

	<h2 style="text-align: center;">Housing Committee</h2> <h3 style="text-align: center;">10<sup>th</sup> October 2018</h3>
<b>Title</b>	<b>Private Sector Housing Refund Clarifications and New Fees for 2019/20</b>
<b>Report of</b>	Councillor Gabriel Rozenberg
<b>Wards</b>	All
<b>Status</b>	Public
<b>Urgent</b>	No
<b>Key</b>	Yes
<b>Enclosures</b>	Appendix A – Proposed New Fee for 2019/20
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### Summary

This report seeks to obtain approval for proposed refund clarifications and new fees for 2019/20 to support the Commissioning Business Plan, and delivery of the front-line service within the Private Sector Housing Team in Re.

### Recommendations

**That the Housing Committee review this report, the proposed refund clarifications and new fees for 2019/20 as set out in Appendix A and refer to Policy and Resources Committee for approval.**

## 1. WHY THIS REPORT IS NEEDED

- 1.1 Fees and charges are reviewed on an annual basis to ensure that the costs of chargeable services are covered and the Council is achieving value for

money. This report sets out the proposed refund clarifications and new fees for services within the Private Sector Housing Team in Re. Any fees which are being increased by less than the rate of inflation plus 2% are not included in this report as their approval method is via a Delegated Powers Report.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 It is recommended that the Housing Committee consider the proposed new fee for 2019/20 as it is considered good practice to review fees and charges to ensure that the costs of providing the services are recouped.
- 2.2 A detailed scheme for refunds for HMO Licensing applications is needed to remove any ambiguity about when a refund may or may not be made.
- 2.3 The extra charge for non-payment of the second HMO licensing fee is proposed as chasing payments takes up officer time and as such has a cost to the Council.
- 2.4 A new Housing Consultation Fee is proposed for landlords wishing to seek schematic consultations without the need for a property inspection.
- 2.5 The Housing and Planning Act 2016 has extended the powers to local authorities and tenants in relation to Rent Repayment Orders (RRO). Tenants can seek rent repayment through a RRO where one of the specified offences relates to housing and certain criteria are met. To make an application for an RRO, a tenant needs to submit a claim to the First-tier Tribunal which sets out the reasons for the claim and the dates to which it relates. There is no statutory obligation on local housing authorities to support a claim by a tenant for an RRO. The introduction of this fee would enable this service to be provided to tenants, resources permitting.

## **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 The alternative approach would be not to review these fees. This is not however considered to be good practice and would potentially expose the Council to the risk of not recovering the costs of the provision of the service, or potentially, over recovering. This would not be appropriate where the basis for charging is limited to cost recovery.
- 3.2 Given the financial pressures currently faced by the Council the only viable option for continuing to provide services is to levy an appropriate fee or charge.

## **4. POST DECISION IMPLEMENTATION**

- 4.1 If the Committee is minded to approve the recommendation then the fees will be referred to the Policy and Resources Committee for consideration and approval as part of the Council wide budget setting. Once the budget is approved by full Council the fees and charges will be posted on the Council's website and, where a statutory duty requires it, advertised in the approved

publication and appropriate location. The new fees and charges will be implemented from 1st April 2019.

## **5. IMPLICATIONS OF DECISION**

### **5.1 Corporate Priorities and Performance**

- 5.1.1 The Corporate Plan 2015-2020 is based on the core principles of fairness, responsibility and opportunity to make sure Barnet is a place:
- Of opportunity, where people can further their quality of life
  - Where people are helped to help themselves, recognising that prevention is better than cure
  - Where responsibility is shared, fairly
  - Where services are delivered efficiently to get value for money for the taxpayer

The Council's priorities include:

- High quality services maintained whilst reducing unit costs to the lowest amongst Barnet's statistical neighbours.

- 5.1.2 Fees and charges need to be reviewed to ensure value for money and cost recovery. This complies with the 2015-2020 Corporate Plan priority for Barnet to be in the lowest 25% of all Councils (Boroughs and County Councils) for expenditure per head of population. The Fees and Charges review is a means of ensuring that net costs are kept under control.

### **5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

- 5.2.1 **Finance & Value for Money:** With public and Member expectations increasing, the review of fees and charges ensures that sufficient resources are made available to manage and prioritise those expectations.
- 5.2.2 All fees and charges will ensure effective cost recovery for delivering the service; prices listed do not include VAT, which will only be charged where indicated.
- 5.2.3 The Constitution requires that all new charges and charges that are proposed to be increased by more than inflation plus 2%, are agreed by the relevant Theme Committee and also reported to Policy and Resources Committee for noting. CPI annual inflation for July 2018 was 2.5%.
- 5.2.4 **Procurement:** At this time there are no procurement implications.
- 5.2.5 **Staffing:** At this time there are no staffing implications.

5.2.6 **Property:** At this time there are no property implications.

5.2.7 **IT:** At this time there are no IT implications.

5.2.8 **Sustainability:** At this time there are no sustainability implications.

### **5.3 Social Value**

5.3.1 The Public Services (Social Value) Act 2012 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits.

5.3.2 Assisting tenants to reclaim rent from non-compliant landlords through Rent Repayment Orders will help deliver economic and social benefits for residents. It will help spread the message that poor housing conditions will not be tolerated in the borough.

5.3.3 In respect of refunds, there are currently a lot of arguments in cases where the landlord withdraws part the way through the licensing process about what, if any, refund they should receive. The new fee refund scheme seeks to provide clarity so Landlords can be certain of their position before investing in the applications.

### **5.4 Legal and Constitutional References**

5.4.1 Local authorities have a variety of powers to charge for specific statutory services set out in statute. The Local Government Act 2003 also provides a power to trade and a power to charge for discretionary services, the latter on a cost recovery basis. Discretionary services are those that a local authority is permitted to provide under statute but is not obliged to do so. The power to charge for discretionary services is not available to local authorities if there is a statutory duty to provide the service or if there is a specific power to charge for it or if there is a prohibition on charging.

5.4.2 Additionally, the Localism Act 2011 provides local authorities with a general power of competence that confers on them the power to charge for services but again these are subject to conditions/limitations similar to those noted above.

5.4.3 Where a local authority has a duty to provide a statutory service free of charge to a certain standard, no charge can be made for delivery to that standard. Should a request be made, however, for delivery above and beyond that standard, this may constitute a discretionary service for which a charge could be made.

5.4.4 There is a variety of legislation permitting charging for different services, some

of which set prescribed fees and charges (or the range of charges for a given service), and others which allow discretion based on costs of providing the service.

5.4.5 Article 7 of the Council's Constitution, 'Committees, Forums, Working Groups and Partnerships' sets out the terms of reference of the Housing Committee including:

- Responsibility for housing matters
- including housing strategy, homelessness,
- social housing and housing grants,
- commissioning of environmental health functions for private sector housing.

5.4.6 Article 7 also states that Policy and Resources Committee are responsible for determining fees and charges for services which are the responsibility of the committee.

5.4.7 The Housing and Planning Act 2016 has extended the powers to local authorities and tenants in relation to Rent Repayment Orders (RRO). There is no statutory obligation on local housing authorities to support a claim by a tenant for an RRO. The introduction of this fee would however enable this service to be provided, resources permitting.

5.4.8 In line with *Hemming v Westminster*, the Council has a Fee 1 and Fee 2 for HMO Licences. Fee 1, the application fee, relates solely to the cost of authorisation procedures (ie, the costs associated with reviewing an application and granting / refusing a licence). Following a successful application, licence applicants are subsequently charged a Fee 2, which is a fee relating to the costs of administering and enforcing the relevant licensing framework. Unsuccessful applicants only need pay the initial fee. This report provides clarity in relation to refunds that will apply in certain situations.

## **5.5 Risk Management**

5.5.1 The fees proposed within this report are based on recovery of costs incurred by the Council. Efforts have been made to limit the charge increases and consideration has been given to the charges adversely affecting demand for the services as well as the need to recoup the cost of providing the service. There will nonetheless remain an element of reputational risk and challenge.

## **5.6 Equalities and Diversity**

5.6.1 The Corporate Plan 2015-2020 sets the Strategic Equalities Objective, which is: that citizens will be treated equally, with understanding and respect, and will have equal access to quality services which provide value to the tax payer. Changes to policies and services are analysed in order to assess the

potential equalities impacts and risks and identify any mitigating action possible before final decisions are made.

5.6.2 The Equality Act 2010 sets out the Public Sector Equality Duty which requires public bodies to have due regard to the need to:

- eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not
- foster good relations between persons who share a relevant protected characteristic and persons who do not

5.6.3 The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

5.6.4 The proposed fees and charges have been reviewed against the protected characteristics and it is considered that there will not be any specific adverse impact on any of the groups.

5.6.5 It is considered that HMO licensing and housing enforcement action requiring the improvement of accommodation has an overall positive impact for landlords, tenants, residents and businesses by virtue of the potential improvement to the quality and management of accommodation in the borough.

5.6.4 In addition there are potential benefits arising from the increased choice of high quality, well-managed affordable housing.

## **5.7 Consultation and Engagement**

5.7.1 The fees and charges will be reviewed by Policy and Resources Committee and will be included within the Council wide budget consultation.

## **6 BACKGROUND PAPERS**

6.1 None

**Appendix 1 – Proposed Refunds and New Fees from 1<sup>st</sup> April 2019/20 – Note any charge increase less than 4.5% (2% plus estimated 2.5% inflation) being dealt with via DPR).**

Description of charge	Unit	Subject to VAT	Current charge excluding VAT	Proposed Charge excluding VAT	Legislative provision to charge	Basis for charging
HMO Licensing pre inspection refund (to cover preliminary administration costs)	Per licence	no	New	Fee 2 will not be charged and a refund will be considered if a property has not been inspected. £57 will be retained of Fee 1 to cover the Council's administrative costs.	S63 Housing Act 2004	Cost recovery
HMO Licensing post inspection, where no paperwork is drafted refund (to cover preliminary administration costs and inspecting officer costs)	Per licence	no	New	Fee 2 will not be charged. £272 will be retained of Fee 1 to cover the Council's administrative costs.	S63 Housing Act 2004	Cost recovery
HMO Licensing post inspection refund when the property is found not to be licensable (to cover preliminary administration costs and inspection)	Per licence	no	New	Fee 2 will not be charged. £164 will be retained of Fee 1 to cover the Council's administrative costs.	S63 Housing Act 2004	Cost recovery
Refund clarification for revocations	Per licence	no	New	Where an HMO licence is revoked there is no refund	S63 Housing Act 2004	Cost recovery
HMO Licensing additional fee for failure to pay 2 <sup>nd</sup> HMO licensing fee within 48 hours of request	Per licence	no	New fee	£15 in addition of Fee 2	S63 Housing Act 2004	Cost recovery

<b>Housing Consultation Fee (up to 2 hours)</b>	Per consultation	yes	New fee	£100 (additional hours charged – up to £61/hour)	S1 Localism Act 2011	Commercial rate
<b>Rent Repayment Order (RRO) support service</b>	Per RRO	yes	New Fee	£100 (additional hours charged – up to £61/hour)	S1 Localism Act 2011	Commercial rate