

<b>Committee(s):</b> Community and Health Committee	<b>Date:</b> 6 January 2020
<b>Subject:</b> Cost Recovery: Food Hygiene Rating Scheme re – inspection requests	<b>Wards Affected:</b> All
<b>Report of:</b> Gavin Dennett, Environmental Health & Licensing Manager	<b>Public</b>
<b>Report Author:</b> Gareth Olive, Regulatory Manager Telephone: 01277 312500 E-mail: Gareth.olive@brentwood.gov.uk	<b>For Decision</b>

### Summary

The Food Hygiene Rating Scheme (FHRS) has been in place in Brentwood Borough Council since February 2011. Currently all food hygiene visits made to premises are conducted at no cost to the business, which includes requested second visits to the business for the sole purpose of increasing their FHRS “star” rating, which is to their business benefit.

There is an opportunity to introduce a charging regime using powers available in the Localism Act for one part of FHRS: requests for a FHRS re-rating inspection. Charging was previously specifically excluded by the Food Standards Agency’s (FSA) contract with local authorities to deliver FHRS, but they have reconsidered this position and now advise that it is possible to charge for this service under the powers granted to local authorities by that Act.

### Recommendations

Members are therefore asked to:

- R1. Note this report and basis for the proposed changes to the operation of FHRS in Brentwood Borough Council; and**
- R2. Approve the introduction of a charge of £180 for re-rating inspections based upon full cost recovery with effect from 1 April 2020, reviewed in line with the fees and charges policy annually thereafter.**

## **Main Report**

### **Background**

1. The Food Hygiene Rating Scheme (FHRS) is a key element of improving food safety. The Scheme, which operates in England, Wales and Northern Ireland, provides transparency about hygiene standards in food businesses at the time they are inspected to check their compliance with food safety legislation.
2. The Food Standards Agency (FSA) consider FHRS to be a good example of using incentives to drive businesses to behave in ways that benefit consumers, and FSA research demonstrates that it is working and driving up food hygiene standards.
3. Displaying a FHRS sticker enables consumers to make an informed choice about where they choose to eat or shop for food. Widespread display of FHRS ratings gives consumers an instant indication of a food business' hygiene standards in comparison to its neighbours and peers.
4. The devolved Governments in Wales and Northern Ireland have already enacted legislation making the previously voluntary FHRS display scheme in their administration mandatory for all food businesses. Wales has been operating this way since November 2013 and Northern Ireland since 2016.
5. The FSA has expressed an intention to extend mandatory display to England and they continue to build the case using evidence from Wales where there has been a positive impact on hygiene standards compared with England since mandatory display was introduced. Increasing numbers of consumers use the scheme to help them make informed choices.
6. Finally, one key difference between the current English voluntary scheme and the two mandatory schemes is that both mandatory schemes enable a charge to be made for re-rating inspections.
7. Any business in Brentwood that has obtained a rating of less than 5 can request a follow up re-rating inspection once they have made any improvements brought to their attention following the first inspection. The purpose of the re-rating is to establish if a higher rating can be obtained and then displayed to the public. Without this, there would be no opportunity for another rating to be given to an improved business until the next planned full inspection.
8. The frequency of planned food safety inspections varies from every six months to three years. The frequency of inspection is determined by the risks posed by the food business and uses the national Food Law Code of Practice scoring process to calculate this risk and any follow-up required. It is important to distinguish a re-rating inspection from other official control revisits that might be conducted as part of our usual food safety work.
9. Whilst a business in England can still choose whether they wish to display a rating sticker in their premises or not under the current voluntary scheme, it is worth emphasising that all Brentwood ratings are already published by the FSA on their

ratings website, so consumers can easily view all the ratings throughout the UK via a computer, tablet or smartphone.

10. Legislation passed in England and Wales in the form of the Localism Act 2011 affected local authorities' powers to charge and the FSA have re-visited the question of whether local authorities in England have power to charge for FHRS re-rating inspections. They now consider that local authorities can charge because a re-rating inspection can be properly described as a "service" which they can provide on a non-commercial basis.
11. The proposed charge will only apply to re-rating inspections and not if we decide to conduct an official control revisit - e.g. to check on essential work / improvements we have required. Consequently, cost recovery from businesses would occur only where they request a re-rating inspection.

### **Issue, Options and Analysis of Options**

12. The following options are available:

#### **Option One – No change**

If we do not introduce charging: -

- a) there is no potential for cost recovery; and
- b) we may still need to introduce charges at a later date, if the FHRS scheme is made mandatory.

#### **Option Two – Full cost recovery**

This option would ensure we are able to use the costs recovered from requested re-rating inspections to help maintain our programmed inspections and other statutory duties. This has been calculated taking into account factors including officer time, direct costs, and a proportion of overheads such as accommodation. This is the preferred option.

### **Reasons for Recommendation**

13. This service is currently delivered free of charge. Brentwood currently receives between 8 and 10 requests for reinspection per year. The income for the current year to date, were the council to charge, would have been £1,440 based on a fee of £180.
14. The number of requests received annually is however likely to increase with the recent introduction of online food delivery platforms. Agreed changes to the operation of two major online delivery platforms, driven by the FSA, means that those platforms do not permit membership below a rating of 3 FHRS. It is anticipated that businesses will want to request more re-rating inspections in order continue trading on such platforms, together with showing the best ratings which

places increased pressure on resources unless we are able to recover the charges.

## **References to Corporate Plan**

15. The Community Health priority of the Corporate Plan aims to support businesses, safe-guard public safety and enhance standards locally. The Corporate plan also rewards compliant businesses by a light touch to public protection.

### **Financial Implications**

**Name & Title: Phoebe Barnes, Corporate Finance Manager**

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16. This is a new charge to be implemented and will be captured within the Fees and Charges Schedules for 2020/21 as well as within the Councils Medium Term Financial Plan.
17. As a non-statutory function, the Localism Act 2011 allows for Councils to make a charge for the service. The charge should ensure that the service being supplied is fully cost recoverable. This ensures the Council can maintain providing these services when faced with financial pressures.
18. The costs in calculating the charge are true and fair and have been benchmarked against similar organisations providing the service. As part of the annual budget cycle this new charge will be reviewed on an annual basis to ensure the charge reflects the cost of providing the service.

### **Legal Implications**

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19. Section 1 of the Localism Act 2011 gives local authorities the power to charge for a service which is not a statutory function. The advice refers to re-inspections made at the request of the food business operator to re-assess the food hygiene rating and does not cover interventions carried out as part of statutory duties i.e. the planned interventions that the Borough is required to undertake in accordance with the food law code of practice.

## **Background Papers**

20. The Brand Standard ensures there is consistency in implementation and operation of the scheme by local authorities. It provides local authorities in England with

advice and guidance on all aspects of implementation and operation of the scheme.

[The Food Hygiene Rating Scheme: Guidance on implementation and operation - the Brand Standard](#)

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