

MIDDLESBROUGH COUNCIL	
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Report of:	Director for Environment and Community Services
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Relevant Executive Member:	The Mayor and Executive Member for Adult Social Care and Public Health
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Submitted to:	Executive
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Date:	4 September 2024
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Title:	Mandatory licensing of Houses in Multiple Occupation (HMO): Review of the licensing fees.
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Report for:	Decision
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Status:	Public
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Strategic priority:	Physical environment
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Key decision:	Yes
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Why:	Decision(s) will have a significant impact in two or more wards
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Subject to call in?:	Yes
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Why:	Non-urgent
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Proposed decision(s)	
	That Executive approves the review of the HMOs licensing process and the new fee structure

Executive summary	
	<p>This report sets out the Council’s role in the mandatory licensing of Houses in Multiple Occupation (HMOs) and the fees charged to administer the scheme. A licensable HMO is a property that is occupied by five or more persons who do not form a single household and who share one or more basic amenities such as a toilet, bathroom or kitchen. Small HMOs are properties occupied by less than five persons who share</p>

common facilities but such properties do not require a mandatory licence and are therefore not subject to the content of this report.

The licensing functions and the fee structure have not been reviewed since 2010. This report sets out the proposed changes to the delivery of the licensing functions and the new fee structure to meet the costs of delivering this statutory function. The implications of the recommendation(s) have been considered by the appropriate officers of the Council and are set out in the main body of the report.

1. Purpose

1.1 To seek Executive approval for the Houses in Multiple Occupation fee structure and reviewed licensing process.

2. Recommendations

2.1 That the Executive Member for Environment approves the fee structure set out in paragraph 4.10 and Appendix 1, and the review of the HMO licensing process.

3. Rationale for the recommended decision(s)

3.1 The current fee and fee structure for HMO licensing in Middlesbrough comprises of a single payment and, subject to any annual council-wide inflationary increase, the fee has not been reviewed for approximately 12 years. Fees and charges should be reviewed periodically and adjusted to reflect changes in operating costs. The Housing Act 2004 (section 63) enables Local Authorities to require the payment of a fee to accompany the application for a licence. Fees charged are to cover all costs incurred in the carrying out the licensing function under the Act. The licensing scheme should operate on a full- cost recovery basis with all the costs borne by the licence-holders and no burden placed on the public purse. A review was required to ensure that the staffing resource was adequate for the delivery of the licensing functions and ensure the operating costs of scheme are being met by the income from the licence fee. The following changes in the licensing process have been identified which impact on the required staffing resource:

- I. A need for interim additional housing inspections during the five-year licence period to ensure the properties are being well maintained and managed.
- II. The additional work required to ensure that gas safety certificates and electrical safety reports are submitted by property owners to the Council annually or when requested.
- III. The time taken for the administration of licensing larger HMOs. Historically, larger HMOs have benefitted from comparatively low licence fees, the inspection of larger HMOs takes considerably more time than smaller properties.
- IV. Management and enforcement costs.

3.2 In relation to the charging structure, the current licence fees are charged as a single payment. In accordance with court judgements, licence fees must be charged in two-parts. A Part 1 payment covers the costs of processing and administering the licence

application and the Part 2 payment covers the costs of the ongoing administration, management, investigation of unlicensed properties, compliance checks with licence conditions, officer training and development, enforcement of the licensing scheme and associated overhead costs. The Part 1 application fee is non-refundable should the application be unsuccessful. The income from each HMO licence issued is spread over the five-year duration of the licence.

3.3 This subject has not been examined by scrutiny.

4. Background and relevant information

4.1 Since 2006, Middlesbrough Council has delivered a statutory (mandatory) licensing scheme for HMOs occupied by five or more unrelated people who share amenities such as a bathroom, kitchen or living space. This is a duty under Part 2 of the Housing Act 2004. Owners of HMOs are required to submit a licence application and pay a fee. Environmental Health Officers then carry out an inspection of the property to check conditions meet safety standards and good management arrangements are in place. Once granted a licence is usually issued for a five-year period. Currently, HMOs are only re-inspected during the five-year period if complaints are made by tenants or others regarding standards or management issues and regulatory action may be necessary. On an annual basis gas safety and electrical safety certificates are required to be submitted to the local authority by the property owners.

4.2 HMOs provide more affordable single or double person accommodation and, due to Middlesbrough's demographic, there is a considerable demand for this type of accommodation, particularly from the most vulnerable tenants. HMO accommodation is often used for emergency accommodation for the homeless. The number of HMOs has increased in recent years, providing more accommodation for a growing student market as well as meeting the need for low-cost single-person accommodation.

4.3 There are currently around 1730 people living in around 245 licensed HMOs in Middlesbrough, the majority of these offer a compliant standard of accommodation. There are HMO properties that operate illegally without a licence. These only become known to officers when tenants make complaints or intelligence is shared between regulatory bodies, including review of Council tax records and information sharing with other agencies, such as the Fire Brigade. It is difficult to quantify the extent of unlicensed HMOs.

4.4 Local Authorities set their own fees to recover the costs of administering and enforcing mandatory HMO licensing. The current fee structure (2024/2025) is £755.42 for HMOs with 5 bedrooms plus a further £24.98 for each additional bedroom. This fee is for a five year licence.

4.5 The percentage breakdown of HMO properties currently licensed by size (number of bedrooms) is:

Number of bedrooms	% of HMO properties
5 bedrooms	45%
6 – 9 bedrooms	43%
10 - 44 bedrooms	12%

4.6 The number of HMOs that require licensing varies from year to year. Based on current figures the number of licences and income (at current fee rates per para 4.4) is shown below:

Year	No of licences	Income (£)
23/24	71	54,334
24/25	83	63,000
25/26	40	31,253
26/27	28	21,846
27/28	14	10,445

4.7 As licences are issued for a 5-year period, the current average income per year, based on 2023/2024 fees is £36,175 which equates to a 0.6 full-time-equivalent Environmental Health Officer. A review of the work involved in the HMO licensing function has been undertaken and this has indicated that a 1.0fte Environmental Health Officer staffing resource is required annually to carry out this function.

4.8 The Public Protection Service delivers the HMO licensing function using more than one officer, with the collective resource equating to a 1fte Environmental Health Officer. This ensures continuity and resilience in delivering this function. The income from the proposed licensing fees, subject to annual staffing uplift (%), will cover the costs incurred by the Council in delivering this function. Should the Council see an increase in the number of licensable HMOs, identified through pro-active investigation or an increase in the prevalence of large HMOs in the local housing market, any additional income will be reinvested into the delivery of the Council's duty under Part 2 of the Housing Act 2004. Income and fees will also be reviewed annually to ensure they are set at the correct level.

4.9 In calculating the resource required an estimation of the potential number of HMOs over the next 5 years is required. There are several market factors which may impact on the overall number of HMOs that come within the scope of mandatory licensing:

- the cost of mortgages affecting the affordability and availability of financing for HMO purposes;
- the increasing availability of purpose-built student accommodation in and around Middlesbrough, which may draw away some demand for more traditional terraced HMO properties in popular student areas in the town centre;
- low demand for housing; and
- an overall increase in the private rental sector.

4.10 Consideration has also been given to the proposed change to Middlesbrough's local planning policy in relation to HMOs. It is proposed that any change of use of a dwelling house to a house in multiple occupation will require approval through the planning process. The consultation on this policy change will take around 2 years and may impact on the number of HMOs in Middlesbrough.

4.11 For the purposes of this exercise it is estimated that the number of licensed HMOs in Middlesbrough will remain between 230 and 260 over the next five years. **Appendix 1** gives details of the proposed new fee structure and the income. The fees are for a 5-year licence (set for 2024-25 rates), these will be uplifted annually to cover the cost of the annual pay uplift.

4.12 In terms of resources, using the estimated profile of 245 HMOs, ranging from 5 bedrooms to 44 bedrooms, the total expected income over a five-year period amounts to £283,500. Whilst the number of licences varies annually, the average annual income over a five-year period will fund a 1.0 FTE (Environmental Health Officer (EHO)) post, at a total cost of £56,700 per annum (salary and costs).

5. Other potential alternative(s) and why these have not been recommended

5.1 The implementation of a new fee and fee structure will enable the Council to deliver its regulatory requirements and deliver a neutral budget cost-effective licensing scheme. It will also help to deliver the Council's aspiration of providing high quality, affordable housing for all.

5.2 The option to 'Do Nothing': This would result in the Council continuing to charge the current fees and applying a single fee scheme which would be contrary to recent legal determination. The HMO licensing scheme would have to operate within the current income received from application fees, with the current staffing resource which will restrict the delivery of the statutory function. In order to ensure that the licensing function is adequately administered it is likely that public funds would be required. There may also be legal challenge of the current one payment fee structure. The Council may be subject to appeals and associated costs.

6. Impact(s) of the recommended decision(s)

6.1 Financial:

Under Part 2 of the Housing Act 2004 when fixing the fees the Council may take into account all costs incurred by the authority in carrying out all their functions in relation to the administration and regulation of the licensing functions. The income from licence fees should therefore cover the costs incurred by the Council in delivering the HMO licensing function, including staff costs, training, admin, overheads, and management fee. This should be done on a cost neutral basis. The income from each HMO licence issued is spread over the five-year duration of the licence. Should the Council see an increase in the number of licensable HMOs, identified through pro-active investigation or an increase in the prevalence of large HMOs in the local housing market, any additional income will be reinvested into the delivery of the Council's duty under Part 2 of the Housing Act 2004. Any deficit will need to be recovered by an increase in future fees to be charged. The income and fees are reviewed annually to ensure they are set at the correct level.

Based on current projections, the number of properties requiring a HMO licence is 245 generating total income of £283,500 in a five year period (average £56,700 pa). The license fees will be reviewed annually in line with inflation. The costs associated with the HMO Licensing process are estimated to be £56,700 p.a. Full details are shown in Appendix 1.

The proposed fees will result in a fair, proportionate and cost neutral model for the delivery of the HMO licensing function, as required under Part 2 of the Housing Act 2004. Overall, this will ensure that there is an adequate staffing resource to administer and regulate the HMO licensing process, to ensure that properties are maintained to acceptable legal standards and that their occupants are protected. The two-part payment process will be compliant with case law.

6.2 Legal:

Part 2 of the Housing Act 2004 provides the legislation for the mandatory licensing of HMOs by the local housing authority. Each application for a licence must be made in accordance with the local authority's requirements and accompanied by a fee fixed by the authority. When fixing their fees the local authority may take into account all costs incurred by the authority in carrying out all their functions in relation to the administration and regulation of the licensing functions

Case law has found that the fee for a HMO licence must be levied in two, separate parts. Part 1 being a fee levied at the point of application, to cover the costs of the scheme's 'authorisation procedures and formalities', i.e. the costs of processing the

application; and Part 2 being, if the application is successful, a further fee to cover the costs of running and enforcing the scheme.

6.3 Risk:

The HMO licensing process operates on the fee income which should be sufficient to cover its administrative, management and enforcement costs. The level of fee should be set at a level to ensure that the costs of the staffing resource required to deliver the licensing scheme are met. If there is inadequate staffing resource in place this will result in a failure to effectively deliver the mandatory licensing scheme. This may put the tenants at greater risk from poor housing and management standards.

If the new two part fee structure is not approved the Council may be subject to appeals and judicial reviews regarding the demands for payment under Part 2 of the Housing Act 2004.

6.4 Human Rights, Public Sector Equality Duty and Community Cohesion:

There will be no negative, differential impact on diverse groups and communities associated with this report. Licensing of HMOs provides significant benefits, particularly to vulnerable groups by improving living standards, which in turn provides for better health, safety and wellbeing and financial management.

6.5 Climate Change / Environmental

There will be no Climate change or Environmental Impact

6.6 Children and Young People Cared for by the Authority and Care Leavers

There will be no impact of children or young people cared for by the Authority and Care Leavers

6.7 Data Protection

There will be no Data Protection impact arising from a change to the HMO licensing process or fees structure.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Implement the new licensing process and fees structure	Judith Hedgley / Wayne Flowers	New licensing process and fees structure to be implemented within 1 month of the Executive decision.

Appendices

1	Projected HMO Licence fee income and cost of service
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Background papers

Body	Report title	Date
Department for Levelling Up, Housing and Communities	Houses in multiple occupation and residential property licensing reform: guidance for local housing authorities - GOV.UK (www.gov.uk)	June 2023

Contact:

Judith Hedgley Head of Public Protection.
 Email: Judith_hedgley@middlesbrough.gov.uk

Wayne Flowers, Public Protection Manager
 Email: wayne_flowers@middlesbrough.gov.uk

Appendix 1 Projected HMO license fee income and costs over 5 year period

Number of bedrooms	Current Fee (Based on £755.42 for a 5 bedroom property plus £24.98 for each additional bedroom)	Total 5 year income at current fees (£)	Part 1 : Application processing (£)	Part 2 : Management and Enforcement (£)	Total proposed fee (part 1 and part 2) * (£)	Number of HMO licenses in each category (estimated)	Total 5 year income at proposed fees (£)
5-10	10 bedrooms £880.32	198,100	672.78	448.52	1,121.30	225	252,300
11-20	20 bedrooms £1,130.12	15,800	849.77	566.51	1,416.28	14	19,800
21-30	30 bedrooms £1,379.92	2,800	1026.75	684.50	1,711.25	2	3,400
31+	31 bedrooms £1,404.90 plus £23.89 for each add'l bedroom	5,600	1203.73	802.49	2,006.22	4	8,000
Total 5 year income		222,300					283,500
Projected income p.a.		44,500					56,700
Estimated cost p.a.		56,700					56,700
(Surplus) / Deficit p.a.		12,200					0
* Proposed fee is at 24/25 rates - this will be uplifted each year in line with salary uplift %							