

# THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

## LICENSING COMMITTEE – 13 FEBRUARY 2025

### REPORT BY THE DIRECTOR FOR HIGHWAY AND REGULATORY SERVICES

#### REVIEW OF LICENSING FEES

This report proposes changes to the fees charged by the Licensing Authority for applications, notifications and annual fees for various licences with effect from 1 April 2025.

**FOR DECISION**

#### 1. BACKGROUND

- 1.1 Under various, relevant, statutory provisions local authorities are entitled to charge fees for granting or renewing licences. Apart from certain licences where the fees are fixed by law, the local authority can charge a reasonable fee which, when totalled, should not exceed the cost of running that particular licensing service. Traditionally this fee includes not only the costs of processing the application, but also the costs of monitoring and enforcing against unlicensed and licensed operators
- 1.2 In December 2009 the Services Directive, Provision of Services Regulations 2009, made under Directive 2006/123/EC of the European Parliament, was introduced. Article 13(2) of the Directive states that any licence fees which applicants incur under a licensing scheme must be reasonable and proportionate to the cost of the “authorisation procedures”.
- 1.3 Gambling Premises Licences are subject to maximum fee levels and when calculating the fees to be charged the licensing authority must “... *aim to ensure that the income from fees of that kind nearly as possible equates to the costs of providing the service to which the fee relates...*” (section 212(2)(d) of the Gambling Act 2005).
- 1.4 In 2016 the decision of the Supreme Court and the European Court of Justice in the Hemmings case, (which related to the level of fees for Sex Shop Licences in Westminster and what the Council was legally entitled to include when setting its fees), established that when setting fees, authorities can recover the costs of processing and granting the application, in addition to the costs of monitoring and enforcement of the licensing regime, provided the fees were charged in two parts. So, the first part of the fee covering the direct costs for processing an application is charged when the application is made and if the application is successful, a second fee is charged for running the licensing regime, including monitoring and enforcement of licensed and unlicensed premises. The second part of the fee is only payable if a licence is granted.

- 1.5 Applicants for a licence are therefore required to submit the first part of the fee (Part A) at the time of submitting an application, to cover the costs of processing the application. They are only required to submit the second part of the fee (Part B) to cover the ongoing costs, for monitoring and enforcing the regime, when the licence is granted.
- 1.6 Since the Hemmings decision in 2016 we have undertaken an annual review of our processes and procedures to identify the separate costs associated with the processing of an application and the ongoing costs of monitoring and enforcing each licensing regime.

## 2.0 **PROPOSED CHANGES TO FEES**

- 2.1 In November last year licensing officers conducted a full review of the costs associated with administering the Council's individual licensing functions. Officers considered, and where appropriate, revised the individual costs associated with the processing of an application and the ongoing costs of operating and enforcing the various licensing regimes.
- 2.2 In calculating application costs officers considered what percentage of applications are likely to attract opposition and the level of expected opposition. In most cases these contested applications would require a licensing hearing, thereby increasing the processing costs quite substantially.
- 2.3 Wherever possible the past history of the processes and level of opposition to applications for each type of licence was used as a guide to inform the likely costs of running a particular licensing service for the coming year.
- 2.4 As the fees must be reasonable and proportionate to cover the cost of processing the procedures and formalities to determine the application and must accurately reflect the actual costs incurred by the Council, any proposed increases may be more or less than the 2% increase recommended by the Cabinet Member for Finance and Property. In some cases, this may result in a reduction of the fee payable.
- 2.5 For some licensing schemes, such as Gambling Premises Licensing, the legislation sets a maximum fee that can be charged. If the Council's costs exceed the maximum permitted fee, then the maximum fee will be charged.
- 2.6 Applicants for a licence would be required to submit the first part of the fee (Part A) at the time of submitting an application, to cover the costs of processing the application. They would only be required to submit the second part of the fee (Part B) to cover the ongoing costs, for monitoring and enforcing the regime, if the licence is granted.
- 2.7 Where a licence is granted for an indeterminate period and the licensing regime provides for the payment of an annual fee, the Part B fee will be the relevant annual fee.

- 2.8 The fees for Animal Licences include the cost of inspections by qualified Animal Health Inspectors, or Veterinarians, which is a requirement under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. These expert services are currently bought in from Corporation of London, who also provide the similar services for a number of other London Boroughs.
- 2.9 On 4 December last year, Councillor Janet Evans chaired a working group of the Licensing Committee to scrutinise the proposed fees for the year commencing 1 April 2025, to ensure that the fees were both proportionate and set at a level which would recover the Council's costs in dealing with that formality.
- 2.10 At the time, the fees charged by the City of London for animal welfare inspections had not been released, licensing officers were, therefore, unable to provide an accurate assessment of the expected costs for processing applications and issuing these types of licences.
- 2.11 The Licensing Working Group concluded that, subject to the Animal Licensing fees being adjusted to include the cost of inspections undertaken by the City of London Animal Welfare and Veterinary Services, the proposed fees were set at an appropriate level.
- 2.12 The revised proposed fees for the period commencing 1 April 2025 are attached in the tables included at Appendix A, and include the updated fees being levied by the City of London.
- 2.13 For the majority of licences, the increases are less than 2%, however, the inspection fees charged by the City of London for animal licences have increased by an average of 50% for the coming year, so the overall increase for these licences is significantly higher than would normally be expected.
- 2.14 For pre-application advice (table 4 of Appendix A) we are proposing to increase the fees between 2% and 28% to more accurately reflect the level of work involved, while still maintaining value for money.
- 2.15 Officers will continue to monitor the ongoing administration and compliance costs for licensed premises and costs involved in processing licensing applications to ensure that the annual and application fees are set at a level which recoups the Council's costs in full.

### **3.0 FINANCIAL IMPLICATIONS**

- 3.1 Assuming that the number of applications received is similar to last year's activity, the changes to licence fees proposed in this report would result in an overall increase in income of £4337, net of the costs being charged by the City of London. This equates to 0.63% of the licensing budget of £685,300 (excluding income from pavement licensing and summertime terraces) for 2024/25.

The increase in income is made up of:

Special Treatment + £3,378

Gambling	+	£68
Other licences	+	£85
Pre-App advice	+	£806
<b>Overall net increase</b>	<b>+</b>	<b>£4,337</b>

#### **4.0 LEGAL IMPLICATIONS**

- 4.1 The Council can set its own fees for the regimes listed in Appendix A of this report subject to any legislative restrictions.
- 4.2 All of the licensing regimes (excluding Licensing Act 2003 and Gambling Act) 2005 are covered by the European Union Services Directive. Regulation 18 of the Provision of Services Regulations 2009 which implements the EU Services Directive into UK law requires that any licensing fees charged in relation to “authorisations” must be reasonable and proportionate to the costs of processing applications. As stated above, the Hemmings case confirmed that when setting licence fees, authorities can recover the costs of processing the application and where applications are successful, the costs of monitoring and enforcing the licensing regime as a whole, provided such costs are charged in two parts (part A and part B). The proposed fees must not be used to make a profit.
- 4.3 If the proposed fee structure results in a surplus or loss for the financial year there will be an appropriate reduction or increase in fees as the case may be for the following financial year.

#### **5.0 EQUALITIES IMPLICATIONS**

- 5.1 The Council, when taking decisions in relation to any of its functions, must comply with its public sector equality duty as set out in s149 of the Equality Act 2010 (the Act). The contents of this report will have no adverse or negative effect/impact on any of the protected characteristics.

#### **6.0 RECOMMENDATIONS**

- 6.1 The Committee is asked to approve the proposed fees set out in Tables 1 – 4 of Appendix A for the period commencing 1 April 2025.

**FOR APPROVAL**

**ANDREW BURTON  
DIRECTOR FOR HIGHWAY AND REGULATORY SERVICES**

Background papers:

<b>No.</b>	<b>Description of Background Papers</b>	<b>Name/Ext of holder of file/copy</b>	<b>Department/ Location</b>
1.	The Local Government (Miscellaneous Provisions) Act 1982	N/A	N/A
2.	Provision of Services Regulations 2009 and EU Directive	N/A	N/A
3.	Gambling (Premises Licence Fees) (England and Wales) Regulations 2007	N/A	N/A
4.	Gambling Act (Temporary Use Notices) Regulations 2007	N/A	N/A

Officer contact:

Any person wishing to inspect the above documents should contact Miss S Dyball, Licensing Team, Council Offices, 37 Pembroke Road, London W8 6PW. Telephone 020 7341 5711.