

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

05 July 2023

Report of the Director of Central Services and Deputy Chief Executive

Part 1- Public

Delegated

1 STREET TRADING FEES

1.1 Executive Summary

1.1.1 The responsibility for setting the licensing fees and charges for 2023/24 is with the Licensing & Appeals Committee.

1.1.2 The review has been carried out by the Head of Service for Licensing, Customer Services and Community Safety and the report sets out the recommended changes to the existing fee structure for Street Trading.

1.1.3 The council has the power to set some fees for certain licensing regimes. However, a number of licensing regimes have fees that have been set by the specific Act or associated regulations. There are three fee regime types that have been set out within this document. These fee regime types relate to how the fees have been set.

Type 1	Type 2	Type 3
Fees that are set by statute for which the council has no power to amend.	A maximum fee cap set by statute that permits councils to set a reasonable fee to recover its costs up to that cap.	The relevant statute permits councils to set their own local fees that will enable it to recover its reasonable costs.
Example <ul style="list-style-type: none">• Licensing Act 2003• Lotteries	Example <ul style="list-style-type: none">• Gambling Act 2005	Example <ul style="list-style-type: none">• Taxi and Private Hire• Scrap Metal• Street Trading

1.1.4 All of the fees within type 2 up to the relevant cap and all of the fees within type 3 fee regimes have been set to recover the council's reasonable costs in carrying out its functions for each specific regime. The fees relate to that regime only and all the income received from fees is used to offset those costs. The council cannot and does not use the income from one specific licensing regime to cover deficits in other regimes.

1.1.5 The council will aim to undertake a review of type 2 and 3 licensing fee regimes every year. When considering the fees the council will take into account the costs that it has incurred from the previous year and set a fee based on those costs. If the council does, in reviewing the fees identify a surplus or a deficit it will adjust the fees accordingly to either reduce the fee levels to reduce the surplus or increase the fee levels to repay that deficit in costs from previous years. This means that the fees will fluctuate year on year based on the review of income and cost associated with that relevant licensing regime.

1.1.6 The principal area covered by Type 3 above is that relating to Hackney Carriage and Private Hire licensing. Further detail in respect of this area is set out below

European Service Directive

1.1.7 The European Union Services Directive -2006/123/EC (the Directive) was given effect in UK law via the Provision of Services Regulations 2009 (SI2009/2999). This Directive and the Regulations contain provisions about the fees which may be charged under relevant licensing regimes within the scope of the Directive. In particular licensing authorities may not set fees that are dissuasive, and any fees must be reasonable and proportionate to the cost of the licensing process and the issuing of the licence.

1.1.8 In addition, a judgment of the Supreme Court in a case involving Westminster City Council has provided further clarification of the type of costs which may be taken into account when setting fees, and when fees may be payable. Pending further guidance from the European Court of Justice, the judgment of the Supreme Court established that a licensing regime may operate on the basis that an applicant must pay:

- i. on making the application, the costs of the application process and,
- ii. on the application being successful, a further fee to cover the costs of the running and enforcement of the licensing regime.

1.1.9 The council has, following this decision, reviewed the Type 3 regime fees, for which the Directive relates so that they identify the costs for processing the application through to determination (Part A) and the cost for running and the enforcement of the licensing regime (Part B).

1.2 Street Trading Fees

1.2.1 At the Licensing and Appeals Committee Meeting on the 8th March 2022, 24 June 2022 and 27 September 2023, Members have agreed the following timetable:

ACTION	DATE	NOTES
10-week public consultation	Start 20.06.2022* End 29.08.2022*	The DRAFT policy will be shared with – <ul style="list-style-type: none"> • Ward Members • Parish & Town Councils • Kent County Council Highways; • Environmental Health; • Economic Development; • Property Services • Planning; • Kent Police; • Kent Fire and Rescue; • Trading Standards; • Current Traders (list supplied by the councils Food Safety Team)
Review consultation responses	W/C 05.09.2022*	The responses will be reviewed by: <ul style="list-style-type: none"> • Head of Service for Licensing, Community Safety & Customer Services • Licensing Officers
Licensing & Appeals Committee	27.09.2022*	<ul style="list-style-type: none"> • L&A committee to approve the policy following the public consultation prior to the resolution
Publish Resolution with consultation	Start 10.10.2022 * End 07.11.2022	The council must publish a notice containing the DRAFT resolution with a 28-day consultation period.
Review resolution consultations	W/C 07.11.2022*	The responses will be reviewed by: <ul style="list-style-type: none"> • Head of Service for Licensing, Community Safety & Customer Services • Licensing Officers

ACTION	DATE	NOTES
Licensing & Appeals Committee	29.11.2022*	<ul style="list-style-type: none"> L&A committee to approve the resolution consultation responses
Full Council	21.02.2023*	<ul style="list-style-type: none"> Full Council approval prior to publishing the final resolution
Publish 1 st Notice	01.03.2023*	The first notice must be published no later than 28 days before the date specified in the resolution for the new designation coming into force.
Publish 2 nd Notice	08.03.2023*	The second notice must be published within one week of the first public notice.
Resolution and new policy will come into force	01.04.2023*	Subject to all other actions being approved.
Licensing and Appeals Committee approve fee levels	05.07.2023*	Licensing and Appeals Committee have delegated powers to set Street Trading Licensing Fees
*All dates are subject to approval at each stage.		

1.2.2 A copy of the Street Trading report from the 8 March 2022 is shown at **Annex 1**

1.2.3 A copy of the Street Trading report from the 14 June 2022 is shown at **Annex 2**

1.2.4 A copy of the Street Trading report from the 27 September 2022 is shown at **Annex 3**

1.2.5 A copy of the Street Trading report from the 29 November 2022 is shown at **Annex 4**

1.2.6 The following table detailed the proposed fee levels.

Street trading consents	2022-23		
	Part A Fee	Part B Fee	Total Fee
Fixed pitch – annual consent	£252	£168	£420
Fixed pitch – monthly consent	£70	£0	£70
Fixed Pitch 1 – 7 days	£20	£0	£20

1.2.7 The Street Trading fee module, together with street trading fees from our neighbouring Authorities can be viewed at **Annex 5**

1.3 Legal Implications

1.3.1 The statutory regime for designating streets for the purposes of street trading and the granting of street trading consents and related matters is set out in Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (see Annex I). There is no statutory requirement to have a licensing policy for street trading.

1.3.2 However, it is considered best practice and also a modern, effective policy document will ensure that the trade and public alike will have a document that fully explains the elements of the regulatory process. This will include the principles to be applied when considering applications for street trading, the application process itself and the grounds for objection, refusal, the hearings procedure and the grounds for appeal.

1.4 Financial and Value for Money Considerations

1.4.1 By going out on consultation to amend the current policy for street trading, the council will have greater scope to collect licence application fees for those seeking to trade within the Borough. Fees have been benchmarked against Street Trading Fees of neighbouring Boroughs.

1.5 Risk Assessment

1.5.1 The recommended fee levels have been calculated in order to ensure that the service remains self-financing, whilst at the same time not making a profit.

1.6 Equality Impact Assessment

- 1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.7 Recommendations

- 1.7.1 It is RECOMMENDED that the proposed scale of fees for licences, consents and registrations set out in 1.26 of this report be adopted with immediate effect.

Background papers:

Department of Transport statistics
Home Office statistics

contact:

Katie Shipman 6027
Anthony Garnett 6151

Adrian Stanfield

Director of Central Services and Deputy Chief Executive