

# Cheltenham Borough Council

Cabinet – 14 June 2016

## Extensions of Licensing Pre-application Advice Scheme

<b>Accountable member</b>	<b>Councillor Andy McKinlay, Cabinet Member Development &amp; Safety</b>
<b>Accountable officer</b>	<b>Mike Redman, Director of Environment</b>
<b>Ward(s) affected</b>	<b>All</b>
<b>Key/Significant Decision</b>	<b>Yes</b>
<b>Executive summary</b>	<p>In March 2013 the Cabinet adopted a discretionary pre-application advice service for licensing.</p> <p>The scheme was adopted under ‘general power of competence’ introduced by the Localism Act 2011 that gives local authorities the legal capacity to do anything that an individual can do that is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power.</p> <p>This report seeks permission to extend the scope of the scheme and to introduce new charges.</p>
<b>Recommendations</b>	<p><b>Cabinet is recommended to:</b></p> <ol style="list-style-type: none"><li><b>1. Approve the extension of the current scheme and the new fees as outlined in the Appendix 2 to come into effect immediately.</b></li></ol>

<b>Financial implications</b>	<p>This proposal will potentially generate additional revenue by utilising existing resource. The amount generated will depend on customer take-up of the scheme, but is estimated to be £4,000 per year. It is intended that this amount would contribute to the REST savings target in 2017/18.</p> <p><b>Contact officer: Myn.Cotterill@cheltenham.gov.uk, 01242 774958</b></p>
<b>Legal implications</b>	<p>As outlined in the report.</p> <p><b>Contact officer: Vikki.Fennell@teWKesbury.gov.uk, 01684 272015</b></p>
<b>HR implications (including learning and organisational development)</b>	<p>There are no direct HR implications in this report.</p> <p><b>Contact officer: Carmel.Togher@cheltenham.gov.uk, 01242 775215</b></p>
<b>Key risks</b>	<p><b>As identified in Appendix 1</b></p>

<b>Corporate and community plan Implications</b>	People live in strong, safe and healthy communities Sustain and grow Cheltenham's economic and cultural vitality
<b>Environmental and climate change implications</b>	None
<b>Property/Asset Implications</b>	None <b>Contact officer: David Roberts@cheltenham.gov.uk</b>

## **1. Background**

- 1.1 In March 2013 the Cabinet adopted a discretionary pre-application advice service for licensing.
- 1.2 The scheme was adopted under 'general power of competence' introduced by the Localism Act 2011 (the 2011 Act). It gives local authorities the legal capacity to do anything that an individual can do that is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power. This general power of competence can be exercised for the benefit of the authority, its area or persons resident or present – or otherwise. The power also allows authorities to make a charge subject to the conditions in Section 3 of the Act.
- 1.3 The Council can rely on the general power of competence conferred by Section 1 of the 2011 Act because individuals could give licensing advice and the giving of such advice is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power.
- 1.4 This report seeks to extend the current scheme to include a wider range of authorisations and introduce new charges.

## **2. The current scheme**

- 2.1 The current scheme covers new and full variation applications made under the Licensing Act 2003. The scheme offers advice on completing application forms, appropriate conditions and operating schedule, policy issues and application submission advice.
- 2.2 The uptake of discretionary licensing pre-application advice is approximately one in every four applications submitted.
- 2.3 The scheme was predominantly set up for the following reasons:
  - 2.3.1 Prospective applicants were put off by the statutory process or dropped out due to the complexities of the process;
  - 2.3.2 Licensing officers were spending a great deal of their time advising prospective applicants, returning invalid applications and rejecting applications that were either submitted contrary to the relevant statutory regulations or advertised wrongly; and
  - 2.3.3 Less experienced operators were submitting very poorly thought through applications that resulted in very poor compliance and business operation.
- 2.4 In most cases the problems above were perceived to be negatively impacting on local economic growth, development and investment and potentially depriving local communities of amenities.

## **3. Proposals for extending the scheme**

- 3.1 It is being proposed that:
  - 3.1.1 the types of authorisations in scope be extended;
  - 3.1.2 the current fees be amended; and
  - 3.1.3 new charges be introduced to extend the level of pre-application advice service offered.

## **4. Types of authorisations to be included**

- 4.1 It is proposed that the following authorisations be included in the range of services eligible for discretionary licensing pre-application advice in addition to the current two (2.1):

- 4.1.1 Permission to obstruct the public highway (i.e. tables and chairs, advertising boards (where there is compliance with policy));
- 4.1.2 Application for minor variation of a premises licence;
- 4.1.3 Application for street trading consent; and
- 4.1.4 Application for a club premises certificate.

## 5. New charges

- 5.1 It is proposed that two additional levels of discretionary service be provided:
  - 5.1.1 **'Check and send'** – The process of applying for a premises licence under the Licensing Act 2003 is strictly defined by regulations and can often be complex. This includes strict requirements to serve applications on a number of statutory responsible authorities depending on the type of application made. Failure to properly follow the regulations is likely to have the application declared invalid. The 'check and send' service will offer applicants the opportunity to have their application validated by a licensing officer who will also distribute the application to the relevant responsible authorities taking that responsibility away from the applicant.
  - 5.1.2 **'Pre-application consultation'** – All of the applications included under the scheme, and those proposed to be included, require some form of formal consultation as an aspect of the determination process. Whilst the current scheme assists with the technicalities of the application process, it does not currently offer pre-submission consultation. This will involve distributing a prospective application to responsible authorities for comment before the formal application is submitted. This will often be helpful to applicants to get an understanding of the likelihood of their application being successful and also to understand and address weaknesses in the application that require attention to avoid objections and committee hearings.
- 5.2 The proposed new fees for the services proposed above are outlined in **Appendix 2**.

## 6. Current fees

- 6.1 The current scheme offers two fee categories: small scale applications and medium to large scale applications.
- 6.2 In 2013, the council was only the second authority in the country to adopt discretionary fees for licensing pre-application advice. As a consequence, there was no relevant experience to rely on when setting appropriate levels of fees. Officers now have the appropriate level of practical knowledge and experience to reconsider fees to align them more accurately with full cost recovery principles.
- 6.3 The proposed amended fees are outlined in **Appendix 2**.

## 7. General principles

- 7.1 None of the new proposals above have any impact on the general principles of the scheme as a whole which are:
  - 7.1.1 **Bureaucracy** - Applicants who decide not to take advantage of the proposed process will still be supplied with the relevant guidance notes and policies. It is also important to ensure that the process does not become overly bureaucratic. As a consequence, no fees will be charged for straightforward queries that can easily be dealt with over the phone and do not require significant officer time.
  - 7.1.2 **Exemptions** - will be applied in certain circumstances for educational institutes, buildings used for

religious purposes, village and community halls and non-profit making charities. These premises already qualify for an exemption from paying the statutory fees.

- 7.1.3 Separation of duties** - the officer involved with pre-application assistance and advice will not have any subsequent involvement with that individual application.
- 7.1.4 Declaration** – service will be subject to the same declaration of understanding including that the service offered ceases on application and may not give any assurances of a success.
- 7.1.5 Policy** – officer advice and technical assistance will be to promote council policy and will not go beyond policy measures.

## **8. Reasons for recommendations**

- 8.1** To better assist applicants to engage with the licensing process for the reasons set out in the report.
- 8.2** To enable the council to more effectively manage officer time and recover costs.

## **9. Alternative options considered**

- 9.1** To keep the current scheme unchanged but this is not considered an appropriate option for the reasons set out in the report.

## **10. Consultation and feedback**

- 10.1** Consultation has been undertaken with GOSS Finance and One Legal.

## **11. Performance management – monitoring and review**

- 11.1** Performance will be assessed against the uptake of the discretionary services provided and the council's ability to more effectively recover its costs.

<b>Report author</b>	<b>Contact officer: Louis Krog, louis.krog@cheltenham.gov.uk, 01242 264217</b>
<b>Appendices</b>	<ol style="list-style-type: none"><li>1. Risk Assessment</li><li>2. Proposed new authorisations and charges (for adoption)</li></ol>
<b>Background information</b>	<ol style="list-style-type: none"><li>1. Pre-application Fees for Licensing Applications, Cabinet report and decision, March 2013</li><li>2. Localism Act 2011</li><li>3. Licensing Act 2003</li></ol>

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the council does not administer the discretionary service properly then it may become over bureaucratic which could have the opposite effect of putting off businesses and investment in new venues.	Licensing Team Leader	14/06/16	2	3	6	Accept				
<p><b>Explanatory notes</b></p> <p><b>Impact</b> – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p><b>Likelihood</b> – how likely is it that the risk will occur on a scale of 1-6                      (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p><b>Control</b> - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											