

**Cheltenham Borough Council**  
**Cabinet – 12 March 2013**  
**Pre-application Fees for Licensing Applications**

<b>Accountable member</b>	<b>Councillor Peter Jeffries - Cabinet Member Housing and Safety</b>
<b>Accountable officer</b>	<b>Grahame Lewis – Executive Director</b>
<b>Ward(s) affected</b>	<b>All</b>
<b>Key Decision</b>	<b>No</b>
<b>Executive summary</b>	<p>Section 1 of the Localism Act 2011 gives local authorities powers to do anything that an individual with full capacity may do. Section 3 of the Act allows local authorities to charge for providing a service that is not required to be provided by legislation.</p> <p>The introduction of a discretionary pre-application assistance and advice service would be beneficial because it will enable the Council to produce better quality of licensing applications which will benefit persons resident or present in Cheltenham.</p> <p>On this basis, Cabinet is recommended to approve the introduction of such a discretionary service in respect of certain licensing applications as specified in this report.</p>
<b>Recommendations</b>	<b>Cabinet is recommended to approve the introduction of a discretionary pre-application service and charges for new and full variation applications made under the Licensing Act 2003</b>

<b>Financial implications</b>	<p>The introduction of the discretionary fee will allow the council to fully recover its costs when providing pre-application licensing advice. The fees laid out in section 5.5 to this report will meet this requirement and will be monitored to ensure that the income from this service does not exceed the cost of service provision.</p> <p>Sarah Didcote</p> <p><b>Contact officer:</b> 01242 26 4125, <a href="mailto:sarah.didcote@cheltenham.gov.uk">sarah.didcote@cheltenham.gov.uk</a></p>
<b>Legal implications</b>	<p>As set out in the report.</p> <p>Sarah Farooqi</p> <p><b>Contact officer:</b> 01684272693, <a href="mailto:sarah.farooqi@tewkesbury.gov.uk">sarah.farooqi@tewkesbury.gov.uk</a></p>

<b>HR implications (including learning and organisational development)</b>	<p>The HR implications for introducing a discretionary pre-application assistance and advice service is increasing demand on officer time. However with training and monitoring by management, officer time will be spent more effectively meeting/speaking with customers who are making licensing applications, rather than dealing with incorrect or incomplete submitted applications.</p> <p>Donna Sheffield</p> <p><b>Contact officer:</b> 01242774972, <a href="mailto:donna.sheffield@cheltenham.gov.uk">donna.sheffield@cheltenham.gov.uk</a></p>
<b>Key risks</b>	<b>None identified.</b>
<b>Corporate and community plan Implications</b>	<p>Cheltenham has a strong and sustainable economy</p> <p>Communities feel safe and are safe</p>

## **1. Background**

- 1.1** The Localism Act 2011 (the Act) introduced a 'general power of competence'. 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. This is considered in more detail in paragraph 5.5.
- 1.2** The Council can rely on the general power of competence conferred by Section 1 of the Localism Act 2011 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.

## **2. Current Arrangements**

- 2.1** The Licensing Act 2003 is the primary legislation that makes provision for the licensing of the sale of alcohol, entertainment and the provision of late night refreshment.
- 2.2** Under the Licensing Act, the licensing authority is both responsible for the administration and determination of applications.
- 2.3** Although there exists a statutory duty on the Council to administer applications, that duty does not extend to the provision of pre-submission advice and assistance.
- 2.4** In 2011 the licensing section received 234 applications under the Licensing Act 2003 for both new premises licences and variations of issued premises licences. All of the applications required some form of statutory consultation with responsible authorities.
- 2.5** Notwithstanding the fact that all of the 234 applications required some form of statutory consultation, it is proposed that discretionary fees only apply to new and full variation applications. This is due to the fact that these applications are more complex in nature and as a consequence licensing officers spend a considerable amount of time with applicants.

## **3. Reasons for recommendations**

- 3.1** The proposal to introduce discretionary services holds benefits for the Council. Officers believe that the assistance offered under the proposed discretionary scheme will benefit persons resident or present in Cheltenham.
- 3.2** From discussions with potential applicants officers know that some are put off by, for example, the length of application forms and the amount of information, some of this is technical, required submitting a completed application. Guidance notes and policies are publicly available to applicants, but the prescribed application process is inherently complicated mainly because it is closely linked to the primary legislation.
- 3.3** In addition, officers routinely reject incomplete or incorrectly served applications which are not resubmitted because applicants perceive the process to be too difficult and onerous.
- 3.4** Investment in the borough is invariably affected by this because without the necessary licence, businesses cannot trade which has obvious investment implications for the borough. Officers are of the opinion that the perceived obstacles in obtaining a licence can be overcome with pre-submission advice and assistance.
- 3.5** As part of the application process, applicants must identify steps they propose to take to promote

the licensing objectives. The objectives are:

- (a) the prevention of crime and disorder,
- (b) public safety,
- (c) the prevention of public nuisance, and
- (d) the protection of children from harm.

**3.6** Less knowledgeable or experienced applicants would normally not put forward sufficiently robust conditions. Where this is the case, the Council is, notwithstanding that, under duty to issue that licence as applied for in the absence of relevant objections. The Council is not empowered in itself to impose conditions in the absence of relevant objections.

**3.7** As a result, the operation of that licence could have an adverse effect on the social well being of a community through, for example, causing a public nuisance or attracting crime and disorder.

**3.8** Officers are of the opinion that better quality and better thought through applications could alleviate some problems that exists with licensed premises.

## **4. Charging Fees**

**4.1** Section 3 of the Act enables local authorities to charge where the council is providing a service relying on general power of competence. A charge can be made where the local authority is not under a duty to provide the service and the person has agreed to the service being provided. There is also a duty to ensure that taking one financial year with another, the income from charges does not exceed the costs of provision of the service, in other words the council cannot make a profit from charging for the service.

**4.2** The Council has a discretion under the Act not to charge for providing a service relying on the general power of competence but it is considered appropriate to charge a fee to cover the costs in providing the service because as a discretionary service it will require officer time that, if not charged for, would be costed into the general licensing budget and thereby default be paid by all.

## **5. Proposals & Process**

**5.1** The proposal is that potential applicants or persons indicating an interest in applying for a licence will be given the opportunity to take advantage of officer assistance at the appropriate discretionary fee.

**5.2** The level of pre-application advice and assistance will be determined by the scale of the application. The nature of the pre-application advice and assistance offered for both small and medium to large scale applications will be the same although the officer time allocated will differ because medium to large scale applications will demand more officer time.

**5.3** Small scale applications would normally consist of applications relating to premises that occupy a relatively small floor area or premises where the proposed licensable activities will largely be ancillary to the operation of the premises, for example, independent supermarkets, food led restaurants or beauty salons. Medium to large scale applications would be any other premises that occupy a large premises or where licensable activities will form part of the primary operation of the premises. Officers will discuss the scale of an application with applicants to ensure agreement will be reached. It is not anticipated that this will be an onerous process.

**5.4** It is proposed that the pre-application advice and assistance will consist of;

- Advice and assistance with completing the application forms including (not exhaustive);

- advice on appropriate conditions taken from the pool of standard conditions outlined in the Council's adopted policy statement or consultation with other responsible authorities,
- advice on drawing up plans to accompany the application in accordance with the relevant regulations, and
- advice on nominating an appropriate designated premises supervisor.
- Assistance with completing the statutory notices and advertising, and
- On-site visit(s) to ensure plans are compliant with prescribed regulations and the appropriate statutory notices are correctly on display.

**5.5** The discretionary fee for the above will be calculated based on the amount of officer time allocated per type of application, small or medium to large, and based on the average cost per hour for Licensing Officers. The proposed fee structure is broken down below;

#### **Small Scale applications**

<b>Action</b>	<b>Allocated Officer time</b>	<b>Avg. officer £/hour</b>	<b>Total</b>
Assistance with application form	1 hour	£17.00	£17.00
Assistance with stat. advertising	30 mins	£17.00	£8.50
On-site visit(s)	1 hour	£17.00	£17.00
<b>Total hours:</b>	<b>2h 30mins</b>		<b>£42.50</b>

#### **Medium to Large Scale applications**

<b>Action</b>	<b>Available Officer time</b>	<b>Officers rate/hour</b>	<b>Total</b>
Assistance with application form	1 hour	£17.00	£17.00
Assistance with stat. advertising	30 mins	£17.00	£8.50
On-site visit(s)	1h 30mins	£17.00	£25.50
<b>Total hours:</b>	<b>3h</b>		<b>£51.00</b>

**5.6** Applicants who decide not to take advantage of the proposed new process will still be supplied with the relevant guidance notes and policies. It is also important to ensure that the new 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.

**5.7** A log will be kept detailing the amount of time spent on each application. If there is a major discrepancy between the time predicted and the actual time spent then a decision will be made as to whether to refund part of the fee. No extra charge will be made if additional time is spent, as an agreement would have been made prior to the advice being given.

**5.8** An application form for applicants wishing to take advantage of the discretionary service is attached at **Appendix 1**. Members will note that the form clearly sets out the conditions under which the discretionary service will be provided to avoid any doubt.

## **6. Exemptions**

**6.1** It is proposed that exemptions 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 and officers consider it appropriate to extend the exemption to also apply to pre-application advice.

## **7. Separation of Duties**

**7.1** Licensing officers only have delegated authority to determine unopposed applications. Applications that are opposed have to be referred to a licensing committee for determination. As a consequence, it is not envisaged that the operation of the new process would cause significant problems with the administration and determination process.

**7.2** Notwithstanding this, it is important for the avoidance of doubt that arrangements for clear separation exist between officers who offer pre-application assistance and those who are responsible for the subsequent administration and determination of that application.

**7.3** It is therefore proposed that the officer involved with pre-application assistance and advice will not have any subsequent involvement with that individual application. There are sufficient staffing resources in place at the moment to accommodate this arrangement.

**7.4** The introduction of the proposed discretionary fee structure will not affect the Council's statutory duties. Officers will still carry out their statutory functions of processing the licence application and fulfil their role as the Licensing Authority and this will not be included in the discretionary charges.

## **8. Reasons for recommendations**

**8.1** As outlined in the report.

## **9. Equality Impact Assessment**

**9.1** An equality impact assessment has been undertaken and no adverse affects on equality practice has arisen as a result of this report.

<b>Report author</b>	<b>Contact officer: Louis Krog, louis.krog@cheltenham.gov.uk, 01242 775004</b>
<b>Appendices</b>	1. Application Form
<b>Background information</b>	1. Localism Act 2011 2. Licensing Act 2003