession of a firearm

*Have any offences been committed involving drugs?*

In a deciding whether a person is a fit and proper person, careful consideration should be given to any unspent convictions for drug related offences. The nature of the offence, the quantity and class of drugs that may have been involved and the relevance of the offence in relation to the management of an HMO must all be taken into account.

*Have any sexual offences been committed?*

Offences of this kind are of particular concern because of the need for licence holders and/or their managers or others involved in the management of an HMO to visit tenants at the property.

A person will not normally be found to be a fit and proper person where they have an unspent conviction for an offence under Schedule 3 of the Sexual Offences Act 2003

*Has any unlawful discrimination been practised?*

In a deciding whether a person is a fit and proper person, careful consideration should be given to any evidence of unlawful discrimination that has been practised by them on the grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business.

Again, the nature of the unlawful discrimination and the relevance of it to the management of an HMO will all be taken into account.

## **Environmental Health Enforcement Policy**

This policy forms part of and is an addendum to the Council's Environmental Health Enforcement Policy as it applies to the Private Sector Housing Team in the execution of their statutory duties.

### **Data Sharing**

Information obtained and used for the purpose of determining whether a licence holder or manager is a fit and proper person may be shared with other councils, council departments or statutory bodies. Licence applicants agree to this when they sign the application form.



