

<b>REPORT TO:</b>	Executive Board
<b>REPORT NO:</b>	HEP/18/19
<b>DATE:</b>	12 March 2019
<b>LEAD MEMBERS:</b>	Councillor Hugh Jones (People – Communities, Partnerships, Public Protection and Community Safety) Councillor David Griffiths (Place – Housing)
<b>CONTACT OFFICER:</b>	Robert Johnston (Tel: 297425)
<b>SUBJECT:</b>	Updating of HMO Licensing Policy and Fees
<b>WARD:</b>	All

## 1 PURPOSE OF THE REPORT

- 1.1 To seek Members approval of the updated 3<sup>rd</sup> edition of the Council's Houses in Multiple Occupation (HMO) licensing policy (Appendix 1) which includes split licencing fee payments to take account of a High Court case ruling that requires HMO licence fee charges to be made in two parts.
- 1.2 To seek Members approval to introduce a new charge of £100 to cover the administrative costs and officer time costs incurred when an immigration inspection is required. This is a non-statutory service.
- 1.3 To seek Members approval to introduce a new charge to cover the costs incurred in providing pre HMO licence application advice. This is a discretionary service which helps improve the quality of HMO licence applications and standards in HMOs.
- 1.4 To seek Members approval for discontinuing the current enforcement charge (£415.50) levied under the Housing Act 2004 for the service of hazard awareness notices.

## **2 EXECUTIVE SUMMARY**

- 2.1 As a consequence of relatively recent landmark court rulings, HMO licence fees will have to be paid in two parts. A Part 1 payment will be required at the point of the application and a second remaining part of the total fee is paid once it is confirmed that the licence application is successful and a licence can be issued.
- 2.2 There are no proposals to increase the current total licence fees from their current levels.
- 2.3 There will be additional administrative works to collect the second fee payment, but it should be possible to pay this on-line or by card payment over the telephone (as at present).

## **3 RECOMMENDATIONS**

- 3.1 That Members agree to and adopt the revised charging mechanism for Houses in Multiple Occupation licensing fees (Appendix 1) and the updated HMO Licensing Policy (3<sup>rd</sup> edition). In addition, that this matter be dealt with as an urgent item of business in accordance with Standing Order 43(1) of the Council's Standing Orders.**
- 3.2 That Members agree to the proposed charge of £100 for the recovery of costs incurred by immigration inspections, to be implemented from 1 April 2019.**
- 3.3 That Members agree to a proposed charge of £35 per hour (or part hour) to owners/landlords/Letting Agents for providing on site advice for a prospective HMO, to be implemented from 1 April 2019.**
- 3.4 That Members agree to cease the enforcement charge of £415.50 for service of hazard awareness notices from 1 April 2019.**

## **REASONS FOR RECOMMENDATIONS**

- (i) To ensure compliance with the European Union Services Directive (ESD 2006/123/EC) by implementing the required administrative arrangements as soon as possible after Executive Board decision.
- (ii) To recover the full costs incurred by immigration inspections which are a non-statutory service.
- (iii) To recover the full costs incurred when an Officer visits a prospective HMO at the request of a landlord or Letting Agent to give pre-licence application advice.
- (iv) To enable Landlords and Letting Agents to use the £415.50 charge to pay for works to remove the hazards specified in the hazard awareness notice.

## 4 BACKGROUND INFORMATION

### Split Licensing Fees

- 4.1 The Council must follow certain principles established in the European Services Directive (ESD) (ESD 2006/123/EC) in respect of HMO licence fee charging. The fees are intended to off-set the cost to the Authority of administering the licensing scheme and are split between costs incurred before and after deciding to issue a licence.
- 4.2 Two landmark rulings - *R (Gaskin) v Richmond-upon-Thames LBC [2018] EWHC 1996 (Admin)*, and *R (Hemming t/a Simply Pleasure) v Westminster CC [2017] 3 WLR 317*, applies to licensing under Part 2 and Part 3 of the Housing Act 2004, meaning that licensing fees must be levied in two separate stages. A Part 1 fee levied at the point of application to cover the costs of obtaining the licence, ie the costs of processing the application; and Part 2 - a licence fee levied upon applicants if the application is successful and hence the licence is granted to part cover the running costs and the enforcement of the scheme.
- 4.3 The implications of this decision are significant for any local authority that does not currently operate a Directive-compliant fee scheme. This report advises of HMO licensing charge changes to its fee charging regime to ensure compliance.
- 4.4 The current fees and the proposed split fee payments are included in Appendix 2 and in the 3<sup>rd</sup> edition of the Council's HMO Licensing Policy which is being updated to reflect these changes.

### Comments on the Fee Structure

- 4.5 Following receipt of an application for a new licence or renewal of an existing licence, the property is inspected to ensure any significant deficiencies are dealt with before the final licence is granted or conditions are included in the licence to address these. The costs of this work is included (along with all other admin and relevant costs) in the Part 1 fee. Activity analysis has shown that 55% of the total fee cost incurred in processing the licence application to the point of issuing the final licence (a draft for consultation is issued prior to this). The remaining 45% of the total fee (Part 2 fee) covers the cost of compliance visits or inspections, including work associated with the identification of unlicensed properties in the Borough.
- 4.6 The Part 1 fee is required to accompany the licence application and the Part 2 fee will have to be paid once a decision to grant the licence is made (before the final licence can be issued).
- 4.7 There is not expected to be any loss of income as a result of splitting the fee payment, but in a few cases the Part 2 fee would have to be refunded if the licence application was unsuccessful.

### Introduction of New Charges and Removal of One Charge

- 4.8 UK Immigration Authorities require sponsors or applicants to provide evidence of the housing condition of their proposed accommodation, to accompany their application for

immigration. On request, an officer from Public Protection will carry out an inspection of the accommodation to ensure that the accommodation:

- is free from disrepair;
- there is nothing about the building that will be prejudicial to the health of the occupants;
- the house will not be overcrowded.

This is a non-statutory service which the Council has not charged for to date, but other Councils do charge a fee for this service, varying from £100 to £225 amongst the North Wales Councils. There are very few of these requests made annually in Wrexham, usually fewer than five per year. **£100** is considered to be a reasonable charge for Wrexham that will ensure full cost recovery.

- 4.9 Members are also requested to support a new charge for the provision of on site advice at a prospective HMO before an application for a HMO licence is submitted. Property owners/landlords or letting agents occasionally request advice about a prospective HMO which entails an officer carrying out an inspection of the property. This is a non-statutory service currently provided free of charge. A reasonable hourly charge to ensure full cost recovery is an hourly charge of £35 hour. The provision of advice by telephone, e-mail or website will continue to be provided free of charge.
- 4.10 The Council currently charges £415.50 if enforcement action is taken, eg service of an improvement notice or prohibition order, following an inspection of a property, in accordance with the Housing Act 2004. This action can also include the service of a hazard awareness notice which requires less serious deficiencies in a property to be rectified (known as category 2 hazards). It is considered that more effective use of this money would be for the landlord/property owner or letting agent to use this for removal of the hazards specified in the hazard awareness notice instead of paying this to the Council. This will not result in significant loss of income to the authority.

## 5 IMPLICATIONS

- 5.1 **Policy Framework** - The fees and charges referred to in this report have been determined in accordance with the Council's cost recovery policy.
- 5.2 **Budget** - The changes will be managed within existing resources for private sector housing standards services. The administration of the scheme is such that it is intended to be self-financing over the full term of the scheme. The change will introduce an additional task with budget monitoring and control.
- 5.3 **Legal** - In accordance with the Housing Act 2004, mandatory and additional licensing fees have been set. When setting fees, regard must now be had to the European Union Services Directive. In the case *R (on the application of Hemmings (t/a Simply Pleasure Ltd) and others) v Westminster City Council* [2015], and *R (Gaskin) v Richmond-upon-Thames LBC* [2018] EWHC 1996 (Admin), the Courts clarified the matters that a local authority can take into account when setting a locally determined fee. The judgements make it clear that fees must be reasonable and proportionate. The need to change the fee structure for the housing licensing scheme follows the High Court's decision in the *Gaskin v Richmond* judicial review case [2018]. The judgment makes it clear that a two stage fee structure is required - one to cover cost of processing applications (which can be charged to everyone, including unsuccessful

applicants, and the second to cover the recoverable costs of the scheme (which can be charged to successful applicants and the licence can be granted once this second fee is paid. There are no alternative options to a split fee regime.

5.4 **Staffing** - There are no staffing implications.

5.5 **Equality/Human Rights** - Members are advised of their duty to consider the full Equality Impact Assessment which is available at <http://vmwinqld/equalityisalive/Menu.aspx> report number (EP/EIA00104/2019). Members of the public can request a copy of the full Equality Impact Assessment from the Contact Officer named in the header box of this report. A summary of the Equality Impact Assessment is attached as Appendix 3.

5.6 **Risks** - The main risk is the difficulty that may arise in collecting the Part 2 payment. This will be required to be paid on-line or by telephone (card payment). The new charge for an immigration inspection could be required in advance of the inspection to mitigate the risk of non payments following inspection.

## 6 CONSULTATION

6.1 The Lead Member for People – Communities, Partnerships, Public Protection and Community Safety and the Lead Member for Place – Housing have been consulted.

## 7 EVALUATION OF OPTIONS

7.1 The proposal to split the HMO licence fee is a legal requirement to ensure the fee structure complies with the European Service Directive.

7.2 A decision not to support the proposed new charge for immigration inspections will result in a loss of income for a non statutory service, which will continue to be provided as it is a requirement of UK immigration services. The council’s cost recovery policy requires effective cost recovery whenever possible.

7.3 A decision not to support the proposed pre-application advice charge for HMO licences would be counter to the Council’s cost recovery policy .

7.4 A decision not to support stopping the enforcement charge for service of hazard awareness notices may result in a delay to the hazards being rectified whilst the landlord/owner or letting agent waits to accrue resources for this work.

BACKGROUND PAPERS	LOCATION	WEBSITE INFO
None		