

Report for: Council

Date of Meeting:	23 February 2023
Subject:	Non-Executive fees and charges for 2023-24
Responsible Officer:	Patrick Flaherty – Chief Executive
Exempt:	No
Wards affected:	All wards
Enclosures:	Appendix 1 - Fees and Charges 2023-2024

Section 1 – Summary and Recommendations

This report sets out the proposed fees and charges for licences/applications for those matters listed in this report, and as set out in appendix 1.

Recommendations:

Council is requested to:

1. Approve and set the fees and charges listed in Appendix 1 for the financial year 2034-24.
2. authorise the Director of Finance to amend fees and charges in year and agree new fees and charges, following consultation with the Corporate Director of Place and the relevant Portfolio Holder.

Section 2 – Report

2.1 Background & Current Situation

2.1.1 The following fees & charges (amongst others) are covered in this report:

- Fees for applications for Special Treatment Licensing under the London Local Authorities Act 1991
- Fees for licence applications for Houses in Multiple Occupation and Selective Licensing under the Housing Act 2004
- Charges for notifications for Skip Licences, Materials on Highway, Hoarding and scaffolding licences under the Highways Act 1980
- Fees for applications under Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 – including pet shops, dog breeders etc.
- Fees for applications for Hypnotism, Sex Shops, Sexual Entertainment Venues, Poisons and Scrap Metal & Motor Salvage Operators licences.
- Street Trading Fees and charges
- Other non-executive fees covered by the Environmental Services

2.1.2 The fees and charges in Appendix 1 were historically considered by the Licensing & General Purposes Committee, as the above relate to non-executive functions. As the Licensing & General Purposes Committee no longer has regular meetings, and usually only meets once annually to agree sub-committees membership, approval of these fees and charges rests with full Council.

2.2 Statutory Fees

2.2.1 The requirement or ability to levy a fee/charge for those items listed in Appendix 1 are provided for in statute, either being set down as a fixed amount (*statutory prescribed*) that the Council cannot vary/set, or by providing the authority with the power to set a fee/charge in accordance with the requirements of the legislation (eg. up to a maximum amount, or cost recovery only, or reasonable cost etc) (*statutory discretionary*). Fees noted in Appendix 1 as ‘statutory prescribed’ are for noting only.

2.2.2 The majority of Licensing Act 2003 regime fees were originally set via the Licensing Act 2003 (Fees) Regulations 2005 and are prescribed. In

a number of cases these fees do not reflect the actual cost of administering the regime but the Council cannot change these.

2.2.3 The Gambling Act 2005 sets out maximum fees for gambling premises licences and fees for permits, notifications and lotteries, and were set in 2007 when the Act came into effect. The authority can set its fees in accordance with these up to the maximum permitted level.

2.2.4 Section 32 of the London Local Authorities Act 1990 permits the council to set fees and charges in respect of street trading licences on a cost recovery basis. In respect of some offences relating to street trading, fixed penalty notices can be issued, and the penalty levels are agreed through London Councils.

2.3 European Services Directive

2.3.1 The European Union Services Directive (2006/123/EC), brought into effect in the UK by the Provision of Services Regulations 2009, requires that fees & charges set under an authorisation scheme have to be reasonable and proportionate to the cost of the procedures and formalities of it and should not exceed these costs.

2.3.2 Following a ruling by the European Court of Justice in the case of *Hemming v Westminster City Council*, it is now clear that fees charged in accordance with a scheme that falls under the provisions of the Services Directive cannot at the outset cover more than just the cost of administering and processing the application (to grant a licence for example). Whilst the cost of enforcing the regime can be recovered, this cannot be wrapped up into one fee at the outset. Therefore, such fees and charges are split into:

- a. The costs of the application process; and
- b. On the application being successful, a further fee to cover the costs of the management and enforcement of the licensing regime.

2.3.3. It is no longer permitted to seek one fee incorporating both application and enforcement costs, and the fees need to be split and the second charge only due for applications which are successful (i.e. granted).

2.3.4 While the UK has now formally left the EU, the principles remain the same and the EU Services Directive is transferred across into UK legislation, so the requirements must still be met.

2.3.5 Therefore, a number of the fees and charges within Appendix 1 are now split into two parts - the administration fee, and the management and enforcement fee. This is not applicable to all, whereby this aspect is left blank on the schedule.

2.3.6 The fees are reflective of the costs for each aspect, and it can be noted that the greater part of the overall fee is usually the cost of the administration of the application (Part 1 of the fee), which includes initial inspections in a lot of licensing regimes

2.4 Discretionary Fees

- 2.4.1 It is recognised that discretionary fees are set at a level that ensures cost recovery but must also not distract from the Council's goal to be more business friendly.
- 2.4.2 With statutory discretionary fees, these would always remain within the fee range or requirements set out under legislation.

2.5 Main Options

Approve the recommended fees and charges

- 2.5.1 The fees and charges set out for approval have been reviewed and varied, where appropriate, to reflect the cost in administering the process. Their approval will therefore ensure recovery of costs.

2.6 Other options considered

Do not approve the recommended fees and charges

- 2.6.1 The Council needs to set its fees and charges for the forthcoming financial year and the proposed amounts stated in the Appendix are to ensure cost recovery as far as possible. This option is therefore not recommended.

2.7 Legal Implications

- 2.7.1 As noted earlier, a number of fees and charges are prescribed by statute (eg. Licensing Act 2003 (Fees) Regulations 2005), as a set amount (in which case it is noted as '*statutory prescribed*' in the appendix). For other fees and charges the relevant legislation may provide that a charge can be made for providing the service but the amount of the charge is discretionary, within the remit of the legislation, often limited to cost recovery only, or a reasonable amount, or within a range/maximum amount. The authority therefore sets the amount of the charge accordingly. These are noted as '*statutory discretionary*' in the appendix.
- 2.7.2 Some of the regimes in the appendix are covered by the European Services Directive and the Provision of Services Regulations 2009, which implements the Directive. As noted earlier this requires that fees charged in relation to authorisations must be reasonable and proportionate to the cost of the process, and the European Court of Justice ruling in the Hemming v Westminster City Council case which

confirmed that a fee covering the administration costs of processing an application should be charged separately from the charge (to successful applicants) for enforcing the regime. It is not possible to charge one fee at the outset and then refund unsuccessful applicants the enforcement part of the fee. The two must be charged separately.

- 2.7.3 The Local Authorities (Functions & Responsibilities) Regulations 2000 sets out what fees and charges cannot be set by the Executive (i.e. Cabinet) as the functions to which they relate are non-Executive functions. The fees and charges in Appendix 1 are those that Council should set, with the exception of those which are prescribed, and therefore for information only.

2.8 Financial Implications

- 2.8.1 The fees and charges for approval are set to recover total cost of administering the licensing functions as per legislation and guidance. Many of the charges are being increased by 10% to take account of the level of inflationary cost increases as measured by the Retail Price Index.

- 2.8.2 The Charging Policy provides guidance on the factors to consider when reviewing charges. Where possible, and consistent with the Council's service priorities, charges are increased to ensure a move towards full cost recovery. The general practice has been to increase fees and charges by a % to cover the September RPI increase and an additional 1 to 2% towards full cost recovery. However, given that the September 2022 RPI was 12.6%, this would mean setting a standard increase of around 15%. Given the current economic climate and challenges already faced by residents, the proposed increases are between 7 and 10% (rounded up or down as appropriate) which is less than September Retail Price Index of 12.6%.

2.9 Risk Management Implications

- 2.9.1 Fees/charges need to be set correctly so as to comply with the requirements of the Provision of Services Regulations 2009, based on the EU Services Directive. Failure to do this could result in the Authority levying a fee that is subsequently considered to have been set unlawfully.
- 2.9.2 Reference to recent case law around fees and charges under the Provision of Services Regulations 2009 is covered above and has been taken into account in the splitting of the fees and charges to ensure compliance.
- 2.9.3 Risks included on corporate or directorate risk register? **No**
Separate risk register in place? **No**

The relevant risks contained in the register are attached/summarised below.

N/A

The following key risks should be taken into account when agreeing the recommendations in this report:

Risk Description	Mitigations	RAG Status
Failure to agree fees and charges mean they are not updated for 2023-24 and Council will not be able to recover costs, putting more financial burden on the organisation	The previous 2022-23 fees and charges shall remain applicable	
Fees/charges need to be set correctly so as to comply with the requirements of the Provision of Services Regulations 2009, based on the EU Services Directive. Failure to do this could result in the Authority levying a fee that is subsequently considered to have been set unlawfully.	Legislative requirement set out in appendix for fees, and confirmed by legal as part of clearance for report	
Fees and charges do not comply with recent case law around fees and charges under the Provision of Services Regulations 2009	Fees and charges split as per the requirement and checked by both legal and finance to ensure in place and accurate	
Fees and charges are not reasonable and proportionate to the cost of the procedures and formalities of it and exceed these costs.	Breakdown of costs carried out, to be able to demonstrate cost to Council and therefore fee level	
Fees and charges are set below the cost of the procedures and formalities meaning the Council is not covering all costs	Breakdown of costs carried out, to be able to demonstrate cost to Council and therefore fee level	

2.10 Equalities Implications / Public Sector Equality Duty

2.10.1 Section 149 of the Equality Act 2010 created the public sector equality duty.

Section 149 states:-

(1) A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

2.10.2 The relevant protected characteristics are age, race, disability, gender reassignment, pregnancy and maternity, religion or belief, sex and sexual orientation.

2.10.3 Fees and charges are kept under regular review to ensure that they are justifiable, fair and, where appropriate, comparable with neighboring Councils.

2.10.4 When making decisions in relation to service provision, the Council must take account of the equality duty and in particular any potential impact on protected groups. Each proposal has been prepared in accordance with the Council's charging policy regarding fees and charges.

2.10.5 Some charges will not increase in 2023/24 and some will be reduced. In others, the level of charge is set by Government and not within the Council's control.

2.10.6 Many of the charges where increases are proposed relate to discretionary services such as hiring playing fields and rooms at the arts centre and would not be considered as essential goods that would contribute to a calculation of increases in the cost of living. It is not possible to calculate the percentage increase across the board as this would depend on the number of times each service was accessed. A number of the charges are being increased by between 7% and 10%, reflecting that most services do not currently recover their full costs. This is in the context of inflation as measured by the Retail Price Index being 12.6% as at September 2022. The difference in most cases represents a small movement towards full cost

2.11 Council Priorities

2.11.1 Good financial accountability and appropriately set fees ensures that costs are fully recovered for services provided. This ensure that resources can be given to compliance and enforcement to ensure that the Borough remains clean and safe.

Section 3 - Statutory Officer Clearance

Statutory Officer: Dawn Calvert

Signed by the Director of Finance and Assurance

Date 06/02/23

Statutory Officer: Baljeet Virdee

Signed on behalf of the Monitoring Officer

Date: 08/02/2023

Chief Officer: Dipti Patel

Signed by the Corporate Director

Date: 08/02/2023

Mandatory Checks

Ward Councillors notified: NO, as it impacts on all Wards

Section 4 - Contact Details and Background Papers

Contact: Emma Phasey – Head of Licensing and Enforcement.

If appropriate, does the report include the following considerations?

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| 1. Consultation | NO |
| 2. Priorities | YES |