
TITLE: REVIEW OF LICENSING FEES

COMMITTEE: LICENSING COMMITTEE

DATE: 11 NOVEMBER 2020

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[V101]

1.0 ISSUE

1.1 This report sets out the statutory fees that East Cambridgeshire District Council is required to charge for specific licences under the Licensing Act 2003 and the Gambling Act 2005.

1.2 The report also sets out the fees for the period 1 April 2021 to 31 March 2022 in respect of those licences and licensing related activities where the authority has the discretion to determine the relevant fees; this includes, but is not limited to hackney carriage and private hire licences, and animal licences.

2.0 RECOMMENDATION(S)

2.1 That Members:

- i) note the statutory fees that East Cambridgeshire District Council is required to charge in respect of the specified licences under the Licensing Act 2003 and the Gambling Act 2005 as set out in Appendix 1 and Appendix 2, and agree to implement these fees (or if subject to statutory amendment, the relevant amended fees) on the 1 April 2021.
- ii) instruct Officers to implement, as appropriate, any other statutory fees that may be brought into force during the 2020/2021 financial year.
- iii) instruct Officers to include the agreed fees in the 2021/2022 annual fees and charges report that is presented to full Council.

2.2 That Members:

- i) agree to implement the proposed fees relevant to those licences and licensing related activities where the authority has the discretion to determine the fees, as set out in Appendix 3 and Appendix 4, on the 1 April 2021.
- ii) agree to implement the proposed fees relevant to Animal Welfare licensing, as set out in Appendix 5 on the 1 April 2021.
- iii) instruct Officers to include the fees in the 2021/22 annual fees and charges report that is presented to full Council.

2.3 That Members:

- i) agree to implement the proposed fees relevant to hackney carriage, private hire and operator licensing, as set out in Appendix 6 on the 1 April 2021.
- ii) instruct Officers to include the proposed fees, as set out in Appendix 6, in the 2021/22 annual fees and charges report that is presented to full Council.

3.0 BACKGROUND

- 3.1 With the exception of statutory fees set by central government the Council is responsible for setting fees and charges for the licensing regulations it is responsible for administering and enforcing.
- 3.2 There is no statutory duty on the Council to consult when setting or revising licensing fees with the exception of those fees relating to hackney carriage, private hire vehicles and operators' licences under Section 70 of the Local Government (Miscellaneous Provisions) Act 1976.
- 3.3 The Committee's legal authority to agree the recommendations is based within a range of specific licensing legislation together with the delegated functions set out in the Council's constitution. Extracts from the relevant legislation are provided in Appendix 7. Due consideration must also be given to the provisions of the EU Services Directive and the judgement in the Hemming case. Members are advised that Officers have considered these requirements when compiling this report.
- 3.4 The Council's fees and charges may be challenged through a number of routes, e.g. service complaints to the Local Government Ombudsman or via a judicial review.
- 3.5 The consequences of such a challenge are clearly demonstrated in the Court of Appeal judgement given in respect of R Hemming and others v Westminster City Council case, which involved the licensing of sex shops in Soho and Covent Garden.
- 3.6 The judgement has made it clear that local authorities may become liable for substantial costs if it is found that procedures for setting fees have not been correctly followed, and if the fees are not reasonable and proportionate to the costs of the licensing procedures.
- 3.7 When considering whether the licensing fees are reasonable and proportionate, it is also necessary to look at each regulatory power separately. In simple terms this means taxi and private hire licence holders should not be charged a fee for their licence that creates an excess which is then used to subsidise the fees paid by applicants wishing to obtain another type of licence such as an animal welfare licence for boarding dogs.

- 3.8 To reduce the risk of challenge to the Council, in 2015 officers created a financial modelling tool to help calculate the fees from 2016/2017 onwards.
- 3.9 This tool collated detailed information regarding the costs associated with undertaking the administrative procedures and formalities of each specific licensing procedure, including the costs of investigating the background and suitability of applicants for licences together with the cost of monitoring the compliance of those who are licensed against the conditions of their licences.
- 3.10 In November 2015 Members were presented with a report which illustrated that the use of this tool had shown there to be a significant deficit in the Licensing Authority's budget, and that this was due in part to not recovering the true costs where the Licensing Authority had a discretion to set the fees. Having considered the report Members took the decision to follow the Officer's recommendation that the Authority look to recover the financial deficit over the extended 2016 to 2021 period rather than look to increase the fees to full cost recovery in one go.
- 3.11 Cost recovery was achieved at the end of the 2018/2019 period.

4.0 SUMMARY

- 4.1 The licensing procedures are considered from receipt of application to the issue of the final licence or permit with both variable and fixed costs being considered. These costs include officer, management and member time spent on licensing administration and monitoring but excludes time spent on enforcing unlicensed operators/businesses, in the case of joint hackney/private hire drivers' and operators' licences. In addition, a proportion of all indirect costs that can reasonably be attributed to licensing procedures have been included; for example, office accommodation, ICT, travelling, legal costs, advertising, equipment, postage & printing, subscriptions, telephone costs, training and other corporate recharges.
- 4.2 In relation to the consideration of applications, it is reasonable to recover the costs of running the relevant Committees from licensing fees and so consequently these costs have been incorporated into the overall figures.
- 4.3 It is also necessary to reflect that not all costs to the licensing authority are recoverable, such as the processing of "Charity Street Collections" and "Charity House to House Collections" where a fee is not permitted to be charged.
- 4.4 In addition to work where no fee may be charged, when a licence fee is statutory, if the time spent dealing with these licences produces a cost recovery figure above that generated by the fees, it is not possible to recover this deficit from other sources, and it must be covered by the Council's general fund.
- 4.5 The following table shows the cost of running the Licensing Authority for the three years 2017/2018, 2018/2019, and 2019/2020, and illustrates the impact

that raising the fees has had on the deficit compared to the pre-increase figure of 2015.

Table 1

Year	Income	Expenditure	Balance	% recovered
2015 (pre increase)	£125,514	£206,890	-£81,376	61%
2017/2018 (full year increase)	£174,857	£234,281	-£59,424	75%
2018/2019 (full year increase)	£189,053	£237,341	-£48,288	80%
2019/2020 (full year increase)	£197,319	£258,354	-£61,035	76%

- 4.6 Due to the legislation it will never be possible to recover 100% of the department's costs, but work undertaken by Officers suggests that in any given year approximately 80% of the expenditure level incurred by the service can be legally recovered, see Table 2 below.

Table 2

Type	Percentage of time 17/18	Percentage of time 18/19	Percentage of time 19/20	Average
Home Boarding	1.46	2.74	3.16	2.45
Kennels and Catteries	3.05	4.17	0.59	2.60
Breeding	2.34	2.60	6.51	3.82
DWA	0.21	0.14	0.15	0.17
Pet Shop	0.93	1.31	0.51	0.92
Riding Est	0.93	1.07	0.31	0.77
Sex Est	0.21	0	0	0.07
Zoo	0.70	0.03	0.04	0.26
GA05	5.00	4.06	5.86	4.97
LA03	30.84	31.64	23.16	28.55
Street Trading	2.10	2.29	3.35	2.58
Taxi	32.95	29.20	32.54	31.56
Scrap Metal	N/A	1.91	3.10	2.50
Totals	80.72	81.16	79.27	80.39

- 4.7 You will note from Table 1 above that the expenditure figure for the 2019/2020 period is significantly higher than the previous period. This is due to both the corporate and operational budgets increasing largely due to the impacts of the job re-evaluation scheme the Council was obliged to undertake.

- 4.8 The proposed budget for running the service for the 2021/2022 period is yet to be set, but the 2020/2021 budget saw a 1.5% increase over the 2019/2020 budget. If this increase is repeated, it would suggest an expenditure figure of £266,410, and therefore, a cost recovery income figure of approximately £213,128 would be needed.
- 4.8 As Members are aware the country is currently having to contend with the impact of a global pandemic in the shape of Covid 19. This virus and the measures taken by the Government to control it are unprecedented in living memory, and the Licensing Authority is not immune to the impact that this emergency is having on businesses of all shapes and sizes. Income for the first six months of the current 2020/2021 year is approximately £18,000 down on the same period last year (£98,088 down to £79,359).
- 4.9 The loss of income in the first six months of the current year appears to be mainly due to losses in our two largest areas of licensing; alcohol, entertainment and late night refreshment licensing, and hackney carriage and private hire licensing. This is not unexpected, as a mixture of the lockdown measures and financial uncertainty has seen community events cancelled, new applications for premises licences placed on hold, taxi drivers holding off replacing vehicles or expanding their fleet, and lower numbers of new driver applicants wishing to enter the trade.
- 4.10 Although August and September saw lower deficits in income over the same period in 2019/2020 than experienced in April and May of the same years (which suggests a possible recovery or stabilising), it is almost impossible to predict what the next six months will bring in terms of income, as this will be largely controlled by the scale of the Government's response to the increasing number of infections being reported in the press as a "second wave".
- 4.11 Current projections for the current 2020/2021 period suggest a reduction in operational income of approximately 15% could be seen. This would produce an income of £167,000 at year end working off the 2019/2020 actual income level. It is hoped that this shortfall will be covered by one of the Government's assistance schemes.

5.0 CONCLUSION

- 5.1 Despite the corporate and operational costs increasing by a greater amount than was factored in at the start of the year (as a result of the national job re-evaluation process that the Council had to undertake), the service only fell short of its cost recovery figure by 4% or £9,364 in the year ending 31 March 2020.
- 5.2 Whilst the work conducted by officers suggests that an increase in some fees could be justified at this time based purely on the economics of time and costs being proportioned, it is impossible to ignore the impact that Covid 19 is having on the licensed trade. Although, it is hoped that the immediate losses in income to the service experienced during the Government's "emergency period" will be covered via one of the many schemes the Government has

announced to assist Local Government, it is clear that the economy will need time to recover once the “emergency period” is ended and life returns to the new normal. Officers believe that any increase in fees at this time is likely to stifle this economic recovery, and could actually result in further reductions in overall income as a result of losing licence holders.

5.3 Having considered all of the information available at this time, Officers recommend that the fees remain at their current levels, and should be reviewed in 12 months’ time once we have a clearer picture of how Covid 19 has impacted the service, and the wider economy.

5.4 There is no need to conduct an Equality Impact Assessment (EIA) as this report does not lead to the creation of a policy, or additional regulation.

6.0 APPENDICES

6.1	Appendix 1	Licensing Act Statutory Fees
6.2	Appendix 2	Gambling Act 2005 Statutory Fees
6.3	Appendix 3	Gambling Act 2005 – Discretionary fees
6.4	Appendix 4	General discretionary fees
6.5	Appendix 5	Animal Welfare Regulation fees
6.6	Appendix 6	Discretionary taxi fees
6.7	Appendix 7	Extracts from legislation regarding fee setting
6.8	Appendix 8	Neighbouring authority fees chart

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
Legislation contained in appendix 6	Room SF208 The Grange, Ely	Stewart Broome Senior Licensing Officer (01353) 616477
LGA guidance on local fee setting 2015		
Hemming v Westminster 2015		
R v Tower Hamlets LBC 1994		