

**HOMES POLICY DEVELOPMENT GROUP
15 NOVEMBER 2022**

PRIVATE SECTOR HOUSING FEES AND CHARGES 2022/23 and 2023/24

Cabinet Member: Cllr Stuart Penny, Cabinet Member for Housing

Responsible Officer: Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing

Reason for Report and Recommendation: To provide Members with the revised fees and charges for locally-set Private Sector Housing statutory functions delivered by the Public Health and Housing Options Service. The report also outlines the fees and charges for non-locally set fees in the same service area which are not subject to change but for which an updated policy on financial penalties applies in some areas as set out.

Recommendations:

- 1. That Cabinet approve the revised locally-set fees and charges as set out in Annexes 1 and 2**
- 2. That the Homes PDG recommends that Cabinet approve the revised Policy on the Use of Financial Penalties in Annex 4**

Financial Implications: The revised, locally set fees and charges are set out in Annex 1 and 2 of the report. The fees have been updated to reflect, actual current service delivery costs as well as a recommendation above to apply further adjustments from 23/24 onwards. Any income generated from these activities is unpredictable based on the nature of enforcement action. It is therefore not possible to forecast any income levels for the year.

Budget and Policy Framework: There is no specific budget for enforcement activity so it is important that the service recovers the cost of enforcement activity where possible. The fees must be set within the scope of the legislation and the Enforcement Policy. The Council must also have a policy on the use of Civil Penalties as an alternative to prosecution. Recent legislative changes mean that the scope of financial penalties has changed and the Policy (in Annex 4) has been updated to reflect this.

Legal Implications: There are no major legal implications. Where there are specific provisions under legislation, statutory functions or discretionary services for fees to be charged then these are indicated in the body of the report.

Risk Assessment: There are no major risks. A failure to update the relevant fees and charges could mean we are not able to adequately recover costs where we are able to do so.

Equality Impact Assessment: An assessment is not necessary for this report. The charges are set, are applicable to the service being provided on a cost-recovery basis only and do not disadvantage any protected characteristics or specific groups.

Relationship to Corporate Plan: This report relates to the economy, homes and community elements for the corporate plan priorities, by recharging for officer time in relation to enforcement activities, Houses in Multiple Occupation (HMO) licensing and recovering costs associated with largely statutory services.

Impact on Climate Change: None directly relevant to this report.

1.0 Introduction

- 1.1 Private Sector Housing within Public Health and Housing Options has a duty to ensure that private accommodation meets minimum standards. In particular there are regulations for the licensing, management and use of houses in multiple occupation (HMO), carbon monoxide detectors and smoke alarms, electrical safety and energy efficiency standards, and hazards within the home.
- 1.2 All enforcement activities and relevant fees and charges within this report are set out in compliance with the legislation and the Mid Devon District Council Enforcement Policy number PH/EP/09/20, adopted in January 2021.
- 1.3 The table of fees and charges will be published on the Council website for transparency and openness.

2.0 Changes to the fees and charges – locally set fees

- 2.1 A breakdown of the Council's locally-set current and proposed fees and charges in respect of its private sector housing functions is included in **Annex 1** (2022/23) and **Annex 2** (2023/24).
- 2.2 In contrast with other areas of fee setting where the service provided is wholly discretionary, these fees and charges almost wholly relate to statutory functions and powers where there is provision to set the fee locally within the constraint that it is based on full cost-recovery only, therefore without a profit element.
- 2.3 These fees were previously reviewed in 2020 and costs have increased alongside some service efficiencies meaning less time is required to deliver elements of some functions. As a result, the fees and charges increases are variable between approximately 11 – 14% in-year for 22/23 excluding the works in default administrative change (50% increase) and will apply from date of the Cabinet decision, if agreed, with allowance for call-in.
- 2.4 A further update for 23/24 onwards has been calculated based on predicted, forward adjusted officer hourly rates provided by the Finance team. This has resulted in an additional, variable increase from the proposed 22/23 baseline of approximately 3-4% excluding the HMO public register copy costs.

HMO Licensing

- 2.5 Section 63(3) of the 2004 Act gives the Council the power to recover all reasonable costs associated with the administration of the HMO licensing function.

- 2.6 Previously the application fees have been charged as a lump sum payable by the applicant on submission of the application. To ensure the Council are compliant with Section 63(3) of the 2004 Act and taking account of recent case law, it is proposed that the licence application fees are instead applied in two parts to reflect the work involved at each stage. This ensures that in those cases which do not proceed to a full licence the Council do not recover costs for work that has not been completed.
- 2.7 The officer time and resources involved in processing a new application have been reviewed and a revised fee calculated. This is one area in particular where direct and indirect cost-increases have been offset by process efficiencies in elements of the licensing process, resulting in quite variable adjustments.

Mandatory HMO Licensing Public Register

- 2.8 Section 232 of the Housing Act 2004 allows the Council to make a reasonable fee for supplying a person with a copy of the register if requested.
- 2.9 A nominal administration fee for providing the full register in electronic form or hardcopy was introduced in 2019-20. It is proposed that a small increase should now be applied to cover increasing costs associated with printing etc.
- 2.10 An extract from the register will be provided on the Council website free of charge; the charges will only apply to requests for the full register.

Charging for enforcement action

- 2.11 The Housing Act 2004 section 49 gives the local housing authority the power to charge for certain enforcement actions. The provisions are clear that only the costs associated with determining whether enforcement action is necessary, identifying the type of action and the serving of the notice can be recovered.
- 2.12 All charges must be reasonable and there is currently no set maximum fee applicable under the legislation. The amount of officer time involved in each course of action is difficult to predict as each intervention will present a unique set of circumstances. Therefore, the average officer time and resources for carrying out these functions have been calculated and a standard fee is proposed in Annexes 1 and 2.
- 2.13 The Enforcement Guidance to the Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005 No 3208) also advises that in deciding whether to make charges and the level of those charges, the Council should take into account the personal circumstances of the person or persons against whom the enforcement action is being taken. Where discretion is applied this will be determined on an individual basis and recorded.
- 2.14 The charge can be applied to all enforcement action under part one of the Act; we currently apply the charge to Improvement Notices, Prohibition Orders, Emergency Remedial Action, Emergency Prohibition Orders and Demolition Orders.

- 2.15 A demand for payment of the charge will be applied upon service of prohibition orders, emergency remedial action notices and emergency prohibition orders. Demolition orders will also be charged upon service with an addition of the survey cost that is required as part of the serving of the order.
- 2.16 It is not considered appropriate to charge for the service of hazard awareness notices as they are low risk and there is no penalty for non-compliance. It is a simply a formal recommendation of the work to be carried out and it is not placed as a local land charge.
- 2.17 Where an improvement notice is served the charge will be applied for non-compliance only as is consistent with the Council's adopted Enforcement Policy. Taking this approach encourages compliance with notice requirements and will improve housing standards generally.

Immigration housing request visits

- 2.18 Historically applications to live and/or work in the UK have required the local housing authority to undertake an inspection of the proposed living accommodation to check its suitability and ensure there would not be overcrowding. These visits no longer need to be undertaken by the local housing authority as part of an application but occasionally the team will receive a request to carry out a visit and provide a report.
- 2.19 As this is not a statutory requirement it is acceptable for the Council to charge for the provision of this service. The officer time and resources involved in processing a request including the inspection, assessment and follow up report, have been reviewed and a revised fee calculated.

Works in default

- 2.20 As set out by provisions contained in Schedule 3 to Part 3 of the Housing Act 2004, it is proposed that we continue to add interest on all costs associated with carrying out works in default (including the costs of the work itself) where the demand for payment remains unpaid after the initial 28 days. An increase to the administration fee is proposed bringing this to £150 administrative with an interest rate of 3% applied per annum for 22/23 and £155/3% from 23/24.

3.0 Changes to the fees and charges – non-locally set fees

- 3.1 The non-locally set fees applicable to the private sector housing functions are set out in **Annex 3** and below. These are defined and fixed in legislation and cannot be adjusted locally. This legislation has not been amended in relation to fees since the previous fee update in 2020 therefore no changes can be introduced but are set out again for transparency. The Policy in relation to Financial Penalties has been updated as set out below but does not amend the relevant fees in that area.

Financial penalties for Housing Act offences

- 3.2 The Housing and Planning Act 2016 introduced an amendment to the Housing Act 2004 to allow local housing authorities to impose a financial penalty on an

owner of a property where they have failed to comply with provisions under the 2004 Act, as an alternative to prosecution. The maximum penalty is £30,000 and this has not been changed. An updated Policy in relation to the use and calculation of a financial penalty is attached in Annex 4.

Penalty Charges for offences under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

- 3.3 The Council has already introduced the maximum penalty of £5,000 with a 25% reduction if payment is made within 14 days of the demand for payment, in accordance with the statement of intent. No changes are therefore proposed.

Financial penalties for breaches of the Electrical Safety Standards

- 3.4 Section 123 of The Housing and Planning Act 2016 makes provision for the local housing authority to impose a financial penalty on an owner of a property where they have failed to comply with the electrical safety standards regulations.
- 3.5 The decision whether to impose a financial penalty (or the level of that penalty) will be made in accordance with the Policy on the Use of Financial Penalties as an Alternative to Prosecution within Private Sector Housing which is in Annex 4. No changes are therefore proposed.

Penalties for offences under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended 2016

- 3.6 The regulations require that private rented domestic properties meet a minimum energy performance rating before they can be rented out. Landlords of certain domestic properties may not grant a new tenancy or continue to let their property if the EPC (energy performance certificate) rating is F or G.
- 3.7 Local authorities have responsibility for enforcing these regulations which means it can be enforced by either Trading Standards Officers or Environmental Health Officers. The local housing authority is the enforcing body for the domestic private rented part of the regulations which sits within Public Health and Housing Options at Mid Devon.
- 3.8 Non-compliance with any notice served under the regulations may result in a financial penalty. The regulations set the maximum amount of penalty that can be administered which the Council has already introduced. No changes are therefore proposed.
- 3.9 In addition to a financial penalty the Council may serve a Publication Penalty. This means that we can publish details of the landlords breach on a publicly accessible part of the PRS Exemptions Register and should remain on the register for a minimum of 12 months. Details are set out in the Policy in Annex 4.

Financial penalties for breaches of a banning order

- 3.10 The Housing and Planning Act 2016 gives provision under section 23 for the Council to impose a financial penalty if a person breaches a banning order.
- 3.11 If the breach continues for more than 6 months an additional financial penalty may be applied for each 6 month period.
- 3.12 The decision whether to impose a financial penalty (or the level of that penalty) will be made in accordance with the Policy in Annex 4 and no changes to this penalty is proposed.

4.0 Recommendations

- 4.1 That Cabinet approve the revised locally-set fees and charges for 2022/23 as set out in Annexes 1 and 2.
- 4.2 That Cabinet approve the revised Policy on the Use of Financial Penalties in Annex 4.

Contact for more Information: Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing snewcombe@middevon.gov.uk or Tanya Wenham, Operations Manager for Public Health & Housing Options twenham@middevon.gov.uk

Circulation of the Report:

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Annex 1 – Locally-Set Fees 2022/23 Private Sector Housing

HMO licensing New Application				
	Fee 2022/23			Previous Fee 2021/22
New licence	Part 1	Part 2	Total fee	
3-5 Units	£785	£262	£1047	£902
6-10 units	£871	£262	£1133	£974
11+ units	£957	£262	£1219	£1046

HMO licensing Renewal			
	Fee 2022/23		Previous Fee 2021/22
Renewal			
3-5 Units	£743		£647
6-10 units	£786		£683
11+ units	£829		£719

HMO Licensing Public Register		
	Charge 2022/23	Previous Charge 2021/22
Request for full register electronically	£6	£5
Request for full register hardcopy	£9	£8

Charging for enforcement action		
	Charge 2022/23	Previous Charge 2021/22
Improvement notice	£660	£553
Prohibition Order	£660	£553
Emergency Remedial Action	£660	£553
Emergency prohibition order	£660	£553
Demolition Order	£660 plus survey fees	£553 plus survey fees

Immigration housing request visits		
	Fee 2022/23	Previous Fee 2021/22
All requests	£410	£330

Works with or without agreement (work in default)		
	Charge 2022/23	Previous Charge 2021/22
Interest on works and associated costs	Cost of the work plus officer time (including travel) plus £150 admin fee. 3% interest per annum added where invoice is un-paid after the initial 28 days.	Cost of the work plus officer time (including travel) plus £100 admin fee. 3% interest per annum added where invoice is un-paid after the initial 28 days.

Annex 2 – Locally-Set Fees 2023/24 Private Sector Housing

HMO licensing New Application						
	Fee 2023/24			Previous fee 2022/23		
New licence	Part 1	Part 2	Total fee	Part 1	Part 2	Total fee
3-5 Units	£816	£270	£1086	£785	£262	£1047
6-10 units	£906	£270	£1176	£871	£262	£1133
11+ units	£995	£270	£1265	£957	£262	£1219

HMO licensing Renewal		
	Fee 2023/24	Previous fee 2022/23
Renewal		
3-5 Units	£768	£743
6-10 units	£813	£786
11+ units	£858	£829

HMO Licensing Public Register		
	Charge 2023/24	Previous Charge 2022/23
Request for full register electronically	£6	£6
Request for full register hardcopy	£9	£9

Charging for enforcement action		
	Charge 2023/24	Previous Charge 2022/23
Improvement notice	£689	£660
Prohibition Order	£689	£660
Emergency Remedial Action	£689	£660
Emergency prohibition order	£689	£660
Demolition Order	£689 plus survey fees	£660 plus survey fees

Immigration housing request visits		
	Fee 2023/24	Previous Fee 2022/23
All requests	£431	£410

Works with or without agreement (work in default)		
	Charge 2023/24	Previous Charge 2022/23
Interest on works and associated costs	Cost of the work plus officer time (including travel) plus £155 admin fee. 3% interest per annum added where invoice is un-paid after the initial 28 days.	Cost of the work plus officer time (including travel) plus £150 admin fee. 3% interest per annum added where invoice is un-paid after the initial 28 days.

Annex 3 – Non-Locally Set Fees Private Sector Housing

Financial (civil) penalties	
	Penalty
Housing Act offences	Financial penalty as alternative to prosecution up to £30,000
Electrical Safety Standards	Up to £30,000
Breach of a banning order	Up to £30,000

Smoke and carbon monoxide alarms	
	Penalty
Failing to comply with a remedial notice	£5000 reducing by 25% if paid within 14 days of demand

Energy Efficiency Regulations		
	Penalty	
Renting out a non-compliant property	Less than three months in breach	£2000 and Publication penalty
	Three months or more in breach	£4000 and Publication penalty
Providing false or misleading information on the Exemption register	£1000 and Publication penalty	
Failing to comply with a compliance notice	£2000 and Publication penalty	

- These penalties are applied to each property where there is a breach to a maximum of £5000 per property
- Publication penalty – some of the details of the financial penalties are published on the publicly accessible part of the PRS Exemptions Register

Annex 4 - Policy on the Use of Financial Penalties (separate document)