

SLOUGH BOROUGH COUNCIL

REPORT TO: Licensing Committee **DATE:** 17th October 2019

CONTACT OFFICER: Michael Sims - Licensing Manager
(For all Enquiries) (01753 477387)
Ginny De Haan – Service Lead Regulatory Services
(01753 477912)

WARD(S): ALL

PART I
FOR INFORMATION

LICENSING PRE-APPLICATION ADVICE, APPLICATION ASSISTANCE AND 'CHECK AND SEND SERVICE'

1. **Purpose of Report**

To inform Members of the introduction of a discretionary Licensing Pre-Application Advice, Application Assistance and 'Check and Send Service'.

2. **Recommendation/Proposed Action**

The Committee is requested:

(a) To note the introduction of the discretionary Licensing Pre-Application Advice, Application Assistance and 'Check and Send Service'.

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

3a. **Slough Joint Wellbeing Strategy Priorities**

The report indirectly supports the strategic priorities and cross cutting themes as the discretionary service will improve licensing standards within the Borough and contribute to the economy in addition to ensuring public safety of our community and visitors.

3b. **Five Year Plan Outcomes**

The discretionary service will contribute to the Five Year Plan with the specific Outcomes of:

- Slough will be an attractive place where people choose to live, work and stay
- Slough will attract, retain and grow businesses and investment to provide opportunities for our residents

4. Other Implications

(a) Financial

Section 3 of the Localism Act 2011 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 the charging for the service.

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 general licensing budget and thereby default be paid by all.

The fees for the discretionary service were set at £75 per hour and were approved by Cabinet on 17th June 2019 as part of the review of the Regulatory Services Fees increase and set as the same formula as already approved and used by SBC Trading Standards and Food and Safety Teams, which will ensure a consistency across the Consumer Protection Services and in the ongoing commercialisation of the services.

(b) Risk Management

Recommendation	Risk/Threat/Opportunity	Mitigation(s)
(a) To note the introduction of the discretionary Licensing Pre-Application Advice, Application Assistance and 'Check and Send Service'.	<p>The opportunities are that those persons taking up the option for the discretionary service will have a better understanding of the Licensing requirements which in turn will improve the operation of their business.</p> <p>The risk is that of a conflict with the same officer dealing with the pre-application assistance advice and determining the application.</p>	For the avoidance of doubt arrangements are in place to ensure a clear separation exists between officers who supply pre-application assistance and those who are responsible for the subsequent processing and/or determination of that application.

(c) Human Rights Act and Other Legal Implications

Section 1 and Schedule 1 Parts I & II of The Human Rights Act 1998 apply:

Article 1 – Every person is entitled to the peaceful enjoyment of his or her possessions including the possession of a licence and shall not be deprived of the possession except in the public interest.

Article 6 – That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The legal implications under the Localism Act 2011 (the “**Act**”) are as follows:.

Section 1 of the Act contains the general power of competence (the “**general power**”) permitting the Council to do anything that individuals generally do, even if they are unlike anything other public bodies do or that the authority may do other than for this power. The generality of the general power is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power.

Section 1(4) of the Act permits the Council to do something in any way, including a power to:

- a) do it anywhere in the United Kingdom or elsewhere,
- b) do it for a commercial purpose or otherwise for a charge, or without a charge; and
- c) do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area,

Section 3 of the Act applies limits on charging in exercise of the general power and states that:

- (1) Subsection (2) applies where—
 - (a) a local authority provides a service to a person otherwise than for a commercial purpose, and
 - (b) its providing the service to the person is done, or could be done, in exercise of the general power.
- (2) The general power confers power to charge the person for providing the service to the person only if—
 - (a) the service is not one that a statutory provision requires the authority to provide to the person,
 - (b) the person has agreed to its being provided, and
 - (c) ignoring this section and section 93 of the Local Government Act 2003, the authority does not have power to charge for providing the service.
- (3) The general power is subject to a duty to secure that, taking one financial year with another, the income from charges allowed by subsection (2) does not exceed the costs of provision.
- (4) The duty under subsection (3) applies separately in relation to each kind of service.

Section 4 applies limits on doing things for commercial purpose in exercise of the general power and states:

- (1) The general power confers power on a local authority to do things for a commercial purpose only if they are things which the authority may, in exercise of the general power, do otherwise than for a commercial purpose.
- (2) Where, in exercise of the general power, a local authority does things for a commercial purpose, the authority must do them through a company.

- (3) A local authority may not, in exercise of the general power, do things for a commercial purpose in relation to a person if a statutory provision requires the authority to do those things in relation to the person.

(d) Equalities Impact Assessment

An Equality Impact Assessment has not been carried out as this is a new discretionary service for any new applicant or current licence holder wishing to take up the service and does not have any potential to cause any negative or adverse impact or discriminate against any equality group.

5. Supporting Information

5.1 The Licensing Team deal with a wide range of licensable activities under a range of different legislation. In particular, the following applications are the most complex and time-consuming:

- Licensing Act 2003: Sale of alcohol, entertainment and the provision of late night refreshment (i.e. new premises, variations, transfers and changes of Designated Premises Supervisors)
- Gambling Act 2005: Gambling (i.e. new premises, variations, transfers)
- The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, including, selling animals as pets, providing or arranging for the provision of boarding for cats or dogs, hiring out horses, breeding dogs, keeping or training animals for exhibition, dangerous wild animals and zoos.
- Sex establishments (Local Government (Miscellaneous Provisions) Act 1982)
- Acupuncture, tattooing, electrolysis, ear or body piercing (Local Government (Miscellaneous Provisions) Act 1982)
- Scrap metal dealers (Scrap Metal Dealers Act 2013)

5.2 Under licensing legislation, the licensing authority is both responsible for the administration and determination of applications.

5.3 Although there exists a statutory duty on the Council to administer applications, that duty does not extend to the provision of pre-submission/application advice and assistance.

5.4 In 2018 the Licensing Team received and processed 219 applications under the aforementioned legislation. The majority of the more time consuming applications were made under the Licensing Act 2003 and required some form of statutory consultation with Responsible Authorities.

5.5 The Licensing Team also process many more straightforward applications and notices. The discretionary pre-application advice service and fees only apply to those matters set out in Section 5.1 above. This is due to the fact that these applications are more complex in nature and as a consequence licensing officers can spend a considerable amount of time with applicants.

6. Reasons for the introduction of the service

- 6.1 The introduction of the discretionary services holds benefits for the Council. Assistance offered under the discretionary service will benefit businesses and residents in the Slough area.
- 6.2 From discussions with applicants, officers know that some are put off, for example, by the length of application forms and the amount of sometimes technical information required in submitting a completed application. Guidance notes and policies are publicly available to applicants on our website, but the prescribed application process is inherently complicated mainly because it is closely linked to the primary legislation and applicants do not always have time to consider the guidance that is available.
- 6.3 In addition, officers routinely reject incomplete or incorrectly served applications which are delayed or not resubmitted because applicants perceive the process to be too difficult and onerous.
- 6.4 Investment in the Borough is invariably affected by this because without the necessary licence, businesses cannot trade which has obvious implications in terms of inward investment, local economic growth and potentially deprives local communities of welcome amenities.
- 6.5 Conversely, less experienced operators can also submit very poorly thought through applications that result in poor business practice and compliance. In many cases this results in adverse impacts on community well-being, for example by causing public nuisance or attracting crime and disorder.
- 6.6 Where poor applications are submitted the Council is not empowered in itself to impose new conditions unless relevant representations are made. Conditions offered up by an applicant can be reworded to ensure they are clear, concise and enforceable but this can sometimes take up considerable amounts of staff time. It is likely many of the perceived obstacles and issues outlined above can be overcome with pre-submission advice and assistance.

7. Fees

- 7.1 The fees for the new service were set at £75 per hour and were approved by Cabinet on 17th June 2019 as part of the review of the Regulatory Services Fees increase and set as the same formula as already approved and used by SBC Trading Standards and Food and Safety Teams.

8. Purpose and Process

- 8.1 The purpose 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 set discretionary fee.
- 8.2 The type of pre-application advice and assistance given will depend on the requirements of the applicant but examples of what the service may consist of include (not exhaustive):
 - Advice and assistance with completing the application forms;

- Advice on appropriate conditions taken from the pool of standard conditions or in consultation with responsible authorities and other statutory service areas and agencies;
- Advice on drawing up plans and other technical documents to accompany the application in accordance with the relevant requirements,
- 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.
- A 'Check Send' Service where application will be validated and distribute completed application form to Responsible Authorities.

- 8.3 The service will apply to those applications set out in Section 5.1 above. The scope of the service will be reviewed after 18 months to determine if there is any merit from a customer and authority perspective in extending the scheme, for example to include Personal licenses.
- 8.4 Applicants who decide not to take advantage of the proposed new process will still be signposted to 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 or email and do not require significant officer time. Additionally, where the Council has the ability to set fees locally, these already include a provision for minor queries as part of the applications process.
- 8.5 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.
- 8.6 The log will also assist in the monitoring of scheme uptake. A dedicated cost-accounting code will be used to clearly identify income arising from the scheme going forward.
- 8.7 An application form for applicants wishing to take advantage of the discretionary service is attached at **Appendix A**, and the Guidance and Terms and Conditions of the service is attached at **Appendix B**.
- 8.8 Members will note that the Guidance and Terms and Conditions clearly set out how the discretionary service will be provided to avoid any doubt. It will also be important to agree the likely assistance required in advance of advice being given in order to ensure everyone is clear on what has been agreed. The service will stop once an application is submitted.

9. **Separation of duties and monitoring**

- 9.1 It is anticipated that the majority of applicants wanting to use the pre-application advice service will want to submit applications under the Licensing Act 2003. As a result, Licensing Officers will only have delegated authority to determine unopposed applications i.e. those where no adverse relevant representations are received. Applications that are opposed have to be referred to a Licensing Sub-Committee for determination. As a result, it is not envisaged that the operation of

the new process would cause significant problems with the administration and determination process.

- 9.2 It will therefore be important that arrangements for clear separation exist between officers who supply pre-application assistance and those who are responsible for the subsequent processing and/or determination of that application.
- 9.3 It is therefore proposed that the officer involved with pre-application assistance and advice will not have any subsequent involvement with processing or determination of that individual application. This will help to ensure that a potential conflict can neither be seen nor occur, especially with those applications decided by officers under delegated authority.
- 9.4 There are considered to be sufficient staffing resources in place to accommodate the arrangement of the new discretionary service.
- 9.5 Around fifteen local authorities have been identified as having taken advantage of the provisions in legislation and introduced charging for discretionary pre-application advice in licensing services. Adopting such a scheme for Slough would therefore place the Council very much in the top percentage of local authorities nationally in this regard.
- 9.6 From available published sources it is apparent that the identified schemes in place currently have embedded successfully within routine service delivery locally. Cheltenham Borough Council for example have had a scheme in place since 2013 and reported within 12-months that around one in four relevant applicants took up their discretionary service for applications under the Licensing Act 2003.
- 9.7 The introduction of the discretionary fee 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.
- 9.8 The Licensing Manager will be responsible for on-going performance and compliance management of the scheme.

10. Exemptions and Equality

- 10.1 Certain premises are exempt from statutory application fees and these are set out in the Licensing Act 2003 (Fees) Regulations 2005, as amended.
- 10.2 Where an application relates to the provision of regulated entertainment only (not alcohol) and that application is by or on behalf of an educational institution e.g. a school or college or a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building, no fee is payable on application. Consequently it is proposed to extend this exemption and not charge for pre-application advice for these premises.

11. Comments of Other Committees

Cabinet on 17th June 2019:

After due consideration the Cabinet approved the fees as set out in the report i.e.

- (a) That the fee for the new provision of Pre-Application Advice, Application Assistance and a 'Check and Send' Service by the Licensing Team be set at a cost recovery rate of £75 per hour, in line with similar service fees.

12. Conclusion

The Committee is requested to note the introduction of the discretionary Licensing Pre-Application Advice, Application Assistance and 'Check and Send Service'.

13. Appendices Attached

- 'A' - Licensing Pre-Application Service application form
- 'B' - Licensing Pre-Application Guidance and Terms and Conditions

14. Background Papers

- 'A' - Localism Act 2011
<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>
- 'B' - Various associated legislation.