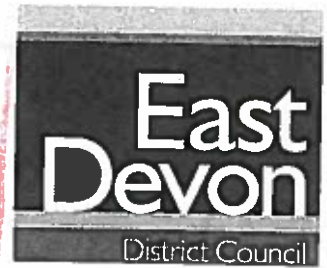
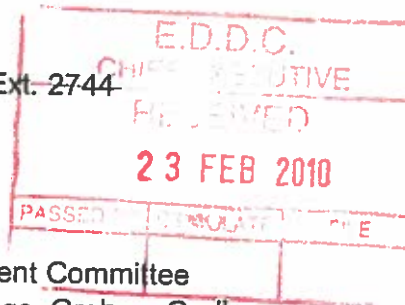


Date 22 February 2010
Contact number: Direct Dial (01395) 517544 or Ext. 2744
E-mail: clane@eastdevon.gov.uk
Our Reference: Chris Lane
Your Reference: -



To: Members of the Licensing & Enforcement Committee
(Councillors David Atkins, Chris Gibbings, Graham Godbeer,
Pat Graham, Steve Hall, May Hardy, John Humphreys,
John Jeffery, Jim Knight, Ann Liverton,
Darryl Nicholas, Barry Nicholson, Marion Olive,
Ken Potter, Mark Williamson).

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Head of Legal, Licensing & Democratic Services
Assistant Solicitor
Licensing Manager
Senior Licensing Officer

**Meeting of the Licensing & Enforcement Committee
Tuesday 2 March 2010 at 9.30am in the Council Chamber, Knowle, Sidmouth**

Members of the public are welcome to attend this meeting when items listed under Part A of the agenda are being considered. For the benefit of Councillors and members of the public a hearing loop system will be in use in the Council Chamber.

Visitors please note that the doors to the civic suite (meeting rooms) will be opened ¼ hour before the start time of the meeting. Councillors are reminded to bring their key fobs if they wish to access the area prior to that time.

AGENDA

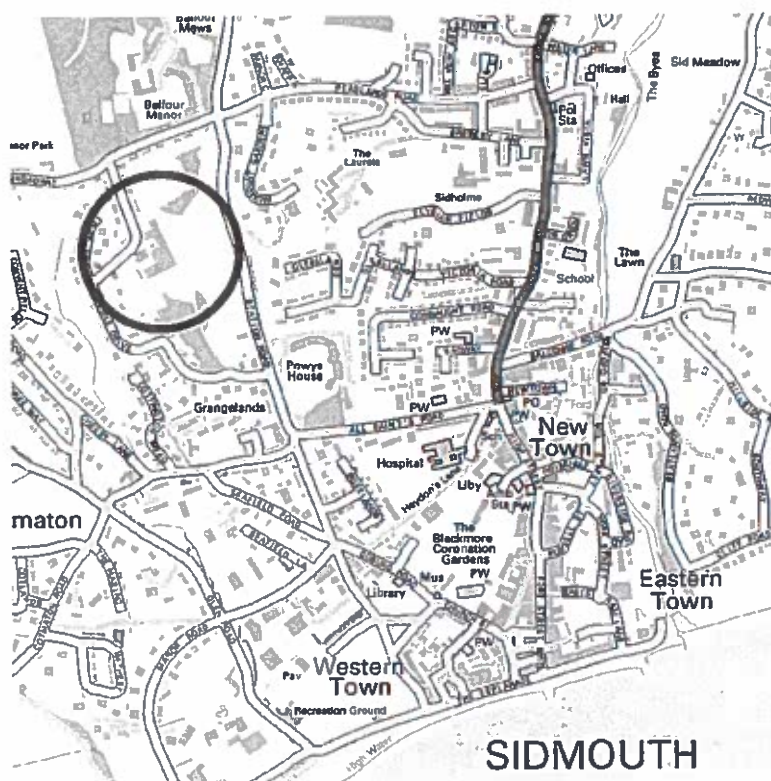
	Page/s
1. To confirm the minutes of the meeting held on 24 November 2009.	3 - 6
2. To receive any apologies for absence.	
3. To receive any declarations of interests relating to items on the agenda.	
4. To consider any items which, in the opinion of the Chairman, should be dealt with as matters of urgency because of special circumstances. (Note: Such circumstances need to be specified in the minutes; any Member wishing to raise a matter under this item is requested to notify the Chief Executive in advance of the meeting).	
5. To agree any items to be dealt with after the public (including the press) have been excluded. (There are no items which the Officers recommend should be dealt with in this way).	
6. Licensing Act 2003 – Councillors as Interested Parties	Licensing Manager 7 – 44
7. Committee update – Licensing Act 2003, Gambling Act 2005, Taxis and General Licensing	Licensing Manager 45 - 51

8.	Committee Update - Consultations and Responses	Senior Licensing Officer	52 - 56
9.	Proposed Permanent Taxi Ranks for Exmouth Town	Licensing Officer	57 -62
10.	Proposed Permanent and Part Time Taxi Ranks for Seaton Town	Licensing Officer	63 - 74

Members Remember!

- You must declare any personal or prejudicial interests in an item whenever it becomes apparent that you have an interest in the business being considered.
- Make sure you say the reason for your interest as this has to be included in the minutes.
- If your interest is prejudicial you must leave the room unless you have obtained a dispensation from the Council's Standards Committee or where Para 12(2) of the Code can be applied. Para 12(2) allows a Member with a prejudicial interest to stay for the purpose of making representations, answering questions or giving evidence relating to the business but only at meetings where the public are also allowed to make representations. If you do remain, you must not exercise decision-making functions or seek to improperly influence the decision; you must leave the meeting room once you have made your representation.
- You also need to declare when you are subject to the party whip before the matter is discussed.

Getting to the Meeting – for the benefit of visitors



The entrance to the Council Offices is located on Station Road, Sidmouth. **Parking** is limited during normal working hours but normally easily available for evening meetings.

The following **bus service** stops outside the Council Offices on Station Road:
From Exmouth, Budleigh, Otterton and Newton Poppleford – 157

The following buses all terminate at the Triangle in Sidmouth, From the Triangle, walk up Station Road until you reach the Council Offices (approximately ½ mile).
From Exeter – 52A, 52B
From Honiton – 340 (Railway Station), 387 (Town Centre)
From Seaton – 52A, 899
From Ottery St Mary – 382, 387

Please check your local timetable for times.

The Committee Suite has a separate entrance to the main building, located at the end of the visitor and Councillor car park. The rooms are at ground level and easily accessible; there is also a toilet for disabled users.

For a copy of this agenda in large print, please contact the Democratic Services Team on 01395 517546

EAST DEVON DISTRICT COUNCIL

Minutes of a Meeting of the Licensing & Enforcement Committee

Held at Knowle, Sidmouth on Tuesday, 24 November 2009

Present:

Councillors:

Graham Godbeer (Chairman)
Chris Gibbings (Vice Chairman)

Pat Graham
Steve Hall
John Humphreys

Jim Knight
Barry Nicholson
Marion Olive

Officers:

John Tippin, Licensing Manager
Ian Carter, Senior Licensing Officer
Giles Salter, Assistant Solicitor
Douglas Jackson, Licensing Officer
John Loveridge, Licensing Officer
Chris Lane, Democratic Services Officer
Mark Dauncey, Devon County Council

Apologies:

Councillors:
May Hardy
John Jeffery
Ann Liverton
Ken Potter
Mark Williamson

The meeting started at 9.30 am and ended at 11.00 am.

***13 Minutes**

The minutes of the meeting of the Licensing & Enforcement Committee held on 29 September 2009, were confirmed and signed as a true record.

***14 Proposed new and temporary taxi ranks for Exmouth Town**

Consideration was given to the report of the Licensing Manager, which asked Members to consider proposed temporary and full time changes to the Hackney Carriage ranks in Exmouth Town. These changes were needed to accommodate the regeneration scheme for the town centre planned to commence in February 2010.

Members noted that a meeting had been held with Paul Wilson from Devon County Council to discuss the matters raised by the Exmouth Taxi Drivers at a recent consultation meeting. This included the possibility of extending the rank in Victoria Road to enable it to take four vehicles. Members also expressed some concerns about the amount of disabled parking in the Strand area.

The need to keep the taxi trade in the Exmouth area informed of the proposals was considered to be a priority and the Licensing Manager acknowledged that a letter should be sent to all taxi drivers in Exmouth informing them of the proposed changes to taxi ranks in Exmouth.

*14 **Proposed new and temporary taxi ranks for Exmouth Town (Cont)**

- RESOLVED** 1. that the Council's powers under Section 63 of the Local Government (Miscellaneous Provisions) Act 1976 be exercised to appoint the following ranks in Exmouth:
- (a) **Rolle Street (Temporary Rank) – 24 Hour Rank**
 South west side from a point 9 metres south east of its junction with Strand for a distance of 40 metres in a south westerly direction
Rank creates 8 spaces
 Restriction: No Waiting At Any Time except taxis.
 - (b) **The Parade - Evening Only Rank**
 Side of road south from a point 95 metres west of its junction with Albion Street for a distance of 15 metres in a westerly direction
Rank creates 3 spaces
 Restriction: No Waiting 6pm-midnight and midnight-8am except taxis.
 - (c) **Imperial Road – 24 Hour Rank**
 Side of road south-west from a point 18 metres north-west of its junction with Rolle Street for a distance of 15 metres in a north-westerly direction
Rank creates 3 spaces
 - (d) **Victoria Road – 24 Hour Rank**
 Side of road south from a point 11 metres west of its junction with road from The Strand to Chapel Hill: for a distance of 21 metres in a westerly direction
Rank creates 4 spaces
 Restriction: No Waiting at Any Time except taxis.
 - (e) **Chapel Street – 24 Hour Rank**
 West side of Chapel Street from its junction with Church Street for a distance of 13 metres in a northerly direction
Rank accommodates 2 spaces
 Restriction: No Waiting at Any Time except taxis.
 - (f) **Esplanade – 24 Hour Rank**
 South West side of the Esplanade nearly opposite the Pavilion from a point 43 metres north-west of the southern boundary line of the Beach Gardens for a distance of 13 metres in a north-westerly direction
Rank accommodates 2 spaces
 Restriction: No Waiting at Any Time except taxis.
2. that the requisite public notice be given of the proposed appointment as required by Section 63(2) of the Local Government (Miscellaneous Provisions) Act 1976;
3. that if no written objection or representation is received relating to the notice given under Section 63(2) of the Local Government (Miscellaneous Provisions) Act 1976 within the 28 day period following the publication of that notice the ranks referred to in paragraph 1 of this recommendation will be deemed appointed;
4. that following the appointment of the taxi ranks Devon County Council as the Highways Authority be requested to put in place the appropriate legal provisions and to mark out the ranks as appropriate.

*15 **Licensing Act 2003, Gambling Act 2005, taxis and general licensing**

Consideration was given to the report of the Licensing Manager, provided Members with an update on the activities of the Licensing Service under the Licensing Act 2003, Gambling Act 2005 and Taxi Legislation together with other general licensing matters.

Members noted that since the commencement of the Licensing Act in November 2005, a total of 2,733 Temporary Event Notices had been given. The pro-active educational partnership approach to enforcement with the aim of compliance through consent continued to be successful. Although there had been complaints received against licensed premises all had been resolved without the need for formal enforcement action. To date the Council has received no applications to review existing licences.

With regard to taxis, members noted that there was currently a fleet of 211 licensed vehicles in East Devon 179 of which were Hackney Carriages and 34 were Private Hire vehicles. There were 247 licensed Hackney Carriage Drivers and 54 Licensed Private Hire Drivers. There were also 16 licensed Private Hire Operators. A recent examination had been undertaken of taxis in the Honiton and Axminster areas and with one exception, the ten vehicles examined had been found to be in good condition.

Members noted that Devon County Council had not yet marked out the taxi ranks in Seaton that had been agreed in 2005. Following a meeting with Paul Wilson from Devon County Council and Councillor Jim Knight, it had been agreed to remove the rank in Eyrecourt Road and replace it with one on Seaton seafront outside the Social Club. This would be considered by the Committee in the New Year. It was anticipated that Devon County Council would prepare the traffic order and mark out the ranks for Seaton within the next three months.

The Licensing Manager reported that the Licensing Section had been awarded the Customer Services Excellence award and all members of the Committee congratulated the Licensing Section on this award. Members noted that there was only one other Licensing Department in the country that had received this award.

RESOLVED that the report be noted.

16 **Gambling Act 2005 - Tri-annual review of the Council's Licensing Policy 2009 and Policy adoption**

Consideration was given to the report of the Licensing Manager, which updated Members on the tri-annual review of the Council's Gambling Act 2005 Licensing Policy and the results of the consultation process and invited the Committee to recommend that the Council adopted the amended Licensing Policy as required by the Gambling Act 2005 at its next meeting on the 9 December 2009.

Members discussed a comment made by Woodbury Parish Council in the consultation responses section that Parish and Town Councils should be regarded as responsible bodies and in future be consulted on such matters relating to licensing. It was acknowledged that, as a matter of good practice, the Licensing Section should inform Town/Parish Council's of any gambling applications in their area. Members noted that there were very few new gambling applications made in East Devon as a whole each year.

16 **Gambling Act 2005 – Tri-annual review of the Council's Licensing Policy 2009 and Policy adoption (Cont)**

RESOLVED

that the results of the public consultation undertaken on the Council's draft Licensing Policy relating to the Gambling Act 2005 be noted.

RECOMMENDED

1. that the Area Child Protection Committee and Local Safeguarding Children Board (Devon County Council) be nominated as the body competent to advise the authority about the protection of children from harm issues as required by the Gambling Act 2005, Section 157(h);
2. that the East Devon Gambling Licensing policy as attached at Appendix A be adopted, for the period 31 January 2010 to 30 January 2013.

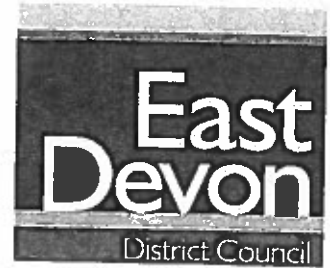
Chairman Date

Agenda Item 6

Licensing & Enforcement Committee

2 March 2010

JT



Licensing Act 2003 – Councillors as interested parties

Summary

The report sets out an explanation of the recent changes to the Licensing Act 2003 relating to the role of elected members as Interested Parties.

Recommendation

That the Committee note the report

~~that the committee note the report~~ or interested parties in draft

a) **Reasons for Recommendation**

To explain to Members the recent changes of the legislation.

b) **Alternative Options**

None

c) **Risk Considerations**

N/A

d) **Policy and Budgetary Considerations**

None

e) **Date for Review of Decision**

N/A

with V/R or
to include elected
members.

1 Explanation

1.1 Section 33 of the Policing and Crime Act 2009 came into force on the 29 January 2010. This section has the effect of changing the definition of "Interested Parties" under the Licensing Act 2003 by adding a new category:

"a member of the relevant licensing authority"

East Devon District Council is a "relevant licensing authority".

1.2 The effect of the previous paragraph is that the definition of "interested parties" (s13(3) Licensing Act 2003) has been expanded to include all members of local authorities that are also licensing authorities, so that elected councillors of the licensing authority can now make representations or seek a review in their own right.

1.3 Elected councillors are not required to live in the vicinity or in the same ward as the licensed premises/club they are making a representation about, and are not required to have been requested to act by any other person or body.

- 1.4 The term "member of the licensing authority" refers only to elected councillors, and not officers or other employees of the authority.
- 1.5 Elected members who make representations or who call for a review carry the same weight as those submitted by local residents or businesses. In the same way that local residents are restricted with the type of representation they can make members can also only make "relevant representations" relating to the four licensing objectives:
- The prevention of crime and disorder;
 - Public Safety;
 - The prevention of public nuisance; and
 - The protection of children from harm
- 1.6 Lacors have provided a FAQ fact sheet relating to elected members as Interested Parties. A copy of this sheet is at **Appendix A** to this report. Also attached is additional guidance:
- Appendix B** - Councillor briefing sheet provided by Lacors on this subject.
 - Appendix C** - Updated Guidance on the role of elected members in relation to licensing committee hearings under the Licensing Act 2003
- 1.7 It may be helpful to emphasize that this change does not affect the role of a Parish or Town Councillor. They are not interested parties in their own right, but can be involved as representatives of interested parties.
- 1.8 Following this meeting I intend to circulate an email to all elected members of this Council to explain this new ability/role. A draft copy of that email is attached at **Appendix D**. A copy **Appendixes A and C** will also be attached to the email for information.

Legal Implications

The legal implications are set out within the report and require no further comment.

Financial Implications

There are no financial implications.

Appendices

- Appendix A - Lacors have provided a FAQ fact sheet relating to Elected members as Interested Parties.
- Appendix B - Councillor briefing sheet provided by Lacors
- Appendix C - Guidance on the role of elected members in relation to licensing committee hearings under the Licensing Act 2003
- Appendix D - Copy of email to Council Members

Background Papers

- Licensing Act 2003
- Section 33 of the Policing and Crime Act 2009
- Revised Guidance (dated January 2010) issued by the Secretary of State for the Department for Culture Media and Sport under Section 182 of the Licensing Act 2003

John Tippin Ext 2787
Licensing Manager

Licensing & Enforcement Committee
2 March 2010



Elected members as Interested Parties: FAQ

In offering this advice LACORS wishes to make it clear that:

- *Legislation may change over time and the advice given is based on the information available at the time the guidance was produced. It is not necessarily comprehensive and is subject to revision in the light of further information.*
- *Only the courts can interpret statutory legislation with any authority.*
- *This advice is not intended to be a definitive guide to, nor substitute for, the relevant law. Independent legal advice should be sought where appropriate.*

Please note that this list is not exhaustive and will be updated whenever new questions and scenarios are submitted to LACORS.

Q. Can all councillors in England and Wales make representations and call for reviews?

A. Nearly all councillors are now "interested parties" under the Licensing Act 2003 and can make representations in their own right in response to premises licence and club premises certificate applications in the area of the authority for which they are also members.

If your council is a licensing authority for the premises or club in question, then you are an interested party. If your council is not a licensing authority then you are not an interested party.

Q. What is the status of Parish/Town councillors?

A. Parish/town councillors are not interested parties in their own right, but can be involved as representatives of interested parties, including the parish/town council itself, instead. For example, a parish or town councillor can speak at a hearing on behalf of a parish/town council, individual resident or organisation that has made a representation.

Q. What is the status of elected mayors?

A. Elected mayors are not interested parties. This is because elected mayors are not included in the statutory definition of "member of the relevant licensing authority". Section 39(5A) of the Local Government Act 2000 states that a reference in any enactment to a member or councillor of a local authority does not include a reference to an elected mayor. There are specific exceptions to this provision, which are listed in other regulations, and the Licensing Act 2003 is not included in those regulations.

Q. Do I need to represent the ward in which the premises is located?

A. No, you can make representations or apply for a review in relation to any premises in any ward within your council's area.

Q. Can I make representations or call for a review even when none of my constituents has approached me formally to do so?

A. Yes. The new provisions mean that all elected members of local authorities that are licensing authorities are now "interested parties" in their own right under the Licensing Act 2003 in the area of the authority for which they are also members.

Q. Can I act as a representative at a hearing on behalf of a resident or local business or other local organisation who have asked me to speak on their behalf?

A. Yes; you can represent another interested party (or parties) who has made a representation. You are subject to the rules of conduct for councillors set out in the National Model Code of Conduct (The Local Authorities (Model Code of Conduct) Order 2007 ("the Model Code")) when you take part in the hearing.

In this scenario you do not need to have made a representation in your own right, but you must ensure that you can demonstrate to the licensing authority that you have been requested to represent the interested party or parties in question.

Q. I am a member of the licensing committee. Can I make representations and call for reviews? Can I address the licensing sub-committee as an interested party at a hearing?

A. Yes, but the Model Code prohibits you from sitting as a member of the sub-committee when it considers the application that you are involved in. You should also consult the DCMS Guidance which addresses this point in detail.

Please also see LACORS leaflet "Elected Member Guidance on the Licensing Act 2003" for more information, and take advice from your council's monitoring officer for more specific guidance.

Q Does a representation or call for review by a councillor carry more weight than those submitted by residents?

A. No. There is no provision within the Licensing Act 2003 for councillor representations or review applications to be given any priority or additional consideration by the licensing sub-committee.

Q. What concerns can I include in my representation?

A. Only "relevant representations" can be considered by the licensing authority. Representations complaining about general problems in an area or the fact that there are "too many" licensed premises in an area, for example, are not relevant representations. Representations should address the effect of the application on one or more of the licensing objectives, i.e.:-

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

Q. What other factors should I be aware of when making a representation?

A. A representation must not be withdrawn, frivolous or vexatious in order to qualify as a relevant representation, i.e. to be considered by the licensing sub-committee. (A representation can only be withdrawn by the person who made it.)

"Frivolous" representations are, for example, concerned with irrelevant details, or details that are not connected to the licensing objectives.

A "vexatious" representation, for example, would be where an interested party makes a representation to annoy or intimidate an applicant rather than on the basis of the licensing objectives.

A DCMS guide for interested parties making representations is available at [http://www.culture.gov.uk/images/publications/Guidance for interested parties.pdf](http://www.culture.gov.uk/images/publications/Guidance%20for%20interested%20parties.pdf)

Q. Who decides whether my representation is frivolous or vexatious?

A. The licensing authority itself makes this decision, and the Guidance issued under section 182 of the Licensing Act recommends that this decision is delegated to a licensing officer.

Q. Can I just outline my concerns about a licensed premises verbally to the licensing officer and ask that they draft my representation and obtain supporting evidence from other departments on my behalf?

A. You are again reminded of the need to comply with the Model Code. You can request information about how to apply for a review, and can ask for information about how to obtain supporting evidence that is publicly available, but you cannot request more assistance from officers than any other interested party.

Q. I have a legal enquiry relating to a review I have initiated as an interested party. Can I obtain advice from the Council's legal officer?

A. No, for the same reasons as above, i.e. it would constitute an improper use of advantage in breach of the Model Code.

Q. My constituents have suggested that I should discuss a licensing application that I have made a representation on with a member of the licensing sub-committee in order to point out the strength of their case. Is this problematic?

A. Yes. This would constitute an attempt to improperly influence a decision, and would therefore be a breach of the Model Code. You should not discuss your representations with members of the licensing sub-committee.

Q. I want to have a premises licence reviewed. How do I make a review application?

A. There is a standard application form, which must be completed and sent to the licensing authority, the premises licence holder and a series of statutory bodies known as "responsible authorities". DCMS has provided detailed guidance on how to apply for a review online: <http://www.culture.gov.uk/images/publications/060918GuidanceforInterestedPartiesReviews2007.pdf>

Q. My application for a review has been heard by the licensing sub-committee and I am not happy with the outcome. Can I appeal?

A. You may appeal the decision. The time limit for lodging an appeal is 21 days from the date that you received notice of the licensing sub-committee's decision. Appeals are made to the Magistrates' Court for the "petty sessions" area in which the premises is situated. Further guidance is available in the DCMS leaflet "Guidance for Interested parties - Appealing licensing decisions in the courts

Q. What happens if I incur legal costs as an interested party if I decide to appeal the decision of the licensing authority in the courts? Must my council indemnify me?

A. LACORS has received the following advice from the Department for Communities and Local Government:

"Certainly it is a reasonable expectation that a local authority will provide indemnification to their members so that members are not left liable for costs arising from their actions taken in relation to their duties. If the member is acting on behalf of the local authority in seeking a review of an existing premises license then one would expect the local authority to meet costs. (A councillor cannot be entitled to indemnification against a costs order by the local authority unless s/he is acting with the authority of the local authority. It would be quite inappropriate for all local authorities to give a blanket indemnification of any action by a local councillor.)

If a councillor acts on his or her own initiative in some legal proceedings, there is little reason for treating them any differently as regards the costs of any litigation than how any other litigant is treated. In short, if the member was acting in a non-official capacity then the indemnity would not apply."

Q. I have not been involved in licensing matters before. Where do I find out more information about the procedure involved?

A. LACORS has produced a Licensing Act 2003 Councillor Handbook, available via the link below, which gives an overview of the Act:

<http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=46BEF40&id=18031>

DCMS have provided an extensive overview of the Act, "Licensing Act 2003 Explained" via its website: http://www.culture.gov.uk/what_we_do/alcohol_and_entertainment/4051.aspx

Councillor briefing: Licensing Act 2003: Councillors as Interested Parties

Note: this briefing applies to elected members in England and Wales

Summary

The Licensing Act 2003 has been amended to expand the definition of "interested party" to include councillors, as long as they are a member of a council that is also a licensing authority (i.e. nearly all councils in England and Wales).

This means that councillors can now make representations in respect of most types of licensing applications:

- New premises licence applications
- New club premises certificate applications
- Applications to vary existing premises licence applications
- Applications to vary existing club premises certificate applications
- Applications for a provisional statement
- Minor variation applications
- Applications for reviews of premises licences or club premises certificates

Legal basis for the change:

From 29th January 2010 the Licensing Act includes a fifth provision in section 13(3) to include councillors: "*Interested party*" means any of the following...(e) a member of the relevant licensing authority." The change was brought about by s33 of the Policing and Crime Act 2009.

Relevant Representations

Representations must address the likely effect of the proposed premises on one or more of the following licensing objectives:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance; or
- the protection of children from harm

Representations about "demand" or general problems are not relevant. In addition, representations must not be frivolous or vexatious.

Reviews

Reviews must be made on a ground (or grounds) relevant to the licensing objectives, and must not be frivolous or vexatious (as above),

Additionally, review applications must not be **repetitious**. If a review has been held recently and the circumstances at the premises remain the same, the licensing authority could reject the application for review.

Further information

- DCMS' overview of the Act, "[Licensing Act 2003 Explained](#)"
- LACORS Licensing and Gambling Policy Officer: emily.scantlebury@lacors.gov.uk

**LACORS' GUIDANCE:
THE ROLE OF ELECTED MEMBERS IN
RELATION TO LICENSING COMMITTEE
HEARINGS UNDER THE LICENSING
ACT 2003**

FOR LOCAL AUTHORITIES IN ENGLAND

Updated January 2010

Note:

- This Guidance, originally issued in 2005, has been updated to take account of the 2007 National Model Code of Conduct (The Local Authorities (Model Code of Conduct) Order 2007, and again in 2010 to take account of the change in the status of elected councillors as interested parties as the result of the amendments to s13(3) of the Licensing Act 2003 brought about by s33 Policing and Crime Act 2009.
- Hard copy of this Guidance is available from LACORS either via a download from its website (free for local authority users) or a copy can be ordered from LACORS, telephone 020 7 665 3888 (a charge will be made).
- A separate LACORS' leaflet for Elected Members which summarises the practical suggestions contained within this document, is available via LACORS' website.

In offering this advice LACORS wishes to make it clear that:

- *Legislation may change over time and the advice given is based on the information available at the time the guidance was produced. It is not necessarily comprehensive and is subject to revision in the light of further information.*
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CONTENTS

Contents	Page
FOREWORD	3
A) INTRODUCTION	5
1. The Licensing Act 2003	5
2. Probity in local government	6
3. Natural Justice - rules of the English Common Law	9
4. The Human Rights Act 1998	11
5. Purpose of this guidance	12
B) SUBSTANTIVE ISSUES	13
1. Introduction	13
2. Interests - 2007 National Model Code of Conduct	15
3. Licensing Sub-Committees: Bias and Predetermination	20
4. Applications submitted by the Local Authority	23
5. Lobbying of / by Councillors	23
6. Pre-application / pre-decision discussions	26
7. Role of the Licensing Officer	26
8. Decisions / Decision making	27
9. Site visits	27
10. Complaints Systems & Record Keeping	27
REFERENCES & WEBSITE LINKS	28
CASE LIST	28

FOREWORD

"As a member of your authority, you are at the heart of local democracy... You represent people in your area and take forward concerns.., drive change, participate in community and action groups, and make decisions for the benefit of the community as a whole. Sometimes these roles and responsibilities conflict, and you need to strike a balance between representation, driving change and ensuring the authority can even-handedly decide matters on their merits – and be seen to be doing so."

*"Lobby groups, dual-hatted members and the Code of Conduct – Guidance for Members"
The Standards Board for England September 2004*

The Licensing Act 2003 put local authorities firmly in the centre of decision making upon licences for regulated entertainment and the provision of alcohol, as well as late night refreshment. Concerns regarding this shift in responsibility have centred around doubts surrounding the impartiality of Councillors and especially as regards those who will make-up the Licensing Committee that will decide upon applications. This concern arises from a view that Councillors are subject to local political pressures and a belief that they will regard the views of local residents as taking precedence over the other interests of their communities.

More broadly, public attention has focused upon the probity of politicians, at both the local and national level, particularly since the outcomes of the Nolan Committee's Third Report in 1997 on the Standards in Public Life. This report resulted in the Local Government Act 2000 which included a Model Code of Conduct for Councillors and also took account of the Human Rights Act 1998.

Every authority was required to adopt a Code of Conduct setting out rules governing the behaviour of its Members. The original 2001 Model Code has been superseded by a new Model Code of Conduct for Members which was issued by the Government on 4 April 2007.

This guidance reflects the provisions of the new Model Code, and aims at enabling local Councillors to represent all of their constituents in a way that does not expose their local authority to accusations of pre-determination, bias or maladministration.

As regards the Licensing Committee, the role of the Elected Member as part of that Committee will involve balancing the multiple needs and interests of the local community, whilst prioritising the four Licensing Objectives of the Licensing Act 2003. In doing so the Elected Member must maintain his/her impartiality and, as public perception of probity is critical, his/her appearance of impartiality too, during the decision making process. This guidance is intended to assist local authorities ensure their Elected Members achieve this.

The guidance within is written with *all* Elected Members in mind, whether they sit on a Licensing Committee or not. It is intended to assist local authorities to devise / review and update local guidance to take account of the new licensing duties, as well as perhaps informing training provided for Councillors. Local Authorities may wish to present this guidance to both their Licensing Committee and their Standards Committee to promote discussion and agreement on local procedure.

A number of local authority officers assisted LACORS with the original version of this guidance including Philip McCourt, Head of Legal Services and Monitoring Officer at Harborough. Pauline Powell, Senior Solicitor at Bristol and Peter Large, at Westminster City Council have also provided helpful comments and advice. The Association of Council Secretaries and Solicitors (ACSeS), The Association of London Government (ALG) as was, and the Society of Local Authority Chief Executives (SOLACE) were also consulted at the time and the Standards Board for England was particularly helpful.

Finally, this version of the guidance is intended for local authorities in England; although much of this document is relevant for local authorities in Wales.

Cllr Geoffrey Theobald OBE
Chairman
LACORS

A) INTRODUCTION

1. The Licensing Act 2003

The Licensing Act 2003 was approved by Parliament on 10th July 2003. As a result, local authorities, in the form of 'Licensing Authorities', took on the increased responsibilities of licensing premises and persons with regard to the carrying-out of licensable activities including the sale and supply of alcohol; provision of regulated entertainment; and the provision of late night refreshment. Key to the process of deciding licence applications will be each Licensing Authority's Licensing Committee.

Each Licensing Committee comprises between 10-15 Elected Members and is able to form sub-committees of no more than 3 Elected Members, to decide upon licence applications, where there are objections and / or relevant representations. Should the applicant or those who have made representations / objections be dissatisfied with the decision of the Licensing Committee, there is then the right of appeal to the Magistrates' Court.

Whilst all local authority actions are subject to rules regarding probity, these Licensing Committees (like the existing Local Authority Planning Committees) need to be especially diligent in this respect. At the time, the DETR (subsequently ODPM and now CLG) "New council constitutions: guidance pack / Modular constitutions for English local authorities" stated:

13.08 Decision making by Council bodies acting as tribunals

Many of the licensing and enforcement functions of ordinary committees will entail them acting in a quasi judicial capacity...The Council, a councillor or an officer acting as a tribunal or in a quasi judicial manner ... will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights."

This guidance sets out the general rules regarding probity in local government and considers how these will apply specifically to the Licensing Committee functions under the Licensing Act 2003.

Accountability - Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness - Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement - Members may take account of the views of others, including their political group, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others - Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to Uphold the Law - Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship - Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership - Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

(ii) National Model Code of Conduct

The National Model Code of Conduct was originally established by Statutory Instrument 2001 No. 1401. It has recently been updated, with the 2007 version established by Statutory Instrument 2007 No. 1159 "The Local Authorities (Model Code of Conduct) Order 2007". As a result, every Local Authority is required to adopt a Code of Conduct, to govern the behaviour of its Elected Members. Authorities now have until 1 October 2007 to adopt the Code of Conduct 2007. After 1 October, Members of Authorities which have not adopted the 2007 Code will be covered by it automatically.

Local Authorities are empowered to add to the provisions in the National Model Code of Conduct, provided they are not inconsistent with it.

The National Model Code of Conduct covers areas of individual behaviour such as Members not abusing their position or not misusing their Authority's resources. In addition there are rules governing disclosure of interest and withdrawal from meetings when Members have relevant interests. Members are also required to record their financial and other interests. It is worth noting that the 2007 Code incorporates new provisions relating to personal and prejudicial interests, with a new definition of personal interests ("family" and "close association") and in certain circumstances permits participation of Members having personal or prejudicial interests. The 2007 Code also includes new provisions relating to bullying, the promotion of equality, access to information and disclosure of confidential information.

This guidance will look at how the Code may be related to the Licensing Committee context.

(iii) Standards Committees

Under the Local Government Act 2000 every Local Authority is required to set-up a local Standards Committee. These are responsible for promoting and maintaining high standards of conduct by Members and co-opted Members of the authority, and to assist members and co-opted Members to observe the Local Authority's Code of Conduct. The Committee should advise Members of any changes to the Code of Conduct; monitor the operation of the Code; and advise and train Members on matters relating to the Code of Conduct. The Standards Committees can also carry-out other functions as the Local Authority sees fit. The Standards Board in England (and the Ombudsman in Wales) may also issue guidance as to the exercise of functions by the Standards Committees.

(iv) The Standards Board for England

The Standards Board for England was formally established in March 2001, and is intended to be independent of government. The Board's aim is to ensure that standards of ethical conduct are being maintained by local authorities and it deals with any complaints of misconduct against individual members.

The 2007 Model Code should be read in conjunction with the current Guidance from the Standards Board from England. LACORS encourages all Authorities particularly to take note of the Board's advice on adoption of the Model Code:

"To avoid confusion with the previous Code, the Standards Board for England...encourages your local authority to adopt the Code of Conduct at its first opportunity.

"It is also important that the Code of Conduct is adopted in its model form, without amendment. This will give certainty to Members and the public as to what standards are expected. It will ensure consistency throughout local authorities, avoiding confusion for Members on more than one authority and for the public. It will also minimise the legal risk of your authority adopting additional provisions which are unenforceable."

Further information about the Standards Board can be found at:

<http://www.standardsboard.gov.uk/>

Guidance from the Standards Board on the 2007 Model Code can be found at:

<http://www.standardsboard.gov.uk/TheCodeofConduct/Guidance/filedownload,5982,en.pdf>

3. Natural Justice - rules of the English Common Law

It should be noted that the following information has been provided to set out the concepts involved in discussion of 'natural justice' and that the case law is primarily provided so as to demonstrate these concepts. Consideration of how these affect local authority functions under the Licensing Act 2003 specifically is provided in subsequent sections of this document.

Some debate exists as to whether Licensing Committees under the Licensing Act 2003 are 'administrative' or 'quasi-judicial' bodies. It may be worth quoting one constitutional lawyer's words on the topic of "judicial", 'quasi-judicial' and 'administrative' functions: the distinction:

"The courts have long been struggling with the distinction between 'judicial', 'quasi-judicial' and 'administrative' functions in an attempt to bring the ever-expanding administration of government departments under judicial control. Two lines of thought were apparent. The first emphasised the distinction between a body which was exercising powers under restrictive rules and a body which was conferred with a wide measure of administrative power (see Gordon DM "Administrative tribunals and the courts (1933) 49 LQR 94). The second line of thought placed great weight on the absence of any true distinction between judicial and administrative functions, regarding the former to be a specialised form of the latter (see Jennings I (Sir) "The Law and the Constitution" 5th edn 1959 Appendix 1). As a result of the confusion, the phrase 'quasi-judicial' came to be used to cover those functions which were not easily compartmentalised into either one of other concepts." (Hilaire Barnett "Constitutional & Administrative Law" 2001p.1081)

The reason the distinction between 'judicial' and 'administrative' was important was that stricter rules of natural justice were required for the former and thus the decisions of public bodies which were viewed as being 'judicial' and not 'administrative' were more open to judicial review by the courts. It was thus in the interests of public bodies that a greater number of its decisions were viewed as being 'administrative'. However, since Ridge v Baldwin (1964) AC 40 this distinction has been far less important as in this case it was held that irrespective of the type of body which made the decision (i.e 'administrative' or 'judicial'), procedural fairness and other such rules, are applicable.

LACORS' guidance "Judicial Review: A Summary" provides some further detail regarding the grounds of judicial review. However, the key item which should be borne in mind as regards the Elected Members sitting on Licensing Committees is that there must be **no procedural impropriety** and thus the decision must be **free from the appearance of bias** and that there must have been a **fair hearing**.

Free from the appearance of bias – Bias has been defined as "an attitude of mind which prevents the [decision-maker] from making an objective determination of the issues that he has to resolve"¹.

The key concept as regards bias is that there is no need for proof of actual or potential bias for there to be 'procedural impropriety' shown. It is sufficient that there is an *appearance* of bias. This is demonstrated in the case of R v Bow Street Magistrates ex parte Pinochet (No 2) (1999) where Lord Hoffman disqualified himself as a judge in the case of the extradition of General

¹ Re Medicaments and Related Classes of Goods No. 2 [2001] 1 W.L.R. 727

Pinochet as Lord Hoffman had connections with Amnesty International, one of the parties to the case.

Further discussion of the case law affecting local authority decisions and functions under the Licensing Act 2003 is contained in section B3.

Fair hearing - For a hearing to be 'fair' a number of conditions must be satisfied including the right for the individual to know the opposing case; generally the right to call witnesses; the ability to question witnesses; the right to legal representation; and generally the right to be given reasons for any decision made. Sometimes a 'written' hearing will suffice and no 'oral' hearing is required.

Two well-know example cases relating to the right to a fair hearing are:

Cooper v Wandsworth Board of Works (1863) - A statute prohibited any building being erected without giving seven days notice to the Board of Works. Mr Cooper started putting up a house without giving notice and thus, the Board demolished the building. Whilst the Board was within its statutory powers in carrying-out the demolition, the Court held that the individual did have a right to a 'fair hearing' before the decision was taken.

Ridge v Baldwin (1964) - A Police Constable was dismissed without having been given a hearing by his superiors. This was held by the Court to have been 'illegal' as he was entitled to a fair hearing before any decision was made.

Licensing Committees will therefore need to follow clear procedures to ensure that the hearings which take place are fair and are seen to be fair: LACORS' Committee Guidance is also available.

4. The Human Rights Act 1998

The Human Rights Act 1998 incorporated into UK law the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms which was originally drafted and enacted by the Council of Europe in 1950. This Convention had been ratified in 1951, although the UK did not allow its citizens the right to petition the Court of Human Rights (in Strasbourg), until 1965.

Prior to the Human Rights Act 1998 the status of the rights provided for by the Convention, merely provided UK judges with another means of interpreting UK statute. However, since the enactment of the Human Rights Act 1998, judges have been able to utilise the rights set-out in the Convention as part of judicial review proceedings against public bodies.

All rights in the Convention are set-out in the form of Articles and it is Article 6 which is particularly important to consider with regards to Licensing Committee procedures and decisions.

Article 6

1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Article 6(1) has been interpreted as requiring a tribunal which is independent from the Executive; and free from pressure and bias. The process must also be fair in terms of parties being able to put their case, hear and challenge witnesses.

The initial key question, however, as regards Licensing Committee decisions, is whether they involve a “*determination of...civil rights and obligations*”. It has been held that this can apply to proceedings before an ‘administrative’ tribunal (the Regional Land Commission) in *Eckle v Federal Republic of Germany 1989 5 EHRR1 para 73* and also to a decision of a public body where the consequences of an administrative decision affected an individual’s civil rights (see *Konig v Federal Republic of Germany 1980 2 EHRR 170* which concerned an individual’s licence to practice as a doctor in his own clinic). As regards Licensing Committees, it is also likely to be argued that the decisions affect a person’s civil rights in that the decision may affect his/her ability to earn a living and, in particular, affect a person’s possessions in the case of an existing licence holder.

Regardless of the view of the applicability of Article 6 to the decisions of Licensing Committees, the House of Lords has held¹ that, in any event, there is now no real difference between the common law test of bias and the requirements under Article 6 of an independent and impartial tribunal.

¹ *Lawal v Northern Spirit Ltd [2003] UKHL 35*

5. Purpose of this guidance

In the same way that Members involved in the Planning Process and Planning Committees might find themselves in situations where it is difficult to balance their representational and decision-making roles, so the same can apply in the licensing context.

Planning was referred to in the Third Nolan Report as "... probably the most contentious matter with which local government deals and is the one on which we have received by far the most submissions. Inevitably the planning process produces both winners and losers. The planning process puts elected councillors into the position of being required to exercise their representational role on behalf of their constituents. Those who lose out frequently put the blame on the process itself." Further, the Nolan Committee stated "We have particular concerns ...about local authorities granting themselves planning permission" (Summary of Third Report).

This could equally apply to the licensing process under the Licensing Act 2003. There will inevitably be licence applications which relate to premises which the local authority may view as important, for example for economic regeneration, and there is also the provision for local authorities to apply for their own Premises Licences covering public land, and indeed have been encouraged to consider doing so by the Government to help ensure cultural diversity (see Licensing Act 2003 Guidance 16.37).

This LACORS guidance, which should be considered along with the Guidance of the Standards Board for England, is therefore provided to assist local authorities identify and avoid problems which previously were associated with the planning function, thereby protecting themselves and their Members from accusations of maladministration or from judicial review proceedings. It is suggested that Licensing/ Legal Officers consider using both sources of guidance in advising their Members. A more concise leaflet is available from LACORS which summarises the suggestions in this guidance and is intended for distribution to Members directly.

The guidance is purely advisory. It is hoped that it will prove useful to local authorities in creating their own mechanisms to ensure public faith in the Licensing Act 2003 regime.

B) SUBSTANTIVE ISSUES

1. Introduction

The 2007 National Model Code of Conduct is statutory and sets out expectations as to the conduct of Elected Members of local authorities in the conduct of their official duties (and to some extent, their private life). Crucial is the separation of private from public interests but there are also provisions regarding any actions bringing the authority into disrepute, relations with other Members, the public and staff, and treatment of confidential material. Elected Members are expected to comply with the spirit and letter of their local codes.

The 2007 Code also addresses issues around respect for others, equality, bullying, access to information, disclosure of confidential information, as well as developing the definition of personal interest to include "family" and "close association".

General Obligations under the 2007 Code are:

- You must treat others with respect [para 3(1)];
- You must not do anything which may cause your authority to breach any equality laws [para 3(2)(a)];
- You must not bully any person including other councillors, council officers or members of the public [paras 3(2)(b)&(c)];
- You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of the authority [para 3(2)(d)];
- You must not disclose confidential information, or information which you believe to be of a confidential nature (except in defined circumstances) [para 4(a)];
- You must not prevent anyone getting information that they are entitled to by law [para 4(b)];
- You must not bring your office or authority into disrepute while acting in your official capacity, or at any time through criminal activity that leads to a criminal conviction [para 5];
- You must not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else [para 6(a)];
- You must only use or authorise the use of the resources of the authority in accordance with its requirements [para 6(b)(i)];
- You must make sure you use the authority's resources for proper purposes only [paras 6(b)(ii) & 6(c)];
- You must have regard to advice from your monitoring officer or chief finance officer where they give it under their statutory duties [para 7].

Full details of these obligations are available in the Standards Board's Guidance.

Further Sections of the National Model Code of Conduct cover Personal Interests, Disclosure of Personal Interests, Prejudicial Interests, Participation in Relation to Disclosed Interests, and the Register of Members' Interests. Again, full details are available in the Standards Board's Guidance.

The remainder of this document details instances where the 2007 National Model Code might impact specifically upon issues arising during the Licensing Act 2003 process. LACORS' suggestions as to how local authorities and their Elected Members may wish to interpret the Code of Conduct in this context are provided. These suggestions are

bold and italicised. LACORS' suggestions in subsequent sections are similarly highlighted.

2. Interests - 2007 National Model Code of Conduct

Full and detailed guidance on Interests is available from the Standards Board. The following is a summary for ease of reference.

The 2007 National Model Code refers to "personal" and "prejudicial" interests and to certain special categories of interests including

- Gifts and hospitality;
- The business of Overview & Scrutiny Committee meetings;
- The business of the Executive or Cabinet;
- Sensitive information

Registration of interests: The Local Government Act 2000 and the 2007 Model Code provide rules for the registration and disclosure of Members' interests. Guidance on these rules is provided by the Standards Boards and advice may be sought by Members from their local authority's monitoring officer. It is recommended that Members regularly review their situation in consideration of these rules.

A register of interests will be maintained by a local authority's monitoring officers and will be open to public inspection.

A Member must provide the monitoring officer with written details of relevant interest within 28 days of his/her election to office. Any changes to his/her interests must be notified within 28 days of the Member becoming aware of the changes.

Personal interests: There are two types. A Member has a personal interest in any business of his/ her authority where it relates to or is likely to affect:

- An interest which must be registered;
- An interest which does not require to be registered, but where the wellbeing or financial position of the Member, his/ her family, or people with whom he/ she has a close association, is likely to be affected by the business of the authority more than it would affect the majority of inhabitants of the ward/ electoral division/ authority's area affected by the decision.

A Member declaring a personal interest may remain in the meeting and speak and vote on the matter, unless that interest is also a prejudicial interest (see below)

Members must declare that they have a personal interest, and the nature of the interest, before the matter is discussed or as soon as it becomes apparent (except in certain limited circumstances which the Code explains). Even if the interest is registered, the Member must declare it in meetings where matters relating to that interest are discussed, unless an exemption applies.

Prejudicial interests: A personal interest will also be a prejudicial interest if all of the following apply:

- The matter does not fall within one of the exempt categories of decisions;
- The matter affects the Member's financial interests or relates to a licensing or regulatory matter; and

- A member of the public, knowing the relevant facts, would reasonably think that the Member's personal interest was so significant that it would be likely to prejudice his/her judgement of the public interest.

A Member having a prejudicial interest in a matter being discussed at a meeting must declare it, and the nature of it, as soon as that interest becomes apparent to the Member. The Member should then leave the room, unless members of the public are allowed to make representations, give evidence or answer questions about the matter by statutory right or otherwise. If that is the case, the Member may also attend the meeting for that purpose. The Member must, however, immediately leave the room once he/ she has finished speaking or when the meeting decides that the Member has finished. The Member must not remain in the public gallery to observe the vote on the matter. Additionally, a Member must not seek to improperly influence a decision on a matter in which the Member has a prejudicial interest.

The National Model Code of Conduct states that where a Member has such an interest s/he should not take part in any discussions about that interest, unless a dispensation¹ has been obtained from the authority's standards committee. S/he must declare what the interest is and withdraw from the meeting by leaving the room (see also *R (Richardson and Another) v North Yorkshire County Council and another* [2003] EWCA Civ 1860)).

Prejudicial interests – licensing or other regulatory matters: LACORS draws Members' attention particularly to the Guidance of the Standards Board on the 2007 Code relating to licensing/ regulatory matters and to situations in which Members have a statutory right to speak.

As an example of a licensing or regulatory matter which would give rise to a prejudicial interest, the Guidance refers to a situation in which a Member of a Licensing Committee might be considering a Licensing application made by him/ her or a body on his/ her register of interests.

Prejudicial interests – significant matters likely to prejudice judgement of the public interest: where a reasonable member of the public knowing all the relevant facts would think that a Member's ability to judge the public interest objectively might be prejudiced, then the Member has a prejudicial interest. The Standards Board guidance offers an example of such a situation from the planning context which, LACORS feels, would apply equally in the Licensing Act 2003 context.: a Member would have a prejudicial interest in a Licensing Act 2003 application if a member of his/ her family lived next to the premises concerned. The existence of the close family tie means that a reasonable member of the public might think that it would prejudice the Member's view of the public interest when considering the licensing application.

Effect of a prejudicial interest: IN AN IMPORTANT CHANGE FROM THE 2001 CODE, THE NEW MODEL CODE SUPPORTS AND RECOGNISES MEMBERS' ROLES AS COMMUNITY ADVOCATES AND ENABLES MEMBERS TO REPRESENT THEIR COMMUNITIES AND SPEAK IN CERTAIN CIRCUMSTANCES EVEN WHERE THERE IS A PREJUDICIAL INTEREST.

Again, LACORS refers Members to the Guidance of the Standards Board and encourages Members to seek the advice of their Monitoring Officer if the situation appears to be unclear.

¹ NB. Dispensations are not possible for members of a Council's Executive.

Although generally the new Code does not provide a right to speak to a meeting where a prejudicial interest exists, the Licensing Act 2003 regime does now provide a statutory right to speak at Licensing Hearings, which is recognised by the Code.

Licensing examples of personal & prejudicial interests: *The key question is “what are to be regarded as personal and prejudicial interests, in terms of the Licensing Act 2003?” It should be recalled that personal interests include those which affect the well-being or financial position of the Member. Examples of personal and prejudicial interests might include situations in which the Member (or their friend, family or employer):*

- *lives very near to the premises in question (likely to have a personal interest and potentially a prejudicial interest);*
- *is a frequent visitor to the premises in a personal capacity (potentially a personal and a prejudicial interest);*
- *belongs to a lobby or campaign group which may be directly impacted by the outcome of the Licensing Committee hearing (personal and potentially prejudicial interest).*

Gifts and hospitality: *Members should be very cautious about accepting gifts or hospitality. Members are required by the National Model Code of Conduct to provide written notification of receipt of any gift/hospitality worth greater than £25, within 28 days, to the monitoring officer of the local authority. To avoid potential perceptions of bias it may be appropriate that generally any gifts or offers are unacceptable. It is recognised that this is more stringent than the National Model Code of Conduct. However, in particular circumstances where a gift or offer is accepted e.g. free drinks, meals, admission to events etc. then local authorities may wish to follow a procedure whereby the details are registered and stored for example, on the licence file.*

Exemptions to the rules on personal and prejudicial interests

Exemption as to personal interests: Where a Member's personal interest arises solely from his/ her membership of, or position of control/ management on

- Any other body to which the Member was appointed or nominated by the authority;
- Any other body exercising functions of a public nature (for example another local authority).

The 2007 Code states [para 9(2)] that in these cases, provided the Member does not also have a prejudicial interest, he/ she needs only to declare that interest if and when speaking on the matter.

Bodies exercising functions of a public nature: The Guidance of the Standards Board cites as examples: regional and local development agencies; other government agencies; other councils, public health bodies, council-owned companies exercising public functions; arms-length management organisations carrying out housing functions on behalf of the Member's authority; and school governing bodies.

Exemptions as to prejudicial interests: Para 10(2)(c) of the Code of Conduct 2007 states that a Member will not have a prejudicial interest if the matter relates to certain functions of their authority:

- Housing – the Member holds tenancy or lease with the authority, but the matter does not relate to his/ her particular tenancy or lease;
- School meals/ transport/ travelling expenses – the Member is a parent or guardian or a child in full-time education and is a parent governor, unless the matter relates to the particular school the Member's child attends;
- Statutory sick pay;
- An allowance/ payment/ indemnity for Members;
- A ceremonial honour given to Members;
- Setting Council tax or a precept.

In respect of the Licensing Act 2003 the situation may occur where a Member carries-out a function for another public authority or another local authority which is making an application for a licence, or which is making a representation. For example, if the local hospital or school is applying for a premises licence and the Member is on the Board of Governors of the school or involved in the management of the hospital. It may also occur where the Member is a 'dual-hatted' Member and is part of the District Council's Licensing Committee but also a Member of the County Council which is applying for a premises licence for its land.

In such situations, whilst there would be a personal interest which could be exempt from declaration, the added dimension of the public function vis-à-vis the other public bodies which the Member also serves, would mean that this was also a prejudicial interest. It is strongly suggested that Members consider NOT availing themselves of any exemption in such circumstances as to do so may put the local authority at risk of being accused of bias.

The Standards Board has previously commented that "...you should not sit on decision-making bodies, such as planning and licensing committees, when they decide applications from an authority on which you also serve. Even though these situations fall within the scope of those

exempt from declaration], a reasonable member of the public would think that your judgment is likely to be prejudiced. In addition, a legal challenge could be made against the authority's decision-making process if you participate in these circumstances." ("Lobby groups, dual-hatted members and the Code of Conduct – Guidance for Members" The Standards Board for England September 2004 p.15).

The Standards Board has also stated "Regulatory matters such as planning and licensing, are particularly sensitive... In our view, you should adopt a particularly cautious approach to planning and licensing matters." ("Lobby groups, dual-hatted members and the Code of Conduct – Guidance for Members" The Standards Board for England September 2004 p.6).

'Advantages' available to Members

Under the National Model Code a Member with a personal and prejudicial interest shall also not "improperly influence a decision about that matter". What this means is that a Member must not use any advantage available to them as a Member which would include, for example, access to Officers and other council Members. Sections of the new Code relating to "Compromising the impartiality of officers of the authority [para 3(2)(d)]; improper use of position [para 6(a)]; use of the authority's resources [para 6(b)(i)]; and using resources for proper purposes only [para 6(b)(ii) and 6(c)] would also apply.

In respect of the Licensing Act 2003 Section B5 Lobbying of/ by Councillors should be referred to. The Member should not have access to papers and persons which would not be available to an ordinary member of the public, and must not be able to address or view the proceedings of the Licensing Sub-Committee, which are not available to members of the public.

The Standards Board for England published in September 2004 a guide, entitled "Lobby groups, dual-hatted members and the Code of Conduct", which Licensing Members and Officers should have regard to.

3. Licensing Sub-Committees - Bias and Predetermination

(a) Introduction

Bias has been defined as “an attitude of mind which prevents the [decision-maker] from making an objective determination of the issues that he has to resolve” (*Re Medicaments and Related Classes of Goods No. 2* [2001] 1 W.L.R. 727). As mentioned in section A3 (Natural Justice – rules of the English Common Law), the important concept as regards bias is that there is no need for proof of actual or potential bias for there to be ‘procedural impropriety’ shown. It is sufficient that there is an appearance of bias. Accordingly, the test for bias is ‘whether a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility of bias’¹.

Further, where the decision to be made is quasi-judicial, as at Licensing Sub-Committees, the key issue to ensure the legality of the decision is the “public perception of a probability of unconscious bias”² This brings into consideration the previous dealings of members of the Licensing Sub-Committee and views expressed by them. ***Members should therefore avoid participating as a member of a Licensing Sub-Committee where previous voting or statements of belief may alter that “objective impression conveyed”***³. The Standards Board for England’s advice also states “*You should not reach a final conclusion before you come to take a decision on an issue*” and that “*Your statements and activities should not create the impression you’re your views on a matter are fixed, and that you will not fairly consider the evidence or arguments presented to you when you are making a decision*”. (“Lobby groups, dual-hatted members and the Code of Conduct – Guidance for Members” The Standards Board for England September 2004) The sections on Gifts & Interests and Lobbying are particularly relevant in this regard.

‘Bias’ also includes the situation where it is felt that the decision-maker has pre-determined the case based upon his/her own prejudices.⁴ In the local government context, the most obvious example of pre-determination is where the impression is clearly given to persons (such as members of the public or a lobbyist) beyond conveying a mere pre-disposition, that ‘the Member or authority will approach the matter with a closed mind and without impartial consideration of all relevant issues’⁵

To help avoid accusations of pre-determination and ensure that Ward Members are free to represent their constituents as ‘interested parties,’ it may be advisable for local Licensing Authorities to consider that Ward Members do not sit on Licensing Sub-Committees where that Committee is considering an application in that Member’s Ward.

(b) ‘Structural’ Bias

A potential issue concerning bias or pre-determination in relation to the Licensing Act 2003, is where a Member sitting on the Licensing Sub-Committee is a Member for another authority function such as economic development / regeneration, where that function’s policy / decisions either impliedly or explicitly support (or indeed, opposes) the application. This might, for example, include the scenario where an ‘Open Spaces’

¹ *Porter v. Magill* [2002] 2 AC 357 at 494 [103]

² *Lawal v Northern Spirit Ltd* [2003] UKHL 35

³ *Coslas Georgiou v Enfield LBC* [2004] EWHC 779 (admin) QBD

⁴ For discussion of this see *Locabail UK v Bayfield Properties* (2000)

⁵ *Costas Georgiou v Enfield LBC* [2004] EWHC 779 (admin) QBD

plan has been agreed and indicates that some areas of the local authority land will be licensed for entertainment purposes under the Licensing Act 2003 (explicit support); or where an economic regeneration plan includes the provision to encourage more theatres and restaurants to an area (implicit support).

In this regard, judicial discussion has noted that there is a difference between pre-determination and a pre-disposition arising from structural or political bias.¹ And it has been stated that "...there is a degree of permissible structural bias built into the statutory framework for local authority decision-making" Cummins v Camden LBA and SSTER [2001] EWHC Admin 1116 at para. 261. However, there is a crucial distinction between party political policy or structural matters, involving Members in a wider policy setting context, and where a Member has acted as an advocate for or against a licence application via their actions in another forum of the local authority or public body. The latter may well give rise to the perception that s/he has pre-judged the issue or having introduced a real possibility of bias.

Local authorities may wish to agree procedures to cover such situations and advise that the Member concerned makes a disclosure of his/her position, in advance, to the Licensing Sub-Committee which will consult with the Sub-Committee's legal advisor to decide if the Member can take part in the decision-making. Licensing Authorities may wish to be cautious and where there is doubt, decide to exclude the Member from the decision making. A useful case to note on this point is the planning case of Costas Georgiou v Enfield LBC [2004].

As mentioned previously, it should be noted that the Standards Board for England has advised that "Regulatory matters such as planning and licensing, are particularly sensitive... In our view, you should adopt a particularly cautious approach to planning and licensing matters." ("Lobby groups, dual-hatted members and the Code of Conduct – Guidance for Members" The Standards Board for England September 2004 p.16)

Potential 'structural bias' may also be perceived where the Licensing Policy Statement includes provision that the local authority intends to licence its land and the Member took part in the Council meeting which approved the policy statement (e.g. Full Council meeting). In such a situation Members would NOT normally be excluded from the Licensing Sub-Committee on this basis as it would make the decision-making process unworkable. The only exception would be where the Member involved could reasonably be seen as having been a leading or particular advocate for or against the proposal.

(c) Difference between the Personal / Prejudicial Interests provisions of the National Model Code of Conduct, and Bias at Common Law

Bias at common law and personal and prejudicial interests under the National Model Code of Conduct are related but do differ as concepts and in their effect. Although the wording and

¹ As referred to in Bovis Homes Ltd v. New Forest DC [2002] EWHC 483 (Admin) it was stated in Cummins v Camden LBA and SSTER [2001] EWHC Admin 1116 at para. 261 that "There is an important distinction between bias from a personal interest and a predisposition, short of predetermination, arising say from prior consideration of the issues or some aspect of a proposal. The decision-making structure, the nature of the functions and the democratic political accountability of Councillors permit, indeed must recognise, the legitimate potential for predisposition towards a particular decision. The source of the potential bias has to be a personal interest for it to be objectionable in law." For further case law on this area see Cummins v. Camden LBC and SSTER [2001] EWHC Admin 1116, R v. SSE ex p. Kirkstall Valley Campaign Ltd [1996] 3 All E.R. 304 and R v. Amber Valley DC, ex p. Jackson [1984] 3 All E.R. 501 and Cosfas Georgiou v Enfield LBC [2004] EWHC 779 (admin)

apparent objectives are similar, the test for common law bias has a lower threshold. Bias at common law includes those areas where the potential Licensing Sub-Committee Member has created a real danger of a perception that s/he has prevented him or herself from being able to make an impartial determination of the issues. This is also known as fettering one's discretion. Interests under the National Model Code of Conduct, however, only concern themselves with the definition of a personal interest under the National Model Code of Conduct, first, and only then is the test as to whether or not that personal interest may be prejudicial then applied.

In terms of effects, a Member who has a personal and prejudicial interest may not take part in the Licensing Sub-Committee or attend the hearing at all. Whereas, a Member who has fettered his/her discretion through common-law bias may not sit as part of the Licensing Sub-Committee but may act on behalf of (or as) an 'interested party'.

Members should also be made aware that, because personal and prejudicial interests under the National Model Code of Conduct are concerned with acting in the wider public interest, matters may be caught as a personal and prejudicial interest under the National Model Code of Conduct which would not be considered to amount to bias under the common law.

For the Licensing Authority, bias may vitiate its decision on an application. Personal and prejudicial interests, in contrast, are ostensibly a matter for the Member concerned to disclose, act upon and take responsibility for. It must be recognised, however, that knowledge of the potentially undisclosed personal and prejudicial interest may be such that it would be irrational for the Authority or Sub-Committee to continue without taking action in response to it, and may therefore in turn, vitiate the Licensing Authority's decision.¹

¹*R (Richardson and another) v North Yorkshire CC and another [2003] EWCA Civ. 1860*

4. Applications submitted by the Local Authority

Local authorities may apply for their own Premises Licences so as to licence areas of public space. Indeed the Government's Guidance encourages this:

3.59 "To ensure cultural diversity thrives, local authorities should consider establishing a policy of seeking premises licences from the licensing authority for public spaces within the community in their own name. This could include for example, village greens, market squares, promenades, community halls, local authority owned art centres and similar public areas."

Such applications must be, and seen to be, dealt with fairly. During such an application process it is therefore important to be aware of any potential appearance of bias. The discussions in the preceding sections should be considered in this respect. *It might also be worth considering whether such applications are always decided by the Licensing Committee and not the Licensing Officer, even where there are no representations, to minimise any potential appearance of bias.*

5. Lobbying off by Councillors

Local democracy: The Licensing Act 2003 sets out the grounds for making representations on licence applications and specifies the parties which may make such representations. It should be borne in mind that one of the key aims of the Licensing Act 2003 is to localise decision-making or 'democratise' the process and Members are therefore legitimately concerned with their locality and the needs/wishes of its constituents, including both the needs for entertainment and employment, as well as the undesirability of crime and public nuisance. Local Councillors can either sit as part of the Licensing Committee or can represent the interests of their constituents by acting as 'interested parties', as long as they do not have any prejudicial interest in the matter (see Licensing Act Section 13(3) and Guidance at 8.5).

Note: Since January 2010, councillors are regarded as interested parties in their own right. They are entitled to make representations or call for reviews in respect of any licensed premises in any ward within the council's area. They do not have to await instructions from residents or other organisations, but can act on their own initiative. (Note: members of councils that are not licensing authorities are not included within this definition. A small minority of councils will be affected by this; the majority are licensing authorities.)

It is important to note that representations submitted by councillors must be "relevant representations"; i.e. they must be concerned with the likely effect of the grant of the premises licence on the promotion of the licensing objectives, and must be made within the 28 day period during which representations may be made to the licensing authority; and they must not be frivolous or vexatious.

The National Model Code of Conduct: Membership of lobby / campaign groups should be included on the register of interests and then if the matter to be decided at a licensing hearing relates to the Member's membership of a lobby or campaign group, a personal (and potentially, a prejudicial) interest should be declared. This might, for example, include a situation where the Member is part of a campaign group which promotes rural pubs and the licence application requests a licence for such a premises. Whilst the National Model Code of Conduct does not require the Member to withdraw from the meeting unless there is also a prejudicial interest,

local authorities may wish to decide that in such a situation the Member does not sit so as to avoid perceptions of bias, especially as the Sub-Committee is made-up of no more than 3 Members. However, this would not preclude the Member attending the meeting either as the licence applicant, or being / representing an 'interested party'.

Clearly, if the interest is also a prejudicial one then the Member must not be present in the meeting in any form. Should s/he be the licence applicant or be / represent an 'interested party' then an agent should be utilised at the meeting instead, to present the Member's views.

It should be noted that the Standards Board for England has advised that "Regulatory matters such as planning and licensing, are particularly sensitive... In our view, you should adopt a particularly cautious approach to planning and licensing matters." ("Lobby groups, dual-hatted members and the Code of Conduct – Guidance for Members" The Standards Board for England September 2004)

Appearance of bias: Whilst lobbying of Members is legitimate and certain Members may make representations to the Licensing Committee on behalf of 'interested parties', it is crucial for the Licensing Authority and its Committee to ensure that there is neither actual nor an appearance of bias in its decision-making. It should also be remembered that concerns about political lobbying were the basis of the concerns which lead to the first Nolan Committee on Standards in Public Life.

To avoid an appearance of bias the following advice can be directed at Members:

- *No Member sitting on the Licensing Sub-Committee can represent one of the interested parties or the applicant. If s/he wishes to do so s/he must excuse him/herself from membership of the Sub-Committee which is considering the application and address the Sub-Committee as an 'interested party'.*
- *If a Member who sits on the Licensing Sub-Committee is approached by persons wishing to lobby him/her as regards the licence application then that Member must politely explain that they cannot discuss the matter and refer the lobbyist to his/her Ward Member or the Licensing Officer who can explain the process of decision making. If the Member who sits on the Licensing Sub-Committee wishes to represent them then s/he will need to excuse him/herself from the Licensing Sub-Committee.*
- *Members who are part of the Licensing Sub-Committee must avoid expressing personal opinions prior to Licensing Sub-Committee decision. To do so will indicate that the Member has made up his/her mind before hearing all the evidence and that their decision may not be based upon the Licensing Objectives nor the Licensing Authority's Statement of Licensing Policy.*
- *Political group meetings should never be used to decide how any Members on the Licensing Sub-Committee should vote. The view of the Ombudsman is that using political whips in this manner may well amount to findings of maladministration. It may be advisable that the Chair of the Licensing Sub-Committee should state, during proceedings, that no member of the Sub-Committee is bound by any party whip.*

- **Councillors must not be members of the Licensing Sub-Committee if they are involved in campaigning on the particular application.**
- **Other Members (i.e. those who do not sit on the Licensing Sub-Committee) need to be careful when discussing issues relating to matters which may come before the Licensing Sub-Committee Members as this can easily be viewed as bias / pressure and may well open that Sub-Committee Member to accusations of such. Whilst a full prohibition upon discussing such issues with Committee Members by other Members may be impractical and undemocratic, local authorities are advised to produce local guidance for Members on how such matters can be dealt with.¹ Such guidance could include a definition of what is viewed as excessive e.g. attempting to obtain a commitment as to how the Member might vote.**
- **Members must not pressurise Licensing Officers to make any particular decisions or recommendations as regards applications (such as the ability to decide whether an application is frivolous or vexatious as per Section 18(7)(c)).**

It should be noted that a Member for a Ward, which would be directly affected by the application, is most at risk to being accused of bias. Such Members are also most likely to be put under pressure to represent local 'interested parties' (ie objectors/supporters) or indeed 'responsible authorities' as regards a licence application. It is for this reason that, whilst there are no statutory requirements for Ward Members to excuse themselves from such licence application Sub-Committees (unless they have a prejudicial interest), local authorities may find it helpful to include in procedures that Members whose Ward includes the application, or whose Ward is likely to be affected by the application, are advised to not sit on the Licensing Sub-Committee considering the application but that s/he may wish to act as / or represent an 'interested party', or may wish to act in their capacity as an interested party in their own right.

¹ "It is undemocratic and impractical to try to prevent councillors from discussing applications with whomever they want: Local democracy depends on councillors being available to people who want to speak to them. The likely outcome of a prohibition would be that lobbying would continue but in an underhand and covert way." (Nolan Committee Report into Standards in Public Life 285 p. 72)

6. Pre-application/ pre-decision discussions

Discussions between the licence applicant and the Licensing Authority prior to the submission of an application (or prior to a decision being made) are often helpful to both parties. For example, a premises licence applicant may ask for advice on how to complete an 'operating schedule'. However, these discussions can often be viewed by objectors as a form of 'lobbying' and the Licensing Authority must ensure it is not open to accusations or / appearance of bias. ***The Licensing Authority must therefore ensure that such advice and assistance is clearly identified as being such and is not any type of 'predetermination'.***

Bearing in mind the available resources, some suggestions on how this can be achieved by the Licensing Authority are:

- ***Ensure that there are clear guidelines on how such pre-application / pre-decision discussions should take place, for both applicants, Members and Officers.*** This may include advice to applicants that they should not approach Licensing Sub-Committee Members to engage them in pre-application / pre-decision discussions, and that all queries should be addressed to the Licensing Officer (or an officer of any local authority 'responsible authority') in the first instance.
- ***Licensing Committee Members should ensure that they do NOT take part in any pre-application / pre-decision discussions and that applicants are referred to the Licensing Officer.***
- ***Ensure to keep full meeting notes on file*** where the meeting / telephone conversation / e-mail communication is contentious (precise arrangements for the necessity to keep meeting notes should be decided by each local Licensing Authority) and follow-up letters can also be useful to confirm the nature and content of the meeting which took place.
- ***Make clear that the discussions do not bind the Licensing Authority*** to any particular decision and when suggestions are made that these are provisional only.
- ***Advice must be consistent with the Licensing Objectives and the Licensing Authorities Statement of Licensing Policy.***
- ***Make clear the limited decision making power of the Licensing Officer.***
- ***Advice must be impartial.***

7. Role of the Licensing Officer

Licensing Officers have no ability under the Licensing Act 2003 to make representations or to be a party to the hearing. ***There is no legal provision for Licensing Officers to make recommendations to the Sub-Committee in terms of the outcome of the Committee hearing as is seen in planning cases.*** However, a summary report of the application, the representations, and the Officer's comments as to how these relate to the Licensing Act 2003, the Guidance and the local Licensing Policy Statement may be useful.

Each local authority would be advised to set-out clearly the role of its Licensing Officer(s) in the decision process covering topics such as pre-application / pre-decision discussions, site visits etc.

8. Decision making

Reasons for decisions made must be clearly documented so that any subsequent accusations of bias etc. can be defended. It is critical that it is clear that decisions are made according to the Licensing Objectives of the Licensing Act 2003 as well as the Licensing Authority's Licensing Policy Statement. Whilst the Government's Guidance accompanying the Licensing Act 2003 indicates some other factors which may influence decisions (e.g. live music / cultural considerations) these will always be subservient to the Licensing Objectives and the Licensing Policy Statement.

9. Site visits

Site visits by Licensing Sub-Committee members are generally unnecessary and can put the Members and the Licensing Authority at risk of accusations of bias. If a Licensing Authority believes that there might be occasions where visits are required then it would be advised to have set-out the reasons why this might be the case in local guidance, so that there are clear criteria for justifying any visit, which can be documented. Licensing Authorities would also be advised to have clear guidance as to how the visits are conducted.

10. Complaints Systems & Record keeping

Licensing Authorities may wish to review their complaints records procedures to ensure that they fully cater for the new functions under the Licensing Act 2003.

The Ombudsman has provided advice on the setting up of a complaints system entitled "Running a Complaints System" (<http://www.lgo.org.uk/guidance.htm>).

Generally, a complaints system, with regard to the licensing function, should ensure that:

- Record keeping is complete and accurate to ensure that complaints can be fully investigated.
- Full and comprehensive files are maintained throughout the life of the licence.
- It should be possible for someone not involved in the application process to understand what the decisions were and why and how reached, by reading the file. Particular care to be taken when a decision has been delegated to the Officer level.

Local record keeping procedures for the Licensing Act 2003 functions need to be devised and ***any decisions of the Licensing Officer as regards applications deemed frivolous or vexatious must be recorded clearly with full reasons provided.***

REFERENCES & WEBSITE LINKS

DETR (subsequently ODPM, DCLG and now CLG) "New council constitutions: guidance pack / Modular constitutions for English local authorities": http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_localgov_605660.hcsp

Good Practice Note No 1 - 'Devising a Complaints System' <http://www.lgo.org.uk/guidance.htm>

LACORS <http://www.lacors.gov.uk>

LGA <http://www.lga.gov.uk/>

Local Government Ombudsman: <http://www.lgo.org.uk>

National Model Code of Conduct:
<http://www.standardsboard.gov.uk/TheCodeofConduct/Guidance/filedownload,5982,en.pdf>

Nolan Committee Reports: <http://www.public-standards.gov.uk/reports/index.htm>

The Standards Board - <http://www.standardsboard.gov.uk>

CASE LIST

Bovis Homes Ltd v. New Forest DC [2002] EWHC (Admin)

Cooper v Wandsworth Board of Works (1863)

Costas Georgiou v Enfield LBC [2004] EWHC 779 (Admin)

Cummins v Camden LBA and SSTER (2001) EWHC (Admin)

Dallaglio (1994)

Eckle v Federal Republic of Germany 1989 5 EHRR1

Ghadami v Harlow D.C. [2004] EWHC

Konig v Federal Republic of Germany 1980 2 EHRR

Lawal v Northern Spirit Ltd [2003] UKHL

Porter v Magill (2002) 2 AC

Ridge v Baldwin (1964) AC

Re Medicaments and Related Classes of Goods No. 2 [2001] 1 W.L.R

R v. Amber Valley DC, ex p. Jackson [1984] 3 All E.R.

R v Bow Street Magistrates ex parte Pinochet (No 2) (1999)

R v. SSE ex p. Kirkstall Valley Campaign Ltd [1996] 3 All E.R

R(Richardson and Another) v North Yorkshire County Council and another [2003] EWCA Civ

Locabail UK v Bayfield Properties (2000)

Appendix D

Dear Members,

You will be aware that under the Licensing Act elected members have had no special status in making representations on applications or calling for formal action by way of reviews of licensed premises. I know that at times this has caused some of you frustration and can confuse residents in your wards.

However the legislation has recently changed, giving you all enhanced roles and any member is now able to both make representations and potentially call for reviews of licences. As ever there are some caveats, the foremost being evidence to support your case.

In summary, this is a significant change from the previous situation, where individual Members could only make such representations if they lived in or had a business in the vicinity of the premises, or had been specifically asked to represent a constituent at a hearing.

However, the statutory constraints on the reasons for representations or reviews still apply – they may only be made on the grounds of one or more of the licensing objectives, which are:

- the prevention of crime & disorder;
- the prevention of public nuisance;
- public safety;
- the protection of children from harm.

Representations or applications for review on other grounds cannot be considered. For instance, public health is not a statutory objective and cannot be considered.

Given the quasi-judicial nature of the proceedings, all representations or review applications:

- must be in writing, showing the name and address of the writer (the representation/review application must be published as part of the process) – there is a prescribed form for reviews on the Licensing WebPages as well a form for make representations;
- must clearly set out the likely effects the grant of the licence would have on the promotion of at least one of the licensing objectives;
- should present evidence in support of the representation or review – evidence based representations will carry more weight than those with little or no evidence provided;
- must clearly relate to the premises for which application is being made.

For example, representations on the basis of general noise and disturbance, without evidence of a causal link to specific premises, will carry little or no weight with the Sub-Committee.

There are particular rules in respect of petitions which are unlikely to carry as much weight with the Sub-Committee as letters from individuals. Individually produced representations will inevitably carry more weight than "form" letters where an individual's details have been added.

The Act also requires the Licensing Authority to disregard representations that are considered to be frivolous or vexatious.

Further information about representations to licensing applications and licence reviews is available from within the Licensing pages on the Council's website on the following links:

- List of all new applications together with guidance on how to make representations:

http://www.eastdevon.gov.uk/applications_received

- Guidance for Interested Parties applying for a Review:

http://www.eastdevon.gov.uk/premises_review

Naturally if there are any issues arising from this letter do not hesitate to contact myself, my deputy Ian Carter or Neil McDonald.

Yours faithfully

John Tippin
Licensing Manger
Legal, Licensing and Democratic Services

Agenda Item 7

Licensing & Enforcement Committee

2 March 2010

JT/IC/NM/DJ/JL

Committee Update -

Licensing Act 2003, Gambling Act 2005, Taxis & General Licensing

Summary

The report provides an update on the activities of the Licensing Service under the Licensing Act 2003, Gambling Act 2005 and Taxi Legislation together with other general licensing matters.

Recommendation

That the report be noted

a) Reasons for Recommendation

To keep the Council's statutory committee up to date with current arrangements and statistics relating to the Licensing Service.

b) Alternative Options

Not Applicable

c) Risk Considerations

Failure to provide an efficient licensing service may result in complaints or legal challenges being made against the Licensing Authority.

d) Policy and Budgetary Considerations

None

e) Date for Review of Decision

Not Applicable

1 Licensing Act 2003

1.1 Licences Issued and Notices Given

1.1.1 The numbers of licences issued and notices given since the last update report to Committee are set out in Appendix A.

1.2 Premises Risk Ratings

1.2.1 The inspections under the premises risk rating system continue and despite the poor weather in January restricting the amount of visits that could be undertaken, are still on target to be completed by 31 March 2010.

1.2.2 Following a request from the Institute of Licensing details of the risk rating system have been passed on to the Isle of Wight Council.

1.3 Enforcement

- 1.3.1 A co-ordinated multi agency approach to complaints received has secured swift resolutions without the need for formal enforcement action.

1.4 Hearings

- 1.4.1 The numbers of hearings held since the last update report to Committee are set out in Appendix A.

1.5 Applications Received and Notices Given

- 1.6.1 The numbers of applications received and notices given are set out in Appendix A.
- 1.6.2 An application for a Minor Variation of PLWA0549 was refused by the Licensing Authority following large numbers of representations from local residents and a representation from the Council's Environmental Health Department.
- 1.6.3 Licensing Officers have been involved in consultation with concert promoters who propose to hold a large scale music event featuring JLS at Escot Country Park, Ottery St Mary during July this year.
- 1.6.4 The licenses for this year's Folk Festival in Sidmouth have now been granted. Only one representation from a local resident was received against the application for Late Night Refreshment at the camp site but this was withdrawn following mediation.

2 Gambling Act 2005

2.1 Licences Issued and Notices Given

- 2.1.1 The numbers of licences issued and notices given since the last update report to Committee are set out in Appendix B.

2.2 Premises Inspections and Risk Ratings

- 2.2.1 A scheme of inspection, report and risk assessment is still under development in consultation with the Gambling Commission and Partner Agencies.

2.3 Enforcement

- 2.3.1 Members will recall from the last update report that there had been concerns in respect of the window display at the premises known as the 'Dove', Dove Lane, Sidmouth.
- 2.3.2 The Licensing Service retains its view that the current window display breaches the Premises licence condition prohibiting advertising and invitations to gamble.
- 2.3.3 The Premises Licence Holder attended the Council Offices in January to explain his proposed actions regarding the window display. He was advised of his options to remove the advertising display or seek to vary the conditions of his licence.
- 2.3.4 Later in the month the Premises Licence Holder advised the Licensing Section that he had reluctantly decided to close the premises. At the time of writing however although the premises has been put up for let the Premises Licence has not been surrendered and the premises continues to trade.



2.4 Hearings

- 2.4.1 The numbers of hearings held since the last update report to Committee are set out in Appendix B.

2.5 Applications & Notifications received

- 2.5.1 The numbers of applications and notifications received since the last update report to Committee are set out in Appendix B.
- 2.5.2 In November 2009 Ladbrokes submitted two applications in relation to their premises at 24-26 The Parade Exmouth currently licensed as a betting shop. The applications sought to create two separate gambling premises separated by a glazed partition.
- 2.5.3 Officers were of the opinion that the separation of the premises was purely artificial and did not meet the guidance issued by the Gambling Commission on the definition of premises. Having been advised of this Ladbrokes withdrew the applications in December.

3 Taxis

3.1 Licences Issued

- 3.1.1 The numbers of Licences issued since the last update report to Committee are set out in Appendix C.

3.2 Enforcement

- 3.2.1 The Licensing Team has continued the education based enforcement and monitoring approach to the Hackney Carriage and Private Hire drivers and vehicles as we have used with the Licensing Act. Again close liaison is maintained with partner agencies and the taxi trade to ensure that the principles of consistency, transparency and proportionality are maintained.

3.3 Hearings

- 3.3.1 Since the last update report to Committee there have been two hearings in relation to hackney carriage driver suitability. Both hearings were on the 15 December 2009.
- 3.3.2 The first applicant applied for a new hackney carriage drivers licence, but had a medical problem and did not meet the medical criteria as laid down by this Council. It was decided that the application for a hackney carriage drivers licence be refused as the applicant did not meet the Group 2 Medical Standard to drive as adopted by this Council on 13 June 1996. There is a right to appeal to the Magistrates Court if aggrieved by the council's decision and to date there has been no notice of appeal from the applicant.
- 3.3.3 The second person to appear before the committee on that date was an existing hackney carriage driving licence holder who had received a recent conviction, which fell outside of the convictions policy that had been agreed by this council on 27 February 2006. It was decided on this occasion that the hackney carriage driver be allowed to continue to hold his licence.

3.4 Applications received

- 3.4.1 The number of applications received since the last update report to Committee is set out in Appendix C.



3.5 Taxi Rank Update

- 3.5.1 **Exmouth** – Members will recall that at their last meeting on the 24 November 2009 a number of new ranks for Exmouth were approved by the Committee. Following that meeting a public notice, as required by the legislation, was published in an Exmouth newspaper. The public notice gave notice of the proposed new ranks and invited consultation within a 28 day notice period. No objections were received to the proposals so the ranks agreed on the 24 November 2009 can now be considered fully approved and merely await Devon County Council to carryout the necessary work to put them in place.
- 3.5.2 A further report relating to the appointment of a new rank in the Strand at Exmouth is included with the agenda for this meeting.
- 3.5.3 **Honiton** – To date there has been no update from Devon County Council as to when the ranks are to be put in place. As it is hoped that a representative from Devon County Highways will be at your meeting on the 2 March 2010 members will have the opportunity to seek an up date.
- 3.5.4 **Seaton** – A report on this matter is included with the agenda for this meeting.

4. Street Trading

- 4.1 Applications for street trading during this year's Sidmouth Folk Festival have been invited and at the time of writing over 30 applications have been received.
- 4.2 No unauthorised trading has been found and no further complaints have been received.

5. Consultations and Partnership Working

5.1 Meeting between Members, Taxi Proprietors and Officers

- 5.1.1 The next liaison meeting has been arranged for Wednesday 7 April 2010 at 1400 hours in the Council Chamber. The Committee's Chairman and Vice Chairman normally attend these meetings.

Legal Implications

There are no legal implications set out within the report requiring comment.

Financial Implications

John Tippin Ext. 2787
Licensing Manager

Licensing and Enforcement Committee
2 March 2010

Ian Carter Ext.2080
Senior Licensing Officer



Licensing Act 2003

Licences Issued and Notices Given

	Feb-10	Nov-09	
Premises Licences	594	595	-1
Club Premises Certificates	61	62	-1
Personal Licences	1,391	1,366	25
Temporary Event Notices including sale or supply of alcohol	2,622	2,511	111
Temporary Event Notices Entertainment and/or Late Night Refreshment only	235	222	13

Hearings

	Nov-09	Dec-09	Jan-10
Hearings where no agreed position has been reached	0	0	0
Hearings held to approve an agreed position	0	0	1

Applications Received and Notices Given

	Nov-09	Dec-09	Jan-10
Grant of a Premises Licence	1	3	0
Variation of a Premises Licence	0	2	1
Transfer of a Premises Licence	3	4	1
Change of Designated Premises Supervisor	3	3	2
Minor Variations	4	1	1
Grant of a Personal Licences	10	10	12
Personal Licence Change of name or address	8	0	4
Temporary Event Notices given	44	36	35

Gambling Act 205

Licences Issued and Notices Given

	Feb-10	Nov-09	
Premises Licences	14	14	0
Small Society Lotteries	175	185	-10

Hearings

	Nov-09	Dec-09	Jan-10
Hearings held	0	0	0

Applications Received and Notices Given

	Nov-09	Dec-09	Jan-10
Applications for a Permit	0	1	1
Application for a Licence	1	0	0
Notification of Intent to have Gaming Machines	7	0	6

Taxis

Licences Issued

	Feb-10	Nov-09	
Hackney Carriages	179	179	0
Private Hire Vehicles	36	34	2
Hackney Carriage Drivers	226	247	-21
Private Hire Drivers	57	54	3
Private Hire Operators	17	17	0

Hearings

	Nov-09	Dec-09	Jan-10
Hearings	0	2	0

Applications Received

	Nov-09	Dec-09	Jan-10
Hackney Carriage Licence (including renewals, transfers & vehicle changes)	22	4	2
Hackney Carriage Drivers Licence (including renewals)	18	5	1
Private Hire Vehicle Licence	1	1	1
Private Hire Vehicle Drivers Licence	0	1	1
Private Hire Operators Licence	0	0	0

Agenda Item 8

Licensing & Enforcement Committee

2 March 2010

IC

Committee Update - Consultations and Responses

Summary

The report summarises the East Devon District Council responses to recent government consultations.

Recommendation

That the report be noted

a) Reasons for Recommendation

To keep the Council's statutory committee up to date with current consultations relevant to the Licensing Service.

b) Alternative Options

Not Applicable

c) Risk Considerations

Failure to provide an efficient licensing service may result in complaints or legal challenges being made against the Licensing Authority.

d) Policy and Budgetary Considerations

None

e) Date for Review of Decision

Not Applicable

1 **Street trading and pedlary laws: A joint consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime – Department for Business Innovation and Skills**

1.1 Background

1.1.1 In 2008 the Government commissioned Durham University to look at the way that licensing and enforcement practices were applied. On publication of the research in 2009, the Consumer Minister announced that the Government will launch a full public consultation on national guidance and options for possible legislative change to street trading and pedlary laws.

1.1.2 The UK and Scottish Governments are consulting on the case for amending and modernising the law as it applies to the control of street trading and the certification of pedlars. They are also seeking stakeholder views on the draft guidance for pedlars, street

traders and enforcers in England and Wales has been produced on the current regime. The consultation closed on 12 February 2010.

1.2 Areas of consultation

- 1.2.1 The consultation seeks the views of the public on the following;
- Ways of making the street trading and pedlary regulatory regime more proportionate and effective.
 - Providing local authorities with additional enforcement options in respect of illegal street trading.
 - Updating the Pedlars Act 1871 to modernise the certification scheme and the definition of a pedlar.
 - Consider introducing a means by which, local authorities might exert proportionate limits on certified pedlar activity in designated areas.
 - Options for revoking the Pedlars Acts and providing for adequate regulation of itinerant traders within the street trading regime.
 - Draft guidance on the application of the current regime in England and Wales for enforcement officers, street traders and pedlars looking at what constitutes acceptable street trading and pedlary practice.

1.2 Summary of response

- 1.3.1 In its response the Council supports the transfer of pedlar's licensing from the police to Local Authorities, a modernisation of the legislation, the creation of a national database and the introduction of greater enforcement powers. The Council also supports the publication of guidance as set out within the consultation.

2 Consultation on a proposal to amend the Licensing Act 2003 to simplify the procedures for Licensing Statements; Interim Authority Notices; and Temporary Event Notices – Department for Culture, Media and Sport

2.1 Background

- 2.1.1 In general, the legislative burdens imposed by the Act are justified by the need to prevent potential adverse impacts on the four licensing objectives. However, stakeholders have identified the detailed requirements of the Act with regard to these processes as being unduly restrictive and burdensome. The Government agrees that they can be simplified without any adverse impact on the licensing objectives. The consultation closed on 9 February 2009.

2.2 Areas of consultation

2.2.1 Licensing statements

Remove the requirement to produce a Licensing Statement every 3 years and allow consultation only with those groups likely to be affected by a specific revision.

2.2.2 Interim Authority Notices (IANs) and Reinstatements on Transfer (RTs)

Extend the notice period for IANs and RTs from 7 to 28 consecutive days and also extend the period for police objections from 48 hours to 2 working days. Extend the period an IAN has effect from 2 months to 3 months.

2.2.3 Temporary Event Notices

Extend the period for police objections from 48 hours to two or three working days and to give a new power to the police to allow a late notification (to be referred to as 'police confirmation').

- 2.2.4 The consultation also seeks views on the draft Order, impact assessment and draft amendments to the Statutory Guidance under s.182 of the Act in relation to these changes.



2.3 Summary of response

2.3.1 In its response the Licensing Authority supports the proposed simplification measures.

3 Proposal to amend Licensing Act 2003 (Personal Licence: relevant offences) – Department for Culture, Media and Sport

3.1 Background

3.1.1 Enforcement agencies have brought to DCMS's attention that there are some offences not currently included in the list of 'Personal licence: relevant offences' ("relevant offences") in Schedule 4 to the Act which they believe should be included. The relevant offences relate to the application for a grant or renewal, and the forfeiture or suspension, of a personal licence. Enforcement agencies believe that there are a number of offences ("new offences") that should be added to the relevant offences to enable the new offences to be capable of being considered as part of the process for obtaining and holding a personal licence. The consultation closes on 12 March 2010.

3.2 Areas of consultation

3.2.1 The consultation seeks the views of the public on the following

- Should any relevant offences be removed from the existing list
- Should the proposed new offences be added to the relevant offences
- Two further offences the government is minded to include on the list of relevant offences
- Two areas for future consideration

3.3 Summary of response

3.3.1 The Council has responded supporting the measures put forward in the consultation.

4. Proposal to exempt small live music events from the Licensing Act 2003 – Department for Culture, Media and Sport

4.1 Background

4.1.1 The Government believes that in general, the regulation of live music under the Act is justified by the potential impact of some live music event on the promotion of the licensing objectives. For example, residents living next door to a public house in a residential terrace may be disturbed by loud performances of live music late at night, or by large numbers of people leaving the venue. Some live music events may also give rise to crime and disorder or endanger public safety. However, the Government considers that small live music events for 100 people or fewer are, in practice, extremely unlikely to give rise to these concerns and will rarely, if ever, have an adverse impact on the promotion of the licensing objectives. The consultation closes on 26 March 2010.

4.2 Areas of consultation

4.2.1 A proposal to exempt small live music events for audiences of not more than 100 people from the requirements of the Licensing Act 2003 relating to the licensing of live music as regulated entertainment under the Act. It also seeks views on the Legislative Reform Order that will deliver the proposal and the Impact Assessment.

4.3 Summary of response



- 4.3.1 The Council's response has been drawn up by officers from both the Licensing and Environmental Health Services.
- 4.3.2 In its response the Council supports the Government's proposal to exempt small live music events.

5. Proposal to clarify the definition of "entertainment facilities" – Department for Culture, Media and Sport

5.1 Background

5.1.1 The definition of regulated entertainment contains two elements: the provision of 'entertainment' and the provision of 'entertainment facilities'. The separate 'entertainment facilities' element is intended to address situations where people take part in entertainment that may not be provided solely for the purpose of entertaining an audience, but which may nevertheless present risks to the promotion of the licensing objectives. Examples may include the use of a dance floor, or some karaoke performances. As part of this, the provision of musical instruments (such as 'pub pianos') can be licensable (separate from a performance of live music) if they are to be used by customers to entertain themselves.

5.1.2 The Act provides for an exemption for performances of live music to the extent that they are incidental to some other activity which is not itself "entertainment" or "the provision of entertainment facilities". However, a broad interpretation of "entertainment facilities" can capture the provision of facilities even if they are intended to be, and are used solely for the provision of exempt incidental music. Such an interpretation limits the usefulness of that exemption, especially for venues that do not have a premises licence, or do not have authorisation for regulated entertainment on their licence, if they are providing the facilities necessary for the performance (such as the provision of a piano in an unlicensed cafe). In such a case, it would mean that they have to make an application to vary the terms of their licence (to add authorisation for entertainment facilities) or make a new application for a premises licence in order to provide exempt incidental music. The Government considers that this was not the intention of Parliament when it introduced the exemption for incidental performances of live music.

5.1.3 The Government feels that the issue requires clarification and propose to amend the Licensing Act 2003 by statutory instrument made under paragraph 4 of Schedule 1 to state that entertainment facilities are not licensable if they are to be used solely for the provision of exempt incidental music. The consultation closes on 26 February 2010

5.2 Areas of consultation

5.2.1 The consultation seeks the views of the public on a proposal to exclude the provision of musical instruments from the definition of entertainment facilities in the Licensing Act 2003 schedule 1, section 3 and clarify that entertainment facilities are not separately licensable if they are used solely for the provision of incidental music.

5.3 Summary of response

5.3.1 The Council has responded supporting the measures proposed in the consultation.

6. Proposed Gambling Act 2005 – Co-regulators Concordat – Local Authorities Coordinators of Regulatory Services

6.1 Background

6.1.1 The Local Authorities Coordinators of Regulatory Services consulted Licensing Authorities last year on a draft enforcement concordat. The concordat is to be an agreement between the



Gambling Commission and Licensing Authorities, based on a set of principals that will set out in general terms the shared understanding of how the Commission and Licensing Authorities will carry out their respective duties under the Gambling Act 2005. Following responses to that consultation a second draft has been produced. This new draft removes most of the detail and replaces it with protocols which have yet to be produced. The consultation closed on 5 February 2009.

6.2 Areas of consultation

6.2.1 The consultation seeks the views of Licensing Authorities on the revised draft protocol.

6.3 Summary of response

6.3.1 The Council has responded supporting the Concordat.

Legal Implications

There are no legal implications set out within the report requiring comment.

Financial Implications

Background Papers

- Street trading and pedlary laws: A joint consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime – Department for Business Innovation and Skills.
- Consultation on a proposal to amend the Licensing Act 2003 to simplify the procedures for Licensing Statements; Interim Authority Notices; and Temporary Event Notices – Department for Culture, Media and Sport.
- Proposal to amend Licensing Act 2003 (Personal Licence: relevant offences) – Department for Culture, Media and Sport.
- Proposal to exempt small live music events from the Licensing Act 2003 – Department for Culture, Media and Sport.
- Proposal to clarify the definition of “entertainment facilities” – Department for Culture, Media and Sport.
- Proposed Gambling Act 2005 – Co-regulators Concordat – Local Authorities Coordinators of Regulatory Services

Ian Carter Ext.2080
Senior Licensing Officer

Licensing & Enforcement Committee
2 March 2010

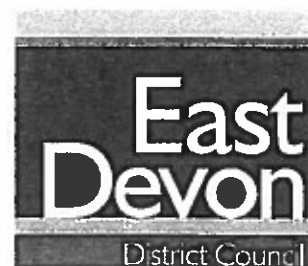


Agenda Item 9

Licensing and Enforcement Committee

2 March 2010

DJ



Proposed Permanent Taxi Ranks for Exmouth Town

Summary

The Licensing and Enforcement Committee is asked to consider changes to the Hackney Carriage ranks in Exmouth Town Centre. This change is part of the regeneration scheme for the town centre and it will ensure that local transport demands are met, with hackney carriage drivers having lawful stands from which to operate their trade.

Recommendation

That the Committee resolves:

1. To exercise the Council's powers under Section 63 of the Local Government (Miscellaneous Provisions) Act 1976 to appoint the following rank in Exmouth:
The Strand to Chapel Hill – 24 Hour Rank
On the north-east side of road
From a point 11 metres south-east of The Strand's junction with Victoria Road for a distance of 50 metres in a south-easterly direction
Restriction: No Waiting At Any Time except taxis
Rank creates 10 new spaces
2. That the requisite public notice be given of the proposed appointment as required by Section 63(2) of the Local Government (Miscellaneous Provisions) Act 1976.
3. That if no written objection or representation is received relating to the notice given under Section 63(2) of the Local Government (Miscellaneous Provisions) Act 1976 within the 28 day period following the publication of that notice the ranks referred to in paragraph 1 of this recommendation will be deemed appointed.
4. That following the appointment of the taxi ranks Devon County Council as the Highways Authority be requested to put in place the appropriate legal provisions and to mark out the ranks as appropriate.

a) Reasons for Recommendation

The Exmouth Town Centre is currently subject of a regeneration scheme which is due for completion in November 2010. On 24 November 2009 this Committee approved a number of changes to the then existing taxi ranks in the town as well as appointing new permanent ranks and one temporary rank. The temporary rank is only needed to accommodate the regeneration works and will need to be replaced by a permanent rank which is the subject of this report. This recommendation is to ensure that the level of hackney carriage ranks is maintained at an acceptable level ensuring that hackney carriage drivers have an adequate number of ranks from which to work, enabling them to carry on their trade in a lawful manner and to provide a good public service.

b) Alternative Options

Not to adopt the recommendation to site the rank in the location outlined.

c) Risk Considerations

None known

d) Policy and Budgetary Considerations

1 Main Body of the Report

- 1.1 Under Section 63(1) of the Local Government (Miscellaneous Provisions) Act 1976 the district council can appoint stands for hackney carriages either on public highways or private land and the stands can be for continual or part time use. The district council can also determine the number of hackney carriages that can use a stand and also has the power to vary the numbers. If the land is to be on the public highway the consent of the highway authority is required. It also requires that notice must be given to the Chief Officer of Police.

Other issues that the Council must consider are:

- a. that the stand will not unreasonably prevent access to any premises;
 - b. that the stand will not impede any taking up or setting down points for Public Service Vehicles (buses) or will not unreasonably interfere with access to passenger road transport operators' stations or depots.
- 1.2 The Exmouth Town Centre is currently subject of a regeneration scheme which is due for completion in November 2010. In order to accommodate the scheme on 24 November 2009 this Committee approved a number of changes to the then existing taxi ranks in the town as well as approving new permanent ranks and one temporary rank. The temporary rank is/was needed to accommodate the regeneration works and will need to be replaced by a permanent rank. It is the purpose of this report to seek approval of a new main rank for the centre of Exmouth.
- 1.3 The meeting on the 24 November 2009 approved the ranks including one temporary rank as listed below:
- (a) **Rolle Street (Temporary Rank) – 24 Hour Rank**
South west side from a point 9 metres south east of its junction with Strand for a distance of 40 metres in a south westerly direction
Rank creates 8 spaces
Restriction: No Waiting At Any Time except taxis.
 - (b) **The Parade - Evening Only Rank**
Side of road south from a point 95 metres west of its junction with Albion Street for a distance of 15 metres in a westerly direction
Rank creates 3 spaces
Restriction: No Waiting 6pm-midnight and midnight-8am except taxis.
 - (c) **Imperial Road – 24 Hour Rank**
Side of road south-west from a point 18 metres north-west of its junction with Rolle Street for a distance of 15 metres in a north-westerly direction
Rank creates 3 spaces
Restriction: No Waiting At Any Time except taxis.
 - (d) **Victoria Road – 24 Hour Rank**
Side of road south from a point 11 metres west of its junction with road from The Strand to Chapel Hill: for a distance of 12 metres in a westerly direction
Rank creates 4 spaces
Restriction: No Waiting at Any Time except taxis.
 - (e) **Chapel Street – 24 Hour Rank**
West side of Chapel Street from its junction with Church Street for a distance of 13 metres in a northerly direction
Rank accommodates 2 spaces
Restriction: No Waiting at Any Time except taxis.
 - (f) **Esplanade – 24 Hour Rank**
South West side of the Esplanade nearly opposite the Pavilion from a point 43 metres north-west of the southern



boundary line of the Beach Gardens for a distance of 13 metres in a north-westerly direction

Rank accommodates 2 spaces

Restriction: No Waiting at Any Time except taxis.

- 1.4 At the conclusion of the regeneration scheme the intention is for the temporary rank in Rolle Street [(a) above] to revert to normal on-street parking. If this happens the number of taxi spaces will be reduced by eight.
- 1.5 The recommendation as set out above is to create a new rank in the Strand. This is the last part of the process to accommodate the regeneration scheme and to create sufficient rank spaces in the town. It will ensure that there is enough taxi transport provision for members of the public, and the trade can operate lawfully, with as much choice of pick up points as is possible. The proposed rank will accommodate 10 extra spaces.
- 1.6 If the recommendation is adopted it will mean that there are a total of 21 full time hackney carriage spaces available for use by the trade, in various locations around the town. There will be a further 3 evening rank spaces available thereby creating a total of 24 available spaces, which is an increase on the number that is available now which stands at 22 spaces. See **Appendix A** (map of proposed hackney carriage ranks)
- 1.7 Devon County Council considers the proposal as set out in the recommendation is the best option taking into account the limitation of locations for such ranks along with all the other changes in the rank structure that are due to occur with the regeneration work. There is no easy solution to the hackney carriage rank situation as the regeneration works have required compromise all round. It is considered that the proposals are a good compromise as they provide good locations in the middle of Exmouth from where the trade can operate.
- 1.8 If the new rank is approved by the Committee, legislation requires that a public notice be placed in a local newspaper in order to provide local residents and businesses with the opportunity to make representations in relation to the proposal. Representations must be made within a 28 day period from the date of publication. Should any objections be received and not withdrawn this item will need to be returned for reconsideration by members.
- 1.9 Paul Wilson, Traffic Engineer East for Devon County Council, or a representative from his department, will attend the Committee meeting on the day to explain the proposals and to answer any questions in relation to the regeneration scheme and taxi rank space proposals.
- 1.10 Consultation letters have been sent to the local taxi drivers who regularly use the ranks but in any case there has been an ongoing dialogue with the taxi trade in the town who are aware of the proposals. Letters have also been sent to Exmouth Town Council, TIC, the Chamber of Commerce, businesses and shop owners in the Strand including Arthur Jones (solicitors and estate agents), Clipper Bar, Bamboo Restaurant, Moores (Off Licence and Newsagents), Garners and the Steak House.
- 1.11 The Devon and Cornwall Constabulary have replied and there are no objections in relation to the proposals as outlined. Copy of E mail at **Appendix B**.
- 1.12 Should any more representations be received before the date of the meeting, copies will be made available to members on the day.

Legal Implications

The legal implications are set out within the report.

Financial Implications

Finance implications are set out in report.



Appendices

- Appendix A DCC Map of Exmouth Town Centre showing locations of the proposed full time taxi ranks
- Appendix B E. mail from Devon and Cornwall Constabulary.

Background Papers

Consultation letters sent to:

- Devon County Council (acting as the Highway Authority)
- Devon and Cornwall Police.
- Local Taxi Drivers
- Exmouth Town Council
- Chamber of Commerce
- Tourist Information Centre.
- Arthur Jones (Solicitors and Estate Agents)
- Clipper Bar
- Bamboo Restaurant
- Moores Off Licence and Newsagent
- Garners
- The Steak House

Douglas Jackson Ext. 2611
Licensing Officer

Licensing and Enforcement Committee
2 March 2010





Bus Stop Clearway

Limited Waiting 30 Minutes No Return Within 1 Hour

Loading Only

No Waiting 6pm-midnight and midnight-8am

No Waiting At Any Time

Devon
County Council

THE STRAND, EXMOUTH

The Strand, Exmouth

SCALE 1 : 1250

DATE 08/10/2009

DRAWING NO. EXM/538

DRAWN BY

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From: Emma.SNOW@devonandcornwall.pnn.police.uk
Sent: 02 February 2010 15:00
To: Douglas Jackson
Subject: RE: Exmouth ranks addition of the Strand NOT PROTECTIVELY MARKED

Dougie

I have mentioned this proposal for the taxi ranks at The Strand, Exmouth to the local crime prevention officer and he raises no concerns. He even mentioned that this is the area he proposed during the original consultation (before my time!).

Obviously The Strand experiences certain issues related to alcohol consumption (assaults, nuisance behaviour) due to its location. Providing the rank is well lit, is covered by CCTV, not hidden from view and it is easy for the taxi to manoeuvre out of the way, I have no issues.

you need anything further please let me know.

Regards

Emma

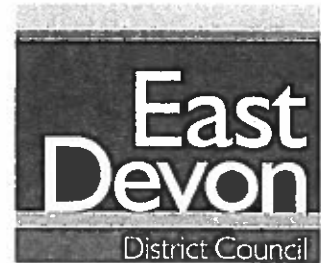
Emma Snow
Architectural Liaison Officer (Exeter, East Devon, Teignbridge)
Police Partnership Office
Old Forde House
Brunel Road
NEWTON ABBOT
TQ12 4XX
Tel: 01626 215125
Mobile: 07595 008128

Agenda Item 10

Licensing and Enforcement Committee

2 March 2010

DJ



Proposed Permanent and Part Time Taxi Ranks for Seaton Town

Summary

The Licensing and Enforcement Committee is asked to consider the proposed part time and full time Hackney Carriage ranks for Seaton Town. These ranks are needed to make available an acceptable level of taxi spaces for the residents of Seaton Town

Recommendation

That the Committee resolves:

- 1 To exercise the Council's powers under Section 63 of the Local Government (Miscellaneous Provisions) Act 1976 to appoint the following ranks in Seaton:
 - (a) **Queen Street**
West side of road from a point 61 metres north from its junction with Beer Road for a distance of 6 metres in a northerly direction
Restriction: No Waiting At Any Time except taxis
Rank creates 1 space
 - (b) **Fore Street** ¹⁶²
West side of road from a point ~~156~~ metres from its junction with Manor Road for a distance of 12 metres in a southerly direction
Restriction: No Waiting At Any Time except taxis
Rank creates 4 spaces
 - (c) **Fore Street**
East side of road from a point 61 metres north of its junction with Marine Place to a point 73 metres north of that junction
Restriction: No Waiting At Any Time except for taxis between the hours of 21.00 and 03.00 hours only
Rank creates 2 spaces
 - (d) **Marine Place**
North side from a point 3 metres east of its junction with Seahill for a distance of 15 metres in an easterly direction
Restriction: No Waiting At Any Time except taxis
Rank creates 2 spaces
2. That the requisite public notice be given of the proposed appointment as required by Section 63(2) of the Local Government (Miscellaneous Provisions) Act 1976.
3. That if no written objection or representation is received relating to the notice given under Section 63(2) of the Local Government (Miscellaneous Provisions) Act 1976 within the 28 day period following the publication of that notice the ranks referred to in paragraph 1 of this recommendation will be deemed appointed.
4. That following the appointment of the taxi ranks Devon County Council as the Highways Authority be requested to put in place the appropriate legal provisions and to mark out the ranks as appropriate.

a) Reasons for Recommendation

In February 2005 the Council's General Licensing Sub Committee appointed four ranks in Seaton however these were never put in place by Devon County Council Highways. There is now an undertaking by Devon County Council to take this issue forward but due to the

passage of time it is believed appropriate that the appointments made five years ago should be re-assessed to ensure that the District Council's licensed hackney carriage trade in Seaton have adequate and suitable taxi ranks to legally work from. This will ensure that the trade can operate lawfully and offer a good service to the residents of Seaton and district. Thereby satisfying local transport demands in relation to its taxi providers

b) Alternative Options

Not to adopt the recommendation or to adopt any part of the proposal for use as hackney carriage ranks.

c) Risk Considerations

None known

d) Policy and Budgetary Considerations

e) Date for Review of Decision

1 Main Body of the Report

- 1.1 Under Section 63(1) of the Local Government (Miscellaneous Provisions) Act 1976 the district council can appoint stands for hackney carriages either on public highways or private land and the stands can be for continual or part time use. The district council can also determine the number of hackney carriages that can use a stand and also has the power to vary the numbers. If the land is to be on the public highway the consent of the highway authority is required. It also requires that notice must be given to the Chief Officer of Police.

Other issues that the Council must consider are:

- a. that the stand will not unreasonably prevent access to any premises;
 - b. that the stand will not impede any taking up or setting down points for Public Service Vehicles (buses) or will not unreasonably interfere with access to passenger road transport operators' stations or depots.
- 1.2 The District Council have a duty to provide taxi ranks for the Hackney carriage trade and licensed hackney carriages need ranks from which to operate. Some years ago Devon County Council Highways made some alterations to the traffic system in Seaton and in doing so and without consultation with the District Council's Licensing Officers removed the appointed taxi ranks. Although the County Council marked out a new rank this it was not legally appointed. Eventually in February 2005 after much local negotiation the Council's General Licensing Sub Committee appointed four ranks in Seaton however three of these were never put in place by Devon County Council Highways and the fourth one although marked out was never properly legalised by the Highways Authority. Below is a list of the ranks that were appointed by the General Licensing Sub Committee in February 2005:
- (a) **Queen Street** (1 Space just above the existing loading bay) - on its west side from a point 110 metres south of its junction with Stock Lane southwards to a point 116 metres south of that junction.
 - (b) **Fore Street** (2 spaces) - on its west side from a point 162 metres south of its junction with Manor Road southwards to a point 174 metres south of that junction.
 - (c) **Fore Street** (2 Spaces) - on its east side from a point 61 metres north of its junction with Marine Place northwards to a point 69 metres north of that junction between the hours of 21.00 and 03.00 hours only
 - (d) **Eyrecourt Road** (2 Spaces) - on its south side from a point 53 metres east of its junction with Seahill eastwards to a point 64 metres east of that junction



- 1.3 There are at present no legally enforceable hackney carriage ranks in Seaton, which means that there are no spaces from which properly licensed hackney carriage drivers can operate their trade legally.
- 1.4 There is an active hackney carriage trade in the Seaton and district area, with many people dependant on the trade for their transport needs. There are at least 12 licensed hackney carriage vehicles operating in the Seaton and surrounding area, including Axminster.
- 1.5 Potentially any licensed hackney carriage licensed with the District Council can use the ranks (at present there are 179 licensed hackney carriage vehicles) but usually it is the local operators who operate in the town.
- 1.6 Seaton is a busy, thriving town with a growing population of approx 7,461; the surrounding towns have populations as follows Axmouth 524, Beer 1362, Colyton 3206 and Axminster 6701. The taxi trade will serve all these areas and anywhere else they are requested to go – including ferrying people to and from the towns in the area for various reasons i.e. elderly shopping trips, pub and club transport, and of course to accommodate the increased numbers of holiday makers when they visit the town. Seaton is also undergoing a regeneration scheme with plans for a visitors' centre, the Tesco development and a wetlands nature reserve.
- 1.7 As explained in paragraph 1.2 the Licensing and Enforcement Committee agreed proposals for hackney carriage ranks for Seaton on 21 February 2005 but they were not finalised by County Council. In any case Hackney Carriage ranks should to be reviewed on a regular basis. Since February 2005 the proposals have changed slightly and the suggested recommendation as outlined is now thought to be the best available option for the town. The main difference being that a proposed Eyrecourt Road rank has been replaced with one in Marine Place.
- 1.8 In order to accommodate the demands from the community, and ensure transport demands are met, it is proposed that new ranks be created as listed below:
- (a) Queen Street
West side of road from a point 61 metres north from its junction with Beer Road for a distance of 6 metres in a northerly direction
Restriction: No Waiting At Any Time except taxis
Rank creates 1 space
 - (b) Fore Street
West side of road from a point 156 metres from its junction with Manor Road for a distance of 12 metres in a southerly direction
Restriction: No Waiting At Any Time except taxis
Rank creates 2 spaces
 - (c) Fore Street
East side of road from a point 61 metres north of its junction with Marine Place to a point 73 metres north of that junction
Restriction: No Waiting At Any Time except for taxis between the hours of 21.00 and 03.00 hours only

Rank creates 2 spaces
 - (d) Marine Place
North side from a point 3 metres east of its junction with Seahill for a distance of 15 metres in an easterly direction
Restriction: No Waiting At Any Time except taxis
Rank creates 2 spaces

A plan showing the location of the proposed permanent and temporary ranks in Seaton Town Centre appears in this report as Appendix A.



- 1.9 If approved Seaton town will have 5 full time hackney carriage spaces situated throughout the town, with the addition of 2 part time spaces in Fore Street - Monday to Saturday from 21.00 – 03.00 hours, Providing a total of 7 available spaces.
- 1.10 This recommendation is thought to be a very good scheme for Seaton ensuring that the taxi trade is well served with the provision of adequate ranks for them to trade. This will also ensure that the public are well catered for with adequate places for them to obtain the appropriate service from the taxi trade.
- 1.11 Devon County Council (the Highway Authority) considers the proposals as set out in the recommendation are the best option taking into account the limitation of locations for such ranks. There is no easy solution to the hackney carriage rank situation. It is considered that the proposals are a good compromise as they provide good locations in the middle of Seaton from where the trade can operate.
- 1.12 If the new ranks are approved by the Committee legislation requires that a public notice be placed in a local newspaper in order to provide local residents with the opportunity to make representations in relation to the proposal. Representations must be made within a 28 day period from the date of publication. Should any objections be received and not withdrawn this item will need to be returned for reconsideration by members. There is a cost implication in that the price of the advert has to be paid for by East Devon District Council
- 1.13 Mr Paul Wilson, Traffic Engineer East for Devon County Council, or a representative from his department, will attend the Committee meeting to answer any questions in relation to the taxi rank space proposals.
- 1.14 Consultation letters have been sent to the local taxi drivers who regularly use the ranks, Devon County Council, Seaton Town Council, the Chamber of Commerce, the Devon and Cornwall Constabulary and the businesses located in the areas where the ranks are to be situated including Byrne Jones shop, HSBC Bank, Fortnum Smith and Bennett Estate Agents, Seaton Social Club, The Terrace Cafe, Past Times Amusements, Seaton Wines, Just Hair, the Mobility Centre, GW Meats, Laces, Steves Newsagents, the Post Office and Lloyds Pharmacy. There has also been a press release outlining the proposals in Pulmans View dated 26 November 2009.
- 1.15 The Devon and Cornwall Constabulary have replied and there are no objections in relation to the proposals as outlined, the local police officers only comment was that there were quite a few taxi spaces in a small area - **Appendix D**.
- 1.16 The Seaton Town Council have replied as at **Appendix E** and are in favour of all the proposals except Marine Place. In relation to Marine Place the Town Council have concerns over the volume of buses and parking in the area and would prefer this rank be located at Fishermans Gap. However Fishermans Gap has already been considered by Devon County Council (Highways), East Devon District Council Licensing Officers and representatives of the Seaton taxi trade and has been discounted on highway and access grounds.
- 1.17 So far there have been three replies to the consultation, from members of the public as at **Appendix B C.and F** Should any further representations be received copies will be made available to members at the meeting.

Legal Implications

The legal implications are as set out with in the report and require no further comment.

Financial Implications

The financial implications are contained within the report.

Appendices

- Appendix A DCC map showing proposed location of taxi ranks
Appendix B Letter from M.E. Shackerley-Bennett



- Appendix C Correspondence from R.W.Bradshaw regarding the Fore Street rank
- Appendix D Correspondence from Devon and Cornwall Constabulary
- Appendix E Correspondence from Seaton Town Council
- Appendix F Correspondence from Mrs Mary Lewis

Background Papers

Consultation letters sent to:

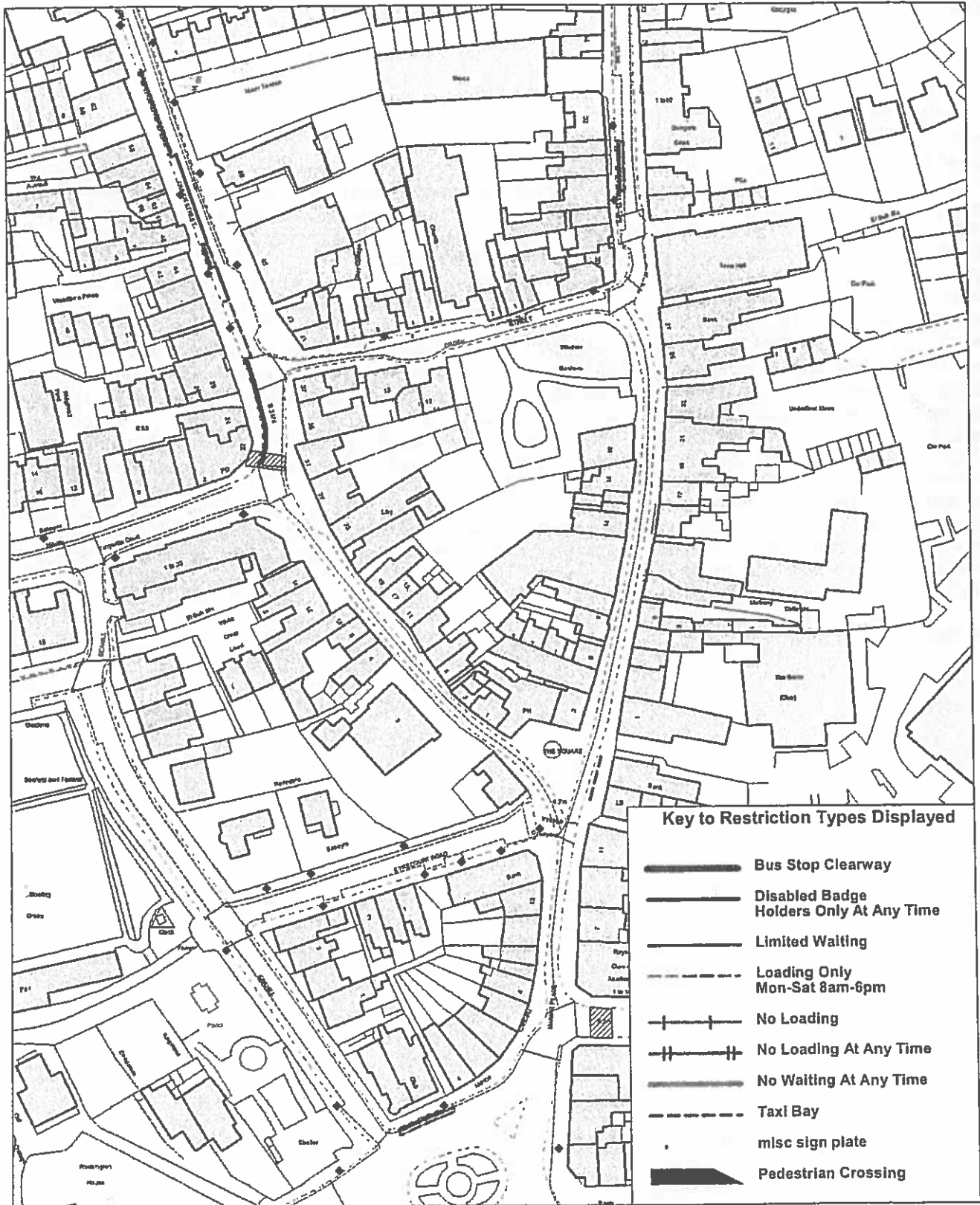
- Seaton Hackney Carriage trade users
- Devon County Council
- Devon & Cornwall Constabulary
- Seaton Chamber of Commerce
- Tourist Information Centre
- Seaton Town Council
- Businesses where the ranks are to be situated.

Douglas Jackson Ext. 2611
Licensing Officer

Licensing and Enforcement Committee
2 March 2010







Seaton Parking and Taxi Ranks

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 Devon County Council
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SCALE	1 : 1000
DATE	14/01/2010
DRAWING No.	
DRAWN BY	

From: Nikki@fairylnd [nikki@fairylnd2.plus.com]
Sent: 28 January 2010 15:35
To: Douglas Jackson
Subject: Proposed New Taxi Ranks for Seaton Town

Dear D Jackson

I live at 30 Fore St in Seaton and was surprised to read that proposals have been put forward for more taxi ranks. There is a 'rank' already outside next door to my house (probably the one your refer to in your letter as the Fore St side of road West 12m space for 2 taxis) and for the time that it has been allocated I have hardly ever seen any taxis in it. If there was CCTV in Seaton you would be able to see how little this 'rank' is used. It also worries me that the size of this 'rank' looks, from your map, that this is to be extended to outside my front door!!

As you probably realise, parking is not very easy in town. Although since the 30 minute allowance has been allocated in Fore St. it is better and usually allows for a turnover of shoppers for the newsagent etc next door-but-one and the launderette opposite and for quick visits to the shops further down.

I park my car in the Orchard Car Park after unloading at the nearest space available to 30 Fore St which at most times proves to be quite difficult. It is very annoying to see the 'taxi spaces' empty all the time while we residents and tradesmen juggle to unload our cars etc in the remaining spaces available. I have difficulty carrying heavy bags and really need to be able to park as near to my house as possible.

I agree that if we have to have more full time taxi spaces the one in Queen St and those in Marine Place are more ideal, although if, as is usual, the spaces will be empty for most of the day/night! Who put forward the idea that we had a lack of spaces??

In my opinion the taxi 'rank' near my house in Fore St should be removed or at least reduced to 1 space, as I have never seen anyone hire or get out of a taxi there - I've been living here for 5 years. If more spaces are required, would it not be more sensible to free up spaces along the Esplanade and/or in Harbour Road by the Co-op Car Park, where people are more likely to need a Taxi both day and night.

Yours faithfully

M. E. Shackerley-Bennett

Alex Long

From: CSC
Sent: 02 February 2010 13:20
To: Licensing
Subject: FW: Customer Services System - EAST10323300, Traffic parking (N), Parking Bay (n), Taxi Rank (n)
Attachments: Enquiry_323300.HTM
Categories: Doug

Good afternoon,

Can you help with this enquiry?

Kind regards
Steph

Customer Services
 East Devon District Council
www.eastdevon.gov.uk

From: wdmcss@devon.gov.UK [mailto:wdmcss@devon.gov.UK]
Sent: 02 February 2010 12:45
To: CSC
Subject: Customer Services System - EAST10323300, Traffic parking (N), Parking Bay (n), Taxi Rank (n)

[DCC Staff: Click here to view in WDM POEMS](#)

To: East Devon District Council - East Devon District Council		Devon County Council Environment, Economy and Culture Lucombe House County Hall Exeter EX2 4QW Tel: 0845 155 1004 Email: environment@devon.gov.uk
Unique Ref: EAST10323300 - Customer Services System OS Grid Ref: 324490 , 90166 Date/Time: 02 Feb 2010 12:12 From: emma.kingston Source Type: Letter No. Customers: 1 Enquiry Type: Fault		
Defect:	Traffic parking (N) Parking Bay (n) Taxi Rank (n) - ?	
Response Action:	request for new or comment to Traffic engineer	
Location:	Seaton - Fore Street	
Description:	Fore Street, Seaton	
Comments:		
Taxi rank is never used.		
Letter attached dated 28/01/10.		

Customer: R W Bradshaw
Tel. No.: ?
Alt Contacts: ?
Email: ?

Response Required: Send Letter
Enquiry Date: 02 Feb 2010 12:12
Req Completion 15 Feb 2010 16:00
Date:

Address: 32, FORE STREET, SEATON,

From: Emma.SNOW@devonandcornwall.pnn.police.uk
[mailto:Emma.SNOW@devonandcornwall.pnn.police.uk]
Sent: 13 January 2010 13:49
To: Douglas Jackson
Subject: RE: Seaton Ranks NOT PROTECTIVELY MARKED

Dougie

Thanks for your email.

The Seaton police officers can not see there being a problem with these taxi ranks - their only comment is that there are quite a few taxi spaces in a small area.

Hope this is okay but if you need anything further please let me know.

Kind regards

Emma

Emma Snow
Architectural Liaison Officer (Exeter, East Devon, Teignbridge)
Police Partnership Office
Old Forde House
Brunel Road
NEWTON ABBOT
TQ12 4XX
Tel: 01626 215125
Mobile: 07595 008128

-----Original Message-----

From: Douglas Jackson [mailto:DJackson@eastdevon.gov.uk]
Sent: 13 January 2010 09:24
To: SNOW Emma 54831
Subject: FW: Seaton Ranks

1

From: Seaton Admin [admin@seaton.gov.uk]
Sent: 04 February 2010 09:37
To: Douglas Jackson
Subject: PROPOSED NEW TAXI RANKS FOR SEATON TOWN

Dear Dave,

Please find below the unanimous decision by Seaton Town Council at their meeting on Monday 1st February 2010-02-04

Queen Street, side of road west - YES
Fore Street, side of road west - YES
Fore Street, side of road east - YES
Marine Place - NO, Members have concerns with volume of buses passing through and concern with volume of parking. Members would like to see this positioned at Fisherman's Gap.

Hope that information is OK, give me a ring if there is any problems

Regards Marie

Mrs Marie Prideaux
Office Manager
Seaton Town Council
Town Hall Fore St
Seaton EX12 2LD

Tel: 01297 21388
Fax: 01297 625746
www.seaton.gov.uk

Douglas Jackson

From: Mary Lewis [bagendbags@googlemail.com]
Sent: 12 February 2010 15:58
To: Licensing
Subject: Proposal of extra taxi ranks in Seaton

Categories: Doug

I wish to object to the proposed increase in taxi ranks in Seaton.

The current one on Fore Street around the corner from my shop is rarely used and I feel a further double bay and the resultant loss of public parking is not justified.

The site mentioned in the newspaper piece, (I did not as a trader receive a letter regarding these proposals) at the junction of Queen Street and Beer Road is at present, I believe a loading bay, and is used by many businesses eg Buffy's for clothes, fruit and veg merchant, Costcutters etc and so is necessary.

I don't understand as stated in the piece how 7 taxis will "be a welcome boost to the local economy", it will be a boost to the local taxi company. Those who need food shopping taken home simply call the company to collect them at the Co-op. The company in question, Clapps, had until last summer their office on Cross Street. Since the bays outside their office were changed to disabled bays they continued to pick up there rather than from the bay on Fore Street, continually blocking the bays. The fact that one firm decided to close their town centre office and relocate to their residence should not mean that further ranks should be imposed when parking spaces are already at a premium.

Seaton traders are suffering greatly from the effects of both the recession and the recent bad weather and rather than assist, DCC and yourselves are proposing changes to street parking at the same time.

We have had notice of 2 more businesses to close this week - we need help to promote Seaton not more restrictions

Yours faithfully

Mrs Mary K Lewis
BAG END BAGS

To: Dougie Jackson
Really good to talk this matter through with you
Mary

