

Birmingham City Council

Report to Cabinet

17 October 2023



Subject: Ratification of Selective Licence Fee
Report of: Craig Cooper, Strategic Director, City Operations
Relevant Cabinet Member: Councillor Jayne Francis, Housing and Homelessness
Relevant O&S Chair(s): Councillor Jack Deakin, Finance and Resources
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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Acocks Green, Alum Rock, Aston, Balsall Heath West, Birchfield, Bordesley Green, Bordesley & Highgate, Bournbrook & Selly Park, Edgbaston, Gravelly Hill, Handsworth, Heartlands, Holyhead, Ladywood, Lozells, North Edgbaston, Small Heath, Soho & Jewellery Quarter, South Yardley, Sparkbrook & Balsall Heath East, Sparkhill, Stockland Green, Tyseley & Hay Mills, Ward End, Yardley West & Stechford.		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 011970/2023		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

1.0 Executive Summary

- 1.1 The purpose of this report is to clarify the apportionment of the Selective Licence fee brought to Cabinet on 1st March 2022 Cabinet report “Selective Licensing – Private Rented Sector “(background papers) and ratify the correct amounts.

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- 1.2 On the 1st March 2022 Cabinet approved a selective licensing scheme covering 25 wards specified in the scheme, including the proposed licence fee, and an application to the Secretary of State for Levelling Up, Housing and Communities, for confirmation of that scheme.
- 1.3 It has been identified that paragraph 8.4 of the 1st March 2022 Cabinet report stated the correct overall licence fee but gave the incorrect apportionment of that fee between the Part A and Part B fees. The total licence fee as approved by Cabinet remains the same at £700. Cabinet is now asked to ratify its approval of 1 March 2022 on the basis of the correct apportionment between the Part A and B fees as stated in this report. The correct overall fee and apportionment amounts were submitted to and confirmed by the Secretary of State for Levelling Up, Housing and Communities.

2.0 Recommendations

- 2.1 That Cabinet notes the correct apportionment of the £700 licence fee. That apportionment being Part A £375 and Part B £325.
- 2.2 That Cabinet ratifies its decision of the 1st March 2022 to approve the authority's selective licensing scheme in which the selective licence fee is £700 with an apportionment of Part A £375 and Part B £325.

3.0 Background

- 3.1 Cabinet has previously approved recommendations to consult on the implementation of a selective licensing scheme across some of the city's wards.
- 3.2 Following the consultation process, on the 1st March 2022 Cabinet approved the proposed selective licensing scheme and the making of an application to the Secretary of State for Levelling Up, Housing and Communities for confirmation of that scheme. As part of its approval of the scheme, Cabinet approved the proposed fee of £700.
- 3.3 It has been identified that paragraph 8.4 of the 1st March 2022 Cabinet report gave an incorrect fee apportionment. Although the total licence fee of £700 was correct, the fee was shown as apportioned into a Part A fee of £295 and a Part B fee of £405. This apportionment should have been Part A fee of £375 and a Part B fee of £325.
- 3.4 In the consultation for the scheme the fee was proposed at £670 apportioned as Part A £375 and Part B £295. After consultation, consideration was given to feedback that there was a need for increased compliance and enforcement. Officers therefore reviewed the proposed staffing structure and identified that extra staffing needed to be provided within the enforcement team to deal with landlords/properties that are operating without an appropriate licence. This was clarified in the Cabinet report and stated as the reason the proposed fee increased from £670 to £700.
- 3.5 However, an error was made in the stated Part A and Part B fee elements. £30 should have been added to the Part B fee, increasing it from £295 to £325. Instead, the £30 was incorrectly added to the Part A figure (i.e., £375 became £405) and the Part A and Part B fees were then incorrectly transposed. Thus, instead of the figures being stated

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as Part A £375 and Part B £325, they were incorrectly stated as Part A £295 and Part B £405. Clearly this was a mistake as following on from the proposed fee apportionment in the original consultation, the articulation of the reasons to increase the fee resulted in a Part A fee of £375 and Part B fee of £325.

- 3.6 This mistake was not made in the application to the Secretary of State for confirmation of the Scheme, nor in the submission in March 2023 of the fee scheme (on annual review) to the Licensing and Public Protection Committee (LPPC) both of which reflected the correct fee apportionment of Part A £375 and Part B £325.
- 3.7 The apportionment of the total licence fee under Part A and B reflects the different activities performed under each Part, and separates the costs associated with administering the application process from those of administering and enforcing the scheme as a whole. This separation is necessary to comply with the cases of *R. (Hemming and Others) vs Westminster City Council* and *R. (Gaskin) v. Richmond-upon-Thames LBC* (2018), which require that the licence fee must be split into two parts. Part A is the application fee and covers only the costs of obtaining authorisation under the scheme, and Part B, which is due only from successful applicants, covers the costs of administration, compliance and enforcement of the scheme.
- 3.8 The application element of the fee is higher than the licence element because more resources are needed to process applications, including verifying the information contained in the application, ensuring the applicant and relevant persons are fit and proper people, and verifying the maximum occupancy numbers and draft licences. Consideration also needs to be given to any representations from the proposed licence holder and any relevant people to the draft licence before a final licence is issued.
- 3.9 The correct apportionment is:
Part A - £375
Part B - £325
Total Licence Fee - £700
- 3.10 It should be noted that the Part A fee has not changed from that originally proposed and consulted upon. However, to avoid any possible confusion or question as to the fee that has been approved by Cabinet, it is necessary for this report to be considered and for Cabinet to ratify its 1 March 2022 decision.
- 3.11 The Cabinet Member for Housing and Homelessness was briefed on this matter on the 26 September 2023.

4.0 Risk Management

- 4.1 The scheme could be susceptible to legal challenge (judicial review) if, for example, there was a lack of clarity as to the fees (including apportionment) that had been approved by Cabinet, or a challenge as to the fee structure being compliant with relevant case law and legislation.
- 4.2 The probability of successful challenge is reduced by Cabinet ratifying its decisions of the 1st March 2022.

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5.0 Compliance Issues

5.1 How are the recommended decisions consistent with the Council's policies, plans and strategies?

5.1.1 Corporate Plan 2022-2026

The Council's vision is to play our part in strengthening Birmingham's position as a thriving, young and diverse global city, as the beating heart of the UK both commercially and culturally; a place where everyone is included in the opportunities that the city can offer; a place where we can celebrate our heritage with a sense of pride and also look forward with a sense of optimism to a golden decade of shared opportunity in a Bolder, Better Birmingham. Tackling inequalities is at the heart of our mission and at the centre of everything we do. We will help make Birmingham a city where all citizens share in the creation and benefits of sustainable economic growth and can live longer, healthier, and happier lives.

Supporting residents to live in safe, secure, housing is one of the foundations of providing the stable environment necessary to promote a society where all citizens can be included in all opportunities.

5.1.2 The scheme is consistent with the Council's Homelessness Prevention, Empty Properties, and Private Sector Housing Strategies as it brings about improvements in the private rented sector, helps to sustain and stabilise communities, thereby contributing to the reduction in approaches to the council for homelessness assistance.

5.1.3 The Environment and Sustainability Assessment has identified positive impacts of the scheme in terms of reducing carbon emissions, improving the environment, and reducing waste. No negative impacts have been identified (see appendix 1)

5.2 Legal Implications

5.2.1 Section 87 of the Housing Act 2004 ("the Act") permits the Council to require any application for a selective licence to be accompanied by a fee, and that this fee may cover all costs incurred by the Council in carrying out its licensing functions.

5.2.2 In accordance with relevant case law (see 3.7), fees must be apportioned correctly with only the costs associated with administering the application up to the point of issue due upon receipt of the application (Part A), with the fee for covering general administration, compliance and enforcement activities (Part B) due from successful applicants on approval of their application.

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5.3 Financial Implications

5.3.2 The fee structure has been calculated on the basis that the scheme will be self-financing over the five-year life of the scheme. This is achieved with a full licence fee of £700 for 40,000 properties covering scheme costs of £28 million. The scheme is managed through a ring-fenced budget with appropriation to/from reserves to manage in-year surpluses or deficits reflecting the profile of income received and costs incurred. The incorrect fee apportionment previously reported does not impact the underlying financial model.

5.4 Procurement Implications

5.4.1 There are no procurement implications.

5.5 Human Resources Implications

5.5.1 There are no human resources implications.

5.6 Public Sector Equality Duty

5.6.1 An equality impact assessment was completed to support the 1st March 2022 Cabinet report (see appendix 2). This did not show an adverse impact on any specific protected characteristic.

6.0 Appendices

Appendix 1 - Environment and Sustainability Assessment

Appendix 2 - Selective Licensing Scheme Equality Impact Assessment

7.0 Background documents

Cabinet report of 1st March 2022 on Selective Licensing [CMIS > Meetings](#)