

 Executive – 4 February 2009		Agenda Item No.
Title	Fees for sex shop licences	
For further information about this report please contact	Robert Inman	
Service Area	Members' Services	
Wards of the District directly affected	None	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006	No	
Date and meeting when issue was last considered and relevant minute number		
Background Papers	Report to the Executive meeting on 3 December 2008	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	No

Officer/Councillor Approval		
With regard to officer approval all reports <u>must</u> be approved by the report authors relevant director, Finance, Legal Services and the relevant Portfolio Holder(s).		
Officer Approval	Date	Name
Relevant Director	10 January 2009	Chris Elliott
Chief Executive	10 January 2009	Chris Elliott
CMT		
Section 151 Officer		Mary Hawkins
Legal	12 January 2009	Peter Oliver
Finance	9 January 2009	Marcus Miskinis
Portfolio Holder(s)	14 January 2009	Michael Doody and Michael Kinson
Consultation Undertaken		
Final Decision?		No – recommendation to Council
Suggested next steps (if not final decision please set out below)		

1. SUMMARY

- 1.1 At the meeting of the Executive on 15 October 2008 consideration was given to the fees and charges to be introduced in April 2009.
- 1.2 Approval of the proposed fee for applications for sex shop licences was deferred pending a further report regarding the reasons for recommending the introduction of a fee of £2000.
- 1.3 A further report was made to the Executive meeting on 3 December 2008 providing background information regarding the proposed fee.
- 1.4 At that meeting, the matter was deferred so that a further report could be prepared taking into account the proposal of the Overview and Scrutiny Committee that the fee should be set at £3500 on the basis that sex shops should be inspected on a quarterly basis.

2. RECOMMENDATIONS

- 2.1 The Executive be requested to recommend the fee to be introduced for sex shop licence applications taking into account the information and advice submitted.

3. REASONS FOR THE RECOMMENDATION

- 3.1 The requirement under statute is that license fees should be sufficient to cover the costs of the Council in administering the licensing function.

4. ALTERNATIVE OPTION CONSIDERED

- 4.1 In the previous reports on this subject, it was proposed that the fee should be increased from £795 to £2000. However, Members expressed the view that the fee should be increased to £3500.

5. BUDGETARY FRAMEWORK

- 5.1 The fees and charges agreed by the Executive form part of the Budgetary Framework which is the resource strategy for implementing the Council's Corporate Strategy.

6. POLICY FRAMEWORK

- 6.1 There are no policy issues relating to this issue.

7. BACKGROUND

- 7.1 The Local Government (Miscellaneous Provisions) Act 1982 includes the requirement that:

"An applicant for the grant, renewal or transfer of a licence shall pay a reasonable fee determined by the appropriate authority."

- 7.2 It was previously recommended that the current fee of £795 needed to be increased to cover the costs of enforcement, any covert operations and possible prosecution. The processing of sex shop applications is time consuming and it is anticipated that

any applications will almost certainly result in representations being received. This would result in a hearing being arranged before the Council's Regulatory Committee.

- 7.3 Non-compliance with the terms of licences issued may result in a prosecution which could be costly. The Interim Head of Legal Services has advised that it would not be appropriate to include in the fee an allowance for the costs of a potential prosecution as a claim to recover costs can be made as part of the court hearing, if successful. The Executive, therefore, must take this advice into consideration when making its decision.
- 7.4 As previously reported, the government has not set a uniform fee for licence applications as this provides latitude for each authority to assess the correct fee taking into account its own individual circumstances, including costs. If the fee charged by this Council were challenge there would be a need to justify the level of the fee.
- 7.5 The Council has not as yet issued any sex shop licences and so there is little background information to assess accurately the costs involved or to substantiate a larger increase in the fee.
- 7.6 The recommended fee of £2000 already takes into account all necessary compliance visits permitted by the mandatory Regulator's Compliance Code which was approved by Parliament under Section 23 of the Legislative and Regulatory Reform Act 2006 .
- 7.7 The Code was produced in response to the Hampton Review of the UK's regulatory system, which proposed the principles of better regulation based on a risk-based approach and proportionality to regulatory enforcement.
- 7.8 Amongst other issues, the Code requires regulators (such as the Council as the licensing authority) to consider:
- **Supporting economic progress**
Performing regulatory duties should not impede business productivity.
 - **Risk assessment**
Undertaking a risk assessment of all their activities.
 - **Information and advice**
Providing information and advice in a way that enables businesses to clearly understand what is required by law.
 - **Inspections**
Only performing inspections following a risk assessment, so resources are focused on those least likely to comply.
- 7.9 The Licensing service has to operate within the Regulator's Compliance Code and act proportionally in applying the law and securing compliance. This involves being consistent in approach, targeting enforcement action, being transparent about how the regulator operates and what those regulated may expect.
- 7.10 These principles will apply both to enforcement in particular cases and to the management of enforcement activities as a whole.

- 7.11 All visits must be made on a risk assessed basis and inspections and compliant premises must not be targeted any more than necessary. Unnecessary visits to compliant premises could easily risk judicial review as the authority could be considered to have acted outside the Regulator's Compliance Code.
- 7.12 If there was a requirement that, in the event of a licence being issued, the establishment should be inspected on a quarterly basis, this would have to be made clear at the time the licence was issued and the reasons why this requirement was being imposed. It is estimated that, on average, the cost of a straightforward inspection would be approximately £50.
- 7.13 If and when an application for a licence is received the Regulatory Committee, when considering whether a licence should be granted, may refuse the application if they consider that "the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number that the authority considers is appropriate for that locality". The Local Government (Miscellaneous Provisions) Act 1982 then goes on to say, "Nil may be an appropriate number for these purposes."
- 7.14 However, as previously explained, there is little background information available regarding the costs of administering this type of licence as there has been no experience, and the situation would have to be kept under close review in order to judge whether the costs involved, compared to the fee charged, was realistic.