

AGENDA ITEM: 9

SUMMARY



Report for:	Licensing Health & Safety Enforcement Committee
Date of meeting:	27 th November 2012
PART:	1
If Part II, reason:	

Title of report:	Licensing fees 2013-14
Contact:	Ross Hill – Licensing Team Leader, Legal Governance
Purpose of report:	To outline proposals for licensing application fees in the financial year 2013-14, prior to consultation
Recommendations	To instruct officers to commence public notification and consultation on the proposed fees, and to report results to a future meeting of the Committee
Corporate objectives:	Dacorum Delivers <ul style="list-style-type: none">The proposed fees have been calculated on a cost recovery basis, and projections show that if the revised fees are adopted the costs of administering licensing schemes should be recovered.
Implications:	<u>Financial</u> There will be a cost in adoption of fees, as some will require public notice to be given. The proposed fee amendments are projected to result in an increase in Licensing service revenue of approximately £25-30,000 per annum. <u>Value for Money</u> The proposed fees have been calculated on a cost recovery basis, with the aim of ensuring that administrative, processing and certain compliance costs are recovered in full.
Risk Implications	None

Equalities Implications	None
Health And Safety Implications	None
Consultees:	This report proposes public consultation on all of the fees, with the results to be reported to a future Committee meeting for consideration.
Background papers:	Draft Licensing Fees & Charges 2013-14
Glossary of acronyms and any other abbreviations used in this report:	

1. BACKGROUND

- 1.1. Dacorum Borough Council has statutory responsibility for the administration and enforcement of a wide range of licences, registrations and permits. A number of these schemes allow the Council to levy an application fee, payable by an applicant for a licence, in order to cover the costs (or a proportion thereof) of the administration of those licences. In some cases, costs are also permitted to cover other aspects of providing the scheme.
- 1.2. The basis in setting such fees is generally to ensure full cost recovery, or as close to it as possible. Numerous legal cases over the years have confirmed that licensing fees may not be used to generate a profit for councils, and that fees should be reviewed regularly (generally annually) to ensure that neither a significant surplus nor deficit is created. Surpluses or deficits are to be carried forward to future years to be redistributed or recouped, as applicable.
- 1.3. For a number of reasons, the fees charged in Dacorum have not been reviewed en masse for several years – for example, the fees charged in respect of taxi drivers and vehicles are unchanged since at least April 2004. Given that inflation alone in this period would account for an average 25% increase in costs, it is hardly surprising that the fees charged no longer accurately reflect the costs of administering the licensing scheme.
- 1.4. There have been a number of recent developments, such as the implementation of the EU Services Directive, and recent court cases such as R (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council¹, which have had a significant impact on Council's powers to set and collect fees. Both the legislation and that case have confirmed that, at least for formalities within scope of the Services Directive, the costs of enforcing a licensing regime may not be recovered via fees.
- 1.5. It is now proposed to review and set licensing application fees for the financial year 2013-14, and the remainder of this report sets out the specific proposals in this respect.

¹[2012] EWHC 1260 (Admin)

1.6. Moving forward, it is expected that this will become an annual exercise. Due to recent and imminent changes in structure, personnel and procedures within the Licensing section, a number of costs have had to be estimated this year, and these costs will be among the first elements reviewed in subsequent years, to ensure the accuracy of our fees.

2. POWERS TO SET FEES

2.1. The table at Annex A summarises the Council's powers to set its fees in respect of licensing applications, and any limitations on those powers.

3. PROPOSALS

3.1. A draft list of service-wide proposals for fees and charges, covering the period from 1st April 2013 to 31st March 2014, is appended to this report as Annex B.

3.2. Increases are proposed to a number of the fees charged in respect of licensing applications, where the current fee does not currently accurately reflect the costs to the council of processing and determining that application type. However, a number of decreases have also been proposed, where costs are currently below the fee charged – for example, change of taxi vehicle ownership, renewal of home boarding licences, bingo licences, dog breeding establishment licences, and transfers of sex establishment licences.

3.3. It is understood that the economic climate for regulated businesses remains challenging at best, and any form of cost increase for those businesses will be unwelcome. Increases have not been suggested lightly, and represent an activity on which the council currently incurs costs significantly greater than the current fee recovered. A number of policies and procedures are currently under review, with further areas to follow in the coming months, with a view to streamlining licensing processes and reducing costs wherever possible, which may in future years enable fees to be reduced.

3.4. The following comments are made on specific proposals:

Section 1.1: Where officers have discretionary delegated authority to exempt an applicant from standard condition/policies, but decline to do so, applicants will usually be entitled to challenge that decision by appeal to the Licensing (Sub-) Committee. It is proposed to introduce a fee, payable on the initiation of such a challenge, to limit the number of frivolous requests made, in a similar way to the fee payable to engage a statutory right of appeal to magistrates' courts. Any such fee would be refundable if an appeal was upheld, in whole or in part.

Section 2: We are currently awaiting confirmation of when the power to set fees for alcohol/entertainment applications will be commenced. In the absence of regulations setting out the matters that must be considered in setting these fees, this part of the exercise has not been completed. Should the powers be commenced in 2013 prior to the annual review of all fees, a separate proposal for these fees will be put to the Committee.

Section 3.1: A discount has been proposed in respect of home boarding establishments, which generally are smaller and carry a lower risk, thus

requiring less officer time. However, a limitation on the number of animals being accommodated has also been proposed to ensure that this provision is not abused.

Section 3.2: Separate fees have been proposed for two types of variations. Those applications in respect of an increase in the number of animals or species being kept will generally engage officers and veterinarians, requiring an inspection of the premises to be carried out to ensure suitability. On the other hand, administrative matters (such as a condition permitting the transfer of animals for a temporary exhibition) will generally have a lower impact on service delivery.

Section 3.6: It is believed that these fees have not previously been set, and there are currently no such licences in force in the Dacorum area. As such, fees have been based on estimated costs only, as there is no relevant data against which to benchmark.

Section 4.3: All of these fees had previously been set at 50% of the prescribed maximum amounts on commencement of the licensing scheme, with the exception of bingo licences which had been set at 100%. These have now been adjusted in accordance with the authority's experiences to date. As no track betting, bingo or family entertainment centre licences have been issued to date, these fees have been based upon estimated costs only.

Section 6: A number of policy and procedural changes have either been proposed or are currently being implemented to this licensing area, and where possible the fees have taken those changes into account. However, in a number of cases, it has not been possible to accurately calculate the effect on costs, resulting in estimated costs being used here.

Section 6.3: Previously 3 fee bands were offered here. Amalgamation of the upper two bands has been proposed to more accurately reflect the costs involved in processing such applications, which are not necessarily quantity related, while preserving a cheaper option for the smallest operators (e.g. sole traders).

Section 8.1: Previously, fees were set at different levels for different categories of sex establishment. Given that the costs involved are similar, these have now been equalised across all categories. A separate enforcement component was also set previously – this has now been eliminated, as such an approach is no longer permissible.

4. TIMELINE

4.1. The following timeline is proposed:

Date	Activity
3 rd December 2012	Start of consultation
20 th January 2013	Last date for consultation responses
12 th February 2013	Licensing HSE Committee meeting Consultation results reported back Decision on whether to adopt fee proposals
1 st April 2013	Any revised fees adopted to take effect

- 4.2. As at least two sections of the proposed fees will require public notice to be given, a general notice will be placed in a local newspaper setting out the proposals and the means for commenting upon them.

5. RECOMMENDATIONS

- 5.1. That the Committee note the proposals in the draft 'Licensing Fees and Charges 2013-14' document; and
- 5.2. That the Committee instruct officers to give the necessary public notices and commence consultation on the proposals in accordance with the above timeline, and report the results back to the Committee at its meeting on the 12th February 2013.

ANNEX A – SUMMARY OF POWERS TO SETT APPLICATION FEES

Section	Area	Power arises from
1.1	General service charges	Various legislation
2.1 – 2.5	Alcohol, entertainment, etc	At present, these fees are prescribed in regulations made by the Secretary of State under the Licensing Act 2003. Section 197A of that Act will allow licensing authorities to set fees locally on a cost-recovery basis, but is yet to be commenced.
3.1	Animal boarding	s.1(2), Animal Boarding Establishments Act 1963 Fee as may be determined by LA.
3.2	Dangerous wild animals	s.1(2)(e), Dangerous Wild Animals Act 1976 Sufficient to meet direct and indirect costs incurred
3.3	Dog breeding	s.3A(2), Breeding of Dogs Act 1973 Reasonable costs incurred in administration and enforcement.
3.4	Pet shops	s.1(2), Pet Animals Act 1951 Fee as may be determined by LA.
3.5	Riding establishments	s.1(2), Riding Establishments Act 1964 Fee as may be determined by LA. Cost of veterinary inspection.
3.6	Zoos	s.15(1), Zoo Licensing Act 1981 Sufficient to cover the reasonable expenditure incurred by the authority. Special provisions for inspections, closures, and direction making.
4.1, 4.3	Gambling notices, premises licences	Set on a cost recovery basis by the authority, up to maximum amounts prescribed in regulations made under the Gambling Act 2005. No fee chargeable for OUN's
4.2, 4.4	Gaming permits, lotteries	Prescribed in regulations made by the Secretary of State under the Gambling Act 2005
5.1 – 5.2	Charity collections	No fees chargeable
6.1	HC/PH drivers	s.53(2), Local Gov't (Misc. Provisions) Act 1976 Recovering the costs of issue and administration. Refundable if licence not granted.
6.2 – 6.3	HC/PH vehicles, PH operators	s.70(1), Local Gov't (Misc. Provisions) Act 1976 Sufficient to cover the cost of: inspection of vehicle for licensing purposes, providing hackney carriage stands, or other costs for administration and control/supervision of vehicles. Refundable if licence not granted. <i>Maximum fees must be advertised.</i>
7.1	Scrap metal	No fees chargeable
7.2	Motor salvage	s.3(1)(b), Vehicles (Crime) Act 2001 Recovering the costs incurred in administration
8.1	Sex establishments	Sch 3, para 19, Local Gov't (Misc. Pr'ns) Act 1982 Reasonable fee
9.1	Skin piercing, etc	s.14(6), 15(6), Local Gov't (Misc. Pr'ns) Act 1982 Reasonable fee

ANNEX B – DRAFT LICENSING FEES AND CHARGES 2013-14