



## How to successfully navigate the post-submission licensing process

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Presented by Richard Tacagni MCIEH CEnvH  
London Property Licensing



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### Helping landlords & agents to achieve compliance



- Being clear on what constitutes an application made under s63 or s87 HA04. It has vital importance from a compliance perspective.
- Recent FTT judgement: *"Whilst [council] would doubtless require those documents in order to determine an application, there seems no reason why they could not accept that an application has been received without the documents and then determine it after they have been received. If [council] do operate in this way, they are opening landlords to possible criminal prosecution and liability for RROs in circumstances where they are not at fault"*
- Whilst 60% of London Boroughs accept online applications, not all systems enable the applicant to download a copy of their application, which is a useful facility. With hard copy applications, there can be delays in receiving an acknowledgement and documentation is sometimes misplaced.

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## Processing of licence applications



- Desktop processing of applications is becoming increasingly common for both HMO and single family lets.
- Can lead to complications when assessing if a property is reasonable suitable for occupation and by how many people (UT: Clark v Manchester City Council, 2015).
- Equally important is the training and skill-set of the front line officers tasked assessing applications and imposing conditions. A tick box mentality can lead to prescriptive interpretation of local HMO standards.
- I would discourage licence refusals or reduction in occupancy without first inspecting the property. It may undermine the council's decision making process in the event of a FTT appeal. An issue to consider – can you reject a licence application that has been properly made?

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## Applying licence conditions



- Mandatory licence conditions are not always being applied: Schedule 4 HA04 amended by the Smoke and CO Alarm (England) Regulations 2015 & the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018.
- New notification requirements if a room is to be removed from use, or if a property becomes over-occupied during the licence period.
- Important to ensure all terms and conditions are clearly defined, fair and appropriate to the specific property.
- Compliance with the Court of Appeal decision Brown v Hyndburn Borough Council – selective licence conditions can relate to 'management, use of occupation' but cannot relate to 'condition and contents'.
- Check the proposed duration of the licence – it can be up to five years and is not restricted to the end date of the licensing scheme!

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## Responding to written representations



- Develop clear procedural arrangements for handling written representations, with independent oversight from more senior / experienced officers.
- This phase of the process provides a good opportunity to listen to the views of all parties, discuss and explore alternative options / solutions and try to reach agreement whilst maintaining constructive dialogue.
- Ensure representations are responded to in a timely manner. Helpful to issue an acknowledgement with an indicative timescale for the response.
- If there are any material changes to the terms and conditions, the consultation process must be repeated. Unclear if there are any limits on how many times this cycle can be completed....!

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## First-tier Tribunal Appeals



- A well-designed licensing framework will help to minimise appeals, which generate a huge amount of work (and expense) for both parties.
- Internal procedures will determine if you can represent yourselves or must be represented by the council's legal services team.
- Remember - the overriding obligation on both parties is to assist the Tribunal in dealing with matters fairly and justly. You can negotiate on a without prejudice basis to try and seek an early resolution.
- The Tribunal can offer mediation if both parties agree. Definitely an option worth considering.
- At any stage in the process, the matter can be resolved by way of a Consent Order. With both sides usually paying their own costs, seeking an early resolution is a win win.

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