

Cherwell District Council

Executive

2 March 2020

Housing Standards – Fees and Charges

Report of Assistant Director Housing and Social Care Commissioning

This report is public

Purpose of report

- 1) To seek approval of revised Houses in Multiple Occupation (HMO) licence fees and of those recoverable costs associated with the issue of certain notices and orders.
- 2) To seek approval of the introduction of fees associated with advisory visits for landlords and for the issue of Empty Homes VAT-exemption letters.
- 3) To seek approval that the periodic review and setting of HMO licence fees will, in future, be delegated to the Assistant Director Housing and Social Care Commissioning.
- 4) To seek approval of a revised *Recovery of Costs Policy* which sets out how recovery of certain enforcement costs will be applied and which, in future, makes the Assistant Director Housing and Social Care Commissioning responsible for reviewing and setting those costs.

1.0 Recommendations

The meeting is recommended:

- 1.1 To approve the proposed House in Multiple Occupation (HOM) licence fee structure.
- 1.2 To approve the revised administrative charges the Council can recover for certain notices and orders issued under the *Housing Act 2004*.
- 1.3 To approve the introduction of a fee for advisory visits.
- 1.4 To approve the introduction of a fee for issuing Empty Homes VAT-exemption letters.
- 1.5 To approve the delegation of future HMO Licence fee setting in accordance with the Housing Act 2004 and Orders under it to the Assistant Director Housing and Social Care Commissioning and Housing.

- 1.6 To approve the *Recovery of Costs Policy 2019* (Appendix 6) which includes future delegation of the setting of recoverable costs to the Assistant Director Housing and Social Care Commissioning to the extent permitted by the Housing Act 2004 and Orders under it.

2.0 Introduction

2.1 HMO licence fees

- 2.1.1 Recent legal rulings have altered how fees can be applied. As a consequence, the Council's HMO licence fees now need to be split so that costs associated with the administration of the licence application process are charged separately from the costs associated with enforcement of HMO licencing provisions, though both can still properly be charged. The net effect of this change is that licence applicants will not have to pay up-front for enforcement aspects of the licensing regime in the event their licence application cannot proceed to the issue of a licence.

- 2.1.2 In addition to splitting the licence fee as required, the proposed licence fee structure also incorporates changes to make the cost of a licence for compliant landlords lower than those for non-compliant landlords. These changes reflect proposals set out in the Council's *HMO Licensing Policy*, adopted by the Executive on 3 September 2018.

2.2 Revised charges for notices and orders

- 2.2.1 The Council already uses powers provided by the *Housing Act 2004* to recover the administrative costs it incurs when it issues certain enforcement notices and orders. The current charge of £200 (but with provision to charge more in certain circumstances) was last set in August 2016 by the Head of Service at that time, in accordance with the provisions of the Council's *Recovery of Costs Policy 2012*, (approved by Executive on 5 November 2012). The proposed increase in the charge follows a review of the costs incurred by the Council and although it recommends a significant increase, the proposed charge now reflects the true cost to the Council of the administration associated with the relevant enforcement activity.

2.3 Charges for advisory visits

- 2.3.1 The proposal to charge landlords for advisory visits reflects growing demands made on the Housing Standards Team by landlords seeking advice about setting up new HMOs. Although the Council wishes to support good landlords, the information required is largely available on the Council's website. Help and assistance over and above that can properly be regarded as a set-up cost of the sort faced by anyone setting up a business, and one for which a fee is judged appropriate. This approach is broadly similar to the charging for pre-application advice by the Council's planning officers.

2.4 Charge for issuing Empty Homes VAT-exemption letters

- 2.4.1 The Council is able, on request, to provide written confirmation to owners of long-term empty homes of the time for which their property is known to have been unoccupied. That information, provided in the form of a Council letter, can be used by the property owner to help secure VAT reductions on materials and certain works of improvement. The letters can therefore facilitate renovations and getting

them back into use. The savings secured can in some cases be significant¹. The proposed charge for providing VAT-exemption letters is intended to reflect the cost to the Council of their production.

2.5 **Setting of future enforcement fees**

2.5.1 The setting of both HMO licence fees and the recoverable costs associated with the issue of certain notices and orders under the *Housing Act 2004* is prescribed by legislation and is therefore capable of specific challenge. In order that these charges can be kept under appropriate review, can be revised as necessary and so that the necessary calculations and justifications can be produced expeditiously if required, it is recommended that the future setting of these enforcement costs is delegated to the Assistant Director Housing and Social Care Commissioning.

2.5.1 The proposed *Recovery of Costs Policy 2019* is a revision of the current 2012 Policy and provides a framework to underpin the determination of relevant costs associated with both the issue of relevant notices and orders but also those recoverable costs associated with any works-in-default² undertaken by the Council.

3.0 **Report Details**

3.1 **HMO licence fees**

3.1.1 The *Housing Act 2004* section 63(3) gives Local Authorities the power to 'require the application to be accompanied by a fee fixed by the authority.' Subsection (7)(a) empowers the authority, when fixing the fees, to 'take into account all costs incurred by the authority in carrying out their function' under the Act.

3.1.2 Two recent legal rulings have placed a duty on local authorities to review their private rented sector licence fees. The cases, *R (Gaskin) v Richmond-upon-Thames LBC* and *R (Hemming t/a Simply Pleasure) v Westminster CC*, mean that the fees local authorities charge for the licensing of houses in multiple occupation must be proportionate for the area to which they apply, and must be applied in two parts:

- 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.

The view of the Ministry of Housing, Communities and Local Government (MHCLG) is that it is now unlawful for a local authority to take a full HMO licence fee upfront and then refund the second part of the fee to any unsuccessful applicants.

3.1.2 Local authorities must ensure that licence fees they set reflect the cost of operating the licensing regime; they cannot be set with the intention of generating a profit. Cost which may be taken into account include: staff time, premises, travel, telephones and computers, publicity and materials such as stationery. Overheads

¹ With an owner in one recent case reporting a saving of several tens of thousands of pounds.

² Work-in-default is the term applied to situations in which the Council carries out works in place of a person served with a notice if that person fails to carry out specified repairs or improvements and incurs recoverable costs as a result.

such as the cost of the Finance Department, Human Resources and Legal Services (to the extent that they are pertinent to licensing) can also be taken into account.

3.1.3 The component parts of running a licensing scheme can be broken down into the following:

- Set up costs.
- Actual processing of applications.
- Overheads.
- Monitoring licence holders.
- Enforcing against unlicensed landlords. This is regarded as being of benefit for licence holders to avoid unlicensed operators undercutting those with licences.

3.1.4 The Council's current licence fees are charged as a single fee payable when a licence application is submitted. The application fee for a first-time licence is £700 and the fee for a renewal application is £400.

3.1.5 The current fee structure for Cherwell District Council is not compliant with the legal requirements arising from recent case law which leaves the Council open to possible challenge and the risk of having to return part of some licence fees already paid by landlords.

3.1.6 A revised fee structure has been produced which:

- Satisfies the new legal requirements (two-stage fee)
- Allows the authority's HMO licensing activities to be as cost-neutral as possible
- Provides a mechanism to encourage compliance
- Places the burden of enforcement costs onto those needing enforcing and reduces the regulatory costs for the compliant majority.
- Continues to provide lower costs for licence renewal (in straight-forward cases).

3.1.7 Proposed licence fee structure:

| Category | Description | Stage 1 fee (charged with application) | Stage 2 fee (becomes due when application successful) | Total fee payable |
|-----------------|-----------------------------|---|--|--------------------------|
| A | Higher-rate new application | £400 | £650 | £1,050 |
| B | Standard new application | £400 | £250 | £650 |
| C | Higher-rate renewal | £300 | £350 | £650 |
| D | Standard renewal | £300 | £150 | £450 |

3.1.8 Each of the fees in the revised fee structure have been developed by means of a thorough review of the particular activities undertaken in the licensing process, how long each typically takes, and which officers are involved. Hourly costs have also included an allowance for corporate overheads (as a 27% increase to gross employment costs³) to reflect the full cost to the Council of time allocated to this activity. This has resulted in an accurate assessment of the cost involved for each category of licence.

³ The 27% overhead figure has been developed corporately and confirmed by the Interim Executive Director: Finance.

3.1.9 Further information about the Stage-1 and Stage-2 fees is provided in *Appendix 1*; Benchmarking of the proposed fees against other local authorities is provided in *Appendix 2* and a SWOT analysis of the approach behind the fee structure in *Appendix 3*.

3.1.10 The introduction of the revised fees is expected to be broadly cost neutral over a projected five-year period (licences last for five years). The analysis of projected income is provided in *Appendix 4*.

3.2 Revised charges for notices and orders

3.2.1 Section 49 of the *Housing Act 2004* empowers local authorities to make such reasonable charge as they consider appropriate as a means of recovering certain administrative and other expenses incurred by them in:

- a) serving an improvement notice under section 11 or 12;
- b) making a prohibition order under section 20 or 21;
- c) serving a hazard awareness notice under section 28 or 29;
- d) taking emergency remedial action under section 40;
- e) making an emergency prohibition order under section 43; or
- f) making a demolition order under section 265 of the *Housing Act 1985* (c. 68).

The Act prescribes which activities can be taken into account for each particular notice/order.

3.2.2 The Council's Private Sector Housing *Housing Health & Safety Rating Scheme Policy 2012* set out the circumstances in which charges will be applied.

3.2.3 The current minimum charge of £200 was set in 2016. A thorough review has been carried out and a new charge has been calculated which takes into account the average time taken for each of the applicable activities, the hourly costs for the officers involved and all associated costs such as postage, mileage etc. For the first time, hourly costs have also included an allowance for corporate overheads (as a 27% increase to gross employment costs) to reflect the full cost to the Council of time allocated to this enforcement activity. The proposed minimum charges are as follows:

| Enforcement Action (under Part 1 of the Housing Act 2004) | Current charge | Proposed charge |
|--|------------------------|------------------------|
| Serving an improvement notice under section 11 or 12 | £200 | £450 |
| Making a prohibition order under section 20 or 21 | £200 | £450 |
| Serving a hazard awareness notice under section 28 or 29 | No charge | No charge |
| Taking emergency remedial action under section 40 | £200 | £450 |
| Making an emergency prohibition order under section 43 | £200 | £450 |
| Reviewing suspended improvement notices / prohibition orders | £200 | £225 |
| Making a demolition order under section 265 of the <i>Housing Act 1985</i> (c. 68) | Charged on hourly rate | Charged on hourly rate |

Where multiple notices are served at the same time in relation to a single property, only a single charge is, and will continue to be, levied.

3.2.4 Benchmarking of the proposed charges against other local authorities has been undertaken and is shown in *Appendix 5*.

3.3 Charges for advisory visits

3.3.1 The Housing Standards Team propose to offer advisory visits for a fee to help landlords and agents who are planning, converting, or renovating their rental properties and HMOs. The purpose of the visits will be to provide advice at an early design stage to ensure properties are converted with safe designs, suitable fire precautions, amenity standards, legal requirements, and offer best practice advice and guidance.

3.3.2 Our advice visits will be ideal for:

- New landlords who want confidence and peace of mind that they are setting up a rental property the right way.
- Landlords who are new to the district and want to make sure they comply with the Council's HMO standards.
- Experienced landlords and agents who want specific advice on upgrading an existing rental property or wish to explore development options.

3.3.3 The visits will help reduce burdens on landlords by enabling them to get it right-first-time and avoid the need for licence conditions, retrospective works, or notices. Officers will continue to give basic, general advice onsite and over the telephone, but can then offer this chargeable service if landlords are looking to invest or make renovations and would benefit from bespoke, expert advice to ensure compliance with the Council's standards.

3.3.4 The fee will be set at £150 per visit (which is a similar level to Planning pre-application visits which are of a similar nature). This should be cost-neutral to the Council, whilst representing good value for customers. A desktop-only service will also be offered for a lower cost of £100 for reviewing and commenting on plans and written proposals.

| | |
|--------------------------------|------------------|
| Landlord/agent advisory visits | £150 per visit |
| Desktop review of plans etc. | £100 per request |

3.3.5 Benchmarking

- South and Value District Councils charge £150 per inspection made at the request of the landlord.
- Oxford City Council charge £158 per HMO licensing advice visit
- Sefton MBC charge £133.50 for HMO advice inspections

3.4 **Charging for Empty Homes VAT-exemption letters**

3.4.1 Owners of empty homes can be eligible for a reduced VAT rate of 5% (if empty 2-9 years) or 0% (if empty 10+ years) on the purchase of building materials associated with improving and bringing the property back into use. The Empty Homes Officer can provide property owners with an official letter confirming that the property has been empty and specifying the duration, which can be used as evidence to HMRC. There is currently no charge for this service which can act as a sweetener and additional leverage for owners who would also be liable for the 100% council tax premium.

3.4.2 It is proposed that the Council makes an administrative charge for this service of **£40 per letter**. This equates to approximately one hour of the Empty Homes Officer's time as they will need to check the records to verify the duration the property has remained empty, and then write and post the letter. This cost will be more than recouped by the potential tax savings which owners will be able to make.

3.4.3 The Empty Homes Officer reports that other authorities charge for this service, but none have responded to a request for information.

3.5 Setting of future enforcement fees

3.5.1 The proposed HMO licence fee structure establishes a new approach to setting these fees. As explained in sections 3.1.6 and 3.1.7, the intention is to ensure that the Council is fully compliant with legislative requirements, that its costs are fully reflected and covered and that non-compliant landlords bear a greater proportion of costs associated with enforcement of the scheme. Having established this approach, and for the reasons set out in section 2.5, it is proposed that the future setting of these enforcement fees is delegated to the Assistant Director Housing and Social Care Commissioning.

3.5.1 The proposed *Recovery of Costs Policy 2019* (attached as *Appendix 6*) is a revision of the current 2012 Policy. It provides a framework to underpin the determination by the Assistant Director Housing and Social Care Commissioning of relevant costs associated with both the issue of certain notices and orders but also those recoverable costs associated with any works-in-default undertaken by the Council. It will provide the basis on which those costs can be supported in the event that costs are challenged in the course of any particular case. The principle change included in the new policy is the specific inclusion of corporate overhead costs.

3.5.2 The new *Recovery of Costs Policy 2019*, if adopted, will replace the current 2012 Policy of the same name.

3.5.3 It is assumed that the fees for discretionary visits and for issue of VAT-letters will be reviewed and revised periodically through the Council's established process for setting fees and charges rather than being delegated to the Assistant Director Housing and Social Care Commissioning. These are straightforward matters and judged not to require the underpinning analysis necessary for enforcement charges.

4.0 Conclusion and Reasons for Recommendations

4.1 HMO licence fees

4.1.1 Revision of the Council's HMO fees is required as a consequence of legal rulings with which the Council must comply. The costs associated with processing and enforcing HMO licences have been thoroughly reviewed. The proposed HMO licence fee structure incorporates the changes required to ensure the Council is compliant, the newly reviewed costs incurred by the Council in carrying out its licensing function, and also recently determined corporate overheads. The proposed licence fee structure therefore reflects the real cost to the Council of its HMO licensing activity.

4.1.2 HMO licence fee structure also implements the introduction of a higher fee for new HMOs found operating without a licence as provided for by the HMO Licence Policy 2018. This revision reflects a reapportioning of the cost of the enforcement element of HMO licences and ensures landlords are paying proportionately towards enforcement costs, with non-compliant landlords contributing more.

4.2 Revised charges for notices and orders

4.2.1 The recoverable charges made by the Council were last set in 2016. They have been reviewed to take account of the Council's increased costs and also to more

properly reflect corporate overheads following recent review. The proposed recoverable costs reflect the true costs incurred by the Council in issuing relevant notices and orders under the *Housing Act 2004*.

4.3 Charges for advisory visits

4.3.1 It is judged appropriate for the Council to charge a fee for detailed advice it provides to landlords who are considering setting up new rental property, particularly new HMOs. Essential information about the Council's requirements are available free of cost but detailed, property-specific advice effectively replaces research and planning a landlord would otherwise have to undertake. It is legitimate and appropriate for the Council to charge for the time committed to this discretionary activity.

4.4 Charge for VAT-exemption letters

4.4.1 It is judged appropriate for the Council to charge a modest fee for undertaking the necessary research and providing written confirmation about long-term empty property which their owners can use to obtain VAT reductions. The proposed charge is simply intended to reimburse the officer time spent on reviewing the property history and producing each letter.

4.5 Setting of future enforcement fees

4.5.1 Delegation of HMO licence fee setting and recoverable costs setting to the Assistant Director, Housing and Social Care Commissioning will ensure these particular charges can be kept under close review, revised as and when required and that the calculations and justifications can be produced as necessary if challenged or appealed. The proposed delegation of recoverable costs is reflected in the proposed *Recovery of Costs Policy 2019* and that policy is dependent upon it. In the absence of such a policy, different arrangements will need to be established in order that recoverable costs can be set.

5.0 Consultation

None

6.0 Alternative Options and Reasons for Rejection

6.1 The following alternative options have been identified and rejected for the reasons as set out below.

In connection with HMO licence fees:

Option 1: Failure to revise the HMO licence fees to split the charge associated with the application and enforcement processes would leave the Council open to legal challenge and is not therefore a supportable option. However, whilst accepting the principle of splitting the licence fees, the Executive could, if it wished, implement different fees to those proposed in the report. The proposed fee structure has been set to reflect the costs incurred by the Council and any changes would therefore risk being deemed arbitrary rather than being soundly based.

Option 2: The Executive could opt not to set different licence fees for compliant and non-compliant applicants. That course would fail to reflect the fact that the

enforcement costs associated with the enforcement of the licensing regime are higher for poorly performing landlords and would mean all landlords being charged equally.

In connection with recoverable administrative costs:

Option 3: The proposed recoverable costs associated with the issues of enforcement notices etc. have again been based on a careful review of the Council's costs. The Executive could, if it wished, set different charges to those proposed in the report but that course would leave the Council at risk of challenge that its charges were arbitrary rather than being soundly based.

In connection with charging for advisory visits:

Option 4: The Executive could determine that it will not charge for this activity or it could set different fees.

In connection with charging for VAT-exemption letters:

Option 5: The Executive could determine that it will not charge for this activity or it could set a different fee.

In connection with Setting of future HMO licence fees and recoverable costs

Option 6: The Executive could decide that future HMO licence fees and recoverable enforcement costs could be determined as part of the Council's fee setting process rather than delegated to the Assistant Director Housing and Social Care Commissioning. That would however risk them becoming divorced from the underpinning analysis necessary to support them in the event of challenge. Failure to adopt the revised Recovery of Cost Policy would also necessitate setting a different mechanism for establishing how Work-in-default costs are to be calculated.

7.0 Implications

Financial and Resource Implications

- 7.1 The proposed changes to the HMO Licence Fee structure will be broadly neutral in terms of income, as set out in *Appendix 4*. No additional resource costs are envisaged.
- 7.2 The income generated from increasing the recoverable costs associated with the issuing of certain Enforcement notices is likely to be modest as it will depend upon the number of non-compliant landlords and premises. In the financial year 2018-19, charges were raised for notices/orders served in relation to two premises. These low numbers reflect the fact that the great majority of landlords respond positively to informal interventions for which no charge is levied. The prospect of incurring a charge provides an incentive for landlords to take action before a formal notice is issued and an increase in the charge can reasonably be expected to add to that incentive⁴.
- 7.3 The proposed discretionary-visit fees and VAT-letter fees will contribute to the relevant Housing Revenue budget. The income generated will clearly depend upon

⁴ Providing landlords with the opportunity to respond to informal enforcement in the first instance (except in the most serious cases or when they have a history of non-compliance) accords with the approach specified in the Council's *Enforcement Policy 2015*.

the number of landlords choosing to use the service but is likely to be modest. At this introductory stage it is envisaged that income of £1k-£1.5k will be raised.

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Legal Implications

- 7.4 The Council needs to revise its HMO licence fees to ensure it is compliant with recent legal rulings. The proposed changes mean that the administrative and enforcement elements of the licencing regime are appropriately identified in the fee structure and appropriately meet the requirements. The manner in which the various fees have been calculated is also compliant with the requirements in the *Housing Act 2004*.
- 7.5 The proposals for recoverable costs are compliant with the requirements in the *Housing Act 2004* and raise no issue.
- 7.6 Charging for discretionary inspections and advice and for the issue of VAT exemption letters is a legitimate approach and raises no legal issues for the Council.
- 7.7 The delegation of the setting of future HMO licence fees and the future setting of recoverable costs associated with the issue of relevant notices/orders under the Housing Act 2004 and with works-in-default, raises no legal issues and is an appropriate means of ensuring that these fees/costs can be regularly reviewed and revised as necessary.
- 7.8 The proposed Recovery of Costs Policy 2019 is an update of an existing policy, which it will replace if adopted, and raises no legal issues.

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8.0 Decision Information

Key Decision

Financial Threshold Met: No

Community Impact Threshold Met: No

Wards Affected

All

Links to Corporate Plan and Policy Framework

Housing That Meets Your Needs - raising standards in rented housing.

Lead Councillor

Councillor John Donaldson, Lead Member for Housing

Document Information

| Appendix No | Title |
|--|--|
| 1 | Additional information about Stage-1 and 2 fees |
| 2 | Licence fee benchmarking |
| 3 | Licence fee SWOT analysis |
| 4 | Projected income |
| 5 | Benchmarking of charges for notices and orders |
| 6 | Recovery of Costs Policy 2019 |
| Background Papers | |
| None | |
| Reference Papers | |
| HMO Licensing Policy 2018 Recovery of Costs Policy 2012 | |
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