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**TITLE: REVIEW OF LICENSING FEES**

**COMMITTEE: LICENSING COMMITTEE**

**DATE: 18 NOVEMBER 2015**

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[Q109]

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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 proposes revised fees for the period 1 April 2016<sup>1</sup> to 31 March 2017 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.

<sup>1</sup> The fees applicable to hackney carriage, private hire vehicle and operator licences may become effective on a date prior to the 1 April 2016. This is because the Council must follow the process prescribed by Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 to vary these fees and the actual date that the fees become legally effective is dependent on whether or not objections are made as part of the prescribed process. Whilst not legally required to do so, the Council has historically applied the same process to hackney carriage and private hire vehicle drivers 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 Part 1 of Appendix 1 and agree to implement these fees (or if subject to statutory amendment, the relevant amended fees) on the 1 April 2016.
- ii) instruct Officers to implement, as appropriate, any other statutory fees that may be brought into force during the 2015/16 financial year.
- iii) instruct Officers to include the agreed fees in the 2016/17 annual fees and charges report that is presented to full Council.

2.2 That Members:

- i) agree to implement, with any necessary modification, the proposed fees relevant to those licences and licensing related activities where

the authority has the discretion to determine the fees on the 1 April 2016.

- ii) instruct Officers to publish on the Council's website, the intention of the Committee to revise the fees as set out in Part 2 of Appendix 1.
- iii) instruct Officers to include the fees in the 2016/17 annual fees and charges report that is presented to full Council.

### 2.3 That Members:

- i) agree to implement immediately, with any necessary modification, the proposed fees relevant to driver licences, as set out in Part 3 of Appendix 1, with an understanding that if Council do not approve the measure, refunds will be given.
- ii) agree to implement, with any necessary modification, the proposed fees relevant to hackney carriage vehicle, private hire vehicle and operator licences, as set out in Part 3 of Appendix 1.
- iii) instruct Officers in accordance with the provisions of Section 70 of the Local Government (Miscellaneous Provisions) Act 1976, to publish a notice in a local newspaper setting out those fees that it is proposed will be varied to be advertised for a period not less than 28 days.
- iv) instruct Officers to include the proposed fees, as set out in Part 3 of Appendix 1, in the 2016/17 annual fees and charges report that is presented to full Council, and that in respect of those fees that are to be advertised in accordance with Section 70 mentioned above these are recorded in the said annual report as 'provisional fees under consultation to be confirmed by 31 March 2016'.

### 3.0 SUMMARY

- 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 enforcing. 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.
- 3.2 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.
- 3.3 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.

- 3.4 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 boarding establishment licence.
- 3.5 To reduce the risk of challenge to the Council, officers undertook work this year to develop a financial modelling tool to calculate the licensing fees to be implemented from 2016/17 onwards. The 2015/16 financial year is the baseline year against which fees and charges, in the following two years of a three year cycle, are being compared.
- 3.6 The tool is based on drawing together detailed information regarding the costs associated with undertaking the administrative procedures and formalities associated with 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.
- 3.7 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. This duty is reflected in the recommendation set out at paragraph 2.3 above. Historically, the Council has also consulted on driver licence fees and consequently officers recommend that this practice continues. With respect to the remaining discretionary fees, it is suggested that publishing the Committee's intentions, prior to the fees coming into force, will be sufficient.
- 3.8 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 2. 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.
- 4.0 FINANCIAL IMPLICATIONS
- 4.1 A task to capture the detail involved in all licensing procedures where the Council has the discretionary power to set fees, using the model mentioned in paragraph 3.5 above, has been undertaken. This is the first year that this model has been used.
- 4.2 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 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.

- 4.3 In relation to the consideration of applications, it is reasonable to recover the costs of running the relevant Committees from licensing fees (unless they are already included in statutory fees) and so consequently these costs have been incorporated into the overall figures.
- 4.4 It is also necessary to reflect the cost to the licensing authority of processing applications where a fee is not permitted to be charged. It has also been considered that the costs of providing advice to those who may consider applying for a licence in the future should not be covered by those already licensed. Currently charity House to House and Street Collections cannot be charged an application fee, and it is estimated that 5% of our resource is spent dealing with these. It is estimated that a further 10% of our time is taken dealing with enquiries that cannot be recovered. The impact on this is that the Licensing Authority will only be able to recover 85% of its costs from discretionary fee payers, with the shortfall being covered by the general fund.
- 4.5 It is accepted that costs can be recovered over a period of time allowing surpluses to be returned to licensees and deficits to be recouped by the Council. This does not mean that fees have to be adjusted every year (although they can be) to reflect immediately any previous deficits or surpluses; however, it must be demonstrable over a period of time that only legitimately incurred costs are recovered. The Hemming case judgement makes it clear that not all costs are recoverable and must be borne by the Council.
- 4.6 At the time of writing this report the licensing income has been confirmed at £118,114, and the total cost of running the Licensing Authority has been confirmed at £212,185 which produces a shortfall of £93,744. This shortfall is being covered by the general fund. Many of the fees currently being charged have not been increased for a number of years, with records indicating that the last increase to a licence fee was made in April 2011. By way of comparison the expenditure 2011 was £189,914. An increase in expenses combined with an historic tendency to benchmark against neighbouring authorities has resulted in a budget deficit of approximately 30% or £61,916 between that which can be lawfully recovered, and that which cannot. This deficit is currently being covered by East Cambridgeshire District Council tax payers.
- 4.7 If Members approve the proposed cost neutral charges detailed in the appendixes to this report, existing licence holders and new applicants will see significant increases over the fees that they currently pay.

4.8 It is likely that any increase in fees will require committee time in January, February, or March. The cost of running these committees will come out of the licensing budget.

## 5.0 CONCLUSION

5.1 The fee analysis model used to create appendix 3 – part 1 illustrates quite clearly that all of the discretionary fees currently charged fail to cover the associated costs of the specific regulatory powers, and thus Members would be completely justified in increasing them to the breakeven levels suggested. However, it should also be noted that these shortfalls which together create a significant deficit were created in part by the licensing authority historically failing to recover the full costs by increasing fees on an annual basis.

5.2 It is also worth noting that this is the first time that the model has been used, and although there are no errors contained in the model, and Officers believe the information accurately reflects the time they feel is taken on each regulatory power, it is based on the information available at this point in time, which is not as comprehensive as it will be in future years as identified shortfalls in data collection are corrected.

5.3 The impact of increasing the fees to the levels required to recover the lawful costs of the licensing authority will effectively require the trade to pay five years of increases in one go. Although lawful this has the potential to affect the cash flow of their businesses, and would in the opinion of Officers be unfair.

5.4 Although benchmarking is not permitted when setting fees, it is also worth noting that the breakeven fees in appendix 3 –part 1 would move the Council significantly away from the fees charged by its neighbouring authorities which can be seen in appendix 4. Officers are aware that a number of the Council's on appendix 4 are looking at the fees they charge, but at the time of writing this report no other information is available.

5.5 The overall decision with fee setting must be made by Members. However, it is the opinion of Officers that a staged increase in fees should be considered. These suggested figures can be found in the last column in appendix 1 - part 2, and represent approximately a fifth of the difference between the current fee and the proposed break even fee. The only exception being the newly created three year driver licence. For these licences it has been necessary to calculate a figure using a combination of the current year's figure at the time of application added to the increased single year figure for the two years that the applicant will not need to renew on in order to arrive at a three year figure.

5.6 Although paragraph 3.7 states that Officers recommend consulting on driver fees in the same way we consult on vehicle and operator fees, it is also recommended by Officers that any proposed increase in driver fees should come into effect immediately, subject to refunds being given if Council approve a lesser figure following the consultation period. The reason for this is

that we have a large number of licence holders renewing before the close of the consultation period, and Officers believe it would be unfair on those renewing after the end of this period to have to pay significantly more than those renewing before. This is especially pertinent due to the introduction of 3 year licences.

- 5.7 Appendix 3 – part 2 illustrates how a proportionate increase in fees paid by new applicants and existing licence holders will bring the service towards a cost neutral standing over the next five years. The table assumes a static LA03 and GA05 income, as these are statutory fees, and cannot be taken into account, and it also assumes a 1.5% increase in expenditure by the licensing authority. Although it is obviously possible for expenditure to increase above this rate, it is presumed that the recent changes to the licensing authority set up will result in improved efficiencies which will in turn help to offset any potential for additional expenses to be incurred.
- 5.8 A staged increase will also enable Officers time to work on data collection methods, and therefore improve the level of information available when considering future increases.
- 5.9 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

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| 6.1 | Appendix 1 – Part 1 | Licensing Act and Gambling Act 2005 Statutory Fees |
| 6.2 | Appendix 1 – Part 2 | Discretionary fees                                 |
| 6.3 | Appendix 1 – Part 3 | Discretionary taxi fees                            |
| 6.4 | Appendix 2          | Extracts from legislation regarding fee setting    |
| 6.5 | Appendix 3 – Part 1 | Fee analysis summary                               |
| 6.6 | Appendix 3 – Part 2 | Cost neutral timeline table                        |
| 6.7 | Appendix 4          | Neighbouring Council fees                          |

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**Background Documents**

**Location**

**Contact Officer**

Legislation contained in appendix 2

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The Grange,  
Ely

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LGA guidance on local fee setting 2015

Hemming v Westminster 2015

R v Tower Hamlets LBC 1994