

Public Document Pack

Date of meeting Monday, 27th March, 2017
Time 6.30 pm
Venue Council Chamber, Civic Offices, Merrial Street, Newcastle-under-Lyme, Staffordshire, ST5 2AG
Contact Geoff Durham



**NEWCASTLE
UNDER LYME**
BOROUGH COUNCIL

Civic Offices
Merrial Street
Newcastle-under-Lyme
Staffordshire
ST5 2AG

Licensing Committee

AGENDA

PART 1 – OPEN AGENDA

1 DECLARATIONS OF INTEREST

To receive declarations of interest from Members on items contained within the agenda.

2 MINUTES OF PREVIOUS MEETING

(Pages 3 - 4)

Resolved: That the minutes of the meeting held on 22 November, 2016 be agreed as a correct record.

3 Minutes of Licensing Sub- Committees - Nov 16 and Jan 17

(Pages 5 - 10)

4 Amendments to Licensing Act 2003 and Police Reform and Social Responsibility Act 2011

(Pages 11 - 14)

5 Fees to be Charged for the Licensing of Gambling, Sexual Entertainment Venue Licensing 2017-18

(Pages 15 - 20)

6 URGENT BUSINESS

To consider any business which is urgent within the meaning of Section 100B (4) of the Local Government Act 1972

Members: Councillors Bailey, Frankish, T Hambleton (Chair), Harper, Johnson, Jones, Mancey, Parker, Reddish, Simpson, Spence, S Tagg, White (Vice-Chair), J Williams and Winfield

PLEASE NOTE: The Council Chamber and Committee Room 1 are fitted with a loop system. In addition, there is a volume button on the base of the microphones. A portable loop system is available for all



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other rooms. Should you require this service, please contact Member Services during the afternoon prior to the meeting.

Members of the Council: If you identify any personal training/development requirements from any of the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Democratic Services Officer at the close of the meeting.

Meeting Quorums :- 16+= 5 Members; 10-15=4 Members; 5-9=3 Members; 5 or less = 2 Members.

FIELD_TITLE

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

LICENSING COMMITTEE

Tuesday, 22nd November, 2016
Time of Commencement: 7.00 pm

Present:- Councillor Trevor Hambleton – in the Chair

Councillors Bailey, Frankish, Harper, Johnson, Jones, Parker, Reddish, Simpson, Spence and S Tagg

Officers Nesta Barker - Head of Environmental Health Services, Jayne Briscoe - Scrutiny Officer and Paul Washington - Principal Solicitor

Apologies Councillor(s) J Williams

1. **DECLARATIONS OF INTEREST**

There were no declarations of interest stated.

2. **APOLOGIES**

An apology was received from Councillor J Williams

3. **MINUTES OF PREVIOUS MEETING**

Resolved: That the minutes of the previous meeting held on 21 July 2016 be approved as a correct record of the proceedings.

4. **MINUTES OF SUB COMMITTEE MEETINGS**

Resolved: That the minutes of the Licensing Sub-Committee held on 2 August 2016 be agreed as a correct record.

5. **FEES AND CHARGES**

A report was submitted which requested members to consider the fees to be charged in relation to the licensing of Gambling and Sexual Entertainment Venues. The fees that were currently charged for the licensing of sex entertainment venues were set out in the report together with a number of additional statutory charges in relation to gambling establishments. It was noted that no increase in any of the charges had been proposed.

Resolved: That the fees to be charged in relation to the licensing of Gambling and Sexual Entertainment Venues be agreed as set out in the report now submitted.

6. **SAFEGUARDING AND CSE TRAINING**

A report was submitted which reaffirmed the role of the Borough Council in safeguarding children and adults at risk of abuse and neglect and updated members on the proposed co-ordination of CSE awareness training to members and partners.

In response to questions from members it was confirmed that the training could be offered to all members of the Council and that possible links to modern slavery could be included as part of the training.

Resolved (i) That the Partnership Team liaise with Democratic Services to co-ordinate and ensure that Level 1 safeguarding children and adults at risk of abuse or neglect training is made available to all members of the Council.

Resolved (ii) That the Partnership Team liaise with Democratic Services to co-ordinate additional CSE awareness training, to include links to modern slavery for all members of the Licensing and Public Protection Committee by the end of the current financial year.

Resolved (iii) That members assist Officers in promoting and encouraging staff of Borough licensed premises to participate in similar CSE training as appropriate (similar to that recently being delivered to taxi drivers) to raise awareness and explain how to raise the alarm with any concerns around suspicious activity.

7. TO CONSIDER THE WORK PROGRAMME FOR THIS COMMITTEE

This item was not considered.

8. URGENT BUSINESS

There was no urgent business.

COUNCILLOR TREVOR HAMBLETON
Chair

Meeting concluded at 7.15 pm

Licensing Sub-Committee 16/11/16

LICENSING SUB-COMMITTEE

Wednesday, 16th November, 2016

Present: Cllr Hambleton in the Chair

Councillors White and Spence

1. Review of a Premises Licence – Newcastle Food and Wine

Having taken into account the Licensing Act 2003 and the guidance issued under Section 182 of the Act, the Councils Statement of Licensing Policy and also the fact that Trading Standards have requested a review of the premises licence supported by Staffordshire Police and Environmental Health to promote the licensing objectives relating to the protection of children from harm and the prevention of crime and disorder.

The Committee have considered those licensing objectives in the light of what has been said and have listened to the arguments and are persuaded that in the light of the evidence before it, it is appropriate to take steps to ensure that the licensing objectives are promoted. In considering which of its powers to invoke the Committee had regard to the guidance at 11.19 and 11.20 which indicates that the Committee should seek to establish the cause of the concerns that the representations identify and that the remedial action taken should generally be directed at the causes and be no more than appropriate and proportionate. In particular where the cause of the identified problem relates to poor management decisions the Committee may consider appropriate action.

Trading Standards brought to the Committees attention that 2.22 of the guidance states that the Government believe that it is completely unacceptable to sell alcohol to children and that under 2.28 Licensing Authorities should give considerable weight to representations about child protection matters.

Trading Standards stated in evidence that the sale of alcohol by the Premises Licence Holder to a child volunteer had occurred on the 03 June 2016. This test purchase operation had been witnessed by an officer of Staffordshire Police. This being despite a visit on 02 March 2016 by Trading Standards staff to provide routine age restricted advice to the Premises Licence Holder.

Environmental Health stated in evidence that during a routine inspection at the premises on 03 July 2015 the Premises Licence Holder/Designated Premises Supervisor had failed to produce a refusals sales register in breach of his premises licence conditions. Staff training had also been identified as an issue.

On 03 August 2016 a further inspection had been conducted initially to “chase up” unpaid annual fees. The Premises Licence Holder was unable to produce staff training records, once again in breach of his licence conditions.

On 28 September 2016 the Premises Licence Holder was still unable to provide evidence of staff training despite earlier requests.

Further, Staffordshire Police had submitted a statement outlining complaints received relating to crime and disorder in and within the vicinity of the licensed premises.

In their defence the representative for the Premises Licence Holder stated that the licence holder had a lack of understanding about "Challenge 25" but that he now understands it and had put in place procedures and documentation to ensure that these problems would not arise again in the future.

The Committee considered the steps available to it to promote the licensing objectives in the interests of the wider community. This is of course a serious matter and revocation of the licence was considered as was the removal of the Designated Premises Supervisor but in view of the actions taken by the Premises Licence Holder it was decided, on this occasion, not to pursue those steps and give the licence holder the opportunity to prove that the premises can be run responsibly.

Protection of the public and in particular vulnerable children was however paramount as was compliance with the Licensing Act and premises licence conditions.

The Committee were therefore disposed to:-

Firstly, suspend the premises licence for a period of 6 weeks to enable the premises to embed the remedial actions proposed;

Secondly, to give the Premises Licence Holder a written warning about his future conduct and the possible ramifications of a further breach of licence.

Thirdly, to impose the conditions set out on pages 19 and 20 of the agenda with the addition of a condition that no single cans of alcohol (split from bound packs) be sold at the premises.

Any party aggrieved by this decision has the right to appeal within 21 days from the date of this decision to the Magistrates' Court. This decision does not therefore take effect until either after 21 days if no appeal is made, or until that appeal is disposed of.

LICENSING SUB-COMMITTEE

Wednesday, 18th January, 2017

Present: Cllr Hambleton in the Chair

Councillors White and Reddish

1. Application for a Premises Licence – Morrisons Daily Petrol Station

Having taken into account the Licensing Act 2003 and the guidance issued under Section 182 of the Act, the Council's Statement of Licensing Policy and also the fact that representations upon that application had been received from Staffordshire Police, Trading Standards, Environmental Health and other persons on the basis that to grant the application would undermine the objectives relating to the Prevention of Crime and Disorder, the Prevention of Public Nuisance, Public Safety and the Protection of Children from Harm.

The Licensing Sub Committee considered those licensing objectives in the light of what had been said and listened to the arguments and took into account that Staffordshire Police, Trading Standards and Environmental Health had entered into negotiations with the applicant and were prepared to withdraw their objections to the grant of the premises licence on the basis of an agreement that had been reached regarding a reduction in trading hours and the imposition of conditions to be referred to. The residents advised the Licensing Sub Committee that there was a possibility that they may suffer public nuisance, mainly in the form of noise and light intrusion, but having considered the points raised, it was felt that the majority of the concerns would be covered by the conditions proposed.

The Solicitor for the applicant drew to the Licensing Sub Committees attention paragraph 3.13 of the Council's Statement of Licensing Policy that there would be a presumption that the sale of alcohol would be licensed at all times that the premises were open for business unless the activity created a focus for disorder and disturbance. The guidance under Section 182 of the Act supported this also. The Daniel Thwaites case in 2008 held that all determinations of licensing applications should be determined on empirical evidence and not on speculative evidence and the Licensing Sub Committee also took into account the guidance at 9.39 which reiterated the fact that authorities' determination should be evidence based.

It was also stated in evidence that planning consent for the extended hours was yet to be obtained.

Having taken all of the issues into consideration, the Licensing Sub Committee were persuaded that it would not offend the licensing objectives to grant the application as amended in the terms agreed with the responsible authorities. The conditions which the Licensing Sub Committee were disposed to impose in addition to the relevant Mandatory Conditions and also conditions that were consistent with those listed by the applicant in the operating schedule (but not inconsistent with those imposed by the Licensing Sub Committee) are:

HOURS OF OPENING AND ALCOHOL SALES

0600 to 2400 Monday to Sunday

HOURS FOR LATE NIGHT REFRESHMENT

2300 to 2400 Monday to Sunday

AGREED CONDITIONS

Conditions agreed with the Police

Prevention of Crime and Disorder

1. CCTV must be installed and cover all public areas to the reasonable agreement of the Police. Access to the system should be allowed immediately to the Police or other authorised officers in accordance with the Data Protection Act where it is necessary to do so for the prevention of crime and disorder, prosecution or apprehension of offenders or where disclosure is required by law, and can be periodically inspected by the Police or other authorised officer to ensure that it continues to function and access must be granted to them upon request to facilitate such an inspection.
2. The CCTV system shall be capable of producing immediate copies of recordings on site. Copies of recordings will be capable of being recorded digitally on CD/DVD or other equivalent medium.
3. There should be a member of staff available at all times who is trained and capable of operating the CCTV system and also downloading any footage required by the police or other authorised officer in relation to the investigation of crime and / or disorder issues, upon request or within 24 hours of such request where it is necessary to do so for the prevention of crime and disorder, prosecution or apprehension of offenders or where disclosure is required by law and all should be kept for a 28 day period.
4. CCTV will be capable of providing an image which is identification standard.
5. The system will display, on any recording, the correct time and date of the recorded image.
6. The CCTV system will be maintained so as to be fully operational throughout the hours that the premises are open for any licensable activity. Daily checks to be made to check the operation of the CCTV system and confirm it is working correctly and such checks to be recorded in a register which is to be endorsed by the person conducting the check and to contain the name of the person conducting the check. This record is to be kept fully updated at all times and remain on the premises for immediate inspection by Police or other authorised officers upon request.

7. All cashiers shall be trained to record refusals in a refusals log. The log will contain:

- details of the time and date the refusal was made
- the identity of the staff member refusing the sale.
- details of the alcohol the person attempted to purchase.

This log will be available for inspection by a Police or other authorised officers on request.

8. An incident log shall be maintained to record:

- All incidents of crime and disorder occurring at the premises
- Details of occasions when the police are called to the premises.

This log will be available for inspection by a police officer or other authorised officers on request.

9. The main door to the premises will be fitted with an electronic locking device to be operated by staff when required when the premises are open for licensable activities.

Protection of Children from Harm

1. The premises licence holder will ensure that an age verification policy will apply to the premises whereby all cashiers will be trained to ask any customer attempting to purchase alcohol, who appear to be under the age of 25 years (or older if the licence holder so elects) to produce, before being sold alcohol, identification being a passport, Military ID or photocard driving licence bearing a holographic mark or other form of identification that complies with any mandatory condition that may apply to this licence.
2. All sales tills shall prompt the cashier making a sale of alcohol to verify that the customer is aged 18 or over.
3. All staff engaged or to be engaged in the sale of alcohol on the premises shall receive the following training in age restricted sales:

- Induction training which must be completed and documented prior to the sale of alcohol by the staff member.
- Refresher / reinforcement training at intervals of no more than 6 months.

Both initial and subsequent refresher training in relation to the sale of alcohol and Challenge 25 will contain a pass/fail test to be undertaken by the staff member which is dated. This can be written or electronic.

Training records to be made available on request to Police or other authorised officers.

Conditions agreed with Environmental Health

1. The premises including the forecourt area shall be monitored and managed to prevent people from congregating and causing anti-social behaviour/nuisance. Anyone causing a nuisance shall be asked to leave.
2. Regular litter patrols shall be conducted at the premises and forecourt so that litter is kept to a minimum so as not to cause a nuisance.

The conditions put forward by the applicant in the operating schedule were:

Prevention of Crime and Disorder

1. All staff engaged in the sale of alcohol will receive suitable training (including refresher training) in relation to the proof of Age "Challenge 25" scheme to be applied on the premises. The following forms of identification are to be acceptable: photo driving licence, passport, proof of age standards scheme (PASS) card, Military ID and any other locally or nationally approved form of identification.
2. CCTV shall be provided on the premises and shall be kept in good working order.
3. All checkout operators will operate a refusals log.

Public Safety

1. The premises holder will undertake ongoing risk assessments in order to comply with Health and Safety Legislation.

The Prevention of Public Nuisance

1. The premises are responsibly managed and supervised.

The Protection of Children from Harm

1. All staff engaged in the sale of alcohol will receive suitable training (including refresher training) in relation to the proof of Age "Challenge 25" scheme to be applied on the premises. The following forms of identification are to be acceptable: photo driving licence, passport, proof of age standards scheme (PASS) card, Military ID and any locally or nationally approved form of identification.
2. Till prompts are in use at the store.

It is also recommended that the applicant discuss the question of light intrusion into properties in the vicinity with both Environmental Health and local residents in order to ascertain whether there was some measure that could be taken to alleviate the problem. The Licensing Sub Committee believed that the applicant had no problems with this.

Any party aggrieved by this decision has the right to appeal within 21 days from the date of this decision of the Magistrates' Court.

Agenda Item 4

Amendments to Licensing Act 2003 and Police Reform and Social Responsibility Act 2011

Submitted by: Head of Environmental Health/Licensing Administration Team Manager

Portfolio: Finance, IT & Customer

Wards Affected: All

Purpose of the Report

To notify the Committee that a number of amendments as proposed in the Policing and Crime Bill have now achieved Royal Assent. The amendments are to the definition of alcohol, the status of summary review interim steps, Licensing Authority powers to revoke or suspend a personal licence and the removal of putting revised guidance before Parliament. There are further amendments that relate to Cumulative Impact Assessments and the Late Night Levy that have not received a commencement date.

Recommendations

That Members note the amendments to the Licensing Act 2003 and Police Reform and Social Responsibility Act 2011

1. **Background**

- 1.1 The Policing and Crime Bill was introduced to Parliament on 10 February 2016 and received Royal Assent on 31st January to become the Policing and Crime Act 2017.
- 1.2 The proposals to amend the Licensing Act 2003 were brought to Committee on 23rd February 2016 and were duly noted. The proposals were to:
 - Amend the definition of alcohol to ensure that powdered alcohol and vaporised alcohol fall within the definition.
 - Amend the summary review process to allow licensing authorities to keep interim steps in place between the review hearing and the outcome of any appeal. Also amending Section 53B to limit the number of times the licence holder can make representations against the interim steps before the review hearing.
 - Give licensing authorities the power to revoke or suspend a personal licence when someone is convicted of a relevant offence.
 - Add to the list of relevant offences.
 - Removing the requirement to lay the s.182 Guidance before Parliament when it is revised (the guidance retains its statutory status).
- 1.3 These amendments come into force on 6th April 2017.
- 1.4 The Bill was amended in the House of Lords on 16th November 2016 to contain two further proposals:
 - To place Cumulative Impact Assessments (CIA) on a statutory footing under the Licensing Act 2003 rather than the s.182 Guidance. Authorities would be required to review any CIA and resulting policy every three years.
 - To amend the Late Night Levy (LNL) provisions under the Police Reform and Social Responsibility Act 2011 to include premises licensed for Late Night Refreshment, and to increase the flexibility in the areas that a LNL can be implemented.

1.5 These amendments have not yet received a commencement date. The House of Lords Select Committee are currently reviewing the impact of the Licensing Act 2003 and are due to publish a report on their findings in Spring 2017.

2. **Proposal**

2.1 That the Committee note the changes to be included in the Licensing Act 2003 and Police Reform and Social Responsibility Act 2011.

3. **Reasons for Preferred Solution**

3.1 The Act has received Royal Assent and the Licensing Authority must work within the provisions laid down in the legislation.

4. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

4.1 Creating a cleaner, safer and sustainable Borough

4.2 Creating a healthy and active community

5. **Legal and Statutory Implications**

5.1 The amendment to the definition of alcohol has been implemented to stop a number of loopholes in the legislation that have been uncovered since the Licensing Act 2003 came into force.

5.2 The amendment to the summary review provisions clarifies the legal position around interim steps taken by the Licensing Authority upon receipt of a summary review application. This clarification should make it more difficult for licence holders to challenge the Authority's decision to impose interim steps pending the full review hearing.

5.3 The addition of further relevant offences for personal licence holders and the power to suspend/revoke a holder's personal licence if convicted of a relevant offence has been implemented to make it easier for Licensing Authorities to take action against licence holders. This may lead to an increase in the number of Licensing Sub-Committee hearings.

5.4 The removal of the requirement for revised statutory guidance to be put before Parliament is to streamline the process and make it easier for amendments to be made on a regular basis.

5.5 The placement of CIA on a statutory footing will make the process more robust and reduce the chances of the Licensing Authority being challenged over the validity of the policy. Once the provision has been passed it will require a review of the current policy, and consultation with affected stakeholders before being passed to Committee for approval.

5.6 The amendments to the LNL provisions have been designed to allow Licensing Authorities greater flexibility to include specified areas within the Borough, rather than the whole Council area, and also premises authorised for Late Night Refreshment, rather than those only those authorised for the sale of alcohol. Unless the Committee wish to consider implementing a LNL then there are no implications.

6. **Financial and Resource Implications**

- 6.1 The changes to the personal licence provisions may lead to an increase in the time officers spend dealing with the convicted licence holders. In turn this would lead to an increase in the number of Licensing Sub-Committee hearings needing to be held.
- 6.2 The CIA amendment if passed in the current form it would require a review of the current policy, a consultation with affected stakeholders, internal departments and outside bodies before being passed to Committee for approval. It would also lead to a review of the Council's Licensing Act 2003 Statement of Policy.

7. **Earlier Committee Resolutions**

- 7.1 On 23rd February 2016 the Committee resolved to note the amendments proposed under the original drafting of the Policing and Crime Bill.

8. **Background Papers**

The Report to Licensing Committee on 23rd February 2016
Policing and Crime Act 2017
Licensing Act 2003
Police Reform and Social Responsibility Act 2011

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FEES TO BE CHARGED FOR THE LICENSING OF GAMBLING, SEXUAL ENTERTAINMENT VENUE LICENSING 2017-18

Submitted by: Head of Environmental Health

Portfolio: Finance, IT & Customer

Ward(s) affected: ALL

Purpose of the Report

For Members to consider the fees to be charged in relation to the licensing of Gambling and Sexual Entertainment Venues.

Recommendations

That Committee agree the fees to be charged for the licensing of Gambling and Sexual Entertainment Venues for 2017/2018.

Reasons

Decisions relating to the setting of non-statutory fees and charges for licensing have been delegated from Council to Licensing Committee.

1. Background

- 1.1 The approval of certain fees and charges relating to the licensing of Gambling and Sexual Entertainment Venues licensing regimes are Council functions.
- 1.2 Council at their meeting on 22nd February 2017 delegated this function to Licensing Committee.
- 1.3 A report was presented to Licensing Committee on 22nd November 2016 in respect of the proposed fees and charges for Gambling and Sexual Entertainment Venues for 2017/18. The committee recommended agreement to the proposals and that the fees and charges should be recommended to Council.

Gambling:

- 1.4 The Gambling Act 2005 allows Licensing Authorities to set their own fees for premises licenses, subject to maximum levels which have been specified by Central Government.
- 1.5 A report was presented to Licensing Committee on 22nd November 2016 in respect of the non-statutory fees and charges for Gambling licenses and also for those statutory fees which have not previously been specified. Committee recommended agreement with the proposed fees and charges.
- 1.6 The Councils Gambling Policy 2015 remains unchanged.

Sexual Entertainment Venues:

- 1.7 The Local Government (Miscellaneous Provisions) Act 1982 ('the Act') introduced a licensing regime to control sex establishments. The Council adopted schedule 3 of the Act on the 31st March 2010 and the schedule took effect on the 3rd August 2010. This means the Council can control and

regulate the operation of certain kinds of sex establishments within its area. No sex establishment can operate unless it has obtained a licence from the Council. Any licence may contain conditions that will restrict how that sex establishment may trade.

1.8 The setting of fees for the licensing of sex establishment remains with the Local Authority. The licence is for a one year period.

2. **Issues**

2.1 **The European Services Directive states (Art 12.2):**

“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”

The Directive includes specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme.

Councils must not use fees covered by the Directive to make a profit or act as an economic deterrent to deter certain business types from operating within an area.

2.2 **Guidance for Local Authorities on the Provision of Service Regulations States (2nd Edition June 2009 Para 12d):**

“Local Authorities must set fees that are proportionate to the effective cost of the procedure dealt with. As costs vary from region to region, central advice on the level of fees will not be appropriate. Local Authorities will need to bear in mind the threat of a legal challenge should the service provider feel that the level of fees are being used as an economic deterrent or to raise funds for local authorities Enforcement costs should not be assimilated with the application fee. This is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of his fees having been used to subsidise his successful competitors.”

2.3 All proposed license fees and charges are detailed in table 1:

Table 1:

LICENCES			
General			
Sex establishments - application fee	3,000.00	3,000.00	Freeze
Sex establishments - Renewal	2,000.00	2,000.00	Freeze
Sex establishments - variation	1,000.00	1,000.00	Freeze
Sex establishments - transfer	1,000.00	1,000.00	Freeze
Gambling Act 2005			
Lotteries - application fee	40.00	40.00	Freeze
Lotteries - annual fee	20.00	20.00	Freeze
Bingo - application fee	3,500.00	3,500.00	Freeze
Bingo - annual fee	1,000.00	1,000.00	Freeze
Bingo - application to vary	1,750.00	1,750.00	Freeze
Bingo – application for transfer	N/A	1,200.00	NEW
Track betting - application fee	2,500.00	2,500.00	Freeze
Track betting - annual fee	1,000.00	1,000.00	Freeze
Track betting - application to vary	1,250.00	1,250.00	Freeze
Track betting - application to transfer	920.00	920.00	Freeze
Club machine permit - application fee	200.00	200.00	Freeze
Club machine permit - renewal fee	200.00	200.00	Freeze
Club machine permit - annual fee	50.00	50.00	Freeze
Betting premises - application fee	3,000.00	3,000.00	Freeze
Betting premises - annual fee	600.00	600.00	Freeze
Betting premises - application to vary	1,500.00	1,500.00	Freeze
Betting premises - application to transfer	1,200.00	1,200.00	Freeze
Family entertainment centre - application fee	2,000.00	2,000.00	Freeze
Family entertainment centre - annual fee	750.00	750.00	Freeze
Family entertainment centre - application to vary	1,000.00	1,000.00	Freeze
Family entertainment centre - application to transfer	950.00	950.00	Freeze
Adult gaming centre - application fee	2,000.00	2,000.00	Freeze
Adult gaming centre - annual fee	1,000.00	1,000.00	Freeze
Adult gaming centre - application to vary	1,000.00	1,000.00	Freeze
Adult gaming centre - application to transfer	1,200.00	1,200.00	Freeze
Copy of any of the above licences (lost, stolen, damaged)	N/A	25.00	NEW
Notice of Intention – 2 or less gaming machines	50.00	50.00	Freeze
Licensed Premises Gaming Machine Permits – more than 2 machines	150.00	150.00	Freeze
Licensed Premises Gaming Machine Permits – more than 2 machines – Variation	100.00	100.00	Freeze
Licensed Premises Gaming Machine Permits – more than 2 machines – Transfer	25.00	25.00	Freeze
Licensed Premises Gaming Machine Permits – more than 2 machines – Annual Fee	50.00	50.00	Freeze
Licensed Premises Gaming Machine Permits – more than 2 machines – Change of Name	25.00	25.00	Freeze
Licensed Premises Gaming Machine Permits – more than 2 machines – Copy	N/A	15.00	NEW

(lost, stolen, damaged)			
Club Gaming/Club Machine Permits – New/Renew	200.00	200.00	Freeze
Club Gaming/Club Machine Permits for holders of Club Premises Certificates (under LA03) – New/Renew	100.00	100.00	Freeze
Club Gaming/Club Machine Permit – Annual Fee	50.00	50.00	Freeze
Club Gaming/Club Machine Permit – Variation	100.00	100.00	Freeze
Club Gaming/Club Machine Permit – Copy (lost, stolen, damaged)	N/A	15.00	NEW
UFEC (Unlicensed family entertainment Centre – 10 year licence)	300.00	300.00	Freeze
Prize Gaming Permit – New/Renewal	300.00	300.00	Freeze
Prize Gaming Permit – Change of Name	25.00	25.00	Freeze
Prize Gaming Permit – Copy (lost, stolen, damaged)	N/A	15.00	NEW
Temporary Use Notice (TUN)	N/A	125.00	NEW
Casino Small – New application	N/A	6,000.00	NEW
Casino Small – Annual Fee	N/A	3,000.00	NEW
Casino Small - Variation	N/A	2,000.00	NEW
Casino Small – Application for Transfer	N/A	1,300.00	NEW

3. Proposal

- 3.1 That Committee agree the fees to be charged for the licensing of Gambling and Sexual Entertainment Venue Licensing for 2017/2018.

4. Reasons for Preferred Solution

- 4.1 The fee can be used to cover the cost of the following:

Administration – This could cover basic office administration to process the licence application, such as resources, photocopying, postage or the cost of handling fees through the accounts department. This could also include the costs of specialist licensing software to maintain an effective database, and printing licences.

Initial visit/s – This could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Councils will need to consider whether the officer time includes travel. It would also be normal to include ‘on-costs’ in this calculation. Councils will need to consider whether ‘on-costs’ include travel costs and management time.

Third party costs – Some licensing processes will require third party input from experts,

Liaison with interested parties – Engaging with responsible authorities and other stakeholders will incur a cost in both time and resources.

Management costs – Councils may want to consider charging an average management fee where it is a standard process for the application to be reviewed by a management board or licensing committee. However, some councils will include management charges within the ‘on-costs’ attached to officer time referenced below.

Local democracy costs – Councils may want to recover any necessary expenditure in arranging committee meetings or hearings to consider applications.

On costs – including any recharges for payroll, accommodation, including heating and lighting, and supplies and services connected with the licensing functions. Finance teams should be able to provide a standardised cost for this within each council.

Development, determination and production of licensing policies – The cost of consultation and publishing policies can be fully recovered.

Web material – The EU Services Directive requires that applications, and the associated guidance, can be made online and councils should effectively budget for this work.

Advice and guidance – This includes advice in person, production of leaflets or promotional tools, and online advice.

Setting and reviewing fees – This includes the cost of time associated with the review, as well as the cost of taking it to a committee for approval.

5. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

5.1 The proposals relate to the adoption of fees and charges which would contribute to the following:

A clean, safe and sustainable borough

- The negative impacts that the Council, residents and local businesses have on the environment will have reduced.

A borough of opportunity

- Fair, proportionate and consistent fees create an equal opportunity for business to thrive.

A co-operative Council delivering high quality, community driven, services.

- High performing services and support will be delivered for businesses and customers.

6. **Legal and Statutory Implications**

6.1 **Hemming v Westminster**

The degree to which fees and processes are proportionate has been tested in a legal challenge brought against the fee charged by Westminster City Council for licensing sex establishments. The case established a number of key points about setting fees under the Services Directive.

In *Hemming v Westminster*, the Court of Appeal ruled that the fees set must not exceed the costs of administering the licensing regime. This means the council was no longer able to include the cost of enforcement against unlicensed sex establishment operators when setting the licence fee, although the cost of visits to licensed premises to monitor compliance could be recovered through fees.

The judgement found that the annual reviews conducted by an officer of Westminster City Council were no substitute for determinations by the council. The judge rejected the council's submission that the fee had been fixed on an open-ended basis in 2004 so that the fee rolled over from one year to the next. Westminster City Council was consequently ordered to repay fees charged over that period.

Annual reviews allow for the fine tuning of fees and allow councils to take steps to avoid either a surplus or deficit in future years. This will not immediately benefit licence holders where the licence has been granted for a number of years and paid for in a lump sum, but will ensure new entrants to the licensing scheme are charged appropriately.

Where fees charged result in a surplus, Hemming v Westminster stated that this surplus must be used to reduce the fees charged in the following year. It is possible to extend the reinvestment of the surplus over more than one year, but this will need careful consideration about whether contributors may leave the licensing system over that period and therefore lose out on the return. Deficits can similarly be recovered, although where there is a significant deficit, councils may want to consider how recovery can be undertaken over more than one year so as not to financially harm otherwise viable businesses.

The case of R v Tower Hamlets LBC (1994) may also be of relevance, as the High Court indicated that “a council has a duty to administer its funds so as to protect the interests of what is now the body of council tax payers”.

7. **Financial and Resource Implications**

7.1 Should a challenge be made in relation to the fee level as detailed in the Hemming v Westminster there could be detrimental financial implications for the Council

8. **Major Risks**

8.1 As detailed under Legal and Statutory Implications

9. **Earlier Council/Committee Resolutions**

9.1 The Council adopted schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 on 31st March 2010 which came into effect on 3rd August 2011.

9.2 Council delegated the function of setting fees and charges to Licensing Committee on 22nd February 2017.

10. **Recommendations**

10.1 That Committee agree the fees to be charged for the licensing of Gambling and Sexual Entertainment Venues for 2017/18

11. **Background Papers**

LGA Guidance on Local Fee Setting