

Report to: Cabinet Agenda Planning

Date of Meeting: 24 June 2019

Report Title: Review of Housing Licensing Fees

Report By: Andrew Palmer, Assistant Director Housing and Built Environment

Purpose of Report

The recent high court case of R (Gasking) v Richmond-upon-Thames London Borough Council has held that licensing schemes made under the Housing Act 2004 are authorisation schemes within the meaning of the EU services directive. This has necessitated a re-assessment of the fees charged for the councils housing licensing schemes.

Recommendation(s)

- 1. That Cabinet approve the revised fee structure for housing licensing to take into account a 'Hemmings' (two part) fee structure.**
- 2. That the revised fee structure is introduced on 1 April 2020**

Reasons for Recommendations

In order to comply with the EU services directive licence fees are required to be charged in two parts. This change to a two part application process will require a review of the online application system; in order to allow sufficient time to project manage this change an implementation date of 1 April 2020 is required.

Introduction

1. On 31 July 2018, the High Court, as a result of *R (Gaskin) v Richmond-upon-Thames LBC* [2018] EWHC 1996 (Admin), held that schemes for the licensing of houses in multiple occupation ('HMOs') under Part 2 of the Housing Act 2004 ('the 2004 Act') are authorisation schemes, within the meaning of EU Directive 2006/123/EC ('the Directive') and regulations incorporating the Directive in domestic law: the Provision of Services Regulations 2009 ('the 2009 Regulations').
2. The result of the above decision is that the fee for an HMO licence under Part 2 of the 2004 Act and for a licence to let other accommodation under Part 3, must be levied in two, separate parts, in accordance with the type A scheme endorsed by the Supreme Court in *R (Hemming, t/a Simply Pleasure Ltd) v Westminster CC* [2015] UKSC 25; [2015] AC 1600;
 - Part 1 – a fee charged at the point of application, to cover the costs of the scheme's 'authorisation procedures and formalities', i.e. the costs of processing the application; and
 - Part 2 – if the application is successful, a further fee to cover the costs of running and enforcing the scheme.
3. In July 2017 the Local Government Association published guidance to help councils understand the full breath of issues that should be considered when setting local licence fees. This guidance made reference to Hemmings but as the outcome of the Gaskin case was still outstanding it was unconfirmed at that time whether the guidance applied in full to housing licensing. In addition to setting out how a two part application fee may be charged it clarified that using a surplus from one licensing scheme to subsidise another or for any fee income to be drawn into the council's general fund is unlawful.
4. The present fee structure for the mandatory licensing of certain types of HMOs, and the discretionary additional HMO and selective licensing schemes in Hastings are not currently a 'Hemming' two part fee structure. Following the Gaskin case therefore it is now appropriate to consider all the councils Housing Act 2004 licensing fees in light of the LGA guidance.

Hastings Selective Licensing Scheme 2016

5. When the fees were originally set for the 2016 selective licensing scheme they were based on an assumption of the administrative time it would take to process licence applications (4.0 FTE) and officer time to visit every licenced property (6.0 FTE). The cost of the service also included management costs and 1.0 FTE officer whose role it would be to find unlicensed properties.
6. On the 9 October 2017 Cabinet received a report reviewing the selective licensing scheme on its second anniversary. This report included a review of the licence fees and Cabinet agreed that an increase in licence fee was required to ensure the scheme operated at nil cost to the wider Council revenue budget. At this time the staffing resource to the project was also reduced to 4.0 FTE field officers and 4.0

FTE administration officers. The resource of 1.0 FTE to find unlicensed properties was also retained.

7. The present fee for selective licensing is £ 665 per dwelling. There is no specific fee for renewal applications as when the scheme was introduced it was assumed that number of licence renewals within the 5 year operation of the scheme was going to be small. To date no selective licence has been granted for the less than the maximum 5 year term and as such no renewals are expected in the lifetime of the scheme.
8. Since the beginning of the scheme it has received 7,565 applications and issued a total of 7,342 selective licenses. The scheme is still receiving applications at a steady rate (approx. 10 applications per week) many prompted by enforcement investigations carried out by the team. The team have successfully prosecuted in relation to 32 unlicensed properties and issued 18 civil penalties since the start of the scheme.

Hastings Additional HMO Licensing Scheme 2018

9. The new additional HMO licensing scheme commenced in April 2018. The fees for this scheme were based on the experience of administering the previous additional HMO licensing scheme (which ceased in September 2016).
10. The present fee structure for the additional HMO licensing scheme is consistent with the fee structure for mandatory HMO licensing that being £ 400 per application unless the HMO was previously unlicensed when the fee rises to £ 1,000. A selective licensing surcharge may also be payable if one or more of the units of accommodation in the HMO required a selective licence prior to the building becoming a licensable HMO.
11. When the new additional scheme was adopted the fees for those HMO's required to be licenced as mandatory under the Housing Act were also amended to be consistent to the additional scheme.
12. Since the beginning of the 2018 HMO licensing scheme we have received 489 applications and issued 303 licences. As opposed to the selective scheme a number of HMO licenses have been granted for less than the maximum 5 year term and as such there are renewal fees payable within this scheme.

'Hemmings' Fee Structure

13. A review of the HMO and selective licensing scheme costs in Hastings has been undertaken to attempt to identify what the Part A and Part B fees would be. The Part A fee covers the actual time taken to receive and process a licence to decision (grant or refuse). This fee can be charged on application as the present fee is. The Part B fee covers the cost of maintaining the wider schemes (such as ICT costs, management overheads) and any enforcement costs. The Part B fee can only be charged when licences are approved (if a licence is refused the Part B fee cannot be charged but the Part A fee can be retained).

14. A breakdown of the calculation of the fees is included in appendix 2. In summary;

Part 2 HMO Licensing (inc. Mandatory and Additional)					
New Application	Part A Fee	Part B Fee	Total Fee	Previous Fee (unlicensed)	Difference
	£ 507	£ 514	£ 1,021	£ 1,000	+2%
Renewal Application	Part A Fee	Part B Fee	Total Fee	Previous Fee (licensed)	Difference
	£ 104	£ 346	£ 450	£ 400	+11%

Part 3 Selective Licensing					
New Application	Part A Fee	Part B Fee	Total Fee	Previous Fee (no fee set)	Difference
	£ 496	£ 111	£ 607	£ 665	-10%
Renewal Application	Part A Fee	Part B Fee	Total Fee	Previous Fee (no fee set)	Difference
	£ 104	£ 85	£ 189	£ 665	-252%

15. As can be seen from the tables above the Part A fee for both Part 2 (HMO) and Part 3 (Selective) licenses is fairly consistent. The difference in the Part B fee is due to there being more properties within the selective scheme to spread the ongoing cost of the scheme across.

Financial impact of proposed fee structure

16. The difference in the new fees proposed for HMO licensing represents a potential increase in income for the scheme over the remaining 4 years of the scheme of £ 10,000 pa. This figure is very uncertain however as it is based on an assumption of the number of applicants that renew promptly (and receive the £ 450 renewal fee as opposed to being treated as a new applicant and being charged £ 1,021). It is also assumed in this estimate that all Part B fees will be paid by landlords once they have received their licence which from previous experience of charging upon grant of licence in the previous licensing scheme is not always the case.

17. The Selective Licensing Scheme is much more established than the 2018 HMO scheme and therefore a significant proportion of applications for this scheme have already been received. Based on the rate at which applications are being received we estimate that there in the region of 800 properties still to apply. The reduction in fees therefore would be a reduction of income for the scheme overall of £ 46,000.

18. Another outcome of the Hemmings case was it made clear that local authorities are restricted from diverting fee income from one licensing scheme to fund another. The possible increase in fee income from the increase in HMO licensing fees therefore cannot be used to fund the reduction in income due to the fee decrease in the selective fee. Both schemes however are required to be kept under constant review and should either scheme look to be operating at a deficit at the end of its five year

duration the expenditure of the scheme will be reduced accordingly. Conversely if, at review, either scheme appears to be operating in surplus consideration will need to be made in respect of refunding landlords a proportion of their fees. As the selective scheme moves into its final years it is expected that staffing resource on this would be required to reduce; this resource would be redeployed to HMO licensing as the workload of this scheme increases meaning the final breakeven point for both schemes should be protected.

19. Whilst the renewal fee for selective licensing appears to be significantly reduced this has no impact on the final financial position of the scheme as no licences have yet been granted on a period of less than 5 years. Therefore the scheme does not account for any renewal income.

Operational impact of proposed fee structure

20. Following the experience of the 2014 Additional HMO Licensing Scheme (which was predominantly paper based) the 2016 Selective Licensing Scheme was introduced through an online only application process to keep the cost of the applications to landlords as low as possible. This process was further refined for the 2018 Additional HMO Licensing Scheme. The introduction of the 2 part fee process means the full fee cannot be charged up front at application and therefore upon grant of licence an invoice is required to be raised and sent with the licence approval documentation.
21. Licence fees for the 2014 Additional HMO Licensing Scheme were payable in full upon grant of licence. In some instances landlords did not continue to pay invoices sent out with licences leaving the authority in the position whereby a licence had been granted but the fee remained unpaid. As the licence had been issued the landlord could not be pursued under the Housing Act and non-payment of the fee could only be recovered through the normal debt recovery processes.
22. A move to a 2 part application will require a full reassessment of the application process, including updating the online application form. In particular effort will be required to combat the issue of landlords avoiding paying part B fees when they have received their licence. This will require significant corporate resource from the transformation team and the legal and finance teams which is not presently identified in their work programme. In order to ensure capacity within the organisation to administer this change a project plan will be developed to implement the new fees from April 2020.

Fee waivers and sundry fees

23. The previous Selective Licensing fee structure included a waiver of fee for landlords who were registered charities. This was applied in cases where a landlord was registered as a charity by the Charity Commission. It is proposed to continue with this reduction.
24. It is important to note taking a 'Hemmings' approach to fee setting does not allow councils to subsidise the scheme using income to the scheme; i.e. any reduction / waiver in fees would be required to be funded outside of the scheme budget (i.e. from the base revenue budget). To date the selective licensing scheme has

received 158 applications from charities who have been exempt fees. It is not known how many of the remaining 800 expected applications will be from charities and therefore will be required to be funded from the general fund.

Risks

25. Neither the MHCLG nor the LGA have issued any specific guidance on fee setting for licensing schemes made under the Housing Act. The adoption on a 'Hemmings' fee structure nationally is sporadic. Locally whilst 3 Sussex authorities have amended their fee structure the remainder either are planning to but have not or are not planning on doing so. The same can be found in London where few boroughs have amended their fees to date.
26. Should the council not adopt a 2 part fee structure there is a risk of legal challenge from landlords. However as the suggested fee structure for HMO licensing represents an increase to landlords this may mean the chance of challenge is reduced.
27. As the proposed new Selective licence fee is less than the present fee there is a risk of challenge from landlords who have paid the present £ 665 fee. To date 956 applications have been received from landlords at this rate. The likely success of any challenge is unknown however it should be noted that should any challenge be successful and the council be required to refund part of fees this would amount to £ 55,448
28. As detailed in paragraph 24 any future fee exempt charity applications would be required to be funded from the general fund. In addition to this the previous 158 fee exempt charity applications have been funded using income for the scheme from landlords who have paid the full fee. There is a risk that these landlords would challenge this and demand refunds for this; the cost of the existing fee exemptions to date has been £ 105,070.

Timetable of Next Steps

Action	Key milestone	Due date (provisional)	Responsible
Report to Cabinet	Cabinet	8 July 2019	Matthew China

Wards Affected

Braybrooke, Castle, Gensing, Ore, Old Hastings, Tressell, Central St Leonards

Implications

Relevant project tools applied? Yes

Have you checked this report for plain English and readability? Yes (Flesch-Kincaid Grade Level 13.0)

Climate change implications considered? Yes

Please identify if this report contains any implications for the following:

Economic/Financial Implications – Scheme is required to be cost neutral to the council.
More detail on financial impact is included from paragraph 16.

Additional Information

Appendix 1 – Proposed fee structure for licensing under Housing Act 2004
Appendix 2 – Fee calculation background

Officer to Contact

Matthew China
mchina@hastings.gov.uk
07967 058984

Appendix 1 – Housing Act 2004 Schedule of Fees

The following fees are not liable to VAT. Renewal application is only applicable if application to renew is made within 3 months of the expiration of the previous licence. Any application outside these 3 months will be treated as a new application.

Licenses are non-transferable. Any new owner is required to make a new application

Housing Act 2004 Part 2 (HMO) – New Application

Part A Fee (payable on application) - £ 507

Part B Fee (payable within 14 days of grant of licence) - £ 514

Housing Act 2004 Part 2 (HMO) – Renewal Application

Part A Fee (payable on application) - £ 104

Part B Fee (payable within 14 days of grant of licence) - £ 346

Housing Act 2004 Part 3 (Selective) – New Application

Part A Fee (payable on application) - £ 496

Part B Fee (payable within 14 days of grant of licence) - £ 111

Housing Act 2004 Part 3 (Selective) – Renewal Application

Part A Fee (payable on application) - £ 104

Part B Fee (payable within 14 days of grant of licence) - £ 85

Miscellaneous Fees

Surcharge for Part 2 Additional HMO Licence where applicant owns units of accommodation within the HMO that do not have an extant existing Part 3 Selective Licence - £ 607 per dwelling

Fee for assistance in making application - £ 50 per application

Discount for charities registered with the Charity Commission in England and Wales – 100%

Appendix 2 – Fee Calculations

Part 2 (HMO) Licence Fee Calculation – New Application

	Time taken (mins)	Who (A/O/M)	Cost £	
PART A	Application process:			
	Application verified	60	A	20.66
	Correspondence on declarations	120	A	41.32
	Draft licence prep	120	A	41.32
	Draft licence checked	60	O	34.88
	Land registry (average 3 searches)			9.00
	Draft licence distribution	60	A	20.66
	Prepare representations report	120	A	41.32
	Review representations	60	O	34.88
	Review representations	60	M	54.02
	Prepare final licence	60	O	34.88
	Check final licence	30	M	27.01
	Inspection:			
	Inspection prep	120	O	69.76
	Inspection	120	O	69.76
PART B	Associated costs:			
	Virtual mailroom	Total cost	6000	7.50
				The cost is calculated per licence as the total for each activity has been divided by the number of licences issued entered
	PART A TOTAL			506.97
	Enforcement costs:			
	Identification of unlicensed properties (0.5FTE)	46620	O	27,101.76
	Determination of enforcement action (0.01FTE)	932.4	M	839.47
	Advice on licensing need (1FTE)	93240	A	32,105.64
	Associated costs:			
	Maintenance of scheme - including complaint investigation (0.1FTE)	9324	M	8,394.71
	Annual scheme review (5 days)	2220	M	1,998.74
	Software licence costs		Total cost	3,000.00
	ICT Equipment		Total cost	7,000.00
	Officer training and CPD (£ 500 per officer per year)		Total cost	7,500.00
	Scheme development / consultation		Total cost	20,000.00
	Online application form cost		Total cost	35,000.00
	Publicity / advertising (inc. formal adoption notices)		Total cost	18,000.00
	Corporate support costs (inc. legal and finance)		Total cost	250,000.00
	Total			410,940.32
	PART B TOTAL			513.68
				The cost is calculated per licence as the total for each activity has been divided by the number of licences issued entered
		Part A	Part B	Total
		£ 507	£ 514	£ 1,021

Hourly rate inc on costs	
A Admin	20.66
O Officer	34.88
M Manager	54.02

Number of licences issued by authority	800
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Part 3 (Selective) Licence Fee Calculation – New Application

PART A

PART B

Application process:

Application verified	60	A	20.66
Correspondence on declarations	180	A	61.98
Draft licence prep	120	A	41.32
Draft licence checked	60	O	34.88
Land registry			3.00
Draft licence distribution	60	A	20.66
Prepare representations report	120	A	41.32
Review representations	60	O	34.88
Review representations	60	M	54.02
Prepare final licence	60	O	34.88
Check final licence	30	M	27.01
Inspection:			
Inspection prep	120	O	55.81
Inspection	120	O	55.81

Associated costs:

Virtual mailroom	Total cost	70000	9.83	The cost is calculated per licence as the total for each activity has been divided by the number of licences issued entered

PART A TOTAL 496.06

Enforcement costs:

Identification of unlicensed properties (1FTE)	93240	O	54,203.52
Determination of enforcement action (0.05FTE)	4662	M	4,197.35
Advice on licensing need (1FTE)	93240	A	32,105.64

Associated costs:

Maintenance of scheme - including complaint investigation (0.2FTE)	18648	M	16,789.42
Annual scheme review (5 days)	11100	M	9,993.70
Software licence costs		Total cost	5,000.00
ICT Equipment		Total cost	20,000.00
Officer training and CPD (£ 500 per officer per year)		Total cost	25,000.00
Scheme development / consultation		Total cost	30,000.00
Online application form cost		Total cost	20,000.00
Publicity / advertising (inc. formal adoption notices)		Total cost	20,000.00
Legal support charges		Total cost	50,000.00
Corporate support costs (inc. finance)		Total cost	500,000.00
Total			787,289.63

PART B TOTAL 110.61

The cost is calculated per licence as the total for each activity has been divided by the number of licences issued entered

Hourly rate inc on costs

A Admin	20.66
O Officer	34.88
M Manager	54.02

Number of licences issued by authority 7118

Inspection rate 80%

Part A	Part B	Total
£ 496	£ 111	£ 607

Part 2 (HMO) Licence Fee Calculation – Renewal

	Time taken (mins)	Who (A/O/M)	Cost £	Hourly rate inc on costs	
				A Admin	20.66
PART A	Application process:			O Officer	34.88
	Renewal application verified	30	A	M Manager	54.02
	Correspondence on declarations	30	A		
	Draft licence prep	30	A		
	Draft licence distribution	60	A		
	Prepare final licence	30	O		
	Check final licence	30	M		
PART B	Associated costs:				
	Virtual mailroom				
	Total cost	6000	7.50		
PART A TOTAL				103.60	
Associated costs:				The cost is calculated per licence as the total for each activity has been divided by the number of licences issued entered	
PART B	Maintenance of scheme - including complaint investigation (0.1FTE)	9324	M	8,394.71	Minutes calculated on a 42 week year
	Annual scheme review (5 days)	2220	M	1,998.74	
	Software licence costs			Total cost 3,000.00	
	Officer training and CPD (£500 per officer per year)			Total cost 7,500.00	
	Publicity and advertising			Total cost 6,000.00	
	Corporate support costs (inc. legal and finance)			Total cost 250,000.00	
	Total			276,893.45	
PART B TOTAL				346.12	
				The cost is calculated per licence as the total for each activity has been divided by the number of licences issued entered	
		Part A	Part B	Total	
		£ 104	£ 346	£ 450	

Part 3 (Selective) Licence Fee Calculation - Renewal

	Time taken (mins)	Who (A/O/M)	Cost £	Hourly rate inc on costs	
				A Admin	20.66
PART A	Application process:			O Officer	34.88
	Renewal application verified	30	A	M Manager	54.02
	Correspondence on declarations	30	A		
	Draft licence prep	30	A		
	Draft licence distribution	60	A		
	Prepare final licence	30	O		
	Check final licence	30	M		
PART B	Associated costs:				
	Virtual mailroom				
	Total cost	56000	7.87		
PART A TOTAL				103.97	
Associated costs:				The cost is calculated per licence as the total for each activity has been divided by the number of licences issued entered	
PART B	Maintenance of scheme - including complaint investigation (0.1FTE)	9324	M	8,394.71	Minutes calculated on a 42 week year
	Annual scheme review (5 days)	2220	M	1,998.74	
	Software licence costs			Total cost 50,000.00	
	Officer training and CPD (£500 per officer per year)			Total cost 25,000.00	
	Publicity and advertising			Total cost 20,000.00	
	Corporate support costs (inc. legal and finance)			Total cost 500,000.00	
	Total			605,393.45	
PART B TOTAL				85.05	
				The cost is calculated per licence as the total for each activity has been divided by the number of licences issued entered	
		Part A	Part B	Total	
		£ 104	£ 85	£ 189	