

	<h2>Housing Committee</h2> <h3>8 February 2017</h3>
<p style="text-align: right;">Title</p>	<p>Private Sector Housing Fees and Charges 2017/18</p>
<p style="text-align: right;">Report of</p>	<p>Commissioning Director – Growth and Development</p>
<p style="text-align: right;">Wards</p>	<p>All</p>
<p style="text-align: right;">Status</p>	<p>Public</p>
<p style="text-align: right;">Urgent</p>	<p>No</p>
<p style="text-align: right;">Key</p>	<p>Yes</p>
<p style="text-align: right;">Enclosures</p>	<p>Appendix A – Proposed Fees and Charges 2017/18</p>
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Summary
<p>This report seeks to obtain approval for the proposed new and above inflation plus 2% fees and charges for 2017/18 to support the Commissioning Business Plan, and delivery of the front line service within the Private Sector Housing Team in Re</p>

Recommendations
<p>That the Housing Committee consider and approve the proposed fees and charges for 2017/18 as set out in Appendix A</p>

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 above inflation fee increases as well as new fees and charges for services within the Private Sector Housing Team in Re. Any fees and charges 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 Delegated Powers Report.

2. REASONS FOR RECOMMENDATIONS

- 2.1 It is recommended that the Housing Committee consider and approve the proposed fees and charges for 2017/18, as it is considered good practice to review fees and charges annually to ensure that the costs of providing the services are recouped and identified income targets for private sector housing are achieved.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The alternative approach would be not to review the existing fees and charges, and not to add new ones where appropriate. 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 recover, where the charge is set at a cost recovery level.
- 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 approves the recommendation then the fees and charges will be noted by the Policy and Resources Committee 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 2017.

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. The charges are discretionary to cover the cost of delivery.

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.

5.2.4 It can be seen from Appendix 1 that a number of proposed HMO fees are made up of Fee1 and a Fee 2; as explained in para 5.4.8., Fee 1 is payable at point of application, Fee 2 is payable by successful applicants.

5.2.5 **Procurement:** At this time there are no procurement implications.

5.2.6 **Staffing:** At this time there are no staffing implications.

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

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

5.2.9 **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 HMO licensing and housing enforcement action requiring the improvement of accommodation will deliver social, economic and environmental benefits for residents in relation to improvement in standards of the private rented sector.

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 Constitution, Responsibility for Functions, Annex A, sets out the terms of reference of the Housing Committee including:

- Promote the better integration of privately rented properties into the Borough's framework
- Be responsible for all matters related to Private Sector Housing including Disabled Facility Grants
- Be responsible for housing licensing and housing enforcement

5.4.6 The Council's Constitution (21, Financial Regulations) also states: "For the fees and charges within their remit, theme Committees, Planning Committee and Licensing Committee must approve changes to fees and charges that are above inflation by 2% or more, the introduction of new fees and charges, and changes to fees and charges outside the normal annual cycle. Changes to fees and charges approved by theme Committees, Planning Committee and Licensing Committee must be reported to Policy and Resources Committee for noting.

5.4.7 In the case of *Hemming v Westminster*, the Supreme Court sought an opinion from the European Court of Justice regarding how such fees should be levied. It identified two different approaches to charging fees:

- Whereby a council charged a fee upon application (covering the costs of authorisation procedures) and a subsequent fee to successful applicants (covering the cost of administering and enforcing the framework) - the 'type A' approach, or
- Where a council charged a single fee on application covering all costs, on the basis that the relevant proportion of the fee would be refunded to unsuccessful applicants – the 'type B' approach.

The Supreme Court found the type A approach of charging two fees is permissible under the Services Directive but considered that the type B approach of charging a single fee was more problematic.

The European Court of Justice published its ruling on the issue on 16 November 2016 ruling that the type B approach of fee setting is not compatible with the Services Directive, arguing that the Directive '*precludes the requirement for the payment of a fee, at the time of submitting an application for the grant or renewal of a authorisation, part of which corresponds to the costs relating to the management and enforcement of the authorisation scheme concerned, even if that part is refundable if that application is refused.*' Therefore, pursuant to the Hemming case, the Council needs to amend its fee structures to ensure that application fees relate solely to the cost of authorisation procedures (i.e. the costs associated with reviewing an application and granting / refusing a licence). Under the type A approach, on which the Supreme Court ruling still holds, successful licence applicants should subsequently be charged an additional fee relating to the costs of administering and enforcing the relevant licensing framework.

- 5.4.8 Where applicable, when an application is made an initial application fee must be paid by all applicants. This covers the costs of the application and authorisation procedures. A subsequent fee is then payable by successful applicants. This covers the cost of administering and enforcing the licensing framework. Unsuccessful applicants only need pay the initial fee.

5.5 Risk Management

- 5.5.1 The fees and charges proposed within this report are for various areas of work and 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 There was no specific consultation on the fees and charges in this report, a number of which are small increases on previous charges and others which are supplemental to existing services/fees and charges. As noted above, the fees and charges will be noted by Policy and Resources Committee and will be included within the Council wide budget consultation.

5.7.2 The final savings will be agreed by Policy and Resources Committee on 16th February 2017 and Full Council on the 3rd March 2017

6 BACKGROUND PAPERS

6.1

Appendix 1 – Proposed Fees and Charges from 1st April 2017/18¹

Description of charge	Unit	Subject to VAT	Current charge excluding VAT	Proposed Charge excluding VAT	Percentage change
Licence fee up to 5 units of accommodation (paper application) for 5 years	Per HMO	VAT not applicable	£1,008.00	£1,167 made up of: Fee1-£563 Fee 2-£604.	New charging mechanism due R (on the application of <i>Hemmings (t/a Simply Pleasure Ltd) and others</i>) v <i>Westminster City Council</i> [2015] UKSC 25
Assisted Licence fee up to 5 units of accommodation (paper application) for 5 years	Per HMO	VAT not applicable	£1,202.00	£1,276 made up of: Fee1-£672 Fee 2-£604	New charging mechanism due R (on the application of <i>Hemmings (t/a Simply Pleasure Ltd) and others</i>) v <i>Westminster City Council</i> [2015] UKSC 25
Licence fee up to 5 units of accommodation (on-line application - when available) for 5 years	Per HMO	VAT not applicable	£958.00	£1,147 made up of Fee1-£530 Fee 2-£617	New charging mechanism due R (on the application of <i>Hemmings (t/a Simply Pleasure Ltd) and others</i>) v <i>Westminster City Council</i> [2015] UKSC 25

¹ Any charge increase less than 3.8% (2% plus estimated 1.8% inflation) being dealt with via DPR.

Assisted Licence fee up to 5 units of accommodation (online application-when available) for 5 years	Per HMO	VAT not applicable	£1,153.00	£1,244 made up of Fee1-£627 Fee 2-£617	New charging mechanism due <i>R (on the application of Hemmings (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2015] UKSC 25</i>
Description of charge	Unit	Subject to VAT	Current charge excluding VAT	Proposed Charge excluding VAT	Percentage change
HMO Licensing Fee for a 1 year licence (paper application)	Per HMO	VAT not applicable	£655.00	£760 made up of Fee1-£563 Fee 2-£197	New charging mechanism due <i>R (on the application of Hemmings (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2015] UKSC 25</i>
HMO Licensing Assisted fee for a 1 year licence (paper application)	Per HMO	VAT not applicable	£849.00	£869 made up of Fee1-£672 Fee 2-£197	New charging mechanism due <i>R (on the application of Hemmings (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2015] UKSC 25</i>
HMO Licensing Fee for a 1 year licence (on line application)	Per HMO	VAT not applicable	£606.00	£ 727 made up of Fee1-£530 Fee 2- £197	New charging mechanism due <i>R (on the application of Hemmings (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2015] UKSC 25</i>

HMO Licensing Assisted fee for a 1 year licence (on line application)	Per HMO	VAT not applicable	£800.00	£824 made up of Fee1- £627 Fee 2- £197	New charging mechanism due <i>R (on the application of Hemmings (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2015] UKSC 25</i>
Description of charge	Unit	Subject to VAT	Current charge excluding VAT	Proposed Charge excluding VAT	Percentage change
Renewal fee up to 5 units of accommodation (paper application) for 5 years	Per HMO	VAT not applicable	£911.00	£998 made up of Fee1- £394 Fee 2- £604	New charging mechanism due <i>R (on the application of Hemmings (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2015] UKSC 25</i>
Assisted Renewal fee up to 5 units of accommodation (paper application)for 5 years	Per HMO	VAT not applicable	£1,106.00	£1,035 made up of of Fee1-£431 Fee 2- £604	New charging mechanism due <i>R (on the application of Hemmings (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2015] UKSC 25</i>
Renewal fee up to 5 units of accommodation (on-line application, when introduced) for 5 years	Per HMO	VAT not applicable	£862.00	£977 made up of Fee1-£360 Fee 2- £617	New charging mechanism due <i>R (on the application of Hemmings (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2015] UKSC 25</i>

Assisted Renewal fee up to 5 units of accommodation (on-line application, when introduced)for 5 years	Per HMO	VAT not applicable	£1,056.00	£ 1,014 made up of Fee1- £397 Fee 2- £617	New charging mechanism due <i>R (on the application of Hemmings (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2015] UKSC 25</i>
Description of charge	Unit	Subject to VAT	Current charge excluding VAT	Proposed Charge excluding VAT	Percentage change
Renewal fee up to 5 units of accommodation (paper application) for 1 year	Per HMO	VAT not applicable	New fee	£591 made up of Fee1- £394 Fee 2- £197	1 year licences were previously adopted for new licence applications but not renewals.
Assisted Renewal fee up to 5 units of accommodation (paper application)for 1 year	Per HMO	VAT not applicable	New fee	£628 made up of Fee1- £431 Fee 2- £197	1 year licences were previously adopted for new licence applications but not renewals.
HMO Licensing Renewal fee for a 1 year licence (on line application, when introduced)	Per HMO	VAT not applicable	New fee	£557 made up of Fee1- £360 Fee 2- £197	1 year licences were previously adopted for new licence applications but not renewals.
HMO Licensing Assisted Renewal fee for a 1 year licence (on line application, when introduced)	Per HMO	VAT not applicable	New fee	£ 594 made up of Fee1- £397 Fee 2- £197	1 year licences were previously adopted for new licence applications but not renewals.
Each extra unit of accommodation over 5 units (assuming a standard fee is for up to a 5 room HMO)	Per unit	VAT not applicable	£24.00	£25.00	4.17%

Fire risk assessment for standard HMO	Each	VAT applicable	New fee	Up to £400 for a standard HMO plus hourly rate up to £84 for revisits and/or additional advice.	New service to assist landlords in complying with their legal requirements. This is not a service previously provided by LBB or Re.
Description of charge	Unit	Subject to VAT	Current charge excluding VAT	Proposed Charge excluding VAT	Percentage change
HMO Licensing refunds	Each			Where a property is no longer licensable or a licence is revoked there is no refund as costs will already have been incurred. A refund will be considered if a property has not been inspected. £62.00 will be retained to cover the Council's administrative costs. After the inspection of the house the HMO inspection service fee or new HMO fee will be charged as appropriate. If any licensing paperwork has been issued there is no refund.	n/a