

SPELTHORNE BOROUGH COUNCIL

HOUSES IN MULTIPLE OCCUPATION
MANDATORY LICENSING FEE POLICY

1. Scope/Purpose

- 1.1 This policy sets out the fee structure in relation to the operating costs of Spelthorne's mandatory houses in multiple occupation (HMO) licensing scheme.
- 1.2 It includes the processing of applications, the issuing of new and renewed HMO licences, and the monitoring of HMOs for compliance with HMO licence conditions.

2. Relevant Legislation

- 2.1 The provision for charging fees was introduced by the Housing Act 2004.
- 2.2 Section 63 of the Act provides that the local authority may require the application for an HMO licence to be accompanied by a fee fixed by the authority. The authority may take into account all costs incurred by them in carrying out their functions under Part 2 of the Act (which deals with HMO licensing) when considering what fees to charge.
- 2.3 Section 23 of the Act makes provision for the national authority to make regulations specifying the maximum fees to be charged (whether by specifying amounts or methods for calculating fee amounts), and cases in which no fees are to be charged or fees are to be refunded. Such regulations have not yet been made.
- 2.4 In the absence of section 23 regulations, local authorities must determine their own fee structure. There is no upper limit on the maximum fee that may be charged but fees must be reasonable and proportionate, and fees must not exceed the costs incurred by the local authority in setting-up and administering the licensing scheme, that is, the local authority cannot make a profit. The cost of monitoring licence holders can also be included in the fee.
- 2.5 The High Court has indicated that local authorities have a duty to administer funds so as to protect the interest of council tax payers in accordance with the accepted principal that licensed activities should be funded by those benefitting from them, rather than council tax payers. It means therefore that the cost of Spelthorne regulating the HMO sector should be through HMO licensing fees and not subsidised by the Borough's council tax payers.

3. Existing Scheme and Recent Change in the Law

- 3.1 Spelthorne Borough Council currently operates a mandatory HMO licensing scheme based on the definition that a licensable HMO is a property occupied by five or more persons, forming two or more households, in a property of 3 or more storeys.
- 3.2 The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 will come into force on 1st October 2018 and will extend the scope of mandatory licensing to include HMOs of less than 3 storeys, and also flats in multiple occupation within purpose built blocks comprising one or two flats, including maisonettes.

- 3.3 For Spelthorne, this means a significant increase in the number of HMOs that will need to be licensed. This will result in improvements to management and safety standards in a high number of residential properties in the Borough.
- 3.4 Spelthorne currently issue licenses for the maximum period as set by the legislation of five years. There is scope to reduce this licence period, and it would be appropriate to do so for those properties where the landlords are less compliant and consequently there is a greater risk to the occupants.
- 3.5 There is a duty on the local authority to inspect licensed HMOs within the term of their licence period. This is to check compliance with licence conditions, and to ensure that the information given in the HMO licence application is correct. While there is no reason why a property couldn't be inspected more than once, or even multiple times during the licence period, however, unless there is a genuine need to do so, this would be burdensome on the landlord's business, and would have resource implications for the Council.

4. Spelthorne's New Mandatory Licensing Scheme

- 4.1 To ensure that all properties that require a licence in the Borough are licensed, and within a timely and efficient manner, we have streamlined our HMO licensing processes. We have also gained a clear understanding of the costs involved so that the fees we charge reflect our new processes, thereby allowing us to recoup these costs. This will also enable considerable improvements to be made to the way we deliver the service.
- 4.2 Spelthorne will be actively promoting the changes to the scheme and ensuring that those landlords that do not come forward to licence their properties will be pursued, and subjected to enforcement action if necessary to ensure that there is no incentive to fail to apply for a licence.
- 4.3 There are two HMO licensing processes:-
- New licence applications
 - Licence renewal applications

New Licence Applications

- 4.4 To ensure a level playing field (as we have in the current mandatory scheme), all new licences will be granted for the same length of time; two years. This will enable the service reasonable time to inspect all licensed HMOs, and give a time frame in which to assess compliance with licence conditions, confidence in management and other risk factors.
- 4.5 It has been determined that a risk rating system would enable HMO monitoring checks to be prioritised according to risk, meaning that we will target the worst first.
- 4.6 In practice, information provided on the application, along with any relevant complaint history we have on the property or the manager of the property will inform the risk score, which will in turn inform when the property will be inspected.

Licence Renewal Applications

- 4.7 In order to incentivise landlords to ensure that HMOs in Spelthorne are competently managed and provide a safe and good standard of accommodation, the licence period for a renewal of a licence will vary according to compliance and risk.
- 4.8 A risk rating system has been set-up to inform what period the licence should be issued for:-

- Landlords that provide well managed, safe accommodation, to a good standard, will be granted a 5 year licence.
 - For properties where the risk has been calculated as being 'medium', a 3 year licence will be granted.
 - For properties where the risk is calculated as 'high', a one year licence will be granted.
- 4.9 This will enable Environmental Health to target its resources to working with those properties that present a higher risk to the occupants.
- 4.10 The cost of processing HMO renewal applications is the same regardless of the time the licence is issued for. As such, the cost of the additional Environmental Health resources directed towards the higher risk HMOs will be funded by their landlords, as they will have to pay the same licence cost again after only one year.
- 4.11 Should improvements in an HMO's standard be evident through the year, the one year licence would be reviewed with the possibility of a three or five year licence being granted for the next licensing period. Conversely, a property with a five year licence can be reduced to a three or one year licence should conditions decline during the licence period.
- 4.12 At the application stage for a new and renewal of a licence, landlords will be made fully aware of what is expected of them and what criteria we will be assessing when determining the licence period for licence renewals.
- 4.13 When assessing confidence in management, the following factors would be considered:
- justified complaints about the property conditions
 - landlord harassment of occupants
 - attempted or actual illegal eviction
 - poor application paperwork
 - where several reminders for documents or works have had to be given
 - persistent non-compliance
 - where enforcement action has been taken by the service or by other services or authorities

Poor confidence in management would result in a higher risk score and so depending on degree, a one or three year licence period would be given where this is the case.

Transitional arrangements

- 4.14 Spelthorne's current fee structure for the existing HMO licensing scheme will cease to have effect once this new fee structure has been approved and published.
- 4.15 Holders of an HMO licence granted under the current HMO licence scheme will be transferred to the new scheme on expiry of their current licence, with their licence being renewed according to the new renewal process and be subjected to the risk rating process.

5. The Licence Fee Structure

- 5.1 The application fee for a new licence and licence renewal includes:-
- Administrative costs involved in the processing of the licence

- Costs associated with maintaining and managing the HMO database and other registers including national ones
 - Cost (averaged) of inspections including travel time, administration, management costs, and various on costs (as suggested below) for visits to premises required as part of the authorisation and monitoring process to check the details of the application and compliance with licence conditions
 - Writing of reports, letters and schedules of work where necessary
 - Third party costs including consultations/visits with other departments and authorities (e.g. Planning, Surrey Fire and Rescue, Building Control)
 - Management costs
 - Local democracy costs
 - Overheads
 - Meetings
 - Provision of informal advice and guidance including the development, publishing and mail of material regarding mandatory licensing and associated information including the new fee structure
 - Development, determination and production of licensing policies
 - Setting and reviewing fees
 - Cost of identifying landlords/owners of unlicensed HMOs. This does not include the cost of taking enforcement action.
- 5.2 A financial incentive is built in to encourage and reward good practice under landlord accreditation and other similar initiatives.
- 5.3 A penalty will usually be charged for late applications where:
- There has been a failure to apply within 14 days after first reminder letter has been sent (two months after licence pack has been sent). This applies to new licenses and licence renewals.
- or
- An unlicensed HMO is found through complaint or other means and no application has been made or application form requested.

Where it is considered legally appropriate, the Council will take enforcement action against landlords who fail to apply for a licence for a licensable HMO.

6. Calculation of licence fees

- 6.1 In setting its fee policy and the fees to be charged, the Council has had regard to the LGA guidance on locally set licence fees and fees set in other local authority areas.
- 6.2 The new fees for the remainder of 2018/19 are set out in Schedule 1

7. Review

- 7.1 The HMO licensing fees will be reviewed every year to ensure that they accurately reflect the actual costs incurred, along with any surpluses or deficits incurred against the predicted level of expenditure in the previous year. The cost calculator and fees will be altered accordingly if necessary.

Schedule 1

HMO Licensing Fees and Charges for New Scheme 2018/19

Application for a new licence (for a two year licence period)

- £850 (of which £465 comprises the maintenance cost per licence which will be refunded for failed applications)

Application for a licence renewal (regardless of whether a one, three or five year licence is granted)

- £615 (of which £300 comprises the maintenance cost per licence which will be refunded for failed renewals)

Discount awarded for:-

- membership of professional landlord's association (5% discount)
- landlord accreditation with a recognised accreditation scheme (10% discount)

Penalty for late application/renewal – additional £130 to set fee