



## Licensing Supplementary Committee

**Report title: Street Trading (Markets) Charges 2020**

**Date:** 19 March 2020

**Key decision:** No

**Class:** Part 1

**Ward(s) affected:** All

**Contributors:** Commercial Services Income Manager, Head of Law

### Outline and recommendations

The purpose of this report is to seek approval for proposed changes to street trading charges and fees to come into effect on 1<sup>st</sup> April 2020.

This report recommends;

1. Consider any representations received about the proposed changes
2. Approve the proposed changes to street trading charges [*proposed*]

## **Timeline of engagement and decision-making**

1. The proposals have been advertised as public notices in the local press for 28 days prior to committee hearing
2. The proposals have been sent by post to all traders on or earlier than 28 days prior to committee hearing
3. Last year, an increase of 2.3% was agreed by the Licencing Supplementary Committee for 2019/20 fees & charges.

### **1. Summary**

- 1.1. This report proposes an increase of 2.5% for Street Trading fees and charges for financial year 2020/21

### **2. Recommendations**

- 2.1. Consider any representations received about the proposed changes
- 2.2. Approve the level of street trading charges proposed in Appendix A for **the** financial year 2020/21, taking effect from 1<sup>st</sup> April 2020 for the street trading in the borough specifically;
  - a) For Deptford markets
  - b) For Catford markets
  - c) For Lewisham six 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 and proposals to revoke licences on ground of charges arrears, replacement stall cards, licence variation and duplicate licences

### **3. Policy Context**

- 3.1. The London Local Authorities Act 1990 (as amended) allows the Council to charge fees and charges in respect of street trading 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.
- 3.2. The legislation requires the Council to advertise its proposals to set or change its streets 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 on the proposed charges.

- 3.3. 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)
- 3.4. The continued administration and support of street trading contributes to two of the Council's priorities from the Corporate Strategy;
  - 1) 'Building an inclusive local economy' – Street trading supports employment of local people and provides opportunity for business start up. Encourages the use of the local economy, attracting footfall to the high street.
  - 2) 'Making Lewisham Greener' - Enables people to shop locally on foot instead of relying on vehicles to visit out of town shopping centres. Maintains refuse and recycling and cleansing functions in main shopping districts.

## **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 trading using the legislation outlined above.
- 4.2 Fees & Charges increase for previous financial years as follows;
  - a) 2019/20 – 2.3% [*inflationary CPI index*] increase applied to all fees and charges
  - b) 2018/19- 2.5% [*inflationary CPI index*] increase applied to all fees and charges
  - c) 2017/18- 1% increase applied to all fees and charges.
  - d) 2016/17- Increase of 2% to traders in Deptford markets. No increase to Catford, Lewisham or any other sites. No increase in admin fees.
- 4.3 Key priorities for spend during 2019/20 have been;
  - a) Introduction of scarab- a cleansing machine specifically brought in to enable thorough street cleansing of market areas during fruiting season and to maintain high levels of cleansing, utilised across the three market sites.
  - b) Cleansing staff
  - c) Waste & Recycling collection and disposal.
  - d) Electrical maintenance works Deptford, Catford & Lewisham
- 4.3 Cross subsidy - Counsel advice confirmed that the longstanding approach in Lewisham of 'cross subsidy' not being applied should continue. To depart from this would expose the Council 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. This is because one of its stated objectives when established 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.
- 4.3 Spreading operating costs to the wider beneficiaries of the markets - this 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.

- 4.4 Cleansing cost- 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
- 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 2.5% rise, rounded to the nearest fifty pence and for temporary licences are based on a 2.5% rise rounded to the nearest fifty pence. The service needs to maintain charges levied on it due to inflationary rate rises for services it uses to facilitate street trading such as cleansing, waste disposal and utilities.
- 5.2. In keeping with the rest of the charges, it is proposed to increase the cost of administrative charges by 2.5% rounded up to the nearest fifty pence.

## 6. Market pitch occupancy and basis of charges

### 6.1. Lewisham High Street seven day market

Pitch occupancy in Lewisham High Street is full to capacity at 100% and the service holds a waiting list for both **temporary** and permanent traders. This far exceeds the national trend of 77% occupancy and is a positive indication of the public desire for the mix of commodities and traders on offer at this site. .

The ability and costs of maintaining levels of cleanliness during the spring/summer months continued to be challenging this year. As our in-house cleansing service was unable to undertake regular deep cleansing of market area during the time fresh berries are sold, a scarab has been leased for use across Lewisham, Deptford & Catford markets which will save costs and maintain acceptable levels of cleansing.

### Lewisham High Street Sunday Market

Occupancy rates on the Sunday market is 57% which in real terms is 27 permanent pitches let and 20 available. A long standing trader surrendered his licence and a second trader surrendered a double pitch which impacted figures.

The revenue from this market is used to support less well performing markets as permitted and outlined above in 4.3

### Catford Market

Catford market remains under-occupied with the majority of pitches being taken by **temporary** traders. 23% of traders occupying the 30 pitches are permanent and 43% casual. Currently two traders who hold seven day **temporary** trading licences will be issued permanent licences from March which will be positive for the market.

Maintenance work has been under taken to maintain electrical function as a number of pitches had witnessed electrical failures.

### Deptford Markets

Occupancy rates have remained consistent since last year with some small increases in occupancy (particularly in casual trading) in the second hand market. However, the occupancy of all the markets in Deptford have remained below the national occupancy

average.

Deptford High Street's level of occupancy has remained unchanged since last year with Wednesdays having a 44% occupancy and Saturdays at 43% from total available pitches of 142/ 183 on Wednesdays- Saturdays respectively.

Douglas Way has seen some slight increase in occupancy levels of 57% on Wednesdays and 62% on Saturdays. The area received a much needed spotlight through a number of key events including the 'International Markets Conference' and 'Deptford Pride' both of which saw Deptford market being the central location and focus of these key events in Summer 2019.

Although some improvements have been gained through a waste reduction initiative and the reduction of cleansing in Douglas Way, this has meant that the area needs less subsidising from authorised areas of budget subsidy (i.e. Lewisham Sunday market).

## **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 10th March 2020 will be detailed at committee on March 19th

## **8. Financial implications**

- 8.1. The running of the markets is a self-financing function of the Council. The proposed increase in charges for 2020/21 will act to help prevent deficit and fund the inflationary increases of costs to the service e.g. cleansing, waste collection and disposal, utilities etc.
- 8.2. The proposed increase to all fees and charges is 2.5% rise rounded up to the nearest fifty pence. Rounding up to the nearest fifty pence does mean some marginal increase or decrease in the % but is done for ease of administration

## **9. Legal implications**

- 9.1 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.
- 9.2 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.
- 9.3 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.

9.4 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.

9.5 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 where licence holders would be affected by the proposed charges.

9.6 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.

9.7 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.

9.8 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. On an appeal to a Magistrates court the court may make such order as it thinks fit.

9.9 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.

9.10 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.

9.11 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.

9.12 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/>

9.13 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

9.14 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/>

## **10. Equalities implications**

10.1. Consideration has been given to the public sector equality duty under the Equalities Act 2010 and there are specific equalities implications arising from this report. Street Trading is a popular choice of occupation for migrants and markets provide affordable food for individuals on low incomes.

## **11. Climate change and environmental implications**

11.1. 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 contribute to reduced carbon footprints and less waste in the packaging often associated with food retail.

## **12. Crime and disorder implications**

12.1. There are no specific implications arising from the report although the continued existence of markets in the borough contributes to the vibrancy of town centres and may assist in reducing the fear of crime

## **13. Health and wellbeing implications**

13.1. There are no specific health and wellbeing implications however the continued presence of markets in the borough encourages residents to purchase low cost fruit and vegetables. Also, markets are accessible on foot in the local area encouraging walking.

## 14. Background papers

14.1. None

## 15. Glossary

15.1. [Type here, Arial size 11]

15.2. See **Section 7 – “Glossary” in the guidance** for more information.

Term	Definition

## 16. Report author and contact

16.1. Kate Parkinson, Commercial Services Income Manager  
[Kate.parkinson@lewisham.gov.uk](mailto:Kate.parkinson@lewisham.gov.uk) 020 8314 2247