

Report to: Environment and Safety.

Date of Meeting: 21st February 2019

Report Title: Challenge to the approved change of Private Hire Operator fees.

Report By: Mike Hepworth. Assistant Director Environment and Place

Purpose of Report

To consider objection received to the proposed changes to Private Hire Operator Licence fees that were agreed on 19th November 2018.

Recommendation(s)

- 1. That councillors reconsider the proposed changes to private hire operator's licence fees, in light of the representation received following the statutory consultation,**
- 2. Councillors either proceed with the existing proposals or determine a revised proposal.**

Reasons for Recommendations

Changes to private hire operator licence fees are subject to a statutory process, and must be advertised and any objections received given proper consideration. A decision must be made by the 27th February 2019.

Introduction

1. On 19th November 2018 officers and portfolio leads considered proposals for a range of licensing fees and charges levied by the Environment and Place Directorate, which included those for hackney carriage and private hire vehicle licences and the fees for private hire operators licences. The hackney and private hire fees for vehicles and operators were then subject to a statutory consultation and public advertisement.
2. The advertisement was placed in December 2018, the consultation period ended on 31st December 2018, and the Authority has received a representation to the changes proposed to private hire operator fees but none in relation to the vehicle fee rises.
3. The fee rises for both hackney carriage and private hire vehicles can now take immediate effect, whereas the proposed fee changes for private hire operators licences must be given further consideration in light of the representation received. A decision must be made by the 27th February 2019, the second date set by the statutory consultation.
4. The representation is attached at Appendix A.

Licence Fees

5. In November 2018 significant changes to the fee structure for all discretionary licensing fees were agreed, following a comprehensive review by the Licensing Manager. In carrying out this fundamental review the Licensing Manager took account of statutory guidance from government, case law which has changed over the last few years, and the way that other local licensing authorities have adapted their systems for administering discretionary licensable activities. Based on the conclusions of this research, the Licensing Manager developed a new methodology for calculating the discretionary licence fees. Shortly after completing this methodology the government issued statutory guidance on how the licence fees for the new animal welfare licensing regime should be calculated, and reassuringly, this essentially mirrored the methodology he had already independently developed.
6. It included an analysis of the time typically spent on processing and determining each type of licence, enabling cost calculations using the appropriate hourly rates. It also incorporated recharges from other services such as legal and democratic services in relation to their input to licensing. Such as through the regular meetings of the Environment and Safety Board.
7. There are also separate calculations estimating the typical cost of checking compliance with each type of licence on an ongoing basis. This included the fees charged for private hire operators and took into account the level of involvement with different types of operator over the past few years, including calls to the department, complaint investigation, visits made and record verification. The figures prepared by the Licensing Manager as a result of the review were verified by the Council's accountants. The proposal is set out at Appendix B.

8. In the review all fees have now been split into Part A (application) and Part B (licence preparation, issue and on-going compliance). This process has been introduced following the recent High Court case against Westminster City Council, it enables applicants to see exactly what fee would be retained and what would be refunded in light of a failed application. The fees can be levied individually or as a whole at the time of the application.
9. Since 2013 we have charged operators on a banded basis (12 bands) depending on the number of licensed vehicles in their fleet. This system was decided by committee following extensive consultation that year. Responses received in 2013 (including from Mr Torab), are attached at Appendix C.
10. The proposal agreed on 19th November 2018 and set out in Appendix B has sought to simplify the system down from twelve bands (12) to four (4), and in fact six (6) of the previous bands were never used. However, it enables the charges to increase in increments that accommodate all of our existing operators in a way that we believe is fair and reasonable.
11. The objector argues that there is no additional work involved in issuing a private hire operator's licence. This is not correct, the legislation requires us to prepare and issue a licence and conduct such enquiries as is appropriate to do so.
12. In addition, part of the licensing function is to enforce the conditions of the operator licence, and this involves at least two visits to the operator to check their records are in order and maintained in accordance with the statutory requirements. We also visit operators on a regular basis, (large ones weekly) to collect applications, deliver licences and plates and investigate complaints, including viewing CCTV. Clearly there is a lot more work involved in checking the records for operators with multiple vehicles. It is almost inevitable that over time we receive more complaints about an operator with many vehicles than just one, and all complaints are investigated.
13. The power to levy an operators fee is given by Section 70 Local Government (Miscellaneous Provisions) Act 1976 which states; "A district council may charge such fees for the grant of vehicle and operators' licences as may be resolved by them from time to time and as may be sufficient in the aggregate to cover in whole or in part :- (a) the reasonable cost of the carrying out by and on behalf of the district council of inspections of hackney carriages and private hire vehicles for the purpose of determining whether any such licence should be granted or renewed; (b) the reasonable cost of providing hackney carriage stands; and (c) any reasonable administrative or other costs in connection with the foregoing and the control and supervision of hackney carriage and private hire vehicles".
14. Although these proposals have been opposed by one of the larger operators, we believe that the way we have structured the charging bands is fair, and that the fee level, which has reduced in these proposals, accurately reflects the work involved in the licence administration.
15. Mr Torab suggests a different type of charging regime, which is not considered appropriate because it would increase the operator fees, the Authority must be seen to charge the fee that covers the reasonable cost of administering the operator licence system. If Mr Torab's counter proposal was introduced, it would

actually generate more fee income than the proposal that the Council advertised in December and wouldn't comply with the principles set out in the EU Service Directive.

16. All discretionary fees must be 'reasonable' and based upon a cost recovery model and not incorporate a 'profit margin'. This principle has been reiterated through the EU Service Directive, which states that: "any charges provided for by a competent authority, which the applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the authorisation procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities".

Legal Considerations

17. The objection raised by Mr Torab of 247 New Carmiles Ltd, questions the Council's proposals, he also says that he feels he is being discriminated against as a result of his ethnic origin/religion.
18. This suggestion is untrue and without basis, the fee/band review was conducted by the Licensing Manager and based purely on the evidential workload identified by the department over the past few years. No account was taken as to the ethnic origin or religious beliefs of any of the operators.
19. In his response Mr Torab also states that when the decision to change to a banded system occurred in 2013, no consultation took place and he was only informed of the final decision. This again is untrue, he responded to the consultation in 2013 and I have included his response on that occasion within Appendix C, this was subsequently considered by committee as required by the legislation. No further challenge was received.

Options (Giving reasons)

20. To decide that the new operator licence fee proposals are reasonable and proportionate, take account of the costs incurred by the Authority and should be implemented.
21. To decide that the new operator licence fee proposals are not reasonable and proportionate and should be replaced with a new system or new scale of fees.

Wards Affected

All wards

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness
Crime and Fear of Crime (Section 17)
Risk Management
Environmental Issues

Economic/Financial Implications
Human Rights Act
Organisational Consequences
Local People's Views
Anti-Poverty

Additional Information

Appendix A. Operator representation.
Appendix B. Operator fee proposal agreed on 19th November 2018.
Appendix C. Representations to 2013 operator fee changes.

Officer to Contact

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