

CABINET

21 May 2019

Title: Enforcement Service Fees and Charges Review	
Report of the Cabinet Member for Enforcement and Community Safety	
Open Report	For Decision
Wards Affected: All	Key Decision: No
Report Author: Andy Opie, Operational Director, Enforcement & Community Safety	Contact Details: Tel: 0208 227 3590 E-mail: andy.opie@lbbd.gov.uk
Accountable Director: Andy Opie, Operational Director, Enforcement & Community Safety	
Accountable Strategic Leadership Director: Fiona Taylor, Director of Law and Governance	
Summary <p>The Council's Enforcement and Community Safety Service is responsible for tackling a wide range of issues that affect the community that primarily relate to crime and anti-social behaviour (ASB). From enforcement intervention, the service is able to recover income from activities including the issuing of fixed penalty notices (FPN) and charging for certain services such as licences and permits.</p> <p>Following recent service developments and an assessment of processes within the Enforcement and Community Safety division, a review of the current charges for FPNs was undertaken. Stemming from that review, it is proposed to increase the fees for offences related to fly tipping, litter and commercial waste to act as a further deterrent. The report also includes proposals relating to charging for food safety re-inspections, the licensing of Houses in Multiple Occupation (HMOs), other licensing activities and the introduction of a school staff parking permit. This paper sets out the rationale for the review and recommends what changes should be made.</p>	
Recommendation(s) <p>The Cabinet is recommended to:</p> <ul style="list-style-type: none">(i) Agree to increase the FPN fee for littering offences (including littering from vehicles) from £75 to £150 with no early repayment discount;(ii) Agree to increase the FPN fee for fly-tipping offences from £150 to £400 with no early repayment discount;(iii) Agree to increase the FPN fee for commercial waste receptacle offences from £100 to £110;	

- (iv) Agree to introduce a new charge for food premises re-inspections of £240;
- (v) Agree the amendment of various licensing fees, including those for mandatory HMOs, as set out at Appendix 1 to the report; and
- (vi) Agree the introduction of a new School Staff parking permit, set at the same rate as the LBBS staff permit, to enable school staff to park in a controlled parking zone area.

Reason(s)

The proposals are part of the Council's wider agenda and supports the four priorities for the borough:

- A new kind of council
- Empowering people
- Inclusive growth
- Citizenship and participation

1. Introduction and Background

- 1.1 The Council's Enforcement and Community Safety service is responsible for tackling a wide range of issues that affect the community, with a considerable focus on crime and ASB.
- 1.2 From enforcement intervention, the Council is able to recover income from activities including the issuing of fixed penalty notices and charging for certain services such as licences and permits. All of this income is used to recover the costs that the council spends on dealing with offenders and keeping the borough safe.
- 1.3 The Cabinet annually considers the fees and charges for Council services. The fees and charges schedule for 2019 was approved by the Cabinet on 13 November 2018 (Minute 54). The proposals in this report represent amendments / additions to that schedule.

2. Proposal and Issues

Fixed Penalty Notice changes

- 2.1 The Council has the ability to issue Fixed Penalty Notices (FPNs) to offenders for a variety of offences. Being able to issue FPNs is a vital tool as it negates the need in most cases to carry out a costly and slow prosecution of a company or individual and allows the Council to deal with a matter promptly and efficiently. This strategy has been very successful for LBBD with around 150 FPNs being issued every month.
- 2.2 The service is keen to use the full breadth of their enforcement powers and use this tool to regulate and enforce against non compliance. There are many different offences where an FPN can be issued. In general, the Government set the tariffs for FPNs and the amount that can be charged varies widely between different offences. In addition, some of these tariffs have a range set which enable councils to choose what amount they want to charge for particular offences. A review of the

current charges for FPNs in LBBB has been undertaken and there are opportunities to increase the fees for three offences related to fly tipping, litter and commercial waste.

- 2.3 LBBB is committed to maintaining a clean and safe environment for the benefit of everyone in the borough. The presence of dumped waste detracts from the image of the area, can be a potential health and safety issue and contributes to perceptions and fear of crime. The council believes that enforcement is a key component to improve local environmental quality and that having stricter penalties will act as deterrent to would be offenders. It is therefore being recommended that, where possible, the FPN tariffs for fly tipping and littering offences are increased to the maximum amount allowed by Government. There are three particular offences that this relates to:
1. Increase the FPN fee for littering offences (including littering from vehicles) from £75 to £150 with no early repayment discount
 2. Increase the FPN fee for fly tipping offences from £150 to £400 with no early repayment discount
 3. Increase the FPN fee for commercial waste receptacle offences from £100 to £110
- 2.4 For two of these offences council's can include early repayment discounts to act as an incentive for offenders to pay quickly. It can be argued that the higher the tariff the more of a deterrent it will be to would be offenders. It also enables the council to recover more money from FPNs to offset its costs. Current payment rates for FPNs are high (at around 70%) and are followed up with prosecutions for offenders that do not discharge liability through this route. It is therefore recommended that no early repayment discount is offered and that all FPN tariffs for environmental offences are set at the maximum amount.

Food Safety recharge for reinspection

- 2.5 The Council inspects food premises using the Food Standard Agency's (FSA) National scheme for rating the hygiene of premises known as the Food Hygiene Rating Scheme (FHRS). The Food Rating Scheme is a key tool in improving food safety within the borough. Premises are inspected and rated to ensure they are compliant with food safety legislation.
- 2.6 Ratings are published on the national database (<http://ratings.food.gov.uk/>). At the same time the premise is risk rated and the date for the next inspection is determined. The frequency of official controls ranges from 6 months for the highest risk business to every 3 years for the lowest risk business.
- 2.7 At the inspection the business is given a report detailing measures required for improvement. They are subsequently sent their risk rating (and sticker) with a letter explaining the process of applying for a re-rating visit. The business must submit sufficient information with its request to allow the inspector to assess if there has been an improvement to hygiene and safety. The business can explain what it has achieved towards the measures identified in the report.
- 2.8 Currently the FSA brand standard specifies that only one re-rating inspection can be requested between statutory inspections, and there is a 3-month standstill period

following a statutory inspection. Requests are accepted in that period, but we cannot carry out an inspection until the standstill period has elapsed. This was designed to ensure that the business can demonstrate sustained improvement following the statutory inspection. Once the application has been accepted and the standstill period has passed the Council has three months to complete the inspection. This allows the re-inspection to be fitted around the other proactive work of staff. At the re-rating inspection we are required to assess the premises in accordance with the Food Law Code of Practice and the rating can go up or down or stay the same. This service is currently provided at no cost.

- 2.9 Local Authorities are able to apply a charge for re inspecting and re-rating the premises. It is recommended that a charge is introduced in order that the council starts to recover costs associated with managing unhygienic and unsafe food premises in the borough.
- 2.10 The Regulatory Services team has undertaken benchmarking where this has already been implemented and reviewed Food Standards Agency guidance. The team have also calculated the approximate costs of undertaking a re-inspection and are recommending a fee of £240. Based on an estimate of at least 20 re-inspections a year, additional income of £4,800 would be generated.
- 2.11 The change to the rules would have the following effect:
- The business requests a re-rating visit in the usual way.
 - The three-month stand still period will no longer apply.
 - If there is sufficient information to demonstrate that a re-rating may be justifiable, the application is accepted, and the business will be contacted to arrange payment. Once payment is received, the Council has three months to complete the inspection.
 - There will be no specified limit to the number of re-rating inspection applications a business can make under the FHS between statutory inspections as long as a business satisfies the application requirements.

Changes to licence fees

- 2.12 it was necessary to carry out a review of the services offered to licensed premises across the Borough to ensure the Council was recovering the cost for both processing applications and carrying out any enforcement or licensing activity in support of the Council's priorities.
- 2.13 A Supreme Court ruling regarding Sex Shop licensing fees (Hemming v Westminster City Council) determined that in order to comply with both UK law and the EU Directive, Councils would need to split the total cost of licensing fees into two parts:
- Part A - the true cost of processing the license application. This would include the administrative function and consideration and
 - Part B function - the cost applied for operating the licensing regime.
- 2.14 This case had implications for all local authorities in that to be compliant with the law licensing fees must be related to the actual running cost of the licensing service and not as a source of income generation or by high charges as a barrier to entry.

- 2.15 Appendix 1 provides a breakdown of current fees and charges for 2018/19 and the proposed Part A and B fees to be implemented from June 2019. Following a review of the licensing fees, the report also provides information where licensing fees have been reviewed. It also highlights the increase in associated fees through inflation (3.2% per annum) which will increase following adoption of the recommendations in this report.

Mandatory House in Multiple Occupation (HMO)

- 2.16 A Mandatory HMO is defined as a large HMO consisting of 5 or more people, forming 2 or more unrelated households, sharing facilities. The number of floors is now irrelevant to the definition of a HMO.
- 2.17 Mandatory licensing of large HMO's as defined above was introduced in 2006 and it has been a legal requirement for HMO's of this nature to be licensed by the Local Authority.
- 2.18 In April 2018, Government extended the definition of an HMO and this report seeks approval to impose the fees and charges in respect of licensing these types of properties and in respect of the new mandatory licensing conditions that the local authority will impose relating to the management, use and occupation of a licensed HMO.
- 2.19 Additionally, as set out in 2.13, following a Court of appeal ruling in 2013 (Hemming v Westminster City Council) the Local Authority had to review their fees and charges in order to comply with charging the correct licensing fees for licensable services. The mandatory HMO license fees have therefore been structured into Part A and Part B fees to comply with this court ruling. The current and proposed fees are set out in Appendix 1.

School staff parking permit

- 2.20 In September 2018 a report was approved by Cabinet on changes to the criteria for implementing Controlled Parking Zones (CPZ). Since then a programme to rollout CPZs across the borough has been designed with Phase 1 programmed to go live on 1 July 2019.
- 2.21 During the planning of the CPZ programme the impact on schools has been reviewed. CPZs near schools are considered to be an important part of the programme given the significant issues with dangerous and anti-social parking that are regularly being experienced. However, the implementation of CPZs will place restrictions on staff being able to park close to their school and may therefore have a detrimental effect on the day to day running of it. The impact is likely to include the ability to travel to and fro school effectively, staff morale and the recruitment and retention of staff. It is therefore recommended that a 'school parking permit' be introduced to enable school staff to park in CPZs.
- 2.22 There are currently a range of different permits that are available for residents, businesses and council staff. Changes to the permit scheme, including introducing measures to improve air quality such as a diesel surcharge were approved at cabinet in July 2018. Having considered all of the existing permits the conclusion is that school staff are an exceptional case and require a new permit to be introduced.

- 2.23 The schools in LBBD are excellent and we want to ensure we are doing everything that we can to ensure they continue to operate well. School staff provide an essential public service so they should be able to access parking permits at a discounted rate when compared to other permits. The proposal is to implement a specific permit for schools that is charged at the same rate as the existing LBBD staff permit.
- 2.24 Council staff are encouraged to use cleaner and more sustainable transport options as part of their commitment to improving the environment and reducing traffic congestion in the borough. However, for many staff access to a car is an essential part of carrying out their role. School staff are in exactly the same position. Council staff can currently purchase an annual permit for £347 or £29 per month (2019/20 rate). The recommendation is therefore for school staff to be able to access a permit for the zone that they are working in at the same rate as Council staff.

3. Options Appraisal

- 3.1 Three options have been considered with regards to the FPN increases. The first is 'No change', which has been discounted because the council is not recovering as much income as it could to cover the costs of enforcing offences in the borough, which is having a negative effect on other council services. The second is 'increase by a lower amount including early repayment options', which has been discounted partly because it means that the council will not recover all of the costs it could but also because it is believed that it will not have a sufficient deterrent effect. The third option, which is what is being recommended is to 'increase to the maximum' as this will have the maximum deterrent effect and enable more cost recovery, which will help protect other council services.
- 3.2 The other recommendations have been calculated based on the amount of time that it takes council officers to undertake the various activities involved in the process of inspecting or issuing licences and permits. No other options have been considered as the council only wishes to recover its costs in relation to these activities.

4. Consultation

- 4.1 Consultation has been undertaken with staff to review current activity and to understand the impact these processes are having on capacity and budgets. Proposals have then been developed and discussed with the relevant cabinet member. The proposals in this report were considered and endorsed by the Corporate Performance Group at its meeting on 28th March 2019.

5. Financial Implications

Implications completed by: Katherine Heffernan, Group Manager for Service Finance

- 5.1 This report proposes increases to the level of certain FPN fees, introduces a new charge for food premises re-inspections, introduces a new parking permit for school staff, and amends licencing fees to comply with recent case law.

- 5.2 The increases in FPN fees will bring charges in line with the statutory maximum as follows: for littering an increase from £75 to £150, for fly tipping from £150 to £400 and for commercial waste receptacle offences from £100 to £110. Assuming that the number of offences remains at the same level, the additional income generated is estimated at £64,000 pa. However, this does not take into account the deterrent effect of increasing fines or any other measures that might lead to a reduction in these offences.
- 5.3 A new charge of £240 for food premises re-inspections is proposed. It is anticipated that there will be approximately 20 re-inspections per year, which will generate income of £4,800.
- 5.4 The proposals introduce a new permit for school staff parking in a CPZ. The proposed cost is £347 for an annual permit or £29 per month.
- 5.5 Licence fees have been split into two parts : Part A which is set to cover the cost of processing the application, and Part B, which is set to cover the cost of operating the licencing regime. Appendix 1 sets out the current fees and the new fees which it is proposed to introduce from June 2019.
- 5.6 The fees for mandatory HMOs have been restructured to reflect new mandatory licencing conditions and also to provide a Part A and Part B split. The current income from HMO licencing fees over the five year licence period is £62,700 from 58 licences. Estimated additional income resulting from the proposed fee restructure has been estimated at £16,000 over the 5 year licence period, assuming that all applications are successful, and Part B is payable, and that the number of HMOs is unchanged at 58. This income will be applied to cover the cost of the scheme.

6. Legal Implications

Implications completed by: Dr Paul Feild, Senior Lawyer

- 6.1 As explained in the text of this report the fixed penal regimes are subject to Government Guidance and there is a discretion to fixing the fees up to a specified fee cap. Clearly a view can be taken as to whether a discount applies or not and it maybe that a way forward is to monitor if the availability of the discount has an impact on prompt payment and review in due course whether the change is effective in practice.
- 6.2 The power to charge for CPZ parking permits and the purposes for which the money may be used is set out in the Road Traffic Regulation Act 1984. This aspect has been tested in the courts. They have determined that the power is not to be used as a source of generating revenue, instead the charging regime ought to seek to be self financing including covering earlier deficits and when a surplus is generated the purpose to which it may be allocated is set out too in statute. That does not mean that finances should be on a knife-edge as it is quite lawful to be prudent to budget for a surplus to allow for unforeseen expenses, shortfalls in other years, and payment of capital charges/debts.
- 6.3 As such controls may have the potential to impact on people's mobility and health outcomes it is important that the changes are evaluated in terms of effect on

vulnerable groups to ensure that any access issues and human rights are properly considered. In relation to the impact on different groups, it should be noted that the Equality Act 2010 provides that a public authority must in the exercise of its functions have due regard to the need to eliminate discrimination and to advance equality of opportunity between persons who do and those who do not share a relevant 'protected characteristic'. This means an assessment needs to be carried out of the impact and a decision taken in the light of such information. For example, people with mobility challenges should not be put at a disadvantage by changes in the regime without proper consideration.

7. Other Implications

- 7.1 **Risk Management** – In order to implement the recommendations effectively it is proposed that staff training will be put in place where required, communications will be developed to ensure the public are aware of the changes, the council's website will be updated and specific engagement with schools will take place to ensure they are clear about the implications.
- 7.2 **Staffing Issues** – There will no change to practice but staff will need to be aware of changes to fees and fee structures so training and awareness raising will need to be undertaken
- 7.3 **Corporate Policy and Equality Impact** – Attached at Appendix 2 is a copy of the Equality Impact Assessment Screening Tool. The changes proposed will have a financial impact on offenders of certain environmental offences, owners of unhygienic food premises, people wishing to apply for certain licences and some school staff working in controlled parking zones. However, no protected group will be disproportionately affected. As a result, a full EIA is not required. The recommendations are designed to improve safety and the local environment so the negative effect experienced by a few will be outweighed by the positive impact on the community as a whole.
- 7.4 **Health Issues** – These proposals will have a positive effect on health. The proposals are designed to improve safety and the environment, including the regulation of unhygienic food premises and preventing the illegal deposit of rubbish on our streets.
- 7.5 **Crime and Disorder Issues** – The council's Enforcement and Community Safety service block are responsible for tackling a wide range of issues that affect the community that primarily relate to crime and ASB. These proposals will help prevent offences from taking place through acting as a deterrent, they will help improve regulation of certain activities and will enable the council to recover more of its costs, meaning that capacity can be re-invested into other crime reduction activities

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

Appendix 1 - Licensing fees and charges 2019/20

Appendix 2 - Equality Impact Assessment Screening Tool