

Members of the Licensing Committee –

Councilors R P Lillis (Chairman), D J Westcott (Vice Chairman),
I Aldridge, S Y Goss, I Jones, A J Kingston-James, J Parbrook, R
Thomas, N Thwaites, K H Turner, T Venner

20 November 2017

**THE PRESS AND PUBLIC ARE WELCOME TO ATTEND THE MEETING
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OR IN OTHER LANGUAGES ON REQUEST**

Dear Councillor

LICENSING COMMITTEE MEETING

Date: Tuesday 28 November 2017
Time: 4.30 pm
Venue: Council Chamber, Council Offices, Williton

Please note that this meeting may be recorded. At the start of the meeting the Chairman will confirm if all or part of the meeting is being recorded.

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Therefore unless you advise otherwise, by entering the Council Chamber and speaking during Public Participation you are consenting to being recorded and to the possible use of the sound recording for access via the website or for training purposes. If you have any queries regarding this please contact Committee Services on 01643 703704.

Yours sincerely



BRUCE LANG
Proper Officer

RISK SCORING MATRIX

Report writers score risks in reports uses the scoring matrix below

Risk Scoring Matrix

Likelihood	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
Impact							

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

- Mitigating actions for high ('High' or above) scoring risks are to be reflected in Service Plans, managed by the Group Manager and implemented by Service Lead Officers;
- Lower scoring risks will either be accepted with no mitigating actions or included in work plans with appropriate mitigating actions that are managed by Service Lead Officers.

LICENSING COMMITTEE - AGENDA

Tuesday 28 November 2017 at 4.30 pm

Council Chamber, Williton

1. **Apologies for Absence**

2. **Minutes of the meeting held on 5 July 2017**

Minutes of the Meeting of the Committee held on 5 July 2017 – **SEE ATTACHED.**

3. **Declarations of Interest**

To receive and record any declarations of interest in respect of any matters included the Agenda for consideration at this Meeting.

4. **Public Participation**

The Chairman to advise the Committee of any items on which members of the public have requested to speak and advise those members of the public present of the details of the Council's public participation scheme.

For those members of the public wishing to speak at this meeting there are a few points you might like to note.

A three-minute time limit applies to each speaker and you will be asked to speak before Councillors debate the issue. There will be no further opportunity for comment at a later stage. Your comments should be addressed to the Chairman and any ruling made by the Chair is not open to discussion. If a response is needed it will be given either orally at the meeting or a written reply made within five working days of the meeting.

5. **Licensing Update Report**

To consider Report No. WSC 125/17. To be presented by Leigh-ann Fumagalli, Licensing Officer – **SEE ATTACHED.**

The purpose of the report is to provide an update on the activities of the Council's licensing service, changes to legislation, current consultations and other general licensing matters.

6. **Scrap Metal Dealers Policy**

To consider Report No. WSC 126/17. To be presented by Mark Banczyk-Gee, Licensing Officer – **SEE ATTACHED.**

The purpose of the report is to recommend that Members adopt the attached policy for all matters relating to Scrap Metal dealers.

7. Caravan Sites and Accommodation of Hinkley Point C (HPC) Workers

The Chairman of the Licensing Committee has requested this agenda item for a discussion about HPC workers residing on caravan sites within West Somerset.

8. Minutes of the meeting of the Licensing Sub-Committee

Minutes of the meeting of the Licensing Sub-Committee held on 22 June 2017 and 2 August 2017, for information – **SEE ATTACHED.**

COUNCILLORS ARE REMINDED TO CHECK THEIR POST TRAYS

The Council's Vision:

To enable people to live, work and prosper in West Somerset

The Council's Corporate Priorities:

- Local Democracy:
Securing local democracy and accountability in West Somerset, based in West Somerset, elected by the people of West Somerset and responsible to the people of West Somerset.
- New Nuclear Development at Hinkley Point
Maximising opportunities for West Somerset communities and businesses to benefit from the development whilst protecting local communities and the environment.

LICENSING COMMITTEE**Minutes of the Meeting held on 5 July 2017 at 4.30pm****In The Council Chamber, West Somerset House, Williton****Present:**

Councillor D Westcott.....	Vice-Chairman (In the Chair)
Councillor I Aldridge	Councillor S Goss
Councillor I Jones	Councillor J Parbrook
Councillor R Thomas	Councillor N Thwaites
Councillor K Turner	

Officers in Attendance:

Licensing Manager (J Rendell)
 Licensing Officer (L Fumagalli-Roberts)
 Democratic Services Officer (C Rendell)

LEP1 Apologies for Absence

Apologies were received from Councillors Kingston-James and Venner.

LEP2 Minutes of the meeting held on 29 November 2016

(Minutes of the Meeting of the Licensing Committee held on 15 March 2017 – circulated with the Agenda.)

RESOLVED that the Minutes of the Licensing Committee held on 15 March 2017 be noted.

LEP3 Declarations of Interest

Members present at the meeting declared the following personal interests in their capacity as a Member of a County, Parish or Town Council:

Name	Minute No.	Member of	Action Taken
Councillor I Aldridge	All	Williton Parish Council	Spoke and voted
Councillor S Goss	All	Stogursey Parish Council	Spoke and voted
Councillor J Parbrook	All	Minehead Town Council	Spoke and voted
Councillor R Thomas	All	Minehead Town Council	Spoke and voted
Councillor N Thwaites	All	Dulverton Town Council	Spoke and voted
Councillor K Turner	All	Brompton Ralph Parish Council	Spoke and voted
Councillor D Westcott	All	Watchet Town Council	Spoke and voted

LEP4 Public Participation

No members of the public had requested to speak on any item on the agenda.

LEP5 Licensing Update Report

The purpose of the report was to keep the Council's statutory Committee up to date on the activities of the Council's Licensing Service, changes to legislation, current consultations and other general licensing matters.

A summary of the activity and performance of the Licensing Service since the last meeting of the Committee was as follows:-

The performance of the Licensing Service was measured against the number of applications that were completed within 14 days of them being determined. The target was 95%. Between 1 January and 31 March 2017, 99% of applications had been completed within the 14 day timescale.

Members were provided with a comparison of the numbers of applications received for each of the regimes administered by the Licensing Team between January and March and the numbers of licences in force and notices given as at 20 June 2017.

Since 6 April 2017, all applications received for Licensing Act 2003 licences required proof of the right to work in the UK to be provided by the applicant. This applied to the following licences:-

- Personal Licences;
- Grant of Premises Licences;
- Full variation of Premises Licences;
- Transfer of Premises Licences; and
- Interim Authority Notices.

All the forms had been updated and all applications had been sent to the Home Office to be checked.

In March 2017 new guidance had been produced by the Committee of Advertising Practice which had followed a review carried out by the Advertising Standards Agency into misleading advertising practices by private door-to-door collection companies. Problems with charitable collection bags issued by commercial companies had included:-

- Recipients were given the impression they were donating directly to a charity when they were not;
- The companies had not provided their name or commercial status on the front of the collection bags;
- Undue prominence was given to a charity's name and registration number on the collection bags; and
- The company name was not given equal prominence when it appeared alongside a charity's name.

This new guidance provided examples of the type of wording and presentation on the collection bags that accorded with the new rules.

During the discussion the following points were raised:-

- Members praised the department on its hard work and were impressed with the 99% of applications completed within 14 days. They queried how many of these applications were for West Somerset cases and how many were for Taunton Deane?

All of these cases were for West Somerset. Confirmation was also given that the completion rate was the same for Taunton Deane.

- Members queried whether the department cross referenced the proof of ID required for Licensing Act 2003 applications?

Licensing were given guidance from the Home Office which confirmed what documents could be used for proof of ID. Once received, this was then sent to the Home Office to check. Licensing were not required to cross reference the documents provided. The other criteria the applicant would have to fulfil, was to prove the right to work within the UK.

- Members were pleased to hear that the West Somerset and Taunton Deane Licensing Departments were working together to streamline the procedures and policies used by the teams.

- Concern was raised on behalf of the West Somerset Taxi Drivers. They were worried that once the two Councils joined together, the West Somerset Taxi Ranks would be taken over by the larger Taunton Taxi Firms and queried was there a way they could prevent this from happening?

The Licensing Manger had recently held a forum with the Taunton Taxi Drivers and they shared the same fears. He confirmed ultimately it would be for the Committee Members to decide what boundary rules they would want implemented in the new Council. He advised that in Cornwall, which was a Unitary Authority, they had retained the district boundaries for the taxi drivers.

- Members queried why a forum was not held in West Somerset?

It was confirmed that a forum was in the pipeline but the feedback from the taxi drivers in West Somerset was mainly positive compared to that of the drivers in Taunton.

RESOLVED that the update report be noted.

LEP6 Changes to the Licensing Regime of Hackney Carriage and Private Hire Vehicles

The purpose of the report was to consider the Hackney Carriage and Private Hire Licensing Regime for vehicles within West Somerset and the fixed interval and renewal dates for Hackney Carriage and Private Hire vehicle licences.

Hackney Carriage and Private Hire vehicle licences were currently issued for a maximum period of 12 months. Current policy dictated that all Private Hire vehicle licences expired on 30 April and the Hackney Carriage licences expired on 30 June, regardless of when the application was made or when the decision was taken to grant a licence.

The effects of the arrangements were substantial peaks in pressure and demand for the service at times that were often busy with other applications, for example Temporary Event Notices for Spring and Summer time events. The demand upon officer time had the potential to disrupt the performance of the service which could lead to delays in other applications being processed.

During the discussion the following point was raised:-

- Members agreed this change in policy was very sensible and was less liable to legal challenges and would be more efficient for the officers.

RESOLVED that Members approved the proposal to remove the fixed interval and renewal dates for Hackney Carriage and Private Hire Vehicles Licences.

LEP7 Minutes of the Licensing Sub-Committees

(Minutes of the Meeting of the Licensing Sub-Committee held on 28 February 2017– circulated with the Agenda.)

RESOLVED that the Minutes of the Licensing Sub-Committee held on 28 February 2017 be noted for information.

LEP8 Forward Plan

(Forward Plan of the Licensing Committee – circulated with the Agenda.)

Members queried whether they could have more information on the use of diesel and electric vehicles for taxi licences.

RESOLVED that the Forward Plan, with the suggested item, be noted.

(The meeting closed at 4.55pm.)

Report Number: WSC 125/17

West Somerset Council

Licensing Committee – 28th November 2017

Licensing Update report

This matter is the responsibility of Cabinet Member Keith Turner

Report Author: Leigh-ann Fumagalli, Licensing Officer

1 Executive Summary / Purpose of the Report

- 1.1 This report provides an update on the activities of the council's licensing service, changes to legislation, current consultations and other general licensing matters.

2 Recommendations

- 2.1 That the report be noted.

3 Risk Assessment

Risk Matrix

Description	Likelihood	Impact	Overall
If the Licensing function were not carried out in an efficient manner, complaints or legal challenges may be brought that could undermine the work being done to support the Council's Corporate Strategy.	4	4	16
Demonstrating good governance of the licensing function through presentation of current arrangements and statistics relating to the licensing service.	3	4	12

Risk Scoring Matrix

Likelihood	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
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Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

4 Background and Full details of the Report

Staffing

- 4.1 The Licensing Manager, John Rendell, has moved over to the Accommodation Team to provide them with some interim support, in particular, to assist with the work involved in implementing the revised phasing plan of the refurbishment of Deane House.
- 4.2 Although the move is initially until the end of December, it is possible that it could be extended. Therefore, firm arrangements were put in place from Monday the 6th of November onwards, to ensure the Licensing team has the right support.
- 4.3 Scott Weetch, Community & Client Services Manager (John's line manager) now has responsibility for specialist tasks such as policy, delegated decisions and complaints. Meryken Then-Bergh, manager of Environmental Health Business Support (also line managed by Scott) is responsible for the people management side of the role and will oversee team meetings, staff one to ones, sickness etc. The team will also take on further responsibility during this time and be lighter on specialist licensing knowledge, which will undoubtedly impact negatively on the performance of the service.
- 4.4 The workload for West Somerset is now shared between the team as we have introduced a duty rota, whereby a specified Licensing Assistant and Officer are available to deal with both West Somerset and Taunton Deane applications and enquires each day. This will provide greater resilience than the previous arrangement of one licensing officer

being responsible for the majority of the West Somerset workload.

Performance of the service

- 4.5 The performance of the licensing service is measured against the number of applications that are completed within 14 days of them having been determined i.e. decision as to whether to grant the licence or not, has been reached. The target for the service is that, for all applications that are completed within a set quarter, 95% must be completed within 14 days of them being determined.
- 4.6 99.3% (146 out of 147) of all applications completed between the 1st of July and 30th September 2017 were completed within the 14 day timescale.
- 4.7 It is anticipated that performance will suffer as a result of the staffing changes described at paragraphs 4.1 to 4.3, although the team would hope to still achieve the target of 95%.

Applications received and licences in force

- 4.8 The numbers of applications received for each of the regimes administered by the licensing service, between July and September 2017, are shown in comparison with those received for the period in the preceding two years at **Appendix A**. The numbers of licenses in force and notices given as of the 17th November 2017 are shown at **Appendix B**.

Reports of unlicensed dog breeders

- 4.9 Following a rising number of reports of unlicensed breeders within Taunton Deane and a report of a similar nature in West Somerset, the Licensing Team have undertaken work in relation to unlicensed dog breeders.
- 4.10 A person is deemed to be operating a dog breeding establishment if, as per the definitions of the Breeding of Dogs Act 1973, as amended by the Breeding and Sale of Dogs (Welfare) Act 1999, they:
- a) Run a business which involves the breeding of dogs for sale; or
 - b) Any bitch or bitches they keep (or are kept by other persons but under a breeding arrangement with them), gives birth to five litters of puppies within a twelve month period.
- 4.11 So in effect, a person can breed up to four litters of puppies in a year and sell them, quite legitimately, unless they are deemed to be running a business. Whether someone is running a business or not can be difficult to ascertain and prove, since the term 'business' is not further defined in the Act and powers of entry into suspected unlicensed premises are reliant on a warrant issued by the courts; except where private dwellings are concerned and there are no powers of entry at all. The ineffective legislation and the proliferation of 'buy and sell' websites and social media pages has provided those looking to make quick money with a virtually anonymous marketplace where they can sell puppies with little trace.
- 4.12 Although the legislation is due to be reformed in October 2018, along with the other dated animal licensing Acts, Officers will be issuing a press release and distributing posters, to raise awareness of the licensing laws and encourage members of the public

to only buy from reputable and licensed sources. A copy of the press release and poster is attached at **Appendix C**.

5 Links to Corporate Aims / Priorities

- 5.1 The licensing service is committed to helping businesses and individuals to comply with all relevant legislation, in order to support new and existing businesses and enable cultural and leisure activities, thereby supporting the Council's growth agenda.

6 Finance / Resource Implications

- 6.1 Where legislation allows for cost recovery, licence fees are levied against the administration of the regime and the supervision of licences issued. It would be unlawful to deliberately set the fees to make a profit and any over (or under) recovery is redressed in future fee levels.
- 6.2 No finance implications identified as a result of this report.

7 Legal Implications

- 7.1 No legal implications identified.

8 Environmental Impact Implications

- 8.1 There are no specific environmental impact implications identified as a result of this report.

9 Safeguarding and/or Community Safety Implications

- 9.1 The four licensing objectives under the Licensing Act 2003 are:
- Prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm

With the addition of securing the welfare of animals, these are the main aims of the Licensing Service. The continued work of the service to achieve and promote these aims, further supports the role of the Council in ensuring community safety.

10 Equality and Diversity Implications

- 10.1 There are a number of protected characteristics identified in the Equality Act 2010, which are; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation and members need to demonstrate that they have consciously thought about the three aims of the Public Sector Equality Duty as part of the decision making process. The three aims the authority must have due regard for are:
- Eliminate discrimination, harassment, victimisation;
 - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - Foster good relations between persons who share a relevant protected

characteristic and persons who do not share it.

10.2 No equality and diversity implications were identified.

11 Social Value Implications

11.1 As this report does not relate to the procurement of any services or products, no social value implications were identified.

12 Partnership Implications

12.1 No partnership implications have been identified.

13 Health and Wellbeing Implications

13.1 Through effective regulation, confidence in licensed premises and activities can be maintained, helping communities to thrive.

14 Asset Management Implications

14.1 No asset management implications were identified.

15 Consultation Implications

15.1 No consultation implications were identified.

16 Scrutiny Comments / Recommendation(s)

16.1 There are no scrutiny comments or recommendations.

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Cabinet/Executive – No**
- **Full Council – No**

Reporting Frequency : Once only Ad-hoc Quarterly

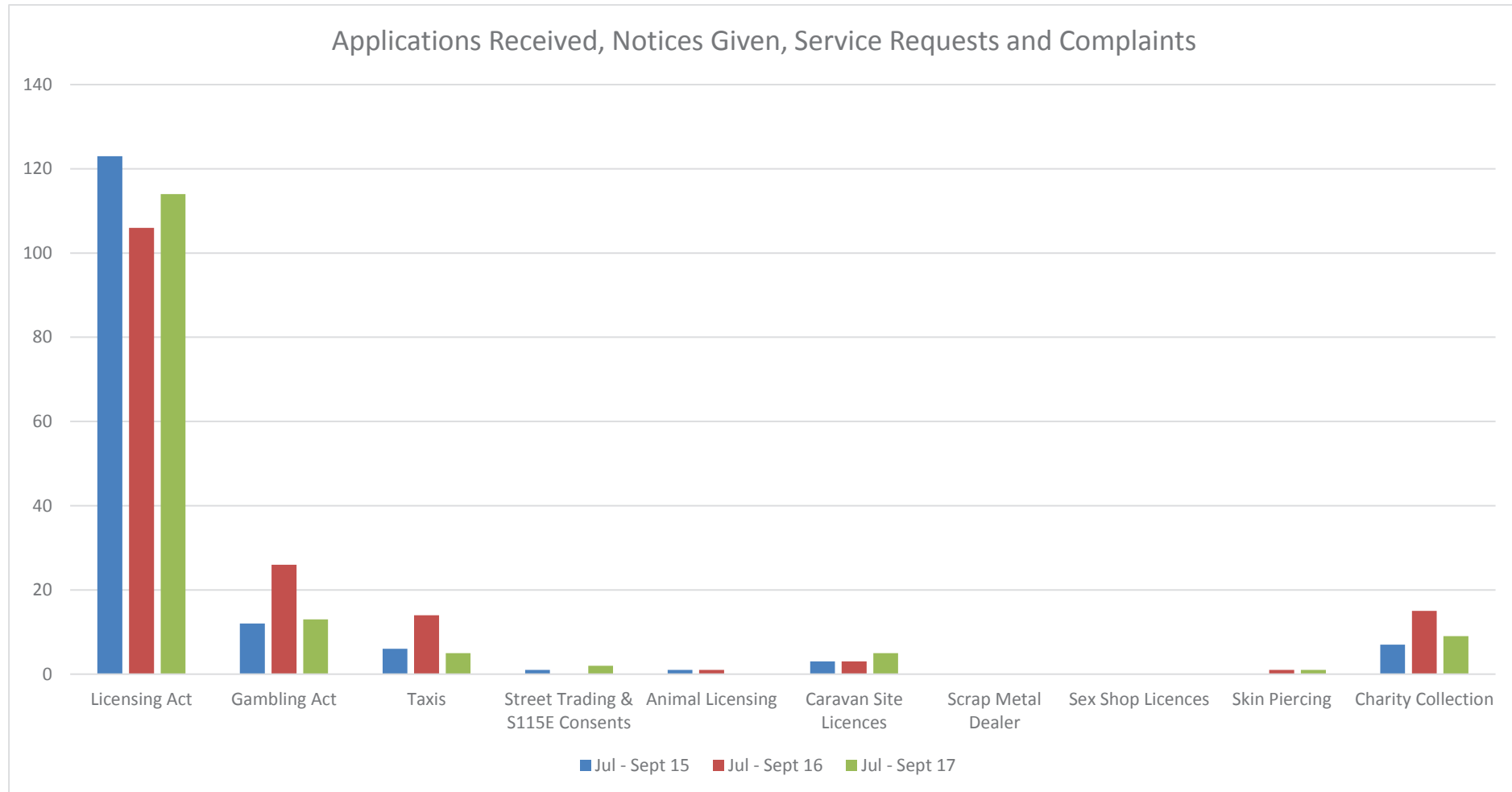
Twice-yearly Annually

List of Appendices

Appendix A	Applications received, notices given, service requests and complaints
Appendix B	Licences issued and notices given
Appendix C	News release – advice for dog owners and buyers

Contact Officer

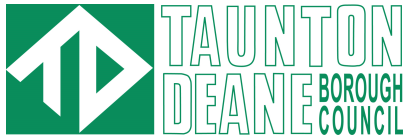
Name	Leigh-ann Fumagalli
Direct Dial	01823 356343
Email	l.fumagalli@tauntondeane.gov.uk



Licences Issued and Notices Given

These figures show the number of licences in force at the 17th November 2017 and the number of notices given since commencement of the relevant legislation

Licensing Act 2003 Premises Licences	274
Licensing Act 2003 Club Premises Certificates	21
Licensing Act 2003 Personal Licences	838
Licensing Act 2003 Temporary Event Notices	2804
Gambling Act 2005 Club Machine Permit	8
Gambling Act 2005 Licensed Premises Gaming Machine Permits	3
Gambling Act 2005 Occasional Use Notices	26
Gambling Act 2005 Premises Licences	12
Gambling Act 2005 Prize Gaming Permits	1
Gambling Act 2005 Society Lotteries	49
Gambling Act 2005 Temporary Use Notices	0
Gambling Act 2005 Unlicensed Family Entertainment Centres	11
Gambling Act 2005 Notification of 2 or less Gaming Machines	32
Hackney Carriages	34
Private Hire Vehicles	18
Hackney Carriage & Private Hire Drivers	61
Private Hire Operators	14
Street Trading Consents	9
Section 115E (Pavement Café) Permits	N/A
Zoo Licences	2
Pet Shop Licences	1
Dog Breeding Licence	0
Animal Boarding Licence	12
Riding Establishment Licences	8
Dangerous Wild Animal Licences	0
Caravan Site Licences	33
Scrap Metal Dealer licence	2
Sex Shop Licences	0
Skin Piercing Registrations	21
Street Collection Permits	491
House to House Collection Permit	367



Taunton Deane Borough Council
 The Deane House, Belvedere Road,
 Taunton TA1 1HE
 Tel 01823 356407
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News Release

30 October 2017

Advice for dog owners and buyers

Are you planning to use boarding kennels or thinking of buying a puppy? Licensing officers working for Taunton Deane Borough and West Somerset Council are issuing this advice as new legislation on dog breeding and dog boarding is about to be introduced.

- Anyone looking to buy a new puppy is being strongly advised to make sure they purchase the pooch from a licensed breeder.
- Commercial dog breeding and boarding both require licences – and pet owners – and would-be owners - are being urged to make sure they check before they make any commitment.
- A licence will make sure that minimum standards relating to the care and welfare of the animals are maintained.

“We are sure people would want the assurance that if they are planning to board their much-loved pet in kennels, their dog will be cared for in premises and by the kennel staff that have been checked by the council,” said a spokesman for the authorities.

“When buying a puppy, It’s important to know that it has come from a licensed breeder and that your council has checked out the premises and and the breeder. We have all read about the horrors of puppy farms so our advice is to check out the backgrounds and the licence.”

Licensing officers have compiled a concise guide to show when licences are required by breeders or boarders and these are available on request from the team.

Anyone concerned about boarding establishments or about breeders is encouraged to contact the licensing team by phone 01823 356343 email licensing@tauntondeane.gov.uk or via the councils’ websites: www.tauntondeane.gov.uk or www.westsomersetonline.gov.uk

ENDS

Released jointly on behalf of Taunton Deane Borough Council and West Somerset Council

Contact:

- Debbie Rundle Media & Communications officer 01823 356407 or 01984 635280

For more information about Taunton Deane services visit www.tauntondeane.gov.uk
 For more information on West Somerset services visit: www.westsomersetonline.gov.uk



Thinking of buying a puppy?

Buy with confidence, from licensed breeders.

Anyone who breeds 5 or more litters of puppies in a 12 month period, with a view to selling them, requires a 'dog breeding' licence from the Council, in accordance with the Breeding of Dogs Act 1973; irrespective of whether they are bred in a home or commercial premises. The same applies to anyone who operates a puppy selling business, regardless of the number of litters or puppies their bitches have.

People who breed and sell puppies without a licence (where one is required) break the law and can be prosecuted. If you buy from an unlicensed breeder, there is no guarantee that the puppy you take home has been kept in conditions which meet the standards a licensed breeder has to comply with, which will have been checked by a Licensing Officer and vet. Puppies kept in poor conditions are more likely to suffer from common, preventable, infectious diseases, painful or chronic inherited conditions, behavioural issues and shorter life spans.

Before you buy a puppy, check the breeder is properly licensed by visiting our 'licensed animal businesses' webpage on our websites; www.tauntondeane.gov.uk & www.westsomersetonline.gov.uk or contact the Licensing Team on 01823 356343 for more information.

Report Number: WSC 126/17

West Somerset Council

Licensing Committee – 28th November 2017

Scrap Metal Dealers Policy

This matter is the responsibility of Cabinet Member Keith Turner

Report Author: Mark Banczyk-Gee Licensing Officer

1 Executive Summary / Purpose of the Report

- 1.1 Members are asked to adopt the attached Policy document as an approved manner in which the council will deal with all matters relating to Scrap Metal dealers.

2 Recommendations

- 2.1 That the policy document be adopted.

3 Risk Assessment (if appropriate)

Risk Matrix

Description	Likelihood	Impact	Overall
That decisions made by the committee in respect of scrap metal licensing can be contested and referred to the magistrate's court as the council cannot demonstrate its approach.	2	2	2
Poor interpretation of the legislation by officers and members.	2	3	5

Risk Scoring Matrix

Likelihood	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
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Impact							

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

4 Background and Full details of the Report

- 4.1 Following a recent application for a scrap metal dealer's licence that went to committee at Taunton Deane it became apparent to councillors they had no guidance in respect of the options available to them when dealing with such matters.
- 4.2 Much of the SMDA (Scrap Metal Dealers Act) 2013 covers the procedure required to apply, vary or appeal in respect of a scrap metal dealer's licence, however as with all legislation it can be confusing for practitioners and councillors.
- 4.3 As a result a policy document has been compiled (appendix 1) which clearly shows what any person applying for a scrap metal dealer's licence or collectors licence can expect.
- 4.4 The policy covers definitions, and procedures to be adopted should matters go to a hearing.
- 4.5 It also explains on what basis an applicant or holder of such a licence will be judged to be a suitable person to hold a licence.
- 4.6 The policy clearly shows the role of the committee as the nominated person as directed by the legislation covering the application, issue, variation or refusal of a licence and the actions both applicant and committee will take.

5 Links to Corporate Aims / Priorities

- 5.1 By adopting this policy the council's corporate strategy will be endorsed as it supports transparency and gives clarity to prospective applicants.

6 Finance / Resource Implications

- 6.1 None identified

7 Legal Implications

- 7.1 By giving councillors some guidance it is reasonable to expect them to reach a fair and qualified decision thereby lessening the likelihood of any further legal action in the matter.

8 Environmental Impact Implications

- 8.1 No environmental implications have been identified

9 Safeguarding and/or Community Safety Implications

- 9.1 None identified

10 Equality and Diversity Implications

- 10.1 There are a number of protected characteristics identified in the Equality Act 2010, which are; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation and members need to demonstrate that they have consciously thought about the three aims of the Public Sector Equality Duty as part of the decision making process. The three aims the authority must have due regard for are:

- Eliminate discrimination, harassment, victimisation;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 10.2 No equality and diversity implications have been identified within this report

11 Social Value Implications

- 11.1 As the proposals do not involve the procurement of services, there are no social value implications.

12 Partnership Implications

- 12.1 None identified

13 Health and Wellbeing Implications

- 13.1 Through effective regulation of scrap metal dealer's confidence can be maintained in a safe public environment.

14 Asset Management Implications

14.1 No asset management implications have been identified within this report

15 Consultation Implications

15.1 The content of this report has been driven by consultation with councillors from Taunton Deane who were presented with a hearing in respect of a contested licence application and sort guidance which was not readily available by way of policy. As a result the officer has consulted with various local authorities in respect of their policy in order to create the policy put before councillors. Licence holders were not consulted as this policy does not impact on them.

16 Scrutiny Comments / Recommendation(s)

16.1 The purpose of the Licensing Committee is to act for the Council in respect of licensing and registration functions. The Committee's powers include the power to discharge the licensing functions on behalf of the licensing authority, outside of the usual democratic process.

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Cabinet/Executive – No**
- **Full Council – No**

Reporting Frequency : **Once only** **Ad-hoc** **Quarterly**
 Twice-yearly **Annually**

List of Appendices

Appendix A	New Policy document
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West Somerset Council and Taunton Deane Borough Council

Scrap Metal Dealer Licensing Policy

Version 1.0 – July 2017

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1. Introduction

- 1.1 The Scrap Metal Dealer's Act 2013 ("the Act") was introduced in law as a better deterrent against the trade in stolen scrap metal which, was impacting on business and enforcement agencies disproportionately.
- 1.2 Since the commencement of the Act, West Somerset Council and Taunton Deane Borough Council has entered into a joint management and shared services project, whereby there are two separate democratic licensing authorities (Licensing Committees) but a single, shared workforce. This policy is to be adopted to ensure consistency across both districts, for the benefit of the public, business community and councils.
- 1.3 This document states West Somerset Council's and Taunton Deane Borough Council's policy on the regulation of Scrap Metal Dealers in their capacity as the relevant local authorities for the purposes of the Act.
- 1.4 The policy acts as a guide to new applicants, existing licence holders, consultees and members of the public as to how both councils (herein referred to as the 'licensing authority') will administer and enforce the requirements of the Act. This includes the approach taken in relation to the acceptance of individuals as suitable applicants, conditions which must be met to continue operating within the business of scrap metal and the processes followed when applying for the grant or renewal of licences. Either council may depart from this policy if the individual circumstances of any case warrant such a deviation. In such cases, the relevant council must give full reasons for doing so.

Definitions of terms used in the policy

2. Definitions and interpretation

Scrap metal dealer

- 2.1 The Act defines a 'scrap metal dealer' as being someone (whether licensed or not) who is carrying on a business which consists:
 - a) Wholly or in part of buying or selling scrap, whether or not the metal is sold in the form in which it is bought; or
 - b) The carrying on of a business as a motor salvage operator.
- 2.2 A 'motor salvage operator' is defined in the Act as a business that consists wholly or mainly of:

- a) recovering salvageable parts from motor vehicles for re-use or sale and selling the remainder of the vehicle for scrap;
 - b) buying written-off vehicles, repairing and reselling them;
 - c) buying or selling motor vehicles which are to be the subject of any of the activities mentioned in (a) or (b);
 - d) activities falling within paragraphs (b) and (c).
- 2.3 Since the definition of 'scrap metal dealer' has been widely drawn, the licensing authority has decided to apply the principals contained within the 'Guide to the Scrap Metal Dealer's Act 2013' published by the Local Government Association, August 2013 ("the guide") when considering if a licence is required or not.
- 2.4 The main principal of this guide is that 'where the sale of the metal is incidental to the main type of work or business undertaken, then a licence will not be needed.' The guide goes on to explain that 'In the case of most tradesmen such as plumbers and electricians and some skip hire firms, the sale of scrap metal is not an integral part of their business and they will not require to be licensed as a scrap metal dealer. Where though there is a reasonable expectation, for example, that the material deposited in the skip will contain significant amounts of scrap metal, such as skips used where there is demolition activity or ones sited at engineering manufacturing establishments and plumbers' yards, then the skip hire company will generally require a scrap metal dealers licence.'
- 2.5 Applying these principals, manufacturing businesses that sell scrap metal created only as a by-product of the processes it uses, or because it has a surplus of materials, would also not require a licence.
- 2.6 In determining whether it is required, the licensing authority will consider the following issues:
- Is the applicant a business (see paragraph 2.7)?
 - Is the applicant associated with any other business that might buy or sell metal (e.g. subsidiaries, businesses run by the same people, companies within a group etc.)?
 - Do they buy scrap metal in any form as part of the business?
 - Is the purchase or sale of scrap metal an integral part of the business? Is the buying or selling of metal advertised by the business, including on the internet?
 - Is any advertising of metal sales etc. done separately from the main part of the business?

- Is the metal sold as a by-product from a manufacturing process?
- What happens to any waste metal that is collected by the business?

2.7 To assist in determining whether an individual is operating a business, the licensing authority will consider HM Revenues & Customs 'nine badges of trade':

- Profit seeking motive;
- The number of transactions;
- The nature of the asset;
- Existence of similar trading transactions or interests;
- Changes to the asset;
- The way the sale was carried out;
- The source of finance;
- Interval of time between purchase and sale;
- Method of acquisition.

Scrap metal

2.8 This is defined in section 21 of the Act. "Scrap metal itself includes any old, waste or discarded metal or metallic material, and any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life. This definition is not intended to include second hand goods, but these could be caught by the definition if they are made from or contain metal that is broken or worn out. It will be a question in each case as to whether items fall within the definition. The definition does however include platinum and a range of other rare metals now being used in catalytic converters although gold or silver are not included in the definition of scrap metal. Jewellers or businesses trading in second hand gold and silver jewellery or products are not therefore caught by this definition."

Collector's licence

2.9 This allows the licensee to operate as a collector in the area of the issuing local authority. It does not allow the collector to operate in any other local authority area, so a separate licence has to be obtained from each council the collector wishes to operate in. The licence does not authorise the licensee to operate a site; to do so they will need a site licence from the relevant local authority.

Site licence

- 2.10 This is required for any premises used in the course of carrying on a business as a scrap metal dealer (whether or not metal is kept there or whether or not it is enclosed). All the sites where a licensee carries on business as a scrap metal dealer have to be identified, and a site manager has to be named for each site. This licence allows the licensee to transport scrap metal to and from those sites from any local authority area.

Nominated person

- 2.11 Schedule 1 section 7 ss8 talks of the applicant having the opportunity to appear before a person nominated by the authority. In this case that person is represented by the licensing committee.

SMD

- 2.12 Scrap Metal Dealers Act 2013

All definitions in section 22 of the scrap metal dealer's act 2013 are used when referring to this policy.

3 Licence applications, renewals and variations.

- 3.1 Any licence issued will last for three years, we will consult with anybody we see fit but in particular the Police, environmental agency, the national resources body for Wales, planning and any other local authority.
- 3.2 Compliance with the legislation is expected and the provisions and requirements made by SMD will be followed.
- 3.4 There is no time limit in respect of receiving the application and it being issued, however the authority would expect to complete the process within three months.
- 3.5 Renewals must be received three months before the expiration of the current licence variations do not include transfer of said licence.

4 Applicant suitability

- 4.1 The SMD section 3 deals with applicant's suitability and the local authority will consider this section of the act when accepting applications or renewals.
- 4.2 Sub section F talks about adequate procedures in place, this is to meet the requirements of the act.

- 4.3 This authority will consult with whomever it feels is relevant to the concerns it has in relation to the applicant. Any evidence of repeated actions as identified at part 3 section 2 sub section A to F of the scrap metal dealers act could lead to the refusal or rejection of the licence application.
- 4.5 In essence the following factors are considered:
- a) Whether the applicant or site manager has been convicted of a relevant offence, or subject to any relevant enforcement action
 - b) Whether the applicant has previously been refused a scrap metal dealers licence or an application to renew a licence has been refused- we will look at the reasons for refusal.
 - c) Whether the applicant has previously been refused a relevant environmental permit or registration- again the reasons will be considered.
 - d) Whether the applicant had previously held a scrap metal dealers licence that has been revoked – again the reasons will be considered.
 - e) Whether the applicant has been convicted of an offence involving dishonesty or violence.
 - f) Whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the obligations placed upon licence holders under the Act can be met.
 - g) Any guidance issued by central government
- 4.6 It is an offence under paragraph 5 of Schedule 1 of the Act for an applicant to knowingly or recklessly make a statement which is false in a material way. The Council reserves the right to prosecute any person who appears to have committed such an offence. Any conviction may be publicised so as to deter others from making false statements.
- 4.7 Conditions as outlined in the scrap metal dealers act may be imposed by the authority at point of issue of the licence or following a hearing of the licensing committee (nominated person)
- 4.8 Scrap dealers have to be registered with the Environment Agency because they still fall within the Environmental Permitting Regulations with regards to processing treating and transporting waste
- 4.9 For example scrap dealers would need an exemption/permit to break down waste for parts, and a waste carrier's license to pick up/transport the waste
- 4.10 Despite being registered at a Local Authority level, you still require these permits/licenses to carry out the types of activities listed due to those being activities regulated by the environment agency

5 Relevance of offences

Applicants with previous convictions

- 5.1 The Licensing Authority will use the following guidelines to make fair and consistent decisions when considering relevant criminal convictions, cautions, reprimands, warnings, information or complaints
- 5.2 Each case will be decided on its merits. The Licensing Authority will endeavour to make consistent decisions but is not bound by or obliged to follow previous decisions made by them in relation to the holders of licences.
- 5.3 It may be appropriate to depart from the general policy in some cases, for example; situations where the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which will be taken into account.
- 5.4 The guidelines are not an attempt to define what a suitable person is.

Relevant offences

- 5.5 The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 specifies certain offences which are relevant in terms of assessing the suitability of an applicant or licence holder. Due to their nature e.g. they are of significance and added weight will be given to convictions for relevant offences, above other convictions, where an applicant or licence holder has been convicted of one or more.
- 5.6 A list of relevant offences has been prescribed by the Secretary Of State in relation to scrap metal licences. "Relevant Offence" means any offence detailed below; and includes an offence of - The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013:
 - a) attempting or conspiring to commit any offence falling within the list below;
 - b) inciting or aiding, abetting, counselling or procuring the commission of any offence falling within the list below, and
 - c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) committed in relation to any offence falling within the list below.

"Relevant Enforcement Action" – a person is the subject of relevant enforcement action if –

- a) the person has been charged with an offence specified in the list below, and criminal proceedings in respect of that offence have not yet concluded; or
- b) an environmental permit granted in respect of the person under the Environmental Permitting (England and Wales) Regulations 2010 (1) has been revoked in whole, or partially revoked, to the extent that the permit no longer authorises the recovery of metal.

6 Revocation and conditions

- 6.1 If the authority decides to refuse the application or revoke a licence or to add /change conditions on a licence, a notice of their decision must be sent to the applicant giving them a specified period within which they must make the authority aware of whether the applicant wishes to make representations to the refusal/revocation/conditions.
- 6.2 This period must be between 14 and 30 days from the date the notice is sent or given to the applicant.
- 6.3 Conditions can only be added or removed as per the SMD act of 2013.
- 6.4 The applicant then has 14 days to make said representations from the date of declaring they intend to make representations. They can elect to make the representation orally in either case a written notice of the representation is required before the hearing can be convened.
- 6.5 Once these representations are received and/or notice served that they are to be presented orally the authority will arrange to have the matter heard before a licensing committee who are appointed by the authority (nominated person). This will be done within 30 days of receipt of the representation.
- 6.6 The applicant can appeal to the magistrates in respect of decisions made by the authority this has to be done with 21 days of the date the licensing committee made the decision.
- 6.7 Any court procedure will be in compliance with the Magistrates court act 1980 and schedule 1 section 9 sub sections 4 to 8.

7 National Register

- 7.1 On receipt of any new application or variation of existing licence the authority will update the national register as required by the scrap metal dealer's act 2013.
- 7.2 The Scrap Metal Dealers Act creates a requirement for a register of scrap metal dealers licences. The Environment Agency must maintain a register of scrap metal licences issued in England, and Natural Resources Wales must maintain a

register of scrap metal licences issued in Wales. Both registers will be open to the public.

7.3 Under the provisions of the Act when councils issue a licence they are obliged to pass on certain information to the Environment Agency to enter on the register. The information that has to be passed on about each licence is:

- a) the name of the council which issued the licence
- b) the name of the licensee
- c) any trading name under which the licensee conducts business as a dealer
- d) the address of any site identified in the licence
- e) the type of licence (site or mobile)
- f) the date the licence expires.

8. Fees

8.1 The Act enables local authorities to set an application fee, having had regard to any guidance issued from time to time by the Secretary of State, with the approval of the Treasury.

8.2 As well as any Secretary of State guidance, the licensing authority has set its scrap metal licence fees having regard to the Provision of Services Regulations 2009, which dictates that fees must be reasonable and proportionate to the cost of the processes associated with a particular licensing scheme i.e. a profit cannot be made.

8.3 Fees have been set to ensure full cost recovery across four areas:

- Application Processing.
- Consumables;
- Administration;
- Monitoring Compliance.

8.4 Application fees are published on the respective council websites, alongside the relevant forms.

9 Enforcement and compliance

9.1 All holders of a scrap metal dealers licence or collectors licence will be expected to comply with the legislation laid down in respect of their relevant activities. The authority will use the legislation laid down as a guide in respect of inspections, enforcement and prosecution.

West Somerset Council

Minutes of the Licensing Sub-Committee Hearing for a Grant of the Premises Licence for Lynch Country House, Bossington Road, Selworthy, held on 22 June 2017 at 11.15am in the Council Chamber, West Somerset House, Killick Way, Williton, TA4 4QA.

Present: Councillor Lillis (Chairman)
Councillors Thwaites and Jones

Officers: Leigh-Ann Fumagalli (Licensing Officer), Alex Kershaw-Moore (SHAPE Legal Services) and Clare Rendell (Democratic Service Officer).

Applicant: Mrs Mo Dewdney (Applicant) and Richard James (Manager).

Interested Parties: Pauline Hall, Priscilla Barney, Michael Dyer, Kath Prideaux, Ian Kelham, Penny Kelham, Tony Ross-Booker and Sarah Shorten.

Other: Nicola Cooper (Avon and Somerset Constabulary Licensing Officer).

(The meeting commenced at 11.15am)

The Chairman introduced himself and his fellow Sub-Committee Members and officers then explained their roles. As well as acknowledging the documents he explained the procedure to be followed during this meeting of the Sub-Committee.

The Licensing Officer introduced her previously circulated report. An application had been received from **Mr Dewdney of Lynch Country House Limited** for a Premises Licence to be granted for **Lynch Country House, Bossington Road, Selworthy**.

The Applicant was seeking authorisation for the supply of alcohol, regulated entertainment and late night refreshment. Following the application being received, the Licensing Department had duly notified Environmental Health and Avon and Somerset Constabulary. Following the notification, objection notices had been received from Avon and Somerset Constabulary and other Interested Parties.

The Licensing Officer informed the Sub-Committee that a mediation meeting was held on 14 June 2017 between the Applicant and Interested Parties that had made representations. The Applicant had outlined the plans for the premises. An agreed position was not reached and the Interested Parties had requested time to view the full application in order to give an informed response. The Licensing Officer agreed to this, but at the time of the hearing no agreed position had been reached.

Detailed in the Officer's report were the four licensing objectives. The Sub-Committee was reminded that the Licensing Policy required the Licensing Authority to carry out its various functions to promote these objectives. These were:-

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

The objectives would be paramount considerations when determining a course of action in relation to the Licensing Authority's licensing functions. Each objective would be given equal importance.

The Legal Representative for the Sub-Committee outlined the licensing objectives for the Interested Parties and confirmed that the Sub-Committee could only consider factors that affected the objectives directly. She also gave a list of factors that could not be considered and highlighted Planning as one of the main issues that could not be discussed.

The following question and statement was raised by the Sub-Committee of the Licensing Officer's report (Responses are shown in italics):-

- Clarification was requested on the opening hours that were being used in the application. *The original hours that were detailed in Appendix one of the report had been amended during mediation and were now Sunday through to Thursday to be closed by 11.00pm and on Friday and Saturday to be closed by midnight. The only day that later times were permitted was on New Year's Eve.*

The following questions and statements were raised by the Interested Parties of the Licensing Officer's report (Responses are shown in italics):-

- An Interested Party queried why Mr Dewdney was not present at the hearing because he was the one that had submitted the application. *It was confirmed that the application was submitted by Lynch Country Limited and therefore Mrs Dewdney, who was one of the company directors, could attend the hearing.*
- Clarification was requested on how a full Premises Licence gave more control than a Temporary Event Notice (TEN). *A TEN could be granted to anyone for any location. Once it had been submitted it was sent to Licensing, Environmental Health and the Police who could object to the notice. TENs only covered fifteen events per year or 168 hours. A Premises Licence had a Designated Premises Supervisor (DPS) allocated which offered greater control. Reviews could be requested by any Responsible or Interested Parties.*
- Clarification was sought on the opening hours. Were Bank Holidays included in the extended hours permitted for New Year's Eve? *No. Extended hours were only permitted for New Year's Eve.*
- Could the Premises Licence be granted with a condition to limit the amount of outdoor events to fifteen, the same amount as a TEN? *Yes.*
- If the Premises Licence was granted, could the Applicant's apply for additional TENs? *Yes.*

The following comments and points were presented by the Applicant in relation to their written application:-

- The Applicant confirmed that they had no intention of applying for a TEN if they were granted a Premises Licence. They did not want to hold too many events.
- The Applicant gave background information on the establishment and their manager, who was very experienced in the licensing trade.
- The Applicant wanted to reassure the Interested Parties that the extended hours requested for New Year's Eve would be for a big holiday let/private party and that they had not planned a large open party for non-residents to attend.
- The Premises Licence was required so that they could hold catered evenings at the house and would be able to serve wine and other alcoholic refreshments.
- There was concern that they would hold weddings every weekend throughout the summer months, but this was not their intention.

- The wedding that was recently held at Lynch Country House was operated via a TEN and managed by an outside company so the Applicant had very little control over the event.
- The Applicant wanted to hold smaller events. For example: poetry readings, comedy nights, classical music evenings, yoga retreats and outdoor theatre events.
- There had been some confusion on the extended hours that had been requested. There had been a rumour circulated that the Applicant wanted to hold a festival for the solstices, but this was not the case. The Applicant did not want to hold large festivals. Lynch House was not big enough to hold such events and was not the right setting for them either.
- If the Applicant had to apply for a TEN every time they wanted to hold an event, they would not choose to do so.
- They had attended the mediation meeting in the hope to lay rest to the concerns raised by the Interested Parties.
- Concern had been raised for the local businesses and what support would be offered. Guests that stayed at the house would use the local amenities and Lynch Country House already directed guests to the local businesses.

The following statement was made by the Sub-Committee of the Applicant following presentation of their report:-

- Due to the concerns that were raised on outdoor events held at Lynch Country House, the Sub-Committee advised that they could apply a limit on how many outdoor events were permitted in a year to the licence if it was granted.

The following questions and statements were raised by the Interested Parties of the Applicant following presentation of their report: (Responses are shown in italics):-

- The Interested Parties queried whether the Applicant intended to hold fifteen outdoor events plus other indoor events.
Yes. The indoor events would be much smaller due to the restricted size of the property.
- Concern was raised that large outdoor events would be held and would lead to noise and public nuisance. For example a wedding with a capacity for 300 people. Yoga and theatre events did not cause any concern, large marquee events did.
This was not what was intended. During the summer months, the property would be booked for family holiday lets, so they would not be able to hold large outdoor events. The Applicant had carried out several sound checks throughout the wedding that was held at the house. They had also given local residents a telephone number to call if there were any problems, but they did not receive any calls.
- Concerns on parking and public safety were raised.
The Applicant had allocated space on site for off-street parking and had placed signs around the house that requested guests to be quiet when they left the house. A minibus had also been arranged to transport guests back into Minehead.
- Concern was raised that one of the owners had intended to hold filming events. This would cause additional noise and light pollution.
Although they would not say no to an opportunity to hold such events, the reality of this type of event being held at the house was very slim.
- A Planning query was raised but this was not considered by the Sub-Committee.

The Legal Representative for the Sub-Committee reminded the Interested Parties that planning, noise and light pollution were not factors that could be considered when the Sub-Committee made their decision.

The following comments and points were presented by the Interested Parties in relation to their written objections:-

- Concern was raised about the parking, extra traffic and the effect it would have on public safety. The roads were very narrow in the village and it would not take much more traffic to cause problems. Residents were worried that if an emergency services vehicle needed to gain access to any of the properties in the village, it would struggle to get along the roads.
- There had been a wedding held at the house recently and this had prompted many of the concerns mentioned at the hearing. Residents did not mind as they believed this was a one-off event but they did not want this type of event to happen every weekend.
- Residents had acknowledged this was a difficult situation. They were a close community and did not want to cause any tension with their neighbours at Lynch Country House.
- The Interested Parties requested that the number of outdoor events should be limited to less than fifteen in a year and asked that the opening hours be amended to 11.00pm on the weekends, which was similar to other premises.
- Concern was raised about the safety of the children that lived in the villages. They played in the area and if the traffic increased this would be more dangerous than it already was.
- Further queries were raised on whether a start time could be included in the restrictions and could they also restrict the number of people allowed to attend to 60?
- Concern was raised that they would use the application to set a precedent.

The Legal Representative for the Sub-Committee advised the Interested Parties that precedence was not a concern because each application was looked at individually and was not judged by past decisions.

Closing Statements

The Applicant made a brief closing statement to the Members of the Sub-Committee:-

- The Applicant was sympathetic to the concerns that had been raised.
- They had tried to manage the noise at the recent wedding and had been in communication with local residents throughout the day and night. Sadly they could not control the sound of customers talking when they left the house.
- The Applicant would like to hold garden events once the gardens had been finished but would not want to apply for a TEN every time they wanted to hold an event.
- They apologised for the parking along the roads. They had arranged for off street parking and a minibus to transport customers to and from the wedding.
- They also apologised for the impact this application had on the community.
- The Applicant wanted to focus on the large holiday let side of the business and if that was a success, they would not need to hold any events.

The Sub-Committee Members retired at 12.45pm.

The Sub-Committee Members returned at 2.05pm

The Sub-Committee Decision

The Legal Representative of the Sub-Committee read out the following decision:-

“This was the decision of the Licensing Sub-Committee held at West Somerset House on 22 June 2017.

This was an application made by Lynch Country House Limited of Lynch Mill, Allerford, Porlock, TA24 8HJ for a Premises Licence in respect of Lynch Country House t/a Bossington Hall which was described briefly in the application form and was set out in the Operating Schedule.

The current application had sought to authorise the sale of alcohol, the provision of late-night refreshment, and the provision of regulated entertainment, namely films, indoor sporting activities, live music, recorded music and dance, during the opening times of Sunday to Thursday 10:00am until midnight and Friday to Saturday 10.00am until 1.00am. And for the premises to be open to the public for the same hours but with an additional hour at closing time (therefore Sunday to Thursday 1.00am and Friday to Saturday 2.00am).

The Applicant had produced a brief Noise Management Plan which stated that they would monitor noise that emitted from the premises regularly, that doors and windows would be kept closed when music was being played, that no amplified music would be permitted outside after 11.00pm and that music inside would be turned down after 11.30pm.

The application had originally asked for additional hours on Bank Holiday weekends and for the summer and winter solstice for the provision of dance, live music and recorded music, late night refreshment and the sale of alcohol. It also asked for an extension to operating hours for the provision of dance, live music and recorded music together with the supply of alcohol on New Year's Eve.

The Applicant had amended the application and removed the request for an additional hour at the winter and summer solstice and at Bank Holiday weekends and that the supply of alcohol was intended to be both on and off the premises. They had further revised their hours so that all licensable activities should end at 11.00pm Sunday to Thursday and midnight Friday to Saturday. This removed late night refreshment as a licensable activity on Sunday through to Thursday because late night refreshment was not licensable before 11.00pm.

In addition the Applicant had offered a restriction in the number of outdoor events to 15 in any one year and clarified that all music, both indoors and outdoors, would be turned off at 11.00pm.

Representations were made by Avon and Somerset Constabulary on the grounds of a detrimental impact on the crime and disorder objective. The Police requested that certain conditions be imposed to negate those affects and had informed the Licensing Authority that those conditions had been discussed and agreed with the Applicants. The Sub-Committee understood that, provided those agreed conditions were put in place, the Police had no objection to the application.

The Licensing Authority received representations from several local residents as Interested Parties who objected to the grant of the Licence on the grounds of noise, increased traffic, concerns about parking and other matters. No representations were received from the Environmental Health Team, or any other Responsible Authority.

For the purposes of clarity the Sub-Committee had made it clear to local residents that matters which related to the protection of wildlife, the impact of light pollution on a Dark Sky Reserve or heritage property, highway safety and/or obstruction were not issues which could be considered as part of the decision whether to grant the application. In addition any other applications, decisions, permissions or refusals which related to planning legislation were not matters that could be considered. The Sub-Committee could only consider the application on the basis of the effect of it on the licensing objectives. Parking and traffic might be considered if it could be said to cause a public nuisance but, in itself, they were not matters that impacted upon the licensing objectives particularly insofar as the protection of children from harm was concerned as this intended to focus on the protection of children from alcohol, strong language and sexual

exploitation. Public safety related to the safety of persons who used the premises for licensable purposes.

The Licensing Sub-Committee had heard and taken into account the oral representations from Leigh-Ann Fumagalli, Licensing Officer for West Somerset Council, Mrs Dewdney, on behalf of the Applicant, Richard James, the proposed Designated Premises Supervisor (DPS) and Manager of the premises, Tony Ross-Booker, Ian and Penny Kelham, Sarah Shorten, Michael Dyer and Pauline Hall.

The Sub-Committee had been made aware by the Licensing Officer that attempts to mediate between the Applicant and the Interested Parties had been made, with mediation meetings held to discuss the concerns of the Interested Parties. Although the Applicant had agreed to make amendments to their application, as previously stated, agreement had not been reached between the parties.

The Licensing Sub-Committee considered that it must carry out its functions with a view to promote the four licensing objectives, and accordingly focused its decision making on the likely effect of the grant of the application on the promotion of those objectives.

It was accepted procedure in licensing decisions, that in order for a conclusion that a premises was not promoting the licensing objectives, evidence had to be present of incidents of crime, disorder, public nuisance which particularly related to, or had arisen from that premises. It was aware that the Environmental Health Team had not made a representation about this particular premises and there had been no direct evidence of incidents of crime and disorder or public nuisance at the premises provided to the Sub-Committee.

The majority of statements made by the Interested Parties were assumptions and speculation about what was likely to happen or was inevitable if a licence for the sale of alcohol was granted and the provision of regulated entertainment was permitted. Whilst the Sub-Committee had no wish to diminish the understandable fears of the local residents, it also had to balance those against the intentions of the Applicant and its rights, under the Licensing Act 2003, to operate a licensed premises if to do so would not undermine the licensing objectives.

On the evidence before it, the Sub-Committee had no reason to believe that the grant of this application would not promote the licensing objectives. The statements made by the Applicant led the Sub-Committee to believe that it was a genuine application presented by sincere directors who wished to create a successful business at a heritage asset in a challenging location. The Applicant had impressed the Sub-Committee with her understanding and acceptance of the concerns raised by the local residents and her willingness to provide mitigation measures to address those concerns. The concessions she had offered showed her keenness to work with the local community and within the environment and the Sub-Committee was grateful for her offer to reduce the opening hours and restrict the number of outdoor events.

The Sub-Committee therefore granted the application, subject to the agreed conditions set out by the Police which were the reduced hours offered by the Applicant and that events held predominantly outdoors would be restricted to no more than fifteen in any twelve month period.

The Sub-Committee granted delegated authority to the Licensing Officer to issue the licence subject to the agreed conditions. The licence would be subject to the mandatory conditions in the Licensing Act 2003.

All parties were reminded that there were rights of appeal against the Licensing Authority's decision pursuant to Section 181 and Schedule 5 of the Licensing Act 2003. An appeal had to

be made to the Magistrates' Court and commenced within 21 days of notification of the Authority's decision.

The Sub-Committee reminded the Interested Parties that a condition of the licence was that a telephone number should be provided by the Applicant for dealing with concerns and that, in addition, advice and support could be obtained from Environmental Health Officers at the Council. The Sub-Committee further reminded all parties that the DPS would be living at the Premises.

All parties were reminded of the procedures contained within the Licensing Act 2003 which related to the review of the Premises Licence. This provision permitted nearby residents, businesses or responsible authorities to apply for a review of a Premises Licence where problems with crime and disorder, public safety, public nuisance or the protection of children from harm had occurred. The Sub-Committee respectfully reminded all parties that for any review to go ahead, evidence would need to be collected of incidents which had occurred that undermined the licensing objectives.

That was the decision of this Licensing Sub-Committee.”

The Chairman declared the meeting closed.

(The meeting closed at 2.20pm)

West Somerset Council

Minutes of the Licensing Sub-Committee Hearing for a Grant of the Premises Licence for The Cat's Whiskers Kitchen, Anchor Street, Watchet, held on 2 August 2017 at 2.00pm in the Dunkery Room, West Somerset House, Killick Way, Williton, TA4 4QA.

Present: Councillor Lillis (Chairman)
Councillors Kingston-James and Turner

Officers: Leigh-Ann Fumagalli (Licensing Officer), Lesley Dolan (SHAPE Legal Services) and Clare Rendell (Democratic Service Officer).

Applicant: Mrs Angela Yon (Applicant).

Interested Parties: Mr David Banks.

(The meeting commenced at 2.00pm)

The Chairman introduced himself and his fellow Sub-Committee Members and officers then explained their roles. As well as acknowledging the documents he explained the procedure to be followed during this meeting of the Sub-Committee.

The Licensing Officer introduced her previously circulated report. An application had been received from **Mrs Angela Yon** for a Premises Licence to be granted for **The Cat's Whiskers Kitchen, Anchor Street, Watchet**.

The Applicant was seeking authorisation for the supply of alcohol for consumption on the premises. Following the application being received, the Licensing Department had duly notified Environmental Health and Avon and Somerset Constabulary. There were no representations received from any Responsible Authorities.

A representation was received from an Interested Party which related to noise that emanated from the conservatory to the rear of the building and issues with planning permission.

The Licensing Authority attempted to arrange mediation between the Applicant and Interested Party, however, an agreed position was not reached.

Detailed in the Officer's report were the four licensing objectives. The Sub-Committee was reminded that the Licensing Policy required the Licensing Authority to carry out its various functions to promote these objectives:-

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

The following comments and points were presented by the Interested Party in relation to their written objections:-

- The history of the building was provided to the Sub-Committee. The premises used to be a public house until the owners received permission for change of use to a museum, following this part of the building had been converted into a restaurant.

- The passageway from the main building to the conservatory at the rear of the property was supposed to be covered.
- There were no objections to the business trading in the front part of the building.
- Concern was raised on whether planning permission had been granted on the passageway because this area was supposed to be covered. This area was not sound proofed and did not appear to be subject to building regulations.
- The Interested Party's bedroom was 4ft away from the conservatory and he had trouble sleeping when the outside area was in use. He could not open the window due to the noise.
- He felt if the application was granted, this would increase the use of the restaurant and therefore more customers would use the conservatory area.
- The Interested Party felt stressed by the situation and was concerned about the effects on his health.

The following comments and points were presented by the Applicant in relation to their written application:-

- The legality of the building was the responsibility of the landlord, who had built the conservatory at the rear of the building. The purpose of the extension was to cover up the patio area that lead from the kitchen to the restaurant.
- The Applicant gave information and clarified the layout of the building and the areas used by the restaurant.
- The restaurant only opened 3 nights a week and she had no plans to open more than that.
- There were other outside areas along the road that residents used and had caused noise in the evenings.
- Customers normally left the premises by 10.30pm and the conservatory was only used during the summer months.

The following questions and statements were raised by the Sub-Committee of the Applicant following presentation of their application (Responses are shown in italics):-

- There were 2 different issues being discussed. One of which was planning permission and this was being dealt with by the Planning Department.
- How many customers normally used the outside area?
Approximately 12 maximum used the conservatory. Not many had used the outside patio area in the evening. The majority of customers that had used the conservatory had left the premises by 10.30pm.
- How many customers could sit out on the outside patio area?
8 people.
- How many times had the conservatory been used since the Applicant had started trading?
Due to the temperatures, the first time the conservatory was used was in June 2017. They would not be able to use it in the winter because the temperatures would be too low.
- If the conservatory was to be properly insulated, would they use it more?
No because there were no power points, so they would not be able to heat it adequately for customers.

The following questions were raised by the Legal Representative to the Sub-Committee of the Applicant following presentation of their application (Responses are shown in italics):-

- Clarification was requested on the floor plan, what area was covered by the conservatory and the location of the patio.
The Applicant showed the Sub-Committee the details on the floor plan provided.
- Clarification was sought on the use of the outside areas and conservatory. If the customers were normally gone by 10.30pm, would the Applicant be willing to have a restriction added to her application to have customers gone by no later than 11.00pm? This time was used for example.
The applicant was open to the suggestion.

The following questions and statements were raised by the Interested Party of the Applicant following presentation of their report: (Responses are shown in italics):-

- Concern was raised over the Applicant being able to sell alcohol. Customers were able to take their own alcohol at present and pay corkage, this meant that they were 'merry', but not too drunk and loud when they left the premises.
The Applicant did not plan to hold a lot of alcoholic beverages, they purpose was sell some wine and beer with their meals.
- Concern was raised that some customers had been outside later than 11.00pm.
This was not a regular occurrence.
- This was not a domestic property, so the level of noise was not the same as that of a neighbour having a BBQ.
The Applicant stated that if the conservatory was not there, they would have a table outside and that would cause more noise.
- The Interested Party requested could a restriction be put on the months they were allowed to use the conservatory and outside area.
The Applicant would not use the conservatory during the winter months because it was too cold.
- Concern was raised on the suggested time restriction of 11.00pm and that the conservatory was not sound proofed.
This time was used as a suggestion, environmental terms stated that the start of the acoustic night was at 11.00pm, which was why they used that time as an example.

Closing Statements

The Interested Party made a brief closing statement to the Members of the Sub-Committee:-

- The main objection was against large groups who dined in the conservatory and made lots of noise, he was not against customers who used the front part of the building.

The Applicant made a brief closing statement to the Members of the Sub-Committee:-

- They were a small business that wanted to make use of the summer months and use the conservatory for bookings of 10 customers.
- The Applicant was happy to have restrictions placed upon their application but required the use the conservatory.

The Sub-Committee Members retired at 2.45pm.

The Sub-Committee Members returned at 3.30pm.

The Sub-Committee Decision

The Chairman of the Sub-Committee read out the following decision:-

“This was the decision of the Licensing Sub-Committee held at West Somerset House on 2 August 2017.

Both the Applicant and the Interested Party had appeared before the Sub-Committee.

The Licensing Officer had advised the Sub-Committee that mediation had been attempted between the parties, however, an agreed position was not reached.

The Interested Party’s representation related to the noise that emanated from the conservatory to the rear of the building and the issues with whether planning permission had been granted or not. The noise had impacted on his daily life and his ability to sleep.

The Applicant had advised the Sub-Committee that the planning issues were the responsibility of her landlord. In response to the concern about noise that emanated from the conservatory, she was prepared to limit the time that the conservatory and outside area were available to the public to 10.30pm.

It was the decision of the Sub-Committee that the licence would be granted and was subject to the following conditions being endorsed upon the licence:-

- The use of the conservatory and the patio at the rear of the premises would not be made available to the public after 10.30pm.
- The non-standard timings that had been approved would not apply to the conservatory and patio area to the rear of the premises.

All parties were reminded that there were rights of appeal against the Licensing Authority’s decision pursuant to Section 181 and Schedule 5 of the Licensing Act 2003. An appeal had to be made to the Magistrates’ Court and commenced within 21 days of notification of the Authority’s decision.

All parties were reminded of the procedures contained within the Licensing Act 2003 which related to the review of the Premises Licence. This provision permitted nearby residents, businesses or responsible authorities to apply for a review of a Premises Licence where problems with crime and disorder, public safety, public nuisance or the protection of children from harm had occurred. The Sub-Committee respectfully reminded all parties that for any review to go ahead, evidence would need to be collected of incidents which had occurred that undermined the licensing objectives.

That was the decision of this Licensing Sub-Committee.”

The Chairman declared the meeting closed.

(The meeting closed at 3.40pm)

