

| <b>LICENSING SUPPLEMENTARY COMMITTEE</b> |  |                           |
|--|--|---------------------------|
| <b>Report Title</b>                      | <b>Street Trading [Markets] charges 2019</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: 5 March 2019</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 2019

### **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, refuse removal and disposal, utilities and general upkeep and maintenance 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 2019 onwards, to take effect from 1<sup>st</sup> April 2019.

- 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 Charge increases have been market specific and have historically been kept very low with some years seeing no price increases;

##### Lewisham Market

2018/19 licence fees increased by 2.5% in line with CPI index inflation. In 2017/18 fees increased by 1% however prior to this;

- permanent licence charges were not increased for three years prior to 2017
- temporary licence charges for two years prior to 2017 and
- Sunday market licence charges were not increased for four years prior to 2017

##### Catford Market

2018/19 fees increased by 2.5%, in 2017/18, they were increased by 1% however;

- charges were not increased for 4 consecutive years prior to 2017.

##### Deptford Market

2018/19, fees were increased by 2.5%, 1% in 2017/18 and in 2016 there was an increase of between 2%- 4% for temporary and permanent licence charges.

- 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. We have written to traders in Douglas Way regarding a pilot project of waste reduction which should see a reduction in costs associated with cleansing, collection & disposal of waste. Significant investment will also be made to provide a permanent ongoing solution to keeping all three markets clean during the fruiting season.
- 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, viability and footfall 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 permanent licences are based on a 2.3% rise, rounded to the one pence and for temporary licences are based on a 2.3% rise rounded to the nearest fifty pence. This increase is linked to the Consumer Price Index rate. Due to the prices being held at a low rate with no price increases seen for a number of consecutive years, the service now needs to catch up to maintain charges levied on it and to encourage growth and an acceptable maintenance level to be kept.

### **5.2 Administrative charge**

In keeping with the rest of the budget it is proposed a 2.3% increase rounded to the nearest one pence in administrative charges and fees is proposed from 1<sup>st</sup> April 2019.

## **6. Market pitch occupancy and basis of charges**

### **6.1 Lewisham High Street**

The occupancy at Lewisham High Street remains high with 94% occupancy rate. This exceeds the national average of around 75%. The service has had to bear the costs of the refuse vehicle costs (which replaced the compactor in 2017), electrical work, works to re-design and replace the water fountain for sole use of Lewisham traders and this will be reflected within the price increase and the need for investment to resolve the costs of cleansing during fruiting season.

### **6.2 Lewisham Sunday Market**

Occupancy rates have remained fairly consistent with 32 pitches occupied- this represents at 57% occupancy rate. The revenue from this market is used to support less well performing markets as permitted and outlined in 4.3 (cross subsidy) so income derived from this, despite not the highest occupancy remains helpful to the overall budget.

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

Catford market is significantly under-occupied, despite 30 pitches being available a day, Thursday and Friday have the highest occupancy levels but these are still fairly low with around 15 pitches being occupied (a mix of permanent and casual traders) which equates to 50%. A one off market was held late in November which proved popular and saw an increase in footfall. This will be replicated when the weather improves.

### **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 44% and 43% occupancy respectively.

### **6.5 Douglas Way**

Occupancy rates of traders selling second hand goods in Douglas way is 51%. 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 (South London Press) 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 received by 1<sup>st</sup> March 2019 will be detailed at committee on March 5<sup>th</sup>

## **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.
- 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'. The recently established London Markets Board, as well as looking to review current Market legislation, is also looking at the social value of markets. Alongside this, the GLA entered a successful submission for London to host the International Public Markets conference 2019 and the markets service made a submission for Deptford to become one of the selected visitor sites for the conference which takes place in June. It is hoped this will help to raise the profile with a legacy of increased footfall.
- 8.3 There is a need to increase the charges uniformly across the service to remain in line with the Consumer Price Index inflationary rates so as to maintain all costs incurred referred to in 10.3 below as general costs of utilities/services increase. The increase will enable the service to maintain its ability to self-fund and to meet the increase in costs and investment made for cleansing, waste disposal, utilities and vehicle charges.
- 8.4 The service has spent on the following areas during 2018/19:
- Renew lighting/electrics in Lewisham, Deptford & Catford – lighting has been completed in some areas, all areas have received electrical check and upgrade to safe standard.
  - Renew bins on the markets and creating a waste strategy to encourage more sustainable waste disposal- bins have been renewed. Project started in February to tackle waste in Deptford, this will be rolled out to all markets if successful.
  - Quicker turnaround of waiting lists for pitches- allocations are now considered on a weekly basis.
  - Re-designed and replaced a water fountain on Lewisham High Street

- Review of Health & Safety- this resulted in the electrical works and fork lift truck use being prohibited on Lewisham market and greater vehicle control in Deptford markets.

## **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 2019/20 will act to help prevent deficit and fund the increases in operational costs incurred by the service, such as rent, cleansing and utilities etc.
- 9.2 The proposed charges for all markets, for both permanent licences is 2.3% rise rounded to the nearest pence and 2.3% rise rounded to the nearest fifty pence for temporary licences.

## **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.

**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