

AGENDA

Meeting: Licensing Committee
Place: The West Wiltshire Room - County Hall, Trowbridge BA14 8JN
Date: Monday 11 December 2017
Time: 10.30 am

Please direct any enquiries on this Agenda to Lisa Pullin, of Democratic Services, County Hall, Bythesea Road, Trowbridge, 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 Allison Bucknell	Cllr George Jeans
Cllr Trevor Carbin	Cllr Jim Lynch
Cllr Sue Evans	Cllr Leo Randall
Cllr Jose Green (Vice-Chairman)	Cllr Pip Ridout
Cllr Mike Hewitt	Cllr Ian Thorn
Cllr Peter Hutton (Chairman)	Cllr Robert Yuill

Substitutes:

Cllr Peter Evans	Cllr Gavin Grant
Cllr Howard Greenman	Cllr Steve Oldrieve
Cllr James Sheppard	Cllr Stewart Palmen
Cllr Anna Cuthbert	Cllr Ernie Clark
Cllr Clare Cape	Cllr Nick Murry
	Cllr Graham Wright

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AGENDA

1. **Apologies/Substitutions**

To receive any apologies and details of any substitutions.

2. **Minutes** (*Pages 7 - 12*)

To confirm and sign the minutes of the meeting held on 13 March 2017 (copy attached).

3. **Chairman's Announcements**

4. **Declarations of Interest**

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

5. **Public Participation**

The Council welcomes contributions from members of the public.

Statements

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 on the front of the agenda for any further clarification.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on **Monday 4 December 2017** in order to be guaranteed of a written response. In order to receive a verbal response questions must be submitted no later than 5pm on **Wednesday 6 December**. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6. **Minutes of the Licensing Sub Committees** (*Pages 13 - 38*)

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

Eastern Area

01/08/17 Application for a Variation of a Premises Licence
The Greyhound, High Street, Bromham, Chippenham

Northern Area

31/05/17 Application for a Variation of a Premises Licence
Tesco, Unit 5a Hathaway Retail Park, Foundry Lane,
Chippenham

Southern Area

20/06/17 Application for a Premises Licence
Snack Van, Lay-by off Packway, Larkhill, Amesbury

Western Area

15/08/17 Application for a Premises Licence
Four Seasons Coffee Shop, 3 Market Street, Trowbridge

7. **Equality Act 2010** (*Pages 39 - 64*)

The attached report of Danial Farr (Compliance Officer) seeks to inform the Committee of the commencement of Sections 165 and 167 of the Equality Act 2010 which came into force on 6 April 2017. These sections impact on the Council's hackney carriage and private hire licencing regime.

8. **Update on Public Spaces Protection Orders**

Tom Ward (Public Health Specialist - Community Safety and Substance Misuse) will provide a verbal update to the Committee on Public Spaces Protection Orders.

9. **Update on the Licensing Service** (*Pages 65 - 70*)

Linda Holland (Licensing Manager) has prepared the attached update for the Committee which informs about the work of the Licensing Team.

10. **Dates of Future Committee Meetings**

Members are asked to note the future meetings of the Licensing Committee, all to commence at 10.30am:

Monday 12 March 2018

Monday 4 June 2018

Monday 3 September 2018

Monday 3 December 2018.

11. **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.

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LICENSING COMMITTEE

DRAFT MINUTES OF THE LICENSING COMMITTEE MEETING HELD ON 13 MARCH 2017 AT THE WEST WILTSHIRE ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Pip Ridout (Chairman), Cllr Desna Allen (Vice Chairman), Cllr Nick Blakemore, Cllr Allison Bucknell, Cllr Dennis Drewett, Cllr Sue Evans, Cllr Mike Hewitt, Cllr Simon Jacobs and Cllr George Jeans

Also Present:

Ian Brown (Head of Environment Services), Linda Holland (Licensing Manager), Jo Hulbert (Compliance Officer), Cllr Peter Hutton (Portfolio Holder), Lisa Pullin (Democratic Services Officer) and Paul Taylor (Senior Solicitor)

1 **Apologies**

Apologies were received from Councillors Davis and Green and from Tracy Daszkiewicz (Consultant in Public Health).

2 **Minutes**

The minutes of the meeting held on 19 September 2016 were presented to the Committee.

Resolved:

That the minutes of the meeting held on 19 September 2016 be approved and signed as a correct record.

3 **Chairman's Announcements**

As this was the last meeting of this Council term, the Chairman wished to express her thanks to all Committee members, the Licensing Team and all other staff involved with licensing.

4 **Declarations of Interest**

There were no declarations of interest.

5 **Public Participation**

No questions had been submitted from the public prior to the meeting. There were two members of the public present and the Committee heard from Mr Adrian Berridge who wished to make a statement in respect of Agenda item 7 – Proposed Changes to Licensing Fees.

Mr Berridge stated that it was already a struggle to recruit new drivers in Wiltshire as there are other costs involved including a medical and these costs could be in the region of £400/£450 as a start up cost. 50% of his drivers were due for retirement and if they all leave then he would struggle to cover the current demand for taxi journeys. He didn't feel that there should be an increase in the licensing fees, bearing in mind that admin costs should have come down now that there is not an annual renewal needed.

The Chairman thanked Mr Berridge for his comments.

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

Eastern Area

- 12/10/16 Application for a Premises Licence
Potterne Social Club, Ewarts Croft, Potterne, Devizes
- 31/10/16 Application for a Variation of a Premises Licence
Crown & Anchor, Crowood Lane, Ramsbury, Marlborough

Northern Area

- 21/09/16 Application for a Variation of a Premises Licence
SN15 Leisure Ltd, Station Hill, Chippenham
- 12/10/16 Application for a Premises Licence
Centre News, High Street, Calne
- 28/11/16 Application for a Variation of a Premises Licence
Calne Town Council, Bank House, The Strand, Calne

Southern Area

- 17/01/17 Application for a Personal Licence

Western Area

- 04/10/16 Application for a Variation to a Premises Licence

Resolved:

That the minutes of the meetings detailed above be approved and signed as correct records.

7 Proposed Changes to Licensing Fees

Ian Brown (Head of Environment Services) referred to the proposal to increase licensing fees for hackney carriage and private hire drivers and private hire operators within the administrative area covered by Wiltshire Council that was circulated with the Agenda. He highlighted the following:

- The current charges as proposed are set at a level which enables the Council to recover its reasonable costs of administering the service and would continue to be reviewed annually to ensure that this is still the case;
- The proposed 5% increase in charges would see a rise of £3.67 per year for a 3 year Hackney/Private Hire driver licence and £4.40 per year for a 5 year licence;
- Payment plans were available for anyone claiming hardship;
- The Immigration Act came into effect in December 2016 and on occasion the Council are required to issue a driver with a licence for a short period of time to correspond with the period covered by their visa. A monthly fee had been calculated to enable a licence to be granted with would terminate at the same time as the period covered by the visa expires;
- The proposed fees would be published for public consultation for a period of 28 days and if no significant objections were received then they would then come into effect;

Members raised the following:

- I understand the Council have a duty to recover costs, but if we approve the increase in fees and if the taxi trade is suffering from a lack of drivers, what will the impact be on our public transport infrastructure?
- What could we do to head off this problem?
- What had been the take up of the payment plans?

Out of 1085 drivers, 270 have used the payment plan option. Out of 103 operators, 25 have used the payment plan option. Those who have

chosen to pay over 5 years won't see their fees increase until the time that they have to renew.

Cllr Peter Hutton (Portfolio Holder) thanked Mr Berridge for attending the meeting and confirmed that the Taxi Licensing Team liaised well with the trade and that there was constant Officer/Trade dialogue which has greatly improved over the years. Over 1000 drivers had completed the Safeguarding training. The Council would continue to review the fees each year as per the Trade's request and acknowledge the role that they play in providing community transport. The tariff increase had been well received as that had meant a wage increase for the drivers. If the changes to fees were to be approved today, then the details would go out to consultation and the trade would be able to make representations.

Members asked if there was anything else that could be done to attract new drivers to join the trade. It was acknowledged that Wiltshire has one of the lowest unemployment rates in the country and that could be a factor in not attracting new recruits.

Officers confirmed that there would be a review of Taxi tariffs in approximately 18 months and that the Council are looking at Uber and the implications for the existing trade and drivers.

Resolved:

- 1. That the Licensing Committee agreed the proposed revision of fees for hackney carriage and private hire driver and operator licences as set out page 75 of the Agenda.**
- 2. Officers be authorised to carry out the necessary public consultation in relation to the proposed fee changes and to implement the revised fees in the event that no significant objections arise from that consultation.**

8 Update from the Licensing Service

The Committee were referred to the Update on the Licensing Service which had been prepared by Linda Holland, Licensing Manager. Linda highlighted the following:

- The Immigration Act 2016 will mean that Immigration Enforcement will become a responsibly authority. All personal and premises licence holders must have permission to live and work in the UK. Immigration offences will be relevant offences under the Licensing Act 2003 and Immigration Officers will have the power of entry to investigate immigration offences in licenced premises;

- The Policing and Crime Act 2017 will amend the meaning of ‘alcohol’ to also include powdered or vaporised alcohol. Licensing Authorities will now have the authority to consider revoking a personal licence when notified of a conviction for a relevant offence with the list of relevant offences being expanded. The Government is proposing to amend the Late Night Levy and to place Cumulative Impact Policies on a statutory footing; and
- The Licensing Team wished to thank all Members for serving on the Licensing Committee and Sub Committee Hearings.

The Vice Chair wished to thank all Officers that supported licensing on behalf of the Committee.

Resolved:

That the Committee note the Licensing Update.

9 **Dates of Future Committee Meetings**

Members noted the dates of future meetings of the Licensing Committee as detailed below, all to start at 10.30am:

12 June 2017
 11 September 2017
 11 December 2017
 12 March 2018.

It was planned to hold a general overview licensing training session for all Councillors after May 2017 and then specific Licensing Committee training for Committee members which would be led by Linda Holland.

10 **Urgent Items**

There were no urgent items.

(Duration of meeting: 10.30 - 11.05 am)

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

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EASTERN AREA LICENSING SUB COMMITTEE

DRAFT MINUTES OF THE EASTERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 1 AUGUST 2017 AT COUNCIL CHAMBER - COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM, SN15 1ER IN RESPECT OF APPLICATION FOR A VARIATION OF A PREMISES LICENCE - THE GREYHOUND, HIGH STREET, BROMHAM

Present:

Cllr Trevor Carbin, Cllr Peter Evans and Cllr Sue Evans

Also Present:

Lisa Grant (Public Protection Officer – Licensing), Sarah Marshall (Senior Solicitor), Lisa Pullin (Democratic Services Officer)

1 Election of Chairman

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

Resolved:

To elect Councillor Peter Evans as Chairman for this meeting only.

2 Apologies for Absence/Substitutions

There were no apologies or substitutions.

3 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 5 – 12 of the Agenda refers).

4 Chairman's Announcements

The Chairman gave details of the exits to be used in the event of an emergency.

5 **Declarations of Interest**

There were no interests declared.

6 **Licensing Application**

Application by Wadworth & Co Ltd for a variation of a Premises Licence at The Greyhound, High Street, Bromham, Chippenham

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

Wadworth & Co Ltd were wishing to vary the existing Premises Licence to extend the hours for the sale of alcohol, live and recorded music and the hours the premises is open to the public. During the consultation process, four relevant representations were received from local residents who had concerns relating to noise from the increase in visitors and the times that they would be leaving the premises. In response to the concerns raised the Applicants made amendments to their application to reduce the timings of the sale of alcohol back to what was on the existing Premises Licence. In light of the agreed amendments, three of the representations were subsequently withdrawn.

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

Mr Lloyd Stephens (Operations Director of Wadworth & Co Ltd) on behalf of the Applicant referred the Sub Committee to the supporting information that had been circulated within the Agenda Supplement.

Miss Hobbs who had made a relevant representation was not present at the hearing.

Mr Stephens on behalf the Applicant did not wish to make any points in summation.

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

The Hearing reconvened at 1.17pm.

Following the deliberations of the Sub Committee Members, the Solicitor for the Council confirmed that no material legal advice was given during the deliberations.

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:

The Eastern Area Licensing Sub Committee has resolved to grant the variation of the Premises Licence in respect of The Greyhound, High Street, Bromham, Chippenham, Wiltshire, as detailed below:

Licensable Activity	Amended Days and Timings
Sale of alcohol ON and OFF the premises	Sunday – Thursday 10:00 - 00:00 (Midnight) Friday & Saturday 10:00 – 00:00 (Midnight)
Live and Recorded music Indoors	Sunday – Thursday 10:00 – 23:00 Friday & Saturday 10:00 – 00:00 (Midnight)
Late Night Refreshment	Monday – Sunday 23:00 – 00:00 (Midnight)
Hrs premises open to the public	Monday – Sunday 09:00 – 01:00 (Next Day)

With the inclusion of the following conditions:

- All windows and doors on the premises to be kept closed after 23:00hrs except for access and egress.
- To undertake regular noise monitoring to the outside area of the premises during events.
- To display prominent notices requesting patrons to leave the premises quietly.
- A contact telephone number to be made available to local residents which can be used to report noise disturbance.

Reasons:

Mr Stephens on behalf of the Applicant referred to the written statement from Wadworth & Co submitted within the Agenda Supplement and confirmed that he had no further information to give to the Sub Committee.

Miss Hobbs who had made a relevant representation was not present at the hearing.

The Sub Committee noted that although Miss Hobbs raised concerns relating to public safety, public nuisance and potential for crime and disorder, there had been no recorded complaints from other residents, no representations had been

received from the Parish Council or any of the responsible authorities and no other evidence relating to these concerns had been presented to the Sub Committee.

In reaching its decision the Sub Committee also considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 35); the guidance issued under Section 182 of the Act and the Licensing Policy of Wiltshire Council.

Right of Appeal:

All parties have the right to appeal to the Magistrates Court within 21 days of receipt of the written decision. Any person has the right to request a Review of the Licence, in accordance with the provisions of section 51 of the Licensing Act 2003.

(Duration of meeting: 1.00 - 1.20 pm)

The Officer who has produced these minutes is Lisa Pullin, Tel 01225 713015 or email lisa.pullin@wiltshire.gov.uk, of Democratic Services

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NORTHERN AREA LICENSING SUB COMMITTEE

MINUTES OF THE NORTHERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 31 MAY 2017 AT COUNCIL CHAMBER - COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM, SN15 1ER IN RESPECT OF AN APPLICATION FOR A VARIATION OF A PREMISES LICENCE - TESCO PLC, UNIT 5A, HATHAWAY RETAIL PARK, FOUNDRY LANE, CHIPPENHAM,

Present:

Cllr Allison Bucknell, Cllr Trevor Carbin, Cllr George Jeans

Also Present:

Cllr Robert Yuill, Paul Taylor (Solicitor for Wiltshire Council), Roy Bahadoor (Licensing Officer) and Kieran Elliott (Senior Democratic Services Officer)

Joshua Liddle, Craig Bayliss, Steven Andrzejuk (Tesco Stores Ltd)

Ann Chard, Charlotte Starlaie (Chippenham Town Council)

13 **Election of Chairman**

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

Resolved:

To elect Councillor Allison Bucknell as Chairman for this meeting only.

14 **Apologies for Absence/Substitutions**

There were no apologies or substitutions.

15 **Procedure for the Meeting**

The procedure as contained in the agenda was detailed.

16 **Chairman's Announcements**

The Chairman gave details of the exits to be used in the event of an emergency.

17 **Declarations of Interest**

There were no interests declared.

18 Licensing Application

Application by Tesco Stores Ltd for a variation of a Premises Licence in respect of Tesco, Unit 5a Hathaway Retail Park, Foundry Lane, Chippenham, SN15 1JB.

The Licensing Officer introduced the purpose and scope of the application, which was to extend the hours for supply of alcohol and remove restrictions of sale on Christmas Day and Good Friday, the premises to which it related and the key issues for consideration. One relevant representation had been received from Chippenham Town Council in objection to the proposed variation.

In accordance with the procedure detailed in the agenda, the Applicant and those who had made a Relevant Representation were given the opportunity to address the Sub Committee.

Key points raised by Craig Bayliss, Joshua Liddle and Steven Andrzejuk on behalf of the applicants, and details supplied in response to questions from the Sub-Committee were:

- The store had been opening from 0600 for a long time, and the terminal hour at 2300 was not being extended. Tesco already had a store able to sell alcohol from 0600 in the wider area, as did other retailers.
- There had been no representation from the police in objection and no issues of littering or of crime and disorder, street drinking or other issues.
- Sales of alcohol between 0600-0800 would be minimal, it was more a service by matching the retail of alcohol hours with the opening hours, which only did not as the alcohol supply hours were a legacy of the licence inherited from former operators of the property, who had opened later than Tesco policy.
- Additional conditions had been volunteered to ensure the licensing objectives were met, CCTV was already in operation and the store regularly cleaned the store front area.
- Wiltshire Council policy was to permit the supply of alcohol hours to match opening hours in the absence of evidenced reasons it would not be justified.

Having no questions for the applicants, key points raised by Ann Chard and Charlotte Starlaie on behalf of those who made a Relevant Representation, and in response to questions from the Sub-Committee, were:

- The application had been discussed by a Chippenham Town Council committee, which objected on the grounds the variation proposed would cause a public nuisance due to close proximity to residential areas, railway areas, and would create littering and anti-social behaviour.

All parties were given the opportunity to ask questions of one another before summing up their cases.

The Sub Committee then retired at 1010 to consider the application and were accompanied by the Solicitor for Wiltshire Council and the Democratic Services Officer.

The Hearing reconvened at 1030.

Following the deliberations of the Sub Committee Members, the Solicitor for the Council confirmed no material legal advice was given in closed session.

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 Northern Area Licensing Sub Committee grants the application for a Variation of a Premises Licence; Tesco, Unit 5a Hathaway Retail Park, Foundry Lane, Chippenham, SN15 1JB as detailed below:

Licensable Activity	Days and Timings
Sale by retail of Alcohol (Off sales)	Daily 06:00 – 23:00 (No non-standard or seasonal variations)

And subject to the conditions as set out in the operating schedule.

Reasons

The Sub-Committee took into account the written representations, along with verbal representations made at the hearing on behalf of the applicants and those making a relevant representation.

The Sub Committee noted the concerns that the variation in hours would lead to an increase in public nuisance. The Sub Committee considered however that the representation in objection had failed to satisfactorily demonstrate with evidence of how the proposed variation would harm the Licensing Objectives, particularly in relation to the prevention of public nuisance. Conditions were in place to manage the sale of alcohol and associated issues, and in the absence of evidence of harm, it was acceptable and in line with policy for the alcohol retail hours to match the opening hours.

In reaching its decision the Sub Committee also considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 35); the guidance issued under Section 182 of the Act and the Licensing Policy of Wiltshire Council.

Right to Appeal

All parties have the right to appeal to the Magistrates Court within 21 days of receipt of this decision. Any person has the right to request a Review of the Licence, in accordance with the provisions of section 51 of the Licensing Act 2003.

(Duration of meeting: 10.00 - 10.30 am)

The Officer who has produced these minutes is Kieran Elliott, tel 01225 718504 or email kieran.elliott@wiltshire.gov.uk, of Democratic Services, direct line , e-mail

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SOUTHERN AREA LICENSING SUB COMMITTEE

DRAFT MINUTES OF THE SOUTHERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 20 JUNE 2017 AT THE BOURNE CENTRE, HOLDERS ROAD, AMESBURY, SALISBURY, SP4 7PW IN RESPECT OF AN APPLICATION FOR A PREMISES LICENCE; SNACK VAN, LAY-BY OFF PACKWAY, LARKHILL, AMESBURY

Present:

Cllr Allison Bucknell, Cllr Jose Green, Cllr George Jeans and Cllr Robert Yuill

Also Present:

Paul Taylor, Solicitor
Hannah Hould, Licenising Officer
Lisa Moore, Democratic Services Officer
Cllr Healing, Durrington Town Council
Mr Gunduz, Applicant

1 Election of Chairman

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

Resolved:

To elect Councillor Alison Bucknell as Chairman for this meeting only.

2 Apologies for Absence/Substitutions

There were none.

3 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 refers).

4 Chairman's Announcements

The Chairman gave details of the exits to be used in the event of an emergency.

5 **Declarations of Interest**

There were no interests declared.

6 **Licensing Application**

Application by Mr Gunduz for a Premises Licence at The Snack Van, Lay-by off Packway, Larkhill, Amesbury.

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

- On 19 April, an application for a Premises Licence in respect of Snack Van had been made by Mr Sihman Gunduz for which one relevant representation had been received from Durrington Town Council.
- The application was for the provision of late night refreshment after 11pm (Friday & Saturday from 11am – 3am).

In accordance with the procedure detailed in the agenda, the Applicant, the Responsible Authorities and those who had made a Relevant Representation were given the opportunity to address the Sub Committee.

Key points raised by Mr Gunduz, the Applicant were:

- Lots of customers were happy with the service he currently provided.
- He had been told by the customers that if he could open later then his trade would increase.
- He wanted to keep his customers happy by staying open later.

Questions from Councillors:

- Do you believe that staying open later would improve the viability of your business? Answer: Yes and by staying open later would enable him to make more profit.
- Was there evidence to say that there would be business at 3am? Answer: The existing regular customers had advised him that they wished to go for food after 11pm. People were currently passing by taxi to go further afield to get food late at night.
- What parking arrangements were available? Answer: 6 /7 cars could park there at the same time.
- Were there any tables at the site? Answer: No it was only for takeaway.
- Was there adequate lighting? Answer: The only the lights were on top of the van as it has its own illumination for this.

- Would CCTV be installed? Answer: There was CCTV already.
- How long had you been in this layby? Answer: 4 months.
- Did anybody who visit on foot? Answer: No, just cars, and if by taxi the taxi waits.
- Were there any more snack bars in Wiltshire run by you? Answer: No.
- Were there any toilets? Answer: At the moment, we open between shop hours, so customers use the shop toilets. If we open later then we would provide a toilet. (Note – that is not relevant to the licence. It would be a trading standards concern)
- The reports states there would be strong management controls and effective training of the staff would take place, how would that take place? Answer: People would be made aware of the CCTV which it was hoped would act as a deterrent. If there was an incident the Police would be called. There would be 2 people working on the late shifts.

Key points raised by Cllr David Healing, Durrington Town Council, who made a Relevant Representation were:

- The increased hours would cause a public nuisance
- Currently school children who called in for a burger on the way home, were continuing along the Packway and would drop the rubbish further up the path. Mainly during the summer.
- There was a history of drugs being circulated at the site. However this was not connected to the applicant.
- A planning application was thought to be going through shortly for a completely new round about, with extended lighting. At the moment there were 200 houses, but this would increase to 400, with the inclusion of a new school. The pathway would be used by more people. We are not sure of the speed limit along this road. There would be an increased accident prone area as people would have to cross the road to use the burger van.
- The Packway would be under a traffic control system, with one part completely closing during these building works. There was concern about the safety of people having to cross a public road.
- Until A303 is developed and relieves the traffic hold ups past Stonehenge, as people are using this road as a rat run.

Note; The Panel were reminded that they were only able to consider the impact on the hours after 23.00 as that is what this application was for.

The Chairman noted that they were limited as to what could be looked at, but noted his general concerns.

Questions from the Councillors –

- With regards to your concerns surrounding children and litter, would you think there was any possibility of the litter issue being added to after

11pm at night? Answer: Until the development has started we do not know.

- Had the planning application been approved yet? Answer: The school development had, but the houses had not yet.
- Regarding the road safety element, had the roundabout work commenced? Answer: It would start in a couple of months. There was no roundabout yet. The works at the moment was to lay sewerage pipes for the houses in the village.
- Have you any evidence that people were walking to the van late at night? Answer: None.

There were no questions from the Applicant.

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

The Sub Committee then retired to consider the application at 11.37am

The Hearing reconvened at 11.50 am.

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

The hearing would consider only the relevance of issues affected by the opening after 11pm.

There was no representation from the Town Council for reduced hours.

The issue regarding rubbish created by school children would not be contributed to after 11pm.

If the applicant cleared up the layby then there was not an issue. There may be a condition in the street trading agreement that they clear up after themselves.

Normally CCTV was to stop public nuisance and crime, however the representations raised were not for that.

Representations were only concerning public nuisance and public safety in relation to pedestrians crossing the road.

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:

Decision:

The Southern Area Licensing Sub Committee resolved to GRANT the Premises Licence as applied for, with the following additional condition:

- That CCTV equipment will be installed and fully maintained to cover the trading area. The CCTV will be of sufficient quality so as to produce images which will enable identification; images will be securely stored for a minimum of 28 days. The CCTV will be made available on request by an authorised officer with the minimum of delay.

Reason: - for the prevention of crime and disorder and the prevention of public nuisance.

The granting of this Premises Licence is without prejudice to any other consents or approvals, including any planning permission that may be required.

7 **Appendix 1**

8 **Appendix 2**

9 **Appendix 3**

(Duration of meeting: Times Not Specified)

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WESTERN AREA LICENSING SUB COMMITTEE

DRAFT MINUTES OF THE WESTERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 15 AUGUST 2017 AT THE KENNET ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN IN RESPECT OF AN APPLICATION FOR A PREMISES LICENCE, FOUR SEASONS COFFEE SHOP, 3 MARKET STREET, TROWBRIDGE

Present:

Cllr Trevor Carbin, Cllr Ernie Clark and Cllr George Jeans

Also Present:

Wiltshire Council

Teresa Bray (Public Protection Officer – Licensing)
Cllr Gavin Grant (Reserve Member)
Linda Holland (Licensing Manager – Public Protection)
Lisa Pullin (Democratic Services Officer)
Guy Sharp (Senior Environmental Health Officer)
Paul Taylor (Senior Solicitor)

Applicant

Kenan Olmez
Gulsen Farrington (Interpreter)

Wiltshire Police

Martin O'Neill (Police Licensing Officer)
Stephen McGlynn (Licensing Manager)

1 Election of Chairman

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

Resolved:

To elect Councillor Ernie Clark as Chairman for this meeting only.

2 **Apologies for Absence/Substitutions**

Apologies were received from Councillor Allison Bucknell. Councillor Trevor Carbin was substitute for Councillor Bucknell.

3 **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 5 – 12 of the Agenda refers).

4 **Chairman's Announcements**

The Chairman gave details of the exits to be used in the event of an emergency.

5 **Declarations of Interest**

There were no interests declared.

6 **Licensing Application**

Application by Mr K Olmez for a Premises Licence – Four Seasons Coffee Shop, 3 Market Place, Trowbridge

Teresa Bray (Public Protection Officer – Licensing) introduced the purpose and scope of the application, the premises to which it related and the key issues for consideration. Teresa highlighted the following:

- This was an application by Mr Olmez for a Premises Licence for the provision of late night refreshment (indoors and outdoors) from 23:00 to 00:00 Sunday to Thursday and from 23:00 to 02:30 Friday and Saturday;
- During the consultation process, three relevant representations were received from Responsible Authorities – Wiltshire Council – Licensing Authority, Wiltshire Council – Environmental Control and Protection and from Wiltshire Police; and
- That the Licensing Officers had concerns about the Applicant's ability to uphold the Licensing Objectives and adhere to any conditions set, should the Premises Licence be granted.

In accordance with the procedure detailed in the agenda, the Applicant and the Responsible Authorities who had made a Relevant Representation were given the opportunity to address the Sub Committee.

Key points raised by the Applicant, Mr Kenan Olmez (via his interpreter – Gulsen Farrington) were:

- When he received the Agenda papers he realised that his previous history of Premises Licences had been focused on and he thought that he would be able have conditions included that would enable the licence to be granted;
- He had learnt from the past and taken the decision not to apply to be open as late as he was previously – weekdays he was requesting until midnight and Fridays and Saturdays until 02:30;
- He had applied for the later opening of his premises to increase his income as the population of Trowbridge has increased. Several pubs and clubs in the area had closed and there was less passing traffic past his premises which meant that it was less likely that incidents of anti-social behaviour would happen;
- The Licensing Authority and the Police know about the decline of the night time trade in the area and he believes the extension to his opening hours should be granted to pick up the trade that there is at these times;
- The premises are open to the public as a coffee shop during the day time to bring in more income and the residents of Trowbridge have had to adjust as the premises used to be just a “kebab shop”. Mr Olmez wished to change the image of the premises and flyers were circulated to promote the other food offerings (chicken, pasta and burgers etc.) they provided to attract more daytime customers;
- After 4pm, Pizzas were available and customers could request delivery of their items;
- Mr Olmez agreed with the findings of Mr Guy Sharp following the inspection visits in February and May 2017 but wanted to state that his mother had passed away three days before the visit in February and so he was very emotional at that time;
- Mr Olmez was in the process of preparing the Health and Safety Certificates that had been requested and was receiving assistance and guidance in relation to this;
- Regarding the photograph provided by Wiltshire Police as page 5 of the Agenda supplement Mr Olmez agreed that the photograph did show that there was a customer in the premises after 23:00, but it did not show what time they entered the premises. He would say that the customer entered before 23:00 and he served him – had he come in after 23:00 he would not have served him;

- On another occasion, some customers had come into the premises before 23:00 and were still eating their food after 23:00. Whilst the door to the premises was closed, it was not locked and two drunk people came into the premises. He agreed that he should have refused to serve them with any food and asked them to leave, but after seeing the behaviour of these two people he thought the only way he would be able to get them out of the premises was to serve them as he thought they would react if he. He preferred to serve them to make them leave and get out and he had not seen these two drunks since that occasion; and
- Mr Olmez acknowledged that he had made mistakes but was trying to correct them and would tell his customers that service had stopped at the closing time should the licence be granted.

The Sub Committee and those who made relevant representations were then given the opportunity to ask questions of the Applicant:

Q If the extra opening hours you are requesting were granted what steps would you take to control the security at the premises?

A There is less people traffic and the numbers of pubs and clubs has decreased. More people go out later on Saturday evenings. The Boutique nightclub is open until 04:00. I am asking for 02:30. A lot of patrons are using the food venues in the new cinema complex between 19:00 and 00:00 and that area is continuing to grow. The Carter Jonas report states that the area around my premises is not as busy as the cinema location.

Q How would you rigorously enforce any conditions that were put on the licence if it was to be granted – if door staff are required as a condition would you be able to provide them?

A The Carter Jonas report proves that it is not as busy in Trowbridge now – the times of needing a doorman has passed. The old business is in the past and the number of people in the area has reduced. I would not need a door man. My food service is different according to the time of day. I don't feel I need protection.

Q Are you saying that you would not comply with the condition and provide door staff if this was part a condition of a grant of the Premises Licence?

A The problems are in the past – business is dropping as proved by the document from Carter Jonas. The problem time was 03:30 to 04:30 in the past. The problems in the town happened after 03:30. Now there are not so many people about and I have told Martin (O'Neill – Wiltshire Police) that if anything happens I would just shut the premises and it wouldn't be

like the old days. I'm sure I wouldn't need a door man and if anything happened I would ban the people involved.

Q How many staff work at the premises until 23:00 and how many would work if the hours are extended if the premises licence is granted?

A Currently I work at the premises with my driver. There are two staff till 20:00 and two more staff after 20:00.

Q Looking at the Agenda (pages 47 and 49) - copies of the letters sent to you in relation to licensing breaches – Are you aware that serving hot food or drinks after 23:00 is in breach of your licence?

A My leaflets stating that I am open until 00:00 were prepared before I lost my premises licence. These hours are delivery hours, not opening hours. The company that I work with has incorrect information. On Just Eat it says that food is available until 00:00. The premises close at 23:00 and delivery is until 00:00.

Key points raised by Linda Holland, Licensing Manager on behalf of Wiltshire Council - the Licensing Authority were:

To aid Mr Olmez and his interpreter a copy of the statement prepared by Linda Holland was given to him with time allowed for him to read it.

- This application seeks to reinstate the licence previously granted with slightly reduced hours and although the premises has a new name I would suggest that there is no change in the management or style of operation;
- We note that the application offers little or no conditions to promote the Licensing Objectives of a premises operating in the late-night economy;
- At the variation application hearing on 7 January 2014 the request for late night refreshment until 05:00 was granted with an additional condition to increase the number of SIA door staff to 3 during the extended opening hours (from 2) after 03:30 on Fridays and Saturdays (as offered by the Applicant). At that time the Sub Committee felt that this would “further improve the situation, particularly as the door staff would now be required to be in place for a period of time after the closure of the premises”;
- The Sub Committee in 2014 accepted that there were problems of crime and disorder but considered that these could be addressed by the presence of adequate SIA door staff and good management practices by Mr Olmez;
- However, there were still persistent breaches of these conditions by Mr Olmez and a failure by him to remedy those breaches, despite considerable work by both Licensing Officers and the Police at the time.

Between January 2014 and February 2015 there were 38 breaches of conditions witnessed by either the Police or Licensing Officers, this included a door staff member working behind the counter serving food, not acting in the capacity of a door supervisor;

- Given the persistent and continuing incidents of non-compliance I took the decision in January 2015 to request a review of Mr Olmez's Premises Licence under the powers available to us in Section 51 of the Licensing Act 2003. This was the first time that this Local Authority had used these powers which was an indication of the serious concerns that we had regarding the management of these premises;
- On 24 March 2015, the Sub Committee revoked Mr Olmez's Premises Licence which meant that he was not allowed trade beyond 23:00. Since the revocation he has continued to trade beyond 23:00 and warning letters have been sent to him by the Licensing Authority;
- On his application Mr Olmez only offers the provision of CCTV and a verbal warning to any person that may be drunk to cease their behaviour. Due to the location of the premises with the taxi rank outside and the nearness to the latest opening night club in the town and the history of a late licence at the venue whilst operated by the Applicant it is likely that the premises would draw unsocial behaviour and cause people to loiter in the area in the late-night economy;
- Whilst I acknowledge that, since the licence was revoked, the level of disorder associated with the premises has reduced, I would suggest that the catalyst for this improvement is the revocation of the late licence previously held by Mr Olmez;
- Within Appendix 6 I have included copies of websites and a leaflet used by Mr Olmez to advertise his business but they are all showing that the premises are open until 00:00 which should not be the case. Premises that are well managed should ensure that their customers know when they are open and trading; and
- Therefore, the Licensing Authority has no confidence that Mr Olmez will comply with further conditions or amendments to his application given the number of incidents previously directly associated with the premises and the attitude of Mr Olmez when he was a licence holder.

The Sub Committee were then given the opportunity to ask questions of Linda Holland:

- Q Are you aware of the Carter Jonas report that the Applicant has alluded to?

A No. I would concede that more people use the St Stephens complex in the town and there is late night opening of the Boutique nightclub in close proximity to the Applicants premises.

Q If the Premises Licence were to be granted do you feel that door staff would be necessary to be included as a condition?

A Yes, I would suggest that door staff would be necessary and as they should not work alone, that two door staff would be required.

The Applicant was then given the opportunity to ask questions of Linda Holland:

Mr Olmez did not ask any specific relevant questions of Mrs Holland, but denied that door staff had previously worked behind the counter at the premises and challenged the need for doorstaff. The Chairman reminded Mr Olmez that he would have the opportunity to sum up at the end of the hearing.

Key points raised by Martin O'Neill, Police Licensing Officer on behalf of Wiltshire Police were:

- Mr Olmez had been the sole owner of the business for 12 years and he has come to the notice of Wiltshire Police on numerous occasions owing to incidents connected with the premises, in relation to public order and breaches of conditions on his premises licence. It was these breaches of conditions which resulted in the Premises Licence being revoked in March 2015;
- The revocation determined that Mr Olmez could now only trade up till 23:00, however he has been witnessed by Police Officers on a number of occasions serving beyond the permitted hours. He was observed delivering food after 23:00 in his vehicle for which he only held a provisional driving licence. In June 2016, he was prosecuted for this driving offence;
- In January 2016 two Police Officers witnessed Mr Olmez serving customers in his premises at 23:15 and a photograph taken shows customers clearly visible in the window of the premises consuming food;
- In April 2017 Mr Olmez was again witnessed serving food to customers at 23:10 and this information was shared with Wiltshire Council Licensing Authority and resulted in a formal written warning being served upon Mr Olmez;
- In the period since the revocation (March 2015 to present day) there have been 8 recorded incidents of crime and disorder at the Applicant's premises. This compares to 3 incidences of crime and disorder related to another late-night refreshment venue in the town which also has a taxi rank situated in close proximity;

- When the Police received notification of the Premises Licence application I went to visit him on two occasions to get a better understanding of what Mr Olmez's intentions were in relation to promoting the four licensing objectives. Mr Olmez was unwilling to engage or discuss these matters with me and it appeared that he did not see any need to address the areas of concern which were highlighted;
- At the visit Mr Olmez stated to me that he was a Personal Licence Holder, but when I asked him to clarify the Licensing Objectives he stated that he did not know what they were as he had not been taught them when he took the Personal Licence course;
- On the second visit to the premises Mr Olmez showed me the current leaflet from the premises – it clearly advertises that his current delivery hours are 16:00 to 00:00 – a service that his not currently licensed to provide;
- It is Wiltshire Police's view that the Applicant is unable to demonstrate strong management practices or a willingness to engage with the Responsible Authorities and support the Licensing Objectives; and
- Based on the evidence presented it is the recommendation of Wiltshire Police that the Licensing Sub Committee should refuse this application.

The Sub Committee asked the following questions of Martin O'Neill from Wiltshire Police:

Q Have things improved because of the licence being revoked – if the Premises Licence was to be granted again, do you think we would be back where we were?

A Yes – with the taxi rank directly outside the premises and a nightclub nearby.

Q If the Licence was to be granted with conditions applied – do you think it would be beneficial to have door staff?

A Yes. They would be able to assist with moving people on and can minimise disorder.

Paul Taylor (Senior Solicitor for Wiltshire Council) asked the following question of Martin O'Neill:

Q If a condition of door staff was to be agreed by the Sub Committee what times would you suggest they would need to be provided?

A I would suggest from 23:00 until 30 minutes after the premises has closed (03:00) to deal with dispersing people away from the premises.

The Applicant was then given the opportunity to ask questions of Martin O'Neill:

Q Are you saying I need to have door staff because my premises is near to a taxi rank?

A Yes the provision of door staff would be beneficial to support the Licensing Objectives.

Q Are you thinking about other kebab shops – do they have door staff?

The Chairman interjected and asked the Applicant to only ask relevant questions.

Key points raised by Guy Sharp, on behalf of Wiltshire Council, Environmental Control and Protection Team were:

- I am a Senior Environmental Health Officer and I have worked in the Food and Safety Team since 2012. I am responsible for carrying out routine food hygiene and health and safety inspections and investigating food safety and health and safety complaints;
- There has been a long history of non-compliance with statutory requirements demonstrated by the Applicant. Since 2009 to date there have been two prohibition notices served for electrical safety issues, four improvement notices served and three hygiene improvement notices served. In 2009 a simple caution was accepted by the Applicant for failure to comply with a prohibition notice and for obstructing officers;
- When I carried out a routine inspection on 21 February 2017 I found food that was out of date – I accept that this was just a few days after the Applicant's mother had passed away. When I visited again on 19 May 2017 I again found food to have expired use by dates;
- Given the fact that there is a clear pattern of failure to comply with basic legislative requirements, I have no confidence that the Applicant has the ability to manage a well-run food establishment. He has no regard for regulations and doesn't want to engage with Officers who are trying to help him. I do not believe that any public safety conditions would be adhered to by the Applicant.

There were no questions for Guy Sharp.

Linda Holland, Licensing Manager on behalf of Wiltshire Council made the following points in summation:

- Since March 2015 the Applicant has chosen to trade outside of his permitted hours and has been fully aware that he should not be trading beyond 23:00; and
- The Applicant has failed to demonstrate any compliance with any of the regulations and if a Premises Licence was to be granted to Mr Olmez he would not comply with any conditions on his licence. Therefore the Licensing Authority requested that the application be refused.

Martin O'Neill from Wiltshire Police and Guy Sharp from Environmental Control and Protection did not wish to make any points in summation.

Kenan Olmez (via his interpreter – Gulsen Farrington) made the following points in summation:

- I had doormen in 2014 – when I applied to open my premises until 05:00 I was told that if I had an extra doorman then I could stay open until then. The security company I was using was called Safe and Sound;
- I decided on a two-week basis to have fewer doormen at my premises to see how it went. I see now that this was a mistake and now because of this I am watched and followed all the time. I have made notes since 2015 for all of the things that have gone wrong. I personally do not believe that I need door men. It shows in market research that they are not needed; and
- I thank Guy for the health and safety information – this is helpful. In 2015 I didn't have anyone to ask about gas safety but since then I have asked for the relevant certificates. When I had a visit from Guy my mother had passed away a few days before and I tried to make things better for the next visit – we will have a proper working relationship in the future.

The Sub Committee then adjourned at 12:50 and retired with the Solicitor and the Democratic Services Officer to make a decision on the licensing application.

The Hearing reconvened at 13:30.

Following the deliberations of the Sub Committee Members, the Solicitor for the Council confirmed that whilst no specific issues of legal advice were given the Members were reminded of the criteria that they should take into account whilst making their decision.

Resolved:

The Western Area Licensing Sub Committee (Councillors Trevor Carbin, Ernie Clark and George Jeans) has resolved to REFUSE the application for a Premises Licence for Four Seasons Coffee Shop, 3 Market Street, Trowbridge.

Reasons:

Having considered the representations and concerns put forward by the Responsible Authorities in objection to this application, the Sub Committee was not satisfied that the Applicant would be able to meet his obligations to promote the Licensing Objectives, particularly the prevention of crime and disorder and the prevention of public nuisance. The Sub Committee did not consider that the concerns that had been raised about the application could be adequately addressed by the imposition of conditions on the licence.

Details of the evidence taken into account by the Sub Committee in reaching this decision are set out in the published Decision Notice.

(Duration of meeting: 10.30 am - 1.30 pm)

The Officer who has produced these minutes is Lisa Pullin, Tel 01225 713015 or email lisa.pullin@wiltshire.gov.uk, of Democratic Services

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Wiltshire Council

Licensing Committee

11 December 2017

Subject: Equality Act 2010

Cabinet Member: Councillor Jerry Wickham – Adult Social Care, Public Health and Public Protection

Key Decision: No

Executive Summary

This report informs members of the commencement of Sections 165 and 167 of the Equality Act 2010 which came into force on 6 April 2017. These sections impact on the Council's hackney carriage and private hire driver and vehicle licensing regime.

The report is asking members to agree the implementation of the powers provided in these sections and their addition to the Wiltshire Council guidelines for taxis and private hire drivers and vehicles. The guidelines are currently under review and a report will be brought to a future licensing committee to agree a full set of guidelines.

The aim of the new provisions in the Equality Act 2010 is to:

- Remove any discrimination against wheelchair users wishing to use designated taxi or private hire vehicles
- Assist passengers in wheelchairs in their use of designated taxi and private hire vehicle services
- Provide advice on designating vehicles as being wheelchair accessible so that the new protections for consumers apply.

Implementation of the powers available in these sections of the Equality Act 2010 will afford wheelchair users an improved choice and information, creating greater freedom of movement when travelling within Wiltshire.

Proposals

The Licensing Committee is asked to:

- (i) Agree the implementation of the powers available to the Council in Sections 165 and 167 of the Equalities Act 2010 and their addition to the Council's Guidelines for taxis and private hire drivers and vehicles, in line with the Department for Transport statutory guidance

- (ii) Authorise officers to:
- (a) Create a list of designated vehicles and make available to the public
 - (b) Publish the list of designated vehicles for the Equality Act 2010 on the Wiltshire Council website
 - (c) Consider exemptions on medical grounds in line with the Department of Transport Guidance based on medical evidence submitted by drivers from their doctors saying that they are unfit to fulfil their duties outlined in Section 165 of the Equality Act 2010
 - (d) Implement the change, giving drivers 56 days to submit their exemption request, from date of 1 February 2018 to comply with Section 165 of the Equality Act 2010.
 - (e) All applicants for hackney carriage and private hire driver licences, received after the implementation date will be required to submit exemption request at the time of application.

Reason for Proposals

The commencement of Sections 165 and 167 of the Equality Act 2010 came into force on 6 April 2017. Due to the commencement of these sections, Wiltshire Council should give consideration to the new powers available to it and decide if the Wiltshire Council guidelines document needs to be updated to include these new changes.

Section 167 of the Act provides local authorities with the powers to make lists of wheelchair accessible vehicles (i.e. "designated vehicles").

Section 165 of the Act then requires the drivers of those vehicles to convey passengers in wheelchairs; provide assistance to those passengers and prohibits them from charging extra.

Tracy Carter
Director, Waste and Environment

Wiltshire Council

Licensing Committee

11 December 2017

Subject: Equality Act 2010

Cabinet Member: Councillor Jerry Wickham – Adult Social Care, Public Health and Public Protection

Key Decision: No

Purpose of Report

1. This report informs members of the commencement of Sections 165 and 167 of the Equality Act 2010 which came into force on 6 April 2017. These sections impact on the Council's hackney carriage and private hire driver and vehicle licensing regime.
2. The report is asking members to agree the implementation of the powers set out in these sections and to add them to the Wiltshire Council guidelines for taxi and private hire drivers and vehicles. The guidelines are currently under review and a report will be brought to a future licensing committee to agree a full set of guidelines.
3. The aim of the changes to the Equality Act 2010 is to:
 - Remove any discrimination against wheelchair users wishing to use designated taxi or private hire vehicles
 - Assist passengers in wheelchairs in their use of designated taxi and private hire vehicle services
 - Provide advice on designating vehicles as being wheelchair accessible so that the new protections for consumers apply.

Implementation of the powers available in these sections of the Equality Act 2010 will afford wheelchair users an improved choice and information, creating greater freedom of movement when travelling within Wiltshire.

Relevance to the Council's Business Plan

4. The process of controlling and licensing hackney carriage and private hire vehicle operators assists the Council in achieving a number of our priorities in the Business Plan 2017-2027.

Business Plan Goals:

Growing the Economy

Transport and Infrastructure – I can get around and access good services

Strong Communities
Safe Communities (Protection) – Good regulation and consumer protection.

Main Considerations for the Council

5. Wiltshire Council's current guidelines for taxi and private hire drivers and vehicles cover some of the aspects that assist the objectives set out in Sections 165 and 167 of the Equality Act 2010; however, these new powers are more robust in two key areas:
 - (i) The penalties - under the Equality Act 2010 are more robust than our existing policy for example:
 - A person who breaches the duties in Section 165 is liable on summary conviction to pay a fine not exceeding level three on the standard scale and the current maximum for this is £1,000.
 - Any person that receives a conviction under Section 165 should have consideration made as to whether they remain a fit and proper person to hold a taxi or private hire driver licence.

Our current guidelines for taxis and private hire allow for:

 - A maximum of 5 penalty points to be awarded for "Refusal to carry passengers without reasonable excuse"
 - 12 penalty points to be awarded before a review therefore a driver could refuse to carry a wheelchair user twice, effectively without penalty.
 - (ii) The second area where the Equality Act 2010 Section 167 is more robust is the requirement for Wiltshire Council to have a list of designated vehicles. This list is available to the public and will assist travellers in making informed travel choices. Currently, we have no way for the public to access details of the wheelchair accessible vehicles in Wiltshire.
6. There is no obligation on the Council to maintain a list of designated vehicles. However, the Government strongly recommends that local authorities do maintain such lists and there is a risk of a challenge should it not do so without good reason.
7. Wiltshire Council's guidelines for taxi and private hire drivers and vehicles fall short in dealing with issues regarding the users of wheelchairs in a proportionate and effective manner. The implementation of Sections 165 and 167 of the Equality Act 2010 will enable the Council to rectify this shortcoming.
8. Publishing a list of designated vehicles under Section 167 will provide a service that empowers users of taxis and private hire vehicles to make an informed decision.

9. The Secretary of State has issued formal guidance on the implementation of the Equality Act 2010 Sections 165 and 167. Wiltshire Council needs to demonstrate it has given due consideration to this document (see **Appendix 1**).

Background

10. The Equality Act 2010 came into force on 1 October 2010. The Equality Act 2010 provides a legal framework that brings together earlier discrimination legislation. This aim of the 2010 Act is to protect the rights of individuals and advance equality and opportunity for all.
11. Since its commencement in October 2010 the Act has been amended several times.
12. Sections 165 and 167 of The Equality Act 2010 came fully into force on 6 April 2017:
 - Section 167 provides local authorities with the power to make lists of wheelchair accessible vehicles (see **Appendix 2**).
 - Section 165 requires the drivers of those vehicles to provide assistance to wheelchair users and prohibits them from charging extra for this service (see **Appendix 3**).
13. Census data from 2011 shows that in Wiltshire there are 31,408 (6.7%) residents that identify as having “day to day activities limited a lot”. This is a significant number of people. While the census does not specify the number of wheelchair users among the 31,408 it does point to a need to have available wheelchair accessible vehicles.
14. These changes will assist wheelchair users who visit Wiltshire when they are using taxis and private hire vehicles and people that are using a wheelchair on a temporary basis due to issues such as broken bones.
15. Guidance from the Department for Transport says “If a driver receives a conviction for breaching duties under Section 165 of the Act, it would be appropriate for the authority to review whether or not they remained a fit and proper person to hold a taxi or private hire vehicle drivers’ licence.” Wiltshire Council’s current guidelines for taxi and private hire drivers have no exact provision for such an event. Under such circumstances we would have to rely on either “Refusal to carry passengers without a reasonable cause” which enables the award of five penalty points or “Any other breach or unsatisfactory behaviour” which enables the award of between one and six penalty points. Under our current system a driver could potentially refuse two journeys without being subject to the level of sanction that the guidance recommends. As a consequence of this Wiltshire Council will have to review its fit and proper person policy.
16. The power in Section 167 of the Equality Act 2010 for a list of designated wheelchair accessible vehicles to be maintained serves dual purpose. The first is to enable the enforcement of the obligations in Section 165 of the Equality Act 2010. The second is to ensure that passengers in wheelchairs are able to make informed travel choices, confident that they will receive the assistance they require to travel safely and that they will not be charged extra for doing so. The

list will be publically available via the Wiltshire Council Website and will contain the following information about designated vehicles:

- Make
- Vehicle registration number
- Number of passengers
- Contact phone numbers
- Model
- Plate number
- Proprietor's name

17. The adoption of these changes will mitigate the potential for legal challenge should an incident occur. We will be able to show that we have been proactive in taking consideration of the Department for Transport guidance, making the appropriate changes to our policy.
18. Drivers of wheelchair accessible vehicles are able to apply for exemption to the duties laid out in Section 165 of the Equality Act 2010 under medical grounds. If they have a condition that would prevent them from assisting a wheelchair user, an exemption will be issued. The driver of the designated vehicle will be required to obtain a completed medical form from a doctor stating that they are unable to carry out such duties. Once the compliance team has received a satisfactorily completed medical form then an exemption card will be issued. The exemption must be displayed on the nearside of the windscreen at all times while the driver is working.
19. Should the powers in these sections be implemented there will be a period of 56 days before the changes come into force. This will afford drivers time to apply for exemption. After this 56 day period the list of vehicles designated under Section 167 of the Equality Act 2010 will be published and the duties under Section 165 of the Equality Act 2010 will come into force. Any driver that applies for a hackney carriage or private hire driver licence after the implementation date will be expected to apply for exemption upon application, where applicable.
20. Implementation of Sections 167 and 165 of the Equality Act 2010 will reduce the potential for negative news stories regarding disabled passengers not being able to travel by taxi or private hire vehicle or being charged extra to do so.
21. Currently, members of the traveling public have no easy route to find wheelchair accessible vehicles. If a member of the public required such a vehicle they would need to contact local companies direct to enquire about wheelchair accessible vehicle availability. As there are lots of taxi and private hire companies and self-employed drivers whose vehicles have no capacity for carrying wheelchairs this could lead to several phone calls and dissatisfaction. A single register for such vehicles would alleviate this issue, making Wiltshire a better place for wheelchair users to arrange travel.

Safeguarding Implications

22. These sections provide protections to wheelchair users by making it an offence for drivers of designated taxi and private hire vehicles to refuse to carry passengers in wheelchairs, to fail to provide them with appropriate assistance or to charge them extra.

23. Public Health has a role in reducing inequalities, the focus of which is captured throughout the paper in terms of ensuring equality of access.

Corporate Procurement Implications

24. There are no direct procurement implications arising from this report.

Environmental and Climate Change Considerations

25. There are no environmental or climate change considerations.

Equalities Impact of the Proposal

26. The impact of these proposals is assessed as `medium` against the Council's statutory responsibilities.
27. There is a clear need to implement the changes outlined in the Department for Transport guidance issued in 2017. The result of these changes will be greater ability to find wheelchair accessible vehicles for members of the public, more accountability by the taxi and private hire trade and a clear course of action for Wiltshire Council.
28. Should the changes be implemented, the first phase of this action must be the communication of the changes to the taxi and private hire trade and the invitation for those drivers effected to apply for exemption on medical grounds.
29. We will allow 56 days for exemptions to be requested and this will commence once the changes have been communicated to the drivers affected. In that time a list of designated vehicles will be drafted. Once the 56 days has passed, the list of designated vehicles will be published on the Wiltshire Council website and the changes will be implemented.
30. From that point on the drivers of vehicles designated under Section 167 of the Act will be required under Section 165 of the Equality Act 2010 to convey passengers with wheelchairs.
31. By issuing exemptions to drivers of vehicles designated under Section 167 of the Equality Act 2010 we are complying with the guidance issued and taking into account any driver that may be adversely affected by these changes.
32. The results of this assessment will be reported along with the other proposed changes to the Wiltshire Council guidelines for taxi and private hire drivers at a future Licensing Committee meeting.
33. Should the Licensing Committee agree that Sections 165 and 167 of the Equality Act 2010 be implemented, the taxi and private hire trade will be notified via a newsletter that will be sent out via email. Printed copies will be sent to those without email via post.
34. Wiltshire Council currently has no way to monitor the use of wheelchair accessible vehicles in Wiltshire. Should the changes come into force then we will be able to monitor the number of vehicles on the list of designated vehicles created

to enable compliance with Section 167 of the Equality Act 2010 is accessed on the Wiltshire Council website. This will provide the authority with feedback on the effectiveness of any changes that come into force and illustrate a baseline to measure improvement against.

35. Wiltshire Council will monitor the impact of these changes through quarterly meetings with the taxi and private hire trade and engagement with the public during regular enforcement visits to taxi ranks around the County, carried out by compliance officers, ensuring that any feedback is logged.
36. The Council will monitor the Department for Transport guidance for any further updates on implementation of the Equality Act 2010. Should these occur then a further review of the policy will be undertaken.

Risk Assessment

Risks that may arise if the proposed decision and related work is not taken

37. The guidance issued by the Department for Transport is statutory guidance, therefore if the Council fail to introduce the proposed changes regarding the implementation of Sections 167 and 165 of the Equality Act 2010, without reasonable cause it would be open to judicial review. There is also the risk of negative press for Wiltshire Council.
38. The Council has already received freedom of information requests regarding the implementation of Sections 167 and 165 of the Equality Act 2010, asking if the Council has implemented it, if it proposes to do so and if not the reason for this.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

39. If the decision is taken to implement Sections 167 and 165 of the Equality Act 2010, the Council will need to ensure a smooth transition, in line with the Department for Transport guidance. Training needs for both council officers and taxi and private hire drivers will be identified and undertaken.
40. Communication of the changes to the taxi and private hire trade and public, including an explanation of the new process and risk of conviction, will need to be clear and timely. Drivers that require exemptions will have 56 days to obtain medical forms completed by their doctors and to arrange appointments to discuss with council officers.
41. To mitigate this risk the Council will notify drivers of the changes via email or letter should they occur at the soonest possible juncture. We will complete this action by sending out a newsletter to all registered hackney/private hire drivers and operators via email or post. The public will be notified on the Wiltshire Council website.
42. During the implementation period, there is the risk of increased demand on council officer time from the taxi and private hire trade. Officers will have to deal with exemption applications, drafting a list of designated wheelchair accessible vehicles and amending Wiltshire Council's website. The increased demand will be resolved during the 56 day exemption application period.

Financial Implications

43. There are no direct financial implications arising from this report.

Legal Implications

44. There is no obligation on the Council to implement the new powers available to it by the commencement of Sections 165 and 167 of the Equality Act 2010. However, there is clear Government guidance that local authorities should take advantage of these powers and a failure to do so without good reason could leave the Council at risk of challenge. Once the Council has established a list of designated vehicles, the driver of any vehicle included in that list becomes subject to the obligations in Section 165, regarding the carrying of wheelchairs and providing assistance to wheelchair users.

Options Considered

45. We have two possible options regarding the proposal as set out below.

- (i) Remain with the current guidelines. Officers will continue to make decisions based on the current guidelines for taxi and private hire drivers and vehicles, with penalty points being applied in line with these guidelines.

The benefits of this include:

- The compliance team will not need to learn a new process
- The license holders will not need to learn a new process.

The risks of this include:

- Potential for negative press exposure
- The Council will not be compliant with Government Guidance regarding the use of the new powers and there would be the potential for legal challenge
- No ability for conviction of taxi and private hire vehicle drivers for non-compliance with the current guidelines for taxis and private hire.

- (ii) Accept the proposals laid out in this document. The guidelines for taxi and private hire drivers and vehicles will be amended. A list of wheelchair accessible vehicles will also be published on the Wiltshire Council website.

The benefits of this include:

- The public will be able to use the published list to make informed decisions regarding their travel
- The revised guidelines for taxi and private hire drivers and vehicles will enable the fleet licensing team to deal with contraventions of the guidelines policy for taxi and private hire drivers and vehicles in a more robust manner
- The Wiltshire Council guidelines for taxi and private hire drivers and vehicles will align with the guidance from the Secretary of State.

The risks include:

- The Council will need to learn and implement the new process
- Communicating the changes to the guidelines policy for taxi and private hire drivers and vehicles to the taxi and private hire trade and public
- The taxi and private hire drivers and vehicle owners will need to be made aware of the new process and possibility of conviction
- An increase in demand on council officer time dealing with applications for exemptions, drafting the designated wheelchair accessible vehicles list and amending the Wiltshire Council website.

Conclusions

46. The issue of conveying passengers with wheelchairs by hackney carriage and private hire vehicles required reassessment. On 6 April 2017, Sections 167 and 165 of the Equality Act 2010 were commenced. Section 167 of the Equality Act 2010 provides local authorities with the powers to make lists of wheelchair accessible vehicles, Section 165 of the Act then requires the drivers of those vehicles to convey passengers in wheelchairs; to provide assistance to wheelchair users; and not to charge them extra.
47. Should the Council choose to implement these sections into the Wiltshire Council guidelines for taxi and private hire drivers and vehicles, the public will be able to attain information regarding the availability of wheelchair accessible vehicles, Wiltshire Council will have greater powers of enforcement and licensed drivers will have unequivocal guidance on expected behaviour regarding the conveyance of wheelchair users.

Tracy Carter
Director Waste and Environment

Report Author:

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8 November 2017

The following unpublished documents have been relied on in the preparation of this report:

None

Appendices

Appendix 1 - Department for Transport Guidance

Appendix 2 - Section 167 of The Equality Act 2010

Appendix 3 - Section 165 of The Equality Act 2010

Department for transport guidance regarding the changes to the Equality Act 2010

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Ministerial Foreword



This Government is committed to ensuring that transport works for everyone, including disabled people. Since joining the Department for Transport in 2015, and taking on Ministerial responsibility for transport accessibility, I have made it my mission to challenge the status quo and encourage innovative thinking to improve access to transport across the modes.

I know however, that despite the real improvements which have taken place in recent years, some disabled passengers still face discrimination when attempting to travel. I am clear that this is unacceptable.

Owners of assistance dogs are already protected by provisions in the Equality Act 2010 which make it unlawful to refuse or charge them extra. I want similar protections to apply to wheelchair users, which is why I am delighted that we have commenced the remaining parts of sections 165 and 167 of the Equality Act 2010, making it a criminal offence for drivers of designated taxi and private hire vehicles to refuse to carry passengers in wheelchairs, to fail to provide them with appropriate assistance, or to charge them extra. I hope that in so doing we will send a clear signal to the minority of drivers who think it acceptable to discriminate on grounds of disability that such behaviour will not be tolerated – and, more importantly, to enable wheelchair users to travel with confidence.

A handwritten signature in blue ink that reads "Andrew Jones". The signature is written in a cursive, flowing style.

**Andrew Jones MP,
Parliamentary Under Secretary of State, Department for Transport**

1. Introduction

Status of guidance

- 1.1 This guidance document has been issued in order to assist local licensing authorities (LAs) in the implementation of legal provisions intended to assist passengers in wheelchairs in their use of designated taxi and private hire vehicle (PHV) services. It provides advice on designating vehicles as being wheelchair accessible so that the new protections can apply, communicating with drivers regarding their new responsibilities and handling requests from drivers for exemptions from the requirements.
- 1.2 This is a statutory guidance document, issued under section 167(6) of the Equality Act 2010 and constitutes the Secretary of State's formal guidance to LAs in England, Wales and Scotland on the application of sections 165 to 167 of the Equality Act 2010. LAs must have regard to this guidance document.

2. Putting the law into practice

Background

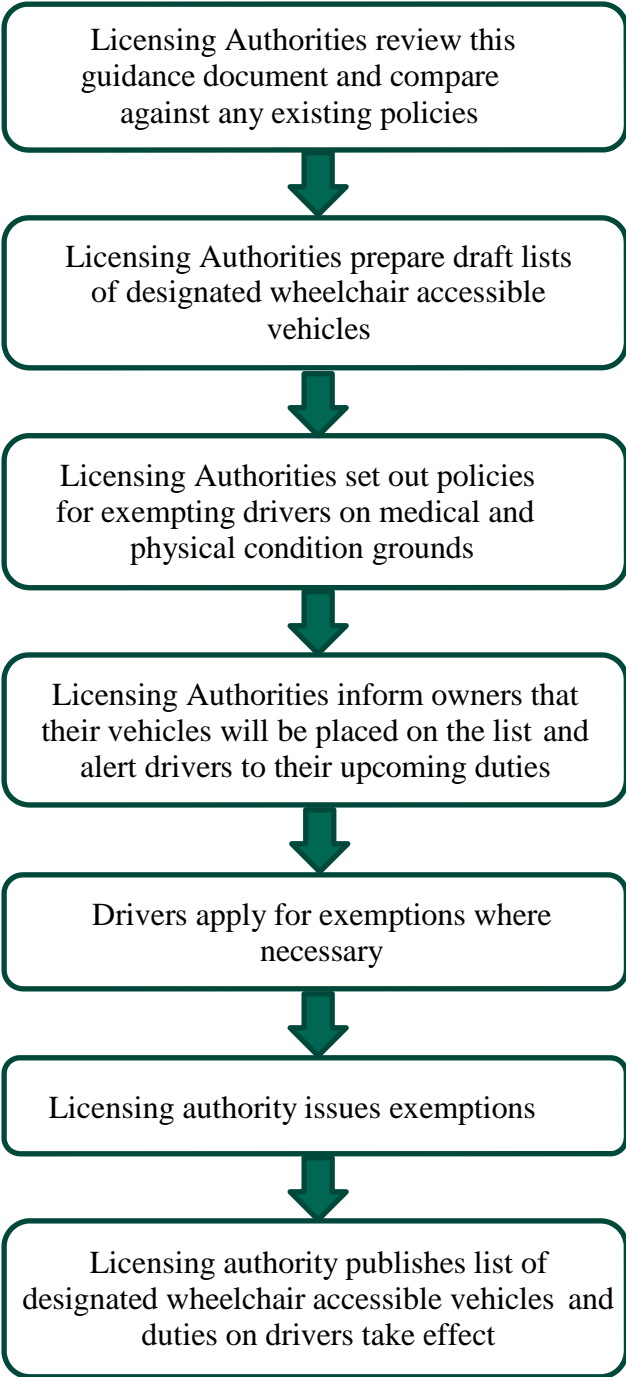
- 2.1 We have commenced sections 165 and 167 of the [Equality Act 2010](#) (“the Act”), in so far as they were not already in force. Section 167 of the Act provides LAs with the powers to make lists of wheelchair accessible vehicles (i.e. “designated vehicles”), and section 165 of the Act then requires the drivers of those vehicles to carry passengers in wheelchairs, provide assistance to those passengers and prohibits them from charging extra.
- 2.2 The requirements of section 165 do not apply to drivers who have a valid exemption certificate and are displaying a valid exemption notice in the prescribed manner. An exemption certificate can be issued under section 166 of the Act, which is already in force. This allows LAs to exempt drivers from the duties under section 165 where it is appropriate to do so, on medical grounds or because the driver’s physical condition makes it impossible or unreasonably difficult for them to comply with those duties.
- 2.3 On 15th September 2010, the Department for Transport issued guidance on the Act which stated, in relation to section 167, *“although the list of designated vehicles will have no actual effect in law until the duties are commenced, we would urge licensing authorities to start maintaining a list as soon as possible for the purpose of liaising with the trade and issuing exemption certificates”*.
- 2.4 We therefore recognise that many LAs have already implemented some of these provisions, including publishing lists of wheelchair accessible vehicles and exempting drivers. Therefore, there are likely to be a range of approaches being used in practice by LAs across England, Wales and Scotland.

Transitional arrangements

- 2.5 We want to ensure that the commencement of sections 165 and 167 of the Act has a positive impact for passengers in wheelchairs, ensures they are better informed about the accessibility of designated taxis and PHVs in their area, and confident of receiving the assistance they need to travel safely.
- 2.6 But we recognise that LAs will need time to put in place the necessary procedures to exempt drivers with certain medical conditions from providing assistance where there is good reason to do so, and to make drivers aware of these new requirements. In addition, LAs will need to ensure that their new procedures comply with this guidance, and that exemption notices are issued in accordance with Government regulations. This will ensure that we get a consistent approach and the best outcomes for passengers in wheelchairs.
- 2.7 As such, we would encourage LAs to put in place sensible and manageable transition procedures to ensure smooth and effective implementation of this new law. LAs should only publish lists of wheelchair accessible vehicles for the purposes of

section 165 of the Act when they are confident that those procedures have been put in place, drivers and owners notified of the new requirements and given time to apply for exemptions where appropriate. We would expect these arrangements to take no more than a maximum of six months to put in place, following the commencement of these provisions, but this will of course be dependent on individual circumstances.

2.8 A flowchart setting out the sorts of processes that a LA could follow is set out below. This is an indicative illustration, and it will be down to each LA to determine the actions they need to take to ensure this new law is implemented effectively in their area.



3. Vehicles

Overview

- 3.1 Section 167 of the Act permits, but does not require, LAs to maintain a designated list of wheelchair accessible taxis and PHVs.
- 3.2 Whilst LAs are under no specific legal obligation to maintain a list under section 167, the Government recommends strongly that they do so. Without such a list the requirements of section 165 of the Act do not apply, and drivers may continue to refuse the carriage of wheelchair users, fail to provide them with assistance, or to charge them extra.

Vehicles that can be designated

- 3.3 We want to ensure that passengers in wheelchairs are better informed about the accessibility of the taxi and PHV fleet in their area, confident of receiving the assistance they need to travel safely, and not charged more than a non-wheelchair user for the same journey.
- 3.4 The Act states that a vehicle can be included on a licensing authority's list of designated vehicles if it conforms to such accessibility requirements as the licensing authority thinks fit. However, it also goes on to explain that vehicles placed on the designated list should be able to carry passengers in their wheelchairs should they prefer.
- 3.5 This means that to be placed on a licensing authority's list a vehicle must be capable of carrying some – but not necessarily all – types of occupied wheelchairs. The Government therefore recommends that a vehicle should only be included in the authority's list if it would be possible for the user of a “reference wheelchair”¹ to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair.
- 3.6 Taking this approach allows the provisions of section 165 of the Act apply to a wider range of vehicles and more drivers than if LAs only included on the list vehicles capable of taking a larger type of wheelchair.
- 3.7 The Government recognises that this approach will mean that some types of wheelchair, particularly some powered wheelchairs, may be unable to access some of the vehicles included in the LA's list. The Act recognises this possibility, and section 165(9) provides a defence for the driver if it would not have been possible for the wheelchair to be carried safely in the vehicle. Paragraph 3.10 of this guidance below aims to ensure that users of larger wheelchairs have sufficient information about the vehicles that will be available to them to make informed choices about their journeys.

¹ As defined in Schedule 1 of the [Public Service Vehicle Accessibility Regulations 2000](#)

Preparing and publishing lists of designated vehicles

- 3.8 We want to ensure that passengers in wheelchairs have the information they need to make informed travel choices, and also that drivers and vehicle owners are clear about the duties and responsibilities placed on them.
- 3.9 Before drivers can be subject to the duties under section 165 of the Act, the LA must first publish their list of designated vehicles, and clearly mark it as ‘designated for the purposes of section 165 of the Act’.
- 3.10 LAs should ensure that their designated lists are made easily available to passengers, and that vehicle owners and drivers are made aware. Lists should set out the details of the make and model of the vehicle, together with specifying whether the vehicle is a taxi or private hire vehicle, and stating the name of operator. Where possible it would also be helpful to include information about the size and weight of wheelchair that can be accommodated, and whether wheelchairs that are larger than a “reference wheelchair” can be accommodated.
- 3.11 However, we recognise that some passengers in wheelchairs may prefer to transfer from their wheelchair into the vehicle and stow their wheelchair in the boot. Although the legal requirement for drivers to provide assistance does not extend to the drivers of vehicles that cannot accommodate a passenger seated in their wheelchair, we want to ensure that these passengers are provided with as much information as possible about the accessibility of the taxi and PHV fleet in their area.
- 3.12 We would therefore recommend that LAs also publish a list of vehicles that are accessible to passengers in wheelchairs who are able to transfer from their wheelchair into a seat within the vehicle. It should be made clear however that this list of vehicles has not been published for the purposes of section 165 of the Act and drivers of those vehicles are therefore not subject to the legal duties to provide assistance. Authorities may however wish to use existing licensing powers to require such drivers to provide assistance, and impose licensing sanctions where this does not occur.

Appeals

- 3.13 Section 172 of the Act enables vehicle owners to appeal against the decision of a LA to include their vehicles on the designated list. That appeal should be made to the Magistrate’s Court, or in Scotland the sheriff, and must be made within 28 days of the vehicle in question being included on the LA’s published list.

4. Drivers

Driver responsibilities

- 4.1 Section 165 of the Act sets out the duties placed on drivers of designated wheelchair accessible taxis and PHVs.
- 4.2 The duties are:
- to carry the passenger while in the wheelchair;
 - not to make any additional charge for doing so;
 - if the passenger chooses to sit in a passenger seat to carry the wheelchair;
 - to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort; and
 - to give the passenger such mobility assistance as is reasonably required.
- 4.3 The Act then goes on to define mobility assistance as assistance:
- To enable the passenger to get into or out of the vehicle;
 - If the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
 - To load the passenger's luggage into or out of the vehicle;
 - If the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.
- 4.4 Once the duties are commenced, it will be an offence for the driver (unless exempt) of a taxi or PHV which is on the licensing authority's designated list to fail to comply with them. We encourage LAs to provide drivers of taxis and PHVs who are not exempt from the duties with clear guidance on their duties with respect to the carriage of passengers in wheelchairs, either as part of existing driver-facing guidance, or as supplementary communication. The Disabled Persons Transport Advisory Committee's Disability Equality and Awareness Training Framework for Transport Staff² may provide a useful resource.
- 4.5 Although each situation will be different, we take the view that reasonable mobility assistance will be subject to other applicable law, including health and safety legislation. However, we would always expect drivers to provide assistance such as folding manual wheelchairs and placing them in the luggage compartment, installing the boarding ramp, or securing a wheelchair within the passenger compartment.
- 4.6 Depending on the weight of the wheelchair and the capability of the driver, reasonable mobility assistance could also include pushing a manual wheelchair or

²
<http://webarchive.nationalarchives.gov.uk/20080804135759/http://www.dptac.gov.uk/education/stafftraining/pdf/trainingframework-nontabular.pdf>

light electric wheelchair up a ramp, or stowing a light electric wheelchair in the luggage compartment.

- 4.7 It is our view that the requirement not to charge a wheelchair user extra means that, in practice, a meter should not be left running whilst the driver performs duties required by the Act, or the passenger enters, leaves or secures their wheelchair within the passenger compartment. We recommend that licensing authority rules for drivers are updated to make clear when a meter can and cannot be left running.

Applying for and issuing exemptions

- 4.8 Some drivers may have a medical condition or a disability or physical condition which makes it impossible or unreasonably difficult for them to provide the sort of physical assistance which these duties require. That is why the Act allows LAs to grant exemptions from the duties to individual drivers. These provisions are contained in section 166, and were commenced on 1st October 2010.
- 4.9 Section 166 allows LAs to exempt drivers from the duties to assist passengers in wheelchairs if they are satisfied that it is appropriate to do so on medical or physical grounds. The exemption can be valid for as short or long a time period as the LA thinks appropriate, bearing in mind the nature of the medical issue. If exempt, the driver will not be required to perform any of the duties. Since October 2010, taxi and PHV drivers who drive wheelchair accessible taxis or PHVs have therefore been able to apply for exemptions. If they do not do so already, LAs should put in place a system for assessing drivers and a system for granting exemption certificates for those drivers who they consider should be exempt.
- 4.10 We suggest that authorities produce application forms which can be submitted by applicants along with evidence supporting their claim. We understand that some licensing authorities have already put in place procedures for accessing and exempting drivers, and as an absolute minimum, we think that the evidence provided should be in the form of a letter or report from a general practitioner.
- 4.11 However, the Government's view is that decisions on exemptions will be fairer and more objective if medical assessments are undertaken by professionals who have been specifically trained and who are independent of the applicant. We would recommend that independent medical assessors are used where a long-term exemption is to be issued, and that LAs use assessors who hold appropriate professional qualifications and who are not open to bias because of a personal or commercial connection to the applicant. LAs may already have arrangements with such assessors, for example in relation to the Blue Badge Scheme.
- 4.12 If the exemption application is successful then the LA should issue an exemption certificate and provide an exemption notice for the driver to display in their vehicle. As section 166 has been in force since 2010, many LAs will already have processes in place for issuing exemption certificates, and as such we do not intend to prescribe the form that those certificates should take. We are however keen to ensure that passengers in wheelchairs are able to clearly discern whether or not a driver has been exempted from the duties to provide assistance, and as such will prescribe the form of and manner of exhibiting a notice of exemption.
- 4.13 If the exemption application is unsuccessful we recommend that the applicant is informed in writing within a reasonable timescale and with a clear explanation of the reasons for the decision.

Demonstrating exemptions

- 4.14 In addition to the exemption certificate, exempt drivers need to be issued with a notice of exemption for display in their vehicle.
- 4.15 The Department will soon make regulations which will prescribe the form of and manner of exhibiting a notice of exemption. Where a driver has been exempted from the duties under section 165 of the Act, they must display an exemption notice in the vehicle they are driving in the form and manner prescribed by the regulations. If the notice is not displayed then the driver could be prosecuted if they do not comply with the duties under section 165 of the Act.
- 4.16 The Department aims to distribute copies of the notice of exemption to LAs, but they are of course free to produce their own in accordance with the regulations.
- 4.17 Only one exemption notice should be displayed in a vehicle at any one time.

Appeals

- 4.18 Section 172 of the Act enables drivers to appeal against the decision of a LA not to issue an exemption certificate. That appeal should be made to the Magistrate's Court, or a sheriff in Scotland, and must be made within 28 days beginning with the date of the refusal.
- 4.19 LAs may choose to establish their own appeal process in addition to the statutory process but this would need to be undertaken rapidly in order to allow any formal appeal to the Magistrate's Court to be made within the 28 day period.

5. Enforcement

Licensing measures and prosecution

- 5.1 It is important to note that a driver will be subject to the duties set out in section 165 of the Equality Act 2010 if the vehicle they are driving appears on the designated list of the LA that licensed them, and the LA has not provided them with an exemption certificate, regardless of where the journey starts or ends.
- 5.2 The Government expects LAs to take tough action where drivers breach their duties under section 165 of the Act.
- 5.3 LAs have wide-ranging powers to determine the rules by which taxis and private hire vehicles within their respective areas may operate. We recommend that they use these powers to ensure that drivers who discriminate against disabled passengers are held accountable.
- 5.4 If a driver receives a conviction for breaching their duties under section 165 of the Act, it would be appropriate for the authority to review whether or not they remained a fit and proper person to hold a taxi or PHV drivers' licence. The Government's presumption is that a driver who wilfully failed to comply with section 165 would be unlikely to remain a "fit and proper person".
- 5.5 Authorities might also apply conditions which enable them to investigate cases of alleged discrimination and take appropriate action, even where prosecution did not proceed.

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This document gives details of the new requirements brought into force in Section 167 of the Equality Act 2010.

167 Lists of wheelchair-accessible vehicles

(1) For the purposes of Section 165, a licensing authority may maintain a list of vehicles falling within subsection (2).

(2) A vehicle falls within this subsection if—

(a) it is either a taxi or a private hire vehicle, and

(b) it conforms to such accessibility requirements as the licensing authority thinks fit.

(3) A licensing authority may, if it thinks fit, decide that a vehicle may be included on a list maintained under this section only if it is being used, or is to be used, by the holder of a special licence under that licence.

(4) In subsection (3) “special licence” has the meaning given by Section 12 of the Transport Act 1985 (use of taxis or hire cars in providing local services).

(5) “Accessibility requirements” are requirements for securing that it is possible for disabled persons in wheelchairs—

(a) to get into and out of vehicles in safety, and

(b) to travel in vehicles in safety and reasonable comfort,

either staying in their wheelchairs or not (depending on which they prefer).

(6) The Secretary of State may issue guidance to licensing authorities as to—

(a) the accessibility requirements which they should apply for the purposes of this section;

(b) any other aspect of their functions under or by virtue of this section.

(7) A licensing authority which maintains a list under subsection (1) must have regard to any guidance issued under subsection (6).

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Appendix 3

This document gives details of the new requirements brought into force in Section 165 of the Equality Act 2010.

Section 165 Passengers in wheelchairs

- (1) This section imposes duties on the driver of a designated taxi which has been hired—
- (a) by or for a disabled person who is in a wheelchair, or
 - (b) by another person who wishes to be accompanied by a disabled person who is in a wheelchair.
- (2) This section also imposes duties on the driver of a designated private hire vehicle, if a person within paragraph (a) or (b) of subsection (1) has indicated to the driver that the person wishes to travel in the vehicle.
- (3) For the purposes of this section—
- (a) a taxi or private hire vehicle is “designated” if it appears on a list maintained under Section 167;
 - (b) “the passenger” means the disabled person concerned.
- (4) The duties are—
- (a) to carry the passenger while in the wheelchair;
 - (b) not to make any additional charge for doing so;
 - (c) if the passenger chooses to sit in a passenger seat, to carry the wheelchair;
 - (d) to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort;
 - (e) to give the passenger such mobility assistance as is reasonably required.
- (5) Mobility assistance is assistance—
- (a) to enable the passenger to get into or out of the vehicle;
 - (b) if the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
 - (c) to load the passenger's luggage into or out of the vehicle;
 - (d) if the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.
- (6) This section does not require the driver—
- (a) unless the vehicle is of a description prescribed by the Secretary of State, to carry more than one person in a wheelchair, or more than one wheelchair, on any one journey;

(b) to carry a person in circumstances in which it would otherwise be lawful for the driver to refuse to carry the person.

(7) A driver of a designated taxi or designated private hire vehicle commits an offence by failing to comply with a duty imposed on the driver by this section.

(8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) It is a defence for a person charged with the offence to show that at the time of the alleged offence—

(a) the vehicle conformed to the accessibility requirements which applied to it, but

(b) it would not have been possible for the wheelchair to be carried safely in the vehicle.

(10) In this section and Sections 166 and 167 “private hire vehicle” means—

(a) a vehicle licensed under Section 48 of the Local Government (Miscellaneous Provisions) Act 1976;

(b) a vehicle licensed under Section 7 of the Private Hire Vehicles (London) Act 1998;

(c) a vehicle licensed under an equivalent provision of a local enactment;

(d) a private hire car licensed under Section 10 of the Civic Government (Scotland) Act 1982.

Update on the Licensing Service: November 2017

To give the Committee an update on the work of the Licensing Team.

Licensing Activity Festivals

The Licensing team inspected/carried out prevention visits to festivals/events during 2017 summer period, attending these events over a large number of weekends and evenings/early mornings. The team were engaged in ensuring the safety of the public attending and staff working at the events.

Wiltshire is a popular venue for festivals, by early intervention and positive engagement we are seeking to guide and educate organisers around managing alcohol consumption levels, drug prevention, antisocial behaviour, and wellbeing of all at the event.

Prevention of harm is a key element when planning an event; Licensing Officers are involved in considerable pre event work guiding organisers in managing their own event to lessen the impact on the local community and emergency services of Wiltshire.

Events 2017

Licensing Officers have been actively engaging with organisers for events in 2017, with the highest profile events being, Chalke Valley History Society in Broad Chalke in June, Womad in Charlton Park in July.

Following the risk rating of the festivals over the past few years, the Licensing team have targeted its resources and focused on the events that are either high profile, have experienced issues previously or are new to Wiltshire. As with all our engagements with festival organisers and their staff, the focus is on a safe secure and enjoyable event for all, within sensible and responsible parameters.

Womad

This year's event was a success with over 30,000 attending (the weather was very inclement) with no significant issues noted by the Licensing or Public Protection Teams that visited the site.

Each year there is a new arena layout, to enhance the visitor experience as most are repeat attendees; the internal traffic management system is updated accordingly.

Smaller Events

A number of new events this year presented their own challenges both to organisers and the responsible authorities; Wiltshire attracted a diverse range of events from

motor bike rallies, to small scale festivals in a rural location. Still planned for this year are carnivals, Christmas markets, Christmas lights switch on.

Partnership Working

The licensing team has been working pro-actively with both Wiltshire Police and the MASH team to assist with concerns regarding vulnerable young persons and their association with licensed premises in Wiltshire.

Licensing Applications

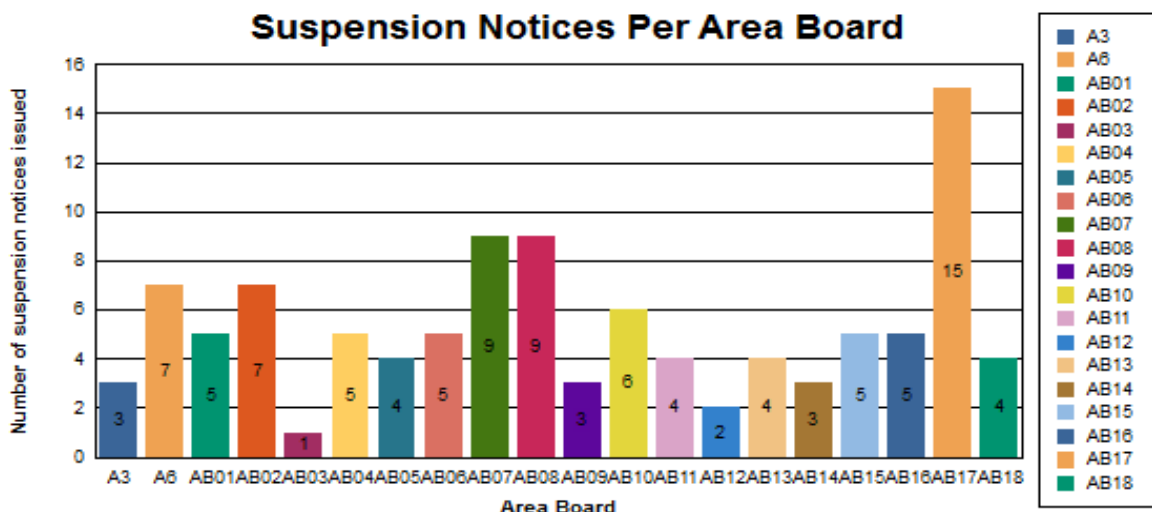
To give the Committee an update on the work of the Licensing Team, detailed in the table below are some the Licensing Applications from 1 January – 15 November 2017.

Licence Applications Jan – November 2016 & 2017

Year comparison	2016	2017
Temporary Events Notices	1109	1595
Late Temporary Events Notices	218	341
Licensing Applications (New /variation/minor variation/Variation of DPS)	566	675
Personal Licences	266	309
Gambling Permits (Gaming Machines)	28	17

Since July 2016, Wiltshire Council has offered online payment for Licensing Act 2003 annual fees.

Last year 106 premises had their licences initially suspended. In the majority of cases the suspension notices were hand delivered in line with the legislative requirements, however payment in most cases was received following contact with licence holder, licence surrendered or premise licence still in suspension.



Currently there are 27 licenses in long term suspension where the licence holder has decided not to pay the fee and wishes the licence to be held in abeyance or the holder cannot be contacted and as the licence is deemed as property cannot be closed by the licence team with due reason.

Guidance Notes

Following concern that a number of Town and Parish councils are unsure of the grounds on which they could support or object to application for a premise licence, which was highlighted at a couple of recent hearings where the parties representing the councils found it difficult to demonstrate their concerns.

The guidance notes to making a representation have been updated giving more information and advice to all and the link to the guidance notes will be on the email trail to town and parish councils when applications are received.

The guidance notes also advises that the 28 day consultation deadline cannot be extended to fit around council meetings as the timeframe is set within the legislation and cannot be extended.

Hearings

This year to date we have held 5 licensing hearings, compared to 14 in both 2016 and 2015. The number of applications or reviews triggered going to Licensing hearing is totally unpredictable as it depends on the applications received by the Licensing Authority and concerns or issues perceived against the application or premises with current licences that are called into review following possible/actual failure to promote one or more of the licensing objectives.

Gambling Premises

The Licensing team have undertaken a programme of inspecting all Betting shops within Wiltshire over the past few months. The inspections have been carried out following training received from the Gambling Commission utilising inspections forms from Nottingham City Council who are recognised as leaders in this field. The rationale behind the inspections is to ensure that all the premise have their local area risk assessment or are working towards completion of one.

Animal Licensing

Since the beginning 2016 Wiltshire has seen an increase in Animal Boarding licences, this increase has also been partly achieved by the proactive work from Licensing Officers investigating unlicensed boarders through social media.

Year Comparison Jan - Aug	2016	2017
Animal Boarding in the Home	24	61

This equates to a 154% increase on initial licences issued.

Due to the increase of applications, the Licensing Authority reviewed the fees and charges to reflect this growth to also include dual licensing.

Fees and charges 2016/17	
Animal Boarding in the Home 1-5 Dogs Initial application	£145

The following fees apply from April 2017:-

Fees and Charges 2017/18	
Animal Boarding in the Home 1-5 Dogs Initial application	£150
Animal Boarding in the Home 6 + Dogs Initial application	£180
Dog Crèche 1 – 10 Dogs Initial application	£150
Dog Crèche 10 + Dogs Initial application	£180
Dual Licence Dog Crèche/Home Boarding Initial application	£225

The Licensing Authority have also found that the condition relating to safeguarding children has been effective when applicants applying for licences. Applicants are unable to obtain a licence to board dogs if under 5's reside at the premises.

Current licensed premises for all Animal Licensing:-

Riding Establishment Licences	24
Animal Boarding Kennels and Catteries	48
Animal Boarding in the Home	206 (renewal and pending)
Dual Dog Crèche/Home Boarding	2
Pet Shops	28
Zoos	2
Dangerous Wild Animals	7
Dog Breeding	9

Two Licensing Officers also attended a Zoo Licensing course to focus on the requirements and exemptions to zoo licensing, this also included extra area in relation to animal welfare with licensing performing animals and circuses.

As Wiltshire is experiencing an increase in petting farms or small zoos that may keep species which are non-hazardous and non-conservation sensitive, Officers must establish if these premises require dispensations under the ZLA.

Impending changes to Animal Licensing

Currently over ten thousand animal related licenses are issued every year by local authorities, making this the biggest group of licenses after pubs, taxis and gambling premises.

DEFRA has announced it is planning to roll out a new framework for the licensing of animal establishments in autumn 2018.

This new framework will replace the existing regime, which is over 60 years old, and considered no longer 'fit for purpose' due to a plethora of animal business types that didn't exist when the legislation was written.

This modernisation of animal licensing will have significant impact on a number of animal related businesses, as many don't fit into the current system: animal groomers, dog trainers, pet sitters and the sale of animals on the internet are relatively recent innovations. The changes also seek to address growing concerns regarding unlicensed/illegal puppy sales.

The draft proposal is to replace the current system of four different licences, and widen the scope to include licensing for all animal related activities. "Model Conditions" have been produced for each sector, and those applying will be expected to comply with these.

Once the finalised implementation details of the changes are known a formal briefing paper will be submitted to the Licensing Committee for information in early 2018.

Licensing Policies

Wiltshire Council's "Statement of Gambling Principles" 2013-2018 is due to be reviewed soon and then republished in January 2019.

This is a legal requirement under section 349 of the Gambling Act 2005. The statement must be reviewed every three years even if amendments have been made in the intervening period.

In terms of timeline, the Licensing Team is proposing to start the process between March – June 2018 as the statement must be published four weeks before coming into effect so by 3 January 2019 before coming into force for 31 January 2019.

A briefing report will be presented to the next Licensing Committee setting out the consultation requirements and member's involvement in the process.

Wiltshire Council's "Statement of Licensing Policy" (Licensing Act 2003) is due for reviewing in 2019.

Conclusion

The Licensing function continues to develop within Wiltshire Council. The core activity of supporting the licensing process has shown year on year improvement. There is also now a greater focus on preventing harm, this emphasis towards prevention and the proactive work undertaken by the team is to ensure safe environments for people to enjoying the various licensable activities across the county.

2018 will be a busy year for the Licensing service with the Gambling Policy requiring review and wholesale changes to animal licensing coming into effect in October 2018.

Linda Holland
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22 November 2017