



CHARNWOOD BOROUGH COUNCIL
Housing Act 2004 - Houses in Multiple Occupation (HMO)
Licensing Protocol

Private Housing Team
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1.0 Introduction

1.1 This Licensing Protocol is provided to give guidance on the application of the mandatory Houses in Multiple Occupation (HMO) licensing scheme. The protocol will assist in making fair, considered, consistent and transparent decisions that can be explained to clients and, if necessary, defended on appeal.

1.2 This document comprises an Introduction (Section 1) and an explanation of the legal framework (Section 2), together with the actual Council Policies and amenity/space standards (Sections 3 and 4).

1.3 This Protocol sets out a range of standards and conditions. These have been considered and approved by the Director of Housing and Health under the powers granted by the Council's Scheme of Delegation, and are included in Section 4.

2.0 Mandatory Licensing: The Legal Framework

2.1 What is an HMO?

A house in multiple occupation (HMO) is any house or flat which is occupied by more than one household who share kitchen, bathroom or toilet facilities. If these facilities are for exclusive use but they are not self-contained with the living accommodation, the property will still count as an HMO. Converted buildings comprising self contained flats may also be HMO's if they do not meet the minimum standards of the 1991 Building Control Regulations, and at least one third of the flats are occupied under short tenancies. HMO's include bedsits, some shared houses, hostels and houses converted into flats.

A household is:

- families - including single people, couples and same sex couples
- other relationships, such as fostering, carers and domestic staff.

The building must be occupied by more than one household:

- as their only or main residence
- as a refuge for people escaping domestic violence
- by students during term time
- for other purposes prescribed by the government.

2.2 Which HMO's are licensable?

The owners of certain types of HMO must apply to the Council to have their property licensed. HMO licensing will apply throughout Charnwood. The Council must maintain a register of licensed HMO's for the public to view.

An HMO must have a licence if **all three** of the following apply:

- it is three or more storeys high (including loft conversions)
- it has five or more people in two or more households,
- and the occupants share (or lack) amenities such as bathrooms, toilets or cooking facilities.

The following properties are exempt:

- where the whole property is self-contained flats that meet 1991 Building Control Regulations
- where the basement is in commercial use and there are only two residential storeys above
- where it is owned or managed by a housing association, local authority, educational establishment (that has adopted an approved code of practice), police or health services.

The responsibility for licensing rests with the person having control of, or the person managing, the property. This is basically the owner, or the person who lets the property and collects the rent.

2.3 Mandatory licensing excludes most self-contained flats from its scope. The exceptions to this will be where (a) it is a single flat above commercial premises or (b) where the flat itself is arranged on 3 storeys. In both cases it would have to be occupied by 5 persons or more living as more than one household.

2.4 This guidance also indicates that all residential parts of the building will be subject to these provisions where the property as a whole is eligible for licensing.

2.5 A licence is to be granted where:

- The house is reasonably suitable for occupation having regard to amenity levels, available living space and general health and safety considerations
- Management arrangements are satisfactory. “Management arrangements” includes arrangements for monitoring and maintaining the property, ordering works, finance, and general manager competence.
- The licensee, manager and others involved in the running of the property are fit and proper persons. When deciding whether an individual is a fit and proper person the Council has to consider whether there is evidence that they have committed an offence of fraud, dishonesty, violence or drugs or an offence under Schedule 3 of the Sexual Offences Act 2003. The Council also has to consider whether there is evidence that they have practised discrimination on grounds of sex, colour, race, ethnic or national origins or disability in connection with any business, or evidence that they have contravened housing or landlord and tenant law.

2.6 The Housing Act lays down mandatory licence conditions relating to:

- provision of annual gas safety certificates
- safety of electrical appliances and furniture
- provision and maintenance of smoke alarms
- provision of written tenancy agreements

In addition the Council can impose its own discretionary conditions. It can also issue a licence for a lesser period than the normal 5 years.

2.7 The Council charges a licence fee for the costs incurred in carrying out its licensing functions. See paragraph 3.5.3 for details. There is also a charge for those enforcement actions specified in S.49 (1) of the Housing Act 2004.

2.8 The Act gives Councils powers to serve notices and take action where there is no prospect of an HMO being licensed. In some circumstances Councils are under a duty to act. Where circumstances require it, Councils must take over the management of an HMO, becoming responsible for running it, making necessary improvements, and collecting rents. In extreme cases the action can be extended to 5 years with the Council also having the power to grant tenancies.

2.9 Councils can extend HMO licensing to bring in categories of HMO not covered by the current “3 storeys/5 occupiers” mandatory scheme. This extension of licensing could be done on a geographical basis or by HMO type.

2.10 The Housing Act lays down a number of licensing -related offences and corresponding penalties, including:

- Operating an unlicensed HMO or allowing an HMO to be occupied by more persons than a licence allows: fine of up to £20,000
- Breach of a licence condition: fine of up to £5,000
- Supplying incorrect information in a licence application: fine of up to £5,000.

In addition, a landlord who operates an unlicensed HMO can be made the subject of a Rent Repayment Order (RRO) by a Residential Property tribunal. An RRO requires the repayment of rent received by the landlord over a period of up to 12 months.

2.11 As part of a general revision of housing standards legislation the existing Housing Fitness Standard is replaced by a Housing Health and Safety Rating System (HHSRS), which involves a risk assessment of the effect of housing conditions on the health of occupiers. The HHSRS involves the assessment of 29 potential hazards and the scoring of their severity to decide whether improvements are needed. If more serious “Category 1” hazards are found, the Council has a duty to require the owner to take appropriate action. If less serious “Category 2” hazards are found, the Council is obliged to take appropriate action as provided for within the enforcement protocol. Councils are required to assess licensable HMO’s to ensure that there are no Part 1 (HHSRS) functions that ought to be exercised by them. This has to be done within five years of a licence being issued. The HHSRS applies to all housing regardless of type or tenure.

Enforcement action under parts 1 and 4 of the Housing Act 2004 provides the Council with a range of options. There is a private sector housing conditions and empty homes enforcement protocol where details of the options can be found using the hyperlink below.

<http://info/CI4/Environmental%20Health/Document%20Library/PRIVATE%20HOUSING%20ENFORCEMENT%20PROTOCOL.pdf>

3.0 HMO Licensing: Procedures and Requirements

3.1 Property Standards

3.1.1 In approving a licence the Council will determine whether the HMO is suitable for occupation by the number of persons stated in the application form. If the arrangements are unsatisfactory, then a licence can be approved for a lesser number, or a licence condition imposed requiring that specified works be carried out to make the property suitable.

3.1.2 The prescribed statutory standards to be considered when determining suitability for occupation by a stated number of persons include those for bathrooms, showers, WCs, wash hand basins, cooking facilities, and living space. Any decision made by the Council will be on the basis of current prescribed statutory standards.

3.2 Fit and Proper Person

3.2.1 The Council shall assess whether the applicant and any manager and any person associated with them or formerly associated with them are fit and proper people to own or manage an HMO.

A person will be considered fit and proper if the Council is satisfied that:

(i) they have no unspent convictions relating to offences involving fraud, dishonesty, violence or drugs, or sexual offences

(ii) 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

(iii) they have no unspent convictions relating to housing or landlord and tenant law

(iv) they have not been refused an HMO licence, been convicted of breaching the conditions of a licence or have acted otherwise than in accordance with the approved code of practice under S233 of the Act within the last five years

(v) they have not been in control of a property subject to an HMO Control Order an Interim Management Order (IMO) or Final Management Order (FMO) or work in default carried out by a local authority within the preceding five years

(vi) they have not been subject to legal proceedings by a local authority for breaches of planning, compulsory purchase, environmental protection legislation or other relevant legislation

(vii) there is no evidence of any offence referred to in (iii), (iv) or (vi) above having been committed within the previous five years.

3.2.2 An unspent conviction or other failure is not necessarily automatic grounds for refusing a licence; other circumstances (e.g. training undertaken by the land lord or subsequent co-operation with the local authority) will be taken into account. Equally, the legislation refers to evidence of an offence; it is not necessary when refusing to accept someone as a fit and proper person to demonstrate that a conviction has been obtained.

3.2.3 Where there is evidence of a problem, we will invite applicants to submit an explanation of their actions. The applicant will be required to account for the failure to comply with legislation, and satisfy the Council that this will not recur.

3.2.4 The decision to accept them as being a fit and proper person will be taken on the basis of:

- The severity of the breach
- The number of breaches
- The time which has elapsed since the last breach and their conduct since it occurred
- The relevance of the breach to the management of HMOs and their occupation
- The evidence that the applicant has accepted the need to conduct his business in accordance with the appropriate standards (including whether there have been satisfactory arrangements made for the repayment of debts associated with statutory responsibilities)
- The training received since the breach occurred.

3.3 Management Arrangements

3.3.1 We will expect the licensee to have satisfactory arrangements and funding in place for the management of the HMO.

The Council requires that the management arrangements include:

- a system for tenants to report defects, including in emergencies
- arrangements for periodic inspections to identify where repair or maintenance is needed including annual inspections of any gas system
- arrangements to respond to defects reported by tenants and found during periodic inspections
- a protocol for dealing with anti-social behaviour occurring within the HMO by tenants or their visitors
- where the licence holder is a managing agent, the clear delegation of authority to make decisions (including those related to expenditure) on all matters concerning the health, safety and wellbeing of occupiers and good management.

3.3.2 We will expect the licensee to have arrangements in place for ensuring that employees, contractors and others having occasion to visit the HMO in connection with its management and/or maintenance are fit and proper persons for the functions they carry out.

3.3.3 Licence applicants will be required to declare as part of the application that proper funding arrangements for the HMO exist. We will want to be satisfied that adequate financial resources to maintain the HMO are available. We will carry out sample verification checking of declarations. It will have regard amongst other things to outstanding debts for work in default and charges for statutory notices, County Court judgements, and outstanding debts for Council Tax, Housing Benefit and services. If necessary, Credit Reference checks will be made.

3.3.4 Where there are indications that the applicant will have insufficient funding or authority to manage the property, we will seek further clarification. Where satisfactory assurances cannot be provided then there is a duty to refuse the application.

3.4 Applications

3.4.1 We will encourage landlords to apply for licences using a variety of methods including:

- Publicising the HMO licensing provisions
- Sending letters and reminders to landlords (when contact details are known)
- Providing paper and electronic application forms

3.4.2 The Council's application form for an HMO licence will be available on request by phone and also on the council website.

A valid application for an HMO licence comprises:

- a fully completed application form
- relevant certificates relating to gas and electrical safety, fire alarm and emergency lighting (where applicable)
- the relevant fee

3.4.3 All the information presented on the application form will be subject to verification processes as required. This will take the form of site inspection, interdepartmental liaison, sample verification and (where there are indications of a misleading application) detailed examination of all information given. Some of this may take place after the application has been approved .

3.5 Licence Duration and Fees

3.5.1 An HMO licence will normally run for a period of 5 years from the date of approval. We may, however, issue a licence for such lesser period as we consider appropriate , having regard to any management deficiencies, the need for works to be carried out to put the house into a satisfactory condition, or concerns as to the Fit and Proper Person status of the relevant person(s). Before so acting we will discuss our concerns with the HMO licence applicant.

3.5.2 Where a shorter licence is granted, subject to satisfactory performance, a further licence will be issued. The duration of the first and second licence periods will be for five years in total. No additional fee will be required for the second licence.

3.5.3 Fees have been set to cover the Council's costs of licensing HMOs.

The fee shall be £500.00 per licence for a property with up to 6 individual lets. Variations on this fee are;

- An additional £10.00 for each individual let over 6
- A discounted rate of £390 for multiple applications from the same person/organisation made on the same date
- A discounted rate of £390 for applications made in relation to properties that are accredited by Loughborough University
- The fee for a licence variation (ie where a licensed property changes ownership) is £100.

3.6 Licence Conditions

3.6.1 An HMO licence will specify the maximum number of occupants who may occupy an HMO. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities. The Council will base its decision on current statutory prescribed standards.

3.6.2 We shall **always** apply licence conditions requiring:

- the production of a gas safety certificate obtained within the local authority's year on an annual basis
- that electrical appliances be maintained in a safe condition and production of a periodic inspection report for the electrical installation on a 5 yearly basis.
- that furniture made available by the licence holder be kept in a safe condition and he/she supplies on demand to the Council a declaration to that effect
- that smoke alarms are installed and are kept in proper working order and the licence holder supplies on demand to the Council a declaration as to the condition and positioning of such alarms
- the attainment and maintenance of proper standards of management and maintenance of facilities and equipment.
- compliance with statutory Management Regulations

3.6.3 We will **normally** apply licence conditions requiring:

- the provision of copies of reports of fire detection, alarm system and emergency lighting annually
- that as part of the landlord's tenancy management duties, he or she must ensure that tenants comply with the terms of their lease and conduct themselves in a way that does not interfere with the rights of neighbouring residents to enjoy peaceful occupation of their homes. Therefore the council will expect a landlord to have procedures in place for dealing with anti-social behaviour from tenants
- compliance with the prescribed statutory amenity standards and the Council's approved standards
- that the licence document and licensee or manager's name, address and telephone number be displayed in a common area of the property
- that a copy of a valid gas safety certificate be displayed in the common parts

Other conditions will be laid down as appropriate.

3.6.4 Charnwood Borough Council may specify conditions restricting occupation of parts of the house on the grounds of lack of amenities or usable space as appropriate.

3.7 Temporary Exemption Notices (TENs)

3.7.1 The Council may grant a TEN where:

- (i) the owner of a licensable HMO states in writing that he/she is acting to make it non-licensable; and
- (ii) the Council is satisfied that it will be non-licensable within 3 months of the date of receiving the written notice

3.7.2 In deciding whether to grant a TEN, we will have regard to the proposals for the property, any planning considerations and arrangements for meeting the needs of occupiers including those likely to be displaced.

3.7.3 We will only grant a second TEN in exceptional and unforeseen circumstances.

3.8 Failing to Apply for a Licence

A person commits an offence if he or she is a person having control of, or managing an HMO which is required to be licensed under Part 2 of the Housing Act 2004 ('the Act') (see section 2.2, page 3) but is not so licensed. The exceptions to this are where a temporary exemption notice is in force in relation to the HMO under section 62 of the Act (see section 3.7, page 9) or an interim or final management order is in force in relation to it under Chapter 1 part 4 of the Act.

In any case where a person is found to be committing this offence, prosecution will be considered by Charnwood Borough Council. On summary conviction, such a person is liable to a fine not exceeding £20,000 .

3.9 Rent Repayment Orders

Where we are satisfied that a landlord has operated a licensable HMO without the benefit of a Licence and the rent is paid as Housing Benefit, we will usually apply to the Residential Property Tribunal for a Rent Repayment Order. We will advise tenants of their rights, which may include that of applying for a Rent Repayment Order in respect of non-Housing Benefit rental payments.

4.0 Amenity and Space Standards for Licensable HMO's

This section of the Protocol details space and amenity standards and the conditions which have been approved by the Director of Housing and Health under powers granted by the Council's Scheme of Delegation. The standards relate to licensable HMO's which are occupied as shared houses, bedsits or bed and breakfast establishments (where the property is the occupant's only or main residence).

The tables are in the following order:

- Guidance on space provision for HMOs
- Shared House guidance
- Bed and Breakfast Guidance
- Bedsit Guidance

4.1 Guidance on space provision for HMOs

<u>Bedsits</u>	
One person units of accommodation	
One room units	13 sqm with kitchen facilities 10 sqm with separate shared kitchen or meals provided
Shared kitchens shall provide	3 sqm per person using kitchen, but in no case being less than 5.5 sqm
Two or more room units	6.5 sqm each bedroom so long as the total floor area of the letting exceeds 15.0 sqm
Each kitchen	5.5 sqm
Each living/kitchen	11 sqm
Each living room	9 sqm
Each living/bedroom	10 sqm
Two or more person units of accommodation - Living together as a single household	
	No habitable room shall be occupied by more than two persons, irrespective of age.
One room units	18.5 sqm with kitchen facilities 16 sqm with separate exclusive kitchen on same floor, or meals provided
Two or more room units	6.5 sqm for each single bedroom 10 sqm for each double bedroom but, only if total floor area of the letting exceeds 18.5 sqm or 16 sqm according to kitchen facilities
Each kitchen	7 sqm
Each living/kitchen	15 sqm
Each living room	10 sqm
Each living/bedroom	14 sqm
Each single person bedroom	6.5 sqm
Each double bedroom	10 sqm
	The unavoidable sharing of rooms by persons of the opposite sex under the age of 10, or who do not live as partners, shall not be permitted.

Guidance on space provision for HMOs cont.

Shared houses	
One person room	Each bedroom/study 10 sqm Where there is a shared living room 6.5 sqm
Two person room	Each bedroom/study 15 sqm Where there is a shared living room 12 sqm
Common Rooms	
Kitchens	Used by 1-5 persons 7 sqm For more than 5 persons an additional 3 sqm per person using kitchen
Dining Kitchens	Used by 1-5 persons 11.5 sqm Used by 6-10 persons 16.5 sqm - but dependent on kitchen facilities provided - contact Housing Standards Team to discuss
Living Rooms and Dining Rooms	Used by 1-5 persons 11.5 sqm Used by 6-10 people 16.5 sqm
The unavoidable sharing of rooms by persons of the opposite sex over the age of twelve and who do not live as partners shall not be permitted .	
Bed & Breakfast accommodation/Hostels/Guest House s	
Bedrooms	
One Person	Premises providing meals or where cooking facilities are provided in a different room 8.5 sqm
Two Persons	11 sqm
Three Persons	17 sqm
Four Persons	22 sqm
	Where cooking facilities are provided in the same room
One Person	14 sqm
Two Persons	18 sqm
Three Persons	23 sqm
Four Persons	28 sqm
Lounge	A minimum provision of 3 sqm per person will be required, which will include one area of at least 15 sqm
Dining	A minimum provision of 2 sqm per person will be required
Combined Lounge/Dining Areas	A provision of 3.5 sqm per person may be adequate if the floor area of lounge and dining rooms are combined
Kitchens used for the preparation of communal foods	To be in accordance with the requirements of the current Food Hygiene Regulations.
The unavoidable sharing of rooms by persons of the opposite sex over the age of twelve and who do not live as partners shall not be permitted .	

4.2 Shared house guidance

Will generally be occupied on a single whole-house tenancy. For individual room-lets see bedsit guidance.

The accommodation shall have adequate means of space heating.

Each kitchen area shall be fitted with:

mechanical extract fan;

adequate refuse disposal facilities;

suitably sited fire blanket;

adequate provision of fire doors and fire detection.

Each bathroom shall be adequately heated and ventilated. Ventilation should include humidistat - controlled extraction.

Communal areas, including hallways, landings, shared kitchen and living/dining rooms shall be fitted with appropriate fire detection and fire precaution equipment.

Item	Size or Number	
Cooker	4 hot rings and grill and oven for each 5 occupants	For 6-10 people adjust the ratio to be provided appropriately. If you have more than 10 people living in the HMO, contact the Housing Standards Team.
Microwave oven - optional	Allows sharing of cooking facilities by extra people at the Council's discretion	
Sink	Bowl and drainer and constant hot and cold water supply for each kitchen/5 occupants	
Worktop	Minimum 500mm depth and at a ratio of 0.5m plus 0.5m for each of the first 3 occupants and then 0.25m for each additional occupant	
Electrical sockets, over worktop	At least 4 sockets for each 5 occupants, excluding those for refrigerator, washing machine and so on	
Dry food storage	Single wall unit for each occupant	
Refrigerator, with freezer compartment	Standard size refrigerator for each 5 occupants	
Bath/shower *	1 for each 5 occupants. With constant hot & cold water supply	
Separate toilet and wash-basin *	1 for each 5 occupants. With constant hot & cold water supply	
Wash hand-basin	1 within each unit. With constant hot & cold water supply	

A suitably equipped communal dining room should be provided next to each shared kitchen facility.

* Where less than 5 occupants share – it may be acceptable for the bath/shower and toilet/wash basin provision to be contained within the one bathroom, although the separation of toilet/wash basin from the bath/shower room is always preferred. Contact the Private Housing Team.

4.3 Bed and Breakfast guidance

- Each unit of accommodation shall have adequate means of space heating.
- Each kitchen area shall be fitted with:
 - mechanical extract fan;
 - adequate refuse disposal facilities;
 - suitably sited fire blanket;
 - adequate provision of fire doors and fire detection.
- Each bathroom shall be adequately heated and ventilated. Ventilation should include humidistat-controlled extraction.
- Communal areas, including hallways, landings, shared kitchen and living/dining rooms shall be fitted with appropriate fire detection and fire precaution equipment.

The service provided at these premises can vary so the amenity provision applying may vary accordingly. But the provision for washing and toilet facilities will be the same for each type as shown.

Item	Size or number	
Bath/shower	1 for 5 occupants. With constant hot & cold water supply	For 6-10 occupants double the number/size to be provided.
Separate toilet and wash hand-basin	1 for 5 occupants. With constant hot & cold water supply	
Wash hand-basin	1 for each letting unit. With constant hot & cold water supply	If you have more than 10 people living in the HMO, contact the Housing Standards Team.

In premises where all or some meals are provided in addition to breakfast, contact the Housing Standards Team to discuss the amenity provision required.

In other cases the amenity provision required is:

Item	Size or Number
Cooker	Contact the Housing Standards Team to discuss the provision required
Microwave oven	
Sink	
Worktop	
Electrical sockets, over worktop	
Dry food storage	Double wall unit or single base unit for each letting unit. Storage in communal areas to be lockable
Refrigerator, with freezer compartment	Suitable refrigerator provision shall be made for each letting unit. Provision to be discussed with the Housing Standards Team

A suitably equipped communal dining room should be provided next to each shared kitchen facility.

4.4 Bedsit Guidance

Bedsits will generally be occupied as 'room -lets' on individual tenancies, whether with or without any exclusive amenities.

- Each unit of accommodation shall have adequate means of space heating.
- Each kitchen area shall be fitted with:
 - mechanical extract fan;
 - adequate refuse disposal facilities;
 - suitably sited fire blanket;
 - adequate provision of fire doors and fire detection.
- Each bathroom shall be adequately heated and ventilated. Ventilation should include humidistat-controlled extraction.
- Communal areas, including hallways, landings, shared kitchen and living/dining rooms shall be fitted with appropriate fire detection and fire precaution equipment.

Bedsit with sole use of:

Item	Size or number
Cooker	4 hot rings and grill and oven (one household) or 2 hot rings and grill and oven (for single person household)
Sink	Bowl and drainer and constant hot & cold water supply
Worktop	1 metre x 500mm
Electrical sockets, over worktop	At least 4 sockets, excluding those for refrigerator, washing machine and so on
Dry food storage	Double wall unit or single base unit for one person. For more than one person proportionately more storage space is needed
Refrigerator, with freezer compartment	Standard size refrigerator
Bath/shower	1 for each household. With constant hot & cold water supply
Wash hand-basin	1 for each household. With constant hot & cold water supply
Toilet	1 for each household

Bedsit with shared use of:

If the Council believes it is not possible to provide facilities within each letting, these shared standards apply.

Item	Size or number	
Cooker	4 hot rings and grill and oven for each 3 occupants	For 4-6 occupants adjust the ratio to be provided appropriately.
Microwave oven - optional	Allows sharing of cooking facilities by extra people at the Council's discretion	
Sink	Bowl and drainers and constant hot and cold water supply for each 3 occupants Note - where exclusive cooking facilities are provided, exclusive sink facilities shall also be provided	
Worktop	Minimum 500mm depth and at a ratio of 0.5 m plus 0.5m for each of the first 3 occupants and then 0.25 for each additional occupant	
Electrical sockets, over worktop	At least 4 sockets for each 5 occupants, excluding those for refrigerator, washing machine and so on	
Dry food storage	Double wall unit or single base unit for each occupant. Storage in communal areas to be lockable	If you have more than 6 occupants living in the HMO, contact the Housing Standards Team
Refrigerator, with freezer compartment	Standard size refrigerator for each bedsit unit. Storage in communal areas to be lockable	
Bath/shower *	1 for 5 people. With constant hot & cold water supply	
Separate toilet and wash-basin *	1 for 5 people. With constant hot & cold water supply	For 6-10 occupants double the number/size to be provided
Wash hand-basin	1 for each bedsit unit. With constant hot & cold water supply	

Each shared kitchen must be no more than one floor away from any letting – except where a suitable equipped communal dining room is provided next to each shared kitchen facility.

* Where less than 5 people share it may be acceptable for the bath/shower and toilet/wash basin provision to be contained within the one bathroom, although the separation of toilet/wash basin from the bath/shower room is always preferred. Contact the Private Housing Team.