

<b>LICENSING SUPPLEMENTARY COMMITTEE</b>		
<b>Report Title</b>	<b>Street Trading [Markets] Charges 2018</b>	
<b>Key Decision</b>		<b>Item No. 3</b>
<b>Ward</b>	<b>All</b>	
<b>Contributors</b>	<b>Commercial Services Income Manager, Head of Law</b>	
<b>Class</b>	<b>Part 1</b>	<b>Date: 20 March 2018</b>

### **1. Purpose of Report**

To seek formal approval of the street trading charges and fees for the borough's markets calculated in accordance with the provisions of the London Local Authorities Act 1990 (as amended). These charges are proposed to come into effect on 1 April 2018

### **2. Policy Context**

- 2.1 The legislation referred to above allows the Council to charge fees and charges in respect of street trading licences in order to recover '...reasonable administrative or other costs ...' In connection with their street trading functions. As well as administrative and enforcement costs, this includes the costs of street cleansing and refuse removal and disposal, as far as they are attributable to such trading.
- 2.2 The legislation requires the Council to advertise its proposals to originally set or change its street trading charges and must allow 28 days, from the date of publication of the proposals to enable receipt of written representations concerning the intended charges prior to a decision being made.
- 2.3 The proposed charges have been calculated in accordance with the provisions of the Act (i.e. they cover the cost of "administering" and "operating" street trading).

### **3. Recommendations**

- 3.1 To consider any representations received about the proposed charges.
- 3.2 To approve the level of street trading charges proposed in Appendix A for financial year 2018 onwards, to take effect from 1<sup>st</sup> April 2018.
  - a) For Deptford Markets
  - b) For Catford market

- c) For Lewisham 6 day market
- d) For Lewisham Sunday market
- e) For other miscellaneous market sites within the Borough
- f) For street trading licence fees
- g) For administrative charges for registration, licences, proposals to revoke licences on ground of charges arrears

#### 4. **Background**

4.1 Street market trading charges are set each year so as to recoup the Council's reasonable costs which are not otherwise recovered, for the running of the Borough's street markets.

4.2 Charges increases have been market specific as follows;

Lewisham Market- permanent licence charges were not increased for 3 years prior to 2017 and temporary licence charges were not increased for 2 years prior to 2017. Sunday market licence charges were not increased for 4 years prior to 2017

Catford Market - charges were not increased for 4 years prior to 2017

Deptford Market- in 2016 there was an increase of between 2%- 4% for temporary and permanent licence charges.

In 2017/18 an increase of 1% was made across all markets.

4.3 Cross Subsidy [i.e. using surplus income generated by one market to address a deficit in another] - Counsel advice confirmed that the longstanding Lewisham approach whereby 'cross subsidy' is not applied should continue. To depart from this would expose us to a significant risk of successful legal challenge as to reasonableness. The only exception being that any surplus income generated by Lewisham Sunday market could be so applied, as one of its stated objectives when established as a regular event in 2003, was that any such surpluses would be made available for the benefit of the borough's markets in general. It should be noted that whatever the legal position, 'cross subsidy' would only be an option if sufficient surplus income was available.

4.4 Spreading operating costs to the wider beneficiaries of the markets - The short answer to this is that it is not legally possible. Counsel advice stated that there is no legal basis for levying charges on [for example] adjacent shop owners as the operational costs of the markets can only be recovered from licence holders. Any such charge would be an attempt to pass on "market" costs to those who do not trade from the market and who do not receive the benefit of the specific services charged for. Such premises already pay for services such as cleansing and waste removal via business rates and trade waste agreements.

- 4.5 Cleansing Costs [alternative providers] - Lewisham Council street cleansing has been nationally recognised as a high quality service with success having been achieved with fairly modest resource implications. The Council has chosen to provide cleansing using in-house resources and under current legislation it is not required to market test this service. Any change would require a strategic decision from the Mayor to carry out a procurement process which would not guarantee any reduction in costs. Due to the number of cancellations in traders at Deptford, the amount of cleansing required is currently being reviewed. A reduction in costs will help offset the deficit.
- 4.6 Charge Comparisons With Other Authorities – There are numerous differences between London borough markets in terms of number of trading days, types of licence, types of commodity sold, cleaning set up, size and location of market etc. It is recognised that simple price comparison of ‘price lists’ does not give an at a glance comparison of charges.

## **5. Structure and Effect of Proposed Charges**

- 5.1 The proposed charges are attached to this report as Appendix A. Charges for all markets for both permanent and temporary licences are based on a 2.5% rise rounded to the nearest 50p or pound.

### **5.2 Administrative Charge**

In keeping with the rest of the budget it is proposed a 2.5% increase rounded to the nearest 50p or pound in administrative charges and fees is proposed from 1<sup>st</sup> April 2018.

## **6. Market Pitch Occupancy and Basis of Charges**

### **6.1 Lewisham High Street**

Last year Lewisham market trading charges were increased by 1%. The 6 day general market occupancy has remained very high at 98% and there have only been two cancellations of pitches from permanent traders this year which were re-filled immediately from a waiting list. The service will suffer from slightly higher cleansing/vehicle costs for 17/18 due to the removal of the compactor in the high street with the replacement by a staffed vehicle. The compactor was replaced in February 2017 as it was not fit for purpose for the waste management needs of the market. A replacement vehicle with staff is now paid for from the budget.

### **6.2 Lewisham Sunday Market**

Occupancy rates are consistently average at 63%. The revenue from this market is used to support less well performing markets as permitted and outlined in 3.2 (cross subsidy).

### 6.3 **Catford Market (Monday – Saturday)**

Catford market is under-occupied with only 36% of pitches being regularly filled. There are plans to re-start the Sunday market in a hope to revive the attendance on weekdays (see below).

### 6.4 **Deptford Markets (Deptford High Street, Giffin Square, Giffin Street)**

There has been a steady decline in permanent traders at Deptford and its surrounding markets since the beginning of 2010. Temporary/Casual traders have maintained occupancy level to some degree. Saturdays and Wednesdays markets are the busiest with 45 and 47% occupancy respectively.

### 6.5 **Douglas Way**

Occupancy rates of traders selling second hand goods in Douglas way is at the national estimated average of 75%. Wednesday and Saturdays remain the busiest trading days.

## 7. **Consultation and Representation**

7.1 As required by law, the proposed charge increases have been advertised in a local newspaper and representations from licence holders invited prior to making a determination on the charges.

7.2 Letters enclosing details have been sent to all trading licence holders showing the basis upon which proposed charge increases are decided and inviting their further comment.

7.3 A duty is placed on the Council to consider representations received before making a determination on the charges. Traders have been advised of the date of the committee meeting to consider charges and asked to submit any written views in advance so they can be given advance consideration by Members. Any further representations received will be verbally reported and circulated to the Committee. Written representations were requested by 6<sup>th</sup> March 2018 and none were received to date.

## 8. **General**

8.1 General markets across London and the UK are showing a decline in attendance and occupancy and national surveys show pitch occupancy estimates at 70-75%. This is compounded by a trend towards online shopping and the decline of high street in general. Specialist markets have increased in popularity in some areas particularly in areas of renewal/redevelopments. Anecdotally, some traders in Deptford Markets have cited housing redevelopments and regeneration in the local area as having some impact on the decline in footfall on market days.

- 8.2 As identified by the Joseph Rowntree Foundation, the presence of a local market add values to the local community in that it acts as a site for ‘social interaction’. With this in mind, the markets service are working to look at how the service can move forward and appeal to the changing community.
- 8.3 There is a need to increase the charges uniformly across the service as this hasn’t been done for a number of years (as outlined above). This will enable the service to maintain its ability to self-fund and to meet the increase in costs from cleansing, waste disposal, room hire (Deptford) and vehicle charges.
- 8.4 The service has recently gone through significant restructuring and are currently targeting;
- Renew and repair of street furniture used by markets service, including gates and bollards
  - Renew lighting/electrics and install CCTV cameras
  - Renew bins on the market and creating a waste strategy to encourage more sustainable waste disposal
  - Quicker turnaround of waiting lists for pitches- allocations are now considered on a weekly basis.
  - Re-instatement of a Sunday market in Catford (Regeneration collaboration) with a view to raising the profile of Catford market in general
  - Review of Health & Safety with surplus from Lewisham spent on upgrading parts of the market- this includes potential installation of gates for hostile vehicle mitigation.

## **9. Financial Implications**

- 9.1 The running of the markets is a self-financing function of the Council. Based on current occupancy levels and with consideration to the current economic situation, the proposed increase in charges for 2018/19 will act to help prevent deficit and fund the increases in operational costs incurred by the service, such as rent, cleansing and utilities etc. The additional income raised through the increase will also help to fund proposed essential maintenance for the upkeep of the market areas.
- 9.2 The proposed charges for all markets, for both permanent and temporary licences, are based on a 2.5% rise (rounded to the nearest fifty pence or pound).

## **10. Legal Implications**

- 10.1 The Council is able to recover its “reasonable administrative or other costs” of operating street trading, under Section 32 of the London Local Authorities Act 1990, as amended.

- 10.2 Reasonableness of the charges relate to the actual cost of providing services to the traders and is not merely limited to consideration of the level of charges .The object of the statutory provisions is for the Council to “break even” on its market account with the outcome that the costs of providing the service fall on the traders and not on the general account.
- 10.3 Those costs, which can be recovered from licence holders, are in accordance with section 32 (1) of the Act “which are not otherwise recovered” include:
- (a) the collection, removal and disposal of refuse or other services rendered to the stall holders; and
  - (b) the cleansing of streets in which street trading takes place in so far as that cleansing is attributable to such trading; and
  - (c) any reasonable administrative or other costs incurred in connection with the administration of street trading; and
  - (d) the cost of enforcing the said statutory provisions relating to street trading.
- 10.4 Street trading licenses are deemed to be possessions for the purpose of Human Rights legislation. The London Local Authorities Act 1990 also provides safeguards to the exercise of the power to vary charges by requiring statutory consultation to be undertaken with traders prior to making a determination on any increased charges proposed.
- 10.5 Before determining the charges to be set, the Council pursuant to section 32(7) of the said Act must
- (a) give notice of the proposed charges to licence holders or to a body or bodies representing them; and
  - (b) must publish notice of the proposed charges in a local newspaper circulating in the area in which the licensed street or streets would be affected by the proposed charges.
- 10.6 A notice under (a) above shall be accompanied by a statement showing how the proposed charges have been computed; and any body representative of licence holders may request the borough Council to supply further information or explanation with the proposed charges as the body may reasonably require in order to ascertain whether the proposed charges are reasonable and have been computed in accordance with the provisions of this section.
- 10.7 Representations in writing may be submitted to the Council within a period of not less than 28 days following the date of publication of the Notice in the local newspaper.
- 10.8 An aggrieved party is entitled to challenge the level of charges which the Council sets, by appealing to the Magistrates Court under section 30A of the 1990 Act within a period of three months from the date the new charges and fees are notified to the licence holders or a body or bodies representative of them.

- 10.9 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 10.10 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - advance equality of opportunity between people who share a protected characteristic and those who do not.
  - foster good relations between people who share a protected characteristic and those who do not.
- 10.11 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Committee, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 10.12 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>
- 10.13 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
1. The essential guide to the public sector equality duty
  2. Meeting the equality duty in policy and decision-making
  3. Engagement and the equality duty
  4. Equality objectives and the equality duty
  5. Equality information and the equality duty
- 10.14 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four

documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

## **11. Equalities Implications**

- 11.1 Consideration has been given to the public sector equality duty under the Equalities Act 2010. Although this report has no specific equalities implications, street markets are viewed as an important source of affordable good quality food and other goods and thus their sustained success is of particular importance to those on low incomes. Markets also have wide economic, social and cultural benefits and can also provide opportunities for new business to begin operation at relatively low cost.

## **12. Environmental Implications**

- 12.1 Markets should be valued because of their potential positive effects on the character and community of the surrounding area and can play a key role in the vibrancy and attractiveness of town centres. Their locations may also contribute to reduced carbon footprints and less waste in the packaging often associated with food retail.
- 12.2 A limited cardboard recycling scheme operated in conjunction with our waste and cleansing services colleagues continues in Lewisham 6 day market. Whilst officers have examined options for extending this, but have yet to identify an economically viable means of doing so.

## **13. Prevention of Crime and Disorder Implications**

- 13.1 There are no specific implications arising from the report although the contribution made by street markets to the vibrancy of town centres may assist in reducing the fear of crime.

## **14. Background Papers –None**

- 14.1 If there are any queries regarding this report please contact Kate Parkinson by emailing [Kate.parkinson@lewisham.gov.uk](mailto:Kate.parkinson@lewisham.gov.uk) or by phone 020 8314 2247