

AGENDA

Meeting: Licensing Committee
Place: County Hall, Bythesea Road, Trowbridge
Committee Room: Committee Room III
Date: Tuesday 30 November 2010
Time: 10.30 am

Please direct any enquiries on this Agenda to Lisa Pullin, of Democratic and Members' Services, Monkton Park, Chippenham, direct line 01225 713015 or email lisa.pullin@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225)713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership:

Cllr Desna Allen
Cllr Richard Beattie
Cllr Peggy Dow
Cllr Rod Eaton
Cllr Jose Green
Cllr Mark Griffiths

Cllr Jon Hubbard
Cllr George Jeans
Cllr Bill Moss
Cllr Nina Phillips
Cllr Bill Roberts
Cllr Jonathon Seed

AGENDA

1. **Apologies**

2. **Minutes** (*Pages 1 - 6*)

To confirm the minutes of the last meeting held on 26 May 2010 (copy attached).

3. **Chairman's Announcements**

4. **Declarations of Interest**

To receive any declarations of personal or prejudicial interests or dispensations granted by the Standards Committee.

5. **Public Participation**

The Council welcomes contributions from members of the public.

If you would like to make a statement at this meeting on any item on this agenda, please register to do so at least 10 minutes prior to the meeting. Up to 3 speakers are permitted to speak for up to 3 minutes each on any agenda item. Please contact the officer named above for any further clarification.

Members of the public wishing to ask a question should give written notice (including details of any question) to the officer named above by 12:00 noon on Friday 26 November 2010.

6. **Minutes of the Licensing Sub-Committees** (*Pages 7 - 40*)

To receive and sign the minutes of the following Licensing Sub-Committees:

Northern Area

25.05.10
08.06.10
12.07.10
02.08.10

Southern Area

22.07.10

Western Area

18.06.10

04.10.10

7. **Improving Communications Between Town Centre Licensed Premises**

Sgt Allan George from Wiltshire Police will be giving a short presentation on the bid for radios for door staff in Chippenham.

8. **Review of Statement of the Licensing Act Policy** *(Pages 41 - 80)*

The report of John Carter (Head of Environmental Protection and Licensing) forms the review of Wiltshire Council's Statement of Licensing Policy and details the changes which have occurred in licensing issues since December 2009, and advises members on the way forward.

9. **Review of Existing Street Trading Controls** *(Pages 81 - 90)*

The report of Alissa Davies reviews the current mechanisms for controlling street trading activity across the Wiltshire Council area, and outlines options for a harmonised scheme.

10. **Guidance on Fit and Proper Persons** *(Pages 91 - 114)*

The report of Kate Golledge (Licensing Manager) informs Members of the need for a robust policy regarding consideration of criminal records for new and existing Hackney Carriage drivers, Private Hire drivers and Operators.

11. **Feedback of the Training Event held on 24 September 2010**

The Committee to give feedback on the licensing training that was held in September and to have a discussion on Philip Kolvin's views on Licensing Officers' making recommendations to Licensing Sub-Committees.

12. **Date of Next Meeting**

It is proposed to hold the next meeting of the Licensing Committee on 26 or 27 April 2011.

13. **Urgent Items**

Any other items of business, which in the opinion of the Chairman, should be taken as a matter of urgency. Urgent items of a confidential nature may be considered under Part II of this agenda.

LICENSING COMMITTEE

DRAFT MINUTES OF THE LICENSING COMMITTEE MEETING HELD ON 26 MAY 2010 AT COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE.

Present:

Cllr Richard Beattie, Cllr Trevor Carbin (Reserve), Cllr Peggy Dow, Cllr Rod Eaton, Cllr Jose Green, Cllr Mark Griffiths, Cllr George Jeans, Cllr Nina Phillips, Cllr Bill Roberts and Cllr Jonathon Seed

Also Present:

Mandy Bradley (Director of Public Protection), John Carter (Head of Environmental Protection and Licensing), Sam Colley (Licensing Team Manager East and South), Kate Golledge (Licensing Team Manager North and West), Roger Hodgkinson (Senior Solicitor) and Lisa Pullin (Democratic Services Officer)

1. **Apologies**

Apologies were received from Councillors Allen, Hubbard and Moss. Councillor Carbin was substituting for Councillor Hubbard.

2. **Minutes**

The minutes of the meeting held on 15 December 2009 were presented.

Resolved:

To approve as a correct record and sign the minutes of the meeting held on 15 December 2009 subject to the following amendment:-

The deletion of the final two bullet points under P44 on page 10 of the Minutes, namely

- **Long trousers and covered in shoes**
- **Waterproof clothing, which should be provided if required.**

3. **Chairman's Announcements**

In view of the fact that there were Members of the Public present at the meeting who were interested in Agenda Item 8 (Harmonisation of Hackney Carriage and

Private Hire Licensing) the Chairman proposed that this item be considered before Agenda Item 7. This was agreed by the Committee.

4. **Declarations of Interest**

Councillor Dow declared a prejudicial interest in Agenda Item 8 (Harmonisation of Hackney Carriage and Private Hire Licensing) as her husband is by occupation a Taxi Driver. She left the meeting for the consideration of the item.

5. **Public Participation**

Mr T Berridge was present at the meeting and indicated that he wished to make a statement in relation to Agenda Item 8 (Harmonisation of Hackney Carriage and Private Hire Licensing). The Chairman informed him that she would allow him to speak on this item when it was being considered by the Committee.

6. **Minutes of the Licensing Sub-Committees**

The Committee received the Minutes of the following Licensing Sub-Committees:

Northern Area

08.12.09

12.05.10

Eastern Area

03.12.09

Western Area

15.12.09

Resolved:

That the minutes be noted and received.

7. **Sexual Entertainment Venues**

The Licensing Team Manager (North and West) outlined her report and advised the Committee that the Policing and Crime Act 2009 had introduced provisions to reclassify lap dancing, pole dancing clubs etc. as Sex Establishments under schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. This came into force on April 6th 2010 and the Committee was asked to adopt the new provisions and make recommendations to full Council for approval.

Currently there was only one existing establishment in Salisbury which would be affected by the new legislation, but they would be able to continue to operate for 12 months before a new Sex Establishment Licence would be needed.

It was confirmed that the amended Licensing of Sex Establishments Policy would be put before Council for approval.

Resolved:

That the Licensing Committee recommend to Council:

To adopt the amendment to the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 by Section 27 of the Policing and Crime Act 2009. This introduces a Licensing regime for “sexual entertainment venues” such as lap dancing.

8. Harmonisation of Hackney Carriage and Private Hire Licensing

The Licensing Team Manager (South and East) introduced the report and advised the Committee that they were being asked to consider the future provision of a harmonised hackney carriage and private hire licensing service.

The four former District Councils which now form Wiltshire Council currently operate four separate and different licensing regimes for the purposes of issuing the relevant licences.

All current licence holders in the taxi and private hire licensing trade in Wiltshire were sent a questionnaire and a set of the new proposed conditions. The consultation also included a cross section of 600 members of the public and a number of bodies representing disabled users. All licence holders were also invited to a trade meeting held at one of the four hub offices.

The Senior Solicitor outlined the legal advice to the Committee which was contained in Appendix 1 in relation to the attaching of conditions to a hackney carriage driver's licence.

The Licensing Team Manager (South and East) explained the results of the consultation to the Committee and they asked questions about the results.

Mr T Berridge (Member of the Public) was present at the meeting and made a statement to the Committee that he was a taxi provider in the Warminster area and it was his view that there was not a requirement from his customers for 1 in 5 taxis to be wheelchair accessible. He had a fleet of 40 cars and at present 1 in 8 of his vehicles was wheelchair accessible but he reported that this facility was not often required.

Members were advised that they could change the number of wheelchair accessible vehicles if they were unhappy with the proposed 1 in 5 vehicles. Members felt that they would be happier with a figure of 1 in 10 wheelchair accessible vehicles.

The Licensing Team Manager (South and East) advised that there was strong support from the trade to retain the four separate zones under which the drivers can trade. If one zone across Wiltshire was to be adopted there would potentially be limited rank space as drivers would be free to trade from any area in the County and they would probably flock to busy areas at busy times leaving other parts of the County with no hackney carriage provision.

It was proposed to retain four different tariffs (one for each zone) and the Licensing Officer (North and West) reported that currently the tariffs in the North and West areas were somewhat lower than the South and East and consultation would be carried out with a view to increasing these tariffs.

Resolved:

1. Enforcement Arrangements

The penalty points scheme for Hackney Carriage Driver's Licenses be extended to all drivers in the Wiltshire Council area from the date of implementation.

2. Conditions

Vehicles should be no older than five years old when first licensed as a hackney carriage or private hire vehicle from the date of implementation.

3. Conditions

In relation to wheelchair accessible vehicles:

- a) To introduce and extend the scheme for there to be 1 in 10 wheelchair accessible vehicles in the North, West and East hubs from the date of implementation.**
- b) To phase out the existing grandfather rights which prevail in the South hub with regard to the pre1989 saloon plated vehicles and phase in the scheme (1 in 10 wheelchair accessible vehicles) over a three year period starting from the date of implementation.**
- c) This will be achieved in accordance with the Council's proposed age restriction policy. Authority for the detail of the phasing in process is delegated to Officers in consultation with the Chair of the Licensing Committee and Portfolio Holder.**

4. Enforcement Arrangements

All licensed vehicles are subject to a six monthly MOT or a compliance check and a conditions check to be carried out by a Wiltshire Council Licensing Officer from the date of implementation.

5. Administrative Arrangements

To retain four zones in the Wiltshire Council area.

6. Administrative Arrangements

To retain the four different existing tariffs (fares) within the harmonised conditions, enforcement and administrative arrangements.

7. Administrative Arrangements

That the changes detailed above shall be implemented from 1 October 2010.

9. Urgent Items

No urgent items were considered.

(Duration of meeting: 10.30am to 12.30pm)

The Officer who has produced these minutes is Lisa Pullin, of Democratic & Members' Services, direct line 01225 713015, e-mail lisa.pullin@wiltshire.gov.uk

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NORTHERN AREA LICENSING SUB-COMMITTEE

DRAFT MINUTES OF THE NORTHERN AREA LICENSING SUB-COMMITTEE MEETING HELD ON 25 MAY 2010 AT ROOMS C AND D, MONKTON PARK, CHIPPENHAM.

Present:

Cllr Desna Allen, Cllr Trevor Carbin and Cllr J Hubbard

Also Present:

Kate Pain, Police Inspector
Jacqui Gallimore, Licensing Officer – Wiltshire Police
David Bennett, Licensing Manager – Wiltshire Police
Fazal Faiz, Applicant
Kate Golledge, Licensing Officer
Roger Hodkinson, Solicitor
Lisa Pullin, Democratic Services Officer
Liam Paul, Democratic Services Officer

6. Election of Chairman

Nominations for a Chairman of the Sub-Committee were sought. Cllr Desna Allen was elected Chair, on the proposal on Cllr Hubbard, seconded by Cllr Trevor Carbin.

7. Procedure for the Meeting

The Chairman outlined the procedure for the meeting, and all those present introduced themselves.

8. Chairman's Announcements

There were no announcements.

9. Members' Interests

There were no declarations of interest.

The meeting adjourned at 10:15, in order for the Solicitor/Legal Adviser to the Sub-Committee to arrive and undertake a briefing with the Sub-Committee members.

10. Exclusion of the Press and Public

The Sub-Committee reconvened at 11:10, to make their decision on whether or not to hear Item No. 5 [Item No. 11 in Agenda], in closed session.

The Sub-Committee explained that they had made the decision to hear the meeting in closed session; having consulted the solicitor for legal advice, and taken into account the advantages and disadvantages of doing so.

Resolved:

That in accordance with Section 100A (4) of the Local Government Act 1972 the public be excluded from the meeting for the business specified in the following item, because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 1 of Part I of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

11. **Licensing Application**

At 11:45 the Sub-Committee withdrew to consider their decision. The meeting reconvened at 12:20, to give their decision in respect of the Temporary Events Notice (TEN) for: Chic-o-land, 9 New Road, Chippenham.

Resolved:

That the Northern Area Licensing Sub-Committee have considered the application and have resolved to issue a counter notice to the Temporary Event Notice. In effect this means that the Committee has refused the application.

Reasons:

The Sub-Committee have considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 105); the guidance issued under Section 182 of the Act, in particular part 7, paragraph 7.23, and the licensing policy of Wiltshire Council.

The Sub-Committee have reached their decision after consideration of the written evidence presented together with the oral evidence given by the parties to the hearing.

The Applicant has the right to appeal to the Magistrates Court within 48 hours of this decision.

(Duration of meeting: 10.00 am - 12.30 pm)

The Officer who has produced these minutes is Liam Paul, of Democratic Services, direct line 01225 718 376, e-mail liam.paul@wiltshire.gov.uk

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NORTHERN AREA LICENSING SUB-COMMITTEE

DRAFT MINUTES OF THE NORTHERN AREA LICENSING SUB-COMMITTEE MEETING HELD ON 8 JUNE 2010 AT MONKTON PARK, CHIPPENHAM.

Present:

Cllr Desna Allen, Cllr Rod Eaton and Cllr Bill Moss

Also Present:

Mr R Hodgkinson – Solicitor, Wiltshire Council
Mrs L Holland – Licensing Enforcement Officer, Wiltshire Council
Ms Anna Thurman – Democratic Services Officer, Wiltshire Council
Ms Pam Denton – Senior Democratic Officer, Wiltshire Council
Mr Freeman - Applicant

12. **Election of Chairman**

Nominations for a Chairman for the Licensing Sub Committee were sought and it was

Resolved:

To elect Councillor Bill Moss as Chairman for this meeting only.

13. **Procedure for the Meeting**

The Chairman explained the procedure to be followed at the hearing, as contained within the 'Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications' (pages 1-6 of the agenda refer). All those present at the meeting introduced themselves.

14. **Chairman's Announcements**

There were none.

15. **Members' Interests**

There were no declarations of interest.

16. **Licensing Application**

Application by Mr and Mrs Freeman, to Vary the Premises License for Prince of Wales, Coped Hall, Wootton Bassett.

The Licensing Officer introduced her report to the Committee.

In accordance with the procedure detailed in the agenda the applicant was given the opportunity to address the Sub Committee.

The Sub Committee members had the opportunity to question the applicant.

The Sub Committee retired to consider the application accompanied by the Solicitor for Wiltshire Council and the Democratic Services Officer.

Following the deliberations of the Sub Committee members the Solicitor for the Council made a statement of the material legal advice given in closed session as follows:

1. The Sub Committee is required to consider the evidence before them and decide if, on that basis, there is a real possibility of any of the Licensing Objectives being undermined.
2. That a license may be limited in time but limits must support licensing objectives.
3. Conditions must be achievable i.e. within the extent of the licensee and enforceable.

The Sub-Committee considered all of the submissions made to it and the written representations together with the Licensing Act 2003, statutory Guidance and Regulations and the Licensing Policy of the Council.

Resolved:

That the application by Mr and Mrs Freeman for the variation of the premises licence under the Licensing Act 2003 in respect of Prince of Wales, Coped Hall, Wootton Bassett, be granted subject to the following conditions:

1. That when music or entertainment is taking place in the 'trade area' the double doors opening onto the outside drinking area should remain closed after 11.00pm
2. The mandatory conditions contained in the Licensing Act 2003
3. Additional conditions, consistent with the Applicant's Operating Schedule as follows:

Reasons

The Sub Committee has considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 18); the guidance issued under Section 182 of the Act and the licensing policy of Wiltshire Council.

None of the objectors attended the hearing to give oral evidence but the Committee considered carefully the written objections attached to the agenda.

The Committee heard from Mr Freeman, the applicant, who stated that he had recently taken over the premises in February this year and wished to enjoy the flexibility when entertainment was being provided. When questioned, Mr Freeman stated that he had not received any complaints about noise which could be identified as coming from his premises. Further, he estimated that approximately 75% of his customers came from the surrounding housing estate. Mr Freeman said that he had been trying to move his customer base towards the age group of 35 years plus and felt he had been successful in this. Mr Freeman stated that full CCTV had been installed and that he would provide a telephone number for residents to contact him should they have concerns about noise or other disturbance.

The Committee found that Mr Freeman gave his evidence clearly and openly and the Committee accepted what he said.

In contrast the Committee found that the objections contained largely speculative concerns about possible problems. However the Committee, saw nor heard any evidence to suggest that there was a real possibility of these concerns being borne out. The Committee therefore felt that this application was not likely to undermine any of the licensing objectives, save in the one respect of the 'trade area'. The Committee felt that as this opened on to the outside drinking area/car park and there were newly built properties a short distance away, that there was the possibility of noise nuisance occurring when entertainment was being offered and this was the reason for the condition referred to above.

Finally the Committee noted Mr Freemans offer that he would make a telephone number available should residents have issues with noise or other problems. Without imposing any binding legal obligation the Committee strongly recommends that this is done.

All parties are reminded that they are entitled to request a review of the license at any time if the Licensing Objectives are compromised.

All parties have the right to appeal to the Magistrates Court within 21 days of this decision. A Responsible Authority or interested party has the right to request the Local Authority to review the licence. Such an application may be made at any time, but it is in the discretion of the Local Authority to hold the

review, and a review will not normally be held within the first twelve months of a licence, save for the most compelling reasons.

The Officer who has produced these minutes is Anna Thurman, of Democratic Services, direct line 01225 718379, e-mail anna.thurman@wiltshire.gov.uk

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NORTHERN AREA LICENSING SUB-COMMITTEE

**DRAFT MINUTES OF THE NORTHERN AREA LICENSING SUB-COMMITTEE
MEETING HELD ON 12 JULY 2010 AT COUNCIL CHAMBER, COUNCIL
OFFICERS, MONKTON PARK, CHIPPENHAM SN15 1ER.**

Present:

Cllr Mark Griffiths, Cllr Trevor Carbin and Cllr Peggy Dow

17. Election of Chairman

Nominations for a Chairman for the Licensing Sub Committee were sought and it was

Resolved:

To elect Councillor Trevor Carbin as Chairman for this meeting only.

18. Procedure for the Meeting

The Chairman explained the procedure to be followed at the hearing, as contained within the 'Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications' (pages 1-6 of the agenda refer). All those present at the meeting introduced themselves.

19. Chairman's Announcements

There were none.

20. Members' Interests

There were no declarations of interest from Members.

21. Licensing Application

Application by Mrs B Pollard for a Premises License for Abbey House and Gardens, Market Cross, Malmesbury.

The Licensing Officer introduced her report to the Committee.

In accordance with the procedure detailed in the agenda the applicant and the objectors were given the opportunity to address the Sub Committee.

Key points raised by Mrs Pollard (applicant) were,

- Abbey Gardens is a private house and gardens which draws 60,000 visitors to the area who often stay in local accommodation, in the 7 month season. The Gardens employ 30 full and part time staff and sources its' supplies locally benefiting the local economy.
- Abbey Garden functions have never received any complaints regarding noise or nuisance behaviour.
- In order to sustain core and further develop the wedding aspect of the business it is necessary to apply for a licence rather than depend on the Temporary Event Notices, which only allows the maximum of 12 events a year. Also couples, due to the economic climate require a cash bar, which in turn provides greater control over alcohol consumption.

Key points made by objectors (Mr Lindrea, Mr and Mrs Lewis and Mrs Foster were,

- Closing times after a wedding reception.
- Location of music and where dancing etc would take place.
- Post party revellers.
- General noise nuisance.

The Sub Committee members sought clarification over some points before retiring to consider the application accompanied by the Solicitor for Wiltshire Council and the Democratic Services Officer.

Following the deliberations of the Sub Committee members the Solicitor for the Council made a statement of the material legal advice given in closed session as follows:

1. The Sub Committee is required to consider the evidence before them and decide if, on that basis, there is a real possibility of any of the Licensing Objectives being undermined.
2. That a license may be limited in time but limits must support licensing objectives.
3. Conditions must be achievable i.e. within the extent of the licensee and enforceable.

The Sub-Committee considered all of the submissions made to it and the written representations together with the Licensing Act 2003, statutory Guidance and Regulations and the Licensing Policy of the Council.

Decision

The Sub Committee (the Committee) has considered all of the submissions made to it today and the written representations together with the Licensing Act 2003, statutory Guidance and Regulations and the Licensing Policy of the Council and has

Resolved:

That the application by Mrs Pollard for the application of the premises licence under the Licensing Act 2003 in respect of Abbey House and Gardens, Market Cross, Malmesbury be granted subject to the following conditions:

1. The mandatory conditions contained in the Licensing Act 2003
2. Additional conditions, consistent with the Applicant's Operating Schedule
3. The further following conditions are attached by the Committee to the licence:
 - Live music (whether acoustic, amplified) and recorded music to cease at 2300hrs save for Friday and Saturday when live music may continue from 2300hrs to midnight indoors only.
 - Doors and windows to remain closed when live music is performed in doors after 2300hrs.
 - The sale or supply of alcohol to cease at 2300hrs but may continue in doors only until midnight on a Friday and Saturday.
 - The venue to close to the public, hirers and guests at midnight save for Friday and Saturday when the premises must close at 0100hrs.

Reasons:

The Sub Committee has considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 18); the guidance issued under Section 182 of the Act and the licensing policy of Wiltshire Council.

The evidence the Committee considered comprised the application, 6 letters of support from the local businesses and organisations and 11 letters of objections from local residents. In addition the Committee heard oral evidence from Mrs Pollard and Mr Hately (in support) and Mr Lindrea, Mr Lewis, Mrs Lewis and Mrs Foster (objecting).

Mrs Pollard emphasised the commercial benefit of her business operation to the general community of Malmesbury. Mrs Pollard however believed that if her business was to thrive and grow she needed the flexibility to conduct licensable activity as outlined in the application. The Committee recognise and acknowledge the importance businesses in maintaining a vibrant and resilient community. The evidence of Mr Hatley strongly supported the application and he in particular praised the applicant's integrity.

The representations opposing the application showed concern about the potential for noise nuisance from the licensable activities in particular Mr Lindrea referred to paragraph 3.18 of The Wiltshire Council Statement of Licensing Policy, in particular the statement to the effect that 'residents should not be prevented from sleeping between 2300hrs and 0700hrs other than on a very infrequent basis'.

Whilst on the one hand the applicant stated that music in the garden was usually acoustic and that events had only very rarely carried on after 2300hrs, Mr Lindrea and Mr and Mrs Lewis did complain of noise nuisance and from disturbance from the noise of guests. The Committee takes into account that this is a small Market Town. In particular the premises themselves include 5 acres of gardens which are bordered on two sides by residential properties. Given this expanse of open land the Committee recognise the tendency for noise to travel in such circumstances. The Committee therefore felt that there was a real possibility of noise nuisance from Licensable activity on the premises and in particular those conducted outside in the gardens. It is for this reason that the Committee has imposed the conditions and limitations stated above.

(Duration of meeting: 10.00 am - 1.15 pm)

The Officer who has produced these minutes is Anna Thurman, of Democratic Services, direct line 01225 713 597, e-mail

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NORTHERN AREA LICENSING SUB-COMMITTEE

DRAFT MINUTES OF THE NORTHERN AREA LICENSING SUB-COMMITTEE MEETING HELD ON 2 AUGUST 2010 AT COUNCIL CHAMBER, COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM SN15 1ER.

Present:

Cllr Desna Allen, Cllr Allison Bucknell, Cllr Trevor Carbin and Thurman (Secretary)

22. **Election of Chairman**

Nominations for a Chairman for the Licensing Sub Committee were sought and it was

Resolved:

To elect Councillor Desna Allen as Chairman for this meeting only.

23. **Procedure for the Meeting**

The Chairman explained the procedure to be followed at the hearing, as contained within the 'Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications' (pages 1-7 of the agenda refer). All those present at the meeting introduced themselves.

24. **Chairman's Announcements**

There were none.

25. **Members' Interests**

Councillor Caswill, Member for Chippenham, Monkton, declared a personal interest as a family member occasionally works as a Doorman at another Chippenham establishment.

26. **Application for Review of a Premises Licence; Karma 17a Station Hill, Chippenham Wiltshire**

Application for the Review of a Premises Licence; Karma 17a Station Hill, Chippenham, Wiltshire.

The Licensing Officer introduced her report to the Committee.

The application for the Review was presented by Mr R Light. At the start of the hearing Mr Holley, representing the Premises Licence holder, agreed to accept the police incident reports as presented at items 1 - 100 in the Appendices to the police evidence. As well as referring to the written submissions, Mr Light called evidence from witnesses.

The key points of the oral evidence presented by the Police were:-

- Concerns were raised regarding the promotion, of what was considered to be irresponsible drinks promotions, selling alcohol very cheaply, in particular the sale of shots of spirits for 50p and promotion of 'Black Rat' cider.
- Within the Facebook, social networking site pages, the Club appeared to encourage excessive drink and, in relation to some of the entries, possible violence and homophobic behaviour.
- The entries on the Club's Facebook page also indicated that there had been underage drinking in the club, detailing that IDs were not being checked.
- In February 2010 confusion had arisen over the use of the Club for under 18's events, resulting in a formal warning.
- Whilst there had been regular discussions with the Club about improving the levels of disorder, there were still a number of issues that needed to be resolved. Levels of crime and disorder linked to the premises had initially dropped but had recently increased again.
- There were concerns that the maximum capacity of the club may have been exceeded on occasions and that the systems for monitoring the number of people in the Club did not seem to be robust.
- Concerns were raised that door staff were not sufficiently identifiable to members of the public, especially those who worked at the entrance to the club.
- Whilst representatives of Karma had attended meetings of Pubwatch, they had not been put forward sufficient numbers of persons to be banned, given the number of incidents that had occurred at the Club. Only 4 of the current banned list of 15 had originated from Karma.
- There was no visible leadership by the Designated Premises Supervisor. The majority of staff there did not appear to know what his role was. This was compounded by a general inconsistency in management.

- It was strongly felt that there was a need for a long-term sustained improvement in behaviour and a change of culture surrounding the club.

Cllr Caswill, as local member for the area drew the panels attention the Premises Licence, Annex A, Prevention of Public Nuisance (page 21 of the Agenda refers). Cllr Caswill detailed the numerous complaints he had received about the consistent volume of the noise and the 'thumping' from local residents. These issues had also been reiterated in the representations from other Interested Parties. He stressed that the Club should do more to reduce the problems caused by excessive noise, and that temporary closure would please the local people.

Mr Holley, on behalf of Karma, called evidence from management and employees of the Club and made the following points:

- The Club employs between 30 and 35 full and part time members of staff.
- He accepted that the incidents in the submissions from the Police had occurred. However, he said that the Club could not always prevent violent incidents from occurring.
- Every time the Club had been asked to make changes from their discussions and regular meetings with the police they had sought to do it.
- There were other licensed premises in the town that had drinks promotions and Karma needed to compete with them.
- They did have arrangements for dealing with people considered to be intoxicated.
- They had a procedure for checking numbers of people going into and leaving the Club. Assurance was given that although the number had been exceeded through the course of a whole evening, the club had never exceeded the maximum number allowed at one time.
- The Club had appointed a consultant to audit the procedures at the Club and to develop and implement new policies and training, which were now in place and operating.
- Very few of the reported incidents took place before 0300hrs, so reducing the Club's hours would not assist. In fact, the situation may be made worse, as there would be people leaving several premises at the same time.

In their deliberations, the Sub-committee considered each of the proposed conditions that had been submitted by Wiltshire Police as part of their review with a view to deciding whether those conditions were necessary to meet the licensing objectives and also whether any other conditions should be applied, in view of the representations that had been made and the evidence presented. With regard to the proposed conditions put forward by the police, the Sub-committee came to the following views on each of them,

- **The current provider of security at Karma to be replaced.** Whilst there had been weaknesses with the current security staffing arrangements, the Sub-committee felt that progress was being made towards improving these and did not consider that these weaknesses necessitated the replacement of the current security provider.
- **Door Supervisors are to remain on duty outside the venue for not less than 30 minutes after the last customer has left the venue, to provide a visible presence and deter anti social behaviour.** This was felt to be a useful additional condition to help prevent any acts of violence in the vicinity of the Club and to encourage patrons to leave the area, thereby reducing the levels of nuisance to neighbouring residents and businesses.
- **The premises licence is to be reduced to 0200hrs on a Thursday evening into the Friday morning for the sale of alcohol and the provision of entertainment and the premises are to be closed to the public at 0245hrs.** The Sub-committee did not consider that a reduction in opening hours was necessary. Whilst the current hours did cause difficulties for the police, given their current shift arrangements, there was insufficient evidence that a reduction in hours would lead to a reduction in the levels of crime and disorder and that these problems were better addressed by improved management arrangements.
- **The premises licence is to be reduced to 0230hrs on a Friday evening into the Saturday morning for the sale of alcohol and the provision of entertainment and the premises are to be closed to the public at 0315hrs.** The Sub-committee did not consider that a reduction in opening hours was necessary. Whilst the current hours did cause difficulties for the police, given their current shift arrangements, there was insufficient evidence that a reduction in hours would lead to a reduction in the levels of crime and disorder and that these problems were better addressed by improved management arrangements.
- **The premises licence is to be reduced to 0230hrs on a Saturday evening into the Sunday morning for the sale of alcohol and the provision of entertainment and the premises are to be closed to the**

public at 0345hrs. The Sub-committee did not consider that a reduction in opening hours was necessary. Whilst the current hours did cause difficulties for the police, given their current shift arrangements, there was insufficient evidence that a reduction in hours would lead to a reduction in the levels of crime and disorder and that these problems were better addressed by improved management arrangements.

- **The designated premises supervisor is to be present at the venue during all key trading times.** The Sub-committee felt that it was important that a personal licence holder was present at the venue during all key trading times. It had been accepted by the parties that it was not reasonable for the DPS to be on site at all time, but that there should be an identified responsible person. The proposed condition would be amended accordingly.
- **The designated premises supervisor is to undertake further training, the course to be approved by Wiltshire Police.** This was considered to be beneficial and to contribute to the good management of the Club and the promotion of the licensing objectives.
- **Venue Management to provide a management structure outlining roles and responsibilities.** The Sub-committee felt that the key to addressing the problems at the Club and to promoting all of the licensing objectives was to get improved management practices and procedures that were understood and implemented by all staff. In addition to the management structure information requested by the police, the Sub-committee felt that there should be a detailed Management Plan which also included, risk assessments, policies and procedures to enable the Premises Licence holder to comply with the four licensing objectives.
- **All bar staff to be trained in the responsible sale of alcohol.** This was agreed to be appropriate for the same reasons as detailed above.
- **No person under the age of 18 years old to be permitted including members of staff.** It had been accepted by the police that it was not necessary to bar all under 18s and that properly managed events for under 18s should not be prevented. Again, the Sub-committee felt that there should be clear procedures for the operation of such events for the protection of children.
- **Polycarbonate glasses are to be used at all times throughout the venue. The venue is to operate a bottle decanting policy.** This was felt to be appropriate as it would reduce the likelihood of harm, in the event of incidents at the club, thereby promoting public safety.
- **The CCTV is to be reviewed and if necessary upgraded to the standards required by Wiltshire Police Crime Reduction Officer.** This was also felt to be appropriate for the promotion of the licensing

objectives and it would help detect and deter acts of crime and disorder and public nuisance.

- **The venue will be active members of Pubwatch.** The Sub-committee felt that, whilst active participation in Pubwatch was to be encouraged, it was not appropriate to impose this as a condition.
- **The venue is to close to the public for a period of three months to enable training, and to reposition the venue within the market place.** The Sub-committee felt that the required improvements to the club were best addressed through management training and the development of proper policies. It was not felt necessary for there to be a period of closure to enable these changes to be implemented.

In addition to the above, the Sub-committee took account of the concerns about noise that had been raised by Interested Parties. They noted that the current conditions required noise observations to be carried out in the vicinity of the premises. They felt that this needed strengthening by a record of this monitoring to be maintained.

The Sub-committee also noted that the Club had stated during the hearing that they either had produced or were developing policies and procedures to address the concerns that had been raised by the Police. The Sub-committee therefore felt that the amended conditions should all be fully implemented within two months.

DECISION NOTICE

Northern Area Licensing Sub-committee

Meeting held Monday 2 August 2010, in Respect of Review of a Premises Licence: Karma, 17a Station Hill, Chippenham, Wiltshire

The Northern Area Licensing Sub-committee has determined to amend the premises license for Karma by the addition of the following conditions;

1. All security staff to wear clothing that clearly identifies them at all times (including outerwear).
2. Door supervisors are to remain on duty outside the venue for not less than 30 minutes after the last customer has left the venue, to provide a visible presence and deter anti social and/or criminal behaviour.

3. The Designated Premises Supervisor or another identified responsible person who holds a valid Personal Licence is to be present at the venue during all key trading times.
4. The Designated Premises Supervisor is to undertake or to have undertaken training as approved by Wiltshire Police within 2 months.
5. The Premises Licence holder to develop, maintain and implement a detailed Management Plan which must include the chain of command and responsibilities, risk assessments, policies, procedures to enable the Premises Licence holder to comply with the four licensing objectives. Such plan to be available for inspection upon request by the Police and Licensing Authority and to be accessible to staff. To be fully implemented by 31st October 2010.
6. All bar staff to be trained in the responsible sale of alcohol by a recognised training provider within 2 months.
7. All staff (to include Management) to undertake induction/fresher training to include roles and responsibilities and the current Licensing Objectives within 2 months.
8. Clear procedures to be in place for the operation of private parties and under 18 events.
9. An accurate and up to date incident log to be maintained at all times.
10. By 30th September 2010 only Polycarbonate glasses are to be in use at **all** times throughout the venue, the venue is to operate a bottle decanting policy, no glass bottles are to be present in the public areas.
11. The CCTV is to be reviewed and if necessary upgraded to standards required by Wiltshire Police Crime Reduction Officer.
12. For a period of 6 months, from this date, a record is to be kept of noise monitoring activity to include date, time and location.

Informative

- 1 The venue is encouraged to continue to be active members of Pubwatch or any successor organisation that is responsible or the promotion of the Licensing Objectives.

In reaching their decision the Sub-committee took into account the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 52); the

guidance issued under Section 182 of the Act and the Wiltshire Council Statement of Licensing Policy.

(Duration of meeting: 10.00 am - 5.30 pm)

The Officer who has produced these minutes is Anna Thurman, of Democratic Services, direct line 01225 713 597, e-mail

Press enquiries to Communications, direct line (01225) 713114/713115

SOUTHERN AREA LICENSING SUB-COMMITTEE

DRAFT MINUTES OF THE SOUTHERN AREA LICENSING SUB-COMMITTEE MEETING HELD ON 22 JULY 2010 AT SALISBURY CITY HALL, MALTHOUSE LANE, SALISBURY, SP2 7TU.

Present:

Cllr Richard Beattie, Cllr Pip Ridout and Cllr Trevor Carbin

Also Present:

Pam Denton, Senior Democratic Services Officer
Liam Paul, Democratic Services Officer

Debbie Mulvey, Licensing Officer
Sam Colley, Licensing Manager
Roger Hodgkinson, Solicitor and Legal Advisor to the Committee

Mrs C Burnett, the Applicant
Mr W.J.Weekes, Chairman of the Stratford Social Club

1. **Election of Chairman**

Nominations for a Chairman of the Sub-Committee were sought and it was:

Resolved:

To elect Cllr Richard Beattie as Chairman, for this meeting only.

2. **Procedure for the Meeting**

The Chairman outlined the procedure for the meeting, and all those present introduced themselves.

3. **Chairman's Announcements**

There were no announcements.

4. **Members' Interests**

There were no declarations of interest.

5. **Licensing Application**

Application for a Club Premises Certificate for Stratford Social Club, Salisbury

The Chairman began by inviting the Licensing Officer to outline her report and state the details of the application.

The Licensing officer introduced her report. A correction was needed as on New Year's Eve, live music was only required from 19:00 – 0030, rather than 01:30 as previously stated.

Mrs Burnett, the applicant and also Mr W.J.Weekes, speaking on behalf of the social club were then given the opportunity to summarise their views.

The Sub-Committee then retired to consider the application at 10:20.

During their deliberation the Sub-Committee members were accompanied by the Solicitor for Wiltshire Council and the Democratic Services Officer. Following the deliberations of the Sub-Committee the Solicitor for the Council made a statement of the material legal advice given in closed session

Meeting reconvened at 11:02

Following the deliberations of the Sub-Committee the Solicitor for the Council made a statement of the material legal advice given in closed session, as follows:

The Sub-Committee must decide if there is a real possibility that one or more of the licensing objectives will be undermined, based on the evidence presented to it. If they feel on the evidence supplied before the Sub-committee that there is no reason to believe that any of the licensing objectives would be undermined by the granting of the application, they should accept the application as it stands without additional conditions.

The Sub-committee **RESOLVED**:

To grant the licence, as applied for, save for the addition of the mandatory conditions and conditions that are consistent with the operating schedule.

Reasons:

The Sub-committee considered the application and the statements made in support by Mrs Burnett and Mr Weekes, together with the letter of objection from the Camping and Caravan Club

The Sub-committee is obliged by section 18 of the act to consider the objection and the likely effect of this application on one or more of the licensing objectives as set out in section 4) of the Licensing Act 2003.

The letter of objection is essentially an objection based on the potential problem of noise nuisance. Specifically the letter refers to “the noise disturbance which will be caused to our campers”. Nobody from the Caravan Club attended to give oral evidence, and the letter itself contains no supporting evidence for the assertion that disturbance will be caused.

The Sub-committee is required to assess whether or not the application presents a real possibility of one or more of the licensing objectives being undermined. In the absence of any supporting evidence the Sub-committee does not consider itself entitled to speculate on the possibility of future problems.

Indeed in this instance the Sub-committee takes account of the guidance issued under section (182) of the act, which discourages a Sub-committee from considering in the licensing decision matters which fall under other legislation.

Representatives of the Social Club have indicated that they have turned their mind to potential problems by stating in their oral evidence that the new property will include secondary glazing and curtains/blinds, that the applicant has stated will be drawn when an event is taking place.

In summary as the Sub-committee is not satisfied that there is any evidence that they can properly consider to suggest the granting of the application will undermine one or more of the licensing objectives, they therefore grant the application as it stands, save for the addition of the mandatory conditions and conditions that are consistent with the operating schedule.

Additionally the Sub-committee notes the fact that the hours of provision of live music on New Year’s Eve are 19:00 until 00:30, and not until 01:30 as originally stated.

The Chairman then thanked all the parties for attending and closed the meeting.

(Duration of meeting: 10.04 - 11.06 am)

The Officer who has produced these minutes is Liam Paul, of Democratic & Members’ Services, direct line 01225718376 , e-mail liam.paul@wiltshire.gov.uk

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WESTERN AREA LICENSING SUB-COMMITTEE

DRAFT MINUTES OF THE WESTERN AREA LICENSING SUB-COMMITTEE MEETING HELD ON 18 JUNE 2010 AT COMMITTEE ROOM III, COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE.

Present:

Cllr Desna Allen, Cllr Peggy Dow and Cllr Mark Griffiths

Also Present:

Mr R Hodkinson – Solicitor, Wiltshire Council
Mrs M Jones – Policy and Licensing Officer
Miss M Gondlach – Democratic Services Officer
Ms Pam Denton – Senior Democratic Services Officer

Mr Edney – Applicant
Mr J Gillbody – Applicant's witness
Mr John Carter – Interested Party
Prof Medland – Interested Party
Mr R Carroll – Interested Party
Ms D Pirrie – Observer
Ms J Cowley - Observer

1. **Election of Chairman**

Nominations for a chairman were sought and it was

Resolved:

To elect Councillor Desna Allen Chairman for this meeting only.

2. **Procedure for the Meeting**

The Chairman explained the procedure to be followed at the hearing, as contained within the "Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications" (pages 1 to 6 of the agenda refer).

3. **Chairman's Announcements**

There were no Chairman's Announcements.

4. **Members' Interests**

There were no Declaration of Interest.

5. **Licensing Application**

Application for a Premises License for the Bear, 26 Silver Street, Bradford on Avon, BA15 1JY.

The Licensing Officer introduced her report.

In accordance with the procedures detailed in the agenda the applicant, his witness, and the interested parties were given the opportunity to address the Sub-Committee and, through the Chairman, to question one another about the details of the application and representations. Sub-Committee members had the opportunity to question all parties.

The applicant and one representative for the interested parties were given the opportunity to summarise their views. The Sub-Committee then retired to consider application.

During their deliberation the Sub-Committee members were accompanied by the Solicitor for Wiltshire Council and the Democratic Services Officers.

Following the deliberations of the Sub-Committee the Solicitor for the Council made a statement of the material advice given in closed session as follows:

1. Paragraphs referred to in particular 2.3.2 / 2.3.8 and 2.3.9 section 1.8.2 of Licensing Act summary
2. Times in the week with particular sensibilities 2.3.6
3. Exemptions in respect of late night refreshments which does not need to be licensed between 11.00 pm and 5.00 am.

The Sub-Committee considered all of the submissions made to it and the written representations together with the Licensing Act 2003, statutory Guidance and Regulations and the Licensing Policy of the Council.

Resolved:

To grant the application for a Premises License for the Bear, 26 Silver Street, Bradford on Avon, BA15 1JY, as follows:

Sale of Alcohol

On Sales 10:00 to 01:00 Monday-Saturday

	10:00 to 23:30	Sunday
Off Sales	10:00 to 00:00 10:00 to 23:30	Monday-Saturday Sunday

Live Music

No amplified music indoors or outdoors after 23:30 daily.

Indoors	10:00 to 01:00 10:00 to 23:30	Monday-Saturday Sunday
Outdoors	10:00 to 23:30	daily

Recorded Music

Indoors	10:00 to 01:00 10:00 to 23:30	Monday-Saturday Sunday
Outdoors	10:00 to 23:30	daily

Performance of dance 10:00 to 01:00 daily

Indoor Sporting event 10:00 to 01:00 daily

Anything of Similar description 10:00 to 01:00 daily

Provision of facilities for Making music, dancing & Entertainment of a Similar description 10:00 to 01:00 daily

Late Night Refreshment 23:00 to 01:30 daily

Subject to the following conditions:

- the mandatory conditions contained in the Licensing Act 2003
- additional conditions previously agreed by the Applicant following consultation with a Wiltshire Council's Pollution Officer in respect of the public nuisance objective:
 1. Whilst live music is being played at the venue, a competent member of staff shall undertake noise observations in Silver Street. The following information shall be included in the noise log

- the name of the person undertaking the observations, the time the observation was made, the location of the observation, the details of the observation and the details of the corrective action undertaken to reduce the music levels.
- 2. The internal lobby doors shall remain closed during live music performances (save access and egress of patrons).
- 3. Posters shall be displayed in the premises to ask patrons to leave quietly respecting the neighbours

For the following reasons:

The Sub-Committee felt on this occasion that they were presented with the task of achieving a very difficult balance. Bradford on Avon is a small Market Town with a very large number of listed buildings creating its own particular character.

There were a large number of written representations objecting to this application, in addition to a petition carrying 39 signatures.

Quite clearly there was a very strong and sincere desire to preserve and protect the character of the town and the quality of the lives of the residents.

The Bear is a pub offering bed and breakfast upstairs. The premises had been closed for approximately two years but the Sub-Committee accepts that prior to its closure there was considerable nuisance from noise and anti-social behaviour from persons that the Committee considers most likely to have come from the Bear public house. However the Sub-Committee have to take into account that this is a new application from a new owner who would in any event be entitled to trade under the existing license which appears as agenda item 5c.

The applicant Mr Edney gave what the Sub-Committee considered to be credible evidence. He appeared anxious to promote a responsible business and good relations with neighbouring residents. In addition Mr Edney also owns and operates the Lamb in Frome. Mr Gilbody, a License Enforcement Officer from Mendip District Council, gave supporting evidence for Mr Edney's application. Mr Gilbody emphasised the very responsible approach Mr Edney takes to the operation of his existing premises and praised the success that Mr Edney has had in transforming the Lamb into an attractive and trouble free venue.

The Sub-Committee accepts the evidence of Mr Gilbody and consider the applicant to be a responsible licensee who has a detailed involvement with the premises he runs and is concerned to ensure that they do not create problems. In answer to questions Mr Edney confirmed that he had consulted with an Environmental Health Officer, which resulted in the applicant volunteering additional conditions as part of his application.

The Sub-Committee formally approves and accepts these conditions.

In summary the Sub-Committee were satisfied that Mr Edney was a responsible and concerned licensee who was committed to developing a business which would be an asset, as opposed to a problem, to the town.

However the Sub-Committee take note of the very strong feelings expressed by the objectors against this application. In the opinion of the Sub-Committee a large part of these objections has been heavily influenced by the admitted problems that the Bear had given rise before its closure and there was understandable anxiety that the same scenario should not be repeated.

The Sub-Committee found that many of the objections were largely speculative, born out of this anxiety. For example paragraph 1 of the petition states the application "if granted would cause an unremitted noise nuisance". The Sub-Committee neither heard nor read any evidence to support such a bleak outlook.

The Sub-Committee however accepts that Bradford on Avon has a special character and this is a factor which the Sub-Committee felt appropriate to take into consideration. Additionally, the Sub-Committee felt that there was a risk of customers from the other two public houses at either ends of Silver Street gravitating to the Bear after the former premises had closed. The Sub-Committee had particular concerns about these customers having access to off sales and therefore continuing to drink beyond the responsible control of the licensee and / or his staff. For this reason the Sub-Committee limited off sales as indicated above.

The second concern the Sub-Committee had was with regard to noise nuisance from the premises, the Sub-Committee accept and endorse the steps Mr Edney had said he would take to sound proof the premises but Silver Street is a narrow street with two other public houses and a large number of residential properties. The Sub-Committee felt that there was a real possibility of noise nuisance from amplified music and other activities carried outside and have therefore imposed the limitations referred to above.

Finally the Sub-Committee have taken into account that other premises in the area have alcohol sales limited to 23:30 on a Sunday. The Sub-Committee have imposed the same limitations in respect of the Bear because they felt that there was a real possibility of drinkers gravitating to the Bear on a night at the end of the week when residents might reasonably expect a lower level of noise and activity than throughout the rest of the week.

With regard to the late night refreshment license the Sub-Committee did not consider that this was likely to present a problem in itself, however the Sub-Committee notes that a late night refreshment license is not required for the service to residents of a hotel, hostel or bed and breakfast and their guests. The Sub-Committee therefore questioned whether a late night refreshment license is needed for what Mr Edney proposes. As Mr Edney stated that the premises would be closed to the public at 01:30 the Sub-Committee can see no grounds to extend the license beyond those hours.

All parties have the right to appeal to the Magistrates Court within 21 days.

An interested party or responsible authority may apply to the Licensing Authority for a review of a premises license, whether or not a review hearing takes place is in the discretion of the Licensing Authority but will not normally be granted within the first 12 months except for the most compelling circumstances.

(Duration of meeting: 10.30 am - 2.35 pm)

The Officer who has produced these minutes is Marie Gondlach, of Democratic & Members' Services, direct line 01225 713 597, e-mail marie.gondlach@wiltshire.gov.uk

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WESTERN AREA LICENSING SUB-COMMITTEE

DRAFT MINUTES OF THE WESTERN AREA LICENSING SUB-COMMITTEE MEETING HELD ON 4 OCTOBER 2010 AT COMMITTEE ROOM III - COUNTY HALL, TROWBRIDGE.

APPLICATION BY PUNCH TAVERNS PLC FOR A PREMISES LICENCE AT THE ROSE AND CROWN. 57 EAST STREET, WARMINSTER, WILTS

Present:

Cllr Desna Allen, Cllr Trevor Carbin (Chair) and Cllr Jonathon Seed

Also Present:

Cllr Andrew Davis, Kate Golledge (Licensing Manager North and West), Roger Hodgkinson (Solicitor), Maggie Jones (Policy and Licensing Officer), Chris Marsh (Democratic Services Officer) and Lisa Pullin (Democratic Services Officer)

6. **Election of Chairman**

Nominations for a Chairman for the Licensing Sub-Committee were sought and it was

Resolved

To elect Councillor Trevor Carbin as Chairman for this meeting only.

7. **Procedure for the Meeting**

The Chairman explained the procedure to be followed at the hearing, as contained within the 'Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications' (pages 1 – 6 of the agenda refer).

All those present at the meeting introduced themselves.

8. **Chairman's Announcements**

There were none.

9. **Members' Interests**

There were none.

10. **Licensing Application**

Application by Punch Taverns Plc for a Premises Licence at The Rose & Crown, 57 East Street, Warminster, BA12 9BZ

The Licensing Officer introduced the purpose and scope of the application, the premises to which it related and the key issues for consideration.

In accordance with the procedure detailed in the agenda the Applicant, the Responsible Authorities and the Interested Parties were given the opportunity to address the Sub-Committee.

Key points raised by Mr Wormald of Punch Taverns Plc on behalf of the Applicant were:

- That the Rose & Crown pub had previously received no complaints regarding noise or disturbance resultant from its activities and events;
- Events have recently been hosted under Temporary Events Notices, and that the premises had now used their quota of these;
- That the area subject to the application – the Function Room – had been used under licence until 2000, and has since been used to a minimal extent; and
- That the Applicants have agreed with the Environmental Health Officer's recommendations and would be willing to meet his suggested conditions to mitigate negative impacts if application approval were subject to these.

Key points raised by the Responsible Authority (Mr Sharp, Environmental Health Officer, Wiltshire Council) were:

- That he had tried to contact the Solicitors for the Applicant to raise his concerns, but had not been able to do so and so had submitted his representation to the application;
- On hearing that the Applicant's were willing to accept his suggested conditions (that there should be no live or recorded music provided externally at the premises and that all windows and doors shall remain closed save for access and egress during the provision of regulated entertainment) he was satisfied that the public nuisance licensing objective would be met; and

- That there had been no noise complaints to the Environmental Health Team in relation to these premises.

Key points raised by the Interested Parties (Mr Pulford, Mrs Abbott, Lady Newson-Smith and Councillor A Davis) were:

- That the pub was in a residential area and any amplified music that was played in the function room would be too loud for the residents;
- The noise created by the band practicing in the function room could be heard by residents;
- The noise from live music playing under the existing licence;
- There was no allocated parking for the pub and often side streets surrounding the area were used by patrons of the pub;
- The patrons leaving the pub are often noisy cause disturbance to the residents; and
- Residents are being affected by anti social behaviour.

The parties were given the opportunity to ask questions of the Applicant, Responsible Authority, Interested Parties and Wiltshire Council officers. A debate ensued in which the Sub-Committee discussed the current use of the premises, impact of noise nuisance on local residents, antisocial behaviour associated with the premises, public relations policy of the landlord and planned future use of the premises.

The Sub-Committee members sought clarification over some points before retiring to consider the application accompanied by the Solicitor for Wiltshire Council and the Democratic Services Officers.

Following the deliberations of the Sub-Committee Members, the Solicitor for the Council made a statement of the material legal advice given in closed session as follows:

1. Conditions must be achievable i.e. within the extent of the licensee, and enforceable.
2. Paragraphs 2.38 and 2.39 (Page 22) of Section 182 of the Licensing Act 2003 Summary.

Resolved:

That the Premises Licence application for the Rose & Crown, 57 East Street, Warminster, be granted as detailed below:

Recorded Music

Monday – Sunday 12.00 to 02.00 Indoors only

Live Music

Thursday and Friday 20.00 to 23.30 Indoors only

Saturday and Sunday 12.00 to 23.30 Indoors only

Provision of facilities for entertainment of a similar description

Wednesday – Friday 20.00 – 23.30 Indoors

Saturday – Sunday 12.00 – 23.30 Indoors

Late Night Refreshment

Monday – Sunday 23.00 – 02.00 Indoors

And subject to the following conditions:

1. The area identified as a function room on page 35 shall not be used for the performance of live music or karaoke.
2. A suitable noise limiter to be installed in the function room after consultation with the Councils noise pollution team to be used when recorded music is played.
3. All windows and doors shall remain closed (save access and egress) during the provision of regulated entertainment.
4. A suitably competent member of staff should monitor noise levels when live or recorded music events are taking place and record whether or not the noise is audible from adjacent premises.
5. It shall be clearly stated within the pub to whom complaints can be made about noise and a log of any complaints received and the remedial action taken should be available for inspection by Wiltshire Council Licensing Officers.
6. The fire exit stairway, leading from the first floor function room, shall not be used for access or egress except for in the event of an emergency.
7. Posters shall be displayed in the premises to ask patrons to leave quietly respecting the neighbours.

(Duration of meeting: 10.00 am - 12.10 pm)

The Officer who has produced these minutes is Lisa Pullin, of Democratic & Members' Services, direct line 01225 713015, e-mail lisa.pullin@wiltshire.gov.uk

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WILTSHIRE COUNCIL

LICENSING COMMITTEE

30 NOVEMBER 2010

LICENSING ACT 2003
REVIEW OF STATEMENT OF LICENSING POLICY

Executive Summary

This report reviews the statement of licensing policy following its approval by Wiltshire Council on 1 December 2009.

It informs members of the Licensing Committee of relevant changes that have occurred in the year since the policy was approved and suggests a way forward.

Recommendations

It is recommended:

- **That the Licensing Committee note this review of the policy and agree to continue the use of the existing statement of licensing policy as approved by council on 1 December 2009.**

Reason for Proposal

Statutory requirements for the Council.

Author: John Carter, Head of Environmental Protection and Licensing,
Public Protection Services.

Corporate Director: Maggie Rae, Public Health & Wellbeing

Contact Details: john.carter@wiltshire.gov.uk

REVIEW OF THE STATEMENT OF LICENSING POLICY

Purpose of Report

1. Wiltshire Council approved the Statement of Licensing Policy under the Licensing Act 2003 at its meeting on 1 December 2009. It was agreed at that time that the policy would be reviewed after a year.
2. This report forms this review, details the changes which have occurred in licensing issues since December last year, and advises members on the way forward.

Background

3. Wiltshire Council, as the Licensing Authority, is required to discharge its responsibilities under the Licensing Act 2003 with a view to promoting the four licensing objectives, namely:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance, and
 - The protection of children from harm
4. The Act was originally designed to be light touch legislation covering a number of 'licensable activities'. Such activities are defined within the Act and broadly relate to the sale and supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment.
5. The existing licensing policy is attached at Appendix 1 to this report.
6. Since the policy was approved a number of significant changes, both local and national, have occurred which are relevant to both the policy and licensing regime as a whole.
7. National legislation currently requires that Licensing Act policies undergo extensive review every three years. As Wiltshire Council produced a new policy at the end of 2009, it is not required to undertake such a review until 2012.

Issues affecting the policy

National issues

8. Since the Licensing Act came into force it has been heavily criticised, claiming that the light touch approach has resulted in a regime which is biased towards businesses.
9. Following the election in May, the Coalition Government has stated that reviewing the Licensing Act is one of its priorities. As a result the Home Office issued a major consultation on the Act in July this year entitled "Rebalancing the Licensing Act: A consultation on empowering individuals, families and local communities to shape and determine local licensing."

10. The key proposals in the consultation are listed below:
 - Licensing authorities to become responsible authorities
 - Burden of proof to be reduced for bringing a review
 - The term “vicinity” to be abolished
 - A fifth licensing objective on health to be added
 - Interested parties widened
 - Early morning restriction orders
 - Cumulative impact policies easier to introduce
 - Late night levy and hours policies strengthened
 - TENS process to be amended
11. It is likely that the changes to the Licensing Act will be fully implemented in 2012.
12. A copy of the council’s response to the Home Office consultation is attached at Appendix 2 to this report.
13. New mandatory licensing conditions have also been introduced during this year. Conditions relating to irresponsible drinks promotions, directly dispensed drinks and the provision of free tap water came into force in April. In October further conditions on age verification policies and drinks measures were also introduced.
14. With the introduction of the new condition on age verification there has been greater interest in the Challenge 25 scheme. Challenge 25 is a retailing strategy that encourages anyone wishing to buy alcohol, who is over 18 but looks under 25 to provide a form of ID such as a passport or driving licence.
15. In January this year new legal powers were introduced which meant that local members are now included as interested parties and can call in licensing applications to hearing and review.
16. The Government’s proposed Decentralisation and Localism Bill may also have an impact on licensing issues; however the effect of the proposed legislation is as yet unknown.

Local issues

17. In February this year changes were made to the out of hours response service which is provided by the council’s Public Protection Services. This had the effect of introducing a higher level of responsive service to the former Salisbury District Council area. Since its introduction in February there have been no complaints received out of hours relating to noise from licensed premises in the Salisbury city centre area.
18. Since June this year a new Wiltshire Licensing Tasking Group has started meeting on a monthly basis. The group, operating as part of the Wiltshire Community Safety Partnership, uses the principles of the National Intelligence Model to gather and share evidence on alcohol related crime and disorder. The aim of the multi agency group is to target their joint resources to reduce crime and disorder from the most problematic premises in Wiltshire. To date the group has been successful

in reducing incidents of crime and disorder associated with licensed premises in Chippenham, Trowbridge and Salisbury.

19. The tasking group has also produced a draft tactical toolkit, which details the legal powers and tools each agency has to address problems from licensed premises, and has commented on a joint council and Police protocol.
20. Further training for members on the Licensing Act was also provided in September by Philip Kolvin QC, the current Chairman of the Institute of Licensing.
21. Since the policy was approved there have been seven hearings and two reviews of licensed premises in the Wiltshire Council area. One of these resulted in the closure of premises for 3 months. At these sub committee meetings the new policy has been shown fit for purpose. In addition no appeals have been lodged following these hearings, which suggests that the policy is robust.
22. Between 1 January and 3 November this year the licensing team across the Wiltshire Council area has received 2,684 applications under the Licensing Act 2003. A breakdown of this figure is given in Appendix 3.
23. A comprehensive review of the policy as required by the Licensing Act would require extensive consultation with all licensees, licensed premises in the county, members, town and parish councils, trade representatives as well as police, fire and rescue, Wiltshire NHS and a variety of other agencies.

Options

There are two options:

- Change the policy
- Keep the existing policy

Change the policy

24. The policy could undergo a comprehensive review. This would have to include an extensive consultation process, detailed in paragraph 23, as was done prior to the introduction of the existing policy.
25. As stated earlier in the report, the Act requires that statements of policy must be reviewed every three years. Any review now could be regarded as being premature by two years. In addition, the current legislative and political climate indicates that substantial changes to the laws are likely in 2011 or 2012, which will also subsequently require a full review of the policy.

Keep the existing policy

26. The existing policy has been tested through the hearing and review processes since its introduction, and has not been contested by any licensees, or their legal representatives.
27. The police have considered the current licensing policy and believe it to be fit for purpose within the current legislative framework. Given the potential for future

national change and the recent progressive inter-agency progress which requires a period of consolidation to become embedded, the police would not be supportive of a policy change at this time.

28. The lack of a terminal hour requirement has not resulted in any increased problems in the control of alcohol related crime and disorder for residents living in the vicinity of licensed premises. Late night/early morning complaints in Salisbury have reduced from 27 in 2009 to 15 in 2010 (up to 15 November).

Environmental Impact of the Proposal

29. There is minimal environmental impact of these proposals. Successful application of the Licensing Act functions will reduce the impact of licensable activities on the public i.e. noise and public disorder.

Equality and Diversity Impact of the Proposal

30. The impact of these proposals is assessed as 'low' against the Council statutory responsibilities. There are potential implications with respect to human rights and these are considered in paragraph 33 below.

Risk Assessment

31. The existing policy is fit for purpose and as such the council is not subject to any significant risks.

Financial Implications

32. If the existing policy is retained there are no additional costs. Further consultation may attract some minor additional costs.

Legal Implications

33. The provisions contained within the Licensing Act 2003 are, in the Government's view, compatible with the requirements of the Human Rights Act 1998. However whilst it appears that the Licensing Act itself is compatible with the Human Rights Act there remains an obligation on the authority itself to act in a way that is also compatible with this Act. The possibility of acting in an incompatible way may arise at various stages such as during the review of premises licences. A robust licensing policy will assist the Council to comply with the Human Rights Act.
34. The licensing service is a high profile regulatory service important for protecting the public but also for ensuring the development of the leisure industry, economic viability and a safe night time economy. The balanced application of licensing functions is critical for the reputation of the council and for building trust and confidence in its service provision.

Conclusion

35. Following this limited review of the statement of policy it is concluded that a full review process is not warranted at present.

36. Carrying out a comprehensive review of the licensing policy at this time of significant change in the legislative and policy regime is likely to result in having to repeat the review process during 2011/12. At this time of dramatic change this course of action is not recommended, and members are recommended to approve the continued use of the existing statement of licensing policy.
-

Background Papers

None

Appendices

Appendix 1: Existing Statement of Licensing Policy

Appendix 2: Wiltshire Council's response to "Rebalancing the Licensing Act "

Appendix 3: Applications received under the Licensing Act 2003 since 1 January 2010.

Wiltshire Council
Licensing Act 2003
Statement of Licensing Policy

Statement of Licensing Policy

November 2009

Published by

**The Licensing Team
Public Protection Service
Wiltshire Council**

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1.0 Introduction

- 1.1 This Statement of Licensing Policy has been prepared in accordance with the provisions of the Licensing Act 2003 ("the Act") and the Department of Culture, Media and Sport (DCMS) Guidance issued under sec.182 of the Act.
- 1.2 The policy takes effect from 2 December 2009.
- 1.3 Licensing is about the appropriate control of licensed premises, qualifying clubs and temporary events. The various permissions that could then result in a hearing are Premises Licences, Club Premises Certificates and, where the Police object, Personal Licences and Temporary Event Notices. It also covers the people who manage these or hold personal licences within the terms of the Act. Applications covered by the Act and relevant to this Statement include:
- Personal Licences
 - Premises Licences – including provisional statements
 - Variations
 - Transfers
 - Interim Authorities
 - Temporary Events
 - Club Premises Certificates
 - Designated Premises Supervisors
 - Reviews
- 1.4 The policy relates to all licensable activities identified as falling within the provisions of the Act, and within the area of Wiltshire Council ("the Licensing Authority"), namely:
- The retail sale of alcohol
 - The supply of alcohol to club members
 - The supply of hot food and / or hot drink from any premises including food stalls between 23.00 and 05.00 hours
 - The provision of 'regulated entertainment' to the public, to club members, or with a view to profit, specifically including:
 - A performance of a play
 - An exhibition of a film
 - An indoor sporting event
 - Boxing or wrestling entertainment
 - A performance of live music
 - Any playing of recorded music
 - A performance of dance
 - Provision of facilities for making music
 - Provision of facilities for dancing.
- 1.5 The policy statement remains in existence for a period of 3 years during which it is kept under review and revised as appropriate. Any major changes are preceded by public consultation.

- 1.6 The policy must be published before the Authority carries out any function in respect of individual applications made under the terms of the Act.
- 1.7 This policy does not specify or imply that any particular control measure is necessary for any premises or class of premises.
- 1.8 Following a representation being made in respect of an application or a request to review an existing licence, the Licensing Authority may grant or withhold a licence, and if granting may set conditions.
- 1.9 Where an application is contested each case will be considered on its' individual merits at a hearing.
- 1.10 The Licensing Authority cannot require that any matters be placed in the Operating Schedule for any application. It is for applicants to carefully consider the effect of their proposal on the four licensing objectives, including the hours of operation and activities and then decide what control measures, if any, they wish to specify in the Operating Schedule.
- 1.11 Responsible Authorities are encouraged to work with potential applicants to help them complete their applications. This may help applicants deal with any concerns of the Responsible Authorities, who may make a representation that could result in a hearing. This is particularly important where the application is of a complex nature or the likely attendance at the premises will exceed 500 persons at any one time. After receiving advice from the Responsible Authorities and others, it is for the applicant to consider what they wish to include in their Operating Schedule. They must be aware, however, that where the advice of the Responsible Authorities is not incorporated in the Operating Schedule there is likely to be a greater risk of a representation being made once the application has been submitted.
- 1.12 Responsible Authorities are expected to examine each application to identify whether the proposals are likely to have a significant adverse effect on any of the licensing objectives. If this is the case, they should work with the applicant so that a revised application can be submitted or, where this is not possible, make a formal representation that would trigger a hearing. The Licensing Authority would then have the opportunity, if necessary, to either refuse the application, curtail activities and hours of operation, or apply conditions.
- 1.13 In stating its policy in this document, the Licensing Authority stresses that all of the ensuing sections are subject to the general provision that the Authority can only make decisions on the merits of applications where its discretion has been engaged. The term "its discretion has been engaged" means that a relevant representation has been received in relation to the application. Where Responsible Authorities and Interested Parties do not raise any relevant representations about the application, the Licensing Authority must grant the licence or certificate, subject only to conditions that are consistent with the Operating Schedule and any mandatory conditions prescribed in the Act. The Licensing Authority may not impose any conditions unless its discretion has been engaged following the making of relevant representations and it has been satisfied at a hearing, of the necessity to impose conditions due to the relevant representations raised. It may then only

impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the relevant representations.

2.0 Wiltshire Council Area

2.1 Wiltshire is a predominantly rural county in the south-west of England. Covering 325,534 hectares, it has a population of 433,000, many of whom live in towns or villages with fewer than 5,000 people. Bigger concentrations of population can be found in the cathedral city of Salisbury, the county town of Trowbridge, and Wiltshire's many market towns. The Armed Forces have a significant presence particularly in the south of the County.

3.0 Licensing Objectives

3.1 The Licensing Authority has a duty under the Act to carry out its licensing functions with a view to promoting four licensing objectives, each licensing objective being of equal importance.

These are:

- The Prevention of Crime and Disorder
- The Promotion of Public Safety
- The Prevention of Public Nuisance and,
- The Protection of Children from Harm.

It is recognised that licensable activities are important to the local economy as well as helping to satisfy cultural and leisure aspirations. The Licensing Authority will, therefore, try and work together with all interested parties, statutory agencies and licensed businesses to ensure a mutual co-existence. When its discretion has been engaged either at a hearing of an application, or a review of a Premises Licence, the Licensing Authority will only grant a licence when it is satisfied that there will be no detriment to the licensing objectives in relation to the matters brought to its attention.

3.2 The Licensing Authority expects individual applicants to address the licensing objectives in their Operating Schedule having regard to the type of premises, the licensable activities to be provided, the nature of the location and the impact on the local community. Whilst it is not the intention to give details of specific control measures in this policy references will be made to sources of control measures and operational schedule statements.

3.3 Where there are no relevant representations, or they have been withdrawn at or before a hearing, the application will be granted as requested subject only to conditions which reflect the Operating Schedule and any mandatory conditions. Most premises do and will operate without any significant concerns to the licensing objectives, however, where there is a relevant representation, the application will usually proceed to a hearing, following which the Licensing Authority may take such steps as are necessary to promote the licensing objectives. In considering the application, the Licensing Authority will have regard to the matters set out below. In order to reduce the risk of relevant representations and the cost and delay of a

hearing, applicants are strongly recommended to consider the following matters and consider incorporating them as necessary into their Operating Schedule.

- 3.4 The following sections set out the Licensing Authority's Policy relating to the four licensing objectives. It is emphasised that these objectives are the only matters which can be taken into account by the Licensing Committee and they will pay particular attention to them at a hearing, when deciding applications and applying any conditions. A hearing must be called when relevant and valid representation is made by Interested Parties or Responsible Authorities, based upon the four licensing objectives.
- 3.5 **Prevention of Crime and Disorder**
- 3.6 **Examples of potential concerns**
While not an exhaustive list, the Licensing Authority recognises that amongst other things some of the following, for certain premises, may be of concern in relation to this licensing objective:
- Violent behaviour
 - Intimidation
 - Antisocial behaviour in general
 - The effects of persons queuing or gathering outside premises. This is particularly relevant to premises where entry is restricted or managed, around takeaways and mobile food vendors, as well as where customers go outside to smoke or drink.
 - The effects of cut price drinks promotions and fixed price drinking sessions
 - The use of and dealing with illegal drugs
 - The underage purchase and consumption of alcohol
- 3.7 **Expectations**
As a matter of good practice the Licensing Authority would suggest that before the application is made:
- Applicants should carefully consider how they intend to promote the Crime & Disorder objective in their Operating Schedule
 - Where applicants consider that the crime and disorder objective could be compromised by their intended activities, they are encouraged to contact the Police as the most relevant Responsible Authority for guidance. Other organisations such as Wiltshire Council's Community Safety Partnership may also be able to offer advice. Contact details for these Authorities/Groups are available from the Licensing Authority.
- 3.8 When considering relevant matters at a hearing the Licensing Authority where there are concerns will seek to achieve by way of conditions or restrictions, that the licensing objective is not compromised, while the premises are operating and more specifically:
- There should be no increase in the levels of crime and disorder when the premises are operating.
- 3.9 Neither the Licensing Authority nor the Responsible Authorities can require any matters to be placed in the Operating Schedule of any application. However,

responsible authorities and interested parties can make a representation if they feel that the proposal compromises one or more of the licensing objectives. Each application that results in a hearing will be determined on its merits.

3.10 **Public Safety**

3.11 Examples of potential concerns

While not an exhaustive list, the Licensing Authority recognises that amongst other things some of the following for certain premises may be of concern in relation to this licensing objective:-

- Excessive numbers of people on the premises
- Consumption of alcohol and other activities
- Seating and premises layout
- Use of special effects such as lasers, smoke machines, foam machines and pyrotechnics
- Customer profile (for instance age or mobility)
- Evacuation of the premises in the event of an emergency
- The care of people who may have consumed too much alcohol or who are affected by the use of illegal substances.

3.12 Expectations

As a matter of good practice the Licensing Authority would suggest that before the application is made:

- Applicants carefully consider how they intend to promote the Public Safety objective in their Operating Schedule.
- Where Applicants consider that the Public Safety objective could be compromised by their intended activities, they are encouraged to contact the Wiltshire Council's Health and Safety Section and/or Wiltshire Fire & Rescue Service as the most relevant Responsible Authorities for guidance. Other organisations such as the Wiltshire Public Events and Licensing Group will be able to offer advice. Contact details for these Authorities/Groups are available from the Licensing Authority.

3.13 When considering relevant matters at a hearing the Licensing Authority will seek to achieve by way of conditions or restrictions, that the licensing objective is not compromised while the premises are operating, and more specifically:

- Suitable measures should be in place to reduce the risks to persons frequenting the premises, identified by the carrying out and implementation of appropriate risk assessments.
- The safety of the public and performers who may have impaired mobility or disabilities is not compromised.
- Staff are adequately equipped to deal with emergencies.
- That all persons, including staff and performers, present in the venue or, at the event, can safely evacuate in the case of emergency and that adequate access arrangement exist to permit the attendance of emergency vehicles if required.

3.14 Neither the Licensing Authority nor the Responsible Authorities can require any matters to be placed in the Operating Schedule of any application. However, responsible authorities and interested parties can make a representation if they feel

that the proposal compromises one or more of the licensing objectives. Each application that results in a hearing will be determined on its merits.

3.15 **Prevention of Public Nuisance**

3.16 Examples of potential concerns

While not an exhaustive list, the Licensing Authority recognises that amongst other things some of the following for certain premises may be of concern in relation to this licensing objective:

- Noise from customers
- Noise and vibration from activities and equipment at the premises, including music, fireworks, special effects and transport
- The use of outdoor areas such as gardens, car parks and designated smoking areas
- Anti social behaviour in general
- The effects of persons queuing or gathering outside premises. This is particularly relevant to premises where entry is restricted or managed, around takeaways and mobile food vendors, as well as where customers go outside to smoke or drink.
- Customers queuing at or leaving premises
- Parking on, or in the vicinity, of the premises (this does not include any issues of availability of parking for residents)
- Light pollution, such as from security lighting, signage and illumination of outdoor areas
- Litter, including smoking related litter
- Fumes and odours from, for instance cooking
- Fly posting and other illegal signs and advertising

3.17 Expectations

As a matter of good practice the Licensing Authority would suggest that before the application is made:

- Applicants carefully consider how they intend to promote the Prevention of Public Nuisance objective in their Operating Schedule.
- Where applicants consider that the Prevention of Public Nuisance objective could be compromised by their intended activities, they are encouraged to contact the Wiltshire Council's Environmental Protection Team and in relation to anti-social behaviour the Police as the most relevant Responsible Authorities for guidance. Contact details for Responsible Authorities are available from the Licensing Authority.

3.18 When considering relevant matters at a hearing the Licensing Authority will seek to achieve by way of conditions or restrictions, that the licensing objective is not compromised while the premises are operating, and more specifically:

- Residents should not be prevented from sleeping between 23.00 and 07.00 other than on a very infrequent basis. An extension of this period may be appropriate depending on local circumstances
- Residents should generally be able to peacefully enjoy their property

- Additional litter from, or in the vicinity, of the premises should not cumulatively cause public nuisance
- Noxious fumes, noise, or light arising from security devices, flood lighting, advertising or any special effect lighting should not detrimentally affect occupants of nearby premises or land

3.19 Neither the Licensing Authority nor the Responsible Authorities can require any matters to be placed in the Operating Schedule of any application. However, responsible authorities and interested parties can make a representation if they feel that the proposal compromises one or more of the licensing objectives. Each application that results in a hearing will be determined on its merits.

3.20 **Protection of Children from Harm**

3.21 Examples of potential concerns

While not an exhaustive list, the Licensing Authority recognises that amongst other things, some of the following for certain premises may be of concern in relation to this licensing objective:-

- Children gaining access to alcohol other than where the law permits
- Exposing children to activities of an adult or sexual nature.
- Premises which have a strong element of gambling
- The location of any cigarette vending machines within the premises
- Night clubs and discos where children and people over the age of 18 are permitted to attend at the same time, other than in the case of family aimed entertainment
- Children gaining access to premises contrary to any age restrictions.
- Age restricted films

3.22 Expectations

As a matter of good practice the Licensing Authority would suggest that before the application is made:

- Applicants carefully consider how they intend to promote the Protection of Children from Harm objective in their Operating Schedule.
- Where Applicants consider that the protection of children from harm could be compromised by their intended activities, they are encouraged to contact the Wiltshire Police, Wiltshire Council's Trading Standards Section and Wiltshire Council's Childrens and Families Department as the most relevant Responsible Authorities for guidance. Contact details for Responsible Authorities are available from the Licensing Authority.

When considering relevant matters at a hearing the Licensing Authority will seek to achieve by way of conditions or restrictions, that the licensing objective is not compromised while the premises are operating, and more specifically:

- Children should generally not be permitted on premises with a strong element of gambling, but not, for example where there are a small number of low cash prize (not jackpot) machines.
- Where there is a risk of children purchasing alcohol illegally, or having it bought for them, that robust measures are put in place to prevent it happening.

- Children should not be permitted on premises where adult entertainment or services are being provided. Note that the sale of alcohol is not considered to fall within the category of adult services in relation to this paragraph.
- Where it is necessary to restrict the access of children to premises, robust age checking systems are put in place.

3.23 Neither the Licensing Authority nor the Responsible Authorities can require any matters to be placed in the Operating Schedule of any application. However, Responsible Authorities and interested parties can make a representation if they feel that the proposal compromises one or more of the licensing objectives. Each application that results in a hearing will be determined on its merits.

4.0 The Licensing Function

4.1 The Licensing Authority recognises that the licensing function is not the only means of securing the delivery of the above objectives. While the licensing function, therefore, should not be seen as a panacea for solving all problems within the community, the Licensing Authority nonetheless regards it as an important route by which such problems can be addressed. The Licensing Authority, therefore, continues to work in partnership with other areas of the Wiltshire Council, relevant agencies including the Police, the Fire Authority, local businesses and local people towards the promotion of the objectives as outlined.

4.2 In undertaking its licensing function, the Licensing Authority must have regard to the following legislation:

- The Licensing Act 2003
- Section 17 Crime and Disorder Act 1998
- The European Convention on Human Rights, which is applied by the Human Rights Act 1998
- The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000.

4.3 The Licensing Authority also has regard to other relevant legislation, strategies, policies and guidance in its decision-making, as outlined below.

4.4 In addition to the Licensing Act 2003 there is other legislation that can be used to control licensed premises. These include:

- Health & Safety enforced by Local Authorities and The Health and Safety Executive
- Fire Safety enforced by Fire & Rescue Services
- Nuisance enforced by Local Authorities

It is recognised that where there are other specific controls that achieve the same standard, that these should be used instead of The Licensing Act 2003

4.5 The aim of the licensing process is to regulate licensable activities in order to promote the licensing objectives. It is the Licensing Authority's wish to facilitate well run and managed premises, with licence holders displaying sensitivity to the impact of the premises on local residents and businesses.

- 4.6 The Licensing Authority recognises that the provision of entertainment is a major contributor to the economy of the Council's area. It makes for a vibrant and attractive area, which subsequently has a positive effect on employment. The Licensing Authority also recognises that owners and occupiers of commercial premises have a legitimate expectation of an environment that makes and keeps their businesses sustainable.
- 4.7 The Licensing Authority also has regard to wider considerations affecting the residential population and the amenity of any area. These include dropping litter and street fouling, noise and street crime. It is, however, recognised that the Licence holder has no direct control over individuals once they are away from the premises.
- 4.8 In a hearing to determine an application for a Licence or consider a Review application, the overriding principle adopted by the Licensing Authority is that each application will be considered on its own individual merits. Licence conditions applied at such a hearing will be tailored to the individual premises and activities and only those necessary to meet the licensing objectives will be applied.
- 4.9 Upon review of a premises licence, the Licensing Authority must, having regard to the application for review and any relevant representations, take such steps as it considers necessary for the promotion of the licensing objectives. Such steps might be:
- The modification of the conditions of the licence
 - The exclusion of a licensable activity from the scope of the licence
 - The removal of the Designated Premises Supervisor
 - The suspension of the licence for a period not exceeding 3 months
 - The revocation of the licence.
- 4.10 The Licensing Authority notes that the legislation does not provide for standard closing times. There is no presumption within the Act for longer opening hours over objections from local residents and businesses located in the vicinity of licensed premises.
Those premises that provide entertainment and particularly those that supply entertainment in addition to the retail of alcohol, are encouraged to provide and promote a range of entertainment during their operating hours. This may include, live music, dancing and theatre for the wider cultural benefit of the community.
- 4.11 The Licensing Authority encourages applicants to train staff and achieve relevant qualifications, such as the National Certificate for Personal Licence Holders, National Certificate for Entertainment Licensees; the Drugs Awareness Certificate; the Barperson's National Certificate, and the Professional Barperson's Qualification.

5.0 Consultation

- 5.1 Before adopting this policy statement the Licensing Authority has consulted with the following:
- Wiltshire Constabulary
 - Wiltshire Fire and Rescue Service

- The Wiltshire District Councils environmental health, health and safety and planning departments as current responsible authorities.
- British Waterways Board
- The Environment Agency
- The Maritime and Coastguard Agency
- Town and Parish Councils in the Wiltshire Council area
- Wessex Association of Chamber of Commerce
- Salisbury and District Chamber of Commerce
- Pub Watch schemes within the area
- The British Institute of Innkeeping
- British Beer and Pub Association
- Federation of Small Businesses
- Federation of Convenience Stores Ltd
- The Association of Licences Multiple Retailers
- Community First – Village Hall Adviser
- Wiltshire County Council Social Services
- Wiltshire County Council – Head of Safe Care and Child Protection
- Wiltshire area Child Protection Committee
- Wiltshire County Council Community Safety team
- Wiltshire County Council Trading Standards Department
- Wiltshire County Council Emergency Planning Department
- Wiltshire County Council Passenger Transport
- Health and Safety Executive (Bristol Office)
- Great Western Ambulance Service NHS Trust
- Rural Arts Wiltshire
- Arts Council of England
- Independent Street Arts Network (ISAN)
- The Musicians Union (South West Region)
- Jazz Services Ltd
- Equity
- CAMRA (Campaign for Real Ale)
- ACAD Bath (Advice on Alcohol)
- Wiltshire Association of Farmers' Markets
- Public Events and Licensing Group West and North Wiltshire, Salisbury and Kennet.
- Poppleston Allen, Licensing Solicitors

6.0 Conditions

- 6.1 Licensing relates to the control of licensed premises, and other events within the terms of the Act and to any conditions which may be attached to licences, and the various other permissions which focus on matters falling within the control of individual licence holders.
- 6.2 Subject to the general provision above at section 1.9, conditions relate to the premises and other places being used for licensable activities, and the impact of those activities in the vicinity. In this regard the Licensing Authority primarily focuses on the direct impact of any activities taking place on those living, working, or otherwise engaged, in the area concerned.

- 6.3 The licensing function is not a mechanism for the control of anti-social behaviour by individuals once they are beyond the direct control of the licence holder of any premises concerned. Conditions attached to licences must only seek to impact on the behaviour of customers on, or in the immediate vicinity of the premises as they seek to enter or leave.
- 6.4 The Licensing Authority may impose conditions following a hearing. These conditions must not be disproportionate or over burdensome. The Licensing Authority does not implement any standard conditions. Conditions may be attached as appropriate given the circumstances of each individual case. Conditions will not be attached where adequate legislative control exists.

7.0 Cumulative Impact

- 7.1 The cumulative impact of licensed premises on the promotion of the licensing objectives is a matter that the Licensing Authority can take into account.
- 7.2 The Licensing Authority may receive relevant representations from either a “Responsible Authority” or an “Interested Party”, suggesting that the cumulative impact of new licences is leading to an area saturated with premises of a particular type, thus making the area a focal point and thereby creating problems of disorder and nuisance over and above the impact of the individual premises. In such cases, the issue of cumulative impact is taken into account when considering the individual merits of any application. The onus is on any persons, or organisation, making such relevant representations to prove the assertion that the addition of the premises concerned would cause the cumulative impact claimed.
- 7.3 The Licensing Authority is not at this time adopting any special policy as to cumulative impact. In addition, the Licensing Authority does not operate a quota system of any kind, which would have the effect of pre-determining any application. Nor does it seek to impose general limitations on trading hours in particular areas. Regard is given to the individual characteristics of the premises concerned within a given area. It is recognised that pubs, clubs, restaurants, hotels, theatres, concert halls and cinemas all could sell alcohol, serve food and provide entertainment, but with contrasting styles and characteristics. Proper regard shall be given to those differences and the impact they are likely to have on the promotion of the licensing objectives.
- 7.4 The Licensing Authority aims to achieve a reduction in crime and disorder throughout the Council’s area consistent with its statutory duty under section 17 of the Crime and Disorder Act 1998. Where relevant representations are made in relation to cumulative impact the Licensing Authority may look more favourably upon applications where the applicant has addressed the issue of preventing crime and disorder in a positive way.
- 7.5 In determining whether to adopt a 'special' policy for a particular area the Licensing Authority may, among other things:
- Gather evidence of relevant concerns from a Responsible Authority or local residents about nuisance and disorder

- Identify the area in which problems are arising, and the boundaries of that area
- Make an assessment of the cause(s)
- Consult with those mentioned in section 5(3) of the Licensing Act 2003, as reproduced in section 5 of this policy
- Review any such special policy regularly

- 7.6 Where there is evidence that a particular area is already suffering adverse effects arising from the concentration of late night premises or, that residential areas are under stress, this is taken into account in determining any further applications for premises within the area identified. In such circumstances the Licensing Authority may take into account:
- The character of the surrounding area
 - The impact of the licence on the surrounding area, both individually and cumulatively with existing licences
 - The nature and character of the proposed operation

8.0 Licensing Hours

- 8.1 The Licensing Authority deals with the issue of licensing hours on the individual merits of each application. However, when issuing a licence with hours extending beyond 23.00 hours, higher standards of control generally need to be included in Operating Schedules in order to promote the licensing objectives, especially for premises, which are situated in, or near, residential areas or in areas where anti-social behaviour takes place. There is no presumption within the legislation for longer opening hours.
- 8.2 In considering all licence applications, the Licensing Authority takes into account the adequacy of the measures proposed to deal with the potential for nuisance and/or public disorder and has regard to all the circumstances of the case.
- 8.3 Where no representations are received an application is approved as applied for. Where a hearing or a review takes place the Licensing Authority may set an earlier terminal hour where it considers this is appropriate to the nature of the activities and the amenity of the area. In addition the Licensing Authority may in the case of an application refuse to grant a licence and at a review, revoke an existing licence.
- 8.4 The Licensing Authority recognises that having fixed and artificially early closing times in certain areas can lead to peaks of disorder and disturbance on the streets when large numbers of people leave licensed premises at the same time. The Licensing Authority aims, through the promotion of the licensing objectives, to reduce the potential for concentrations of people and thus achieve a slower dispersal of people from licensed premises through longer opening times when appropriate.
- 8.5 The Licensing Authority does not seek to adopt fixed terminal hours in designated areas (known as “zoning”), as this can lead to the significant movement of people across boundaries in search of premises opening later.
- 8.6 Shops, stores and supermarkets are generally permitted to sell alcohol for consumption off the premises during their normal trading hours, unless there are

exceptional reasons relating to the licensing objectives, in particular the prevention of crime and disorder and public nuisance.

9.0 Enforcement

- 9.1 The Licensing Authority has agreed and published protocols with all enforcing authorities including the Police. These protocols provide for the targeting of agreed problem and high risk premises, but with a lighter touch being applied to those premises which are shown to be well managed and maintained.
- 9.2 In general, action is taken in accordance with agreed enforcement principles and in line with the enforcement policies of the Licensing Authority and all Responsible Authorities. The key principles of consistency, transparency and proportionality are acknowledged. Any Government advice or requirement in relation to enforcement will be taken into account.
- 9.3 A graduated response is effected where there is evidence of contravention of licensing legislation or licence conditions. Whilst an isolated or minor breach might be dealt with by way of an oral or written warning, more serious breaches are likely to attract prosecution and/or a review of the licence.
- 9.4 Where contraventions or concerns as to compliance with regulations enforced by other agencies are identified during enforcement activities, these matters will be reported to the relevant agency.
- 9.5 The Licensing Authority employs Licensing Enforcement Officers to investigate complaints against licensed premises, allegations of unlicensed activities, and the breach of licence conditions.
- 9.6 The Licensing Authority will refer to the following Policies when considering enforcement: - Enforcement Concordat (to be supported by the Regulators' Compliance Code that enables the 'Hampton principles') and Enforcement protocol agreed with Wiltshire Constabulary (published on the Council's Website: www.wiltshire.gov.uk).

10.0 Integrating Strategies and the Avoidance of Duplication

- 10.1 By consulting widely prior to the publication of this policy statement, the Licensing Authority has endeavoured to secure proper integration with local crime prevention, planning, transport, tourism and cultural strategies.
- 10.2 The Licensing Authority's Licensing Committee considers wider issues which may need to be given due consideration and is willing to consider reports on:
- The Cultural Strategy for the area
 - The Tourism Strategy for the area
 - The Employment situation in the area and the need for new investment and employment, where appropriate.

- 10.3 The Licensing Authority recognises that licensing applications should not be seen as a repeat of the planning application process and that there should be a clear separation of the planning and licensing regimes to avoid duplication and inefficiency.

11.0 Other Legislation

- 11.1 Other statutory requirements and opportunities for control, for example relating to planning, building regulations, fire safety, nuisance and health and safety, may apply to the provision of any regulated activities at a premises and the responsibility for compliance lies with the licence holder. Advice may be obtained from the appropriate enforcing authority or from the Licensing Authority's Licensing Officers.
- 11.2 In reaching a decision on whether, or not, to grant a licence, following a hearing or call for review, the Licensing Authority may take account of any non-compliance with other statutory requirements brought to its attention, if these undermine the licensing objectives. This is because any non-compliance with other statutory requirements may demonstrate that the premises are unsuitable for the activities proposed, or that the management of the premises is not adequate to protect the public from harm or nuisance.
- 11.3 The grant of a licence does not imply any recognition of compliance with other legislative requirements.

12.0 The Licensing Process

- 12.1 A *Licensing Committee, Sub-Committee, or Licensing Officers* acting under delegated authority, may carry out the powers of the Licensing Authority under the Act.
- 12.2 Many of the licensing procedures are largely administrative with no perceived areas of contention. In the interests of efficiency and effectiveness Licensing Officers generally carry these out.
- 12.3 The Licensing Authority ensures that all officers and members who deal with applications have received adequate training for their role under the Licensing Act 2003.
- 12.4 A *sub-committee* of the Licensing Authority deals with applications and the review of a licence, where there are relevant representations.
- 12.5 When determining applications the Licensing Authority has regard to any guidance issued by the relevant Government department. In particular, account is taken of the need to encourage and promote live music, dancing and theatre for the wider cultural benefit of the community as a whole. If relevant representations are made concerning the potential for limited disturbance in a particular neighbourhood, the Licensing Authority's consideration is balanced against the wider benefits to the community. Any conditions imposed on licences do not seek to discourage such entertainment, but are aimed solely at promoting the licensing objectives.
- 12.6 The Licensing Authority acknowledges the guidance received from the Government

advising that the views of vocal minorities should not be allowed to predominate over the general interest of the community.

13.0 Administration, Exercise and Delegation

- 13.1 Applications are dealt with in accordance with a schedule of delegated authority which was approved by the Implementation Executive in January 2009. This may be subject to change in the future.
- 13.2 Personal licence applications are granted where the respective applicants have a qualification approved by the Government and they do not have criminal convictions for relevant offences as set out in the Licensing Act 2003 or where they do have convictions for relevant offences, no objection has been received from the Police.
- 13.3 Where an applicant for a personal licence has a current conviction for a relevant offence, the Police can object to the application, and a hearing is held at which the applicant has the opportunity to appear before a licensing *Sub-Committee*. The Licensing Authority only grants a licence following a hearing where it is satisfied that the grant of the application does not undermine the crime and disorder licensing objective.
- 13.4 In relation to premises licences, which permit the sale of alcohol by retail, a Designated Premises Supervisor must be specified for the premises. The Designated Premises Supervisor must also be a personal licence holder. Where the Police recommend that a Designated Premises Supervisor be removed, a hearing is held in the same way as detailed at 12.4.

14.0 Pub Watch

- 14.1 The Licensing Authority recognises the value of 'Pub Watch' schemes and intends where appropriate, to play a supportive role in such schemes, and attend meetings as appropriate. Where such a scheme is active in the locality of a premises, the applicant is strongly encouraged to become an active member of Pub Watch. As well as traditional pubs and entertainment venues, this includes premises who are licensed solely for the sale of alcohol for consumption off the premises.

15.0 Alcohol Pricing

- 15.1 Premises are discouraged from offering to supply alcohol at discounted prices where this would lead to excessive consumption of alcohol. This discounting could include 'Happy Hours', 'Buy One Get One Free' and 'All You Can Drink' promotions and similar offers.

16.0 Controls Away From Premises

- 16.1 The Licensing Authority recognises that both within and outside the licensing regime there are a number of mechanisms for addressing issues concerning unruly behaviour, which occurs away from licensed premises. These include:

- Planning controls
- Ongoing measures to provide a safer and cleaner environment in partnership with local businesses and others
- Powers to designate parts of the Council's area as places where alcohol may not be consumed publicly
- Confiscation of alcohol from adults and children in designated areas
- Police enforcement of the law with regard to disorder and anti-social behaviour
- Police powers to close premises for up to 24 hours in cases of disorder or excessive noise
- The power of Police, local businesses or residents to demand a review of the licence
- Enforcement action(s) against those selling alcohol to people whom are already drunk.

16.2 In addition the Licensing Authority recognises that the Crime and Disorder Reduction Partnership also have a role play to further the strategic objectives for crime and disorder reduction within the Council's area.

17.0 Temporary Events Notices

- 17.1 Current Guidance issued under the Act, encourages a locally established preferred period of notice. The Authority, after consulting with the Police, suggests that as a guide, it would be helpful if Temporary Event Notices were submitted at least 28 days before an event.
- 17.2 The law states, however, that 10 clear working days is the minimum possible notice, therefore applications given with less than the prescribed notice will be refused. Notices that give the 10 clear working days notice to the Licensing Authority and the Police will always be accepted as a valid application.
- 17.3 Exceptionally, the Police may issue an Objection Notice where they consider the prevention of crime and disorder objective may be undermined. In such circumstances, the Licensing Sub Committee will consider the objection by way of a hearing and confine its consideration to the prevention of crime and disorder objective.

18.0 Large Scale Events

- 18.1 These are events that, because of their size, cannot be carried out with a Temporary Event Notice but need a Premises Licence which may be for a temporary period in order to operate. Much larger crowds may be attracted to large-scale events and the risk to public safety and to crime and disorder, as well as public nuisance, may be considerable. The Licensing Authority and all other statutory consultees, should be given at the earliest opportunity, notice of such major events to discuss Operating Schedules with the Organiser, prior to a formal application being submitted. Failure to consult in sufficient time, may result in an objection on the grounds that insufficient time has been allowed to properly assess and consult to ensure that, in particular, public safety is not undermined.

18.2 The Licensing Authority encourages applicants at an early stage to engage with Responsible Authorities and Wiltshire Council's Public Event and Licensing Group.

19.0 Other Services of Information and Guidance

Further guidance can be obtained from the Council's Licensing Team and will be available on the licensing pages of the Council's Website.

APPENDIX A – Glossary of Terms

The following comprises a glossary of terminology used within the statement of licensing policy. Terms defined at length within the Licensing Act 2003 have generally not been included.

Alcohol Harm Reduction Strategy

A strategy issued by the Government aimed at identifying initiatives and priorities, which may help in the promotion of the licensing objectives.

Club Premises Certificate

A certificate authorising the use of premises by a qualifying club for one or more club activities.

Crime and Disorder Reduction Partnership

A partnership comprising relevant sections of the Council, the Police and other interested parties, established to develop a strategy for the reduction of crime and disorder in the area.

Cumulative Impact

The potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.

Designated Premises Supervisor

The individual specified in the premises licence as the premises supervisor.

Interested Parties

The individuals or bodies who are entitled to make relevant representations to licensing authorities in relation to applications for the grant, variation or review of premises licences. These include individuals or businesses in the vicinity of the premises in question, or bodies representing such individuals or businesses.

LACORS/TSI Code of Best Practice on Test Purchasing

The Code of Best Practice on Test Purchasing issued by the Local Authorities Co-ordinators of Regulatory Services (LACORS) and the Trading Standards Institute (TSI). The Code gives guidance as to the test purchasing of alcohol by trading standards officers.

Licensing Committee

The committee established by the licensing authority to discharge the licensing functions of the authority.

Licensing Hours

The hours during which authorised licensable activities take place.

Operating Schedule

A prescribed document which must accompany any application for a premises licence or a club premises certificate, setting out the nature of the proposed licensable activities, the proposed trading hours, and the steps envisaged promoting the licensing objectives, amongst other things.

Personal Licence

A licence which authorises an individual to supply or authorise the supply of alcohol in accordance with the premises licence.

Premises Licence

A licence authorising premises to be used for one or more licensable activities.

Proportionality

The principle under which, in the licensing context, only necessary conditions can be imposed on licensable activities, taking specific account of the size, style, and characteristics of such activities taking place at the premises concerned.

Pub Watch Scheme

An agreement reached by a group of licence-holders in a particular locality to counter, on a collective basis, those who threaten damage, disorder, and violence or use or deal in drugs in their premises. Normally, action consists of agreeing not to admit or serve individuals who cause such problems.

Qualification approved by DCMS

A licensing qualification accredited by the Secretary of State.

Relevant Offence

Any offence listed in Schedule 4 of the Licensing Act 2003.

Relevant Representation

A representation regarding the likely effect of the grant of a licence on the promotion of one or more of the licensing objectives.

Responsible Authorities

The public bodies that must be fully notified of applications and that are entitled to make relevant representations to the licensing authority in relation to the grant, variation or review of a premises licence. These include as at 1 April 2009 :

- the chief officer of police
- the local fire and rescue authority
- the local enforcement agency for the Health and Safety at Work etc Act 1974
- the local authority with responsibility for environmental health
- the local planning authority
- a body that represents those who are responsible for or interested in matters relating to the protection of children from harm
- the local weights and measures authority (trading standards)
- any licensing authority, other than the relevant licensing authority, in whose area part of the premises are situated.

Safer Clubbing

Guidance issued by the Home Office giving advice to nightclub owners, dance event promoters and local authority licensing departments on how to ensure the health and safety of persons attending dance events.

Special Policy

A policy setting up a rebuttable presumption that applications for new premises licences or club premises certificates will normally be refused whenever relevant representations are received as to the cumulative impact on the licensing objectives.

Terminal Hours

The times at which authorised licensable activities should cease.

Zoning

The adoption of fixed terminal hours in designated areas.

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Appendix 2

Wiltshire Council's response to Rebalancing the Licensing Act - Consultation

- Consultation Question 1: What do you think the impact would be of making relevant licensing authorities responsible authorities?

Under the existing legislation the licensing authority's role is impartial. We advise the applicant and any interested parties/responsible authorities. If the licensing authority became a responsible authority it remove this impartiality, and the likely impact would be an increase in the workload of both licensing officers (commenting on applications and gathering intelligence) and for licensing members (with additional reviews and hearings).

There is also the potential impact, where Responsible Authorities have not fully engaged with the Licensing Act 2003, that they could put the burden of proof back on the Licensing Authority. This will result in an increase in review applications, and representations against applications, made by those licensing authorities who would now be engaging with the Act instead of. A further impact may be that formally raising licensing authority concerns results in better licences being issued and so safeguarding the local areas around licensed premises.

- Consultation Question 2: What impact do you think reducing the burden of proof on licensing authorities will have?

Reducing the burden of proof would be beneficial for an authority to be able to consider both the impact of the granting of a licence on the licensing objectives, as well as the wider actions that would be required by an applicant to promote them. It may also result in increased compliance with existing conditions and an increased willingness to implement Licensing Authority recommendations. The use of similar examples elsewhere to demonstrate a likelihood of a problem rather than having evidence would be advantageous. There is however an area of ambiguity regarding the wider effects and relating these back to individual premises.

- Consultation Question 3: Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?

At present licence applicants have to consider the impact of their licence in regard to the four licensing objectives. If they do not put anything in the application on how they are going to do this and nobody makes a representation the licence has to be granted. This needs to be tightened up to ensure applicants are considering the local area. The legislation would need to define the local area as this appears to be significantly wider than the vicinity which is use currently.

All applicants should have to demonstrate within the operating schedule that they have considered what impact their premises will make to an area and

what they propose to do to mitigate against it. Many applicants put the onus on Responsible Authorities by not offering any proposals within their operating schedules; they just wait to see whether or not a Responsible Authority asks for conditions to be imposed by way of representations.

A requirement on the applicant to carry out pre application advertising/consultation with an option to make representations to the applicant (copy to Licensing Authority), may assist. This would enable the applicant to liaise with potential objectors prior to the expense of a full application and hearing and adjust the application accordingly or decide not to apply.

- Consultation Question 4: What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?

The potential effect is that the police could make relevant representations without sound evidence. If the police do have sound evidence then they can make representation now.

Concern is expressed that should extra weight be given to Police representations that this could lead to frivolous or over zealous representations from Police looking to address issues that are not best addressed by the Licensing Act 2003, or poor representations that put the licensing Authority in a difficult position. Any representations from the police must be made on an evidential basis.

The police evidence should be relevant to licensable activities, or how the Licence holder can exercise any control over matters not within their range of responsibility.

- Consultation Question 5: How can licensing authorities encourage greater community and local resident involvement?

One possibility would be to notify residents and/or businesses of applications by letter. This would be more time consuming and more costly. The other problem with this is where you draw the line on who gets notified. Greater use could be made of individual local members, area boards, community forums, media and websites to advise residents and community groups of applications. A question remains that if the Licensing Authority sends out notifications to the local residents and businesses whether this would be viewed as touting for representations.

- Consultation Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?

If the vicinity was removed then anybody no matter how distant from the premises could make a representation. Whilst this would reduce uncertainty for both interested parties and for licensing authorities as to whether or not persons / bodies could be considered as being “in the vicinity”, it is likely that it would increase the number of objections to applications and so result in more

time consuming and costly hearings for the licensing authority. A challenge would be that unless the premises are going to have an impact on persons/business then why should they be able to make representations against the licence? It may also increase the number of potentially vexatious complaints. Another effect may be that if interested parties are not restricted to only those from within a Licensing Authority's area this may lead to organisations or pressure groups objecting to licence applications all over the Country without having the requisite local knowledge of an area or its problems.

- Consultation Question 7: Are there any unintended consequences of designating health bodies as a responsible authority?

This could be seen as over protection, and if alcohol is viewed as a harmful substance this could result in whole scale objections from the health community. However increased engagement from the health community on the consequences of alcohol would be welcomed, particularly on acute impacts such as accident and emergency admissions. There is a risk of potential challenges on applications and reviews on the health grounds, as there would need to demonstrate the link between specific premises and its consequential effects on the health of any individuals.

- Consultation Question 8: What are the implications in including the prevention of health harm as a licensing objective?

To make this workable there would have to be a definition of health and what is harmful; is this acute or chronic? The inclusion of prevention of health harm would be difficult for an applicant with no medical knowledge (persons working in licensed premises) to judge what harms individual persons. It would have the potential to make any licence more difficult to get as alcohol can have negative health effects.

- Consultation Question 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?

The effect depends on what the definition of a community group is, and which community groups were included. As long as any representation would have to be made with regard to the licensing objectives this is not a problem. Too many responsible authorities could make the application process very onerous. With the potential of more objections appearing to affect community and so lead to increased hearings and reviews, with associated increases in costs to the licensing authorities.

Area boards, local members, and town and parish councils could be considered to represent community groups.

- Consultation Question 10: What would be the effect of making the default position for the magistrates' court to remit the appeal back to the licensing authority to hear?

The existing system currently provides a useful third party assessment which is both impartial and objective. A default position would produce conflicts between two licensing panels in the same authority, leading to loss of confidence in the impartiality of the hearings. This could also lead to difficulties for authorities in arranging appeal hearings with different Sub-Committees, to those that made the original determinations. There would be increased workload, costs from additional hearings.

- Consultation Question 11: What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination.

This proposal is supported as an improvement. It often takes a long time for an appeal to get to the magistrates court. The effect would be to improve the power of the review process by ensuring that problem premises are required to “change their ways” immediately, and not use the system to their advantage by appealing and then withdrawing at a later date.

- Consultation Question 12: What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of the local areas?

Licensing Authorities are aware of issues in their areas and are therefore able to judge the appropriate hours for problem areas, i.e. town centre locations. The flexibility of the orders may lead to a bigger uptake if they can be used successfully to address these problems areas.

This may lead to concerns from the trade as to on what grounds would an EMRO be made and is there any right of appeal/challenge? The need for EMROs is questioned. If licensing hours need to be changed it should be achieved through the existing hearing process

- Consultation Question 13: Do you have any concerns about repealing Alcohol Disorder Zones?

None, as they have proved difficult to implement and police, and have not really addressed the issues they were intended to.

- Consultation Question 14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies?

It would make it easier to introduce Cumulative Impact Policies. Care must be taken to ensure that these are not used a too heavy handed way in areas that could be sorted in a different way.

Having such policies do not prevent applications being made, and subsequently granted by an authority, if an applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on the licensing objectives. However they may give residents false hope.

- Consultation Question 15: Do you agree that the late night levy should be limited to recovery of these additional costs? Do you think that the local authority should be given some discretion on how much they can charge under the levy?

Any levy should be limited to recovering those additional costs incurred in policing or servicing those parts of the night-time economy that are causing problems for an authority, but not to generate a profit. There should be clear guidelines on how much can be levied, who can be levied and who the collecting authority is and how the money is then made available to other agencies. The costs need to be flexible as they will relate to police costs which will vary from place to place. Detailed costs will presumably be needed from the police in order to support the need for a levy.

Would it not be simpler for the levy to be raised directly by the police?

- Consultation Question 16: Do you think it would be advantageous to offer such reductions for the late night levy?

Yes, but any offer must be subject to clear guidelines, i.e. active participation in recognised schemes such as Best Bar None, or even better some demonstration of good performance. However taking part in Best Bar None or similar schemes must not be simply a token gesture but depend on the effective implementation of such a scheme.

- Consultation Question 17: Do you agree that the additional costs of these services should be funded by the late night levy?

Yes, but the costs will be challenged by the trade as services should be covered by NNDR. Any extra costs that a business causes should be paid by that business with clearly defined costs.

Taxi marshals are supported, but again will be open to challenge from business.

- Consultation Question 18: Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime?

The concern is that earlier closing times will not reduce alcohol related crime, but simply move the problems to a different time. People will probably consume the same amount of alcohol in a shorter space of time which may increase the problems of crime and disorder. Any imposition of closing hours is likely to be challenged by business, so the grounds for making these would be required.

- Consultation Question 19: What would be the consequences of amending the legislation relating to TENs so that:

- a. All the responsible authorities can object to a TEN on all of the licensing objectives?

Opening up TENs to all responsible authorities will increase bureaucracy and mean these are no longer a light touch measure. The current time frame would be difficult to work within and would need to be extended if all responsible authorities were allowed to make representations. The existing application form gives insufficient details for most authorities to base any representation on. This change would also result in an increased workload on the Licensing Authorities and other Responsible Authorities (additional work in sending TENs out, and considering their implications) unless the applicants were required to do this. It is suggested that the only Responsible Authority that could be deemed appropriate to extend to is Environmental Health on noise concerns.

b. The police (and other responsible authorities) have five working days to object to a TEN?

This would be a good idea as it gives them more time to consider the application and object if necessary. This would only be effective if the timescale for serving of the Notices was extended to more than the current 10 clear working days.

c. The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?

This proposal is strongly supported, as long as the legislation is clear and unambiguous. If the notice period was extended the concern is that this would make it more difficult for events organised by individuals to be arranged at short notice. It would also make the notice procedure more onerous on members of the public i.e. community halls etc. To ensure a fair system the notice period should be not be any different for licensed premises.

d. Licensing authorities have the discretion to apply existing licence conditions to a TEN?

It is supported that premises that hold a licence should have the conditions of that licence attached to the TEN. This would not work for premises that are only licensed for alcohol and were using TENs to include regulated entertainment because they probably would not have the right conditions to deal with the added noise.

• Consultation Question 20: What would be the consequences of:

a. Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year?

Such a restriction would interfere with the applicants' ability to run bars off site i.e. for weddings. It would also be restrictive to catering companies operating at venues all over the country, requiring a national system of monitoring use of TENs. It is not clear how this would promote the licensing objectives.

b. Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field)?

This would reduce the number of events occurring in a particular area without the onus of a premises licence. An advantage may be to encourage some venues to get a full premises licence. It would be beneficial for the legislation to be reworded to define boundaries and the 499 limit.

- Consultation Question 21: Do you think 168 hours (7 days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

Yes. We support an increase the maximum fine to £20,000, but revised guidance to magistrates is key to ensure that higher fines are applied, and increased publicity would help the promotion of this little used tool.

- Consultation Question 22: What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

An upper limit of 28 days (the review consultation period) may be more appropriate.

- Consultation Question 23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?

This would increase awareness of checking the age of customers, send a strong message to the licensed trade. It could also give the licence holder more incentive to ensure staff are correctly and regularly trained on underage sales. However it would also result in additional reviews and increased workload for officers and members with associated costs.

- Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following.

- a. Simple and effective ways to define the 'cost' of alcohol

It is assumed that the costs referred to does not include health related costs. There is no simple answer to this question. Costs need to be broken down from start to finish; Manufacture, tax, transport, staffing, promotions etc. The retail sector seems best placed to define this.

- b. Effective ways to enforce a ban on below cost selling and their costs.

No comment.

- c. The feasibility of using the Mandatory Code of Practice to set a licence condition that no sale can be below cost, without defining cost.

This is very difficult for licensing authority to determine. This should be a trading standards issue and not a mandatory condition and would also be open to significant level of challenge.

- Consultation Question 25: Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?

Yes, we support the increase in fees to recover true costs to licensing authorities. However precise, cost recovery will vary between Licensing Authorities, making national fees difficult to calculate. Increase of costs would have high impact on business especially at this time of economic recovery.

- Consultation Question 26: Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?

Yes this is strongly supported. It would make collection of revenue easier because we would have a usable lever to encourage payment. It would give the licence holder a greater incentive to pay the fees on time. This omission in the original legislation has resulted in additional work and lost income. Following non payment should also result in a requirement to re-apply from scratch.

- Consultation Question 27: Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol-related crime?

We do not believe that they have had a great impact on alcohol-related crime. The current wording makes the conditions difficult to enforce, so a redrafting may help their effectiveness.

- Consultation Question 28: Would you support the repeal of any or all of the mandatory conditions?

No, as they give a consistent approach to all licensed premises where appropriate.

- Consultation Question 29: Would you support measures to de-regulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?

We would support the following measures:

- Streamlined application process
- Drop the 3 year requirement to review policy. Only review where concerns have been raised.
- When a licence lapses under section 27 (death, incapacity or insolvency) the licensee only have a period of 7 days to reinstate the licence under sections 47 or 50. We believe this period should be extended to possibly 28 days.

- Creation of an offence for not transferring a premises licence to the new premises owner/operator within a specific time period. This will ensure licensing authorities have up to date information.
- Possible use of improvement notices by LA (Licensing Officers) to address minor infringements of conditions / operating hours.

Appendix 3

Licensing Act applications (1 January 2010 to 3 November 2010)

Licensing Act 2003 - Applications received					
	North	West	South	East	total
Personal licenses, premises licences (new, vary, transfer, review)	214	248	195	149	806
Temporary Event Notices	518	372	585	403	1878
Total	732	620	780	552	2684

WILTSHIRE COUNCIL

LICENSING COMMITTEE

30TH NOVEMBER 2010

REVIEW OF EXISTING STREET TRADING CONTROLS

Executive Summary

This report reviews the current mechanisms for controlling street trading activity across the Wiltshire Council area, and outlines options for a harmonised scheme.

Recommendations

It is recommended:

- That the Licensing Committee recognise the need to introduce a new harmonised street trading scheme.
- That a single council-wide consent street trading scheme is the best option for the new scheme.
- That Licensing officers are tasked with producing an appropriate single council-wide consent street trading scheme by May 2011.
- That the Licensing Committee agree to consider the details of the proposed consent street trading scheme before recommending it for resolution to full Council.

Reason for Proposal

To adequately control street trading activity.

Author: Alissa Davies, Licensing Team (North and West), Public Protection Services

Corporate Director: Maggie Rae, Public Health and Wellbeing

Contact Details: alissa.davies@wiltshire.gov.uk

Purpose of Report

1. To inform members of the current policies for controlling street trading.
2. To make members aware of the legal process for introducing a harmonised street trading scheme across the Wiltshire Council area.
3. To recommend that Wiltshire Council introduces a single council-wide consent street trading scheme.

Background

4. 'Street trading' is the selling or exposing or offering for sale of any article, including a living thing. A 'street' is any area which the public have access to without payment, including private land. This includes both town centres and road lay-bys.
5. Part III, Schedule 4 of the 1982 Local Government (Miscellaneous Provisions) Act (the 1982 Act) gives District Councils extensive powers to regulate street trading.
6. Under the 1982 Act District Councils were able to designate any street as a:
 - Consent street
 - Licence street
 - Prohibited street
7. It is illegal to trade in a consent street or licence street without first obtaining a consent or licence from the council. It is illegal to trade in a prohibited street.
8. The 1982 Act also allowed councils to introduce 'reasonable charges' for granting and renewing street trading consents.
9. The following are exempt from the 1982 Act:
 - Pedlars with valid pedlar's certificates issued by the Chief Constable of the police authority
 - Chartered markets
 - Trading in a trunk road picnic area
 - Trading as a news vendor or roundsman
 - Permitted street collections
 - Trading on premises used as a petrol station or on the street adjoining premises used as a shop under the same ownership
 - Using an object or structure placed on or over a highway
10. Consent street trading can be used to assist local businesses by establishing a level playing field between fixed and mobile traders.

Current Situation

11. Before the formation of the unitary authority, Wiltshire County Council controlled street trading using the Highways Act 1980 and the District Councils controlled street trading by adopting powers under the 1982 Act.
12. Currently there is no harmonised street trading policy for Wiltshire Council, this is due to the former District Councils choosing to control street trading in different ways:
 - The North and West areas operate two different consent street trading schemes with different fee structures and different conditions.
 - The East operates a prohibited street (trading) scheme for a limited number of streets in the town centres.
 - There is no street trading scheme in the South area as Salisbury District Council did not adopt the powers in the 1982 Act. Wiltshire Council therefore has no enforcement powers in the South except to remove traders who are obstructing the public highway under the Highways Act 1980.
13. Lay-by traders are currently not regulated anywhere in the Wiltshire Council area, apart from food hygiene controls for food traders.
14. There have been some complaints from market traders in Salisbury in relation to street trading which have not been able to be satisfactorily resolved due to the lack of any scheme in the South area.

Options

There are two options:

- Do nothing, and continue with a mix of different schemes.
- Introduce a new harmonised street trading scheme across the Wiltshire Council area.

Do nothing

15. Taken together the existing policies are not fit for purpose and fail to meet Wiltshire Council's corporate priorities in that they are not customer focused. In different areas of the county street traders have different rights, are charged different fees and are subject to different procedures and conditions. This does not meet the corporate priority of the Council being fair, open and honest in its decision making. The existing consent street trading schemes in the North and West use different consultation procedures for granting and renewing street trading consents. There is no consultation on street trading in the East. This is inconsistent, unfair and confusing for street traders, local businesses, residents and council officers.
16. At present the Council finds it difficult to remove illegal street traders in the South because it has no enforcement powers except in cases where a street trader obstructs the public highway. Local businesses feel they are being

undermined by unfair competition from illegal traders who do not pay business rates.

Introduce a new harmonised street trading scheme across the Wiltshire Council area

17. A new harmonised street trading scheme would introduce the same fees, procedures and conditions for all street traders. This would ensure consistency, fairness and clarity for street traders, local businesses, residents and council officers.
18. It would afford Wiltshire Council extensive powers to remove all illegal street traders, including those in the South. There would be a clear enforcement procedure for removing illegal traders. The new harmonised street trading scheme could ensure a level playing field for all businesses in Wiltshire.

The introduction of a new harmonised scheme across the Wiltshire Council area would enable the Council to adequately control street trading activity. There are 3 options for designation:

- Consent street trading scheme
- Licence street trading scheme
- Prohibited street (trading) scheme

Consent street trading scheme

19. A new harmonised consent street trading scheme across the Wiltshire Council area would provide a flexible means of controlling street trading activity. There is scope for the fees charged for a street trading consent to cover the costs of administration and enforcement. It would also be possible for Wiltshire Council to generate income through the introduction of a new harmonised consent street trading scheme. A consent street trading scheme would allow greater scope for local decision making.
20. Wiltshire Council would be free to choose the procedure for administering and enforcing the consent street trading scheme and would be able to introduce conditions to prevent nuisance.

Licence street trading scheme

21. A new harmonised licence street trading scheme across the Wiltshire Council area would afford Wiltshire Council powers to adequately control street trading activity. As in a consent street trading scheme, there is scope for the fees charged for a street trading licence to reflect the costs of administration and enforcement.
22. However, a licence street trading scheme is less flexible and would have slower enforcement processes and higher administration costs. Wiltshire Council would not be free to choose the procedure for administering and enforcing a licence street trading scheme.

Prohibited street (trading) scheme

23. A new harmonised prohibited street (trading) scheme across the Wiltshire Council area would send a very clear message that Wiltshire Council does not tolerate any street trading, except by traders exempt from the 1982 Act.
24. However, it would be impossible for Wiltshire Council to cover its administration or enforcement costs if a prohibited street (trading) scheme was introduced. A prohibited street (trading) scheme is very inflexible- Wiltshire Council would not be able to make any concessions for street trading events held by charities, not-for-profit organisations, Town and Parish Councils or the Wiltshire Council Markets Team.
25. An options appraisal detailing the positive and negative consequences of each type of designation is provided in Appendix 1.

Environmental Impact

26. The introduction of an appropriate harmonised street trading scheme will improve the local environment in Wiltshire. If a consent street trading scheme is introduced Wiltshire Council will be able to control the appearance of mobile street trading units, their location and impose conditions for appropriate waste disposal.

Equality and Diversity

27. Unless a prohibited street (trading) scheme is introduced, a new harmonised street trading scheme will have a low impact. If a prohibited street (trading) scheme is introduced, there are potential implications with respect to human rights where a street trader has previously been granted planning permission to change the use of the land.
28. The introduction of a new harmonised street trading scheme will allow Wiltshire Council to promote fairness and consistency in the regulation of street trading activity.

Risk Assessment

29. The existing policies are inconsistent and open to challenge.

Financial Implications

30. A harmonised consent street trading scheme or licence street trading scheme will either generate income or be cost neutral.

Legal Implications

31. Any proposed harmonised street trading scheme will be compatible with the Human Rights Act.

32. Full formal consultation will take place before any street trading scheme is implemented.

Next Steps

33. Licensing officers will produce an appropriate street trading scheme for the consideration of the Licensing Committee by May 2011.
34. There is a set legal procedure for resolution by full Council whichever type of street trading scheme is decided upon.

Conclusion

35. The introduction of a harmonised street trading scheme will benefit local businesses by providing fairer trading conditions, and would ensure consistency, whilst generating income for the authority.

Background Papers

Part III, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982

Appendices

Appendix 1: An options appraisal detailing the positive and negative consequences of each type of designation.

Appendix 1

An options appraisal detailing the positive and negative consequences of each type of designation

Consent Street Trading Scheme	
Positives	Negatives
High potential for income generation	
The council is free to set the fees for a street trading consent, as long as these are 'reasonable.' This means the scheme either pays for itself or allows the council to generate income.	<p>The council cannot recover costs for refuse collection or street cleansing, although consent can include conditions for adequate refuse collection and street cleansing and the council can revoke or refuse to renew consent if these conditions are breached.</p> <p>The council must return whole or part of the fee where consent is surrendered or revoked.</p>
Reduced administration costs	
<p>The council is under no duty to grant a street trading consent. There is no need to specify statutory grounds for refusal to grant as long as the refusal is 'reasonable.'</p> <p>The applicant has no right of appeal to the Magistrates' court.</p> <p>There are no notice requirements. The applicant does not have the right to make representations, although the council does have discretion to hear representations.</p> <p>Highway authority consent is not required before designating a street as a consent street.</p>	
Adequate enforcement powers	
The council can prosecute for breach of times, streets and days.	The council cannot prosecute a street trader for breach of the type of article sold.

<p>There are no statutory limitations on the council's power to revoke or refuse to renew consent.</p> <p>The council can include any 'reasonable' conditions and can withdraw, revoke or refuse to renew a consent at any time if conditions are breached. This includes standard conditions for all consents and specific conditions for specific traders, for example the type of article sold. The council has power to ensure conditions are upheld.</p>	
Scope to be flexible/ make concessions	
<p>The council is free to choose the procedure for a consent street trading scheme, provided it acts 'reasonably.'</p> <p>The council can make concessions for certain types of street trading activity, such as street trading events run by charities and not for profit organisations.</p>	

Licence Street Trading Scheme	
Positives	Negatives
Some potential for income generation	
<p>The council is free to set the fees for a street trading licence, as long as these are 'reasonable.'</p> <p>The council can recover costs for refuse collection and waste cleansing. These costs can be included in the fee for a street trading licence. (Schemes that mix consent streets and licence streets often charge more for a licence).</p> <p>Where a street trading licence is surrendered or revoked the council is under no obligation to refund the licence fee. This is at the discretion of the council.</p>	<p>The applicant has the right of appeal to the Magistrates' court on statutory grounds if the council varies the conditions, revokes or refuses to renew the licence. Appeals can be protracted and expensive.</p>

Higher administration costs	
<p>The council can include administration costs in the fee it charges for a street trading licence.</p>	<p>Before a council revokes, varies or refuses to renew a licence, the applicant has the right to make representations. The applicant must be given 7 days to decide whether to make representations and a further 'reasonable period' to make representations.</p>
Slower enforcement process	
<p>The council can use the 'principal terms' of a street trading licence to specify the street, days, times and type of article sold. The council can prosecute for breach of the principal terms of a street trading licence.</p> <p>The council can attach 'reasonable subsidiary terms' to a street trading licence, for example requiring the trader to display their licence or preventing the trader from leaving refuse behind.</p>	<p>The council is not free to set the procedure for a licence street trading scheme- the procedure is set by the 1982 Act.</p> <p>The council is obliged to grant a street trading licence unless the application can be refused on the following statutory grounds:</p> <ul style="list-style-type: none"> • There is not enough space • There are already enough traders • The trader wants to trade for less days than the minimum number decided on by the council • The trader is unsuitable because of a previous conviction or failure to pay fees • The trader did not use their licence sufficiently. <p>The council can only revoke, vary the terms or refuse to renew a street trading licence if:</p> <ul style="list-style-type: none"> • The applicant is unsuitable because of a previous conviction • The applicant has persistently refused or neglected to pay fees • The applicant has not used the licence sufficiently and has no reasonable excuse. <p>The applicant has the right of appeal to the Magistrates' court against the refusal, revocation or variation of the principal terms of the licence (street, days, times and type of article sold). If the licence holder applies for renewal before the expiry date the licence remains valid until the end of the appeals process.</p>

Inflexible- hard to move from a licence street trading scheme to a consent street trading scheme or a prohibited street trading scheme	
	A street trading licence is a possession, therefore holders of street trading licences would be protected under the Human Rights Act if the council chose to introduce a prohibited street trading scheme or a consent street trading scheme in any street that was previously in a licence street trading scheme.

Prohibited Street (Trading) Scheme	
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Positives	Negatives
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No potential for income generation	
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A prohibited street (trading) scheme has low administration costs after the initial designation has taken place. Action is only taken by the licensing authority when the council receives a complaint about an illegal street trader.	No fees are charged in a prohibited street (trading) scheme. The council cannot recover the costs of administration and enforcement work and may make a loss.
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Very clear 'zero-tolerance' policy	
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It is illegal for anyone to trade in a prohibited street unless they are exempt from the 1982 Act. This is easy for potential street traders, residents and local businesses to understand. The council can prosecute for illegal street trading in a prohibited street.	
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The council has no enforcement powers outside of the area covered by the prohibited street (trading) scheme	
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	The council cannot impose any licensing conditions on anyone trading in areas outside of the prohibited street (trading) scheme.
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No scope to be flexible or make concessions	
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A prohibited street (trading) scheme has no procedural requirements once designation has taken place.	It is not possible to make any concessions for street trading events, such as those held by charities, not-for-profit organisations, Wiltshire Council or Town and Parish Councils.
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WILTSHIRE COUNCIL

LICENCING COMMITTEE

30 NOVEMBER 2010

GUIDANCE ON FIT AND PROPER PERSONS

Executive Summary

This report informs members of the Licensing Committee of the need for a robust policy regarding consideration of criminal records for new and existing Hackney Carriage drivers, Private Hire drivers and Operators.

Recommendations

It is recommended:-

That the Licensing Committee notes and approves the proposed policy on the relevance of convictions for Hackney Carriage drivers, Private Hire drivers and Operators.

Reason for Proposal

To provide a consistent and legally robust Policy.

Author: Mrs. Kate Golledge, Licensing Manager North and West Wiltshire

Contact Details: kate.golledge@wiltshire.gov.uk

Purpose of Report

1. At the Licensing Committee meeting on the 26 May 2010, Members approved a new set of conditions for Hackney Carriage (taxi), Private Hire drivers, operators and vehicles. As part of the new harmonised regime a consistent policy on considering drivers convictions is required.

Background

2. Wiltshire Council approved a scheme of delegated powers at its meeting on 1 December 2009. It was agreed that powers to grant licences for Hackney Carriages drivers, Private Hire drivers and operators were delegated to officers.
3. This report details a new policy to consider an applicant's criminal record and the relevance of that record when determining if that person is a "fit and proper" person to hold a Hackney Carriage driver, Private Hire driver or operator licence.
4. Currently the four licensing zones of Wiltshire Council: - North, South, East and West are operating with the former district council policies for considering the relevance of convictions for Hackney Carriage drivers, Private Hire drivers and operators.
5. Wiltshire Council has a statutory duty under the Town Police Clauses Act 1847, the Transport Act 1985 and the Local Government (Miscellaneous Provisions) Act 1976 to licence Hackney Carriage drivers, Private Hire drivers and operators. Under this legislation the council shall not grant a Hackney Carriage driver, Private Hire driver or operators licence unless it is satisfied that the applicant is a "fit and proper person".
6. In order to achieve consistency and avoid the risk of successful legal challenge, Local Authorities need to have a clear policy for the consideration of criminal records.
7. Where licensing officers have delegated powers to grant licences they will utilise the guidelines laid down in the policy when making a decision to grant a licence.
8. It is proposed that the policy and guidelines detailed in Appendices 1 and 2 attached to this report are approved by the Licensing Committee.
9. It is further recommended that the Licensing Sub-Committee form the Appeals Panel to hear applications from drivers who have accrued enough penalty points under the Wiltshire Council scheme to have their licence suspended or revoked.

Environmental Impact

10. There is minimal environmental impact of this proposal.

Equality and Diversity

11. The impact of these proposals is assessed as `medium` against the Councils statutory responsibilities. The adoption of a harmonised policy and guidelines will ensure a fair and consistent application across the Wiltshire Council area.

Risk Assessment

12. If the Council operates without a ratified, robust and consistent policy, it could be open to successful legal challenge over its decision making and so impact on the council's reputation.

Financial Implications

13. Significant legal costs could be involved if the council were faced with a successful legal challenge, this would include compensation for loss of trade and goodwill amongst other costs.

Legal Implications

14. Ratification of the amended, harmonised policy will reduce the risk of legal challenge to the licensing process.

Conclusion

15. It is recommended: -
 - a) That the proposed policy on the relevance of convictions for Hackney Carriage drivers, Private Hire drivers and operators is ratified for adoption by the Licensing Committee.
 - b) That the Licensing Sub-Committee form the panel to hear appeals against the issuing of penalty points under the Wiltshire Council scheme where a driver is facing suspension or revocation.

Background Papers

Local Government Regulation Taxi and PHV Licensing `Criminal Convictions` Policy - September 2010

Appendices

- Appendix 1 Statement of Policy, relevance of conviction for new applicants.
- Appendix 2. Statement of Policy for existing Hackney Carriage and Private Hire Drivers licences.

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HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING

STATEMENT OF POLICY **RELEVANCE OF CONVICTIONS FOR NEW APPLICANTS**

Wiltshire Council has a statutory duty under the Town Police Clauses Act 1847, the Transport Act 1985 and the Local Government (Miscellaneous Provisions) Act 1976 to license hackney carriage and private hire vehicles, drivers and operators. Under this legislation the Council shall not grant a hackney carriage or private hire driver's licence or a private hire operator's licence or vehicle licence unless it is satisfied that the applicant is a **"fit and proper person"**.

Applicants for hackney carriage or private hire vehicle licenses will be required to declare any convictions they have. All information given will be treated in strict confidence while the licensing process takes its course and will be retained for no longer than is necessary. An applicant for a driver licence is now included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and all previous convictions, if considered relevant to the application, can now be considered.

An applicant for a hackney carriage or private hire driver licence will be required to provide an Enhanced Disclosure from the Criminal Records Bureau. An applicant for a Vehicle Licence or a Private Hire Operator Licence, where there is no intention to drive a licensed vehicle, will be required to provide a Basic Disclosure. Disclosures bring together information held on the Police National Computer, local police records and where appropriate information is held on lists by the Department of Health and the Department of Education and Employment.

The disclosure of a criminal record or other information will not debar an applicant from obtaining a licence unless Wiltshire Council considers that the conviction(s) renders them unsuitable. In making this decision this authority will consider the nature of the offence, how long ago it was and the age the applicant was when it was committed and any other factors, which may be relevant. However the overriding consideration will be the safety and protection of the public.

Any applicant who is refused a licence on the grounds that he/she is not a fit and proper person to hold such a licence has a right of appeal to a Magistrates' Court under the Local Government (Miscellaneous Provisions) Act 1976. Any person aggrieved by the decision of the Wiltshire Council has a period of 21 days, from the date on which the notice of the Council's decision is served on the applicant, in which to lodge an appeal.

Wiltshire Council

 Where everybody matters

GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS FOR NEW DRIVER APPLICANTS

1. General Policy

Each case will be decided on its own merits. Although an applicant may have convictions, which would fall under the guidelines of the policy, the Council will always consider the full facts of the case and any mitigating or other circumstances, before making a decision.

An applicant with previous conviction(s) need not be permanently banned from obtaining a license, but depending on the offences involved, they will be expected to have remained **free of conviction** for the periods indicated in these guidelines before an application is considered. The term **free of conviction** will be calculated to run from the date of conviction for each offence recorded. The Council will however retain the discretion to refuse a licence even after such a period has elapsed.

If the offence is isolated, there are mitigating circumstances and/or the period free of conviction has not been satisfied, some discretion may be appropriate, but the overriding consideration should be the safety and protection of the public.

In cases where applicants have been disqualified from driving, the period **free of conviction** will run from the date of the restoration of the driving licence or if required to take a driving test, from the date of passing the test.

Please see examples of how the term **free of conviction** is calculated by referring to paragraph 12 “**Applicants With Previous Convictions**”.

The following examples afford an illustration of the likely response of the Council where convictions or police cautions are revealed.

2. Traffic Offences

Minor Traffic Offences

(A list of offences to which this paragraph applies is attached as **Annex 1**)

If an applicant has received a conviction for a minor traffic offence, 6 months **free of conviction** should have elapsed before an application will be considered.

If an applicant has more than one conviction, in the last three years, 12 months **free of conviction** should have elapsed since the most recent conviction, before an application will be considered.

Major Traffic Offences

(A list of offences to which this paragraph applied is attached as **Annex 2**)

Licensed drivers of hackney carriage and private hire vehicles are responsible for the safety of members of the public who travel in their vehicles and a serious view will always be taken of a conviction for a major traffic offence.

If an applicant has a conviction for a major traffic offence, without disqualification, 12 months **free of conviction** should have elapsed before an application will be considered.

If an applicant has more than one conviction, in the last three years, 2 years **free of conviction** should have elapsed since the most recent conviction, before an application will be considered.

Hybrid Traffic Offences

(A list of offences to which this paragraph applies is attached as **Annex 3**)

Offences of this type will be treated as major traffic offences if the court awarded 4 or more penalty points for the offence and as a minor traffic offence if the court awarded 3 or less penalty points for the offence.

Disqualification

Where an applicant has been disqualified from driving for a major traffic offence, 3 years **free of conviction** should have elapsed before an application will be considered.

If an applicant has previously accrued sufficient penalty points to require a period of disqualification (totting up), a period of 12 months **free of conviction** should have elapsed before an application will be considered.

In 'totting up' cases where disqualification is considered by the court, but because of 'exceptional circumstances' they decide not to disqualify a driver, 12 months from the date the court made its finding should have elapsed before an application will be considered.

3. Drunkenness and Related Offences

With a Motor Vehicle

A very serious view will be taken of convictions of driving or being in charge of a vehicle whilst under the influence of drink or drugs or failing to provide a specimen for analysis.

If an applicant has been disqualified from driving as a result of a conviction for this type of offence, then before an application is considered, 3 years free of conviction should have elapsed.

If an applicant has more than one conviction for this type of offence then serious doubts should be raised as to his/her suitability to hold a licence. Although each case will always be considered on its own merits, the council will always retain the discretion to refuse an application, with the overriding consideration being the safety of the public.

If there is any suggestion that an applicant is or was an alcoholic then grave doubts should arise as to their suitability to hold a licence. A special medical examination should be arranged and depending on the medical evidence and advice given, at least 6 years should have elapsed after any treatment has been completed before an application is considered. Although each case will be considered on its own merits, the Council will retain the discretion to refuse a licence, with the overriding consideration being the safety and protection of the public.

Not in a Motor Vehicle

An isolated conviction for a drink related offence should not necessarily debar an applicant from obtaining a licence.

If an applicant has more than one conviction for this type of offence, at least 3 years free of conviction should have elapsed since the most recent conviction before an application is considered.

A number of convictions for offences of this type may indicate a medical problem and grave doubts should arise as to the suitability of the applicant to be licensed. In these circumstances a special medical examination should be arranged and depending on the medical evidence and advice given, at least 6 years should have elapsed after any treatment has been completed before an application is considered. Although each case will be considered on its own merits, the Council will retain the discretion to refuse a licence, with the overriding consideration being the safety and protection of the public.

4. Drugs

A serious view will always be taken of a conviction for any offence involving drugs. Licensed drivers of hackney carriage and private hire vehicles are responsible for the safety of members of the public who are traveling in their vehicles.

An applicant with a conviction for a drug related offence involving a Class A, B or C drug will be required to show a period free of conviction as follows:

1. Class A drug the period will be 5 years
2. Class B drug the period will be 4 years
3. Class C drug the period will be 3 years

If an applicant has more than one conviction for a drug related offence, then depending on the type of drug involved, the period free of conviction which should have elapsed since the most recent conviction will be either double or a combination (if the class of drug is different) from the periods shown above.

If there is any suggestion that an applicant is or was a drug addict then grave doubts should arise as to their suitability to hold a licence. A special medical examination should be arranged and depending on the medical evidence and advice given at least 6 years should have elapsed after any treatment has been completed before an application is considered. Although each case will be considered on its own merits, the Council will retain the discretion to refuse a licence, with the overriding consideration being the safety and protection of the public.

5. Indecency/Sexual Offences

Drivers of hackney carriages and private hire vehicles often carry unaccompanied passengers and a serious view will always be taken of a conviction for an indecency/sexual offence. When considering the seriousness of any indecency/sexual offence, the overriding consideration will always be the safety and protection of the public.

Depending on the seriousness of the offence, an applicant with a conviction for an indecency/sexual offence will not normally be considered for a licence until a substantial period, usually between 5 to 7 years, free of conviction has elapsed.

More than one conviction for an indecency/sexual offence would raise serious doubts of an applicant's suitability to hold a licence. If after careful consideration it is decided to allow an application to continue, at least 10 years free of conviction must have elapsed since the most recent conviction, before an application will be considered.

An applicant with a conviction for a serious sexual offence such as Rape or Unlawful Sexual Intercourse will raise very grave doubts of an applicant's suitability to hold a licence and will generally be refused.

6. Dishonesty

Licensed drivers of hackney carriage and private hire vehicles are expected to be trustworthy persons. The widespread practice of delivering unaccompanied property is indicative of the trust that business people put in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare or knowing that a property is empty, whilst the occupants are away on holiday after taking them to the railway station or airport etc. For these reasons a serious view will be taken of any convictions involving dishonesty.

An applicant with a conviction for an offence such as theft, bilking, handling stolen goods or deception, should be required to show a period of at least 3 years free of conviction before an application is considered. If an applicant has more than one conviction for this type of offence, then at least 5 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

An applicant with a conviction for a more serious offence such as Burglary, Fraud or Forgery should be required to show a period of at least 5 years free of conviction before an application is considered. If an applicant has more than one conviction for this type of offence, then at least 7 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

7. Criminal Damage

A minor offence of criminal damage should not necessarily debar an applicant from obtaining a licence.

If an applicant has more than one conviction for this type of offence, at least 3 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

Offences such as arson are considered much more serious and applicants will generally be refused.

8. Violence

As the drivers of licensed hackney carriages and private hire vehicles maintain a close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding, assault or any other type of offence of a violent nature, with the overriding consideration being the safety and protection of the public.

An applicant with a conviction for a minor offence of assault such as common assault, battery, or obstruction should be required to show a period of at least 3 years free of conviction before an application is considered. If an applicant has more than one conviction for this type of offence, then at least 5 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

An applicant with a conviction for a more serious offence of assault such as ABH, Assault on Police, Affray, Resisting Arrest, Possessing an Offensive Weapon, Racially-aggravated criminal damage or Racially-aggravated offence, should be required to show a period of at least 5 years free of conviction before an application is considered. If an applicant has more than one conviction for this type of offence, then at least 7 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

An applicant with a conviction for the most serious offences of assault such as GBH, Malicious Wounding or Robbery, should be required to show a period of at least 8 years free of conviction before an application is considered. If an applicant has more than one conviction for this type of offence, then at least 10 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

An applicant with a conviction for an offence of Murder, Manslaughter or Manslaughter or Culpable Homicide While Driving, should raise grave doubts as to the applicants suitability to hold a licence. The Council will normally refuse a licence, the overriding consideration being the safety of the public.

9. Police Cautions

A Police Caution is considered and administered when a person comes to the notice of the Police for the first time. A formal caution is only offered if there is sufficient evidence to lead to a prosecution and the offender admits his/her guilt.

A formal Police Caution will be viewed as a conviction. The period free of conviction will be the same as for a conviction and will run from the date the caution was administered.

10. Other Offences

Where a Binding Order, Community Service Order or a Restraining Order have been imposed by the Court, then no application should be considered, whilst that order is still current. A period of at least 2 years should have elapsed, after the expiry of the order, before an application is considered and even then the overall consideration will be the protection of the public.

11. Pending Offences

An applicant is required to disclose details of any charges pending against him. If there is a pending charge, the application will not be considered until the result of the case is known. The application will then be considered in line with the guidelines relating to the relevance of convictions.

12. Applicants with Previous Convictions

The following are illustrations of how the term 'free of conviction' will be calculated:-

(1)	<u>Offence</u>	<u>Court Date</u>	<u>Date Free of Conviction</u>
	Theft	25.7.02.	1 st Offence 25.7.05 2 nd Offence 25.7.07
(2)	<u>Offence</u>	<u>Court Date</u>	<u>Date Free of Conviction</u>
	ABH	9.7.98.	1 st Offence 9.7.03 2 nd Offence 9.7.05
(3)	<u>Offence</u>	<u>Court Date</u>	<u>Date Free of Conviction</u>
	Driving a Motor Excess Alcohol	12.11.99. Disqualified 12 months	1 st Offence 12.11.03 2 nd Offence 12.11.05

Annex 1

MINOR TRAFFIC OFFENCES

MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street Offences
MS40	Driving with uncorrected defective eyesight or refusing to submit to a test
MS70	Driving with uncorrected defective eyesight
MS80	Refusing to submit to an eyesight test
MS90	Failure to give information as to identity of driver etc
MW10	Contravention of Special Road Regulations (excluding speed limits)
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with a 'Stop' sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with traffic sign (excluding 'Stop' sign, traffic lights or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

Aiding, abetting, counseling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. PC10 becomes PC16)

Annex 2

MAJOR TRAFFIC OFFENCES

AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving while disqualified by order of court
BA20	Attempting to drive while disqualified by order of court
CD10	Driving without due care and attention
CD20	Driving without reasonable consideration for other road users
CD30	Driving without due care and attention or without reasonable consideration for other road users
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death by careless driving when unfit through drugs
CD60	Causing death by careless driving with alcohol level above the limit
CD70	Causing death by careless driving then failing to supply a specimen for analysis
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive.
DR70	Failing to provide specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle when unfit through drugs
IN10	Using a vehicle uninsured against third party risks
LC20	Driving otherwise than in accordance with a licence
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability
LC50	Driving after a licence has been revoked or refused on medical grounds
MS50	Motor racing on the highway
MS60	Offences not covered by other codes
UT50	Aggravated taking of a vehicle

Aiding, abetting, counseling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16)

Annex 3

HYBRID TRAFFIC OFFENCES

CU10	Using vehicle with defective brakes
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyre(s)
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
SP10	Exceeding goods vehicle speed limit
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on a motorway
SP60	Undefined speed limit offence

Aiding, abetting, counseling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. CU10)

1st September 2010.

GUIDELINES OF THE RELEVANCE OF CONVICTIONS AND THE SUSPENSION OR REVOCATION OF EXISTING HACKNEY CARRIAGE & PRIVATE HIRE DRIVER LICENCES

General Legislation

Under Section 50 Town Police Clauses Act 1847 Wiltshire Council may, upon conviction for the second time of the proprietor or driver of any such hackney carriage for any offence under the provisions of this or the special Act with respect to hackney carriages, or any byelaw made in pursuance thereof, suspend or revoke, as they deem right, the licence of any such proprietor or driver.

Under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, Wiltshire Council may suspend, or revoke or refuse to renew a driver's licence, if since the licence was issued, the driver is convicted of:

- An offence involving dishonesty, indecency or violence
- An offence under the Town Police Clause Act 1847 or the local Government (Miscellaneous Provisions) Act 1976
- Or any other reasonable cause

Where Wiltshire Council suspend, revoke or refuse to renew a licence Under Section 61, they will give to the driver a notice of the grounds on which the licence has been suspended, revoked or not renewed, within 14 days. The suspension or revocation takes effect at the end of a period of 21 days beginning with the day on which the notice is served on the driver.

Any driver aggrieved by a decision of Wiltshire Council has a right of appeal to the Magistrates' Court. The appeal must be lodged within the 21 days of the notice being served on the driver and until the time of appealing has expired or when an appeal is lodged and until the time the appeal is heard, the driver may continue to work.

If it appears that in the interests of public safety it requires the suspension or revocation of the licence to have immediate effect, the notice given to the driver will include a statement that this is so and an explanation why. The suspension or revocation will take effect as soon as the notice is served on the driver, even though an appeal may be lodged.

General Policy

Each case will be decided on its own merits. The suspension, revocation or refusal to renew a licence is a serious matter and Wiltshire Council will always consider the full facts of the case and any mitigating or other circumstances, before making a decision.

If the offence is isolated and there are mitigating circumstances, some discretion may be appropriate when deciding on the period of suspension or revocation, but in every case the overriding consideration will always be the safety and protection of the public.

The following examples afford an illustration of the likely response of the Council, when offences are committed or unacceptable behaviour/conduct takes place.

Traffic Offences

(Please note a list of Minor, Major and Hybrid Offences are attached as Annexes). A Hybrid offence will be treated as a major traffic offence if the court awarded 4 or more penalty points for the offence and as a minor traffic offence if the court awarded 3 or less penalty points for the offence.

Licensed drivers of hackney carriages and private hire vehicles are responsible for the safety of members of the public who travel in their vehicles. A serious view will always be taken if evidence is obtained or information comes to light of a driver committing or being convicted of a major traffic offence. In these circumstances and after consideration of the circumstances and seriousness of the offence involved, a hackney carriage or private hire driver licence could be suspended for any period between 14 and 56 days.

If a licensed driver is convicted of committing any traffic offence and accrues sufficient penalty points to require a period of disqualification (totting up) then in these circumstances his hackney carriage or private hire driver licence will be suspended as follows:

- If the disqualification period is less than 28 days, it will be the period of disqualification plus 14 days.
- If the disqualification period is between 28 days and 3 months, it will be the period of disqualification plus 28 days.
- If the disqualification period is between 3 months and 6 months, it will be the period of disqualification plus 56 days.

If the disqualification period is for any period over 6 months the hackney carriage or private hire driver licence will be revoked from the date of the conviction. Any application for a new licence will not be considered until a period of at least 12 months has elapsed from the date of revocation plus any period of disqualification imposed by the court.

In cases where disqualification is considered by the court, but because of 'exceptional circumstances' they decide not to disqualify a driver, the following will apply:

- After considering the full circumstances of the case, including the 'exceptional circumstances' considered by the court, if it is felt appropriate a driver's licence may be suspended for a period not exceeding 28 days.
- If a decision is made not to suspend a driver's licence, an official warning should be served on the driver informing him/her that if any further driving offences are committed during a period of 6 months from the date of conviction, his/her licence may be suspended for a period not exceeding 28 days.

Driving Without Insurance

A serious view will always be taken of an offence of driving without insurance. Licensed drivers of hackney carriages and private hire vehicles are responsible for the safety of members of the public who are travelling in their vehicles.

If a licensed driver is convicted or evidence is obtained of him/her committing this type of offence the following will apply:

- If the offence is committed whilst driving a vehicle other than a licensed vehicle, his/her licence will be suspended for 56 days from either the date of the conviction or the date the offence is committed or came to notice on, plus any period of disqualification imposed by the court.
- If the offence is committed whilst driving a licensed vehicle, his/her licence will be revoked from either the date of the conviction or the date the offence is committed or came to notice on. Any application for a new licence will not be considered until a period of at least 6 months has elapsed from the date of revocation plus any period of disqualification imposed by the court.
- If the offence is committed whilst driving a licensed vehicle, which he/she is also the owner, his/her licence will be revoked from either the date of the conviction or the date the offence is committed or came to notice on. Any application for a new licence will not be considered until a period of at least 18 months has elapsed from the date of revocation plus any period of disqualification imposed by the court.

Driving Under the Influence of Drink or Drugs

A very serious view will be taken of convictions of driving or being in charge of a vehicle whilst under the influence of drink or drugs or failing to provide a specimen for analysis.

If a licensed driver is convicted of this type of offence the following will apply:

- A driver convicted of this type of offence, whilst driving or being in charge of a vehicle other than a licensed vehicle, will have his/her licence revoked from the date of conviction. Any application for a new licence will not be considered until a period of at least 3 years has elapsed from the date of conviction plus any period of disqualification imposed by the court.
- A driver convicted of this type of offence, whilst driving a licensed vehicle, will have his/her licence revoked from the date of conviction. Any application for a new licence will not be considered until a period of at least 4 years has elapsed from the date of conviction plus any period of disqualification imposed by the court.

Drugs

A serious view will always be taken of a conviction for any offence involving drugs. Licensed drivers are responsible for the safety of members of the public who are travelling in their vehicles.

A driver convicted of a drug related offence will have his/her licence revoked from the date of conviction. Any application for a new licence will not be considered until a period of at least 3 years has elapsed from the date of conviction.

If evidence is obtained of a licensed driver committing or being involved in a drug related offence or incident, then serious doubts should be raised as to his/her suitability to continue to hold a licence. Although each case will always be considered on its own merits, the Council will always retain the discretion to revoke a licence with the overriding consideration being the safety of the public. If a licence is revoked any application for a new licence will not be considered until a period of at least 3 years has elapsed from the date of revocation.

If there is any evidence to suggest that a driver may be a user of or dependant on drugs, a special medical examination should be arranged. Depending on the medical evidence and advice given then serious consideration should be given as to the driver's suitability to continue to hold a licence. Although each case will always be considered on its own merits, the Council will always retain the discretion to revoke a licence with the overriding consideration being the safety of the public. If a licence is revoked any application for a new licence will not be considered until at least 6 years has elapsed from the date of revocation and after any treatment has been completed.

Indecency/Sexual Offences

Drivers of hackney carriages and private hire vehicles often carry unaccompanied passengers and a serious view will always be taken of a conviction for any indecency or sexual offence.

A driver convicted of an indecency or sexual offence will have his/her licence revoked from the date of conviction. Any application for a new licence will not be considered until a period of at least 5 years has elapsed from the date of conviction.

If evidence is obtained of a licensed driver committing or being involved in any offence or incident involving indecency or of a sexual nature, then serious doubts should be raised as to his/her suitability to continue to hold a licence. Although each case will always be considered on its own merits, the Council will always retain the discretion to revoke a licence with the overriding consideration being the safety of the public. If a licence is revoked any application for a new licence will not be considered until a period of at least 5 years has elapsed from the date of revocation.

Dishonesty

Licensed drivers are expected to be persons of trust and for this reason a serious view will always be taken of any convictions involving dishonesty.

A driver convicted of any offence involving dishonesty will have his/her licence revoked from the date of conviction. Any application for a new licence will not be considered until a period of at least 3 years has elapsed from the date of conviction.

If evidence is obtained of a licensed driver committing or being involved in any offence of dishonesty, serious consideration should be given as to his/her suitability to continue to hold a licence. Although each case will be considered on its own merits, the Council will always retain the discretion to revoke a licence with the overriding consideration being the safety of the public. If a licence is revoked any application for a new licence will not be considered until a period of at least 3 years has elapsed from the date of revocation.

Violence

Licensed drivers maintain a close contact with the public and because of this a serious view will always be taken of any convictions involving offences of violence.

A driver convicted of a minor offence of assault, such as common assault, can expect his/her licence to be suspended for a period of time ranging from 28 to 56 days depending on the circumstances of the offence. The suspension will run from the date of conviction.

A driver convicted of an offence of actual bodily harm will have his/her licence revoked from the date of conviction. Any application for a new licence will not be considered until a period of at least 2 years has elapsed from the date of conviction.

A driver convicted of a more serious offence of assault such as grievous bodily harm, wounding, Racially-aggravated offence, will have his/her licence revoked from the date of conviction. Any application for a new licence will not be considered until a period of at least 5 years has elapsed from the date of conviction.

If evidence is obtained of a licensed driver committing or being involved in any offence of violence consideration should be given to suspending or revoking his/her licence. Although each case will be considered on its own merits, the Council will always retain the discretion to suspend or revoke a licence with the overriding consideration being the safety of the public. Depending on the seriousness of the offence, if a licence is suspended it will be for a period of time ranging from 28 to 56 days. If a licence is revoked any application for a new licence will not be considered until a period of at least 2 years has elapsed from the date of revocation.

Criminal Damage

A driver convicted of a minor offence of criminal damage can expect his/her licence to be suspended for a period of time ranging from 28 to 56 days depending on the cost of the damage caused. The suspension will run from the date of conviction.

A driver convicted of a serious offence of damage such as arson will have his/her licence revoked from the date of conviction. Any application for a new licence will not normally be considered.

Unacceptable Behaviour

A licensed driver should always behave in a civil and orderly manner at all times when dealing with passengers or members of the public, including other drivers of hackney carriage or private hire vehicles.

A driver convicted or cautioned of any discriminatory offence may have his/her licence suspended or revoked depending on the circumstances of the case.

A driver convicted of offences such as Drunk & Incapable, Drunk & Disorderly or Conduct Likely to Cause a Breach of the Peace may have his/her licence suspended or revoked depending on the circumstances of the case.

The period of suspension will be a period of time ranging from 28 to 56 days. If the licence is revoked any application for a new licence will not be considered until a period of at least 12 months has elapsed from the date of conviction.

Police Cautions

A Police Caution is considered and administered when a person comes to the notice of the Police for the first time. A formal caution is only offered if there is sufficient evidence to lead to a prosecution and the offender admits his/her guilt.

If a driver receives a formal Police Caution it will be viewed as a conviction. The relevant offence/conviction will then be considered in line with these guidelines relating to the relevance of convictions.

Pending Offences

A driver is required to disclose details of any incident where he is arrested by the Police and/or details of any charges pending against him/her.

In the majority of cases no action will be taken until the result of the Police investigation is known and the driver is charged or cleared of the relevant offence(s). If a conviction follows it will be considered in line with these guidelines relating to the relevance of convictions.

However if it appears that in the interests of public safety the offence(s) require the suspension/revocation of the licence to have immediate effect, the driver will be served with the relevant notice as explained under the paragraph ' General Legislation'.

MINOR TRAFFIC OFFENCES

MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street Offences
MS40	Driving with uncorrected defective eyesight or refusing to submit to a test
MS70	Driving with uncorrected defective eyesight
MS80	Refusing to submit to an eyesight test
MS90	Failure to give information as to identity of driver etc
MW10	Contravention of Special Road Regulations (excluding speed limits)
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with a 'Stop' sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with traffic sign (excluding 'Stop' sign, traffic lights or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

Aiding, abetting, counseling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. PC10 becomes PC16)

MAJOR TRAFFIC OFFENCES

AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving while disqualified by order of court
BA20	Attempting to drive while disqualified by order of court
CD10	Driving without due care and attention
CD20	Driving without reasonable consideration for other road users
CD30	Driving without due care and attention or without reasonable consideration for other road users
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death by careless driving when unfit through drugs
CD60	Causing death by careless driving with alcohol level above the limit
CD70	Causing death by careless driving then failing to supply a specimen for analysis
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive.
DR70	Failing to provide specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle when unfit through drugs
IN10	Using a vehicle uninsured against third party risks
LC20	Driving otherwise than in accordance with a licence
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability
LC50	Driving after a licence has been revoked or refused on medical grounds
MS50	Motor racing on the highway
MS60	Offences not covered by other codes
UT50	Aggravated taking of a vehicle

Aiding, abetting, counselling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16)

HYBRID TRAFFIC OFFENCES

CU10	Using vehicle with defective brakes
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyre(s)
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
SP10	Exceeding goods vehicle speed limit
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on a motorway
SP60	Undefined speed limit offence

Aiding, abetting, counselling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. CU10)

1st September 2010.

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