

BODY: General Licensing Committee

DATE: 14th July 2014

SUBJECT: Street Trading Consent Income Associated with the Street Market.

REPORT OF: Jay Virgo, Senior Specialist Advisor.

Ward(s): All

Purpose: For Committee to review the setting of fees for the Street Market.

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Recommendation: Members are recommended to delegate the setting of consent fees, in relation to the Street Market, to the Senior Head of Development in consultation with the Chair of General Licensing.

1.0 Background

- 1.1 In early 2012 Cabinet received reports regarding a proposed street market in Eastbourne. The Cabinet recommended that Full Council should delegate to the General Licensing Committee the setting of the associated consent fees.
- 1.2 From January 2014 the Chamber of Commerce acts as the council's agent in running the street market. The Chamber originally contracted with the Eastbourne Street Market Company (ESMC) who collected the consent fees. However the ESMC ceased trading at the end of 2013.
- 1.3 The Eastbourne Chamber of Commerce opted to continue running the street market via *ad hoc* applications to the Licensing Authority at Eastbourne Borough Council to enable the continuation of the street market.
- 1.4 **Appendix 1** of this report includes the General Licensing minutes of the 23rd April 2012. It can be seen that it was agreed that the fee levied for consent at the street market was £5 per pitch and this would be "used for managing the enforcement of the market"
- 1.5 This fee has been collected by Eastbourne Street Market Company and subsequently the Chamber of Commerce and duly paid to Eastbourne Borough Council.

2.0 Fee-Setting: General Principles

- 2.1 In order to ensure that council tax payers are not subsidising the work involved in the administration of licensing functions, income is raised by licence fees. These

fees must not be used to raise revenue but instead are set at a level which aims to cover the cost of administering the function within the constraints of regulation.

- 2.2 Case law has established a number of points relevant to fee-setting. It has confirmed that approximate calculations of anticipated costs are sufficient to discharge the requirement that the licensing authority endeavour to achieve a break-even position. Surpluses as well as deficits must be carried over year on year, for local authorities must not make a profit. A shortfall in one year may moreover be rectified by increasing costs the following year where needed, although the council does not have to adjust the licence fee every year to reflect any previous deficit or surplus.

3.0 Fees: Current and Proposed

- 3.1 The Market has now been running very smoothly for almost 2 years and the fee has been reviewed. The current fee of £5 per pitch has been determined as having been set too high, in that it has created a surplus which exceeds the cost to the Council of the administration and enforcement of the street market.
- 3.2 Eastbourne and District Enterprise Agency Limited (EDEAL) has been given a 5 year contract to carry out Town Centre Management services on behalf of EBC. This is intended to become a self-sufficient role so EBC funding will cease and EDEAL will support the role through its economic efficiencies by the 31st March 2015. The services agreement will end on 31st March 2018, at which point a separate arrangement regarding consents will have to be put in place.
- 3.3 The contract has been drafted in such a way so as to permit EDEAL, should it choose to organise a regular street market(s), to act on behalf of EBC in allocating and distributing the relevant consents to and collecting the relevant consent fees from market stall holders for onward transmission to EBC, in a similar way as was required under the previous street market contract.
- 3.4 Consequently, in order to ensure that the fee associated with the street market pitches is set at a level which may, if necessary, be adjusted to ensure that a surplus is not created, it is considered appropriate that the determination of the fee be delegated to a designated Council Officer who will exercise the delegation in consultation with the chair of General Licensing Committee.
- 3.5 Initially it is proposed that a nominal fee of £1 be levied per pitch to cover associated administrative costs. Our experience over the past two years suggests that this is sufficient to cover costs and to stimulate further interest by potential stall holders.

4.0 Legal Considerations

- 4.1 The Council's Legal Officer has been fully consulted.

5.0 Financial & Resource Implications

- 5.1 The Council's Finance Team is actively involved in the project to set fees and charges at fair and proportionate levels so as to ensure that the income received does not exceed the cost of the function and the service is effectively self-financing. They have been fully consulted on this report and have advised accordingly.

6.0 Human Rights

- 6.1 The provisions of the Human Rights Act 1998 must be borne in mind by the Committee when taking licensing decisions. Particular regard should be had to Article 1 of the First Protocol, which relates to the protection of property and the peaceful enjoyment of possessions and property.
- 6.2 Article 8 relates to the right to respect for private and family life, home and correspondence - should also be borne in mind. While the Human Rights Act makes it unlawful for a local authority to act or to fail to act in a way that is incompatible with a Convention right, Article 1 of the First Protocol and Article 8 are both qualified rights which means that interference - to a justifiable extent - may be permitted as long as what is done:
Has a basis in law;
- Is intended to pursue a legitimate purpose
 - Is necessary and proportionate; and
 - Is not discriminatory;

7.0 Summary

- 7.1 The report explains the rationale for General Licensing Committee to delegate decisions on the street market consent fee to the appointed Officer in consultation with the chair of General Licensing Committee. Subject to committee approval, it lays the foundation for proposals which will ensure that the fee income received reflects the cost of running the function whilst ensuring the street market is a commercially attractive proposition to potential market traders.