



*Alison Stuart  
Head of Legal and  
Democratic Services*

**MEETING** : LICENSING COMMITTEE  
**VENUE** : COUNCIL CHAMBER, WALLFIELDS, HERTFORD  
**DATE** : WEDNESDAY 14 NOVEMBER 2018  
**TIME** : 7.00 PM

**PLEASE NOTE TIME AND VENUE**

**MEMBERS OF THE COMMITTEE**

Councillor D Andrews (Chairman)  
Councillors P Ballam, R Brunton, Mrs R Cheswright, K Crofton,  
G Cutting, B Deering, J Jones, M McMullen, T Page, M Stevenson and  
N Symonds

**CONTACT OFFICER: PETER MANNINGS**  
**01279 502174**  
**[peter.mannings@eastherts.gov.uk](mailto:peter.mannings@eastherts.gov.uk)**

## **DISCLOSABLE PECUNIARY INTERESTS**

1. A Member, present at a meeting of the Authority, or any committee, sub-committee, joint committee or joint sub-committee of the Authority, with a Disclosable Pecuniary Interest (DPI) in any matter to be considered or being considered at a meeting:
  - must not participate in any discussion of the matter at the meeting;
  - must not participate in any vote taken on the matter at the meeting;
  - must disclose the interest to the meeting, whether registered or not, subject to the provisions of section 32 of the Localism Act 2011;
  - if the interest is not registered and is not the subject of a pending notification, must notify the Monitoring Officer of the interest within 28 days;
  - must leave the room while any discussion or voting takes place.
2. A DPI is an interest of a Member or their partner (which means spouse or civil partner, a person with whom they are living as husband or wife, or a person with whom they are living as if they were civil partners) within the descriptions as defined in the Localism Act 2011.
3. The Authority may grant a Member dispensation, but only in limited circumstances, to enable him/her to participate and vote on a matter in which they have a DPI.
4. It is a criminal offence to:

- fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register;
- fail to notify the Monitoring Officer, within 28 days, of a DPI that is not on the register that a Member disclosed to a meeting;
- participate in any discussion or vote on a matter in which a Member has a DPI;
- knowingly or recklessly provide information that is false or misleading in notifying the Monitoring Officer of a DPI or in disclosing such interest to a meeting.

(Note: The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.)

## **Public Attendance**

East Herts Council welcomes public attendance at its meetings and will provide a reasonable number of agendas for viewing at the meeting. Please note that there is seating for 27 members of the public and space for a further 30 standing in the Council Chamber on a "first come first served" basis. When the Council anticipates a large attendance, an additional 30 members of the public can be accommodated in Room 27 (standing room only), again on a "first come, first served" basis, to view the meeting via webcast.

If you think a meeting you plan to attend could be very busy, you can check if the extra space will be available by emailing [democraticservices@eastherts.gov.uk](mailto:democraticservices@eastherts.gov.uk) or calling the Council on 01279 655261 and asking to speak to Democratic Services.

## **Audio/Visual Recording of meetings**

Everyone is welcome to record meetings of the Council and its Committees using whatever, non-disruptive, methods you think are suitable, which may include social media of any kind, such as tweeting, blogging or Facebook. However, oral reporting or commentary is prohibited. If you have any questions about this please contact Democratic Services (members of the press should contact the Press Office). Please note that the Chairman of the meeting has the discretion to halt any recording for a number of reasons, including disruption caused by the filming or the nature of the business being conducted. Anyone filming a meeting should focus only on those actively participating and be sensitive to the rights of minors, vulnerable adults and those members of the public who have not consented to being filmed.

## AGENDA

1. Appointment of Vice-Chairman

2. Apologies

*To receive apologies for absence.*

3. Chairman's Announcements

4. Declarations of Interest

*To receive any Members' declarations of interest.*

5. Minutes - 5 September 2018 (Pages 7 - 10)

*To approve the Minutes of the meeting of the Committee held on Wednesday 5 September 2018.*

6. Licensing Sub-Committee - 8 October 2018 (Pages 11 - 18)

*To receive the Minutes of meetings of the Licensing Sub-Committee held on:*

*8 October 2018*

7. Statement of Gambling Principles 2019-2022 - Consideration of Consultation Responses (Pages 19 - 90)

8. Review of Licensed Vehicle Policy: Vehicle Ages and Emissions (Pages 91 - 102)

9. Night Time Economy Position Statement Consultation Responses  
(Pages 103 - 168)

10. Urgent Business

*To consider such other business as, in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration and is not likely to involve the disclosure of exempt information.*

MINUTES OF A MEETING OF THE  
LICENSING COMMITTEE HELD IN THE  
COUNCIL CHAMBER, WALLFIELDS,  
HERTFORD ON WEDNESDAY 5 SEPTEMBER  
2018, AT 7.00 PM

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PRESENT: Councillor D Andrews (Chairman)  
Councillors P Ballam, R Brunton,  
Mrs R Cheswright, K Crofton, B Deering,  
J Jones, M McMullen, M Stevenson and  
N Symonds

ALSO PRESENT:

Councillors S Bull, M Casey, I Devonshire,  
P Moore, S Reed, P Ruffles and T Stowe

OFFICERS IN ATTENDANCE:

|                 |   |
|-----------------|---|
| Simon Aley      | - Interim Legal<br>Services Manager                 |
| Isabel Brittain | - Head of Strategic<br>Finance and<br>Property      |
| Peter Mannings  | - Democratic<br>Services Officer                    |
| Oliver Rawlings | - Service Manager<br>(Licensing and<br>Enforcement) |
| Brad Wheeler    | - Senior Licensing<br>and Enforcement<br>Officer    |

161 APOLOGIES

Apologies for absence were submitted on behalf of Councillors G Cutting and T Page.

162 CHAIRMAN'S ANNOUNCEMENTS

The Chairman advised of the necessity of this extra meeting to consider the report included in the Agenda in respect of the Statement of Principles under the Gambling Act 2005.

163 MINUTES - 14 MARCH 2018

Councillor R Brunton proposed and Councillor J Jones seconded, a motion that the minutes of the meeting held on 14 March 2018, be approved as a correct record and signed by the Chairman. After being put to the meeting and a vote taken, this motion was declared CARRIED.

RESOLVED – that the Minutes of the meeting held on 14 March 2018, be confirmed as a correct record and signed by the Chairman.

164 LICENSING SUB-COMMITTEE - 28 MARCH, 21 MAY, 8 JUNE AND 13 JULY 2018

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RESOLVED – that the Minutes of the Licensing Sub-Committee meetings held on 28 March, 21 May, 8 June and 13 July 2018, be received.



165 STATEMENT OF PRINCIPLES UNDER THE GAMBLING ACT  
2005

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The Head of Housing and Health submitted a report presenting draft revisions to the Council's Statement of Principles under the Gambling Act 2005. The Service Manager (Licensing and Enforcement) advised that the written policy regarding the Council's Statement of Principles was the least used Licensing Policy in place at the Authority.

The Service Manager commented on the potential for serious implications of gambling for residents in East Herts. He referred to gaming machines and lottery registrations which were the high volume applications in East Herts. As a result, the parts of the policy dealing with these areas have been expanded. Members were advised that there had not been any substantive changes in the law or guidance during the life of the previous policy.

Members were reminded that they were free to comment on the draft policy at any point during the 8 week public consultation period. A further report would be submitted to Licensing Committee in November to review and consultation responses and then the document would be recommended to Council in December 2018.

The Service Manager confirmed to Councillor R Brunton that not one occasional use notices had ever been used in East Herts. Councillor R Brunton proposed and Councillor B Deering seconded, a motion that recommendation (A) as now detailed, be

approved. After being put to the meeting and a vote taken, this motion was declared CARRIED.

Councillor P Ballam proposed and Councillor B Deering seconded, a motion that recommendation (B) as now detailed, be approved. After being put to the meeting and a vote taken, this motion was declared CARRIED.

The Committee approved the recommendations now detailed.

RESOLVED – that (A) Officers commence consultation with responsible authorities, representatives of licence-holders and other persons on the proposed revisions to the Statement of Principles under the Gambling Act 2005; and

(B) Officers report the results to the Licensing Committee meeting on 14 November 2018.

The meeting closed at 7.05 pm

|                |
|----------------|
| Chairman ..... |
| Date .....     |

MINUTES OF A MEETING OF THE  
LICENSING SUB-COMMITTEE HELD IN THE  
COUNCIL CHAMBER, WALLFIELDS,  
HERTFORD ON MONDAY 8 OCTOBER 2018,  
AT 2.00 PM

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PRESENT: Councillor B Deering (Chairman)  
Councillors R Brunton and J Jones

ALSO PRESENT:

Councillors D Andrews, G Cutting, T Page  
and N Symonds

OFFICERS IN ATTENDANCE:

|                |  |
|----------------|--|
| Simon Aley     | - Interim Legal<br>Services Manager              |
| Peter Mannings | - Democratic<br>Services Officer                 |
| Brad Wheeler   | - Senior Licensing<br>and Enforcement<br>Officer |

10 APPOINTMENT OF CHAIRMAN

It was proposed by Councillor J Jones and seconded by Councillor R Brunton that Councillor B Deering be appointed Chairman for the meeting. After being put to the meeting and a vote taken, the motion was declared CARRIED.

RESOLVED - that Councillor B Deering be appointed Chairman for the meeting.

11 MINUTES - 13 JULY 2018

It was moved by Councillor J Jones and seconded by Councillor R Brunton that the Minutes of the meeting held on 13 July 2018 be confirmed as a correct record and signed by the Chairman. After being put to the meeting and a vote taken, the motion was declared CARRIED.

RESOLVED – that the Minutes of the meeting held on 13 July 2018 be confirmed as a correct record and signed by the Chairman.

12 APPLICATION FOR A NEW PREMISES LICENCE FOR ACE OF LANES, ANCHOR STREET, BISHOP'S STORTFORD, HERTS CM23 3BP

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The Chairman outlined the procedure to be followed. All those present were introduced. The Senior Licensing and Enforcement Officer summarised the application made under the Licensing Act 2003. He detailed the Licensable activities being sought by the applicant and the requested hours outlined at paragraph 2.3 of the report submitted.

The Sub-Committee was advised that since the application had been submitted, the applicant had amended the requested hours for all activities and closing on Friday and Saturday nights. On Fridays and Saturdays all licensable activities would cease at 23:45 and the premises would close at midnight.

He set out the steps due to be taken to promote and

meet the four licensing objectives. He referred to the proposed conditions including a CCTV system in constant operation during all licensable activities and also 'Challenge 21' as an age verification policy.

The Sub-Committee was advised that after 10 pm, the following would apply along with the other conditions which had been agreed with Hertfordshire Constabulary as accepted conditions, as detailed on pages 57 and 58 of the report submitted:

6. After 22:00 hours the following applies to the outside terrace area edged blue on the licence plan:
  - a. Use as a smoking area only
  - b. No more than 10 people at any one time
  - c. No drinks permitted
  - d. Doors onto the terrace to be kept closed other than for access and egress

The Sub-Committee was advised that the outstanding representations related to the prevention of public nuisance in respect of noise, litter and the consumption of alcohol and these concerns were set out at pages 59 to 61 of the Agenda. The Officer advised that Members could grant the application, impose conditions, reject part or all of the application or amend the application. The decision of the Sub-Committee would have to be evidence based.

Councillor G Cutting, on behalf of the residents who had made representations as the affected persons, referred to their concerns as being solely regarding the

use of the outside terrace. The provision of the bowling alley was welcomed. He referred to the letters of objection and concerns regarding a lack of consultation. Residents were concerned, in particular, with the proximity of the rear terrace to the Nicholls Lodge apartments, which were 15 metres from the proposed terrace.

Councillor Cutting referred to concerns regarding loss of amenity and privacy for residents whose apartments faced the area of the terrace. He commented on whether the terrace could be relocated to the front of the proposed bowling alley. He also highlighted the issue of cigarette or vape smoke reaching the apartments and expressed concerns over a lack of engagement with the residents on the part of the applicant.

Councillor Cutting concluded by highlighting the suggested conditions relating to the outside terrace and he commented the doors should be closed aside from ingress and egress. He highlighted the impact this terrace could have on elderly residents who had an expectation of quiet domestic living.

The Solicitor for the applicant explained that the applicant also owned and operated Bacchus so was well aware of the 4 licensing objectives. The applicant therefore had experience of managing premises where noise might be an issue. The premises being referred to as Aces of Lanes would be a 12 lane bowling alley with a golf simulator, restaurant and bar and also a number of entertainment machines. The intention was that this would be a facility for the whole

community and for families in particular.

The Sub-Committee was advised that the applicant had met with the police at the premises and a number of agreed conditions had been included in the Agenda. There had been no objection from Environmental Health Officers. The applicant had corresponded with local residents so there had been an attempt at engagement to raise awareness of the proposed conditions.

The Solicitor confirmed that Aces of Lanes would not be alcohol led and would predominantly be a multi-use facility aimed at providing an entertainment venue with the primary use being as a 10 pin bowling centre. CCTV would be in use both internally and externally and those present were shown computer assisted design (CAD) drawings to highlight efforts that would be made to soften the building's appearance and act as a barrier to noise. This was evidence of efforts that were being made to consider the local environment and avoid disturbance for residents.

The Solicitor concluded that the applicant had shown an ability to manage large licensed premises and the applicant wished to avoid complaints that required action by Environmental Health. He confirmed to Councillor J Jones that the outdoor terrace would operate as an extension to the restaurant with tables and chairs provided. Councillor J Jones was also assured that any diners or those with a drink would be asked to move inside by 10 pm.

The applicant confirmed to Councillor R Brunton that

the entertainment equipment would be muted and Aces of Lanes would be a much calmer operation than other facilities. The Sub-Committee was advised that the outdoor terrace was an extension to the restaurant and would be well away from the inside bar.

The applicant's solicitor demonstrated the intended location of the exit doors for the terrace and the emergency exits on a computer generated plan of the building. The applicant confirmed to the Sub-Committee that police had been called to Bacchus on 2 occasions by door staff and where possible, the door staff had dealt with incidents inside to minimise disturbance for local residents.

The applicant confirmed to Councillor J Jones that 1 security person would be on duty in Aces of Lanes and the maximum capacity would be 450 based on a fire risk assessment. The applicant responded to a number of further queries from the Sub-Committee in respect of the tow path, fire exits, outside lighting, CCTV and the proportions and location of the doors for accessing the outside terrace. At the conclusion of the closing submissions, the Sub-Committee and the Democratic Services Officer withdrew to allow Members to consider the evidence.

Following this, Members and the Democratic Services Officer returned and the Chairman announced that the Sub-Committee had listened to the Licensing Officer, the applicant, the local Member speaking on behalf of the interested parties and had read the interested parties submissions. The Sub-Committee felt that the imposed conditions, along with the conditions agreed



with the Police, would serve to ensure the prevention of public nuisance and would address the concerns of the interested parties regarding the Prevention of Public Nuisance.

RESOLVED – that for the reasons now detailed, the application for a new premises licence for Aces of Lanes, Anchor Street, Bishop’s Stortford, Herts, CM23 3BP be approved, subject to the agreed police conditions and in particular the following condition:

- 6. After 22:00 hours the following applies to the outside terrace area edged blue on the licence plan:
  - a. Use as a smoking area only
  - b. No more than 10 people at any one time
  - c. No drinks permitted
  - d. Doors onto the terrace to be kept closed other than for access and egress

The meeting closed at 3.37 pm

|                                  |
|----------------------------------|
| Chairman .....<br><br>Date ..... |
|----------------------------------|

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EAST HERTS COUNCIL

LICENSING COMMITTEE – 14 NOVEMBER 2018

REPORT BY THE HEAD OF HOUSING AND HEALTH

STATEMENT OF GAMBLING PRINCIPLES 2019-2022 – CONSIDERATION  
OF CONSULTATION RESPONSES

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WARD(S) AFFECTED: ALL

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### **Purpose/Summary of Report**

- To consider the responses to the public consultation on the Draft Statement of Gambling Principles

| <b><u>RECOMMENDATIONS FOR LICENSING COMMITTEE: That</u></b> |   |
|---|---|
| <b>(A)</b>  | <b>The Committee consider the responses to the consultation and any resulting amendments;</b> |
| <b>(B)</b>  | <b>The final wording be endorsed; and</b>   |
| <b>(C)</b>  | <b>The Committee recommends the final wording to Council for adoption.</b>                    |

#### 1.0 Background

1.1 The Gambling Act 2005 requires East Herts Council to publish a Statement of Principles that it applies when exercising its functions under the Act. The statement must be published every three years and the Licensing Authority must keep the statement under constant review and consult statutory consultees as set out in the Act, and any other appropriate person, on any proposed new or revised Statement of Principles. The statement must then be re-published.

## 2.0 Report

- 2.1 The Statement of Gambling Policy was last published in January 2016. Having previously endorsed the wording of the draft policy it is for Licensing Committee to consider any responses to the consultation.
- 2.2 During the 2 month public consultation, between 7<sup>th</sup> September 2018 and 2<sup>nd</sup> November 2018, one response was received.
- 2.3 The letter was received on 29<sup>th</sup> October 2018 from Gosschalks Solicitors on behalf of the Association of British Bookmakers (ABB) who represent over 80% of the high street betting market. The first four and a half pages are general comments regarding the recent changes to the Gambling Act 2005 and give the background to why the ABB have employed Gosschalks to respond to local authority's policy revisions.
- 2.4 This letter is similar in structure and content to the response letter received from Gosschalks on behalf of the AAB in September 2015 when the previous policy revision was consulted upon. The letter is attached to this report as **Essential Reference Paper 'B'**.
- 2.5 There is only one specific comment regarding the draft revised document and this relates to pages 36 and 37 of the document which covers 'Primary Gambling Activity'.
- 2.6 Gosschalks point out that the Gambling Commission revised the Licence conditions and codes of practice in January 2018 to come into effect from 4<sup>th</sup> April 2018. This revision removed the concept of "primary gambling activity" from the document and replaced it with the concept of "substantive facilities". The relevant excerpt from the revised Licence conditions and codes of practice can be found at **Essential Reference Paper 'C'**.

- 2.7 As such Gosschalks have suggested that this section of the draft document be revised to reflect the amended Social Responsibility Code Provisions.
- 2.8 Officers agreed with the suggestion to amend this section and have made the appropriate changes having taken into consideration the changes made by the Gambling Commission. The amended wording can be found on pages 36 and 37 of the draft policy at **Essential Reference Paper 'D'**.
- 2.9 As no other responses were received the wording in ERP D is the final wording for Members consideration.
- 3.0 Implications/Consultations
- 3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

#### Background Papers

East Herts Statement of Principles under the Gambling Act 2005,  
Policy for 2016-2019

<https://www.eastherts.gov.uk/article/36093/Gambling-Policy-Guidance--Fees>

Gambling Act 2005

<http://www.legislation.gov.uk/ukpga/2005/19/contents>

Licence conditions and codes of practice, January 2018 GC

<https://www.gamblingcommission.gov.uk/PDF/LCCP/Licence-conditions-and-codes-of-practice.pdf>

Contact Member: Councillor Graham McAndrew – Executive Member for Environment and the Public Realm.

Contact Officer: Jonathan Geall – Head of Housing and Health, Extn: 1594.

Report Author: Oliver Rawlings – Service Manager Licensing and Enforcement, Extn: 1629.

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## ESSENTIAL REFERENCE PAPER 'A'

### IMPLICATIONS/CONSULTATIONS

|  |  |
|--|--|
| Contribution to the Council's Corporate Priorities/ Objectives ( <i>delete as appropriate</i> ): | Priority 1 – Improve the health and wellbeing of our communities<br><br>Priority 2 – Enhance the quality of people's lives; and<br><br>Priority 3 – Enable a flourishing local economy   |
| Consultation:  | Any revision of the Policies in relation to vehicle licensing that the Authority seeks to rely upon must be subject to public consultation and any responses to be considered by Licensing Committee before recommending the document for approval by Full Council. An 8 week consultation will be undertaken. |
| Legal:   | If the correct process is not followed then any reliance the authority places on the policy would be open to challenge   |
| Financial:   | There would be a cost implication if the authority was judicially reviewed or appeals were made against decisions based on the policy.   |
| Human Resource:  | No issues identified by report author or contact officer   |
| Risk Management:   | No issues identified by report author or contact officer   |
| Health and wellbeing – issues and impacts:   | One of the licensing objectives under the Gambling Act 2005 is protecting children and other vulnerable persons from being harmed or exploited by gambling. The policy has been written so that the authority can promote the objective.   |

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BY EMAIL ONLY  
Licensing Department  
East Hertfordshire District Council

**Please ask for:** Richard Taylor  
**Direct Tel:** 01482 590216  
**Email:** rjt@gosschalks.co.uk  
**Our ref:** RJT / AW / 097505.00005  
#GS2236209  
**Your ref:**  
**Date:** 29 October 2018

Dear Sir/Madam,

**Re: Gambling Act 2005 Policy Statement Consultation**

We act for the Association of British Bookmakers (ABB) and have received instructions to respond on behalf of our client to the current consultation on the Council's review of its gambling policy statement.

The Association of British Bookmakers (ABB) represents over 80% of the high street betting market. Its members include large national operators such as William Hill, Ladbrokes Coral and Paddy Power, as well as almost 100 smaller independent bookmakers.

Please see below for the ABB's response to the Council's current consultation on the draft gambling policy statement.

This response starts by setting out the ABB's approach in areas relevant to the local authority's regulation of betting shop premises, and its commitment to working with local authorities in partnership. The response finishes by highlighting matters within the policy statement which the ABB feels may need to be addressed.

Betting shops have been part of the British high street for over 50 years and ensuring a dialogue with the communities they serve is vital.

The ABB recognises the importance of the gambling policy statement in focusing on the local environment and welcomes the informed approach this will enable operators to take with regard, to the requirements for local area risk assessments.

Whilst it is important that the gambling policy statement fully reflects the local area, the ABB is also keen to ensure that the statutory requirements placed on operators and local authorities under the Gambling Act 2005 remain clear; this includes mandatory conditions (for instance, relating to Think 21 policies) and the aim to permit structure. Any duplication or obscuring of these would be detrimental to the gambling licensing regime. The ABB also believes it is important that the key protections already offered for communities, and clear process (including putting the public on notice) for objections to premises licence applications, continue to be recognised.

Any consideration of gambling licensing at the local level should also be considered within the wider context.

- the overall number of betting shops is in decline. The latest Gambling Commission industry statistics show that numbers as of March 2017 were 8,788 - a decline of 349 since March 2014, when there were 9,137 recorded.
- planning law changes introduced in April 2015 have increased the ability of licensing authorities to review applications for new premises, as all new betting shops must now apply for planning permission.
- successive prevalence surveys and health surveys tells us that problem gambling rates in the UK are stable (0.6%) and possibly falling.

### **Working in partnership with local authorities**

The ABB is fully committed to ensuring constructive working relationships exist between betting operators and licensing authorities, and that where problems may arise that they can be dealt with in partnership. The exchange of clear information between councils and betting operators is a key part of this and the opportunity to respond to this consultation is welcomed.

### **LGA – ABB Betting Partnership Framework**

In January 2015 the ABB signed a partnership agreement with the Local Government Association (LGA), developed over a period of months by a specially formed Betting Commission consisting of councillors and betting shop firms, which established a framework designed to encourage more joint working between councils and the industry.

Launching the document Cllr Tony Page, LGA Licensing spokesman, said it demonstrated the *"desire on both sides to increase joint-working in order to try and use existing powers to tackle local concerns, whatever they might be."*

The framework builds on earlier examples of joint working between councils and the industry, for example the Medway Responsible Gambling Partnership which was launched by Medway Council and the ABB in December 2014. The first of its kind in Britain, the voluntary agreement led the way in trialing multi-operator self-exclusion. Lessons learned from this trial paved the way for the national multi-operator self-exclusion scheme now in place across the country. By phoning a free phone number (0800 294 2060) a customer who is concerned they are developing a problem with their gambling can exclude themselves from betting shops close to where they live, work and socialise. The ABB is working with local authorities to help raise awareness of the scheme, which is widely promoted within betting shops.

The national scheme was first trialed in Glasgow in partnership with Glasgow City Council. Cllr Paul Rooney, Glasgow's City Treasurer and Chairman of a cross-party Sounding Board on gambling,

described the project as "*breaking new ground in terms of the industry sharing information, both between operators and, crucially, with their regulator.*"

### **Primary Authority Partnerships in place between the ABB and local authorities**

All major operators, and the ABB on behalf of independent members, have also established Primary Authority Partnerships with local authorities. These partnerships help provide a consistent approach to regulation by local authorities, within the areas covered by the partnership; such as age-verification or health and safety. We believe this level of consistency is beneficial both for local authorities and for operators.

### **Local area risk assessments**

Since April 2016, under new Gambling Commission LCCP provisions, operators have been required to complete local area risk assessments identifying any risks posed to the licensing objectives and how these would be mitigated. Licensees must take into account relevant matters identified in the licensing authority's statement of licensing policy, and any local area profile, in their risk assessment. These must be reviewed where there are significant local changes or changes to the premises, or when applying for a variation to or for a new premises licence.

The ABB fully supports the implementation of risk assessments which will take into account risks presented in the local area, such as exposure to vulnerable groups and crime. The requirements build on measures the industry has already introduced through the ABB Responsible Gambling Code to better identify problem gamblers and to encourage all customers to gamble responsibly.

This includes training for shop staff on how to intervene and direct problem gamblers to support services, as well as new rules on advertising including banning gaming machine advertising in shop windows, and the introduction of Player Awareness Systems which use technology to track account based gaming machine customers' player history data to allow earlier intervention with any customers whose data displays known 'markers of harm'.

### **Best practice**

The ABB is committed to working pro-actively with local authorities to help drive the development of best practice with regard to local area risk assessments, both through responses to consultations such as this and directly with local authorities. Both the ABB and its members are open and willing to engage with any local authority with questions or concerns relating to the risk assessment process, and would encourage them to make contact.

Westminster Council is one local authority which entered into early dialogue with the industry, leading to the development of and consultation on draft guidance on the risk assessment process, which the ABB and our members contributed to. Most recently one operator, Coral, has been

working closely with the Council ahead of it issuing its final version of the guidance, which we welcome.

The final guidance includes a recommended template for the local area risk assessment which we would point to as a good example of what should be expected to be covered in an operator's risk assessment. It is not feasible for national operators to submit bespoke risk assessments to each of the c.350 local authorities they each deal with, and all operators have been working to ensure that their templates can meet the requirements set out by all individual local authorities.

The ABB would be concerned should any local authority seek to prescribe the form of an operator's risk assessment. This would not be in line with better regulation principles. Operators must remain free to shape their risk assessment in whichever way best meets their operational processes.

The ABB has also shared recommendations of best practice with its smaller independent members, who although they deal with fewer different local authorities, have less resource to devote to developing their approach to the new assessments. In this way we hope to encourage a consistent application of the new rules by operators which will benefit both them and local authorities.

### **Concerns around increases in the regulatory burden on operators**

The ABB is concerned to ensure that any changes in the licensing regime at a local level are implemented in a proportionate manner. This would include if any local authority were to set out overly onerous requirements on operators to review their local risk assessments with unnecessary frequency, as this could be damaging. As set out in the LCCP a review should only be required in response to significant local or premises change. In the ABB's view this should be where evidence can be provided to demonstrate that the change could impact the premises' ability to operate consistently with the three licensing objectives.

Any increase in the regulatory burden would severely impact ABB members at a time when overall shop numbers are in decline, and operators are continuing to absorb the impacts of significant recent regulatory change. This includes the increase to 25% of Machine Games Duty, limits to staking over £50 on gaming machines, and planning use class changes which require all new betting shops in England to apply for planning permission.

### **Employing additional licence conditions**

It should continue to be the case that additional conditions are only imposed in exceptional circumstances where there are clear reasons for doing so. There are already mandatory and default conditions attached to any premises licence which will ensure operation that is consistent with the licensing objectives. In the vast majority of cases, these will not need to be supplemented by additional conditions.

The LCCP require that premises operate an age verification policy. The industry operates a policy called “Think 21”. This policy is successful in preventing under-age gambling. Independent test purchasing carried out by operators and the ABB, and submitted to the Gambling Commission, shows that ID challenge rates are consistently around 85%. The ABB has seen statements of principles requiring the operation of Challenge 25. Unless there is clear evidence of a need to deviate from the industry standard then conditions requiring an alternative age verification policy should not be imposed.

The ABB is concerned that the imposition of additional licensing conditions could become commonplace if there are no clear requirements in the revised licensing policy statement as to the need for evidence. If additional licence conditions are more commonly applied this would increase variation across licensing authorities and create uncertainty amongst operators as to licensing requirements, over complicating the licensing process both for operators and local authorities

### **Considerations specific to the Draft Statement of Principles under the Gambling Act 2005 – Policy for 2019 to 2022**

On behalf of the ABB, we welcome the light touch approach to the draft statement of principles. There is a single section, however, that should be amended as the Gambling Commission Guidance on the issue of primary gambling activity has changed since the last statement of principles was published.

The concept of “primary gambling activity” is no longer used by the Gambling Commission following consultation in November, 2015 and thereafter amended Guidance and new SR Code provisions. In the circumstances, the section headed “primary gambling activity” on pages 36 and 37 need to be updated.

The current position is contained within SR Code Provision 9.1 which requires that gaming machines may be made available for use in licensed betting premises only where there are also substantive facilities for non-remote betting provided.

The final paragraph of this section refers to the potential for an application to vary a premises licence to extend the opening hours and indicates that an applicant would be expected to demonstrate that the extension was not designed solely to benefit from the machine entitlement and activity which is ancillary to the primary activity of the premises. Following the amended Guidance and case law, the requirement is that substantive facilities be provided. The use of those facilities is not an issue and therefore there is no requirement for any investigation with regard to the purpose of any application for variation of the expected use of the facilities at any time.

## Conclusion

The ABB and its members are committed to working closely with both the Gambling Commission and local authorities to continually drive up standards in regulatory compliance in support of the three licensing objectives: to keep crime out of gambling, ensure that gambling is conducted in a fair and open way, and to protect the vulnerable.

Indeed, as set out, the ABB and its members already do this successfully in partnership with local authorities now. This includes through the ABB Responsible Gambling Code, which is mandatory for all members, and the Safe Bet Alliance (SBA), which sets voluntary standards across the industry to make shops safer for customers and staff.

We would encourage local authorities to engage with us as we continue to develop both these codes of practice, which are in direct support of the licensing objectives, as well as our processes around local area risk assessments.

Yours faithfully,

**GOSSCHALKS**

**GAMBLING  
COMMISSION**

**Licence conditions and codes of practice**

**January 2018**

**In effect from 4 April 2018**

## 9 Gaming machines in gambling premises

### 9.1 Gaming machines in gambling premises

#### **Social responsibility code provision 9.1.1**

##### **Gaming machines in gambling premises – betting**

##### **All non-remote general betting operating licences, except where betting is offered under a 2005 Act casino premises licence**

- 1 Gaming machines may be made available for use in licensed betting premises only where there are also substantive facilities for non-remote betting, provided in reliance on this licence, available in the premises.
- 2 Facilities for gambling must only be offered in a manner which provides for appropriate supervision of those facilities by staff at all times.
- 3 Licensees must ensure that the function along with the internal and/or external presentation of the premises are such that a customer can reasonably be expected to recognise that it is a premises licensed for the purposes of providing betting facilities.

#### **Social responsibility code provision 9.1.2**

##### **Gaming machines in gambling premises – bingo**

##### **All non-remote bingo operating licences**

- 1 Gaming machines may be made available for use in licensed bingo premises only where there are also substantive facilities for non-remote bingo, provided in reliance on this licence, available in the premises.
- 2 Facilities for gambling must only be offered in a manner which provides for appropriate supervision of those facilities by staff at all times.
- 3 Licensees must ensure that the function along with the internal and/or external presentation of the premises are such that a customer can reasonably be expected to recognise that it is a premises licensed for the purposes of providing bingo facilities.

#### **Social responsibility code provision 9.1.3**

##### **Gaming machines in gambling premises – casino**

##### **All non-remote casino operating licences, except 2005 Act operating licences**

- 1 Gaming machines may be made available for use in licensed casino premises only where there are also substantive facilities for non-remote casino games and/or games of equal chance, provided in reliance on this licence, available in the premises.
- 2 Facilities for gambling must only be offered in a manner which provides for appropriate supervision of those facilities by staff at all times.
- 3 Licensees must ensure that the function along with the internal and/or external presentation of the premises are such that a customer can reasonably be expected to recognise that it is a premises licensed for the purposes of providing facilities for casino games and/or games of equal chance.



# **East Hertfordshire District Council**

## **Statement of Principles under the Gambling Act 2005 - DRAFT**

### **Policy for 2019-2022**

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## **Introduction**

The Gambling Act 2005<sup>1</sup> (the “Act”) was passed on 7 April 2005. The Act modernised the law on gambling and introduced a gambling regulator, the Gambling Commission. The Gambling Commission regulates the gambling industry, and the Act also gave responsibility for gambling premises licensing to Local Authorities.

The Act requires East Herts Council (the “licensing authority”) to publish a Statement of Principles that it applies when exercising its functions under the Act. The statement must be published every three years and the Licensing Authority will keep the statement under constant review and will consult statutory consultees as set out in the Act, and any other appropriate person, on any proposed new or revised Statement of Principles. The statement must then be re-published. This version of the Statement of Gambling Policy has been revised following the third 3 year review and is for the period 2016-2019.

This statement of principles supports East Herts Council’s priority’s:

- 1. Improve the health and wellbeing of our communities;**
- 2. Enhance the quality pf people’s lives; and**
- 3. Enabling a flourishing economy.**

Section 25 of the Gambling Act, Guidance to local authorities, states that;

*“The (Gambling) Commission shall from time to time issue guidance as to-  
(a) the manner in which local authorities are to exercise their functions under this Act,  
and  
(b) in particular, the principles to be applied by local authorities in exercising functions under this Act.”*

The Gambling Commission states at the start of its Guidance to Licensing Authorities<sup>2</sup>:

*“The aim of this Guidance is to ensure that every licensing authority has the information it needs to make effective decisions. It does not seek to impose a ‘one size fits all’ model across all licensing authorities. We recognise that every licensing authority is different and will have different views about how it wishes to manage gambling locally. Indeed, the Act establishes a high degree of local accountability for gambling regulation.*

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<sup>1</sup> The Gambling Act 2005 can be accessed via: <http://www.legislation.gov.uk/ukpga/2005/19/contents>

<sup>2</sup> The Gambling Commissions Guidance to Licensing Authorities can be accessed via: <http://www.gamblingcommission.gov.uk/for-licensing-authorities/GLA/Guidance-to-licensing-authorities.aspx>

*This Guidance does not, therefore, attempt to fetter the discretion that licensing authorities have under the Act and it is not intended to replace their judgement in individual cases. Moreover, this Guidance cannot anticipate every set of circumstances that may arise and, as long as it has been understood and taken into account, licensing authorities may depart from it where they consider it would be right to do so. There should, however, be strong reasons for departing from this Guidance and these need to be clearly expressed and explained if a licensing authority is to avoid judicial review or challenge on appeal for failing to take this Guidance into account."*

This policy was drafted giving the guidance by the Gambling Commission due consideration and will broadly follow it.

The Act also requires this Authority to carry out its various licensing functions so as to be reasonably consistent with the following three licensing objectives:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime.
- Ensuring that gambling is conducted in a fair and open way.
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

As required by the Guidance issued by the Gambling Commission, in carrying out its licensing functions under the Act, particularly with regard to premises licences, the Council will generally aim to permit the use of premises for gambling as long as it is considered to be:

- In accordance with any relevant code of practice issued by the Gambling Commission;
- In accordance with any relevant code of practice issued by the Gambling Commission;
- Reasonably consistent with the licensing objectives; and
- In accordance with the policy statement published by this Authority under section 349 of the Act.

***This Statement of Principles will not override the right of any person to make an application, make representations about an application, or apply for a review of a licence. Each will be considered on its own merits and according to the statutory requirements of the Gambling Act 2005. In producing this statement the Licensing***

***Authority has had regard to the licensing objectives issued by the Gambling Commission and responses to consultation on this statement***

## ***Background to East Herts***

East Herts is the largest of the 10 districts in Hertfordshire. It covers 184 square miles, around a third of the county, and offers a blend of rural and town living. The benefits of this mixture are greatly appreciated by the 144,700<sup>3</sup> people who live in the district. The majority of the people who live in the district live in one of the five towns. Bishop's Stortford has the largest population (39,901), followed by Hertford (37,177), Ware (19,921), Sawbridgeworth (9169) and Buntingford (6,044)<sup>4</sup>.

Although the district is mainly comprised of farmland, five busy market towns (Bishop's Stortford, Buntingford, Hertford, Sawbridgeworth and Ware) and more than 100 villages and hamlets are scattered across the area. There are a number of residential developments in progress or being proposed which will increase the population of East Herts over the coming years. This includes the Harlow and Gilston Garden Town project which will deliver 3,000 homes by 2033, with a further 7,000 to follow. The Old River Lane project in Bishop's Stortford will create a new leisure and cultural quarter in the Town attracting visitors from further afield as well as new residents.

East Herts is regarded as an attractive rural location for those moving out from (and commuting into) London because of its excellent transport links. However, there are no direct rail links between the main towns of Hertford/Ware and Bishops Stortford. Road and bus transport connects the five main towns, supported by licensed taxis.

The people of East Herts are predominantly employed and enjoy higher than average earnings (£589.90 gross weekly pay for full-time workers compared to £518.10 for the whole of the country<sup>5</sup>). Unemployment is very low (1.3%<sup>6</sup>).

House prices are among the highest in the country; in 2014 for the period April to June the average property price was £338,000<sup>7</sup> while the average salary in 2013 was £31,548 compared to £31,949 in Hertfordshire.

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<sup>3</sup> Mid 2015 Population Estimate, ONS

<sup>4</sup>

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/wardlevelmidyearpopulationestimatesexperimental>

<sup>5</sup> 2013 Annual Survey of Hours and Earnings – Resident Analysis, NOMIS, ONS

<sup>6</sup> April 2014, Total Claimant Count, NOMIS, ONS

<sup>7</sup> April 2014, Total Claimant Count, NOMIS, ONS

A fifth of people are under 16 and a fifth of people are over 60. The average age in the district is 39.5<sup>8</sup>. Over 89% of people were born in England, 3% were born in other countries in the European Union and 4% in other countries<sup>9</sup>.

East Herts has a low ethnic minority population of just 4.5%. The largest ethnic minority group is Asian/Asian British at 1.9% with Indian being the highest within that group. The second largest minority group is mixed/multiple ethnic groups at 1.6%<sup>10</sup>.

Over a third of people are educated to level 4 or higher e.g. Bachelor's degree (33.5%, 36,867). However, under a fifth of the population have no qualifications (17.2%, 18,959)<sup>11</sup>.

East Herts is one of the safest places to live in Hertfordshire with low levels of burglary and vehicle crime. The district has a crime rate that is well below the national average and East Herts remains the 3<sup>rd</sup> safest area out of 10 in the county when measuring all crime incidents between 1st August 2014 to 31st July 2015. For the period 2014/15 there were 6029 recorded crimes in East Herts. This is an increase in crime from the previous 2013/14 period of just 49 crimes. However when compared to crime levels from 5 years ago all crime has decreased by 1 from 6630 to 6029<sup>12</sup>.

There are good transport links, both by road and rail between the East Herts district and London,

As at July 2018 the numbers of premises issued with licences, permits or registrations within East Herts are as follows:

- 15 Bookmakers or betting shop (-1 on July 2015);
- 128 Alcohol premises with gaming machines (+1 on July 2015);
- 11 Registered clubs with gaming machines (-6 on July 2015);
- 75 Small society lottery registrations (-7 on July 2015);
- 0 Bingo premises (No change);
- 0 Track betting premises (No change);
- 0 Casinos (No change); and
- 0 Adult gaming centres (No change).

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<sup>8</sup> 2011 Census – Age Structures (KS102EW), NOMIS

<sup>9</sup> 2011 Census – Country of Birth (KS204EW), NOMIS

<sup>10</sup> Census 2011 – Ethnic Group (KS201EW), NOMIS

<sup>11</sup> Census 2011 – Qualifications and Students (KS501EW), NOMIS

<sup>12</sup> East Herts Strategic Assessment 2016-17

## **Consultation**

East Herts Council has conducted a public consultation on this Statement of Principles on its website before finalising and publishing.

The Gambling Act requires that the following parties are consulted by licensing authorities:

- The Chief Officer of Police.
- One or more persons who appear to the authority represent the interests of persons carrying on gambling businesses in the authority's area.
- One or more persons who appear to the authority to represent the interests of persons likely to be affected by the exercise of the authority's functions under the Gambling Act 2005.

Our consultation took place between 7<sup>th</sup> September and 2<sup>nd</sup> November 2018 and we followed, where practicable, the Government Consultation Principles (published November 2013). This document is available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/255180/Consultation-Principles-Oct-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf)

The full list of comments made, and the consideration of those comments is available by request to Licensing and Enforcement, East Herts District Council, Wallfields, Pegs Lane, Hertford, SG13 8EG or [community.protection@eastherts.gov.uk](mailto:community.protection@eastherts.gov.uk).

## ***Declaration***

In producing this Statement of Gambling Policy, this Licensing Authority declares that it has had regard to the licensing objectives of the Gambling Act 2005, the Guidance issued by the Gambling Commission and any responses from those consulted on the Statement.



## ***Local Authority Functions***

Under the Act, the Gambling Commission is responsible for issuing operating licences and personal licences. The council in its capacity as a licensing authority will:

- be responsible for the licensing of premises where gambling activities are to take place by issuing premises licences
- issue provisional statements
- regulate members' clubs and miners' welfare institutes who wish to undertake certain gaming activities via issuing club gaming permits and/or club machine permits
- Issue club machine permits to commercial clubs
- grant permits for the use of certain lower stake gaming machines at unlicensed family entertainment centres
- receive notifications from alcohol licensed premises (under the Licensing Act 2003) of the use of two or less gaming machines
- grant licensed premises gaming machine permits for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where more than two machines are required
- register small society lotteries below prescribed thresholds
- issue prize gaming permits
- receive and endorse temporary use notices
- receive occasional use notices
- provide information to the Gambling Commission regarding details of licences issued
- maintain registers of the permits and licences that are issued under these functions

- exercise its powers of compliance and enforcement under the Act in partnership with the Gambling Commission and other relevant responsible authorities.

Private gaming in private dwellings and betting between inhabitants of the same premises on domestic occasions or between employees of the same employer is exempt from licensing or registration if:

- no charge is made for participating;
- only equal chance gaming takes place; and
- it does not occur in a place to which the public have access.

The Authority will not be involved in licensing remote gambling - this is dealt with by the Gambling Commission via Operator Licences. The Financial Services Authority regulates spread betting and the National Lottery Commission regulates the National Lottery.

## ***Responsible Authorities***

These are generally public bodies that must be notified of all applications and who are entitled to make representations to the council if they are relevant to the licensing objectives.

Section 157 of the Act defines those authorities as:

- the Gambling Commission
- the Police
- the Fire Service
- a competent body to advise the authority about the protection of children from harm
- the local planning authority
- Environmental Health
- HM Revenue and Customs
- A licensing authority in whose area the premises is situated (that is, the council itself and also any adjoining council where premises straddle the boundaries between the two).

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm. The principles are:

- (i) The need for the body to be responsible for an area covering the whole of the licensing authority's area.
- (ii) The need for the body to be answerable to democratically elected persons, rather than any particular vested interested group.

This authority designates Hertfordshire Safeguarding Children Board for this purpose.

Any concerns expressed by a responsible authority about their own functions cannot be taken into account unless they are relevant to the application itself and the licensing objectives. The Licensing Authority will not take into account irrelevant representations, such as:

- there are too many gambling premises in the locality (because need for gambling facilities cannot be taken into account)
- the premises are likely to be a fire risk (because public safety is not a licensing objective)
- the location of the premises is likely to lead to traffic congestion (because this does not relate to the licensing objectives)
- the premises will cause crowds to congregate in one area causing noise and nuisance (because other powers are generally available to deal with these issues. Unlike the Licensing Act 2003, the Gambling Act does not include as a specific licensing objective regarding the prevention of public nuisance. Any nuisance associated with gambling premises should be dealt with under other relevant laws).

*The contact details of all the Responsible Authorities under the Gambling Act 2005 are available via the Council's website at [www.eastherts.gov.uk](http://www.eastherts.gov.uk)*

## ***Interested Parties***

Interested parties can make representations about licence applications, or apply for a review of an existing licence. These parties are defined in the Gambling Act 2005 as follows:

*A person is an interested party if, in the opinion of the licensing authority, the person:*

- a. lives sufficiently close to the premises to be likely to be affected by the authorised activities;*
- b. has business interests that might be affected by the authorised activities; or*
- c. represents persons who satisfy paragraph (a) or (b)'.*

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under the Gambling Act 2005 to determine whether a person is an interested party. The principles are:

- Each case will be decided on its merits. This authority will not apply a rigid rule to its decision making. The benefit of doubt will be given to the party making the representation until the doubt can be resolved.
- Interested parties include trade associations, and residents' or tenants' associations, if they represent someone who would be classed as an interested party in their own right. Councillors and MPs may also be interested parties. Elected Councillors may represent interested parties, but may not also sit on the Licensing sub-committee determining the application.
- In determining whether someone lives sufficiently close to a particular premises as to likely to be affected by the authorised activities, or has business interests likely to be affected, the Council may take account of:
  - the size of the premises;
  - the nature of the premises;
  - the nature of the authorised activities being proposed ;
  - the distance of the premises from the person making the representation;
  - the characteristics of the complainant; and
  - the potential impact of the premises.

The Council may receive representations which it considers to be frivolous or vexatious. A vexatious representation is one that is repetitive, without foundation or made for some other reason such as malice. A frivolous representation is generally one that is lacking in seriousness, or is unrelated to either the licensing objectives, the guidance issued by the Gambling Commission or this statement of principles. Decisions on whether representations are frivolous or vexatious will usually be a matter of fact, given the circumstances of the representation. In

deciding whether or not a representation is frivolous or vexatious the Licensing Authority will normally consider:

- Who is making the representation and whether there is a history of making representations that are not relevant.
- Whether the representation raises a relevant issue or not.
- Whether the representation is specific to the premises that are the subject of the application.

Any such decision will be made objectively and not on the basis of any political judgment.

## ***Exchange of Information***

Licensing authorities are required to include in their policy statement the principles to be applied by the authority in exercising the functions under sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission, and the functions under section 350 of the Act with the respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.

This licensing authority will act in accordance with the provisions of the Gambling Act 2005 in its exchange of information which includes the provision that the Data Protection Act 1998 will not be contravened. The licensing authority will also have regard to any Guidance issued by the Gambling Commission on this matter when it is published, as well as any relevant regulations issued by the Secretary of State under the Gambling Act 2005.

The authority may from time to time exercise its" powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the police and other partners to fulfil its" statutory objective of reducing crime in the area.

Details of applications and representations which are referred to a Licensing Sub-Committee for determination will be published in reports that are made publicly available in accordance with the Local Government Act 1972 and the Freedom of Information Act 2000. Personal details of people making representations will be disclosed to applicants and only be withheld from publication on the grounds of personal safety where the licensing authority is asked to do so.

## ***Compliance and Enforcement***

Licensing authorities are required by regulation under the Gambling Act 2005 to state the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to begin criminal proceedings in respect of the offences specified.

This licensing authority's principles are guided by the Gambling Commission's Guidance for local authorities and it will endeavour to be:

- Proportionate: intervening only when necessary, with remedies appropriate to the risk posed, and costs identified and minimised;
- Accountable: justifying decisions, and subject to public scrutiny;
- Consistent: with joined up rules and standards implemented fairly;
- Transparent: being open, with simple and user friendly rules; and
- Targeted: to focus on the problem, and minimise side effects.

This Council has an Enforcement Policy based around the principles of consistency, transparency and proportionality set out in the Department of Trade and Industry's Enforcement Concordat and which also takes into account the Attorney General's Guidelines to Crown Prosecutors for bringing prosecutions.

This licensing authority will seek to work with other agencies in enforcing this legislation and work to create a joint protocol with all the relevant agencies to avoid duplication with other regulatory regimes as far as possible, following the Gambling Commission's guidance for licensing authorities.

This licensing authority will also, as recommended by the Gambling Commission's guidance for local authorities, adopt a risk-based inspection programme and will consider any risk models produced in conjunction with the Gambling Commission.

The main enforcement and compliance role for this licensing authority will be to ensure compliance with the premises licences and other permissions which it authorises.

The Gambling Commission will be the enforcement body for Operator and Personal Licences. Concerns about manufacture, supply or repair of gaming machines will not be dealt with by the licensing authority but will be notified to the Gambling Commission.

The authority proposes that a graduated response is taken where offences against licensing legislation are found or where licence conditions have been contravened. An isolated and minor offence may be dealt with purely by way of a written warning whilst more serious offences which have either been committed over a period of time or which jeopardise public safety may result in a referral for prosecution.

We continue to work actively with other responsible authorities in seeking compliance and enforcing licensing legislation. We share information about licence-holders and licensed premises under the Crime and Disorder Act 1998, and expect to be closely consulted when any enforcement action may be required.

As a Council we have signed up to the Hertfordshire Better Business for All Partnership Charter which is a voluntary undertaking between Hertfordshire Regulatory Services and all local businesses, irrespective of size or resources. It aims to support a relationship between businesses and regulators built upon trust, understanding and a desire to improve together in terms of compliance with regulation and support of business growth

In the interests of transparency, this licensing authority's enforcement and compliance protocols and written agreements will be available upon request, from Community Safety and Licensing, East Herts Council, Wallfields, Pegs Lane, Hertford, SG13 8EQ.

## ***Gaming Machines***

Within both the gambling legislation and this document, references are made to gaming machines as being within categories A, B, C or D, or in some cases, sub-categories such as B1, B2, B3 or B4.

Gaming machines are categorised according to the nature of their operation, the maximum charge to use, and the maximum prize available, and the legislation sets out the categories and sub-categories of machines that holders of each type of premises licence or permit are entitled to make available for use.

As both machine entitlements and the values applicable to each category are prescribed in secondary legislation, and may be changed at relatively short notice, it is not considered appropriate to include this information within this document.

Persons under the age of 18 years are not permitted to use any gaming machine other than a category D machine, which are generally low-value machines located in family entertainment centres. Holders of licences and permits which allow the provision of higher-category machines in premises where children are present should take appropriate steps either to locate those machines in a segregated area with age-restricted access, or to locate the machines so that their usage can be monitored at all times – the appropriate action is dependent upon the nature of the premises and the authorisation held.

Some types of licence, permit or entitlement limit the number of gaming machines which may be made available for use in the authorised premises. The licensing authority notes the Commission's guidance on the meaning of 'available for use', including the provision that a greater number of machines may be located in the premises so long as there is a mechanism in place to disable machines and prevent the number of gaming machines which are actively available for use from exceeding the limit. Simply switching the gaming machine off at an adjacent power socket will not be acceptable to the licensing authority if a customer is able to reactivate the machine by switching it back on. Where an operator or permit-holder wishes to provide a greater number of machines on their premises than may be made available for use under the licence or permit, the onus will be on that operator or permit-holder to demonstrate to the licensing authority that they have a sufficiently robust mechanism in place to prevent a breach of the licence or permit.

All gaming machines which are made available for use in premises must adhere to the appropriate technical standards set by the Gambling Commission, including bearing the correct categorisation markings and any other signage required.



A number of premises which are not entitled to provide gaming machines (including fast-food outlets, taxi booking offices, shopping centres and transport hubs) provide other types of machines, which operate differently to gaming machines. These may include skill machines (where the likelihood of winning a prize is dependent solely on the player's skill or knowledge, and not on chance), and non-prize machines (where players play for a high-score or for amusement only, and no prize can be won as a result). Such machines fall outside of the scope of the 2005 Act, and are not subject to control by the licensing authority. However the authority will investigate complaints where it is believed that a machine purporting to be a skill game or a non-prize machine is actually a (licensable) gaming machine. In determining whether such complaints are accurate we may seek advice from machine suppliers, manufacturers, and from the Gambling Commission.

## ***General Statement of Principles***

The council recognises the wide variety of premises which will require a licence or a permit. These include casinos, betting shops, bingo halls, pubs, clubs and amusement arcades.

In carrying out its licensing functions the council will have regard to any guidance issued by the Gambling Commission from time to time.

The council will not seek to use the Act to resolve matters more readily dealt with under other legislation.

To ensure the licensing objectives are met the council will establish a close working relationship with the police, the Gambling Commission and, where appropriate, other responsible authorities.

Where children, young persons and other vulnerable people are allowed access to premises where gambling takes place, the council may take whatever steps are considered necessary to either limit access generally or by introducing measures to prevent under-age gambling where it believes it is right to do so for the prevention of their physical, moral or psychological harm from gambling, especially where it receives representations to that effect.

Applicants seeking premises licences are encouraged to propose any prohibitions or restrictions of their own in circumstances where it is felt that the presence of children would be undesirable or inappropriate.

However, the overriding principle is that all applications and the circumstances prevailing at each premises will be considered on their own individual merits. When applying these principles the licensing authority will consider, in the light of relevant representations, whether exceptions should be made in any particular case. As with the Gambling Commission, the licensing authority will regulate gambling in the public interest.

### Preventing gambling from being a source of crime and disorder

The Gambling Commission will play a leading role in preventing gambling from being a source of crime and will maintain rigorous licensing procedures that aim to prevent criminals from providing facilities for gambling.

Anyone applying to the council for a premises licence will have to hold an operating licence from the Commission before a licence can be issued. Therefore, the council

will not generally be concerned with the suitability of an applicant and where concerns about a person's suitability arise the council will bring those concerns to the attention of the Commission.

If an application for a licence or permit is received in relation to premises which are in an area noted for particular problems with organised crime, the council will, in consultation with the police and other relevant authorities, consider whether specific controls need to be applied to prevent those premises from being a source of crime.

There are already powers in existing anti-social behaviour and licensing legislation to deal with measures designed to prevent nuisance, whether it arises as a result of noise from a building or from general disturbance once people have left a building. The council does not intend to (and indeed, cannot) use the Act to deal with general nuisance issues, for example, parking problems, which can easily be dealt with using other powers.

Issues of disorder should only be dealt with under the Act if the disorder amounts to activity which is more serious and disruptive than mere nuisance and it can be shown that gambling is the source of that disorder. A disturbance might be serious enough to constitute disorder if police assistance was required to deal with it. Another factor which could be taken into account is how threatening the behaviour was to those who could see or hear it, and whether those people live sufficiently close to be affected or have business interests that might be affected.

When making decisions in this regard the council will give due weight to any comments made by the police.

#### Ensuring gambling is conducted in a fair and open way

The Gambling Commission does not generally expect local authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will either be a matter for the management of the gambling business or will relate to the suitability and actions of an individual. Both issues will be addressed by the Commission through the operating and personal licensing regime.

Because betting track operators do not need an operating licence from the Commission the council may, in certain circumstances, require conditions on a licence relating to the suitability of the environment in which betting takes place.

#### Protecting children and other vulnerable people from gambling

Apart from one or two limited exceptions, the intention of the Act is that children and young persons should not be allowed to gamble and should therefore be prevented from entering gambling premises which are „adult-only“ environments.

In practice, steps will generally be taken to prevent children from taking part in, or being in close proximity to, gambling especially with regard to premises situated in areas where there may be a high rate of reported truancy. There may also be restrictions on advertising so that gambling products are not aimed at children or advertised in such a way that makes them particularly attractive to children. In relation to casinos only, the Gambling Commission will be issuing a code of practice about access to casino premises for children and young persons.

When considering whether to grant a premises licence or permit the council will consider whether any measures are necessary to protect children, such as the supervision of entrances, the segregation of gambling from areas frequented by children and the supervision of gaming machines in non-adult gambling specific premises, such as pubs, clubs, betting tracks etc.

In seeking to protect vulnerable people the council will include people who gamble more than they want to, people who gamble beyond their means, and people who may not be able to make informed or balanced decisions about gambling, perhaps due to a mental impairment, alcohol or drugs.

Children (defined in the Act as under 16s) and young persons (16-17s) may take part in private and non-commercial betting and gaming but the Act contains a number of restrictions on the circumstances in which they may participate in gambling or be on premises where gambling is taking place. An adult is defined as 18 and over. In summary:

- betting shops cannot admit anyone under 18
- bingo clubs may admit those under 18 but must have policies to ensure they do not gamble, except on category D machines
- Adult Entertainment Centres cannot admit those under 18
- Family Entertainment Centres and premises with an alcohol premises licence such as pubs) can admit under-18s, but they may not play category C machines which are restricted to those over 18
- clubs with a Club Premises Certificate can admit under-18s, but they must have policies to ensure those under 18 do not play machines other than category D machines
- tracks will be required to have policies to ensure that under 18s do not participate in gambling other than on category D machines.

The council will always treat each case on its own individual merits and when considering whether specific measures are required to protect children and other

vulnerable people will balance its considerations against the overall principle of aiming to permit the use of premises for gambling.

In January 2018 Public Health England, the Local Government Association and the Gambling Commission wrote to Directors of Public Health in England outlining the links between Public Health and gambling; specifically that problem gambling can have an impact on physical, mental and emotional health and wellbeing. The letter suggests that local Public Health teams have a critical role to play in developing licensing authorities' Statement of Principles as they have a good understanding of health issues within a local authority area.

The council will work with the local Director of Public Health to develop a Local Area Profile for applicants to refer to when putting together their local risk assessments.

Whilst Local Public Health Departments are not Responsible Authorities the council will consult the Director of Public Health on premises licences applications.

## ***Location of Premises***

The licensing authority notes that demand issues cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives can. Particular attention will be paid to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder.

## ***Local Area Profile (LAP)***

A local area profile will be produced by the authority and published on our website. This will highlight areas, if any, within the District which the licensing authority, in consultation with the responsible authorities and other partner agencies (in particular, the Public Health unit of Hertfordshire County Council), considers to present higher than normal risks for the location of a gambling premises. This may be due to large levels of vulnerable persons living in a particular locality, the proximity of a school, youth centre or medical facility, a high level of deprivation, or other factors which the authority believes should be taken into consideration.

We expect operators, both when applying for new premises licences and when reviewing their existing premises, to take account of our local area profile within their own local risk assessments (described below), and to implement suitable and sufficient measures to mitigate any risks identified which may arise as a result of the opening or continuation of trade at those premises.

We will use the LAP in assessing premises licence applications and the risk assessments supplied.

### ***Local risk assessments***

Under the Commission's Licence Conditions and Codes of Practice, from April 2016 operators will be required to compile and maintain a local risk assessment for each premises they operate, and to provide copies of these assessments to the licensing authority alongside any application for a new premises licence or to vary an existing premises licence, or otherwise at the request of the authority. Risk assessments must be kept at the individual premises to which they relate all staff should be fully aware of the risk assessment and where it is kept in order that they work in accordance with any requirements, and it can easily be provided to responsible authorities should they request to see it at any reasonable time, including unannounced inspections and ad hoc visits.

We do not intend to specify a format or mandatory content for these local risk assessments, as we believe that these will be decisions for the operator to take, and will be dependent upon the location, size, and operational nature of the premises in question.

However, we would expect that operators have considered the individual circumstances of each of their premises when compiling the risk assessments – a single generic risk assessment covering every premises in an operator's estate will not be considered by the authority to be suitable nor sufficient. We would also expect operators to take full account of our local area profile when compiling their risk assessments, and to reflect this in the control measures which they will implement.

## **PREMISES LICENCES**

### **General Principles**

Where an individual or company proposes to offer gambling for which an operating licence is required, and which is premises based, that individual or company will need to apply for a premises licence. A premises licence is one which authorises premises (which are defined in the Act as “any place”) to be used for:-

- The operation of a casino (a “casino premises licence”)
- The provision of facilities for playing bingo (a “bingo premises licence”)
- Making Category B gaming machines available for use (an “adult gaming centre premises licence”)
- Making Category C gaming machines available for use (a “family entertainment centre premises licence”) or
- The provision of facilities for betting (a “betting premises licence”)

Premises licences will be subject to requirements in the Gambling Act 2005 and regulations, and specific mandatory and default conditions which will be detailed in regulations issued by the Secretary of State. Licensing authorities may exclude default conditions and attach others, where they find it appropriate.

**Definition of “premises”** - Premises is defined in the Act as “any place”. Different premises licences cannot apply in respect of single premises at different times. However, it is possible for a single building to be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises. Whether different parts of a building can properly be regarded as being separate premises will always be a question of fact in the circumstances. However, the Gambling Commission does not consider that areas of a building that are artificially or temporarily separate can be properly regarded as different premises.

This licensing authority attaches particular weight to the Gambling Commission’s Guidance for local authorities:

- *licensing authorities should take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware that entrances and exits from parts of a building covered by one or more licences should be separate and identifiable so that the separation of different premises is not compromised and that people do not ‘drift’ into a gambling area.*

- *licensing authorities should pay particular attention to applications where access to the licensed premises is through other premises (which themselves may be licensed or unlicensed). Clearly, there will be specific issues that authorities should consider before granting such applications, for example, whether children can gain access; compatibility of the two establishments; and ability to comply with the requirements of the Act. But, in addition an overriding consideration should be whether, taken as a whole, the co-location of the licensed premises with other facilities has the effect of creating an arrangement that otherwise would, or should, be prohibited under the Act.*

A licence to use premises for gambling will only be issued in relation to premises that are ready to be used for gambling: The Gambling Commission has advised that references to “the premises” are to the premises in which gambling may now take place. Thus an applicant cannot obtain a full premises licence until the premises in which it is proposed to offer the gambling are constructed. It is a question of fact and degree whether premises are finished to a degree that they can be considered for a premises licence. The Gambling Commission emphasises that requiring the building to be complete ensures that the authority can, if necessary, inspect it fully, as can other responsible authorities with inspection rights.

**Plans** – The Licensing Authority will expect compliance with the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulation 2007 (as amended) in relation to the submission of plans with applications.

The Regulations state that plans shall contain the following information:

- the extent of the boundary or perimeter of the premises
- where the premises include, or consist of, one or more buildings, the location of any external or internal walls of each such building
- where the premises form part of a building, the location of any external or internal walls of the building which are included in the premises
- where the premises are a vessel or a part of a vessel, the location of any part of the sides of the vessel, and of any internal walls of the vessel, which are included in the premises
- the location of each point of entry to and exit from the premises, including in each case a description of the place from which entry is made or to which the exit leads.

**Location** - This authority will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, and to gambling becoming a source of crime or disorder. No areas in East Herts have



been identified as areas where gambling premises should not be located, but if this situation changes, this statement will be updated. Any such future policy will not prevent an application being made, and each application will be decided on its merits, with the onus upon the applicant showing how the concerns can be overcome.

**Conditions** - Any conditions attached to licences will be proportionate and will be:

- relevant to the need to make the proposed building suitable as a gambling facility
- directly related to the premises and the type of licence applied for;
- fairly and reasonably related to the scale and type of premises: and
- reasonable in all other respects.

Decisions on individual conditions will be made on a case by case basis. Where there is a need this licensing authority will consider;

- the use of door supervisors,
- supervision of adult gaming machines, and a
- appropriate signage for adult only areas.

This licensing authority will expect the licence applicant to offer their own suggestions as to way in which the licensing objectives can be met effectively.

### ***Division of Premises***

In the Act, 'premises' is defined as including "any place". Section 152 prevents more than one premises licence applying to any single place. But a single building could be subject to more than one premises licence, provided each licence is for a different and discrete part of the building, and the different parts of the building can be reasonably regarded as being different premises. This approach has been taken to allow businesses in large, multiple unit premises such as a pleasure park, tracks or shopping centres to obtain discrete premises licences, where appropriate safeguards are in place.

This licensing authority takes note of the Gambling Commission's guidance which states that licensing authorities should take particular care in considering applications for multiple licences within a single building, and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular the authority is aware of the following:

- The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part

in gambling, but also preventing them from being in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to or closely observe gambling where they are prohibited from participating.

- Entrances to and exits from parts of a building covered by one or more premises licences should be separate and identifiable so that the separation of different premises is not compromised and people do not “drift” into a gambling area. In this context it should normally be possible to access the premises without going through another licensed premises or premises with a permit.
- Customers should be able to participate in the activities identified on the premises licence.

The licensing authority will also consider specific measures that may be required for buildings that are subject to multiple premises licences. Such measures may include the supervision of entrances; segregation of gambling areas and non-gambling areas frequented by children; and the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives. These matters are in accordance with the Gambling Commission's guidance.

It is also noted that an issue has arisen in some parts of the country, where operators have sought to sub-divide existing single licensed premises, and obtain further premises licences in respect of each part of the divided premises. It has been observed that this practice has been used predominantly in respect of categories of premises licences which allow the operation of a small, fixed number of high-value gaming machines – in effect, using multiple premises licences in respect of different areas of a single business to artificially increase the permitted number of category B machines that can be made available.

The licensing authority notes the Commission's guidance that “in most cases the expectation is that a single building/plot will be the subject of an application for a licence, for example, 32 High Street. But that does not mean that 32 High Street cannot be the subject of separate premises licences for the basement and ground floor, if they are configured acceptably. Whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances.” When assessing whether premises can be regarded as separate, the licensing authority proposes to assess the following criteria:

- Does each premises have its own external entrance;
- Does each premises trade as a separate entity;
- Are the premises subject to separate non-domestic rateable valuations?
- Is each premises operated by different persons;
- What is the quality of separation (i.e. if dividing barriers are to be used, are they permanent, opaque, floor-to-ceiling division?);

- Is there a genuine need to establish a division between premises, or is the division aimed solely at artificially increasing the permitted number of high-value gaming machines.

If it is proposed to utilise sterile, non-gambling areas to create sub-divisions, then the licensing authority will apply the following criteria to those areas:

- Is the non-gambling area proposed as a token separation;
- Is it genuinely an area to which the public would go for purposes other than gambling;
- Is it in effect introducing artificial separation, or genuinely a functionally separate area;
- Is there in effect direct access between the divided units, or is it a place from which access can be gained to two premises.

Different configurations may be appropriate under different circumstances but the crux of the matter is whether the proposed premises are genuinely separate premises that merit their own licence with the gaming machine entitlements that brings; and are not artificially created as part of what is readily identifiable as a single premises. Poor quality or temporary divisions will not be viewed favourably.

The licensing authority notes that any premises subject to multiple discrete premises licences must be able to comply with the mandatory conditions restricting access to each licensed premises, as follows:

| Premises type               | Access restrictions  |
|-----------------------------|--|
| Adult gaming centre         | No direct access from any other licensed gambling premises, or from premises with a family entertainment centre gaming machine permit, a club gaming/machine permit, or an alcohol-licensed premises gaming machine permit |
| Betting (other)             | Access from a street or another betting premises only<br>No direct access from any other premises used for retail sale of goods or services  |
| Betting (track)             | No direct access from licensed casino or adult gaming centre premises  |
| Bingo                       | No direct access from licensed casino, adult gaming centre or betting (other) premises   |
| Family entertainment centre | No direct access from licensed casino, adult gaming centre or betting (other) premises   |

In the case of some divided premises, it appears that the intended primary use of a premises licence had not been offered, with operators seeking solely to make use of any additional machine entitlement (for example, holding a bingo premises licence but not making any facilities for playing bingo available in the licensed premises). The Gambling Commission consulted on this issue in 2008, and subsequently issued a revision to the Licence Conditions and Codes of Practice affecting Bingo, Betting and Casino operating licences. Holders of these licences are now mandated to provide suitable and sufficient facilities for their primary licensable activity (e.g. provision of facilities for non-remote betting in a betting (other) licensed premises), now referred to in the Guidance as offering an appropriate licensing environment.

Tracks may be subject to one or more premises licences, provided each licence relates to a specified area of the track. This licensing authority will consider the impact of the licences on the third licensing objective and the need to ensure that entrances to each premises are distinct and that children are excluded from gambling areas where they are not permitted.

### ***Access by Children***

When considering applications for premises to which children may be admitted, in cases where the issue of a licence would authorise the provision of gaming machines of categories C or higher, the licensing authority will expect the operator to ensure that:

- all such machines are located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance;
- only adults are admitted to the area where these machines are located;
- access to the area where the machines are located is supervised;
- the area where these machines are located is arranged so that it can be observed by the staff or the licence holder; and
- at the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.

These considerations will apply equally to single premises and to buildings where multiple, discrete premises licences may have effect (for example, a multi-unit shopping centre, or a mixed use development with a number of retail and leisure units).

## ***Door Supervisors***

This licensing authority will consider whether there is a need for door supervisors to meet the licensing objectives of protecting children and vulnerable persons from being harmed or exploited by gambling, and also to prevent premises becoming a source of crime. The Gambling Act 2005 has amended the Security Industry Act and door supervisors at casinos or bingo premises need not be licensed by the Security Industry Authority. However, the licensing authority strongly recommends that any door supervisors or security staff who are employed should be licensed by the SIA.

This Licensing Authority will require that premises licence holders undertake Criminal Records Bureau checks and evidence of suitable training for door supervisors, or are SIA licensed where this is possible, where this is imposed as a condition. This recognises the nature of the work which may include checking ages, searching individuals and dealing with aggressive persons. This Licensing Authority may require specific requirements for door supervisors, which are shown to be appropriate to individual premises and subject to any codes of practice.

## ***Types of Premises Licences***

### ***Adult Gaming Centres***

This licensing authority has specific regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and expects the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds cannot access the premises.

This licensing authority will expect applicants to offer their own measures to meet the licensing objectives; however appropriate measures or licence conditions may cover issues such as:

- Proof of age schemes
- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-barring schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare.

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

The licensing authority will expect applicants to be able to comply with any mandatory conditions imposed on their premises licence through regulations made by the Secretary of State. The licensing authority will expect applicants to be able to comply with any default conditions similarly imposed. Applicants seeking to remove or amend default conditions must demonstrate that there will be little or no risk to the licensing objectives or the licensing authority's statement of principles by removing the default conditions.

As regards the protection of vulnerable persons, this licensing authority will consider measures such as the use of self-barring schemes, provision of information leaflets or helpline numbers for organisations such as GamCare.

## ***(Licensed) Family Entertainment Centres***

This licensing authority has specific regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machine areas.

This licensing authority expects applicants to offer their own measures to meet the licensing objectives; appropriate measures / licence conditions may include:

- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-barring schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare.
- Measures / training for staff on how to deal with suspected truant school children on the premises.
- Staff are trained to have a full understanding of minimum age limits on participation in gambling

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

This licensing authority will, following the Gambling Commission's guidance, refer to the Commission's website to see any conditions that apply to operating licences covering the way in which the area containing the category C machines should be set out. This licensing authority will also make itself aware of any mandatory or default conditions on these premises licences, when they have been published.

Measures such as the use of self-barring schemes, provision of information leaflets or helpline numbers for organisations such as GamCare will be considered in order to protect children and vulnerable persons.

The licensing authority will expect applicants to be able to comply with any mandatory conditions imposed on their premises licence through regulations made by the Secretary of State. The licensing authority will expect applicants to be able to comply with any default conditions similarly imposed. Applicants seeking to remove or amend default conditions must demonstrate that there will be little or no risk to

the licensing objectives or the licensing authority's statement of principles by removing the default conditions.

## ***Casinos***

The authority passed a 'no casino' policy under Section 166 of the Gambling Act on 24 February 2010. This resolution remained in effect until 23 February 2013. Should the Council decide in the future to pass such a resolution again it will update this document with details of that resolution. Any such decision will be made by full council.

## ***Bingo premises***

Bingo is a class of equal chance gaming and will be permitted in alcohol licensed premises and in clubs provided it remains below a certain threshold, otherwise it will be subject to a bingo operating licence which will have to be obtained from the Gambling Commission.

The holder of a bingo operating licence may provide any type of bingo game including cash and prize bingo.

Commercial bingo halls will require a bingo premises licence from East Herts Council.

Amusement arcades providing prize bingo will require a prize gaming permit from East Herts Council.

In each of the above cases it is important that where children are allowed to enter premises licensed for bingo, in whatever form, they are not allowed to participate in any bingo game, other than on category D machines. When considering applications of this type the council will therefore take into account, among other things, the location of the games or machines, access to those areas, general supervision of the premises and the display of appropriate notices.

It is important that if children are allowed to enter premises licensed for bingo that they do not participate in gambling, other than on category D machines. Where category C or above machines are available in premises to which children are admitted licensing authorities should ensure that:

- all such machines are located in an area of the premises separate from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance



- only adults are admitted to the area where the machines are located;
- access to the area where the machines are located is supervised;
- the area where the machines are located is arranged so that it can be observed by staff of the operator or the licence holder; and
- at the entrance to, and inside any such area there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.

We note that the Gambling Commission's Guidance states:

18.5 Licensing authorities need to satisfy themselves that bingo can be played in any bingo premises for which they issue a premises licence. An operator may choose to vary their licence to exclude a previously licensed area of that premises, and then apply for a new premises licence, or multiple new premises licences, with the aim of creating separate premises in that area. Essentially providing multiple licensed premises within a single building or site. Before issuing additional bingo premises licences, licensing authorities need to consider whether bingo can be played at each of those new premises.

18.7 Children and young people are allowed into bingo premises; however they are not permitted to participate in the bingo and if category B or C machines are made available for use these must be separated from areas where children and young people are allowed. Social Responsibility (SR) code 3.2.5(3) states that „licensees must ensure that their policies and procedures take account of the structure and layout of their gambling premises“ in order to prevent underage gambling.

18.9 The gaming machines must remain within the licensed area covered by the premises licence. In the unusual circumstance that an existing bingo premises covered by one premises licence applies to vary the licence and acquire additional bingo premises licences (so that the area that was the subject of a single licence will become divided between a number of separate licensed premises) it is not permissible for all of the gaming machines to which each of the licences brings an entitlement to be grouped together within one of the licensed premises.

18.10 Equipment operated by a bingo operating licence for the purpose of playing bingo, for example what are currently known as mechanised cash bingo, electronic bingo terminal (EBTs) and video bingo terminals (VBTs), will be exempt from controls on gaming machines provided they comply with any conditions set by the Commission and, in the case of EBTs, do not hold gaming machine content.

18.11 An EBT that offers gaming machine content in addition to bingo content is considered to be a gaming machine and would count towards the total number of gaming machines or towards the offering of bingo. Any EBTs that do not offer

gaming machine content would not count towards the number of gaming machines.

The licensing authority will expect applicants to be able to comply with any mandatory conditions imposed on their premises licence through regulations made by the Secretary of State. The licensing authority will expect applicants to be able to comply with any default conditions similarly imposed. Applicants seeking to remove or amend default conditions must demonstrate that there will be little or no risk to the licensing objectives or the licensing authority's statement of principles by removing the default conditions.

Operators' attention is also drawn to section of this document concerning primary gambling activity.

### ***Members' clubs and commercial clubs***

Bingo may be provided at clubs and institutes either in accordance with a permit or providing that the limits in section 275 of the Act are complied with. These restrictions limit the aggregate stake or prizes within any seven days to £2000, and require the Commission to be notified as soon as is reasonably practicable if that limit is breached. Stakes or prizes above that limit will require a bingo operator's licence and the corresponding personal and premises licences

### ***Betting premises***

Anyone wishing to operate a betting office will require a betting premises licence from the Council. Children and young persons will not be able to enter licensed betting premises.

Betting premises may provide a limited number of gaming machines and some betting machines.

The authority recognises that certain bookmakers have a number of premises within its area. In order to ensure that any compliance issues are recognised and resolved at the earliest stage, operators are requested to give the authority a single named point of contact, who should be a senior individual, and whom the authority will contact first should any compliance queries or issues arise.

There is no evidence that the operation of betting offices has required door supervisors for the protection of the public. The Authority will make a door supervision requirement only if there is clear evidence from the history of trading

at the premises that the premises cannot be adequately supervised from the counter and that door supervision is both necessary and proportionate.

The Council has the power to restrict the number of betting machines, their nature, and the circumstances in which they are made available. It will not generally exercise this power unless there are good reasons, taking into account, among other things, the size of the premises and the level of management and supervision especially where vulnerable people are concerned.

This licensing authority will, as per the Gambling Commission's Guidance, take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of staff to monitor the use of the gaming machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number, nature or circumstances of betting machines an operator wants to offer

The licensing authority will expect applicants to be able to comply with any mandatory conditions imposed on their premises licence through regulations made by the Secretary of State. The licensing authority will expect applicants to be able to comply with any default conditions similarly imposed. Applicants seeking to remove or amend default conditions must demonstrate that there will be little or no risk to the licensing objectives or the licensing authority's statement of principles by removing the default conditions.

Each application will be considered on its own individual merits.

### ***Gaming Machines in Gambling Premises***

The Social responsibility code provisions 9.1.1 and 9.1.213 deal with the provision of gaming machines in betting and bingo premises respectively.

Both provisions state that:

Gaming machines may be made available for use on licensed betting/bingo premises only where there are also substantive facilities for non-remote betting/bingo, provided in reliance on this licence, available at the premises.

In both cases the provisions require:

- facilities for gambling must only be offered in a manner which provides for appropriate supervision of those facilities by staff at all times; and

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<sup>13</sup> Gambling Commission Licence conditions and codes of practice January 2018:  
<https://www.gamblingcommission.gov.uk/PDF/LCCP/Licence-conditions-and-codes-of-practice.pdf>

- the license must ensure that the function along with the internal and/or external presentation of the premises are such that a customer can reasonably be expected to recognise that it is a premises licensed for the purpose of providing betting/bingo facilities.

## ***Tracks***

Only one premises licence can be issued for any particular premises at any time unless the premises is a track. A track is a site where races or other sporting events take place.

This licensing authority is aware that the Gambling Commission may provide further specific guidance as regards tracks. We have taken note of the Guidance from the Gambling Commission which highlights that tracks are different from other premises in that there may be more than one premises licence in effect and that the track operator may not be required to hold an operator licence as there may be several premises licence holders at the track which will need to hold their own operator licences.

Track operators are not required to hold an 'operator's licence' granted by the Gambling Commission. Therefore, premises licences for tracks, issued by the Council are likely to contain requirements for premises licence holders about their responsibilities in relation to the proper conduct of betting.

Although there will, primarily, be a betting premises licence for the track, there may be a number of subsidiary licences authorising other gambling activities to take place. Unlike betting offices, a betting premises licence in respect of a track does not give an automatic entitlement to use gaming machines.

In accordance with the Gambling Commission's guidance, this licensing authority will especially consider the impact upon the third licensing objective (i.e. the protection of children and vulnerable persons from being harmed or exploited by gambling) and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

This authority will therefore expect the premises licence applicant to demonstrate suitable measures to ensure that children do not have access to adult only gaming facilities. It is noted that children and young persons will be permitted to enter track areas where facilities for betting are provided on days when dog-racing

and/or horse racing takes place, but that they are still prevented from entering areas where gaming machines (other than category D machines) are provided.

This licensing authority will expect applicants to offer their own measures to meet the licensing objectives however appropriate measures / licence conditions may cover issues such as:

- Proof of age schemes
- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Location of gaming machines
- Self-barring schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare
- Staff are trained to have a full understanding of minimum age limits on participation in gambling

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

*Gaming machines on tracks* - The licensing authorities needs to consider the location of gaming machines at tracks, and applications for track premises licences will need to demonstrate that, where the applicant holds a pool betting operating licence and is going to use his entitlement to four gaming machines, these machines are locate in areas from which children are excluded. Children and young persons are not prohibited from playing category D gaming machines on a track.

*Betting machines on track premises* - This licensing authority will, in accordance with the Gambling Commission's guidance, take into account the size of the premises and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator wants to offer. It will also take note of the Gambling Commission's suggestion that licensing authorities will want to consider restricting the number and location of such machines in respect of applications for track betting premises licences.

*Condition on rules being displayed* - In line with guidance from the Gambling Commission the Council will attach a Condition to Track Premises Licence requiring the track operator to ensure that the rules are prominently displayed in or near the

betting areas, or that other measures are taken to ensure that they are made available to the public. This could include printing rules in the race-card or making them available in leaflet form from the track office.

### ***Travelling Fairs***

Where category D machines and / or equal chance prize gaming without a permit is to be made available for use at travelling fairs, it is a statutory requirement that the facilities for gambling are no more than an ancillary amusement at the fair. This licensing authority decides whether that requirement is met and whether the applicant falls within the statutory definition of a travelling fair.

The licensing authority will also consider whether the applicant falls within the statutory definition of a travelling fair.

## ***Provisional Statements***

A person may apply to the Licensing Authority for a provisional statement in respect of premises:

- they expect to be constructed
- they expect to be altered or
- they expect to acquire a right to occupy

Such applications are dealt with in the same manner as applications for premises licences. Once the premises are constructed, altered or acquired the holder of a provisional statement may apply for the necessary premises licence. The Gambling Commission's draft guidance states that "It is a question of fact and degree whether premises are finished to a degree that they can be considered for a premises licence" and that "Requiring the building to be complete ensures that the authority can inspect it fully.

Where the holder of a provisional statement applies for a premise licence, no further representations from responsible bodies or interested parties can be taken into account unless they concern matters which could not have been addressed at the provisional statement stage, or they reflect a change in the applicant's circumstances. In addition, the Licensing Authority may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:

- (a) which could not have been raised by objectors at the provisional licence stage; or
- (b) which in the authority's opinion reflect a change in the operator's circumstances.

This authority has noted the Gambling Commission's guidance that "A licensing authority should not take into account irrelevant matters.... One example of an irrelevant matter would be the likelihood of the applicant obtaining planning permission or building regulations approval for the proposal."

## ***Reviews***

Responsible Bodies and Interested Parties (see definitions in Section 6) may apply to the Licensing Authority for a review of a premises licence. The Licensing Authority may reject an application if it thinks that the grounds on which the review is sought:

- do not raise an issue relevant to the principles listed below;
- are frivolous or vexatious;
- will certainly not cause the Licensing Authority to wish to alter, revoke or suspend the licence;
- are substantially the same as previous representations or requests for review.

The principles referred to above are:

- in accordance with any relevant code of practice issued by the Gambling Commission
- in accordance with any relevant guidance issued by the Gambling Commission
- reasonably consistent with the licensing objectives and
- in accordance with the authority's statement of licensing Statement of Principles

Licensing authority officers may be involved in the initial investigations of complaints leading to a review, or may try informal mediation or dispute resolution before a full review is conducted. The licensing authority may review premises licences of its own volition. This may be on the grounds that a premises licence holder has not provided facilities for gambling at the premises. A referral to a Licensing Sub-Committee of a set of premises for a review will be first approved by the Head of Housing & Health.

The Licensing Authority can also initiate a review of a licence on the basis of any reason which it thinks is appropriate.

This can extend to a review of a class of licences where it considers particular issues have arisen. Reviews of a class of premises will be first agreed to by the Head of Community and Customer Services in consultation with the Chair of the Licensing (Licensing Act 2003) Committee.

The purpose of a review is to determine whether the licensing authority should take any action in relation to the licence. If action is justified the licensing authority may:

- add, remove or amend a licence condition (other than a mandatory condition)
- exclude or amend a default condition imposed by regulations
- suspend the premises licence for a period not exceeding three months
- revoke the premises licence.



In determining the appropriate course of action the licensing authority must have regard to the principles set out in section 153 of the Act as well as any relevant representations.

The Gambling Commission will be a responsible authority in premises licence reviews.

It is noted that as per the Gambling Commission's guidance for local authorities "moral objections to gambling are not a valid reason to reject applications for premises licences" (except when concerning any 'no casino resolution) and also that unmet demand is not a criterion for a licensing authority. This may not be the case with respect to gaming permits.

## **Permits, Temporary & Occasional Use Notices**

### ***1. Unlicensed Family Entertainment Centre gaming machine permits (Statement of Principles on Permits – Schedule 10 para 7)***

Where premises do not hold a Premises Licence but wish to provide only category D gaming machines, it may apply to the licensing authority for this permit. It should be noted that under section 238 of the Gambling Act, the applicant must show that the premises will be wholly or mainly used for making gaming machines available for use.

The Act states that a licensing authority may prepare a statement of principles that they propose to consider in determining the suitability of an applicant for a permit. In preparing that statement, and/or considering applications, it need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under section 25 of the Act.

Accordingly this licensing authority will also have regard to the licensing objectives when considering applications relating to unlicensed FEC permits.

A Family Entertainment Centre (FEC) gaming machine permit may be granted only if the Licensing Authority is satisfied that the premises will be used as an unlicensed FEC and if the Chief Officer of the Police has been consulted. No conditions may be imposed upon the grant of a permit.

Therefore the licensing authority will need to be satisfied that the applicant has a full understanding of the maximum stakes and prizes of the gambling that is permitted in unlicensed FEC's; has no relevant convictions (as detailed in Schedule 2 to the 2005 Act); and that all staff employed on the premises are provided with proper training in relation to stakes and prizes.

Unlicensed FECs, by definition, will not be subject to scrutiny by the Gambling Commission as no operating (or other) licences will be applied for and issued.

#### Statement of Principles

This licensing authority will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The efficiency of such policies and procedures will each be considered on their merits, however, they may include appropriate measures or training for staff to deal with suspected truant school children on the premises, measures or training

covering how staff would deal with unsupervised very young children being on the premises, or children causing perceived problems on or around the premises.

This licensing authority will also expect, following Gambling Commission guidance, that applicants demonstrate:

- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs.
- that they have no relevant convictions (those that are set out in Schedule 7 of the Act)
- and that staff are trained to have a full understanding of the maximum stakes and prizes.
- an awareness of local school holiday times and how to identify the local education office should truants be identified.

*Compliance with any relevant industry Code of Practice for FECs issued by BACTA or other trade associations may be taken by the licensing authority as evidence that (apart from the criteria relating to criminal convictions) the applicant has met the above.*

*Applicants must submit with their application two copies of plans of the premises, to a scale of 1:100, showing the exits/entrances to the premises, location of gaming machines, and the location of safety equipment such as fire extinguishers.*

*The licensing authority may refuse an application for renewal of a permit only on the grounds that an authorised local authority officer has been refused access to the premises without reasonable excuse, or that renewal would not be reasonably consistent with pursuit of the licensing objectives.*

## **2. (Alcohol) Licensed premises gaming machine permits – (Schedule 13 Para 4(1))**

The Act provides that premises licensed to sell alcohol for consumption on the premises, are automatically authorised to have 2 gaming machines, of categories C and/or D. These premises merely need to notify the authority. The licensing authority can remove the automatic authorisation in respect of any particular premises if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
- gaming has taken place on the premises that breaches a condition of section 282 of the Gambling Act (i.e. that written notice has been provided to the licensing authority, that a fee has been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has been complied with)
- the premises are mainly used for gaming; or
- an offence under the Gambling Act has been committed on the premises

If a premises wishes to have more than 2 machines, then it must apply for a permit and the licensing authority must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission issued under Section 25 of the Gambling Act 2005, and 'such matters as they think relevant'.

### Statement of Principles

This licensing authority considers that "such matters" will be decided on a case by case basis but generally there will be regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machines. The authority will take into account whether access by children to the premises under the Licensing Act 2003 is restricted or not.

Measures which will satisfy the authority that there will be no access may include the adult machines being in sight of the bar, or in the sight of staff that will monitor that the machines are not being used by those under 18. Notices and signage may also be help. As regards the protection of vulnerable persons this applicants may wish to consider the provision of information leaflets or helpline numbers for organisations such as GamCare.

A plan must accompany applications indicating where, and what type, of gambling machines are to be provided. This plan may take the form of an amendment to the plan attached to the premises licence issued under the Licensing Act 2003.

It is recognised that some alcohol licensed premises may apply for a premises licence for their non-alcohol licensed areas. Any such application would need to be applied for, and dealt with as an Adult Entertainment Centre premises licence.

The licensing authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions other than these cannot be attached.

The holder of a permit must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

#### Administrative matters

Notifications for two or less machines shall be dealt with under delegated authority.

Applications for three or more machines will be referred to a Licensing Sub-Committee of Councillors.

### **3. Prize Gaming Permits**

Prize gaming may be provided in bingo premises as a consequence of their Bingo Operating Licence. Any type of prize gaming may be provided in Adult Gaming Centres and licensed Family Entertainment Centres. Unlicensed family entertainment centres may offer equal chance prize gaming under a gaming machine permit. Prize gaming without a permit may be provided by travelling fairs, as long as none of the gambling facilities at the fair amount to more than an ancillary amusement. Children and young people may participate in equal chance gaming only.

The Licensing Authority can only grant a permit if they have consulted with chief officer of Police. Therefore, the Licensing Authority will consider the suitability of the applicant in terms of any evidence provided by the Police that would make them unsuitable to hold a prize gaming permit.

Applicants should set out the types of gaming they are intending to offer and should be able to demonstrate:

- that they understand the limits to stakes and prizes that are set out in Regulations
- and that the gaming offered is within the law.

It should be noted that there are conditions in the Gambling Act 2005 by which the permit holder must comply, but that the licensing authority cannot attach conditions. The conditions in the Act are:

- the limits on participation fees, as set out in regulations, must be complied with
- all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played
- the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
- participation in the gaming must not entitle the player to take part in any other gambling.

Applications may only be made by people who occupy or plan to occupy the premises, are aged 18 or over (if an individual), and no premises licence or club gaming permit under the Gambling Act 2005 may be in force.

Statement of Principles

The Gambling Act 2005 states that a Licensing Authority may “prepare a statement of principles that they propose to apply in exercising their functions under this Schedule” which “may, in particular, specify matters that the licensing authority proposes to consider in determining the suitability of the applicant for a permit”.

This Licensing Authority considers that such matters will be decided on a case by case basis but generally there will be regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to unequal chances prize gaming. The authority will take into account whether access by children to the premises under the Licensing Act 2003 is restricted or not.

A plan must accompany applications indicating where, and what type, of prize gaming is to be provided.

### Conditions

There are mandatory conditions in the Gambling Act 2005 that the permit holder must comply with, but the Licensing Authority cannot attach conditions. The conditions in the 2005 Act are:

- The limits on participation fees, as set out in regulations, must be complied with.
- All chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played.
- The prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize).
- Participation in the gaming must not entitle the player to take part in any other gambling.

In making its decision on an application for this type of permit the Licensing Authority does not need to have regard to the licensing objectives but must have regard to any Gambling Commission guidance.

#### **4. Club Gaming and Club Machines Permits**

Members Clubs and Miners' welfare institutes (but not Commercial Clubs) may apply for a Club Gaming Permit or a Clubs Gaming machines permit.

The licensing authority notes paragraphs 25.44 – 25.49 of the Commission's Guidance as to matters to take into account when determining that a club meets the statutory qualifying requirements. These include:

- the club's constitution;
- the frequency of gaming; and
- ensuring that there are more than 25 members.

The club must be conducted "wholly or mainly" for purposes other than gaming, unless the gaming is in bridge and whist clubs covered by regulations made by the Secretary of State. A members' club must be permanent in nature, not established to make commercial profit and be controlled by its members equally. Examples include working men's clubs, branches of Royal British Legion and clubs with political affiliations.

The Gambling Commission's guidance advises that Licensing Authorities may only refuse an application on the grounds that:

- the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
- the applicant's premises are used wholly or mainly by children and/or young persons;
- an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
- a permit held by the applicant has been cancelled in the previous ten years; or
- an objection has been lodged by the Commission or the police (Gambling Commission's draft Guidance for Local Authorities 25.18)

##### Club gaming permit

A club gaming permit allows the premises to provide:

- up to three machines of categories B, C or D
- equal chance gaming and
- games of chance as set out in regulations.

##### Club gaming machine permit



A club gaming machine permit will enable the premises to provide up to three machines of categories B, C or D.

The licensing authority will wish to be satisfied that applicants for these permits meet the statutory criteria for members' clubs contained in sections 266 and 267 of the Act. Clubs which hold a club premises certificate under the Licensing Act 2003 are entitled to benefit from a fast-track application procedure.

#### Conditions

There are statutory conditions on club gaming permits that no child uses a category B or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines.

## **5. Lotteries**

The Gambling Act 2005 regulates almost all forms of fund-raising lotteries promoted in the UK. With the exception of the National Lottery, which is not regulated under this Act, it is illegal to promote a lottery for private or commercial gain.

While the term 'lottery' is used within the legislation, these provisions are also likely to apply to raffles, prize draws, tombola's, sweepstakes, scratch-card sales, and so on – in short, any arrangement in which a payment is made for a random chance of winning a prize. For the sake of simplicity, 'lottery' is used to define all of these.

Broadly speaking, there are two categories of lottery established under the Act –

- Licensed lotteries include those run by societies that aim to raise more than £20,000 in a single draw, or £250,000 in a calendar year, as well as any lotteries promoted by a local authority. An operating licence must be held by the promoter(s) of these lotteries.
- Exempt lotteries fall into one of four sub-categories, each with its own limits on the amounts that can be raised, the purposes for which it can be promoted, and the manner in which it must be run. These sub-categories comprise Incidental Non-Commercial Lotteries, Customer Lotteries, Private Lotteries, and Small Society Lotteries

### Licensed Lotteries

The administration and enforcement of licensed lotteries is the responsibility of the Gambling Commission, although local authorities may provide information and intelligence to assist in the exercise of these functions.

Should a society registered with a licensing authority for the promotion of small society lotteries promote a lottery which causes either on the statutory limits on proceeds to be exceeded, then any subsequent lotteries promoted by that society in the current calendar year or any of the following three calendar years will be deemed to be large society lotteries, and will require the society to obtain a relevant operating licence from the Gambling Commission. The registration with the licensing authority will remain in force, but will not serve to authorise any lottery schemes during this period – it is open to the society as to whether to cancel the registration.

The Act provides a mechanism for local authorities to promote lotteries (or have lotteries promoted on their behalf) in order to raise funds for any item or service on

which they may lawfully incur expenditure. Prior to doing so, an operating licence must be obtained from the Gambling Commission. A senior council officer must also hold a personal management licence, again issued by the Commission. At the time of writing, no such licences are in place, and accordingly lotteries may not be promoted by or on behalf of the authority.

### Exempt Lotteries

Of the four sub-categories of exempt lotteries, only Small Society Lotteries require registration with a local authority – no authorisation is required for the other three categories. Both the Commission and local authorities may carry out compliance checks to ensure that any exempt lotteries are carried on in accordance with the relevant legal restrictions.

Prior to registering a society, the licensing authority may consult informally with certain statutory partners, including the Gambling Commission and Hertfordshire Constabulary, in order to satisfy itself that the information given in the application for registration is correct, the applicant is a bona fide non-commercial society, an operating licence held by the society has not been refused or revoked in the preceding 5 years, and that no persons who will be connected with the promotion of lotteries for the society have been convicted of relevant offences. Where the authority cannot be so satisfied, it is open to it to refuse the application for registration, but only after the applicant has been given the opportunity to lodge representations in respect of the proposed refusal.

Registrations will remain in force indefinitely, incurring an annual fee in each year that they remain in force. Societies may request the cancellation of their registration, in writing, at any time. The licensing authority may also revoke a registration or cancel a registration for non-payment of annual fees. Revocation may only occur after the applicant has been given the opportunity to lodge representations.

### Free prize draws & skill competitions

The Gambling Act 2005 does not include any measures to regulate prize draws where there is no charge to enter, nor any competition where the outcome relies significantly upon a participant's skill, judgement or knowledge. Generally, the licensing authority will be not become involved in any matters relating to such schemes.

However, on some occasions, schemes that are presented as skill competitions will actually fall under the definition of lotteries or prize gaming, and would therefore need to comply with the statutory requirements. Alongside the Gambling

Commission, licensing authorities are obliged to monitor the boundaries between lotteries and skill competitions, and will provide basic advice on ensuring that any competitions are run in compliance with the relevant laws. However, the licensing authority will not offer advice or approval of individual schemes, nor will it offer in depth advice as to the legality of a particular activity. It is ultimately the responsibility of the promoter to ensure that a scheme is compliant with statutory requirements, and to seek independent confirmation of this from a legal adviser where appropriate.

This licensing authority notes the criteria set out in section 14 of the Act relating to the characteristics of a skill competition, and will expect the promoter of any such scheme to ensure that the competition includes a suitable challenge of skill, judgement or knowledge that will:

- prevent a significant proportion of people who wish to participate from doing so; or
- prevent a significant proportion of people who participate from receiving a prize.

A small society lottery is a lottery promoted on behalf of a non-commercial society as defined in Section 19 of the Gambling Act 2005. A society is non-commercial if it is established and conducted:

- for charitable purposes
- for the purposes of enabling participation in, or of supporting sport, athletics or a cultural activity: or
- for any other non-commercial purpose other than that of private gain.

All applications for registration must be in the form specified by the Secretary of State and accompanied by supporting documentation that the Licensing Authority will need to assess the application.

This Licensing Authority, when considering an application for registration may request additional information as deemed appropriate, this may include a declaration from the governing body of the society stating:

- the application is on behalf of a genuine non-commercial lottery
- that all persons connected with the promotion of the lottery have no relevant convictions or cautions against them
- briefly explaining the purpose of the society and; the reasons for the fund raising
- confirmation of the appointment of 2 members of the Society who have the authority to sign and complete the necessary returns

- and where a society intends to employ an external lottery manager, evidence that person holds an operator's licence issued by the Gambling Commission.

The licensing authority will adopt a risk-based approach towards its enforcement responsibilities for small society lotteries. This authority considers that the following list, although not exhaustive, could affect the risk status of an operator:

- submission of late returns (returns must be submitted within three months of the date that a lottery was drawn)
- submission of incomplete or incorrect forms
- breaches of the limits for small society lotteries.

If the Authority is minded to refuse an application, the applicant will be notified in writing the reasons why it is considering refusal and the evidence on which it has based the preliminary conclusion. The applicant will be given the opportunity to provide further evidence in support of the application or to make representation regarding these matters.

## **6. Temporary Use Notices**

Temporary Use Notices allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. A Temporary Use Notice may only be granted to a person or company holding a relevant operating licence.

The licensing authority can only grant a Temporary Use Notice to a person or company holding a relevant operating licence i.e. a non-remote casino operating licence.

The Secretary of State has the power to determine what form of gambling can be authorised by Temporary Use Notices, and at the time of writing this statement the relevant regulations (SI no 3157: The Gambling Act 2005 (Temporary Use Notices) Regulations 2007) state that temporary use notices may only be used to permit the provision of facilities for equal chance gaming, where the gaming is intended to produce a single overall winner. There can, however, be more than one competition with a single winner held at the individual event covered by a specific temporary use notice. The facilities may not be provided in circumstances where any person participating in the gaming does so by means of a gaming machine. Equal chance gaming is gaming which does not involve playing or staking against a bank and gives equally favourable chances to all participants. Examples of equal chance gaming include games such as backgammon, mah-jong, rummy, kalooki, dominoes, cribbage, bingo and poker.

There are a number of statutory limits as regards Temporary Use Notices. The meaning of “premises” in Part 8 of the Act is discussed in Part 7 of the Gambling Commission Guidance to Licensing Authorities and at paragraph 14.10 of the Guidance. As with “premises”, the definition of a “set of premises” will be a question of fact in the particular circumstances of each notice that is given. In the Act “premises” is defined as including “any place”. In considering whether a place falls with the definition of a “set of premises”, the licensing authority need to look at, amongst other things, the ownership/occupation and control of the premises.

This licensing authority expects to object to notices where it appears that their effect would be to permit regular gambling in place that could be described as one set of premises, as recommended in the Gambling Commission’s Guidance to Licensing Authorities.

## ***7. Occasional Use Notices***

The licensing authority has very little discretion as regards these notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. The licensing authority will need to consider the definition of a 'track' and whether the applicant is permitted to avail him/herself of the notice.

## **Administration, Exercise and Delegation of Functions**

The Licensing Committee will consist of between 10 and 15 councillors, sitting at least annually to discuss this Statement of Principles, review delegated decisions and administrative matters. The Council will review this Statement of Principles at least every three years. Any changes to the Statement of Principles will include full consultation of all interested parties and responsible authorities.

Sub-committee(s) of three Councillors will determine applications where representations have been received from interested parties and responsible authorities.

The Licensing Committee may also deal with other matters not associated with the Gambling Act 2005.

Each decision of the Licensing Committee or its Sub-Committee(s) shall be accompanied with clear reasons for the decision. A summary of the decision will be posted on the Council's website as soon as possible after the decision has been confirmed, where it will form part of the statutory register required to be kept by the Council.

The Council's authorised officers will deal with all other licence/permit application where either no representation/objection(s) have been received, or where representations have been received and it is agreed by all parties that a hearing is not necessary.

Council officers will make decisions on whether representations or applications for reviews should be referred to the Licensing Committee or Sub-Committee(s) and upon whether representations are frivolous, irrelevant, vexatious or repetitious. Where representations are rejected, the person making that representation will be given written reasons.

Where appropriate the Council will seek to delegate decision making so far as possible in the interests of speed, efficiency and cost effectiveness.

The Council will seek to integrate this Statement of Principles with its various other strategies/policies, having regard to the licensing objectives and will utilise its collaborative and partnership working arrangements and networks that engage with responsible authorities, interested parties and key stakeholders. This will include taking into account the following:

- Council Enforcement Policy



- Community Strategy
- Drugs and Alcohol Strategy
- Diversity and Equality Policy

## **Equality & Diversity**

East Herts Council is firmly committed to providing and promoting equality for all its employees and the wider community. The Council has adopted this policy to ensure equality influences the way we provide services and the employment of staff. To achieve this we will endeavour to create an environment in which there is respect for every individual and recognition that no member of the public, employee, potential employee, service user or Councillor will be discriminated against irrespective of their gender, race, ethnicity, colour, marital status, disability, age, sexuality, family responsibilities, religion, trade union involvement or political beliefs. Neither shall they be disadvantaged by conditions or requirements that cannot be shown to be justifiable for health and safety or legal reasons. This is not an exhaustive list and the Council recognises that there are other groups who may face unlawful discrimination.”

In respect of race equality the Council has adopted the McPherson’s definition of a racist incident ‘a racial incident is any incident which is perceived to be racist by the victim or any other person’.

The Council follows the Codes of Practice of the Commission for Racial Equality and Equal Opportunity Commission, and is committed to achieving the Equality Standard for local government.

We believe in the need to eliminate unlawful discrimination and to promote equality of opportunity in all that we do. We recognise the rich diversity of East Hertfordshire’s population as a strength and we aim to treat all people with dignity and respect whilst recognising the value of each individual and the positive contribution they make to the divers community and workforce.’

## Contact Point

For further information about this statement, or to discuss an actual or future application, please contact:-

Housing & Health  
East Herts District Council  
Wallfields  
Pegs Lane  
Hertford  
SG13 8EQ

Telephone: 01992 531503

E-Mail: [community.protection@eastherts.gov.uk](mailto:community.protection@eastherts.gov.uk)

EAST HERTS COUNCIL

LICENSING COMMITTEE – 14 NOVEMBER 2018

REPORT BY HEAD OF HOUSING AND HEALTH

REVIEW OF LICENSED VEHICLE POLICY: VEHICLE AGES AND EMISSIONS

WARD(S) AFFECTED: ALL

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## **Purpose/Summary of Report**

- To present a draft 'Vehicle age and Emissions' policy and seek Members' endorsement for consultation.

| <b><u>RECOMMENDATIONS FOR DECISION:</u> That</b> |  |
|--|--|
| <b>(A)</b>                                       | <b>Members endorse the draft Vehicle Age and Emissions Policy for consultation; and</b>                          |
| <b>(B)</b>                                       | <b>Officers commence an eight week public consultation regarding the draft Vehicle Age and Emissions Policy.</b> |

### 1.0 Background

1.1 The Council, as the authority responsible for issuing Hackney Carriage and Private Hire vehicle licences, is able to set the standards that must be met before a vehicle is licensed.

1.2 The Council has previously created a policy in relation to the age of vehicles which can be licensed.

1.3 As part of the ongoing review of East Herts policies in relation to taxis it is suggested that the current age policy be updated.

1.4 A revised policy has been produced to take into account changes in vehicles over recent years. The main consideration

is the safety of the vehicles, however, it is recognised that members now place high importance on tackling poor air quality, particularly within the district's three Air Quality Management Areas (AQMAs) in Bishop's Stortford, Hertford and Sawbridgeworth. It is also noted that newer vehicles have ever decreasing emission levels and so it is appropriate to reflect this downward trajectory within East Herts polices.

- 1.5 The Committee is asked to endorse a public consultation on the revised policy. As part of the consultation every member of the licensed Hackney Carriage and Private Hire Trade, including those that are not vehicle proprietors, will be contacted in writing to canvas their opinions.
- 1.6 An eight week public consultation is proposed starting on 19<sup>th</sup> November 2018 and closing on 11<sup>th</sup> January 2019. All the responses to the consultation will be brought before the Licensing Committee for consideration on 6<sup>th</sup> February 2019 and it is proposed that a final policy will be recommended to Full Council for approval on 5<sup>th</sup> March 2019.
- 1.7 It is proposed that any revised policy would come into effect on the 1<sup>st</sup> April 2019.

## 2.0 Report

- 2.1 East Herts' current vehicle age policy requires that vehicles must be less than five years of age when first licensed.
- 2.2 The authority does not want and is not able to have a blanket policy regarding refusing applications for vehicle licences based on age so each application must be considered on its own merits.
- 2.3 As a result the authority regularly receives applications from people wishing to licence vehicles for the first time which are over five years of age. Each of these vehicles is inspected by a Licensing Officer before being approved to have a mechanical

inspection at one of the authority's nominated garages. No fee is currently attached to this inspection despite the amount of officer time involved.

- 2.4 The current policy does not set down criteria for a vehicle to be considered an exception to the policy so often people bring vehicles to be inspected and are surprised when it fails. This can obviously have serious financial implications for the individual if the vehicle has been purchased for the specific reason of being licensed.
- 2.5 The principle of placing an age limit on licensed vehicles is perfectly acceptable. The purpose of such a policy is to try and ensure that the taxi fleet is as safe, reliable and comfortable as possible.

The DfT Best Practice guidance states:

*It is perfectly possible for an older vehicle to be in good condition. So the setting of an age limit beyond which a local authority will not license vehicles may be arbitrary and inappropriate. But a greater frequency of testing may be appropriate for older vehicles - for example, twice-yearly tests for vehicles more than five years old.*

- 2.6 There is no proposal to implement a maximum age limit for licensed vehicles. If they can comply with the policy there is no reason why these vehicles cannot continue to be licensed.
- 2.7 East Herts Council already requires a greater frequency of testing for older vehicles as detailed below.

*All vehicles require a VCC to be issued 1 year after the date of first registration. All classes of vehicle require an annual roadworthiness certificate until the vehicle reaches 7 years of age. Between the ages of 7 and 10 years, both classes of vehicle require a 6 monthly roadworthiness certificate. After 10 years, vehicles require a VCC every 4 months.*

*For all vehicles over the age of 10 years from date of first registration, these tests are enhanced to the standard used at the Public Carriage Office (Metropolitan Police).*

- 2.8 It is considered that the frequency of testing is adequate. It is proposed to remove the requirement for vehicles over 10 years old to be tested to the standard used at the Public Carriage Office. Since this policy was first implemented the standard of the testing required has reached such a level the 'enhanced' level of testing is considered the norm.
- 2.9 It is considered helpful to officers and prospective and existing vehicle proprietors if the details of what would be considered as an exception from the policy were published. Therefore 'Exceptional Condition Criteria' have been included in the draft policy attached to this report as **Essential Reference Paper 'B'**. Where an exception to the policy is requested then the suggested process to be followed would be that the vehicle and supporting documents are inspected by either an enforcement officer or a licensing officer and then if they confirm it passes the first eight criteria the vehicle can attend to an approved garage for mechanical inspection.
- 2.10 When considering age policies the DfT guidance<sup>1</sup> also states:

*Local licensing authorities may wish to note that a review carried out by the National Society for Cleaner Air in 2005 found that taxis were more likely than other vehicles to fail an emissions test.*

- 2.11 The DfT goes further by mentioning Environmental Considerations:

*Local licensing authorities, in discussion with those responsible for environmental health issues, will wish to consider how far their vehicle licensing policies can and should support any local environmental policies that the local authority may have adopted.*

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<sup>1</sup> Department for Transport: Taxi and private hire vehicle licensing: best practice guidance (2nd March 2010)

*This will be of particular importance in designated Air Quality Management Areas (AQMAs), Local authorities may, for example, wish to consider setting vehicle emissions standards for taxis and PHVs. However, local authorities would need to carefully and thoroughly assess the impact of introducing such a policy; for example, the effect on the supply of taxis and PHVs in the area would be an important consideration in deciding the standards, if any, to be set. They should also bear in mind the need to ensure that the benefits of any policies outweigh the costs (in whatever form).*

2.12 Officers have taken into account the above guidance and it is believed that the imposition of the suggested emissions standards would have little or no impact on the supply of vehicles within East Herts but would make a positive contribution to tackling air pollution.

2.13 The cost of compliance with this policy to the licensed trade has also been considered with the following points being made:

- the Euro 5 emissions standard came into effect in January 2011 so vehicles manufactured after this date can still be licensed for the first time until 1<sup>st</sup> April 2020
- from 1st April 2020 only cars meeting the Euro 6 emissions standard which came in effect in September 2015 will be able to be licensed for the first time
- if an older vehicle fails the emissions part of the policy then it is open to the proprietor to have the vehicle adapted/modified to meet the standard or change to a cleaner fuel rather than going to the expense of changing the vehicle.

The suggested changes in relation to emissions should have minimal impact on the people wishing to enter the trade and licence their own vehicle as the authority already has a policy of not issuing licences to vehicles over five years old. All vehicles manufactured in the last five years have been

required by legislation to meet or exceed the Euro 5 emissions standard.

- 2.14 Similarly the requirement for vehicles to meet or exceed Euro 5 emissions standards at renewal from the 1<sup>st</sup> April 2020 should not impact the existing licensed trade financially. A maximum of 107 of the 315 vehicles licensed at the time of writing the report do not meet or exceed Euro 5 it is likely that the majority of these vehicles will have been replaced by April 2020 regardless of the change in policy (based on the figures for replacement vehicles over the last two years). These vehicles can be replaced by vehicles up to five years old, which will offer the proprietor a significant saving over having to buy a brand new vehicle, or the vehicle can be modified to comply with the policy.
- 2.15 The table below shows the dates of first registration of all the vehicles currently licensed by East Herts.

| Dates vehicles registered | Number of vehicles licensed |
|---------------------------|-----------------------------|
| 2004                      | 1                           |
| 2005                      | 2                           |
| 2006                      | 11                          |
| 2007                      | 15                          |
| 2008                      | 28                          |
| 2009                      | 14                          |
| 2010                      | 36                          |
| January 2011- August 2015 | 134*                        |
| September 2015 - present  | 74**                        |

\*Meets or exceeds Euro 5 emissions standards (some vehicles first registered in 2010 will also meet or exceed the standard but all new vehicles had to meet or exceed the standard from January 2011)

\*\* Meets or exceeds Euro 6 emissions standards (some vehicles first registered in early 2015 will also meet or exceed the standard but all new vehicles had to meet or exceed the standard from September 2015).



2.16 It is recognised that licensed vehicles can significantly contribute to poor air quality for a number of reasons:

- the ranks for these vehicles are located in our Town Centres;
- a significant part of their day-to-day work is short urban journeys which generate more emissions due to their nature;
- the older vehicles that some proprietors licence are not equipped with 'start, stop' technology so spend a significant amount of time idling.

The contribution in terms of emissions that licensed vehicles make to East Herts AQMAs would be reduced by 2020 if the draft emissions policy were approved in its current form.

2.17 It is believed that the draft age and emissions policy will have the following benefits should it ultimately be approved by Council:

- an increase in public safety;
- clearer guidelines for those seeking to licence a vehicle within East Herts;
- promotion of the East Herts licensed trade as professional;
- reduction in the trade's contribution to air pollution;
- potential benefits to the health of East Herts licensed drivers as it has been demonstrated that the air quality inside a vehicle in an AQMA is generally worse than outside the vehicle so any improvement will benefit those who regularly drive through these areas.

2.18 In order to encourage the take up of fully electric vehicles which produce zero emissions the authority is investigating schemes that would improve the charging infrastructure with East Herts. In addition the authority is offering a free vehicle

licence for any application to licence a fully electric vehicle received between 01/04/2019 and 31/03/2020.

### 3.0 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

#### Background Papers

None

Contact Member: Councillor Graham McAndrew – Executive Member for Environment and the Public Realm.

Contact Officer: Jonathan Geall – Head of Housing and Health, Extn: 1594.

Report Author: Oliver Rawlings – Service Manager Licensing and Enforcement, Extn: 1629.

## ESSENTIAL REFERENCE PAPER 'A'

### IMPLICATIONS/CONSULTATIONS

|  |  |
|--|--|
| Contribution to the Council's Corporate Priorities/ Objectives <i>(delete as appropriate):</i> | Priority 1 – Improve the health and wellbeing of our communities<br>Priority 2 – Enhance the quality of people's lives; and<br>Priority 3 – Enable a flourishing local economy   |
| Consultation:  | Any revision of the Policies in relation to vehicle licensing that the Authority seeks to rely upon must be subject to public consultation and any responses to be considered by Licensing Committee before recommending the document for approval by Full Council. An 8 week consultation will be undertaken.   |
| Legal:   | If the correct process is not followed then any reliance the authority places on the policy would be open to challenge   |
| Financial:   | No issues identified by report author or contact officer   |
| Human Resource:  | No issues identified by report author or contact officer   |
| Risk Management:   | No issues identified by report author or contact officer   |
| Health and wellbeing – issues and impacts:   | Resident's health and wellbeing can be affected by unsafe vehicles and poor air quality. The draft policy would help continue to ensure licensed vehicles are safe and could also have a positive effect on air quality and the AQMAs within East Herts. Improved air quality would also have a positive effect on the health of the licensed drivers who spend a significant amount of time in their vehicles with the associated pollutants. |

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### **(DRAFT) Licensed Vehicle Age and Emissions Policy**

The purpose of this policy is to ensure taxis are as safe, reliable and comfortable as possible while at the same time minimising emissions. The policy aims to have a positive impact on emissions as it is recognised that the age of vehicles and the exhaust emission specification are critical to the level of pollutants emitted. Consequently, to improve air quality and reduce emissions from the taxi fleet, standards relating to the exhaust emissions have been introduced in addition to the requirements regarding the age of vehicles.

In order to be licensed, a vehicle must **meet both the age and emissions criteria**. Applications to licence vehicles which fall outside of the policy will be considered on their own merits.

#### **Vehicle Age**

**At first application** - Vehicle licences will not be granted in respect of vehicles that were first registered (or, in the case of imported vehicles, manufactured) more than 5 years prior to the date that the application is made.

**At renewal** - Vehicle licences will not be renewed in respect of any licensed vehicle that was first registered (or, in the case of imported vehicles, manufactured) more than 10 years prior to the date of renewal (or 12 years in the case of purpose-built or fully wheelchair accessible vehicles).

A vehicle may be considered for licensing beyond these upper age limits if it is in '**exceptional condition**'. The criteria for meeting this standard are below.

#### **Exceptional Condition Criteria**

A vehicle will be considered to be in 'exceptional condition' if **ALL** of the following apply:

1. The vehicle must not have failed the council's vehicle inspection or standard MOT (or just the standard MOT if the vehicle has not been licensed previously) on any significant item within the previous five years. For the purposes of this criterion, a significant item is defined as any item that would cost more than £30.00 to correct.
2. The bodywork is in near perfect condition with no signs of panel age deterioration, dents, scratches, stone chips, or rust or any other abrasions that may detract from the overall appearance of the vehicle.
3. The general paint condition should show no signs of fading, discolouration or mismatching that may detract from the overall appearance of the vehicle.
4. The interior trim, panels, seating and carpets and upholstery are in excellent condition, clean and free from damage and discolouration.
5. The boot or luggage compartment is in good condition, clean and undamaged.
6. Passenger areas are free from damp and any unpleasant odours.
7. The vehicle is in excellent mechanical condition and in all respects be safe and roadworthy, with no signs of corrosion to the mechanical parts, chassis, underside or bodywork.
8. The vehicle must have a complete service record to show that it has been properly serviced and maintained in accordance with the manufacturer's service specification.

9. The vehicle passes the council's vehicle inspection.

The first eight criteria will be checked by an officer of the council and the proprietor of the vehicle must provide all the necessary documentation to support their request for a vehicle licence to be granted outside of this policy. An appointment will need to be made for this and a fee may be charged.

If the first eight criteria are satisfied then the proprietor of the vehicle must book and pay for the council's approved vehicle inspection from a nominated garage and produce the pass certificate to the council.

### **Emissions Standards**

**At first application** – Vehicles must meet or exceed Euro 5 emissions standards (From 01/04/2020 vehicles must meet or exceed Euro 6 emissions standards at first application.)

**At renewal** – From 01/04/2020 vehicle licences will not be renewed in respect of any licensed vehicle that does not meet or exceed Euro 5 emissions standards. (From 01/04/2023 vehicle licences will not be renewed in respect of any licensed vehicle that does not meet or exceed Euro 6 emissions standards.)

Where vehicles do not meet the relevant emissions criteria the proprietor may:

- have the vehicle adapted / modified to meet the standard and provide evidence of this
- change the fuel that is used to a cleaner alternative, such as bio diesel or
- replace the vehicle with one that meets the emission standard.

Notwithstanding that each application will be considered on its own merits.

### **When will the different criteria be applied?**

If the licence of a currently licensed Hackney Carriage or Private Hire Vehicle is allowed to **EXPIRE** by its proprietor then any subsequent application will **NOT** be considered as a renewal. This means that where an existing vehicle licences expires, a subsequent application for a licence for that vehicle will be treated as a first time application and the standards and criteria relating to first time applications will be applied.

For the avoidance of doubt when a new vehicle has an existing plate transferred onto it the vehicle will be considered under the criteria for a vehicle being licensed for the first time.

### **Low Emission and Electric Vehicles**

The Council encourages the uptake of low emission and electric vehicles in the District. The authority will seek to examine the feasibility of introducing schemes which help improve the charging network and aid drivers in testing and purchasing electric vehicles.

The Council will waive the initial vehicle licence application fee for any application to licence a fully Electric Vehicle (EV) received between 01/04/2019 and 31/03/2020.

EAST HERTS COUNCIL

LICENSING COMMITTEE – 14 NOVEMBER 2018

REPORT BY HEAD OF HOUSING AND HEALTH

NIGHT TIME ECONOMY POSITION STATEMENT CONSULTATION  
RESPONSES

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WARD(S) AFFECTED: ALL

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### **Purpose/Summary of Report**

- To consider the responses to the public consultation on the Draft position statement 'Licensing Decision Making relating to the Night Time Economy'.

| <b><u>RECOMMENDATIONS FOR DECISION: That</u></b> |   |
|--|---|
| <b>(A)</b>                                       | <b>The wording of the position statement be endorsed; and</b>   |
| <b>(B)</b>                                       | <b>This final wording be recommended to Council for adoption as an addendum to the Council's Statement of Licensing Policy.</b> |

#### 1.0 Background

1.1 Section 5 of the Licensing Act requires the Licensing Authority to determine its Licensing Policy and publish every 5 years the Statement of Licensing Policy that sets out the principles it applies in exercising its functions under the Licensing Act 2003. The Statement must be published before the Licensing Authority carries out any licensing functions under the 2003 Act. The Act also requires that the Statement of Licensing Policy is kept under review, and appropriate revisions are made.

- 1.2 The current policy was determined in January 2016 for a period of five years and so must be re-determined by Council by 31 January 2021 at the latest.
- 1.3 Following a number of applications for new and varied licences, some of which were ultimately decided by a Licensing Sub-Committee, members of the Licensing Committee expressed concerns that some parties did not fully understand or engage with the process.
- 1.4 As a result the licensing team undertook to draft a position statement relating to how licensing decisions are made relating to the night-time economy.
- 1.5 This draft was produced with a view to it forming an addendum to the Statement of Licensing Policy and is aimed at making it far clearer how decisions are made with regard to licensed premises applications. Topics covered are:
- who the relevant 'stakeholders' are, going beyond responsible authorities alone, and what should their reasonable expectations be of the licensing process;
  - the Licensing Team's expectations of how the responsible authorities could make their representations so as to make decision-making as transparent and robust as possible;
  - triggers for enforcement action;
  - an articulation of the benefits of well-run licensed premises to the district – economic and cultural/entertainment;
  - how the council will proactively support best practice in the night time economy, for example, by promoting the use of Live ID and making best use of CCTV.

## 2.0 Report

- 2.1 The six week public consultation on the Draft Night Time Economy Position Statement closed at midnight on 12<sup>th</sup> August



2018. As Part of the consultation every person holding a licence issued by this authority under the Licensing Act 2003 received details of the consultation.

- 2.2 During the consultation 11 responses were received from various parties. These are broken down as follows:

| <b>Type of respondent</b> | <b>Number of responses</b> |
|---------------------------|----------------------------|
| Resident                  | 4                          |
| Responsible authority     | 1                          |
| Solicitor/licence holder  | 3                          |
| Town Councillor           | 1                          |
| Undisclosed               | 2                          |

Of the residents that responded three were from Hertford and one was from Ware.

- 2.3 Some of the responses contained general comments and neither supported the draft NTE Position Statement nor suggested any amendments. Others contained a significant amount of detail regarding suggested amendments to the wording of the statement and other matters that might be included. All of the responses to the consultation can be found at **Essential Reference Paper B**.
- 2.4 The officer response to the comments received can also be viewed at **Essential Reference Paper B**. Amendments to the draft position statement have been made where it was believed it was appropriate or would aid the reader in understanding the process. These amendments in no way fetter Members' discretion to amend the NTE Position Statement as they see appropriate but are officer recommendations.
- 2.5 Where an amendment has been suggested in a response but the change has not been included in the final suggested draft a commentary has been included to explain this decision.

- 2.6 One of the responses highlighted that minor variations were not mentioned in the policy. Although this type of application is less likely to impact on the licensing objectives it is still open to, albeit shorter, consultation with the public and the responsible authorities. This has resulted in a number of amendments to the policy being made by officers beyond those suggested in the consultation response.
- 2.7 Members are asked to consider the amended Night Time Economy Position Statement and endorse the final wording before recommending it to Council.
- 3.0 Implications/Consultations
- 3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

#### Background Papers

None

Contact Member: Councillor Graham McAndrew – Executive Member for Environment and the Public Realm.

Contact Officer: Jonathan Geall – Head of Housing and Health, Extn: 1594.

Report Author: Oliver Rawlings – Service Manager Licensing and Enforcement, Extn: 1629.

## ESSENTIAL REFERENCE PAPER 'A'

### IMPLICATIONS/CONSULTATIONS

|  |  |
|--|--|
| Contribution to the Council's Corporate Priorities/ Objectives <i>(delete as appropriate):</i> | Priority 1 – Improve the health and wellbeing of our communities<br>Priority 2 – Enhance the quality of people's lives; and<br>Priority 3 – Enable a flourishing local economy   |
| Consultation:  | The draft NTE position statement has been subject to public consultation and the responses will now be fully considered by Licensing Committee before approving the final wording and recommending the document to Full Council.   |
| Legal:   | If the correct process is not followed then any reliance the authority places on the statement would be open to challenge  |
| Financial:   | No issues identified by report author or contact officer   |
| Human Resource:  | No issues identified by report author or contact officer   |
| Risk Management:   | No issues identified by report author or contact officer   |
| Health and wellbeing – issues and impacts:   | Resident's health and wellbeing can be affected by licensed activities carried out in a way that does not promote the licensing objectives. In order to ensure that residents understand and are able to engage with the process fully the NTE Position Statement has been prepared. |

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**1. 12/07/2018 (Respondent type: Resident)**

General comments/observations:

1. Document has a repeated para number of 5.16 (twice).
2. 6.3 - not really sure that in 2018 it reflects the clients in referring to a 'vertical drinking establishment' as "aimed at a YOUNGER audience" Those I use have a very mixed and often older grouping esp where sports screens are offered.
3. 6.4 refers to 'robust management of venue's last entry times' but no reference to opening or licensing hours. It seems to be self-regulated and if times are not published (on EHDC website or at point of entry) how do residents know if regulations are being breached? I raise this as 5.15, 5.16, 5.16. 5.17 puts the initial policing issue onto residents and other bodies but without knowing what the establishment is licensed for (published and displayed at point of entry) it could lead to time wasting on pointless complaints - just a view).

**RESPONSE:** Point 1 was agreed and the numbering corrected. Point 2 had merit and as such the following words were removed from the draft document: (aimed at a younger audience and often associated with music or sports screens). Point 3, the details of opening hours and licensed hours are publicly available on the council website at: <https://publicaccess.eastherts.gov.uk/online-applications/search.do?action=simple&searchType=LicencingApplication>. The premises are required to display a summary which contains this information but there is no legal requirement for this to be displayed at the point of entry.

## **2. 13/07/2018 (Respondent type: Not given)**

Email entitled: Supermarket Alcohol

I have read thru the licensing schedule, the only suggestion I would urge you to focus on is the sale of cheap alcohol.

**RESPONSE:** The authority can give this matter consideration in the future but it does not form part of the consultation currently.

## **3. 18/07/2018 (Respondent type: Town Councillor)**

I have read the whole document and find it well considered and comprehensive. I particularly like the proposal of notifying local parish/town councils. I have no hesitation in endorsing it. Thank you for the hard work and commitment in producing it.

**RESPONSE:** Thank you for your comments.

## **4. 18/07/2018 (Respondent type: Not given)**

Dear Mr Rawlings

Please could you tell me why I have been sent this email and letter?

Regards

**RESPONSE:** As part of the consultation we contacted everyone who had previously held a licence or notice under the Licensing Act 2003. This individual no longer works within East Herts.

## **5. 20/07/2018 (Respondent type: Resident)**

Having only lived in Hertford since 2003, I have witnessed the slow deterioration of the county town. Initially, this was due to the lack of and high cost of parking places. As a shopping experience in the daytime, it is a none event. Endless nail bars, hairdressers, cafes and restaurants have replaced shops. The local authority have turned the town into a second rate night time entertainment centre catering for the young. We do have two or three shops which are most useful, but shopping is very limited. It will only get worse as on-line-shopping increases.

**RESPONSE:** The NTE Position statement is proposed to help residents to address any perceived deterioration in the town relating to the night time economy. Licensing is not a mechanism by which the types and number of shops within the town can be addressed.

## **6. 09/08/2018 (Respondent type: Licence Holder)**

Dear Oliver,

My feedback, which is based on my own situation, is on the Council's position with regards the following planning issues.

- Daytime vs night time economy.

Hertford is a very historical town built around the Brewing industry. The town has proportionately more licensed venues scattered around the town that most non Brewing towns. This is to be expected and reinforces its tradition. But these large numbers of licensed venues, both Bars and Restaurants, lead to a very vibrant destination town, especially at night. What the town lacks is a dedicated plan around retail and other leisure activities. This would

give a far more balanced town in my opinion and solve some of the issues we currently have around the poor balance.

- Housing positions vs vibrant venues.

Councils are under immense pressure to build more houses. Hertford is no exception. But squeezing luxury flats into the Town Centre is not a viable answer. A town with a vibrant night life should not have as many flats and houses based in its centre. Consideration must be given to whether each party will exist harmoniously next to each other. Failing that, does the planning process take into consideration the position of windows and doors and how they might open out onto potentially noise generating areas. Simple amendments to Planning applications to insist on air conditioning to these rooms, so that open windows are not required, may solve this issue. It may sound a cliché, but in this Brewing Town, I would expect that the majority of Pubs and Bars were in place long before the new flats were built.

- The minority vs the majority.

In my case, the six flats are located meters away from my bar and give rise to my business being restricted in the hours that it is allowed to operate. Arguably, the 6 flats to the rear on my pub garden, influence the many hundreds of guests that I have in on a weekly basis. This has a massive financial burden to the business in an environment where its costs are forever escalating. Under the terms of any Licensing application, Amendment or Review, the Public can raise a complaint against the venue from any geographical distance away from that venue. Surely there must be protection from this. If you choose to buy or rent a flat in a town or city centre, you should not expect a country life of tranquillity.

I hope this feedback is useful to your project.



Kind regards,

**RESPONSE:** Many of the issues raised are looking at the bigger picture and the policies of the Authority as whole and are not matters for Licensing. In the last paragraph the response mentions that a complaint can be made from any distance away from the premises and asks if there is protection from this. The relevancy or not of a representation or review application would be decided by the Licensing Authority taking all factors into consideration, including geographical location. If, in the opinion of the Licensing Authority, none of the licensing objectives were being undermined or potentially undermined then the application/representation would be rejected.

**7. 09/08/2018 (Respondent type: Solicitor from Poppleston Allen)**

Dear Oliver

I have reviewed the East Herts Night-time Economy Position Statement and comment on the draft as follows:-

- Paragraph 2.1 includes a table outlining how relevant parties will be made aware of applications and in relation to residents this includes the consultation period during which public notices will be displayed for new premises licence applications and full variations (i.e. not less than 28 days). I note that there is no reference to the process for minor variations, which residents can object to, so I think it may be appropriate to include a reference to the 10 working day consultation period in the case of minor variations to avoid any confusion.
- At paragraph 4.6 the document states that a Licensing Committee is required under legislation to make a decision on an application

at the hearing and there is no power to defer the decision. This is not correct in all cases. Regulation 26 under the Licensing Act 2003 (Hearing) Regulations 2005 sets out the specific cases in which the Authority must make a determination at the conclusion of the hearing however, in most cases the Authority has 5 working days within which to determine an application.

- Paragraph 5.11 states that the guidance issued under the Section 182 was last amended in 2017 however it was last amended in April 2018.
- Paragraph 5.12 appears to contain a mistake as it refers to prevention of children from harm, instead of protection of children from harm.

I am happy to discuss any of the above points should you wish.

Kind regards,

**RESPONSE:** All four points in this response are valid and amendments have been made to the appropriate paragraphs.

#### **8. 10/08/2018 (Respondent type: Solicitor on behalf of a licence holder)**

Dear Mr Rawlings,

I act on behalf of Breeze Bars Limited and have been instructed to respond on behalf of the company to the public consultation on the draft night time economy position statement published by East Herts Council.

My client is the owner and operator of Bacchus in Bishop's Stortford. The company takes its responsibilities seriously and is proud that the venue has established a reputation for providing a safe and enjoyable experience.

Safety and security are at the top of the company's list of priorities. Any incidents are rare and generally minor.

Bacchus provides a number of benefits to the local community. People do not have to travel to London for a quality club experience. Having a nightclub in the town encourages people to spend their money locally, not only at Bacchus but also with other businesses in the town.

The recent variation of the premises licence was an acknowledgement of the way in which Bacchus is operated, the licensing authority being satisfied that the conditions already in place are sufficient to cover any additional noise or disruption.

The concern of the company is that the position statement may cause issues for operators in the future if it is adopted as currently drafted.

The draft statement contains some inaccuracies and does not make clear the limitations that apply to representations made in respect of applications under the Licensing Act 2003.

By way of assistance, I have made some suggested alterations in the accompanying document.

I have made the suggested alterations with the following aims in mind:

- To correct any errors
- To avoid any confusion
- To provide an accurate summary of the statutory process

In order to achieve those aims, I have used the relevant provisions of the Licensing Act, Regulations, the Statutory Guidance and case law.

The amended statement is in word format with track changes, so that you can see the suggested alterations that I have made. I am sorry about the formatting of the document but it is how it transferred from the original PDF version.

The amended statement is also in PDF format for ease of reading.

If it would be of further assistance, I will be pleased to discuss any aspect of the amended statement with you.

Please do not hesitate to contact me if you have any queries.

Kind regards,

**RESPONSE:** This response provided a version of the draft position statement with tracked and this is attached as **ESSENTIAL REFERENCE PAPER 'C'**. Some of the points raised were addressed in the response above. Many of the points raised were considered valid and the draft document amended appropriately. Where a point is not considered valid or the suggested wording has been amended the explanation for this is included in the essential reference paper as a comment.

## 9. 10/08/2018 (Respondent type: Resident)

### East Herts Council-Licensing Decision Making relating to the Night Time Economy "NTE"

I have read your 22 page "Position Statement" and would like to make the following comments.

I live in **REDACTED** Ware. My home is adjacent to **REDACTED** This places my

wife and I in a unique position to comment on East Herts Council's performance in relation to 1:1.4-  
“..to balance the benefits of a prosperous local night time economy with minimising any detrimental  
impacts on the quality of life..” In this respect East Herts District Council “EHDC” have and are failing.

The imbalance between businesses engaged in “entertainment” means that Ware is already a  
“destination location” for music and the sale of alcohol and take away food. The town centre can  
“boast” a number of eateries and a myriad of “take away” and late night retailers.

The reality is that the undermanaged growth of these type of business by either the Town Council  
(whose powers seem limited), EHDC, and Hertfordshire Police have led to a substantive growth of  
anti-social behaviour at the weekends between Friday to Sunday night. However almost on any night  
Taxi's dropping their passengers and picking up people in various stages of alcoholic distress as late  
(or early ) as 3am makes living in this area of Ware uncomfortable and unattractive. This would if  
publicised correctly would end the EHDC wish for our area “1.4-“.. in a way that continues to make  
East Herts an attractive place to live and visit”

Cars mostly driven by younger men use Station Road/Amwell End, and Viaduct Road and the Town  
centre itself as something akin to a “drag strip racing circuit”. I suspect we are all relieved to note  
that no Council official or Police Officer has been hurt during these antics as none are ever seen in  
this area during these times.

As you will note I can only directly comment on the situation in **REDACTED**

, Ware and am unable

to verify what I hear from Friends who live in other parts of the EHDC area but my understanding is  
that similar but not so acute behaviour is seen and experienced by local residents.

My specific observations on how EHDC are failing to adhere to your own “Licensing Policy” and in  
particular the four objectives are listed below.

- The little to no evidence of EHDC efforts to protect the public and local residents from either  
crime or anti-social behaviour. Almost all of our local licensed premises are “irresponsible”  
identified by drunkenness and late night/early morning noise in the road and general area  
where we live.
- To my untrained eye there is little to no CCTV coverage in the area outside the town centre.  
This encourages anti-social behaviour to be drawn to quieter and non-patrolled areas.
- The “co-operation” between EHDC and the Police is either not working or is non-existent.
- In Ware “public nuisance” is a daily (and nightly) reality. This is shown by the amount of  
rubbish and litter from take aways and the amount of bottles and cans and cigarettes butts  
are clearly overwhelming your street cleaning operative. There is a noticeable increase in  
vermin which EHDC Environmental officers casually attribute to the River Lea and the BR  
railway tracks !
- We also see groups of Taxi drivers standing outside their vehicles (near Ware BR) smoking,  
spitting, and make inappropriate remarks and gestures to young women passing by their  
vehicles especially when going to and coming from Ware BR station in the early evening and  
later at night. Those with responsibilities for the care of children and young people have  
evidence of how these matters can escalate into something more worrying. These taxis and

their drivers regularly perform illegal road manoeuvres and tie up short term public parking bays. The noise of slamming doors and arguing with passengers over fares can (and does) run between 10pm through to 3/4am.

- Traffic in Station Road, Ware regularly mounts the pavement sometimes at speed. Although requested repeatedly, no traffic calming measures have been considered by EHDC or Hertfordshire County Council. For those of us who regularly witness this we are sure that someone will be seriously injured or worse.

I accept that this a very personalised view and that the maybe others who live in our vicinity are content with what I describe. However my challenge to EHDC is to make this proposal more widely known by direct mail or e-mail or via inclusion in your regularly received magazine to those residential homes effected by the aim of this discussion document. I believe that many would "score" the local authority poorly in management of the area and taking into consideration their wishes, needs and requirements.

The partnerships and co-operation that the document so proudly refers to is not readably in evidence to local residents and I'm sure in other areas covered by the EHDC. It seems that EHDC are more interested in promoting business and hence local taxation via business rates and licence fees then providing a safe and enjoyable environment for its residents and their families.

EHDC challenge must be to actively work and achieve what you think you've already done. A solid base of recordable and acknowledge achievement is the only way that the hopes and aspirations of EHDC will be able to deliver a workable framework in alignment with this NTE document.

I hope that you have received a substantial response to this document. It will (I hope) support the points that I make in this response. I am happy to speak to and address the points covered in this response which limit me to 1,000 words but easily cover at least twice that number.

**RESPONSE:** This response contained a wide variety of issues that extend far beyond the control of the Licensing Act 2003. It is hoped that the NTE Position statement will help to address the either perceived imbalance between promoting business and the needs of residents which is often difficult to do under a permissive regime. The individual points have been responded to directly but the response did not suggest any changes or amendments to the draft document.

### **10. 11/08/2018 (Respondent type: Resident)**

Whilst I appreciate the trade that the late night crowds bring to the town, there needs to remain the right balance between an enjoyable night out in the county town and safety/consideration for local

residents. There should be strict volume controls for venues/events (Dog & Whistle DJ events in garden for example) and clear enforcement of these conditions as often it has taken intervention from nearby residents to inform them of the travelling sounds of their music. I would also like to see more visible policing to enhance safety as there have been an increasing number of incidents in the last year when comparing to the previous 10 that we have been living here.

**RESPONSE:** The NTE Position Statement informs residents of the powers they have to address issues with premises and how the Licensing Authority will deal with these. Each application is considered on its own merits and when the nature or style of a venue changes there is no automatic right to revisit the hours and conditions attached to that premises licence. Where there are concerns that any of the licensing objectives are being undermined by the operation of particular premises conditions such as those detailed in the response can be imposed if appropriate.

### **11. 13/08/2018 (Respondent type: Hertfordshire Constabulary)**

Under section 3 (3.6 and 3.7 – although numbers are duplicated) - Use of TEN's – Further guidance required in relation to the use of them to overcome licence conditions. For example a premises that has a condition not to use their garden after a certain time apply for a TEN's to use the garden for entertainment past this time. Is it reasonable / acceptable to allow the premises to then use the garden as it will be a one off? What if they regularly use TEN's to overcome this condition?

Also where a TEN is used to extend the licensable hours on a late night venue there is the issue that no conditions then apply for the

additional hours. What are the expectations of the applicant in relation to still working by the conditions on their licence – can they be advised to state this in their application forms?

Clearly if there are concerns objections can be made to either reject a TEN's or have the conditions added. I am looking at where there are no specific concerns but Police would still want a premise to operate in line with conditions.

Perhaps outside of this consultation is the issue around the use of TEN's for festival type events – guidance from the Committee / Council in relation to this issue would be helpful. Also clearer expectation to applicants as to what is required on the form when submitting a TEN's – ie more detail.

Below two paragraphs I think restrict the Council's enforcement team to only ever checking premises when there have been complaints or there have previously been complaints. I believe there would be occasions when you will do random checks even when there have not been complaints.

5.2 In common with other local authorities, the council as the licensing authority does not routinely monitor all licensed premises for compliance with specific licensing conditions. This would be unnecessary as most premises conduct their business in a responsible way, keeping to the conditions of their licence.

5.3 Thus, the council's enforcement action needs to be targeted. Decisions about which premises to investigate will be:

- reactive – based on a specific complaints or resulting from intelligence from partners that strongly suggests a breach of the licence has occurred/is on-going and/or



- proactive – this may take the form of one-off or periodic follow-ups based on previous complaints.

**RESPONSE:** With regards to the matter of TEN's. The Police response suggests that at times TEN's are used by premises to extend their hours of operation whilst not having to comply with any conditions on their licence. This may in fact be the case but there is no requirement for licensed premises to comply with its conditions whilst operating under a TEN as it is a completely separate authorisation. The Licensing Authority does not see a benefit to asking premises users to state whether they will be complying with their conditions during a TEN as it would not be enforceable and is not a requirement of the legislation. As such there is no expectation on premises users to comply with the premises licence conditions but the authority would consider it prudent for responsible premises users to do so. Conditions are there to address issues that might otherwise undermine the licensing objectives so to not follow them increases the likelihood of complaint and future TEN's being rejected or having conditions attached.

It is correctly pointed out that where there are concerns the Police can make an objection and request that relevant licensing conditions from the premises licence are attached to the TEN. Where there are 'no specific concerns' then no additional requirements should be imposed on the premises user. The Licensing Act 2003 is a permissive regime so activities should be allowed to go ahead where there are no concerns regarding the undermining of (potential or actual) or failure to promote the licensing objectives.

The Licensing Authority cannot require more information to be included on a Temporary Event Notice than is already required by regulation or legislation. If the detail on a form is not adequate for

the notice to be processed then the TEN is either rejected or the premises user is contacted and asked for additional details.

The paragraphs referenced do not limit the ability of the Licensing Authority to only visiting premises which have received complaints. With the limited resources available to the council it is not possible to schedule visits to every licensed premises within the District. These resources must be targeted primarily on risk based criteria. However when considering using these resources in the most cost effective way several compliant premises may be visited in the vicinity of a premises which is the subject of complaints whilst the officers are in that particular area. The ability to visit any licensed premises, or premises suspected of providing licensable activity, is not fettered by these paragraphs.

## 1. Introduction

1.1 East Herts Council is the licensing authority responsible for considering, granting and enforcing permissions covering the sale of alcohol, entertainment and the provision of late night refreshment. Establishments concerned with these activities are herein termed 'licensed premises'. This term covers both premises already operating with a licence and those applying for a licence for the first time.

1.2. As required by statute, the council has adopted a Statement of Licensing Policy (herein referred to as the 'Licensing Policy') with regard to which it will determine licence applications. This position statement should be considered an addendum to the Licensing Policy and should be read in conjunction with it. This position statement provides more detail on how stakeholders, including the public, can raise issues and concerns about new applications or applications to vary a licence or seek a review of an existing licence.

1.3 In recent years there has been an increase in proposals related to the night time economy (NTE), that is, the economic activity taking place in the evening, such as eating and drinking, entertainment and nightlife, broadly between the hours of 9pm and 5am, often seven days a week. At the same time, there appears to have been a change in the type and style of offer they provide for customers, sometimes with existing premises seeking to extend their hours of operation later into the night, for example, shifting the closing time from 2.00am to 3.00am. On occasion, applications, whether for new premises or extensions to existing operating hours, have caused concern among the local residential population regarding their quality of life.

1.4 The council has many jurisdictions; in addition to being the licensing authority, the council is also the planning authority and environmental health authority and may have a relationship with the applicant as a landlord. As a consequence, the council will interact

with applicants and applications in a number of ways. Of particular relevance here, as a regulatory authority, the council will always need to strive to balance the benefits of a prosperous local night time economy with minimising any detrimental impacts on the quality of life and amenity of residents in a way that continues to make East Herts an attractive place to live and visit.

#### Licensing objectives

1.5 Licensing Act 2003 requires each licensing authority to carry out its duties, including determining licensed premises applications, with a view to promoting the licensing objectives specified in the Act.

These are:

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

1.6 Reference throughout this Position Statement to the licensing objectives should be read as meaning the promotion of these objectives.

## 2. Who has a stake in licensing matters?

2.1 The council, as the licensing authority, has a duty to ensure that various parties are aware of an application for a new premises licence or a variation to an existing one. The table below lists these parties and how they are made aware of an application.

Table 1: Parties which the council has a duty to make aware of applications

Party

Made aware by

Responsible authorities:

- Licensing Authority – East Herts Council
- Hertfordshire Police

- Environmental Health – East Herts Council
- Planning Service – East Herts Council
- Fire Authority – Hertfordshire Fire & Rescue Service
- Hertfordshire Safeguarding Children Board
- Trading Standards – Hertfordshire County Council
- Home Office – Alcohol Licensing Team
- Public Health – Hertfordshire County Council
- Health and Safety Executive

(only need to be consulted if they are the enforcing authority for Health and Safety at the premises)

- Applicant will submit copies of application documents directly to them at the same time as the documents are sent to the licensing authority
- In the case of applications made online through the licensing portal, the council's licensing team will send the application documents electronically to the responsible authorities immediately upon receipt
- Residents and businesses, notably those living/working in the vicinity of the premises
- Written notices will be put up by the applicant (in a statutorily prescribed format), attached to or near the premises concerned and displayed for not less than 28 days
- A public notice (in a statutorily prescribed format) submitted by the applicant will be published in a locally circulated newspaper
- Information about pending applications will be displayed on the council's website

Other persons, including residents and businesses

- Written notices will be put up by the applicant (in a statutorily prescribed format), attached to or near the premises concerned and displayed for not less than 28 days
- A public notice (in a statutorily prescribed format) submitted by the applicant will be published in a locally circulated newspaper

- Information about pending applications will be displayed on the council's website

2.2 The council wishes to take a broad and inclusive view of who constitutes stakeholders in the development of and proper operation of a successful night time economy in East Herts and the licensing decisions related to this. So, in addition to the parties listed above, the council sees the following as having a stake in night time economy related matters:

- residents across the town centre concerned
- residents in East Herts area generally
- local businesses in the town centre concerned
- local businesses in East Herts area generally
- local chambers of commerce
- local transport undertakings – (bus and coach operators; taxis and local rail companies)
- Hertfordshire County Council as highway authority
- patrons and prospective patrons of late night venues in East Herts
- owners, managers and staff of late night venues in East Herts
- the local health services
- elected and non-elected community representatives
- the local media
- other enforcing authorities
- the Security Industry Authority as regulators for door supervisors
- HM Revenue and Customs.

2.3 Each of the stakeholders in the table and the list above has influence over the night time economy in different ways. They can affect the direction the NTE takes as consumers, patrons, investors, suppliers and landlords. The licensing process is only one of the ways.

2.4 To ensure as wide a range of stakeholders as possible can participate in discussions about the NTE, the council will publicise applications for new or varied licences on its website and make it clear to whom representations can be made.

2.5 All stakeholders may engage with the licensing process if they are able to make a relevant representation (see below) during the application consultation period for new licences and variations to existing licences.

2.6 Stakeholders will also be able to express their views by applying for a review of a particular premises licence where they have evidence that the licensing objectives are not being addressed.

### 3. Stakeholder engagement and representations

#### The basis of decision making

3.1 The process for making decisions on licensed premises applications is governed by the Licensing Act 2003 and associated regulations.

Each application must be determined on its own merits.

Unlike other ways in which the local authority determines applications, for example planning applications, there is a presumption in licensing law that if:

- the licensing authority receives a valid application and
- the application is properly advertised and
- there is no relevant representation raised by any responsible authority within the 28 day statutory consultation period and
- there is no relevant representation raised by any other person within the 28 day statutory consultation period then
- on the 29th day after the valid application is received, the licence is automatically granted as applied for, that is, without

any variation and subject only to the mandatory conditions and any conditions consistent with the operating schedule.

3.2 It is within this context that the council will do its utmost to facilitate those wishing to make relevant representations to do so in the most effective way and within the 28 days consultation period.

Relevant, vexatious and frivolous representations

3.3 To be a valid representation then the person making the representation must be clearly identifiable and give their address. A representation made by a responsible authority or other person must be relevant. In addition, a representation made by another person must not be frivolous or vexatious.

3.4 A representation is 'relevant' if it is argued that the granting of the licence would be likely to have an impact on at least one of the licensing objectives. So, for example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant as prevention of a detrimental impact on other commercial premises is not one of the four licensing objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation.

3.5 A representation may be considered 'vexatious' if it appears intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses.

3.6 'Frivolous' representations are essentially those lacking seriousness. Frivolous representations could concern issues which are, at most, minor and/or for which no remedial steps would be warranted or proportionate.



3.7 Any person who is aggrieved by a rejection of their representations as either vexatious or frivolous may lodge a complaint through the council's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review.

How responsible authorities can make their views known

Licensed premises applications

3.8 The council strongly encourages the responsible authorities listed in Table 1 above to engage in the consultation process regarding applications and raise any issue concerning the licensing objectives with the licensing authority. This may include submitting a representation if there are grounds to do so.

3.9 Evidence-based representations provide the council, when acting as the licensing authority deciding on applications, with the best means of assessing the merits, or otherwise, of applications under consideration.

3.10 While the type of representation and level of evidence will vary on a case-by-case basis, best practice would suggest representations should include wherever possible:

- whether the representation is for or against the application
- reference to concerns over the undermining or potential undermining of the Licensing Objectives (as determined by legislation and listed in the council's Licensing Policy)
- evidence to support the above.

3.11 The council encourages all responsible authorities to engage with applicants at the pre-application stage and give advice to assist applicants to amend their proposals to accommodate the issues raised and thus avoid the responsible authority making an objection. Whether the responsible authority engages or not, and whether or

not the applicant works with the responsible authority, does not fetter the responsible authority's discretion over whether or not to object to an application. If a representation has been received, the council will wish to see efforts or continued efforts on the part of both the applicant and the responsible authority to address the relevant issues.

### Temporary Event Notices

3.12 The police and the council's Environmental Health team are the only responsible authorities the law requires to be notified of and have the right to object to Temporary Event Notices (TENs). They have an ability to assist the licencing authority by making relevant representations during the consultation period following submission of a TEN.

3.13 Subject to the requirements mentioned above, the format and content of representations are not defined in legislation or guidance. It would assist the licensing authority in their decision making if responsible authorities could include in their representations as much of the following information as possible in support of their position:

- a commentary on past events at the venue / event
- any evidence of breaches of relevant statutory requirements
- a summary of complaints, if any, from the public concerning the premises.

### How members of the public can make their views known

3.14 In order to make informed decisions, the council is keen to hear from those with a view on the grant of a particular application on the licensing objectives.

3.15 As noted in Table 1 above, the legislation and guidance dictates that members of the public have a specific time period during which

**Comment [RO1]:** These words have not be included in the amended draft as the Licensing Authority is interested in people's views in general regarding licensed premises and not just on the grant of a licence.

to raise issues. The Licensing Act 2003 established a very prescriptive procedure for the way in which applications are made and determined. Of note:

- the requirements concerning advertising of applications are set out in the Licensing Act 2003 (Premises Licences and Club Premises Certificates Regulations) 2005
- Regulation 25 provides that the applicant shall advertise the application for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority by displaying a notice that complies with prescribed requirements
- the applicant must also publish a notice at least once in a local newsletter or similar document circulating in the vicinity of the premises
- the Regulations oblige the council, as the licensing authority, to also advertise the application on its website for a period of no less than 28 consecutive days starting on the day after the day on which the application was given. The content of the advertisement is prescribed.
- these Regulations also prescribe that members of the public and others can only make representations during the period of 28 days starting on the day after the application was given to the licensing authority

3.16 The council has considered the scope for raising awareness of applications in additional ways. Given that licensing matters are governed by statute and regulation, this is not quite as straightforward as it may seem. Of note, Westminster City Council has sought in the past to facilitate greater awareness by contacting properties in the vicinity of premises subject to a licence application by means of individual correspondence. The council was then challenged in the High Court by some residents who lived in the locality but outside of the 'perimeter' the council had drawn for consultation purposes and so had not been contacted directly by the council. The Court of Appeal ultimately decided that neither the 2003

Act nor the Regulations imposed any duty on a licensing authority to advertise an application or to take any steps to notify anyone affected by it that it had been made. The sole duty to advertise and to give notice of an application was placed on the person making the application. *Corporation of the Hall of Arts and Sciences v The Albert Court Residents' Association* [2011] EWCA Civ 430

3.17 Having considered this case, it is the council's view that relying on the means of communication set by the relevant regulations, and detailed above, is a better way to proceed than attempting to directly contact those the council may deem at any one time to be affected.

3.18 That said, the council will do its utmost to ensure anyone wishing to make a representation is aware of the 28 day window for responding and the central importance of this given that, unfortunately, the council cannot vary this time period.

3.19 Within the relevant legislation, regulations and case law discussed above, the council will strive to facilitate resident engagement, including emphasising the 28 day consultation window. The council will:

- encourage applicants to hold informal discussions with local residents and businesses, the responsible authorities and others prior to submitting formal licence applications
- ensure applicants meet their statutory obligations to publicise their applications; advertising in a local newspaper and posting a notice at or near the premises – when such notices are removed or become defaced the council will require them to be replaced and if appropriate the consultation time period to be restarted
- advertise applications on the council's website
- alert ward members and parish/town councils of applications in their areas to enable them to discuss matters with residents should they wish

3.20 To assist the licensing authority in their decision making, members of the public making representations must provide the following:

- whether the representation is for or against the application
- reference to concerns over the undermining or potential undermining of the Licensing Objectives
- any evidence to support the above

How comments made by members of the public feed into the decision making process

3.21 Provided that relevant representations from members of the public are received by the council within the 28 day consultation period, they will form part of the decision-making process. Thus, representations from members of the public have a significant role to play in the decision making process. The council will share representations with other responsible authorities where the comments relate to that authority's remit. This will:

- provide information which the responsible authority can draw on when considering what representations, if any, it wishes to make
- assist the responsible authority in determining what conditions, if any, it would wish to see attached to a grant approval
- enable the responsible authority to assess whether it needs to carry out any further investigations itself.

3.22 The council will also share comments with the applicant as required by law. This will:

- assist the applicant to better understand how the proposal could impact on local people
- enable the applicant to make amendments to, or withdraw, the application to mitigate or allay concerns raised

- provide the applicant with the opportunity to better explain what is proposed and/or address any misunderstandings; this in itself may mitigate or allay concerns

3.23 If the issues raised by members of the public cannot be mitigated by the applicant through informal discussion, nor allayed to the satisfaction of the responsible authorities, then the council will, within 20 working days of the close of the consultation, hold a public hearing of the Licensing Committee, or a sub-committee, to consider and determine the application.

3.24 Determining applications is dealt with in Section 4 below.

Expressing views through the planning process

3.25 Another key route by which stakeholders can express their views is through the planning process, either when neighbourhood plans are being developed or when particular planning applications are considered. The mechanisms and procedures governing how interested parties can input to planning decisions is covered in the council's planning policies – see <https://www.eastherts.gov.uk/planning>

#### 4. Determining applications

4.1 Where at all possible, the council will assist in enabling the applicant and those making representations to find common ground thus mitigating or removing the concerns raised. A representation may be withdrawn at any time prior to or during a hearing. However, the timescale for mediation is extremely tight.

4.2 If the issues raised by members of the public cannot be mitigated by the applicant through informal discussion, nor allayed to the

satisfaction of the responsible authorities, then the council will, within 20 working days of the close of the consultation, hold a public hearing of the Licensing Committee, or a sub-committee, to consider and determine the contested application. This also applies to contested applications for variations to a licence or a review of a licence (with the exception of a summary review).

**Comment [RO2]:** This wording and the paragraph as a whole were amended to be clearer.

4.3 At the hearing all responsible authorities and other persons who have made valid representations, which have not been withdrawn, will be entitled to attend and make their representations in person. Those who have made representation do not have to attend and all valid representations whether made in person or in writing will be considered.

4.4 The hearing will focus on the steps, if any, considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may not add further representations to those disclosed prior to the hearing. For example, representations in relation to variations should be confined to the subject matter of the variation.

4.5 The council's Licensing Committee, or a sub-committee of this Committee, will consider the oral and written evidence before them. In determining the weight to place on the evidence before them, the members of the Committee will consider how the application supports or otherwise the four licensing objectives specified in the Licensing Act 2003:

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

4.6 These four objectives underpin the council's Licensing Policy. The Policy states that:

- licensing is about regulating licensable activities provided on licensed premises, by qualifying clubs and at temporary events within the terms of the 2003 Act;
- conditions may only be imposed following a hearing if considered appropriate and proportionate in order to promote one or more of the licensing objectives raised in a relevant representation; and
- conditions attached to various authorisations will be focused on matters which are within the control of individual licence holders and others with relevant authorisations

The Policy goes on to state that the legislation supports a number of other key aims and purposes and that these too are vitally important and thus are key to decision making. These additional aims and purposes consist of:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises
- giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems
- recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises
- providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area
- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.



4.7 The Licensing Committee, or sub-committee, is normally required to make a decision on an application within five working days of the last day of the hearing. Full reasons for the decision will also be provided.

**Comment [R03]:** This wording has been used but additional wording added to aid clarity.

Interplay between planning decision making and licensing decision making

4.8 While the development control and planning consent processes are separate jurisdictions to licensing decision making there are links between them. The council as a planning authority is a

responsible authority under the Licensing Act 2003. Intelligence sharing and representations are routinely made between officers involved in processing applications under the two decision making regimes. The decision making processes and enforcement criteria under each regime, however, are different so that action taken in response to particular circumstances involving a given venue may not be the same under both regimes.

## 5. Enforcement action

5.1 Enforcement covers a wide range of actions from giving advice through to prosecution and closure of premises. The council recognises that it is good practice for enforcement activity to be intelligence-led, evidence-based and proportionate.

5.2 In common with other local authorities, the council as the licensing authority does not routinely monitor all licensed premises for compliance with specific licensing conditions. This would be unnecessary as most premises conduct their business in a responsible way, keeping to the conditions of their licence.

5.3 Thus, the council's enforcement action needs to be targeted. Decisions about which premises to investigate will be:

- reactive – based on a specific complaints or resulting from intelligence from partners that strongly suggests a breach of the licence has occurred/is on-going and/or
- proactive – this may take the form of one-off or periodic follow-ups based on previous complaints.

## Raising concerns about licensed premises

5.4 Given the council's desire to be as responsive as possible to concerns, it is likely that most enforcement action will be reactive. It is therefore paramount that individuals, organisations and other authorities report incidents and concerns about specific licensed premises when they arise so that timely investigation and intelligence gathering can take place.

5.5 Wherever possible, the council would expect such concerns to be raised with the Premises Licence Holder or Designated Premises Supervisor in the first instance. Often, the business may not have realised that its operation is causing nuisance or problems and raising the issue is sufficient to ensure a prompt and adequate remedy.

## The licensing authority's approach to enforcement

5.6 If raising concerns with particular premises does not remedy the situation, the council may become involved. In such circumstances, the council may:

- arrange meetings between various parties, including members of the public if appropriate, to jointly explore how best to remedy the situation
- direct the Premises Licence Holder or Designated Premises Supervisor, business owner or occupier as appropriate to take action. This could take the form of issuing advice and guidance or may be more directive, for example, though not limited to,

- requiring specific remedies for noise nuisance or imposing variations to the conditions of the licence via a review
- visit the premises in an attempt to witness the problem directly.

5.7 Sometimes, issues may arise within an area or on a particular street where it is not clear which establishment(s) is causing the issues. It can be the case that an issue arises from the interaction of venues and patrons purely because of the geographical proximity, for example, a pub or club, late night food take-away and/or taxi ranks all located in close proximity may encourage concentrations of noise and/or other nuisance.

5.8 In the short-to-medium term, in such circumstances council officers will seek to identify which establishment(s) is/are causing the issues and then make appropriate interventions as discussed above.

5.9 In the longer term, the council, in its wider capacity than simply being the licensing authority, recognises it has a role to play with partners in identifying, addressing, mitigating and if at all possible designing-out the types of nuisance that can arise from the night time economy.

#### Partners' roles in enforcement activities

5.10 Enforcement activity may be undertaken by one or more of the responsible authorities separately based on the extent to which the issue in question relates to their particular jurisdiction.

5.11 The statutory guidance issued to licensing authorities by the Home Office under section 182 of the Licensing Act 2003 (last amended in April 2018) states "It is also reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on

concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other responsible authority”.

5.12 On that basis the lead authorities would be:

- Crime and disorder – Hertfordshire Constabulary
- Noise and other nuisance – East Herts Council as Environmental Health authority
- Public safety issues – East Herts Council as Environmental Health authority; Hertfordshire County Council as Fire Authority
- Prevention of children from harm - Hertfordshire Constabulary; Hertfordshire County Council as Social Services and Education Authority.
- 5.13 Where the issues are wider, enforcement may be taken by the responsible authorities working together in partnership. The council is committed to partnership working. This could involve, for example:
  - sharing intelligence, joint monitoring visits and intervention meetings with licence holders
  - bringing forward a review of the licence for an individual licensed premises
  - seeking changes to the East Herts Council’s Statement of Licensing Policy on the basis of the evidence for, and articulation of, particular amendments.

The licensing authority’s ability to act as a responsible authority

5.14 East Herts Council recognises that the Licensing Act 2003 includes licensing authorities within the list of responsible authorities. In certain circumstances it may be appropriate for the council to take action as a responsible authority in the absence of

action by other responsible authorities, although it is important to note the statutory guidance accompanying the Act clearly states: “Licensing authorities are not expected to act as responsible authorities on behalf of other parties (for example, local residents, local councillors or community groups) although there are occasions where the authority may decide to do so. Such parties can make relevant representations to the licensing authority in their own right, and it is reasonable for the licensing authority to expect them to make representations themselves where they are reasonably able to do so. However, if these parties have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as responsible authority. [Emphasis added]

5.15 It is the council’s view that it would not be appropriate for the council, in its role as licensing authority, to seek to usurp the ability of other responsible authorities, residents or other stakeholders to raise and articulate their own concerns. The Licensing Act 2003 has both explicitly and implicitly empowered a broad range of organisations and individuals to raise concerns about applications, make representations on, including objections to, applications and/or seek a review of an existing licence.

5.16 The council acting as the licensing authority does not wish to become, nor be seen as, the primary body which makes representations as officers exercising the licensing authority’s functions would not be able to draw on the expertise held by others, such as the police, fire service and the like, or the direct experience of residents, and so the evidence for action would almost inevitably be diminished and the likelihood of securing effective interventions lessened.

5.16 Given the above, the council, acting as the licensing authority, will determine on a case-by-case basis whether the wider interests of the community and/or partner agencies would be best served by taking on the role of a responsible authority.

5.17 Regardless of the origin of the need for any enforcement sanction, the council will act in accordance with the council's published enforcement policy

<https://www.eastherts.gov.uk/article/35499/Environmental-Health---Enforcement> and will only act in cases which are in the public interest and where there is sufficient evidence to do so.

## 6. The night time economy

6.1 All the council policies and procedures regarding the licensing of premises recognise that there are significant benefits to the district of a well-run late evening and night time economy.

6.2 The provision of local entertainment facilities for the local population enables residents to have a good night out without having to travel to London or other towns and cities. It brings in additional income to local businesses providing sustainable employment and ensures town centres remain at the heart of the community and do not become ghost towns after dark. Facilities which enable individuals to meet in a safe, vibrant and accessible area enhance community cohesion and social inclusion especially when amenities are attractive to a wider age group.

6.3 The council recognises that for the night time economy to work well from the perspective of a broad range of stakeholders, it is important to have a variety of different venues and a diverse cultural offer that can attract people of different ages and backgrounds to the district's centres in the evening and night time. An imbalance or preponderance of one type of establishment will not achieve this. A mixture of cafes and restaurants, traditional pubs, 'vertical drinking' establishments (aimed at a younger audience and often associated with music or sports screens) and a late night club offer is usually needed. The local theatres, cinemas and music venues are also important as are sports facilities. The greatest benefits will be

achieved where customers patronise a range of different venues for food, drink and entertainment during their night out.

### Encouraging and facilitating best practice

6.4 The council is committed to facilitating a vibrant, varied and safe night time economy for residents and visitors alike. The council already funds, supports and/or promotes best practice to achieve this, including:

- provision and use of CCTV in town centres and around individual premises
- the use of industry-accredited door supervisors
- Live ID technology to check the ID of late night establishment patrons and bar entry to those using fake ID or with a history of anti-social behaviour
- noise impact assessments and the proper use of sound limiting devices
- appropriate signage requesting patrons to respect local neighbours
- appropriate siting and robust management of smoking shelters and related facilities
- robust management of venues' last entry times
- active live communication between venues and also the police, for example via radio links, to issues alerts about developing issues
- taxi marshalling schemes and robust taxi licensing practices
- good liaison with local transport companies

6.5 In time, the council wishes to work with local stakeholders to achieve Purple Flag status for the district's town centres. This is an accreditation process similar to the Green Flag award for parks and the Blue Flag for beaches. It is operated by the Association of Town and City Centre Management. The accreditation process takes towns and cities through a comprehensive set of standards, management processes and good practice examples all designed to ensure

standards of excellence are met in managing the night time economy.

## 7. References

Home Office statutory Guidance

East Herts Statement of Licensing Policy 2016

<https://www.eastherts.gov.uk/article/35119/Licensing-Policy>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705588/Revised\\_guidance\\_issued\\_under\\_section\\_182\\_of\\_the\\_Licensing\\_Act\\_2003\\_\\_April\\_2018\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003__April_2018_.pdf)



**East Herts Council**

**Licensing Decision Making relating to the Night Time Economy**

**POSITION STATEMENT**

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## **1. Introduction**

- 1.1 East Herts Council is the licensing authority responsible for considering, granting and enforcing permissions covering the sale of alcohol, entertainment and the provision of late night refreshment. Establishments concerned with these activities are herein termed 'licensed premises'. This term covers both premises already operating with a licence and those applying for a licence for the first time.
- 1.2. As required by statute, the council has adopted a Statement of Licensing Policy (herein referred to as the 'Licensing Policy') with regard to which it will determine licence applications. This position statement should be considered an addendum to the Licensing Policy and should be read in conjunction with it. This position statement provides more detail on how stakeholders, including the public, can raise issues and concerns about new applications or applications to vary a licence or seek a review of an existing licence.
- 1.3 In recent years there has been an increase in proposals related to the night time economy (NTE), that is, the economic activity taking place in the evening, such as eating and drinking, entertainment and nightlife, broadly between the hours of 9pm and 5am, often seven days a week. At the same time, there appears to have been a change in the type and style of offer they provide for customers, sometimes with existing premises seeking to extend their hours of operation later into the night, for example, shifting the closing time from 2.00am to 3.00am. On occasion, applications, whether for new premises or extensions to existing operating hours, have caused concern among the local residential population regarding their quality of life.

1.4 The council has many jurisdictions; in addition to being the licensing authority, the council is also the planning authority and environmental health authority and may have a relationship with the applicant as a landlord. As a consequence, the council will interact with applicants and applications in a number of ways. Of particular relevance here, as a regulatory authority, the council will always need to strive to balance the benefits of a prosperous local night time economy with minimising any detrimental impacts on the quality of life and amenity of residents in a way that continues to make East Herts an attractive place to live and visit.

### ***Licensing objectives***

1.5 Licensing Act 2003 requires each licensing authority to carry out its duties, including determining licensed premises applications, with a view to promoting the licensing objectives specified in the Act. These are:

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

1.6 Reference throughout this Position Statement to the licensing objectives should be read as meaning the promotion of these objectives.

## 2. Who has a stake in licensing matters?

2.1 The council, as the licensing authority, has a duty to ensure that various parties are aware of an application for a new premises licence or a variation to an existing one. The table below lists these parties and how they are made aware of an application.

| <b>Table 1: Parties which the council has a duty to make aware of applications</b>   |  |
|--|--|
| <b>Party</b>   | <b>Made aware by</b>   |
| Responsible authorities: <ul style="list-style-type: none"> <li>• Licensing Authority – East Herts Council</li> <li>• Hertfordshire Police</li> <li>• Environmental Health – East Herts Council</li> <li>• Planning Service – East Herts Council</li> <li>• Fire Authority – Hertfordshire Fire &amp; Rescue Service</li> <li>• Hertfordshire Safeguarding Children Board</li> <li>• Trading Standards – Hertfordshire County Council</li> <li>• Home Office – Alcohol Licensing Team</li> <li>• Public Health – Hertfordshire County Council</li> <li>• Health and Safety Executive<br/><i>(only need to be consulted if they are the enforcing authority for Health and Safety at the premises)</i></li> </ul> | <ul style="list-style-type: none"> <li>• Applicant will submit copies of application documents directly to them at the same time as the documents are sent to the licensing authority</li> <li>• In the case of applications made online through the licensing portal, the council’s licensing team will send the application documents electronically to the responsible authorities immediately upon receipt</li> </ul>                        |
| Other persons, including residents and businesses  | <ul style="list-style-type: none"> <li>• For New or Variation applications written notices will be put up by the applicant (in a statutorily prescribed format), attached to or near the premises concerned and displayed for not less than 28 days</li> <li>• For New and Variation applications a public notice (in a statutorily prescribed format) submitted by the applicant will be published in a locally circulated newspaper</li> </ul> |

|  |  |
|--|--|
|  | <ul style="list-style-type: none"> <li>• For Minor Variation applications written notices will be put up by the applicant (in a statutorily prescribed format), attached to or near the premises concerned and displayed for not less than 10 working days (there is no requirement for a newspaper advertisement)</li> <li>• Information about pending applications will be displayed on the council's website</li> </ul> |
|--|--|

2.2 The council wishes to take a broad and inclusive view of who constitutes stakeholders in the development of and proper operation of a successful night time economy in East Herts and the licensing decisions related to this. So, in addition to the parties listed above, the council sees the following as having a stake in night time economy related matters:

- residents across the town centre concerned
- residents in East Herts area generally
- local businesses in the town centre concerned
- local businesses in East Herts area generally
- local chambers of commerce
- local transport undertakings – (bus and coach operators; taxis and local rail companies)
- Hertfordshire County Council as highway authority
- patrons and prospective patrons of late night venues in East Herts
- owners, managers and staff of late night venues in East Herts
- the local health services
- elected and non-elected community representatives
- the local media
- other enforcing authorities
  - the Security Industry Authority as regulators for door supervisors
  - HM Revenue and Customs.

- 2.3 Each of the stakeholders in the table and the list above has influence over the night time economy in different ways. They can affect the direction the NTE takes as consumers, patrons, investors, suppliers and landlords. The licensing process is only one of the ways.
- 2.4 To ensure as wide a range of stakeholders as possible can participate in discussions about the NTE, the council will publicise applications for new or varied licences on its website and make it clear to whom representations can be made.
- 2.5 All stakeholders may engage with the licensing process if they are able to make relevant representations (see below) during the application consultation period for new licences, variations to existing licences and minor variation.
- 2.6 Stakeholders will also be able to express their views by applying for a review of a particular premises licence where they have evidence that the licensing objectives are not being addressed.

### **3. Stakeholder engagement and representations**

#### ***The basis of decision making***

- 3.1 The process for making decisions on licensed premises applications is governed by the Licensing Act 2003 and associated regulations. It is recognised that each application must be determined on its own merits. Unlike other ways in which the local authority determines applications, for example planning applications, there is a presumption in licensing law that if:
- the licensing authority receives a valid application *and*
  - the application is properly advertised *and*
  - there is no relevant representation raised by any responsible authority within the 28 day statutory consultation period *and*
  - there is no relevant representation raised by any other person within the 28 day statutory consultation period *then*

- on the 29<sup>th</sup> day after the valid application is received, the licence is **automatically** granted as applied for, that is, without any variation and subject only to the mandatory conditions and conditions consistent with the operating schedule.

3.2 It is within this context that the council will do its utmost to facilitate those wishing to make representations to do so in the most effective way and within the 28 days consultation period.

#### Relevant, vexatious and frivolous representations

- 3.3 To be a valid representation then the person making the representation must be clearly identifiable and give their address. A representation made by a responsible authority or other person must be relevant. In addition, a representation made by another person must not be frivolous or vexatious.
- 3.4 A representation is 'relevant' if it is argued that the granting of the licence would be likely to have an impact on at least one of the licensing objectives. So, for example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant as prevention of a detrimental impact on other commercial premises is not one of the four licensing objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation.
- 3.5 A representation may be considered 'vexatious' if it appears intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses.

3.6 'Frivolous' representations are essentially those lacking seriousness. Frivolous representations could concern issues which are, at most, minor and/or for which no remedial steps would be warranted or proportionate.

3.7 Any person who is aggrieved by a rejection of their representations as either vexatious or frivolous may lodge a complaint through the council's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review.

### ***How responsible authorities can make their views known***

#### ***Licensed premises applications***

3.8 The council strongly encourages the responsible authorities listed in Table 1 above to engage in the consultation process regarding applications and raise any issue concerning the licensing objectives with the licensing authority. This may include submitting objection representation if there are grounds to do so.

3.9 Evidence-based representations provide the council, when acting as the licensing authority deciding on applications, with the best means of assessing the merits, or otherwise, of applications under consideration.

3.10 While the type of representation and level of evidence will vary on a case-by-case basis, best practice would suggest representations should include wherever possible:

- whether the representation is for or against the application
- reference to concerns over the undermining or potential undermining of the Licensing Objectives (as determined by legislation and listed in the council's Licensing Policy)
- evidence to support the above.



3.11 The council encourages all responsible authorities to engage with applicants at the pre-application stage and give advice to assist applicants to amend their proposals to accommodate the issues raised and thus avoid the responsible authority making an objection. Whether the responsible authority engages or not, and whether or not the applicant works with the responsible authority, does not fetter the responsible authority's discretion over whether or not to object to an application. If objection representation has been received, the council will wish to see efforts or continued efforts on the part of both the applicant and the responsible authority to address the relevant issues.

### ***Temporary Event Notices***

3.12 The police and the council's Environmental Health team are the only responsible authorities the law requires to be notified of and have the right to object to Temporary Event Notices (TENs). They have an ability to assist the licencing authority by making relevant representations via objection notice during the consultation period following submission of a TEN.

3.13 Subject to the requirements mentioned above the format and content of representations are not defined in legislation or guidance. It would assist the licensing authority in their decision making if responsible authorities could include in their representations as much of the following information as possible in support of their position:

- a commentary on past events at the venue / event
- any evidence of breaches of relevant statutory requirements
- a summary of complaints, if any, from the public concerning the premises.

### ***How members of the public can make their views known***

3.14 In order to make informed decisions, the council is keen to hear from those with a view on a particular application or licence based on the licensing objectives.

3.15 As noted in Table 1 above, the legislation and guidance dictates that members of the public have a specific time period during which to raise issues. The Licensing Act 2003 established a very prescriptive procedure for the way in which applications are made and determined. Of note:

- the requirements concerning advertising of applications are set out in the Licensing Act 2003 (Premises Licences and Club Premises Certificates Regulations) 2005
- Regulation 25 provides that the applicant for a new or variation to an existing licence shall advertise the application for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority by displaying a notice that complies with prescribed requirements
- the applicant must also publish a notice at least once in a local newsletter or similar document circulating in the vicinity of the premises
- the Regulations oblige the council, as the licensing authority, to also advertise the application on its website for a period of no less than 28 consecutive days starting on the day after the day on which the application was given. The content of the advertisement is prescribed
- These regulations also prescribe that members of the public and others can only make representations during the period of 28 days starting the day after the application became valid.

3.16 The regulations regarding the advertising of minor variation applications simply require that a notice containing the prescribed information be displayed for no less than 10

working days starting on the day after the day on which the application was given to the relevant licensing authority. There is no requirement for the application to be advertised in the newspaper or by the local authority.

- 3.17 The council has considered the scope for raising awareness of applications in additional ways. Given that licensing matters are governed by statute and regulation, this is not quite as straightforward as it may seem. Of note, Westminster City Council has sought in the past to facilitate greater awareness by contacting properties in the vicinity of premises subject to a licence application by means of individual correspondence. The council was then challenged in the High Court by some residents who lived in the locality but outside of the 'perimeter' the council had drawn for consultation purposes and so had not been contacted directly by the council. The Court of Appeal ultimately decided that neither the 2003 Act nor the Regulations imposed any duty on a licensing authority to advertise an application or to take any steps to notify anyone affected by it that it had been made. The sole duty to advertise and to give notice of an application was placed on the person making the application. *Corporation of the Hall of Arts and Sciences v The Albert Court Residents' Association* [2011] EWCA Civ 430
- 3.18 Having considered this case, it is the council's view that relying on the means of communication set by the relevant regulations, and detailed above, is a better way to proceed than attempting to directly contact those the council may deem at any one time to be affected.
- 3.19 That said, the council will do its utmost to ensure anyone wishing to make a representation is aware of the 28 day window for responding and the central importance of this given that, unfortunately, the council cannot vary this time period.

3.20 Within the relevant legislation, regulations and case law discussed above, the council will strive to facilitate resident engagement, including emphasising the 28 day consultation window. The council will:

- encourage applicants to hold informal discussions with local residents and businesses, the responsible authorities and others prior to submitting formal licence applications
- ensure applicants meet their statutory obligations to publicise their applications; advertising in a local newspaper and posting a notice at or near the premises – when such notices are removed or become defaced the council will require them to be replaced and if appropriate the consultation time period to be restarted
- advertise applications on the council's website
- alert ward members and parish/town councils of applications in their areas to enable them to discuss matters with residents should they wish

3.21 To assist the licensing authority in their decision making, members of the public making representations must provide the following:

- whether the representation is for or against the application
- reference to concerns over the undermining or potential undermining of the Licensing Objectives (as determined by legislation and listed in the council's Licensing Policy)
- any evidence to support the above.

***How comments made by members of the public feed into the decision making process***

3.22 Provided that relevant representations from members of the public are received by the council within the 28 day consultation period, they will form part of the decision-making process. Thus, representations from members of the public

have a significant role to play in the decision making process. The council will share comments with other responsible authorities where the comments relate to that authority's remit. This will:

- provide information which the responsible authority can draw on when considering what representations, if any, it wishes to make
- assist the responsible authority in determining what conditions, if any, it would wish to see attached to a grant approval
- enable the responsible authority to assess whether it needs to carry out any further investigations itself.

3.23 The council will also share comments with the applicant as required by law. This will:

- assist the applicant to better understand how the proposal could impact on local people
- enable the applicant to make amendments to, or withdraw, the application to mitigate or allay concerns raised
- provide the applicant with the opportunity to better explain what is proposed and/or address any misunderstandings; this in itself may mitigate or allay concerns

3.24 In relation to minor variations there is no right to a hearing where valid representations have been received during the consultation and not withdrawn.

3.25 Determining applications is dealt with in Section 4 below.

### ***Expressing views through the planning process***

3.26 Another key route by which stakeholders can express their views is through the planning process, either when

neighbourhood plans are being developed or when particular planning applications are considered. The mechanisms and procedures governing how interested parties can input to planning decisions is covered in the council's planning policies – see <https://www.eastherts.gov.uk/planning>

#### **4. Determining applications**

- 4.1 Where at all possible, the council will assist in enabling the applicant and those making representations to find common ground thus mitigating or removing the concerns raised. A representation can be withdrawn at any time prior to or during a hearing. However, the timescale for mediation is extremely tight.
- 4.2 If the issues raised by members of the public in relation to new, variation or review applications (with the exception of summary reviews) cannot be mitigated by the applicant or licence holder through informal discussion, nor allayed to the satisfaction of the responsible authorities, then the council will, within 20 working days of the close of the consultation, hold a public hearing of the Licensing Committee, or a sub-committee, to consider and determine the contested application.
- 4.3 Where relevant representations have been received during the consultation period for a minor variation and not withdrawn the Licensing Authority has to determine the application and there is no right to a hearing.
- 4.4 At the hearing all responsible authorities and other persons who have made valid representations, which have not been withdrawn, will be entitled to attend and make their representations in person. Those who have made representation do not have to attend and can choose to nominate someone to speak on their behalf. All valid representations whether made in person or in writing will be considered.

- 4.5 The hearing will focus on the steps, if any, considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may not add further representations to those disclosed prior to the hearing. For example, representations in relation to variations should be confined to the subject matter of the variation.
- 4.6 The council's Licensing Committee, or a sub-committee of this Committee, will consider the oral and written evidence before them. In determining the weight to place on the evidence before them, the members of the Committee will consider how the application supports or otherwise the four licensing objectives specified in the Licensing Act 2003:
- the prevention of crime and disorder
  - public safety
  - the prevention of public nuisance and
  - the protection of children from harm.

These four objectives underpin the council's Licensing Policy. The Policy states that:

- licensing is about regulating licensable activities provided on licensed premises, by qualifying clubs and at temporary events within the terms of the 2003 Act;
- conditions may only be imposed following a hearing if considered appropriate and proportionate in order to promote one or more of the licensing objectives raised in a relevant representation; and
- conditions attached to various authorisations will be focused on matters which are within the control of individual licence holders and others with relevant authorisations.

4.7 The Policy goes on to state that the legislation supports a number of other key aims and purposes and that these too are vitally important and thus are key to decision making. These additional aims and purposes consist of:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises
- giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems
- recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises
- providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area
- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.

4.8 The Licensing Committee, or sub-committee, is normally required under the legislation to make a decision on an application within 5 working days of the last day of the hearing but generally this is done at the end of the hearing. Full reasons for the decision will be provided to enable all parties to understand how the decision was reached.

### ***Interplay between planning decision making and licensing decision making***



4.9 While the development control and planning consent processes are separate jurisdictions to licensing decision making there are links between them. The council as a planning authority is a responsible authority under the Licensing Act 2003. Intelligence sharing and representations are routinely made between officers involved in processing applications under the two decision making regimes. The decision making processes and enforcement criteria under each regime, however, are different so that action taken in response to particular circumstances involving a given venue may not be the same under both regimes.

## **5. Enforcement action**

5.1 Enforcement covers a wide range of actions from giving advice through to prosecution and closure of premises. The council recognises that it is good practice for enforcement activity to be intelligence-led, evidence based and proportionate.

5.2 In common with other local authorities, the council as the licensing authority does not routinely monitor all licensed premises for compliance with specific licensing conditions. This would be unnecessary as most premises conduct their business in a responsible way, keeping to the conditions of their licence.

5.3 Thus, the council's enforcement action needs to be targeted. Decisions about which premises to investigate will be:

- reactive – based on a specific complaints or resulting from intelligence from partners that strongly suggests a breach of the licence has occurred/is on-going and/or
- proactive – this may take the form of one-off or periodic follow-ups based on previous complaints.

### ***Raising concerns about licensed premises***

5.4 Given the council's desire to be as responsive as possible to concerns, it is likely that most enforcement action will be

reactive. It is therefore paramount that individuals, organisations and other authorities report incidents and concerns about specific licensed premises when they arise so that timely investigation and intelligence gathering can take place.

- 5.5 Wherever possible, the council would expect such concerns to be raised with the Premises Licence Holder or Designated Premises Supervisor in the first instance. Often, the business may not have realised that its operation is causing nuisance or problems and raising the issue is sufficient to ensure a prompt and adequate remedy.

### ***The licensing authority's approach to enforcement***

- 5.6 If raising concerns with particular premises does not remedy the situation, the council may become involved. In such circumstances, the council may:
- arrange meetings between various parties, including members of the public if appropriate, to jointly explore how best to remedy the situation
  - direct the Premises Licence Holder or Designated Premises Supervisor, business owner or occupier as appropriate to take action. This could take the form of issuing advice and guidance or may be more directive, for example, though not limited to, requiring specific remedies for noise nuisance or imposing variations to the conditions of the licence via a review
  - visit the premises in an attempt to witness the problem directly.
- 5.7 Sometimes, issues may arise within an area or on a particular street where it is not clear which establishment(s) is causing the issues. It can be the case that an issue arises from the interaction of venues and patrons purely because of the geographical proximity, for example, a pub or club, late night

food take-away and/or taxi ranks all located in close proximity may encourage concentrations of noise and/or other nuisance.

- 5.8 In the short-to-medium term, in such circumstances council officers will seek to identify which establishment(s) is/are causing the issues and then make appropriate interventions as discussed above.
- 5.9 In the longer term, the council, in its wider capacity than simply being the licensing authority, recognises it has a role to play with partners in identifying, addressing, mitigating and if at all possible designing-out the types of nuisance that can arise from the night time economy.

### ***Partners' roles in enforcement activities***

- 5.10 Enforcement activity may be undertaken by one or more of the responsible authorities separately based on the extent to which the issue in question relates to their particular jurisdiction.
- 5.11 The statutory guidance issued to licensing authorities by the Home Office under section 182 of the Licensing Act 2003 (last amended in April 2018) states *"It is also reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other responsible authority"*.
- 5.12 On that basis the lead authorities would be:
- **Crime and disorder** – Hertfordshire Constabulary

- **Noise and other nuisance** – East Herts Council as Environmental Health authority
- **Public safety issues** – East Herts Council as Environmental Health authority; Hertfordshire County Council as Fire Authority
- **Protection of children from harm** - Hertfordshire Constabulary; Hertfordshire County Council as Social Services and Education Authority.

5.13 Where the issues are wider, enforcement may be taken by the responsible authorities working together in partnership. The council is committed to partnership working. This could involve, for example:

- sharing intelligence, joint monitoring visits and intervention meetings with licence holders
- bringing forward a review of the licence for an individual licensed premises
- seeking changes to the East Herts Council's Statement of Licensing Policy on the basis of the evidence for, and articulation of, particular amendments.

### ***The licensing authority's ability to act as a responsible authority***

5.14 East Herts Council recognises that the Licensing Act 2003 includes licensing authorities within the list of responsible authorities. In certain circumstances it may be appropriate for the council to take action as a responsible authority in the absence of action by other responsible authorities, although it is important to note the statutory guidance accompanying the Act clearly states:

*"Licensing authorities are **not** expected to act as responsible authorities on behalf of other parties (for example, local residents, local councillors or community groups) although there are occasions where the authority may decide to do so. Such parties*

*can make relevant representations to the licensing authority in their own right, and it is reasonable for the licensing authority to expect them to make representations themselves where they are reasonably able to do so. However, if these parties have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as responsible authority. [Emphasis added]*

- 5.15 It is the council's view that it would not be appropriate for the council, in its role as licensing authority, to seek to usurp the ability of other responsible authorities, residents or other stakeholders to raise and articulate their own concerns. The Licensing Act 2003 has both explicitly and implicitly empowered a broad range of organisations and individuals to raise concerns about applications, make representations on, including objections to, applications and/or seek a review of an existing licence.
- 5.16 The council acting as the licensing authority does not wish to become, nor be seen as, the primary body which makes representations as officers exercising the licensing authority's functions would not be able to draw on the expertise held by others, such as the police, fire service and the like, or the direct experience of residents, and so the evidence for action would almost inevitably be diminished and the likelihood of securing effective interventions lessened.
- 5.17 Given the above, the council, acting as the licensing authority, will determine on a case-by-case basis whether the wider interests of the community and/or partner agencies would be best served by taking on the role of a responsible authority.
- 5.18 Regardless of the origin of the need for any enforcement sanction, the council will act in accordance with the council's published enforcement policy  
<https://www.eastherts.gov.uk/article/35499/Environmental-Health---Enforcement>

and will only act in cases which are in the public interest and where there is sufficient evidence to do so.

## **6. The night time economy**

- 6.1 All the council policies and procedures regarding the licensing of premises recognise that there are significant benefits to the district of a well-run late evening and night time economy.
- 6.2 The provision of local entertainment facilities for the local population enables residents to have a good night out without having to travel to London or other towns and cities. It brings in additional income to local businesses providing sustainable employment and ensures town centres remain at the heart of the community and do not become ghost towns after dark. Facilities which enable individuals to meet in a safe, vibrant and accessible area enhance community cohesion and social inclusion especially when amenities are attractive to a wider age group.
- 6.3 The council recognises that for the night time economy to work well from the perspective of a broad range of stakeholders, it is important to have a variety of different venues and a diverse cultural offer that can attract people of different ages and backgrounds to the district's centres in the evening and night time. An imbalance or preponderance of one type of establishment will not achieve this. A mixture of cafes and restaurants, traditional pubs, 'vertical drinking' establishments and a late night club offer is usually needed. The local theatres, cinemas and music venues are also important as are sports facilities. The greatest benefits will be achieved where customers patronise a range of different venues for food, drink and entertainment during their night out.

### ***Encouraging and facilitating best practice***

- 6.4 The council is committed to facilitating a vibrant, varied and safe night time economy for residents and visitors alike. The

council already funds, supports and/or promotes best practice to achieve this, including:

- provision and use of CCTV in town centres and around individual premises
- the use of industry-accredited door supervisors
- Live ID technology to check the ID of late night establishment patrons and bar entry to those using fake ID or with a history of anti-social behaviour
- noise impact assessments and the proper use of sound limiting devices
- appropriate signage requesting patrons to respect local neighbours
- appropriate siting and robust management of smoking shelters and related facilities
- robust management of venues' last entry times
- active live communication between venues and also the police, for example via radio links, to issues alerts about developing issues
- taxi marshalling schemes and robust taxi licensing practices
- good liaison with local transport companies

6.5 In time, the council wishes to work with local stakeholders to achieve Purple Flag status for the district's town centres. This is an accreditation process similar to the Green Flag award for parks and the Blue Flag for beaches. It is operated by the Association of Town and City Centre Management. The accreditation process takes towns and cities through a comprehensive set of standards, management processes and good practice examples all designed to ensure standards of excellence are met in managing the night time economy.

## 7. References

Home Office statutory Guidance

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705588/Revised\\_guidance\\_issued\\_under\\_section\\_182\\_of\\_the\\_Licensing\\_Act\\_2003\\_\\_April\\_2018\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003__April_2018_.pdf)East Herts Statement of Licensing Policy 2016

<https://www.eastherts.gov.uk/article/35119/Licensing-Policy>

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