
The Cabinet Member for Policing and Equalities – Councillor A S Khan

21st March 2019

Name of Cabinet Member:

Cabinet Member for Policing and Equalities - Councillor A S Khan

Director Approving Submission of the report:

Deputy Chief Executive (Place)

Ward(s) affected:

All

Title:

Mandatory Houses in Multiple Occupation Licensing and housing inspection fees and charges.

Is this a key decision?

No

Executive Summary:

The purpose of this report is to seek the Cabinet Member for Policing and Equalities approval, in consultation with the Cabinet Member for Housing and Communities, to adopt revised fees and charges relating to Mandatory Houses in Multiple Occupation (HMO) Licensing and housing inspections commencing April 2019.

The proposed fees for Mandatory HMO Licensing are structured to cover the costs associated with implementing and delivering the scheme as the Council is not allowed to make a profit from such schemes.

Recommendations:

The Cabinet Member for Policing and Equalities is requested to:

1. Consider and approve the fees and charges relating to Mandatory HMO Licensing and housing inspections as set out in the report.
2. Authorise the Head of Planning and Regulatory Services to implement the fees and charges structure commencing from the 1st April 2019 and to review and amend the fees and charges (as appropriate) each financial year thereafter.

List of Appendices included:

None

Background Papers:

None

Other useful documents:

Housing Act 2004.

<https://www.legislation.gov.uk/ukpga/2004/34/contents>

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).

Has it been or will it be considered by Scrutiny?

No.

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No.

Will this report go to Council?

No.

Report title: Mandatory HMO Licensing and housing inspections fees and charges

1. Context (or background)

- 1.1 In October 2018 the Government amended the definition of a Mandatory Licensable House in Multiple Occupation (HMO) by removing the rule relating to the property being of three storeys or more and as such requiring all HMOs occupied by 5 or more people to be licensed under the national mandatory licensing scheme.
- 1.2 The Council now estimates that, as a result of the extension of the mandatory licensing definition there will be an additional 1,200 HMOs that will require licensing under the mandatory scheme. This has increased the total number of licensable HMOs to around 2,400.
- 1.3 Current resources exist to deliver the original scheme and approval has been sought to provide additional resources to deliver the increase outputs estimated. A recruitment process is underway to secure additional resources and the fees and charges to fund these posts have been reviewed resulting in the need for fees to be amended as per this report.
- 1.4 The Housing Act 2004 permits the Council to require any application for a licence under Part 2 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.
- 1.5 In developing its fee structure the Council has also had to have 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).
- 1.6 As a result of the Hemming case in particular, the Council is required to request payments in two stages – Stage 1 to cover the costs associated with determining the initial application and Stage 2 to cover the costs of running and enforcing the scheme.
- 1.7 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. Table 1 below provides the proposed fees and charges for the next financial year commencing 1st April 2019.

Table 1 – Proposed Fees and Charges

Licence or Charge	Type	Licence Duration	Actual	Proposed		
			2018-19 £	2019-20 Stage 1 £	2019-20 Stage 2 £	2019-20 TOTAL £
Licence	New Application	Annual (New)	829.12	600	455	1,055
Licence	New Application	Annual (Unlicensed)	0	600	650	1,250
Licence	New Application	Two Year	0	415	290	705
Licence	New Application	Five Year	0	450	190	640
Licence	Renewal	All types	0	255	290	545
Charge	Housing Inspection	N/A	0	N/A	N/A	102
Charge	HMO Pre-app	N/A	0	N/A	N/A	196

1.8 The Council also provides a number of inspection services for landlords who are proposing to use their property as a HMO and to provide their property to the Council for homelessness purposes. The Council currently delivers these services free of charge and it is proposed that costs are recovered through fees to provide these services, which will reduce the burden on the Council's budget and the public purse.

2. Options considered and recommended proposal

2.1 Do nothing. This option is not recommended because the Council does not have sufficient resources to deliver the increased levels of licence applications for mandatory licensable HMOs.

2.2 Approve the revised fees and charges. The Council has a duty to licence all mandatory HMOs and as such requires additional resources to deliver this scheme. The fees and charges will provide a self-financing option to deliver these requirements and cover the costs of the additional resources required. Therefore, the Cabinet Member for Policing and Equalities is requested to approve the fees and charges as set out in Table 1.

2.3 Pre-application advice already exists within the planning department and the Council is proposing to offer a similar service for landlords who are considering using their property as a HMO. The lowering of the criteria for a mandatory licensable HMO has seen an increase in advisory visits being carried out by the Council, which is placing additional pressure on already limited resources. The Cabinet Member for Policing and Equalities is requested to approve the fees and charges relating to HMO Pre-Licensing Advice which will assist with reducing the burden on the Council's budget and public purse.

2.4 Landlords who provide their property for temporary accommodation for homelessness purposes are required to ensure that the property meets the minimum standard for housing. In all cases the Council is carrying out an inspection to ensure that these standards are met. Currently this is a service provided by the Council free of charge. The proposal to charge a fee to cover the cost of the time taken to complete such inspections is therefore being considered. The Cabinet Member for Policing and Equalities is requested to approve the fees and charges relating to Housing Options inspections which will assist with reducing the burden on the Council's budget and public purse.

3. Results of consultation undertaken

3.1 The fees and charges are required to self-finance the delivery of the national mandatory HMO licensing scheme and have been developed in accordance with the changes to this scheme. The extension of the scheme has already been subject to national consultation by the Ministry for Housing, Communities and Local Government and the results of this have been taken in to consideration by Government when developing guidance provided to Local Authorities for implementing these powers. There is no statutory requirement to consult further on the fees and charges set out in this report.

4. Timetable for implementing this decision

4.1 The fees and charges are proposed to be introduced from the 1st April 2019 and reviewed annually.

5. Comments from Director of Finance and Corporate Services

5.1 Financial implications

5.1.1 The financial implications associated with the recommendation are limited to the employee costs associated with implementing the extension of the national mandatory HMO licensing scheme in accordance with the case referred to in paragraph 1.5 of the report.

5.1.2 All income received from mandatory HMO licences will be used to self-finance the scheme.

5.1.3 Section 63 of the Housing Act 2004 permits the Council to require any application for a licence under Part 2 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.

5.1.4 When setting the fees and charges structure for the licensing scheme the Council has to take account of the staff costs, training, administration and publicity and that it is not allowed to use licensing fees to raise revenue for other projects or areas of work.

5.1.5 The proposed fees and charges structure is cost neutral: the financial modelling of the scheme estimates income and expenditure cash flows as below. This shows that the scheme is modelled to break even over a 5-year cycle.

	2019-20 £ million	2020-21 £ million	2021-22 £ million	2022-23 £ million	2023-24 £ million	Total £ million
Expenditure	0.5	0.5	0.5	0.6	0.6	2.7
Income	(0.2)	(0.3)	(0.6)	(0.7)	(0.9)	(2.7)
Net Total	0.3	0.2	(0.1)	(0.1)	(0.3)	0.0

5.1.6 The modelled activity suggests that additional staff would be required to administer the scheme. There is therefore a financial risk that the number and type of licences issued in real life differ from the model and the amount of income received does not cover the costs of operating the scheme. In order to mitigate this risk:

- The financial position of the scheme will have to be carefully monitored and action taken to control costs if necessary.
- The fees and charges structure will be reviewed on an annual basis and if there is a need to increase fees to cover any potential shortfall then this will be recommended and reported through the budget setting process.

5.2. Legal implications

5.2.1 Section 63 of the Housing Act 2004 permits the Council to require any application for a licence under Part 2 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.

5.2.2 Section 63 of the Act is drafted in broad terms. It does not prohibit creative fee structures. Therefore, differential fees for compliant and non-compliant landlords may be charged provided the Council is able to evidence:-

- How landlord behaviour is linked to the purposes of the Act in overcoming problems;
- How and why the cost of Parts A and B differ for each class of landlord;
- That the different fees are not discriminatory;

- That in each case they are reasonable – they must not be so high as to dissuade the provision of a service
- That the fees are reasonable and proportionate.

5.2.3 *R (Hemming) V Westminster City Council* (Case C-316/15) and the High Court decision in *R (Gaskin) v LB Richmond Upon Thames* 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.

5.2.4 The legal cases of Hemming and Gaskin, held that 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.

5.2.5 The judgements in *Hemming* and *Gaskin*, which require the overall licence fee to be paid in two stages, has therefore had the effect that the fee for a Mandatory HMO Licence under Part 2 of the 2004 Act must be levied in two separate parts.

5.2.6 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.

5.2.7 Once the application has been determined as successful the Stage 2 payment can be requested and charged to cover the costs of running and enforcing the scheme.

5.2.8 In terms of the Housing Inspection and Pre-HMO licensing fees these are discretionary services and a charge can be made as a result of Section 1 of the Localism Act 2011.

6. Other implications

6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

6.1.1 The Council Plan takes forward the main themes agreed by the Council in recent years. It reaffirms the Council's ambition – developed with the Strategic Partnership and partners to make Coventry: A Top Ten City.

6.1.2 This ambition is driven through three corporate priorities which directly address the needs of the City and include, in particular:

- 1) Promoting the growth of a sustainable Coventry economy by:
 - Increasing the supply, choice and quality of housing; and
- 2) Improving the quality of life for Coventry people by:
 - Improving the health and wellbeing of local residents
 - Protecting our most vulnerable people
 - Reducing health inequalities;

6.1.3 The Health and Wellbeing Strategy 2016-19 recognises that creating health, wealth and happiness requires more than simply managing people's health problems.

6.1.4 The health and wealth being of people can be improved if people have jobs, good housing, and are connected to families and communities.

6.1.5 The Council's Housing Strategy 2013-2018 affirms the Council's view that housing plays a crucial role in the economic growth of the City. The ambition for Coventry is "*to ensure decent homes, housing choice and support for Coventry citizens*" through various themes including:

- Increase the supply, choice and quality of new housing;
- Prevent and tackle homelessness;
- Strive for a healthier and more sustainable City by improving the quality and use of stock; and
- Encourage balanced, stable and sustainable communities.

6.1.6 The Housing Strategy links into the Council Plan and the Health and Wellbeing Strategy by contributing to the delivery of the key corporate priorities but also in supporting the local economy through ensuring communities have stable and safe places to live.

6.2. How is risk being managed?

6.2.1 If the fees and charges are not approved, the City Council will not be able to deliver its regulatory duties of implementing the national mandatory HMO licensing scheme.

6.2.2 The fees and charges will inform decisions taken by regulatory services that will have an impact on the interests of private landlords, agents and tenants.

6.2.3 Decisions of regulatory services are open to challenge through the First Tier Property Tribunal and in certain cases the Magistrates Court and beyond. The fees and charges are designed to ensure our compliance with legislation and the case law mentioned thereby, minimising the risk of legal challenge.

6.3. What is the impact on the organisation?

6.3.1 The adoption of the proposed fees and charges will enable the Council to secure additional resources to effectively deliver the increased work-stream resulting from the changes to the HMO definition. Implementing and charging for Pre licensing advice visits and housing option inspections will also contribute to reducing the financial burden on Council budgets.

6.4 Equalities/EIA

None.

6.5 Implications for (or impact on) the environment

None.

6.6. Implications for partner organisations?

6.6.1 The effective implementation of the Mandatory HMO licensing scheme has an impact on the quality and management of larger HMOs in the PRS and on the co-existence of rented properties with local residents and communities.

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