



CITY OF
Lincoln
COUNCIL

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TO ALL COUNCIL MEMBERS

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Date: 15 January 2020

COUNCIL - TUESDAY, 21 JANUARY 2020

Dear Councillor,

Further to the previously issued agenda for the Council meeting of Tuesday, 21 January 2020, please find attached the following additional papers.

Private Sector Housing Enforcement (Pages 3 - 10)

This item is scheduled to be considered by the Executive on 20 January 2020.

If you require any further information please feel free to contact me using the information provided above.

Yours faithfully,

Graham Watts
Democratic and Elections Manager

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SUBJECT: FEES & CHARGES – PRIVATE SECTOR HOUSING

DIRECTORATE: COMMUNITIES AND ENVIRONMENT

REPORT AUTHOR: SARA BOOTHRIGHT – ENVIRONMENTAL HEALTH & CORPORATE SAFETY MANAGER

1. Purpose of Report

- 1.1 To seek member's approval for the introduction of three new fees and charges, the amendment of the existing HMO licencing fee structure within the Private Sector Housing Team and approval of a related delegation of authority to the Assistant Director for Health & Environment.

2. Executive Summary

- 2.1 The introduction of the three new fees and charges will seek to act as a deterrent and encourage private landlords, in particular, to engage with the Private Sector Housing Team to improve the health and safety standards in properties throughout the City.
- 2.2 The first is to introduce a variable fee and charge to recover the costs of certain types of enforcement action taken under Housing Act 2004.
- 2.3 The second fee, a variable charge up to a maximum £30,000 for imposing a civil penalty, mainly on private housing landlords.as an alternative enforcement sanction to prosecution for specific offences under the Housing Act 2004.
- 2.4 The third fee, the introduction of a penalty charge notice up to a maximum of £5,000 under the provisions of the Smoke Alarm & Carbon Monoxide Regulations 2015.
- 2.5 Fourthly, to amend the HMO licencing fee structure by removing the multiple application discount.
- 2.6 It is recognised that in certain circumstances there needs to be some flexibility in the levying of charges and therefore approval is sought for the Assistant Director for Health & Environment to have delegated authority to reduce or waiver the charge. Any such reduction or waiver will be carefully considered.

3. Background

- 3.1 The Health & Environmental Enforcement Policy 2019-2024 approved at Executive on 20 October 2019 set out a number of enforcement sanctions where the Council can impose a financial penalty. However, in order to fully implement the enforcement policy, fees and charges need to be formally agreed and set.

4. Recommendation to introduce charges to recover the costs associated with the service of enforcement notices under the Housing Act 2004.

4.1 The Housing Act 2004 came into force in April 2006 and brought significant changes to how properties were inspected and the enforcement action that could be taken. It introduced a range of enforcement notices where properties were found to have category 1 or category 2 hazards as defined by the Housing Health and Safety Rating System.

- Hazard Awareness Notice – a legal notice that simply advises of the presence of a hazard and that action should be taken, these notices do not carry a time limit for compliance.
- Improvement Notice – A notice that requires the hazard to be removed by undertaking repairs or other remedial works within a specified time scale
- Prohibition Order – restrict the use of the whole or part of a dwelling due to the presence of serious hazards
- Emergency Position Order – Restrict the immediate use of all or part of the dwelling
- Emergency Remedial Action Notice – works undertaken as an emergency by the Council
- Demolition Order – Main provisions are still within the Housing Act 1985, requires the demolition of a property.

4.2 Section 49 of the Housing Act 2004 allows the Council to charge for the following:-

- Determining whether to serve the notice
- Identifying an action to be specified in the notice
- Serving the specified notice
- Reviewing a suspended improvement or suspended prohibition Order.

4.3 The reason for introducing the charge is to act as a deterrent and encourage landlords in particular to engage with the Private Sector Housing Team to improve health and safety standards in the property. However, if the landlord or responsible person refuses to engage with the council then the time spent issuing the enforcement notice can be recovered through the implementation of the enforcement charge.

4.4 It is proposed that the following notices will carry a charge as provided by section 49 of the Housing Act 2004 and in accordance with the relevant sections of legislations stated:-

- Improvement Notices (sections 11 & 12)
- Prohibition Orders (sections 20 & 21)
- Emergency Remedial Action (section 40)
- Emergency Prohibition Orders (section 43)
- Demolition Order(section 265 Housing Act 1985)

4.5 The principle of implementing the charge is that it recovers the time all officers have spent in undertaking the elements set out in 4.2 above. The charge will be calculated on a case by case basis and will vary depending on the size of the property and the number of category 1 or 2 hazards identified included in the enforcement notice.

However, there is a minimum enforcement charge of £336.63 which is for a 1 or 2 bedroom property with one hazard identified. The charge will vary upwards depending on the number of bedrooms and the number of hazards identified at the property.

When an enforcement notice is served an invoice for the enforcement charge will be included. Any invoices that are not paid can be placed as a local land charge.

- 4.6 Should members agreed to apply the charges for enforcement notices, it is recommended that charges do not apply to owner occupiers as this group of tenure are not seeking a financial gain by not removing a category 1 or 2 hazard from their own property.

5. Recommendation to introduce a charge for Civil Penalties issued under the provisions of the Housing and Planning Act 2016

- 5.1 The introduction of civil penalties charges will provide the Council with an alternative to prosecution for offences under the Housing Act 2004 and Housing and Planning Act 2016. Implemented alongside existing powers of prosecution, the imposition of civil penalties for relevant offences will remove the financial benefit to landlords from offending; help to deter landlords from committing offences; and support the Council's wider efforts to improve the management of the private rented housing stock.

Section 126 and Schedule 9 of the Housing and Planning Act 2016 enables the Council to impose a civil penalty of up to £30,000 per offence as an alternative to prosecution for specific offences under the Housing Act 2004.

The overriding principle when considering civil penalties is that the person on whom the civil penalty has been issued should not make any financial gain as a result of their failure to comply with the relevant legislation.

Civil penalties may be imposed on the owner, person having control, or the licence holder of a property, as appropriate. The Council considers that the most likely recipients of civil penalty notices will be those persons who are involved in the owning or managing of private rented properties. However, the Council does have the power to impose them on tenants of Houses in Multiple Occupation for offences under section 234 of the Housing Act 2004, and will consider doing so where it is deemed appropriate.

A civil penalty can be considered as an alternative to prosecution for any of the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of HMOs (section 72);
- Offences in relation to the licensing of houses under Part 3 of the Act (section 95);
- Contravention of an overcrowding notice (section 139);
- Failure to comply with the management regulations in respect of HMOs (section 234).

The Council will consider civil penalties for all landlords that are in breach of one or more of the sections of the Housing Act 2004 listed above. Enforcement action will be considered on a case-by-case basis.

Where a person has committed multiple offences, and a civil penalty could be imposed for each one, the Council will consider as to whether it is just and proportionate to impose a penalty for each offence. Deciding not to impose a civil penalty for some of the offences does not mean that other appropriate enforcement sanctions, as listed in this policy, cannot be pursued for those offences.

Prior to imposing a civil penalty, the Council will serve a notice of intent and this will give the recipient an opportunity to make representations against the proposed civil penalty.

Where a person or company fails to pay the civil penalty, the Council will refer the case to County Court for an Order of that Court. If necessary, county court bailiffs will be instructed to enforce the order and recover the debt as set out in the statutory guidance.

Civil penalty payments will be retained by the Council provided that it is used to further the Council's statutory function in relation to their enforcement actions covering the private rented sector as specified in the regulations.

Civil penalties can be set by the Assistant Director – Health & Environment, as stated in the constitution.

The Council's Civil Penalties Procedure & Guidance is published on the Council's website provides detailed information on how the penalties are calculated.

6 Proposal for introducing a penalty notice charge under the provisions of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

6.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 allows for the issuing of penalty charge notices. Private sector landlords are required to:-

- Install at least one smoke alarm on every storey of their property
- Install a carbon monoxide alarm in any room containing a solid fuel burning appliance
- Check that these alarms are in working order on the day a new tenancy begins

When considering issuing a penalty charge, the following factors will be considered:-

- Before any penalty charge is made, the landlord will be given the opportunity to do the work through the service of a remedial notice.
- The financial penalty for the breach should act as a deterrent for the future.
- What is the likely impact on tenants and associated risk to their health, safety and wellbeing
- The cost of the Council of undertaking works in default which we have a legal duty to do if the landlord fails to comply with the penalty charge notice.

- First or repeat breaches.
- Officer time and costs to investigate and serve remedial notice and penalty charge notice.
- Administrative costs in organising works in default.

6.2 The maximum penalty that can be charged is £5,000. The penalty should be a deterrent as the remedy is relatively simple and low cost but the risks associated with non-compliance are high. It is recommended that the penalty is set at £5,000 with a reduction to £2,500 for the first breach if the penalty charge is paid within 14 days and repeat breaches to be set at £5,000 with no discount for early payment.

7. Recommendation to Propose an amendment the Houses in Multiple Occupation fee structure

7.1 The present HMO fee structure became effective on 10 September 2018 detailed in table 1 below.

Table 1 – Present Fee Structure

HOUSES IN MULTIPLE OCCUPATION

Premises Licence Fee	
- Basic Fee up to 5 persons	850.00
- 6 to 10 persons	Basic Fee + 10%
- 11 to 15 persons	Basic Fee + 20%
- 16 to 20 persons	Basic Fee + 30%
- For every 5, or part thereof over 20	Additional 10%
Multiple Application Discount on the second and subsequent completed applications (<i>received within 12 months of the date of receipt of a previous successful application, and the fit and proper person check was undertaken for the earlier application</i>)	5% off the Basic Fee
Trusted Landlord Scheme Discount (<i>must be accredited on the date of the completed application</i>)	35% off the Basic Fee

7.2 At the time of setting the new fee structure it was anticipated that offering a 5% discount for multiple applications would reduce officer time in processing the applications with regard to the fit and proper person check. This, however, has not been the case as every application that is received has to undergo administrative tasks to assess that the fit and proper person elements of the application form are completed and are satisfactory.

7.3 The officer time in processing applications has not been reduced and it is therefore recommended that the 5% discount off the basic fee for multiple applications is removed from the fees and charges.

7.4 Applicants who have submitted a valid application prior to full council's decision will receive the multiple application discount if they were eligible for the discount.

8. Strategic Priorities

8.1 Let's deliver quality housing

The introduction of the three new fees and charges will seek to act as a deterrent and encourage private landlords, in particular, to engage with the Private Sector Housing Team to improve the health and safety standards in properties throughout the City.

9. Organisational Impacts

9.1 Finance (including whole life costs where applicable)

The introduction of all three fees should not be considered as an income generation as the intention is for each to act, largely as a deterrent or to punish the offender. However, charging for enforcement under the provisions of the Housing Act 2004 does enable the Council to apply a cost recovery charge for the work officers undertake in issuing these enforcement notices and this will see some income being generated for a service that otherwise would not be able to recover its costs incurred. The Council served 17 notices in 18/19 and at the baseline recovery rate proposed this would have equated to a recovery of £5722.

It is not intended to include any income budgets for any charge to recover costs at this stage but we will monitor and review and if appropriate include an income budget in future years to offset the costs incurred. For civil penalties monies generated these will be held and used to further Private Sector Housing statutory functions.

9.2 Legal Implications including Procurement Rules

The introduction of charging for the three proposed fees are implementing the legal provisions set out in the Housing Act 2004, Housing & Planning Act 2016 and the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and there are no other legal implications arising from this report.

The recommendations in this report are based on government guidance on civil penalties, smoke and carbon monoxide regulations, and charging.

9.3 Equality, Diversity & Human Rights (including the outcome of the EA attached, if required) –

The Public Sector Equality Duty means that the Council must consider all individuals when carrying out their day-to-day work, in shaping policy, delivering services and in relation to their own employees.

It requires that public bodies have due regard to the need to:

- Eliminate discrimination
- Advance equality of opportunity
- Foster good relations between different people when carrying out their activities

As the introduction of the new charges and the amendment to the HMO fee structure do not impact upon or are influenced by any of the protected characteristics it has been considered that there is no requirement to undertake an Equality Analysis.

10. Risk Implications

- 10.1 The introduction of these fees and charges there is a potential risk that payments will not be made and a local land charge will have to be applied to the property or where a debtors invoice has been raised an application to the County Court for recovery. The implementation of these recovery processes will have an impact on resources of other services within the Council.

11. Recommendations

- 11.1 To agree to the recommendation for introducing a variable charge to recover costs associated with the service of specified enforcement notices, as set out in 4.4. It is recommended that charges do not apply to owner occupiers and refer to Full Council.
- 11.2 To agree to the recommendation for introducing a charge for Civil Penalties issued under the provisions of the Housing and Planning Act 2016 of up to £30,000 per offence as an alternative to prosecution for specific offences under the Housing Act 2004 and refer to Full Council.
- 11.3 To agree to the recommendation for introducing a penalty notice charge under the provisions of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, that the penalty is set at £5,000 with a reduction to £2,500 for the first breach if the penalty charge is paid within 14 days and repeat breaches to be set at £5,000 with no discount for early payment and refer to Full Council.
- 11.4 To agree to the recommendation that the 5% discount off the HMO basic fee for multiple applications is removed from the fees and charges and refer to Full Council.
- 11.5 To agree to delegate authority to the Assistant Director for Health & Environment in relation to 11.1 to 11.3 above so they can agree in certain circumstances, such as personal circumstances of the individual to which the charge is applied to reduce or waiver the charge and refer to Full Council.

Is this a key decision? No

Do the exempt information categories apply? No

Does Rule 15 of the Scrutiny Procedure Rules (call-in and urgency) apply? No

How many appendices does the report contain? None

List of Background Papers: None

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