

HOUSING (SCOTLAND) ACT 2006

HOW TO MAKE A REPRESENTATION REGARDING AN HMO LICENCE APPLICATION

Background

Under the Housing (Scotland) Act 2006 (“the 2006 Act”) West Lothian Council is responsible for determining applications in relation to licences for Houses in Multiple Occupation (HMOs).

The definition of an HMO is

“any living accommodation i.e.

- house; or
- premises or group of premises (or, in either case, part thereof) owned by the same person and its occupants share one or more of the basic amenities (a toilet; personal washing facilities; and facilities for the preparation or provision of cooked food) with each other
- occupied by 3 or more persons, who are not all members of the same family or of one or other of two families, as their only or main residence; or
- which is of such type, or which is occupied in such manner, as the Scottish Ministers may by order specify”

No additional types of HMO have been specified as yet by Ministers.

Owners of properties falling within the definition of an HMO must apply for an HMO licence before using the property as an HMO. It is a criminal offence to operate without an HMO licence when one is required. There are some exemptions from the requirement for a licence.

More information about HMO licensing can be found by clicking on the link below -

<https://www.westlothian.gov.uk/article/34802/Houses-in-Multiple-Occupation-HMO-Licence>

Who can submit a representation about the application?

The legislation does not allow for objections to be made in relation to HMO applications. Under the 2006 Act any person may make a representation concerning HMO applications.

How do I make a representation?

A written representation about an application for an HMO licence is valid only if it—

- sets out the name and address of the respondent,
- is signed by or on behalf of the respondent, and is made on or before the deadline for making written representations.

All representations require to be made in writing by email or letter and you should be aware that these are copied to the applicant. The attached form can be used or referred to as a guide as to content.

What is the time limit for submitting a representation?

The deadline for making written representations is either the date 21 days after the application is lodged which is specified in the site notice, or the date contained in a public notice, whichever is later.

Late representations will not be considered by the council unless it is satisfied that it was reasonable for the respondent to make the representation after the deadline for doing so.

How will my representation be considered?

If any representations or adverse reports are received from the public or the council's advisors the application will be referred to the Licensing Committee for determination. All persons who submit representations will be invited to attend the committee hearing to make an oral submission.

Before determining an application for an HMO licence, the council must consider any —

- valid written representations (unless withdrawn),
- reports made by advisors on the application
- written responses given by the applicant and
- oral representations

What are the grounds of refusal for HMO applications available to the council?

You should note that under the legislation the council has limited grounds for refusal available to it. Issues which can be taken account of under planning and other legislation cannot be taken account of in determining these applications unless the issues fall within the statutory grounds for refusal. You may wish to seek legal advice about this before making a representation.

First possible ground of refusal

The application must be refused if the applicant or any agent referred in the application is not a fit and proper person to be authorised to permit persons to occupy any living accommodation as an HMO. Where the applicant or agent is not an individual the council must consider if any director, partner other person concerned in the management of the applicant or agent is a fit and proper person.

In deciding if a such a person is a fit and proper person the terms of Section 85 of the Antisocial Behaviour (Scotland) Act 2004 apply. The council shall have regard (among other things) to any material:

- if it shows that the relevant person has—
 - committed any offence involving—
 - fraud or other dishonesty;
 - firearms
 - violence;
 - drugs;
 - a sexual offence, or
- practised unlawful discrimination in, or in connection with, the carrying on of any business; or
- contravened any provision of
 - any Letting Code issued under [section 92A](#);
 - the law relating to housing; or

- landlord and tenant law.

Second ground of refusal

The council may only grant an HMO licence if it considers that the living accommodation concerned —

- (a) is suitable for occupation as an HMO, or
- (b) can be made so suitable by including conditions in the HMO licence.

In determining whether any living accommodation is, or can be made to be, suitable for occupation as an HMO the council must consider—

- (a) its location,
- (b) its condition,
- (c) any amenities it contains,
- (d) the type and number of persons likely to occupy it,
- (da) whether any rooms within it have been subdivided,
- (db) whether any rooms within it have been adapted and that has resulted in an alteration to the situation of the water and drainage pipes within it,
- (e) the safety and security of persons likely to occupy it, and
- (f) the possibility of undue public nuisance.

Third possible ground of refusal

That there is or would be if the application was granted overprovision of HMOs in the locality. In making a decision regarding overprovision the council must have regard to -

- whether there is an existing HMO licence in respect of the property
- the views, if known, of the applicant and, if applicable, of any tenant of the property
- the number and capacity of licensed HMOs in the locality premises,
- the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need,
- such other matters as the Scottish Ministers may by order specify (none have been as yet)

West Lothian Council has a small number of HMOs licensed and does not have an HMO overprovision policy.

Can I appeal against the grant of an HMO licence?

Anyone who has made a representation can appeal to the local Sheriff Court within 28 days of receiving notice of the decision by lodging a summary application. You should contact the Sheriff Court for further details.

In addition, anyone who made a representation can ask the council to provide a statement of reasons for the decision within 14 days of receiving notice of the decision.

Please send any representation by email to:

licensing@westlothian.gov.uk or by post to -

West Lothian Council
Licensing Team
West Lothian Civic Centre
Howden Road South
Livingston EH54 6FF

**OPTIONAL FORM WHICH CAN BE USED TO MAKE REPRESENTATIONS
IN RELATION TO AN HMO APPLICATION**

Please read the attached guidance notes on how to make a representation in relation to an HMO application before completing this form. This form when completed should be sent to the Licensing Team using the contact details in the guidance notes.

1. Full name and address of person making the representation:

Telephone Number:	
Email Address:	

2. Address of premises in respect of which the representation is made:

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3. Details of your representation (please state your representation in writing in the relevant box, continuing on a separate sheet if necessary. If you are unsure which box to complete, please refer to the guidance notes above.)

1.	In support of application	
2.	Fit and proper person issues	

3.	Issues connected to the suitability of the living accommodation	
4.	Overprovision	
5.	Other issues connected to one of the possible grounds for refusal	

Signature:

Date of signature:

Privacy Statement – Data Protection

All personal information that you supply will be used to contact you in connection with your representation or objection. We are required by law to share a copy of your representation with the applicant but in so doing we will redact your email address and telephone number.