
REPORT TO:	ENVIRONMENTAL AND DEVELOPMENT SERVICES COMMITTEE	AGENDA ITEM: 9
DATE OF MEETING:	28th SEPTEMBER 2017	CATEGORY: RECOMMENDED
REPORT FROM:	GED LUCAS, DIRECTOR OF HOUSING AND ENVIRONMENTAL SERVICES	OPEN/EXEMPT: OPEN
MEMBERS' CONTACT POINT:	MATT HOLFORD – ENVIRONMENTAL HEALTH MANAGER	DOC:
SUBJECT:	CHARGING FOR REQUESTS FOR FOOD HYGIENE REVISITS	REF:
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE: EDS13

1. Recommendations

- 1.1 That Members approve the proposal to charge £150 for every request from a food business for a discretionary food hygiene inspection revisit for a trial period of 18 months.

2. Purpose of Report

- 2.1 To provide Members with an understanding of the legal and practical context behind food hygiene re-inspections.
- 2.2 To provide Members with a summary of the predicted positive and negative consequences of introducing a charge for food hygiene re-inspections.

3. Executive Summary

- 3.1 Local authorities are under a legal duty (Food Safety Act 1990 and EU Regulation 882/2004) to ensure compliance with legislation relating to food within their districts. The main way in which this duty is discharged is through periodic inspections of each registered food business by suitably qualified staff within the Environmental Health Service. South Derbyshire currently has 820 registered food businesses.

4. Background – Food Hygiene Inspections and Re-Inspections

- 4.1 During each inspection the officer not only establishes levels of compliance with food hygiene law at the time of the inspection, but also rates the risk of the business in order to establish how soon it should next be visited. Businesses determined to be of a relatively high risk are subject to more regular inspections than those considered to be of a low risk.
- 4.2 The risk assessment process is based on statutory guidance issued by the Food Standards Agency. The Inspector must score the business on eight different risk

criteria. Appendix A provides a summary of how the scoring framework operates and how it effects the frequency with which a business is inspected.

- 4.3 In 2006 the Food Standards Agency introduced the FHRS - Food Hygiene Rating Scheme (commonly known as “scores on the doors”). The scheme was set up with the intention of allowing consumers to make informed decisions about the places where they eat out or shop for food and, through these decisions, encourage businesses to improve their hygiene standards. The FHRS is currently voluntary in England and only applies to retail and catering businesses, of which there are currently approximately 650 in South Derbyshire. Businesses are given a distinct green and black window sticker to show their Food Hygiene Rating (although in England it is not mandatory to display the sticker). All ratings are displayed on the website www.food.gov.uk/ratings.



- 4.4 Under FHRS there are six different food hygiene ratings (0 to 5). The rating given to a business is based on conditions found at the time of the inspection and is calculated based on three of the eight risk rating criteria – namely hygiene, structural conditions and confidence in procedures and management. A summary of how the FHRS rating is calculated is provided in Appendix A.
- 4.5 As the FHRS has become progressively more familiar to consumers as a trusted brand, so food businesses have become more enthusiastic about achieving the top (5) rating. This in turn has created increasing demand from food business operators for Council officers to re-inspect and re-rate their food businesses after improvements have been made.
- 4.6 Many local authorities have raised concerns that they do not have the capacity to provide their food businesses with these re-inspection services whilst at the same time meeting their statutory duties to carry out all other food hygiene duties.
- 4.7 In response to these concerns, the Food Standards Agency announced in March 2017 that having taken legal advice, it was satisfied under the Localism Act 2011 that local authorities could charge for re-inspections where there is no statutory requirement to provide that re-inspection, in order to recover their costs.

Scenarios When Re-Inspections Take Place

- 4.8 There are three scenarios following a full inspection when an Inspector will return to a food business before the next programmed inspection:
1. An inspector must re-inspect a business where the business is unsatisfactory i.e. where it has scored 15 or more for any of the three criteria used for the FHRS (i.e. hygiene standards, structural compliance or confidence in procedures and management). In this instance the purpose of the re-visit is to ensure that basic legal standards are being met;

2. A Food Business Operator can appeal against the FHRs rating they are given. In this scenario the business is encouraged to have an informal discussion first to try and resolve the dispute. If it cannot be informally resolved, then the paperwork associated with the visit would be reviewed by the Environmental Health Manager, and in some circumstances, a further visit to the business may be required. Any appeal must be determined within 21 days.
 3. The Food Business Operator can request a revisit to review the FHRs rating where they consider that relevant improvements have been made and they are likely to now achieve a higher rating.
- 4.9 In scenarios 1 and 2 Council Inspectors are under a duty to re-inspect. In scenario 3 the Council is under no duty to offer a service to re-inspect and it is only required to do so at the date of the next programmed inspection date.
- 4.10 There is no charge payable for either scenario 1 or 2. The purpose of this report is to establish if SDDC should charge for scenario 3, and if so what that charge should be.

Corporate Priorities

- 4.11 Supporting the local food and drink sector is a priority within the D2N2 Strategic Economic Plan and this is reflected in two of the Councils Corporate Plan Measures for 2017/18, namely;

PR5.1 Number of food businesses which have a Food Hygiene Rating score of five.

PR5.2 Number of registered food businesses active in the District.

- 4.12 To date, the Environmental Health Service has provided free re-inspections to its registered food businesses on request. We have adopted this approach in order to provide support on regulatory compliance to new businesses to help deliver measure PR5.1, and to offer existing businesses an opportunity to most rapidly achieve a 5 rating in order to support measure 5.2.
- 4.13 In 2017/18 the corporate target for PR5.1 is to have >81% of our retail and catering food businesses to have a FHRs score of 5. The latest performance figure is that 85.7% have a rating of 5. The corporate target for PR5.2 is to have >810 registered food businesses within South Derbyshire. The latest figure for this measure is that we have 820 registered food businesses. We are therefore currently well on course to meet our targets to support the local food and drink economy.
- 4.14 Our Corporate Plan also seek to ensure that all services maximise savings and income raising opportunities as reflected in measure O1.1 of the Corporate Plan Measures for 2017/18:

O1.1 Achieve £850,000 savings or extra income by 31st March 2018 as per the Medium Term Financial Plan.

Existing Demand

- 4.15 Officers estimate that in recent years we have received an average of approximately 10 requests for discretionary re-inspections each year (i.e. those described in paragraph 4.8 point 3). Usually these are from businesses which have dropped from a 5 rated business to 2 or 3 rating, and therefore the businesses have been motivated to implement improvements and return to a 5 rating as soon as possible.

- 4.16 Over the past 5 years we have only carried out 1 revisit due to an appeal against an FHRS score (as described in paragraph 4.8, point 2). We suspect that this number is so low because officers are consistent in their rating, and fully explain the reason behind the rating that is awarded. Letters are sent to all businesses receiving a rating of 0-2. Those scoring 3 and above, are left a 'Record of Inspection' at the time of the visit.
- 4.17 Of the 645 businesses currently holding a FHRS rating, 553 have a rating of 5, 57 are rated 4, 24 rated 3, 3 are rated 2, 8 rated 1 and none are rated 0.

Cost Recovery and Benchmarking

- 4.18 We have calculated the cost of undertaking a discretionary re-inspection and the calculations are contained in Appendix A. The overall cost of an average re-inspection to the Council is estimated to be approximately £150.
- 4.19 Since the announcement by the FSA, we understand that all Councils across Derbyshire have signalled their likely intention to introduce charges. In Wales and Northern Ireland the prescribed charge is mandatory and has been set at £160 (Wales) and £150 (Northern Ireland). In the estimated 29% of local councils in England who have so far adopted a charging system the charges have been set between a range of £90 and £250.

Likely Consequences of Charging for Services

- 4.20 Introducing a charging scheme may have a number of consequences which are discussed below:
- 4.21 If the demand for discretionary re-inspections remains the same then we would anticipate that the service will generate approximately £1,500 per year. The Food Standards Agency is looking to bring in mandatory display of FHRS stickers in England, which in turn may increase the number of requested revisits.
- 4.22 During pilot studies prior to the FSA announcement, local authorities found that introducing a charge actually increased the number of requests for discretionary re-inspections. On the face of it this is counter-intuitive, however on reflection it may be that businesses feel that they are getting value for money if they are paying a small charge for a service rather than no charge. Where a charge is made, businesses are revisited within three months, so the rating can be re-assessed sooner so businesses may want to pay for that reason (where no charge is made, a three month 'standstill period' is required between the date of initial inspection and a requested revisit). Where a charge is made, there is also no limit to the number of revisit requests that can be made (currently only one requested revisit can be undertaken).
- 4.23 On the downside, new businesses, for whom cash is tight, will probably be less inclined to utilise the advice services offered which may have an adverse impact on PR5.1. However, we already have systems in place to support new businesses by giving advice before their first rating inspection.
- 4.24 We have concerns that the adoption of a charge may create a gap in trust between the business operator and their Inspector. Introducing a charge may result in a perception within the food business community that Inspectors will be motivated to reduce their FHRS in order to increase revenue. However, we have experienced, competent officers who follow the FHRS Brand Standard and statutory Code of Practice when rating, so can show that this is not the case.

- 4.25 The introduction of a charge may also encourage Food Business Operators to appeal (paragraph 4.8, point 2) against a FHRs rating rather than asking for a discretionary re-inspection.
- 4.26 A regular criticism levelled by food business operators at the way in which they are regulated is that they are treated differently in different geographical locations. With this in mind we are keen to ensure that businesses in South Derbyshire receive treatment as close to the 'normal' way they are treated by food hygiene regulators across the rest of the country. This would lead us towards setting a charge approximately equal to the national average.

Conclusions

- 4.27 On balance it appears very likely that charging for FHRs re-inspections will be introduced across most of the UK over the next 12 months. In order to provide the food industry with consistency South Derbyshire should adopt a charging scheme. Based on our calculations, this charge should be £150 (including VAT) in order to ensure cost recovery.
- 4.28 However, we remain concerned that the charging scheme could have an adverse impact on our local food business community with whom we have worked hard over the past decade to build relations, maximise hygiene standards and support the economic prosperity. The effects of charging schemes on all of these are as yet untested.
- 4.29 Following the introduction of a charge we would like to undertake a local review of the positive and negative impacts of the charging scheme over the next 18 months. We would propose to come back to Committee with a further report containing the conclusions of this review 18 months after the implementation of the charging scheme.

5. Financial Implications

- 5.1 Minor beneficial. As discussed in paragraph 4.21, we predict that the proposals will generate a small income stream for the authority of approximately £1,500 a year.

6. Corporate Implications

- 6.1 As discussed in section 3 of this report the proposals are likely to have a small beneficial impact on Corporate Plan measure O1.1 and a potentially adverse impact on measures PR5.1 and PR5.2.

7. Community Implications

- 7.1 Neutral. We do not foresee that the proposals will result in any significant beneficial or adverse impacts on the risk of food businesses in South Derbyshire.

8. Conclusion

- 8.1 That Members agree to the introduction of a £150 charge for requests for food hygiene re-inspections and that Members receive a report 18 months after the date of the introduction of the charge to consider the impacts and to review the business case for the continuation of a charge.