


<p style="text-align: center;">London Borough of Hammersmith & Fulham</p> <p style="text-align: center;">FULL COUNCIL</p> <p style="text-align: center;">19 JULY 2017</p>	
<p>LICENSING FEES 2017-18</p>	
<p>Report of the Cabinet Member for Environment, Transport & Residents Services – Councillor Wesley Harcourt</p>	
<p>Open Report</p>	
<p>Classification: For decision Key Decision: Yes</p>	
<p>Wards Affected: None</p>	
<p>Accountable Director: Nicholas Austin, Director for Environmental Health</p>	
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1. EXECUTIVE SUMMARY

- 1.1 This report contains details of the proposed application and annual fees for various licences for the period commencing the 20 July 2017.

2. RECOMMENDATIONS

- 2.1. Officers recommend that the Full Council approve the proposed fees.

3. REASONS FOR DECISION

- 3.1 Under various, relevant, statutory provisions local authorities are entitled to charge fees for granting or renewing licences. Apart from certain licences where the fees are fixed by law, the local authority can charge a reasonable fee which, when totalled, should not exceed the cost of running that particular licensing service.

4. INTRODUCTION AND BACKGROUND

- 4.1 In December 2009 the Services Directive, Provision of Services Regulations 2009, made in compliance with Directive 2006/123/EC of the European Parliament, was introduced. Article 13(2) of the Directive states that any licence fees which applicants incur under a licensing scheme must be

reasonable and proportionate to the cost of the “authorisation procedures”. This means that councils may not make any profit from charging applicants for licence applications or from regulating individual licensing functions.

- 4.2 Traditionally the fees charged for licences have included the costs of processing the application, and the costs of monitoring and enforcing against unlicensed and licensed operators. Until now, application fees have been payable in full at the time of making an application and unsuccessful applicants have been eligible for a refund of a proportion of the fee paid, subject to the Council’s costs of processing the application.
- 4.3 However, in the case of *Hemmings v Westminster City Council* which examined the level of fees for Sex Shop licences in Westminster and what the Council was legally entitled to include when setting the fees, the Supreme Court and the European Court of Justice clarified what local authorities could include when setting licence fees. The courts also concluded that as the licence fee was essentially made up of two parts; the first part for the direct costs of processing an application, and the second part for the costs associated with running the licensing function. The latter element included monitoring and enforcement of licensed and unlicensed premises, and this should be reflected in how the fees are charged. The second part of the fee should only be payable if a licence is granted. A summary of the *Hemmings* case is contained at Appendix 1.
- 4.4 Officers have conducted a comprehensive review of all licensing charges. As part of this review officers have taken into account past history of the administration processes and the level of opposition to licence applications and have used this as a guide to calculate the likely costs for the forthcoming year.
- 4.5 In calculating the fees the various officers involved in different parts of the process and the different associated pay grades have been taken into account.

5. PROPOSAL AND ISSUES

- 5.1 The fees must be reasonable and proportionate to cover the cost of processing the procedures and formalities associated with the relevant licensing function, and they must accurately reflect the actual costs incurred by the Council.
- 5.2 In view of the *Hemmings* decision the fees have been calculated in two parts, A and B.

Part A is to cover the direct costs associated with processing the application to the point where a decision is made, and if appropriate a licence is issued. This fee would be payable in full on submission of the application, and is non-refundable.

Part B is to cover the ongoing costs associated with running the licensing function, including the supervision and monitoring of licensed premises and the enforcement activity for any unlicensed premises. This fee would only become payable if a licence is granted, and would need to be paid before the licence becomes operational. It is proposed that a condition would be imposed on relevant licences, *“that the licence shall be of no effect and the premises may not operate until the Part B fee has been received by the Council”*.

- 5.3 Officers will continue to monitor ongoing administration and compliance costs for licensed premises and costs involved in processing licensing applications to ensure that the annual and application fees are set at a level which recoups the Council’s costs.
- 5.4 The proposed fees for licence applications for the period commencing the 20 July 2017 are set out in tables contained at Appendix 2. The fees must be reasonable and proportionate to cover the cost of processing the procedures and formalities associated with the relevant licensing function. They must accurately reflect the actual costs incurred by the Council and must be sufficiently robust to withstand any legal challenges. The proposed fees may increase or decrease from the current fees however, all fees have been worked using a consistent methodology.
- 5.5 Massage and Special Treatment (MST) Level 1 Licence Renewals will increase by a significant amount. The Council values the contribution of small businesses to the local economy and recognises that such an increase resulting from the revised methodology in calculating the fees, may be a challenge to meet for some small businesses that require this type of licence. As such it is proposed that a discount of £327 will be available for current businesses who are renewing this type of licence. The cost of funding this discount will be met by a Section 106 funded economic development strategy.

6.0 **CONSULTATION**

- 6.1 The Council’s Finance Team has been consulted and has contributed to the fees review process.

7.0 **EQUALITY IMPLICATIONS**

- 7.1 The Council, when taking decisions in relation to any of its functions, must comply with its public sector equality duty as set out in Section 149 of the Equality Act 2010. The outcome of this legal challenge will have no adverse or negative effect / impact on any of the protected characteristics.

8. **LEGAL IMPLICATIONS**

- 8.1 The legal background is summarised in Appendix 1.
- 8.2 Implications have been verified by: Tasnim Shawkat, Director for Law, 020 8753 2700 [Reference: HT].

- 8.3 Section 106 agreements are made under Section 106 of the Town and Country Planning Act 1990. Section 106 agreements secure contributions or works which are reasonably and directly related to the development for appropriate planning applications.
- 8.4 Any contributions will need to be spent in accordance with the terms of the particular agreements concerned.

9 FINANCIAL IMPLICATIONS

- 9.1 The financial implications have been verified by: Mark Jones, Director for Finance and Resources – TTS/ELRS, 020 8753 6700.
- 9.2 The income the Council received for issuing MST premises licences in 2015/16 was £79,228 and £12,675 for therapists, an overall total of £91,903. Given the current number of licences (144) the resultant outcome is that some licences will go up notably, a new Level 1 application of which there were 6 issued in 2016/17, and some will go down, a new Level 3 of which there were 7 issued in 2016/17. There will be reduced income for Level 3 Renewals of which 54 were issued in 2016/17. Overall there is a potential small loss on the current income position.
- 9.3 For Animal Health licences the outcome of moving to the new charging regime more accurately reflects the costs incurred to the Council. In the past the Council has subsidised licence holders by not passing on the cost of the City of London Vets inspection fees.
- 9.4 The exhibition licence for Olympia may result in a shortfall of income in the region of £30,000 and this is based on 2015/16 data.
- 9.5 The discount of MST Level 1 Renewals may result in a shortfall of income of around £13,000 per annum and will be subsidised from Section 106 funding of the Town and Country Planning Act 1990 (as amended).
- 9.6 The changes to licence fees payable in relation to Gambling, Sex Shops and Sexual Entertainment Venues, Marriage Licences, and Scrap Metal Licences would result in an overall reduction in income of £12,428. This figure assumes that the number of applications received is similar to the year 2015/16. This relates to 2.16 per cent of the total licensing budget of £574,300.
- 9.7 The reduction is made up of; Annual fees for Gambling Licences – reduction of £8,540, Sex Shop and Entertainment Venues – reduction of £1,399, Marriages Licences – reduction of £2,723, and Scrap Metal dealers – increase of £234.

10. IMPLICATIONS FOR BUSINESS

- 10.1 European and domestic law has changed over the last seven years in respect of what can be considered when calculating fees for licence applications. This

legal challenge has highlighted the need for the Council to re-assess the level of all licence fees that it has the discretion to set itself.

- 10.2 The Supreme Court has identified what can be considered when calculating fees for different licence types. The Council has re-assessed all of its relevant licence fee levels in accordance with the judgement of the Court. This will lead to a fair and legally compliant licence fee system for the Borough's licensed businesses.

11 RISK MANAGEMENT

- 11.1 Local authorities have a legal obligation to review the fees they charge for licence applications on an annual basis. Both the Supreme Court and the European Court have clearly laid out what can be taken into consideration when setting these fees, and how the fees can be charged. Failure to comply with these court rulings, or to review licence fees, would leave the Council open to legal challenge. Reviewing the licence fees in accordance with the court rulings significantly mitigates the risk of any future legal challenge.

12. RECOMMENDATIONS

- 12.1 Full Council is recommended to approve the proposed fees set out in the Tables attached as Appendix 2 commencing on 20 July 2017.

LIST OF APPENDICES:

Appendix 1 - Summary Hemmings v Westminster City Council

Appendix 2 - Tables of Proposed Fees

SUMMARY HEMMING V WESTMINSTER CITY COUNCIL

In 2012 Timothy Hemming and six other sex shop owners in Westminster challenged the level of licence fees set by Westminster City Council for sex shop licences by way of Judicial Review. At the time of the challenge, Westminster charged just under £30,000 for an annual licence, roughly £27,000 of which related to the running of the licensing regime. Mr Hemming argued that the term “authorisation procedures” in the Service Regulations meant that the Local Authority could only charge the costs incurred in processing the application and not any enforcement costs. In May 2012 this claim was upheld in the High Court and the Court of Appeal. However, Westminster City Council appealed to the Supreme Court, and contended that the fees charged included two elements, firstly the costs associated with processing the application, and a second element to cover the cost of running the licensing regime. The latter charge comprises both a fee for monitoring and enforcing the regime. Both elements were paid up front when the application was made.

Westminster argued that their fees were compliant with the Directive because if the application were unsuccessful, the second part would be refunded to the applicant. If the application were successful Westminster would keep all the fees charged.

As part of its judgement, the Supreme Court considered two ways in which the fees could be charged. The first, where an initial fee was charged to cover the processing of the application and, if the application was successful, a second fee would be payable for the running of the licensing regime, which could include the costs of enforcing against licensed and unlicensed persons. This was called a Type A scheme.

The second was where the applicant paid both the costs of processing the application and the costs of running the licensing regime when the application was submitted. If the application was unsuccessful the costs of running the regime would be refunded to the applicant. This was a Type B method and one which Westminster initially adopted.

The Supreme Court decided that the Type A method was compliant with both UK law and the EU Directive. However, the Court was not sure if the Type B method was compliant with the EU Directive so they referred the matter to the European Court of Justice (ECJ) for a determination.

The ECJ decided on 16 November 2016 that the Type B method of charging fees was not compliant with the EU Directive. The Supreme Court will need to reflect this finding in its judgment.

Local authorities should adopt a two tier system when charging licensing fees, in line with Type A mentioned above.

APPENDIX 2

TABLES OF PROPOSED FEES

TABLE 1

Licence/Application Type	Current Fee £	Maximum permitted fee £	Percentage difference	Proposed Fee £
Gambling Premises Applications – Part A				
<u>Adult Gaming Centre</u>				
Provisional Statement	2000.00	2000.00	0%	2000.00
New Grant	2000.00	2000.00	0%	2000.00
New Grant where a provisional statement issued	1200.00	1200.00	-49.4%	607.00
Variation	1000.00	1000.00	0%	1000.00
Transfer/Reinstatement	1200.00	1200.00	-83.8%	194.00
<u>Betting Shop Premises</u>				
Provisional Statement	3000.00	3000.00	-59.8%	1206.00
New Grant	3000.00	3000.00	-55.4%	1338.00
New Grant where a provisional statement issued	1200.00	1200.00	-52.7%	568.00
Variation	1500.00	1500.00	-61.4%	579.00
Transfer/Reinstatement	1200.00	1200.00	-83.8%	194.00
<u>Betting Tracks</u>				
Provisional Statement	2500.00	2500.00	-54.4%	1141.00
New Grant	2500.00	2500.00	-49.1%	1273.00
New Grant where a provisional statement issued	950.00	950.00	-34.8%	619.00
Variation	1250.00	1250.00	-30.3%	871.00
Transfer/Reinstatement	950.00	950.00	-79.6%	194.00
<u>Bingo Premises</u>				
Provisional Statement	3500.00	3500.00	-20.3%	2790.00
New Grant	3500.00	3500.00	-16.5%	2922.00
New Grant where a provisional statement issued	1200.00	1200.00	-50.2%	598.00
Variation	1750.00	1750.00	-51.0%	857.00
Transfer/Reinstatement	1200.00	1200.00	-83.8%	194.00
<u>Family Entertainment Centre (++)</u>				
Provisional Statement	2000.00	2000.00	0%	2000.00
New Grant	2000.00	2000.00	0%	2000.00
New Grant where a				

provisional statement issued	950.00	950.00	-37.1%	598.00
Variation	1000.00	1000.00	-14.3%	857.00
Transfer/Reinstatement	950.00	950.00	-79.6%	194.00
Copy of a licence	25.00	25.00	0%	25.00
Minor changes	25.00	50.00	100%	50.00
Temporary Use Notice	152.00	500.00	0.7%	153.00
Gambling Premises Annual Fees – Part B	Current Fee £	Maximum permitted fee £	Percentage difference	Proposed Fee £
<u>Adult Gaming Centre</u>				
Annual	1000.00	1000.00	-25.3%	747.00
Seasonal – per month*				149.00
<u>Betting Shop Premises</u>				
Annual	600.00	600.00	-25.0%	450.00
Seasonal – per month*				90.00
<u>Betting Tracks</u>				
Annual	1000.00	600.00	-33.9%	661.00
Seasonal – per month*				132.00
<u>Bingo Premises</u>				
Annual	1000.00	600.00	-33.9%	661.00
Seasonal – per month*				132.00
<u>Family Entertainment Centre (++)</u>				
Annual	750.00	750.00	0%	750.00
Seasonal – per month*				150.00

++ No licences currently issued by the licensing authority

*Seasonal Licences are charged at 20% of the annual fee for each month, up to the annual fee

TABLE 2

Licence/ Application Type	Current Fee £	Proposed Fee Part A £	Proposed Fee Part B £	Percentage difference	Total £
Sex Shop/Sex Cinema					
Grant	5121.70	2690.00	757.81	32.68%	3447.81
Renewal	1831.90	588.82	757.81	-26.49%	1346.63
Variation at renewal	316.40	2131.07	N/A	573.54%	2131.07
Variation mid term	1700.50	2436.81	N/A	43.30%	2436.81
Transfer	789.60	440.70	N/A	-44.19%	440.70
Occasional	426.80	2111.09	757.81	572.19%	2868.90

Sexual Entertainment Venue (SEV)					
Grant	7229.70	3619.38	1004.69	-36.04%	4624.07
Renewal	3913.60	1995.53	1004.69	-23.34%	3000.22
Variation at renewal	1669.20	1339.85	N/A	-19.73%	1339.85
Variation mid term	4571.70	3132.40	N/A	-31.48%	3132.40
Transfer	1097.90	508.70	N/A	-53.67%	508.70
Occasional	602.48	2120.28	1004.69	418.68%	3124.97
Licence/ Application Type	Current Fee £	Proposed Fee Part A £	Proposed Fee Part B £	Percentage difference	Total £
Scrap Metal Dealers					
Premises Grant	527.70	312.67	189.97	-4.75%	502.64
Renewal	407.40	254.64	189.97	9.13%	444.61
Variation	124.40	161.98	N/A	30.21%	161.98
Change of Name or Address	26.30	43.21	N/A	64.31%	43.21
Replacement licence	10.10	26.61	N/A	163.42%	26.61
Personal Grant	185.00	209.00	31.10	29.78%	240.10
Renewal	126.40	135.20	31.10	31.57%	166.30
Change of Name or Address	28.30	43.21	N/A	52.70%	43.21
Replacement licence	10.10	26.61	N/A	163.42%	26.61
Marriage Licences	1120.20	388.88	50.51	-60.78%	439.39
Religious Premises to be licensed for Civil Partnership	273.00	254.79	50.51	11.83%	305.30
Changes to Marriage Licences	93.00	93.00	N/A	0%	94.67

TABLE 3

Licence/ Application Type	Number currently licensed	Current Fee £	Proposed Fee Part A £	Proposed Fee Part B £	Percentage difference	Total £
Animal Health Licences						
Animal Boarding Est	2	413	494	106	+ 45%	600
Pet shop	2	272	432	106	+ 97%	538
Performing animal	1	480	384	106	+ 2%	490
Riding establishment	1	565	662	106	+35%	768
Dangerous & Wild animal	0	480	520	106	+30%	626

Dog breeding	0	272	494	106	+120%	600
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TABLE 4

Licence/ Application Type	Number currently licensed	Current Fee £	Proposed Fee Part A £	Proposed Fee Part B £	Percentage difference	Total £
Massage and Special Treatment (MSTs) Licences						
New Level 1	6	196	417	281	+256%	698
New Level 2	7	734	417	281	- 5%	698
New Level 3	7	1306	417	281	-47%	698
Renewal Level 1	42	167	216	281	+197%	497
Renewal Level 2	48	640	216	281	-23%	497
Renewal Level 3	54	1136	216	281	-56%	497
Variation/add Treatment	5	66.70	293	n/a		293
Transfer	2	66.70	308	n/a	+361%	308
Occasional	2	50% new	208	n/a		208
Therapist Registration	210	67	82	n/a	+22%	82
MST Renewal Olympia	1	1136	114	281	- 65%	395
MST Olympia Occasional	20	67	197	n/a	+194%	197
Total		Actual income £91,903			-18%	Potential income £106,688

TABLE 5

Licence/ Application Type	Number	Current fee £	Proposed Fee Part A £	Proposed Fee Part B £	Total £
Olympia Licence					
Exhibition licence	1	93,869.30	356	n/a	356
Opposed licence application	0	n/a	2,925.20	n/a	2,925.20
Exhibition approvals	115 in 2015/16	n/a	n/a	46,739.55	46,739.55
EH Enforcement /	Based on visits / actions made in	n/a	n/a	6,239.00	6,239.00

monitoring visits, and associated costs	2015/16				
Highways monitoring costs	Based on visits / actions made in 2015/16		n/a	5,449.96	5,449.96
Transport planning monitoring costs	Based on visits / actions made in 2015/16			357.20	357.20
Total			£3,281.20	£58,785.71	£62,066.91