

**AGENDA ITEM**

**REGULATORY COMMITTEE**

**21 March 2017**

**REPORT OF THE DIRECTOR OF OPERATIONS**

**PRE-APPLICATION ADVICE AND CHARGING FOR LICENSING APPLICATIONS**

**Responsible Officer:** Simon Newcombe, Public Health and Professional Services Manager

**REASON FOR REPORT**

1. To set out proposals for the introduction of a discretionary chargeable service for the provision of pre-application advice for licensing applications

**RECOMMENDATIONS**

1. That the Regulatory Committee recommends to Council the introduction of the discretionary chargeable service for the provision of pre-application advice for relevant licensing applications as set out in Section 2 and Annexe 1 of the report.
2. That the Regulatory Committee recommends to Council that the Scheme of Delegation for the Regulatory Committee be updated within the Constitution to include the Localism Act 2011 to enable consequential reviews and updates to scheme charges to made by these committees.

**RELATIONSHIP TO CORPORATE PLAN**

1. There are no direct links to the Corporate Plan, nonetheless the proposed scheme will improve licensing standards within the district and contribute to the economy in addition to ensuring public safety of our community and visitors.

<b>FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS</b>	
<b>Financial</b>	<p>The proposed scheme will generate income to enable the Council to recover of the costs of what is currently a free, discretionary advice service.</p> <p>It is not proposed that this income will form part of the Licensing team (Public Health Services) savings target for 2017/18 due to unknown uptake of the scheme and to allow for adequate time for the scheme to become established. The scheme will be formally reviewed within 12-months of operation and this will inform budget setting in future years.</p>
<b>Legal</b>	The legal implications under the relevant licensing legislation and the Localism Act 2011 are set out in the report.
<b>Risk Assessment</b>	No key risks identified. Matters relating to the adequate resourcing of the proposed service and for separation of duties are relevant and outlined in the report.

<b>CONSULTATION CARRIED OUT WITH:</b>
1. The Member Services Manager
2. Lead Officer – Licensing Team
3. The Chief Executive and Leadership Team
4. Legal Services

## **1.0 INTRODUCTION**

1.1 The Localism Act 2011 (the Act) 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.

1.2 The 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.

1.3 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 charging for the service.

1.4 As this proposed service covers functions of both the Licensing Committee and the Regulatory Committee, this report has been written with both in mind. It is hoped that this saves on duplication and provides a complete overview of the proposals. Where required, the functions of each specific Committee has been made clear in the body of the report.

## 2. **Current Arrangements**

2.1 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:

*Within the scheme of delegation of the Licensing Committee:*

- 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)

*Within the scheme of delegation of the Regulatory Committee:*

- Animal welfare including breeding/boarding, dangerous wild animals, riding establishments, pet shops and zoos (various Acts)
- Hackney carriage and private hire trade (Local Government (Miscellaneous Provisions) Act 1976 and Town Police Clauses Act 1847)
- 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)

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

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

2.4 In 2016, the licensing section received 431 applications under the aforementioned legislation. The majority of the more time consuming applications are made under the

Licensing Act and require some form of statutory consultation with responsible authorities.

2.5 Notwithstanding the fact that the licensing team also process many more straightforward applications and notices, it is proposed that discretionary pre-application fees only apply to those matters set out in Section 2.1 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.

### 3. **Reasons for recommendations**

3.1 The proposal to introduce discretionary services holds benefits for the Council. Officers believe that the assistance offered under the proposed discretionary scheme will benefit residents and persons present in the Mid Devon area.

3.2 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.

3.3 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.

3.4 Investment in the district 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.

3.5 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.

3.6 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.

3.7 It is likely many of the perceived obstacles and issues outlined above can be overcome with pre-submission advice and assistance.

#### 4. **Proposals & 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 and experience of the applicant. In order to try and be as inclusive as possible, it is proposed to offer three levels of service for the majority of applications, ranging from low to high (1 hour to 3 hours) of officer time. Costs are then calculated based on the hourly rate (including on-costs) of the licensing officer post for 2017/18.

4.3 In general, the fees are set as follows:

<b>Level of assistance required</b>	<b>Officer time</b>	<b>Fee</b>
Low	1 hour	£30.00
Medium	2 hours	£60.00
High	3 hours	£90.00

4.3 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;
- 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.

4.4 The scheme will apply to those applications set out in Section 2.1 above. The scope of the scheme will be reviewed on an annual basis to determine if there is any merit from a customer and authority perspective in extending the scheme, for example to include a basic 'check and send' type service or to encompass other licence types currently not included, for example mobile home sites and personal licences.

4.5 The proposed fee structure is set out in Annexe 1 and will apply initially for the 2017/18 financial year. Fees will be reviewed on an annual basis as part of wider

performance monitoring to ensure they are fit for purpose. Annex 1 indicates the likely advice given by officers for each service.

- 4.6 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.
- 4.7 A log will be kept detailing the amount of time spent on each application. If there is 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.
- 4.8 The log will also support the annual fee review process and enable monitoring of scheme uptake. In any case, dedicated cost-accounting codes will be used on the Council financial management system to clearly identify income arising from the scheme going forward.
- 4.9 An application form for applicants wishing to take advantage of the discretionary service is attached at Annexe 2. Members will note that the form clearly sets out the terms and conditions under which 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.

## 5. **Separation of duties and monitoring**

- 5.1 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. 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.
- 5.2 Notwithstanding this, it is important for the avoidance of doubt 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.

- 5.3 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.
- 5.4 There are considered to be sufficient staffing resources in place at the moment to accommodate this arrangement; however the lead officer and service manager will review staff resources regularly to ensure the Council is able to adequately deliver the scheme especially during any lengthy periods of staff absence or where scheme uptake is exceptional.
- 5.5 Around ten 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 Mid Devon would therefore place the Council very much in the top percentage of local authorities nationally in this regard.
- 5.6 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 on four relevant applicants took up their discretionary service. It is proposed that this will be used as an informal benchmark figure for initial review and resource monitoring of the proposed scheme in Mid Devon.
- 5.7 The introduction of the proposed discretionary fee structure 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.
- 5.8 The service manager will be responsible for on-going performance and compliance management of the scheme. Day to day operation and compliance monitoring will be completed by the lead officer for licensing.

## 6. Exemptions and equality impact

- 6.1 Certain premises are exempt from statutory application fees and these are set out Licensing Act 2003 (Fees) Regulations 2005.
- 6.2 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.

- 6.3 An equality impact assessment has been undertaken and no adverse effects on equality practice have been identified as a result of this report and recommendations.

<b>Contact for any more information</b>	Simon Newcombe, Public Health and Professional Services Manager (01884 244615 or <a href="mailto:snewcombe@middevon.gov.uk">snewcombe@middevon.gov.uk</a> )
<b>Background Papers</b>	Localism Act 2011 / various pieces of legislation
<b>File Reference</b>	SN/Public Health/Licensing
<b>Circulation of the Report</b>	Chief Executive / Leadership Team Member Services Manager Lead Officer – Licensing Team Licensing and Regulatory Committee



**ANNEXE 1 – TOTAL HOURS AND FEES**

Licence Type	Examples of the assistance and advice given					Total time / Cost
	Level of advice	Application	Inspection	Conditions	Advertising & Notices	
Alcohol, Entertainment and Late-Night Refreshment	Low	30 minutes	N/A	N/A	30 minutes	1 hour / £30.00
Animal related	Medium	1 hour	N/A	30 minutes	30 minutes	2 hours / £60.00
Gambling						
Acupuncture, tattooing, electrolysis, ear or body piercing	High	1 hour	1 hour	30 minutes	30 minutes	3 hours / £90.00
Sex establishments						
Hackney Carriage and Private Hire	Low	1 Hour	N/A	N/A	N/A	1 hour / £30.00
Scrap Metal	Low	1 Hour	N/A	N/A	N/A	1 hour / £30.00

**ANNEX 2 - PRE-APPLICATION ADVICE REQUEST FORM**



To make a request for pre-application advice please complete this enquiry form. Please read this document carefully and provide as much information as possible.

**1) Type of application** (please tick the relevant box)

- Alcohol, entertainment and late night refreshment
- Animal Welfare
- Gambling
- Hackney carriage and private hire
- Scrap metal
- Sex establishment
- Acupuncture, tattooing, electrolysis, ear or body piercing

**2) What level of service do you require?** (for information about what each category may include, please see the pre-application fee sheet)

- Low (1 hour - £30.00)
- Medium (2 hours - £60.00)
- High (3 hours - £90.00)

**3) Your details**

Name: \_\_\_\_\_

Home address: \_\_\_\_\_

Tel No. \_\_\_\_\_ Email: \_\_\_\_\_

**4) Business details**

Business name: \_\_\_\_\_

Premises address: (including postcode)  
\_\_\_\_\_

**5) Description of proposal:** (please provide as much information as possible, including the specific type of application you wish to submit)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6) History**

Have you previously contacted the licensing team about this (or a similar) proposal?

Yes  No

If yes, please give dates and the name of the officer involved:

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**7) What we will do:** (please note these are examples only and the specific services provided depend on the application type and the level of assistance requested)

- Assist with the application forms
- Assist with the content of notices
- Assist with completing the plan for the premises
- Offer advice and guidance on appropriate conditions, which may be taken from a standard pool of conditions, if applicable
- Consult with relevant Responsible Authorities in relation to possible conditions they believe may be appropriate
- Visit the site to ensure that plans are correct and that notices are placed in the correct location

**8) Important information:**

- The final decision on your application will be made by Council Members or under delegated authority by an officer. Depending on the type of application, it may be subject to a statutory consultation period after submission. You should therefore be aware that the Council’s officers are unable to give any guarantees about the decision that will be made in relation to your application
- The Council will not deal with your request for advice until payment has been made
- The Council are not responsible for advertising your application (if required), this must be done by the applicant themselves
- The pre-application advice service will end once an application is submitted
- A new officer (i.e. different from the officer providing pre-application advice) will deal with your application once it has been submitted
- Mid Devon District Council is under a duty to protect the public funds it administers and to prevent and detect crime, and to this end may use the information you have provided on this form within this authority for the prevention and detection of fraud or crime. It may also share this information with other bodies administering public funds solely for these purposes.

**9) Declaration**

I confirm that I have read and understood the above information.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_