

Agenda Item No: 4

Report To: LICENSING, HEALTH AND SAFETY
COMMITTEE



Date of Meeting: 16th January 2017

Report Title: PROPOSED FEE LEVELS FOR 2017/18
APPLICATIONS

Report Author & Job Title: Trevor Ford
Environmental Protection and Licensing Team Leader

Portfolio Holder Cllr. Bradford
Portfolio Holder for: Highways, Wellbeing and Safety

Summary:	The report proposes fees for licences for the financial year 2017/18.
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Key Decision: NO

Significantly Affected Wards: Not applicable

Recommendations: That the Licensing, Health and Safety Committee recommends:

- I. The fees used for gambling applications and notices as given in Appendix A to full council.
- II. The sex establishment fees as given in Appendix B to full council.
- III. The hackney carriage, private hire and operator licence fees in Appendix C to full council for public consultation.
- IV. The scrap metal site and collectors fees as given in Appendix D to full council.
- V. To note the annual licensing summary in Appendix E.

Policy Overview: The process of setting the fees for licences is essential to ensure that operational costs are recovered and that council budgetary objectives are met.

Financial Implications: The process of setting the fees is necessary to ensure that fees are set at a level that will enable the authority to recover the costs associated with the service provision.

Legal Implications The appropriate setting of fees is necessary to ensure that the Council do not act outside of current legislation and request costs which we are not entitled to recover from licensees. Failure to set costs appropriately opens the

Council up to legal challenge.

Equalities Impact Assessment

The setting of fees in relation to these functions is not considered to cause any discrimination. The fees are set in accordance with Government guidance and each application is processed on its individual merits.

Other Material Implications:

Members should note generally that licences issued by the Council may be considered possessions and therefore Article 1 to Protocol 1 of the Human Rights Act 1998, the peaceful enjoyment of possessions, is relevant.

Exempt from Publication:

NO

Background Papers:

None

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Report Title:

PROPOSED FEE LEVELS FOR 2017/18 APPLICATIONS

1. The report recommends the proposed fees for licences for the financial year 2017/18.
2. Whether to approve the following fees for recommendation to the full council.
 - The fees used for gambling applications and notices as given in Appendix A.
 - The sex establishment fees as given in Appendix B.
 - The hackney carriage, private hire and operator licence fees in Appendix C for public consultation.
 - The scrap metal site and collectors fees as given in Appendix D.
 - To note the annual licensing summary as in Appendix E.

Introduction and Background

3. The fees have been calculated by examining how long is spent processing an application and who in the authority is likely to carry out the various processes.
4. The type of tasks involved in a premises application for example:
 - Assistance to the applicant (pre-application stage, including telephone advice, sending forms, etc.) and the checking of an application for completeness when received.
 - Checking all required documents have been submitted, processing the application fee, banking processes and reconciling payments.
 - Entering the information into our computer system including scanning if appropriate.
 - Contacting the applicant to clarify the application or chase missing information if required.
 - Assess representations for relevance and undertake informal mediation.
 - Carry out compliance visits and checking the operating licence once issued.
 - Determining the licence, arranging a hearing, holding a hearing and notification of the decision if required.
 - Prepare and issue the licence and update the records/register.
 - Appeal preparation and holding an appeal hearing, if necessary.
5. Gambling Related Fees

The Gambling Act 2005 Section 212 gives the Secretary of State power to make regulations prescribing the fees payable to the licensing authority. It also gives them the power to devolve to licensing authorities, in England and Wales, the freedom to set fees for premises licence applications, subject to

any constraints they may prescribe. The Government decided that for England and Wales, licensing authorities will determine their own fees for gambling premises licences and temporary use notices but that the Secretary of State will prescribe the maximum fee payable for each category of licence.

Local authorities are able to set fees for premises licences from within fee bands prescribed by Department for Culture, Media and Sport (DCMS).

There will be an initial fee to cover the cost of application and an annual "maintenance" fee.

The DCMS asked licensing authorities to set fees to ensure full cost recovery and that the fee levels represent fairness and value for money for the gambling industry. All licensing authorities must set their fees upon a cost recovery basis only (Gambling Act Section 212 (2)(d)) and are required to review their fee levels on an annual basis to ensure this.

While the licensing authority can set fees for the applications in Appendix A, permit fees are prescribed by the Government and therefore licensing authorities have no discretion to set fees on these applications.

While the council is required to set fees for casino licenses, the Secretary of State determines which districts are able to accept an application for a casino.

It is proposed that this year the fees remain the same as the costs of processing these licences have not increased. These are set out at Appendix A.

6. Sex Establishment Fees

The licensing of sex establishments is governed by the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3. Under these adoptive provisions local authorities can require any sex shops or sex cinemas in their area to obtain a licence. Ashford Borough Council adopted Schedule 3 effective from 1 May 1983.

Members will be aware that the council carried out a consultation about whether to adopt the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1982, for the licensing of Sexual Entertainment Venues, such as lap dancing clubs. Council adopted the relevant provisions on 17 February 2011.

It is proposed that small increases of 1.00% for grant of licence be made to the fees this year. It is however proposed that the fee for renewal of licence decreases to £300 as this process is predominately administrative and does not usually require a site visit. These are set out at Appendix B.

7. Hackney Carriage and Private Hire Fees

Under Local Government (Miscellaneous Provisions) Act 1982, the provisions controlling the levying of fees are:

- Local Government (Miscellaneous Provisions) Act 1982, Schedule 53(2), in respect of drivers licences for both hackney carriages or private hire vehicles; and
- Local Government (Miscellaneous Provisions) Act 1982 Schedule 70 for hackney carriage proprietors' licences, private hire vehicle licences and private hire operators' licences.

There were no increases in fees from 2009 to 2012. Neither were there any in the financial year 2013/14 which was due to an increase in the number of drivers, ensuring that any inflationary costs were covered by increased income.

In 2012/13 most of the fees remained unchanged, with the following exceptions:

- Application fee to renew vehicle licences was reduced from £290 to £270.
- Application fee to transfer vehicles (due to a proprietor changing their vehicle) was reduced from £25 to £20.
- Three year driver licences were introduced at £75 (compared to £49 for an annual licence).

In 2014/15 there were minor increases and decreases in the fees, with the following exceptions:

- Vehicle licences increased by £10, both new applications and renewals
- Operators licence for 4-10 vehicles, reduced from £310 to £250
- Drivers replacement badge, reduced from £15 to £11
- Transfer and replacement plate increased from £20 to £25
- Hackney drivers knowledge test increased from £30 to £45

Licensed drivers and proprietors have up to five additional costs to pay in relation to the annual licensing process; Disclosure and Barring Service checks (every three years and currently £44), vehicle compliance checks (two per year and currently £28), and medicals every three or six years for those under 65. Additional one off costs are; knowledge test for hackney carriage drivers (£50) and Taxi Driving Test (from £80).

In 2015/16 the overall fees were increased by an average of 1% inline with inflation, with the following exceptions:

- Three year driving licence increased from £75 to £100 to cover administration and compliance costs over the three year period.
- Hackney carriage drivers test increased from £45 to £50 to cover administration costs.

In 2016/17 there were increased fees only to vehicle licences and operators licences.

It is proposed for 2017/18 that;

- Drivers licences increase £1
- Vehicle licence grant and renewals increase £3

- Private hire operators licences increase between £1 to £8, depending on the number of vehicles held on the licence
- Transfer of vehicle licences increases £1 (4%) due to increased administrative requirement over replacement plate fee which is proposed to remain at the same fee of £25
- Additional vehicles on operators licences to increase 0.95 and 1.03% in accordance with vehicle numbers

The proposed licence fees are set out at Appendix C.

8. Scrap Metal Dealers Fees

The Scrap Metal Dealers Act 2013 received Royal Assent on the 28 February 2013, delivering much needed reform of the scrap metal sector. The 2013 Act provided effective and proportionate regulation of the sector, creating a more robust, local authority run licensing regime that supported legitimate dealers yet provide the powers to effectively tackle unscrupulous operators.

Schedule 1(6) of the 2013 Act provides that an application must be accompanied by a fee set by the local authority. In setting a fee, the authority must have regard to any guidance issued from time to time by the Secretary of State with the approval of the Treasury.

The power to set fees has been passed to individual local authorities, so that any fees levied in each local area is set by reference to the actual costs to each authority. The EU Services Directive states that a licence fee can only be used to pay for the cost associated with the licensing process. In effect, each local authority must ensure that the income from fees charged for each service, application, variation and renewal does not exceed the costs of providing the service.

It is proposed that an increase of 0.98-1.30% be made to the fees this year. These are set out at Appendix D.

Proposal/Current Position

9. The fees as recommended by the Licensing, Health and Safety Committee will be presented to Council on 9th February 2017. This will allow the authority time to publish and apply the gambling and sex establishment fees by the 1 April 2017.

Implications and Risk Assessment

10. As previously stated the recommendations do not represent key decisions. The consideration assessment indicates low impact in terms of human rights, legal and staffing implications.
11. The process of setting the proposed fees for licences fees is essential to ensure that operational costs are recovered and if no decision is taken, the council budgetary objectives are unlikely to be met.

12. If trade bodies or applicants 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.
13. Case law relating to fee levels in various licensing areas has agreed a general principle that licensing fees should not be used as a method of creating revenue. For example:
 - *R v Manchester City Council ex parte King (The Times, 3 April 1991)* – established that local authorities may only charge reasonable fees for licences and not use them to raise revenue;and
 - *R v Westminster City Council ex parte Hutton (1985) LGR* – established the need to only take into account relevant material when setting the fees
14. Under the recently adopted EU Services Directive licence fees set must be proportionate to the effective cost of the licensing procedure and must not be used as an economic deterrent or to raise funds. Councils must set fees that cover the costs directly associated with the licensing function. It is important therefore that council's fees are defensible and based on actual costs incurred. It is also important to ensure that our fees do not include potential enforcement costs.
15. A recent High Court case (*Hemming (t/a Simply Pleasure Ltd) & Ors v Westminster City Council [2012] EWHC 1260 (Admin)*) confirmed that it was unlawful for a local authority to charge lawful licensees for the cost of enforcement action against unlicensed operators. In addition the judgement contained an important decision relating to the setting of sex establishment application fees, stating that licensing authorities cannot simply rollover licensing fees without determining the licence fee.

Equalities Impact Assessment

16. The setting of fees in relation to these functions is not considered to cause any discrimination. The fees are set in accordance with Government guidance and each application is processed on its individual merits.

Consultation Planned or Undertaken

17. The fees that require formal consultation will be subject to public notices once the fees have been agreed by Council.

Other Options Considered

18. The need to ensure fees cover local authority costs means that whilst various changes have been considered, the process is not open to other options

Reasons for Supporting Option Recommended

19. The recommended option is supported to ensure effective recover of the costs incurred in processing and regulating the aforementioned licensing regimes.

Next Steps in Process

20. The hackney carriage and private hire licence fees are subject to a public consultation in accordance with Section 70 of the Local Government (Miscellaneous Provisions) Act 1976. A public notice will be placed in the local press. If no objections are received in response to the public notice the fee structure would be adopted from 1 April 2017. If relevant objections are received in response to the public notice, these would be reported back to the Licensing, Health and Safety Committee in April 2017
21. All other fees, not subject to public consultation, will be recommended to full council.

Conclusion

22. The impact on income to the council of these changes must be carefully monitored and annual reviews of fees must be continued to ensure that the service remains self-financing but avoids raising excessive revenue. The fees have generally been increased inline with inflation, which is currently 1%.
23. A licensing summary for the period 1 January 2016 to 31 December 2016 has been prepared and is set out at Appendix E.

Portfolio Holder's Views

24. Cllr Bradford is of the opinion that the council continues to provide a cost effective licensing regime with a minimal increases in fees, and therefore supports the proposed fees outlined in this report.

Contact and Email

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APPENDIX A: RECOMMENDED GAMBLING RELATED LICENCE FEES FOR 2017/18

APPENDIX B: RECOMMENDED SEX ESTABLISHMENT LICENCE FEES FOR 2017/18

APPENDIX C: PROPOSED HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING FEES 2017/18

APPENDIX D: RECOMMENDED SCRAP METAL, SITE & COLLECTORS LICENSING FEES 2017/18

APPENDIX E: LICENSING SUMMARY 2016/17

APPENDIX A: RECOMMENDED GAMBLING RELATED LICENCE FEES FOR 2017/18

Premises Type	New Application (£)	Annual Fee (£)
New Small Casino	6570 (8000)	3730 (5000)
New Large Casino	7860 (10000)	7520 (10000)
Regional Casino	12380 (15000)	11610 (15000)
Bingo Club	2250 (3500)	700 (1000)
Betting Premises (excluding Tracks)	2290 (3000)	455 (600)
Tracks	1760 (2500)	700 (1000)
Family Entertainment Centres	1760 (2000)	605 (750)
Adult Gaming Centre	1760 (2000)	705 (1000)
Temporary Use Notices	204 (500)	N/A

	Application to Vary	Application to Transfer	Application for Re-Instatement	Application for Provisional Statement	Licence Application (provisional Statement holders)	Copy Licence	Notification of Change
	£	£	£	£	£	£	£
New Small Casino	2690 (4000)	1564 (1800)	1314 (1800)	6570 (8000)	2335 (3000)	25 (25)	50 (50)
New large Casino	3555 (5000)	1835 (2150)	2070 (2150)	7860 (10000)	3860 (5000)	25 (25)	50 (50)
Regional Casino	5800 (7500)	4230 (6500)	4230 (6500)	12380 (15000)	6030 (8000)	25 (25)	50 (50)
Bingo Club	1540 (1750)	855 (1200)	855 (1200)	2250 (3500)	930 (1200)	25 (25)	50 (50)
Betting Premises (excluding Tracks)	1300 (1500)	855 (1200)	855 (1200)	2250 (3000)	930 (1200)	25 (25)	50 (50)
Tracks	1180 (1250)	855 (950)	855 (950)	1760 (2500)	930 (950)	25 (25)	50 (50)
Family Entertainment Centres	795 (1000)	855 (950)	855 (950)	1760 (2000)	770 (950)	25 (25)	50 (50)
Adult Gaming Centre	795 (1000)	855 (1200)	855 (1200)	1760 (2000)	930 (1200)	25 (25)	50 (50)
Temporary Use Notices	N/A	N/A	N/A	N/A	N/A	25 (25)	N/A

Ashford Borough Council's Licensing Authority proposes the following fees as shown in bold type in the table above. For ease of reference the maximum fees identified by DCMS that could be charged are shown in brackets. Current fees are shown in the next table.

CURRENT GAMBLING RELATED LICENCE FEES FOR 2016/17

Premises Type	New Application (£)	Annual Fee (£)
New Small Casino	6570 (8000)	3730 (5000)
New Large Casino	7860 (10000)	7520 (10000)
Regional Casino	12380 (15000)	11610 (15000)
Bingo Club	2250 (3500)	700 (1000)
Betting Premises (excluding Tracks)	2290 (3000)	455 (600)
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Adult Gaming Centre	1760 (2000)	705 (1000)
Temporary Use Notices	204 (500)	N/A

	Application to Vary	Application to Transfer	Application for Re-Instatement	Application for Provisional Statement	Licence Application (provisional Statement holders)	Copy Licence	Notification of Change
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Tracks	1180 (1250)	855 (950)	855 (950)	1760 (2500)	930 (950)	25 (25)	50 (50)
Family Entertainment Centres	795 (1000)	855 (950)	855 (950)	1760 (2000)	770 (950)	25 (25)	50 (50)
Adult Gaming Centre	795 (1000)	855 (1200)	855 (1200)	1760 (2000)	930 (1200)	25 (25)	50 (50)
Temporary Use Notices	N/A	N/A	N/A	N/A	N/A	25 (25)	N/A

Ashford Borough Council's Licensing Authority proposes the following fees as shown in bold type in the table above. For ease of reference the maximum fees identified by DCMS that could be charged are shown in brackets. Current fees are shown in the next table.

APPENDIX B: RECOMMENDED SEX ESTABLISHMENT LICENCE FEES FOR 2017/18

	CURRENT FEES 2016/17	PROPOSED FEES 2017/18
Grant	£3204	£3236
Transfer	£350	£300
Renewal	£350	£300

APPENDIX C: PROPOSED HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING FEES 2017/18

	CURRENT FEES 2016/17	PROPOSED FEES 2017/18
Private Hire & Hackney Carriage Drivers Licence (for 1 year)	£50.00	£50.00
Private Hire & Hackney Carriage Drivers Licence (for 3 years)	£100.00	£101.00
Additional driver's licence (adding a licence)	£20.00	£20.00
Hackney Carriage Knowledge Test & Re-test	£50.00	£50.00
Replacement badge / Licence	£11.00	£11.00
Vehicle Licence - New or Renewal (including vehicle plate) for 1 year	£305.00 £285 – Renewal	£308.00 – New £288.00 - Renewal
Vehicle Plate Internal / External	£25.00	£25.00
Transfer of Vehicle Licence (with or without vehicle plate)	£25.00	£26.00
<i>Vehicle Inspection - Test Fee (set by contract)</i>	<i>Max £28.00</i>	<i>Max £28.00</i>
<i>Vehicle Inspection - Missed Appointment (set by contract)</i>	<i>No charge</i>	<i>No charge</i>
Private Hire Operators Licence - New or Renewal (for 3 years)	1-3 vehicles : £125 4-10 vehicles : £420 11-20 vehicles : £840	1-3 vehicles : £126 4-10 vehicles : £424 11-20 vehicles : £848
To increase number of vehicles licensed during duration of Operators Licence	1-3 to 4-10 £290 4-10 to 10-20 £420	£293 £424
Fee for Returned (Bounced) Cheques	£16.00	£16.00

APPENDIX D: RECOMMENDED SCRAP METAL DEALERS FEES FOR 2017/18

	CURRENT FEES 2016/17	PROPOSED FEES 2017/18
Grant Site Licence	£305	£308
Grant Collectors Licence	£205	£207
Renewal Site Licence	£205	£207
Renewal Collectors Licence	£102	£103
Variation	£77	£78
Replacement Licence	£11	£11

APPENDIX E: LICENSING SUMMARY 2016

Licences/Permissions issued 1st Jan 2016 – 31st Dec 2016

Licence/Permission Type	Number Issued
Taxi	
Vehicles – new, renewal, transfers	330
Drivers / Operators – new, renewals	190
Licensing Act 2003	
TEN's	434
Personal Licences	101
Premises Licences – new, variations, Vary DPS, Transfers	138
Hearings	1
Gambling Act 2005	
Lotteries (new & renewal)	100
Gambling	8
Scrap Metal Dealers Act 2013	
Site licences	4
Collectors licences	6
Other	
Sexual Entertainment Venues	1
Use of Council Land	35
Publicity Displays / Town Centre	7
Skin Piercing etc	29
Animal Licensing	47
House to House	18
Street Collections	47
Street Trading	77
TOTAL LICENCES/PERMISSIONS ISSUED	1649

New Premises Licences 1st Jan 2016 – 31st Dec 2016

Marks & Spencer Simply Foods, Warren Retail Park, Ashford
Crown Lodge, Wye Road, Hastingleigh
Badgers Hill Farm, New Cut Road, Chilham
Shisha Cloud, 18-20 New Rents, Ashford
Bookmakers Arms, Harvey House, 18 High Street, Charing
Ashford Pizza and Kebab House, 13 High Street, Ashford
The Music Hub, 27 Bank Street, Ashford
La Cantina di Tenterden, 25 High Street, Tenterden
Ques Smokehouse, 38 Bank Street, Ashford
Pizza Hut, Eureka Leisure Park

Homelands Stadium, Ashford Road, Kingsnorth
Sunshine Moonshine, Mersham Le Hatch Business Village, Smeeth
The Bench, Mersham Le Hatch Business Village, Smeeth
B&M Bargains and Garden Centre, Ashford Business Park, Sevington
The Mersham Hatch Estate, Mersham Le Hatch, Smeeth