

**Title of meeting:** Cabinet Member for Housing Decision meeting

**Date of meeting:** 10<sup>th</sup> October 2016

**Subject:** Review of the Fees charged for HMO licencing and Enforcement costs under Housing Act 2004.

**Report by:** Owen Buckwell, Director of Property and Housing

**Wards affected:** All

**Key decision:** Yes

**Full Council decision:** No

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## **1 Purpose of report**

- 1.1 To formally review the current charges imposed by the Private Sector Housing Team for the mandatory and additional licensing schemes operating for Houses in Multiple Occupation (HMOs); to review the current charges imposed due to enforcement action undertaken under Part 1, Housing Act 2004.

## **2. Recommendations**

**That the Cabinet Member for Housing;**

- 2.1 approve the new fees for the Additional and Mandatory Licensing programs within Portsmouth and approve the new enforcement fees relating to Part 1, Housing Act 2004 as set out in appendix 1 and 2.**

## **3. Background**

- 3.1 The Housing Act 2004 introduced mandatory licensing of Houses in Multiple Occupation. The legislation allows a local authority to charge a reasonable fee for a licence that ensures the process of licensing certain HMOs does not provide any financial burden onto the local authority but no local authority can make a profit from the fee charged.
- 3.2 An Additional Licensing (AL) scheme was introduced by the city council into three post code areas, PO1, PO4 and PO5 from the 27<sup>th</sup> August 2013, again the legislation allows for the local authority to charge a reasonable fee for undertaking this function.
- 3.2 Section 49 of the Housing Act 2004 permits the City Council to levy a reasonable fee for their expenses in relation to enforcement action under Part 1 Housing Act 2004.

#### **4. Overview of HMO Licensing.**

- 4.1 There are currently 2950 properties that are subject to a HMO licence with just over 150 applications still waiting to be reviewed and, on average over the last 12 months about 16 new applications per month are being received.
- 4.2 These licences ensure that 12,800 people are living in HMO's that the city council have some control over and are working with the licence holder to improve the living conditions and the impact HMO's can have on the local community.
- 4.3 There are currently 1800 licensed landlords or companies, of which 23% have a single licence only. 53% of the landlords live in Hampshire and the largest single landlord has been licenced for 87 properties.

#### **5 Overview of Enforcement Action**

- 5.2 In 2015/16 the Private Sector Housing Team has served over 120 assorted Notices and Order on landlords and owner occupiers throughout the city. As an authority we will always try to work with the property owner before taking any enforcement action. However, we have to be mindful that the occupants are living in a property that could be affecting their health, safety and welfare.
- 5.3 The number of Notices or Orders served has increased, which is in part due to landlords not being as proactive in undertaking repair, but also the Private Sector Housing Team are more proactive in the service of a Notice or Order, which is a result of the recent changes in legislation.
- 5.4 Below is a list of the Notices/Orders where a charge can be made:
  - serving an improvement notice under Section 11 or 12 (includes suspended notices)
  - making a prohibition order under Section 20 or 21 (includes suspended orders)
  - serving a hazard awareness notice under Section 28 or 29
  - taking emergency remedial action under Section 40
  - making an emergency prohibition order under Section 43
  - making a demolition order under Section 265 of the Housing Act 1985 (c. 68)
  - review of suspended improvement notices (Section 17) and suspended prohibition orders (Section 26)

#### **6. Best Practice for charges.**

- 6.1 The matrix breaks down the process into specific selected areas that can be charged for as allowed within the legislation. This format has been adopted so the system is transparent and complies with the requirements of the Housing Act 2004.
- 6.2 The hourly rate for staff used within the fee calculation is approved by financial services and takes into account normal additional cost and overheads associated with staff employment.
- 6.3 Any person who has been served with any type of enforcement notice or order has the right to appeal to the First-tier Tribunal service. Over the last 2 years, we have

been involved with 4 appeals where the person on whom the enforcement action has been taken against, has not only appealed the notice or order, but has also appealed against the charge.

- 6.4 In all cases, the fee matrixes in particular the functions charged for and the time set have been scrutinised by the Tribunal and they have deemed in all cases that the costs are reasonable.

## **7 Future Charges - HMO Licencing.**

- 7.1 The revised HMO licensing fees must be set at a level that will cover all the costs of providing the scheme, based on estimated officer time and associated costs involved in processing the applications, inspections, monitoring and enforcement as well as all appropriate overheads.
- 7.2 The Additional Licencing scheme must end on the 27<sup>th</sup> August 2018, unless a further consultation is undertaken as the main aims and objectives have not been achieved throughout the 5 years of the scheme.
- 7.4 The proposed fees set for a Mandatory or an Additional Licence can be found Appendix 1.
- 7.5 The fee for all licences must be paid at the time an application is made.
- 7.6 The new charging structure will continue the discount given to Landlords and Agents who are members of the City Council's Landlord Accreditation Scheme (LAS).

## **8 Future Charges - Enforcement.**

- 8.1 The proposed fees set for all types of enforcement action under Part 1, Housing Act 2004 can be found in Appendix 2.
- 8.2 If any additional costs are incurred in determining of whether to serve a Notice/Order must be included on top of the total charge figure.
- 8.3 Appropriate additional charges on top of the total charge can include the following:
- If a valuation has been required to determine a course of action, the cost of the valuation report and the time to produce the report can be recovered.
  - If an expert opinion has been sought, e.g. electrical, drainage or structural the cost of doing this can be recovered.
  - If a contractor has been used to gain access to a property as part of exercising a warrant which results directly in the service of a notice/order, the cost of this action can be recovered.
  - If we have to arrange for emergency rehousing or temporary relocation of occupants. The cost of the housing can be fully recovered.
  - Additional officer time to facilitate service of the Notice/Order for emergency action.
- 8.4 No charge is to be made for copies of notices/orders that we are statutorily obliged to send out, e.g. to occupiers, mortgagees.

- 8.5 For buildings converted into flats where there are various leaseholders and a freeholder, a charge is to be made for each notice/order served, if there are varying responsibilities for works.
- 8.6 Only one charge is to be made for works that could have been placed on one notice, but the officer has decided to serve multiple notices to deal with the hazards present at the property. e.g. Combined Section 11 and 12 Improvement Notice.
- 8.7 Where there are several owners associated with a single property, i.e. where a group has come together to purchase a property, then only one charge is to be made, apportioned between the owners.
- 8.8 The Council may have regard to the personal circumstances of the recipient before exercising its power to make such a reasonable charge under Section 49 of the Housing Act 2004. If a change in the charge is made, this must be made by the Private Sector Housing Manager, who will have regard to the following:
- Income derived from the property.
  - Service of a Notice/Order due to tenant refusing access.
  - Officers and Landlord unable to agree on the works, but landlord willing to undertake works.

## **9 Equality Impact Assessment (EIA)**

- 9.1 A preliminary EIA was undertaken prior to the full consultation process. The information sourced from the respondents has not indicated that a full EIA is required.

## **10 City Solicitor's comments**

The report identifies the legal basis for service of notices under the 2004 act, that being section 49(1) in addition there is power to appeal to the appropriate Tribunal which has the power to quash, reduce and order repayment in respect to any notice or order under section 49(1), that power being pursuant to section 49(7)- the report identifies in line with the correct statutory provisions the basis for cost recovery and how such cost is computed.

## **11 Director of Finance comments**

- 11.1 This review is in line with previous recommendations, which approved the annual revision of fees and charges. The proposed fees set out within this report and the attached appendices are anticipated to cover the costs of carrying out the Licensing and Enforcement duties, and as a result the schemes will be delivered from within existing cash limits.

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Signed by:

Owen Buckwell, Director of Property and Housing.

## **Appendices:**

Appendix 1 - Full list of the licence fee charges.

Appendix 2 - Full list of enforcement fees.

Appendix 3 - Overview of the current position of Additional Licencing.

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

<b>Title of document</b>	<b>Location</b>
None	

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

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Signed by:

Councillor Steve Wemyss

Cabinet Member for Housing