

Licensing Committee

4 December 2018

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

Street trading – Consent Fees 2019/2020

Final Decision-Maker	Licensing Committee
Portfolio Holder(s)	Councillor Dr Ronen Basu, Portfolio Holder for Sustainability
Lead Director	Paul Taylor Director of Change and Communities
Head of Service	Gary Stevenson, Head of Housing, Health & Environment
Lead Officer/Report Author	Sharon Degiorgio, Senior Licensing Officer
Classification	Non-exempt
Wards affected	All

This report makes the following recommendations to the final decision-maker:

1. That the Licensing Committee approves the fee levels as set out in paragraph 2.4 of the report for implementation on 1 April 2019.

This report relates to the following Five Year Plan Key Objectives:

- A Prosperous Borough.
Supporting smaller businesses and helping to develop a vibrant town.

Timetable

Meeting	Date
Licensing Committee	4 December 2018

Street trading – Consent Fees 2019/2020

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The authority is required to review the fees set for the administration of the Local Government (Miscellaneous Provisions) Act 1982. This ensures the Council complies with its statutory duty and that the licensing of street trading is self financing, in accordance with the Council's Medium Term Financial Plan.
 - 1.2 The Licensing Committee approves the fee levels as set out in paragraph 2.6 of the report for implementation on 1 April 2019.
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2. INTRODUCTION AND BACKGROUND

- 2.1 Street trading is regulated under the Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. Designation as a 'Consent' street gives the Council a wide discretion to impose conditions and controls or to refuse. There is no automatic right of appeal.
- 2.2 On 25 July 2013 Full Council resolved to designate certain streets in Tunbridge Wells as 'Consent' streets for the purposes of street trading. Consents will be issued for up to a maximum of 104 days in any calendar year.
- 2.3 Paragraph 9 of Schedule 4 of the 1982 Act states "a Council may charge such fees as they consider reasonable for the grant or renewal of a street trading consent". It is therefore necessary for the Authority to review its fees.
- 2.4 The current fee structure was initially brought in by the Licensing Committee to cover the trial period and was not set to recover the full costs of providing the regime, but to try and encourage interest in the initiative. However, to date, there has been little take-up of this initiative.
- 2.5 There is currently one street trader operating in the Borough.
- 2.6 The European services Directive, as incorporated by the Provision of Services Regulations 2009 provides that fees and charges 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". This principle was affirmed by the courts *in the 2015 case of R (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council*, the Supreme Court ruled that licensing authorities could include the costs of regulatory and enforcement activities in determining the licence fees to be paid by licensed operators. The costs charged for the clerical and administrative aspects must be reasonable and proportionate to the actual cost of those procedures.

Proposed Fees

- 2.7 There has been no increase in the fees since the initiative took effect in 2013, and due to the limited “take up”. The approach taken this year has therefore been to limit any increase to an inflationary increase on last year’s fees (2.5%).
- 2.8 The fee consists of two elements, firstly, the initial fee which will cover the costs associated with the administration for processing the application and the issuing of the necessary consent. Secondly, a daily pitch fee which will include a contribution towards ensuring compliance of licence conditions.

Licence	Existing Consent Fee	Proposed Consent Fee
Initial/Application fee	£61.00	£62.00
Pitch fee	£25.00	£25.50

3. AVAILABLE OPTIONS

- 3.1 Members may approve the fees as set at in paragraph 2.8.
- 3.2 Members may decide not to apply an inflationary increase and leave the fee unchanged.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Members are asked to approve the proposed fees set out in paragraph 2.8 of the report.
- 4.2 The basis in setting such fees is generally to ensure full cost recovery, or as close to it as possible. Licensing fees may not be used to generate a profit for Councils.

5. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 5.1 The fees will be charged from 1 April 2019 from the date of the Committee decision 4 December 2018 with respect to new applications and existing consent holders. The revised fees will be published on the Councils’ website.

6. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off (name of officer and date)
Legal including Human Rights Act	Should parts of industry believe the authority's fees are at a level which is greater than the costs of the statutory functions then it would be open to them to undertake judicial review proceedings. Should this arise, the authority would need to evidence how it arrived at the fee levels to demonstrate that they have been calculated on a cost recovery basis only.	Robin Harris, Senior Lawyer (Contentious) 12.11.18
Finance and other resources	It is anticipated that overall income from the proposed fees and charges in paragraph 2.8 will cover the cost of providing the service.	Jane Fineman, Head of Finance and Procurement 12.11.18
Staffing establishment	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 12.11.18
Risk management	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 12.11.18
Environment and sustainability	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 12.11.18
Community safety	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 12.11.18
Health and Safety	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 12.11.18
Health and wellbeing	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 28.10.18
Equalities	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 12.11.18
Data Protection	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 12.11.18

7. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

None

8. BACKGROUND PAPERS

None