

**Classification:** Public

**Key Decision:** No

## **Gravesham Borough Council**

**Report to:** Licensing Committee

**Date:** 5 March 2014

**Reporting officer:** Sarah Kilkie, Assistant Director (Communities)

**Subject:** Sex Establishments and Sexual Entertainments Venues –  
Review of fees and charges

### **Purpose and summary of report:**

To apprise Members of the proposed fees and charges regarding the licensing of sex establishments including sexual entertainments venues for 2014/15

### **Recommendations:**

Members to note the contents of the report and the fees set by officer under delegated powers in respect of sex establishment licences for 2014/15

## **1. Background**

- 1.1 On 20 December 1982 Gravesham Borough Council adopted powers available under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to regulate sex establishments.
- 1.2 This enabled the council to license and regulate sex shops and sex cinemas and was delegated to be a function of Regulatory Board.
- 1.3 On 5 October 2010, Council adopted the amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as introduced by the Policing and Crime Act 2009, so as to allow the licensing of 'sexual entertainment venues' in addition to the existing categories of sex establishment.
- 1.4 At that same meeting Council delegated all categories of sex establishments licensing to the Licensing Committee and the Constitution was updated accordingly.
- 1.5 On 9 March 2011, the Licensing Committee endorsed the steps taken by officers in working up a scale of fees for the licensing of sex establishments and sexual entertainment venues. These fees, of £2,510 for an application and £1,320 for renewal/transfer/variation were subsequently published.
- 1.6 On 17 September 2013, the Licensing Committee delegated future fee setting to the Assistant Director (Communities) in conjunction with the Assistant Director (Finance)

- 1.7 Since the initial fee setting process, these fees have been reviewed each year in accordance with corporate procedures and have remained at the same level. The fees currently charged (2013/14) are: £2,510 for an initial application/grant and £1,320 for a renewal/transfer/variation application

## **2. Proposed fees**

- 2.1 In calculating an appropriate fee for sex establishments we used a 'toolkit' approach recommended by LACORS that we are familiar with having used it to set our licence fees under the Gambling Act 2005. The methodology is to break down the licence application or renewal process into all of its component steps - right from opening the envelope containing the incoming application form, logging it onto the system, making necessary background checks and site visits, liaising with partners and stakeholders, through to determining the application by panel hearing and dealing with any appeals. Some of these steps are taken for all incoming applications and are charged 100%, whilst other steps are taken in only a percentage of applications and for these the cost is pro-rata-ed accordingly. In this way the 'average' cost of an application or renewal was generated.
- 2.2 In common with other locally set licence fees within Regulatory services an increase of 2.5% be made to the fees for 2014/15 which is in line with inflation and is fully justified by a recalculation using our 'toolkit' and current officer hourly rates as calculated based on 220 chargeable days per year. Therefore the fee for an initial application/grant will be £2,573 and £1,353 for a renewal/transfer/variation application.
- 2.3 This review of the licence fee for sex establishments was carried out by the Assistant Director (Communities) in conjunction with the Assistant Director (Finance) under delegated powers and as part of a wider corporate procedure and was reported to Cabinet on 3 February 2014, as well as being presented to Licensing Committee for information.

## **3. BACKGROUND PAPERS**

- 3.1 None

Anyone wishing to inspect background papers should, in the first place, be directed to Committee & Electoral Services who will make the necessary arrangements.

<b>IMPLICATIONS</b>	<b>Appendix 1</b>
<b>Legal</b>	<p>When setting licence fees the Council must have regard to the European Service Directive 2006/123/EC (Services in the Internal Market) and the Provision of Services Regulations 2009.</p> <p>The European Directive states “The fee which may be charged by points of single contact should be proportionate to the cost of the procedures and formalities with which they deal”.</p> <p>Article 13 of the Directive states “Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation, procedures in question and shall not exceed the cost of the procedures”.</p> <p>Regulation 18(4) of the 2009 Service Regulation states “Any charges provided for by a competent authority which applicants may incur under an authorisation scheme must not exceed the cost of the procedures and formalities”.</p> <p>In a recent judicial review (Hemming and Others v Westminster City council) the Courts considered that there are 3 elements in the licensing process:</p> <ul style="list-style-type: none"> <li>(a) The vetting of the applicant and application and the grant of the licence.</li> <li>(b) The supervision and enforcement of the licence and any conditions in order to confirm compliance at renewal.</li> <li>(c) Enforcement of the legislation on unlicensed operators etc.</li> </ul> <p>It concluded that (a) and (b) could be included in the fee calculation, but the Court was definite that (c) could not.</p> <p>It is therefore clear that the cost of enforcing against unlicensed operators is not recoverable in licence fees.</p>
<b>Finance and Value for Money</b>	<p>Setting fees at a level which recovers more than is permitted by law is likely to give rise to a legal challenge.</p> <p>The cost of administering and compliance checking licence will be funded by licence holders with a fee set on a purely cost recovery basis.</p>
<b>Risk Assessment</b>	<p>The process of setting the proposed fees for licences is essential to ensure that operational costs are recovered and if no decision is taken, the Councils budgetary objectives will not be met.</p> <p>If trade bodies or applicants believe that the authority’s fees are at a level which is greater than the costs of the licensing function involved 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 imposed to demonstrate that they have been calculated on a cost recovery basis only.</p>

Equality Impact Assessment	Screening for Equality Impacts		
	Question	Answer	Explanation
	a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	<b>No</b>	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
	b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	<b>No</b>	N/A
	c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		N/A
	<i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i>		
<b>Corporate Business Plan</b>	Links to the strategic priority of managing the council's business responsibly and in particular to area of focus 18: Working to ensure council services provide value for money and are delivered efficiently		
<b>Crime and Disorder</b>	Well run and crime free sex establishments have clear implications in helping the authority fulfil its Section 17 duties		