

Cherwell District Council

Executive

3 November 2014

Pre-application Fees for Licensing Act 2003 and Other Licensing Applications

Report of Director of Community and Environment and Interim Shared Public Protection and Environmental Health Manager

This report is public

Purpose of report

To consider the introduction of fees for providing pre-application advice in relation to licence applications subject to consultation.

1.0 Recommendations

The meeting is recommended:

- 1.1 To approve the introduction of a discretionary pre-application advice service and charges for licence applications.
- 1.2 To agree to the introduction of pre-application charging from 1st April 2015.
- 1.3 To approve the future extension of the scheme to other types of licence applications should this be successful.

2.0 Introduction

- 2.1 Section 1 of the Localism Act 2011 gave local authorities a 'general power of competence'. This gave powers to do anything that an individual with full capacity may do. Section 3 of the Act allows local authorities to charge for providing a service that is not required to be provided by legislation.
- 2.2 The majority of licence regimes allow or require the Council to set a fee for application, variation or renewal but only on a cost recovery basis which can only be used to run the licensing service.
- 2.3 A pre-application charge would not fall within this scope and would allow the Council to draw additional income but at the same time provide a quality advice service to applicants. Although initially this is unlikely to attract a large volume of applicants, there is potential to widen the scheme to other types of licence.

3.0 Report Details

Background

- 3.1 The Licensing Act 2003 is the primary legislation that makes provision for the licensing of the sale of alcohol, entertainment and the provision of late night refreshment in the District. Under the act, the licensing authority is both responsible for the administration and determination of applications. Although the Council has a statutory duty to administer applications, that duty does not extend to the provision of pre-submission advice and assistance.
- 3.2 In 2013/14, the Council's licensing team processed 24 applications for new premises licences and full variations of existing premises licences under the Licensing Act 2003. All of these applications required some form of statutory consultation with responsible authorities.
- 3.3 There were numerous other Licensing Act applications, including minor variations, premises licence transfers, variations of designated premises supervisors, etc, but it is proposed that discretionary fees only apply to new and full variation applications. This is due to the fact that these are more complex in nature and as a consequence licensing officers spend a considerable amount of time with applicants.

Reasons for Recommendations

- 3.4 The introduction of a discretionary pre-application assistance and advice service for licence applications would be beneficial because the Council will receive better quality applications from the onset. Owing to the fact that applicants would be advised regarding the licensing objectives (see para 3.7 below) in the case of the Licensing Act 2003, or given other expert advice on licensing conditions, in the event that the pre-application regime was to be extended to other types of licence application; this could well benefit residents of, or businesses operating in, the District.
- 3.5 From discussions with potential applicants, officers know that some are put off by the application process because of the length of the forms and the amount of information – some of which is legal and/or technical – required when submitting an application. Guidance notes and policies are publicly available to applicants, but the prescribed application process is inherently complicated mainly because it is closely linked to the primary legislation. For example, national Licensing Act, application forms are statutory, lengthy and not the easiest to understand, and applications have to comply with guidance laid down under section 182 of the act.
- 3.6 Officers routinely reject incomplete or incorrectly served applications which are not resubmitted because applicants perceive the process to be too difficult and onerous. This increases the burden on businesses. By introducing a pre-application advice fee, a formal transparent quality service can be offered which assists applicants to “get it right first time”.
- 3.7 As part of the application process, applicants must identify steps they propose to take to promote the licensing objectives, which are:
 - (a) the prevention of crime and disorder;

- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

- 3.8 Less knowledgeable or inexperienced applicants often do not put forward sufficiently robust conditions, but in the absence of representations, the Council is still under a duty to issue the licence as applied for. In the absence of relevant objections, the Council is not empowered to impose conditions.
- 3.9 As a result, the operation of the licence could have an adverse effect on the social wellbeing of a community through, for example, causing a public nuisance or attracting crime and disorder. This is sometimes due to a misunderstanding of the section 182 guidance (mentioned above) which differs from the Act itself. Officers are of the opinion that better quality and better thought through applications could alleviate some problems that exists with licensed premises.

Charging Fees

- 3.10 As mentioned above, section 3 of the Localism Act enables local authorities to charge where the council is providing a service relying on general power of competence. A charge can be made where the local authority is not under a duty to provide the service and the person has agreed to the service being provided.
- 3.11 There is also a duty to ensure that taking one financial year with another, the income from charges does not exceed the costs of provision of the service, in other words the Council cannot make a profit from charging for the service.
- 3.12 The Council has a discretion under the Act not to charge for providing a service relying on the general power of competence but it is considered appropriate to charge a fee to cover the costs in providing the service because as a discretionary service it will require officer time that, if not charged for, would be costed into the general licensing budget. The pre-application fees would be separated from that.

Process

- 3.13 By introducing a pre-application fee applicants or persons indicating an interest in applying for a licence will be given the opportunity to take advantage of officer assistance at the appropriate fee.
- 3.14 The level of pre-application advice and assistance will be determined by the scale of the application. The nature of the pre-application advice and assistance offered for both small and medium to large scale applications will be the same although the officer time allocated will differ because medium to large scale applications will demand more officer time.
- 3.15 These will be defined as:
- Small scale applications would normally consist of applications relating to premises that occupy a relatively small floor area or premises where the proposed licensable activities will largely be ancillary to the operation of the premises, for example, independent shops and food led restaurants

- Medium to large scale applications would be any other premises that occupy a large premises or where licensable activities will form part of the primary operation of the premises.

3.16 Officers will confirm and agree the scale of an application with applicants at the onset of offering the advice. It is not anticipated that this will be an onerous process.

3.17 It is proposed that the pre-application advice and assistance will consist of:

- advice and assistance with completing the application forms;
- advice on appropriate conditions taken from the pool of standard conditions outlined in the Licensing Act 2003 Statement of Licensing Policy;
- advice on drawing up plans to accompany the application in accordance with the relevant regulations;
- advice on nominating an appropriate designated premises supervisor;
- assistance with completing the statutory notices and advertising, and
- one or more site visits to ensure plans are compliant with prescribed regulations and the appropriate statutory notices are correctly on display.

3.18 The discretionary fee will be calculated based on the amount of officer time allocated per type of application, and based on the average cost per hour for Licensing Officers. The initial proposed fee structure is broken down below:

<u>PRE-APPLICATION CHARGES</u>			
<u>Small scale applications*</u>	<u>Officer time*</u>	<u>Average cost*</u>	<u>Total</u>
Assistance with application form	1 hr	£40.00	£40.00
Assistance with advertising	30 mins	£20.00	£20.00
On site visit number of visits /mileage	1 hr	£40.00	£40.00
Total time taken	2 hrs 30 mins		£100.00
<u>Medium to large scale applications*</u>	<u>Officer time*</u>	<u>Average cost*</u>	<u>Total</u>
Assistance with application form	1 hr 30 mins	£60.00	£60.00
Assistance with advertising	30 mins	£20.00	£20.00
On site visit	1 hr 30 mins	£60.00	£60.00
Total time taken	3 hrs 30 mins		£140.00

*this may vary (based on the above fees) in the event that the application process takes longer /turns out to be more complicated than originally anticipated.

- 3.19 At this stage it is difficult to predict future income as it will depend on a number of factors including take up and number of applications. Any income generated will therefore be regarded as nominal in the first instance. Should the service be a success and once there is a clearer understanding of the scale of annual income it can be built into future draft budgets.
- 3.20 Assuming all applicants for new premises and full variations took advantage of this pre-app service, and based on the average number during 2013/14, the estimated income in the first year would be c.£2,700.
- 3.21 Applicants who decide not to take advantage of the proposed new process will still be supplied with the relevant guidance notes and policies and to ensure that the new process does not become overly bureaucratic, no fees will be charged for straightforward queries at this time.
- 3.22 A log will be kept detailing the amount of time spent on each application as an agreement would have been made prior to the advice being given. The licensing authority reserves the right to charge extra (based on the above fees) in the event that the application process takes longer /turns out to be more complication than originally anticipated. Any proposed increase will be discussed with the applicant at the earliest opportunity.

Exemptions

- 3.23 It is recommended that exemptions be applied in certain circumstances in line with the exemptions already in place under the Licensing Act, i.e. educational institutes, buildings used for religious purposes, village and community halls, etc.

Separation of Duties

- 3.24 Licensing officers only have delegated authority to determine unopposed applications. Applications that are opposed have to be referred to a Licensing Committee for determination. As a consequence, it is not envisaged that the operation of the new process would cause significant problems with the administration and determination process.
- 3.25 However, it is important to avoid conflict of interest and in the interests of transparency that arrangements for clear separation exist between officers who offer pre-application assistance and those who are responsible for the subsequent administration and determination of that application.
- 3.26 This means that the officer giving the pre-application assistance and advice will not have any subsequent involvement with that individual application; this will be monitored by the Licensing Team Leader. There are currently sufficient staffing resources in place to accommodate this arrangement.
- 3.27 The introduction of the discretionary fee structure will not affect the Council's statutory duties. Officers will still carry out their statutory functions of processing the licence application and fulfil their role as the Licensing Authority including enforcement duties.

4.0 Conclusion and Reasons for Recommendations

- 4.1 The Licensing Act 2003 states that all licensing matters must promote the four licensing objectives (as outlined in para. 3.7 above). With a Licensing Officer giving expert advice to prospective applicants, it is envisaged that this promotion will be satisfactorily achieved.
- 4.2 Introducing a pre-application scheme will provide a quality service to applicants assisting them to get it right first time. This can only enhance the quality of applications submitted to the Council, which may ultimately cut down on the time spent and the cost of dealing with licensing applications at hearings.

5.0 Consultation

Members of the Licensing Committee have been consulted and any late comments will be reported to this meeting. The Committee Chairman has also been consulted directly and supports the recommendations.

As pre-application advice is not a statutory function and the service will be discretionary, it is not felt that an external consultation is necessary

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: To approve the introduction of fees for pre-application advice

Option 2: Not to approve the introduction of fees; officers will continue to provide advice but a fee will not be recovered.

7.0 Implications

Financial and Resource Implications

- 7.1 The introduction of a discretionary fee will allow the council to recover some of its costs when providing pre-application advice. The fees detailed in section 3.18 of this report will meet this requirement and will be monitored to ensure that the income from this service does not exceed the cost of service provision.

Comments checked by:

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Legal Implications

- 7.2 As set out in the report.

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Risk Implications

- 7.3 There is a risk that if policy and legislation has not been correctly followed, any resulting appeal could be successful.

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8.0 Decision Information

Key Decision

Financial Threshold Met: No

Community Impact Threshold Met: No

Wards Affected

All

Links to Corporate Plan and Policy Framework

Licensing Act 2003 Statement of Licensing Policy

Lead Councillor

Councillor Tony Ilott, Lead Member for Clean and Green

Document Information

Appendix No	Title
None	
Background Papers	
None	
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