

BABERGH DISTRICT COUNCIL

From: Head of Environment	Report Number: N126
To: Regulatory Committee	Date of meeting: 4 April 2014

LICENSING ACT 2003 - LOCALLY SET LICENCE FEE CONSULTATION

1. Purpose of Report

- 1.1 To report details of a Home Office consultation, ending 10 April 2014, on changing the system of fees attributable to Licensing Act 2003 functions – via amendments already made to the Licensing Act 2003 by the Police Reform and Social Responsibility Act 2011. The proposals seek to transfer responsibility for fee setting from centrally prescribed via national fee regulations to (capped) locally set licensing fees (LSLF) based on local activity and evidence.
- 1.2 To consider the issues and seven options contained within the consultation document and linked impact assessment and authorise the Corporate Manager – Licensing to submit a response by the deadline in accordance with the Committee’s preference and general views on fee setting issues. The response shall include some broad costs evidence based upon local activity analysis.

2. Recommendations

- 2.1 That the Committee consider the consultation issues and options and instruct the Corporate Manager – Licensing to draft a response incorporating the Committee’s view, broad local costs and activity analysis (in consultation with the Finance Team) and preferred option, or alternative methodology if considered appropriate, for enabling locally set licensing fees.
- 2.2 That the Corporate Manager – Licensing in consultation with the Regulatory Committee Chairman finalises the response and covering letter to be sent to the Home Office, and that the submission be forwarded in due course to the LGA (as requested from Local Authorities) as part of wider lobbying on this topic.

The Committee is able to resolve these matters.

3. Financial Implications

- 3.1 Nationally the LGA, supported by Independent Fee Review Panel findings (the ‘Elton Report’ published January 2007), estimates that Local Authority costs of administering statutory Licensing Act 2003 functions are outstripping fee income to the order of £1.5m per month. There is significant variance between Licensing Authority costs across England and Wales, with some more or less breaking even with others accruing huge deficits since 2005. Effectively local taxpayers are burdened with subsidising business licence fees by this inequality. In particular, rural Licensing Services with large geographical bases such as the combined expanse of Babergh and Mid Suffolk, can experience cost elements which are not borne by London Borough or other Metropolitan Licensing Authorities.

3.2 Locally set licence fees, based upon local activity and evidence (still likely to be capped and subject to nationally-set parameters), should go some way to reducing the burden on local taxpayers and Local Authorities and also result in a more reflective and equitable fee scheme for licensed businesses. Local government will only be able to set the fee *levels* not the fee *structure* which is legislated as a central government responsibility. The Home Secretary also has powers to cap or constrain powers of Licensing Authorities in determining the amount of any fee, so it is likely that if abandoning NDRV as a fee methodology the Home Secretary will prescribe ‘classes’ (or types) of premises, as an alternative, to achieve a nationally consistent framework.

4. Risk Management

4.1 Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
Failure to enable cost recovery locally set licence fees will continue to adversely impact on local taxpayers, LA resources and equality for the licensed sector	Often	Noticeable	Respond to the current consultation, supporting the changes to LSLF, and state a preferred method/provide evidence

5. Consultations

5.1 The content of this report refers to a national consultation exercise being conducted by the Home Office.

6. Equality Analysis

6.1 There are no direct equality impacts on persons or groups with protected characteristics arising from the content of this report or linked consultation.

7. Shared Service / Partnership Implications

7.1 There is significant potential for fees to vary significantly from Council to Council as a nationally prescribed ‘one size fits all’ fee scheme devolves to locally evidenced and calculated levels. At such time as LSLF is possible, with the parameters and capping levels known, the Suffolk group of authorities will work collaboratively to safeguard that there is a broadly consistent fee scheme across the county, although it is accepted that some differences due to specific local circumstances are inevitable.

7.2 The shared Babergh and Mid Suffolk licensing service is already delivering a value for money, effective and efficient multi-disciplinary service with significant levels of partnering activity and collaboration for the benefit of our communities. The consultation document (pages 28 to 33) refers to not providing or accruing costs by ‘gold plating’ the functions and requirements of the 2003 Act. It is clear that the

BDC/MSDC shared service model and practice is going even further with its good practices than those specified by the Home Office and avoids any of the 'gold-plating' scenarios mentioned specifically in the document.

8. Key Information

- 8.1 Licensing Act 2003 fees have not changed since the Act was implemented. The current system is nationally prescribed by The Licensing Act 2003 (Fees) Regulations 2005 which came into force on 7 February 2005, and created five fee bands (A to E) for premises and members clubs, linked to premises Non-Domestic Rateable Value (NDRV). These regulations also prescribe a range of other statutory fees from Temporary Event Notices to Interim Authority Notices and Personal Licences.
- 8.2 An Independent Fee Review Panel report published in January 2007 chaired by Lord Elton (the 'Elton Report') found that licence fees should have increased by 7% in 2007 and be reviewed every three years thereafter. It was estimated at that time that Licensing Authority costs nationally were exceeding fee income by around 41% and the Elton Report recommended that the Government, at that time, should reimburse Councils to the order of £43m from the £90m+ deficit. None of these recommendations was progressed.
- 8.3 The LGA and Suffolk Authorities have lobbied hard for equality, and specifically rural equality, on this issue for a number of years. Babergh District Council delivered a lobbying speech and presentation on locally set licence fees at the LGA national conference in London in February 2011. This led to some follow-up work with the Home Office and subsequently the Police Reform and Social Responsibility Bill (as was) was amended to include clauses on enabling locally set licence fees, which became enacted and is only now to be activated. It is unlikely that any new fee system will be enabled before October 2014 and it will include a transitional period which will also address the issue of later deregulation of some community premises, which are currently fee exempt.
- 8.4 Apart from being several years too late, there are significant positives to be taken from the current consultation. The Government has listened to many previous key lobbying points – including that:
 - (a) this consultation is aimed at Local Authority, local taxpayer and licensed sector equality;
 - (b) it is exploring general costs accrued by statutory licensing functions (including costs borne by Environmental/Planning consultees and Legal) being spread across the fee base equitably, via local activity and evidence methodology;
 - (c) it is indicating that reviews (no fee attributable) and interventions, mediations, training, proportional and reasonable corporate overheads, visits and inspections, consultations, hearing and appeal costs and other general fees arising from the licensing function (software, postage, stationery, printing etc.) can be spread fairly across the whole licensed base rather than micro-costing up individual process activity for individual types of application; and
 - (d) exploring alternative and more reflective solutions rather than linking the main fee scheme solely to NDRV, and in doing so reducing cross-subsidisation by classes of premises.

- 8.5 It is of paramount importance that the need to be as close to full cost recovery as possible and reduce any burden on local taxpayers is diligently balanced with value for money and fairness for local businesses and licensable events - so they are not deterred from licensable activity, start-up, diversification or business growth. The consultation document (page 7) states “locally-set fees are not a blank cheque for local government”.
- 8.6 Local Authorities already have considerable (and recent) experience in locally setting licensing fees based on cost recovery and without causing any significant business deterrent. This is true for taxi and private hire, sex establishments, gambling (cap applies), scrap metal dealing and other licensing and non-licensing functions.
- 8.7 Less favourable aspects of the consultation, and wider implications arising, include:
- (a) the requirement for an annual fee review, estimated by the Home Office at a cost of £4300 per Authority. This would place a significant additional burden on Licensing Authorities and increase their costs (and thus fees). Most other discretionary licensing fee schemes are based on a 3-yearly review and analysis cycle, and this was favoured by the Elton Report;
 - (b) de-regulation of entertainment issues which will impact on cost as per our previous consultation response (not yet quantifiable as £). Enforcement costs against unlicensed premises will have to be centrally met as these cannot be added as a general cost against the licence fee base. About 12% of our current licence base is fee exempt as community premises with no alcohol. These premises will in the main be taken completely outside of regulation with upcoming deregulation reforms. Reviews and enforcement activity are likely to increase more than 10% as a direct impact of deregulatory orders;
 - (c) the seven options proposed in the consultation may be too limited and problematic, and increase Local Authority resource and cost in some respects (not least fees linked to establishing ‘primary use’, which is already a problematic issue in respect of excluded premises provisions for garage premises). The Home Office only favour three of the stated options (5 to 7). Option 1 (no change at all) is neither acceptable nor sustainable. The seven consultation options are attached as Appendix A (i). Alternative fee methodology may be proposed as part of the consultation response, although the tight deadline may limit what is realistically achievable;
 - (d) event licensing fees (such as outdoor larger scale music festivals) are not within scope of this consultation but the Government within the consultation document (page 9) has stated an intention to revisit this area once LAs have “developed expertise” in setting fees for Licensing Act 2003 functions. Also changes to create a single annual fee payment date are being considered but are not being progressed until this initial element is concluded.
- 8.8 An appraisal of the Authority’s estimated costs attributable to the Licensing Act 2003 functions within scope of this consultation will be verbally updated to the Committee at the meeting, as this work is still being progressed by the Corporate Manager Licensing and Finance Officer. A Westminster Briefing is being attended by the Corporate Manager on 25 March 2014 which will also help to inform the draft submission.

8.9 A draft consultation questionnaire response is attached as Appendix B to aid the discussion and consideration of the consultation issues.

9. Appendices

Title	Location
A: (i) Home Office Options (1-7) contained within fee consultation document February 2014 (ii) Existing Main Fee Banding structure from 2005	Attached
B Draft consultation questionnaire response	Attached

10. Background Documents

- 10.1 A consultation on fees under the Licensing Act 2003 (Home Office)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279706/locally_set_fees_consultation_v4.pdf
- 10.2 Fee Regulations Impact Assessment (Home Office)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263197/locally_set_fees_IA.pdf

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APPENDIX A (i)

HOME OFFICE OPTIONS (1 to 7) CONTAINED WITHIN FEE CONSULTATION DOCUMENT 2014

OPTION	OVERVIEW
1	Do nothing (retain centrally set fees at current levels)
2	Revise centrally set fees so that they recover average costs and a retain the current NDRV banding link and application/annual fee differentiation
3	Enable locally set licensing fees (LSLF) and retain NDRV linked bands
4	LSLF with flat fees in each fee category
5	LSLF with discretion for LA to charge variable fee amounts (for main fees only) linked to a late terminal hour
6	LSLF with discretion for LA to charge variable fee amounts (for main fees only) linked to 'primary use' alcohol on sales
7	LSLF with discretion for LA to charge variable fee amounts (for main fees only) linked to both a late terminal hour and 'primary use' alcohol on sales

Options 5 to 7 = Home Office preferred options

Option 1 = Not acceptable or sustainable

APPENDIX A (ii)

EXISTING MAIN FEE SYSTEM (UNCHANGED FROM 2005) WITH INDICATIVE % OF BABERGH LICENSED BASE

		APPLICATION	ANNUAL FEE	%
No Rateable Value to £4,300	A	£100	£70	20%
£4,301 - £33,000	B	£190	£180	54%
£33,001 - £87,000	C	£315	£295	7%
£87,001 - £125,000	D	£450	£320	2%
£125,001 and above	E	£635	£350	5%

NOTE: FEE EXEMPT = APPROX 12% OF LICENSED BASE AS 'COMMUNITY PREMISES' WITHOUT ALCOHOL



DRAFT ONLY FOR DISCUSSION AT REGULATORY COMMITTEE

LICENSING ACT 2003: Home Office consultation on fees under the Licensing Act 2003

1 Do you agree or disagree that the use of national non-domestic rateable value bands as a criterion for variable fee amounts should be abandoned?

DISAGREE unless there is a sufficiently robust and practical alternative

2 If you disagree, please provide evidence that higher national non-domestic rateable value is consistently linked to higher average costs to the licensing authority within individual licensing authority areas, keeping your views to a maximum of 200 words.

Our Authority agrees with the findings of the 2007 Independent Fee Review Panel (Elton Report) which found that whilst NDRV is not perfect on its own as a fee method, there is little better nationally consistent reflective of a premise size, location and use. We believe that NDRV (under revised bandings) could viably be retained as one element of LSLF. Revision of a fee scheme to 'class' of premises may assist, but it depends on the detail and whether any class definition includes or excludes a premises size and locality consideration. This may not reflect the true impact of larger licensed venues. Larger capacity on-licences (super-pubs and nightclubs) and larger function venues also generally have a higher impact on cost and resources. Supermarkets and off-licences sell alcohol in large quantities which does directly impact on the NTE and promotion of licensing objectives due to pre-loading.

3 Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is linked to costs?

AGREE

4 If you agree, please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

It should not be overlooked that well managed late night licensed premises can have a positive impact on communities, the local economy and promotion of the licensing objectives. Our experience of our area is that there are generally more incidents, and of higher impact (and cost), at later opening venues. Later venues also become a destination for customers who have been drinking at home or migrate from earlier closing venues. Late night noise risk/intel based inspections in a large rural geographic area linked directly to enforcement of licensing conditions is also costly (and is attributable to licensing functions not environmental protection). Late night refreshment venues can also become a flashpoint. More interventions, and cost, are generally attributable to later opening venues from our experience. Safe and orderly dispersal of the NTE community from the town centres is a national as well as a local issue.

5 Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is sufficiently practical to implement?

AGREE that this should be sufficiently practical to implement provided it is made clear that the determination is made on standard licensable activity timings, which licensable activities (or if it is 'any' then state so) and that non-standard timings which may take a venue past the set time occasionally are or are not affected. LA areas may have specific bank holiday problems (so this should be discretionary).

6 If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

N/A

7 Do you agree or disagree that the licensing authority should be able to determine the hours during which the higher fee is payable within the boundaries of midnight to 6am?

DISAGREE with the hours stated, but AGREE with the local discretion

8 If you disagree, please state the hours during which you think licensing authorities should be able to determine that a higher fee is payable.

We believe that LAs should be given discretion between 11pm and 8am which creates consistency with the recent and ongoing deregulatory orders relating to entertainment which cover activities from 8am until 11pm.

9 Do you agree or disagree that licensing authorities that impose higher fees for premises which open later should have discretion to exclude premises that are authorised to open late only on certain nights per year?

AGREE

10 Please state your reasons, keeping your views to a maximum of 200 words.

Local discretion should apply. If there is a resource and cost impact for some bank holiday periods, risk or intel based inspections or requests from partners like the Police to carry out joint working or campaigns then the Licensing Authority should have the local discretion to apply the higher fee. There should also be a locality consideration - for example a rural pub opening later with a small customer base may not have the same impact as a busy town centre bar or nightclub.

11 Do you agree or disagree that the criterion of whether or not a premises is used primarily for the sale of alcohol for consumption on the premises is linked to costs?

DISAGREE STRONGLY

12 Please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

Linking any fee element to a local 'primary use' determination is a recipe for considerable dispute and challenge - which itself is likely to increase costs for LAs (and thus fees). Lessons should be learnt from the problems surrounding the excluded premises 'primary use' provision created by section 176 of the 2003 Act relating to garage premises. Many premises have diversified to offer a range of activities and whilst alcohol may be ancillary to a day-time food led operation the nature of the venue may change in the later NTE hours to more of a wet-led premises. There are already disputes and difficulty in applying the 'exclusively or primarily' provisions of the LA2003 for fee multiplier and children's access purposes.

13 Do you agree or disagree that the criterion of whether or not premises are exclusively or primarily used for the sale of alcohol for consumption on the premises is sufficiently practical to implement?

DISAGREE STRONGLY that it is practical to implement

14 If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

In addition to the question 12 response above, it is likely to be a burden for LAs to administer - including as licence permissions can be varied at any time - and there may be inconsistency of approach across Councils. Costs of applying this are likely to increase fees

15 Do you agree or disagree that there should be discretion to apply higher fee amounts only where both criteria apply in combination?

DISAGREE unless there is any national consistency set centrally on how to reliably establish 'primary use' - unlikely to be viable

16 Do you agree or disagree that, if a licensing authority has determined that different fee amounts should apply, it should have discretion to exclude certain types of premises from that higher fee amount?

AGREE that LAs should have full discretion based on local activity and evidence

17 If discretion to exclude certain types of premises from a higher fee amount were available, what types of premises should be specified in the regulations as potentially excluded classes? Please give reasons for your answer, keeping your views to a maximum of 200 words.

Educational, community, local authority, restaurant (ancillary alcohol), hotels (without a general bar) or charity venues (unless hosting a large music festival or outdoor event). Also hospitals, carehomes, sheltered housing schemes and similar venues which may hold a premises licence or club certificate. A locality discretion may also need to be considered, if practical to implement, as some venues of the same class in NTE centres may impact greater than rural premises (or vice versa for some noise and public nuisance issues).

18 Are there alternative options that should be available to licensing authorities to apply different fee amounts in their area? Please specify and set out your evidence in the box below, keeping your views to a maximum of 200 words.

We strongly agree that LSLF should be enabled and this should have happened before now. We understand that fee setting is a complex and multi-faceted issue which needs to be considered and set robustly. We believe that there should be a nationally consistent 'class' definition as outlined in the consultation document but this may need to extend to stating an element linked to size or capacity (which may be difficult if capacity is self-set by the responsible person under the Regulatory Reform (Fire Safety) Order 2005). NDRV may still have a part to play if bandings parameters are revised nationally (or better locally) to be more reflective. Rather than primary use being used perhaps there could be two discretionary higher fee amounts linked to terminal hour or else a graduated sliding scale of fees kicking it at 11pm (or whichever trigger point a local LA determines). Flat fee by class + NDRV element to account for size/location + terminal hour higher fee (e.g. 11pm to 1am) + terminal hour higher fee (e.g. 1am to 4am) - or sliding scale.

19 Do you agree or disagree that the proposed cap levels will enable your licensing authority to recover costs?

AGREE. The cap needs to be high enough to enable those LAs with higher (but justifiable) costs to recover them.

20 Do you have any other comments on the proposed cap levels? Please specify them in the box below, keeping your views to a maximum of 200 words.

Local Authorities have sufficient experience of setting fees based on cost recovery to ensure that a more equitable fee scheme is implemented based on local activity and evidence, and balancing this with the need to not deter business or activity. It is vital that caps are set for business assurance. Local taxpayers must equally be assured that they are not subsidising businesses licence fees. The public need assurance that there are enough fees to cover the proportionate costs of administering and enforcing licensing functions. Our LA is unlikely to need to charge anything near to the proposed cap levels.

21 Do you agree or disagree that the proposed cap of £100 will enable your licensing authority to recover costs?

AGREE

22 Please set out evidence for your answer in the box below, keeping your views to a maximum of 200 words.

It is unlikely our LA would need to charge anything near to the £100 cap for TENs. Care is needed with TENs to not deter low-risk licensable activity so local discretion is vital. The current fees of £21 are far too low though (and were set pre-Environmental Health consultation). We estimate that our broad costs are around £44 per unit for TENs (including Environmental Protection consultation costs and proportional share per unit of hearing costs)

23 Do you agree or disagree that licensing authorities be required, before locally-set fees are implemented, to:

(a) publish their proposed fee levels?; **AGREE**

(b) publish the basis on which they have been calculated? **AGREE but these can only be general estimates based on cost recovery and the principles should be outlined in national s182 guidance**

(c) publish the measures they have taken to keep costs down? **AGREE in general terms (e.g. shared services, Regulator's Code, more proportionate interventions to reduce reviews, joined-up working methods)**

(d) invite comments from interested parties? **AGREE as this system should be consistent with other fee setting processes which invite comment**

24 What practical steps can licensing authorities take to secure efficiency? Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

Local Authorities are well accustomed to doing more with less in the current situation of diminishing core funding and protracted inability to have LSLF in this area. Shared service models such as those we deploy at Babergh and Mid Suffolk are the way forward. We invest to save in engagement with our communities and work in partnership with licensees and RAs to gain efficiencies and reduce costs and duplication. Interventions and mediation are key to secure promotion of the licensing objectives without invoking costly reviews, hearings and associated resource costs and risks. This working also promotes business support. We regulate based on the Regulators Code in a risk/intel based method and do not provide 'gold-plating' to our services.

25 Do you agree or disagree that the Guidance should suggest that these areas present a particular risk of excessive costs or gold-plating?

AGREE that all of those areas should be referenced in guidance.

26 Do you think that there are other activities that may present a particular risk of excessive costs or gold-plating? Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

It is our view that some of the licensing changes made by Central Government will impact negatively on LA costs and resources, especially deregulatory orders relating to entertainment. Efficiencies and good practice is a matter for LAs who have much experience in doing more with less, reducing or eliminating inefficiencies, demonstrating innovative and good practices and working more strategically to integrate licensing functions with other strategies and initiative. Event licensing fees must be progressed as referred to in the consultation report as these bring special risks and significantly increased resources and costs (even events up to 5000 capacity).

27 Do you agree or disagree that there should be a single national payment date for annual fees in England and Wales?

We have no fixed view on this. AGREE this may be preferred by some business sectors. Caution needs to be exercised in how this would be implemented and any transitional period. It would result in a spike of activity for smaller authorities and potentially a spike of licence suspensions/enforcement activity for non-payment. Currently LAs can spread this activity to manageable monthly collections and related suspension activity throughout the year whereas it may need to deploy additional temporary resource in this scenario.

28 Do you think that the Impact Assessments related to the consultation provide an accurate representation of the costs and benefits of the proposal to move to locally-set fees (including, in particular, the costs of setting fees locally)?

We think the Impact Assessment variation of sample LA costs clearly demonstrates why LSLF is needed based on local evidence and activity

29 Do you have any comments on the methodologies or assumptions used in the impact assessment? If so, please detail them in the box below, referencing the page in the impact assessment to which you refer. Please keep your views to a maximum of 200 words.

If adopting a 'polluter pays' approach to licensing fees perhaps levying a discretionary fee against review hearing licence/certificate holders may be more equitable than spreading the cost of review hearings against all the licensed base? It may also act as a deterrent and encourage more conciliation/mediation work? How this may interact with an appeals process may require further consideration however.