

Report to: Cabinet

Date of Meeting: 3 February 2020

Report Title: Review of HMO Licensing Fees

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

Purpose of Report

The 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 HMO licensing scheme.

Recommendation(s)

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

Reasons for Recommendations

In order to comply with the provisions of the services directive housing licence fees are required to be charged in two parts. As the Council is presently consulting on a new Selective Licensing scheme (Housing Act 2004 Part 3) to replace the existing scheme in October 2020 which includes details on two part fees for this scheme this report only proposes changing the HMO Licensing Scheme (Housing Act 2004 Part 2) fees in April 2020.

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 consequence 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 (referred to as a 'Hemmings' fee structure);
 - Part 1 – a fee levied 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 breadth of the issues that need to 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 levied 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 categories 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 2015

5. The present Selective Licensing Scheme (which commenced in October 2015) is due to cease in October 2020. To date this scheme has received over 8,000 applications. Although applications are still being received for this scheme the rate is now much reduced and is expected to continue at this low level until the end of the scheme.
6. The Council is presently consulting on a new scheme to replace the existing scheme from October 2020. The consultation for the new scheme includes details on a 'Hemmings' two part fee. It is not proposed that the council amend the existing fees for the Selective Licensing 2015 scheme and that a single fee is retained until the end of the scheme in October 2020.

Hastings Additional HMO Licensing Scheme 2018

7. 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 licencing scheme (which ceased in September 2016).
8. 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.
9. 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.
10. 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

11. A review of the HMO 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).
12. 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
	£ 414	£ 566	£ 980	£ 1,000	-2%
Renewal Application	Part A Fee	Part B Fee	Total Fee	Previous Fee (licenced)	Difference
	£ 414	Nil	£ 414	£ 400	+3%

Financial impact of proposed fee structure

13. Based upon the modelling we have so far undertaken, the new fee structure proposed for HMO licensing might result in a small net increase in income received in respect of the councils HMO licencing scheme operating costs over the remaining

4 years of the scheme. However, this should be treated with caution as it is based on an assumption of the number of applicants that renew promptly (and receive the £ 414 renewal fee as opposed to being treated as a new applicant and being charged £ 980). 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.

14. Another outcome of the Hemmings case was it made clear that local authorities must not utilise surplus fee income from one licensing scheme to fund other council activities. Fees are required to be kept under constant review and should the 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, the scheme appears to be operating in surplus consideration will need to be made in respect of refunding landlords a proportion of their fees.

Operational impact of proposed fee structure

15. Following the experience of the 2014 Additional HMO Licensing Scheme (which was predominantly paper based) the 2018 Additional HMO Licensing Scheme was introduced through an online only application process to keep the cost of the applications to landlords as low as possible. 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.
16. Licence fees for the old 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 normal debt recovery processes.
17. 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.

Risks

18. 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 most Sussex authorities have amended their fee structure and the remainder are planning to do so from April 2020.
19. Should the council not adopt a 2 part fee structure there is a risk of legal challenge from landlords. While there is still a significant amount of time to run on the HMO licensing scheme it is appropriate to adopt the fee structure for this scheme however the risk of challenge with regards to the selective licensing scheme is reduced significantly due to the fact this scheme is nearing its natural end.

Timetable of Next Steps

Action	Key milestone	Due date (provisional)	Responsible
New fee introduced	Adaption of online application form and associated procedures	1 April 2020	Matthew China

Wards Affected

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

Implications

Relevant project tools applied? ~~Yes~~/No – not relevant

Have you checked this report for plain English and readability? Yes/~~No~~ – Readability score of 41.0

Climate change implications considered? ~~Yes~~/No – not relevant

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

Equalities and Community Cohesiveness

Crime and Fear of Crime (Section 17)

Risk Management

Environmental Issues

Economic/Financial Implications – As detailed in the report at paragraphs 14 and 15

Human Rights Act

Organisational Consequences – As detailed in the report at paragraphs 16 to 18

Local People's Views

Anti-Poverty

Additional Information

Appendix 1 – Proposed fee structure for licensing under Housing Act 2004

Appendix 2 – Fee calculation background

Officer to Contact

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Appendix 1 – HMO Licensing (Housing Act 2004 Part 2) 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) - £ 414

Part B Fee (payable within 14 days of grant of licence) - £ 566

Housing Act 2004 Part 2 (HMO) – Renewal Application

Part A Fee (payable on application) - £ 414

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

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 under the Hastings Borough Council Selective Licensing Scheme 2015 - £ 665 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

	Time taken (mins)	Who (A/O/M)	Cost (£)
Application process:			
Application verified	60	A	16.81
Correspondence on declarations	120	A	33.62
Draft licence prep	120	A	33.62
Draft licence checked	60	O	28.21
Land registry (average 3 searches)			9.00
Draft licence distribution	60	A	16.81
Prepare representations report	120	A	33.62
Review representations	60	O	28.21
Review representations	60	M	43.63
Prepare final licence	60	O	28.21
Check final licence	30	M	21.82
Inspection:			
Inspection prep	120	O	56.42
Inspection	120	O	56.42
Associated costs:			
Virtual mailroom			6000
		Total cost	7.50
PART A TOTAL			413.90

PART A

Enforcement costs:			
Identification of unlicensed properties (0.5FTE)	46620	O	21,919.17
Determination of enforcement action (0.01FTE)	932.4	M	678.01
Advice on licensing need (1FTE)	93240	A	26,122.74
Associated costs:			
Maintenance of scheme - including complaint investigation (0.1FTE)	9324	M	6,780.10
Annual scheme review (5 days)	2250	M	1,636.13
Final scheme review (15 days)	6750	m	4,908.38
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
Legal support charges		Total cost	50,000.00
Corporate support costs (inc. legal and finance)		Total cost	250,000.00
Total			452,544.52
PART B TOTAL			565.68

PART B

Hourly rate inc on costs	
A Admin	16.81
O Officer	28.21
M Manager	43.63

Part A	Part B	Total
£ 414	£ 566	£ 980

Number of licences issued by authority	800
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