

London Borough of Hammersmith & Fulham

CABINET MEMBER DECISION

29 April 2016



FEES AND CHARGES – PRIVATE SECTOR HOUSING

Report of the Cabinet Member for Housing

Open Report

This is an open report

Classification - For Decision

Key Decision: Yes

Wards Affected: All

Accountable Executive Director: Nicholas Austin Director for Environmental Health

Report Authors:

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AUTHORISED BY:

The Cabinet Member for Housing has signed this report

DATE: 18 April 2016

AUTHORISED BY:

The Cabinet Member for Environment, Transport and Residents Services has signed this report.

DATE: 18 April 2016

1. EXECUTIVE SUMMARY

- 1.1. The report outlines new charges being proposed by the Private Sector Housing Service in Environmental Health to include 'an assisted fee' for House in Multiple Occupation (HMOs) licences and a fee for giving professional advice to landlords to raise standards in HMOs. It also seeks approval to charge the same fee for the shorter two year licence (issued where there are concerns relating to safety and management), as is charged for a five year licence for houses in multiple occupation (HMOs).
- 1.2. In addition, a proposed Penalty Charge Notice fee of £5,000 for non-compliance with a Remedial Notice in relation to the Smoke and Carbon Monoxide Alarm Regulations 2015.

2. RECOMMENDATIONS

- 2.1. Approval to charge two year HMO licences at the same rate as five year HMO licences, approximately £1,200 for an average size HMO.
- 2.2. Approval to charge and include an 'assisted fee' as part of the HMO licensing fee at £283.
- 2.3. Approval to charge a fee of £243 for professional advice to landlords to raise standards in HMOs.
- 2.4. Approval to charge a £5,000 fee for penalty charge notice for non-compliance with a remedial notice.

3. REASONS FOR DECISION

- 3.1. Under the Housing Act 2004, fees can only be set to recover all reasonable costs incurred by the Council in the processing of licences. The administrative and officer costs in preparing a two year HMO licence and a five year HMO licence are identical. Therefore, it is reasonable to charge the same amount.
- 3.2. The Local Government Act 2003 allows the Council to charge for discretionary services. Providing sound advice to landlords will encourage good working relations between housing providers in the private rented sector and the Council. Sound advice on local housing standards is critical to raising housing standards in the Borough.
- 3.3. In a significant number of applications received for a house in multiple occupation officers spend a considerable amount of time and resource assisting and advising landlords. At this time this expense is not recoverable. An assisted fee will ensure that the Council recovers its costs whilst continuing to provide landlords with a standardised service.
- 3.4. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 gives the Council the power to charge for penalty charge notice for non-compliance with a remedial notice. It is requirement of the Regulations to publish a Statement of Principles which it proposes to follow in determining the amount of a penalty

charge. The fee to the Penalty Charge Notice will act as a deterrent to poor performing landlords and will raise standards in the private rented.

4. INTRODUCTION AND BACKGROUND

- 4.1. The private rented sector in LBHF has grown rapidly in the last ten years and now accounts for approximately 27,500 properties, a third of the Borough's housing. It is likely that this trend is to continue leading to the private rented sector becoming the dominant source of housing in the Borough.
- 4.2. A notable proportion of private rented sector accommodation is provided by Houses in Multiple Occupation (HMO). It is estimated that there are over 6,000 HMOs in the Borough. The definition of an HMO in the Housing Act 2004 is a property rented out by at least three people who are not from a single 'household' but share facilities like the bathroom and kitchen
- 4.3. HMOs provide a valuable source of accommodation, however they also account for the largest proportion of reported hazardous defects annually to the Environmental Health private housing team. HMOs also tend to be at greater risk from poor management, fire safety issues, damp, mould, poor ventilation, inadequate heating and anti-social behaviour.
- 4.4. It is a mandatory requirement for larger properties that have five or more sharers and three or more stories (although the Government is currently consulting on the potential extension of this definition to capture a wider section of the sector) to be licensed. The license specifies a number of legal conditions including the safe number off occupants that can live there. The term of the license is normally five years during which it must have an inspection under the Housing Health and Safety Risk System (HHSRS).
- 4.5. The Council is legally able to recover its costs for licensing HMOs.
- 4.6. In LBHF there are currently around 300 licensed HMOs but it is suspected that a further 300 properties are operating without a licence

5. PROPOSAL AND ISSUES

Licensing Houses in Multiple Occupation – fee for a two-year HMO licence.

- 5.1. The Council issues HMO licences for a five year period. Where there are concerns about a particular property in terms of meeting safety and/or management standards, the Council reserves the right to issue a licence for a shorter period of two years after which the landlord is required to apply again.
- 5.2. The cost in processing and issuing a licence is identical therefore it is suggested that landlords should be charged the same fee regardless of the licence period. Landlords will also be required to pay the same fee irrespective of a 'material change to the property' as the administrative costs to the licensing process are not affected.
- 5.3. The current fee for a 5 year license for an average size HMO is around £1200.

Licensing Houses in Multiple Occupation – ‘Assisted fee’.

- 5.4. Some applications for a HMO licence require more officer time to assist with the process than others and having reviewed our processes we are keen to ensure that we are recovering the Council’s reasonable costs. We are introducing an assisted fee which will be charged where an applicant requires additional assistance with completing the application form. The fee will include;
- advice and assistance with completing the application form
 - advice on nominating the appropriate person to hold the licence
 - advice on drawing up plans to accompany the application in accordance with guidance
 - assistance with submitting plans
 - advice on relevant documentation that is required as part of the licence
 - advice on management agreements.
- 5.5. The assisted fee has been calculated using the HMO licensing fees calculator in line with the other HMO licensing fees that we charge for. The fee charged will be £283.

Charging for professional advice to landlords to raise standards in HMO’s

- 5.6. In 2003 the Government introduced the Local Government Act 2003 (LGA2003). Section 93 of the Act enables Best Value local authorities to charge for discretionary services subject to having regard to the statutory guidance issued by the Secretary of State in November 2003, ([General Power for Best Value Authorities to Charge for Discretionary Services - Guidance on the Power in the Local Government Act 2003](#)). This gives authority to councils to charge a fee for providing this type of advice to landlords.
- 5.7. It is proposed that the advice and assistance will be offered under the authority of The Local Government Act 2003 and will consist of providing advice and assistance on the required housing standards.
- 5.8. Having reviewed our processes, the proposed fee would aim to cover the current costs to the Service associated with providing this advice. This will enable the Council to continue to provide advice to landlords on a cost neutral basis and it will present members with options on prioritising other housing enforcement work going forward.
- 5.9. Providing pre-advice would give landlords an alternative option for receiving professional advice on HMO housing matters, rather than being limited to advice from consultants and lawyers.
- 5.10. Landlords themselves will benefit by coming directly to the Council for advice on matters relating to housing standards and this may remove the need for future enforcement action and costs that would be incurred by all parties.

5.11. The fee has been calculated on the basis that it will take on average five and half hours of officer time to provide the advice and liaise with the landlord. The fee charged will be £283.

Fee of Penalty Charge Notice for non-compliance with a Remedial Notice

5.12. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduced new legal requirements on private sector landlords from 1st October 2015 in respect of premises occupied under tenancies starting on or after that date.

The requirements are to;

- (i) Equip a smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation
- (ii) Equip a carbon monoxide alarm in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance and
- (iii) Carry out checks by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins where it is a new tenancy.

5.13. Any penalty charge should be set at a level which is proportionate to the risk posed by non-compliance with the requirements of the legislation and which will deter non-compliance. It should also cover the costs incurred by the Council in administering and implementing the legislation.

5.14. The provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on a landlord. The cost of the alarms is low and in many cases they can be self-installed without the need for a professional contractor. The impact on occupiers, damage to property and financial costs resulting from a fire or Carbon Monoxide poisoning far outweigh the cost of installing alarms.

5.15. The ability of the Council to serve a Penalty Charge Notice for non-compliance with a Remedial Notice is an effective incentive to comply with these Regulations. It is understood that the imposition of the maximum potential fixed penalty charge, being £5,000 under the regulations, can present a significant financial burden but this will be balanced against the risk, the low cost of compliance and the fact that all reasonable opportunity will have been given to the landlord to comply prior to any penalty charge being issued. A recipient of a fixed penalty charge will also have the right of appeal.

5.16. For the reasons as discussed above the maximum penalty charge of £5,000 is proposed and this is consistent across West London authorities. The Council may exercise discretion and reduce the penalty charge if there are extenuating circumstances following a representation made by the landlord. This discretion will not apply when;

- (i) The person / company served on has obstructed the Authority in carrying out its duties and / or
- (ii) The person / company has previously received a penalty charge under this legislation

6. OPTIONS AND ANALYSIS OF OPTIONS

- 6.1. The Council can recover the costs of its time which in terms of issuing and processing is the same regardless of whether the licence is for two or five years. Two year licences will only be issued where there is cause for concern relating to the condition and management of the property. Officers will be required to inspect to ensure compliance with the HHSRS within the two year period. The objective is to improve the standard of the private rented sector accommodation through encouraging landlords to meet minimum standards that will allow them to obtain a license for the maximum term and reduce their operating costs.
- 6.2. The introduction of an assisted fee will mean that costs associated with advising landlords at this critical stage will be recoverable and result in a reduced number of licences being refused owing to the quality of applications, which are often being very poor. Currently officers are spending a significant amount of time chasing landlords which has led to back log and diverted our limited resources away from dealing with rogue landlords.
- 6.3. The Council propose to charge landlords for professional advice. This will mean that costs associated with advising landlords will be recoverable. Currently officers are doing this on top of their existing workload with competing priorities leading to inconsistent quality of service. The team does not have resources to sustain this service given the complexity around some of the issues being raised. Landlords would benefit from the professional input.
- 6.4. Imposing the maximum Penalty Charge Notice will act as a deterrent for poor performing and non-compliant landlords to address hazards with potentially fatal consequences. If a landlord does not comply with the Regulations, the Council is duty bound to carry out works in default. This could potentially lead to an increase in works in default and resource implications for debt recovery for the Council.

7. CONSULTATION

- 7.1. No consultation has taken place. Existing fees are published on the website.

8. EQUALITY IMPLICATIONS

- 8.1. The objective of the proposals is to improve the private rented sector in terms of meeting minimum legal safety standards to protect lives and the well-being of residents. No negative impact equality implications are foreseen but there are

expected to be positive measures by ensuring a minimum standard for all residents.

9. LEGAL IMPLICATIONS

- 9.1. *When the Local Authority has a statutory duty to provide a service, any charge to be imposed must be within any statutory fee range outlines in related legislation*
- 9.2. *When the Local Authority has the “discretion” to provide a service any charge to be imposed must be made up of the reasonable costs of providing the service. The Local Authority is not entitled to make a profit from these charges*
- 9.3. *Any statutory penalty charge, such as the one outlined in this report, must be limited to that which has been provided by statute. In this case the report states that regulations provide for a maximum £5,000 penalty.*

Implication verified/completed by: Joyce Golder, Principal Solicitor, 020 7361 2181

10. FINANCIAL AND RESOURCES IMPLICATIONS

- 10.1. This report recommends changes to existing fees and the introduction of additional fees and a penalty charge.
- 10.2. The annual budgeted income for HMO licence fees is £35,000. The overall income from HMO licences is not expected to change significantly due to the changes proposed.
- 10.3. Implications verified/completed by: (Gary Hannaway, Head of Finance, 0208 753 6071).

11. IMPLICATIONS FOR BUSINESS

- 11.1. The majority of landlords will be unaffected by the proposals, however those operating unfit premises will benefit from professional advice and assistance that will enable them to ensure they meet minimum standards and therefore spend their resources appropriately.
- 11.2. Where landlords are unable to meet the standards required for a five year licence, a two year licence still allows them to operate their business legally and derive an income whilst they make the necessary improvements.

12. RISK MANAGEMENT

- 12.1 Actions taken to minimise the risks associated with the recommendations are incorporated in the body of the report. The Risk Manager agrees with the proposals and the additional risks highlighted in section 6 of the report including the issues concerning the default works, debt recovery and resources. These however have to be set against the larger opportunity risk and benefits arising

from the recommendations to improve the Private Housing Sector and Houses with Multiple Occupancy.

- 12.2 Implications verified by: Michael Sloniowski, Shared Services Risk Manager, telephone 020 8753 2587.

LOCAL GOVERNMENT ACT 2000

LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
	N/A		