

LICENSING - CHARGING FOR PRE-APPLICATION ADVICE

Cleaner and Greener Advisory Committee - 29 October 2019

Report of	Chief Officer Environmental and Operational Services Chief Officer Planning and Regulatory Services
Status	For decision
Cabinet	7 November 2019
Key Decision	Yes

Executive Summary: This report invites Members to consider introducing an innovative new scheme designed to help licence applicants by offering the provision of a (paid for) pre-application advice service 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.

This report supports the Key Aim of sustainable economy.

Portfolio Holder Cllr. Margot McArthur

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Recommendation to Advisory Committee: That the recommendations below be recommended to Cabinet.

Recommendation to Cabinet: That

- a) the provision of a (paid for) pre-application advice service 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, be approved; and
 - b) the proposed fees set out in Appendix B of the report, be adopted.
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Reason for recommendation: The Licensing Service recommends the scheme to offer a value for money option to assist applicants which should lead to the enhancement of quality applications being submitted and recovery of costs for officer time.

Introduction and Background

- 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 suggest who to consult. 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.

- 2 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

- 3 Currently the licensing team offers pre-application advice free of charge to applicants who request this service (most usually for new and major variations of premises licences). In the course of a year the team deals with approximately 25 applications for Sevenoaks. 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.
- 4 Under the Licensing Act 2003 applications for transfers and variations of designated premises supervisors have a much higher instance of applications being submitted which are invalid upon receipt and require a lot of work for the Partnership Hub team to sort out. This is because they are often submitted by a licensee who is not using an agent, and they don't understand the legal requirements.

Proposed Scheme

- 5 The proposed scheme is in two parts:
 - (i) For the Sevenoaks Licensing Team, whilst covering all their reasonable costs in providing pre-application advice, to offer a dedicated and bespoke service to applicants which they can pay for. The income received would offset salary costs and make the service as far as possible self-financing. The fees proposed have been calculated based upon an average officer hourly rate and what level of officer carries out the work.
 - (ii) Our proposed 'check and send' service for volume applications
- 6 Re 5 (i) above, 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.
- 7 The 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.

- 8 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.
- 9 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. The proposed costs are detailed at Appendix C, which includes costs of other authorities' schemes are attached at Appendix C for comparison)
- 10 Re 5 (ii) above, the proposed 'check and send' service for volume applications will relate to Licensing Act 2003 applications for transfers and variations of designated premises supervisors, because there is a higher instance of these applications being submitted which are invalid upon receipt and which require a lot of work by the Partnership Hub team to sort out with the applicant.
- 11 An officer from the Licensing Partnership Hub Team will provide dedicated time in assisting in completion of the application, advice on documentation needed and help in submitting the application. They will also offer the facility for them to complete an online application there and then (in our offices) with an officer assisting them.
- 12 We hope this will be of particular benefit to those customers who struggle to understand the many legal requirements (especially if English is not their first language) and who otherwise cannot afford the higher fees associated with using a solicitor or specialist agent.
- 13 The proposed cost of the check and send service is £55, (which includes the statutory application fee of £23) but where they have already submitted an application with fee which is invalid we would give them the option of paying the difference of £32 for an officers time to advise and assist.

Statutory functions

- 14 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'.
- 15 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.

16 At present Licensing offers this service free of charge, but this is not sustainable. 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.

18 The intent of the introduction of paid for advice is to cover the costs of:

- lengthy appointments - especially if an applicant cannot afford 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.

Available options

19 To approve the introduction of paid for pre-application advice as set out in Appendix B.

20 To reject the introduction of paid for pre-application advice and continue to provide discretionary services free of charge. However, due to resourcing pressures, this option is not considered viable.

Preferred option and reasons for recommendations

21 We currently spend a noticeable amount of time providing advice or sorting out poorly 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.

This is not considered sustainable, but because we wish to continue helping applicants in advance as much as possible, we are looking to introduce fees to formalize the giving of advice and ensure that it can then be covered within the costs of running the service instead of being at the expense of it.

The Licensing Service recommends the first option in order to offer a value for money advice service based on cost recovery, which we think will be of benefit to our customers because:

- For Full Pre-app Advice, instead of relying on the good will / availability of an officer to help, they can purchase a service which will guarantee them bespoke advice and assistance, to be delivered within an agreed timescale, based upon their needs.
- for the Check and Send Service, this represents a real value for money alternative for our business customers which hopefully should lead to them receiving their premises licences more quickly, because they will not have lost time at the start of the process by submitting an invalid application which cannot be processed.

22 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.

Other Authorities

16 Initially not many authorities provided paid for pre-application advice. The City of Westminster local authority introduced it in 2012 and is thought to have been the first to do so. Others have followed suit. (Please refer to benchmarking at Appendix C)

17 It is proposed to bring this in across the Licensing partnership. Maidstone, Tunbridge Wells and London Borough of Bexley have already agreed to introduce this in principle, with fees to be set in next couple of months.

Next Steps: Communication and implementation of the decision

18 Should Cabinet be minded to agree the proposed pre-application advice fees they would come into effect on 1 January 2020.

Key Implications

Financial

There are no specific financial implications resulting from the matters considered in this report, as the intent is to cover costs of this discretionary service.

Legal Implications and Risk Assessment Statement.

The legal implications are set out in the body of this report.

Equality Assessment

Section 149(1) of the Equality Act 2010 requires that, in exercising its functions public sector bodies to have 'due regard' to the need to -

- Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act;
- Foster good relations between people who share a relevant 'protected characteristic' and those who do not;
- Advance equality of opportunity between people who share a relevant 'protected characteristic' and those who do not.

Assessing the potential impact on equality of proposed decision, changes to policies, procedures and practices is one of the key ways in which the Council can demonstrate that they have had 'due regard'. Assessing impact on equality should be tailored to, and be proportionate to, the decision(s) being made.

Officers have considered the impact of the proposals contained in this report and consider that there would be no, or very limited adverse or disproportionate impact on those who share a protected characteristic. This will be kept under review as part of the Council's ongoing duty.

Appendices

Appendix A - List of licensing regimes that will be affected

Appendix B - Proposed Fees

Appendix C - Benchmarking with other authorities including web-links to other schemes in use for comparison

Background Papers

General power for Best Value Authorities to charge for Discretionary Services - Guidance on the Power in the Local Government Act 2003 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/8310/151291.pdf)

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