



Selective Licensing Policy.

VERSION 1 – DECEMBER 2018

COVENTRY CITY COUNCIL – PLANNING AND REGULATORY SERVICES

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Coventry Selective Licensing Policy and Procedures

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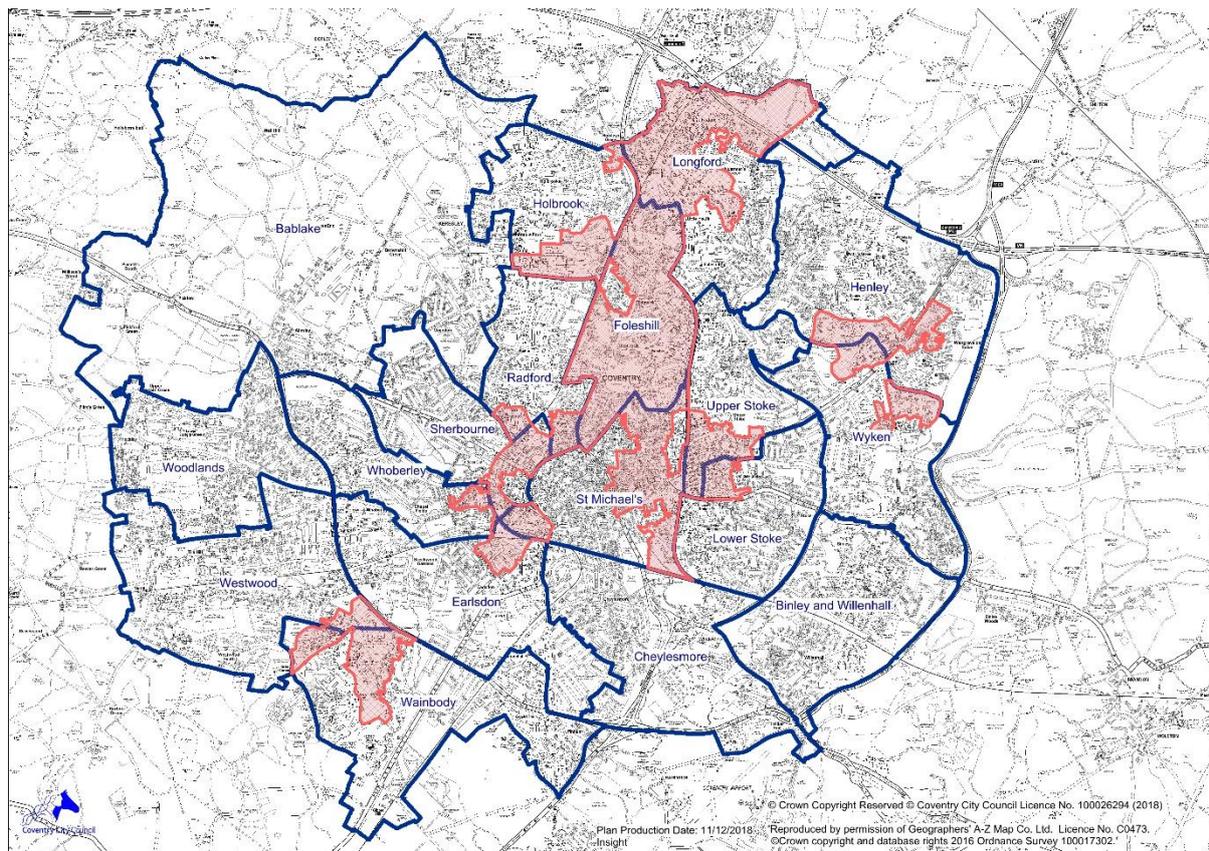
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Introduction

Under Section 80 of the Housing Act 2004 Coventry City Council has the power to designate areas of the City subject to Selective Licensing of certain types of rented houses.

Coventry City Council has exercised this power and designated the following areas of the City as subject to Selective Licensing.

Figure 1 - Map of Selective Licensing areas.



Selective Licensing covers all private rented houses within the designated areas and all licence applications are to be accompanied with a fee determined by the Council. Once a licence is issued it is not transferable.

This document sets out the structure of the scheme and the fees and charges and criteria Coventry City Council will apply to all licences in relation to its Selective Licensing schemes.

Selective Licensing in Coventry

Under the “Coventry City Council Areas (TBC) Designation for Selective Licensing 2019” which will come into force on the (DATE), most privately rented homes in the City are required to have a property licence.

The Council has exercised its powers to charge under Section 87(3) and (7) of the Housing Act 2004 and does so taking into account the Provision of Services Regulations 2009, which themselves implement the EU Services Directive.

Under Part 3 of the Housing Act 2004, a house is required 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.

In the event that a building has multiple dwellings contained within it the Council will require a separate application and fee for each of the dwellings within the building. The Council will consider each application and will take the following factors into account before deciding to issue a multi property licence or not:

- Each of the dwellings are separate dwellings (usually self-contained flat,) which are contiguous to one another in the same building;
- Each of the dwellings are occupied under non-exempt tenancies; and
- Each of the dwellings within the same building are within common ownership and management control.

Where the Council is satisfied that individual property licences should be granted, it will give notice of this to the applicant and every relevant person. There is a right to appeal this decision to the First Tier Tribunal (Residential Property Chamber), notwithstanding the grant of these licences.

In cases of a registered `not for profit` charity i.e. Cyrenians or an individual housing provider, such as a private landlord or organisation who is assisting the Council by offering permanent accommodation to meet our homelessness duties applications will be accepted, for the particular property being provided without a fee being payable. An assessment of the organisation will then be carried out and if appropriate the Council will determine the application and issue a licence without requiring any fee. Each case will be considered on its merits based on the type of individual or organisation submitting the application and the removal of the fee requirement will only be applied to the licence for the house being provided for homelessness purposes.

Licence Fees

Section 87 of the Housing Act 2004 permits the Council to require any application for a licence under Part 3 to be accompanied by a licence fee and that this fee may properly cover all costs incurred by the Council in carrying out its functions.

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In developing its fee structure the Council has had regard to the European Court of Justice ruling in *R (Hemming) V Westminster City Council* (Case C-316/15) and the High Court decision in *R (Gaskin) v LB Richmond Upon Thames* (2018) EWHC 1996 (Admin) which held that the EU's Provision of Services Directive, which is enshrined in UK law as the Provision of Services Regulations 2009 should apply to property licensing fees and the processes involved in implementing and delivering such schemes.

The Services Directive, in particular should be interpreted as precluding charging in advance for costs other than those directly related to the authorisation process of the scheme. In other words, the Council 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 it clear that unsuccessful applicants are provided with a refund of the remaining part of the fee. The Council may legitimately recover its wider costs, over and above those relating to the administration of applications, but this should be at the point at which the Council has determined that a licence is to be granted.

The judgements in *Hemming* and *Gaskin* has therefore had the effect that the fee for a Selective Licence under Part 3 of the 2004 Act must be levied in two separate parts.

The Council is not allowed to demand fees in the Stage 1 process for anything other than the costs of administering and processing the application for a licence. Furthermore this element of the fee is non-refundable should the application be unsuccessful.

In the case of Stage 2 payments these can only be requested if the initial application is successful and will be charged to cover the costs of running and enforcing the scheme.

As such the Council, when setting its fees, has adopted the two stage approach. All fees and charges will be reviewed on an annual basis and the following tables set out those fees for the period (DATE TBC).

Table 1- Fees and Charges

Stage	Type of Licence	Fee
Stage 1 Fee – Payable at the time of making the application	1 year licence	£ 251.32
Stage 2 Fee – Payable once the Council has determined to grant a Licence.	1 year licence – where landlord has been found to be operating an unlicensed property	£ 488.59

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Total Fee		£ 740.00
Stage	Type of Licence	Fee
Stage 1 Fee – Payable at the time of making the application	1 year licence	£ 251.32
Stage 2 Fee – Payable once the Council has determined to grant a Licence.	1 year licence – where the landlord is licensing a new property without being identified as part of the Council proactive enforcement regime.	£ 290.54
Total Fee		£ 540.00
Stage	Type of Licence	Fee
Stage 1 – Payable at the time of making the application	5 year licence – subject to criteria	£ 221.52
Stage 2 – Payable once the Council has determined to grant a Licence	5 year licence	£ 160.00
Total Fee		£ 380.00
Stage	Type of Licence	Fee
Stage 1 – Payable at the time of making a Renewal Application.	Renewal of a licence – subject to criteria	£ 191.72
Stage 2 – Payable once the Council has determined to Grant a Renewal of a Licence	Renewal of a licence	£ 225.10
Total Fee		£ 415.00

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Under Section 90 (6) of the Housing Act 2004 the Council has the power to impose a restriction / obligation on a particular person (with their consent). In accordance with this power the Council will require the licence holders consent to pay the Stage 2 fee in advance of the licence being issued, this will be required as part of the application process.

In addition, the Council will attach a condition to all licences requiring this obligation to be met i.e. to pay the Stage 2 fee. This approach is consistent with that set out in the *Hemming* case.

Failure to make the Stage 2 payment will result in the Council taking action through, either the revocation or refusal of the licence or by enforcing the non-compliance of the licence condition associated with the making of the Stage 2 payment.

Processing the application

Under the Housing Act 2004 the Council can either grant or refuse a licence. In determining whether to grant or refuse a licence the Council must satisfy itself of the following:

- That the proposed licence and manager of the property
- 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.

Tests for fitness etc. and satisfactory management arrangements.

Coventry City Council must be satisfied that “the proposed management arrangements are satisfactory” before granting a licence. Those arrangements include (but are not limited to) consideration of whether:

- the person(s) proposed to be involved in the management of the premises has/have a sufficient level of competence to be involved;
- the person(s) proposed to be involved with the management of the premises is/are actually involved in the management;
- the person(s) is/are ‘fit and proper’ (which is discussed above); and
- the proposed management structures and funding arrangements are suitable.

If there are concerns about the competencies and structures in place to manage the premises then conditions can be imposed on the licence to ensure that the necessary arrangements are in place. However, if such conditions will still not be possible or practical to impose then it may be necessary to refuse to grant a licence.

It is for a Council to determine whether a person has sufficient competence to be involved in the management of premises and, of course, the level of competence

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required will in some measure be determined by the complexity of the management challenges posed. The Council will, therefore, be looking at the applicant's experience and track record of managing residential premises and, in particular where he/she is the existing manager, the premises to which the application relates. In most cases landlords who belong to a recognised trade association or are members of an accreditation scheme will be regarded as having the necessary competence to be involved in the management of the premises because, at least such organisations can be called upon for advice and assistance where necessary.

The management structures must be such that the manager is able to comply with any licence conditions and deal with the day to day operational management issues that arise as well as being able to deal with longer term management issues. In considering whether the structures are appropriate the Council may take account of the following:

- evidence as to whether the systems in place are sufficient to enable the manager to comply with any condition of a licence or if such systems can be put in place through a condition of a licence to ensure compliance;
- evidence of the systems for dealing with:
 - i) emergency repairs and other issues;
 - ii) routine repairs and maintenance to the premises and its curtilage;
 - iii) cyclical maintenance;
 - iv) management and the provision of services (if any) to the building and its curtilage;
 - v) management of tenancies or occupants;
 - vi) management of the behaviour of tenants, occupants and their visitors to the premises; and
 - vii) neighbourhood issues (including disputes)
- evidence of structures for engagement with the local authority, police and other agencies, where appropriate.

In order to be able to demonstrate much of the above evidence it is likely that the manager will need to operate within a reasonable proximity to the premises, so that he/she can attend to matters promptly and retain an overview on the condition of the premises and the management of the tenancies.

The Council must also be satisfied that the financial arrangements relating to the premises are suitable. In that regard the manager must be sufficiently funded or have access to funding to carry out his obligations under the licence and his/her general management functions.

Coventry City Council can vary or revoke a licence at any time during the licence period if there is sufficient evidence to support these decisions. Unannounced visits of licensed properties will therefore be undertaken during the licence period to check for

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compliance with the licensing and management regimes which apply. This is consistent with the powers provided under Section 239 of the Housing Act 2004.

Breach of any such legislation is a strict offence for which further action will be taken. The Housing, Health and Safety Rating System (HHSRS) also applies to rented properties and (if appropriate) remedial works can be enforced via this legal mechanism separately to the powers provided under the licensing scheme.

The fit and proper test

In deciding to grant a licence Coventry City Council must be satisfied that the proposed licence holder “is a fit and proper person to be the licence holder ...” and that “the proposed manager of the house is a fit and proper person to be the manager of the house ...”.

This requirement is to ensure that those responsible for operating the licence and managing the premises are of sufficient integrity and good character to be involved in the management of the particular residential premises to which the application relates and as such they do not pose a risk to the health, safety or welfare of persons occupying and visiting the premises.

When considering whether a person is ‘fit and proper’ Coventry City Council will have regard to any misdemeanours (wrong doings) of the relevant person concerned. This is evidence that the person has:

- committed any offence involving fraud or other dishonesty, violence or drugs and certain types of sexual offences;
- practised unlawful discrimination on the grounds of sex, colour, race, ethnic or national origins or disability, in connection with the carrying out of business;
- contravened any provision of housing or landlord and tenant law; or
- acted otherwise than in accordance with an approved code of practice.

The above list is not exhaustive and Coventry City Council can and will consider whether a relevant person has committed other relevant misdemeanours, for example, discrimination under Regulation 5 of the Equality Act (Sexual Orientation) Regulations 2007. A relevant person will not be deemed unfit, simply because of poor management, although this is highly relevant to determining any question of suitability or competence.

Coventry City Council do not adopt a blanket policy with its consideration of factors under a fit and proper person test. Each case will be considered on its own merits and regard will be had to information provided / omitted from an application form; historical information already held by Coventry City Council relating to the

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premises and / or any relevant person connected with the licence application.

In an application for a licence the applicant must provide details of the following in relation to him/herself and the proposed manager (if the applicant is not to be the licence holder):

- unspent convictions;
- any findings of a court/tribunal that the person has practised unlawful discrimination;
- any judgement entered against that person in relation to a contravention of housing or landlord and tenant law (and, in so far it relates to the housing or landlord and tenant law, any contravention of any enactment relating to public or environmental health);
- any control order made in respect of any HMO under his/her management or ownership (and also in respect of any former HMO he/she owned or managed);
- any enforcement action in respect of any house or HMO under his/her management or ownership (and also any former HMO or house he/she owned or managed) under the housing health and safety rating system in Part 1 of the Housing Act 2004 so far as that enforcement action related to a category one hazard;
- details of any refusal to grant a licence, or details of the revocation of a licence granted for non-compliance of a condition or conditions in respect of any house or HMO under his/her management or ownership (and also in relation to any former HMO or house he owned or managed); and
- details of any interim or final management orders made by an LHA in respect of any house or HMO under his management (and also in respect of any former HMO or house he owned or managed).

An applicant for a licence must disclose any misdemeanours which relate to themselves, the proposed manager and any other relevant person, if any. Coventry City Council should therefore have sufficient information to decide a person's fitness based on the application.

If Coventry City Council are not satisfied that it has sufficient information (being that supplied in connection with the application) to make a determination, it may require the applicant to provide further details and / or undertake their own further enquiries with other relevant Council departments and external bodies as it deems necessary, including for example Disclosure & Barring Service checks (DBS). The completion and signing of the Licence application form will be taken as an agreement to any such action

Checks will also be made internally with other Council departments such as Licensing, Trading Standards, Planning, Building Control, Council Tax and Housing Benefit.

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Coventry City Council are also able to request information on criminal convictions, and although this is not undertaken as a matter of routine a Police National Computer (PNC) checks will be requested where there is sufficient evidence that this is necessary. A PNC check may also be requested for the purposes of officer safety during the course of the licensing application should this also be considered necessary.

Such reasons for a PNC check may include that:

- Coventry City Council have evidence of a history of complaints or problems with the landlord (which in themselves might not amount to 'evidence' of unfitness to meet the test), but further investigation may be required;
- the applicant has been evasive or untruthful in their application for a licence;
- the applicant, or proposed manager, is unknown to Coventry City Council and has not demonstrated any history or competence of managing HMOs or other private rented properties;
- Coventry City Council has reasonable grounds to suspect that the applicant, or the proposed manager, has committed an offence which is relevant to the determination of any question of his/her fitness; or
- the premises provides accommodation mainly to vulnerable persons.

In deciding whether a misdemeanour (including a criminal offence) is relevant to the determination of a person's fitness a Council may wish to consider the following factors:

- the relevance of the misdemeanour(s) in relation to the person's character and integrity to manage residential premises and in particular the type of premises to which the licence relates;
- the seriousness of the misdemeanour(s) in terms of impact, or potential impact, upon the residents and the wider community, including if more than one misdemeanour has been carried out the cumulative impact;
- the length of time since any misdemeanour; and
- any mitigating circumstances.

Consideration of 'persons associated or formerly associated' with the proposed licence holder or manager.

If there is evidence that a person associated, or formally associated, with the person proposed to be the licence holder or manager of the property, has committed any misdemeanours, that evidence may be taken into account in determining the proposed licence holder's or manager's fitness (even if that person has himself or herself an unblemished record).

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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 he or she were not unfit, would 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 misdemeanours and those misdemeanours are relevant to the wife's management of the property or licence then the Council may refuse to grant her a licence.

Likewise if a landlord with an unsatisfactory record nominated a "manager" who had a clean record, but had acted for him whilst the misdemeanours were committed, Coventry City Council may consider the managing agent by association to be unfit too.

Issuing a Licence

All properties subject to an annual property licence will be inspected prior to the issuing of a draft licence to ensure that the property meets the required standards and the necessary and appropriate management arrangements are in place.

Where the licence holder and manager has satisfied the requirements for a longer licence the licence will be issued after an initial inspection being completed. All properties will however remain subject to further inspections during the lifetime of the licence to check compliance with licence conditions, management responsibilities and minimum standards. In certain cases the Council may decide to carry out such inspections without prior notice being given to the owner, licence holder and /or manager.

Where the inspection has been pre-arranged then all applicants will be required to provide access to all rooms in the house at a suitably arranged appointment.

All contact with the licence holder and relevant person(s) will be made using the contact information provided by the applicant on the original application. Accordingly, it is the licence holder's responsibility to ensure that all contact details are up to date and you must notify the Property Licensing Team of any change in details. The Property Licensing Team will not be held responsible for any delay in communication if it is as a result of any contact information changing.

A draft licence with conditions will be issued based on the findings from this inspection. The draft licence (known as an Intention Notice) will be emailed to all relevant persons and other interested parties for consultation.

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The relevant persons will have an opportunity to make any representations, which will be considered.

When this process is complete a full licence with the conditions (known as the Decision Notice) will be issued. Again, copies will be sent to all interested parties.

If the licence holder is still dissatisfied with the conditions of the licence, they will have an opportunity to appeal to the First-tier Property Tribunal. The details of how this appeal can be made will be provided with the Licence.

All properties will be inspected at least once during the period of the licence to check conditions have been complied with. Failing to comply with any conditions on a licence is an offence under Section 95(2) of the Housing Act 2004 and, if found guilty the licence holder could face a prosecution or issued with a Civil Penalty of up to £30,000.

In cases where the licence is being issued to or on behalf of a new landlord who has never licensed a property before the first licence will run for one (1) year, and the licence must be renewed before it expires. After the first year, the opportunity will be provided to apply for a longer licence, provided all the relevant criteria is met.

The Council considers this approach is justified in furtherance of the overriding public interest of improving the standard of rented properties and their management.

Renewal Applications

The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012 set out amendments to “renewal applications”, which reduces the burden on landlords applying for the renewal of a licence.

In the case of renewal applications the applicant must:

- supply with the application, completed and signed declarations in the form specified in paragraph 4 of Schedule 2 of the Housing Act 2004;
- supply in addition a completed and signed declaration in the form specified in paragraph 5 of that Schedule; and
- in either case, sign the application.

The form of declaration mentioned above will be available for applicants to sign as part of any renewal application.

The regulations define a “renewal application” as “*an application for a licence under section 87 of the Act where, at the time the application is made a licence of the kind applied for is already held by the applicant and has effect in respect of the HMO or house*”.

The effect of this part of the Regulations is that in order for the Council to treat any application as a “renewal” the application must be made during the active period of the

current licence. If a renewal application is received on or after expiry of the current licence then the application will be treated as a new application and the appropriate fees above will apply.

Application for a revocation or variation of a licence.

If circumstances regarding the property change during the licence period, for example a change in the number of letting units, the licence holder must notify the Property Licensing Team directly so the licence can be re-assessed and varied if the premises is considered suitable to accommodate the variation request.

Similarly, if the premises are no longer going to be occupied as a rented property or the licence holder changes, then the licence holder must make an application for the licence to be revoked. Any remaining period of the licence will be forfeited and there will be no right to a refund of the original payment.

Licence Criteria

One year licence application criteria

Annual licences are normally issued to new landlords where they have recently acquired or converted their property into a licensable property. This licence will be issued for a probationary period of 12 months and will be subject to the inspections process described earlier.

Upon renewal the landlord/licence holder will be able to apply for a longer licence and, subject to meeting the relevant criteria, may be issued with a 5 year or “end of scheme” licence. In cases where the landlord/licence holder is not able to meet the qualifying criteria an annual licence will be issued as a renewal.

It is important that a renewal application is submitted before expiry of the current licence otherwise it may be determined that this is a new application and additional information will be required. A different fee may also apply to reflect the increased time involved in processing the application.

Annual licences will automatically be issued to those landlords who are found to be operating an unlicensed property through proactive visits carried out by the Council. In cases such as these it is likely that the landlord may also be subject to a formal investigation by the Council – given that they have been found to be operating an unlicensed property. This may affect their eligibility as licence holder or manager so they will be required to nominate an alternative competent person to be licence holder/manager.

Upon renewal the landlord/licence holder will be able to apply for a longer licence and, subject to meeting the relevant criteria, may be issued with a 5 year or “end of scheme” licence. In cases where the landlord/licence holder is not able to meet the qualifying criteria an annual licence will be issued as a renewal.

In all cases the applicant must:

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Complete a valid application within 12 weeks of the property being licensable; and

Comply with all licence conditions before the licence is due for renewal.

Five year / End of Scheme licence application criteria

All applicants that meet the criteria set out below will be eligible for a 'five-year' licence (granted for 5 calendar years or up to the expiry date of the operating scheme).

The criteria for such a licence is as follows:

- Valid renewal application completed promptly before or within 2 weeks of being sent the first renewal reminder;
- In the case of new applications, a complete application form;
- Fee paid;
- Declaration signed; and
- Five-year licence self-certification forms signed by the licence holder and (if applicable) managing agent.

All parties actively involved in managing the property (i.e. joint or sole management responsibility) must be accredited with Coventry City Council's Landlord Accreditation Scheme (CLAS). See *Additional Notes* below for details.

All parties involved in the licensing and management of the property must also have a good history with the Council. When determining the compliance with this element of the criteria the Council will take the following into account:

- All licence applications made on time;
- No outstanding licence conditions;
- No recent complaints about the property we have taken action to resolve;
- All certificates provided up to date and satisfactory;
- No issues with other departments within the council i.e. planning/highways;
- Have suitable maintenance arrangements in place with suitably qualified and competent tradespeople for the upkeep of the property; and
- Adhere to the principles set out in the **Private Rented Sector Code of Practice**;

Managing Agents (with sole or joint management responsibility) must meet the following additional criteria:

- 50% or more of the company's employees are suitably qualified in residential property management;
- All employees carry out regular continued professional development (CPD); and
- The company is registered with a recognised professional association.

Should any issues arise or new information be discovered after the licence is issued, Coventry City Council reserves the right to revoke the licence. If any relevant person

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is found to have provided false or misleading information or made a false declaration, we may take enforcement action against them separately.

It is the responsibility of the proposed licence holder and manager(s) to meet all of the eligibility criteria for the licence and provide all necessary evidence when requested. If all requested documentation is not provided in time, the Council will automatically assess the application based on the evidence we hold and issue a licence accordingly, which will generally be an annual licence.

Coventry Landlord Accreditation Scheme (CLAS)

All parties actively involved in managing the property must be accredited with Coventry City Council Landlord Accreditation Scheme (CLAS) to be eligible for five-year licences. Read the (WEB PAGE LINK TBC) or contact (EMAIL TBC) for further information on becoming accredited.

The licence holder **does not** need to be CLAS accredited if the managing agent has CLAS accreditation and full management responsibility.

The landlord **does not** need to be CLAS accredited if the managing agent is the licence holder, has CLAS accreditation, and full management responsibility.

The licence holder and managing agent **both** need to be CLAS accredited if they have joint management responsibility.

The licence holder **only** needs to be accredited if they have full management control and their agent has **no** property management responsibility (i.e. agent is used only for finding tenants and/or rent collection.)

The licence holder must complete a self-certification form in all cases, even when full management control has been given to a managing agent (who in that case must also complete the form).

'Suitable maintenance arrangements' means having arrangements in place with suitably qualified and competent tradespeople to carry out maintenance and emergency repairs. For example, having ready details of a Gas Safe Registered plumber, a NICEIC registered electrician and reputable builder/handyman; or having a comprehensive emergency cover plan for your properties.

'Recognised professional associations' for agents include: ARLA, ARMA, IRPM, NAEA, and RICS.

A Disclosure and Barring Service (DBS) check may be requested from the landlord in cases where the agent has full management control (irrespective of whom the licence holder is).

Will tacit consent apply?

In deciding whether tacit consent applies the Council has taken into consideration the recent High Court decision in the case of *R(Gaskin) v Richmond LBC* [2018] EWHC 1996 (Admin).

The *Gaskin* case says that the Provision of Services Directive applies to licensing schemes in full and that regulators should set out how long it will take to carry out a licensing approval process and if they do not meet that timeline then approval (tacit consent) should happen automatically.

Upon receiving a valid application, the Council will aim to provide a decision as soon as is reasonably practicable, however each case will require different processes to be completed, for example if an inspection of the property is necessary then the Council will be required to complete this before issuing you with a decision. This could therefore extend the time it takes to process your application.

It is therefore the Council's aim to process all valid applications and provide the relevant persons with a decision within 12 weeks of receipt. This will require the full co-operation of the applicant with the Council's requirements for determining a licence application.

If a decision about a licence application has not been received after this period, then tacit approval may apply but the proposed licence holder should not assume they will automatically have been granted a licence.

As mentioned the target completion period for issuing a decision and a licence is subject to many factors and as such applicants should check with the Council on the status of their application.

By the Council setting out and displaying publicly their licensing processing time, the Council considers this will instil confidence in local landlords and help to keep them informed about the process.

Public registers

A register of property Licences is available online and details of this can be obtained by sending a formal, written request to the Property Licensing team.

Appeals

If an application for a property Licence is refused, there is a right to appeal this decision within 28 days to the First-tier Tribunal (Property Chamber - Residential Property). The details of this will be provided with the Decision Notice.