

**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE INTERIM ASSISTANT DIRECTOR OF REGULATION AND  
ENFORCEMENT  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**18 DECEMBER 2020**  
**ALL WARDS**

**REVIEW OF STREET TRADING CONSENT FEES AND CHARGES 2021/22**

1. Summary

- 1.1 The Corporate Charging Policy and Financial Regulations require that fees and charges levied by the Licensing and Public Protection Committee be reviewed on an annual basis to ensure the continued full recovery of costs.
- 1.2 The street trading portfolio has recently been transferred from the Markets Service to the Licensing Service and as such it is appropriate that the fees are reviewed and proposals relating to those fees be brought to the Licensing and Public Protection Committee for approval.
- 1.3 City Council considered and approved the Street Trading Policy 2020 on 3 November 2020. The proposed fees within this report reflect the resources required to administer the future street trading scheme within the Street Trading Policy 2020.
- 1.4 A consultation was held regarding the proposed fees and charges between 13 November 2020 and 10 December 2020 (midnight). As of 15:00hours on 10 December 2020 two consultation submissions had been received.

2. Recommendations

- 2.1 That the introduction of a Street Trading consent application fee be approved to take effect from 19 December 2020 in relation to applications made to commence trading from 1 April 2021 as detailed in section 4.5.
- 2.2 That the new street trading annual and occasional consent fees be approved to take effect from 19 December 2020 in relation to consents granted for any period from 1 April 2021 as detailed section 4.5.

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### 3. Background

3.1 The City Council's Corporate Charging Policy and Financial Regulations require that Chief Officers, at least annually, report to and seek approval from Committee on a review of all fees and charges levied for services provided. This report also acknowledges the introduction of the new Street Trading Policy 2020 and takes account of the legal framework within which street trading consent fees must be set.

3.2 The legislation that governs street trading is Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

3.3 Paragraph 9 (1) of Schedule 4 states:

*A district council may charge such fees as they consider reasonable for the grant or renewal of a street trading licence or a street trading consent.*

3.3 Current fees for street trading consents include variations based on size of trading space occupied, type of trading unit and location of trading unit. These are shown below. It must however be noted that we do not currently have any trading units that occupy an area less than 1.39 square metres. Indeed, most non-football traders are currently paying the fee for occupying up to 2.78 square metres while occupying significantly more space. This is because the current charging structure does not accommodate a fee for larger trading areas. The current charges have been in place since 2013 and are shown below.

#### Current city centre charges

<b>Charge Type</b>	<b>Payment per month in advance</b>
Decorative carts	£643.00
Trading pitch under 1.39 square metres	£260.00
Trading pitch 1.39 to 2.78 square metres	£392.00
Kiosk	£191.00

#### Current suburb charging

<b>Charge Type</b>	<b>Payment per month in advance</b>
Trading pitch under 1.39sq.m	£163.00
Trading pitch 1.39 to 2.78sq.m	£228.00
All football sites	£788.00 (per season)

### 4. Proposals

4.1 In order to ensure the fees reflect the cost of administering the consent scheme and processing the consents, as well as compliance with those consents (and a small proportion for enforcement against illegal street traders), the fee calculations are based on the projected estimations and

actual expenditure costs for the street trading service for 2020/21. In future years the intention is to use finalised accounts.

- 4.2 Members will note that the fees are split into a non-refundable application fee and a consent fee. This split is required further to case law set by R (Hemming and Others) vs Westminster City Council. Each fee takes account of salary costs, overhead costs, and processing and activity times.
- 4.3 The time taken to process and administer (including compliance) each consent type has been estimated as this these are new proposed consents (annual and occasional). Previous consents were issued based on location, space occupied and type of unit. In future years actual costs will be verified each year to ensure the calculations are accurate. Costs for peripheral items such as the installation of electrical supplies for trading units, legal costs and mileage costs are added in after the time is calculated, as will be any restitution of carry forward balances.
- 4.4 The most significant reason for the higher cost for annual consents in the city centre is that street traders in this area will be visited weekly to ensure compliance and to resolve any logistical or other issues. Outer city traders and occasional traders over 12 days will be visited at least monthly.
- 4.5 The most significant reason for the higher cost of an Occasional Sports Stadia Consent is because compliance visits at these venues will need to be done in pairs to ensure health and safety both due to the crowded environment and also the time of day (some evening work)
- 4.6 It is acknowledged that a renewal fee still needs to be calculated. However, as the earliest renewal under the new Street Trading Policy 2020 will occur from 1 April 2022 officers intend to bring this renewal fee and any other fees identified to Licensing and Public Protection Committee towards the end of calendar year 2021 (after appropriate consultation)
- 4.7 The proposed fees and charges for 2021/22 are detailed below.

Licence Type	Application fee	Licence fee
Annual City Centre	£724	£5,160
Annual Out of City	£724	£2,218
Occasional 20-30 days (Citywide)	£724	£1,589
Occasional 10-19 days (Citywide)	£724	£708
Occasional under 10 days (Citywide)	£724	£425
Annual Sports Stadia Consent	£724	£3,728
Occasional Sports Stadia Consent (20-30 days)	£724	£3,225
Occasional Sports Stadia Consent (10-10 days)	£724	£1,416
Occasional Sports Stadia Consent (under 10 days)	£724	£849

## 5. Consultation

- 5.1 Under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (LGMPA 82), a district council may charge such fees as they consider reasonable for the grant or renewal of a street trading licence or a street trading consent. There is no requirement to consult.
- 5.2 Birmingham City Council have decided to consult on these proposed fees given that they support new types of consents made under the new Street Trading Policy 2020.
- 5.3 The proposed fees and charges were consulted on through BeHeard between the dates of 13 November 2020 and 10 December 2020. All current street traders were contacted in writing to make them aware of this consultation.
- 5.4 As of 15:30hours on 10 December 2020 three consultation submissions have been received. Appendix 1 shows both the consultation submissions and Birmingham City Council's response.

## 6. Implications for Resources

- 6.1 The proposals are consistent with the proposed budget for 2021/22 for the Licensing and Public Protection Committee that will be reported to you in March, subject to prior approval by City Council. This will ensure that the services continue to be managed within the approved cash limits and in line with the financial regulations relating to these services.
- 6.2 The fees and charges proposed within this report are calculated based on forecast and actual (part year) income and expenditure for 2020/2021 and include the forecast direct costs of the delivery of services and a proportion of indirect central business support costs e.g. Human Resources, Legal, IT, Finance, Procurement and Democratic costs.
- 6.3 The total forecast expenditure for 2020/21 is in the region of £482,000 as this cost includes the development of the Street Trading Policy 2020, associated legal costs and introduction of electrical infrastructure etc. The total forecast income is in the region of £300,000. The proportions directly correspond to the proportion of officer time expended on these service areas. We acknowledge that the budget is not balanced as it is being implemented part year, the ring-fenced nature of the budget enables the service to carry forward balances into the year.
- 6.4 It should be noted that the street trading fees and charges will be recalculated annually and that they may increase or decrease depending on the cost of delivering the service in the previous year and any carry forward balances.
- 6.5 There are three possible ways in which the fees could be challenged:
  - Judicial review of the Council decision based on the decision being ultra vires or considered to be unreasonable or irrational (known as Wednesbury Principles).

- Through the District Auditor – if a Birmingham resident objects to the Local Authority accounts on the grounds that an item is contrary to law or
  - If the Council proposes to set an unlawful fee. This must be reported to and considered by the Monitoring Officer.
- 6.6 The proposed fees have been calculated having regard to forecast accounts on the basis that they are new fees based on the new Street Trading Policy 2020. In future years they will be based on finalised accounts in accordance with best practice advice and also with regard to significant case law. There is no statutory method in which to calculate the fees.
- 6.7 Any decision to set fees otherwise than in accordance with the proposals within this report without appropriate justification is likely to increase the risk of challenge.
7. Implications for Policy Priorities
- 7.1 The recommendations are in accordance with Financial Regulations and budget requirements.
- 7.2 The legal requirement for a Licensing Service to recover only “reasonable costs” takes precedence over the City Council’s Corporate Charging Policy and the requirement to maximise income.
- 7.3 The issues addressed in this report underpin the City Council Vision, Birmingham is an entrepreneurial city to learn, work and invest in, Birmingham is an aspirational city to grow up in, Birmingham is a great city to live, Birmingham is a fulfilling city to age well in.
- 7.4 Regulation and Enforcement will be a key service in ensuring Birmingham residents gain the maximum benefit from hosting the Commonwealth Games by supporting legitimate business.
- 7.5 The proposed fees support the Regulation and Enforcement Mission Statement: Locally accountable and responsive fair regulation for all – achieving a safe, clean, green and fair trading city for residents, business and visitors.
8. Public Sector Equality Duty
- 8.1 The fees that are proposed in this report will relate to all consent holders and applicants for consents regardless of their protected characteristics. The fees are calculated on the cost of delivering the service and consequently an Equalities Assessment has not been undertaken.

## **INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT**

Background Papers: Birmingham City Council – Corporate Charging Policy

**Street Trading Fees and Charges 2021/22 Consultation Feedback and Birmingham City  
Council Response  
Consultation Submissions**

**Submission 1**

*"I think the proposed fees are unrealistic it is not a feasible rent for only 20 days of trading. And 700 for a application fee is extortionate."*

**Response to submission 1**

Street trading consent fees include the cost of administering the consent scheme and processing the consents, as well as compliance with those consents. A small proportion of the fee relates to dealing with illegal street traders (thus protecting legitimate traders). The proposed fees are considered reasonable and proportionate and directly relate to the costs of delivering the service.

In order to ensure the fees reflect the cost of administering and processing the consents the fee calculations are based on the projected estimations and actual expenditure costs for the street trading service for 2020/21. In future years the intention is to use finalised accounts.

The application fee incurs the costs related to the whole application process and the need to consider all elements identified within the policy against an assessment framework. This fee includes liaising with partners and administering the application process. In this first year 2021/22 the costs for application include the estimated costs for an appeal process. The need for this appeal process will be reviewed in 2021/22 and as such it may be that future application fees reduce.

**Submission 2**

*I do believe that these fees need to be looked at and adjusted accordingly. Anyone who works at villa park will be paying three times the amount they we're paying previously, if they stay in the premiership. If they were relegated to a lower division that same pitch would cost four times as much. This would also have the same effect at Birmingham City's ground but in the opposite direction as they currently play in the championship, but could be promoted. The fees for city and out of city seem reasonable as they haven't gone up by much. Traders should not be forced to pay an annual fee up front, as all the big high street businesses only pay quarterly. We have to take into account that the effect that the pandemic has had on business throughout 2020, and it will take a few years for businesses to get back to an even keel. It may be worth delaying these charges for 12-24 months.*

**Response to submission 2**

The proposed consent fees seek to ensure cost recovery for the cost of administering the consent scheme and processing the consents, as well as compliance with those consents. A small proportion of the fee relates to dealing with illegal street traders (thus protecting legitimate traders). The proposed fees are considered reasonable and proportionate and directly relate to the costs of delivering the service.

In order to ensure the fees, reflect the cost of administering and processing the consents the fee calculations are based on the projected estimations and actual expenditure costs for the street trading service for 2020/21. In future years the intention is to use finalised accounts.

We have accepted that the covid pandemic will cause economic difficulties for traders and as a result of this we will support street traders to pay their consent fees monthly in advance for the first six months of 2021/22 before moving to quarterly payments.

**Submission 3**

*The way things have been this year*

*It's impossible to even find that kind of money*

**Response to submission 2**

The proposed application and consent fees seek to ensure cost recovery.

In order to ensure the fees, reflect the cost of administering and processing the consents the fee calculations are based on the projected estimations and actual expenditure costs for the street trading service for 2020/21. In future years the intention is to use finalised accounts. The fees in future years may vary.

We have accepted that the covid pandemic will cause economic difficulties for traders and as a result of this we will support street traders to pay their consent fees monthly in advance for the first six months of 2021/22 before moving to quarterly payments.