AGENDA

1. Apologies for Absence

2. Declaration of Members' Interests

   In accordance with the Council’s Constitution, Members are asked to declare any interest they may have in any matter which is to be considered at this meeting.

3. Minutes - To confirm as correct the minutes of the meeting held on 14 October 2015 (Pages 3 - 5)

4. Sub-Committees - To receive the minutes of the Licensing Sub-Committee meetings held on: (Pages 7 - 24)

   • 4 November 2015
   • 16 November 2015
   • 15 December 2015
   • 7 March 2016

5. Enforcement Policy (Pages 25 - 43)
6. Verbal Update on Changes to Licensing and Regulatory Service

7. Verbal Update on Applications and Appeals Received

8. Any other public items which the Chair decides are urgent

9. To consider whether it would be appropriate to pass a resolution to exclude the public and press from the remainder of the meeting due to the nature of the business to be transacted.

Private Business

The public and press have a legal right to attend Council meetings such as the Licensing and Regulatory Board, except where business is confidential or certain other sensitive information is to be discussed. The list below shows why items are in the private part of the agenda, with reference to the relevant legislation (the relevant paragraph of Part 1 of Schedule 12A of the Local Government Act 1972 as amended). *There are no such items at the time of preparing this agenda.*

10. Any other confidential or exempt items which the Chair decides are urgent
Our Vision for Barking and Dagenham

One borough; one community; London’s growth opportunity

Encouraging civic pride

- Build pride, respect and cohesion across our borough
- Promote a welcoming, safe, and resilient community
- Build civic responsibility and help residents shape their quality of life
- Promote and protect our green and public open spaces
- Narrow the gap in attainment and realise high aspirations for every child

Enabling social responsibility

- Support residents to take responsibility for themselves, their homes and their community
- Protect the most vulnerable, keeping adults and children healthy and safe
- Ensure everyone can access good quality healthcare when they need it
- Ensure children and young people are well-educated and realise their potential
- Fully integrate services for vulnerable children, young people and families

Growing the borough

- Build high quality homes and a sustainable community
- Develop a local, skilled workforce and improve employment opportunities
- Support investment in housing, leisure, the creative industries and public spaces to enhance our environment
- Work with London partners to deliver homes and jobs across our growth hubs
- Enhance the borough’s image to attract investment and business growth
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MINUTES OF LICENSING AND REGULATORY BOARD

Wednesday, 14 October 2015
(7:00 - 7:38 pm)

Board Members Present: Cllr Josephine Channer (Chair), Cllr Adegboyega Oluwole (Deputy Chair), Cllr Syed Ahammad, Cllr Faruk Choudhury, Cllr Chris Hughes, Cllr Hardial Singh Rai and Cllr Lee Waker

Apologies: Cllr Peter Chand, Cllr Kashif Haroon and Cllr Elizabeth Kangethe

33. Declaration of Members' Interests

There were no declarations of interest.

34. Minutes (4 February 2015)

The minutes of the meeting held on 4 February 2015 were confirmed as correct.

35. Minutes of Sub-Committees

The minutes of the following Sub-Committee meetings were confirmed as correct:

- 22 January 2015
- 13 February 2015
- 11 March 2015
- 24 March 2015
- 15 April 2015
- 14 May 2015
- 26 May 2015
- 4 June 2015
- 8 July 2015
- 10 September 2015
- 15 September 2015
- 24 September 2015

36. Deregulation Act 2015

The Principal Licensing Officer introduced a report to the Board advised of the changes made by the Deregulation Act 2015.

The Deregulation Act 2015 received Royal Assent on 26 March 2015 which amends the Licensing Act 2003. In addition to the Deregulation Act 2015, the Legislative Reform (Entertainment Licensing) Order 2014 took effect from 6 April 2015.

The Board noted the following key changes:
• The requirement to renew a personal Licence had been abolished with effect from 1 April 2015. In effect, any licence that had an expiry date now does not expire and the licence would remain in force until it was revoked by a court or surrendered/lapses by the applicant or their circumstance.

• The requirement to report a lost or stolen licence to the police before applying for duplicates had been abolished from 26 May 2015.

• The offence of selling liqueur confectionary had been repealed from 26 May 2015, after that date any person of any age could buy liqueur confectionary in England and Wales.

• The limit on the number of Temporary Event Notices (TEN) that could be applied for at a single premise would increase from 12 to 15 per year from 1 January 2016.

• Live Music
  • Live unamplified music was deregulated between 08:00 – 23:00 on any premises.
  • Live amplified music was deregulated between 08:00 – 23:00 provided the audience did not exceed 500.

• Recorded Music
  • Recorded music was deregulated between 08:00 – 23:00 in on-licensed premises provided that the audience did not exceed 500.

• The following exemption applied for Local Authorities, Schools and Hospitals.
  • Live music or recorded music between 08:00 – 23:00 at the Local Authority/School/Hospital premises providing that the audience did not exceed 500 and the organiser has consent from the relevant School, Local Authority or Health Care Provider.
  • Any entertainment provided by or on behalf of a School relevant School, Local Authority or Health Care Provider on their own premises between 08:00 and 23:00.

• The following exemption applied for Community Premises
  • Live or recorded music between 08:00 and 23:00 in a church hall, village hall, community hall or other similar community premises, that was not licensed to sell alcohol provided that, the audience did not exceed 500, and the organiser had consent for the performance from a person who was responsible for the premises.

There were also exemptions for travelling circuses, Greco-Roman wrestling and freestyle wrestling, incidental film exhibition, exhibition of films in community premises.

In response to questions regarding amplified music, the Board were advised that enforcement would need to be undertaken by Environmental Health who could issue noise abatements.

The report was noted.

The Principal Licensing Officer introduced a report to the Board on the review of the statement of licensing policy.

The policy had been reviewed in accordance with the revised Guidance issued by the Home Office, under Section 182 of the Licensing Act 2003 and informal consultation had been undertaken with the Responsible Authorities, in preparation for formal consultation.

The policy had been updated to:

- Refresh our community priorities;
- Include additional guidance around planning and building control approval;
- Include references to the Barking and Dagenham Growth Strategy 2013 – 2023;
- Provide further details and guidance on the matters that should be addressed when demonstrating how the application will promote the four licensing objectives, through the operating schedule;
- Include legislative and guidance changes since the last review; and
- Reflect the creation of sub-committees to deal with matters requiring a licensing hearing.

The Board noted that places of worship were excluded from the statement of licensing policy.

The Licensing Act 2003 and associated guidance required that the policy must be consulted on formally and prescribes what that consultation must include.

The Board noted that all premises licensed under the Licensing Act 2003 by LBBD will be written to, inviting them to view the draft policy and to make any comments by writing to the Licensing Department. Consultation would also be undertaken with other stakeholders and with Responsible Authorities, including police; fire and rescue; trading standards; health and safety; planning; public health and environmental health. The consultation period would be for at least 8 weeks.

The Chair requested that comments made as part of the consultation process be brought back to the next available meeting of the Board for consideration.

The report was noted.
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MINUTES OF
LICENSING SUB-COMMITTEE

Wednesday, 4 November 2015
(7:00 - 8:10 pm)

Board Members Present: Cllr Josephine Channer (Chair), Cllr Faruk Choudhury and Cllr Chris Hughes

Apologies:

19. Declaration of Members' Interests

There were no declarations of interest.

20. Application to Vary a Premises Licence: Way2Save, 147 Ripple Road, Barking, Essex, IG11 7PW

The Principal Licensing Officer presented a report to the Sub-Committee concerning an application to vary the premises licence of Way2Save, 147 Ripple Road, Barking, Essex IG11 7PW.

The Sub-Committee were advised that the application was to extend the opening hours to sell alcohol for consumption off the premises. The application for the variation of the licence (including hours) and the current premises licence were appended to the report.

During the consultation period, one valid representation had been received from the Metropolitan Police, raising relevant concerns around noise from people visiting the premises in the early hours of the morning and crime and disorder in the area. A copy of the Metropolitan Police representation and a statement from PC Scott Mahoney was appended to the report.

The Chair invited Andrew O'Connor PC 519KG and PC Scott Mahoney to address the Sub Committee.

The Sub-Committee were advised that although the store was considered to be professionally run, there were overriding concerns that the extended hours at the premises would attract antisocial behaviour and crime in the area. In particular, concerns were raised regarding:

- Individuals rushing to buy alcohol before the premises stops selling alcohol
- Youths congregating outside the premises
- Care and residential homes in the area being disturbed by those congregating by the premises
- Criminal activity of those congregating outside the premises
- Complaints from neighbours
- Alcohol dependency issues currently in the area

In response to questions, PC Mahoney advised that there was no evidence relating to problems from Way2Save, there was not a dispersal order in place or
being applied for to disperse those congregating outside the premises however an Antisocial Behaviour Order was being applied for in relation to issues with the care/residential homes in the vicinity.

Mr Graham Hopkins, the applicant’s representative, was then invited to address the Committee advising that,

- The premises was currently open 24 hours a day, however alcohol was only sold for part of the opening times.
- The premises was well run, with a CCTV system in place, Challenge 25 and staff training. Customers who were clearly under the influence of alcohol were not served.
- The premises had always cooperated with the Police.
- The applicant was due to sell the premises for personal reasons and the proposed buyer had been working in the premises and already ran another premises in the Borough.
- There had been no representation from other persons or responsible authorities except for the Police.
- There was no evidence from the Police to link the premises to the issues that had taken place in the surrounding area.

Mr Hopkins then took the opportunity to present the Sub-Committee and the Police with proposed additional conditions to be placed on the licence.

In response to questions from the Sub Committee, Mr Hopkins advised that alcohol was kept behind the tills and next to the tills and was currently covered up after 11pm. There were four members of staff working in the premises over night.

The Chair then gave all parties the opportunity to sum up before members retired to deliberate.

DECISION

The Sub-Committee considered all evidence and representation made to them.

The Sub-Committee decision was to grant the application to vary the licence as applied for, with the proposed conditions as submitted by the premises.

21. Application for a Review of the Premises Licence for Bottle Green, 60 Station Parade, Barking, Essex, IG11 8EA

The Licensing Officer presented a report to the Sub-Committee concerning an application for a review of the premises licence for Bottle Green, 60 Station Parade, Barking, IG11 8EA.

The current Premises Licence was held by Kirubakaran Rajaratnam who was also the Designated Premises Supervisor (DPS).

The Sub-Committee were advised that on 26 August 2015 an application for the Review of the Premises Licence was received from Andrew O’Connor PC 516KG on behalf of the Chief Officer of Police for the Metropolitan Police, under the Licensing Objectives of Crime and disorder and the Protection of Children from harm, public safety and the prevention of public nuisance.
The Police were asking for conditions to be added to the licence which currently held conditions carried over from the Licensing Act 1964. These included:

1. Challenge 25 scheme
2. Refusals Book
3. Record of Authorisation
4. CCTV
5. Staff Training

The Sub-Committee noted that the reason for review was that alcohol was sold to a 16 year old under a test purchase operation.

The Chair invited PC O’Connor to address the Sub-Committee. PC O’Connor advised that following discussions with the premises, the proposed conditions had been accepted.

The Chair invited Mr Rajaratnam to address the Sub-Committee. Mr Rajaratnam advised that he had accepted the conditions by the Police and many were already in place, although he requested that Challenge 25 be dropped to Challenge 21 to appease his customers.

In response to the failed test purchase, Mr Rajaratnam advised that this was the first incident in 15 years. The alcohol was served by a new member of staff who had recently joined the premises following experience of working in and training staff in another premises.

The Chair allowed those present to sum up before the Sub-Committee retired to deliberate.

DECISION

The Sub Committee had regard to the Licensing Act 2003, the statutory guidance issued, the Councils Licensing Policy and all matters presented before it, both written and aural.

The Sub Committee agreed that in order to promote the licensing objectives to vary the licence for Bottle Green as follows:

1. Challenge 25 Scheme:- The premises shall operate in accordance with the ‘Challenge 25’ scheme. The scheme operates on the basis that whilst alcohol may be sold to persons aged 18 years and over, anyone who is, or appears to be under 25 years of age will be asked for ID. Notices to this effect should be displayed in clear and prominent positions at the premises. The only proof of age accepted in respect of the sale of alcohol shall be a photo’ driving licence, passport, and other approved photographic ID bearing the PASS hologram.

2. Refusals Book:- A refusals book shall be kept at the premises, in which must be recorded the date, time and circumstances under which any attempted purchase by a young customer has been refused. This book must be made available for inspection by any police officer, police community support officer or authorised officer of the Licensing Authority. Entries in this book must be made as soon as
practicable after the refusal of the sale. The DPS should check and sign the entries on at least a weekly basis.

3. Record of Authorisation:- A written record of those authorised to make sales of alcohol shall be kept, this should be endorsed by the DPS with the date such an authorisation commences. This record shall be available to any police officer, police community support officer or authorised officer of the Licensing Authority.

4. CCTV:- A CCTV system shall be installed, kept and maintained at all times during the currency of the licence. The CCTV system serving the premises shall:
   a. be maintained, fully operational and in good working order at all times (if the system breaks down then police should be informed immediately and repaired within two working days).
   b. make and retain clear images that include the points of sale of alcohol and facial images of the purchasers of the alcohol;
   c. the CCTV recordings shall show an accurate date and time that the recordings were made and all recordings shall be retained for a period of not less than 31 days.
   d. The original, or a copy of the CCTV recording, will be available on request to the Police and Local Authority within 48 hours.
   e. Copies of CCTV recordings shall be provided in a format that can be viewed on readily available equipment without the need for specialist software.

5. New Staff Members:- All new members of staff shall, before first starting to sell alcohol, be trained as to their responsibilities under the Licensing Act 2003, namely sales to underage, persons already intoxicated, sales by proxy, licensable hours, conditions attached to the premises licence. This training should be recorded in a staff training log and be made available on demand to any Police Officer, Police Community Support Officer or an authorised officer of the Local Authority.

6. Continuation Training for all staff members:- All staff shall receive training on the prevention of underage sales at least every six months. Such training shall be recorded in a Staff Training Log showing what training has been given to whom by whom and on what date. This should be signed by the DPS as correct. These records shall be available on request to any Police Officer, Police Community Support Officer or an authorised officer of the Local Authority.

22. Application for a Personal Licence

The Councils Licensing Officer presented a report in relation to an application for a personal licence.

The Sub Committee noted the applicant was not present however agreed to proceed with the hearing as the application had already been deferred due to non attendance.

Upon receipt of the application, a Disclosure and Barring Service (DBS) disclosure showed an unspent conviction that was a relevant offence as specified in Schedule 4 of the Licensing Act 2003. Due to the relevant office, the application was referred to the Police, who had objected.
The Chair invited Andrew O’Connor 516KG PC to address the Sub Committee. PC O’Connor advised that due to the relevant conviction, the granting of the licence would seriously undermine the prevention of crime objective of the Licensing Act and therefore the Metropolitan Police objected to the granting of the application.

The Sub Committee retired to make their decision.

**DECISION**

The Sub-Committee considered in detail the submissions and evidence submitted by the Police.

After consideration, the Sub-Committee decided to reject the application as it considered it necessary for the promotion of Licensing objective of prevention of crime.
MINUTES OF
LICENSING SUB-COMMITTEE

Monday, 16 November 2015
(5:00 - 7:35 pm)

Board Members Present: Cllr Josephine Channer (Chair), Cllr Kashif Haroon and Cllr Chris Hughes

23. Declaration of Members' Interests

There were no declarations of interest.

24. Application to Review the Premises Licence for The Thatched House, Ripple Road, Barking, IG11 9PG

The Principal Licensing Officer presented a report to the Sub-Committee concerning an application for a summary review of the premises licence for The Thatched House, Ripple Road, Barking, IG11 9PG.

The Sub Committee were advised that on 20 October 2015 an application for the Summary Review the Premises Licence was received from Corinne Holland PC119KG on behalf of the Chief Officer of Police for the Metropolitan Police Area, as the premises had been associated with serious crime and disorder.

The Licensing Authority on receipt of the application for Summary Review must, within 48 hours of the time of its receipt, consider whether it was necessary to take interim steps pending determination of the review of the premises licence and undertake a full review within 28 days after the day of receipt of the summary review application. The Sub Committee were aware that a meeting of the Sub-Committee had taken place on 22 October 2015 to consider interim steps.

The current Premises Licence was held by Paul Njoroge and the Designated Premises Supervisor (DPS) was Benson Nyaga, who held a Personal Licence issued by Slough Council.

The Chair invited the Police to present the application for review. The Police’s legal representative, Mr Rory Clark, was present and address the sub-committee on behalf of the Police.

The Sub Committee were advised that the concern of the Police was that there had been a number of incidents at this premises over the last year, and specifically over the last 3 months, and that these incidents were invariably occurring in the early hours of the morning, after 02:00 and that intoxication was a regular factor in these incidents. The Police’s representation was that in order to prevent crime and disorder and to protect the public from harm, the licensing hours should be reduced so that the premises was to close before the hours when these incidents tend to occur.

The Police requested that the licensing hours be amended to reflect a closing time
of 02:30 with all licensable activities to cease by 02:00. The Police confirmed that in the three and a half weeks since the licensing hours had been reduced, there had been no further reports of crime or disorder. Prior to this there had been an average 2 incidents in any one month period. The premises license holder accepted that following the reduction in licensing hours, there had been no further incidents.

The Chair invited the Designated Premises Supervisor (DPS), Mr Njorage, to address the Sub-Committee in response to representation made by the Police. The DPS was represented by Mr Alan Aylott who spoke on behalf of the DPS.

Mr Aylott had provided a ‘grid’ which was in essence a Scott schedule of the 27 incidents raised by the Police, setting out the premises license holder’s views of those particular incidents and what comments they had. The schedule broke down the incidents into hourly blocks and confirmed how many had been subjected to No Further Action (‘NFA’) by the Police and how many resulted in action and what that action was.

The submissions made by the premises license holder were that in the majority of these cases, no crime had been committed as no prosecution or caution had followed. Further, of those matters that did result in action, it was the case that the initial report had been exaggerated. Further, the position of the premises was that a number of these calls, specifically the anonymous calls, were made by disgruntled patrons who have been ejected from the premises. The premises license holder submitted that those patrons would know that such a call would result in a black mark against the venue and lead to a license review. Further, the premises license holder submitted that the premises was being punished for matters which were either not serious or for which had been dealt with appropriately, and that it was having a significant financial impact on a legitimate business.

The premises license holder also made a number of criticisms of the Police’s representations. It was said that the Police had made these representations against the premises on one hand, but on the other they had not deemed it serious enough to pursue these matters to prosecution, or to institute an action plan. The Police were also criticised for their ongoing investigation into the noxious substance incident, in which they stated it may be bleach or ammonia or acid, but were not able to evidence exactly what it was that was thrown. The Police’s response was that this was clearly a substance along those lines due to the obvious smell, and the effects that it was having on the victims face.

The premises license holder submitted that changes had now been made to the CCTV and the lighting systems, and that they had identified 7 underperforming members of the security team who should be replaced. The case was put that existing staff members should remain as they have local knowledge which was valuable in tackling crime and disorder. Submissions were also made that the security team have always dealt with crime and disorder appropriately when it had occurred by making calls to the police and assisting with their investigations. The Police stated that the premises had only called the Police when their own staff had been attacked.

Both parties were given the opportunity to ask clarifying questions of the other, and both parties were asked to provide closing statements. The Police confirmed they
were simply asking, at this stage, for a reduction in hours in respect of licensable activities, and that this was the real solution to the problems which had occurred. The applicant conceded that licensable activities could be reduced to 03:00 with the premises to close at 03:30. They had also offered for their staff to attend appropriate training, and to replace 7 members of the security staff. In respect of the interim steps, it was initially suggested these hours be changed to reflect what the Police were asking in respect of the final decision, however in closing the premises license holder requested that the interim steps simply be discharged.

**DECISION**

The decision of the sub-committee was to:

1. Allow the current licensing and closing hours to operate as per the original license, between Monday and Wednesday

2. To alter the licensing and closing hours of the premises on Thursday through to Sunday as follows:
   a. Last entry to be 02:00
   b. All licensable activities to cease at 02:30
   c. Premise to close at 03:00

3. To incorporate the “proposed conditions” provided by the premises license holder except for proposed conditions:
   o #5 (Hi-Vis closing to be worn by door staff whilst dispersing patrons – existing conditions provide for Hi-Vis to be worn at all times in any event)
   o #9 (last admission time of 02:45, for reasons stated above)

4. To incorporate the steps already taken by the premises as continuing conditions. Therefore the conditions would be:
   a. **CCTV**
      i. To maintain a total of 32 cameras ensuring all corners and blind spots are covered
      ii. The camera above the search are to be maintained in a position to give a clear view against the reflective effect caused by the Hi Vis jackets
      iii. The premises license holder to maintain a maintenance contract with a CCTV company (currently ‘G Systems’, however any company providing similar services shall be compliance with the conditions)

   b. **Lighting**
      i. A spotlight to be maintained in the car park
      ii. Dance floor lighting to remain at an increased level to ensure customers are recognisable in the dark
      iii. Maintain co-operation with the Cab-Office

   c. **Security**
      i. Door supervisors program to extend to an extra door supervisor outside during Friday and Saturday nights, to include:
1 at Tesco (petrol station) car park
2 at the entrance gate facing the main car park
1 at the exit gate facing the cab office
4 to monitor and supervise the barriers at the search area
Another 8 inside
2 in the family area
2 along the front aisle
4 in the dance floor areas

5. Premises license holder to replace those 7 staff who have been identified as underperforming, and provide the Council with details of this within 3 months of the date of this condition coming into effect. Those new guards to be fully brief on local known troublemakers, and other relevant matters.
   a. Ejected customers to be properly escorted away and barred
   b. Any person seeking to gain entry will be assessed to ascertain if they have been pre-loaded and, if so, refused entry
   c. All staff to co-operate fully with the Police

6. All bar staff are to undergo and successfully pass a Council approved training course, such courses to be completed within 3 months of the date of this condition coming into effect

Any party who was not satisfied with this decision was entitled to appeal to the Magistrates' Court within 21 days.

Interim Steps

The sub-committee had additionally been invited to reconsider the terms of the interim steps. The following represents a separate and distinct decision made by the sub-committee.

In light of the above condition, the sub-committee agreed to amend the interim steps to reflect the licensing hours which have been imposed on the full review of the license. The sub-committee considered it inappropriate for the interim steps to remain as they were, on the basis that this would be more onerous than what has been considered appropriate for the final conditions.

The sub-committee would not be revoking the interim steps as request, as to do so would be inappropriate. It was clear to the sub-committee that on balance the steps are having a positive effect on the prevention of crime and disorder and to remove the steps at this stage, before the new conditions take effect, was likely to have a detrimental and unacceptable effect on crime and disorder in the intervening period.

The Decision is therefore:

1. Amend the interim steps so that licensing and closing hours are to operate as per the original license, between Monday and Wednesday

2. To alter the licensing and closing hours of the premises on Thursday through to Sunday as follows:
a. Last entry to be 02:00
b. All licensable activities to cease at 02:30
c. Premise to close at 03:00
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BOARD MEMBERS PRESENT: Cllr Josephine Channer (Chair), Cllr Faruk Choudhury and Cllr Chris Hughes

25. DECLARATION OF MEMBERS' INTERESTS

There were no declarations of interest.

26. DETERMINATION OF OBJECTION TO TEMPORARY EVENT NOTICE: THE CLUB, 121 BROAD STREET, DAGENHAM, ESSEX, RM10 9HP

The Councils Licensing Officer, Mr Paul Adams, presented a report in respect of three Temporary Event Notice (TEN) applications which had been received from The Club, 121 Broad Street, Dagenham, Essex, RM10 9HP.

The Sub-Committee were advised that on 3 December 2015, three applications were submitted for the grant of a Temporary Event at the premises for the following:

- 28 December 2015 - Back Hall/Club Lounge – 19:00 to 02.00
- 31 December 2015 - Front Bar – 19:00 to 02.00
- 31 December 2015 – Upstairs Hall – 19:00 to 0200

All notifications are for the sale by retail of alcohol; the provision of regulated entertainment and the provision of late night refreshment.

On 4 December 2015 the Licensing Department received a notification from London Borough of Barking and Dagenham Noise Team that they would be objecting to the three Temporary Event Notices due to substantiated noise complaints from the premises.

Tim Jones and Andrew Martin from the Councils Noise Team were present to advise on their objection to the TEN’s. The Chair invited Mr Jones to address the Sub Committee.

Mr Jones advised that they felt that the TENs as applied for would undermine the licensing objective of prevention of public nuisance. An abatement notice under section 80 of the Environmental Protection Act 1990 had been served on the premises earlier in the year and following a breach of the notice in April, the premises were successfully prosecuted on 2 October 2015.

There had been further complaints regarding noise from residents, particularly in relation to an event in November 2015, however Mr Adams advised the Sub-Committee that he has been advised by the Police that the incident which took place outside the premises in November was not considered to be the
responsibility of The Club.

Mr Hand, the owner of the premises, was present and was given the opportunity to address the Sub-Committee.

Mr Hand advised that since the incident in April, the premises had taken steps to ensure limited noise was escaping from the venue during events. There had only been one complaint received since April and the Police had not raised any issues with the premises. Investment had been made to the premises to ensure neighbouring residential properties were not disturbed, with any disruption kept to a minimum.

In response to a question from the Sub-Committee, Mr Hand advised there were approximately 4 – 6 door staff in place when an event was being held.

The Chair allowed both parties to sum up their case. The Sub-Committee then retired to consider their decision.

DECISION

In arriving at the decision, the Sub-Committee had considered very carefully each point made by the parties present. The Sub Committee also considered the following:

(a) London Borough Barking and Dagenham’s policy on the Licensing and the objectives of protection from public nuisance.

(b) The Sub-Committee weighed all the evidence, the individual merits of the case, the relevance of the applicant’s record, its policy, its obligations to act in the interests of protecting the public and the detrimental effect of any refusal on the applicant.

Mindful of the residential situation of The Club and that one of the TEN’s was for extended hours on a weekday the Sub-Committee resolved that:

1. The TEN’s for Monday the 28th December be granted however that licensable activities end at midnight rather than at 02.00. The conditions of the licence attach to the TEN.

2. The TEN's for 31st December 2015 be granted as applied for, and that the conditions of licence attach to the TEN.
MINUTES OF
LICENSING SUB-COMMITTEE

Monday, 7 March 2016
(7:00 - 7:57 pm)

**Board Members Present:** Cllr Josephine Channer (Chair), Cllr Faruk Choudhury and Cllr Hardial Singh Rai

27. **Declaration of Members' Interests**

There were no declarations of interest.

28. **Application for a new a Premises Licence: Barking Park, Longbridge Road, Barking, IG11 8TA**

The Council’s Licensing Officer, Maria Williams, presented a report to the Sub Committee which was regarding an application for a Premises Licence for Barking Park, Longbridge Road, Barking IG11 8TA.

The application was for one event to be held in Barking Park on 20 August 2016 during the hours of 07:00 to 21:00 to include:

- **Live Music:** Saturday 07:00-11:00 and 12:00 – 21:00
- **Recorded Music:** Saturday 07:00-11:00 and 12:00 – 21:00
- **Performance of Dance:** Saturday 15:00-15:30 and 16:30 – 17:00
- **Sale of alcohol:** Saturday 12:00-21:00

The Sub Committee were advised that during the consultation period the applicant had agreed additional conditions with the Police and that one valid representation had been received from the London Borough of Barking and Dagenham Environmental Health Noise Team. This representation was presented under public nuisance regarding noise. The Sub Committee noted that despite various correspondence being received from the applicant regarding noise risk assessments, this had not satisfied the concerns of the Environmental Health Noise Team.

Mr Andrew Martin, Environmental Health Officer, was present at the meeting and was invited by the Chair to address the Sub Committee.

Mr Martin advised the Sub Committee that since the publication of the agenda, a revised site plan had been received however this did not allay the concerns raised regarding noise nuisance. A copy of the revised site plan was circulated to the Sub Committee.

The proposed event was considered by Mr Martin to be a pop concert and was not suitable for Barking Park as the event would fall outside of the requirements of the Noise Council Code of Practice on Environmental Noise Control at concerts. It was estimated that approximately 3000 addresses would be affected by noise nuisance if the event were to go ahead.
Mr Martin continued to advise the Sub Committee that the Noise Council Code of Practice on Environmental Noise Control at concerts was in place to reach a balance between the enjoyment of those attending the event and local residents.

In response to questions, the Sub Committee were advised that previous events held in Barking Park had been subject to noise assessments.

The applicant, Ms Ajana was present was invited by the Chair to address the concerns raised. Ms Ajana introduced Mr John Michael, a sound engineer who would be providing the set up for the provision of music on the day, to the Sub Committee. Mr Michael advised the Sub Committee that the event was not intended to be a pop concert, with speakers facing the proposed dance areas only and not across the park. It was intended that the event would be no louder than a funfair.

Naomi Giwa, an additional applicant, was also present and addressed the Sub Committee advising that the event was being marketed as a cultural festival community event with a mixture of culture and music. There would be sound management present on the day and it was proposed that the event would finish at 20:00 and not 21:00 as previously stated.

There would be two stages on the day and at no point would there be two live performances taking place at the same time. It was proposed that a DJ would be on the smaller stage when the main stage had a performance taking place.

In response to questions, the Sub Committee were advised that:

- The applicants would revise the site plan if requested to by the Council;
- No performance would start before 12noon on the day, however there would be sound checks taking place during the morning;
- Residents would be informed of the event via a leaflet drop and a contact number would be left if residents wished to complain about noise on the day; and
- A separate company would be providing the bar and would check ID and only serve drinks in plastic cups. No bottles would be allowed into the park.

Mr Martin took the opportunity to ask questions of Mr Michael regarding the proposed decibel (dB) level for the event and was advised that this would be 115dB at the stage and dropping to 65dB within 200 metres, therefore not adversely effecting residential properties in the surrounding area.

Mr Martin suggested that the reduction in dB level may cause the applicants to receive complaints on the day of the event as those attending could have difficulty hearing the performances. This could result in mismanagement of sound if the applicants were under pressure by those in attendance to increase the dB level and therefore adversely effecting the residential properties in the surrounding area, in particular Longbridge Road.

The Chair invited all parties to sum up their case before retiring to consider their decision.

DECISION
The Sub Committee, having due regard for the licensing objectives, granted the licence with all conditions agreed by the Police and Environmental Health, and additional conditions, based on the applicants assurance during the meeting as follows:

a) Any event held in the park under the authority of this licence will have to have been approved by the Safety Advisory Group (SAG) held within the Local Authority. Whilst being scrutinised by the SAG the Police will be allowed to advise and comment on the impacts to the Licensing Objectives.

b) No event will be held under the authority of the premises licence unless the police have been given notice of at least 30 days.

c) The Event Organiser shall have full control over the sound amplification equipment and the volume shall be adjusted according to the reasonable requirements of the Responsible Authority for Environmental Health and to ensure that so far as is reasonably practicable the following noise control limits are met:

i) The Music Noise Level does not exceed 65dB(A) over a fifteen minute period at a point 1m from the façade any noise sensitive premises throughout the duration of the regulated entertainment.

ii) The Music Noise Level does not exceed 75dB over a fifteen minute period in the 63Hz and 125Hz octave frequency bands at a point 1m from the façade any noise sensitive premises throughout the duration of the regulated entertainment.

d) The Event Organiser shall ensure that all persons (including individual sound engineers) involved with the sound system are informed of the target sound control limits set out in c) above and that any reasonable instructions from the Responsible Authority for Environmental Health regarding noise levels are complied with.

e) Unrestricted access to the front of house position and backstage areas shall be allowed at all times to the Responsible Authority for Environmental Health for the purpose of sound level measurements, communications with the nominated noise consultant/sound engineer and monitoring licence conditions.

f) All complaints about noise received by the site office/event organiser shall be logged, and shall at their request be notified to the Responsible Authority for Environmental Health.

g) The Premise Licence Holder or a member of the organisers or a designated person shall be responsible for monitoring the noise level and any noise complaints received regarding the event to a programme approved by the Responsible Authority for Environmental Health.

h) All results of noise monitoring are to be made available to the Responsible Authority for Environmental Health.
i) The last act to finish their performance by 20:00

j) No stage to be placed along the Longbridge Road side of Barking Park.

k) Only one stage at a time may play live music, recorded music, or anything of a similar description to live music or recorded music. There was a right to appeal this decision within 21 days commencing on the day that notification of the decision was received.
<table>
<thead>
<tr>
<th><strong>Title:</strong> London Borough of Barking and Dagenham Regulatory Services Enforcement Policy</th>
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<tbody>
<tr>
<td><strong>Report of The Cabinet Member for Crime and Environment</strong></td>
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<tr>
<td><strong>Open</strong></td>
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<td><strong>Wards Affected:</strong> All</td>
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<tr>
<td><strong>Report Author:</strong> Theo Lamptey, Regulatory Services</td>
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<tr>
<td><strong>Accountable Director:</strong> Claire Symonds, Strategic Director Customer, Commercial and Service Delivery</td>
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<tr>
<td><strong>Summary:</strong></td>
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<tr>
<td>This report seeks the Boards comment on the revised Enforcement Policy for the Council’s Regulatory services, before it is considered by Cabinet.</td>
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<tr>
<td>The Regulatory Service includes all the regulatory enforcement functions relating to Environmental Health (Food, Health &amp; Safety), Environmental Protection, Noise and Nuisance, Trading Standards, Licensing, Private Sector Housing and the Enforcement services (Street Networks). The intention of the policy is to ensure that all enforcement action is compliant with all relevant legislation, code of practices and government guidance. Also it must be fair, clear, transparent, consistent, proportionate, risk based and robust.</td>
</tr>
<tr>
<td>It is aimed to assist local businesses contributing to supporting the local economy as outlined in the Council priorities and corporate plans.</td>
</tr>
<tr>
<td>The revised enforcement policy sets how the Council service is responsible for ensuring compliance.</td>
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<tr>
<td>The Local Authority is required to publish an Enforcement Policy setting out how it will enforce legislation and to comply with the law.</td>
</tr>
<tr>
<td><strong>Recommendation(s)</strong></td>
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<tr>
<td>The Board is asked to consider and provide comments on the Enforcement Policy.</td>
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Reason(s)

To ensure that the Council’s enforcement policy complies with the new requirements in the Regulators’ Code.

To ensure that any enforcement action taken by the Council’s Authorised Enforcement Officers of the Council are proportionate, consistent, fair and effective.

1. Introduction and Background

1.1 This policy is to create a borough wide approach to enforcement providing a consistent framework for making enforcement decisions.

1.2 It reflects recent changes in the legislative powers now under the control of the Local Authority. It supersedes the existing enforcement policy adopted by the Council on 29 January 2002 which was covered by the former Health and Consumer Service Division.

1.3 The Council deals with a wide range of enforcement activities covering in the region of 150 primary Acts of Parliament together with a number of regulations and orders. The legislation covered by the services deals with issues and seeks to protect consumers, residents and businesses as well as the environment. Investigations under these Acts can result in both informal and formal actions being taken to ensure compliance with the law.

1.4 Enforcement in the context of this policy includes the use a range of activities to ensure compliance with legislation, such as:

- Conducting regular inspections of business premises
- Responding to complaints and enquires from the public about businesses and individuals
- Carrying out education and awareness programmes
- Conducting investigations to support the enforcement actions
- Patrolling the borough and serving fixed penalty or statutory notices and taking prosecution action for a range of environmental offences as appropriate.

*The range of enforcement may change as new legislation is enacted.*

1.5 The proposed policy covers all aspects of the regulatory functions and seeks to assist officers in the decision making process when dealing with enforcement issues. It sets out a consistent approach on the use of all enforcement tools at officers’ disposal to achieve effective and efficient compliance with relevant legislation.
1.6 The Policy recognises that most businesses and individuals want to comply with the law. Help and support will be provided to enable them to meet their legal obligations without unnecessary expense, while firm action will be taken against those who flout the law or act irresponsibly.

1.7 Particular regard has been given to the provisions of the Regulators’ Code and the provisions outlined in the Legislative and Regulatory Reform Act 2006 and the Regulatory and Enforcement Sanctions Act 2008.

1.8 The policy highlights the link to the council’s wider Ambition 2020 agenda.

2. Proposal and Issues

2.1 Enforcement actions are taken within the context of a legal and policy framework. The Council’s enforcement services will carry out their enforcement related work with due regards to the Regulators’ Code.

2.2 The obligations in the Code with regards to compliance and enforcement action relates to the Macrory Review. One of the key points raised in the Review was that regulators should publish an enforcement policy. It is enshrined in five principles of good regulations that every action should be transparent, accountable, proportionate, and consistent and targeted where action is needed.

2.3 The decision to use enforcement action will be taken in the context of this policy and any other relevant policies of the Council, but also in the context of the particular case under consideration. Factors taken into consideration will include but will not be limited to:

- The risk that the breach poses to the health, safety or economic welfare
- Whether the offence involves a failure to carry out the requirements of a statutory notice or order
- The degree of pre-meditation of the offender
- Where there is a previous history of warning or cautions for similar offences
- There is reckless disregard for health and safety
- Incidents such as the obstruction of an officer or aggressive behaviour.

2.4 The policy will take into account the following factors to achieve compliance:

- The person, business or household ability to comply
- The willingness of the person, business or household to comply with the action proposed by the council.
- The level of complaints received relating to the person, business or household in the past.

This list is not exhaustive and will depend on the facts of each case.
2.5 All decisions in relation to appropriate action will be taken based on the key principles set out as above. It is also in accordance with the Code of Crown Prosecutors, which details considerations to be taken into account before commencing enforcement legal proceedings.

2.6 The Policy ensures that enforcement is carried out in a fair, equitable and consistent manner. It sets out the enforcement options and how they will be applied. Officers are expected to use their professional discretion in individual cases. There will be training, procedures and monitoring to ensure there is a common approach. In order to proceed with formal action, officers will provide an opportunity for matters to be resolved informally with the exception of health and safety matters where immediate action is required.

2.7 The revised policy takes account of the issues such as the recent legislative changes and the breadth of the Council’s regulatory functions. In addition, it does not infringe legislation such as the Human Rights Act 1998.

3. Options Appraisal

3.1 The options are limited as the council is required to have an enforcement policy as outlined in the Legislative and Regulatory Reform Act 2006 and the Regulatory and Enforcement Sanctions Act 2008.

3.2 There is an option to extend the current enforcement policy which was last adopted in 2002. This approach is not recommended as the policy will not be fully compliant with the up to date legal requirements set out in the Regulators Code. Also it would be open to challenge from the government department, the Better Regulation Delivery Office (BRDO).

4. Consultation

4.1 All regulatory teams within the Council have been consulted about the policy, any comments or suggestions have been incorporated into the policy where appropriate.

4.2 Business engagement, consultation and feedback are actively encouraged by the Regulators’ Code. Work is ongoing through the Local Business Support Focus Group to hear the views from the local businesses about the Council’s approach to enforcement.

4.3 It is intended that there will be ongoing consultation with businesses which will help inform any future revision to the agreed policy.

5. Financial Implications

Implications completed by: Richard Tyler, Interim Group Manager
5.1 The policy provides a framework for the delivery of LBBD’s regulatory services, which will set out the principles of good enforcement practice. This will improve transparency around enforcement processes and potentially streamline the management of enforcement cases. The costs emerging from the adoption and implementation of the Enforcement policy will be met from existing budgets.

5.2 The implementation of the new policy will ensure that enforcement decisions are appropriate, based on areas of risk, and that the Council does not incur excessive costs associated with its enforcement activities.

6. **Legal Implications**

Implications completed by: Chris Pickering – Principal solicitor
Telephone and email: 0208 227 3774; chris.pickering@bdttlegal.org.uk

6.1 This is a revision of the Council’s Enforcement Policy. By virtue of the Regulatory Enforcement and Sanctions Act 2008, Legislative and Regulatory Reform Act 2006, and the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as amended), the Regulator’s Code was issued under parliamentary approval as specified regulators must have regard to the code when determining policies, setting standards or giving guidance in relation to their duties.

7. **Other Implications**

7.1 This fully supports section 17 of the Crime and Disorder Act.

7.2 There are no direct implications in adopting the enforcement policy and minimal environmental impact from adoption of the policy itself. However successful application of the policy will assist in delivering efficient regulation which may reduce environmental damage, and ensure that resources are targeted where there is most significant environmental harm.

8. **Risk Management**

8.1 The enforcement policy is based on a risk based approach to ensuring compliance with the variety of legislation which is administered by the Council.

8.2 Failure to meet new and existing statutory requirements must be specifically addressed in the Council risk register at the Regulatory managers meetings.

8.3 Controls are in place to mitigate the risk include training, periodic update of the Scheme of delegation and Services business planning process.
9.0 Equal Opportunities

9.1 A screening for the equalities impact assessment has been carried out on the effect of the policy. The policy has low relevance in relation to its impact on the areas under the statutory duties contained in the equalities impact assessment, but contributes towards the corporate priorities of the council, open and transparent decision making.

9.2 The Council, when taking decisions in relations to any of its functions, must comply with its public sector equality duty as set out in S149 of the Equality Act 2010 (Act).

Background Papers Used in the Preparation of the Report:

None

List of Appendices

Appendix A – Draft Enforcement Policy
London Borough of Barking & Dagenham
Regulatory Services
Enforcement Policy
2016 - 2020
Approved by Cabinet on xxxx
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Last Updated January 2016
1. Introduction

The London Borough of Barking and Dagenham have agreed a number of priorities for the borough, these are:-

- Encouraging civic pride
- Enabling social responsibility
- Growing the borough

A firm but fair enforcement policy will support these priorities, this document sets out our Policy and how we will implement it.

The Council’s Regulatory Services are responsible for several different enforcement functions namely: trading standards, licensing, food safety, food standards, health and safety at work, noise and nuisance, environmental protection, environmental crime, highways, private sector housing, building control, planning enforcement and Anti-Social Behaviour (ASB). Each area uses different legislation to ensure compliance of the law within the borough and each has its own extensive body of regulations, codes of practices and guidance.

1.1 Our primary enforcement duty is to protect the safety of the public, their health and safety and the environment. At the same time we are committed to promoting a thriving local economy by carrying out our enforcement functions in an equitable, practical, transparent and consistent way.

1.2 This enforcement policy helps to promote efficient and effective approach to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens.

1.3 This policy has been developed in accordance with the general principles of the Regulators’ Code, the provisions outlined in the Legislative and Regulatory Reforms Act 2006 and the Regulatory and Enforcement Sanctions Act 2008. All relevant stakeholders have been consulted and current government guidance and relevant codes of practices have also been considered.

1.4 This policy sets out the core standards of the Council’s approach to enforcement; education, compliance and enforcement. These core standards cover all aspects of enforcement, delivered by the council.

1.5 The Council is moving towards a more integrated enforcement and regulatory service. The aim is to use all aspects of enforcement and regulation maximise impact for minimum cost, ensuring that community and businesses alike take responsibility for their actions, so Barking and Dagenham is a place that people enjoy living and working in and are proud of. This Enforcement Policy is a key document is achieving consistency and standards across the Council’s enforcement services.
1.6 Finally this Policy will help to ensure that we are fair, impartial, independent and objective and will not be influenced by matters such as ethnicity, origin, gender, religious belief, political views or sexual orientation of suspect or victim or witness or offender.

2. Scope of Enforcement Policy

2.1 The Council has a wide range of regulatory and enforcement functions. The principle of this policy applies to actions taken by council officers to achieve compliance with legislation and national guidance. It supports existing, specific guidance on enforcement action in the statutory code of practice for regulators, relevant guidance documents and guideline issued by other government departments and other bodies.

2.2 In addition, consideration will be given to any other enforcement policy or scheme such as the Home / Primary Authority principle, where relevant. The Regulatory Enforcement and Sanction Act 2008 established the Primary Authority Scheme. We are required to comply with the requirements of the Act when considering taking enforcement action against a business or organisation that has a Primary Authority.

3. General Principles of Enforcement

3.1 We believe in firm but fair enforcement of all regulatory laws. Prevention is better than cure and our role therefore involves actively working with businesses to advise and assist with compliance. Consideration should also be given to the following principles:

- **Proportionality** – This means ensuring enforcement action corresponds appropriately to the risks arising. This will include any actual or potential harm arising from a breach of the law. We will ensure that our actions are proportional to the potential risk to health, safety, the environment and the benefits arising from the actions taken.

- **Consistency** - Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar results. Businesses that manage similar risks expect a consistent approach from the Council and other agencies.

- **Profiling** – This means making sure that action is targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled. It also means that any enforcement action is directed against the person or company responsible for the breach.
• **Transparency** - Transparency means being clear with businesses about how we operate and enforce. This also means helping individuals, organisations and businesses to understand what is expected of them in order to comply with legal requirements. We will also provide a clear distinction as to what are statutory requirements and advice or guidance about what is desirable but not compulsory.

• **Accountability** - We are accountable to the public for our actions. This means that we undertake enforcement on behalf of the public at large and not just in the interest of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate be taken into account when making enforcement decision.

3.2 Whilst the general principle outlined above will apply in all cases, it must be recognised that each individual case will vary and each must be considered on its own merits before a decision is reached.

3.3 Where offending causes a cost to the council we will seek to recover the costs of dealing with that offending from those that are responsible.

4. **Business Engagement Processes**

   The Council will engage with businesses in a variety of ways including:

   • Undertake a programme of routine and planned inspections of trade premises based on risk assessment
   • Offer advice on compliance to businesses within the whole borough
   • Work with businesses and other agencies to achieve our objectives
   • Conduct enforcement visit to premises to deal with complaints, accidents and investigate allegation of non compliance.
   • Provide response to business enquires within the set working standards and written response if requested within the set standards period

5. **Decisions on Enforcement Actions**

5.1 We will ensure that our enforcement actions are consistent and aim to:

   • Protect the public and businesses from harm as well as change the behaviour of the offender
   • To deter future non-compliance and reassure the community
   • Eliminate any financial gain or benefit from non-compliance
   • Be proportionate to the nature of the offence and the harm caused and
   • Be responsive and consider what is appropriate for a particular offender and regulatory issue, which can include sanction and public stigma that should be associated with criminal conviction
5.2 Enforcement decisions and actions will be made with due regard to the provisions of:

- The Human Rights Act
- The Crime and Disorder Act
- Equal rights and anti-discrimination legislation
- Service-specific legislation
- All other relevant legislation applicable from time to time
- Internal procedures and processes as applicable

5.3 The Council is a public authority for the purposes of the Human Rights Act 1998. We will therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

5.4 Information concerning non-compliance may be shared with other enforcement agencies. Any such action will only be undertaken in the public interest and in compliance with the Data Protection Act 1998.

5.5 Any decision on enforcement action will be taken on the merits of each case, objectivity and impartial. This will not influenced by reason of race, disability, sexual orientation, age, religious beliefs or the employment status of the victim or witness. However, where victim has been targeted by the offender by virtue of class or status such as vulnerable or young, consideration will be given when deciding on any course of action. Cases are assessed in accordance to the Code of practice for Crown Prosecutor to justified enforcement actions.

5.6 We will ensure that any decision to depart from the Code or any other of the general principles will be properly reasoned, based on material evidence and documented.

6. Enforcement Actions / Sanctions

6.1 Where appropriate, we will seek to achieve compliance through early engagement, mediation, education and advice. In cases, where this is not deemed possible by officers as the appropriate route, these decisions will be recorded and considered as justified.

6.2 There are a number of potential enforcement options available to the service to achieve compliance. The types of actions that can be considered are as follows:

- **Informal Action** – For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

- **Fixed Penalty Notice (FPN) / Penalty Charge Notice (PCN)** – Certain
offences are subject to fixed penalty notices where prescribed by legislation. They are recognised as an enforcement tool and avoid a criminal record for the defendant. We may choose to issue an FPN or PCN on a first occasion without issuing a warning. Unpaid PCN’s will result in the offender being pursued in the County Court for non payment of debt. Unpaid FPNS will be prosecuted where it is possible to do so.

- **Refusal, Revocation or Suspension of Licence or Permit** – where there is a requirement for business or individual to be licensed by the local authority, the licence may be granted in accordance with the Council’s Scheme of delegation. For relevant matters where representations or objections are received to an application the Licensing Regulatory Board / Committee will hear the case and determine the matter in line with the provisions of the relevant legislation.

- **Licence Review** - Responsible Authorities and ‘Other Persons’ have the power under the Licensing Act 2003 to apply to have a Premises Licence reviewed by the Licensing Committee where activities at the premises appear to be undermining one or more of the four Licensing Objectives (the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm).

- **Statutory Notices** – Certain legislation allows notices to be served requiring offenders to take specific actions, provide certain information, or cease certain activities. Notices may require activities to stop or cease immediately where the circumstances relating to serious threat to health, safety, the environment or to amenity and situation deteriorate, if a breach is not remedied quickly. Unless prescribed in law the time allowed in other circumstances will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance. In some circumstances we will charge for notices served.

6.3. Where an enforcement intervention has a formal appeal route we will include details of this with the notice that we serve.

6.4 Certain types of enforcement interventions allow works to be carried out by the enforcing authority and reasonable costs recovered. See Work in Default below.

- **Enforcement Undertaking / Injunctive Proceedings** - this may be sought from businesses that breach legislative requirements specified for the purpose of part 8 of the Enterprise Act 2002. Injunctive orders may be sought in the County Court in relation to businesses who breach legislative requirements specified for the purposes of Part 8 of the Enterprise Act 2002. In most cases an order will be sought from the court in circumstances where a business has been given an undertaking which it has subsequently breached.
• **Seizure** – in some situations, Council officers have powers to seize goods, equipment and documents, either to prevent the occurrence of an incident, to ensure that an activity ceases, or to ensure that it does not recur. The seized goods may be required as evidence for possible future court proceedings. When we seize goods, equipment and documents we will explain at the time the powers we are exercising and the reason why they are being exercised. Also provide an appropriate receipt to the person from whom the goods were seized.

• **Confiscation / Forfeiture Proceedings** – this procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods and equipment in order to prevent them re-entering the market place or being used to cause any further problem. In appropriate circumstances, we will make application for forfeiture to the Courts.

• **Simple Cautions** – these will be issued where there is clear evidence and acceptance of an offence by the offender. A simple caution is an admission of guilt, but is not a form of sentence nor is it a criminal conviction. The purpose will be to deal quickly and simply with less serious offences; to reduce chances of re-offending and to avoid unnecessary appearance in criminal courts. A record of the caution is kept on file and may be cited in a Court if further offending occurs. Where a person accepts a caution they will also be expected to pay the reasonable costs involved in investigation of the offence.

• **Prosecution** – A prosecution will normally be considered where the individual or organisation meets one or more of the following criteria:

  o Deliberately, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others,
  o Deliberately or persistently ignored written warnings or formal notices,
  o Endangered, to a serious degree, the health, safety or well being of people, animals or the environment,
  o Assaulted or obstructed an officer in the course of their duties
  o Where a prosecution would be in the public’s interest.

• **Proceeds of Crime Application** – this application may be made under the Proceed of Crime Act 2002 for confiscation of assets in serious cases. The purpose of this is to recover the financial benefit that the offender has obtained from their criminal conduct.

• **Work Related Death** – where there has been a breach of the law leading to a work-related death, we will consider whether the circumstances of the case might justify a charge of manslaughter. We will liaise with the Police, Coroners and the Crown Prosecution Service (CPS) to agree the appropriate Authority to take legal proceedings under the health and safety law.
• **Work in Default** – Where we have served a notice requiring works such as improvement, prohibition or to otherwise remediate a non compliance notice and the person receiving the notice does not comply with it, we will exercise powers available to arrange for the work to be carried out and the full costs recovered. This is known as ‘work in default’ or ‘direct action’ and we will always seek to recover our full cost from the person receiving the original notice.

• **Directed Surveillance Using The Regulatory of Investigatory Powers Act 2000 (RIPA)** – The Council is a public authority for the purpose of the Human Rights Act 1998. Where investigation into prevention of disorder or detection of crime is necessary, officers will carry out the investigation using overt methods, unless the only means of investigation is by way of covert directed surveillance. Any directed surveillance shall be carried out in accordance with the Council procedures under the Regulatory of Investigatory Powers Act 2000 (RIPA) and the Protection of Freedom Act 2012. Authorisation for this type of pre-planned investigation must be in writing by formally appointed officer within the Council and formally authorised by a Justice of the Peace.

7. **Determining Formal Actions**

7.1 When a decision whether or not to prosecute is being made, we follow the principle criteria from the guidance contained in the Code for Crown Prosecutors which requires the two main tests:

1. Whether the standard of evidence is sufficient for a realistic prospect of conviction (Evidential Test).
2. Whether a prosecution is in the public interest (Public Interest Test)

7.2 **The Evidential Test** – we must be satisfied that there is sufficient evidence against the offender on each charge. A realistic prospect of conviction is an objective test that means a jury or bench of magistrates, properly directed in accordance with the law is more likely to convict the offender of the alleged charge than not to.

7.3 **The Public Interest Test** – the public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. The public interest factors that may affect the decision to prosecute will depend on the following:

- The seriousness of the offence
- The likelihood of the offender re-offending
- Whether there has been negligence and the possibility of avoiding the offences
- The views of anyone aggrieved by the offence
- The length of time since the offence took place
7.4 Some factors may increase the need to prosecute but others may suggest that another course of action would be appropriate and proportionate.

8. **Consideration Factors**

8.1 In making the decision to take formal action, the service will have particular regards to the following criteria:

- Whether the breach was pre-mediated or committed deliberately or reckless, or without due diligence;
- Whether there are any prior complaints and convictions or other information relevant to the individual, family, business or trader history;
- Effect of the breach on the victim or affected person, in particular vulnerable or the infringement resulted in death or serious injury
- The prevalence of the type of breach and whether a particular enforcement action could act as a deterrent and encourage compliance generally; and
- Inadequate mitigation or explanation given by individual, business or trader. Also the attitude of the individual, business or trader as to whether they were obstructive, co-operative and took action to mitigate the cost or impact of their offending.

9. **Authorisation**

9.1 The Council will ensure that officers who carry out enforcement duties are appropriately qualified and trained. The officers will carry authorisation in the form of a card and we will ensure that the extent of authorisation is reviewed from time to time in the light of their qualification and experience and changes in legislation.

10. **Working with Partners**

10.1 Where appropriate, enforcement activities will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement. We will share intelligence relating to wider regulatory matters with other regulatory enforcement agencies. This includes government agencies, departments, other local authorities, Police forces and Fire authorities.

11. **Equal Opportunities and Diversity**

11.1 The Council recognises the diversity of our community and enforcement activities will have due regard to the Equality Act 2010

12. **Review of Policy**

12.1 We will review this policy and update it to reflect changes in its source
documents and controlling bodies every two years. We will also review its effectiveness in supporting the Council’s and the Community’s priorities.

12.2 We will consult with stakeholders before and after making any changes to this policy.

13. Monitoring Arrangement

13.1 The Council Planning Authority will publish a local enforcement plan to manage enforcement proactively in a way that is appropriate to the local area. This will set out how we will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

14. Publicity

14.1 Following adoption of this policy, it will be made available to all interested parties including individuals, organisations, businesses etc. It will also be published on the Council’s website.
Appendix A

Reference Sources

The Code for Crown Prosecutors –

The Cautioning of offenders, Home office

Reducing Administrative Burden –

Regulatory Enforcement and Sanctions Act 2008

Regulators’ Code

Legislative and Regulatory Reform Act 2006


Criminal Justice and Police Act 2001

Criminal Procedure and Investigations Act 1996

HSE Enforcement Policy Statement

Police and Criminal Evidence Act 1984 and associated Codes of Practice

Food Law Code of Practice (England) 2012

Human Rights Act 1998

Data Protection Act 1998

Hampton Report,

Enforcement Concordat

National Planning Policy Framework