



Individual Member Delegated Decision : Lead Member for Housing and Welfare Reform

Report from the Strategic Director, Community Well Being

Private Housing - HMO and Selective Licensing Fee Structure

Wards Affected:	All
Key or Non-Key Decision:	Non-Key Decision
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	Appendix 1 – Revised Fee Charging structure Appendix 2 - Standard wording to explain the two stage fee
Background Papers:	None
Contact Officer:	Hakeem Osinaike, Operational Director of Housing Telephone: 0208 937 5199; Email: hakeem.osinaike@brent.gov.uk Spencer Randolph, Head of Service, Private Housing Services Telephone: 020 8937 2546; Email: spencer.randolph@brent.gov.uk Tony Jemmott, Private Housing Manager (Licensing) Telephone: 020 8937 2377; Tony.jemmott@brent.gov.uk

1.0 Summary

- 1.1 As a consequence of a couple recent legal rulings, Private Housing Services (PHS) are having to change the way in which it collects its fees for all types of housing licence applications.
- 1.2 At this stage, officers are not proposing to increase the fee from its current level which went up on the 1st June 2018.
- 1.3 The rulings mean that the licence fee will have to be paid in two parts. Fee 1 payment will be required at the point of the application and fee 2 is paid once it is confirmed that the licence application is successful and a licence can be issued.
- 1.4 This will mean that there will be additional administrative works to collect the second fee but we are working with IT to develop a simple process that will allow this to be paid on line.

2.0 Recommendations

- 2.1 That the Lead Member for Housing, following consultation with the Leader of the Council, agrees to the revised charging mechanism for licensing fees as set out in Appendix 1 of this report and to the implementation thereof, with the start date for implementation to be set by the Strategic Director for Community Well Being.

3.0 Detail

- 3.1 In setting HMO and Selective licence fees, the council must follow certain principles established the European Services Directive (ESD). The fees are intended to off-set the cost to the Authority of administering the licensing scheme and is split between costs incurred before and after deciding to issue a licence.
- 3.2 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), therefore 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, Part 1 – a fee levied at the point of application to cover the costs of obtaining authorisation under the scheme, i.e. 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.
- 3.3 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 Private Housing Licensing changes to its fee charging regime to ensure compliance.
- 3.4 The Housing Act 2004 permits the Council to set licensing fees. The Licensing fees were subject to public consultation and were approved by Cabinet prior to the introduction of the schemes.
- 3.5 The current basic fee in Brent is £840.00 for an HMO licence and £540.00 for a selective licence. The current fees were effective from 1st June 2018, having been increased from £540.00 and £340.00 respectively.

4.0 Comments on the fee structure:

- 4.1 The Brent HMO fee structure is not based on the number of storeys. However for a mandatory licence any habitable rooms in an HMO over five (rooms) is charged at an additional £25.00 per room.
- 4.2 There is a £40.00 discount per property off the licence fee for landlords who are accredited to the London Landlords Accreditation scheme (ATLAS). The discount is to be applied at the second stage payment.
- 4.3 Our practice is to inspect all HMO licence renewals prior to issuing the new licence. There is a reduction of £100.00 off the HMO renewal application fee. The application

must be made to the Council before the expiry date of the existing licence, otherwise the full application fee is required.

- 4.4 There is no expected difference in the fee income levels as a result of the splitting of the fees.

5.0 Implementation Plan

- 5.1 It is proposed that the changes are implemented by the 10th January 2019.

Activity	Due Date/Responsible	Status
Gather info from LAs	27/9/18 Licensing Manager	Complete
Licensing Staff Communication	2/10/18 Licensing Manager	Complete
Complete change report	06/11/18 - Licensing Manager	Complete
Governance and Forward Plan	10/12/2018 – Lead Member/Leader	
IT/Application form changes	17/12/18 - IT/ Licensing Manager	
Website update	24/10/18 Web/Communications Teams	
Management Signoff	31/10/2018 -	
Go live	7 th January 2019	
Review	6 th January 2020	

6.0 Risks and Mitigation

- 6.1 The main risk is the difficulty in collecting the Part 2 fee as this is likely to delay the issuing of the licence. To mitigate we propose to issue the licence in line with schedule 5, Housing Act 2004. The legal requirement is that a copy of the licence and notice must be served on the applicant, and licence holder if different, within 7 days from the date on which our decision was made. The Service will need to be appropriately resourced to secure payment from the applicants. It is proposed that the changes will be reviewed after 4 weeks operation to report on the collection of the Part 2 fee.

7.0 Financial Implications

- 7.1 The changes will be funded within existing resources for Private Housing 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 additional task with budget monitoring and control.

8.0 Legal Implications

- 8.1 When setting fees regard must 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], the Supreme Court clarified the matters that a local authority can take into account when setting a locally determined fee. The judgement makes it clear that fees must be reasonable and proportionate and cannot be set to act as an economic deterrent to deter certain business types from operating within an area. However fees can be set at a level enabling the authorities to recover from licensed operators the full costs of managing and enforcing the licensing scheme,

including the cost of investigating and prosecuting those operating without the necessary licence.

- 8.2 The question as to whether a fee can be charged on application that includes the cost of managing and enforcing the licence scheme (including, amongst others, the costs of detecting and prosecuting unauthorised activities) or whether this element can only be collected on the grant of a licence was considered. The Court of Justice for the European Union (CJEU) on referral from the Supreme Court has ruled that the cost of managing and enforcing the licensing regime cannot be charged at the point of application. However, a fee for these element can be charged once the licence has been granted.
- 8.3 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.
- 8.4 The previous housing licensing fees were made by the Cabinet. There is an argument as to whether the Strategic Director could make the changes under his delegated powers as the total fees are not being changed. However, bearing in mind that this is an issue with the potential for legal challenge and that the Council's Constitution states that individual member delegated decisions can be made regarding the agreement of changes to existing fees and charges, it is recommended that the decision to change the fee structure is made by the Individual Lead Member, in consultation with the Leader, pursuant to paragraph 13 of Part 3 of the Council's Constitution.

9.0 Human Resources Implications

- 9.1 The additional work associated with the administration of split fees and particularly with collection of the second part of the payment will need to be met from within resources and kept under review.

10.0 Diversity Implications

- 10.1 The change in the approach to fee payment would apply to all owners of licensable properties. There should be no adverse impact on any group of individuals with a protected characteristic. However this change will affect unsuccessful applicants as they will have to pay the initial application fee and their application fee will not be returned if the application is unsuccessful.

Appendix 1 – Brent Licensing Fee Charging Structure

Licence Applications Fees

Scheme	Full Fee	Part 1-Fee on Application (non-refundable)	Part 2- Fee on Grant of Licence
Mandatory	£840.00	£540.00	£300.00
	Application, processing and inspection of up to 5 habitable rooms (lounge, dining room or bedroom)		
	£25.00		
	For each additional habitable room a charge per room of....		
Additional	£840.00	£540.00	£300.00
Selective	£540.00	£340.00	£200.00

Licence Applications Renewal Fees – *Where an applicant makes a declaration to confirm no changes to circumstances or property since 1st application and the application is made before the expiry of an existing licence*

Scheme	Full fee	Part 1-Fee on Application (non-refundable)	Part 2-Fee on Grant of Licence
Mandatory	£740	£440.00	£300.00
	Application, processing and inspection of up to 5 habitable rooms (lounge, dining room or bedroom)		
	£25		
	For each additional habitable room an additional charge per room of....		
Additional	£740	£440.00	£300.00
Selective	£500	£300.00	£200.00

Additional charges associated with the application process

Council assistance provided to complete an application.	Fee
<i>For those applicants that are not able to complete an online application form the Council will offer an assisted service. This will enable you to make an application by telephone or by coming into Brent's Civic Centre, by appointment, and we will help you complete the form on line.</i>	£100.00

Other fees and charges

Application type	Fee or charge
Taking a licence back (revocation)	None
Application to licence after one has been taken away	Initial application fee
Applicant withdraws application	Initial application fee with no refund
Mistaken application	Refund
Temporary Exemption Notice (TEN) made by the council	No fee
Application received following the expiry of a Temporary Exemption Notice (TEN) made by the council	Initial application fee
Change of licence type - for example, if a single dwelling is re-let as a House in Multiple Occupation	New application fee
Reminder letter issued	£15
Missed inspection appointment	£100
Finder's fee – where a licensable property was found by the Council (landlords may still be subject to prosecution by the Council for operating an unlicensed rental accommodation).	£300

Licence variation fees - *For a licence variation where the property is already licensed.*

Proposed variation to the licence	Fee
Change of details of any existing licence holder, manager, owner, mortgagor, freeholder or leaseholder	None
Change of mortgagor, owner, freeholder and leaseholder (unless they are also the licence holder or manager)	None
Reduction in the number of occupiers and/or households for licensing purposes	None
Variation of licence started by the council	None
Change of manager (unless they are also the licence holder)	None
A larger number of occupiers and/or households for licensing purposes through increasing the number or size of rooms, and/or amenity provision (unless there is a change of licence type - from Selective to Additional)	None
Change of the existing licence holder	A new application must be made

Discounts

	Fee Reduction
Landlord Accreditation Scheme Membership off new (First time) applications. The discount is applied to the 2 nd payment.	£40

Appendix 2 - Standard wording to explain the two stage fee

A fundamental review of property licence fees was required due to changes following clarification of the matters that a local authority can take into account when setting a locally determined fee in the 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.

The rulings apply to licensing under Part 2 and, it would seem to selective licences required under Part 3, 2004 Act, meaning that licensing fees must be levied in two separate stages, Part 1 – a fee levied at the point of application to cover the costs of obtaining authorisation under the scheme, i.e. the costs of processing the application;

Part 2, the costs of managing and enforcing the licensing regime cannot be charged at the point of application. However, a fee for these elements can be charged when the licence is granted.

For this reason, from 5th November 2018 applicants for an HMO licence need to pay the first part payment with the application (based on the number of rooms being let – see table below). This is the “fee on application”. An additional “fee on grant of licence” is payable just before the licence is granted.

After an HMO Licence is granted, refunds will only be granted in exceptional circumstances at the Council’s discretion, as the fees are calculated to cover the Council’s costs, which have already been incurred. Even if the HMO ceases to be licensable during the licence period and the licence is revoked, there is no pro rata refund as costs have already been incurred by the Council.

For current fees please refer to www.brent.gov.uk/prslicensing