

Committee: Planning and Transportation Committee	Date: 6 October 2020
Subject: Highways Act 1980 licence and consent charges	Public
Report of: Director of the Built Environment	For Decision
<p style="text-align: center;">Summary</p> <p>The City Corporation is able to make charges for certain licences and consents that it grants or gives under the Highways Act 1980 ("the Act"). These charges have not been reviewed for at least 20 years and the original basis on which the current charges were calculated is now unclear. This report therefore recommends a new set of charges for these licences and consents and sets out the rationale for their calculation so that they can be updated more regularly and on a consistent basis in future. The existing and recommended charges are set out in a summary table at Appendix 1 to this report for ease of comparison.</p> <p>Recommendation</p> <p>Members are asked to agree the recommended charges set out in the summary table at Appendix 1 to this report for section 176(1) licences (in relation to bridges); section 177(1) licences (in relation to buildings); section 179(1) consents (in relation to vaults, arches, cellars and building foundations); section 180(1) consents (in relation to openings into cellars and vaults); and section 180(2) consents (in relation to pavement lights and ventilators).</p>	

Main Report

Background

1. The City Corporation is able to make charges for certain licences and consents that it grants or gives under the Highways Act 1980 ("the Act"), namely section 176(1) licences (in relation to bridges); section 177(1) licences (in relation to buildings); section 179(1) consents (in relation to vaults, arches, cellars and building foundations); section 180(1) consents (in relation to openings into cellars and vaults); and section 180(2) consents (in relation to pavement lights and ventilators), to authorize these works being constructed above and/or in and/or below the highway.
2. These charges have not been reviewed for at least 20 years and the original basis on which the current charges were calculated is now unclear. In some instances the level of charge does not clearly reflect the matters for which the Act and the Local Authorities (Transport Charges) Regulations 1998 allow the City to impose a charge, and in other instances the City does not impose a charge for some consents when it is legally entitled to do so to recover its costs. This report therefore recommends a new set of charges for these

licences and consents and sets out the rationale for their calculation so that they can be updated more regularly and on a consistent basis in future.

Current Position

3. **Section 176(1) licences** are licences from the highway authority to the owner or occupier of any premises adjoining the highway to construct a bridge over the highway on such terms and conditions, and to use it for such period and on such terms and conditions, as the authority think fit.
4. As section 176(1) licences are granted by the highway authority, Transport for London is responsible for granting such licences for the Greater London Authority road network (the red routes).
5. Section 176(2) of the Highways Act 1980 provides that a reasonable sum in respect of legal or other expenses is payable in respect of section 176(1) licences.
6. The City Corporation currently charges £5000 for section 176(1) licences.
7. **Section 177(1) licences** are licences from the highway authority to any person to construct a building over any part of a highway maintainable at the public expense (whether it is intended to span the highway or not), or alter a building so constructed. Licences under section 177 may contain such terms and conditions, including terms and conditions with respect to the construction (including the headway over the highway), maintenance, lighting and use of the building, as the highway authority think fit (cf. section 177(2) of the Highways Act 1980).
8. Section 177(1) licences are not required for privately maintainable highways.
9. As section 177(1) licences are granted by the highway authority, Transport for London is responsible for granting such licences for the Greater London Authority road network (the red routes).
10. Section 177(3) of the Highways Act 1980 provides that a reasonable sum in respect of legal or other expenses incurred in connection with the grant of the licence and an annual charge of a reasonable amount for administering the licence is payable in respect of section 177(1) licences.
11. The City Corporation currently charges £1500 for section 177(1) licences in respect of minor/architectural building over a highway maintainable at the public expense and £5000 for major/habitable building over a highway maintainable at the public expense.
12. **Section 179(1) consents** are consents of the appropriate authority to construct works, being any part of a building and a vault, arch or cellar, whether forming part of a building or not, under any part of a street. The “appropriate authority” in Greater London is the local authority in whose area the street is situated. A street means the whole or any part of any highway, road, lane, footway, alley, passage, square, court or land laid out as a way

whether it is for the time being formed as a way or not, irrespective of whether it is a thoroughfare (cf. section 329(1) of the Highways Act 1980 and section 48(1) of the New Roads and Street Works Act 1991). These consents are therefore required for most ways in the City, not just highways, although not for city walkways, which are not streets (cf. section 5(2) of the City of London (Various Powers) Act 1967).

13. As section 179(1) consents are consents of the appropriate authority Transport for London has no rôle in consenting to works under City streets except, where relevant, as the landowner.
14. Regulation 3(1) of and the Schedule to the Local Authorities (Transport Charges) Regulations 1998 authorise the appropriate authority to impose a charge in respect of considering an application for consent under section 179(1). In determining the amount of the charge the appropriate authority shall have regard to the cost to them of dealing with considering the application.
15. The City Corporation currently makes no charge for section 179(1) consents for building foundations and charges £3000 for section 179(1) consents for vaults and/or cellars.
16. **Section 180(1) consents** are consents of the appropriate authority to make an opening in the footway of a street as an entrance to a cellar or vault thereunder. Where the appropriate authority give consent they must require the person to whom the consent is given to provide a door or covering constructed in such manner and of such materials as they direct. The “appropriate authority” in Greater London is the local authority in whose area the street is situated. A street means the whole or any part of any highway, road, lane, footway, alley, passage, square, court or land laid out as a way whether it is for the time being formed as a way or not, irrespective of whether it is a thoroughfare (cf. section 329(1) of the Highways Act 1980 and section 48(1) of the New Roads and Street Works Act 1991). These consents are therefore required for most ways in the City, not just highways, although not for city walkways, which are not streets (cf. section 5(2) of the City of London (Various Powers) Act 1967).
17. As section 180(1) consents are consents of the appropriate authority Transport for London has no rôle in consenting to openings in the footways of City streets except, where relevant, as the landowner.
18. Regulation 3(1) of and the Schedule to the Local Authorities (Transport Charges) Regulations 1998 authorise the appropriate authority to impose a charge in respect of considering an application for consent under section 180(1). In determining the amount of the charge the appropriate authority shall have regard to the cost to them of dealing with considering the application.
19. The City Corporation currently makes no charge for section 180(1) consents.

20. **Section 180(2) consents** are consents of the local authority to carry out any works in a street to provide means for the admission of air or light to premises situated under, or abutting on, the street. These works are most commonly pavement lights and smoke vents. In giving any consent the local authority may impose any requirement as to the construction of the works. A street means the whole or any part of any highway, road, lane, footway, alley, passage, square, court or land laid out as a way whether it is for the time being formed as a way or not, irrespective of whether it is a thoroughfare (cf. section 329(1) of the Highways Act 1980 and section 48(1) of the New Roads and Street Works Act 1991). These consents are therefore required for most ways in the City, not just highways, although not for city walkways, which are not streets (cf. section 5(2) of the City of London (Various Powers) Act 1967).
21. As section 180(1) consents are consents of the local authority Transport for London has no rôle in consenting to works to provide means for the admission of light or air in City streets except, where relevant, as the landowner.
22. Regulation 3(1) of and the Schedule to the Local Authorities (Transport Charges) Regulations 1998 authorise the local authority to impose a charge in respect of considering an application for consent under section 180(2). In determining the amount of the charge the local authority shall have regard to the cost to them of dealing with considering the application.
23. The City Corporation currently charges £3000 for section 180(2) consents.

Options

24. There are a wide range of options for how the charges for these licences and consents could be rationalized and updated. The recommended charges and the rationale for them are set out *below*. Your Committee is asked to review them and to consider them particularly against the “do nothing” option, i.e., to retain the current charges.
25. The existing and recommended charges are set out in a summary table at Appendix 1 to this report for ease of comparison.

Proposals

26. It is recommended that the charge for **section 176(1) licences** be increased from £5000 to £8214. This is an increase of £3214, an increase of approximately 64%.
27. The recommended charge of £8214 is based on an estimated 111 hours of officer time at £74 per hour. The estimated 111 hours of officer time consists of 21 hours for reviewing the application and its plans and elevations; corresponding with the applicant; checking the application for compliance with the relevant planning permission; checking the application for compliance with the design and check certificates issued as part of the technical approval process; assessing whether the City’s standard terms and conditions and informatives are all appropriate; assessing whether any bespoke terms and conditions and informatives are needed; and preparing,

engrossing and issuing the licence; and 90 hours of inspections of the licenced bridge at an estimated 1 hour of inspection time per bridge over a design life of 90 years.

28. It is recommended that the charge for **section 177(1) licences** be increased from £1500 (for minor/architectural works) and £5000 (for major/habitable works) to £8214 (without distinction). This is an increase of £6714 for minor architectural works, an increase of approximately 448%, and an increase of £3214 for major/habitable works, an increase of approximately 64%.
29. There seems to be no justification for the current substantial difference in the charge between minor/architectural works and major/habitable works, which appears to be based on the value of the licence to the licence holder rather than on the costs to the City Corporation of granting and administering the licence, which do not vary in accordance with this architectural/habitable distinction.
30. The recommended charge of £8214 is based on an estimated 111 hours of officer time at £74 per hour. The estimated 111 hours of officer time consists of 21 hours for reviewing the application and its plans and elevations; corresponding with the applicant; checking the application for compliance with the relevant planning permission; checking the application for compliance with the design and check certificates issued as part of the technical approval process; assessing whether the City's standard terms and conditions and informatives are all appropriate; assessing whether any bespoke terms and conditions and informatives are needed; and preparing, engrossing and issuing the licence; and 90 hours of inspections of the licenced building at an estimated 1 hour of inspection time per building over a design life of 90 years.
31. It is recommended that the charge for **section 179(1) consents** be altered from nothing (for building foundations) and £3000 (for vaults and cellars) to £1458 (without distinction). This is an increase of £1458 for building foundations but a decrease of £1542 for vaults and cellars, a decrease of approximately 51%.
32. There seems to be no justification for the current substantial difference in the charge between building foundations and vaults and cellars, which appears to be based on the value of the consent to the consent holder, rather than on the costs to the City Corporation of considering the application, which do not vary in accordance with this distinction between building foundations and vaults and cellars.
33. The recommended charge of £1458 is based on an estimated 17 hours of officer time at £74 per hour and an estimated £200 of expenses for giving notice of the consent to any public utility operators having any apparatus under the street, as is required by section 179(5) of the Highways Act 1980, and to other interested parties. The estimated 17 hours of officer time consists of time for reviewing the application and its plans and elevations; corresponding with the applicant; checking the application for compliance with the relevant planning permission; checking the application for

compliance with the design and check certificates issued as part of the technical approval process; preparing, engrossing and issuing the consent; and giving notice of the consent to public utility operators and other interested parties . The £200 of expenses for giving notice to public utility operators and other interested parties comprises stationery, printing and postage.

34. It is recommended that the charge for **section 180(1) consents** be increased from nothing to £1532. This is an increase of £1532.
35. It is unclear why the City Corporation is not charging for these consents when the power to do so came into force on 28 April 1998.
36. The recommended charge of £1532 is based on an estimated 18 hours of officer time at £74 per hour and an estimated £200 of expenses for giving notice of the consent to any public utility operators having any apparatus under the street, as is required by section 180(5) of the Highways Act 1980, and to other interested parties. The estimated 18 hours of officer time consists of time for reviewing the application and its plans and elevations; corresponding with the applicant; checking the application for compliance with the relevant planning permission; checking the application for compliance with the design and check certificates issued as part of the technical approval process; preparing the requirements for the provision of a door or covering constructed in an appropriate manner and of appropriate materials; preparing, engrossing and issuing the consent; and giving notice of the consent to public utility operators and other interested parties . The £200 of expenses for giving notice to public utility operators and other interested parties comprises stationery, printing and postage.
37. It is recommended that the charge for **section 180(2) consents** be decreased from £3000 to £1976. This is a decrease of £1024, a decrease of approximately 34%.
38. The recommended charge of £1976 is based on an estimated 24 hours of officer time at £74 per hour and an estimated £200 of expenses for giving notice of the consent to any public utility operators having any apparatus under the street, as is required by section 180(5) of the Highways Act 1980, and to other interested parties. The estimated 24 hours of officer time consists of time for reviewing the application and its plans and elevations; corresponding with the applicant; checking the application for compliance with the relevant planning permission; checking the application for compliance with the design and check certificates issued as part of the technical approval process; preparing any requirements as to the construction of the works; preparing, engrossing and issuing the consent; and giving notice of the consent to public utility operators and other interested parties . The £200 of expenses for giving notice to public utility operators and other interested parties comprises stationery, printing and postage.

Corporate and Strategic Implications

39. A closer relationship between charges made for the relevant licences and consents and the City's costs in considering applications for them and

administering them will ensure that City resources are not inappropriately diverted, meaning that the delivery of the City's Corporate Plan is not compromised.

Implications

40. The recommended changes in charges are estimated to, on average, increase the City's annual income from these charges from approximately £29 000 to approximately £38 000. If your Committee agrees the recommended charges, an appropriate change in the relevant budget will be effected from the 2021/22 financial year. This should serve to better cover the relevant staff costs and other expenses involved with considering applications for and administering these licences and consents.
41. The recommended charges are considered to better reflect the matters for which the Act and the Local Authorities (Transport Charges) Regulations 1998 allow the City to impose a charge and they are considered to better reflect the City's actual costs involved with considering applications for and administering these licences and consents. It is therefore considered that the recommended charges reduce the risk of any successful challenge to the charges being imposed and any related risk to the City's reputation.

Conclusion

42. The City Corporation is able to make charges for certain licences and consents that it grants or gives under the Highways Act 1980 ("the Act"). These charges have not been reviewed for at least 20 years and the original basis on which the current charges were calculated is now unclear. This report therefore recommends a new set of charges for these licences and consents and sets out the rationale for their calculation so that they can be updated more regularly and on a consistent basis in future. The existing and recommended charges are set out in a summary table at Appendix 1 to this report for ease of comparison.

Appendices

Appendix 1: summary table

Craig W. J. S. Stansfield
Transport Planning Manager
Department of the Built Environment
telephone: + 44 7802 378 810
e-mail: Craig.Stansfield@CityOfLondon.Gov.UK