

Classification: Public

Key Decision: No

Gravesham Borough Council

Report to: Housing Services Cabinet Committee

Date: 14 November 2022

Reporting officer: Victoria May, Service Manager (Housing Options)
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Subject: Standalone HMO Licencing Policy including review of fees, enforcement fees and statutory and non-statutory fees.

Purpose and summary of report:

To provide Housing Services Cabinet Committee with an opportunity to make comments on the expanded Houses of Multiple Occupation (HMO) Licencing Policy. This will ensure a consistent and robust approach whilst also ensuring compliance with the need to split the HMO licencing fees into two separate elements, A and B payments following case law.

In addition, this report also provides the Housing Services Cabinet Committee with the updated fees matrix for Private Sector Housing enforcement activity to ensure a consistence and transparent approach to charging fees for both statutory and non-statutory inspections that will form part of the Council's annual review of fees and charges.

Recommendations:

1. For Members to discuss and provide feedback on the HMO Licencing Policy prior to being ratified by the Cabinet Member for Housing Services.

Key Implications:	
Item	Implications
Legal	The Council has a statutory duty to licence and enforce HMOs. The proposed charging and enforcement is in line with the Housing Act 2004 and Section 49.
Finance and Value for Money	The report is intended to provide data that enables Management Team to understand the councils position when dealing with Houses of Multiple Occupation. The report details an income stream that is demand led and not targeted (or guaranteed). However, money accrued from HMO Licencing will go into the general fund. Money for both HMO and Section 49 (enforcement) is not a ringfenced income and therefore offers some flexibility with how this can be used.
Corporate Plan	In line with the objectives of the Corporate Plan 2019-23 strategic objective #1 People, the private sector housing work is a statutory requirement and under commitments will fulfil the 'enforce a high quality of private housing' and 'provide pro-active, supportive and financially efficient housing service' and 'safeguards / protects

	residents including the most vulnerable'. This will also fit into #2 Place 'Improve residents wellbeing'
Climate Change	When considering the suitability of an HMO, good quality electrics in line with the energy efficiency guidelines will be considered as well as providing advice to landlords about LED lighting and timed Switches if they are not already in place.

1. Background

- 1.1 The Private Sector Housing Team (PSH) provides services, support and advice to privately renting tenants, homeowners and private landlords. Their primary aim is to work towards ensuring the private rented tenure residents are living in accommodation that is well maintained, safe and warm and to improve poor housing conditions which impact upon the health and protection of residents. In addition, the service administers Disabled Facilities Grants, licences certain Houses in Multiple Occupation, Caravan sites and will soon be managing empty homes within the borough.
- 1.2 Private Sector Housing has an established Housing Enforcement Policy and Housing Assistance Policy and whilst the current HMO Licensing Scheme is reference within the Councils enforcement policy, best practice is to have a standalone policy.
- 1.3 On 31 July 2018, new case law emerged R (Gaskin) v Richmond-upon Thames LBC [2018] held that schemes for the licensing of houses in multiple occupation ('HMOs') are authorisation schemes, within the meaning of EU Directive The consequence of this 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.
- 1.4 In July 2017 the Local Government Association (LGA) published guidance to help councils understand the breadth of the issues that need to be considered when setting local licence fees.

2. Current Position – HMO Licencing

- 2.1 As referenced above, the Council does not have a dedicated HMO Licensing Policy in place and although HMOs are cited in the current Housing Enforcement Policy (Private Sector), it is best practice to have standalone policy to ensure a consistent and transparent approach.
- 2.2 In introducing a standalone HMO licencing policy, an extensive amount of work has been undertaken with regards to fees and charges for HMO's. Currently, the service charges one fee for new applications and renewals, which is £540. The service does not charge reduced fees for renewal of HMO licences
- 2.3 In reviewing the fees and charges, neighbouring boroughs fees have also been reviewed as set out in the following table:

Local Authority	New HMO Licence	Renewal HMO Licence
Gravesham	£540.00	£540.00
Medway	£1,106.70	£619.00
Dartford	£860.00	£645.00
Sevenoaks	£654.00	£412.00

3. Current Position – Housing Enforcement (Private Sector)

- 3.1 Alongside creating a standalone HMO policy, the existing fee structure within the Housing Enforcement Policy (Private Sector, ratified by Housing Services Committee in September 2019), has been undertaken. Historically, whilst possible, the service has not charged for any enforcement activity when serving an Improvement Notice, Prohibition Notice and an Emergency Prohibition Notice amongst other notifiable notices.
- 3.2 In addition, Gravesham has not charged for UK entry inspections (often referred to as Immigration Inspections). The purpose of these inspections is to assist the Home Office/Embassy to determine proposed accommodation is safe and free from hazards and not overcrowded. In the Enforcement Policy it details that Gravesham can carry out this inspection with no charge detailed. Ukrainian host inspections would be excluded from this.
- 3.3 It is appropriate to consider all the councils current and future Housing Act 2004 fees in line with the LGA guidance as Councils are permitted to recover costs. This will enable service delivery to be protected moving forward.

4. Proposed Standalone HMO Licencing Policy and Fees

- 4.1 The standalone HMO Licencing Policy, included updated fees can be found in Appendix 1. The standalone policy will ensure:
- 4.1.1 consistency of Gravesham’s approach to HMO Licencing
 - 4.1.2 enable officers to make reasoned decisions regarding licencing
 - 4.1.3 inform the public of the principles by which the licencing action is determined and subsequently taken
 - 4.1.4 ensure that an annual review is in place for the private housing function
- 4.2 The updated fee structure will ensure best practice and will introduce different fees depending on the type of application that will be split in to two parts, Part A and Part B payments. The requirement to charge a two-stage fee is appropriate and will be applied as follows:
- 4.2.1 Part A – A fee levied at the point on application, to cover the costs of the scheme’s authorisation procedures and formalities, i.e. the costs for processing the application.
 - 4.2.2 Part B – The payment of a further fee and final fee of the relevant variable licence fee will be payable by a successful applicant prior to the grant of a Licence.

- 4.3 In the situation where the Council proposes to refuse to grant a Licence, it will serve notice to that effect under paragraph 5 to Schedule 5 Housing Act 2004. If the Council subsequently refuses to grant a licence, the fee equating to the relevant variable licence fee to cover the cost of determining that application is payable at that point. If the applicant does not pay that fee within 28 days of the refusal, the Council reserves the right to taken enforcement action to recovery the fee payable. Landlords are unable to submit the application without a payment being made and part B payment will need to be received before an award of an HMO licence is granted. Therefore, there will be no recovery costs to Gravesham.
- 4.4 The table below sets out the current fee structure for the Councils mandatory HMO licencing Scheme, and the new fees that will form part of the council's annual review of fees and charges:

Mandatory HMO Licencing Scheme (excludes Additional & Selective)			
Local Authority	Total	Part A	Part B
Current new HMO licence fee	£540.00	N/A	N/A
Current Renewal HMO licence fee	£540.00	N/A	N/A
Proposed New HMO licence fee	£703.00	£298.85	£404.48
Proposed Renewal HMO licence fee	£545.40	£221.86	£323.54

5. Fee Structure for Housing Enforcement Policy (Private Sector)

- 5.1 Section 49 of the Housing Act 2004 states that '*the local authority may make such reasonable charge as they consider appropriate as a means of recovering certain administrative and other expenses incurred by them*'. This applies to all notifiable notices that can be served and Appendix 3 the costing is broken down.
- 5.2 The proposal is to be in line with neighbouring authorities who actively charge and have done for some time. For 2022/2023 the proposed charge is £522.92 (excluding VAT) for any notice. Prices will increase per annum in line with inflation and officer's time.

Local Authority	Section 49 Charges (excluding VAT)
Gravesham	N/A
Medway	£535.50
Dartford	£460.00
Sevenoaks	Case by Case

- 5.3 Although the service has not been required to conduct one to date, it is proposed to introduce a charge to conduct a UK Entry Inspection and administration. The proposed fee for 2022/23 will be £158.69 which will be increased per annum in line with inflation and officer's time and will be promoted on the Councils website.

6. Conclusion

- 6.1 It is vital that Gravesham are delivering services in line with legislation and delivering services whilst adhering to policy. In addition, services should raise income where there is a power or duty to do so. This links in with the Charging Strategy objectives of the Council and this new proposal does cover the full cost of providing the service.
- 6.2 The Corporate Plan 2019-23 provides strategic objective of which this area of work would cross over into a number of themes. The Council should meet the commitment to enforce a high quality of private housing and this approach will demonstrate that the Private Sector Housing team are pro-active in their approach and supportive to residents who are reliant on private sector homes. The service, at times, deals with the most vulnerable households in the borough and therefore it is important that we do all we can to improve residents' wellbeing.
- 6.3 As a Council, we should be creating and taking the opportunities available to cover officer costs to administer an effective and professional HMO licencing scheme. In addition, the service needs to pro-actively portray a message to the minority of rogue landlords in the private sector that as a Council we will not tolerate poor quality housing in the borough.

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Secondary Implications	
Risk Assessment	<p>Neither DLUCH nor the LGA have issued any specific guidance on fee setting for licencing schemes made under the Housing Act. The adoption on a “Hemming” fee structure nationally is sporadic. Kent County Council district and boroughs councils are not actively promoting the 2-part fee process, however, other local authorities have adopted and implemented the 2-part fee structure.</p> <p>Should the council not adopt a 2-part fee structure there remains a risk of legal challenge from landlords and applicants.</p>
Data Protection Impact Assessment	<p><i>A data protection impact assessment (DPIA) should be carried out at the start of any major project involving the use of personal data or if you are making a significant change to an existing process.</i></p> <p>a. Does the project/change being recommended through this paper involve the processing of personal data or special category data or criminal offence data? A definition of each type of data can be found on the Information Commissioner’s Office website via the above links. No</p> <p>b. If yes to question a, have you completed and attached a DPIA including Data Protection Officer advice? N/A</p> <p>c. If no to question b, please seek advice from your nominated DPIA assessor or the Information Governance Team at gdpr@medway.gov.uk. N/A</p>
Equality Impact Assessment	<p>a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community? If yes, please explain answer. No</p> <p>b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality? If yes, please explain answer. Yes as this is likely to target the most vulnerable household living in poverty.</p> <p><i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i></p>
Crime and Disorder	The provision of suitable HMOs and homes within the borough enhances the council’s ability to meet the needs to our residents and helps prevent them being victims of crime or becoming involved in criminal activity.
Digital and website implications	The HMO application can currently be made via Gravehsams website and for those that attempt to make the application through GOV.UK will be redirected. There is a small piece of work to take place to ensure that the split payment is possible and will proceed once approved.
Safeguarding children and vulnerable adults	The provision of safe accommodation contributes towards meeting the needs to vulnerable adults and children.