

Public Document Pack

Date of meeting Wednesday, 14th February, 2018
Time 7.00 pm
Venue Committee Room 1, 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 19 June, 2017 be agreed as a correct record.

3 MINUTES OF SUB COMMITTEE MEETINGS

(Pages 5 - 8)

To consider the minutes of the Licensing Sub-Committees which have met since the previous Licensing Committee.

4 Immigration Act 2016

(Pages 9 - 10)

5 Licensing Fees and Charges 2018-19

(Pages 11 - 16)

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 Frankish, S Hambleton, Johnson, Mancey, Owen, Parker, Reddish, Simpson, Spence, S Tagg, S White, G Williams (Vice-Chair), J Williams, Winfield (Chair) and Woolley

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 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.

NOTE: THERE ARE NO FIRE DRILLS PLANNED FOR THIS EVENING SO IF THE FIRE ALARM DOES SOUND, PLEASE LEAVE THE BUILDING IMMEDIATELY FOLLOWING THE FIRE EXIT SIGNS. PLEASE **DO NOT** USE THE LIFTS.

COUNCIL CHAMBER: FIRE EXITS ARE AT THE REAR OF THE CHAMBER AT BOTH SIDES AND THIS IS THE SAME FOR OCCUPANTS OF THE PUBLIC GALLERY.

COMMITTEE ROOMS: EXIT VIA THE WAY YOU ARRIVED AT THE MEETING OR AT THE FAR END OF THE COUNCIL CHAMBER.

ON EXITING THE BUILDING, PLEASE ASSEMBLE AT THE REAR OF THE ASPIRE HOUSING OFFICE OPPOSITE THE CIVIC OFFICES. DO NOT RE-ENTER THE BUILDING UNTIL ADVISED TO DO SO.

LICENSING COMMITTEE

Monday, 19th June, 2017
Time of Commencement: 6.30 pm

Present:- Councillor Joan Winfield – in the Chair

Councillors Frankish, Harper, Jones, Parker,
Reddish, Simpson, Spence, S Tagg,
G Williams and J Williams

Officers Nesta Barker - Head of Environmental
Health Services, Matthew Burton, Geoff
Durham and Paul Washington - Principal
Solicitor

Apologies Councillor(s) S Hambleton, T Hambleton,
Johnson and White

1. **APOLOGIES**

Apologies were received from Councillors S Hambleton, T Hambleton, Johnson and White

2. **DECLARATIONS OF INTEREST**

There were no declarations of interest stated.

3. **MINUTES OF PREVIOUS MEETING**

Resolved: That the minutes of the meeting held on 27 March, 2017 be agreed as a correct record.

4. **SPECIAL SATURATION POLICY -JUNE, 2017**

Members received a presentation on the Special Saturation Policy from Chief Inspector Peter Owen of Staffordshire Police.

The purpose of the presentation was to seek Members' views on whether the Policy was still required and if so whether it was still adequate and whether it required review.

Resolved: That the current Saturation Policy should continue for a further 12 months within the existing boundaries pending a further review when students have taken occupation of buildings currently under construction.

5. **MINUTES OF SUB COMMITTEE MEETINGS**

Resolved: That the minutes of the Licensing Sub-Committee(s) held on 12 April, 2017 be agreed as a correct record.

6. **LICENSING ANNUAL REPORT, 2017**

Licensing Committee - 19/06/17

Consideration was given to a report informing Members of key issues and activities undertaken by the Licensing Service in 2016-17.

Resolved: That the report be received and the priorities for the 2017-18 work plan be supported.

7. URGENT BUSINESS

There was no urgent business.

COUNCILLOR JOAN WINFIELD
Chair

Meeting concluded at 7.15 pm

LICENSING ACT 2003

DECISION RELATING TO AN APPLICATION FOR THE VARIATION OF A PREMISES LICENCE: CREWE ARMS, WHARF TERRACE, MADELEY HEATH, CREWE, CW3 9LP

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 representations to the application have been received from 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 have considered those licensing objectives in the light of what has been said and have listened to the arguments and are persuaded that it would not offend the licensing objectives to grant the application.

A number of residents had expressed concerns with regard to the problems that had occurred prior to the review of the premises licence in 2014. Concerns were expressed that the extension of hours for the provision of live and recorded music would be untenable for residents and would lead to patrons sitting and standing drinking outside the premises causing nuisance. Likewise the sale of alcohol for additional hours would result in patrons leaving the premises later and causing additional noise and anti-social behaviour which was audible within local residential properties and which disrupted, amongst other things, regular sleeping patterns.

Residents also asserted that the lack of sound proofing at the premises rendered them unsuitable to handle live and recorded music. Concern was also expressed that the licence holder, Punch Taverns PLC, had not engaged with local residents with regard to the running of the premises despite their previous undertaking to do so. Incidents relating to drivers in the car park area were also referred to.

In response the solicitor for the applicant referred to the fact that considerable investment had been made in the premises by both the licence holder and the lessee. There had been a fundamental shift in how the premises operated and there had been a change to the customer base. Customers now tended towards families, middle-aged and the more elderly which helped to ensure that the pub operated as a family and community pub. Live entertainment was now provided along with a Spanish and English food menu. In fact, the publican had signed a 3 year tenancy agreement which hopefully demonstrated commitment to continued success at the premises. The publican had endeavoured to speak to residents to discuss the plans for the premises and handed out business cards with contact details if there were any concerns to those residents whom she was able to contact. The solicitor, on behalf of Punch Taverns, apologised for Punch Taverns not engaging with the residents earlier.

Following discussions with the Police, Environmental Protection, and the Fire and Licensing authorities, three temporary event notices were given and events subsequently held. All events had live music and were well supported. No issues were raised by the residents and no complaints were received on any of the music nights.

The Licensing Sub-Committee noted that none of the Responsible Authorities had objected to the application. They also took into account the conditions attached to the premises licence as a result of the previous consent order, in particular the fact that section 177a of the Licensing Act 2003 no longer applied to performances of live music and also that, as part

of the noise management scheme, noise limiting device(s) were to be installed and maintained in effective working order. It was noted that these appeared to have had the desired effect.

The Licensing Sub-Committee also took into account paragraphs 1.2, 9.43 and 9.44 of the Secretary of States guidance to which it was specifically referred to by the applicant's solicitor. Having considered the evidence the Licensing Sub-Committee concluded that whilst problems had occurred in the past, a fact that was not disputed, there was no evidence that suggested that similar problems would re-occur, particularly in view of the assurance given in connection with the new management and operational proposals.

The Licensing Sub-Committee were therefore disposed to grant the application subject to the following amendments to the existing conditions of the licence and also the addition of the further conditions listed below, alongside any relevant mandatory conditions. The amendments and conditions referred to are as follows.

To amend Annex 4 Condition 10 to read as follows:

'All images should be kept for 28 and produced to the Police, Trading Standards and Local Authority licensing officers within 48 hours of request, when sought pursuant to the Data Protection Act 1998 and 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.'

To add the following conditions:

1. A written record shall be kept on the premises by the DPS of every person employed on the premises as a door supervisor in a register kept for that purpose. That record shall contain the following details:
 - The door supervisor's name, date of birth and home address;
 - His/her security authority number;
 - The time, date he/she starts and finishes duty
 - Each entry shall be signed by the door supervisor;
 - Hi-visibility clothing to be worn at all times
2. Daily checks to be made to check the operation of the CCTV and confirm it is working correctly and such checks to be recorded in a log/register, which is to be endorsed by the person conducting the check and to contain the person's name. The CCTV log/register is to be checked monthly by the DPS. This is to be kept updated at all times and remain on the premises for immediate inspection by Police, Trading Standards or Local Authority Officer on request.
3. A dispersal management plan will be drawn up and implemented at the premises to ensure as far as practicable that all customers leave the premises quickly and quietly at closing time.
4. No new entry shall be permitted to the premises from 23:30 hours on any night except New Year's Eve. Signs shall be displayed on the entrances to the premises notifying customers of this condition.
5. A telephone number for the DPS or manager of the premises will be given to any residents on request to allow complaints to be made directly should issues relating to the operation on the premises arise.

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

LICENSING ACT 2003

**DECISION RELATING TO AN APPLICATION FOR THE GRANT OF A PREMISES
LICENCE: NO.14, 14 BRUNSWICK STREET, NEWCASTLE-UNDER-LYME, ST5 1HL**

Having taken into account the Licensing Act 2003, the guidance issued under Section 182 of the Act, the Councils Statement of Licensing Policy and also the fact that an objection to the application had been received on the basis that to grant the application would undermine the objectives relating to the prevention of crime and disorder and the prevention of public nuisance.

The Licensing Sub-Committee have considered those licensing objectives in the light of what has been said and have listened to the arguments and are persuaded that it would not offend the licensing objectives to grant the application.

A local resident expressed concerns that the granting of the licence would add to disturbances that were already being experienced by him from a nearby premises and it was felt that there were already an abundance of licensed premises in Newcastle town. Concern was also expressed that granting a licence would add to anti-social behaviour in the vicinity of the premises which was located in a mixed residential and business area.

In response the applicant stated that he would do his best to prevent disorder and nuisance. The premises were small and alcohol would only be supplied with a meal. Alcohol would not be 'on show'. In fact the premises could only accommodate about 15 people. The applicant went on to say that Brunswick Street has a number of restaurants and takeaways and this premises would add to that type of business.

The committee took into account that the Police and Environmental Health had met with the applicant and had agreed the terms of the present application for the premises to be used as a noodle bar. In fact the applicant had agreed that a condition be imposed in relation to the provision of alcohol. The committee noted that there had been no objections from any of the responsible authorities or any other residents in the vicinity of the premises.

The committee in its deliberations took into account the decision of the high court in the Daniel Thwaites case in 2008. In which it was held that all determinations of licensing applications should be made on empirical evidence and not on speculative evidence. In fact the Secretary of States Guidance at 9.43 reiterates the fact that the authorities determinations should be evidence based.

The committee were not convinced that the granting of a premises licence for the premises would offend any of the licensing objectives especially in view of the fact that responsible authorities had been instrumental in promoting relevant amendments to the application especially in relation to the deletion of references to regulated entertainment. In any event parties would have the benefit of being able to review the licence if subsequent problems were to arise.

Having taken all of the evidence into account the committee were disposed to grant the application subject to a relevant condition being imposed. The condition which the committee was disposed to impose in addition to the relevant mandatory conditions and also conditions that are consistent with those listed by the applicant in the operating schedule is:

- That food will be available throughout the permitted hours for licensable activities whenever alcohol is available for sale or supply.

Classification: NULBC **UNCLASSIFIED**

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

27 September 2017

Amendments to Licensing Act 2003 by Immigration Act 2016

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

Portfolio: Finance & Resources

Wards Affected: All

Purpose of the Report

To notify the Committee that a number of amendments have been made to the Licensing Act 2003 following the implementation of the Immigration Act 2016.

Recommendations

That Members note the amendments to the Licensing Act 2003.

1. **Background**

1.1 The Immigration Act 2016 received Royal Assent on 12th May 2016 with the provisions amending the Licensing Act 2003 coming into force on 6th April 2017.

1.2 The amendments to the Licensing Act 2003 are as follows:

- An “Entitlement to Work” test introduced for Personal Licence Holders and individual Premises Licence Holders, where the Premises Licence permits the sale of alcohol or late night refreshment;
- Applicants for Personal Licences must produce evidence of their entitlement to work in the United Kingdom;
- Where the applicant has committed immigration offences, the Licensing Authority to advise the Secretary of State (Home Office Immigration Enforcement (“HOIE”) as it would the Police on conviction of a “Relevant Offence”;
- Applicants for Premises Licences, made by individuals, will likewise have to produce evidence of their entitlement to work in the United Kingdom, along with their nationality and date of birth;
- Individual applicants for a transfer of a Premises Licence must provide evidence of their entitlement to work in the United Kingdom, along with their nationality and date of birth;
- Applicants to become a Designated Premises Supervisor must provide their place of birth, date of birth and nationality and confirm on their consent to become the Designated Premises Supervisor that they are entitled to work in the United Kingdom;
- The Secretary of State (HOIE) is a Responsible Authority;
- Applications for the transfer of a Premises Licence also need to be served on the Secretary of State (HOIE), as well as the Police and Licensing Authority;
- If an individual holding a Premises Licence ceases to be entitled to work in the United Kingdom on or after 6th April 2017, the Premises Licence lapses immediately, and will lapse completely unless transferred or an Interim Authority lodged within 28 days;
- A Personal Licence will lapse when an individual is no longer entitled to work in the United Kingdom on or after 6th April 2017;

- Applications for transfers or new Premises Licences must not be signed by PA, since they contain a declaration of the individual's entitlement to work in the United Kingdom;
- Immigration Officers can now enter licensed premises as if they were a Police Constable, if premises are being used for the sale of alcohol or late night refreshment, to see if an offence under The Immigration Act 2016 has been committed.

2. **Proposal**

2.1 That Members note the amendments to the Licensing Act 2003.

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 Council must consult with HOIE on the applications stated at 1.2 of the report.

5.2 The Council has a duty to check that applicants for premises licences and personal licences have an entitlement to work in the UK, and not grant a licence unless satisfied that the criteria set down by the legislation has been met.

6. **Financial and Resource Implications**

6.1 The requirement to carry out the entitlement to work checks has led to a small increase in the time officers spend dealing with prospective licence holders and applicants.

6.2 The provision allowing Immigration Officers to enter licensed premises has led to an increase in the number of multi-agency enforcement visits being carried. In turn that has led to an increased number of premises licence transfer applications being received following checks being carried out on who the responsible person/s are at specific premises, that we have not been notified at the time the ownership changed hands (i.e. late night takeaways that change hands but do not notify the Council's licensing department).

7. **Earlier Committee Resolutions**

7.1 N/A

8. **Background Papers**

Licensing Act 2003
Immigration Act 2016

FEES TO BE CHARGED FOR THE LICENSING OF SCRAP METAL DEALERS, GAMBLING, SEXUAL ENTERTAINMENT VENUE LICENSING 2018-19

Submitted by: Head of Environmental Health

Portfolio: Finance & Resources

Ward(s) affected: ALL

Purpose of the Report

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

Recommendations

That Committee agree the fees to be charged for the licensing of Scrap Metal Dealers, Gambling and Sexual Entertainment Venues for 2018/2019.

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 Scrap Metal Dealers, 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.

Gambling:

- 1.3 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.
- 1.4 The Councils Gambling Policy 2015 remains unchanged.

Sexual Entertainment Venues:

- 1.5 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.
- 1.6 The setting of fees for the licensing of sex establishment remains with the Local Authority. The licence is for a one year period.

Scrap Metal Dealers:

- 1.7 The Scrap Metal Dealers Act 2013 ('the SMDA13') introduced a licensing regime to control Scrap Metal Dealers, replacing the registration scheme used previously. The SMDA13 allows Licensing Authorities to set their own fees for both Site and Collectors licences.

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 below:

| Licences: | 2017/18 fees | 2018/19 fees | Difference |
|---|--------------|--------------|------------------------------|
| 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 |
| Scrap metal dealer site licence | 255.00 | 265.00 | 4% |
| Scrap metal dealer collectors licence | 204.00 | 210.00 | 3% |
| Gambling Act 2005 | | | |
| Lotteries - application fee | 40.00 | 40.00 | All Frozen or Set by Statute |
| Lotteries - annual fee | 20.00 | 20.00 | |
| Bingo - application fee | 3,500.00 | 3,500.00 | |
| Bingo - annual fee | 1,000.00 | 1,000.00 | |
| Bingo - application to vary | 1,750.00 | 1,750.00 | |
| Bingo – application for transfer | 1,200.00 | 1,200.00 | |
| Track betting - application fee | 2,500.00 | 2,500.00 | |
| Track betting - annual fee | 1,000.00 | 1,000.00 | |
| Track betting - application to vary | 1,250.00 | 1,250.00 | |
| Track betting - application to transfer | 920.00 | 920.00 | |
| Club machine permit - application fee | 200.00 | 200.00 | |
| Club machine permit - renewal fee | 200.00 | 200.00 | |
| Club machine permit - annual fee | 50.00 | 50.00 | |
| Betting premises - application fee | 3,000.00 | 3,000.00 | |

| | | | |
|---|----------|----------|--|
| Betting premises - annual fee | 600.00 | 600.00 | |
| Betting premises - application to vary | 1,500.00 | 1,500.00 | |
| Betting premises - application to transfer | 1,200.00 | 1,200.00 | |
| Family entertainment centre - application fee | 2,000.00 | 2,000.00 | |
| Family entertainment centre - annual fee | 750.00 | 750.00 | |
| Family entertainment centre - application to vary | 1,000.00 | 1,000.00 | |
| Family entertainment centre - application to transfer | 950.00 | 950.00 | |
| Adult gaming centre - application fee | 2,000.00 | 2,000.00 | |
| Adult gaming centre - annual fee | 1,000.00 | 1,000.00 | |
| Adult gaming centre - application to vary | 1,000.00 | 1,000.00 | |
| Adult gaming centre - application to transfer | 1,200.00 | 1,200.00 | |
| Copy of any of the above licences (lost, stolen, damaged) | 25.00 | 25.00 | |
| Notice of Intention – 2 or less gaming machines | 50.00 | 50.00 | |
| Licensed Premises Gaming Machine Permits – more than 2 machines | 150.00 | 150.00 | |
| Licensed Premises Gaming Machine Permits – more than 2 machines – Variation | 100.00 | 100.00 | |
| Licensed Premises Gaming Machine Permits – more than 2 machines – Transfer | 25.00 | 25.00 | |
| Licensed Premises Gaming Machine Permits – more than 2 machines – Annual Fee | 50.00 | 50.00 | |
| Licensed Premises Gaming Machine Permits – more than 2 machines – Change of Name | 25.00 | 25.00 | |
| Licensed Premises Gaming Machine Permits – more than 2 machines – Copy (lost, stolen, damaged) | 15.00 | 15.00 | |
| Club Gaming/Club Machine Permits – New/Renew | 200.00 | 200.00 | |
| Club Gaming/Club Machine Permits for holders of Club Premises Certificates (under LA03) – New/Renew | 100.00 | 100.00 | |
| Club Gaming/Club Machine Permit – Annual Fee | 50.00 | 50.00 | |
| Club Gaming/Club Machine Permit – Variation | 100.00 | 100.00 | |
| Club Gaming/Club Machine Permit – Copy (lost, stolen, damaged) | 15.00 | 15.00 | |
| UFEC (Unlicensed family entertainment Centre – 10 year licence) | 300.00 | 300.00 | |
| Prize Gaming Permit – New/Renewal | 300.00 | 300.00 | |
| Prize Gaming Permit – Change of Name | 25.00 | 25.00 | |
| Prize Gaming Permit – Copy (lost, stolen, damaged) | 15.00 | 15.00 | |
| Temporary Use Notice (TUN) | 125.00 | 125.00 | |
| Casino Small – New application | 6,000.00 | 6,000.00 | |
| Casino Small – Annual Fee | 3,000.00 | 3,000.00 | |
| Casino Small - Variation | 2,000.00 | 2,000.00 | |
| Casino Small – Application for Transfer | 1,300.00 | 1,300.00 | |

3. **Proposal**

- 3.1 That Committee agree the fees to be charged for the licensing of Scrap Metal Dealers, Gambling and Sexual Entertainment Venue Licensing for 2018/2019.

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 Scrap Metal Dealers, Gambling and Sexual Entertainment Venues for 2018/19

11. **Background Papers**

LGA Guidance on Local Fee Setting