

HAMBLETON DISTRICT COUNCIL

Report To: Licensing Committee
31 May 2016

From: Executive Director

Subject: LICENSING ACT 2003 STATEMENT OF LICENSING POLICY

All Wards

1.0 PURPOSE AND BACKGROUND

1.1 The purpose of this report is to seek approval to consult with all responsible authorities, licence holders and any other interested parties on the proposed revision of the Licensing Act 2003 Statement of Licensing Policy.

2.0 INFORMATION AND ANALYSIS

2.1 Licensing authorities are required under the Licensing Act 2003 to publish a Statement of Licensing Policy which they propose to apply when exercising their functions. The policy must be published at least every five years.

2.2 The existing policy was adopted in June 2012 and therefore the revision must be completed by June 2017.

2.3 The policy, once adopted, is a material consideration to be taken into account when the Council is exercising any of its functions under the Act.

2.4 Hambleton District Council, as the licensing authority, is required to discharge its responsibilities under the Act with a view to promoting the licensing objectives, namely:

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

2.5 The licensing authority must have regard to its policy along with the Home Office Guidance when considering applications in respect of the following:

- personal licences;
- premises licences;
- club premises certificates; and
- temporary event notices.

2.6 The draft policy is attached at Annex A.

2.7 The draft policy takes account of recent legislative changes and provides additional guidance for the benefit of the public and trade. However, if the proposed revisions are implemented, there would be no significant changes in terms of procedure and interpretation.

3.0 FINANCIAL IMPLICATIONS AND EFFICIENCIES

3.1 The only financial implications related to the revision of the Statement of Licensing Policy relate to consultation and publication. The costs associated with consultation and publication will be covered by existing budgets.

4.0 EQUALITIES AND DIVERSITY ISSUES

4.1 The Council's Equality duty has been considered and any implications have been addressed within the draft Statement of Licensing Policy.

5.0 LEGAL IMPLICATIONS

5.1 Failure to adopt a policy within the statutory timescales would constitute a breach of the Licensing Act 2003. Complying with the statutory requirements in the adoption of a Statement of Licensing Policy will protect the Council in the event of any future legal challenge.

6.0 RECOMMENDATION

6.1 Members are asked to approve a six week consultation on the draft Statement of Licensing Policy commencing forthwith, subject to the matter being referred back to the Licensing Committee for consideration of any responses received during the consultation period.

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Background papers: Licensing Act 2003 Statement of Licensing Policy (June 2012)
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DRAFT STATEMENT OF LICENSING POLICY

MAY 2016

Version Control

<i>Version No.</i>	<i>Amended by</i>	<i>Date</i>
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PART 1: INTRODUCTION

1.1 HAMBLETON

- 1.1.1 Hambleton is a local government district situated in the county of North Yorkshire. The council area is mainly rural with five market towns. These areas are shown on the map at Annex A.
- 1.1.2 Hambleton covers an area of 1,311.17 km² most of which, 1,254.90 km², is green space. In 2011, Hambleton had an estimated population of 89,140¹.

1.2 APPLYING THE POLICY

- 1.2.1 This document sets out the policy that the licensing authority will apply when making decisions about new applications and licences currently in force.
- 1.2.2 In formulating this policy, regard has been given to advice contained in the Home Office Guidance issued under section 182 of the Licensing Act 2003.
- 1.2.3 Any guidance contained within this policy is to be treated as a guide only and final interpretation of the law will ultimately rest with the courts.
- 1.2.4 Any obligation in this policy not to do any act or thing shall be deemed to include an obligation not to cause or permit that act or thing to be done.
- 1.2.5 Any reference to any statute or subordinate legislation shall be deemed to include a reference to any amendment or re-enactment.
- 1.2.6 The policy will be applied in the majority of cases when considering licence applications, but the licensing authority will consider each application on its individual merits and may, at times, exercise its discretion to depart from the general policy.
- 1.2.7 Nothing in this statement of licensing policy shall:
- prevent any person from making an application for authorisation or giving a notice under the Act;
 - prevent any person from making representation in respect of an application of a type where the Act provides for them to do so;
 - prevent any person from making an application for the review of a premises licence; or
 - restrict or fetter the licensing authority's discretion to consider and determine applications, or to initiate legal proceedings or other enforcement action, based upon the individual circumstances and merits of a particular case.
- 1.2.8 This policy must be published on at least one occasion in each five-year period.

1.3 CONSULTATION

- 1.3.1 In producing this statement of licensing policy, the licensing authority has had regard to the licensing objectives of the Licensing Act 2003, the Home Office Guidance and any views expressed during the consultation upon the proposed statement.

1.4 PERSONAL DATA

¹ 2011 Census Results

- 1.4.1 The council will hold personal data (about applicants, licensees, complainants etc) in connection with its licensing function.
- 1.4.2 The council will comply with its obligations under data protection legislation.
- 1.4.3 The council's aim is to minimise the unnecessary disclosure of personal data.
- 1.4.4 Personal data will only be obtained, kept or used as authorised by statute.

1.5 EQUALITY AND DIVERSITY

- 1.5.1 The council's policies and procedures will be applied fairly to all, irrespective of race, religion, gender, disability, sexual orientation or age.
- 1.5.2 The council recognises that it has a duty to have regard to the requirements of the Equality Act 2010 in relation to the need to eliminate unlawful discrimination and promote equality for people with protected characteristics.

1.6 HUMAN RIGHTS

- 1.6.1 In formulating this policy, the council has had regard to the provisions of the European Convention on Human Rights in that everyone has the right to respect for their home and private life and that every person is entitled to the peaceful enjoyment of their possessions.
- 1.6.2 The Human Rights Act 1998 makes it unlawful for a Public Authority to act in a way that will be incompatible with a convention right. Consequently an aim of this policy and in particular in relation to the decision-making processes of the council is to ensure that a licensing decision does not cause a breach of a convention right.

PART 2: LICENSING OBJECTIVES

2.1 INTRODUCTION

2.1.1 Licensing authorities must carry out their functions with a view to promoting the four licensing objectives, which are:

- the prevention of crime and disorder,
- public safety,
- the prevention of public nuisance, and
- the protection of children from harm.

2.1.2 Each objective is of equal importance. There are no other statutory licensing objectives and therefore the promotion of the four objectives is a paramount consideration at all times.

2.1.3 When considering applications in respect of previously unlicensed premises, the licensing authority will consider whether or not the activities are likely to have an adverse effect on the licensing objectives in the local area. When considering applications in respect of already-licensed premises, the licensing authority will also consider whether or not there is any evidence of adverse effects on the licensing objectives in the local area.

2.1.4 The licensing authority will work in partnership with its neighbouring authorities, the police, local businesses and local residents towards the promotion of the licensing objectives.

2.1.5 In completing an operating schedule, applicants are expected to have regard to this policy and to set out the steps to be taken to promote the licensing objectives.

2.1.6 Applicants are expected to obtain sufficient information to enable them to demonstrate that they understand:

- the layout of the local area;
- the physical environment including crime and disorder hotspots;
- the proximity to residential premises;
- the proximity to areas where children may congregate;
- any risk posed to the local area by the proposed licensable activities;
- the Guidance issued under section 182 of the Licensing Act 2003; and
- any local initiatives which may help to mitigate potential risks.

2.2 PREVENTION OF CRIME AND DISORDER

2.2.1 The licensing authority will ensure that adequate measures are taken by licensees to reduce the risk of crime and disorder.

2.2.2 Appropriate measures will depend on the type, size and location of the premises and the activities that are proposed to be carried out but they may include:

- effective methods of communication between licensees and/or police;
- effective and responsible management of premises;
- training and supervision of staff;
- the use of CCTV systems where appropriate;
- policies and practices relating to the prevention of underage drinking (e.g. ID schemes, refusal logs, signage etc);

- drugs policies;
- policies relating to the use of glass and bottles (e.g. using toughened glass, prohibiting the removal of glasses from the premises); and
- effective record keeping (e.g. staff training records, incident logs).

2.2.3 The licensing authority will work closely with the police and licence holders to monitor and investigate incidents of crime and disorder associated with licensable activities.

2.2.4 Although incidents occurring outside of licensed premises will often be outside of the direct control of licence holders, they will be expected to provide evidence or intelligence to assist statutory bodies where appropriate.

2.3 PUBLIC SAFETY

2.3.1 The public safety objective concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning.

2.3.2 The licensing authority will ensure that adequate measures are taken by licensees to promote public safety. Appropriate measures will depend on the type, size and location of the premises and the activities that are proposed to be carried out but they may include:

- suitable and sufficient risk assessments
- fire safety measures;
- effective and responsible management of premises;
- access for emergency services such as ambulances;
- good communication with local authorities and emergency services;
- ensuring the presence of trained first aiders and appropriate first aid kits;
- ensuring the safety of people when leaving the premises;
- appropriate and frequent waste disposal;
- policies relating to the use of glass and bottles (e.g. using toughened glass, prohibiting the removal of glasses from the premises);
- ensuring appropriate attendance limits; and
- considering the use of effective CCTV in and around the premises.

2.3.3 The licensing authority will not duplicate obligations placed upon licence holders under the Health and Safety at Work Act 1974 or the Regulatory Reform (Fire Safety) Order 2005.

2.4 PREVENTION OF PUBLIC NUISANCE

2.4.1 Applicants and licence holders are encouraged to consider all possible sources of nuisance when compiling operating schedules and to implement appropriate measures for the promotion of this objective.

2.4.2 Public nuisance is not narrowly defined in the 2003 Act and it therefore retains its broad common law meaning. It may include matters relating to noise, vibration, light, litter, offensive odours and anti-social behaviour.

2.4.3 The absolute prevention of the above issues will not always be possible. A degree of noise, for example, is inevitable with most forms of regulated entertainment. However, the licensing authority will ensure that licensees take adequate measures to prevent disproportionate and unreasonable levels of nuisance by:

- controlling the levels of noise emanating from the premises;
- controlling light pollution;
- controlling the dispersal of customers;
- managing the disposal of waste; and
- dealing with any litter problems created as a result of licensable activities.

2.5 PROTECTION OF CHILDREN FROM HARM

2.5.1 This objective includes the protection of children from moral, psychological and physical harm associated with, for example:

- alcohol consumption;
- violence;
- drug use;
- strong language and sexual expletives; and
- sexual exploitation.

2.5.2 Children should not be prevented from attending responsibly-run, family-oriented licensed premises (e.g. restaurants, theatres, supermarkets, community premises etc), particularly when accompanied by a suitable adult.

2.5.3 The licensing authority will ensure that adequate measures are taken to protect children from harm when on the premises. Appropriate measures will depend on the type, size and location of the premises and the activities that are proposed to be carried out. If it is appropriate to do so, the licensing authority may, for example, consider restricting the access of children to certain premises where:

- adult entertainment is provided;
- one or more members of the current management have been convicted for serving alcohol to minors;
- the premises have a reputation for allowing underage drinking;
- it is known that unaccompanied children have been allowed access;
- there is a known association with drug taking or dealing; or
- the premises are used exclusively or primarily for the sale of alcohol for consumption on the premises.

2.5.4 Any such restrictions will only be imposed where it is appropriate for the promotion of the licensing objectives. The restrictions may relate to:

- the hours when children may be present;
- the presence of children under certain ages when particular specified activities are taking place;
- the parts of the premises to which children may have access; and
- access by children without an accompanying adult.

2.5.5 High-profile cases across the UK have highlighted potential links between victims of child sexual exploitation and licensed premises. Licence holders and applicants

should therefore be aware of the potential for premises to be used by persons who are exploiting children.

2.5.6 Sexual exploitation of children and young people under 18 involves exploitative situations, contexts and relationships where young people receive something (e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money) as a result of them performing sexual activities. In all cases, those exploiting the child/young person have power over them by virtue of their age, gender, intellect, physical strength and/or economic resources².

2.5.7 The licensing authority expects licence holders and applicants to be aware of the possibility of child sexual exploitation taking place in or around licensed premises. Suitable protective measures should also be implemented to assist in the detection and reporting of incidents. These may include:

- child sexual exploitation training;
- written management procedures for identifying and reporting suspicious behaviour to police;
- frequent monitoring of all areas of the premises.

² Department for Children, Schools and Families (DCSF) and Home Office (2009) - Safeguarding children and young people from sexual exploitation: supplementary guidance to Working together to safeguard children

PART 3:
LICENSABLE ACTIVITIES

3.1 INTRODUCTION

3.1.1 It is a criminal offence under section 136 of the 2003 Act to carry on a licensable activity otherwise than in accordance with a licence or other authorisation under the 2003 Act. The fine for this offence is unlimited.

3.1.2 Licensable activities include:

- the sale by retail of alcohol;
- the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club
- the provision of regulated entertainment; and
- the provision of late night refreshment.

3.2 SALE OR SUPPLY OF ALCOHOL

3.2.1 Alcohol sales include 'the sale by retail of alcohol' for premises licences and 'the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club' for club premises certificates.

3.2.2 The sale or supply of alcohol which is of a strength not exceeding 0.5 per cent ABV (alcohol by volume) at the time of the sale or supply in question is not a licensable activity.

3.2.3 Alcohol may be sold:

- for consumption on the premises;
- for consumption off the premises; or
- for consumption both on and off the premises.

3.2.4 The place where the alcohol is ordered may be different to the place where the alcohol is appropriated to the contract (i.e. where it is specifically set apart for delivery to the purchaser). This position can arise when sales are made online, by telephone, or mail order. In these instances, a licence will be required at the location where the alcohol is stored.

3.2.5 Every supply of alcohol under a premises licence must be made or authorised by a person who holds a personal licence. For more information on personal licences, see Part 4.

3.2.6 It is not generally permissible to sell alcohol on a moving vehicle. However, the licensing authority will consider applications for the sale of alcohol from a parked or stationary vehicle.

3.2.7 The sale or supply of alcohol is prohibited from motorway service areas and from premises which are used primarily for one or more of the following:

- the retailing of petrol or derv; or
- the sale or maintenance of motor vehicles.

3.2.8 No licence granted in respect of any premises referred to in paragraph 3.2.7 will authorise the sale of alcohol.

3.3 REGULATED ENTERTAINMENT

3.3.1 The provision of regulated entertainment includes:

- Performances of plays;
- Exhibitions of films;
- Indoor sporting events;
- Boxing and wrestling entertainment events;
- Performances of live music;
- Playing of recorded music;
- Performances of dance; and
- Entertainment which is similar to music or dance.

3.3.2 The activities outlined in paragraph 3.3.1 are generally licensable if they:

- take place in the presence of a public audience; or
- are held in private but are the subject of a charge made with a view to profit.

3.3.3 The following entertainment activities are not licensable for the purposes of the Act:

- activities which involve participation as acts of worship in a religious context;
- activities in places of public religious worship;
- activities that involve teaching students to perform music or to dance;
- the demonstration of a product;
- Morris dancing;
- music that is incidental to some other non-licensable activity;
- an exhibition of moving pictures if it is incidental to some other activity;
- a spontaneous performance of music, singing or dancing;
- activities taking place at a garden fete that is not being promoted or held for purposes of private gain;
- films for advertisement, information, education or in museums or art galleries;
- live television or radio broadcasts;
- activities on moving vehicles (i.e. when the vehicle is not permanently or temporarily parked);
- stand-up comedy;
- entertainment facilities (e.g. dance floors);
- the performance of a play between the hours of 8am and 11pm in the presence of an audience of no more than 500 people;
- a performance of dance between the hours of 8am and 11pm in the presence of an audience of no more than 500 people;
- not-for-profit film exhibitions held in community premises between the hours of 8am and 11pm in the presence of an audience of no more than 500 people;
- indoor sporting events between the hours of 8am and 11pm in the presence of an audience of no more than 1,000 people;
- Greco-Roman wrestling or freestyle wrestling between the hours of 8am and 11pm in the presence of an audience of no more than 1,000 people;
- a performance of unamplified live music between the hours of 8am and 11pm;
- a performance of amplified live music between the hours of 8am and 11pm in the presence of an audience of no more than 500 people in any workplace;
- any playing of recorded music between the hours of 8am and 11pm in the presence of an audience of no more than 500 people on premises authorised to sell alcohol for consumption on those premises;

- any playing of recorded music between the hours of 8am and 11pm in the presence of an audience of no more than 500 people on community premises.

3.4 LATE NIGHT REFRESHMENT

- 3.4.1 The provision of late night refreshment involves the supply of hot food or drink between 11pm and 5am.
- 3.4.2 The supply takes place when the hot food or hot drink is given to the customer and not when payment is made.
- 3.4.3 The supply of hot drink by a vending machine is not a licensable activity provided the public have access to and can operate the machine without any involvement of the staff. However, this exemption does not apply to hot food.
- 3.4.4 Supplies of hot food or hot drink from 11.00pm are exempt from the provisions of the 2003 Act if there is no admission to the public to the premises involved and they are supplies to:
- a member of a recognised club supplied by the club;
 - persons staying overnight in a hotel, guest house, lodging house, hostel, a caravan or camping site or any other premises whose main purpose is providing overnight accommodation;
 - an employee supplied by a particular employer (for example, a staff canteen);
 - a person who is engaged in a particular profession or who follows a particular vocation (for example, a tradesman carrying out work at particular premises);
 - a guest of any of the above.

PART 4: PERSONAL LICENCES

4.1 INTRODUCTION

- 4.1.1 Every sale of alcohol made under the benefit of a premises licence must be authorised by a personal licence holder. The only exception is for a community premises which has successfully applied to remove this requirement (see paragraph 5.7).

4.2 APPLICATION FOR THE GRANT OF A PERSONAL LICENCE

- 4.2.1 An application for a personal licence will only be processed by Hambleton District Council if:

- the applicant is aged 18 years or over;
- the applicant is ordinarily resident in the district of Hambleton at the time of the application (unless he/she is not ordinarily resident in England or Wales);
- the application is accompanied by a licensing qualification accredited by the Secretary of State (details of licensing qualifications accredited by the Secretary of State may be viewed on www.gov.uk);
- the application is accompanied by a basic criminal record check obtained via www.disclosurescotland.gov.uk (the certificate must have been issued no more than one month before the application date);
- the appropriate fee has been paid to the licensing authority; and
- the applicant has not forfeited a personal licence in the five years preceding the date of the application.

4.3 DETERMINATION OF PERSONAL LICENCE

- 4.3.1 An application for a personal licence will be granted without the need for a hearing provided:

- the applicant has no unspent convictions for a relevant offence or a foreign offence; or
- the police have not objected to the grant of the application on crime prevention grounds.

4.4 HEARINGS

- 4.4.1 Where an applicant has an unspent conviction for a relevant or foreign offence, and the police object to the application on crime prevention grounds, the applicant will be invited to a hearing of the Licensing and Appeals Hearings Panel.

- 4.4.2 If the Licensing and Appeals Hearings Panel decides that the grant of the application will not undermine the crime prevention objective, the licence may be granted.

4.5 APPEALS

- 4.5.1 If an application is refused, the applicant will be entitled to appeal to the Magistrates' Court against the decision. Similarly, if the application is granted despite a police objection notice being lodged, the chief officer of police will be entitled to appeal against the licensing authority's determination.

4.6 PERIOD OF VALIDITY

- 4.6.1 Personal licences remain valid unless surrendered, suspended, revoked or declared forfeit by the courts.
- 4.6.2 The requirement to renew a personal licence was removed from the Licensing Act 2003 by the Deregulation Act 2015. While personal licences issued before the 2015 Act have expiry dates, these dates no longer have any effect.
- 4.6.3 Once granted, the licensing authority which issued the licence remains the relevant licensing authority, even though the individual may move out of the area or take employment elsewhere.

4.7 CHANGES WHILST LICENCE IN FORCE

- 4.7.1 The holder of the licence is required by the 2003 Act to notify the licensing authority of any changes to his/her name or address.
- 4.7.2 Where the holder of a personal licence is charged with a relevant offence, he/she must produce the licence to the court before the case is first heard in court (or if that is not possible, he/she must explain why).

PART 5: PREMISES LICENCES

5.1 INTRODUCTION

5.1.1 A premises licence authorises the use of any premises (any vehicle, vessel or moveable structure or any place or a part of any premises) for licensable activities.

5.1.2 Railway vehicles and aircraft engaged on journeys are exempted from the requirement to have an authorisation to carry on licensable activities (although a magistrates' court can make an order to prohibit the sale of alcohol on a railway vehicle if this is appropriate to prevent disorder). Stationary aircraft and railway carriages used as restaurants and bars are subject to the provisions of the 2003 Act.

5.2 GRANT OF LICENCE

5.2.1 An application for a premises licence may be made by anyone who carries on or proposes to carry on a business involving licensable activities on premises situated wholly or mainly in the district of Hambleton.

5.2.2 An applicant for a premises licence must be:

- one or more individuals aged 18 years or over;
- a business;
- a partnership;
- a person exercising a statutory function (for example, a local authority);
- a person exercising any function by virtue of the Royal prerogative (for example, a body exercising functions by virtue of a royal charter);
- a recognised club;
- a charity;
- an educational institution;
- a health body in the public and private sector; or
- the police

5.2.3 An application for the grant of a premises licence must be accompanied by:

- the requisite fee;
- an operating schedule (see below);
- a plan of the premises in a prescribed form (see paragraph 5.11); and
- a form of consent from the individual who is to be specified in the licence as the designated premises supervisor (only if the application involves the supply of alcohol).

5.2.4 An application for the grant of a premises licence must be advertised:

- in a local publication on at least one occasion within ten working days of the application date; and
- be advertised on the premises for a period of 28 days.

5.3 VARIATION OF LICENCE

5.3.1 The holder of a premises licence may apply for a variation of the licence. An application for a variation of a premises licence must be accompanied by:

- the requisite fee;

- an operating schedule (see paragraph 5.13);
- the existing premises licence; and
- if the variation relates to any structural alterations, a plan of the premises in a prescribed form (see paragraph 5.11);

5.3.2 An application for the variation of a premises licence must be advertised:

- in a local publication on at least one occasion within ten working days of the application date; and
- be advertised on the premises for a period of 28 days.

5.4 MINOR VARIATION

5.4.1 The Act allows for a simplified procedure for varying a licence where the changes cannot have an adverse effect on the licensing objectives.

5.4.2 Changes to the structure of the premises will not fall within the definition of a minor variation if it increases the capacity for drinking on the premises, or if it impedes the effective operation of a noise reduction measure such as an acoustic lobby.

5.4.3 An application for a minor variation of a premises licence must be accompanied by:

- the requisite fee;
- the existing premises licence; and
- if the variation relates to any structural alterations, a plan of the premises in a prescribed form (see paragraph 5.11).

5.4.4 An application for a minor variation of a premises licence must be advertised on the premises for a period of 10 days.

5.5 CHANGE OF DPS

5.5.1 A premises licence may be varied to specify an individual as designated premises supervisor.

5.5.2 The police may object to the designation of a new designated premises supervisor where, in exceptional circumstances, they believe that the appointment would undermine the prevention of crime and disorder objective.

5.5.3 An application to specify an individual as designated premises supervisor must be accompanied by:

- the requisite fee;
- the existing premises licence; and
- a form of consent from the individual who is to be specified as the designated premises supervisor.

5.6 TRANSFER OF LICENCE

- 5.6.1 Any person who may apply for the grant of a premises licence (see paragraph 5.2.2) may apply for a premises licence to be transferred to them.
- 5.6.2 The police may object to the transfer of a premises licence where, in exceptional circumstances, they believe that the transfer would undermine the prevention of crime and disorder objective.
- 5.6.3 An application for the transfer a premises licence must be accompanied by:
- the requisite fee;
 - the existing premises licence; and
 - a form of consent from the existing premises licence holder.

5.7 COMMUNITY PREMISES – ALTERNATE MANDATORY CONDITION

- 5.7.1 The holder of a premises licence in respect of community premises may submit an application to disapply the mandatory conditions in sections 19(2) and 19(3) of the Act concerning the supervision of alcohol sales by a personal licence holder and the need for a designated premises supervisor who holds a personal licence.
- 5.7.2 An application for the mandatory conditions to be disapplied must be accompanied by:
- the requisite fee;
 - the existing premises licence; and
 - details of the proposed arrangements to supervise alcohol sales.

5.8 INTERIM AUTHORITY NOTICE

- 5.8.1 Where a premises licence lapses due to the death, incapacity or insolvency of the licence holder, but no application for transfer has been received to reinstate the licence under section 50 of the Act, a person who has an interest in the premises may, during the initial 28 day period, give notice to the Licensing Authority in respect of the licence. A similar notice must also be given to the chief officer of police within this period.
- 5.8.2 Where an interim authority notice is given, the premises licence is reinstated for a maximum period of three months from the day the notice was given to the licensing authority to allow for applications to transfer the licence.

5.9 PROVISIONAL STATEMENTS

- 5.9.1 Where premises are being or are about to be constructed, extended or otherwise altered for the purpose of being used for one or more licensable activities, investors may be unwilling to commit funds unless they have some assurance that a premises licence covering the desired licensable activities would be granted for the premises when the building work is completed.
- 5.9.2 A business or an individual (aged 18 or over) with an interest in any particular premises may therefore apply for a “provisional statement”.

5.9.3 An application for a provisional statement must be accompanied by:

- the requisite fee;
- a statement made by or on behalf of the applicant including particulars of the premises to which the application relates and of the licensable activities for which the premises are to be used; and
- plans of the work being or about to be done at the premises.

5.9.4 An application for a provisional statement must be advertised:

- in a local publication on at least one occasion within ten working days of the application date; and
- be advertised on the premises for a period of 28 days.

5.9.5 When a person applies for a premises licence in respect of premises (or part of the premises or premises which are substantially the same) for which a provisional statement has been made, representations by responsible authorities and other persons will be excluded where:

- the application for a licence is in the same form as the licence described in the provisional statement;
- the work in the schedule of works has been satisfactorily completed;
- given the information provided in the application for a provisional statement, the responsible authority or other person could have made the same, or substantially the same, representations about the application then but failed to do so without reasonable excuse; and
- there has been no material change in the circumstances relating either to the premises or to the area in the proximity of those premises since the provisional statement was made.

5.10 CHANGES DURING PERIOD OF LICENCE

5.10.1 The holder of a premises licence must notify the licensing authority of any changes to his/her name or address or that of the designated premises supervisor.

5.11 REVIEWS

5.11.1 At any stage following the grant of a premises licence, a responsible authority or any other person may apply for a review of the licence in the event of any perceived failure to promote one or more of the licensing objectives.

5.11.2 Although the licensing authority may act in its capacity as a responsible authority to apply for a review of a club premises certificate, it will not normally do so on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review in their own right if they have grounds to do so.

5.11.3 Where the licensing authority does act as a responsible authority and applies for a review, it will make provision for an appropriate separation of responsibilities in order to ensure procedural fairness and eliminate conflicts of interest.

5.11.4 Reviews allow the Licensing and Appeals Hearings Panel, if necessary, to modify the licence conditions, remove the designated premises supervisor or, in extreme cases, to suspend or revoke all or part of the licence.

5.12 PLANS OF PREMISES

5.12.1 Premises plans are not required to be submitted in any particular scale, but they must be in a format which is “clear and legible in all material respects” (i.e. they must be accessible and provide sufficient detail for the licensing authority to be able to determine the application, including the relative size of any features relevant to the application).

5.12.2 There is no requirement for plans to be professionally drawn as long as they clearly show all of the prescribed information (see Annex B).

5.13 OPERATING SCHEDULE

5.13.1 In completing an operating schedule, applicants must describe the steps that are appropriate for the promotion of the licensing objectives having had regard to this policy. Applicants are expected to include positive proposals in their application on how they will manage any potential risks.

5.13.2 While applicants are not required to seek the views of responsible authorities before formally submitting an application, they may find them to be a useful source of expert advice on local issues that should be taken into consideration when making an application.

5.14 SUBMITTING APPLICATIONS

5.14.1 Applications may be submitted:

- by post using the application forms available on the council’s website;
- via email using the application forms available on the council’s website; or
- online via www.gov.uk

5.14.2 If an applicant submits any part of their application in writing, the applicant will be responsible for sending copies to each of the appropriate responsible authorities. However, if an application is submitted online or via email, the licensing authority will be responsible for copying it to responsible authorities.

5.14.3 If information is missing or incorrect, the licensing authority may ‘hold’ the application until the applicant has supplied all of the required information. This effectively resets the time period for determining an application and may be done any number of times until the application form is complete.

5.15 DETERMINING UNCONTESTED APPLICATIONS

5.15.1 In the absence of any representations in respect of any duly made application, a licence will be granted as applied for, subject only to any mandatory conditions and those conditions which form part of the operating schedule.

5.16 REPRESENTATIONS

5.16.1 Responsible authorities and any other persons may make relevant representations in respect of applications for the grant or variation of a premises licence. In these cases, the application will be referred to the Licensing and Appeals Hearings Panel for determination.

5.16.2 The licensing authority will accept all reasonable and proportionate representations made by responsible authorities unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. It remains incumbent on the responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing³.

5.16.3 Representations must be made in writing and may be amplified at the subsequent hearing. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

5.17 HEARINGS

5.17.1 The licensing authority must hold a hearing within a prescribed period where relevant representations are made.

5.17.2 Notices will be sent to each party informing them of the date so that they may attend if they wish to give evidence at the hearing.

5.17.3 The procedure for hearings is attached at Annex C.

5.18 PERIOD OF VALIDITY

5.18.1 Unless it has been granted only for a limited period, a premises licence will remain valid until:

- Mandatory conditions;
- it is suspended;
- it is surrendered;
- it is revoked; or
- it lapses where the holder of the licence:
 - dies;
 - lacks capacity to hold a licence within the meaning of the Mental Capacity Act 2005;
 - becomes insolvent;
 - is dissolved, or
 - if it is a club, ceases to be a recognised club.

5.19 APPEALS

³ 9.12 of the [Home Office Guidance](#) issued under section 182 of the Licensing Act 2003 (March 2015)

5.19.1 Any party aggrieved by the decision of the Licensing and Appeals Hearings Panel can appeal to the Magistrates' Court.

5.20 CONDITIONS

5.20.1 Conditions on premises licences will fall into one of three categories as follows:

- Mandatory conditions;
- Conditions consistent with the applicant's operating schedule; and
- Conditions imposed by the Licensing and Appeals Hearings Panel.

5.20.2 Mandatory conditions are attached to all premises licence, where appropriate, to ensure that:

- No supply of alcohol is made under a premises licence at a time when there is no designated premises supervisor in respect of the premises licence;
- No supply of alcohol is made under a premises licence at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended;
- Every supply of alcohol under the premises licence is made or authorised by a person who holds a personal licence;
- The admission of children to the exhibition of any film is restricted in accordance with any recommendation by the film classification body or the licensing authority;
- Any individual carrying out a security activity in accordance with a licence condition is authorised under the Private Security Industry Act 2001;
- An age verification policy is adopted and implemented in relation to the sale or supply of alcohol;
- The age verification policy requires individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either a holographic mark or an ultraviolet feature;
- No alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price;
- Staff do not carry out, arrange or participate in any irresponsible promotions in relation to the premises;
- Free potable water is provided on request to customers where it is reasonably available;
- The following drinks (if sold on the premises) are available in the following measures:
 - beer or cider - half pint
 - gin, rum, vodka or whisky - 25ml or 35ml
 - still wine in a glass - 125ml.

5.20.3 The mandatory conditions are prescribed in legislation and are subject to periodic change. The licensing authority will not necessarily replace licences following every change but the changes will be reflected when any other amendments are made by the licence holder. A full schedule of the current mandatory conditions will be maintained on the council's website.

- 5.20.4 Licence holders should be aware that mandatory conditions will apply to their licence, even if they are not printed upon it, and as such are encouraged to periodically check for updates to the current conditions.
- 5.20.5 Proposals put forward by an applicant to promote the licensing objectives may, at the discretion of the licensing authority, be imposed on a licence in the form of clear and enforceable conditions. Any such conditions must be consistent with the applicant's operating schedule. Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule
- 5.20.6 The Licensing and Appeals Hearings Panel may impose additional conditions upon receipt of relevant representations if it is satisfied as a result of a hearing (unless all parties agree that a hearing is not necessary) that it is appropriate in order to promote one or more of the four licensing objectives.
- 5.20.7 The licensing authority will be alive to the indirect costs that can arise as a result of conditions being imposed on premises licences. Conditions may be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. In any case, licensing authorities have a general responsibility to avoid imposing unnecessary regulatory burdens on businesses⁴.

5.21 PLANNING PERMISSION

- 5.21.1 Planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency.
- 5.21.2 The planning and licensing regimes involve consideration of different (albeit related) matters. The Licensing and Appeals Hearings Panel is not bound by decisions made by a planning committee and vice versa.
- 5.21.3 There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time.
- 5.21.4 Premises operating in breach of their planning permission would be liable to prosecution under planning law.

5.22 CUMULATIVE IMPACT

- 5.22.1 "Cumulative impact" means the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. It should not, however, be confused with any question of 'need' which relates to the commercial demand for a particular type of premises. The issue of 'need' is a matter for market forces to influence and for the planning authority to regulate. It is not a matter for the licensing authority to consider in discharging its licensing functions or formulating its statement of licensing policy.
- 5.22.2 The licensing authority recognises that, in accordance with the statutory guidance, it may adopt a special policy in response to a cumulative impact issue in a defined area. Consideration of such a policy may be prompted by submissions from

⁴ [Regulators' Code](#) - Better Regulation Delivery Office – April 2014

responsible authorities or other persons, evidenced appropriately and linked to one or more of the licensing objectives.

- 5.22.3 The licensing authority will not seek to introduce quotas of licensed premises, nor will it seek to impose general limitations on trading hours in particular areas. Instead, consideration will be given to the individual characteristics of the premises concerned within a given area.

**PART 6:
CLUB PREMISES
CERTIFICATES**

6.1 INTRODUCTION

6.1.1 A club premises certificate authorises a club to carry out qualifying club activities such as the supply of alcohol and the provision of regulated entertainment.

6.1.2 A qualifying club may choose to apply for a premises licence if it decides that it wishes to offer its facilities commercially for use by the general public, including the sale of alcohol to them.

6.1.3 The 2003 Act does not prevent visitors to a qualifying club being supplied with alcohol as long as they are 'guests' of any member of the club and nothing in the Act prevents the admission of such people as guests without prior notice. However, a club acting in good faith will only allow access by bona fide guests. The licensing authority is of the opinion that a person should not be regarded as a guest if he/she has had no previous acquaintance with a member.

6.1.4 In order to be a qualifying club, a club must meet the following qualifying conditions:

- nobody can be admitted as a member without an interval of at least two days after their nomination or application for membership;
- a person who is admitted as a member other than by prior nomination or application must wait at least two days before enjoying the privileges of membership;
- the club is established and conducted in good faith as a club (see paragraph 6.1.4);
- the club has at least 25 members; and
- no alcohol is supplied, or intended to be supplied, on the club premises except by or on behalf of the club.

6.1.5 In determining whether a club is established and conducted in good faith, the licensing authority will consider:

- any arrangements restricting the club's freedom of purchase of alcohol;
- how money or property belonging to the club is used;
- giving members information about the club's finances;
- the club's accounts; and
- the nature of its premises.

6.1.6 The holder of a club premises certificate is entitled to certain benefits including:

- the authority to supply alcohol to members and sell it to guests on the premises to which the certificate relates without the need for any member or employee to hold a personal licence;
- the authority to provide late night refreshment to members of the club without requiring additional authorisation;
- more limited rights of entry for the police and authorised persons because the premises are considered private and not generally open to the public;
- exemption from police powers of instant closure on grounds of disorder and noise nuisance (except when being used under the authority of a temporary event notice or premises licence) because they operate under their codes of discipline and rules; and
- exemption from orders of the magistrates' court for the closure of all licensed premises in an area when disorder is happening or expected.

6.2 GRANT OF CLUB PREMISES CERTIFICATE

6.2.1 An application for the grant of a premises licence must be accompanied by:

- the requisite fee;
- a declaration relating to the qualifying criteria;
- an operating schedule (see below);
- a plan of the premises in a prescribed form (see paragraph 6.5); and
- a copy of the club rules.

6.2.2 An application for the grant of a club premises certificate must be advertised:

- in a local publication on at least one occasion within ten working days of the application date; and
- be advertised on the premises for a period of 28 days.

6.3 VARIATION

6.3.1 The holder of a club premises certificate may apply for a variation of the club premises certificate. An application for a variation of a club premises certificate must be accompanied by:

- the requisite fee;
- the existing club premises certificate;
- an operating schedule (see below); and
- if the variation relates to any structural alterations, a plan of the premises in a prescribed form (see paragraph 6.5).

6.3.2 An application for the variation of a club premises certificate must be advertised:

- in a local publication on at least one occasion within ten working days of the application date; and
- be advertised on the premises for a period of 28 days.

6.4 MINOR VARIATION

6.4.1 The Act allows for a simplified procedure for varying a club premises certificate where the changes cannot have an adverse effect on the licensing objectives.

6.4.2 Changes to the structure of the premises will not fall within the definition of a minor variation if it increases the capacity for drinking on the premises, or if it impedes the effective operation of a noise reduction measure such as an acoustic lobby.

6.4.3 An application for a minor variation of a club premises certificate must be accompanied by:

- the requisite fee;
- the existing club premises certificate; and
- if the variation relates to any structural alterations, a plan of the premises in a prescribed form (see paragraph 6.5).

- 6.4.4 An application for a minor variation of a club premises certificate must be advertised on the premises for a period of 10 days.

6.5 CHANGES DURING PERIOD OF CERTIFICATE

- 6.5.1 A club must notify the licensing authority of any change in the club's name or its rules.

6.6 REVIEWS

- 6.6.1 At any stage following the grant of a club premises certificate, a responsible authority or any other person may apply for a review of the certificate in the event of any perceived failure to promote one or more of the licensing objectives.
- 6.6.2 Although the licensing authority may act in its capacity as a responsible authority to apply for a review of a club premises certificate, it will not normally do so on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review in their own right if they have grounds to do so.
- 6.6.3 Where the licensing authority does act as a responsible authority and applies for a review, it will make provision for an appropriate separation of responsibilities in order to ensure procedural fairness and eliminate conflicts of interest.
- 6.6.4 Reviews allow the Licensing and Appeals Hearings Panel, if necessary, to modify the club premises certificate conditions or, in extreme cases, to suspend or revoke all or part of the certificate.

6.7 PLANS OF PREMISES

- 6.7.1 Premises plans are not required to be submitted in any particular scale, but they must be in a format which is "clear and legible in all material respects" (i.e. they must be accessible and provide sufficient detail for the licensing authority to be able to determine the application, including the relative size of any features relevant to the application).
- 6.7.2 There is no requirement for plans to be professionally drawn as long as they clearly show all the prescribed information (see Annex B).

6.8 OPERATING SCHEDULE

- 6.8.1 In completing an operating schedule, applicants must describe the steps that are appropriate for the promotion of the licensing objectives having had regard to this policy. Applicants are expected to include positive proposals in their application on how they will manage any potential risks.
- 6.8.2 While applicants are not required to seek the views of responsible authorities before formally submitting an application, they may find them to be a useful source of expert advice on local issues that should be taken into consideration when making an application.

6.9 SUBMITTING APPLICATIONS

6.9.1 Applications may be submitted:

- by post using the application forms available on the council's website;
- via email using the application forms available on the council's website; or
- online via www.gov.uk

6.9.2 If an applicant submits any part of their application in writing, the applicant will be responsible for sending copies to each of the appropriate responsible authorities. However, if an application is submitted online or via email, the licensing authority will be responsible for copying it to responsible authorities.

6.9.3 If information is missing or incorrect, the licensing authority may 'hold' the application until the applicant has supplied all of the required information. This effectively resets the time period for determining an application and may be done any number of times until the application form is complete.

6.10 DETERMINING UNCONTESTED APPLICATIONS

6.10.1 In the absence of any representations the application will be granted, subject only to any mandatory conditions and those conditions which form part of the operating schedule.

6.11 REPRESENTATIONS

6.11.1 Responsible authorities and any other persons may make relevant representations in respect of applications for the grant or variation of a club premises certificate. In these cases, the application will be referred to the Licensing and Appeals Hearings Panel for determination.

6.11.2 Representations must be made in writing and may be amplified at the subsequent hearing. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

6.12 HEARINGS

6.12.1 The licensing authority must hold a hearing within a prescribed period where relevant representations are made.

6.12.2 Notices will be sent to each party informing them of the date so that they may attend if they wish to give evidence at the hearing.

6.12.3 The procedure for hearings is attached at Annex C.

6.13 PERIOD OF VALIDITY

6.13.1 A club premises certificate will remain valid unless:

- it is suspended;
- it is surrendered; or

- it is withdrawn by the licensing authority.

6.14 APPEALS

6.14.1 Any party aggrieved by the decision of the Licensing and Appeals Hearings Panel can appeal to the Magistrates' Court.

6.15 CONDITIONS

6.15.1 Conditions on club premises certificates will fall into one of three categories as follows:

- Mandatory conditions;
- Conditions consistent with the applicant's operating schedule; and
- Conditions imposed by the Licensing and Appeals Hearings Panel.

6.15.2 Mandatory conditions are attached to all club premises certificates, where appropriate, to ensure that:

- The admission of children to the exhibition of any film is restricted in accordance with any recommendation by the film classification body or the licensing authority;
- Any individual carrying out a security activity in accordance with a licence condition is authorised under the Private Security Industry Act 2001;
- An age verification policy is adopted and implemented in relation to the sale or supply of alcohol;
- The age verification policy requires individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either a holographic mark or an ultraviolet feature;
- No alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price;
- Staff do not carry out, arrange or participate in any irresponsible promotions in relation to the premises;
- Free potable water is provided on request to customers where it is reasonably available;
- Any alcohol supplied for consumption off the premises are made to a member of the club in person and may only be removed from the premises in a sealed container; and
- The following drinks (if sold on the premises) are available in the following measures:
 - beer or cider - half pint
 - gin, rum, vodka or whisky - 25ml or 35ml
 - still wine in a glass – 125ml.

6.15.3 The mandatory conditions are prescribed in legislation and are subject to periodic change. The licensing authority will not necessarily replace club premises certificates following every change but the changes will be reflected when any other amendments are made by the licence holder. A full schedule of the current mandatory conditions will be maintained on the council's website.

- 6.15.4 Clubs should be aware that mandatory conditions will apply to their club premises certificates, even if they are not printed upon it, and as such are encouraged to periodically check for updates to the current conditions.
- 6.15.5 Proposals put forward by an applicant to promote the licensing objectives may, at the discretion of the licensing authority, be imposed on a club premises certificates in the form of clear and enforceable conditions. Any such conditions must be consistent with the applicant's operating schedule. Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule.
- 6.15.6 The Licensing and Appeals Hearings Panel may impose additional conditions upon receipt of relevant representations if it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate in order to promote one or more of the four licensing objectives.
- 6.15.7 The licensing authority will be alive to the indirect costs that can arise as a result of conditions being imposed on club premises certificates. Conditions may be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. In any case, licensing authorities have a general responsibility to avoid imposing unnecessary regulatory burdens on businesses⁵.

6.16 PLANNING PERMISSION

- 6.16.1 Planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency.
- 6.16.2 The planning and licensing regimes involve consideration of different (albeit related) matters. The Licensing and Appeals Hearings Panel is not bound by decisions made by a planning committee, and vice versa.
- 6.16.3 There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of club premises. Where these hours are different to the hours shown on the club premises certificate, the club must observe the earlier closing time.
- 6.16.4 Clubs operating in breach of their planning permission would be liable to prosecution under planning law.

⁵ [Regulators' Code](#) - Better Regulation Delivery Office – April 2014

PART 7: TEMPORARY EVENT NOTICES

7.1 INTRODUCTION

- 7.1.1 Temporary Event Notices (TENs) allow licensable activities to take place at events involving no more than 499 people at any one time.

- 7.1.2 The proposed premises user may notify the licensing authority of an event and, provided certain requirements have been complied with, the activities will be authorised.
- 7.1.3 A TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required.

7.2 CRITERIA

- 7.2.1 Any individual aged 18 or over may give a maximum of five standard TENs or two late TENs per calendar year to authorise the carrying on of licensable activities from any premises.
- 7.2.2 A temporary event notice must be accompanied by the requisite fee.
- 7.2.3 A standard TEN must be given to the Licensing Authority no later than 10 working days before the day on which the event is to start.
- 7.2.4 A late TEN must be given to the Licensing Authority no later than five working days before the day on which the event is to start.
- 7.2.5 Unless it is sent electronically, a copy of the TEN must also be sent to North Yorkshire Police and Hambleton District Council's Environmental Health Service at least ten working days before the event (or five working days in the case of a late TEN).
- 7.2.6 The following limitations are also imposed on the use of TENs:
- the number of times a premises user may give a TEN is 50 times in a calendar year for a personal licence holder and five times in a calendar year for other people;
 - the number of times a premises user may give a late TEN is limited to 10 times in a calendar year for a personal licence holder and twice for other people (note: late TENs count towards the total number of permitted TENs);
 - the number of times a TEN may be given for any particular premises is 15 times in a calendar year;
 - the maximum duration of an event authorised by a TEN is 168 hours (seven days);
 - the maximum total duration of the events authorised by TENs in relation to individual premises is 21 days in a calendar year;
 - the maximum number of people attending at any one time is 499; and
 - the minimum period between events authorised under separate TENs in relation to the same premises (not including withdrawn TENs) by the same premises user is 24 hours.

7.3 WORKING DAYS

- 7.3.1 A "working day" under the 2003 Act means any day other than a Saturday, Sunday, Christmas Day, Good Friday or Bank Holiday.

- 7.3.2 The expression “five (or ten) working days before the day on which the event begins” should be interpreted in accordance with the legal principle that fractions of a day are to be disregarded. This is necessary to ensure that time periods specified in legislation do not end up being shorter than the period specified by Parliament.

7.4 OBJECTIONS

- 7.4.1 Provided that the criteria set out above are met, only North Yorkshire Police and the council’s Environmental Health Service may object to an event being authorised by a TEN.
- 7.4.2 Should the licensing authority receive an objection notice to a late TEN it is required to serve a counter notice no later than 24 hours before the event and the event will not then be permitted.

7.5 HEARINGS

- 7.5.1 Where an objection notice is received in respect of a standard TEN, the licensing authority must hold a hearing to consider any potential adverse effects on the licensing objectives.
- 7.5.2 The licensing authority must decide whether it is appropriate for the promotion of the licensing objectives to issue a counter-notice, which has the effect of cancelling the authorisation to carry on licensable activities.
- 7.5.3 Where the authority has decided not to issue a counter-notice, the licensing authority may resolve to give effect to conditions from a premises licence or club premises certificate if it considers this appropriate for the promotion of the licensing objectives.
- 7.5.4 Any conditions brought forward will be replicated in the same form as used on the licence or certificate, and will be imposed only if they address issues raised within objection notices given to the authority. The authority will not utilise this power to condition or restrict aspects of the event which are not referenced within an objection notice or supplementary representations.
- 7.5.5 If the licensing authority is of the opinion that an event should not proceed, it will issue a counter-notice. The power to impose conditions will not be utilised to impose conditions which are inconsistent with the proposed event, or which are impossible for the premises user to comply with.
- 7.5.6 The licensing authority has no other power to impose conditions on temporary event notices. Undertakings agreed between a premises user and a responsible authority to resolve objections to a TEN are unenforceable, and are therefore discouraged.

PART 8: ENFORCEMENT

8.1 INTRODUCTION

- 8.1.1 This policy sets out the standards and guidance that will be applied by the licensing authority when discharging its functions under the Licensing Act 2003.
- 8.1.2 The policy applies to enforcement and regulation affecting businesses and members of the public.
- 8.1.3 The Regulators' Code⁶ has been considered in order to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between the licensing authority and the trade.
- 8.1.4 The council aims to reduce regulatory burdens and support compliant business growth by ensuring that each requirement is properly justified by the risk it seeks to address, balancing the cost of the requirement against the benefit to the public.

8.2 OVERALL AIM OF THE ENFORCEMENT POLICY

- 8.2.1 The aim of the licensing authority is to undertake its regulatory and enforcement role in a fair, open and consistent manner. In doing this it will act in accordance with the guidance and standards set out in this policy.

In particular, the licensing authority will:-

- Consult with parties subject to regulation and enforcement by the licensing authority about the standards it sets in undertaking this role;
 - Work with individuals and businesses to assist them in complying with their legal duties and obligations;
 - Ensure its staff are appropriately trained and apply the policy professionally and consistently;
 - Make information about the policy widely available to the public and businesses within the district;
 - Monitor compliance with the policy and review it from time to time in consultation with parties subject to its application; and
 - Comply with the various requirements and standards of external legislation, guidance, corporate policy and good practice identified in the Environmental Health Service Enforcement Strategy and Policy.
- 8.2.2 The Authority has a statutory duty to ensure that drivers, vehicles and operators are appropriately licensed and carry out their trade in accordance with relevant legislation, byelaws, statutory notices and conditions. The means by which this is achieved is through enforcement.

8.3 GUIDING PRINCIPLES

- 8.3.1 In undertaking its regulatory and enforcement role, the licensing authority will have regard to the following guiding principles:-

⁶ Department for Business, Innovation & Skills – Better Regulation Delivery Office – July 2013

- Any decision regarding enforcement action will be impartial and objective, and will not be affected by race, gender, sexual orientation or religious beliefs of any alleged offender, complainant or witness;
- The licensing authority believes the vast majority of individuals and businesses wish to comply with the legal requirements placed upon them and should be assisted in doing so;
- In dealing with any enforcement situation, the licensing authority's actions will be proportionate to the scale, seriousness and intentionality of any non-compliance;
- There will be consistency of enforcement whilst recognising individual circumstances which may modify the appropriate action to be taken in each case;
- Except in the most serious cases where advice/warnings have not been heeded, adequate opportunity will be given to rectify non-compliance before formal legal action is commenced;
- Enforcement is seen as a final means of securing compliance with the appropriate standards, and not as an end in itself;
- Prosecution will normally only be considered where it is in the public interest to do so and in serious or blatant cases, or where other approaches have failed;
- Regard shall be had to the relevant legislation and codes of practice which protect the rights of the individual and guide enforcement action (including Human Rights Act 1998, Code for Crown Prosecutors, EHS Enforcement Policy and Strategy); and
- Regard shall be had to the council's equal opportunities and customer care policies.

8.4 STANDARDS

8.4.1 The licensing authority will always endeavour to meet the highest standards of service in undertaking its regulatory and enforcement function. The following specific level of service standards will be applied:-

- Matters relating to enforcement and regulation will be dealt with promptly, with enquiries and complaints receiving a first response within three working days;
- Except in the case of necessary and approved covert investigations, officers will announce themselves on arrival at premises and show identification unless they are already well known to the person;
- Officers will provide their name and a contact telephone number to those persons or businesses with whom they are in contact concerning a regulatory or enforcement matter;
- Requests for service relating to enforcement or regulatory matters will normally only be dealt with if the name and address of the complainant is given. Any such identification will be treated in confidence, but may need to be disclosed should formal legal proceedings be taken against the person or business to which the complaint relates. Anonymous complaints may, however, be investigated if they relate to protection of children or other vulnerable groups, or matters relating to serious safety issues etc or where the issue complained of can be determined by the Enforcement Officers themselves without further involvement of the complainant;
- Officers will be professional, courteous and helpful in their conduct of regulatory or enforcement matters, and wherever possible will seek to work with individuals and businesses towards compliance;
- Officers will endeavour to provide advice in a clear and simple manner and where any corrective or remedial work is necessary, an explanation will be given as to why it is necessary, and over what timescale it is required;
- Officers generally seek an informal resolution to cases of non-compliance except where immediate formal enforcement action is required;

- Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken; and
- Where there is known to be involvement of any other enforcement agency, or any case involves joint enforcement arrangements, the licensing authority will consult with that other agency prior to taking any formal enforcement action.

8.5 ENFORCEMENT ACTIVITIES

8.5.1 Enforcement activities will fall into the following broad areas:-

- Undertaking routine inspections of licensed premises;
- Undertaking proactive inspections, sometimes with other agencies;
- Responding to requests for service, complaints or information provided by the public, businesses and others;
- Offering general and specific advice to applicants, licensees and the public about the requirements of the licensing regime; and
- Taking action and, where necessary, imposing sanctions in response to breaches or the requirements of the licensing regime.

8.5.2 Records of enforcement action will be kept.

8.5.3 Where there is known to be involvement of any other enforcement agency or any case involves joint enforcement arrangements, the licensing authority will consult with that other agency prior to taking any enforcement action.

8.6 THE ENFORCEMENT ACTIONS AVAILABLE

8.6.1 Decisions about licence applications and enforcement will be consistent, balanced and fair and be made by reference to approved standards. This will ensure the safety of the public is adequately protected. The seriousness of any infringement is the starting point for action to be taken in particular circumstances. Final action taken will depend on any modifying or mitigating factors present.

8.6.2 After having due regard to all relevant information and evidence, the following enforcement options will be considered:

- To take no action;
- To take informal action;
- To issue a written warning;
- To issue a simple caution;
- To review a licence;
- Prosecution.

8.6.3 **No Action** – this course of action is only considered appropriate where, in the authorised officer's opinion, all relevant statutes and guidelines are satisfactorily complied with.

8.6.4 **Informal Action** – informal actions, such as offering advice (which can be written), are generally used by Enforcement Officers to secure good conduct by licence holders. Such enforcement action may be appropriate in any of the following circumstances:-

- If the behaviour or offence does not warrant more formal action;

- Consideration of the history of the licensee results in reasonable expectation that informal action will achieve future compliance;
- Confidence in the licensee is high; and
- Consequences of non-compliance will not pose a significant risk to public safety.

Even where some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a more formal approach. Such decisions will be at the decision-making officer's discretion.

8.6.5 **Written Warnings** – this action will be taken where it is considered important to formally document the breach. The written document will be evidence that the licensee knew about the issue should it arise again and may override any mitigation.

8.6.6 **Simple Cautions** – where there is a criminal offence, but the public interest does not require a prosecution, a simple caution may be an appropriate course of action as an alternative to prosecution. The aim of a simple caution is to:

- offer a proportionate response to low-level offending where the offender has admitted the offence;
- deliver swift, simple and effective justice that carries a deterrent effect;
- record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks;
- reduce the chances of them re-offending; and
- increase the amount of time officers spend dealing with more serious crime and reduce the amount of time officers spend completing paperwork and attending court, whilst simultaneously reducing the burden on the courts⁷.

8.6.7 **Prosecution** - the decision to prosecute is a serious matter and will require consultation with the Principal Licensing Officer, the Environmental Health Manager and the council's Legal Manager. Prosecution will, in general, be restricted to those circumstances where the law is blatantly disregarded, legitimate instructions of the Authority are not followed and/or the public is put at serious risk.

The circumstances that are likely to justify prosecution may be characterised by one or more of the following:-

- Where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage to those who disregard it;
- Where there appears to have been reckless disregard for the licensing objectives;
- Where there have been repeated breaches of legal requirements;
- Where a particular type of offence is prevalent;
- Where a particular contravention has caused serious public alarm;
- Where false information, either in written or verbal form, is deliberately provided to the licensing authority or to an investigating officer;
- Where the offender has repeatedly ignored advice;
- Where there is a widespread disregard of the law and appropriate notice has been given to the public or the business community that legal proceedings will be considered for future breaches; or
- Where some other significant public purpose would be served.

⁷ Simple Cautions for Adult Offenders - Ministry of Justice (April 2015)

8.7 APPEALS

- 8.7.1 Appeals against decisions of the Licensing and Appeals Hearings Panel may be made to the Magistrates' Court.
- 8.7.2 Any notifications of enforcement action will include written information about how to appeal. This will explain how, where and within what time period an appeal may be brought and on what grounds.

8.8 COMPLAINTS ABOUT LICENSEES

- 8.8.1 Members of the general public are able to make complaints to the licensing authority about the conduct and/or service received from licensees and the licensing authority will adhere to the following procedure:-
- Ascertain the facts regarding the complaint and decide if actionable;
 - Register the complaint and refer to an investigating officer;
 - Contact the complainant within 5 working days;
 - Investigate the complaint;
 - Make a decision; and
 - Inform all parties of that decision.
- 8.8.2 Licensees who are the subject of a written complaint will be informed of the nature of the complaint, including the date, time and location of the incident and, if necessary, given sufficient notice to attend any interview.
- 8.8.3 The outcome of the investigation will be implemented in accordance with this policy.
- 8.8.4 Disputes between licensees should be resolved between themselves and not through this procedure.
- 8.8.5 If there is evidence relating to alleged serious criminal offence, such as threats of violence, assault etc, this will be referred to North Yorkshire Police.

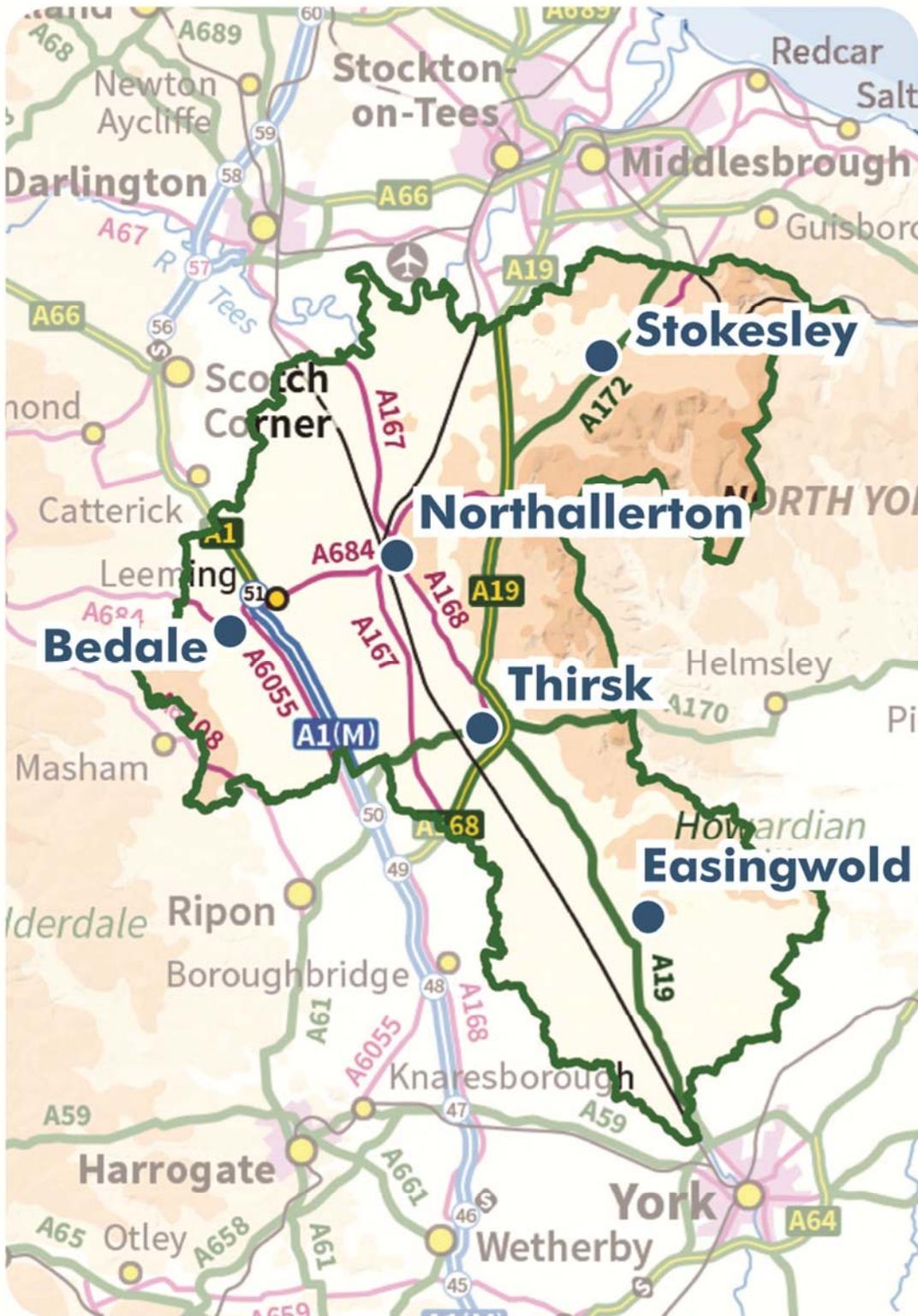
8.9 COMPLAINTS ABOUT THE SERVICE

- 8.9.1 Any dissatisfaction with the actions of an officer of the council will be dealt with under the council's Feedback Procedure, copies of which are available from offices of the council, by accessing the council's website (www.hambleton.gov.uk) or by telephoning Hambleton District Council on 01609 779977.

8.10 POLICY REVIEW

- 8.10.1 The implications and effectiveness of this policy will be regularly monitored.
- 8.10.2 This policy will be reviewed where appropriate to reflect changes indicated by the internal monitoring arrangements, by legislation or by guidance issued by Central Government.
- 8.10.3 Views of the policy and its implementation will be sought to ensure it continues to meet the principles of good enforcement.

MAP OF HAMBLETON



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PREMISES PLANS

The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005/42 as amended by Licensing Act 2003 (Premises Licences and Club Premises Certificates) (Amendment) (Electronic Applications etc) Regulations 2009/3159

An application for a premises licence or a club premises certificate shall be accompanied by a plan of the premises to which the application relates and shall comply with the following:

The information contained in the plan must be clear and legible in all material respects⁸.

The plan shall show—

- (a) the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
- (b) the location of points of access to and egress from the premises;
- (c) if different from sub-paragraph (3)(b), the location of escape routes from the premises;
- (d) in a case where the premises is to be used for more than one licensable activity, the area within the premises used for each activity;
- (e) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
- (f) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
- (g) in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
- (h) in the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
- (i) the location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment; and
- (j) the location of a kitchen, if any, on the premises.

The plan may include a legend through which the above matters are sufficiently illustrated by the use of symbols on the plan.

⁸ Substituted by Licensing Act 2003 (Premises licences and club premises certificates) (Amendment) (Electronic Applications etc) Regulations 2009/3159 reg.6 (December 28, 2009)

LICENSING AND APPEALS HEARINGS PANEL PROCEDURE

The hearing of matters will be less formal than hearings before, for instance, a Magistrates' Court. In particular, strict rules of evidence are not adhered to and information is not provided under oath. Nevertheless, proceedings before the Panel will observe basic rules of natural justice.

At the beginning of the hearing the Chairman shall:-

- ask those present to introduce themselves;
- explain the procedure;
- ask the parties whether they consider the public should be excluded from all or part of the hearing;
- ask the parties whether they wish permission for another person to appear at the hearing.

The Panel will consider whether the public should be excluded from all or any part of the hearing. This will only be done if the Panel considers that the public interest in so doing outweighs the public interest in the hearing taking place in public.

The Panel will consider requests for permission for other persons to appear at the hearing. Such permission will not be unreasonably withheld.

The Chairman will ask the Environmental Health Manager to outline the background to the case. The Environmental Health Manager's role will be to provide factual information to the Panel.

The hearing shall take the form of a discussion led by the Panel (through the Chairman) and cross-examination shall not be permitted unless the Panel considers that cross-examination is required for it to consider the matter.

The Chairman is likely to ask for the views of the parties in the following order:-

- (a) the applicant/licence holder/Notice giver (including any other persons who have been given permission to participate);
- (b) any party making representations (including any other persons who have been given permission to participate).

The applicant/licence holder/Notice giver will be given the final opportunity to address the Panel.

Each party will be given an equal maximum period of time in which to put forward any additional information requested by the Council, to question other persons (if given permission by the Panel) and address the Panel.

The Panel may exclude disruptive persons in certain circumstances.

The Panel may adjourn the hearing in certain circumstances.

The Panel may ask the parties to withdraw so that it can consider its determination. In considering its determination, the Panel may ask its Legal Advisor to provide it with legal and procedural advice. The nature of this advice will be notified to the parties.

The Panel will make its determination at the end of the hearing and this will be confirmed in writing.