

## Individual Executive Decision Notice

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| <b>Report title</b>                            | HMO Licence fees   |               |
| <b>Decision designation</b>                    | GREEN  |               |
| <b>Cabinet member with lead responsibility</b> | Councillor Jacqueline Sweetman<br>City Assets and Housing  |               |
| <b>Wards affected</b>                          | All  |               |
| <b>Accountable Director</b>                    | Ross Cook, City Environment  |               |
| <b>Originating service</b>                     | Commercial Regulation  |               |
| <b>Accountable employee</b>                    | William Humphries Service Manager Private Sector Housing<br>Tel 01902 556059<br>Email William.humphries@wolverhampton.gov.uk |               |
| <b>Report to be/has been considered by</b>     | Directorate Leadership Team  | 16 March 2021 |

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### Summary

HMO Licence Fees have been reviewed to reflect changes in licensing policy and process, to ensure they recover the costs of the HMO licensing scheme and to ensure they comply with applicable legislation, caselaw and guidance.

Cabinet (Resources) Panel during the meeting on 1 October 2019, approved within the fees and charges report, that authority be jointly delegated to the responsible Cabinet Member in consultation with the relevant Director to approve any other fees and charges not detailed in that report.

### Recommendation for action or decision:

That the Cabinet Member for City Assets and Housing, in consultation with the Director of City Environment:

1. Approve the new HMO Licence Fee Structure for 2021/2022 as detailed in Appendix 1 for implementation from 1 June 2021.

Jacqueline Sweetman (Portfolio Holder)

Ross Cook (Director)

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Signature

Date:

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Signature

Date:

## **1.0 Background**

- 1.1 The Housing Act 2004 - Part 2, states that houses in multiple occupation (HMO) occupied by 5 or more people from 2 or more households, are required to have a licence from the local authority. It states that the local authority may charge a fee that is set locally.
- 1.2 The current HMO licence fee is set within the Cabinet Report – Amendment to the Housing Enforcement and Charging Policy - 17 October 2018. It sets a single flat fee at £650 and includes a scheme of discounts up to 50%.
- 1.3 Licence fees set by the local authority should be in accordance with the Local Government Association ‘Open for business – LGA Guidance on locally set licence fees’. The LGA guidance is heavily based on the outcome of Hemming v Westminster City Council in which the UK Supreme Court with reference to the European Court of Justice set out the principle that licence fees should be charged in two parts. The first fee, charged at the time of application, for processing the application up to grant or refusal of the licence. The second fee charged at the point of granting the licence, for administering and enforcing the licensing scheme. The outcome of Gaskin v Richmond-upon-Thames LBC in the High Court directly applies the Hemming v Westminster judgement to HMO Licensing fee.
- 1.4 The processing of HMO licences was undertaken within the Private Sector Housing Service, there is an ongoing project to move this to Licensing Services and to digitise the application process. It is therefore an appropriate time to review the HMO licence fee.
- 1.5 Cabinet (Resources) Panel meeting on 1 October 2019 approved, within the fees and charges report, that authority be jointly delegated to the responsible Cabinet Member in consultation with the relevant Director as appropriate to approve any other fees and charges not detailed in the report to Cabinet (Resources) Panel.
- 1.6 Approval is therefore sought to implement the revised fees and charges for HMO licensing under the above delegation, as detailed in HMO Licence Fee Structure for 2021/2022 at Appendix 1.

## **2.0 Review of the HMO Licence Fee Structure.**

- 2.1 The current single flat fee does not comply with the requirements of the LGA Guidance or applicable case law to have a two-part fee.
- 2.2 The offering of discounts undermines the requirement for licence fees to be cost recovery.
- 2.3 The fee of £650 is low compared to the cost in officer time and financial costs of processing an HMO licence application, the cost associated with the life of HMO licences and the cost of enforcement of the HMO licensing scheme.

- 2.4 A review of the overall cost per hour of officer time within Private Sector Housing has been undertaken. These updated hourly rates are based on salary with on costs including national insurance and superannuation, and apportionment of the services non-controllable budgets including management, facilities and support. The calculation of actual cost differs across the pay scale; grade 5 - £57.81 per hour, grade 6 - £66.81, grade 7 - £77.61.
- 2.5 The total cost of each fee is shown within this report to include pence for clarity. The actual fee payable will be rounded down to the whole pound.
- 2.6 The proposed HMO licence first fee to be paid on application is £806.45 (£806) for a HMO with up to 6 bedrooms, additional charges apply for additional bedrooms and other spaces. The proposed HMO licence second fee to be paid on grant of a licence is a flat fee of £500.05 (£500). The minimum fee for a HMO licence will therefore become £1306.50 (£1306). The full fee structure is given at HMO Licence Fee Structure for 2021-2022 at Appendix 1.
- 2.7 A review has been undertaken for full cost recovery of the officer hours and financial costs for the first fee, that is the cost of processing of HMO licence applications and the second fee is the cost associated with the life of HMO licences including the costs of enforcement of the HMO licensing scheme. No discounts are proposed, all properties much reach a high standard. The full review is given as HMO Licence Fee Cost Recovery 2021-2022 at Appendix 2.

### **3.0 Evaluation of alternative options**

- 3.1 The option exists to leave in place the existing HMO licence fee. This should be rejected as it is not in accordance with the LGA guidance or relevant case law and is therefore open to legal challenge. It also fails to recover the costs of the HMO licensing scheme having an impact on the public purse and restricts the resources available to Private Sector Housing to regulate HMO's.

### **4.0 Reasons for decision**

- 4.1 The new HMO Licence Fee Structure 2021/2022 ensures that the fees charged will be in accordance with relevant guidance and caselaw. It will also ensure that the costs incurred in delivering the HMO Licensing Scheme are fully recovered and the scheme is not a burden on the public purse. It should also prevent any legal challenge of the HMO Licence Fee structure.

### **5.0 Financial implications**

The current HMO licence fee fails to recover the costs incurred in the delivery of the HMO licensing scheme. Approving the new HMO Licence fee structure will ensure that HMO licence fees do recover the costs and ensuring that the HMO licensing scheme does not create a burden on the public purse. [JM/11032021/P]

### **6.0 Legal implications**

The current HMO licence fee is not in accordance with Local Government Association 'Open for business – LGA Guidance on locally set licence fees' nor the outcomes of R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) (Respondents) v Westminster City Council (Appellant) [2017] UKSC 50, or R (Gaskin) v Richmond-upon-Thames LBC [2018] EWHC 1996 (Admin), leaving the Council open to legal challenge. Approving the new HMO licence fee structure, will ensure that the Council is acting in accordance with these requirements. [DA/10032021/A]

## **7.0 Equalities implications**

7.1 This HMO licence fee review is part of a larger project to improve the way we deliver the HMO licensing scheme. An Initial Equalities Analysis has been undertaken 1<sup>st</sup> January 2021 and determined that there are no direct equalities implications anticipated.

## **8.0 All other Implications**

8.1 There are no other direct implications.

## **9.0 Schedule of background papers**

9.1 Cabinet Report – Amendment to the Housing Enforcement and Charging Policy - 17 October 2018.

9.2 Cabinet (Resources) Panel – Fees and Charges 2020-2021 - 1 October 2019

9.3 Local Government Association Open for business – LGA Guidance on locally set licence fees.

9.4 R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) (Respondents) v Westminster City Council (Appellant) [2017] UKSC 50.

9.5 R (Gaskin) v Richmond-upon-Thames LBC [2018] EWHC 1996 (Admin)

## **10.0 Appendices**

10.1 Appendix 1: HMO Licence Fee Structure for 2021/2022.

10.2 Appendix 2: HMO Licence Fee Cost Recovery Spreadsheet 2021/2022.