

Charging for Discretionary Environmental Health Services

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| Final Decision-Maker | COMMUNITIES, HOUSING AND ENVIRONMENT COMMITTEE |
| Lead Head of Service | John Littlemore, Head Housing and Community Services |
| Lead Officer and Report Author | Tracey Beattie, Mid Kent Environmental Health Manager |
| Classification | Public |
| Wards affected | All |

Executive Summary

This report sets out three new discretionary charges for Environmental Health; enhanced contaminated land reports, Pre-application advice for Acoustics, Contaminated Land and Air Quality and advice visits and reports to businesses (new and material changes). Currently this advice is provided free of charge but does impact on the work of the service and is discretionary rather than part of the statutory functions required.

Purpose of Report

Decision

This report makes the following recommendations to this Committee:

1. Approve the adoption of discretionary charges for pre-application planning advice on acoustic, air quality and contaminated land assessments.
2. Approve the adoption of discretionary charges for Enhanced Contaminated Land reports.
3. Approve the adoption of discretionary charges for advice to businesses for food hygiene.

Timetable

| Meeting | Date |
|--|------------------|
| Corporate Leadership Team | 3 December 2019 |
| Communities, Housing & Environment Committee | 16 December 2019 |

Charging for Discretionary Environmental Health Services

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

| Issue | Implications | Sign-off |
|---------------------------------------|---|--------------------------------------|
| Impact on Corporate Priorities | Accepting the recommendations will support the following Strategic Priorities: <ul style="list-style-type: none"> • Safe, Clean and Green • A Thriving Place | Head of Housing & Community Services |
| Cross Cutting Objectives | <i>The four cross-cutting objectives are:</i> <ul style="list-style-type: none"> • <i>Heritage is Respected</i> • <i>Health Inequalities are Addressed and Reduced</i> • <i>Deprivation and Social Mobility is Improved</i> • <i>Biodiversity and Environmental Sustainability is respected</i> | [Head of Service or Manager] |
| Risk Management | Considered in paragraph 5.1 | [Head of Service or Manager] |
| Financial | <ul style="list-style-type: none"> • It is appropriate to recover the cost of providing general advice as proposed in this report. • The recommendations are expected to result in net extra income in the region of £1,500. This income is in addition to amounts already accounted for within the Council's financial planning. | Section 151 Officer & Finance Team |
| Staffing | We will deliver the recommendations with our current staffing. | Head of Service |
| Legal | <ul style="list-style-type: none"> • Under section 111 of the Local Government Act 1972 the Council has | Team Leader (Corporate |

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| | <p>power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. Additionally, the Council has a general power of competence pursuant to Section 1 of the Localism Act 2011 which enables it to do anything that individuals generally may do. The proposed discretionary services are in exercise of these powers.</p> <ul style="list-style-type: none"> • Section 93 of the Local Government Act 2003 permits best value authorities to charge for discretionary services provided the authority has the power to provide that service and the recipient agrees to take it up on those terms. The authority has a duty to ensure that taking one financial year with another, income does not exceed the costs of providing the service. | Governance), MKLS |
| Privacy and Data Protection | Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with our retention schedules. | Policy and Information Team |
| Equalities | No impact on groups with protected characteristics identified as a result of the recommendations set out in this report. | Equalities and Corporate Policy Officer |
| Public Health | We recognise that the recommendations may have varying impacts on population health or that of individuals. | Public Health Officer |
| Crime and Disorder | There are no implications for Crime and Disorder in this report | Manager |
| Procurement | There are no implications for Procurement from this report | [Head of Service & Section 151 Officer] |

2. INTRODUCTION AND BACKGROUND

- 2.1 The work of the Environmental Health Service falls into two distinct areas. Statutory duties which the local authority are legally bound to do and discretionary services which support and assist businesses, commercial developers and the public, this includes advice and guidance. Some discretionary advice overlaps with commercially available advice, other advice and guidance is for public health purposes. The public health aspect of environmental health and advice provided as part of any regulatory situations (inspections, visits and audits, complaints investigations) sit outside the scope of this report.
- 2.2 The demands placed on statutory Environmental Health services are increasing. There are, rightly, more requirements to document officer decisions, and there are expectations that processes should be adhered to and audited by management, as well as internal and external audits by the Food Standards Agency. All of which lengthen processes and absorb officer time and capacity. In addition, Environmental Health is, in part, a demand lead service, with new business churn and development applications placing claims on officer time, over and above programmed work.
- 2.3 As the service reaches capacity we will be faced with decisions relating to the continuation of these discretionary services. We can choose to draw away from them, as some authorities have, to focus resource to pure statutory functions. Or we can implement a cost recovery charge to enable businesses, developers and private individuals to access a professional service. This also enables us to control the resource we use for such work.
- 2.4 As mentioned in paragraph 2.1 in many situations the advice and guidance businesses and developers request from us is available from commercial services, but at a cost. Where as environmental health within Mid Kent Environmental Health provide appropriate and timely information free. In addition, as regulators we are in a position to explain how and what compliance can look like, where there is discretion or where we have adopted standards we can specify conditions required.
- 2.5 The principle of charging for discretionary services has been established under section 111 of the Local Government Act 1972 and section 93 of the Local Government Act 2003 to charge for discretionary services and members of the Communities, Housing and Environment Committee will recall that in 2018 they agreed to implement charges for Food Hygiene Rating Scheme Rescores for food businesses. The service also charges for the discretionary Food Hygiene Training Courses run for food businesses. Both are based on cost recovery, with a minimum number of candidates required for each training course run and rescore charges applied on application by the food business operator.
- 2.6 Income from charging for current discretionary services in environmental health is modest. Other service fees are set by government and covers pollution prevention charges and private water supply fees. The current

contaminated land search fee is based on £25 per hour based on legal guidance obtained in 2013-14.

Table 1

| Discretionary Charges for Services | 2018/19 (£) | To date 2019/20 (£) |
|---|--------------------|----------------------------|
| Food Hygiene Rating Scheme Re-score Charge | 2,080 | 2,560 |
| Food Hygiene Training | 455 | 715 |
| Contaminated Land Searches (land charge search) | 400 | 400 |

2.7 The aspects of discretionary work under consideration for the new charges are;

- Provision of pre-application advice for noise controls, air quality assessment advice and contaminated land mitigation
- Enhanced advice for contaminated land enquiries
- Advice to businesses on compliance with regulatory requirements.

The service has always provided advice to those who approach the service but this isn't uniformly made by all businesses and developers. Requests can be 'niche' and require in depth research from the officer before responding. Such work is professionally rewarding and plays to the core of our role of environmental health in supporting people, businesses or developers.

2.8 The purpose of introducing a range of charges for these discretionary services has three purposes;

- Establish consistency and fairness to all businesses
- Ensure consistency of approach by officers and enable targeting of professional resource
- Provide a cost recovery structure for the discretionary work currently provided by the service.

2.9 The discretionary charges proposed in this report are currently implemented by other Kent local authorities such as Canterbury, Dartford, Sevenoaks and many London authorities.

2.10 The proposed charges are set out below with indicative income from each area.

Table 2

| Service | Specific element | Cost | Potential Demand & Income |
|-------------------------------------|---|--------------------------------------|--------------------------------------|
| Contaminated land searches | Basic Environmental Information Regulation Request Factual report, maps, list of planning applications, locations of requested features such as private water supplies etc. if we hold that data. | To remain at current rate £25 /hr | 4 – 6 per year (£200) |
| | Enhancement 1 Additional research into planning history to identify any contaminated land reports that may be connected to the site. | £55 /hr | 2 – 4 per year (£500) |
| | Enhancement 2 Additional to either above elements, to include officers professional opinion on likelihood of site being subject to further investigation under P2A of the Environmental Protection Act 1990. A view based upon the information available to the council at the time of the request. | £55 /hr | 1 – 3 per year (£500) |
| Pre Application Consultation | Pre-app advice via the planning team as part of their overall service | No charge | |
| | Direct approach from consultant to review and approve either scope of works or completed report prior to submission. Written response and advice provided. | £55 /hr | 3 per year (£350 – 450) |
| | Site visits as part of the above | Hourly Rate plus mileage | 2 per year (£500) |
| | Any visit as part of regulation to check up compliance and progress | No Charge | |

| Service | Specific element | Cost | Potential Demand & Income |
|------------------------|---|---|---------------------------|
| Business Advice | Advice given during routine inspections or in response to service requests purposes | No Charge | |
| | Direct approach by a food business to give advice on plans and layout of the food business. (including approved premises) | £55 /hour Rate plus mileage for site visits | 2 per year (£500) |
| | Direct approach for advice on setting up a new food business (pre start up advice) | | |
| | Direct approach for kitchen design advice or expanding an existing business | | |

Financial Consideration

- 2.11 Charging for discretionary services aligns with the conclusions made in the Council's Medium Term Financial Strategy 2020/21- 2024/25 (paragraph 3.11) which stated that although largely self sufficient the Council needed to assume a continued reliance on self-generated resources.
- 2.12 Charges are based on cost recovery including 'back office' costs.
- 2.13 Charging for services will allow managers to control demand. Although the charge is based on a cost recovery it may deter some from using the service, conversely release pressure on officer time. It will enable managers to manage their professional resources by prioritising statutory functions and urgent matters, through applying time frames for responding to these discretionary requests. This will enable businesses to plan and seek alternative commercial providers rather than service responses.

Pre- Planning Application Advice

- 2.14 Officers in Environmental Protection provide professional detailed advice for some often complex developments. It is only direct requests by consultants, acoustic, contaminated land and air quality that would be charged, rather than a duplication of the existing pre-application advice system which comes via the planning portal process. Environmental Protection officer work closely with developers and specialist consultants to explore the standard of work required to overcome noise concerns, or mitigation measure required for air quality assessments before the applications are submitted through the planning portal. This pre application work enables developers to submit their application and reduce the pathway

to approval by committee. This does not, and would not predetermine the approval process at committee.

- 2.15 Often consultants will approach Environmental Protection to confirm satisfaction with the scope of an investigation or assessment prior to providing a quote to a potential client or to ensure that this is not rejected. Consultants will also ask for officer approval before it is finalised to the client.

Enhanced Advice for Contaminated Land Enquiries

- 2.16 The service has a duty to supply baseline information for contaminated land searches; the current fee is based on legal advice. However we are aware that there is potential to provide an enhanced, more detailed response which we could charge more for to bring us in line with other local authorities in Kent.
- 2.17 However there is often a request to provide more detailed information, such as that contained in planning records, which can be accessed by anyone via the planning portal. For a site with a lengthy development history this can take many hours. This additional information is currently provided on request by developers or home owners, yet commercial firms also provide and charge for the same service. The professional opinion of the contaminated land officer is often sought, as to whether a particular site is likely to be investigated further by the council. This opinion is not subject to the same price regulation as basic Environmental Information Regulation details and could be charged for as part of an enhanced package. Currently it is provided free of charge with other information supplied mainly to developers.

Business Advice and Support

- 2.18 Primarily focused at new food businesses that request pre-opening advice visits or discuss with officers the range of facilities their businesses will need. Such advice is positive for both the business and the service by providing a clear understanding of their legal responsibilities and dispel myths, there-by save the businesses time and money. And for the service the visit can save time at later inspections and foster good officer/business relationships. Not all businesses seek out advice before they open, some have access to commercial advisors, and others rely on their own experience and knowledge.
- 2.19 Other common advisory situations may involve changes to process for manufacturers or expansion of premises. Important as this work is, it is not a statutory requirement, it can take hours of officer time researching, writing emails/letters and working with other agencies.
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3. AVAILABLE OPTIONS

3.1 Option 1

To approve the application of discretionary charges for all service areas identified in the report; pre application planning advice for environmental health, enhanced advice for contaminated land enquiries, and for advise to businesses. Although charging may drive some businesses to seek advice from the private sector there are many that would prefer to seek advice from the regulatory authority. Over all these measure will generate some income for the authority and should this be an increasing area of work it may support service delivery in the future. Through adopting a charging scheme managers can control demand for the services, focus time and resource where needed, whether this is on statutory functions or towards advice and enable the Council to recover income on a cost recovery basis.

3.2 Option 2

To approve one or two of the proposed charges of the three areas identified in the report. This may raise questions of inconsistency of application, such as why one area has been approved for discretionary charge and another not applied. This will provide the service with a clear indication of whether the service continues to provide the discretionary service should demand for statutory functions continue to grow.

3.3 Option 3

Not to approve the adoption of any charges for discretionary services. This will retain the current position. This will impact on whether the discretionary service is delivered in the future.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 The preferred option is Option 1, to approve all three discretionary charges to enable the service to continue to provide discretionary advice. It will confirm a commitment to providing important services on a cost recovery basis.

5. RISK

- 5.1 The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. That consideration is shown in this report at paragraphs 2.2 – 2.13. We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

6.1 No consultation is proposed.

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

7.1 If adopted the charges will be included in the fees and charges report for 2020-21.
