

Agenda Item No: 4

Report To: LICENSING COMMITTEE

Date of Meeting: 17 January 2023

Report Title: PROPOSED FEE LEVELS FOR GAMBLING ACT AND
LICENSING ACT APPLICATIONS - 2023/24

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Portfolio Holder: Cllr. Paul Bartlett
Portfolio Holder for: Safety and Wellbeing



Summary:	The report proposes fees for Gambling Act licences and notices for the financial year 2023/24.
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Key Decision: NO

**Significantly
Affected Wards:** Not applicable

Recommendations: That the Licensing Committee :-

- I. Recommends the proposed fees for gambling applications to full council – Appendix A
- II. Notes the annual licensing summary in relation to the Licensing Act 2003 and Gambling Act 2005 – Appendix B

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 relevant 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 fees appropriately opens the Council up to legal challenge.
*Text agreed by
Principal Litigator on
3 Jan 2023*

**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.

Data Protection Impact Assessment:	N/A
Risk Assessment (Risk Appetite Statement):	<p>The recommendation does not represent a key decision.</p> <p>There is a low impact in terms of human rights, the environment, legal and staffing implications.</p>
Sustainability Implications:	N/A
Other Material Implications:	Members should note generally that some 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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PROPOSED FEE LEVELS FOR GAMBLING ACT AND LICENSING ACT APPLICATIONS – 2023/24

1. The report recommends the proposed fees for licences for the financial year 2023/24.
2. The Committee are asked to approve the following fees under the Gambling Act 2005 for recommendation to the full council (*Appendix A*), and to note the annual licensing summary (*Appendix B*).

Introduction and Background

3. The fees have been determined 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. Licensing Related Fees

Fees set under the Licensing Act 2003 are set by Regulations, and are therefore not at the discretion of the council.

Where relevant the Licensing Team will provide feedback to the relevant government departments in order to aid the setting of these fees.

6. 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 increase broadly in line with inflation except where fees are at their statutory maximum.

Implications and Risk Assessment

7. 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.
8. The process of setting the proposed licence fees is essential to ensure that operational costs are recovered. If no decision is taken, the council budgetary objectives are unlikely to be met.
9. 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.
10. 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

11. Licence fees must be set at a level 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.

Equalities Impact Assessment

12. 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

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

Other Options Considered

14. 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

15. It is worth noting, that whilst licensing fees are set/adjusted annually, the council are able to consider the actual income and expenditure across a number of years, and can adjust fees in future years to 'correct' for any unexpected income or losses. As such should the fees proposed result in any unexpected 'excess' income then it will be possible to correct for this as part of future fee setting.
16. Accordingly, the recommended option is supported to ensure effective recovery of the costs incurred in processing and regulating the aforementioned licensing regimes.

Next Steps in Process

17. The fees recommended by this committee, will go to full council on 2 March 2023, and if accepted will come into effect on 1 April 2023.

Conclusion

18. The impact of these changes on income to the council must be carefully monitored. Annual reviews of fees must be continued to ensure that relevant

costs are recovered and raising excessive revenue is avoided. The fees have been increased broadly in line with inflation.

19. A licensing summary for the period 1 January 2022 to 31 December 2022 has been prepared and is set out at Appendix B.

Portfolio Holder's Views

20. "Whilst the current economic climate continues to present challenges for businesses, it remains essential for the council to continue to ensure that the licensing fees are set at the correct level so as to ensure appropriate cost recover, and so as to provide the resources to continue to protect public safety."

Councillor Paul Bartlett

Contact and Email

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APPENDIX A: RECOMMENDED GAMBLING LICENCE FEES

APPENDIX B: LICENSING ACT AND GAMBLING ACT ANNUAL SUMMARY 2022

APPENDIX A: GAMBLING RELATED LICENCE FEES

Premises Type	Application Type	Current Fee 2022/23	Proposed Fee 2023/24	Statutory Max Fee
New small casino	New application	7,535.00	8,000.00	8000
	Annual fee	4,277.00	4,962.00	5000
	Variation	3,084.00	3,578.00	4000
	Transfer	1,794.00	1,800.00	1800
	Re-instatement	1,507.00	1,749.00	1800
	Provisional statement	7,536.00	8,000.00	8000
	Provisional statement holders	2,677.00	3,000.00	3000
	Copy licence	25.00	25.00	Not set by LA
	Notification of change	50.00	50.00	Not set by LA
New large casino	New application	8,966.00	10,000.00	10000
	Annual fee	8,626.00	10,000.00	10000
	Variation	4,077.00	4,730.00	5000
	Transfer	2,106.00	2,150.00	2150
	Re-instatement	2,150.00	2,150.00	2150
	Provisional statement	9,016.00	10,000.00	10000
	Provisional statement holders	4,428.00	5,000.00	5000
	Copy licence	25.00	25.00	Not set by LA
	Notification of change	50.00	50.00	Not set by LA
Regional casino	New application	14,201.00	15,000.00	15000
	Annual fee	13,317.00	15,000.00	15000
	Variation	6,652.00	7,500.00	7500
	Transfer	4,852.00	5,629.00	6500
	Re-instatement	4,852.00	5,629.00	6500
	Provisional statement	14,201.00	15,000.00	15000
	Provisional statement holders	6,915.00	8,000.00	8000
	Copy licence	25.00	25.00	Not set by LA
	Notification of change	50.00	50.00	Not set by LA
Bingo club	New application	2,581.00	2,994.00	3500
	Annual fee	804.00	933.00	1000

	Variation	1,750.00	1,750.00	1750
	Transfer	981.00	1,138.00	1200
	Re-instatement	981.00	1,138.00	1200
	Provisional statement	2,581.00	2,994.00	3500
	Provisional statement holders	1,067.00	1,200.00	1200
	Copy licence	25.00	25.00	Not set by LA
	Notification of change	50.00	50.00	Not set by LA
Betting Premises (excluding tracks)	New application	2,626.00	3,000.00	300
	Annual fee	522.00	600.00	600
	Variation	1,492.00	1,500.00	1500
	Transfer	981.00	1,138.00	1200
	Re-instatement	981.00	1,138.00	1200
	Provisional statement	2,581.00	2,994.00	3000
	Provisional statement holders	1,067.00	1,200.00	1200
	Copy licence	25.00	25.00	Not set by LA
	Notification of change	50.00	50.00	Not set by LA
Tracks	New application	2,018.00	2,341.00	2500
	Annual fee	804.00	933.00	1000
	Variation	1,250.00	1,250.00	1250
	Transfer	950.00	950.00	950
	Re-instatement	950.00	950.00	950
	Provisional statement	2,018.00	2,341.00	2500
	Provisional statement holders	950.00	950.00	950
	Copy licence	25.00	25.00	Not set by LA
	Notification of change	50.00	50.00	Not set by LA
Family Entertainment Centres	New application	2,000.00	2,000.00	2000
	Annual fee	695.00	750.00	750
	Variation	913.00	1,000.00	1000
	Transfer	950.00	950.00	950
	Re-instatement	950.00	950.00	950
	Provisional statement	2,000.00	2,000.00	2000
	Provisional statement holders	883.00	950.00	950
	Copy licence	25.00	25.00	Not set by LA

	Notification of change	50.00	50.00	Not set by LA
Adult Gaming Centre	New application	2,000.00	2,000.00	2000
	Annual fee	809.00	939.00	1000
	Variation	913.00	1,000.00	1000
	Transfer	981.00	1,138.00	1200
	Re-instatement	981.00	1,138.00	1200
	Provisional statement	2,000.00	2,000.00	200
	Provisional statement holders	1,063.00	1,200.00	1200
	Copy licence	25.00	25.00	Not set by LA
	Notification of change	50.00	50.00	Not set by LA
Temporary Use Notices	New application	223.00	259.00	500
	Copy licence	25.00	25.00	Not set by LA
Licensed Premises Gaming Machine Permit	Grant	150.00	150.00	Not set by LA
	Existing operator grant	100.00	100.00	Not set by LA
	Variation	100.00	100.00	Not set by LA
	Transfer	25.00	25.00	Not set by LA
	Annual Fee	50.00	50.00	Not set by LA
	Change of name	25.00	25.00	Not set by LA
	Copy of permit	15.00	15.00	Not set by LA
Lottery Registration	New Application	40.00	40.00	Not set by LA
	Renewal	20.00	20.00	Not set by LA
Licensed Premises Automatic Notification	Notification	50.00	50.00	Not set by LA
Club Gaming Permits	Grant	200.00	200.00	Not set by LA
	Grant (Club Premises Cert. holder)	100.00	100.00	Not set by LA
	Existing operator grant	100.00	100.00	Not set by LA
	Variation	100.00	100.00	Not set by LA
	Renewal	200.00	200.00	Not set by LA
	Renewal (Club Premises Cert. holder)	100.00	100.00	Not set by LA
	Annual Fee	50.00	50.00	Not set by LA
	Copy of permit	15.00	15.00	Not set by LA
Club Machine Permits	Grant	200.00	200.00	Not set by LA
	Grant (Club Premises Certificate holder)	100.00	100.00	Not set by LA

	Existing operator grant	100.00	100.00	Not set by LA
	Variation	100.00	100.00	Not set by LA
	Renewal	200.00	200.00	Not set by LA
	Renewal (Club Premises Cert. holder)	100.00	100.00	Not set by LA
	Annual Fee	50.00	50.00	Not set by LA
	Copy of permit	15.00	15.00	Not set by LA
Family Entertainment Centre Gaming Machine Permit	Grant	300.00	300.00	Not set by LA
	Renewal	300.00	300.00	Not set by LA
	Existing operator grant	100.00	100.00	Not set by LA
	Change of name	25.00	25.00	Not set by LA
	Copy of permit	15.00	15.00	Not set by LA
Prize Gaming Permits	Grant	300.00	300.00	Not set by LA
	Renewal	300.00	300.00	Not set by LA
	Existing operator grant	100.00	100.00	Not set by LA
	Change of name	25.00	25.00	Not set by LA
	Copy of permit	15.00	15.00	Not set by LA
	Annual Fee	20.00	20.00	Not set by LA

APPENDIX B:

LICENSING ACT AND GAMBLING ACT ANNUAL SUMMARY 2022

Licences/Permissions issued

Licence/Permission Type	Number Issued
Licensing Act 2003	
TENs (including late TENs)	436
Personal Licences	76
Premises Licences – New, Variation, Vary DPS, Transfer	130
Hearings	0
Club Certificates – New, Variation	2
Gambling Act 2005	
Lotteries – New, Renewal	73
Gambling	6
TOTAL LICENCES/PERMISSIONS ISSUED	723

New Premises Licences

Sayitwithgin Ltd, 134 Sandyhurst Lane, Boughton Aluph, Kent, TN25 4NT
Nando's, 156 Ashford Designer Outlet, Kimberley Way, Ashford, Kent, TN24 0DQ
DBS Group Ltd t/a Warehorne Vineyard, Warehorne Oast, Warehorne Road, Warehorne, Kent, TN26 2JT
Bottega Montalbano Ashford Ltd, Site of 13 and 14, Elwick Road, Ashford, Kent
Ashford News, 28 County Square, Ashford, Kent, TN23 1YB
Wanhe, 25 New Rents, Ashford, Kent, TN23 1JJ
Singleton Pizza & Kebab, 3A The Singleton Centre, Hoxton Close, Singleton, Kent, TN23 5GR
Nisa Local, 20 Cedar Parade, Repton Avenue, Ashford, Kent, TN23 3TE
Boys Hall, Boys Hall Road, Willesborough, Kent, TN24 0LA
Itaca's Cafe and Wine bar, 2A North Street, Ashford, Kent, TN24 8JN
Westwell Wines, The Vyneyarde, Westwell Lane, Charing, Kent, TN27 0BW
TK's Fish & Chips, Unit E, Trafalgar House, Elwick Road, Ashford, Kent, TN23 1PF
Grillo's Peri Peri & Pizza, 20 Bank Street, Ashford, Kent, TN23 1BE
Jays Soul Food, 12 New Street, Ashford, Kent, TN24 8UU
On Pizza, 14 County Square, Ashford, Kent, TN23 1YB
T & K Food Mart Nisa Local, Unit 1, The Market Quarter, 57 Godinton Road, Ashford, Kent, TN23 1FE
Hukins Hops, Haffenden Farm, Bugglesden Road, Tenterden, Kent, TN30 6TG
<u>New Club Certificates</u>
Club House, Egerton Playing Fields, Egerton Recreation Ground, Rock Hill Road, Egerton, Kent, TN27 9DS

Issued between 1 January 2022 and 31 December 2022.