

Title: Review of Licensing Fees

Committee: Licensing Committee

Date: 20 November 2024

Author: Stewart Broome, Licensing Manager

Report number: Z102

Contact officer:

Stewart Broome, Licensing Manager

stewart.broome@eastcambs.gov.uk, 01353 616287, DF208, The Grange, Ely.

1.0 Issue

1.1 To review the fees that the Licensing Authority charges to obtain and maintain various regulatory permissions.

2.0 Recommendations

2.1 That Members:

- i) note the statutory fees that East Cambridgeshire District Council is required to charge in respect of the specified licences under the Licensing Act 2003 and Gambling Act 2005, and agree to set the discretionary fee elements of the Gambling Act 2005 and the Business and Planning Act 2020 at the maximum level permitted, as set out in Appendix 1, Appendix 2, and Appendix 3.
- ii) Agree to implement the fees in paragraph i) (or if subject to statutory amendment, the relevant amended fees) on the 1 April 2025.
- iii) instruct Officers to implement, as appropriate, any other statutory fees that may be brought into force during the 2024/2025 financial year.
- iv) instruct Officers to include the agreed fees in the 2025/2026 annual fees and charges report that is presented to full Council.

2.2 That Members:

- i) agree to implement the proposed fees relevant to those licences and licensing related activities where the authority has the discretion to determine the fees, as set out in Appendix 4 and Appendix 5, on the 1 April 2025.
- ii) instruct Officers to include the fees in the 2025/2026 annual fees and charges report that is presented to full Council.

2.3 That Members:

- i) agree to implement the proposed fees relevant to hackney carriage, private hire and operator licensing, as set out in Appendix 6 with immediate effect.
- ii) instruct Officers to include the fees in the 2025/2026 annual fees and charges report that is presented to full Council.

3.0 Background/Options

- 3.1 With the exception of statutory fees set by central government the Council is responsible for setting fees and charges for the licensing regulations it is responsible for administering and enforcing.
- 3.2 There is no statutory duty on the Council to consult when setting or revising licensing fees with the exception of those fees relating to hackney carriage, private hire vehicles and operators' licences under Section 70 of the Local Government (Miscellaneous Provisions) Act 1976.
- 3.3 The Committee's legal authority to agree the recommendations is based within a range of specific licensing legislation together with the delegated functions set out in the Council's constitution. Extracts from the relevant legislation are provided in **Appendix 7**. Due consideration must also be given to relevant case law. Members are advised that Officers have considered these requirements when compiling this report.
- 3.4 The Council's fees and charges may be challenged through a number of routes, e.g. service complaints to the Local Government Ombudsman or via a judicial review.
- 3.5 The consequences of such a challenge are clearly demonstrated in the Court of Appeal judgement given in respect of R Hemming and others v Westminster City Council case, which involved the licensing of sex shops in Soho and Covent Garden.
- 3.6 The judgement has made it clear that local authorities may become liable for substantial costs if it is found that procedures for setting fees have not been correctly followed, and if the fees are not reasonable and proportionate to the costs of the licensing procedures.
- 3.7 When considering whether the licensing fees are reasonable and proportionate, it is also necessary to look at each regulatory power separately. In simple terms this means taxi and private hire licence holders should not be charged a fee for their licence that creates an excess which is then used to subsidise the fees paid by applicants wishing to obtain another type of licence.
- 3.8 It is also necessary to reflect that not all costs to the licensing authority are recoverable, such as the processing of "Charity Street Collections" and "Charity House to House Collections", where a fee is not permitted to be charged, or deficits in statutory income against expenditure.

- 3.9 As a result of the points raised in paragraph 3.8, it is not legally possible to recover 100% of the cost of running the Licensing Authority from the fees charged, and this deficit must be covered by the Council's general fund.
- 3.10 The law does not require the Licensing Authority to amend the fees annually, even when a deficit or surplus in income is identified, but the review process must take place.

4.0 Arguments/Conclusions

- 4.1 The licensing budget considers direct costs, such as licensing staff wages, but it also includes indirect costs that can reasonably be attributed to licensing procedures, for example, office accommodation, ICT support and software licensing fees, travel, legal support costs, advertising, equipment, postage & printing, subscriptions, telephone costs, training and other corporate recharges.
- 4.2 In relation to the consideration of applications, it is reasonable to recover the costs of running the relevant Committees from licensing fees and so consequently these costs have been incorporated into the overall figures.
- 4.3 As mentioned in paragraph 3.9 above, due to the current legislation, it will never be possible to recover 100% of the department's costs, but work undertaken by Officers suggests that in any given year approximately 80% to 85% of the expenditure level incurred by the service can be legally recovered, see Table 1 below for breakdown of the resources spent dealing with the differing licensing regimes. A three-year period is shown to illustrate trends.

Table 1

Type	Percentage of time 21/22	Percentage of time 22/23	Percentage of resources 23/24	3 year average
Animal Boarding	2.80	2.23	1.87	2.30
Breeding	5.96	5.22	1.84	4.34
DWA	0.18	0.18	0.13	0.16
Pet Shop	0.61	0.43	0.48	0.51
Riding Est	0.46	0.42	0.60	0.49
Sex Est	0.00	0.00	0.00	0.00
Zoo	0.42	0.42	0.03	0.29
GA05	2.11	2.40	3.39	2.63
LA03	24.52	24.45	20.86	23.28
Street Trading	4.34	4.25	2.82	3.80
Taxi	36.72	38.37	52.13	42.41
Scrap Metal	0.99	1.05	0.18	0.74
Exhibiting Animals	0.47	0.37	0.45	0.43
Pave	1.59	1.49	2.29	1.79
Totals	81.18	81.28	87.07	83.17

- 4.4 The licensing database is a live database where the number of issued permissions is constantly changing. Table 2 below shows the number of issued licences at the given date. You will note an increase in overall licence numbers, and the significant increase in taxi driver and vehicle licences issued between April 2023 and the time of writing this report.

Table 2

Type of Licence	Number Apr 2023	Number Sept 2023	Number Sept 2024	Increase/ Decrease
Licensing Act 2003	306	311	326	+ 5
Animal Premises	65	67	66	- 1
Small Society Lottery Registrations	78	82	84	+ 2
Gambling Act 2005	15	15	15	0
Personal	1141	1161	1200	+ 39
Street Trading	18	18	23	+ 5
Taxi Driver	160	252	299	+ 47
Private Hire Operator	12	15	15	0
Taxi Vehicle	157	230	279	+ 49
Scrap Metal Dealer	8	8	9	+ 1
Pavement	15	15	17	+ 2
Total	1975	2186	2333	+ 147

- 4.5 Table 3 below shows the cost of running the licensing authority, and the income received for last three-year period.

Table 3

Year	Income	Expenditure*	Balance	% recovered
2021/2022	£179,220	£268,949	-£89,729	67%
2022/2023	£204,245	£302,414	-£98,169	68%
2023/2024	£251,256	£326,523	-£75,267	77%

* This figure is the combination of the direct expenditure figure taken from the licensing service budget code (LI001), plus the corporate recharge fees that are back-charged to the licensing service, which cover things such as, IT support, customer service support, legal support etc, but do not appear in the LI001 overall operating budget code.

- 4.6 The proposed budget for running the service for the current 2024/2025 period is £363,934 (£244,122 LI001 plus £119,812 corporate oncosts), and allocated income for the first 6 months of this period is approximately £156,000 which is positive news, and reflective of the increased work entering the department. A cost recovery figure of approximately £302,000 (£363,934 * 83%) would be required for this current period, and early indicators are suggesting that this is very likely to be achieved.
- 4.7 The proposed budget for the 2025/2026 period has not been set at this point, but Officers consider that the overall cost of running the licensing service in 2025/2026 is likely to be set at a figure around £370,000 to £375,000. This will reflect staffing changes caused by the move to the Legal Services directorate, and it will reflect

the Government's Autumn Budget statement and general inflationary factors, which will also have an impact on expected expenditure levels. Based on this figure, an estimated cost recovery income of between £307,000 and £311,250 would be required (using an 83% recovery rate).

- 4.8 Table 4 below shows income received in each area of licensing in the last full accounting year of 2023/2024, against the budget for this same period.

Table 4

Type	Percentage of resources used 2023/2024 taken from Table 1	Indicative cost recovery income figure based on 2023/2024 combined costs (£326,523)	Actual income received 2023/2024
Animal Boarding	1.87	6,110.90	7,976.50 ↑
Breeding	1.84	6015.61	7,471.17 ↑
DWA	0.13	425.15	0
Pet Shop	0.48	1,578.43	1,506 ↓
Riding Est	0.60	1,959.59	2,077.50 ↑
Sex Est	0	0	0
Zoo	0.03	102.62	450 ↑
GA05 – Statutory	3.39	11,066.09	5,780.50 ↓
LA03 – Statutory	20.86	68,106.89	72,790.83 ↑
Street Trading	2.82	9,192.01	10,871 ↑
Taxi	52.13	170,213.47	132,109.42 ↓
Scrap Metal	0.18	586.41	1506.66↑
Exhibiting Animals	0.45	1453.81	1120 ↓
Pave – Statutory	2.29	7,466.98	3400 ↓
Burdens payment	N/A	4196	4196 ↔
Total	87.07	£288,474	£251.256

- 4.9 Members will note in Table 4 above that there are three areas showing significant differences between the cost recovery figure and the actual income received. Members are asked to note that the Gambling Act 2005 and Pavement Licensing fees are statutory, and the Licensing Authority currently charge the maximum level permitted by law, so this shortfall cannot be recovered by increasing the fees in these areas. The taxi driver fees are discretionary, and whilst this shortfall in isolation could prompt thoughts of raising the discretionary fee, officers would advise against this at this point in time for the reasons set out in paragraph 4.13 below.

Conclusion

- 4.10 External pressures continue to impact all areas of licensing. The figures show that licence stock levels have remained consistent across the board during the past year. However, taxi licensing continues to grow with both driver and vehicle numbers increasing in the region of 20% in the 2023/2024 period, with officers now managing approximately double the number of taxi licences compared to two years ago.

4.11 The only area of discretionary fee income in the 2023/2024 period where there is a significant shortfall relates to taxis, and further analysis shows this to be the result of driver income not covering the time taken, as opposed to vehicle or operator income.

4.12 There are a number of identified reasons why driver income fell short in the 2023/2024 period, such as:

- an increase in the number of vetting checks needing to be run per driver
- an increase in driver related enquiries
- an increase in enforcement action – low level (motoring FPNs, failing to update addresses etc)
- an increase in enforcement action – high level (appeals and committees)
- more inhouse safeguarding courses run
- more reporting requirements – Defra / NFI etc.

All of the above actions require officer time, and therefore, increase the total amount of time spent on this area of taxi work.

4.13 Despite the information shown in Table 4, Officers do not recommend increasing the taxi driver fees at this point in time for the following three reasons:

1. The rolling three-year period in Table 1 shows taxi work to average at 42.41%. This suggests that the 52.13% figure could be artificially high.
2. Taxi income for the first six months of 2024/2025 is £95,665, and projections estimate that the year-end figure will be in the region of £175,000. Should this level of income be achieved, it will be sufficient to cover estimated taxi costs¹ for the 2025/2026 period based on the current fee levels.

¹ *Estimated expenditure figure of £311,250 taken from paragraph 4.7 above, multiplied by 52% being the likely upper limit of the level of taxi resources to be used.*

3. The past two years have seen a number of changes in the Licensing Authority, and large increases in taxi numbers. Whilst larger numbers of licences can bring economies of scale, initially it can create additional work whilst procedures and expectations are embedded.

5.0 Additional Implications Assessment

Financial Implications Yes	Legal Implications No	Human Resources (HR) Implications No
Equality Impact Assessment (EIA) No	Carbon Impact Assessment (CIA) No	Data Protection Impact Assessment (DPIA) No

(a) Financial implications

The correct setting of fees for licensable activities is essential. Fees set at incorrect levels can adversely impact those who wish to obtain permission to operate lawfully, and equally, where fees which can be set to cost recovery are not, the shortfall must be funded by the Council, as the Council has a duty to uphold its statutory duties. This impacts on the Council's ability to spend money in other areas.

6.0 Appendices

6.1	Appendix 1	Licensing Act 2003 - Statutory fees
	Appendix 2	Gambling Act 2005 - Statutory fees
	Appendix 3	Gambling Act 2005 & Business and Planning Act - Discretionary Statutory fees
	Appendix 4	General discretionary fees
	Appendix 5	Animal Welfare Regulation fees
	Appendix 6	Discretionary taxi fees
	Appendix 7	Extracts from legislation regarding fee setting

7.0 Background documents

LGA guidance on local fee setting 2015

Hemming v Westminster 2015

R v Tower Hamlets LBC 1994