



NORTHAMPTON
BOROUGH COUNCIL

CABINET REPORT

Report Title	Review of the licence fees for Houses in Multiple Occupation (HMOs)
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AGENDA STATUS: PUBLIC

Cabinet Meeting Date:	4 December 2019
Key Decision:	Yes
Within Policy:	Yes
Policy Document:	Yes
Directorate:	Housing and Wellbeing
Accountable Cabinet Member:	Councillor Stephen Hibbert
Ward(s)	All

1. Purpose

- 1.1 On 16 October 2019, Cabinet approved the designation of an Additional HMO (Houses in Multiple Occupation) Licensing Scheme for a period of five years commencing on 1 February 2020.
- 1.2 The new Additional HMO Licensing Scheme replaces the five-year scheme that was introduced in 2014 and ended on 2 November 2019.
- 1.3 Following a comprehensive review of the HMO licence fees, Cabinet is asked to approve changes to the HMO licence fees and amendments to the Private Sector Housing Fees & Charges Policy.

2. Recommendations

- 2.1 It is **recommended** that Cabinet:
 - (a) Approves the changes to the HMO licence fees (as set out in Paragraphs 3.2.5 – 3.2.12 of this report), including the apportionment of the HMO licence between the processing of the application and the administration of the HMO licensing scheme, and delegates to the Head of Housing and Wellbeing the authority to implement these revised fees with regard to applications for HMO licenses received with effect from 11 December 2019.

- (b) Approves the updated Private Sector Housing Fees & Charges Policy (attached to this report as **Appendix A**); and
- (c) Approves the transitional arrangements (as set out in Paragraph 3.2.16 – 3.2.17 of this report) for those HMO licences that were issued under the previous Additional HMO Licensing Scheme of 2014 and were not due to expire until after 2 November 2019.

3. Issues and Choices

3.1 Report Background

- 3.1.1 As a local housing authority, Northampton Borough Council has a general statutory duty under Part 2 of the Housing Act 2004 (“the Act”) to implement, administer and enforce a licensing regime with regard to Houses in Multiple Occupation (“HMO”) in its district.
- 3.1.2 HMO licensing within Northampton is split into two categories; mandatory and additional. A property will be a licensable HMO on a mandatory basis if it is occupied by five or more persons living in two or more separate households and it meets specific tests set out in Part 7 of the Act. Local housing authorities may also designate areas of their district as subject to additional licensing in relation to a description of HMO specified by them if certain requirements are met.
- 3.1.3 On 19 October 2019, following a period of consultation with the public, Cabinet approved the designation of an additional HMO licensing scheme for a period of five years commencing on 1 February 2020. This new scheme replaces the original five-year additional licensing scheme that was introduced in 2014 and ended on 2 November 2019. A property will be a licensable HMO under the additional scheme if it is occupied by three or more persons living in two or more separate households and it also meets the specific tests set out in Part 7 of the Act
- 3.1.4 The Act includes a power for local housing authorities to charge fees for the administrative cost of considering applications for new HMO licenses and for renewals of existing licenses and enforcement of its HMO licensing regime. The High Court also recently ruled that this fee charging power also entitles local housing authorities to charge HMO licence holders a fee as a contribution to the cost of enforcing the HBO licensing regime.
- 3.1.5 The fee structure for the licensing of HMOs in Northampton is set out in the Council’s Private Sector Housing Fees and Charges Policy which is designed to ensure transparency, consistency and fairness in the way in which fees and charges are calculated and applied.
- 3.1.6 It also seeks to encourage good behaviour and ensure that responsible landlords pay lower fees and charges.
- 3.1.7 During this year’s review of the HMO licensing fees, consideration has been given to not just the cost of processing applications and administering the scheme but also case law, guidance and the practice of other local authorities.
- 3.1.8 The review also takes into account the Council’s designation of an Additional HMO licensing scheme (covering a larger geographical area than the previous scheme approved in 2014) for a five year period from 1 February 2020.

Number of licensed HMOs in Northampton

- 3.1.9 On 30 September 2019, there were a total of 869 licensed HMOs in Northampton and, of these:

- 474 have a Mandatory HMO licence (because they are occupied by at least five persons who form two or more households and share some facilities); and
- 395 have an Additional HMO licence (because they are situated in a designated area and are occupied by at least three persons who form two or more households and share some facilities).

3.1.10 The Housing Enforcement Team’s intelligence-led approach to enforcement has enabled Officers to identify 960 ‘properties of interest’ that are suspected of being licensable HMOs and have been operating without an HMO licence.

3.1.11 Although some of these ‘properties of interest’ are Mandatory HMOs that are situated throughout the borough, most have required an Additional HMO licence because they are situated in the designated area of the Additional HMO licensing scheme. The number of licensable HMOs that are operating without an HMO licence is expected to increase from 1 February 2020 when the new, larger Additional HMO licensing scheme comes into effect.

3.1.12 The Council’s Housing and Planning Teams are sharing intelligence and working collaboratively and proactively to identify HMOs that require a licence and/or planning permission but are operating without it.

Existing HMO Fee Structure

3.1.13 Under the existing fee structure, the amount that an applicant pays for their HMO licence depends on the number of people who can occupy the property and whether or not the application is completed on time.

3.1.14 The Council will offer a reduction in the HMO licence fee where a completed application (for a new licence or the renewal of a licence) is made on time.

3.1.15 Of the 369 new or renewed HMO licence applications received in 2018/19, a total of 242 (66%) qualified for an ‘early bird discount’. Of the 141 new or renewed HMO licence applications received during the first half of 2019/20, 93 (66%) qualified for an ‘early bird discount’.

3.1.16 The following fees are currently charged for new HMO licences:

Application for new licence	Description	Amount	Early bird discounted amount
Standard HMO Licence Fee (for up to 5 persons)	The fee charged for a new HMO licence (or to renew an HMO licence that has already expired) for HMO that can accommodate up to 5 persons	£1,100	£675 (a saving of £425)
Standard HMO licence Fee (for 6 or more persons)	The fee charged for a new HMO licence (or to renew an HMO licence that has already expired) for HMO that can accommodate 6 or more persons	£1,140 for 6 persons (Plus £40 per person if more than 6 persons)	£715 (a saving of £425)

- 3.1.17 Where an HMO licence is being renewed, the amount that an applicant pays for their HMO licence depends on the number of people who can occupy the property and whether or not the licence is renewed on time.
- 3.1.18 An 'early bird discount' is awarded to those who renew their licence on time.
- 3.1.19 The following fees are currently charged for the renewal of HMO licences:

Application to renew licence	Description	Amount	Early bird discounted amount
Renewal HMO Licence Fee (for up to 5 persons)	The fee charged for the renewal of a licence for an HMO that can accommodate up to 5 persons	£1,100	£625 (a saving of £450)
Renewal HMO licence Fee (for 6 or more persons)	The fee charged for the renewal of a licence for an HMO that can accommodate 6 or more persons	£1,140 for 6 persons (Plus £40 per person if more than 6 persons)	£665 (a saving of £450)

3.2 Issues

Local Government Association guidance

- 3.2.1 Although Regulations provide for the payment of a fee in relation to the granting of a licence under the Housing Act 2004, it is for each licensing authority to determine the fee payable in its area.
- 3.2.2 The licence fee must be reasonable and be based on the actual total cost of setting up the scheme, processing the applications, administering the scheme and undertaking enforcement during the whole five year period of the licence.
- 3.2.3 In July 2017, the Local Government Association (LGA) updated its guidance on locally set licence fees in the light of a number of legal challenges (most notably *Gaskin v Richmond-upon-Thames LBC* and *Hemmings v Westminster City Council*): "Councils should be able to separate out the cost of processing an initial application from those costs associated with the ongoing administration of a scheme, because this latter element cannot be charged to unsuccessful licence applicants".
- 3.2.4 Although the Council has not previously separated out the HMO licence fee between processing and administration, this is something that needs to be addressed in the new fee structure. If it does not, then the risk is that an unsuccessful applicant may be able to successfully challenge, by way of judicial review, the existing practice of not separating out administration and enforcement costs.

Proposed HMO Fee Structure

- 3.2.5 The calculation of Northampton's new HMO Licence fees has been carried out using a standard spreadsheet that was originally formulated by the LGA and incorporates all costs involved in the setting up of the scheme, together with the ongoing staff costs in relation to administration and enforcement and projected inflation over the 5 year licensing period. See **Appendix B**.
- 3.2.6 Reflecting the LGA guidance, it is proposed that, from 11 December 2019, Northampton's HMO licence fee is made up of two parts:
- **First Payment of £546** – this is for processing the licence application and is paid when the application is submitted. It is non-refundable. in the event of refusal of the application.
 - **Second Payment of £723** – this is for administering and enforcing the licensing scheme and will be requested in an invoice that is sent to the applicant with the draft HMO licence.
- 3.2.7 Applicants will be required to make the second payment within 14 days of receiving the invoice and the draft HMO licence. The final licence will not be issued until this payment is made. If the applicant does not pay, their application will be returned to them as incomplete and the Council will look to take enforcement action against them for operating a licensable HMO without an HMO licence.
- 3.2.8 In order to encourage and reward good behaviour, landlords who currently apply for an HMO licence in a timely manner or renew an existing HMO licence before it expires have been provided with an 'early bird discount'. It is proposed that this incentive will continue and, as most of the people who qualify for the discount are better landlords and need a lot less administration and enforcement, the discount will be applied to the second payment.
- 3.2.9 It is proposed that, from 11 December 2019, the HMO licence fees (for Mandatory and Additional HMOs) are as follows:

Application for new licence	Description	Fee payable (in two parts)	Early bird discounted amount
Standard HMO Licence Fee (for up to 5 persons)	The fee charged for a new HMO licence (or to renew an HMO licence that has already expired) for an HMO that can accommodate up to 5 persons	① £546.00 (Processing)	① £546.00 (Processing)
		② £723.00 (Administration and enforcement)	② £473.00 (Administration and enforcement)
		TOTAL £1,269.00	TOTAL £1,019.00 (a saving of £250)

Standard HMO licence Fee (for 6 or more persons)	The fee charged for a new HMO licence (or to renew an HMO licence that has already expired) for an HMO that can accommodate 6 or more persons	① £546.00 (Processing)	① £546.00 (Processing)
		② £763.00 (Administration and enforcement)	② £513.00 (Administration and enforcement)
		Plus £40 per person if more than 6 persons	Plus £40 per person if more than 6 persons
		TOTAL £1,309.00	TOTAL £1,059.00 (a saving of £250)

3.2.10 It is proposed that, from 11 December 2019, the fees for the renewal of a Mandatory or Additional HMO licence will be as follows:

Application to renew licence	Description	Fee payable (in two parts)	Early bird discounted amount
Renewal HMO Licence Fee (for up to 5 persons)	The fee charged for the renewal of a licence for HMO that can accommodate up to 5 persons	① £546.00 (Processing)	① £546.00 (Processing)
		② £723.00 (Administration and enforcement)	② £180.00 (Administration and enforcement)
		TOTAL £1,269.00	TOTAL £726.00 (a saving of £543)
Renewal HMO licence Fee (for 6 or more persons)	The fee charged for the renewal of a licence for HMO that can accommodate 6 or more persons	① £546.00 (Processing)	① £546.00 (Processing)
		② £763.00 (Administration and enforcement)	② £220.00 (Administration and enforcement)
		Plus £40 per person if more than 6 persons	Plus £40 per person if more than 6 persons
		TOTAL £1,309.00	TOTAL £766.00 (a saving of £543)

3.2.11 In order to further incentivise landlords to license their HMOs at the start of the new Additional HMO licensing scheme on 1 February 2020, it is proposed that an additional discount of £200 is given for the first 150 completed new licence applications that are received under the new scheme. This will reduce the HMO licence fee to £819, representing a total saving of £450.

3.2.12 All Additional HMO licences (both new and renewed) that are issued on or after 1 February 2020 will be issued with an end date not later than 31 January 2025.

Benchmarking against other local authorities

3.2.13 Although it is for each licensing authority to determine the HMO fees that are payable in its area – based on the costs involved in setting up, administering and enforcing the scheme – a benchmarking exercise has been carried out to establish whether or not the HMO fees that Northampton is proposing to charge are significantly different to what other local authorities are charging.

3.2.14 For an HMO with up to 5 persons, landlords and owners are being charged the following amounts by their local authority:

Local authority	Initial HMO licence	Renewal HMO licence	Term
Oxford City Council	£525 - £1,940	£250 - £475	5 years
Nottingham City Council	£990 - £1,720	£990 - £1,720	5 years
Reading Borough Council	£690 - £1,485	£475	5 years
Northampton BC (Proposed)	£1,019 - £1,269	£726 - £1,269	5 years
Coventry City Council	£1,055 - £1,250	£545	5 years
Watford Borough Council	£1,172	£975	5 years
Birmingham City Council	£1,150	£850	5 years
Swindon Borough Council	£735 - £1,050	£735 - £1,050	5 years
Kettering Borough Council	£1,000	£1,000	5 years
London Borough of Hillingdon	£980	£735	5 years
Cambridge City Council	£950	£855	5 years
Bedford Borough Council	£906	£906	5 years
Rugby Borough Council	£650 - £900	£493	5 years
Peterborough City Council	£750 - £900	£750 - £900	5 years
Sheffield City Council	£750	£430	5 years

3.2.15 The table above shows that, over a ten year period, the HMO fees that Northampton is proposing to charge are not markedly different to what most other local authorities are charging over the same period.

Transitional arrangements for licensed HMOs

3.2.16 As the previous Additional HMO Licensing Scheme ended on 2 November 2019 and the new five year Additional HMO Licensing Scheme does not come into effect until 1 February 2020, it is recommended that transitional arrangements are put in place to ensure that landlords whose Additional HMO licence had not expired when the scheme ended are not financially disadvantaged.

3.2.17 It is proposed that, where an Additional HMO licence had not expired when the Additional HMO Licensing Scheme ended on 2 November 2019, the whole of the unexpired term of the licence will be carried over (at no cost to the landlord) to the new Additional HMO licensing scheme which starts on 1 February 2020.

3.3 Choices (Options)

Approval of the changes to the HMO licence fees

Option 1

- 3.3.1 Cabinet can choose to approve the changes to the Council's HMO licensing fees in order to generate sufficient fee income for the Council to license Mandatory HMOs and set up, administer and enforce the Additional HMO licensing scheme. It would also reduce the risk of High Court challenge of the Council's current practice of charging a combined fee for administration and enforcement of the HMO licensing regime.

Option 2

- 3.3.2 Cabinet can choose **not** to approve the changes to the Council's HMO licence fees. However, this will mean that the Council will have to charge either the current lower HMO fees (preventing the Council from recovering the full cost of operating the licensing scheme) or higher HMO fees that will exceed the cost of setting up, administering and enforcing the licencing scheme and cannot be justified. It may also result in an increased risk of High Court challenge of the combined HMO license fee.

Approval of the updated Private Sector Housing Fees & Charges Policy

Option 3

- 3.3.3 Cabinet can choose to approve the updated Private Sector Housing Fees and Charges Policy. This is required in order to ensure that the Policy is up to date and reflects the amended HMO license fees should Cabinet approve Option 1.

Option 4

- 3.3.4 Cabinet can choose not to approve the updated policy. However, if it is not approved, this decision is likely to attract criticism from the press and public and have an adverse effect on the reputation of the Council, as its written policy and what it actually charges in fees will be different. This situation may also result in an increased risk of High Court challenge if the new fees are approved and charged. If successful, the Council may be ordered to refund the difference between the old fees and the new fees to applicants.

Approval of the transitional arrangements

Option 5

- 3.3.5 Cabinet can choose to approve the transitional arrangements set out in paragraphs 3.2.16 and 3.2.17. Approval would ensure that landlords of HMOs that are licensed at the time the existing Additional HMO licensing scheme ends on 2 November 2019 are not financially disadvantaged.

Option 6

- 3.3.6 Cabinet can choose not to approve the transitional arrangements and require all landlords to apply for a new Additional HMO licence on 1 February 2020. This is likely to attract a lot of criticism from landlords and may result in an increased risk of challenge in the High Court. If successful, the Council may be ordered to refund affected landlords.
- 3.3.7 It is recommended that Cabinet approve options 1, 3 and 6, for the reasons outlined above.

4. Implications (including financial implications)

4.1 Policy

- 4.1.1 The action that the Council is proposing to take is in line with Council policy and reflects the priorities in the Corporate Plan.

4.2 Resources and Risk

- 4.2.1 The revised fees and charges proposed in relation to HMO licensing have been calculated in accordance with the Local Government Association guidance and, as a result, reflect the cost of the processing, administration and enforcement of the HMO scheme.
- 4.2.2 The Housing Enforcement Team has worked with the Finance Team to capture the costs of the HMO Licensing Scheme so that a licence fee can be based on historic costs against assumed volumes.
- 4.2.3 An assessment of officer time spent on HMO licensing activities was conducted. An estimate of on-costs and overheads have also been apportioned.
- 4.2.4 The Public HMO Register was used as the basis to estimate volumes as well as an estimate for the Additional HMO Licensing Scheme.
- 4.2.5 Costs and time spent on activities remain relatively stable. It is volumes that will impact upon the licence fee income budget. Volume estimates are prudent and income budgets set in accordance with this via the Medium Term Financial Plan (MTFP).
- 4.2.6 Regular annual reviews will take place and the Fees and Charges will be updated as appropriate.

4.3 Legal

- 4.3.1 Part 2 of the Act provides for the licensing of HMOs. It sets out specific rules relating to grant or refusal of applications for the licensing by local housing authorities of HMOs if they are intended to be occupied by five or more persons living in two or more separate households and if the property itself meet specific tests set out in Part 7 of the Act.

- 4.3.2 Section 63 (3) of the Act specifically permits a local housing authority to require that an application for a HMO licence, including an application for renewal of such a license, is accompanied by a fee fixed by that authority.
- 4.3.3 Section 63 (7) permits local housing authorities to fix fees having taken into account all of the costs incurred by the authority in carrying out their functions under Part 2, which includes the costs of setting up the mandatory licensing scheme, as well as any additional licensing scheme, and administering and enforcing it.
- 4.3.4 Part 2 also permits a local housing authority to set up and administer a scheme of additional licensing. Northampton Borough Council set up such a scheme initially on 3 November 2014, which designated all HMOs containing three or four occupiers living in two or more households, irrespective of the number of floors in the building, in a particular geographical area of the borough as licensable. This scheme expired on 2 November 2019.
- 4.3.5 A further scheme designating all HMOs containing three or four occupiers living in two or more households in a larger geographical area of the borough was designated by Cabinet on 16th October 2019. This will come into effect on 1 February 2020.
- 4.3.6 Section 63 (5) and (6) permits the creation of regulations which may, amongst other things, specify the maximum fees which are to be charged by local housing authorities. Although regulations have been created in accordance with section 63 (5 and (6), no provision has been made within them for effectively capping the fees which may be charged by local housing authorities. It is for each individual authority to determine what is an appropriate fee to set up, administer and enforce a regime of HMO licensing and this determination is potentially judicially reviewable in the High Court.
- 4.3.7 The case of R (on the application of Gaskin) v Richmond upon Thames LBC [2019] P.T.S.R. 567 is authority for the principle that in letting and managing property for profit, a HMO landlord provides a service for the purposes of the Provision of Services Regulations 2009. As such, in operating a regime of HMO licensing in accordance with Part 2 of the Act, local housing authorities will be running an authorisation scheme for the purposes of the Services Regulations 2009.
- 4.3.8 As a result, the practice of charging a single fee for administering and enforcing a HMO licensing regime in accordance with Part 2 of the Act may infringe the Provision of Services Regulations 2009 on the basis that it is not limited to the costs of the procedures and formalities of the authorisation scheme. However, charging a separate fee upon grant of an HMO licence, following payment of an initial fee for consideration of the licence application, which is limited to the costs of enforcing the authorisation scheme would not infringe the Provision of Services Regulations 2009

4.4 Equality and Health

- 4.4.1 HMO licensing helps the Council to improve housing conditions and the life chances, health and wellbeing of people with protected characteristics, including homeless people, young people, older people, people with disabilities and families with children.

- 4.4.2 Poor living conditions – including overcrowding, damp and cold, trip hazards, unsafe gas and electrical installations, and a lack of natural light and ventilation – are known to have a significant adverse impact on the health, wellbeing and safety of all tenants, but especially on older people, people with chronic health problems, people with restricted mobility, and children.
- 4.4.3 The inspection and licensing of HMOs, together with the imposition and enforcement of the licensing conditions, will benefit people with protected characteristics and have a positive impact on Equality and Diversity.
- 4.4.4 HMO licensing is part of the Borough Council’s commitment to improving communities and our town as a place to live. In implementing the revised Private Sector Housing Fees & Charges Policy, the Council will have due regard to its Public Sector Duty and continue to work to tackle discrimination and inequality and contribute to the development of a fairer society.

4.5 Consultees (Internal and External)

- 4.5.1 Despite there being no requirement or expectation for a statutory or discretionary external consultation to take place, the Corporate Management Board and Cabinet Members have been consulted about the proposals set out in this report. The overall approach to HMO fees and charges (as set out in the Private Sector Housing Fees & Charges Policy) has been discussed, in recent years, with landlords, letting agents and stakeholders in a series of landlord focus groups and meetings of the Landlord Forum.
- 4.5.2 The size of HMO licencing fees proposed in this report have been benchmarked with other local authorities as set out in paragraphs 3.2.13 to 3.2.15.

4.6 How the Proposals deliver Priority Outcomes

- 4.6.1 If implemented, the action proposed in this report will help to meet 2 of the priorities in the Corporate Plan 2018 - 20:
- **More homes, better homes:** The HMO fee income will provide the Housing Enforcement Team with the capacity to identify licensable HMOs that are operating without a licence, tackle criminal, rogue and irresponsible landlords, and make effective use of its enforcement powers to ensure good standards in the private rented sector; and
 - **Keeping the town and people safe:** The HMO fees income will support the Housing Enforcement Team’s intelligence-led, targeted approach to enforcement and will improve the condition, management and safety of private rented housing in Northampton.

Appendices

Appendix A – Private Sector Housing Fees & Charges Policy (11 December 2019)

Appendix B – Completed HMO Licensing Costs Calculator

5. Background Papers

'Open for business. LGA guidance on locally set licence fees', Local Government Association (Updated July 2017)

Cabinet Report – Proposed Designation of an Additional HMO Licensing Scheme (16 October 2019)

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