

Executive Board – 19 September 2023

Subject:	Houses in Multiple Occupation (HMO) Revised Fees and Conditions 2023
Corporate Director(s):	Colin Parr, Director of Communities Environment and Resident Services_ Colin.Parr@nottinghamcity.gov.uk
Portfolio Holder(s):	Councillor Jay Hayes, Portfolio Holder for Housing
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Subject to call-in:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Key Decision	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Criteria for Key Decision:	
(a)	<input type="checkbox"/> Expenditure <input checked="" type="checkbox"/> Income <input type="checkbox"/> Savings of £750,000 or more taking account of the overall impact of the decision
and/or	
(b)	Significant impact on communities living or working in two or more wards in the City Yes <input checked="" type="checkbox"/> <input type="checkbox"/> No
Type of expenditure:	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
Total value of the decision:	£7,280,292
Wards affected:	All
Date of consultation with Portfolio Holder(s):	4 th July 2023
Relevant Council Plan Key Theme:	
Clean and Connected Communities	<input checked="" type="checkbox"/>
Keeping Nottingham Working	<input checked="" type="checkbox"/>
Carbon Neutral by 2028	<input checked="" type="checkbox"/>
Safer Nottingham	<input checked="" type="checkbox"/>
Child-Friendly Nottingham	<input type="checkbox"/>
Healthy and Inclusive	<input checked="" type="checkbox"/>
Keeping Nottingham Moving	<input type="checkbox"/>
Improve the City Centre	<input checked="" type="checkbox"/>
Better Housing	<input checked="" type="checkbox"/>
Financial Stability	<input type="checkbox"/>
Serving People Well	<input checked="" type="checkbox"/>
Summary of issues (including benefits to citizens/service users):	
<p>This report recommends the adoption of a revised fee for applications for Licences for Houses in Multiple Occupation (HMOs) under both the Mandatory and Additional Licensing schemes operating within the City of Nottingham.</p> <p>With regard to Additional Licensing the current Additional Licensing Designation ends on 31 December 2023 and a separate report on this agenda asks the Board to consider making a further Designation (“the New Designation”) to come into effect from 1 January 2024. It is intended that the revised fees will apply to applications in relation to both Designations.</p>	

Exempt information: None.	
Recommendation(s):	
1	To adopt the revised Part A and B licensing fees for HMOs licensed under both the Mandatory and Additional Licensing schemes as set out in section 3 of this report, such fees to be effective from 1 st October 2023 and to apply in conjunction with the existing additional fee payments outlined in paragraph 2.9
2	To note that that in respect of Additional Licensing, the revised fees shall apply to both the current Designation and the New Designation (if made) and that the Interim Director of Communities shall update the Council's Licence Fee Policy (Appendix 1) and Guidance document for licences under Parts 2 and 3 Housing Act 2004 to reflect the revised fees under delegated powers
3	To approve the spend as detailed in sections 2 and 3 of this report from 1st October 2023
4	To note the continued use of ring-fenced reserves, as detailed in paragraphs 8.3 and 8.4 of the February Report and section 3 below.
5	To approve the revised HMO Licence Conditions to apply to licences granted under both the Mandatory and Additional Licensing schemes as set out in Appendix 2.

1 Reasons for Recommendations

- 1.1 The Council is under a duty to licence certain types of HMOs (Mandatory Licensing) and has a discretion to licence others (Additional Licensing). Both forms of Licensing are governed by Part 2 of the Housing Act 2004 and the Council is permitted in law to recover the cost of the licensing process in the fees which it sets. It has been over 5 years since HMO Licensing fees were last increased and the current fees no longer fully cover the operational cost of the licensing process. The proposed fees have been calculated to achieve maximum cost recovery for the licensing process based on the number of estimated applications likely to be received by the Council and the activities required to support and undertake compliance and enforcement activities for that number.
- 1.2 Councillors will have had sight of the results of the consultation exercise in relation to the proposed New Designation and Scheme of Additional Licensing in appendices 3 and 4 of the report recommending the making of the new Designation which is earlier on the Board's agenda. . The results of the consultation showed continued support for the current three tier fee structure, in particular the less compliant landlord fee and the discounted fee for accreditation. The three-tier fee structure has therefore been maintained along with the two-part payment model which was required and adopted during the current schemes as a result of binding legal precedent.

2 Background & Consultation Findings

Legislative Licensing changes

- 2.1 All HMOs (whether they fall within the Mandatory or Additional Licensing Schemes) require a licence under Part 2 of the Housing Act 2004. Due to legislative changes and market fluctuation there has been and continues to be some movement of HMOs between the two Schemes during the lifespan of the current Additional Licensing Designation. The New Designation (if made) will expand the designated area to cover the entire City district and is anticipated to be likely to bring an additional 500 HMOs into the licensing regime.

- 2.2 HMO Licences are generally issued for a period of 5 years (unless issued for a shorter period due to the facts of the case, or revoked). Some licences in the current Additional HMO Licensing Scheme will extend beyond the end date of the current Designation on 31 December 2023. These Licences will effectively “hold over” into the New Scheme (if approved). Historically as mandatory and additional HMO licences are issued under the same part of the Act and involve the same processing, checking and conditions we have historically always treated them the same way and charged the same HMO fee for both regardless of which scheme the licence was applied for under.

Two Part Licence Fee

- 2.3 The Local Government Association guidance on locally set licence fees “Open for Business” June 2017¹ (“The LGA Guidance”) advises that to comply with the law licence fees should be split into two parts (Parts A and B). This approach has been applied to the current fees:-

Part A fee: this covers all the work on the licence up to and including determining and issuing the licence.

Part B fee: this part of the fee covers all work once the licence has been granted including, amongst other things, inspections and compliance work and enforcement costs. If no licence is issued (i.e. the application is refused), no Part B payment is required.

The current HMO licensing fee has been in place since 2018 and was subject to a detailed review in 2020. No changes to the fee were made at that time due to the economic implications of Covid19. There have therefore been no increases in line with inflation and/or operational demands since 2018.

- 2.4 In line with the LGA guidance the Council can recover full costs on this service, must aim to remain cost neutral and ring fence the income keeping it separate from the general fund to be used only for the delivery of the relevant scheme. The cost of the HMO licensing process has been reviewed and full cost recovery cannot be achieved to support the current and future cost of the service if the fee is not now increased.

Three Tier Fee Structure

- 2.5 Licensing has identified that there are essentially three groups of landlords operating and managing HMOs within the city. The resources required to identify, assess, process and manage the application along with the determination of the licence application, compliance and enforcement for these three groups can vary considerably and this has been reflected in the current and proposed fee structure.

These comprise of:

- Good Landlords, who are essentially aware of their legal responsibilities, provide properties that are of good quality that are compliant with standards and well managed. This group will proactively seek to licence during the transition period for licensing or plan for the introductions of new schemes and some of these Landlords will go on to take up accreditation but not all.
- Less compliant, misinformed, unaware or accidental landlords, who operate without the proper knowledge of legislative requirements,

¹ <https://www.local.gov.uk/publications/open-business-lga-guidance-locally-set-licence-fees>

provide mixed and often poor standard accommodation (particularly in relation to fire safety and management) once prompted and guided they usually comply with requirements and submit relevant documentation but this can be a long and intensive process sometimes resulting in multiple visits and enforcement activity.

- Rogue landlords, who deliberately avoid making licence application, offer a very poor standard of accommodation combined with a poor management and who put profit before safety. They will have little regard for tenant safety, welfare and pay no regard to the legal eviction procedures. Upon threat of enforcement action, they will either finally make a very poor attempt to licence with the application taking many months to process or look for ways to avoid licensing such as removing tenants and sealing off rooms. Enforcement action is usually associated with this group.

2.6 The proposed revisions to the Part A and B fees have been calculated using an updated LGA toolkit to ensure value for money, but also to ensure that all allowable costs are recovered. Based on running the Mandatory and Additional Schemes in parallel, the fee was calculated and based on costs for a forecast of 5,300 licence applications being received over a five-year period (Mandatory is estimated to receive 3000 applications and Additional 2300 licences). The team will continue to work together and have costs proportionally allocated across the two schemes.

Why a fee increase is essential to remain cost neutral

2.7 It is appropriate to periodically review the fee to achieve maximum cost recovery. The main driver for the fee review has been rising personnel costs since 2018 of approximately 23% as can be seen in Table 1 below, other than this the service has managed to significantly reduce operational costs by -24% since 2018 through best value efficiency review and savings.

Table 1 Estimated Costs 2018 vs 2023

Estimated Costs	2018	2023	Variation £s	Variance %	Costs
Personnel Costs	£5,163,085	£6,356,779	£1,193,694	23%	Increased
Operating Costs	£1,107,987	£837,584	-£270,403	-24%	Reduced
One Off Costs inc Exit Costs	£113,000	£85,930	-£27,070	-24%	Reduced
Total Cost	£6,384,072	£7,280,293	£896,221	14%	Increased

At this point it is worth noting that although the proposal is to increase the fee, this is not driven by an increase in staffing numbers and the current staffing levels of 28 FTEs will be maintained, even though it is forecasted the team will receive approximately 500+ new applications.

The biggest cost saving has been made in the operating costs. This is a combination of reduced premises costs brought about by co-location to Byron House and the introduction of hybrid working. Sharing IT programmes and user licences along with system maintenance costs and transport costs, with the larger Selective Licensing Scheme have offered economies of scale. There have also been cost reductions over the five years with the increased use of public transport, multi-use travel card savings and the sharing of resources such as pool cars. The cost of publicity has also been reduced with the move to social media

and digital platforms and the reduction in printed promotional materials. The reduction in these costs has allowed the offsetting of the wage increases meaning the scheme has remained cost neutral and the budget has remained balanced to date.

However, the cost of living is a driving factor and when adjusted for inflation, using the Bank of England inflation calculator, the proposed licence fees have fallen in real terms since the implementation of the current fee structure in 2018. This is possibly, despite increasing wage costs over the same period, due to the efficiencies that have been achieved as part of the best value principals applied to our transformation journey since January 2018 and through the Pandemic, meaning a total review of operations was required to maintain the service during these restricted and difficult operating times.

These efficiency savings have made the biggest impact on the Part A fee, which has fallen both in actual terms and when inflation is considered. However, the Part B fee is largely comprised of the salary costs for officers who inspect HMOs, audit licence holders and enforce HMO standards, so little savings can be made here if the outcomes focussed approach is to be maintained.

Some significant efficiencies have already been made in this work, with further opportunities being explored as part of the project to implement the Cx software package and the Customer Transformation Project. However, large scale savings in the Part B fee could only be achieved through conducting less HMO inspections, auditing less licence holders and completing less enforcement action, all of which would impact on the value of HMO Licensing to the city and its residents.

The increases in the part B fee have resulted from the complexity of the interventions required to either achieve compliance or progress with enforcement. Enforcement is always a last resort when all other intervention such as 'educate, ask and warn' have been exhausted.

The evidence gathering process for the proposed 3rd Additional licensing scheme have further illustrated that HMOs in Nottingham require active regulation and interventions by the HMO Licensing & Compliance team. As such, the efficiencies that have been achieved in the Part B fee work have enabled us to visit more HMOs and target higher risk properties increasing the impact of licensing in the city.

The 2018 fee was set with a forecast compound inflation rate, over the 5-year period, of 7.4% (Source HMG Treasury Deflator Forecasts Mar 2016). According to the Bank of England inflation calculator, the actual compound inflation rate, over the period of 2018 to June 2023, was 24.12% (Source: <https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator>), which is 16.72% higher than forecast. Below are some tables that show the inflationary adjustments on the Part A and Part B fee.

Table 2 Part A Fee with inflationary adjustments considered

Fee Type	2018 Fee (Current Fee)	2018 fee adjusted for actual inflation to June 2023	2023 Fee (Proposed Fee)	Variance
Standard	£890	£1,038.84	£670	-£368.84
Accredited	£615	£717.85	£670	-£47.85
Less-Compliant	£890	£1,038.84	£670	-£368.84

Table 3 Part B Fee with inflationary adjustments considered

Fee Type	2018 Fee (Current Fee)	2018 fee adjusted for actual inflation to June 2023	2023 Fee (Proposed Fee)	Variance
Standard	£440	£513.59	£803	+£289.41
Accredited	£375	£437.71	£453	+£15.29
Less-Compliant	£830	£968.81	£1,311	+£342.19

Table 4 Combined Part A & B Fees with inflationary adjustments considered

Fee Type	2018 Fee (Current Fee)	2018 fee adjusted for actual inflation to June 2023	2023 Fee (Proposed Fee)	Variance
Standard	£1,330	£1,552.43	£1,473	-£79.43
Accredited	£990	£1,155.57	£1,123	-£32.57
Less-Compliant	£1,720	£2,007.65	£1,981	-£26.65

From April 2023 further changes were made to the inspection management process, and these have resulted in significant increases in the number of HMO internal compliance inspections. As Table 5 below shows, the total number of inspections for April 2023 to July 2023 period is up 111% when compared to the same period last year.

Table 5 - Total number of inspections for April 2023 to July 2023

	April 22 – July 22	April 23 – July 23	Variance	Variance %
Licence Compliance Inspection	100	210	+110	+110%
Licence Compliance Re- inspection	10	23	+13	+130%
Pre-Licence Inspection	9	18	+9	+100%
Total Internal HMO Inspections	119	251	+132	+111%

Clearly there is a significant increase in productivity both of outputs and property improvement outcomes. The transformation journey which began in 2018 and is still ongoing has been complex and challenging at times but is an example of delivering best value through economy, efficiency and effectiveness. This has allowed for savings which will be passed on to citizens by keeping HMO licence fees as low as possible as shown in Table 4 above.

- 2.8 Benchmarking fees with other Councils is problematic due to the broad variety of approaches taken however a benchmarking exercise has been carried out and is detailed in Appendix 3. This shows the proposed new standard fee (combined parts A and B = £1473) as comparable although at the top of the range which runs from £750-£1473 with a mean of £1126 and Bristol having the closest comparative fee at £1420. However, it should be noted that not all other councils have recently reviewed their fees.

Cardiff Metropolitan University published an academic paper in 2022 entitled 'The role of Housing Act 2004 licensing in addressing the needs and issues of

stakeholders in the private rental housing sector of England and Wales'². The paper examined Licence fees across a large number of councils.

The report highlighted that poorly financed schemes would be at the risk of enforcing mainly on compliant landlords who made applications, whilst failing to adequately resource against less conscientious operators. Lack of enforcement in licensing schemes is an area of criticism. When asked, 49% of councils reported that licence fee income did not cover the full cost of licensing work including enforcement and that scheme fee income had to be supplemented by other budgets, this suggests that the intention of the legislation and guidance on fee setting had not been fully applied by many councils.

There are significant variations in the approach taken by councils in calculating licence fees including the use of additional finance outside of fee income to support licensing work. It is very difficult to benchmark against any one model as there is no standardised formulation available to calculate fees.

Nottingham City Council have designed a bespoke calculation method which aims to capture all true costs associated with the processing, monitoring, compliance, and enforcement of the licensing process.

The Council's stance has always been very clear and follows the LGA guidance which states that licensing schemes should be funded on a cost-recovery basis³. Nottingham has a dedicated HMO licensing team, meaning the full costs can be identified as these staff solely undertake HMO licensing activities and no other Council duties.

No specific body is charged with the role of collecting data on HMO Licensing and therefore comparisons with other schemes are limited to published reports and proposals of each local authority. However, the National Audit Office (NAO) published a useful report in 2021 entitled 'Regulation of private renting'⁴ which considers the regulation of PRS and Value for Money.

The report states in section 13, that there is considerable variation in the approaches and regulatory activity of local authorities, and it is important to note that licensing fees are not directly comparable for several reasons including the following:

- funding sources (some Councils directly fund aspects of their schemes from other sources in addition to licence fees generated)
- size of PRS covered i.e. number of properties within the scheme
- operational delivery model including frequency and complexity of inspection and enforcement programme
- complexity of application process and number of licence types offered
- Variety of licence periods, i.e. several councils issue majority one year licences as opposed to our majority 5 year licences
- Frequency and number of licence parts and payments
- Location, demography and deprivation differences

2.9 The current fee structure requires additional fee payments for some applications, which are added to the Part A or Part B payments as applicable. These additional fee payments were calculated to reflect the extra cost of intervention,

²https://figshare.cardiffmet.ac.uk/articles/thesis/The_role_of_Housing_Act_2004_licensing_in_addressing_the_needs_and_issues_of_stakeholders_in_the_private_rental_housing_sector_of_England_and_Wales/21325041/1/files/37848711.pdf

³ <https://www.local.gov.uk/publications/open-business-lga-guidance-locally-set-licence-fees>

⁴ <https://www.nao.org.uk/wp-content/uploads/2021/09/Regulation-of-private-renting.pdf>

administration and processing time required for some licences and no revisions are proposed in relation to these additional fee payments which will continue to apply alongside the revised Part A and Part B fees. These additional fee payments are as follows:

- Extra Bedroom Fee - when a HMO has 10 bedrooms or more, an extra fee of £25 is applicable per bedroom
- Missed Inspection Fee £50 - will be added when the inspection is missed by the licence holder or managers without giving prior notification.
- Extra Correspondence Fee £40 will be added when extra correspondence becomes necessary.
- Extra Documents Fee £30-£90 (dependent on no. of copies) will be added when copy documents are requested.
- Paper Application Form Request £35 - a fee will be charged when landlords phone up and ask for a printed copy of the application form to be posted to their correspondence address. A free online only application form is available for download and completion.
- Paper Application Processing Fee £65 will be charged when a paper application is received by the department.
- Fee to support people completing the application form - £40 per hour (minimum charge £40)

Consultation findings

- 2.10 The recent consultation in relation to the New Designation has revealed that in the main consultees considered the proposed fees too expensive and the application process too complicated. With this in mind the revised proposed fees are slightly lower than those consulted on for both the standard and less compliant fees and the application process has been significantly simplified during the current scheme in response to licensees' feedback and in order to generate efficiencies for best value.

Staffing

- 2.11 Through experience of operating the current HMO licensing schemes, the Council has become more accurate in its assessment of the time required to process applications. Due to the complexity of some applications and the need for due legal process, including time for representations, appeals and enforcement activity, some applications can take up to six months from receipt to issue and in more complex cases 12 months or more.
- 2.12 The staffing resource to ensure licences are issued efficiently is in place and has been reviewed for economy, efficiency and effectiveness. A predicted increase in the number of applications, combined with a number of more complex cases has increased demand on staffing resource however, operational improvements to the lifecycle of the licensing process have offered efficiencies which mean that the existing staffing resource is sufficient to manage the increase, evidencing that learning from the current scheme is delivering best value.
- 2.13 The outcome of the fee modelling forecasts are that the service will continue to need 28 staff of varying grades for the processing and compliance activity across the mandatory and additional licensing schemes. All of these staffing costs are recovered from the licence fee except the three posts which are required to deliver Part 1 Housing Act 2004 activity across both schemes.
- 2.14 The proposed revisions to the Part A and B fees has been calculated with nominal

set up costs included as the team is already established and apart from a small number of staff starting and finishing their employment, there was nothing else to consider in the main. An exit strategy cost has been included to cover staff redeployment and or redundancies should either or both schemes come to an end.

- 2.15 Both Additional and Mandatory licences are administered by one dedicated HMO team. The fee forecast indicates that 25 full time equivalents (FTE) will be required to operate the two licensing schemes. Broken down this is approximately 11 FTE for additional and 14 FTE for mandatory. Staffing and activity levels will be monitored against the fee in line with projected licences to assure the scheme has adequate resource throughout its lifecycle and remains cost neutral.

Table A and B below show the staffing costs for both Mandatory and Additional schemes.

Table A Mandatory Licensing Staffing costs (based on 3000 licences)

	Number of Staff Per year	Salaries Including on Costs (£'m)	Overhead costs (£'m)	Set up Costs (£'m) Inc Exit Cost	Total (£'m)
Totals	14	3.186	0.886	0.049	4.121

Table B Additional Licensing Staffing costs (based on 2300 licences)

	Number of Staff Per year	Salaries Including on Costs (£'m)	Overhead costs (£'m)	Set up Costs (£'m) Inc Exit Cost	Total (£'m)
Totals	11	2.442	0.680	0.037	3.159

3 The Proposed Revisions to Parts A and B of the HMO Licence Fee

- 3.1 The current and proposed Part A and B fees for both Mandatory and Additional HMOs are shown in Table C below. If approved, it is suggested that the proposed fee should apply from 1 October 2023 with any necessary additional fee payments continuing to be applied as set out in paragraph 2.9 above.

Table C: Current and revised HMO Part A and B fees (Mandatory & Additional)

Licence Fee	Current	Proposed
Standard fee	1 st payment (Part A) £890 2 nd payment (Part B) £440 Total £1330	1 st payment (Part A) £670 2 nd payment (Part B) £803 Total £1473
Less compliant fee	1 st payment (Part A) £890 2 nd payment (Part B) £830 Total £1720	1 st payment (part A) £670 2 nd payment (Part B) £1311 Total £1981
Accredited fee	1 st payment (Part A) £615 2 nd payment (Part B) £375 Total £990	1 st payment (Part A) £670 2 nd payment (Part B) £453 Total £1123

Table D below shows the total projected income for both schemes per licence type which has been calculated for cost neutrality including the following:

- Staffing costs to run the schemes, these have been included at productive hours as per the guidance and relevant staff grades for each piece of work
- Processing costs of each licence, application, checking etc. – this has been calculated using percentages for the amount of time taken
- Enforcement costs (as per recent change to legislation)
- Management costs
- Set-up costs
- Exit costs
- Staff overhead costs
- Inflation factors.

Table D Total projected combined income (Mandatory and Additional)

Licence Type	Cost of Licence	No of Licences Estimated - Additional	Total Income Additional (£'m)	No of Licences Estimated - Mandatory	Total Income Mandatory (£'m)	Total No of Licences Estimated	TOTAL INCOME £'m
Accredited Fee	£1,123	920	£1,033,160	1,200	£1,347,600	2,120	£2,380,760
Standard Fee	£1,473	1,196	£1,761,708	1,560	£2,297,880	2,756	£4,059,588
Less Compliant Fee	£1,981	184	£364,504	240	£475,440	424	£839,944
		2,300	£3,159,372	3,000	£4,120,920	5,300	£7,280,292

These figures include central establishment charges and labour recharges towards services provided to the proposed scheme which have been calculated proportionately in line with the LGA guidance” core principles which state fees should be: non-discriminatory; justified; proportionate; clear; objective; made public in advance; transparent and accessible. See Table E below.

Table E - Central establishment charges and labour recharges

Total for the 5 years of the scheme	Additional (£'m)	Mandatory (£'m)
Central establishment charges	0.272	0.354
Labour recharges	0.316	0.412
Grand Total	0.588	0.766

Ring fenced reserves

- 3.2 There are two ring-fenced reserves for the current scheme as per the LGA guidance which clearly states fees income should not be drawn into the Council’s general fund. Any income generated from the licence fee will be solely utilised for the

purposes of the relevant HMO Licensing scheme in accordance with appropriate legislation and Guidance. See excerpt Table F below:

Table F LGA Guidance on locally set licence fees

Do	Don't	Maybe
Check the relevant legislation	Use a surplus from one fee to subsidise another	Include the costs of enforcement against unlicensed traders
Calculate processing costs and enforcement costs separately and ensure that any fees covered by the Services Directive are charged to applicants and new licensees in two stages	Allow fees income to be drawn into the council's general fund	Include a condition on the issued licence that requires the payment of the enforcement part of the fee, where this is not charged upfront
Clearly communicate to applicants the elements that make up the fee	Allow fee levels to roll-over each year without a review	
Ensure fees are determined by the right person	Forget to ask the courts to award costs during a prosecution	
Include staff on-costs		
Include training costs for officers and councillors		

It is estimated that 90% of eligible properties will proactively apply for a licence during the five years of the New Additional Licensing Designation and the income is based on this. The income will not be received uniformly throughout the 5-year period. Therefore, an earmarked reserve is essential to balancing revenue and expenditure over the 5 years and will be drawn down as required.

The two ring-fenced reserves which are already in place in the current scheme would be used to facilitate the new scheme, saving the need for additional reserves to be set up. This refers to the financial treatment not the funds which will be placed within them. The balance of the revenue budget (fee income against activity) as of 4th May 2023 stands at £23,385 for the current Mandatory scheme and £202,030 for the current Additional Licensing scheme. Any balance will be utilised to cover inspection and enforcement of licences which continue beyond the 5 year Designation of the current Additional Licensing Scheme and for the ongoing Mandatory Licensing Scheme.

Revised Licence Conditions

- 3.3 Mandatory and Additional HMO licences when granted share a common set of conditions. These have also been reviewed and the revised licence conditions can be found at Appendix 2. These have been amended to remove three conditions which are not directly required under The Housing Act 2004 and which duplicate other existing requirements thereby simplifying the process for both licence holders and the Council. An additional condition has however been added regarding the requirement to provide sight of an Energy Performance Certificate if one is required or details of the registered exemption if one is not.

4 Other Options Considered in Making Recommendations

- 4.1 The proposed level of staffing is reduced thereby reducing the need to increase fee levels. This option would reduce the service capacity to issue licences efficiently and in a timely manner. It would also restrict the amount of compliance and enforcement work which could be carried out. It would significantly limit the amount of engagement work by the Safer Housing Team resulting in a poor customer experience and reduction in the quality of housing for some citizens. This option is not supported.

- 4.2 No change and leave the fee at the current level. The licensing scheme activities should be cost neutral to the Council and this is the aim of the new proposals. This option may be welcomed by landlords, but the current fees do not cover the operational costs of the current Schemes. Cost recovery is permitted by law and it is appropriate for the fee to cover the operational costs of the schemes. Should the fee remain at its current level the deficit would need to be covered by the general fund. This option is not supported.
- 4.3 An annual licence fee - While some Landlords would appreciate the ability to pay in more frequent smaller instalments, this option would increase the operational cost of the licence fee overall as it results in more collection, processing and chasing non-payment activity over the 5 year period. This option is not supported and not required by statute.
- 4.4 Not charging for extra bedroom inspections in HMOs which have 10 or more bedrooms. This option was considered and rejected as the cost and time to inspect larger HMOs can be substantial and multiple visits may be required. The cost is difficult to absorb within the standard fee and would result in smaller properties subsidising the cost for larger HMO operators. This option is not supported.

5. Risk

- 5.1 There are risks to this scheme which could have an impact on the financial business model. An example of some of the risks that could impact on the schemes financial viability and would require a resources review to mitigate are shown below in Table G:

Table G Risk

Risk	Mitigation
Level of applications vary	Monitor levels of applications closely. Use of reserve accounts as necessary during the duration of the scheme to assist with managing the budget, when fluctuations in applications and fee income does not match with consistent levels of operational activity.
Landlords may gain accreditation in order to secure a lower fee and the number of accredited landlords could change impacting costs and income.	Work closely with accreditation partners to monitor these numbers and to ensure that accreditation continues to be strongly indicative of full compliance and lesser operational interventions undertaking. Since scheme 1 & 2 the council has a good understanding of the likely numbers of accredited applications and this will be monitored closely.
If operational activity identifies unexpected deviation in quality of property (better or worse) which impacts operational input required, staffing balance or costs causing them to be different to those that are anticipated	To monitor this closely and re-adjust operating model as/if appropriate.
If there are any legislative / guidance changes and/or case law rulings	To continue to maintain awareness of any proposed and actual changes to guidance and legislation, understand the impact this may have on the scheme and take mitigating action if required
The volatile state of national	To keep the fee under regular review, adjusting

Risk	Mitigation
finance and unknown potential inflationary pressures	as appropriate during the scheme. It is permitted to adjust the fee mid Designation/scheme as required.
There are wider economic factors, e.g. recession, rent level changes and changes to taxation which may impact on a variety of factors such as number of privately rented properties and ability to pay licence fees.	To continue on-going monitoring of the number of applications being received against projections. To stay aware of on-going changes in the wider economy that may impact on scheme delivery and the ability of landlords to complete administrative undertakings in a timely manner.
Ability to recruit appropriate number of experienced and qualified staff to support scheme delivery due to availability of staff and pressure from other local housing authorities that are implementing schemes locally / regionally.	To continue to support the development of colleagues in the team including apprenticeships and other appropriate training opportunities. To work with colleagues in HR to ensure we can maximise recruitment of staff from as wide a pool as possible, considering alternatives to traditional recruitment routes. To maintain awareness of the need for NCC to offer competitive salaries to recruit and retain staff.
Flare replacement, issues with upgrade, integration and continuity	Work is ongoing to identify and mitigate potential blockages. However, overall, once the system is operational there should be improvements and efficiencies to support scheme implementation.
Risk of having to operate standalone Additional Licensing without the Mandatory Licensing Scheme	Although fixed costs would fall fully on the Additional licensing scheme should the mandatory scheme be withdrawn by government, a fee review would be undertaken to recalibrate the scheme to ensure it remains cost neutral, there would undoubtedly be a period allowed for closedown of such schemes to accommodate the changes.

5.2 The valuation and sensitivity of risks above currently cannot be quantified however; these will be developed as the scheme progresses. During this time the following needs to be in place to ensure the early warning of risks and the ability to undertake corrective action mitigating any financial impact to the organisation:

- i. Robust performance monitoring frameworks for both operational and financial targets.
- ii. Staffing flexibility set up to be able to align to activity levels.
- iii. The business model includes full staffing exit costs for the additional scheme only (as referred to above).

6 Finance Colleague Comments (Including Implications and Value for Money/VAT)

6.1 This decision seeks to revise the existing HMO Additional and Mandatory Fees effective from 1st October 2023. Delegate to authority to the Director of CERS to produce Fee and Policy Guidance. Approve the expected spend as expected for the duration of the proposed Additional Scheme and ongoing for the Mandatory. Continue the use of ring-fenced reserves for these schemes. Approve the revised fee policy and Revised License Conditions

6.2 The revised / new fees have been calculated in consideration of the LGA “Open for Business” guidance in terms of allowable spend and structure of fees (Part A/B allocations). The existing fees have been in place since 2018 and therefore a full

fee review and cost analysis was completed by the Service to ensure that the costs are proportionate and are ensuring Best Value for the Landlords.

- 6.3 There is risk associated with predicting the income and associated costs relating to these licenses, as the income is dependent on the number of licensable premises. This number can be subject to change relating to the ongoing usage of the properties as HMO's, categorisation of the properties with related fee level, also wider economic implications that could affect the housing/rental sector.
- 6.4 These costs include an assumed level of inflation, although considering the recent market volatility the assumed cost inflation will need to be reviewed regularly against actual costs to ensure sufficient. Income will ultimately be dependent on the numbers of applications and therefore expenditure will need to be carefully managed so that the costs are always covered by income with regular reviews. Should the Additional scheme look to be operating at a deficit at the end of its five-year duration the expenditure of the scheme will be reduced accordingly.
- 6.5 The costs of managing the Licensing function is covered in full by the fees that can be charged to the landlords for this scheme and as such there will be no gain or loss in association with this scheme, with the scheme remaining cost neutral with no MTFP impact. All conditions and requirements of the scheme must be met by the Service.

Advice Provided by: Susan Turner – Senior Commercial Business Partner
(CERS) – 9 August 2023

7 Legal and Procurement Colleague Comments (Including Risk Management Issues, and Legal, Crime and Disorder Act and Procurement Implications)

- 7.1 Section 63 of the Housing Act 2004 permits the Council to charge a fee for HMO licence applications under Part 2 of that Act. This covers both Mandatory and Additional licensing schemes.
- 7.2 When determining the fee the Council may, subject to regulation, take into account all costs incurred by the authority in carrying out its functions under Part 2 of the Act and all costs incurred in respect of the making of Management Orders in so far as they may not be recoverable under other provisions.
- 7.3 The report author confirms that relevant LGA guidance has been applied when setting the fee and the Council is entitled to seek to operate on a full cost recovery basis. The payment of the fee in 2 parts (Part A and Part B fees) is in line with the requirements of the EU Services Directive, the Provision of Services Regulations 2009 and various binding case law in relation thereto
- 7.4 In relation to conditions these may be applied to a HMO licence in so far as it is considered appropriate for regulating the management, use and occupation of the HMO and its condition and contents. Such conditions should be reasonable and enforceable and should not generally duplicate other existing legal requirements. The imposition of conditions on a licence is challengeable by way of appeal.

Advice Provided by Ann Barrett Team Leader, Legal Services 2 August 2023

8 Procurement Colleague Comments N/A

9 Strategic Assets and Property N/A

10 Hr Colleague Comments N/A

11 It Colleague Comments N/A

12 Social Value Considerations

- 12.1 The licensing of HMOs is part of the Council's overall strategic approach to housing and is a key priority for the city. By tackling the problem properties and raising standards in HMO properties, it will help to achieve a number of positive outcomes in terms of regeneration, health and wellbeing, and community safety, which are all major priorities for the city. This will help to deliver improved outcomes for citizens.
- 12.2 The Council needs to recover the costs which arise from delivering this service. It is through the collection of fees that the Council is able to finance both the statutory and Additional Scheme requirements.

13 Regard to the NHS Constitution

- 13.1 The NHS Constitution has as one of its guiding principles that the NHS will work across organisational boundaries. It says: "The NHS is committed to working jointly with other local authority services, other public sector organisations and a wide range of private and voluntary sector organisations to provide and deliver improvements in health and wellbeing". The Council's approach to housing also follows this principle, seeking to work with a range of other services to improve citizens' lives, not least their health and wellbeing. The licensing of HMOs brings improved housing conditions which in turn can have a positive impact on health and wellbeing which has been demonstrated both nationally and locally.
- 13.2 As stated in paragraph 12.2 above, it is the collection of fees for licences that enables the Council to deliver the service and achieve the outcomes stated above.

14 Equality Impact Assessment (EIA)

- 14.1 Has the equality impact of the proposals in this report been assessed?

No
An EIA is not required because:
(Please explain why an EIA is not necessary)

Yes
Attached as Appendix 4, and due regard will be given to any implications identified in it.

15 Data Protection Impact Assessment (DPIA)

- 15.1 Has the data protection impact of the proposals in this report been assessed?

No
A DPIA is not required because:

Yes
Attached as Appendix 5 and due regard will be given to any implications identified in it.

16 Carbon Impact Assessment (CIA)

- 16.1 Has the carbon impact of the proposals in this report been assessed?

No

Yes

Attached as Appendix 6 and due regard will be given to any implications identified in it.

17 List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

17.1 The Nottingham City Council calculation model. The fee has been calculated using a bespoke spread sheet which is a streamlined version of the original toolkit created by the Local Government Association (LGA) in 2006 (used previously for selective, additional and mandatory licensing) and stands up to an assessment of value for money. This spread sheet calculates the “best guess estimate” as referred to within “Open for Business” and uses suggested costs given by the LGA in their June 2017 publication ‘Open for Business: LGA Guidance on locally set fees’ and is based on the number of licensable Houses of Multiple Occupation (HMOs).

18 Published documents referred to in this report

18.1 National Audit Office (NAO) Regulation of Private Renting 2021

<https://www.nao.org.uk/wp-content/uploads/2021/09/Regulation-of-private-renting.pdf>

18.2 Open for business: LGA guidance on locally set license fees

<https://local.gov.uk/open-business-lga-guidance-locally-set-licence-fees>

18.3 The Housing Act 2004 (“the Act”)

<https://www.legislation.gov.uk/ukpga/2004/34/contents>

18.4 The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

<http://www.legislation.gov.uk/uksi/2018/221/contents/made>

18.5 The role of Housing Act 2004 licensing in addressing the needs and issues of stakeholders in the private rental housing sector of England and Wales, Henry Dawson 2020

https://figshare.cardiffmet.ac.uk/articles/thesis/The_role_of_Housing_Act_2004_licensing_in_addressing_the_needs_and_issues_of_stakeholders_in_the_private_rental_housing_sector_of_England_and_Wales/21325041/1/files/37848711.pdf