

Report for: Regulatory Committee - 25th February 2021

Title: Review of Fees and Charges 2021-22 - Licences

Report

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Ward(s) affected: ALL

Report for Key/

Non Key Decision: N/A

1. Describe the issue under consideration

- 1.1. The Council's income policy requires an annual review of the level of the fees and charges levied upon service users. The aim of the review is to ensure that income generated ensures full cost recovery.
- 1.2. A small number of items (relating to certain approvals, consents, permits and licenses) cannot be made by the Executive and are, therefore, reserved for consideration and decision by the Council's Regulatory Committee. The committee is being asked to approve the fees and charges for 2021/22.
- 1.3. This report sets out the proposal to not increase fees for those licensing regimes where the Council has the power to set its own fees for 2021/22. The fees will still enable the Council to recover its costs in managing and administering these licensing regimes. The types and frequency of applications has remained static in most cases. We do however expect to see a fall in these various licences and permits due to the impact of the pandemic on businesses. Reductions of income are offset by a reduction in compliance activities and administration formalities.

2. Reason for Decision

- 2.1 It is a requirement of the Council's income policy to review fees and charges annually. The financial position of the Council supports the view that levels of fees and charges should be maximised commensurate with the full recovery of costs, taking into account all relevant factors including the effect on service users and any consequent demand for services. A licensing scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme, and must not exceed the cost of those procedures and formalities. Failure to do this could result in the Authority levying a fee that is subsequently considered to have been set unlawfully.
- 2.2 It is a requirement of the London Local Authorities Act 1990 that fees are reviewed to ensure that fees are set to cover the full cost recovery to the Local Authority. The Supreme Court case of (*R (Hemming and Others) v Westminster City Council*) concluded that the amount of the fee is required to be determined every year and further to that a Local Authority was precluded from making a profit from the licensing

regime.

3. Recommendations

That the Regulatory Committee approve:

- 3.1. The fees for 2021/22 which are to remain as they were for 2020/21.

4. Alternative options considered

- 4.1. An increase, for 2021/22, even if it is inflationary only will impact on the small businesses in the borough. Benchmarking has been carried out on Massage and Special treatment fees, Street trading fees and animal licensing. Haringey remains one of the most expensive boroughs, (see appendix 1) an inflationary increase is not appropriate at this time as even this level of increase will impact on street trading and massage and special treatment businesses significantly. At this time as we the Council are trying to support business as we go through the impacts of the pandemic, we are expecting to see some business close permanently following the 3rd Lockdown in the UK. We are able to maintain full cost recovery as a minimum within the existing charges. The cost of not increasing the discretionary fees is approximately £4000.
- 4.2. We cannot increase any other fees collected through the Licensing processes, which has an income target of £483,000. Licensing Act and Gambling premises are already set at statutory maximums and make up a significant proportion of the fees collected. The Gambling premises income is generally decreasing due to the changes in law on fixed odds betting terminals which will see betting shops closing down and annual fees no longer being paid to the Licensing Authority.
- 4.3. Consideration as been given to reducing the discretionary fees such as street trading, special treatment, but this has been discounted as our expenditure costs have not disproportionately reduced and if we were to reduce fees we would therefore, be subsidising the expenditure. The Service has been diligent in ensuring that affected business are not charged for periods of months when the UK has been in Lockdown. This has been well received and welcomed by businesses.

5. Background information

- 5.1 Throughout 2020 The Licensing Service had received various request and enquiries from businesses asking for licensing fees to be set aside due to the pandemic. This has been in relation to Licensing Act 2003 fees. However, the Council has no discretion over this matter and annual fees for active Premises Licence must be made on the anniversary of the grant of the licence. We have raised this concern with the LGA and Home Office and have been advised that the hospitality sector has received various grants during the various stages of lockdown. The Government has put measures in place to support the industry by bringing in Pavement Licences and relaxing the Licensing Act 2003 to allow for Off sales from premises with On Premises licences.

Where fees are set centrally, for example under the Licensing Act 2003 (LA 2003), councils have little flexibility and there is no clear mechanism to provide refunds or

part refunds. Neither the Home Office or Gambling Commission are expecting councils to issue refunds.

Whilst we are unable to cancel Licensing Act 2003 fees, we have worked with Business's to cancel of any costs incurred whilst their business has been closed and supported with grant enquiries where necessary.

Street Trading and the ability for business to use the pavement for external seating areas have also been progressed through the Business and Planning Act 2020 which has a flat fee of £100 for the year for a pavement licence up to end of September 2021. The general effect of this has been a reduction in Licensing fee income. The £100 application fee for a Pavement licence does not cover the cost of administering and compliance of the licence requirement in this regard.

5.2 Benchmarking has been carried out and is at Appendix 1 with some narrative below to explain and compare figures.

5.3 Street Trading

The street trading fees are set under the London Local Authorities Act 1990 and are set quite differently borough to borough. In Haringey we have set the fees to ensure we can provide a cost neutral service including the enforcement aspect of the workload. Our costs are higher than some other borough as we do not run council led markets. We have had several businesses complain about our costings for displaying tables and chairs and therefore leading them to only use this licence seasonally as it is not affordable all year round for small businesses.

Our application fee for shop front and tables and chairs is in line with most neighbouring boroughs. However, as we charge per square metre the monthly costs is higher than others. It should be noted that other Local Authorities charge up to a certain number of tables and chairs.

We would be putting our small businesses under a lot of financial strain raising the fees. We are increasingly finding more businesses displaying tables and chairs and shop fronts without a licence and with enforcement action being limited it is unfair to target businesses currently paying for licences.

The Government have also now introduced a new Pavement Licence process intended to assist the hospitality sector businesses as they struggle to operate under social distancing guidelines and find themselves with reduced indoor trading space. The Pavement licence process offers a streamlined quick and cheaper option for business to apply for external seating areas. The Act came into effect in August 2020 and Haringey has imposed the maximum application fee of £100 per application. These permits last until September 2021, however it is thought the Government will extend this period further in order to provide further support to businesses. Businesses have the option of applying for tables and chairs under the London Local Authority Act 1990 or the Pavement Licence process.

5.4 Animal Activities Licensing

Our application fee seems to be in line with two other Local Authorities but higher than four others. The second part of the fee is relevant to the number of visits and enforcement action required.

Applicants have complained that the level of fees are very high and does not take into account the small doggy day care two dog operations which are still having to pay out in excess of £500 for a licence.

5.5 Massage & Special Treatment

The MST fees are set differently between authorities that it is very hard to compare them. It should be noted the Haringey fees are more expensive in the long run as we charge for each therapist and what treatment that therapist is undertaking.

5.6 Scrap Metal

Our fees are the lowest for site licenses among the boroughs benchmarked with. Our fee is currently £358 and highest found in a neighbouring borough was £909. We will consider increasing these fees as although we have very few site licences, the inspections of these sites are time consuming and involve officers from many different agencies working together to inspect a given operation.

Our collectors licence fees are the second lowest amongst the boroughs we benchmarked with. Our fee is set at £256 and the highest at £701 and reflect the cost of administrator and enforcement carryout for these licences and therefore we would not recommend increasing the fees at this time. Over the years our licences have reduced drastically we started with 32 licences and currently have eight.

6. Governance

6.1 The Regulatory Committee have responsibility for the determination of certain specified fees and charges, namely:

- Fees for applications for Special Treatment Licensing under the London Local Authorities Act 1991.
- Fees for applications for Street Trading under the London Local Authorities Act 1990
- Fees for applications for Animal Activities Licensing
- Fees for applications for Hypnotism, Sex Shops, Sexual Entertainment Venues, Scrap Metal & Motor Salvage Operators licences.
- Gambling Act 2005 and Licensing Act 2003.

6.2 The requirement or ability to levy a fee/charge for these matters are provided for in statute, either being set down as a fixed amount (statutory prescribed) that the Council cannot vary/set, or by providing the authority with the power to set a fee/charge in accordance with the requirement of the legislation (e.g. up to a maximum amount, or cost recovery only, or reasonable cost etc.) (Statutory discretionary).

7 Contribution to strategic outcomes

7.1 The fees contribute to Priority 4 of the Borough Plan –Economy

- A growing economy and thriving local businesses, supported by a community wealth building approach.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

8.1 Chief Finance Officer

8.2 This report seeks regulatory committee approval not to apply an inflationary increase to the Licencing fees and charges for 2021/22 where the Council could apply an increase. The reasons for the recommendation not to apply an inflationary increase are outlined in the report. A 2% increase on the discretionary element would amount to approximately £4k.

9 Legal

9.1 The Head of Legal and Governance has been consulted in the preparation of this report and comments as follows:

9.2 There are a variety of legislative powers that entitle the Council to charge fees for different licensing activities. In some instances, the Council has no discretion as to the level of the charge. In other cases, the specific legislative provisions allow authorities to decide whether to charge and how much.

9.3 Regulation 18(4) of the Provision of Services Regulations 2009 requires that any charges that the Council imposes must be reasonable and proportionate to the costs of the procedures and formalities under the licensing scheme and must not exceed the cost of those procedures and formalities.

9.4 Certain fees may not be set by the Cabinet. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 provides that decisions on certain approvals, consents, permits and licenses (for example premises licences; licenses for street trading) cannot be made by the Executive (Cabinet). Likewise, charges for such approvals, consents, permits and licenses may not be determined by the Cabinet. These fees will be set by the Regulatory Committee and are the subject of this report.

9.5 In reviewing fees and charges, services need to demonstrate that they have had due regard to the overarching Public Sector Equality Duty as set out in the Equality Act 2010. The EQIA screening tool is at Appendix 3.

9.6 The proposal not to increase the discretionary fees do not give rise to any legal implications.

10 Equalities

10.1 The Council has a public sector equality duty under the Equalities Act (2010) to have due regard to:

- tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil

partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;

- advance equality of opportunity between people who share those protected characteristics and people who do not;
- foster good relations between people who share those characteristics and people who do not.

10.2 An EQIA screening tool has been prepared. These changes will have a low impact overall and are not expected to have a disproportionate impact on any protected groups.

11 Use of Appendices

Appendix 1	Benchmarking document
Appendix 2	Schedule of Licensing Fees 2021-22
Appendix 3	Equalities Impact Assessment screening tool