

**3 November 2015**

**Planning and Licensing Committee**

**Proposed General Licensing Fees and Charges for 2016/17**

**Report of:** *Ashley Culverwell – Head of Borough Health Safety and Localism*

**Wards Affected:** *All*

**This report is :** *Public*

**1. Executive Summary**

- 1.1 This report seeks Members agreement on the proposed budget and Schedule of fees and charges for 2016/17 in respect of the general licensing functions other than Hackney Carriage and Private Hire and any statutory or centrally set fees.

**2. Recommendation**

- 2.1 **That the schedule of fees and charges for all non statutory fees as attached at appendix A be agreed and to take effect on and from 1 April 2016.**

**3. Introduction and Background**

- 3.1 Some licence fees and charges are statutory and therefore determined by regulations issued in accordance with primary legislation. The council must review any discretionary charges for all services from time to time, to ensure that they reflect the current cost of providing the service. Costs should in most cases aim to achieve full cost recovery including reasonable costs for administration and in some cases enforcement.
- 3.2 In 2014 the Council determined that all fees and charges across the entire range of Council services should be fully assessed and amended where appropriate in time for the fee setting process for 2016/17.

- 3.3 Whilst there is no discretion for the Council to set fees for some of the licences that it issues, these fees have still been calculated in the same manner as discretionary fees as it provides a good indication of the degree of surplus or deficit on each account. Moreover, it is intended that this process should be undertaken across the board on an annual basis as this will also provide for a smooth transition and more accurate calculation if (as is anticipated) some of these fees are able to be set locally in the future as part of the Government's localism agenda.
- 3.4 Statutory fees are those pertaining to the Licensing Act 2003 and Gambling Act 2005. Although in the latter case this is a statutory maximum with the ability to charge less. However, in the former case there is no discretion at all. These calculations have been attached for at **Appendix B**.
- 3.5 All other fees are non statutory and the Council must therefore set these as close to full cost recovery as possible. These calculations are attached at **Appendix C** with the exception of any fees relating to Hackney Carriage or Private Hire, driver, vehicles and operators, which form the subject of a separate report for reason of transparency and clarity.
- 3.6 The general licence fees over which the Council has full discretion include; Markets and Street Trading (including Pavement Permits), Scrap Metal, Sex Establishments (including adult shops and lap/table dancing type venues), Animal Licensing (including Zoo's, Dangerous Wild Animals, Pet Shops, Dog Breeders, Riding Schools and Animal Boarding) and Skin piercing (including tattooing, electrolysis and body piercing).
- 3.7 In addition to the above, there are other functions that the council is legally obliged to administer but cannot charge a fee for. These include House to House and Street collection permits.

#### **4. Issues Options and Analysis of Options**

- 4.1 Fees and charges should aim to recover the full cost of the service(s) being provided (where legislation permits). It is not generally permitted for any profit to be made from licence fees and calculations are only permitted to incorporate costs as permitted by legislation. These permitted costs

vary depending on the specific licence and governing legislation and are therefore outlined in detail in paragraph 5 of this report.

- 4.2 There is no specific legislation that prevents the Council from setting a fee below that of full cost recovery. However, this would mean a subsidy for licence holders from the general fund. Therefore, the fairest and most practical approach is that full cost recovery should be maintained so that the burden of cost falls on the person who benefits most from the licence i.e. the licence holder and not the Council Tax payer.
- 4.3 As part of the budget setting process for 2015/16, the Council determined that only an inflationary rise should be allocated to accounts in favour of a full root and branch review of fees in time for setting fees for 2016/17. This process has been completed in relation to licence fees using the tried and tested methods that have worked well over the past 3 to 4 years in respect of the Taxi Trading Accounts. Fees have been adjusted to offset any surplus or deficit shown on each individual account. The full proposed fees and charges are attached as **Appendix A**.
- 4.4 This method will be carried forward for each account year on year and any surplus or deficit taken into account during each fee setting process.

## **5. Reason for Recommendations**

- 5.1 As above stated, the fees should be set individually for each account and cross over between each is not permitted i.e. a surplus in one is not permitted to offset a deficit in another. Generally, where a fee is discretionary it is required to be 'reasonable'. This means that the Council is not permitted to make a profit and therefore that the fee should aim to achieve full cost recovery subject to the inclusion only of the element of cost permitted by legislation.
- 5.2 The licensing team record their time on a daily basis in order to feed information into the budget setting process as accurately as possible. Traditionally, this has been done in respect of the Taxi Trading Accounts where the complexity of the legislation requires that these are calculated in a specific and very transparent manner. The same statistics have been used to calculate the cost of providing each licensing function and therefore the most appropriate fee, where this can be set or to accurately record any surplus or deficit where the fee is statutory.

- 5.3 In all cases further streamlining of processes within the licensing department and cost reductions brought about by efficiencies within the council as a whole e.g. the Town Hall project are expected to make a long term positive impact on the cost of running each function.
- 5.4 The proposed fees and charges and/or the surplus or deficit on the account along with a summary of the reasoning behind the proposals are highlighted separately below:

All calculations are reproduced in appendices B and C.

#### **5.4.1 Licensing Act 2003: - All Fees are Statutory**

The licensing Act 2003 (LA2003) function accounts for 39.09% of the overall licensing function/resource. The overall cost of the LA2003 function as at the close of the 2014/15 accounts is £137,423 as compared to an income of £78,753. This means that a deficit is carried forward to 2016/17 of £58,670.

However, these fees are set under Central Government regulations and have remained unchanged since implementation of the Licensing Act in November 2005. In view of this there is no scope to set these fees at present, although the possibility of locally set fees has not been totally discounted by Government, which means that by continuing to calculate the year on year cost of this service, the Council will be better placed to set the most accurate and appropriate fee should this become possible at a later date.

#### **5.4.2 Gambling Act 2005 – Fee set at discretion up to a statutory maximum**

The Gambling function accounts for 6.68% of the overall work of the team and for the year 2014/15, the total costs of administering this function were £23,353. With an income of £10,275 from the gambling account for the same year, this means that gambling incurred a loss of £13,078.

Whilst the fee is subject to a statutory maximum with regard to premises applications, this is currently only set at 75% of the maximum figure. The proposal is to increase the fees up to the maximum permissible fee in order to recoup some of the deficit. This is unlikely to fully recover the total deficit due to the small number of applications likely to be received. There is no scope to increase any further although it is hoped that costs may reduce for reasons as highlighted in paragraph 5.3.

### **5.4.3 Street Trading – Discretionary**

Street Trading incorporates the Market, individual stalls, the lighting up Brentwood event and Pavement Cafes. This work amounts to 7.22% of the licensing function at a cost of £26,479 as at the close of business for 2014/15. The income from this is £23,374 leaving a current deficit of just over £3,000 showing on the account.

The numbers of licences issued are relatively small and the calculation is somewhat complex given that some licences are issued on a daily rate, some weekly and others annually. The increase in fees has therefore been calculated to reflect the work that is involved in each case and is aimed at achieving full cost recovery by the end of 2016/17 and gradually reducing the year on year deficit from then on.

One area that has traditionally been calculated separate is the independent fruit stall. This is because it has been trading for many years, has made a positive contribution to the High Street area of Brentwood and does not require a great deal of supervision. The fee has been set at £280PA for the last two years. It is proposed on this occasion that it be raised to £350PA, which covers the costs associated with the grant of this particular licence. This increase has been discussed with the stall holder and he is in full agreement with the proposal.

### **5.4.4 Scrap Metal – Discretionary**

Scrap Metal only accounts for 1.08% of the licensing function, a cost of £4,016 as at close of accounts for 2014/15. Income for the same period amounted to £2,170, which means a loss on the account of £1,846.

Costs for next year are likely to be similar as there is an exercise planned to visit a number of premises throughout the Borough in order to assess whether a licence is required. This may result in an increase in income as these compliance checks may identify traders who are yet to licence under this relatively new legislation. In addition the streamlining as identified in paragraph 5.3 may identify some efficiency savings.

The current increase is proposed from £365 to £495 for a 3 year site licence and from £180 to £280 for a 3 year collector's licence. The initial fee was set as a best estimate when the legislation was first introduced in 2013 and it was agreed at that time that a full review of fees would follow once more accurate cost figures had been assessed.

#### **5.4.5 Skin Piercing – Discretionary**

This is a very small element of the licensing function taking less than 0.5% of the overall workload of the team. Associated costs are, therefore also low and the expenditure on this account amounts to only £1220 at the close of accounts for 2014/15. However, with only 7 registrations in that year this has still brought about a small deficit on the account.

Traditionally these fees have only increased year on year by a few £'s and this therefore means that a substantial increase is required in order to reduce the deficit. However, it is worth noting that this is a 'one off' fee as once registered this continues in perpetuity for as long as the premises is in operation.

Premises registrations are proposed to increase from £105 to £250 and practitioners from £47 to £89. Whilst this increase still leaves an anticipated deficit on the account, this is another area where streamlining of the process and planned future efficiencies should reduce the costs associated with conducting this function. Therefore these fees will be kept under review and re-assessed in detail as part of the fees and charges process for 2017/18.

#### **5.4.6 Animal Licensing - Discretionary**

This area covers a number of different types of licence as outlined in appendix C and accounts for 2.63% of the overall work of the team at a cost of £9,336 as at close of accounts for 2014/15.

A move to online applications and afore mentioned anticipation of efficiency savings should reduce these costs over time. Therefore, whilst the increase proposed from £158 to £250 does not recover the full cost of operating the animal function, it is proposed that given the size of the deficit (circa £6000PA) it is impractical to increase fees to the level that would be required to offset this. Therefore, a further review should be undertaken as part of the 2017/18 process, which can take account of any cost savings made over the coming year.

It remains likely that a further increase would be required for 2017/18, however, the impact of this would be spread and if delayed for a year the overall increase should be less than if it were all imposed now.

Zoo licensing is also included in this account and these licences are proposed to increase from £762 to £900 for the grant of a licence and £383 to £550 for a renewal.

#### **5.4.7 Sexual Entertainment Venues (SEV) – Discretionary**

This area of licensing has been calculated in a different manner to the other functions performed by the department. The reason for this is that currently there are no licensed sex shops or adult entertainment venues in the borough. This means that the fee calculation must be made on an estimate of how much it would cost to fully process an application from start to finish and the cost of compliance checking throughout the term of the licence.

The fee is therefore calculated to include administration costs (including recharges, overheads and staff salaries), broad consultation, the cost of a hearing to determine the outcome of any application received, the additional cost of processing representations and producing a report for a hearing and two compliance checks per annum.

The recent *Hemmings v Westminster* Case looked at the fee charged for these types of licences and determined that the fee cannot be set as a deterrent as appears to have happened in some areas. The fee at Brentwood is however, reasonable and can be fully justified as being at an appropriate level to achieve cost recovery.

No costs have been appropriated to this account at this stage as the only expenditure unless application(s) are received would be in training, writing of processes and procedures and formulation of a policy. These are all currently in place and whilst they will be reviewed, there was no such review in the 2014/15 period upon which current expenditure predictions are based.

- 5.5 With regard to any of the increases proposed, the only alternative to not increasing by as much or in failing to impose any increase at all would be for the balance to be found through the Council's central fund. Ultimately this would mean that licence fees were subsidised by the Council Tax payer and not by those who benefit most from the grant of any licence. Anything other than attempting to achieve full cost recovery as outlined in this report is not therefore, seen as a viable or appropriate option.

## **6. References to Corporate Plan**

- 6.1 The proposals contained within this report link directly to the following priorities of the corporate plan:

### ***A prosperous Borough –***

*“Safeguarding public safety through a risk based regulation and licensing service.”*

### ***Street Scene and Environment –***

*“Develop effective partnership arrangements so all issues affecting neighbourhoods are delivered in a timely and efficient way”*

### ***Localism –***

*“Encourage local businesses to invest directly in Brentwood’s communities”*

## **7. Consultation**

- 7.1 There is no consultation required under legislation relating to any discretionary fees outlined in this report given the requirement to set the fees as cost recovery. However, these will be published on the Council website and are in all cases open to challenge by way of Judicial Review should they be inappropriately set. For this reason the calculations have been made to ensure that they capture only those elements of costs that legislation permits to be recovered and using the latest available actual expenditure for each licensing function.

## **8. Implications**

### **Financial Implications**

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The impact of the revised fees and charges will be incorporated within the medium term financial plan.



## **Legal Implications – Monitoring Officer Comment**

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There are potential cost implications in the event of failure to calculate or advertise fees in the proper manner, however, the fees proposed in this report have been calculated on a cost recovery basis using a robust system of accounting which has been developed over time to ensure they are as accurate as possible.

**Other Implications** (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

The main objective of any licensing regime is the protection of the public, through managing risks, promoting best practice and ensuring that business is conducted safely and free from crime and disorder. Policy and procedure is developed in conjunction with legislation and government guidance to not only promote these principles at all times but to ensure that the licensing function is fully inclusive and available to all sectors of the community.

The fees proposals in this report have been proposed taking full account of legislative requirements and have therefore undergone a full impact assessment at National level. Therefore, there are no significant implications arising from agreement to the recommendations of this report.

## **9. Appendices to this report**

- Appendix A – Proposed Fees and Charges
- Appendix B - Breakdown of Recharges
- Appendix C - Trading Accounts

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