

Title of meeting: Cabinet Member for Housing Decision meeting

Date of meeting: 23rd September 2014

Subject: Review of the Licensing Programmes for Houses in Multiple Occupation in Portsmouth.

Report by: Alan Cufley Head of Corporate Assets, Business and Standards

Wards affected: St. Jude, Central Southsea, Eastney and Craneswater, Milton, Fratton, Baffins and St.Thomas.

Key decision: Yes

Full Council decision: No

1 Purpose of report

- 1.1 To formally review the current progress of both the mandatory and additional licensing schemes operating for Houses in Multiple Occupation (HMOs); to review the current licence fees for types of licence, including certain 's257' properties.

2. Recommendations

That the Cabinet Member for Housing;

- 2.1 approves the new fees for Additional and Mandatory Licensing including the change to the fee structure for a section 257 property which would require to be licensed under the Additional Licensing scheme.**

3. Background

- 3.1 An Additional Licensing (AL) scheme was introduced by the city council into three post code areas, PO1, PO4 and PO5 from the 27th August 2013, following a comprehensive consultation with relevant parties.
- 3.2 The legal responsibility is on the landlord or person in control to make an application for a licence. The city council has however been very active in contacting as many landlords as possible to ensure they are aware of this responsibility.

4. Overview of Additional Licensing in the first year.

- 4.1 Although less than the 2,500 predicted, there have been 2,065 applications made by landlords of HMO properties, subject to the AL scheme, within the last year. Despite the scheme being introduced in August, a large number of landlords waited until the final weeks of February in which to submit applications which has meant that applications have not been processed as quickly as had initially been expected.

- 4.2 Of the 2,065, there are just over 600 applications still waiting to be reviewed and, on average, about 12 new applications per month are being received.
- 4.3 As there are no accurate records of property that falls under Section 257 of the Housing Act 2004, an estimate of 600 applications from these buildings was planned. However, there have only been 87 section 257 applications submitted, and of these 50 remain to be processed.
- 4.4 Whilst the overall number of applications received is lower than the predicted number, there are around a further 1600 properties where the owners are being contacted to see if they are required to obtain a licence.
- 4.5 From the applications submitted the following information is available:
- Total numbers of permitted persons currently living in Additional Licenced HMO properties is 8,365, which represents 8,309 households.
 - There are currently 1705 licensed landlords or companies, of which 26% have a single licence only. 55% of the landlords live in Hampshire and the largest single landlord has been licenced for 211 properties.
 - Through the implementation of licencing, the number of amenities in 136 properties has been increased to a level that is acceptable for the number of occupants and improvements made to the fire safety in 638 properties.

5 **Recommended changes to the Additional Licensing scheme for 's257 property'.**

- 5.2 A number of landlords have expressed concern over the fee charged for smaller section 257 properties, which may only consist of two self-contained flats, with no common area.
- 5.3 To take into account these concerns a revised fee has been calculated representing the lack of a common area. The change is shown in Appendix 1 to this report

6. **Legal and Best Practice Changes to Licensing.**

- 6.1 Over the last 12 months, there have been a number of cases through the courts or First-tier Tribunal Service (RPT) that have affected the licensing schemes currently running.
- 6.2 Variation of licence fees:

Crompton v Oxford City Council: *The power to charge fees in respect of HMO licensing is found in s63 of the Housing Act 2004. Importantly, this power is granted in respect of licence applications only. Oxford City Council had sought to charge a fee for the variation of an HMO licence. The Residential Property Tribunal (RPT) ruled that the fee was unlawful and that it could not be charged.*

- 6.3 Section 63 Housing Act 2004 permits a local authority to charge a fee when an application for a licence is made whether that is for a Mandatory, Additional or Selective Licence.

- 6.4 When fixing fees under this section, the local housing authority may take into account
- (a) all costs incurred by the authority in carrying out their functions under this legislation
 - (b) all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 in relation to HMO's.

6.5 From a review of the licencing information held, it is possible to confirm that no landlord has been charged for variation of a licence.

6.6 However the RPT decision was unclear if other additional charges could be levied within the concept of Section 63. Therefore, in order to ensure that all costs of the licensing programme are covered within the fee charged, these additional costs must be calculated and reflected in the initial charge. This means that as a consequence of this ruling, the cost of a licence must increase.

6.7 Determination of a HMO:

***Bristol City Council v Digs (Bristol) Ltd:** The defendant was the private landlord of a maisonette in multiple occupation. The council brought a prosecution for failure to obtain an HMO licence and for breaches of the HMO regulations. A District Judge at Bristol Magistrates Court tried the preliminary issue of whether the maisonette was a licensable HMO. It extended over two storeys of a building with a further entrance corridor and hallway on a lower storey.*

The council included the lower storey in deciding that the HMO extended to three storeys. The Judge held that having regard to Article 3 of the HMO (Prescribed Description) (England) (Order) the maisonette was not an HMO. The council had been wrong to include the lower storey. In the light of that ruling, the council offered no evidence and the defendant was acquitted.

6.9 As a consequence of this decision, all the licences issued in Portsmouth under this provision have been reviewed to ensure that there are none that meet this criteria. All mandatory licensed properties have been considered and currently none have been found that meet the court ruling requiring the licence to be revoked.

7. Enforcement of the Additional Licensing Scheme.

7.1 Regrettably a large number of landlords have either, still not applied for the Additional Licence, or submitted all the information required by the scheme. The AL team are being as proactive as possible but there is a limit to how much the Council can or should do to make the landlord / agent comply with the Regulations.

7.2 The legislation provides a remedy for such a situation and involves the service of an Interim Management Order (IMO).

7.3 Consequently, it is anticipated that a number of IMOs will need to be issued over the coming months where there is no prospect of a licence being issued in the future or that certain health and safety conditions are unsatisfactory.

8 Future Charges for Licensing.

- 8.1 As described in paragraph 6.6 above, 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.
- 8.2 The scheme must end on the 27th 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.
- 8.3 Therefore, all licences issued from the 27th August 2014, will only be for a period of 4 years and the revised fee structure reflects this position.
- 8.4 The proposed fees set for a Mandatory or an Additional Licence are shown below and in Appendix 1:

Property Type	Per application.	Per application for properties operating on the designation date#
All HMOs	£550	£700
Section 257 properties	£570	£640
Section 257 – no common area	£120	N/A

for properties which were operating as a HMO on the designation date, but the landlord failed to apply for a licence.

- 8.5 The fee can be paid either as a one off payment or, if the licence holder makes applications for more than 10 properties, as a monthly direct debit over a 4 year period. It can also be paid by equal instalments where the licence will be fully paid over 12 months.
- 8.6 As a degree of administration has already been undertaken or would not be duplicated, any applicant who makes a second application for another HMO whether submitted at the same time or within the first 6 months from the date of the licence will be charged a reduced rate of £490.
- 8.7 Similarly any applicant who makes a second application for another section 257 property whether submitted at the same time or within the first 6 months from the date of the licence will be charged a reduced rate of £400.
- 8.8 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)

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

10.1 The cost setting in the report is consistent with the legal authorities that have been referred to within the report and that in addition all relevant costs are included within the fee.

11 Head of Finance comments

11.1 This review is in line with the previous recommendation to review fees on an annual basis (Cabinet Report, 10th April 2013 in Introduction of a Comprehensive Licensing Programme for HMOs in Portsmouth, paragraph 12.1). The proposed fees set out within Appendix 1 are anticipated to cover the costs of running the Mandatory and Additional Licensing Schemes. The schemes will therefore be delivered within existing cash limits.

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Signed by:
Alan Cufley Head of Corporate Assets, Business & Standards

Appendices:

Appendix 1 - Full list of the licence fee charges.

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:

Title of document	Location
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