

Overview & Scrutiny Commission

Date: 21st March 2024

Call-in: Brickfield Road Traveller Site Annual Review of Weekly Licence Fee

Lead officer: Lucy Owen, Executive Director of Housing and Sustainable Development

Lead member: Councillor Andrew Judge, Cabinet Member for Housing and Sustainable Development

Contact officer: Steve Webb, Business Support and Relationship Manager

Recommendations:

- A. That the Panel review and consider the information provided in response to the call-in relating to the decision to increase the Brickfield Road Traveller Site Weekly Licence Fee.
 - B. That the Panel refer the decision back to the Executive Director of Housing and Sustainable Development for reconsideration, setting out the nature of the Panel's concerns; or
 - C. Decide not to refer the matter back to the Executive Director of Housing and Sustainable Development, in which case the original decision stands.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. On 4th March 2024, the Executive Director of Housing and Sustainable Development, in consultation with the Cabinet Member for Housing and Sustainable Development, made the decision that the weekly licence fee for the rental of a pitch on the council's travellers' site be increased by 7.7% from 1st April 2024. (Appendix 1)
- 1.2. The decision was made in response to a report prepared by the Business Support and Relationship Manager, that set out the background and the reasons for the increase. (Appendix 2)
- 1.3. The decision was called-in on 8th March 2024 by Cllr Samantha MacArthur, Cllr Jil Hall and Cllr Paul Kohler.
- 1.4. The reasons for the call-in are:
 - respect for human rights and equalities
 - consideration and evaluation of alternatives

2 DETAILS

Background information relating to the annual review of the weekly licence fee

- 2.1. On 22nd March 2010, as part of a Large-Scale Voluntary Transfer, the council transferred its housing stock to Merton Priory Homes [MPH] (now Clarion Housing.)

- 2.2. The council retained ownership of the Brickfield Road Traveller Site and entered into a 30-year management agreement for MPH to manage the site on behalf of the council. The management agreement forms part of the legally binding Stock Transfer Agreement.
- 2.3. Under Sections 6 and 12 of the management agreement, it says
- 6.1 The Council will set a weekly licence fee to be payable by the occupants of the Site provided that such fee shall be **no less** than such amount as may be recommended by the Company [MPH] (acting reasonably) from time to time*
- 6.2 Subject to clause 6.1, the licence fee shall be reviewed at least annually by the Council and notified to the Company.*
- 12.1 The Company shall be entitled to collect and retain any charges payable by the occupants under their occupancy agreements including the licence fees and water charges.*
- 2.4. As part of the Stock Transfer offer, the council made a number of “promises” to its residents. One of these 91 promises was a 5-year promise to not increase rents by more than the standard Homes and Communities Agency (HCA) formula in use at the time: RPI + 0.5% + £2.08 per week. This promise was applied to the traveller site as well as the former council homes that transferred to MPH.
- 2.5. Once the 5-year limitation had expired, there was still a need for MPH/Clarion to continue to seek a review of the weekly licence fee. Accordingly, each year the current HCA/Government Regulator formula has been adopted. This included four years 2016 to 2019 where the rent setting formula at that time was a 1% decrease in the weekly rents.
- 2.6. In 2019 the Government changed the formula to be used from April 2020 to CPI+1.0%. This remained the formula for increases in April 2021 and April 2022. There was an exception for April 2023 due to the cost of living crisis, however CPI+1% has been reinstated for increases from April 2024.

Respect for human rights and equalities

- 2.7. The impact of the Government’s rent setting formula is national and is applied to all social rented tenants, including groups with protected characteristics.
- 2.8. The decision was accompanied by an Equalities Impact Assessment (EIA) and is attached as Appendix 3. This EIA was reviewed with Susan Botros, the Council’s Equalities and Community Cohesion Officer, and any recommendations made were incorporated.
- 2.9. On completion of the EIA, we assessed that there is a potential negative impact with regards to Age, Disability, Race and Socio-economic status
- (i) Romany Gypsies and Irish Travellers are protected against race discrimination. This is because Romany Gypsies and Irish Travellers are protected ethnic groups under the Equality Act. All households on the Traveller site are affected equally by this increase regardless of their ethnic group.

- (ii) Older residents of pension age could have a reduced income compared to working age neighbours
- (iii) Additionally, Disabled residents could be negatively affected as people with disabilities tend to face higher levels of unemployment.

2.10. The mitigating actions are:

- (i) Any households experiencing financial hardship can continue to apply for Housing Benefit / Universal Credit for the licence fee of their pitch and can seek support from Clarion Housing if they have difficulties. Clarion Tenancy Sustainment team have had no referrals from Brickfield Road.

2.11. The call-in paper makes the following observations:

- (i) The assertion in the Equalities Assessment that “All households on the Traveller site are affected equally by this increase regardless of their ethnic group” does not show that an assessment of the possibility of indirect discrimination has been completed (we would also query if the correct comparator is those at the site only or all Clarion tenants subject to the 7.7% increase, who are provided different services - which impacts the potential reasonableness of the increase).
- (ii) An equalities assessment comparing the impact of these changes on Romany Gypsies and Irish Travellers at Brickfield Road with other Merton residents beyond the Traveller site has not been completed.
- (iii) The Council’s Corporate Equality Scheme requires departments to consider other relevant groups or issues in their assessments such as looked after children, carers, gypsies and travellers, and community cohesion where appropriate.

2.12. These observations were reviewed with the Council’s Equalities and Community Cohesion Officer:

- (i) There does not appear to be indirect discrimination as the 7.7% is applied across the whole of the Clarion housing stock. The flat rate of 7.7% is not varied according to location or dwelling or ethnic group. This therefore does not indicate that there is indirect discrimination as all households are equally impacted. Additionally, all households are equally able to make use of the benefit system to assist with the payment of rent or licence fee.
- (ii) Whilst this may be a valid observation, to analyse the impact specifically on one ethnic group over any other would not take into account the potential impact on all other marginalised ethnic groups. A comparison with all other Merton residents would need to acknowledge all potentially marginalised and/or vulnerable groups. The mitigation of this would mostly still remain that households who have difficulty meeting the increase costs can apply for Housing Benefit or Universal Credit.

(iii) The EIA template which was completed is the current tool in place, until the new refreshed version is available. As such the relevant groups, as defined by the corporate template have been considered. The new EDI strategy adopted in February will require the EIA template to be updated, which is currently under review.

Consideration and evaluation of alternatives

- 2.13. As set out in 2.1 to 2.6 above, the council has entered into a legal contract with Clarion Housing whereby the weekly licence fee increase “shall be no less than such amount as may be recommended by Clarion Housing (acting reasonably) from time to time”.
- 2.14. Given that the increase implemented each year was in accordance with the Government’s rent setting formula (which was also one of the stock transfer promises), and this year the recommended increase is also in accordance with the Government’s rent setting formula, the recommendation is considered to be reasonable.
- 2.15. Households experiencing financial hardship continue to be entitled to claim Housing Benefit / Universal Credit, which will help mitigate any negative impact. The increased costs are therefore subsidised through the benefits system as are increases elsewhere in the social housing sector.
- 2.16. An increase lower than the 7.7% recommended by Clarion Housing would not be compliant with management agreement, so was not recommended.
- 2.17. An increase higher than 7% has not been requested by Clarion Housing and would not benefit the residents or the council.
- 2.18. With regards to determining if Clarion are “acting reasonably”, the call-in request says that the Councillors would expect a review of Clarion’s reasonableness to include evidence of
 - a) the services provided by Clarion to residents of Brickfield Road in 2022/23, with associated costs
 - b) estimated costs for services which will be provided in 2023/24
 - c) any poorly resolved or unresolved complaints logged by service users, stakeholders, and ward councillors to Clarion regarding their service provision in Brickfield Road
 - d) a comparison of the fees charged to Brickfield Road Travellers’ Site residents and Clarion’s other social housing residents

2.19. The data has been requested of Clarion and is set out below:

a)

	2022/23
Cost per Unit – Brickfield Road	
- Management Costs (£1,472per unit)	£22,080
- Maintenance Costs (£2,084 per unit)	£31,260
- Other costs (£286 per unit)	£4,290

Water	£4,670
Pest Control	£2,580
Rubbish Removal	£4,620
Fire Safety	£313
Electricity	£492
Total	£70,305

b)

	2023/24 Est
Cost per Unit – Brickfield Road	
- Management Costs (£1,529 per unit)	£22,936
- Maintenance Costs (£2,165.25 per unit)	£32,479
- Other costs (£297.15 per unit)	£4,457
Water	£4,815
Pest Control	£11,468
Rubbish Removal	£4,780
Fire Safety	£7,139
Electricity	£545
Total	£88,619

c) There were no formal complaints from Brickfield Road for 2022/23 and 2023/24

There were seven member enquiries, two in 2022/23 and five in 2023/24 (YTD)

d)

Charges Per Calendar Month	Brickfield Rd	1 Bedroom - average	2 Bedroom - average	3 Bedroom - average
2022/23	£443.34	£492.15	£523.53	£599.23
2023/24	£474.46	£529.19	£562.93	£644.34

2.20. Acknowledging the residents' dissatisfaction with the changes to fire safety equipment, a meeting was held between Merton's Head of Housing and Strategy, the Business Support and Relationship Manager and Clarion's Head of Housing. Concerns were expressed regarding the lack of reassurance and guidance to the residents from a fire safety professional. Following this meeting, feedback from Clarion Housing is that a fire safety professional will attend site to provide reassurance to residents on the reasons for the change and to explain the following points:

- The first action in the event of a fire should be to make sure your family and others are safe and raise the alarm / call the fire service.
 - The equipment is not designed for fires inside the caravans.
 - The Water Extinguisher is designed to put out small fires outside, no larger than a waste bin on items like Paper / Cardboard & Wood
 - The Foam Extinguisher is designed to put out small fires outside involving paper / card & wood BUT also fires outside involving oil / flammable liquids or Paint.
 - There is no expectation that the Residents will use the extinguishers in the event of a fire.
 - If Residents do use extinguishers this is at their own risk and Residents must not endanger themselves or others if using the extinguishers
- Clarion's fire safety team can provide guidance and awareness on what to do in the event of a fire.

2.21. Following a meeting between Clarion, Merton Waste Services and the Business Support and Relationship Manager, and discussing the issues on site, it was agreed to set out two main waste disposal options to the Brickfield Road residents and hold a ballot to see which option was most favourable choice. A draft letter and ballot paper was sent to Waste Services, and following some further negotiations with Veolia, it was agreed on 12/03/2024 that the ballot could proceed. It is intended that this will be sent by the Business Support and Relationship Manager week commencing 18/03/2024.

2.22. It is hoped that once the issues with the bins are resolved, the problems with the rats on site will diminish. Further action still to complete, as soon as possible, is to arrange a follow-up on-site inspection with Clarion Pest Control contractors, Clarion Housing Officers, Officers from Merton's Housing Needs and Strategy, plus representatives from the site neighbours in order assess any pest issues outside the site perimeter and agree any appropriate remedial actions where necessary.

3 ALTERNATIVE OPTIONS

3.1. The travellers' site management agreement states that the weekly licence fee "shall be no less than such amount as may be recommended by Clarion Housing (acting reasonably) from time to time". The proposed increase of 7.7% is considered to be reasonable as this is the same rate that will be applied to the tenants in Clarion Housing stock and it follows the Government's current rent setting formula.

3.2. Alternative licence fee increase of less than 7.7% was not considered to be in accordance with the management agreement as the management agreement says *The Council will set a weekly licence fee to be payable by the occupants of the Site provided that such fee shall be **no less** than such amount as may be recommended by the Company (acting reasonably) from time to time*

- 3.3. An increase above 7% would not be in accordance with the Government formula and would not benefit the residents or the council.
- 3.4. There was a Stock Transfer promise to only increase the licence fee by the Governments' formula for 5 years. After 5 years, Clarion continued to base their licence fee increase by recommending the Government formula prevalent each year. This was also the case for the 4 years where the formula was a 1% reduction. Accordingly, this approach has been considered to be reasonable.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. The Council has consulted with Clarion Housing who have recommended the new licence fee increase of CPI+1%.
- 4.2. The consultation between Clarion and Merton Council consists of an exchange of emails seeking an update from Clarion to inform the Council of their recommended increase (Appendix 4).
- 4.3. Given that the annual increase has always been based on the implementation of the prescribed Government formula, initially set out by Merton Council as one of the transfer promises, there has never been any consultation with residents as it is a nationwide increase and not calculated locally.

5 TIMETABLE

- 5.1. The setting of the licence fee needs to be agreed before April 2024.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. None for the council. The income from the weekly licence fee is collected and retained by Clarion Housing to cover the cost of meeting their obligations and commitments under the management agreement.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. Under the management agreement, which forms part of the stock transfer agreement, the council has legal responsibility for reviewing and setting the weekly licence fee, based on the amount recommended by Clarion Housing (acting reasonably). The council will be in breach of the transfer agreement if it fails to fulfil this responsibility.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. The impact has been considered as part of the EIA attached.
- 8.2. There is a potential negative impact with regards to Age Disability, Race and Socio-economic status.
- 8.3. Mitigating actions are:
Any households experiencing financial hardship can continue to apply for Housing Benefit / Universal Credit for the licence fee of their pitch and can seek support from Clarion Housing if they have difficulties. Clarion Tenancy Sustainment team have had no referrals from Brickfield Road

9 CRIME AND DISORDER IMPLICATIONS

9.1. None for the purpose of this report

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. The level of weekly licence fee increase proposed will enable Clarion Housing to manage the site effectively, including carrying out routine repairs and maintenance and complying with Health & Safety regulations.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

Appendix 1 - Original Non-Key Decision by the Executive Director for Housing and Sustainable Development

Appendix 2 – Original report to the Executive Director for Housing and Sustainable Development and Cabinet Member for Housing and Sustainable Development

Appendix 3 - Equality Impact Assessment

Appendix 4 - Consultation with Clarion Housing.

12 BACKGROUND PAPERS

12.1.