

REPORT TO:	CABINET 18 November 2019
SUBJECT:	Amendments to the current Croydon Private Rented Property Licensing Scheme conditions and fees.
LEAD OFFICER:	Shifa Mustafa, Executive Director – Place Steve Iles, Director Public Realm – Place
CABINET MEMBER:	Councillor Alison Butler Deputy Leader (Statutory) and Cabinet Member for Homes and Gateway Services
WARDS:	All

CORPORATE PRIORITY/POLICY CONTEXT/ AMBITIOUS FOR CROYDON

This report builds on commitments in the Council’s Corporate Plan (2018), reflecting on the Council’s approach to the private rented sector and ensuring the current selective licensing scheme CPRPL is fit for purpose and continues to meet the following key ambitions:

- *‘Good, decent and safe homes, affordable for all’*
 - Important themes are *quality homes* and *homes for everyone*. Croydon’s selective licensing scheme was introduced to ensure everyone in the borough has access to decent, safe housing. We want to ensure that all residents, regardless of tenure, feel they are protected, treated fairly, and can stay in their homes once they are in them.
- *‘A cleaner, greener Croydon’*
 - Croydon’s *Don’t Mess With Croydon, Take Pride* campaign is important for setting out our ambitions for raising environmental standards and improving the living environment across the borough.
- *‘One borough – many places’*
 - Some parts of Croydon have persistent or difficult issues to address. We want to provide targeted responses to the range of issues across our multifaceted borough.

FINANCIAL IMPACT

There will be a need to adapt the current application system to allow for a two stage payment process. Overall the financial impact will be cost be neutral as the cost of administering the scheme is covered by charging license fees to landlords. It is possible some resources will be needed in chasing the Part B payment but these will be met by the license fees. More detail on the current and proposed fee structure are outlined in the appendices below.

FORWARD PLAN KEY DECISION REFERENCE NO.: This is not a key decision

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out in the recommendations below.

1. RECOMMENDATIONS

The Cabinet is recommended to:

- 1.1 Note the changes required to the current Croydon Private Rented Property Licensing Scheme conditions and fees by virtue of changes in statutory provisions, including in relation to Data Protection; and legal interpretation by the Courts as detailed within the body of the report;
- 1.2 Approve the two stage licensing fee payment arrangement that requires the applicant make the same total payment under the scheme if the License is successfully granted, but in two stages, Part A on application and Part B if the License is granted, as detailed in section 6 of the report;
- 1.3 Authorise the Council to include a new licence condition covering smoke and carbon monoxide alarm requirements, condition no. 3.9, as detailed in section 5 of the report;
- 1.4 Authorise the amendment to the 'Private Rented Property Licensing Guide for Rented Properties in Croydon' to include reference to the statutory discretion that exists for the Council to issue a "multi-let property licence and the parameters proposed for this as detailed in section 9 of the report.
- 1.5 Subject to approval of recommendations 1.2, 1.3 and 1.4, approve the revised 'Private Rented Property Licensing Guide for Rented Properties in Croydon', Appendix B. The revision makes changes to the fee structure and conditions and takes account of the other statutory changes required with appropriate updates to the text. The changes are applicable to applications made and licences issued as part of the current Selective Licensing Scheme designation, that commenced in Croydon on the 1st October 2015 and that continues until the 30th September 2020;
- 1.6 Authorise the proposed changes to have effect from Monday 2nd December 2019 and that license holders be notified of the proposed changes in advance thereof.

2. EXECUTIVE SUMMARY

- 2.1 Everyone needs a decent, safe and secure home – it is the foundation of a good life. In October 2019 Cabinet authorised the statutory consultation for a new Croydon Private Rented Property Licensing scheme [CPRPL 2020]. The current CPRPL scheme runs for a period of five years to the 30th September 2020 [CPRPL 2015]. Revision of the scheme is needed that reflect the various legislative changes and the current legal interpretation by the Courts which have occurred since commencement of the designation.
- 2.2 This report seeks authority to implement a revised set of property licensing conditions for licence holders in the current CPRPL 2015 scheme. It also

seeks authority to introduce a split fee structure that sees the fee total remain the same but the fees being collected in two stages; Part A and Part B.

- 2.3 Landlords letting licensed premises are provided information on the scheme through the Private Rented Property Licensing Guide for Rented Properties in Croydon. This guide covers the main aims of the Council in introducing the scheme, the application process, who can apply, the licence and penalties. Appendix 1 to the guide covers the costs of the scheme and how the fee structure was arrived at and Appendix 2 to the guide sets out the licensed premise conditions that all licence holders should comply with. The report therefore also seeks authority to implement a revised Licensing Guide, which was last revised in 2016.

3. The private rented sector and selective licensing in Croydon

- 3.1 Croydon's current selective licensing scheme [CPRPL 2015] began on the 1st October 2015 and will expire on the 30th September 2020. CPRPL 2015 encourages landlords to meet their responsibilities through proactive engagement, licensing inspections and monitoring and enforcement work, the borough is being made a better place to live and work for all residents.
- 3.2 Selective Licensing allows local authorities to adopt a much more proactive approach to raising housing standards as licensing conditions are primarily aimed at good practice to prevent problems arising.
- 3.3 In Croydon, at the end of August 2019, 35,500 premises have been issued with a licence to more than 19,000 licence holders. To enforce conditions, over 11,000 licensed dwelling inspections have been carried out. The Council receives approximately 300 new licence applications a month.
- 3.4 The licensing conditions are contained in the document 'Private Rented Property Licensing Guide for Rented Properties in Croydon'. The current Guide that has been in place since the commencement of the designation is attached as Appendix A to this report. The proposed revisions to the Guide, for which Cabinet approval is sought, is attached as Appendix B to the report with the changes highlighted.

4. The need for changes to the Licensing fees and conditions.

- 4.1 Since the designation commenced on the 1st October 2015 there have been no changes to the fee structure or licensing conditions. This paper ensures the licensing scheme is updated in line with a number of key legislative changes and Court judgements. The changes take account of:
- An additional licensing conditions imposed by the Smoke and Carbon Monoxide Alarm (England) Regulations 2015,
 - The judgement in the case R (Gaskin) v London Borough of Richmond [2018] EWHC 1996. This sees the licensing scheme fee structure move from a single upfront payment to include a Part A and Part B payment,
 - The interpretation of what is a house under section 80(2) of the Housing Act 2004. Councils are accepted as having the discretion to issue a licence for

a houses either let under a single tenancy or alternatively to a house under two or more tenancies or licences in respect of different dwellings contained in it,

- The Housing and Planning Act 2016 introduced financial penalties as an alternative sanction to the Council instituting criminal proceedings in the Magistrates Court for certain offences. The Council adopted the financial penalty sanction in May 2017. The current 'Private Rented Property Licensing Guide for Rented Properties in Croydon' was published in 2016. Whilst the Guide warns landlords about the consequences of not licensing a property or failing to comply with licensing conditions the only sanction set out in the current version of the guide is proceedings in a Magistrates Court. The proposed amended guide informs licence holders of the introduction of financial penalties as an alternative to proceedings in the Magistrates' Court , and
- Changes to the levels of fine are introduced by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 which made the maximum fine (for some offences) allowed in a magistrates' courts, unlimited.

- 4.2 The report seeks authority for the changes to take effect from Monday the 2nd December 2019.
- 4.3 The Selective Licensing and Housing Enforcement Team will inform landlords of the proposed changes at the Croydon landlord forum scheduled for the 21st October 2019.
- 4.4 If Cabinet authorise the changes to the, 'Private Rented Property Licensing Guide for Rented Properties in Croydon' the new document will be made available on the Council website from Monday the 25th November 2019 ready for their commencement on Monday December 2nd 2019.
- 4.5 If approval is given, the new guide will also be circulated to landlords in late November 2019, prior to the January 2020 forum, where it will feature as an agenda item.
- 4.6 Council officers undertaking selective licensing inspections and enforcement activity will exercise some discretion when first enforcing the legal requirements of the new licensing conditions.

5. Smoke and Carbon Monoxide Alarm Regulations 2015

- 5.1 The Smoke and Carbon Monoxide (England) Regulations 2015 placed a duty on Local Authorities to serve a remedial action notice ("RAN") on a landlord who does not comply with their duty to provide and maintain smoke and carbon monoxide alarms. Premises licensable under Parts 2 and 3 of the Housing Act 2004 Act are exempt with the new responsibilities included within the amended Housing Act 2004 Part 2 (Mandatory HMO) and Part 3 (selective) CPRPL conditions.
- 5.2 On 3rd May 2017 the Leader of the Council adopted the new enforcement powers introduced by the Smoke and Carbon Monoxide (England) Regulations

2015 (“the Regulations”). This was contained in the report ‘Making Homes Safer’. This gave agreement to the proposed Statement of Principles and, following this, agree the new penalty charge structure. The Regulations came into force on the 1st October 2015 and the date on which authorised officers could commence to use the new powers was Monday 8th May 2017.

- 5.3 This report seeks authority to make a change to the safety requirements in the licensing conditions to take account of these Regulations. The proposed change introduces a new condition at 3.9 which is broken down into 3.9.1 covering smoke alarms and 3.9.2 covering carbon monoxide alarms. This condition is proposed to apply to licensable properties and states;

3.9 The Licence holder shall comply with the requirements of the Smoke & Carbon Monoxide Alarms (England) Regulations 2015. (Reference SI 2015 no 1693) (unless an exempt landlord or tenancy)

3.91 The licence holder is to ensure that a smoke alarm is installed on each storey of the house on which there is a room used wholly or partly as living accommodation, and to keep each such alarm in proper working order;

3.92 The licence holder will ensure that a carbon monoxide alarm is installed in any room in the house which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; to keep any such alarm in proper working order; and to supply the authority, on demand, with a declaration by him as to the condition and positioning of any such alarm.”

A declaration regarding smoke alarms is to be made within 28 days of demand by the Council.

- 5.4 Whilst the Regulations do not give a time period in which to make the declaration, it is proposed that the condition requires that the declaration regarding alarms is to be met within 28 days of demand from the Council. This time frame is typical of other situations within the current conditions when the Council is able to make a demand of the licence holder.
- 5.5 The amendments made by the new conditions apply only to licences granted or renewed on or after 1st October 2015. Given the commencement date of the Croydon Scheme, all licences issued as part of CPRPL 2015 were on or after the 1st October 2015.

6. Two part fee structure following Gaskin v Richmond Council

- 6.1 On 31 July 2018, the Divisional Court held in R (Gaskin) v Richmond-upon-Thames LBC [2018] EWHC 1996 that schemes for the licensing of houses in multiple occupation ('HMOs') under Part 2 of the Housing Act 2004 ('the 2004 Act') are authorisation schemes, within the meaning of EU Directive 2006/123/EC ('the Directive') and regulations incorporating the Directive in domestic law: the Provision of Services Regulations 2009 ('the 2009 Regulations'). Part 3 schemes are seen as authorisation schemes.

- 6.2 As a consequence, a fee for licence to let accommodation under CPRPL 2015 must be levied in two, separate parts, in accordance with the type A scheme endorsed by the Supreme Court in R (Hemming, t/a Simply Pleasure Ltd) v Westminster CC [2015] UKSC 25; [2015] AC 1600:
- 6.3 The new fee structure sees the CPRPL fee levied in two parts;
- Part A fee – a fee levied at the point of application, to cover the costs of processing the CPRPL application; and
- Part B – if the application is successful, a further fee to cover the costs of running and enforcing the licence (scheme). This fee is to be paid just prior to the issuing of a CPRPL 2015 licence. The payment of the Part B fee is deemed a part of a duly made application.
- 6.4 Croydon currently charges a standard fee that is £750. It is not deemed permissible to make part of the current one-off fee refundable in the event that a licence application fails. The fee structure for the new Selective Licensing scheme [CPRPL 2020] proposes a split fee structure.
- 6.5 The existing fee structure is Appendix 1 to the Guide. The current Guide is attached as Appendix A to this report. The proposed two stage fee amounts are covered in the proposed amended Guide attached as Appendix B with the proposed fee structure forming Appendix 1.

7. Financial Penalties as an alternative to prosecution

- 7.1 The Housing and Planning Act 2016 [“2016 Act”] introduced a range of measures designed to tackle Rogue Landlords, including banning orders, the establishment of a ‘Rogue Landlord database’ and the extension of Rent Repayment Orders to cover matters such as the failure to comply with an Improvement Notice. The 2016 Act also provides new powers on financial penalties that permit local authorities to impose a financial penalty, of up to £30,000, as an alternative to prosecution for a range of offences under the 2004 Act. These powers, which relate to offences committed after 6th April 2017, are applicable to all licensing offences created by section 95 of the 2004 Act. It enables a civil remedy as opposed to a criminal remedy.
- 7.2 On 3rd May 2017 the Leader agreed to adopt the new enforcement powers introduced by the 2016 Act and the methodology for ‘Determining the Penalty’. The report was titled ‘Making Homes Safer’ and when a financial penalty was determined the appropriate course of action the level of fine can be subsequently calculated. The use of the financial penalty commenced on the 8th May 2017.
- 7.3 The current Private Rented Property Licensing Guide for Rented Properties in Croydon makes no mention of the sanction that can be made by the Local Authority. The proposed wording of the Guide is amended to reflect the fact that a financial penalty exists as an alternative to prosecution when an offence under either section 95(1) or 95(2) is alleged to have been committed.

7.4 Croydon Council has issued 25 financial penalty notices in relation to Housing Act 2004 offences since the enforcement option was adopted.

8. Changes to the maximum penalty in a Magistrates Court.

8.1 The Private Rented Property Licensing Guide for Rented Properties in Croydon outlines the penalties for landlords who do not license their property or for licence holders who do not comply with the CPRPL conditions. The guide states that the offence of;

- failure to apply for a licence under section 95(1) can lead to a fine of up to £20,000 on conviction and
- failure to comply with any licence condition under section 95(2) may result in proceedings including fines up to £5,000.

8.2 In the 2004 Act, a section 95(1) offence was banded a level 5 offence and a section 95(2) was banded a level 4 offence; with the fine maximums on the scale being £20,000 and £5,000 respectively. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 changed the fine maximums with any offence punishable on summary conviction being capped at or over £5,000 now becoming an unlimited amount.

8.3 The Private Rented Property Licensing Guide for Rented Properties in Croydon is therefore proposed to be amended to reflect the removal of the cap for the licensing offences.

9. Licences for blocks of flats with one licence holders

9.1 Section 79 of the Housing Act 2004 describes the premises that need a licence under CPRPL. The requirement relates to houses and 79(1) provides for houses to be licensed by local housing authorities where it is part of a designation and the whole of it is occupied either 79(2) (i) under a single tenancy or licence that is not an exempt tenancy or 79(2) (ii) under two or more tenancies or licences in respect of different dwellings contained in it.

9.2 The current application process does not preclude applications for houses occupied under two or more tenancies but it is felt that 'Private Rented Property Licensing Guide for Rented Properties in Croydon' should be amended to explain the discretion that exists for the Council to issue such a licence. This selective licence will be referred to under the Croydon scheme as a multi-let property licence.

9.3 A multi-let property licence can apply to buildings that are occupied under two or more tenancies or licences in respect of different dwellings contained in it. This can be purpose built or through conversion. If an application is accepted, the Council will need to be satisfied that conditions are met and this approach is the best course of action.

9.4 Following such an application the Council may decide that each separate dwelling in the building should have its own licence, a single dwelling licence. If the Council is satisfied that a single dwelling licence should be granted, for

each of the individual dwellings, it will give notice of this to the applicant and other parties. Anyone dissatisfied with this approach has the right to make an appeal to the First-tier Tribunal Property Chamber (Residential Property).

- 9.5 The cost of a multi-dwelling licence will simply reflect the number of single dwellings covered by the licence. There are no additional discounts available.
- 9.6 For the Council to issue a multi-let property licence, as a minimum, the following conditions must be met as part of the wider assessment. Each of the dwellings are
- separate dwellings (usually self-contained flats), which adjoin one another in the same building; and
 - occupied under non “exempt tenancies”;
 - are within common ownership and management control, and
 - clear responsibility for the licensing conditions is achievable.
- 9.7 There are increased risks for a licence holder associated with a multi-let property licence. The Housing Act 2004 states that a licence only remains valid where key personnel don't change. A licence cannot be transferred to a new owner. If a new licence were to be needed a new fee needs to be paid and this would be in relation to all dwellings. The licence holder of a multi-let property licence is very much tied in for the period of the licence.

10. PRE-DECISION SCRUTINY

- 10.1 The Private Rented Housing in Croydon was reviewed by the Scrutiny Streets, Environment & Homes Scrutiny Sub-Committee on the 19 March 2019. The report considered how the private rented sector impacted not just on tenants but also on the wider community, and how the council deals with the problems and opportunities presented by the private rented sector.
- 10.2 The report concluded that the council's best option is to renew the Selective Licensing Scheme and ensure that it is fully integrated with the appropriate policies of the Council and partner agencies.
- 10.2 Whilst this Cabinet report has not directly been the subject of scrutiny, the March 2019 Scrutiny report acknowledges the importance of an effective Selective Licensing scheme. This report updates the Private Rented Property Guide to ensure it is up to date with current legislative requirements and to provide improved clarity to all parties involved.

11. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 11.1 The changes proposed within this report do not require additional revenue or capital budget. The fee charged to landlords will remain the same with no changes to the amount. The fee will be collected in two stages instead of in one. The first part of the fee will be levied at the point of the application and the second element before the license is issued. This change ensures that the scheme is update in line with key legislative changes and court judgements.

11.2 **The effect of the decision**

The changes to fee collection will be managed within the existing budget and no additional resource required.

11.3 **Risks**

Updating the charging structure ensures that the Council's current selective licensing scheme is in line with relevant legislation. There is a risk of reduced or delayed fee levels, if an application is unsuccessful. This however is mitigated by the fact that the initial fee covers the cost of processing.

11.4 **Options**

In order to ensure the Council complies with legal requirements, the option presented in this paper meets that objective.

11.5 **Future savings/efficiencies**

This is a self-financing scheme. The changes to the fee structure will enable the Council to match the processing costs to the fee and the running costs of the scheme and make efficiencies where necessary.

Approved by: Lisa Taylor, Director of Finance, Investment and Risk and s151 Officer

12. **LEGAL CONSIDERATIONS**

12.1 The Head of Litigation and Corporate Law comments on behalf of the Director of Law and Governance that the Housing Act 2004 contains provisions for the introduction of a scheme of selective licensing of private landlords in a local housing authority's area and it is subject to these provisions which Croydon has put in place its current scheme. In an area subject to selective licensing, all private landlords must obtain a licence and if they fail to do so, or fail to achieve acceptable management standards, the authority can take enforcement action whether via prosecution leading to a fine, via financial penalty or in some cases, assuming management control of the property.

12.2 Selective licensing does not extend to properties where the tenancy has been granted by a body which is registered as a social landlord under Part 1 of the Housing Act 1996.

Approved by Sandra Herbert, Head of Litigation and Corporate Law on behalf of the Director of Law and Governance & Deputy Monitoring Officer

13. **HUMAN RESOURCES IMPACT**

13.1 There are no HR issues arising from this report. If any should arise these will be managed under the Council's policies and procedures.

Approved by Jennifer Sankar, Head of HR Place & GSE, for and on behalf of, Sue Moorman, HR Director.

14. EQUALITIES IMPACT

- 14.1 An Equalities Analysis has been carried out to ascertain the impact changing how the fees are paid. The key findings were that there is no reason to believe that the protected groups will be at any greater risk than the rest of the population. Opportunities to advance equality have been taken, so no change to the recommendations is suggested.
- 14.2 In developing this proposal, regard has been had to the council's Corporate Plan and its equality objectives contained in the Opportunity and Fairness Plan 2016-20.
- 14.3 The outcome of our Equality Analysis in relation to the recommendations contained in this report are as follows:-
- No major change – Selective licensing protects all vulnerable tenants. It would be a serious breach of licencing conditions if a landlord were to discriminate against any of the protected groups. Landlords who have been convicted of a discriminatory offence cannot receive a licence. Selective licensing provides additional safeguards because of the joint-working arrangements and signposting which are built into the scheme.

Approved by: Yvonne Okiyo, Equalities Manager

15. ENVIRONMENTAL IMPACT

- 15.1 The wider selective licensing scheme offers a positive impact on energy use and energy efficiency in Croydon. The recommendations in this report will not have an environmental impact.

16. CRIME AND DISORDER REDUCTION IMPACT

- 16.1 The recommendations will not impact the prevention of crime in Croydon under Section 17 of the Crime and Disorder Act 1998 and reduction of crime and disorder under Section 6 of the same Act.

17. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 17.1 The report seeks authorisation for the updating of the current Croydon private Rented Property Licensing Scheme for the period until the designation comes to an end on the 30th September 2020. This will ensure the Council complies with key legislative changes and interpretations and makes the Guide clearer for all parties involved.

18. OPTIONS CONSIDERED AND REJECTED

- 18.1 This report recommends the change to one condition, the revised fee structure and clarity from the Guide. The only other option was whether to wait until the new scheme but the Council has a duty to protect the safety of tenants and to

comply with statute.

19. DATA PROTECTION IMPLICATIONS

19.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?

YES

The proposals contained within the report do not involve the collection of any additional data outside of that already collected by the existing scheme. Nor does the report change the way the standard licence application data is stored or managed.

19.2 HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?

YES

The Director of Public Realm confirms that a DPIA has been completed and will be kept under review

CONTACT OFFICER: Nick Gracie-Langrick, Selective Licensing and Housing Manager Ext: 50190.

APPENDICIES: Appendix A: Current Private Rented Property Licensing Guide for Rented Properties in Croydon [2016 version]

Appendix B: Proposed new Private Rented Property Licensing Guide for Rented Properties in Croydon [2019 version]

BACKGROUND DOCUMENTS: None