



## DISTRICT COUNCIL

Despatched: 08.10.13

### **LICENSING COMMITTEE**

**16 October 2013 at 6.00 pm**

**Conference Room, Argyle Road, Sevenoaks**

### **AGENDA**

#### **Membership:**

Chairman: Cllr. Mrs. Morris Vice-Chairman: Cllr. Clark  
Cllrs. Abraham, Ayres, Mrs. Ayres, Cooke, Davison, Mrs. George, Orridge, Mrs. Parkin,  
Piper, Raikes and Walshe

	<b><u>Pages</u></b>	<b><u>Contact</u></b>
<b>Apologies for Absence</b>		
1. <b>Minutes</b> Minutes of the meetings of the Committee held on 25 July 2013 and of the Sub-Committee held on 19 August 2013, 2 September 2013, 3 September 2013, 9 September 2013 and 13 September 2013.	(Pages 1 - 32)	
2. <b>Declarations of interest</b> Any interests not already registered		
3. <b>Actions from the previous meeting</b>	(Pages 33 - 34)	
4. <b>Scrap Metal Dealers Act 2013</b>  Update and Setting of Fees	(Pages 35 - 52)	Claire Perry Tel: 01732 227325
5. <b>Amendments to the Constitution relating to the Licensing function</b>	(Pages 53 - 86)	Claire Perry Tel: 01732 227325

#### **EXEMPT ITEMS**

(At the time of preparing this agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public.)

To assist in the speedy and efficient despatch of business, Members wishing to obtain

factual information on items included on the Agenda are asked to enquire of the appropriate Contact Officer named on a report prior to the day of the meeting.

Should you require a copy of this agenda or any of the reports listed on it in another format please do not hesitate to contact the Democratic Services Team as set out below.

For any other queries concerning this agenda or the meeting please contact:

**The Democratic Services Team (01732 227241)**

**LICENSING COMMITTEE**

Minutes of the meeting held on 25 July 2013 commencing at 6.00 pm

Present: Cllr. Mrs. Morris (Chairman)

Cllr. Clark (Vice-Chairman)

Cllrs. Abraham, Cooke, Clark, Davison, Piper and Raikes

Apologies for absence were received from Cllrs. Ayres, Mrs. Ayres, Mrs. George, Mrs. Parkin and Walshe

1. Minutes

Resolved: That the minutes of the meeting of the Committee held on the 27 March 2013 and of the Sub-Committee held on 1 July 2013 be approved and signed by the Chairman as a correct record.

2. Declarations of interest

No declarations of interest were made.

3. Actions from the previous meeting

There were no actions from the previous meeting.

4. Membership of Licensing Hearing Sub-Committees

The Chairman drew Members attention to the new number of Members on the Committee. There would now be four Sub-Committees for Licensing Hearings with Cllr Mrs Morris as floating Member.

Resolved: That the memberships of the Licensing Sub-Committees as set out in the report be approved.

The Chairman reminded Members to respond to the training invites that the Licensing Partnership Manager had sent out. She encouraged Members to spend a morning in the Licensing Team to see the complexity of the processes involved with the Licensing Partnership (Maidstone Borough Council, Tunbridge Wells Borough Council and Sevenoaks District Council). The Licensing Partnership Manager also informed the Committee that if they wished to take part in enforcement visits they were to let her know.

*Action 1: The Licensing Partnership Manager to send out a list with the dates for the training to the Committee.*

5. FACE TO FACE CHARITABLE STREET COLLECTORS

The Licensing Partnership Manager presented a report requesting agreement to enter into a Site Management Agreement (SMA) in order to better regulate and control the

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**Licensing Committee - Thursday, 25 July 2013**

numbers, frequency and location of direct debit street collectors in the Sevenoaks District.

Members considered the report for the control of Direct Debit Charitable Street Collectors. Members' questioned why Sevenoaks High Street was the only designated location within the District. The Licensing Partnership Manager explained that it was because it was where the Direct Debit Charitable Street Collectors had requested to be. If there became a demand for other areas the agreement could be amended to include these.

The Licensing Partnership Manager tabled the Public Fundraising Regulatory Association ([PFRA](#)) [Rule Book](#). If Direct Debit Charitable Street Collectors were seen to break the rules then they would accumulate points, similar to the taxis. This would go on a national database that was administered by the PFRA. If the rules were broken anywhere in the Country, not just in Sevenoaks, this would also be recorded.

There was no membership fee. The only cost would be officer time. There were no regulations for Direct Debit Charitable Street Collectors presently, by signing up to the agreement charities were agreeing to behave in accordance with the PFRA rule book. Members asked how the rules would be enforced. The Licensing Partnership Manager advised that there were Police Community Support Officers (PCSOs), Police and the Licensing Officers who would take note if the rules were not followed and pass the information on to the PFRA. There could also be site visits by members of the PFRA.

Resolved: A Site Management agreement be entered into regarding the activities of Face-to-Face Direct Debit Charitable Street Collectors in Sevenoaks with the Public Fundraising Association (PFRA), attached at Appendix A to the report.

### 6. SCRAP METAL DEALERS ACT

The Licensing Partnership Manager verbally updated the Committee on the Scrap Metal Dealers Act 2013. The primary legislation had been passed but the guidance and fee regulations were still awaited.

Scrap metal dealers were previously dealt with by Environmental Health at the Council. Since Partnership working all three authorities would deal with it through Licensing. The Scrap Metal Dealers being licenced would have a suitability test which would be like the previous Criminal Records Bureau check, now the Disclosure Barring Service. Licences could be revoked and there would be specified conditions. The Licensing Team would also have powers for inspection. There were two types of Licences; one for the sites and one for the collection of scrap metal. It was thought that it would not require a policy but may just be guidance.

A register was being collated with information that was held by Sevenoaks District Council, Kent Police and Kent County Council. Fee setting guidance and regulations were awaited and the transitional period did not begin until 1 August 2013. All licences would need to be issued by 1 December 2013. The Environment Agency would host the database nationally. There would be a charge for holding the information but the cost was not known yet. The Police could object to applications.

It was anticipated that across the Partnership there could be a significant but not a large number of scrap metal dealers to be licensed.

In response to a question as to whether Dunbrik would need a licence, the Head of Environmental and Operational Services advised that there was a duty to dispose of household waste metal such as tin cans and therefore, would not need to be licenced. If a contractor was used for the removal of a motor vehicle they would have to be licenced.

It was recommended that a further update be given at the next Licensing Committee meeting. If there was not enough information provided in time for the next meeting, then an additional meeting of the Licensing Committee may be necessary.

#### 7. LICENSING PARTNERSHIP ANNUAL REPORT

The Licensing Partnership Manager presented a report on progress over the past year and an update on projects for the future for the Partnership.

The Head of Environmental and Operational Services advised that the report had been considered by the Services Select Committee on 4 April 2013. This report would be sent at this time each year.

The Licensing Partnership Manager tabled June 2013 [Performance Indicators](#). She explained that she had added the number of applications received to provide more context.

Members asked whether many complaints were received. The Licensing Partnership Manager advised that Sevenoaks District Council received a minimum number of complaints regarding taxi licensing in comparison to other Councils. There were liaison forums held throughout the year with taxi drivers where issues could be raised.

Members requested clarification regarding the number of Animal Establishments in Sevenoaks. The Head of Environmental and Operational Services advised that the Licenses were dealt with by Environmental Health and this was something that was historical. The Animal welfare fees would be set at the Licensing Committee.

Resolved: That the Licensing Partnership Annual Report be approved.

THE MEETING WAS CONCLUDED AT 6.47 pm

Chairman

## Agenda Item 1

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LICENSING HEARING

Minutes of the meeting of the Licensing Hearing  
held on 19 August 2013 commencing at 1.05 pm

Present: Cllrs. Abraham, Mrs. Ayres and Ayres

Also present: P.C. Beresford - Kent Police Representative  
Ms. C. Eames - Objector's Legal Representative  
Mr. G. Barnes - Objector  
Mr. K. Morris - Objector  
Ms. S. Pegler - Objector  
Ms. J. Bolton - Licensing Officer  
Mrs. L. Leeds - Licensing Officer  
Mr. G. Grove - Legal Adviser  
Ms V. Etheridge - Democratic Services Officer  
Mr. R. Wilson - Observer (Head of Environment & Operational Services)

1. Appointment of Chairman

Resolved: That Cllr. Ayres be appointed Chairman of the meeting.

2. Declarations of interest

There were no declarations of interest.

3. Licensing Act 2003 - consideration of interim steps following an application for a summary review of a premises licence - Royal Oak, West York, Ash

The Hearing gave consideration to a report by the Head of Environment & Operational Services giving details of an application under Section 53 of the Licensing Act 2003 for a summary review hearing and that accordingly the application had been referred to the Sub-Committee for consideration of interim steps pending a formal review hearing and determination on the grounds of the licensing objective of prevention of crime and disorder in accordance with Section 53A of the Licensing Act 2003.

The application was made by Kent Police and the grounds for review were that on Sunday 11 August 2013 there was an incident at the premises involving serious crime under section 53A of the Licensing Act 2003 (premises associated with serious crime and disorder), and the standard review route would take at least 28 days.

The Hearing heard from PC Beresford, the applicant on behalf of Kent Police and Ms Eames (Solicitor representing Shepherd Neame) and Mr Barnes (Property and Tenanted Trade Director – Shepherd Neame), the objectors to the application.

PC Beresford advised the Sub Committee that Kent Police did not request summary reviews as a matter of course but there were a number of factors in this case that gave them real concern that should these factors go unaddressed, the road was open for another serious assault, and a management response falling far below what is reasonable and expected, that could result in serious injury or worse of the reasons for

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Licensing Hearing - Monday, 19 August 2013

the application. In response to the Chairman he advised that, subject to the Sub Committee's approval, certain interim steps had been agreed with the licence holder. These were that: Kevin Morris cease to be designated premises supervisor and be replaced with immediate effect by Samantha Pegler (the stepdaughter of Mr Morris and an existing member of staff); the terminal hour for sale of alcohol to be changed to 23.00 – all week, up until the full hearing; the terminal hour for the premises being open to be changed to 23.30 – all week, up until the full hearing; additional visits to be carried out by brewery management; a suitable drugs policy to be put in place; and adaptation of the CCTV.

In response to questions from the Sub Committee he advised that he had requested the transcript of the discussion with the emergency services operator which should be available in time for the full review hearing, and that he did not have dates or details with him but he believed that there had been at least one other incident at the premises in the past month.

Ms Eames confirmed the agreement that had been reached with Kent Police, and added that the restrictions should only be in place until the full review hearing. In response to questions the Sub Committee was advised that Mr Morris was a tenant at the premises and would remain living there for the time being. No action would be taken by the licence holder when at the moment no details or evidence had been passed to them. The Sub Committee advised that they did not feel happy about the choice of alternative designated premises manager, Ms Eames pointed out that the agreement had been reached with Kent Police. PC Beresford confirmed that he was happy with the choice as Ms Pegler had, since the incident, been very cooperative.

It was confirmed that this was an interim steps hearing only. Pending the submission of the full evidence at the review hearing, which the licence holder had not yet had access to, they had decided not to take a challenging role.

At 13.35 the Hearing Members, the Council's Legal Adviser and Democratic Services Officer withdrew to consider the issues raised.

At 13.47 the Hearing Members, Council's Legal Adviser and Democratic Services Officer returned to the Council Chamber.

The Chairman informed the Hearing that the Sub-Committee had had regard to the representations made by the Applicant and interested parties as well as the guidance issued under Section 53A of the Licensing Act 2003 and the Council's Statement of Licensing policy.

It was therefore unanimously,

Resolved: That the following modifications be made to the current premises licence pending the full review hearing

- a) Kevin Morris cease to be designated premises supervisor and be replaced with immediate effect by Samantha Pegler;
- b) the terminal hour for sale of alcohol to be changed to 23.00, seven days a week;
- c) the terminal hour for the premises being open to be changed to 23.30, seven days a week;



Licensing Hearing - Monday, 19 August 2013

- d) additional visits to be carried out by brewery management;
- e) a suitable drugs policy to be put in place; and
- f) adaptation of the CCTV and the outside camera to be repaired.

THE MEETING WAS CONCLUDED AT 1.47 pm

Chairman

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LICENSING ACT 2003 – Section 53a

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**Notice of determination of interim steps following an application for a summary review of a premises licence**

**To:** Chief Officer of Police for the Kent Police area  
**Of:** Maidstone Police Station, Palace Avenue, Maidstone Kent  
**Ref:** 11/00342/LAPMV

Sevenoaks District Council being the licensing authority, on the 15 August 2013 received an application for the review of a premises licence in respect of premises known as The Royal Oak, West Yoke, Ash TN15 7HT.

On the 19 August 2013, within 48 hours of receipt of the chief officer's application, a hearing was held to consider whether it was necessary to take interim steps, and having considered it the Council have determined as follows:

**To make the following modifications to the Premises Licence pending the full review hearing** (to be held within 28 days of the application being received):

Supply of alcohol:

Sunday to Thursday 10:00 - 23:00  
Friday and Saturday 10:00 - 23:00

The opening hours of the premises:

Sunday to Thursday 10:00 - 23:30  
Friday and Saturday 10:00 - 23:30

The designated premises supervisor where the premises licence authorises for the supply of alcohol be changed from

Mr Kevin Morris  
3 Gresham Close  
Rainham  
Kent. ME8 7RR

to

Samantha Pegler  
Royal Oak,  
West Yoke,  
Ash TN15 7HT

**To add conditions to the Licence as follows (pending the full review hearing):**

CCTV to be adapted and outside camera repaired, to allow immediate taking of images recorded by police upon arrival whether on disk, video tape or otherwise. All recording to be kept for a minimum period of 28 days – prevention of crime and disorder, by allowing immediate viewing and circulation aiding apprehension of offenders – this allows an interim measure by the premises with CCTV coverage continuing following an incident.

A suitable Drugs Policy to be worked on and permanently put in place.

**To add the following informative to the Licence as follows (pending the full review hearing):**

Additional visits by brewery staff to be carried out.

The reason for the above modifications to the premises licence is to take interim steps due to the potential undermining of the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance in light of an alleged breach of licence conditions, until a full review hearing is held.

The interim steps are effective from the 19 August 2013.

Dated:

Signed .....

Chairman – Licensing Hearing

Signed .....

Designation – Licensing Officer

Please address any communications to:

The Licensing Partnership  
Community Services  
Council Offices  
PO Box 182  
Argyle Road  
Sevenoaks  
Kent TN13 1GP

**Note: An appeal against the interim steps may be made to the above address and a further hearing held within a further 48 hours pursuant to Section 53A Summary Review Guidance 4.(4.1).**

**LICENSING HEARING**

Minutes of the meeting held on 2 September 2013 commencing at 10.30 am

Present: Cllrs. Abraham, Mrs. Morris and Raikes

Also present	P.C. Beresford	-	Kent Police Representative
	Mr. M. Trigg	-	Objector's Legal Representative
	Mr. A. Benedict	-	Objector
	Mrs. J. Benedict	-	Objector
	Mrs. L. Leeds	-	Licensing Officer
	Mr. L. Roberts	-	Legal Advisor
	Mr. D. Lagzdins	-	Democratic Services Officer

There were no apologies for absence.

1. Appointment of Chairman

Resolved: That Cllr. Raikes be appointed as the Chairman of the meeting.

2. Declarations of interest.

There were no declarations of interest.

3. Application for a review of the Premises Licence for the Edenbridge Cellar, 58 High Street, Edenbridge, Kent. TN8 5AJ

The Hearing gave consideration to a report by the Head of Environmental and Operational Services giving details of an application from Kent Police for the review of the Licence for Edenbridge Cellar, 58 High Street, Edenbridge, Kent TN8 5AJ under section 51 of the Licensing Act 2003.

The application form for the review and Part A of the Premises Licence were tabled for the hearing's consideration.

The Hearing heard from the Police Licensing Officer. He advised that every attempt had been made to resolve concerns that Kent Police had and that they emphasised building working relationships with licence holders within the District. However, following visits to the premises, there was a falling confidence in the premises supervision. There was concern at the level of training staff received and whether staff had the knowledge and support to refuse underage sales. Kent County Council Trading Standards had also visited the premises and held meetings with the Licence Holder.

There was a perceived lack of visibility from the Designated Premises Supervisor. On a visit in July 2013 staff were unable to provide a contact number for the DPS. Although the premises owner had remote CCTV feed to the Head Office this could be too remote. It was noted that the cultural background of the staff could understandably lead to a reluctance to deal with the police.

The Police Licensing Officer responded to questions from the Sub-Committee. The review was sought on all four licensing objectives as they were all at risk when the supervision was inadequate. There was no compulsion under the licence for the premises to have a

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refusals register but they were an accredited member of the Kent Community Alcohol Partnership which did require this. Levels of compliance had improved with the increase in visits to the premises.

The Hearing heard from the solicitor for the holder of the premises licence. The premises owner had a total of 5 licensed premises most of which were in London, and 15 years of licensing experience. There had been no previous review of any of those licenses or any prosecution.

On 16 August 2013 they had submitted an application to change the Designated Premises Supervisor. There was already a management team of 4 people, each of whom had a personal licence and each premises was visited at least twice per week by one of these people. If any problem was noticed through the remote CCTV then the premises would be contacted immediately. Although there was a perception of a lack of supervision there had been no evidence of any breach and the Police had accepted there was more supervision than was immediately apparent when they had visited. Home Office Guidance stated a DPS could supervise more than one premises. The licence holders had always cooperated with the Police.

The Police concern had originally been about supervision but there was an application submitted to change the DPS who would then be on site 4 days per week. Another licence holder would be present 6 days per week. A till prompt was being considered for age-related products. It was felt that the proposed changes to the licence would be disproportionate to the concern raised. They could lead to an inadvertent breach and it was contrary to guidance to require the DPS to cover only a single store.

In response to questions from the Sub-Committee the solicitor confirmed that Challenge 25 training had been brought back and posters put up. There was little passing trade and so the staff knew the customers and there was no need to update the refusals register. There was CCTV outside the premises and they could increase the recording period from 21 days to a month. No-one under the age of 18 was employed in the shop.

Each party summarised their case.

At 11:13 a.m. the Hearing Members and withdrew to consider the issues raised and the Council's Legal Advisor accompanied them for the purpose of providing legal advice only.

At 11:39 a.m. the Hearing Members and the Council's Legal Advisor returned to the Council Chamber.

The Chairman informed that hearing that a decision had been made. Additional conditions would be added to Part A of the licence that the Premises shall operate a Challenge 25 Policy in accordance with the Kent Community Alcohol Partnership guidelines and shall keep an active, auditable refusal register.

The reason for imposing the condition was the concern about the way the premises had been supervised in the past which would be addressed by the applicant's proposed change of Designated Premises Supervisor and the desirability of keeping an auditable record of refusals.

The Committee felt the conditions to be proportionate given the premises existing membership of the Kent Community Alcohol Partnership.

It was therefore unanimously,

Resolved: That the Premises Licence for Edenbridge Cellar, 58 High Street, Edenbridge, Kent TN8 5AJ be amended as set out in the appendix to these minutes.

THE MEETING WAS CONCLUDED AT 11.41 am

Chairman





LICENSING ACT 2003 – Section 52(10)

**Notice of determination of application for a review of premises licence**

**To:** Chief Officer of Police for the Kent Police area  
**Of:** Maidstone Police Station, Palace Avenue, Maidstone, Kent  
**Ref:** 13/02178/REVIEW

Sevenoaks District Council being the licensing authority, on the 17 July 2013 received an application for a review of the premises licence in respect of premises known as Edenbridge Cellar, 58 High Street, Edenbridge, Kent TN8 5AJ.

On 2 September 2013 there having been a valid request for review under section 51 of the Licensing Act 2003, having considered the application and having held a hearing the Licensing Sub-Committee determined as follows:

**To modify the conditions of the licence in the following respects, namely**

To add conditions to the Licence as follows:

Annex 4 – Conditions attached after a hearing by the Licensing Authority:

That the Premises shall operate a Challenge 25 Policy in accordance with the Kent Community Alcohol Partnership guidelines and shall keep an active, auditable refusal register.

The reason for imposing the condition was the concern about the way the premises had been supervised in the past. The concerns would be addressed by the applicant’s proposed change of Designated Premises Supervisor and the desirability of keeping an auditable record of refusals.

The determination will not have effect (a) until the end of the period given for appealing against the decision, or (b) if the decision is appealed against, until the appeal is disposed of. \*

Dated: \_\_\_\_\_ Signed \_\_\_\_\_  
Chair – Licensing Hearing  
Signed \_\_\_\_\_  
Designation – Licensing Officer

Please address any communications to:

Licensing Partnership  
Sevenoaks District Council  
PO Box 182  
Argyle Road  
Sevenoaks

## Agenda Item B

Kent TN13 1GP

**\*Note:** Pursuant to Part 1 of Schedule 5 of the Licensing Act 2003 as amended, any party eligible to appeal must appeal to a magistrates' court within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

LICENSING HEARING

Minutes of the meeting of the Licensing Hearing  
held on 3 September 2013 commencing at 2.00 pm

Present: Cllrs. Abraham, Davison and Raikes

There were no apologies of absence.

1. Appointment of Chairman

Resolved: That Cllr. Raikes be appointed as the Chairman of the meeting.

2. Declarations of Interest

There were no declarations of interest.

3. Application for a Premises Licence - Martins, 19 - 21 The Row, New Ash Green, Kent. DA3 8JB

The Hearing gave consideration to a report by the Head of Environmental and Operational Services giving details of an application from Martin McColl Ltd for a new Premises Licence under the Licensing Act 2003 for Martins, 19-21 The Row, New Ash Green, Kent. DA3 8JB. It was noted that objections had been received and that accordingly the application had been referred to the Sub-Committee for determination.

The Hearing heard from the applicant's solicitor who explained that throughout the country there were more than 800 Martin stores with premises licenses. He explained that Martin McColl Ltd understood the concerns that had been expressed and procedures were in place to address these. A meeting had taken place between the Police and the Store Manager on the prevention of crime and recommendations made by the Police had been adopted. There would be CCTV in key locations which included oversight of areas where alcohol is kept on display. Recordings would be retained in store and at Head Office. A Challenge 25 policy on age restricted products would operate. The CCTV and the till were linked so that the timing of transactions linked to the timing of images. The videos would be kept for 31 days. The till would keep a record of all the successful and unsuccessful sales of age restricted products. If someone was denied a purchase for not having the correct identification this would be recorded indefinitely.

Other procedures would also be in place such as test purchases. These test purchases would be undertaken by an external company. Training would also be given to all staff on the sales of age restricted products and this would be updated every three months. It was also considered to be a serious disciplinary offence for employees to sell alcohol to those under the age of 18 years.

In response to questions from the Sub-Committee the applicant's solicitor replied that a paper refusal register would not be kept as records were stored electronically on the till at the point of sale. If any sale was rejected then the product, date and time would be recorded. CCTV would also record this. The Area Manager would visit every six weeks and

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Licensing Hearing - Tuesday, 3 September 2013

would inspect the electronic record held. Evidence of these inspections would also be recorded on the system.

The applicant's solicitor confirmed that the Premises Licence would be from 6am to 11pm. The store currently closed at 8pm, however if in the future the store wished to extend its opening hours the Premises Licence would then be in place.

The Hearing heard from Mrs Boniface, one of the objectors, who stated that she objected to another premises selling alcohol which would effect the village life as there was already a Co-op and a pub which sold alcohol. She objected to the selling of age restricted products to those who were underage, especially cigarettes. Another premises selling alcohol would increase the under age drinking problem which already affected the village and could lead to an increase in littering.

The Chairman questioned when the selling of cigarettes to those under age had occurred and she confirmed that it had been more than 10 years ago.

In summary, the Applicants informed the Sub-Committee that they felt there was no evidence for refusal. The store would be well equipped with CCTV and there would be procedures in place to ensure that alcohol was not sold to anyone under age. The issue of the sale of tobacco he urged should not taken into consideration as this had occurred more than 10 years before the current Manager was in place and was therefore historical. The Police had not made any objections to the application and the Store Manager had met with them to discuss additional issues.

At 2:30 p.m. the Hearing Members and withdrew to consider the issues raised and the Council's Legal Advisor accompanied them for the purpose of providing legal advice only.

At 2:37 p.m. the Hearing Members and the Council's Legal Advisor returned to the Council Chamber.

The Chairman informed the Hearing that the Sub-Committee had had regard to the representations made by the Applicant and interested parties, to the guidance issued under s.182 of the Licensing Act 2003 and the Council's statement of Licensing policy. The Sub-Committee felt that the steps that had been described met the set criteria and therefore there was no valid reason the premises license should not be granted on the terms for which it had been applied.

It was therefore unanimously,

Resolved: That a Premises Licence in respect of Martin McColl, Martins, 19-21 The Row, New Ash Green, Kent. DA3 8JB. subject to the conditions contained in license attached as an appendix to these minutes be granted.

THE MEETING WAS CONCLUDED AT 2.39 pm

Chairman

## Notice of determination for application premises licence

**To:** MARTIN MCCOLL LTD

**Of:** MARTIN MCCOLL HOUSE, ASHWELLS ROAD, BRENTWOOD, ESSEX, CM15 9ST

**Ref:** 13/02105/LAPRE

Sevenoaks District Council being the licensing authority, on 10 July 2013 received an application for a premises licence in respect of premises known as Martins, 19-21 The Row, New Ash Green, Kent. DA3 8JB.

On 3 September 2013 there being valid representations which were received but had not been withdrawn, a hearing was held to consider these representations and having considered them the Licensing Sub-Committee determined as follows:

### To grant the Premises Licence:

Section M To allow the sale of alcohol for consumption off the premises every day from 06:00 until 23:00 hours

Section O Hours premises are open to the public from 06:00 until 23:00 hours

### To add the conditions on the Licence as follows:

#### The supply of alcohol

Where a premises licence authorises the supply of alcohol, the licence must include the following conditions:-

No supply of alcohol may be made under the premises licence -

- (a) at a time where there is no designated premises supervisor in respect of the premises licence, or
- (b) 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 must be made or authorised by a person who holds a personal licence.

#### Mandatory Conditions in force from 6 April 2010

4. The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. The policy must require 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 a holographic mark.

This licence granted at the Hearing is effective from 3 September 2013.

Dated:

Signed .....

Chair – Licensing Hearing

Signed .....

Designation – Licensing Officer

Please address any communications to:

Licensing Partnership  
Sevenoaks District Council  
Council Offices  
PO Box 182  
Argyle Road  
Sevenoaks  
Kent TN13 1GP

**Note:** Pursuant to Part 1 of Schedule 5 of the Licensing Act 2003 as amended, any party eligible to appeal must appeal to a magistrates' court within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

**LICENSING HEARING**

Minutes of the meeting  
held on 9 September 2013 commencing at 10.30 am

Present: Cllrs. Mrs. Ayres (Substitute), Davison and Raikes

Also present	P.C. Beresford	-	Kent Police Representative
	Ms. C. Eamy	-	Objector's Legal Representative
	Mr. G. Barnes	-	Objector
	Mr. C. Pattinson	-	Objector
	Ms. S. Pegler	-	Objector
	Mrs. L. Leeds	-	Licensing Officer
	Mr. L. Roberts	-	Legal Advisor
	Mr. D. Lagzdins	-	Democratic Services Officer

1. Appointment of Chairman

Resolved: That Cllr. Davison be appointed as the Chairman of the meeting.

2. Declarations of interest

There were no declarations of interest.

3. Application for a review of the Premises Licence for the Royal Oak, West Yoke, Ash

The Hearing gave consideration to a report by the Head of Environmental and Operational Services giving details of an application from Kent Police for the summary review of the Premises Licence for The Royal Yoke, Ash, Sevenoaks, Kent TN15 7HT under section 53A of the Licensing Act 2003.

Documents from Kent Police relating to an incident outside of the licensed premises on 11 August 2013 were tabled for Members' consideration.

The Hearing heard from the Police Licensing Officer. He advised that urgent steps had been required following a serious incident outside the premises. There had been an assault outside the premises 25 minutes after the premises should have closed, 55 minutes after the premises should have stopped serving alcohol. The former premises supervisor had stopped an ambulance despite the clear wishes of the victim and had failed to provide appropriate first aid.

At an interim hearing on 19 August 2013 the Licensing Sub-Committee had ordered the Designated Premises Supervisor (DPS), Kevin Morris, to be replaced by his daughter, Samantha Pegler, and for there to be a reduction in licensed hours. The police had since added further evidence for the Licensing Authority to consider.

The Sub-Committee was advised that the tenancy had since been transferred to Ms Pegler. Mr Morris would still live on the premises. A proposed 6 month probationary period for the new DPS had been agreed with the licence holders (Shepherd Neame) with reduced hours. The Officer had been assured that Shepherd Neame were in a stronger position to revoke the tenancy if necessary.

## Agenda Item 1

Licensing Hearing - Monday, 9 September 2013

The Police Licensing Officer responded to Members questions. He was satisfied that the measures put in place or proposed by the licence holders were adequate to mitigate those concerns raised and with the transfer to a new DPS who had not been a DPS before but had many years experience as bar staff. The Officer had very positive initial dealings with the new DPS.

The legal representative for the premises licence holder accepted that unlicensed activities had taken place. She clarified the details of the proposed agreement reached with Kent Police. As a calming measure the licensed hours would be reduced by one hour each day for 6 months, until 28 February 2014, with the closing time to be set as 30 minutes afterwards. This would not apply for the period 20 December 2013 to 1 January 2014. Shepherd Neame had stepped in and were reviewing the CCTV on the premises. A new drugs policy was being drawn up and staff would be trained in it. Increased support would be provided to Ms Pegler given that she was a new tenant and given the review. The Property and Tenanted Trade Director would visit the site every couple of weeks as a minimum.

The representative added that the previous DPS had effectively lost his tenancy from this review. The licensees had taken the opportunity to work with Kent Police and arrive at a proposal. They hoped the 6 month period would allow the new DPS to become successful. They were already confident from the new DPS having turned away a Licensing Officer who sought to be served after hours as a test.

The licence holders reassured the Hearing that there had been an acknowledgement and recognition of past failings, but the proposals were an commitment to address these.

At 11:05 a.m. the Hearing Members and withdrew to consider the issues raised and the Council's Legal Advisor accompanied them for the purpose of providing legal advice only.

At 11:20 a.m. the Hearing Members and the Council's Legal Advisor returned to the Council Chamber.

The Chairman informed the Hearing that the Sub-Committee had agreed to the additional condition limiting licensed and opening hours, as agreed between Kent Police and the licensee. It was also requested that a copy of the new drugs policy be forwarded to the Sevenoaks District Council Licensing Officers once produced.

The condition was imposed with particular regard to the licensing objective of the prevention of crime and disorder.

THE MEETING WAS CONCLUDED AT 11.22 am

Chairman



LICENSING ACT 2003 – Section 53C(10)

**Notice of determination of application for a review of premises licence**

**To:** Chief Officer of Police for the Kent Police area  
**Of:** Maidstone Police Station, Palace Avenue, Maidstone Kent  
**Ref:** 11/00342/LAPMV

Sevenoaks District Council being the licensing authority, on the 15 August 2013 received an application for the review of a premises licence in respect of premises known as The Royal Oak, West Yoke, Ash TN15 7HT.

On 9 September 2013, within 28 days of receiving the application for a review, a hearing was held to consider this application and relevant representations and having considered them the Licensing Sub-Committee determined as follows:

**To modify the conditions of the licence in the following respects, namely**

Additional Condition:

That until 28 February 2014 all licensable activities shall not take place outside the hours of

Sunday to Thursday 10.00 to 23.00

Friday and Saturday 10.00 to 00.00

Save and except between 20 December 2013 and 1 January 2014 and the premises shall be closed to the public 30 minutes after the last time for the supply of alcohol.

The reason for the decision is the prevention of crime and disorder.

The determination will not have effect (a) until the end of the period given for appealing against the decision, or (b) if the decision is appealed against, until the appeal is disposed of. \*

Dated: Signed .....  
Chair – Licensing Hearing  
Signed .....  
Designation – Licensing Officer

Please address any communications to:  
Licensing Regime  
Community and Planning Services

# Agenda Annex

Council Offices  
PO Box 182  
Argyle Road  
Sevenoaks  
Kent TN13 1GP

**\*Note:** Pursuant to Part 1 of Schedule 5 of the Licensing Act 2003 as amended, any party eligible to appeal must appeal to a magistrates' court within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

**LICENSING HEARING**

Minutes of the meeting  
held on 13 September 2013 commencing at 10.30 am

Present: Cllrs. Abraham, Mrs. Morris and Orridge

Also present: Mr. I. Fenn - Applicant  
Ms.. H. Jerrard - Applicant  
Mrs. J. Short - Objector (SDC Environmental Health)  
Mr. D. Keady - Objector (SDC Environmental Health)  
Mrs. L. Leeds - Licensing Officer  
Mr. D. Lagzdins - Legal Advisor  
Ms. V. Etheridge - Democratic Services Officer

1. Appointment of Chairman

Resolved: That Councillor Orridge be appointed Chairman.

2. Declarations of Interest

There were no declarations of interest.

3. Application for a Temporary Event Notice (TEN) - White Horse, Sundridge - 20 September 2013

(In order to expedite proceedings the Sub Committee conducted the hearing of the two applications under Section 100 (1) of the Licensing Act 2003 for Temporary Event Notices (TEN) on 20 September 2013 and 18 October 2013 for The White Horse Inn, 105 Main Road, Sundridge, Sevenoaks, Kent TN14 6EQ, concurrently.)

The Hearing gave consideration to a report by the Chief Officer Environmental and Operational Services giving details of an application under Section 100 (1) of the Licensing Act 2003 for Temporary Event Notices (TEN) for The White Horse Inn, 105 Main Road, Sundridge, Sevenoaks, Kent TN14 6EQ on 20 September and 18 October. It was noted that an objection had been received from the Environmental Health Partnership and that accordingly the application had been referred to the Sub-Committee for determination.

The Hearing heard from the applicant and asked questions. The applicant advised that the request was only for a further 45 minutes of live music between 23.00 and 23.45 on the dates specified for an audience of 150 people. There had been no complainants about noise from the car park. The applicant apologised for the previous noise nuisance and explained that he had also not been aware that he did not have the appropriate licence for those events. Since he had been served with a noise abatement notice measures had been taken to mitigate the noise by repositioning the bands, placing insulation in the bay window and keeping doors and windows shut. An event had taken place since the notice had been served, and no complaints had been received to his knowledge.

## Agenda Item 1

Licensing Hearing - Friday, 13 September 2013

The Hearing heard from the objector who reported that a noise abatement notice had been served on 5 September 2013 following complaints received after the events on 28 April 2013, 31 May 2013, 12 July 2013 and 16 August 2013. Prior to the event in July the applicant had been reminded and had confirmed that he would keep doors and windows shut, however a complaint was still received. In August noise level monitoring was carried out from a complainant's house which resulted in the serving of the abatement notice. It was agreed that no complaints had been received after the event that had taken place since the serving of the notice. In response to comments she advised that many people may be affected but not everyone chose to complain for varying reasons. When asked whether Environmental Health was satisfied with the action taken since the serving of the notice, she replied that on the basis that no complaints had been received after the last event and if the measures continued, they were.

At 10.50 the Hearing Members, the Council's Legal Advisor and Democratic Services Officer withdrew to consider the issues raised.

At 11.18 the Hearing Members, Council's Legal Advisor and Democratic Services Officer returned to the Council Chamber.

The Chairman informed the Hearing that the Sub-Committee had had regard to the representations made by the Applicant and interested parties with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy. He also advised that the decision was made having considered the measures taken to mitigate the noise arising from past events and having due regard to the licensing objectives in particular the prevention of public nuisance, and with the knowledge that the Environmental Health Team would continue to monitor events at the premises and consider any complaints that they received

It was therefore unanimously,

Resolved: That a counter-notice not be issued for the Temporary Event Notice (TEN) for The White Horse Inn, 105 Main Road, Sundridge, Sevenoaks, Kent TN14 6EQ on 20 September 2013.

#### 4. Application for a Temporary Event Notice - White Horse, Sundridge - 18 October 2013

Please see Minute 3 above.

At 10.50 the Hearing Members, the Council's Legal Advisor and Democratic Services Officer withdrew to consider the issues raised.

At 11.18 the Hearing Members, Council's Legal Advisor and Democratic Services Officer returned to the Council Chamber.

The Chairman informed the Hearing that the Sub-Committee had had regard to the representations made by the Applicant and interested parties with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy. He also advised that the decision was made having considered the measures taken to mitigate the noise arising from past events and having due regard to the licensing objectives in particular the prevention of

public nuisance, and with the knowledge that the Environmental Health Team would continue to monitor events at the premises and consider any complaints that they received

It was therefore unanimously,

Resolved: That a counter-notice not be issued for the Temporary Event Notice (TEN) for The White Horse Inn, 105 Main Road, Sundridge, Sevenoaks, Kent TN14 6EQ on 18 October 2013.

The meeting was concluded at 11.19 p.m.

Chairman

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LICENSING ACT 2003 – Section 105 (3)

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**Notice of determination of application for a temporary event notice for 20 September 2013**

To: Mr Ian Fenn

Of: The White Horse Inn, 105 Main Road, Sundridge, Sevenoaks, Kent TN14 6EQ

Ref: 13/02631/LATEN

Sevenoaks District Council being the licensing authority, on the 30 August 2013 received an application for a temporary event notice in respect of premises known as The White Horse Inn, 105 Main Road, Sundridge, Sevenoaks, Kent TN14 6EQ.

On the 13 September 2013 there being a valid objection notice which was received and had not been withdrawn, a hearing was held to consider this objection notice, and having considered it the Licensing Sub-Committee determined as follows:

To take no action and permit the event in the manner described in the Temporary Event Notice

Event start date: 20 September 2013

Event end date: 20 September 2013

Provision of regulated entertainment:

Non standard timings: 2300 – 2345 hours

This decision was made with regard to the 4 Licensing Objectives and in particular the Prevention of Public Nuisance.

Dated: 13 September 2013

Signed .....

Chair – Licensing Hearing

Signed .....

Designation –Licensing Officer

Please address any communications to:

Licensing Regime  
Community and Planning Services  
Council Offices  
PO Box 182  
Argyle Road  
Sevenoaks  
Kent TN13 1GP

**Note:** Pursuant to Part 3 of Schedule 5 of the Licensing Act 2003 as amended, any party eligible to appeal must appeal to a magistrates' court within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against. No appeal may be brought later than

# Agenda Annex

five working days before the day on which the event period specified in the temporary event notice begins.



LICENSING ACT 2003 – Section 105 (3)

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**Notice of determination of application for a temporary event notice for 18 October 2013**

To: Mr Ian Fenn

Of: The White Horse Inn, 105 Main Road, Sundridge, Sevenoaks, Kent TN14 6EQ

Ref: 13/02631/LATEN

Sevenoaks District Council being the licensing authority, on the 30 August 2013 received an application for a temporary event notice in respect of premises known as The White Horse Inn, 105 Main Road, Sundridge, Sevenoaks, Kent TN14 6EQ.

On the 13 September 2013 there being a valid objection notice which was received and had not been withdrawn, a hearing was held to consider this objection notice, and having considered it the Licensing Sub-Committee determined as follows:

**To take no action and permit the event in the manner described in the Temporary Event Notice**

Event start date: 18 October 2013

Event end date: 18 October 2013

Provision of regulated entertainment:

Non standard timings: 2300 – 2345 hours

This decision was made with regard to the 4 Licensing Objectives and in particular the Prevention of Public Nuisance.

Dated: 13 September 2013

Signed .....

Chair – Licensing Hearing

Signed .....

Designation –Licensing Officer

Please address any communications to:

Licensing Regime  
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PO Box 182  
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Sevenoaks  
Kent TN13 1GP

**Note:** Pursuant to Part 3 of Schedule 5 of the Licensing Act 2003 as amended, any party eligible to appeal must appeal to a magistrates' court within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against. No appeal may be brought later than

# Agenda Annex

five working days before the day on which the event period specified in the temporary event notice begins.

**ACTIONS FROM THE MEETING HELD ON 25 JULY 2013**

<b>Action</b>	<b>Description</b>	<b>Status and last updated</b>	<b>Contact Officer</b>
ACTION 1	The Licensing Partnership Manager would send out a list with the dates for the training to the Group (Minute Item 4)	Email sent to members of the Committee on 29.07.2013	Claire Perry

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**NEW SCRAP METAL DEALERS ACT 2013**

**Licensing Committee – 16 October 2013**

Report of the: Chief Officer Environmental and Operational Services

Status: For Decision

Also considered by: Council – 26 November 2013

Key Decision: No

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**This report supports the Key Aim of** Safe Communities to aid in the reduction of crime within the District.

**Portfolio Holder** Cllr. Ms Lowe (Housing and Community Safety)

**Contact Officer(s)** Claire Perry Ext: 7325 / 07970 731616

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**Recommendation to the Licensing Committee:** That Full Council be recommended to approve the appropriate fee levels for grant and renewal of Scrap Metal Dealers site licence and a Scrap Metal Dealer collector's licence as set out in paragraph 24 of the report.

**Recommendation to Council:** That the fees for grant and renewal of Scrap Metal Dealer site licence and a Scrap Metal Dealer collector's licence be approved.

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**Reason for recommendation:** to ensure that the Council complies with its Statutory duty under the Scrap Metal Dealers Act 2013.

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**Introduction and background**

1. The Act repeals the Scrap Metal Dealers Act 1964 (and related legislation) and Part 1 of the Vehicles (Crime) Act 2001, creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries. The Act maintains local authorities as the principal regulator, but gives them the power to better regulate these industries by allowing them to refuse to grant a licence to 'unsuitable' applicants and a power to revoke licences if the dealer becomes 'unsuitable'.
2. The licensing regime introduced by the Act is very similar to the licensing of taxi drivers and the issuing of Personal Licences under the Licensing Act. The suitability of applicants is based on a number of factors as outlined in the Act, including any unspent relevant criminal convictions. Whilst it is expected that straightforward applications will be decided under delegation to Officers, any applications with objections where the applicant wishes to make representations

## Agenda Item 4

would need to be heard by the Licensing Committee, with an option to appeal their decision to the Magistrates' Court.

### **Licences**

3. Under the Act there are two types of licence; a site licence and a collector's licence, which will both be administered by the local authority. Site managers will need to be named on site licences. Collectors will need a licence in each local authority area in which they collect. Both types of licence last for three years.
4. The local authority must be satisfied that the applicant is a suitable person to hold a licence before it can grant a licence. The scope of this requirement will include applicants, site managers, directors, secretaries and shadow directors of companies.
5. It is proposed that the Council will require a photograph to accompany the application for a Collector's Licence. It is envisaged that the photograph will form part of the licence document and will enable Officers to identify licensed collectors.

### **Determining Applications**

6. Section 3 of the Act states that a Council must not issue a licence unless it is satisfied the applicant is a suitable person to carry on a business as a scrap metal dealer, identified via a 'suitability test'. In the case of a partnership, the suitability of each partner will be assessed. In the case of a company, it means assessing the suitability of any directors, company secretaries, or shadow directors.
7. In assessing an applicant's suitability, the Council can consider any information considered relevant. The Council will be in a stronger position to defend any challenges to a decision to refuse a licence where the decision is based on the factors specifically listed in legislation, which includes whether:
8. The applicant or site manager has been convicted of a relevant offence or subject to any relevant enforcement action (Statutory Guidance has been published and is attached as Appendix B);
9. The applicant has previously been refused a scrap metal dealers licence or an application to renew a licence has been refused.
10. The applicant will be required to complete an application and declare that the information provided is correct. The applicant will commit an offence under the Act should they make a false statement, or recklessly make a statement which is false in a material way.
11. The authority will want to satisfy itself that an applicant is suitable by checking they do not have a previous relevant conviction, have not been the subject of enforcement action, or have been refused a licence. There is no requirement under the Act for applicants to provide a Basic Disclosure Certificate (BDC). However, it is recommended to the Licensing Committee that an applicant is required to submit a Basic Disclosure Certificate provided by Basic Disclosure

## Agenda Item 4

Scotland as part of the application process. The Council will require the certificate to be within 30 days of its issue when presented with the application.

12. Should an applicant refuse to supply a BDC this would be grounds for the Council to consider what further information was needed to judge whether the applicant was suitable to hold a licence. Refusal to submit a Basic Disclosure Certificate would be grounds for the Council to decline to proceed with the application.
13. The application period includes a transitional period for those currently registered under the Scrap Metal Dealers Act 1964 and the Vehicles (Crime) Act 2001. The guidance issued by the Local Government Association (Appendix C) recommends for those registered under the former licensing regime, that their BDC is no more than 3 months old at the time of application. During the transitional period, the Council will accept relevant standard or enhanced disclosure certificates which are no more than three months old at the date of application.
14. Once the transitional period has ended, the Council will require an applicant to provide a Basic Disclosure Certificate (including standard and enhanced disclosures) that are no more than one month old at the time the application is submitted. The authority recognises that a Basic Disclosure Certificate will reveal only any unspent convictions on the Police national computer. The Certificate will not provide details of convictions for relevant offences secured by the Environment Agency or equivalent, or other local authorities. In the case of applications received during the transitional arrangements or for any new applications, the authority will consult with the Environment Agency or equivalent and the Police. The authority will reserve the right to also contact any other local authority it feels necessary to determine the suitability of an applicant(s).
15. In the case where a Basic Disclosure Certificate highlights a relevant conviction the authority will seek further information from the Police to enable the authority to better assess the applicant(s) suitability. The authority will also check public records held by the Environment Agency or equivalent to assess if any enforcement action has been taken against an individual. In certain circumstances it may be necessary to make direct contact with the above to assess if any on-going enforcement action is pending, which may not be held on a public register at the time of application.
16. If the Council should receive information that an applicant(s) has been convicted of a relevant offence, a judgement will be made whether to refuse or grant the licence. The Council will take into account any information received by an applicant or other bodies. The Council will consider the nature of the offence or enforcement action, the gravity of the offence or enforcement action, when the enforcement action was taken, or any other relevant information as defined by the Act.

### **Representations**

17. In the case where the authority rejects an application(s), or revokes, or varies a licence, the Council will notify the applicant or licence holder by way of a written Notice. The Council will advise the applicant(s) or licence holder what the authority proposes to do and the reasons behind the action. The Notice will stipulate that the applicant/licence holder has the opportunity to make a

## Agenda Item 4

representation, or let the authority know that they wish to. The applicant/licence holder has up to 14 days from the date of the Notice to respond.

18. If the applicant/licence holder does not make a representation, or does not say that they wish to in that time period, then the Council can refuse the application, or revoke, or vary the licence. Where the applicant states they want to make representations, the authority will provide a further reasonable period in which to do so. If the applicant fails to provide a representation within the agreed period then the authority will refuse the application, or revoke, or vary the licence.

### Hearings

19. Where the applicant makes representations, the authority has to consider them in accordance with the Act. If the applicant wishes to make oral representations the authority will arrange a hearing. It is anticipated that these hearings will follow the procedures for hearings under the Licensing Act 2003. The Council anticipates that further guidance on hearings will be issued.
20. Should the Council refuse an application, revoke or vary a licence the applicant/licence holder will receive a Notice of Decision, which will set out the Council's reasons for its decision. The Notice will inform the applicant, or licence holder of their right to appeal to the Magistrates' Court and, where the licence has been revoked or varied, the date under which that comes into effect.

### Conditions

21. In cases where the applicant or any site manager has been convicted of a relevant offence, or where the authority is revoking a licence, the authority can impose conditions on the licence. The authority can impose one or both of two conditions, these conditions specify that:
  - the dealer can receive scrap metal only between 9.00am and 5.00pm on any day, in effect limiting the dealer's operating hours; and/or
  - any scrap metal received has to be kept in the form the dealer received it for a set period of time, which cannot be more than 72 hours.
22. There is no equivalent set of conditions for collectors.

### Fees

23. The Act provides that an application for a licence must be accompanied by a fee. The fee will be set locally by each local authority on a cost recovery basis. Local authorities will have a duty to have regard to guidance issued by the Secretary of State which outlines the issues that should be considered when setting the fee and what activities the fee can cover. This fee will be an essential component of the new regime as it will provide local authorities with the funding they need to administer the legislation and ensure compliance (Appendix A).
24. In setting a fee, the authority must have regard to any guidance issued by the Secretary of State, the proposed fees have been calculated using that Guidance (Appendix A) and are as follows;



Site Licence –	Grant (3 years)	£405.00
Site Licence -	Renewal (3 years)	£345.00
Collectors Licence –	Grant/renewal (3 years)	£270.00

25. Further Fees will need to be set for variations and transfers however due to the short time frame it was felt that these fees are the most relevant and need to be agreed prior to 15 October 2013 when applications with grandfather’s rights will have to be submitted.

**Other Options Considered and/or Rejected**

26. The introduction of new legislation replaces the current legislation governing Scrap Metal and as such there is no alternative action.

**Key Implications**

Financial

The Local Authority is required under the Scrap Metal Dealer Act 2013 to set fees to administer the regime and ensure compliance. The fees levied in each local area are set by reference to the actual costs to each authority. The EU services directive states that a licence fee can only be used to pay for the cost associated with the licensing process. In effect, each local authority must ensure that the income from fees charged for each service does not exceed the costs of providing the service.

Legal, Human Rights etc.

The Local Authority is required under the Scrap Metal Dealer Act 2013 to set fees to administer the regime and ensure compliance.

Equality Impacts

Consideration of impacts under the Public Sector Equality Duty:		
Question	Answer	Explanation / Evidence
a. Does the decision being made or recommended through this paper have potential to disadvantage or discriminate against different groups in the community?	No	N/A
b. Does the decision being made or recommended through this paper have the potential to promote equality of opportunity?	No	
c. What steps can be taken to mitigate, reduce, avoid or minimise the impacts identified above?		

## Agenda Item 4

### **Appendices**

A - Home Office: Scrap Metal Dealers Act 2013:  
guidance on licence fee charges

B - Home Office: Scrap Metal Dealers Act 2013  
Determining suitability to hold a scrap metal dealer's  
licence

### **Background Papers:**

None

**Mr Richard Wilson**

**Chief Officer Environmental and Operational Services**

### **Scrap Metal Dealer Act 2013: guidance on licence fee charges**

#### **Context**

The Scrap Metal Dealers Act 2013 (referred to in this guidance as the 2013 Act) received Royal Assent on the 28 February 2013, delivering much needed reform of the scrap metal sector. The 2013 Act will provide effective and proportionate regulation of the sector, creating a more robust, local authority run, licensing regime that will support legitimate dealers yet provide the powers to effectively tackle unscrupulous operators. It will raise trading standards across the whole sector.

#### **Introduction**

The 2013 Act will allow local authorities to decide who should and should not be licensed, allowing them to refuse a licence upon application or to revoke a licence at any time if they are not satisfied that the applicant is a suitable person to carry on business as a Scrap Metal Dealer. The act also creates closure powers for unscrupulous dealers who operate without a licence. It extends the record keeping requirements placed upon scrap metal dealers and requires the verification of the people Scrap Metal Dealers are transacting with. The act will integrate the separate regulation for motor salvage operators with the scrap metal sector and bring to an end the cash exemption given to some collectors under the 1964 Act.

Finally, the 2013 Act creates a fee raising power, to allow local authorities to recover the costs stemming from administering and seeking compliance with the regime. This element of the legislation will be the focus of this guidance.

The intention is for the act to be implemented in October 2013.

#### **Licensing requirements placed upon scrap metal dealers**

Section one of the 2013 Act requires a scrap metal dealer to obtain a licence in order to carry on business as a scrap metal dealer<sup>1</sup>. It will be an offence to carry on a business as a scrap metal dealer in breach of the requirement to hold a licence. This offence is punishable on summary conviction with a fine not exceeding level 5 on the standard scale. In addition, Schedule 1(6) of the 2013 Act provides that an application must be accompanied by a fee set by the authority.

#### **Aim and scope**

Local authorities will be responsible for administration and compliance activity in relation to the 2013 Act. This guidance is provided to local authorities in relation to the carrying out of their fee raising function. It also provides information for the benefit of those who will be applying for a scrap metal dealer's licence and the general public. This guidance applies to local authorities in England and Wales and is produced in accordance with the 2013 Act.

#### **Legal status**

Schedule 1(6) of the 2013 Act provides that an application must be accompanied by a fee set by the local authority. In setting a fee, the authority must have regard to any guidance issued from time to time by the Secretary of State with the approval of the Treasury. This Guidance is therefore binding on all licensing authorities to that extent.

## Agenda Item 4

### **What costs can local authorities charge for when issuing a licence?**

The 2013 Act provides that an application for a licence must be accompanied by a fee set by the local authority. This fee raising power is an essential component of the legislation as it will provide local authorities with the funding they need to administer the regime and ensure compliance.

The power to set fees has been passed to individual local authorities, so that any fees levied in each local area is set by reference to the actual costs to each authority. The EU services directive states that a licence fee can only be used to pay for the cost associated with the licensing process. In effect, each local authority must ensure that the income from fees charged for each service does not exceed the costs of providing the service.

LAs should specify fees for each category of application. Specifically we would expect a fee to be specified for the assessment of an application for a licence, the assessment of an application to vary a licence, and the assessment of an application for licence renewal.

Local authorities should specify fees which are payable by licence applicants for the assessment and administration activity within the new licensing regime brought about by the 2013 Act. They should do this by identifying what they need to do to assess the type of licence in question and calculating their best estimate of the cost to be incurred by the LA. The authority will then be able to calculate a best estimate of unit cost for each case.

In effect, the costs of a licence should reflect the time spent assessing and administering applications, processing them, having experienced licensing officers review them, storing them, consulting on the suitability of an applicant, reviewing relevant offences, the decision on whether to issue a licence, as well as the cost of issuing licences in a format that can be displayed. Consulting the local authority's enforcement records in order to determine the suitability of the applicant is chargeable within the licence fee costs as are costs associated with contested licence applications.

Registering authorities should review fees regularly to check whether they remain appropriate.

### **Can a local authority charge for enforcement activity?**

The licence fee cannot be used to support enforcement activity against unlicensed scrap metal dealers. Any activity taken against unlicensed operators must be funded through existing funds. Such activity against unlicensed operators includes issuing closure notices; with applications for closure orders subsequently made to a magistrates court. The cost of applying to the Magistrates Court for a warrant (Section 16(5)(6) and (7) of the 2013 Act) for entry to unlicensed premises, by force if necessary, will incur legal costs to be borne by the local authority and police.

### **What are the different types of licences?**

There are two types of licence specified within the act, one is for a site licence and the other is for a mobile collector licence (carrying on business otherwise than at a site). The licence authorises the licensee to carry on business as a scrap metal dealer at the sites listed in it (in the case of a site licence) or within the local authority area (in the case of a mobile collector's licence).

### **Site licences**

A site licence requires all of the sites at which the licensee carries on the business as a scrap metal dealer within the local authority area to be identified and a site manager to be named for each site. In doing so, they will be permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites from any local authority area.

### **Collectors licences**

A collector's licence authorises the licensee to operate as a mobile collector in the area of the issuing local authority, permitting them to collect any scrap metal as appropriate. This includes commercial as well as domestic scrap metal.

The licence does not permit the collector to collect from any other local authority area. A separate licence should be obtained from each local authority from which the individual wishes to collect in. A collector's licence does not authorise the licensee to carry on a business at a site within any area. Should a collector wish to use a fixed site, they will need to obtain a site licence from the relevant local authority.

The Act 2013 also specifies that a licence will be issued by the local authority in whose area a scrap metal site is situated, or (in respect of a mobile collector) in the area that the collector operates.

### **Do different fees apply?**

Yes. Fees charged for a site licence would reflect the extra work involved in processing these licences and will vary from a collector's licence.

### **Display of licences**

The form in which a licence is issued must enable it to be displayed in accordance with section ten of the 2013 Act. All licensees are therefore required to display a copy of their licence. For site operators the licence must be displayed in a prominent place in an area accessible to the public. For mobile collectors, it must be in a manner which enables the licence to be easily read by a person outside the vehicle. A criminal offence is committed by any scrap metal dealer who fails to fulfil this requirement. This offence is punishable on summary conviction with a fine not exceeding level 3 on the standard scale.

The cost of providing a licence in a form which can be displayed should be included in the local authority licence fee charges.

### **Police objections to licence applications**

The police may object to a licence application where they believe that the applicant is not a suitable person as defined within the act. The police can object where, for example, the applicant has been convicted of a relevant offence. LAs should also consider representations from other organisations or individuals in considering the applicant's suitability

Where the police do object, the local authority should take this into consideration but must use their own judgement and discretion when taking a licence decision. The local authority must allow for the person whose licence is about to be refused or revoked to be afforded the right to make representations. The local authority considering the matter must restrict its consideration to the issue of suitability of applicant and provide comprehensive reasons for

## Agenda Item 4

its decision.

Costs associated with considering oral and written representations should be included in licence fee charges.

### **Appeals**

There is a right of appeal to the Magistrates' Court against a decision to refuse a licence application, to include a condition within the licence, to revoke the licence or to vary the licence. The costs associated with appeals and the costs of defending an appeal in the Magistrate Court should not be included in licence fee charges.

The costs associated with defending a Judicial Review into whether the local authority has failed to have regard to the guidance on fees is not chargeable under the licence regime.

### **Revocation of a licence and formulating and imposing licence conditions**

If a licence has been granted, it may be revoked or licence conditions imposed on a scrap metal dealer if the subsections within Clause 4 of the Scrap Metal Dealers Act are triggered. A local authority may impose conditions pending an appeal against revocation (section 4 (7)) or if the applicant or site manager has been convicted of a relevant offence (section 3 (8)).

### **Variation of licence**

Schedule 1 paragraph 3(1) indicates that a local authority may, on an application, vary a licence by changing it from one type to another and (2) if there is a change in any of the matters mentioned in section 2(4)(a), (c) or (d) or (6)(a).

These changes should be recorded by the local authority. The applicant is also under a duty to notify any convictions for relevant offences to the local authority. These measures ensure that a single record will be held of the licence holder's history in terms of licensing matters.

### **National Register of Scrap Metal Dealers**

Whilst a local authority can recover any costs incurred in transmitting information about a licence, the costs which the Environment Agency incurs are not chargeable under the licence regime.

### **How long will a licence be valid for?**

Schedule 1 paragraph 1 of the 2013 Act specifies the terms of a licence. It indicates that a licence expires at the end of the period of 3 years beginning with the day on which it is issued.

### **Additional regulations and guidance**

The Home Office will be publishing regulations in relation to relevant offences and the identification required to sell scrap metal over the summer of 2013. These regulations will be published on [www.gov.uk](http://www.gov.uk). We will also be working with the Local Government Association, the British Metal Recycling Association and British Transport Police to produce additional guidance on the requirements of the new act.

The Local Government Association guidance will include a breakdown of reasonable timescales for each of the activities associated with setting a fee.

## **Annex A - Definitions**

### **What is a local authority?**

'Local authority' means —

- (a) in relation to England, the council of a district, the Common Council of the City of London or the council of a London borough;
- (b) in relation to Wales, the council of a county or a county borough.

### **What is a scrap metal dealer?**

#### **21 'Carrying on business as a scrap metal dealer' and 'scrap metal'**

(2) A person carries on business as a scrap metal dealer if the person—

- (a) carries on a business which consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought, or
- (b) carries on business as a motor salvage operator (so far as that does not fall within paragraph (a)).

### **What is a mobile collector?**

'Mobile collector' means a person who—

- (a) carries on business as a scrap metal dealer otherwise than at a site, and
- (b) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.

### **What is a motor salvage operator?**

(4) For the purposes of subsection (2)(b), a person carries on business as a motor salvage operator if the person carries on a business which consists —

- (a) wholly or partly in recovering salvageable parts from motor vehicles for re-use or sale and subsequently selling or otherwise disposing of the rest of the vehicle for scrap,
  - (b) wholly or mainly in buying written-off vehicles and subsequently repairing and reselling them,
  - (c) wholly or mainly in buying or selling motor vehicles which are to be the subject (whether immediately or on a subsequent re-sale) of any of the activities mentioned in paragraphs (a) and (b), or
  - (d) wholly or mainly in activities falling within paragraphs (b) and (c).
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Home Office

# **Scrap Metal Dealers Act 2013**

## Determining suitability to hold a scrap metal dealer's licence

Statutory guidance for local authorities in England and Wales  
First publication: issued 1 October 2013

## Agenda Item 4

### Introduction

The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013. The majority of the provisions within the Act commence on 1 October 2013 including the requirement in section 1(1) to be authorised by a licence in order to carry on business as a scrap metal dealer. Section 3(1) of the Act states that a local authority must not issue or renew a scrap metal dealer's licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer. Section 3(6) states that a local authority must have regard to any guidance on determining suitability issued by the Secretary of State.

### Status of the guidance

This is statutory guidance and local authorities are under a duty to have regard to it.

### Whose suitability should be assessed?

When assessing an application for a scrap metal dealer's licence, you should consider the suitability of:

- the individual applicant;
- each partner within a partnership;
- any director(s), secretary(s) or shadow director(s) of a company.

You should consider whether a site manager (if an application for a site licence is submitted) has been convicted of a relevant offence or relevant enforcement action and whether this impacts on the applicant's suitability to hold a scrap metal dealer's licence.

### What information may you have regard to?

Under section 3(2) of the Scrap Metal Dealers Act 2013, you may have regard to any information which you consider to be relevant when determining the suitability of a person to hold a scrap metal dealer's licence, including:

1. whether the applicant or any site manager has been convicted of any relevant offence

Under Schedule 1, Para 2 (1) (j), of the Act, a person applying for a scrap metal dealer's licence must provide details of any conviction for a relevant offence. The relevant offences, prescribed by the Secretary of State, can be found in Part 1 and 2 of the Schedule of The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 using the following link:

<http://www.legislation.gov.uk/id/ukxi/2013/2258>. Under Regulation 2, a relevant offence is also "attempting or conspiring to commit any offence falling within the Schedule; inciting or aiding, abetting, counselling or procuring the commission of any offence falling within the Schedule, and an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) committed in relation to any offence falling within the Schedule". These offences should also be considered when determining suitability.

- A conviction for a relevant offence should not automatically lead to the refusal of a scrap metal dealer's licence. You may consult your local police force (section 3 (7)) for further details about the offence including both the seriousness of the offence and the date of when it was committed. Once you have this, you should consider it alongside any other information you may have regard to when determining suitability. If a site manager has been convicted of a relevant offence, the same process applies.

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- Under section 4 (5) of the Act, if a person has been convicted of a relevant offence or is convicted of a relevant offence once a licence has been issued, you may wish to consider, imposing one or both of the following conditions on the licence if you think this is necessary:
    - that the dealer must not receive scrap metal except between 9am and 5pm on any day;
    - that all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.
  - These conditions are set out at section 3 (8) of the Act and could be applied until you are satisfied that the inclusion of such a condition in the licence is no longer necessary under all the circumstances.
  - If, during your checks, you discover that the applicant has a relevant conviction which was not detailed in a person's application you should request further information from the applicant (Schedule 1, Para 4). You should also consider whether this is a deliberate omission and therefore impacts on suitability. Making a false statement in an application is a criminal offence (Schedule 1, Para 5) and, where this has happened, it will be at your discretion as to whether you refer this to the police.
  - Only unspent convictions should be considered for individual applicants, site managers, partnerships and companies.
2. whether the applicant or any site manager has been the subject of any relevant enforcement action
- The relevant enforcement action you may have regard to when considering suitability to hold a scrap metal licence has been prescribed in Regulation 3 of The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 by the Secretary of State which can be found at: <http://www.legislation.gov.uk/id/uksi/2013/2258>.
  - Under Regulation 3(a), a person is the subject of relevant enforcement if *'the person has been charged with an offence specified in the Schedule to these Regulations, and criminal proceedings in respect of that offence have not yet concluded'*. However, you should **not** refuse a licence on this point alone as the action (pending prosecution) is ongoing. If an applicant details a pending prosecution in their application form, you should note this and monitor the outcome. Only once the action is completed should you consider whether the outcome, if a conviction, impacts on a person's suitability to hold a scrap metal dealer's licence and take any necessary action for instance to impose conditions or, ultimately, to revoke.
  - Under Regulation 3 (b), a person is the subject of relevant enforcement action if *"If an environmental permit granted in respect of the person under the Environmental Permitting (England and Wales) Regulations 2010 has been revoked in whole, or partially revoked, to the extent that the permit no longer authorises the recovery of metal"*. You should consult the Environment Agency (in England) or Natural Resources Wales (section 3 (7)) to find out the reasons for the whole or partial revocation and consider if the reasons impact on their suitability.
3. any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal)
- You should check your local authority area's records to find out whether a scrap metal dealer has previously been refused a scrap metal dealer's licence, taking into consideration

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the reasons for the refusal. Section 3 (7) of the Act states that you may consult other persons regarding the suitability of an applicant, including in particular, any other local authority or officer of a police force. It will be undesirable for a person who has been refused a licence by one local authority area to be issued a licence by another, therefore if a person has been refused a licence in a different local authority area it will be important to scrutinise the reasons for the refusal. For example, the refusal may have been given because the applicant has not demonstrated that there will be adequate procedures in place to comply with the Act (section 3 (2) (f)) but the applicant has now implemented sufficient changes and the reason no longer applies.

### 4. any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal)

- You should routinely check whether an applicant is on the Environment Agency's/Natural Resources Wales' register of permits and registrations. If you have any concerns or would like to find out further information you should contact the Environment Agency (in England) or Natural Resources Wales. Additionally, if the applicant does not appear on the register and, therefore, does not hold a relevant environmental permit, exemption, or registration, then you may also wish to consult the Environment Agency or Natural Resources Wales as the applicant should not be operating as a scrap metal dealer without one or other of these.

### 5. any previous revocation of a scrap metal licence (and the reasons for the revocation)

- You should routinely check the register of scrap metal licences, hosted by the Environment Agency/Natural Resources Wales, to find out if a scrap metal dealer has had a licence revoked in another local authority area. If a person has had a licence revoked, you should contact that local authority to understand the reasons why the licence was revoked (section 3 (7)). It will be important for you to scrutinise the reasons for refusal and consider whether these still apply. The reasons for revoking a licence may not always impact on suitability (section 4 (1) (2)).

### 6. whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this Act are complied with

- Where you have information that raises concerns about the adequacy of procedures that the applicant or site manager has in place to comply with section 11 (verifying the supplier's identity), section 12 (offence of buying scrap metal for cash) or section 15 (records: supplementary), you may wish to obtain further information about how the applicant will ensure compliance with the requirements of the Act. For example, where you have concerns about the procedures around the offence of buying scrap metal for cash, you may wish to check the details of the back account which the applicant proposes to use. This information should be included in the application form (Schedule 1, Para 2 (1) (i)).

## Further information

Although section 3 (2) sets out some information you may have regard to, you may request any relevant information from the applicant (either when the application is made or later) to help you consider the application (Schedule 1, Para 4 (1)), this will include determining suitability.

## Reasons for refusal

If a licence application is refused, you should provide full reasons for your decision. This will not only help the applicant to understand the refusal but will allow a Magistrates' Court to clearly understand the reasons should the applicant appeal the decision.



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**AMENDMENTS TO THE COUNCIL'S CONSTITUTION RELATING TO THE COUNCIL'S LICENSING FUNCTION**

**Licensing Committee – 16 October 2013**

Report of Chief Officer Environmental and Operational Services

Status: For Decision

Also considered by: Governance Committee – 5 November 2013

Council – 26 November 2013

Key Decision: No

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**Portfolio Holder** Cllr. Ms Lowe (Housing and Community Safety)

**Contact Officer(s)** Claire Perry Ext: 7325

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**Recommendation to the Licensing Committee and Governance Committee:** That Full Council be recommended to approve the amendments to Part 8 and Part 13 of the Council's constitution attached at Appendix A and Appendix B.

**Recommendation to Council:** That the amendments to Part 8 and Part 13 of the Council's constitution attached at Appendix A and Appendix B be approved.

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**Reason for recommendation:** to ensure that the Council's Constitution remains up-to-date and reflects the legislation under which the Council's Licensing Team operate.

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**Introduction and Background**

1. It has been necessary to update the Council's constitution to reflect changes that have been made to legislation and new legislation that has been implemented.
2. In Part 8 – Licensing Committee, the Committee's Terms of Reference have been amended to reflect two new pieces of legislation:
  - Police Reform and Social Responsibility Act 2011 – to enable the Local Authority to set a Late Night Levy or an Early Morning Restriction Order should they wish; and
  - Scrap Metal Dealers Act 2013 – to enable the Committee consider these applications
3. Under Part 8 of the Constitution it is also being suggested that the Licensing Committee should delegate powers to the Licensing Sub-Committees for the determination of an application for a Sexual Entertainment Venue licence.

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4. It is also felt that it would be beneficial to refer some reports to a Licensing Sub-Committee on either an application by a Private Hire Driver or a Hackney Carriage Driver. As a result of this a minor amendment to the Terms of Reference for the Licensing Sub-Committees has been suggested.
5. The proposed changes to Part 13 – Officer Responsibilities and Delegations, clarify that the delegations to Officers to determine applications under the Licensing Act 2003 and Gambling Act 2005, exist only when no relevant representations have been received.
6. It is also being proposed that authority to determine applications under the Scrap Metal Dealers Act 2013 be delegated to officers.

### Key Implications

#### Financial

None arising directly from the contents of this report.

#### Legal Implications and Risk Assessment Statement.

Section 37 of the Local Government Act 2000 requires the Council to keep its Constitution under review.

If Chief Officers act without the appropriate authority any decision or action they take could be challenged and result in adverse costs and publicity against the Council. It is therefore imperative that delegations are given correctly.

#### Equality Impacts

Consideration of impacts under the Public Sector Equality Duty:		
Question	Answer	Explanation / Evidence
a. Does the decision being made or recommended through this paper have potential to disadvantage or discriminate against different groups in the community?	No	N/A
b. Does the decision being made or recommended through this paper have the potential to promote equality of opportunity?	No	
c. What steps can be taken to mitigate, reduce, avoid or minimise the impacts identified above?		

### Appendices

Appendix A - Part 8 – Licensing Committee (as amended)



Appendix B- Part 13 - Officer Responsibilities and Delegations (as amended)

**Background Papers:**

Sevenoaks District Council's Constitution

**Mr Richard Wilson**

**Chief Officer for Environmental and Operation Services**

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## **PART 8 – LICENSING COMMITTEE**

### **1. Licensing Committee**

1.1 Composition: Thirteen Members of the District Council reflecting the political proportionality of the Council

1.2 Terms of Reference

(a) Except as provided in the Licensing Act 2003 and the Gambling Act 2005, the discharge of all functions of the District Council as licensing authority prescribed by those acts;

(b) the issue, renewal, transfer, suspension and revocation of hackney carriage, private hire vehicle, driver and operator licenses;

(c) applications for the licensing of sex establishments

(d) the discharge of relevant functions relating to the Police Reform and Social Responsibility Act 2011;

(e) the discharge of relevant functions relating to the Scrap Metal Dealers Act 2013 and

(d) the discharge of all other functions relating to licensing and registration in so far as they are the responsibility of the District Council.

### **2. Licensing Hearing Sub-Committees**

2.1 The Licensing Committee has established five Licensing Hearing Sub-Committees. The Chief Executive will call a meeting of one of the sub-committees whenever there is business to be transacted.

Composition: Each Sub-Committee will contain three Members of the Licensing Committee. Any member of the Licensing Committee may act as a substitute on any of the Licensing Sub-Committees. Democratic Services must be notified by the members concerned of any substitutions at least one working hour prior to a sub-committee meeting.

~~2.21~~ Terms of Reference

Licensing Act 2003:

(a) determination of application for the grant/ renewal of a personal licence where an objection notice has been given by the Police;

(b) consideration of Police objection notice following conviction of personal licence holder;

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- (c) determination of application for the variation of a designated premises supervisor where a notice has been received from the Police;
- (d) determination of application for the transfer of a premises licence where a notice has been received from the Police;
- (e) determination of application for:
  - (i) premises licence;
  - (ii) club premises certificate;
  - (iii) provisional statement;
  - (iv) variation of premises licence / club premises certificates;
  - (v) review of a licence following an application by a senior police officer; where relevant representations have been made;
- (f) determination of application for the review of a premises licence/club premises certificate;
- (g) determination on review of premises licence following closure order;
- (h) consideration of Police or Environmental Health objection notice given in response to a temporary event notice; and
- (i) consideration of Police notice given in response to an interim authority notice.

### Gambling Act 2005:

- (a) determination of application for the grant/ variation/ transfer/ reinstatement of premises licence where relevant representations have been received.;
- (b) determination on review of premises licence;
- (c) determination of application for provisional statement where relevant representations have been received;
- (d) consideration of notice of objection to temporary use notice;
- (e) determination of application for the grant/ renewal of family entertainment centre gaming permit, club gaming permit, club machine permit, licensed premises gaming machine permit, gaming machine permit where relevant representations have been received ; and

(f) ~~—~~ cancellation of club gaming permit, club machine permit, licensed premises gaming machine permit where relevant representations have been received.

Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 27, Policing and Crime Act 2009

(a) determination of application for the grant/ renewal/ transfer of a sex shop, sex cinema or sexual entertainment venue

Town Police Clauses Act 1847, Public Health Act 1875 and Local Government (Miscellaneous Provisions) Act 1976

(a) to exercise the Council's powers and duties in relation to the licensing of hackney carriages and private hire vehicles, including the licensing of vehicles, drivers and operators, the control of numbers of hackney carriages, the licensing of private hire operators and the granting of permits for small buses where the matter has been referred by the delegated officer.

### **3. Procedure at Sub-Committees of the Licensing Committee (established in accordance with Section 9 of the Licensing Act 2003)**

- 3.1 In accordance with Section 9 (1) of the Licensing Act 2003, the Licensing Committee has resolved to establish five Sub-Committees, each consisting of three members of the Committee.
- 3.2 The Sub-Committees have delegated authority to determine those functions that are reserved for decision by the Sub-Committees in accordance with Appendix B of the Council's Statement of Licensing Policy dated 7<sup>th</sup> January 2011.
- 3.3 Hearings shall be conducted in accordance with this Procedure Note and The Licensing Act 2003 (Hearings) Regulations 2005 subject to the right of the Sub-Committee to vary that procedure at their absolute discretion if considered in the public interest.
- 3.4 The quorum for a Sub-Committee shall be two members.
- 3.5 At the commencement of each hearing the Sub-Committee shall elect one of its members as Chairman.
- 3.6 The order of business at hearings shall be:
  - (a) Election of Chairman.
  - (b) Declarations of interests.

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- (c) Chairman explains the procedure to be followed at the hearing, including the setting of equal time limits for all parties and the granting of adjournments.
- (d) Chairman ascertains who is assisting or representing the parties.
- (e) Applicant (or his/her representative) addresses the Sub-Committee.
- (f) Applicant questioned by members. At the discretion of the Sub-Committee, other parties may be permitted to question the applicant.
- (g) Persons who have made representations in respect of the application (or their representative) address the Sub-Committee. No issues other than those relevant to their representations may be raised.
- (h) Members question each party at the conclusion of their address. At the discretion of the Sub-Committee, the applicant may be permitted to question other parties.
- (i) Sub-Committee may offer the parties a short adjournment to discuss in the absence of the Sub-Committee whether a solution acceptable to all the parties can be put to the Sub-Committee.
- (j) Applicant (or his/her representative) makes closing address.
- (k) Sub-Committee may grant a short adjournment. The parties may not speak to members regarding the application during adjournments.
- (l) The Sub-Committee considers the application and motions put to accept or reject the application in the terms requested or to grant the application subject to specified conditions. Reasons are to be given for motions.
- (m) The parties will be informed of the decision at the hearing or thereafter in accordance with Regulation 26 of the 2005 Regulation.

## **PART 13 - OFFICER RESPONSIBILITIES AND DELEGATIONS**

### **1. The Council’s Officers**

1.1 The Council has people working for it (Officers) to give advice, implement decisions and manage the day-to-day delivery of its services. Some Officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A code of practice governs the relationships between Officers and Members. (Appendix J - Protocol on Councillor and Officer Relations)

### **2. Management Structure**

#### General

2.1 The full Council may engage such staff (referred to as Officers) as it considers necessary to carry out its functions.

#### Chief Officers

2.2 The full Council will engage persons for the following posts, who will be designated Chief Officers:

<b>Post</b>	<b>Functions and areas of responsibility</b>
Chief Executive	<p>Overall corporate management and operational responsibility (and Head of Paid Service) (including overall management responsibility for all Officers)</p> <p>Provision of professional advice to all parties in the decision-making process.</p> <p>Representing the Council on partnership and external bodies (as required by statute or the Council).</p> <p>The Section 151 Officer.</p> <p>The Returning Officer and Electoral Registration Officer for the Council.</p> <p>Responsibility for Regeneration.</p>
Chief Officer Communities & Business	<p>Community Engagement, Community Plan, Community Safety, Economic Development, Grants, Health, Leisure, Health and Wellbeing Boards, Older People, Safeguarding, West Kent Partnership, Young People.</p>
Chief Officer Environmental & Operational	<p>Building Control, Business Continuity, Corporate Health &amp; Safety, CCTV, Emergency Planning, Environmental Health, Licensing, Parking &amp; Amenity, Procurement, Refuse Collection &amp; Recycling, Street &amp; Other</p>

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Services	cleansing services, Land Charges.
Chief Finance Officer	Audit, Anti-Fraud, Benefits, Business Rates, Council Tax, Finance, Risk Management, Strategic Asset Management, Treasury Management.
Chief Officer Housing	Climate Change, Empty Homes, Housing Policy & Enabling, Management of Gypsy/Traveller sites & unauthorised encampments, Liaison with Housing Associations, Private Housing, Social Housing, West Kent Leader Programme, Private sector letting scheme, Disabled facility grants and welfare funerals.
Chief Officer Legal & Governance	Data Protection & Freedom of Information, Democratic Services, Elections, Legal Services, Monitoring Officer, Standards Ethics and Governance
Chief Planning Officer	Conservation, Development Control, Planning Appeals, Planning Enforcement, Planning Policy, Arboricultural Policy.
Chief Officer Corporate Support	Customer Services, Facilities Management, IT Services, Property Services, Post Room & Scanning, Telecommunications.

2.3 The designations of these posts may be changed from time to time by the Cabinet on receipt of advice from the Chief Executive.

### Head of Paid Service and s.151 Officer and Monitoring Officer

2.4 The Council will designate the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service and s. 151 Officer
Chief Officer Legal & Governance	Monitoring Officer

2.5 Such posts will have the functions described in paragraphs 3, 4 and 5 below.

### Structure

2.6 The Chief Executive will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of Officers. This is set out at the end of this part of this Constitution.

### Delegations to Dartford Borough Council

2.7 Pursuant to enabling legislation Council and Cabinet have delegated to Dartford



Borough Council via its Head of Paid Service the discharge of all functions with regard to the Internal Audit and Fraud Service as may be more particularly identified in Schedule 1 of the Partnership Working Agreement. Council and Cabinet have also agreed to place at the disposal of Dartford Borough Council for the purposes of their functions the services of officers employed by Sevenoaks District Council.

- 2.8 Pursuant to enabling legislation Council and Cabinet have delegated to Dartford Borough Council via its Head of Paid Service the discharge of all functions with regards to the Environmental Health Service as may be more particularly identified in the Partnership Working Arrangements. Council and Cabinet have also agreed to place at the disposal of Dartford Borough Council for the purposes of their functions the services of officers employed by Sevenoaks District Council.

### **3. Functions of the Chief Executive (as Head of Paid Service)**

#### Discharge of Functions by the Council

- 3.1 The Chief Executive will keep under review the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.

#### Restrictions on Functions

- 3.2 The Chief Executive may not be the Council's Monitoring Officer but may hold the post of s.151 Officer if a qualified accountant.

### **4. Functions of the Monitoring Officer (Chief Officer Legal & Governance)**

#### Maintaining the Constitution

- 4.1 The Monitoring Officer (Chief Officer Legal & Governance) will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Members, staff and the public.

#### Ensuring Lawfulness and Fairness of Decision-Making

- 4.2 After consulting with the Chief Executive (the Head of Paid Service and s.151 Officer), the Chief Officer Legal & Governance (Monitoring Officer) will report to the full Council or to the Cabinet in relation to an Executive Function – if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration.
- 4.3 Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

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### Supporting the Standards Committee

- 4.4 The Chief Officer Legal & Governance (the Monitoring Officer) will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- 4.5 Notwithstanding the duty of confidentiality, the Monitoring Officer shall be at liberty to disclose any information relating to the Council's affairs, and providing copies of any records or documents belonging to the Council to the Standards Committee for the purpose of investigation or determination of a complaint against a Member.

### Conducting Investigations

- 4.6 The Chief Officer Legal & Governance (the Monitoring Officer) may conduct investigations into allegations of Member Code of Conduct breaches and make reports or recommendations in respect of them to the Standards Committee.

### For Access to Information

- 4.7 The Chief Executive (the Head of Paid Service and s.151 Officer) will ensure that Cabinet decisions, together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible.

### Advising Whether Cabinet Decisions are Within the Budget and Policy Framework

- 4.8 The Monitoring Officer, in consultation with the Head of Paid Service and s.151 Officer, will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.

### Providing Advice

- 4.9 The Monitoring Officer, in consultation with the Head of Paid Service and s.151 Officer, will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Members.

### Restrictions on Posts

- 4.10 The Monitoring Officer cannot be the Head of Paid Service and s.151 Officer.

## **5. Functions of the s.151 Officer (the Chief Executive)**

### Ensuring Lawfulness and Financial Prudence of Decision-Making

- 5.1 After consulting with the Monitoring Officer, the s.151 Officer will report to the full Council or to the Cabinet in relation to an Executive Function and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

### Administration of Financial Affairs

- 5.2 The s.151 Officer will have responsibility for the administration of the financial affairs of the Council.

### Contributing to Corporate Management

- 5.3 The s.151 Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

### Providing Advice

- 5.4 The s.151 Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Members and will support and advise Members and Officers in their respective roles.

### Giving Financial Information

- 5.5 The s.151 Officer will provide financial information to the media, members of the public and the community.

### Restrictions on Functions

- 5.6 The s.151 Officer may not be the Monitoring Officer but may hold the post of Head of Paid Service.

## **6. Duty to provide sufficient resources to the Monitoring Officer, the s.151 Officer and the Returning Officer**

- 6.1 The Council will provide the Monitoring Officer, s.151 Officer and the Council's Returning Officer with such Officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

## **7. Conduct**

- 7.1 Officers will comply with the Officers' Code of Conduct (Appendix I - Code of Conduct for Employees) and the Protocol on Officer/Councillor Relations set out in (Appendix J - Protocol on Councillor and Officer Relations) or such other Protocols as may be adopted by the Council.

## **8. Employment**

- 8.1 The recruitment, selection and dismissal of Officers will comply with the Officer Employment Procedure Rules set out in (Appendix M - Officer Employment Procedure Rules).

## **9. Delegations to Officers**

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### Introduction - Overall Basis

- 9.1 This scheme delegates the powers and duties of the Council to Officers and shall be interpreted widely rather than narrowly and shall include the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of anything specified, including appointment and dismissal of staff (where that is not reserved to Members by the scheme of delegation to committees) and authorising the affixing of the Common Seal.
- 9.2 This scheme operates under sections 101 of the Local Government Act 1972 and 15 of the Local Government Act 2000 and all other enabling powers.

### Overall Limitations

- 9.3 This scheme does not delegate to Officers:
- (a) any matter reserved to full Council;
  - (b) any matter, which by law, may not be delegated to an Officer; and
  - (c) the determination of policy (including extension of or amendment to an existing policy) and budgetary matters; and
  - (d) any matter expressly withdrawn from delegation by this scheme or, in a particular case, by the Council, Cabinet or Committee or Sub-Committee.
- 9.4 The exercise of a delegated power shall be subject to:
- (a) The Council's policies, procedures and protocols, including the Budget and Policy Framework (Appendix B - Budget and Policy Framework Procedure Rules).
  - (b) The requirements of the Constitution, including the Contracts Procedure Rules (Appendix E - Contracts Procedure Rules) and Financial Procedure Rules (Appendix D - Financial Procedure Rules);
  - (c) Any statutory restrictions;
  - (d) The right of the Council, Cabinet, Committee or Sub-Committee to decide any matter in a particular case; and
  - (e) Any restrictions, conditions or directions of the delegating body.
- 9.5 In exercising delegated powers, Officers shall:
- (a) have regard to any report by the Chief Executive in his capacity as Head of Paid Service or the Monitoring Officer under sections 4 and 5 of the Local Government and Housing Act 1989 or the Chief Executive in his capacity as s.151 Officer under section 114 of the Local Government Finance Act 1988.

- (b) not go beyond the provision in the revenue or capital budgets for their service except to the extent permitted by the Contracts Procedure Rules (Appendix E - Contracts Procedure Rules) or Financial Procedure Rules (Appendix D - Financial Procedure Rules).
- (c) Where and when appropriate, report back to Cabinet, or appropriate Committee or Sub-Committee, as to the exercise of the delegated powers.

### **10. Further Provisions:**

- 10.1 This scheme includes the power for Officers to delegate in writing all or some of the delegated functions to other Officers (described by name or post) either fully or under the general supervision and control of the delegating officer. Sub-delegations shall be recorded in a register kept by the Democratic Services Team under section 100G of the Local Government Act 1972. It shall be the responsibility of the Officer delegating any function to ensure that a copy of the delegation is forwarded to the Democratic Services Manager.
- 10.2 Before exercising delegated powers an Officer shall comply with the requirements for consultation with Members set out in this Constitution, including the limitations set out in this Scheme of Delegation, the Budget and Policy Framework Procedure Rules (Appendix B - Budget and Policy Framework Procedure Rules), the Access to Information Procedure Rules (Appendix A - Access to Information Procedure Rules), the Financial Procedure Rules (Appendix D - Financial Procedure Rules), and the Contracts Procedure Rules (Appendix E - Contracts Procedure Rules), and the Protocols (as set out in the appendices to this Constitution). It shall always be open to an Officer not to exercise delegated powers but to refer the matter to the Cabinet, Committee or Sub-Committee for decision.
- 10.3 In exercising delegated powers, Officers shall consult with such other Officers as they determine appropriate and shall have regard to any advice given.
- 10.4 This scheme shall operate from 1<sup>st</sup> September 2013.
- 10.5 This scheme delegates to the holder of each post named in it the management of the resources made available for the duties of the post as specified in the terms of the post holder's appointment.
- 10.6 In each case the delegated authority does not authorise the post holder to make any planning application which would materially conflict with or prejudice an identified policy in an adopted Local Plan for the time being in force.
- 10.7 In each case, except where the Chief Executive is exercising delegated authority under paragraph 12 (d) below, none of the Officers named is authorised to make a formal response on behalf of the Council to any Government Consultation Paper, without reference first to the Cabinet, relevant Portfolio Holder or the relevant Committee provided that when the timescale does not allow for reference to a scheduled Cabinet or Committee meeting, Officers are authorised to respond,

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following consultation with the relevant member of the Cabinet (where the matter is an Executive function) or with the relevant Committee Chairman (where the matter is not an Executive function).

- 10.8 The powers delegated to Officers, other than the Chief Executive, in this scheme may also be exercised by the Chief Executive when he considers such action to be appropriate.
- 10.9 Any reference to any Act of Parliament shall include reference to regulations, subordinate legislation and European Union legislation upon which either UK legislation is based, or from which powers, duties and functions of the Council are derived.
- 10.10 Reference to any enactment, regulation, order or byelaw shall include any amendment, re-enactment or re-making of the same.
- 10.11 Any post referred to below shall be deemed to include any successor post or a post which includes within the job description elements relevant to any particular delegation, which were also present in the earlier post and shall include anyone acting up or seconded.

### **11. General Delegations to All Chief Officers Acting Individually**

- 11.1 The Chief Officers referred to within Part 13 of the Constitution are those set out in paragraph 2.2 above.
- 11.2 Chief Officers are empowered to carry out those specific functions of the Council delegated to them in this scheme of delegation forming Part 13 of the Constitution in addition to the follows generic powers:-
- 11.3 Deal with employment issues in accordance with the Council's procedures.
- 11.4 Within service budgets, accept tenders, place contracts and procure other resources within or outside the Council subject to compliance with the Council's Financial and Contract Procedure Rules.
- 11.5 Serve, receive and act upon notices and comply with any duty of the Council.
- 11.6 Exercise virement within the financial limits contained in the Financial Procedure Rules.
- 11.7 Provide services to other local authorities and organisations.
- 11.8 In exercising their delegated powers Chief Officers must act within the law, the Council's Constitution, its Financial and Contract Procedure Rules and other procedures and policies and within appropriate service budgets.
- 11.9 In exercising their delegated powers the Chief Officers will:

- consult the relevant Cabinet Portfolio Holder as appropriate;
- consult any appropriate Chief Officer or relevant Head of Service/Service Manager, in particular where there are significant financial, legal, property or HR implications of the proposed action or decision.

11.10 In the event of a Chief Officer post being vacant, or in the absence of a Chief Officer, those delegated powers may be exercised by the relevant Head of Service/Service Manager so far as permitted by law.

11.11 Where this Constitution permits the exercise of delegated powers by Heads of Service/Service Managers, such exercise is subject to the same restrictions and requirements as are applicable to Chief Officers.

### **12. Delegation to the Chief Executive and s.151 Officer**

- (a) To be Head of the Paid Service under Section 4 of the Local Government and Housing Act 1989 and the s.151 Officer
- (b) The power to incur expenditure in the event of a civil emergency and to make orders under the Public Order Act 1986.
- (c) To manage the co-ordination of budget processes, including overall strategy, planning and information.
- (d) In cases of urgency, after consultation with the Leader and Deputy Leader of the Council [and, where possible, the Leader(s) of the Opposition], to take any decision which could be taken by the Cabinet or by a Committee and to report such actions to Cabinet or Committee as appropriate.
- (e) To be the Returning Officer and Electoral Registration Officer for the Council.
- (f) To be the proper officer of the Council for the purposes of the Local Government Act 1972, The Local Authorities (Executive and Arrangements)(Meetings and Access to Information)(England ) Regulations 2012 and the Local Government (Miscellaneous Provisions) Act 1976.
- (g) To designate suitably qualified officers as Authorising Officers for the purpose of granting authorisations to exercise the powers made available to the Council by the Regulation of Investigatory Powers Act, 2000 in accordance with the changes to provisions made by the Protection of Freedoms Act 2012.
- (h) To exercise the granting of the higher level of internal authorisation under the Regulation of Investigatory Powers Act 2000 as set out in the Council's Surveillance Policy.
- (i) To be the proper officer of the Council for the purpose of Part II of the Local Authorities (Statutory Order) (England) Regulations 2001

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- (j) As Head of Paid Service, to exercise any powers delegated to another Officer except those in respect of which a specific professional qualification is required by statute.
- (k) The Chief Executive, or in his absence, the Chief Officer Communities & Business to give authorisation of a dispersal order under the Anti Social Behaviour Act 2003 Part 4 (Sections 30 and 31).
- (l) Pursuant to enabling legislation this Council via its Chief Executive has received and shall discharge all the functions of Dartford Borough Council with regard to the Revenues and Benefits Service as may be more particularly identified in Schedule 1 of the Partnership Working Agreement and Dartford Borough Council have agreed to place at the disposal of Sevenoaks District Council for the purposes of those functions the services of officers employed by Dartford Borough Council.
- (m) Pursuant to enabling legislation this Council via its Chief Executive has received and shall discharge all the functions of Dartford Borough Council with regard to the Environmental Health Service as may be more particularly identified in the Partnership Working Arrangements and Dartford Borough Council have agreed to place at the disposal of Sevenoaks District Council for the purposes of those functions the services of officers employed by Dartford Borough Council.
- (n) To grant exemptions on the political restrictions of officer posts under the Localism Act 2011
- (o) To exercise the proper administration of the Council's financial affairs which shall include issues of insurance, discretions as to rating, housing benefits and Council Tax under section 151 of the Local Government Act 1972 and section 114 of the Local Government Finance Act 1988.

This authority is limited in the following cases:

- (i) the approval of sums exceeding £10,000 being transferred from an agreed estimate to another purpose other than for which it was approved shall be subject to approval by the relevant Portfolio Holder(s); and
  - (ii) the writing off of debts exceeding £5,000 and rent arrears exceeding £5,000 shall be subject to approval by the Value for Money Portfolio Holder.
- (p) To exercise the budgetary control functions under the Council's Financial Procedure Rules.
  - (q) To arrange all borrowings, financing and investment in line with the Council's Treasury Management Policy Statement.
  - (r) To agree the terms of loans permitted under law.
  - (s) To authorise the release of funds from contingencies as set out in the Revenue Budget.



- (t) To have responsibility for the Council's general administration (including the sealing of documents), Committee structure and operation (including payment of Members' allowances and expenses) save that any adjustment to the Council's calendar of meetings as may be necessary shall only be exercised after consultation with the Leader of the Council or the appropriate Chairman. To be the proper officer of the Council for the purposes of sections 96, 225, 229 and Part VA, sections 115 and 146 of the Local Government Act 1972 and for the purposes of section 41 of the Local Government (Miscellaneous Provisions) Act 1976.
- (u) To manage central training and job evaluation.
- (v) To determine and issue guidelines to Officers for the management of human resources and in particular recruitment, training, conditions of service, rewards and discipline.
- (w) To permanently re-grade posts up to and including Head of Service level.

### **13. Delegation to the Chief Finance Officer**

- (a) To exercise all the powers of management in the best interests of the Council with regard to land and property owned by the Council including authorising action for possession of any land or property.
- (b) To acquire and dispose of land that is necessary for the Council's current programme.
- (c) To institute and conduct legal proceedings where sufficient evidence exists when this is in the Council's interest or arising out of its functions and to take such action as he thinks appropriate with regard to any such proceedings as being in the Council's interest.
- (d) To defend all proceedings brought against the Council including appeals against its decisions and to take such action as he thinks appropriate with regard to any such proceedings.
- (e) To authorise Officers to represent the Council before all Courts and Tribunals.
- (f) To have the responsibility for taking care of all securities and title deeds of all property held in the name of the Council.
- (g) To maintain the collection of revenue, council tax and national non-domestic rates.
- (h) The administration of benefits.
- (i) To maintain an effective internal audit service
- (j) To act as lead officer for the Audit Committee
- (k) To act as the Risk Management Officer Champion and ensure appropriate risk

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management arrangements are in place across the Council.

- (l) To act as lead officer for maintaining effective corporate governance arrangements and the preparation of the Annual Governance Statement.
- (m) To make appropriate banking arrangements on behalf of the Council
- (n) To insure against risks where he considers this appropriate.
- (o) To receive and respond to expressions of interest under Community Right to Challenge, under Part 5, Chapter 2 of the Localism Act 2011.
- (p) To undertake the functions of the designated s.151 Officer in the absence of such Officer.

### **14. Delegation to the Chief Officer Legal & Governance**

- (a) To institute and conduct legal proceedings where sufficient evidence exists when this is in the Council's interest or arising out of its functions and to take such action as is considered appropriate with regard to any such proceedings as being in the Council's interest.
- (b) To defend all proceedings brought against the Council including appeals against its decisions and to take such action as is considered appropriate with regard to any such proceedings.
- (c) To authorise Officers to represent the Council before all Courts and Tribunals.
- (d) To have responsibility for the Council's general administration (including the sealing of documents), Committee structure and operation (including payment of Members' allowances and expenses) save that any adjustment to the Council's calendar of meetings as may be necessary shall only be exercised after consultation with the Leader of the Council or the appropriate Chairman or Chairmen.
- (e) To have the responsibility for taking care of all securities and title deeds of all property held in the name of the Council.
- (f) To act as the Proper Officer for the purposes of the Local Government Act 2000.
- (g) To amend the Constitution where necessary to reflect changes in the law or decisions of council bodies or to correct inaccuracies.
- (h) To prepare all contracts for the sale or purchase of Council Land and property and all leases, tenancy agreements or other agreements affecting Council land or property including easements or any interest in land.
- (i) To settle legal documents.
- (j) To sign the documents intended to give effect to decisions of a council body.

- (k) To sign any notice, demand or other document on behalf of the Council in connection with any actual or contemplated legal proceeding.
- (l) To settle any action in any court or tribunal in which the Council is a party or where legal proceedings are indicated providing that any settlement exceeding £50,000 will be subject to prior consultation with the Leader or Deputy Leader of the Council except in cases of urgency where the settlement is made on the advice of Counsel.
- (m) In consultation with the Chairman of the Governance Committee to make payments or provide other benefits in cases of maladministration in accordance with Section 92 of the Local Government Act 2000 (as amended)
- (n) To act as the Proper Officer for the purposes of the Local Government Acts 1972 and 2000 and all Regulations made there under other than those Proper Officer functions delegated to the Chief Executive and s.151 Officer in connection with the administration of the Council's financial affairs.
- (o) To act as lead officer for the Governance Committee
- (p) To act as lead officer for the Standards Committee

### **15. Delegation to Chief Planning Officer**

- (a) To exercise all the powers and duties of the Council as the Local Planning Authority (including the conduct of appeals) under all Town and Country Planning legislation, subject to the following exceptions:
  - (1) Where an application is submitted to Sevenoaks District Council for determination, it shall be referred to the Development Control Committee if any of the following apply.
    - (i) In the opinion of the Chief Planning Officer, the application is of a significant, controversial or sensitive nature.
    - (ii) It is proposed to determine an application which in the opinion of the said Chief Planning Officer, would set a significant precedent.
    - (iii) A written request for consideration by the Development Control Committee, supported by an appropriate planning reason<sup>1</sup>, has been received from a Member of the Council no later than 21 calendar days following despatch of the weekly list of planning applications on which such applications appear, or such lesser period as may be notified by the Chief Planning Officer in relation to any application where a decision could not otherwise be made by Committee before the statutory deadline for determination.

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<sup>1</sup> A 'Planning Reason' includes accordance with a relevant Development Plan Policy or a material planning consideration. The Chief Planning Officers or Development Control Manager will offer advice if necessary on an appropriate planning reason.

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Where amended plans and/or information of a significant nature (as determined by the Chief Planning Officer) are received on an application, an additional call-in period will be given, the period for which will be specified by the Chief Planning Officer to suit the circumstances of each case.

- (iv) A written request for consideration by the Development Control Committee, supported by an appropriate planning reason, has been received from a Member of the Council relating to an application in their Ward no later than seven calendar days following notification by the Chief Planning Officer of a proposed recommendation which is contrary to representations received in support of, or in objection to, an application from the Town or Parish Council for the area (subject to the arrival of such representations within the statutory consultation period).
  - (v) An application known to have been submitted by, or on behalf of, a Member or an Officer of the District Council, or a member of their family<sup>2</sup>.
- (2) Where the Council is a consultee to an application e.g. where an application is submitted to Kent County Council as the Mineral Planning Authority, the application shall be referred to the Development Control Committee if in the opinion of the Chief Planning Officer, it is of a significant, controversial or sensitive nature.
- (3) Enforcement action shall be referred to the Development Control Committee if either of the following apply.
- (i) A request for consideration by the Development Control Committee, supported by an appropriate planning reason, has been received from a Local Member; or
  - (ii) The Chairman or Vice Chairman of the Development Control Committee requires the case to be considered by the Development Control Committee.
- (4) Where permission has been refused under delegated powers, an appeal has been lodged and new information has been received that leads Officers to conclude that refusal of permission can no longer be substantiated at appeal, the matter will be referred back to Members to enable the original delegated refusal to be reviewed.

If sufficient time is available, local Members will be asked to agree to a decision no longer to oppose the scheme following the procedure for delegated decisions and if the local Members do not agree the matter will be

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<sup>2</sup> A 'member of their family' shall include a partner (someone they are married to, civil partner or other person who they live with in a similar capacity), a parent, a parent-in-law, a son or daughter, a stepson or stepdaughter, the child of a partner, a brother or sister, a brother or sister of their partner, a grandparent, a grandchild, an uncle or aunt, a nephew or niece, and the partners of any of these people.

referred to the Development Control Committee including, if necessary, an emergency meeting.

If the appeal timetable does not allow for the above process to be completed in time, the review of the delegated decision will be referred to a Panel of three Members of the Committee for decision, after consultation with the local Members.

The Chief Executive will call a meeting of one of the Panels whenever there is business to be transacted.

A Panel will contain three Members of the Development Control Committee. Either the Chairman or Vice-Chairman of the Development Control Committee will be one of the Members of the panel and the other Members of the Panel will be selected sequentially in alphabetical order. Local Members should not normally be part of the Panel but will have the right to address the Panel for a maximum of 3 minutes.

Any Member of the Development Control Committee may act as a substitute on a Panel. Democratic Services must be notified by the Members concerned of any substitutions at least one working hour prior to a Panel meeting. The Chairman or Vice-Chairman of the Development Control Committee, whichever is present, will be the Chairman of the Panel.

The quorum for a Panel meeting shall be three Members.

The procedure will not apply to the review of individual reasons for refusal where the decision to refuse permission does not change.

- (5) The Chief Planning Officer to institute, conduct and settle legal proceedings on behalf of the Council in any Court of Law, Tribunal or other body in respect of any breach or contravention of the Planning Acts and regulations made thereunder (including actions for injunctions).
- (b) To take all necessary action to defend legal proceedings against the Council.
- (c) To exercise all relevant legislation where appropriate as follows:
- The Town and Country Planning Act 1990
  - Planning (Listed Buildings and Conservation Areas) Act 1990
  - Town and Country Planning (Control of Advertisements)(England) Regulations 2007
  - the Town and Country Planning (General Permitted Development) Order 1995

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- Planning & Compulsory Purchase Act 2004
- Planning and Compensation Act 1991
- Countryside and Rights of Way Act 2000.
- Growth and Infrastructure Act 2013
- the Localism Act 2011

or such other Acts of Parliament as relate to the relevant statutory functions of the planning authority

### **16. Delegation to the Chief Officer Environmental & Operational Services**

- (a) To exercise all the Council's powers and duties with regard to Building Control under the Building Act 1984 and regulations made thereunder.
- (b) To take all necessary action to secure compliance with the Building Act 1984 and regulations made thereunder, including the service of statutory notices.
- (c) To institute, conduct and settle legal proceedings on behalf of the Council in any Court of Law, Tribunal or other body in respect of any breach or contravention of the Building Act 1984 and regulations made thereunder (including actions for injunctions).
- (d) To take all necessary action to defend legal proceedings against the Council.
- (e) To exercise the functions of the Council with regard to environmental improvements and access to the Countryside.
- (f) To deal with all matters relating to high hedges under Part 8 of the Anti-Social Behaviour Act 2003

#### Environmental and Operational Services

##### Direct Services

- (g) To operate the activities of Sevenoaks Direct Services.
- (h) To deal with any matters relating to the powers contained in the Clean Neighbourhood and Environment Act 2005.
- (i) To deal with any matters relating to the powers contained in the Environmental Protection Act 1990
- (j) To deal with any matters relating to the powers contained in the Refuse Disposal (Amenity) Act 1978

### Parking & Amenity

- (k) To operate playgrounds to ensure health and safety requirements are met, and to seek alternative management of playgrounds as appropriate.
- (l) To monitor and review the Council's grounds maintenance contract and ensure corrective action is taken when required.

### Environmental Services

- (m) To be the Council's proper officer for the purposes of matters relating to food safety and infectious diseases save that where such designation requires a medical or other specialist qualification, to be authorised to designate suitable persons as proper officer for that purpose.
- (n) To exercise all the functions of the Council with regard to matters relating to environmental health, including public health, food hygiene and health and safety, animal welfare (including the authorisation of legal proceedings).
- (o) To exercise all the functions of the Council with regard to matters relating to contaminated land (including the authorisation of legal proceedings) and air quality.

### Licensing

- (p) To authorise legal proceedings in respect of any contravention arising from the Licensing Act 2003, the Gambling Act 2005 and the Charities Act 2006.
- (q) To determine all applications for a personal licence, where no objections have been made
- (r) To determine all applications for a premises licence/club premises certificate under the Licensing Act 2003, where no relevant representations have been made.
- (s) To determine all applications for a provisional statement under the Licensing Act 2003, where no relevant representations have been made.
- (t) To determine all applications to vary premises licences/club premises certificates under the Licensing Act 2003, where no relevant representations have been made.
- (u) To determine all applications to vary designated personal licence holders, except where there is a police objection.
- (v) To determine all requests to be removed as designated personal licence holders.
- (w) To determine all applications by way of Interim Authority Notices except where there is a police objection.
- (x) To determine whether representations submitted are irrelevant, frivolous, or vexatious

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(y) To determine all applications for Minor Variations to premises/club premises licences.

~~(z)~~ To determine all applications for removal of the mandatory condition to have a Designated Premises Supervisor at Community Premises.

~~(aa)~~ To make a representation to applications for Premises Licence or Club Premises Certificate under the Licensing Act 2003.

~~(bb)~~ To make an application for a premises licences or club premises certificate to be reviewed without having to wait for another Responsible Authority to make an application.

~~(cc)~~ To determine all applications for a premises licence/club premises certificate under the Gambling Act 2005, where no relevant representations have been made.

~~(dd)~~ To determine all applications for a provisional statement under the Gambling Act 2005, where no relevant representations have been made.

~~(ee)~~ To determine all applications to vary premises licences/club premises certificates under the Gambling Act 2005, where no relevant representations have been made.

~~(z)~~~~(ff)~~ To determine all applications under the Scrap Metal Dealers Act 2013.

~~(aa)~~~~(gg)~~ To maintain the Licensing Register.

~~(bb)~~~~(hh)~~ To exercise the Council's powers and duties in relation to the licensing of hackney carriages and private hire vehicles, including the licensing of vehicles, drivers and operators, the control of numbers of hackney carriages, the licensing of private hire operators and the granting of permits for small busses.

~~(ee)~~~~(ii)~~ To exercise all the Council's functions with regard to hypnotism street collections (including the variation of any conditions imposed on any licence)

### Additional Functions

~~(dd)~~~~(jj)~~ To carry out the land charges function.

~~(ee)~~~~(kk)~~ To carry out street naming and numbering.

~~(ff)~~~~(ll)~~ To carry out the retaining of walls near streets.

~~(gg)~~~~(mm)~~ To carry out the Council's functions in relation to temporary road and footpath closures.

~~(hh)~~~~(nn)~~ To carry on the functions associated with parking contraventions.

~~(ii)~~~~(oo)~~ To exercise as appropriate all relevant legislation as follows:



- Animal Boarding Establishments Act 1963
- Animal Welfare Act 2006
- Animals Act 1941
- Breeding of Dogs Act 1973 & 1991
- Dogs (Fouling of Land) Act 1996
- Clean Air Act 1993
- Control of Pollution Act 1974
- Control of Dogs Order 1991
- Criminal Justice and Public Order Act 1994
- Anti- Social Behaviour Act 1972
- Dangerous Dogs Act 1991
- Dangerous Wild Animals Act 1976
- Environment Act 1995
- European Communities Act 1972
- Food Safety Act 1984 and 1990
- Food Hygiene (England) Regulations 2006
- Food and Environment Protection Act 1985
- Guard Dogs Act 1975
- Health Act 2006
- Health and Safety at Work etc Act 1974
- National Assistance (Amendment) Act 1951
- National Assistance Act 1948
- Noise Act 1996
- Noise and Statutory Nuisance Act 1993

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- Offices, Shops and Railway Premises Act 1963
- Performing Animals (Regulations) Act 1925
- Pet Animals Act 1951
- Pesticides Act 1995
- Pollution Prevention and Control Act 1990
- Police and Criminal Evidence Act 1984
- Prevention of Damage by Pests Act 1949
- Public Health (Amendment) Act 1907 and 1961
- Public Health Act 1936, 1925, 1961
- Public Health (Control of Diseases) Act 1984
- Refuse Disposal (Amenity) Act 1978
- Riding Establishments Act 1964 & 1970
- Scrap Metal Dealers Act 2013
- Christmas Day Trading Act 2004
- Sunday Trading Act 1847
- Goods Vehicle (Licensing of Operators) Act 1995
- Towns Improvement Clauses Act 1847
- The Water Supply (Water Quality) Regulations 2010
- Water Industry Act 1991
- Wildlife and Countryside Act 1981
- The Private Water Supply Regulations 2009
- Zoo Licencing Act 1981
- Road Traffic Act 1988 and 1991
- Road Traffic Regulation Act 1984

- Traffic Management Act 2004
- Town Police Clauses Act 1847
- Highways Act 1980
- House to House Collections Act 1939
- Local Government Act 1972
- The Local Government (Miscellaneous Provisions) Act 1976 and 1982
- Commons Act 1899
- Local Authorities (Goods and Services) Act 1970
- Sunbeds Regulation Act 2010
- Localism Act 2011

or such other Acts of Parliament as relate to the relevant statutory functions of the Environmental services authority.

## **17. Delegation to the Chief Officer Housing**

### Housing Services

- (a) To exercise all the functions of the Council as a housing authority, including the responsibility for the Council's Housing Strategy and policies, the enabling role, the Homelessness and Housing advice service, standard and fitness or properties, Energy Conservation issues and the management of unauthorised encampments and of the Council's gypsy site.
- (b) The power to authorise Housing staff (Housing advice and Homelessness) under Part V11 Housing Act 1996, Housing Act 2002, Prevention from Eviction Act 1977, Police and Criminal Evidence Act 1984 and National Assistance Act 1948.
- (c) To exercise where appropriate all other relevant legislation as follows:
  - Houses, Grants, Construction and Regeneration Act 1996
  - Housing Acts 1977, 1985, 1988, 1989, 1996, 2002 and 2004
  - Environmental Protection Act 1990
  - Local Government Acts 1933 & 1972
  - Caravan Sites and Control of Development Act 1960

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- Caravan Sites Act 1968
- Building Act 1984
- The Water Supply (Water Quality) Regulations 2010
- The Water Industry Act 1991 as amended
- The Private Water Supply Regulations 2009
- Prevention of Damage by Pests Acts 1949
- Public Health Acts 1936 & 1961
- Public Health Control of Disease Act 1984 as amended
- Landlord and Tenant Act 1985
- National Assistance Act 1948
- Local Government (Miscellaneous Provisions) Act 1976 & 1982
- Criminal Justice and Public Order Act 1994
- Home Energy Conservation Act 1995 as amended
- Land Drainage Act 1991
- Rent (Agricultural) Act 1976
- Protection from Eviction Act 1977
- Mobile Homes Act 1975 and 1983
- Police and Criminal Evidence Act 1984
- The National Assistance Act 1948
- The Local Government (Miscellaneous Provisions) Act 1976
- The Kent Acts
- Localism Act 2011

or such other Acts of Parliament as relate to the relevant statutory functions of the Housing Authority.

### **18. Delegations to the Chief Officer Communities & Business**

### Communities and Business

- (a) To be responsible for the implementation and co-ordination of the Council's duties and functions under the Crime and Disorder Act 1998 as amended, including the authorisation of seeking appropriate orders under the Act.
- (b) To manage the Council's contractual relationship with Sencio Community Leisure and to operate the Council's leisure facilities that are not under the management of the Leisure Trust, including seeking alternative management of leisure facilities or funding or assistance from the Lottery Arts Fund save that where support or rejection for such assistance arises from a town or parish council, the Local Member(s) shall be consulted.
- (c) In partnership, facilitate arts (arts development in partnership with Kent County Council) within Council policies and manage the Council's contractual relationship for the operation of the Stag (formerly known as Sevenoaks Playhouse).
- (d) To exercise co-ordination of all matters relating to sustainable development and other matters of environmental management and policy agreed by the Council.
- (e) To be responsible for the implementation of Economic Development Policy and Programmes.
- (f) To be responsible for Strategic and Operational Tourism.
- (g) To undertake the Council's involvement in Health Improvement Plans, Health and Wellbeing Boards and the implementation of Health Policy.
- (h) To be responsible for the implementation, with other partners, of the Sevenoaks District Community Plan on behalf of the Council.
- (i) The responsibility, with other partners, for the implementation of the Voluntary Sector Compact.
- (j) To facilitate youth development and safeguarding within the Council's policies.
- (k) To operate the Council's capital schemes in parishes and other grant schemes.
- (l) To authorise and maintain a list of assets of community value and to make adjudications and decisions in relation thereto.
- (m) To exercise where appropriate all other relevant legislation as follows:
  - Anti-Social Behaviour Act 2003 and consequential amendments
  - Police Reform Act 2002
  - Police & Justice Act 2006

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- Localism Act 2011

or such other Acts of Parliament as relate to the relevant statutory functions for Community Safety.

### **19. Delegations to Chief Officer Corporate Support**

(a) To be responsible for the following functions

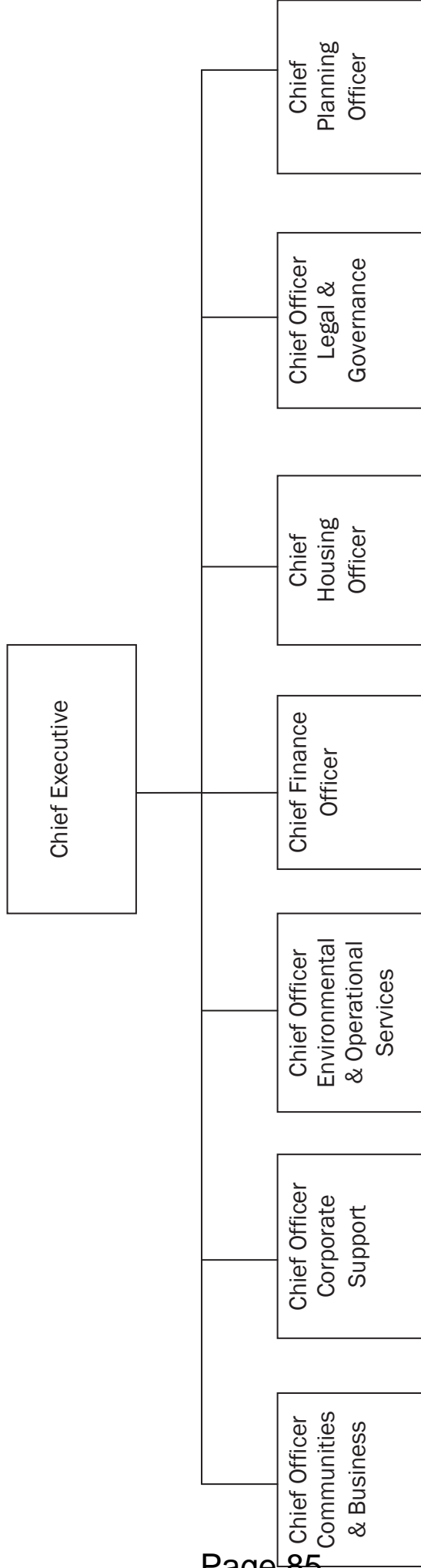
- Customer services
- Facilities Management
- IT Services
- Property Services,
- Post Room and Scanning
- Telecommunications

(b) To exercise where appropriate all other relevant legislation as follows:

- Landlord and Tenant Act 1954
- Landlords and Tenant Covenants Act 1995
- The Construction (Design and Management) Regulations 2007
- The Control of Asbestos Regulations 2012
- Disability Discrimination Act 2005
- The Local Government (Miscellaneous Provisions) Act 1976
- Local Authorities (Goods and Services) Act 1970
- The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007
- Localism Act 2011

or such other Acts of Parliament as relate to the relevant statutory functions in relation to the Facilities and IT services of the authority

**Organisational Structure**



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