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Cabinet Member for Policing and Equalities

7<sup>th</sup> July 2022

**Name of Cabinet Member:**

Cabinet Member for Policing and Equalities - Councillor AS Khan

**Director Approving Submission of the report:**

Director of Streetscene and Regulatory Services

**Ward(s) affected:**

All Wards

**Title:**

**Licensing – Introduction of a discretionary chargeable pre-application advice service**

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**Is this a key decision?**

**No** - Although the matters within the report affect all wards in the city, it is not anticipated that the impact will be significant.

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**Executive Summary:**

The purpose of this report is to seek approval for the introduction of a discretionary chargeable service for the provision of pre-application advice for licensing applications, and a check and send service for volume applications.

**Recommendations:**

The Cabinet Member is recommended to :

1. To approve the provision of a discretionary chargeable service for licensing pre application advice.
2. Adopt the proposed fees set out in Appendix A of the report.

**List of Appendices included:**

Appendix A – Pre-application advice fees and charges

**Other useful background papers:**

Licensing Act 2003  
Local Government Act 1972  
Scrap Metal Dealers Act 2013  
Gambling Act 2005

Local Government (Miscellaneous Provisions) Act 1982  
Localism Act 2011

**Other Useful documents**

None

**Has it been or will it be considered by Scrutiny?**

Not applicable

**Has it been or will it be considered by any other Council Committee, Advisory Panel, or other body?**

Not applicable

**Will this report go to Council?**

Not applicable

## **1 Context (or background)**

- 1.1 The licensing team are committed to working with applicants early in the application process to assist them with submitting a valid application and to ensure that the application that they submit will be acceptable. The licensing regime is often challenging and can deter some applicants from making an application, so we positively encourage pre-application advice as it can provide customers with clarity and reassurance about their application. It also enables officers to alert applicants to issues and concerns that may arise from their proposal.
- 1.2 Providing pre-application advice prior to an application being made is a discretionary service. Section 111 of the Local Government Act 1972 permits this discretionary service as it classed as conducive or incidental in relation to carrying out the licensing function.

## **2 Current arrangements**

- 2.1 Currently, the licensing team offers pre-application advice free of charge to applicants who request this service (usually for new and variation applications). On average the time spent with an applicant providing this advice can take approximately one hour and an Officer can also conduct a site visit upon request and if necessary.
- 2.2 Under the Licensing Act 2003 applications for transfers and variations of designated premises supervisors have a much higher instance of applications being submitted, which are invalid upon receipt and require a lot of work for the licensing team to make right. Usually, this is because they have been submitted by a licensee who is not using an agent, and they have a poor understanding of the legal requirements.
- 2.3 The licensing team deal with a wide range of licensable activities under a range of different legislation the following applications are the most complex and time-consuming:
  - Licensing Act 2003: new premises, variations, minor variations, transfers, and variation to the designated premises supervisor.
  - Gambling Act 2005 (new premises, variations, and transfers)
  - Scrap Metal Dealers Act 2013 (new and renewals)
  - Local Government (Miscellaneous Provisions) Act 1972 – Sexual Entertainment Venues, Sex Establishments and Street Trading Consents.
- 2.4 Under licensing legislation, the Licensing Authority is both responsible for the administration and determination of applications. Although there is a statutory duty of the Council to administer applications, that duty does not extend to the provision of pre-application advice and assistance.
- 2.5 In 2021 the licensing team received 497 applications under the legislation noted in paragraph 2.3 and most of the more time-consuming applications required some form of statutory consultation with the responsible authorities.
- 2.6 Although the fact that the licensing team also process many more straightforward applications and notices, it is proposed that the discretionary pre-application fees only apply to those matters detailed in 2.3 above. This is because these applications are more complex and therefore officers could potentially spend a considerable time with the applicants.

### **3 Reason for recommendations**

- 3.1 The proposal to introduce a discretionary chargeable pre-application service holds benefits for the Council. Officers believe that the assistance offered under the proposed discretionary scheme will benefit residents and persons present in the City. It will also assist an applicant making a suitable application, thus avoiding representations and the need for Licensing & Regulatory Sub-Committee hearing to determine applications, which is a cost to the Council.
- 3.2 From discussions with applicants, officers are aware that some are put off, for example, by the length of the application forms and the amount of technical information required in submitting a completed application. Although guidance notes and policies are publicly available on our website, the prescribed application process is inherently complicated, and often applicants do not have time to consider the guidance that is available.
- 3.3 In addition, officers routinely reject incomplete or incorrectly served applications, and these are then delayed or not resubmitted because applicants perceive the process to be too difficult or onerous. As a result, investment in the City is invariably affected by this because without the necessary licence authorisation, businesses cannot trade, which has implications of inward investment, local economic growth and potentially deprives local communities of welcome amenities.
- 3.4 Conversely, less experienced operators also submit very poorly considered 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.
- 3.5 Often instructing an agent to make applications on behalf of an applicant is costly, and an expense that applicants cannot afford. English is also not the first language for a high proportion of applicants, which makes the process more challenging when making licensing applications.
- 3.6 Officers currently spend a large amount of time providing advice or rectifying poorly completed applications, which then has an adverse impact on the other day to day work of the team, which is unsustainable. However, officers want to continue to assist applicants in advance as much as possible, so the introduction of fees to formalise the giving of advice, will be covered within the costs of running the service instead of being at the expense of it.
- 3.7 Many local authorities are already charging for licensing pre-application advice and a full benchmarking exercise has taken place when determining the fees.

### **4 Proposal & Process**

- 4.1 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.
- 4.2 The level of pre-application advice and assistance required is determined by the type of application to be completed. The type of application will also determine the fee charged, as the more complex applications will require more bespoke advice and liaison with the responsible authorities. A site visit will be available to those applications that request it, at an additional cost and assistance with advertising the application will also be available at an additional cost. It is proposed that the advice is allocated on an hourly basis, therefore,

dependant on the experience and knowledge of the applicant, an applicant may need more or less time as appropriate.

- 4.3 The pre-application advice service provides the following advice and guidance relating to the completion of the applications forms and other statutory requirements (although not exhaustive):
- Advice on appropriate conditions, or how to comply with conditions where in force.
  - Advice on drawing up plans to accompany the application in accordance with any relevant regulations.
  - Assistance with advertising and notice.
  - Consultation with responsible authorities
- 4.4 A check and send service will be made available whereby officers will do a pre-submission validation check to ensure there are no errors or omissions that may invalidate the application and then distribute the validated application to the responsible authorities and/or consultees. This service will be preferable to those who do not require any pre-application advice, but just to make sure they have got it right first time. Those taking advantage of this service will avoid any unnecessary delays to applications and it will allow the application process to be more expedient.
- 4.5 The proposed fees are set out at Appendix A of this report. Costs are calculated based on the hourly rate (including on-costs) of the licensing officer post.
- 4.6 The pre-application service will apply to those applications set out in paragraph 2.3 of this report. The fees will be reviewed on an annual basis to determine if the service can be extended to encompass other licence types, to reflect any changes in the cost of providing the service (such as pay inflation) and to assess the effectiveness of the service.
- 4.7 Applicants who decide not to take advantage of the proposed new process will still be signposted to the relevant guidance notes and policies on our website. It is also important to ensure that the new process does not become overly bureaucratic. Consequently, no fees will be charged for straightforward queries that can be easily dealt with over the phone or by e-mail and do not require significant Officer time.
- 4.8 It is important to note that there will be a clear separation between officers that provide pre-application assistance and those who are responsible for the subsequent processing and in the case on certain applications (Minor Variations) the determination of an application. This will help to avoid any potential conflict from occurring. There are currently enough staff in the existing team to ensure an appropriate division of duties.
- 4.9 The introduction of the proposed discretionary fee structure will not affect the Council's statutory duties. Officers will 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.
- 4.10 The service manager will be responsible for on-going performance and compliance management of the pre-application service.
- 4.11 There are certain premises that are exempt from statutory applications fees, and these are set out in the Licensing Act (Fees) Regulations 2005
- 4.12 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,

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.

## **5 Options considered and recommended proposal**

5.1 There are two options available for the Cabinet Member of Policing and Equalities to consider:

5.1.1 Option 1 is to authorise the proposal contained within this report to introduce a discretionary chargeable licensing pre-application advice service on a cost recovery basis or:

5.1.2 To continue giving free advice at a cost to the Council or refuse to give advice to potential applicants. To do the latter may be contrary to the spirit of 'Better Regulation' and the new Regulators Code, whereby a 'partnership' approach to achieving compliance is encouraged. It is, therefore, appropriate to charge a fee.

5.2 Your Officer recommends Option 1 to enable the Council to continue to provide pre-application advice on a cost recovery basis.

## **6 Results of consultation undertaken**

6.1 No consultation is required to be undertaken however, it is recommended that whenever fees are set, an explanation is provided to potential applicants as to how the fees are calculated to promote transparency and reasonableness.

## **7 Timetable for implementing this decision**

7.1 If approved, the decision will have immediate effect.

## **8. Comments from Chief Operating Officer (Section 151 Officer) and the Director of Law and Governance**

8.1 Financial implications

The proposed fees have been calculated on a full cost basis, which considers both the direct and indirect costs associated with providing pre-application advice. This will ensure that pre-application customers pay a fair rate for the services provided.

The service currently has a target of £100k additional income to be achieved from commercialisation. It is estimated that this proposal will deliver £15,500 towards the target.

8.2 Legal implications

The Localism Act 2011 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 person(s) resident or present – or otherwise.

The Localism Act also allows authorities to make a charge where it is not under a duty to provide the service and the person has agreed to the service being provided.

Providing pre-application advice prior to an application being made is a discretionary service. Section 111 of the Local Government Act 1972 permits this discretionary service as it classed as conducive or incidental in relation to carrying out the licensing function.

## **9 Other implications**

None

### **9.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint or Coventry Sustainable Community Strategy**

It is the Regulatory Services team's responsibility to ensure that members of the public in Coventry are not put at risk. This contributes to the Council's core aim of ensuring that citizens live longer healthier lives. Cost recovery of such a service will mean that costs are not taken from existing budgets.

### **9.2 How is risk being managed?**

Decisions of Regulatory Services are open to challenge by way of Judicial Review. The fees and charges are designed to ensure our compliance with legislation minimising the risk of legal challenge.

### **9.3 What is the impact on the organisation?**

None

### **9.4 Equalities / EIA**

This decision will not affect the service provision and therefore details of the Equalities Impact Assessment are not relevant in this case.

### **9.5 Implications for (or impact on) climate change and the environment**

None

### **9.6 Implications for partner organisations?**

None.

### **9.7 Human Rights Act Implications**

None.

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## **Appendices**

### Appendix A – Proposed fees & Charges