

# Licensing Committee

17 September 2019

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

Yes

## Introduction of Licensing Pre-application Advice

<b>Final Decision-Maker</b>	Licensing Committee
<b>Portfolio Holder(s)</b>	Portfolio Holder for Sustainability
<b>Lead Director</b>	Paul Taylor - Director of Change and Communities
<b>Head of Service</b>	Gary Stevenson - Head of Housing, Health and Environment
<b>Lead Officer/Author</b>	Sharon Bamborough – Head of Licensing Partnership
<b>Classification</b>	Non-exempt (Public)
<b>Wards affected</b>	All

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

1. To agree in principle to the introduction of charging for pre-application advice for certain types of licence applications

### Explain how this report relates to the Corporate Priorities in the Five Year Plan:

- A Prosperous Borough
- A Green Borough
- A Confident Borough
- To ensure effective partnership working

### Timetable

<b>Meeting</b>	<b>Date</b>
Licensing Committee – consider in principle	17 September 2019
Licensing Committee - annual review of fees and charges	3 December 2019

# Introduction of Licensing Pre-application Advice

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report invites Members to consider introducing, in principle, a fee for the provision of pre-application advice for applications relating to various types of premises licensing (a list of the types is attached at **Appendix A**) as well as a 'check and send' type service for volume applications which have a high rate of errors and are invalid on receipt.
  - 1.2 It is requested that Member consider this as an 'in principle' decision – and if agreed, the proposed fees will be included as part of the larger annual review of fees and charges report in the coming months.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 We are committed to working with our customers early in the premises licence application process in order to help them to submit the best possible application which might be acceptable, to give advice on information needed (statutory and policy) and to confirm who must be consulted. Pre application advice is also helpful so that our customers know how to make a valid application. To that end we positively encourage pre application advice because it can give the customer greater clarity and reassurance about their application. We can also alert them to issues and concerns that might arise from their proposal. *Whilst this approach will be encouraged we will make it clear that it is not a requirement for an application.*
- 2.2 Our charged pre application scheme will provide customers with detailed written advice on statutory requirements and policy. There will be a template form and guidance available on our website for applicants. This will ensure that we receive all the information that we need in order to give appropriate advice. Any advice given on policy/statute will be clear as to what is a statutory requirement and what is policy or guidance, and that each case has to be considered on its own merits
- 2.3 Our proposed 'check and send' service for volume applications will provide officer time in assisting in completion of the application, advice on documentation needed and help in submitting the application.
- 2.4 Providing pre-application advice prior to an application being made is a discretionary service. Section 111 of the Local Government Act 1972 allows this discretionary service as it is classed as conducive or incidental in relation to carrying out the licensing functions.

### Current arrangements

- 2.5 Currently the licensing team offers pre-application advice free of charge to applicants who request this service. In the course of a year the team deals with

approximately xx (awaiting figure) applications for Tunbridge Wells. One hour is the average amount of time spent on pre-application advice, excluding large scale events and these meetings take place at the Council offices and some take place on site.

- 2.6 The proposal is for the Licensing Team to recover all their reasonable costs in providing pre-application advice and use the income received to offset salary costs and make the service as far as possible self-financing. The fees proposed will be calculated based upon an average officer hourly rate and what level of officer carries out the work.
- 2.7 It is proposed that this service will cover only certain licensing regimes, mainly premises based. It will not, for example, cover hackney carriage/private hire licensing.
- 2.8 Having regard to other models adopted by other authorities, it is proposed to charge applicants on the basis of how complex the application is and therefore how much officer time will be taken up in providing the correct level of advice. (Costs of other authorities' schemes are attached at Appendix B for comparison)
- 2.9 The pre-application advice can involve carrying out a site visit, attending meetings, telephone calls, assessing plans and possible advice on drafting of proposed conditions. The Licensing Team will also provide advice on the process and the practicalities of filling out various forms so as to ensure when the applications are submitted it can be made valid. This will usually include written advice and/or a meeting with the applicant.
- 2.10 Any written advice will contain the important caveat that pre-application advice does not guarantee that their application will be successful. Neither will it exempt them from any enforcement action taken by the council.
- 2.11 For the 'check and send' service, this will relate to Licensing Act 2003 applications for transfers and variations of designated premises supervisors, because there is a higher instance of applications being submitted which are invalid upon receipt and require a lot of work for the Hub team to sort out with the applicant.
- 2.12 It is also proposed that in general, we would not charge for charitable organisations, provided they provide evidence of charitable status. Decisions on exemption from fees will be at the discretion of the Licensing Service.

#### Statutory functions

- 2.13 Section 93 of the Local Government Act 2003 introduced a general power for Best Value authorities to charge for discretionary services subject to having regard to the statutory guidance issued by the Secretary of State. The power came into force on 18 November 2003 and at the same time the ODPM (Office of the Deputy Prime Minister) issued guidance for local authorities on how to use this power: 'General power for Best Value Authorities to Charge for

Discretionary Services – Guidance on the Power in the Local Government Act 2003’.

- 2.14 The Guidance on the Power in Section 93 of the Local Government Act 2003 sets out the underlying principles for the introduction of charges for discretionary services. It stipulates that such charges must not provide a new source of income and should only cover the cost of provision, i.e. not make a profit. Charges must be based on principles set out in the Chartered Institute of Public Finance and Accountancy’s (CIPFA) Best Value Accounting Code of Practice. A charge can only be made if the recipient agrees to the service.
- 2.15 At present the Licensing team offers this service free of charge. The team will still carry out the statutory functions in processing the applications and this function will not be included in the charges. In addition, they will still answer minor queries and enquiries.
- 2.16 The intent of the introduction of paid for advice is to cover the costs of:
- lengthy appointments - especially if an applicant has either chosen not to engage legal representation (and needs a great deal of guidance) or if an agent feels that a formal appointment would be beneficial to their client in order to address concerns up front and smooth the way for the application following advice from very experienced officers.

*This will be provided by the senior licensing officer or licensing officer, and will include advice on the legislation and our policies.*

- A ‘check and send’ type service (to be provided by the Hub Team) to deal with the high volume of incorrect /badly drafted applications for variation of DPS, Transfers, etc. They would offer an appointment to check the application (or provide step by step advice on completion if submitting online)

*This will be provided by one of the Licensing Hub team officers, and is much more focused on whether an application has been correctly completed or is missing any required documentation.*

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### **3. AVAILABLE OPTIONS**

- 3.1 To approve, in principle, the introduction of charging pre-application advice and check and send service (with proposed fees to be set out and considered at a future meeting of the Licensing Committee).
- 3.2 To reject the introduction of paid for pre-application advice and continue to provide discretionary services free of charge.
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#### 4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 We currently spend a noticeable amount of time providing advice or sorting out badly completed applications which has a knock on effect to the other day to day work of the team. Work will build up and this causes a knock on effect of pressure leading to lack of target achievement or errors, and we sometimes then need to use overtime to ensure performance deadlines are being met.
- 4.2 In order to cover the costs of this overtime caused by impact of spending time on this area of work, we are looking to introduce fees to formalize the giving of advice and ensure that it can then be covered within the costs or running the service instead of being at the expense of it.
- 4.3 The Licensing Service recommends the first option in order to cover the costs of:
- the demands on Licensing officers' time who currently give this advice for free
  - the additional time Hub team officers spend in dealing with applicants who have a high instance of invalid applications.
- 4.4 It is hoped that this will not only cover costs but also lead to a higher number of good quality applications being submitted at first attempt.
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#### 5. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 5.1 Should the committee be minded to agree the principle of charging for pre-application advice, the proposed charges will be included in the annual review of fees and charges due to come to committee in the next few months.
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#### 6. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Legal</b> including Human Rights Act	<i>The council has statutory powers to charge for discretionary services on a cost recovery basis. This scheme is within those statutory powers.</i>	Robin Harris Senior Lawyer – Contentious, Mid-Kent 02.09.19
<b>Finance</b> and other resources	<i>If chargeable pre-application advice is introduced, this will have the benefit of helping to offset operational costs.</i>	Lee Colyer, Director of Finance, Policy & Development 09.09.19

<b>Staffing establishment</b>	No impact on Tunbridge Wells Borough Council	Sharon Bamborough Head of Licensing Partnership 09.09.19
<b>Risk Management</b>	A risk assessment is undertaken on an annual basis regarding the service objectives and reviewed regularly	Sharon Bamborough Head of Licensing Partnership 09.09.19
<b>Data Protection</b>	No impact.	Sharon Bamborough Head of Licensing Partnership 09.09.19
<b>Environment and Sustainability</b>	No impact.	Sharon Bamborough Head of Licensing Partnership 09.09.19
<b>Community Safety</b>	No impact.	Sharon Bamborough Head of Licensing Partnership 09.09.19
<b>Health and Safety</b>	No impact.	Sharon Bamborough Head of Licensing Partnership 09.09.19
<b>Health and Wellbeing</b>	No impact.	Sharon Bamborough Head of Licensing Partnership 09.09.19
<b>Equalities</b>	No impact.	Sharon Bamborough

		Head of Licensing Partnership 09.09.19
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## **7. REPORT APPENDICES**

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

- Appendix A: List of licensing regimes/applications which will be applicable for per-application advice.
- Appendix B: Benchmarking with other authorities.

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## **8. BACKGROUND PAPERS**

none