

TONBRIDGE & MALLING BOROUGH COUNCIL



EXECUTIVE SERVICES

Chief Executive

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NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.

Contact: Committee Services
committee.services@tmbc.gov.uk

30 September 2016

To: MEMBERS OF THE LICENSING AND APPEALS COMMITTEE
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Licensing and Appeals Committee to be held in the Civic Suite, Gibson Building, Gibson Drive, Kings Hill, West Malling on Monday, 10th October, 2016 commencing at 7.30 pm

Yours faithfully

JULIE BEILBY

Chief Executive

A G E N D A

PART 1 - PUBLIC

- | | | |
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| 1. | Apologies for Absence | 5 - 6 |
| 2. | Declarations of Interest | 7 - 8 |

3. Minutes 9 - 12

To confirm as a correct record the Minutes of the meetings of Licensing and Appeals Committee held on 16 March and 25 April 2016

4. Minutes of Panel 13 - 60

To receive the Minutes of the following meetings of the Licensing and Appeals Committee sitting as a Panel:

15 March 2016
6 April 2016
9 June 2016
10 June 2016
18 July 2016
27 July 2016
26 August 2016
26 September 2016 – to follow

Decisions to be taken under Delegated Powers

5. Sex Establishments and Sexual Entertainment Venues - Policy for 2017-2020 61 - 106

Matters submitted for Information

6. Update on Local Authority Lottery - Verbal Presentation 107 - 108
7. Overview of Licensing 2015-16 - Verbal Presentation 109 - 110
8. Urgent Items 111 - 112

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

Matters for consideration in Private

9. Exclusion of Press and Public 113 - 114

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

PART 2 - PRIVATE

10. Urgent Items 115 - 116

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

MEMBERSHIP

Cllr Mrs J A Anderson (Chairman)
Cllr Mrs P A Bates (Vice-Chairman)

Cllr O C Baldock
Cllr Mrs S M Barker
Cllr M C Base
Cllr Mrs B A Brown
Cllr M A Coffin
Cllr B T M Elks
Cllr Mrs F A Kemp

Cllr S M King
Cllr H S Rogers
Cllr R V Roud
Cllr A K Sullivan
Cllr M Taylor
Cllr F G Tombolis

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Apologies for absence

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Declarations of interest

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TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS COMMITTEE

Wednesday, 16th March, 2016

Present: Cllr R W Dalton (Chairman), Cllr Mrs P A Bates (Vice-Chairman), Cllr Mrs J A Anderson, Cllr M C Base, Cllr M A Coffin, Cllr B T M Elks, Cllr Mrs F A Kemp, Cllr S M King, Cllr H S Rogers, Cllr A K Sullivan, Cllr M Taylor and Cllr F G Tombolis

Councillor N J Heslop was also present pursuant to Council Procedure Rule No 15.21.

Apologies for absence were received from Councillors O C Baldock and R V Roud

PART 1 - PUBLIC

LA 16/13 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/14 MINUTES

RESOLVED: That the Minutes of the meeting of the Licensing and Appeals Committee held on 2 December 2015 be approved as a correct record and signed by the Chairman.

LA 16/15 MINUTES OF PANEL

RESOLVED: That the Minutes of the meetings of the Licensing and Appeals Committee sitting as a Panel held on 16 December 2015 and 24 February 2016 be received and noted.

MATTERS FOR RECOMMENDATION TO THE COUNCIL

LA 16/16 PROPOSED LICENCE CONDITIONS FOR THE HOMEBOARDING OF DOGS AND CATS AND DOG DAY CARE ESTABLISHMENTS

Further to Minute LA 15/90, the report of the Director of Central Services and Monitoring Officer gave details of proposed licensing conditions in respect of the home boarding of dogs and cats. The Annexes to the report set out proposed standards and controls for the regulation of home boarding of dogs and cats and day care dog boarding establishments carried out within a business premises and, alternatively, the home environment. Consideration was also given to proposed licensing fees and recovery of costs of additional veterinary inspections.

Members requested that the need for maximum permitted numbers of animals be made clear in the publicity for the scheme. They also raised questions about accepting stage payments for fees and exploring tendering for veterinary services.

RECOMMENDED: That

- (1) the licence conditions detailed in Annexes 1, 2 and 3 to the report be adopted subject in each case to the deletion of the word “always” in paragraph 6.8.1 in the section on Supervision;
- (2) the annual fee of £150 be approved to cover the costs associated with the administration and inspection regime; and
- (3) the cost of additional veterinary fees be recovered from the applicant on the basis set out at paragraph 1.3.1 of the report.

***Referred to Council**

MATTERS SUBMITTED FOR INFORMATION

LA 16/17 ONLINE LICENSING FORMS

The Committee received a demonstration of online taxi licensing application forms. These had recently gone live in respect of new applications completed in the Kings Hill reception area and would be extended to other licences in due course. The Licensing and Community Safety Manager also presented examples of bodycam film used in enforcement situations. He undertook to provide Members with a copy of the matrix used in checks at the taxi ranks.

RESOLVED: That the report be received and noted.

MATTERS FOR CONSIDERATION IN PRIVATE

LA 16/18 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 8.25 pm

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS COMMITTEE

Monday, 25th April, 2016

Present: Cllr Mrs P A Bates (Vice-Chairman - in the Chair), Cllr Mrs J A Anderson, Cllr M C Base, Cllr Mrs B A Brown, Cllr M A Coffin, Cllr B T M Elks, Cllr S M King, Cllr H S Rogers, Cllr R V Roud, Cllr A K Sullivan, Cllr M Taylor and Cllr F G Tombolis

Councillor N J Heslop was also present pursuant to Council Procedure Rule No 15.21.

Apologies for absence were received from Councillors R W Dalton (Chairman), O C Baldock and Mrs F A Kemp

PART 1 - PUBLIC

LA 16/31 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/32 CLASSIFICATION OF A FILM "FEAR ITSELF"

The report of the Director of Central Services and Monitoring Officer invited the Committee to consider the classification to be applied to a film documentary about horror cinema which was due to be shown at the Angel Centre, Tonbridge, in May and June. Annex 1 to the report set out the guidance received from the British Board of Film Classification (BBFC). The report had invited members of the Committee to review the film in advance of the meeting and a copy of the review form, to be completed by those members who had viewed the film, was set out at Annex 3 to the report.

RESOLVED: That the film "Fear Itself" be classified as 15.

MATTERS FOR CONSIDERATION IN PRIVATE

LA 16/33 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 7.40 pm

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TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Tuesday, 15th March, 2016

Present: Cllr R W Dalton (Chairman), Cllr Mrs F A Kemp and Cllr S M King

Together with representatives from the Licensing Authority and the applicant.

As an apology for absence had been received from Councillor Mrs J A Anderson in advance of the meeting Councillor Mrs F A Kemp was appointed to serve on the Panel

PART 1 - PUBLIC

LA 16/10 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/11 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/12 REVIEW OF A DUAL HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER'S LICENCE (CASE NO 4/2016)

(Reason: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding a review of a dual hackney carriage and private hire drivers licence following a formal complaint received from a member of the public.

It was alleged that the applicant was abrupt, very rude and refused to take the complainant and her daughter, who had a tube in her stomach, a bag with special pump and pushchair on the requested journey. Items placed in the boot of the taxi were allegedly removed, placed on the

footpath and the applicant drove off with another fare. The incident had occurred at Waterloo Road, Tonbridge (station taxi rank).

Copies of the individual's current licence and the complaint were attached as Annexes 1 and 2 respectively to the report.

Reference was made to two further complaints received and these were tabled as evidence at the meeting:

Complaint 2 related to a passenger with a knee replacement wanting to sit in the front of the taxi when the applicant advised they would have to sit in the back seat.

Complaint 3 alleged that the applicant would not take a female passenger to their home address due to parked cars and lack of turning. This resulted in the complainant having to walk down a dark street on her own at 2200 hours.

The Panel made the following findings:

- The Panel listened carefully to the applicant, the evidence presented and also had regard to the written report of the Director of Central Services; and
- The Panel noted the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Licensing Policy.

For these reasons, the Panel therefore

RESOLVED that:

- (1) In relation to Complaint 1, it appeared to the Panel that there had been a misunderstanding over who had been 'first in the queue' at the taxi rank. It appeared that the applicant had been waiting in the correct place and when discussions became heated took steps to remove himself from the situation.

The Panel found no reason on which to uphold the complaint.

- (2) In relation to Complaint 2, the Panel was concerned that the applicant, due to his mannerisms, might appear outwardly to others as being rude or aggressive. The Panel advised the applicant that he should take into consideration how he appeared to other people when conducting himself as a taxi driver.

The Panel found no reason to uphold the complaint in this case.

- (3) In relation to Complaint 3, the Panel understood the applicant's reasons for not wishing to drive to the address in question, due to the potential risk to his vehicle. However, the Panel stressed that all

drivers had a duty of care to their passengers and must treat them fairly. Drivers should bear in mind that their passengers might be vulnerable, whilst not necessarily appearing so. The Panel expected its licensed drivers to deliver passengers to their desired locations even if that required the driver to undertake potentially difficult manoeuvres. It had been open to the applicant to ask the passenger about alternative turning arrangements and this did not appear to have been done.

The complaint was, therefore, upheld but the Panel decided to take no further action.

The meeting ended at 7.52 pm
having commenced at 7.00 pm

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TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Wednesday, 6th April, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr H S Rogers and Cllr M Taylor
Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 16/19 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/20 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/21 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER'S LICENCE (CASE NO 5/2016)

(Reason: LGA 1972 Sch12A Paragraph 1 – Information relating to an individual)

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding an application for a Probationary Private Hire Driver's Licence and the information revealed on the Disclosure and Barring Service (DBS) Certificate which had shown a conviction under s1(2)(A) and s2 of the Fraud Act 2006 in February 2014.

The Panel listened carefully to the information provided by the Applicant, had due regard to the evidence he provided of the circumstances regarding the offence and had regard to the report of the Director of Central Services and Monitoring Officer and to the Tonbridge and

Malling Borough Council Hackney Carriage and Private Hire Licensing Policy.

The Panel was mindful of the seriousness of the offence of which the Applicant had been convicted and was concerned that all taxi drivers should be wholly trustworthy. The Panel noted the circumstances of the offence which had been revealed on the DBS Certificate supplied by the Applicant. The Panel concluded that, whilst the offence had been committed within a period which the Authority's Policy would usually require refusal of an application, it was satisfied this appeared to be a 'one-off' offence and a mistake which the Applicant had readily admitted to the Police and the Panel. In addition, the Panel noted the Applicant's intention to apply for a Hackney Carriage Driver's Licence and suggested that, because of the unspent conviction, it would be inadvisable to do so until the expiration of the probationary period.

The Panel, therefore,

RESOLVED: That, subject to the Driver attending a meeting with the Licensing and Community Safety Manager on a monthly basis during the twelve month probationary period, the application for a Probationary Private Hire Driver's Licence be APPROVED.

The meeting ended at 10.24 am
having commenced at 9.30 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Wednesday, 6th April, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr H S Rogers and Cllr M Taylor
Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 16/22 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/23 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/24 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER'S LICENCE (CASE NO 6/2016)

(Reason: LGA 1972 Sch12A Paragraph 1 – Information relating to an individual)

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding an application for a Probationary Private Hire Driver's Licence following the receipt of information from the Disclosure and Barring Service (DBS) which had shown a conviction under Common Law dated March 2012 for the offence of 'doing act tending and intended to pervert the course of Public Justice on 2 May 2011'.

The Panel listened carefully to the information provided by the Applicant, had due regard to the evidence she provided of the circumstances regarding the offence and had regard to the report of the Director of Central Services and Monitoring Officer and to the Tonbridge and

Malling Borough Council Hackney Carriage and Private Hire Licensing Policy.

The Panel was mindful of the seriousness of the offence of which the Applicant had been convicted at the Crown Court and was concerned that the Applicant had made a conscious decision to break the law despite the fact that, as a PCSO at the time of the offence, she must have been aware of the consequences of doing so and would have had ample opportunity to take advice on the serious consequences of her action.

The Panel concluded that, whilst it had taken into account the evidence of recent 'good character' provided by the Applicant, it remained unconvinced that she was, at present, a 'fit and proper' person to hold a Probationary Private Hire Driver's Licence.

For these reasons the Panel, therefore,

RESOLVED: That the application for a Probationary Private Hire Driver's Licence be REFUSED.

The meeting ended at 11.22 am
having commenced at 10.34 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Wednesday, 6th April, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr H S Rogers and Cllr R V Roud

Together with representatives of the Licensing Authority

As an apology for absence had been received from Councillor M Taylor in advance of the meeting Councillor R Roud was appointed to serve on the Panel

PART 1 - PUBLIC

LA 16/25 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/26 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/27 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER'S LICENCE (CASE NO 7/2016)

(Reason: LGA 1972 Sch12A Paragraph 1 – Information relating to an individual)

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding an application for a Probationary Private Hire Driver's Licence following the receipt of information from the Disclosure and Barring Service (DBS) which had shown a conviction under the Road Traffic Act 1988 s5(1)(A) in September 2012 for an Offence of Driving a Motor Vehicle with Excess Alcohol on 2 June 2012.

The Panel listened carefully to the information provided by the Applicant, had due regard to the evidence he provided of the circumstances regarding the offence and had regard to the report of the Director of

Central Services and Monitoring Officer and to the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Licensing Policy.

The Panel noted that the Council's ordinary policy regarding drunkenness when in charge of a vehicle, resulting in disqualification, required a period of at least five years free from conviction before a licence might be granted. In this case, the last conviction for such an offence was in September 2012. The Panel could find no reason to depart from the Policy in this case.

For these reasons the Panel, therefore,

RESOLVED: That the application for a Probationary Private Hire Driver's Licence be REFUSED.

The meeting ended at 12.01 pm
having commenced at 11.32 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Wednesday, 6th April, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr H S Rogers and Cllr R V Roud

Together with representatives of the Licensing Authority

As an apology for absence had been received from Councillor M Taylor in advance of the meeting Councillor R Roud was appointed to serve on the Panel

PART 1 - PUBLIC

LA 16/28 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/29 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/30 APPLICATION FOR RENEWAL OF A DUAL HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER'S LICENCE (CASE NO 8/2016)

(Reason: LGA 1972 Sch12A Paragraph 1 – Information relating to an individual)

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding an application for the renewal of a Dual Hackney Carriage and Private Hire Driver's Licence following receipt of information from the Driver and Vehicle Licensing Agency (DVLA). The applicant had 9 penalty points on his DVLA Driving Licence for exceeding the statutory speed limit on a public road on three occasions in June, August and November 2013. It was noted that the Applicant had failed to declare these convictions on the questionnaire completed on 25 November 2015.

In considering the information received from the DVLA the Panel noted that Offence Codes SP10 to SP50 must stay on a driving licence for four years from the date of the offence and that the Council's Policy stated that an application would normally be refused where an applicant had 6 or more penalty points on his DVLA licence.

The Panel listened carefully to the information provided by the Applicant, had due regard to the evidence he provided of the circumstances regarding the offences and had regard to the report of the Director of Central Services and Monitoring Officer and to the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Licensing Policy.

The Panel considered it a very serious matter that the Applicant had exceeded speed limits, not from the point of view of the driver but for the safety of the general public and passengers. The Panel took account of the fact that the offences had occurred nearly three years ago and that there had been no subsequent offences. However, it reminded the Applicant that, as a licensed driver, he should have informed the licensing officers promptly of any relevant offences or penalty points.

The Panel, therefore,

RESOLVED: That,

- (1) subject to the Driver attending a meeting with the Licensing and Community Safety Manager on a six monthly basis during the twelve month probationary period, the application for a Probationary Private Hire Driver's Licence be APPROVED; and
- (2) 3 Penalty Points be given against the new licence to reflect the fact that the Applicant had failed to disclose the three convictions formally to the Licensing Authority within seven days of the conviction as required by the Council's Hackney Carriage and Private Hire Licensing Policy.

The meeting ended at 1.12 pm
having commenced at 12.31 pm

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Thursday, 9th June, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs F A Kemp and Cllr H S Rogers

Together with representatives of the Licensing Authority, Mr R Collins (Applicant) and Mr S Goode (Designated Premises Supervisor); and Mrs L Gregory, Ms E Hoyle and Mr N Stillwell (Interested Parties)

PART 1 - PUBLIC

LA 16/34 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/35 APPLICATION FOR A NEW PREMISES LICENCE FOR THE OLD FIRE STATION, CASTLE STREET, TONBRIDGE

The Panel gave consideration to an application made by FirestationTN Limited for a Premises Licence under Section 17 of the Licensing Act 2003 in respect of premises known as "The Old Fire Station" at Castle Street, Tonbridge. The application related to the performance of plays; exhibition of films; performance of live music; playing of recorded music; performance of dance; and supply of alcohol.

The Panel gave careful consideration to the written report of the Director of Central Services and Monitoring Officer, the application set out at Annex 3 to the report, and the written representations received during the statutory consultation period (as set out at Annex 4 to the report). The Panel was advised that the representation from Kent Police had been withdrawn following the agreement of the Applicant to the conditions proposed in the written representation dated 17 May 2016 set out at Annex 4 to the report. The Panel was further advised that the Environmental Protection Team was content with the noise management plan which had been submitted by the Applicant.

The Panel listened carefully to the representations made by Mr R Collins and Mr Goode and by local residents Mrs Gregory, Ms Hoyle and Mr Stillwell who made particular reference to their concerns in respect of the proximity of residential properties to the proposed licensed premises.

The Panel was mindful of its obligations under Section 18(3) of the Licensing Act 2003, which stated that, having regard to the relevant representations, the Licensing Authority must take such of the steps set out in Section 18(4) (if any) as it considers appropriate for the promotion of the licensing objectives. The Panel had particular regard to the provisions of Chapter 9 of the amended guidance issued under Section 182 of the 2003 Act. Having had regard to the representations, both written and oral, and in accordance with the objectives contained within the Licensing Policy of Tonbridge and Malling Borough Council, the Licensing and Appeals Committee, sitting as a Panel

RESOLVED: That the Premises Licence be granted subject to the mandatory conditions as set out in the Licensing Act 2003, such conditions as are consistent with the operating schedule and to the following further conditions:-

Section J	Supply of alcohol – Monday until Sunday from 11:00 hours to 23:00 hours
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Conditions:

1. Signs will be clearly displayed at all exits requesting patrons leave the premises and area quietly;
2. Challenge 25 will operate at all times within the premises and sufficient signage will be displayed to ensure that patrons are aware;
3. All staff will have received training in the sale of alcohol including Challenge 25 and refusals. Records of all such training shall be kept and made available to Police, Local Authority or Trading Standards Officers upon request;
4. A refusals register will be kept detailing all refusals made for the sale of alcohol, this will include the date, time, reason for refusal and member of staff making refusal;
5. Bottle Bins will not be used between 20:00 hours and 08:00 hours;
6. No use of the area to the front of the premises by patrons at any time, save for entrance and exit to the premises, with signage to be used to advise patrons and Staff to monitor this;
7. No use of the side courtyard area at any time save for the purposes of smoking;
8. For events where the sale of alcohol is one of the primary activities one SIA registered doorman should be used at the main entrance;

9. Front doors and street facing windows to be closed at 20:00 hours;
and
10. Tonbridge and Malling Borough Council are to be notified in writing of planned events. Residents in the vicinity of the premises are also to be kept informed of planned events.

LA 16/36 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 10.56 am
having commenced at 9.30 am

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TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Thursday, 9th June, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs F A Kemp and Cllr H S Rogers

Together with representatives of the Licensing Authority, Ms S Hall (Barrister to the Applicant), Mrs D Martin (Designated Premises Supervisor) and Ms N Law (Controller Premises Licence, MRH Petroleum); and Mr A Townend, Mr M Morton and Mrs G Morton (Interested Parties)

PART 1 - PUBLIC

LA 16/37 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/38 APPLICATION FOR A VARIATION OF THE PREMISES LICENCE FOR MRH DITTON, 613 LONDON ROAD, DITTON

The Panel gave consideration to an application made by Malthurst Petroleum Limited for the Variation of a Premises Licence under Section 34 of the Licensing Act 2003 in respect of premises called MRH Ditton, 613 London Road, Ditton. The application related to a change of the licenced hours for the supply of alcohol for consumption off the premises.

The Panel gave careful consideration to the written report of the Director of Central Services and Monitoring Officer, the application set out at Annex 4 to the report, and the written representations received during the statutory consultation period (as set out at Annex 6 to the report). The Panel was advised that the representation from Kent Police had been withdrawn following the agreement of the Applicant to the conditions proposed in an email from PC John Brooker dated 6 June 2016. The Panel was further advised that the Environmental Protection Team had withdrawn its written representation following the agreement of the Applicant to condition 7 in the Kent Police conditions and clarification of the signage informing patrons not to sound car horns.

The Panel listened carefully to the representations made by the Applicant and by local residents Mr M Morton and Mr A Townend who made particular reference to their concerns in respect of the proximity of residential properties to the proposed licensed premises.

The Panel was mindful of its obligations under Section 18(3) of the Licensing Act 2003, which stated that, having regard to the relevant representations, the Licensing Authority must take such of the steps set out in Section 18(4) (if any) as it considers appropriate for the promotion of the licensing objectives. The Panel had particular regard to the provisions of Chapter 9 of the amended guidance issued under Section 182 of the 2003 Act. Having had regard to the representations, both written and oral, and in accordance with the objectives contained within the Licensing Policy of Tonbridge and Malling Borough Council, the Licensing and Appeals Committee, sitting as a Panel

RESOLVED: That the Premises Licence be granted subject to the mandatory conditions as set out in the Licensing Act 2003, such conditions as are consistent with the operating schedule accompanying the application and to the following further conditions:-

Variation

Section 13 of 17 of the online form	<p>Supply of Alcohol –</p> <p>From 00:00 hours until 24:00 hours (24 hours a day) every day of the week.</p>
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Existing licence

	<p>Late Night Refreshment –</p> <p>From 23:00 hours until 05:00 hours every day of the week</p>
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Conditions:

1. CCTV to be installed in and around the premises covering the internal and external areas accessed by customers;
2. Written notices and signs will be prominently displayed in all public areas informing customers that they are subject to recording by means of CCTV;
3. All CCTV cameras and recording equipment must be well maintained, kept in good working order and be subject to regular testing and inspection. Records of all testing and inspections must be maintained at the premises;
4. All images captured by CCTV must be of a continuous nature and be retained and stored securely for a minimum of 30 days;

5. CCTV images should be provided to Kent Police within a reasonable time period upon request when required for the purposes of investigation and detection of incidents or offences and to assist with the identification of person believed connected with offences;
6. Spirits will only be sold from behind the till area/point of sale;
7. Appropriate signs will be displayed within the shop and on the forecourt requesting customers respect the local residents by leaving the premises quietly;
8. Appropriate signs will be displayed within the shop and on the forecourt stating that the premises are licensed for off-sales only and consumption of alcohol is prohibited within the shop and on the forecourt;
9. Signage will be displayed within the premises to ensure customers are fully aware of the operation of Challenge 25;
10. Sufficient and suitable waste receptacles will be located on site; and
11. A written refusals book will be kept at the premises and all staff fully trained in its use as per the Challenge 25 policy. The following information will be recorded in this book:-
 - Time and Date of Refusal
 - Item refused
 - Name/Description of person refused sale
 - Reason for refusal
 - Name of staff member making refusal

A condition reference the use of a refusals log had been offered in the operating schedule and would be reproduced subject to the licence being granted as the applicant would prefer to maintain the wording offered in the application.

LA 16/39 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 2.07 pm
having commenced at 12.30 pm

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TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Thursday, 9th June, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs F A Kemp and Cllr H S Rogers

Together with representatives of the Licensing Authority, Mr S Thomas (Solicitor to the Applicant), Mrs N Chaussy (Applicant) and Mr R Mezes (Designated Premises Supervisor)

PART 1 - PUBLIC

LA 16/40 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/41 APPLICATION FOR A NEW PREMISES LICENCE FOR THE FARMHOUSE, 97 HIGH STREET, WEST MALLING

The Panel gave consideration to an application made by Heritage Taverns Limited for a Premises Licence under Section 17 of the Licensing Act 2003 in respect of premises known as "The Farmhouse" at 97 High Street, West Malling. The application related to the performance of live music; playing of recorded music; provision of late night refreshment and supply of alcohol.

The Panel gave careful consideration to the written report of the Director of Central Services and Monitoring Officer, the application set out at Annex 3 to the report, and the written representation received during the statutory consultation period (as set out at Annex 5 to the report). The Panel was advised that the representation from Kent Police had been withdrawn following the agreement of the Applicant to the conditions proposed in the written representation dated 17 May 2016 set out at Annex 4 to the report.

The Panel listened carefully to the representations made by Mr S Thomas, Solicitor, on behalf of the applicant, Mrs Chaussy (Owner) and Mr Mezes (Designated Premises Supervisor)

The Panel was mindful of its obligations under Section 18(3) of the Licensing Act 2003, which stated that, having regard to the relevant

representations, the Licensing Authority must take such of the steps set out in Section 18(4) (if any) as it considers appropriate for the promotion of the licensing objectives. The Panel had particular regard to the provisions of Chapter 9 of the amended guidance issued under Section 182 of the 2003 Act. Having had regard to the representations, both written and oral, and in accordance with the objectives contained within the Licensing Policy of Tonbridge and Malling Borough Council, the Licensing and Appeals Committee, sitting as a Panel

RESOLVED: That the Premises Licence be granted subject to the mandatory conditions as set out in the Licensing Act 2003, such conditions as are consistent with the operating schedule and to the following further conditions:-

Section e)	Performance of live music – Monday until Sunday from 08:00 hours until 24:00 hours (Midnight).
Section f)	Playing of recorded music – Monday until Sunday from 11:00 hours until 24:00 hours (Midnight).
Section g)	Performance of dance – Monday until Sunday from 11:00 hours until 24:00 hours.
Section i)	Late Night Refreshment – Monday until Sunday from 23:00 hours until 01:00 hours Non Standard times – New Year’s Eve – the end of permitted hours on NYE until the start of permitted hours on New Year’s Day.
Section j)	Supply of alcohol – Monday until Sunday from 08:00 hours until 23:30 hours.

Conditions:

1. No use of the rear outside area after 23:00 hours except for the purposes of smoking;
2. There will be no new admissions to any part of the premises after 23:00 hours on any day;
3. On Fridays 2 SIA door staff to be employed at the premises from 19:00 hours until half an hour after the close of the premises. One

- of whom shall have specific responsibility for the area at the rear of the premises;
4. On any Saturday during the period 1st May to 31st October in any given year, 2 SIA door staff to be employed at the premises from 19:00 hours until half an hour after the close of the premises. One of whom shall have specific responsibility for the area at the rear of the premises;
 5. On New Year's Eve 2 SIA door staff shall be employed at the premises from 19:00 hours until half an hour after the close of the premises. One of whom shall have specific responsibility for the area at the rear of the premises;
 6. In addition to the SIA requirements at conditions 3, 4 and 5 above, on Fridays when the function room is not used for seated functions only, or functions where food and incidental music is provided then one member of SIA door staff will be required to supervise the function room and a person who has passed their personal licence holders exams will be required to supervise the function throughout the period the function takes place at the premises;
 7. There will be a person who has passed their personal licence holders exams on duty at the premises at all times that licensable activities are taking place;
 8. There will be a member of staff present at the premises during trading hours who is able to download CCTV images at the request of the Police;
 9. CCTV to be fitted to a standard agreed by the Police that complies with the CCTV Code of Practice (Latest Edition), produced by the Information Commissioners Office, with all public areas, including all access and egress points covered;
 10. The CCTV system shall be maintained and serviced on a regular basis and records kept to that effect;
 11. The CCTV shall be operational at all times that the premises are open for trading;
 12. CCTV images shall be retained for a period of at least one calendar month by whatever means the licence holder deems appropriate;
 13. Challenge 25 will be in operation at the premises with sufficient signage to ensure that patrons are aware;

14. All staff will be trained in relation to the sale of alcohol including Challenge 25 and refusal of sales for any reason. Records of such training should be completed and produced to Police, Local Authority or Trading Standards Officers;
15. A register of any refusals should be maintained at the premises. This should record, as a minimum, Date, time, reason for refusal and staff member making refusal;
16. All members of staff will be aware of all licensing conditions appertaining to this premises licence;
17. All doors and windows to be closed after 23:00 hours; and
18. The Cocktail Bar shall cease sale of alcohol at 23:00 hours, and close at 23:30 hours.

LA 16/42 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 3.40 pm
having commenced at 3.00 pm

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 10th June, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs P A Bates and Cllr M Taylor

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 16/43 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/44 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/45 APPLICATION FOR A DUAL HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER'S LICENCE - CASE NO 12/2016

(Reason: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding an application for a Dual Hackney Carriage and Private Hire Driver's Licence following the receipt of information from the Disclosure and Barring Service (DBS).

The Panel listened carefully to the information provided by the Applicant, had due regard to the evidence he provided regarding a Caution he had received on 9 January 2014 for an offence of common assault by beating. The Panel had regard to the report of the Director of Central Services and to the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Licensing Policy and made the following findings:-

1. The Panel noted that the Applicant had accepted a simple caution for an offence of common assault by beating on 9 January 2014. The Panel did not find the Applicant's explanation of the facts surrounding the caution to be particularly convincing.
2. The Applicant said that he had not assaulted the complainant but had still accepted the caution in order to avoid publicity. He further stated that the alleged victim of the alleged assault was the subject of a restraining order (an injunction) as a result of making suggestive remarks to his wife and threatening his children and had been convicted himself of assault on two teenagers in 2012 (this was confirmed by a newspaper report).
3. The Panel was advised that the Police could not administer a simple caution unless the defendant admitted his guilt.
4. Under paragraph 12.3.2 (iii) of the Council's Licensing Policy it stated that an application would normally be refused where the Applicant has a conviction for an offence of common assault and under paragraph 12.12.1 the Policy stated that formal cautions shall be treated as though they were convictions and must be disclosed.
5. In addition, the Applicant had failed to disclose his caution to the Licensing Authority immediately as required by paragraph 5.6.5 of the Policy.
6. The Applicant had also failed to disclose his caution on his renewal application form.

For these reasons the Panel therefore

RESOLVED: That the application for a Dual Hackney Carriage and Private Hire Driver's Licence be refused for "any other reasonable cause" under Section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976.

The meeting ended at 10.20 am
having commenced at 9.30 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 10th June, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs P A Bates and Cllr M Taylor

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 16/46 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/47 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/48 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER'S LICENCE - CASE NO 11/2016

(Reason: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding an application for a Probationary Private Hire Driver's Licence following receipt of information from the Driver and Vehicle Licensing Authority (DVLA).

The Panel noted that the Applicant had requested an adjournment of the consideration of his application as he was on holiday and had only received notification of the Hearing 7 to 10 days prior to the date of meeting. The Panel noted that, while it would have been helpful if the Applicant had provided documentary proof to show that he was on holiday and unable to attend, the application was for a Probationary Private Hire Driver's Licence and there would be no risk to the public's

safety by adjourning the hearing to allow the Applicant to attend another hearing and put forward his case.

For these reasons the Panel therefore

RESOLVED: That the Applicant's request for an adjournment be AGREED.

The meeting ended at 10.35 am
having commenced at 10.30 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 10th June, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs P A Bates and
Cllr M Taylor

Together with representatives of the Licensing Authority.

PART 1 - PUBLIC

LA 16/49 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/50 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

**DECISIONS TAKEN UNDER DELEGATED POWERS IN
ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE
CONSTITUTION**

**LA 16/51 APPLICATION FOR A DUAL HACKNEY CARRIAGE AND PRIVATE
HIRE DRIVER'S LICENCE - CASE NO 9/2016**

**(Reason: LGA 1972 Sch 12A Paragraph 1 – Information relating to
an individual)**

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding an application for a Dual Private Hire and Hackney Carriage Driver's Licence.

The Panel was advised that the Applicant had appeared before a Licensing Hearing on 18 February 2015 after he had undertaken school contracts with young and vulnerable persons using an unlicensed private hire vehicle. That Panel had resolved that there was reasonable cause to revoke his Dual Private Hire and Hackney Carriage Driver's Licence. The Applicant had appealed to Sevenoaks Magistrates Court where the appeal was held on 29 May 2015. The Appeal was dismissed by the Magistrates.

The Panel listened carefully to the information provided by the Applicant, had regard to the report of the Director of Central Services and made the following findings:-

1. The Panel decided to grant the application for a Dual Hackney Carriage and Private Hire Driver's Licence under s.51 and s.59 of the local Government (Miscellaneous Provisions) Act 1976 on the basis that the Applicant was a fit and proper person to hold the licence. The Panel noted that the Applicant had previously had his licence revoked on 18 February 2015 for using an unlicensed hire car on two days, Monday 24 and Tuesday 25 November 2014, to carry out five school runs.
2. The Applicant's appeal against that decision was dismissed by Sevenoaks Magistrates Court on 29 May 2016. The Applicant told the Panel that he had panicked when he could not find a driver to cover for him. He acknowledged that he had made a conscious decision not to contact the Council and ask for a temporary plate and had regretted his decision. He told the Panel that as soon as he had been caught by Kent County Council he went to see the Licensing Manager.
3. The Panel noted that paragraph 11.8.7 of the Council's Policy stated that a further application would not normally be considered for two years from the date of revocation. In this case the Panel felt that the Applicant had shown genuine remorse for his mistake and had learnt his lesson. The Panel felt that it could deviate from the Policy and that the public could be protected by the granting of this application for six months subject to conditions.

For these reasons the Panel therefore

RESOLVED: That the licence be granted for six months and a condition be imposed that the Applicant meet with a representative of the Licensing Team every month to ensure that there are no problems and that he was complying with all the terms of the Borough Council's Hackney Carriage and Private Hire Licensing Policy.

The meeting ended at 12.15 pm
having commenced at 11.30 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 10th June, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs P A Bates and Cllr M Taylor

Together with representatives of the Licensing Authority.

PART 1 - PUBLIC

LA 16/52 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/53 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/54 APPLICATION FOR RENEWAL OF A PRIVATE HIRE DRIVER'S LICENCE - CASE NO 10/2016

(Reason: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding an application for the renewal of a Private Hire Driver's licence following the receipt of information from the Disclosure and Barring Service (DBS).

The Panel listened carefully to the information provided by the Applicant, had due regard to the report of the Director of Central Services and to the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Policy and made the following findings:-

1. The Panel noted that the Applicant had been convicted of two offences of failing to stop and failing to report an accident contrary

to s.170(4) of the Road Traffic Act 1988. The panel accepted that the fines imposed were at the bottom end of the scale and that the Applicant had not been required to pay any compensation.

2. The Panel noted that the Applicant had been a driver for 14 years. The Panel was pleased to note that the Applicant had disclosed her convictions on her application form although she had not immediately (i.e. within 72 hours) notified the licensing authority of them.
3. In the circumstances the Panel felt that the Applicant posed no risk to the public, was a fit and proper person and therefore, was prepared to renew the licence.

For these reasons the Panel, therefore,

RESOLVED: That the application for the renewal of the Private Hire Driver's Licence be GRANTED under s.51 of the Local Government (Miscellaneous Provisions) Act 1976 on the basis that the Applicant was a fit and proper person to hold the licence.

The meeting ended at 1.05 pm
having commenced at 12.30 pm

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Monday, 18th July, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr O C Baldock and
Cllr H S Rogers

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 16/55 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/56 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

**DECISIONS TAKEN UNDER DELEGATED POWERS IN
ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE
CONSTITUTION**

**LA 16/57 DUAL HACKNEY CARRIAGE AND PRIVATE HIRE LICENCE
(CASE NO 013/2016)**

**(Reason: LGA 1972 Sch 12A Paragraph 1 - Information relating to
an individual)**

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding a formal complaint received from a member of the public about the holder of a Dual Hackney Carriage and Private Hire Licence (15/00234/DUALDL) following an incident during a journey from Waterloo Road (Station taxi rank) to the home address of the complainant. The complainant alleged that the Driver had shouted and become very aggressive when asked to provide a receipt and had driven the complainant back to Waterloo Road while the latter was talking to a 999 Police Operator on his mobile 'phone.

The Panel listened carefully to the information provided by the Licence Holder, who was supported by his legal adviser at the Hearing. A

representative of Kent Police also attended in order to present details of a 999 police operator call made at the time of the incident which was alleged to have taken place on Tuesday 5 July at approximately 23.45 hours. The Panel had regard to the report of the Director of Central Services and to the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Licensing Policy and made the following findings:-

1. The Panel made reference to the key pieces of evidence, read through the transcript of the formal interview undertaken with the Licensed Driver, heard a contemporaneous recording of a 999 call made by the passenger in the taxi (the complainant) and heard in person from the Licensed Driver.
2. The Panel was very concerned at the behaviour of the licence holder in his role as a licensed taxi driver.
3. It was clear from the 999 call that the Driver had been asked to stop to allow the passenger out, which he then refused to do. It was also clear that the passenger perceived that the Driver drove too fast and it was apparent from his subsequent email to Licensing Services that he had been frightened by the experience and was concerned for his own safety.
4. It was apparent from the Driver's evidence before the Panel that he did not believe that he was at fault and he had not sought to apologise for his behaviour. Furthermore, it was apparent that the Driver, despite being asked four times to show identification, had refused to provide this to the passenger. The Driver confirmed that he was not wearing his badge, which was a legal requirement.
5. The Panel was unconvinced by the evidence given by the Driver during the Hearing.

For these reasons the Panel therefore

RESOLVED: That the Dual Hackney Carriage and Private Hire Driver's Licence (numbered 15/00234/DUALDL) be revoked.

The meeting ended at 11.05 am
having commenced at 9.30 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Wednesday, 27th July, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs P A Bates and Cllr R V Roud

Councillor Mrs S M Barker was also present pursuant to Council Procedure Rule No 15.21.

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 16/58 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/59 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/60 APPLICATION FOR PROBATIONARY PRIVATE HIRE LICENCE (CASE NO 11/2016)

(Reason: LGA 1972 Sch 12A Paragraph 1 - Information relating to an individual)

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding an application for a Probationary Private Hire Driver's Licence following receipt of information from the Driver and Vehicle Licensing Authority (DVLA) regarding the use of a mobile 'phone while driving and of exceeding the statutory speed limit on a public road.

The Panel listened carefully to the information provided by the Applicant, had due regard to the report of the Director of Central Services and to

the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Policy and made the following findings:-

1. The Panel noted the relevant provisions of the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Licensing Policy.
2. The Panel considered the Policy, and in particular to paragraph 12.7.2 which stated that where an applicant had more than one conviction for this type of offence within the last 6 months, an application would normally be refused.
3. The Panel noted that the most recent offence was over 6 months old. However, the Panel remained concerned at the frequency of similar offences with a short period.
4. Additionally, in relation to the mobile 'phone offence, whilst the Panel accepted the explanation given, it remained concerned that the circumstances demonstrated a lack of due attention which would be essential for a professional driver.

For these reasons the Panel therefore

RESOLVED: That the application for a Probationary Private Hire Driver's Licence be REFUSED.

The meeting ended at 10.10 am
having commenced at 9.30 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Wednesday, 27th July, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs P A Bates and Cllr R V Roud

Councillor Mrs S M Barker was also present pursuant to Council Procedure Rule No 15.21.

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 16/61 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/62 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/63 APPLICATION FOR PROBATIONARY PRIVATE HIRE LICENCE (CASE NO 14/2016)

(Reason: LGA 1972 Sch 12A Paragraph 1 - Information relating to an individual)

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding an application for a Probationary Private Hire Driver's Licence following receipt of information from the Disclosure and Barring Service (DBS).

The Panel noted that the Applicant had requested an adjournment of the consideration of his application as he was on holiday. The Panel noted that the application was for a probationary licence and that there would be no risk to the public's safety by adjourning the hearing to allow the Applicant to attend another hearing and put forward his case.

For these reasons the Panel therefore

RESOLVED: That the Applicant's request for an adjournment be AGREED.

The meeting ended at 10.31 am
having commenced at 10.30 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Wednesday, 27th July, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs P A Bates and Cllr R V Roud

Councillor Mrs S M Barker was also present pursuant to Council Procedure Rule No 15.21.

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 16/64 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/65 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/66 APPLICATION FOR DUAL HACKNEY CARRIAGE AND PRIVATE HIRE DRIVING LICENCE (CASE NO 15/2016)

(Reason: LGA 1972 Sch 12A Paragraph 1 - Information relating to an individual)

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding an application for a Dual Hackney Carriage and Private Hire Driver's Licence following the receipt of information from the Disclosure and Barring Service (DBS).

The Panel listened carefully to the information provided by the Applicant, had due regard to the report of the Director of Central Services and to the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Policy and made the following findings:-

1. The Panel noted the relevant provisions of the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Licensing Policy.
2. The Panel considered this as a serious offence for which the Applicant was convicted just over three years ago to a five year custodial sentence.
3. The Panel considered the Policy and, in particular, the reference to offences involving dishonesty. It noted that, under the Policy (paragraphs 12.2.3 and 12.2.4 of Appendix D), an application submitted within 4 years of conviction for such an offence would normally result in a refusal. Where an application is submitted between 4 and 5 years after conviction, more weight would be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

For these reasons the Panel therefore

RESOLVED: The application for a Dual Hackney Carriage and Private Hire Driver's Licence be REFUSED.

The meeting ended at 12.15 pm
having commenced at 11.30 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 26th August, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs P A Bates and Cllr O C Baldock

Councillor Mrs S M Barker was also present pursuant to Council Procedure Rule No 15.21.

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 16/67 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/68 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/69 APPLICATION FOR A PROBATIONARY PRIVATE HIRE LICENCE (CASE NO 14/2016)

(Reason: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding an application for a Probationary Private Hire Driver's Licence following receipt of information from the Disclosure and Barring Service (DBS).

The Panel listened carefully to the information provided by the Applicant, had due regard to the report of the Director of Central Services and to the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Policy and made the following findings:-

1. While the Panel noted that the Applicant had disclosed the receipt of a Caution for Common Assault on 25 July 2013 on his application it was concerned that the Applicant had resorted to physical means to resolve a conflict rather than waiting for the Police to attend.
2. The Panel was impressed by the level of support and guidance given by the Applicant's father, the fact that the Applicant had been successful in procurement of employment which involved driving a company vehicle and that the Applicant had not come to the attention of the authorities for any other reason.

For these reasons the Panel therefore

RESOLVED: That the application for a Probationary Private Hire Driver's Licence under s.51 of the Local Government (Miscellaneous Provisions) Act 1976 be GRANTED on the basis that the Applicant was a fit and proper person to hold the licence.

The meeting ended at 10.30 am
having commenced at 10.00 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 26th August, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs P A Bates and Cllr O C Baldock

Councillor Mrs S M Barker was also present pursuant to Council Procedure Rule No 15.21.

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 16/70 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/71 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/72 APPLICATION FOR A PROBATIONARY PRIVATE HIRE LICENCE (CASE NO 17/2016)

(Reason: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding an application for a Probationary Private Hire Driver's Licence following receipt of information from the Disclosure and Barring Service (DBS) that the Applicant had received a conviction on 19 September 2013 for Battery.

The Panel listened carefully to the information provided by the Applicant, had due regard to the report of the Director of Central Services and to the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Policy and made the following findings:-

1. The Panel noted that the Applicant had made a conscious decision to declare on his questionnaire that he had no convictions for assault or any other offence.
2. The Applicant had a conviction dated 19 September 2013 for Battery under s.39 of the Criminal Justice Act 1988.
3. The Panel considered the Policy, and in particular to paragraph 12.3.1 which stated that where the Applicant has a conviction for assault within the last 4 years, an application would normally be refused.
4. The Panel did not hear any mitigating circumstances from the Applicant or any reasons to encourage them to deviate from the Policy.

For these reasons the Panel therefore

RESOLVED: That the application for a Probationary Private Hire Driver's Licence under s 51 of the Local Government (Miscellaneous Provisions) Act 1976 be REFUSED on the basis that the Applicant was not a fit and proper person to hold the licence.

The meeting ended at 11.25 am
having commenced at 10.45 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 26th August, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs P A Bates and Cllr O C Baldock

Councillor Mrs S M Barker was also present pursuant to Council Procedure Rule No 15.21.

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 16/73 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/74 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/75 APPLICATION FOR RENEWAL OF A PRIVATE HIRE DRIVER'S LICENCE (CASE NO 18/2016)

(Reason: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

The Panel was asked to consider whether an application for the renewal of a Private Hire Driver's Licence should be granted following the receipt of information from the Disclosure and Barring Service (DBS). The Applicant was contacted via mobile 'phone as he had failed to arrive prior to the start of the meeting and he confirmed that he had received the agenda papers but had forgotten about the Hearing. The Panel listened very carefully to the Driver's request that the Hearing be adjourned to allow him to attend and his confirmation that he was happy for the application to be considered in his absence.

The Hearing took place in the Driver's absence and the Panel had regard to the report of the Director of Central Services and Monitoring Officer. The Panel made the following findings:-

1. The Panel refused the request for an adjournment as it was not convinced by the reason given by the Applicant.
2. The applicant had failed to declare on his renewal application form the conviction in 2014 under the Theft Act 1968 s.1(1) for Theft (By Employee) on 11 November 2013.
3. The Panel considered the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Policy and the provision which stated that an application would normally be refused following a conviction for dishonesty.

For these reasons the Panel therefore

RESOLVED: That the application for the renewal of a Private Hire Driver's Licence under s.61(1)(a)(i) of the Local Government (Miscellaneous Provisions) Act 1976 be REFUSED on the basis that the Applicant was not a fit and proper person to hold the licence.

The meeting ended at 12.00 pm
having commenced at 11.30 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 26th August, 2016

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs P A Bates and Cllr O C Baldock

Councillor Mrs S M Barker was also present pursuant to Council Procedure Rule No 15.21.

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 16/76 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 16/77 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 16/78 APPLICATION FOR A PROBATIONARY PRIVATE HIRE LICENCE - CASE NO 19/2016

(Reason: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding an application for a Probationary Private Hire Driver's Licence following receipt of information from the Disclosure and Barring Service (DBS).

The Panel listened carefully to the information provided by the Applicant, had due regard to the report of the Director of Central Services and Monitoring Officer and made the following findings:-

1. The Panel noted that the Applicant was waiting for his Residence Card to be sent through from the Home Office. The Panel was shown a letter dated 5 December 2015 which indicated that this process normally took six months.

For these reasons the Panel therefore

RESOLVED: That the Hearing be postponed until the Applicant has received his Residence Card.

The meeting ended at 12.55 pm
having commenced at 12.45 pm

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

10 October 2016

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Delegated

1 SEX ESTABLISHMENTS AND SEXUAL ENTERTAINMENT VENUES – POLICY FOR 2017 - 2020

1.1 Background

1.1.1 The current Policy on Licensing Sex Shops, Sex Cinemas and Sexual Entertainment Venues was published in 2013 and has a life span of three years.

1.1.2 Tonbridge & Malling Borough Council currently has one licensed Sex Shop called Vibez, trading in Aylesford. There are no sexual entertainment venues currently operating within the Borough, the one previous establishment (the Harp, East Peckham) having been refused a licence under the existing policy in 2013.

1.1.3 Since November 2005, the Licensing Act 2003 has required a wide range of regulated entertainment to be licensed by the Council acting as the Licensing Authority. This includes live and recorded music as well as dancing and dance performances.

1.1.4 Members will be familiar with the restrictions in the 2003 Act, which mean that any representation against a Premises licence and Club Premises Certificate can only be based on the four licensing objectives namely:

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

Whilst licences can be subject to review procedures, they otherwise continue in force for the life of the business concerned

1.1.5 Sex shops and sex cinemas, in contrast, are licensed under the Local Government (Miscellaneous Provisions) Act 1982. This regime gives the Licensing Authority a wider discretion in determining whether to grant or refuse licences (including the statutory grounds for refusal), a power to set a limit on the number of premises that may be suitable for a particular locality, greater flexibility

on applying licence conditions and the ability to accept representations from a wider scope of the community. Sex shop licences are only valid for a year at a time, meaning there is scope for regular review.

- 1.1.6 These concerns were addressed by amending Schedule 3 to the 1982 Act through Section 27 of the Policing and Crime Act 2009. A new class of licensed sex establishment – Sexual Entertainment Venues – was created which required lap dancing venues and similar premises to be licensed under the more flexible 1982 Act rather than under the Licensing Act 2003.
- 1.1.7 In 2011 Tonbridge and Malling Borough Council consulted local residents and businesses on whether the Council should adopt the new powers to regulate sexual entertainment venues contained in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.
- 1.1.8 The overwhelming view of respondents was that the Council should adopt the new provisions. Accordingly, on 23 February 2012 Council resolved to adopt the sexual entertainment licensing provisions contained in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. These adopted provisions came into effect on 1 June 2012.
- 1.1.9 The decision to adopt the new provision only related to relevant adult entertainment. Any other licensable activity at a venue such as alcohol sales and late night refreshment remains licensable under the Licensing Act 2003.
- 1.1.10 The provisions of Schedule 3 to the 1982 Act allow -
- Local people to oppose an application for a sexual entertainment venue if they have legitimate concerns that it would be inappropriate given the character of an area, for example, if the area was primarily a residential area. An objection cannot however be made on purely moral or religious grounds.
 - Local authorities to decide whether or not to set a limit on the number of sex establishments of a particular type in a locality, as well as the number of sex establishment generally. The limit for a particular locality may be set as nil, but it is however unlikely that a local authority could set the limit as nil for the whole of its area without running the risk of judicial review.

1.2 Development of the Statement of Licensing Policy

- 1.2.1 The Tonbridge and Malling Borough Council's Statement of Licensing Policy was developed in close conjunction with the other local authorities in Kent. This was achieved via the mechanism of the Kent and Medway Regulatory Licensing Steering Group.

- 1.2.2 The current policy has been developed taking full account of the requirements of the legislation and guidance so as to minimise the prospect of future judicial review.
- 1.2.3 The aim of the joint working group was to promote consistency to the benefit of Licensees, potential licensees, businesses, residents and to regulatory agencies such as the police.
- 1.2.4 The policy is attached as **Appendix A** to this report. Members will note that the policy includes a Model Pool of Conditions (**Appendix B**) which, whilst not exhaustive, will, it is hoped, guide both applicants and the public regarding what would generally be expected from anyone seeking a sex establishment licence from this authority.
- 1.2.5 The policy provides that each application will be judged on its own merits but taking into account the various criteria laid out within the policy document. In this way each application will be considered as to whether it is suitable given the nature of the particular locality in question.

Consultation timetable

- 1.2.6 The proposed timetable for consultation in respect of the policy is:
- Licensing and Appeals Committee – 10th October 2016
 - Public Consultation – 14th October 2016 until 31 January 2017
 - Licensing and Appeals Committee 14th February 2017
 - Full Council – 11th April 2017
 - New policy comes into force – 15th April 2017
- 1.2.7 In the meantime, it is recommended that the existing policy remains in force.

1.3 Legal Implications

- 1.3.1 There is no statutory requirement to have a licensing policy for sex establishments. However, it is considered best practice and also a modern, effective policy document will ensure that the trade and public alike will have a document that fully explains the elements of the regulatory process. This will include the principles to be applied when considering applications for sex establishments, the application process itself and the grounds for objection, refusal, the hearings procedure and the grounds for appeal.
- 1.3.2 Any criteria applicable to applications for sex establishments must meet the requirements of the Provision of Services Regulations 2009. It is considered that the draft policy complies with these regulations.

1.4 Financial and Value for Money Considerations

- 1.4.1 There are no statutory fees for sex establishments or sexual entertainment venues. The level of fee is therefore at the discretion of the Licensing Authority, subject of course to the general principle that the income generated should not exceed the costs of providing the service.
- 1.4.2 The current licence fee for a sexual entertainment venue is £2,000.

1.5 Risk Assessment

- 1.5.1 The introduction of a policy should provide a transparent and consistent basis for decision making. This in turn should reduce the risks of decisions being challenged in the Courts.

1.6 Equality Impact Assessment

- 1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.7 Recommendations

- 1.7.1 Members are **RECOMMENDED**:

- 1) To approve the draft policy at Appendix A (and model pool of conditions at Appendix B) for consultation as set out at paragraph 1.2.6
- 2) To agree that the existing version of the policy be re-adopted until the coming into force of the new policy for 2017-2020 in April 2017.

Background papers:

contact: Anthony Garnett

Nil

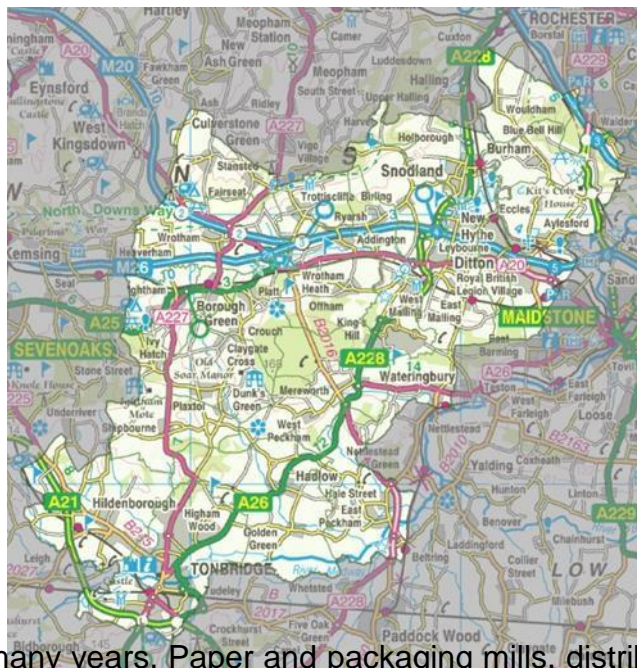
Adrian Stanfield
Director of Central Services and Monitoring Officer

Draft

Tonbridge & Malling Borough Council's Policy on
Licensing Sex Shops, Sex Cinemas and Sexual
Entertainment Venues
2017 - 2020

1. **Introduction**

- 1.1. Tonbridge and Malling Borough Council lies in the heart of Kent and is an area of variety and historical interest. The Council is made up of 54 borough councillors (members) representing the 26 wards in the borough.



The borough of Tonbridge and Malling lies in the heart of Kent and is an area of variety and historical interest. The borough is largely rural with few large settlements; Tonbridge in the south being the largest. The remainder of the borough is dotted with villages and smaller towns.

Industry and commerce are concentrated around Tonbridge, Aylesford, Ditton, Larkfield and Snodland. Mineral extraction has been carried out in the area for many years. Paper and packaging mills, distribution, general and light industry and many small businesses make up the industrial scene. The borough is a popular area for office location and high tech development, particularly at the Kings Hill business and residential community

2. Overview

- 2.1. Tonbridge and Malling Borough Council consulted local residents and businesses on whether the Council should adopt the new powers to regulate sexual entertainment venues contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') between the 1 September 2011 and 14 October 2011.
- 2.2. The overwhelming view expressed by respondents was that the Borough Council should adopt the new provisions. Accordingly, the sexual entertainment licensing provisions contained in the 1982 Act were adopted at Full Council on Thursday 23 February 2012. These provisions came into effect on 1 July 2012.
- 2.3. Premises for which a sexual entertainment venue licence is required or held (or for which the requirement has been waived under paragraph 7 of Schedule 3 to the

1982 Act do not also require a premises licence, club premises certificate or temporary event notice in order to provide relevant entertainment. This is because such entertainment is expressly excluded from the definition of regulated entertainment found in the Licensing Act 2003. However, if the premises also carries on other licensable activities (e.g. the sale of alcohol or the provision of regulated entertainment then this is not a provision of relevant entertainment), they will nevertheless continue to require a premises licence, club premises certificate or temporary events notice under the Licensing Act 2003 for those other activities, subject to any exceptions contained in that Act.

- 2.4. In practice this will mean that the vast majority of lap dancing clubs and similar venues will require both a sexual entertainment venue licence for the provision of relevant entertainment and a premises licence or club premises certificate for the sale of alcohol or provision of other types of regulated entertainment not covered by the definition of relevant entertainment.
- 2.5. Live music or the playing of recorded music which is integral to the provision of relevant entertainment, such as lap dancing, for which a sexual entertainment licence is required, is specifically excluded from the definition of regulated entertainment in the Licensing Act 2003. Therefore, a sexual entertainment venue will not require a premises licence or club premises certificate just because it plays recorded music for a performer to dance nor will providing entertainment facilities for the purposes of the provisions of relevant entertainment be regulated entertainment under the Licensing Act 2003.

3. Policy

3.1. The purpose of this policy is to:

- Set out the expectations of Tonbridge and Malling Borough Council in relation to the licensing of sexual entertainment venues, sex shops and sex cinemas
- The process for making an application
- The process the Council will follow in considering and determining an application.
- Assist any persons making representations in respect of an application to make a properly directed and evidenced representation.

3.2. Notwithstanding this policy, each application will be assessed on its individual merit. Whilst this policy will set out the broad scope of the Council's expectations, it should not be seen as restricting or predetermining the outcome of any application or representation in respect of the licensing of any premises.

4. Definitions

4.1. For the purpose of this policy the following definitions (as set out in the 1982 Act) will apply:-

4.2. Sex Shop

Any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles (anything for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity) or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.

4.3. Sex Cinema

Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced which are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage sexual activity, acts of force or restraint which are associated with sexual activity or are concerned primarily with the portrayal of or primarily deal with or relate to, genital organs or urinary or excretory functions but does not include a dwelling to which the public is not admitted.

4.4. Sexual Entertainment Venue

Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

5. Relevant Entertainment

- 5.1. Any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).
- 5.2. The following forms of entertainment will therefore fall within the definition of 'regulated entertainment',:-
- Lap Dancing
 - Pole Dancing
 - Table Dancing
 - Strip Shows
 - Peep Shows
 - Live Sex Shows
- 5.3. However, this list is not exhaustive and Tonbridge and Malling Borough Council will judge each case on its merits. Decisions will be based on the content of the entertainment provided and not the name given to it.

6. Exemptions from being a sexual entertainment venue

- 6.1. The following are not sexual entertainment venues for the purposes of this policy:-
- (a) sex cinemas and sex shops
 - (b) premises at which the provision of relevant entertainment is such that, at the time in question and including any relevant entertainment which is being so provided at that time
 - (i) there have not been more than eleven occasions on which relevant entertainment has been provided which fall (wholly or partly) with the period of 12 months ending with that time
 - (ii) no such occasions has lasted for more than 24 hours and
 - (iii) no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasions falls within the 12 month period mentioned in subparagraph (i)).
- 6.2. Premises which fall under this exemption created for infrequent entertainment do not require a sexual entertainment licence but will instead need an appropriate authorisation under the Licensing Act 2003. For example, to cover the performance of dance.

- 6.3. Operators are encouraged to maintain written records of any relevant entertainment that falls within the exemption. This will enable the Licensing Authority to verify whether the venue falls within the permitted exemption.
- 6.4. Any records should contain information of the date, times of the event and those persons who have participated in the relevant entertainment, which includes performers, security, management and bar staff. If tickets are sold then details should be recorded of the number of tickets sold at each event.

7. Nudity

- 7.1. Schedule 3 of the 1982 Act sets out the definition of a display of nudity:
- In the case of a woman, it means exposure of her nipples, pubic area, genitals or anus and
 - in the case of a man it means exposure of his pubic area, genitals or anus

8. Spontaneous Entertainment

- 8.1. Where activities that would otherwise be considered to involve the provision of relevant entertainment take place, but are not provided for the financial gain of the organiser or entertainer, such as a spontaneous display of nudity or a lap dance by a customer or guest, the premises will not be considered a sexual entertainment venue by virtue of those circumstances alone. This is because the relevant entertainment must be provided for the financial gain of the organiser or entertainer. However, it should be noted that an organiser might be considered to have provided the entertainment where he has permitted the activity to take place, whether expressly or impliedly.

9. The Organiser

- 9.1. Any person who is responsible for the organisation or management of the relevant entertainment at a premises at which relevant entertainment is provided. In most circumstances, this will refer to the manager of the premises, but could also refer to someone who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.
- 9.2. The organiser must be someone who is in a position of responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment. It is only necessary for one person to hold a sexual entertainment venue licence for premises, even if there is more than one person who is responsible for the organisation or management of the relevant entertainment or the premises.

10. Planning

- 10.1. Applicants are encouraged to ensure that the proposed activity will constitute a lawful planning use and the hours sought do not exceed those authorised by any planning permission. Where the hours authorised by the relevant planning permission are different to the licensing hours for those premises, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to enforcement action under planning law.
- 10.2. Failure to obtain planning permission (where required) is not a ground for refusal of the grant of an application under the 1982 Act and such a failure to obtain planning permission will be dealt with as part of the planning process.
- 10.3. The Borough Council will not normally consider planning matters such as 'need' in determining a licence application as this is more appropriately dealt with by the planning process.

11. European Convention on Human Rights

- 11.1. The Human Rights Act 1998 incorporates the European Convention on Human Rights (ECHR) and makes it unlawful for a local authority to act in a way which is incompatible with a convention right. The Council will have regard to the Human Rights Act when exercising its licensing functions, with particular reference to the following relevant provisions of the European Convention on Human Rights.

Article 6 – in the determination of civil rights and obligations every person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law

Article 10 – freedom of expression

Article 1 of the First Protocol – every person is entitled to the peaceful enjoyment of his or her possessions

12. Locality, Character and Layout

- 12.1. Paragraphs 12 (3) (c) and 12 (3) (d) of Schedule 3 allow appropriate authorities to refuse applications on grounds related to an assessment of the relevant locality. A licence can be refused if either, at the time the application is determined the number of sex establishments or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made.

12.2. Schedule 3 to the 1982 Act defines 'relevant locality' as follows:

- In relation to premises the locality where they are situated
- In relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

12.3. Once the Borough Council has determined the relevant locality, it will seek to make an assessment of the 'character' of the relevant locality and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality. The Council may consider a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

12.4. The Borough Council has determined not to set specific relevant localities in respect of each type of sex establishment, instead judging each application it receives on its own individual merits.

12.5. In licensing of sexual entertainment venues the Borough Council will consider the impact of such premises and their operation on the vicinity. This will include:

- The likely effects of any increased footfall or vehicular traffic
- Any advertising or displays of an erotic or pseudo-erotic nature
- The type of location (residential, commercial, industrial)
- The vicinity of establishments whose patrons are likely to be effected by the operation of the premises
- The proximity of residential premises, including any sheltered housing and accommodation for vulnerable people
- The proximity of educational establishments to the premises
- The proximity of places of worship to the premises
- Access routes to and from schools, play areas, nurseries, children's centres or similar premises in proximity to the premises
- The proximity to shopping centres
- The proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs (this list is not exhaustive)
- The proximity to historic buildings and tourist attractions
- Localities where the cumulative impact of the venue, taken with other licensed premises or commercial interests, is likely to have an adverse effect on crime and disorder and public nuisance
- The nature and concerns of any objections received from residents or businesses
- Any evidence of complaints about noise and/or disturbance caused by the premises
- The proximity of other sex establishments

- 12.6. When considering an application for the grant, renewal, variation or transfer of a licence the Council will also take into account the following
- The type of activity to which the application relates
 - The duration of the proposed licence
 - The days and hours of operation of the activity
 - The layout and condition of the premises
 - The use to which other premises in the vicinity are put
 - The levels of crime and disorder in the area.
- 12.7. Sex establishments should not be functionally visible to passers by on retail thoroughfares or pedestrian routes. In more sensitive locations applicants should consider whether it would be appropriate to locate such premises at basement level or locate entrances away from retail thoroughfares or busy pedestrian routes.

13. Waivers

- 13.1. The Borough Council may waive the need for a sex entertainment venue licence under certain circumstances.
- 13.2. An applicant can apply for a waiver either as part of the application for a licence or separately. The Borough Council may grant a waiver if they consider that to require a licence would be unreasonable or inappropriate. . The waiver may last for such a period that the Borough Council think fit, but can be terminated by the Council at any time with 28 days notice.
- 13.3 The Borough Council will consider waiver applications on an individual basis.

14. Application Process

- 14.1. The Borough Council may impose restrictions on the licence or to place conditions on the licence. Where such restrictions or conditions are applied, the Borough Council will ensure that they are necessary, reasonable and proportionate to achieve the objectives of any primary legislation, in particular the 1982 Act and any subsequent, relevant legislation.
- 14.2. The Borough Council will consider
- The locality, character and layout of the premises including access
 - The times of operation
 - The suitability of the applicant
 - The cumulative impact of the premises when taken together with other licensed premises in the locality.
 - The management procedure in place to ensure the premises is operated in a way conducive to the area.

The above list is not exclusive, and the Borough Council may consider other factors where relevant to the particular application

- 14.3. Applications for licences for sex shops, sex cinemas and sex entertainment venues must be made on the prescribed form and accompanied by
- (i) the relevant fee;
 - (ii) A site plan of radius of $\frac{1}{4}$ of a mile (scale 1:500) clearly showing the locality in which the proposed sexual entertainment venue will be situated. The plan should clearly identify the proposed sexual entertainment venue marking the site/premises boundary with a red line and define other types of businesses and residential properties around the site as listed at 12.5;
 - (iii) A plan of the premises (scale 1:100) showing the part(s) of the premises that it is proposed to licence as a sexual entertainment venue. All areas requiring to be licensed should be outlined in red on the plan. If a part of the premises is within a licensed premises under the Licensing Act 2003 which will have a dual purpose then the plan should show the site where facilities for the public are shared such as toilets and bar
- 14.4. The plan of the premises must show the position of all CCTV cameras. All such cameras must be approved by Kent Police and be operated in accordance with the CCTV code of practice.
- 14.5. Plans may be considered in other scales with prior agreement with the Borough Council.
- 14.6. Applicants must give public notice of the application by publishing an advertisement in a local newspaper that is circulated in the area of Tonbridge and Malling no later than 7 days after the date the application is made.
- 14.7. Applicants must display a notice of the application on or near the premises in a place where it can be conveniently read by members of the public. The notice must be displayed for a period of 21 days beginning with the date the application was made.
- 14.8. All notices should be in the form prescribed (**Appendix B**) and identify the premises or, if the application relates to a vehicle, vessel or stall, specify where it will be used as a sex establishment.
- 14.9. The applicant must serve the application on Chief Officer of Police at Tonbridge Station no later than 7 days after the date of application.

14.10. In determining an application the Borough Council shall have regard to all relevant considerations, including any comments made by:

- Police
- Fire Authority
- Planning and Building Control
- KCC Safeguarding Children Board
- UK Border Agency
- Environmental Health (Environmental Protection and Food and Safety)
- Councillors
- Interested Parties (local residents/businesses)

14.11. Officers from any of these authorities may inspect the premises to ensure that the required technical standards are met.

14.12. The Borough Council will not determine an application for the grant of a licence, unless, the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the premises.

15. Objections

15.1. Any person can object to an application.

15.2. Objections cannot be based on purely moral grounds/values or religious grounds as the legislation specifically prohibits this. Any objections on this basis will be refused or disregarded if presented with other reasons for objection.

15.3. Objections to the application must be made in writing and be received by the Borough Council within 28 days of the application being made. The objection must state in general terms the grounds of the objection.

15.4. The general terms of any objection will be provided to the applicant prior to the determination of the application. However, the Council will not without the consent of the objector reveal his/ her name or address to the applicant.

16. Conditions

16.1. The Borough Council may attach conditions to a licence. To assist applicants the Licensing Authority has formulated a pool of conditions (**appendix A**) in respect of each type of licensed premises. However this list is not exhaustive and is merely to give an indication of what may be considered in respect of any individual application.

- 16.2. Some of the conditions will be placed on the particular type of establishment as mandatory conditions and others may be applied only where a perceived necessity exists and in a manner that is both proportionate and reasonable to promote a safe and well managed venue. Each case will be dealt with on its individual merits.
- 16.3. Whilst conditions or restrictions may be imposed in relation to any matter (other than any matter in relation to which requirements or prohibitions are or could be imposed by or under the Regulatory Reform (Fire Safety) Order 2005) it is likely that the conditions or restrictions will be attached in respect of the following areas:
- Hours of opening and closing
 - Visibility of the interior of the premises
 - Displays or advertisements
 - Any change to the type of premises
 - Minimum distance between audience and performers
 - The control of access to changing room facilities
 - The control of private viewings

17. Hearings

- 17.1. Under paragraph 10 (19) of Schedule 3, before refusing an application, renewal or application to transfer a licence all applicants will be given the opportunity to appear before and be heard by the Licensing & Appeals Panel that is responsible for determining the application.
- 17.2. Whilst Schedule 3 does not make explicit provision for objectors to be heard, the Council believes it right to offer an oral hearing to objectors. This does, however remain within their discretionary powers. Although a local authority is under a duty to consider any objection made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.
- 17.3. Persons making written objections will also be informed of the date and time of the Licensing & Appeals Panel hearing where they will be invited to address the committee and ask questions relating to the application.
- 17.4. All objectors and applicants are reminded that they can if they wish be legally represented at their own expense at the hearing. Alternatively they may if they wish ask a Councillor to represent them.
- 17.5. All parties may use witnesses and supporting documentation however, copies of documents and details of witnesses must be submitted to the Borough Council for

consideration prior to the hearing and in exceptional circumstances with approval of all parties at the hearing.

- 17.6. The Licensing & Appeals Panel will consider all the evidence presented to it during the hearing and members may ask questions of officers, applicant and objectors. After the evidence has been presented all parties will be asked to leave to allow for the Licensing Sub-Committee to come to a decision on the application.
- 17.7. When a decision is reached the Licensing & Appeals Panel will inform the applicant and relevant parties of their decision and the reasons for coming to that particular decision.
- 17.8. The decision of the Licensing & Appeals Panel will be confirmed, in writing, to the parties within 5 working days of the meeting at which the application was considered giving reasons for the decision.

18. Refusal of a Licence

- 18.1. Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence. A licence **must not** be granted:
 - To a person under the age of 18
 - To a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months
 - To a person other than a body corporate who is not resident in an European Economic Area (EEA) State or was not so resident throughout the period of six months immediately preceding the date when the application was made or
 - To a body corporate which is not incorporated in an EEA State or
 - To a person who has within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.
- 18.2. A licence may be refused where
 - The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason
 - If the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself

- The number of sex establishments or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is or exceeds the number which the authority considers is appropriate for that locality
- That the grant or renewal of the licence would be inappropriate, having regard to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character of the premises, vehicle, vessel or stall in respect of which the application is made.

18.3. In making any determination to refuse an application, renewal or transfer the local authority will give consideration to:

a) Unsuitability of applicant

In determining the suitability or otherwise of an applicant the local authority may consider

- previous experience of the applicant
- any evidence of the operation of any existing/previous licence held by the applicant, including any licence held in any other local authority area
- any report about the applicant and management of the premises received from objectors
- any previous convictions and in particular those that have been imposed in respect of offences involving violence, dishonesty, or a breach of the requirements of the legislation covering the type of establishment in respect of which the application is made.

b) Business carried out on behalf of a person who would be refused

The Borough Council takes a serious view of any application that seeks to subvert the underlying principals of the Act. Where it is considered that the applicant is effectively operating the business on behalf of a person who would, for whatever reason be refused or disqualified from the grant of a licence due to the mandatory or discretionary grounds for refusal there will be a presumption towards refusal unless overwhelming reasons are accepted for the contrary decision to be made.

c) The application exceeds the limit set on the number of the specific type sex establishment in an area

Tonbridge and Malling Borough Council has not set a limit on the number of establishments of a specific type that will be permitted within any particular locality. In deciding whether to allow the application the authority will have consideration to:

- Any nuisance associated with the premises or the activities undertaken thereon

- The possibility of children or other vulnerable persons being harmed or exploited by the provision of sexual entertainment or the operation of sex shops or sex cinemas
- The potential of the activities associated with the operation of the premises being a source of crime and disorder, being associated with crime or being used to support crime.
- Any other reason including the existence of a police caution, representations from the police or by other enforcement agencies in relation to crime and disorder.

This list is not exhaustive

d) The grant of the licence would be inappropriate

In deciding whether the grant of a licence is appropriate the Borough Council will consider the type of area in which it is intended to site the premises and the hours during which it is intended to operate. The Council is also likely to consider:

- The proximity to other premises/ establishments (please see list at 12.5)
- Whether the area is predominantly residential rather than commercial in nature and premises may cause disturbance to local community.
- Whether management systems are suitable to ensure the safety of performers, customers and staff.

Again, this list is not exhaustive

19. Duration of Licences

19.1. Licences for sex establishments will be granted for up to one year.

20. Renewal of Licence

It will be the applicant's responsibility to apply for the renewal of the licence in good time (not less than 6 weeks) prior to the expiry of the existing licence. In the event that no application is made prior to the expiry of the existing licence the licence shall cease to remain in force, and a new application will be required.

21. Appeals

21.1. Section 27 of Schedule 3 to the 1982 Act permits appeals against the decision of the Council in relation to sexual entertainment venues. Appeals will be heard in the first instance by the Magistrates Court. An appeal must be made to the Magistrates Court within 21 days of notification of the decision of the Licensing & Appeals Panel .

21.2. An appeal can be made in the following circumstances:-

- By an applicant for the grant, renewal or transfer of a licence whose application is refused
- By an applicant for the variation of terms, conditions or restrictions on or subject to which the licence is held whose application is refused
- The holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held
- The holder of any such licence whose licence is revoked

21.3. There is no right of appeal for objectors.

21.4. There is no right of appeal against refusal on the ground that there are sufficient sex establishments in the locality or that to grant would be inappropriate having regard to the character of the locality, use of premises in the vicinity and the layout, character, condition and location of the premises.

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TONBRIDGE AND MALLING BOROUGH COUNCIL

STANDARD TERMS, CONDITIONS & RESTRICTIONS RELATING TO SEX ESTABLISHMENTS

These terms, conditions and restrictions apply to the licences for sex establishments granted, renewed or transferred by the Council under the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

Definitions

Save where the context otherwise requires, the following expressions shall have the following meanings:-

- i) "Sex Establishments", "Sex Cinema", "Sex Shop", "Sex Article", "Sexual Entertainment Venues" and "relevant entertainment and nudity" shall have the meanings ascribed to them in the Third Schedule of the Local Government (Miscellaneous Provisions) 1982 as amended.
- ii) "Premises" means a building or part of a building and any forecourt, yard or place of storage used in connection with a building or part of building, which is subject of a licence for a sex establishment granted under the Third Schedule.
- iii) "Approval of the Council" or "Consent of the Council" means the approval or consent of the Council in writing.
- iv) "Approved" means approved by the Council in writing.
- v) "The Council" means the Tonbridge and Malling Borough Council.

General

The following terms, conditions and restrictions are applicable to all sex establishment licences. In the event of a conflict between these and any special conditions contained in a licence relating to a sex establishment the special condition shall apply.

The grant of a licence for a sex establishment shall not be deemed to convey any approval or consent which may be required under any other enactment by law or regulation other than the Third Schedule to the Local Government (Miscellaneous Provisions) Act 1982 as amended.

Sex Shops

Times of Opening

Condition 1

Except with the previous consent of the Council the premises shall not open to the public before 9.00am and shall not be kept open after 6.00pm

Except with the previous consent of the Council, the sex establishment shall not open on Sundays or any other Bank Holidays or any Public Holidays.

A notice displaying the times when the premises are open or closed shall be displayed on the entrance to the premises in a form and manner approved by the Council.

Conduct and Management of Premises

Condition 2

Where the Licensee is a body corporate or an unincorporated body, any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director, secretary or manager, are to be furnished within 14 days of a request in writing from the Council.

Condition 3

The Licensee or some responsible person nominated by him in writing for the purpose of managing a sex establishment in his absence and whom details (including photographs) have been supplied to and approved in writing by the Council, shall be in charge of and upon the premises during the whole time they are open to the public.

Condition 4

The holder of the licence shall keep exhibited in a suitable place within the shop premises, so that it can be easily seen by premises users, a copy of the licence and any conditions and regulations made and they shall be readily available for inspection by any of the following officers:-

- a) Duly authorised officer of the Tonbridge and Malling Borough Council
- b) Police Officer, and
- c) Officer of the Fire Authority

Condition 5

The name of the person responsible for the management of the sex establishment being either the Licensee or a manager approved by the Council, shall be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.

Condition 6

The Licensee shall retain control over all portions of the premises and shall not let, licence or part with possession of any part of the premises.

Condition 7

The Licensee shall maintain good order in the premises at all times and shall ensure that persons entering or leaving the licensed premises conduct themselves in an orderly manner and do not in any way cause annoyance to residents and persons passing by.

Condition 8

No person under the age of 18 shall be permitted entry to the premises or be employed in the business of sex establishments.

Condition 9

The Licensee shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the Council.

Condition 10

The Licensee shall ensure that no part of the premises shall be used by prostitutes (Male or Female) for soliciting or for any immoral purpose.

Condition 11

Neither the Licensee nor any employee or other person shall seek to obtain custom for the sex establishment by means of the personal solicitation outside or in the vicinity of the premises.

Condition 12

The Licensee shall ensure that during the hours the sex establishment is open for business, every employee wears an identifying badge, of a type approved by the Council, indicating his name and that he is an employee.

Condition 13

No refreshment of any kind shall be provided nor any consumed on the licensed premises other than for any bona fide staff in a part of the premises not open to the public.

Use of the Premises

Condition 14

The sex shop shall be conducted primarily for the purpose of the sale of goods for retail and change of use of any portion of the premises from that licensed by the Council, shall not be made until the consent of the Council has been obtained thereto.

Condition 15

No change from a sex cinema or sexual entertainment venue to a sex shop or from a sex shop to a sex cinema or sexual entertainment venue shall be effected without the consent of the Council and neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be sold, hired, exchanged, loaned or demonstrated in a sex cinema or sexual entertainment venue.

Goods available in sex establishments

Condition 16

All sex articles and other things displayed for sale, hire, exchange or loan within the sex shop, shall be clearly marked to be shown to the persons who are inside the sex shop the respective charge being charged.

Condition 17

All printed matter for sale, hire, exchange or loan shall be available for inspection prior to purchase, and a notice to this effect is to be prominently displayed within the sex establishment.

Condition 18

No film or video shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification or such other authority performing a similar scrutinising function as may be notified to the licensee by the Council and bears a certificate to that effect and is a reproduction authorised by the owner of the copyright of the film or video so certified.

- a) The screen of any equipment used should be no more than 12 inches and placed in such a position so as not to be visible to the public outside the premises.
- b) The screen shall be placed in such a position approved by the Council.
- c) Only videos of clips of other videos for advertising purposes shall be shown and no individual clip shall be shown for longer than three minutes.
- d) No film or video will be shown in its entirety.
- e) Films will not be shown at the customer's request.
- f) All trailers shown are to be approved by the British Board of Film Classification
- g) A warning notice will be placed on the screen stating "For staff use only" or "No customers allowed to operate".

External Appearances

Condition 19

No advertisement, words, letter, model, sign, placard, board, notice, device, representation, drawing, writing or any other matter or thing (whether illuminated or not) shall be exhibited so as to be visible from the outside of the premises except:- (i) Any notice of a size and in the form approved by the Council which is required to be displayed so as to be visible from outside the premises by law, or by any condition of a licence by a Council.

Such display, advertisement, word, letter, model, sign, placard, notice, device, representation, drawing, writing or any matter or thing as shall have been approved by the Council.

Condition 20

A prominent clear notice shall be displayed at each entrance to the premises advising customers that no person under 18 will be admitted and they may be asked to produce evidence of their age.

Suggested notice 'PERSONS UNDER 18 CANNOT BE ADMITTED TO THESE PREMISES'

Condition 21

The entrance doors to the premises shall be obscured, screened or arranged so as to effectively prevent the interior of the premises being seen by passers by.

The obscuration, screening or other arrangements shall be to the satisfaction of and approved by the Council.

Condition 22

- (a) The windows of the licensed premises fronting the pavement shall not be as obscured other than with the consent of the Council, but shall have suspended behind them, in a position and attitude approved by the Council, such opaque blinds or screen or such other arrangements as approved by the Council.
- (b) This condition shall not be construed as lessening any obligation of the Licensee under Licence Condition 21.
- (c) Any such special precautions as may be necessary shall be taken to maintain the screening of the shop window during any cleaning process.

State, Condition and Layout of the Premises

Condition 23

The premises shall be maintained in good repair and condition throughout, including the front fascia of the shop and entrance to the satisfaction of the Council.

Condition 24

Lighting in all parts of the premises shall be to a level approved by the Council and shall be in operation continuously during the hours when the sex establishment is open to the public.

Condition 25

The number, size and position of all doors or openings provided for the purpose of the ingress and egress of the public shall be approved by the Council and shall comply with the following requirements:-

- (i) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word "Exit" or "Fire Exit".
- (ii) Doors and openings that lead to parts of the premises to which the public are not permitted to have access, shall have notices placed over them marked "Private – no access to the public".
- (iii) Save in the case of emergency no access shall be permitted through the premises adjoining or adjacent.

Condition 26

The external door/doors to the sex establishment shall be fitted with a device to provide for their automatic closure and such device shall be maintained in good working order.

Condition 27

Alterations or additions either internal or external, whether permanent or temporary to the structure, lighting or layout of the premises, shall be made except with the prior approval of the Council.

Condition 28

All parts of the premises shall be kept in a clean and wholesome condition to the complete satisfaction of the Council.

Safety

Condition 29

The Licensee shall take all reasonable precautions for the safety of the public and employees.

Condition 31

The Council reserves the right after grant, renewal or transfer of this licence at any time to dispense with or modify or relax any of these terms, conditions and restrictions and to make such additional terms, conditions and restrictions as they may deem requisite to meet the circumstances of any particular case.

Condition 32

The licence may be revoked by the Council if at any time the holder is convicted of any offence of using the licensed premises, or other premises for which a similar licence has been granted other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in Paragraph 1 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

Sex Cinemas

Film Categories

Condition 1

The categories U, PG, 12, 15, 18 and restricted 18 have the following effect:

- U—Universal - suitable for all
- PG — Parental Guidance — some scenes may be unsuitable for young children
- 12 — Passed only for persons of 12 years and over
- 15 — Passed only for persons of 15 years and over
- 18 — Passed only for persons of 18 years and over
- Restricted 18 - Passed only for persons of 18 or over who are members (or their guests) of a properly constituted club.

Unclassified Films

Condition 2

The licensee must notify the Council in writing no later than twenty-eight days prior to exhibiting any other film that has not been classified as specified in the film categories. Such a film may only be exhibited if the Council's gives written consent prior to the event and must comply in accordance with the terms of any such consent given.

Restricted Films

Condition 3

Films restricted 18 (R18) may be shown at the premises only with the Council's prior written consent and in accordance with the terms of any such consent.

Persons Under 18

Condition 4

No person appearing to be under the age of 18 shall be admitted to any part of the programme and the licensee shall display in a conspicuous position at each entrance to the premises a notice in clear letters in the following terms:

PERSONS UNDER 18 CANNOT BE ADMITTED TO THIS CINEMA FOR ANY PART OF THE PROGRAMME

Condition 5

No persons under 18 years of age shall be employed in any capacity at the premises in an area operating as sex cinema club.

Advertising

Condition 6

No advertisement displayed at the premises where a film is to be exhibited shall depict any scene or incident from a film that has been classified by the British Board of Film Classification, Board of Film Censors or approved for exhibition by the Licensing Authority.

Condition 7

The licensee shall display in a conspicuous position, to the satisfaction of the Council at each entrance to the premises, during the whole time the public are admitted to the premises and so as to be easily seen and read by the public, a timetable of the films on exhibition.

Condition 8

When the programme includes a film restricted 18, the licensee shall display in a conspicuous position at each entrance to the premises a notice in clear letters in the following terms:

CINEMA CLUB — MEMBERS AND GUESTS ONLY. PERSONS UNDER 18 CANNOT BE ADMITTED TO THIS CINEMA FOR ANY PART OF THE PROGRAMME.

Condition 9

The entrance doors to the premises shall be obscured, screened or arranged so as to effectively prevent the interior of the premises being seen by passers by.

The obscuration, screening or other arrangements shall be to the satisfaction of and approved by the Council.

Restricted 18

Condition 10

A register of all members and all visitors books of their guests shall be available for immediate inspection by authorised officer of the Council during any performance or at any other reasonable time.

Condition 11

Tickets shall in no circumstances be sold to persons other than to members.

Membership

Condition 12

The club rules must be submitted to the Council 14 days before the club commences operation and notice of all rule changes shall be given to the Council within 14 days of the change.

Condition 13

Membership shall be open to persons of both sexes of not less than 18 years of age

Condition 14

Applications for membership, including both name and address, shall be in writing, signed by the applicant and if deemed necessary such applicant shall provide satisfactory references and proof of age.

Condition 15

No persons shall be admitted to membership until the expiration of at least 24 hours after such written application has been approved by the management of the club.

Condition 16

New members shall be supplied with a personal copy of the club rules before being admitted to membership and be given a copy of any rule changes within 14 days of the change.

Condition 17

An annual subscription shall be fixed for the club and shall run for 12 months from the date of registration. Membership may be renewed annually at the subscription for the time being in force, but the management may refuse to renew any membership without assigning reason for such refusal.

Condition 18

Members shall be entitled on any day to bring no more than one guest to accompany the member, and the name of the guest shall be entered in the visitors book and counter signed by the member.

Condition 19

Tickets shall be sold only to members on the production of a membership card, and members shall if required sign and acknowledgement for the ticket or tickets issued.

Condition 20

Membership cards shall be personal to the member and carry a photograph of the holder.

Condition 21

Neither membership tickets nor guest tickets shall be transferable.

Condition 22

Guests may be asked for proof of identity, or of age, or any particulars of any guest shall be produced by any member of guest if demanded by the management.

Condition 23

Members shall undertake to behave in a proper and orderly manner. Any member or guest acting in a manner which is offensive, or a nuisance or annoyance to others may be refused admission or expelled from the premises. A member may also be deprived of membership.

Sale of Sex Articles

Condition 24

Neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint

which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema.

Display of Tariff and Charges

Condition 25

There shall be prominently and legibly displayed a comprehensive tariff of all charges and prices which shall be illuminated and placed in such a position that it can easily and conveniently be read by persons before entering the premises. No employee shall stand in such a position as to obscure the notice.

Conduct and Management of Premises

Condition 26

The name of the person responsible for the management of the sex establishment being either the Licensee or a manager approved by the Council, shall be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.

Condition 27

A notice showing the name of the person responsible for the management of the sex cinema on that day to be prominently displayed within the sex cinema throughout the period during which he is responsible for its conduct.

Condition 28

The Licensee shall ensure that no part of the premises shall be used by prostitutes (Male or Female) for soliciting or for any immoral purpose.

Condition 29

Neither the Licensee nor any employee or other person shall seek to obtain custom for the sex establishment by means of the personal solicitation outside or in the vicinity of the premises.

Condition 30

The Licensee shall ensure that during the hours the sex establishment is open for business, every employee wears an identifying badge, of a type approved by the Council, indicating his name and that he is an employee.

Condition 31

The Licensee or some responsible person nominated by him in writing for the purpose of managing a sex establishment in his absence and whom details (including photographs) have been supplied to and approved in writing by the Council, shall be in charge of and upon the premises during the whole time they are open to the public.

Condition 32

All parts of the premises shall be kept in a clean and wholesome condition to the complete satisfaction of the Council.

Internal access to cinema

Condition 33

Windows and openings within the premises where films are shown should have blinds of a type and size that covers windows and openings which render the interior of the cinema where films are being shown invisible to passers by and/or other areas within the building that are open to the public for other activities.

Condition 34

The licensee shall ensure that no noise shall emanate from the cinema that can be heard from within another area of the building or from outside.

Security

Condition 35

A member of staff to remain in the vicinity of the entrance to the cinema to prevent under 18's or non-members from illegal entry.

Use of Premises

Condition 36

No change from a sex shop or sexual entertainment venue to a sex cinema or from a sex cinema to a sex shop or sexual entertainment venue shall be effected without the consent of the Council.

Safety

Condition 37

The Licensee shall take all reasonable precautions for the safety of the public and employees.

Sexual Entertainment Venue

Times of Opening

Condition 1

The premises shall not open unless otherwise permitted:

[TIMES WILL BE SPECIFIED FOR EACH LICENCE]

Conduct and Management of Premises

Condition 2

The name of the person responsible for the management of the sex establishment being either the Licensee or a manager approved by the Council, shall be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.

Condition 3

The licensee or the responsible person shall maintain a daily register to be kept on the premises and produced to an authorised officer on request. The register to be completed each day within 30 minutes of the Sex Entertainment Venue opening for business and will record the name and contact details of any person who is to be responsible for managing the Sex Entertainment Venue in the absence of the licensee and details of all staff employed at the premises including performers.

Condition 4

A notice showing the name of the person responsible for the management of the sex entertainment venue on that day to be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.

Condition 5

Where the licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 14 days of such change.

Condition 6

The licensee shall ensure that no part of the building or its boundary is used by prostitutes (male or female) for the purposes of soliciting or any other immoral

purposes. Neither the licensee nor any employee or other person shall seek to obtain custom by means of personal solicitation outside or in the vicinity of the premises.

Condition 7

The licensee shall ensure that the public are not admitted to any part or parts of the premises other than those that have been approved by the Council.

Condition 8

Licensee shall maintain good order on the premises and in particular shall ensure that no

- lewd conduct
- indecent behaviour
- unlawful possession and/or supply of controlled drugs
- conduct likely to cause a breach of the peace on the premises
- offers of any sexual or indecent service for reward
- any acts of violence against person or property and/or the attempt or threat of such acts

takes place on the premises or in its immediate vicinity

Condition 9

A management operation manual detailing all aspects of procedure when the premises is operating relevant entertainment shall be produced and approved by the Licensing Authority. This document shall be on going and under constant review.

Condition 10

All members of staff (except performers) shall be easily identifiable. If required by the Council or Kent Police in writing the licensee shall ensure that during the hours the premises are open for relevant entertainment staff will wear a badge of a type/format approved by the Council indicating their name and that they are an employee or person working in the premises.

Age Restriction

Condition 11

No person under the age of 18 shall be admitted to the premises or employed in the business of the sex establishment.

Condition 12

A prominent clear notice shall be displayed at each entrance to the premises advising customers that no person under 18 will be admitted and they may be asked to produce evidence of their age.

PERSONS UNDER 18 CANNOT BE ADMITTED TO THESE PREMISES

Advertising

Condition 13

No display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation, drawing, writing or any matter or thing (where illuminated or not) shall be exhibited so as to be visible from outside the premises without approval by the Council.

Condition 14

The licence holder shall not display outside the premises, or on any advertising material, photographs or other images that indicate and suggest striptease or similar dancing takes place on the premises and which may be offensive.

Condition 15

The premises should not advertise by means of cruising vehicles or use of any other form of solicitation to invite people into the premises.

External and Internal access to an area holding relevant entertainment

Condition 16

The entrances to the premises shall be of a material or covered with a material that will render the interior of the premises invisible to passers by.

Condition 17

Windows and openings within the premises other than entrances will have curtains / blinds of a type and size that covers windows and openings which render the interior of the premises where relevant entertainment is taking place invisible to passers by and/or other areas within the building that are open to the public for other activities.

Condition 18

Windows will remain closed whilst the premises or part of that premises is being used for relevant entertainment.

Layout of the premises

Condition 19

No fastening of any description shall be fitted upon any booth or cubicle within the premises.

Condition 20

All dance booths or cubicles are to be equipped with a panic alarm for safety.

Condition 21

Any changes to layout of the premises must be informed to the licensing authority in writing submitting plans. Alteration must not take place without prior written consent by the Licensing Authority

Condition 22

The licensee shall ensure that noise from the premises or vibration be transmitted through the structure of the premises does not give rise to a nuisance to the occupiers of premises in the vicinity of the venue.

Condition 23

The external doors to the premises shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.

Condition 24

Doors and openings which lead to parts of the premises to which the public are not permitted to have access shall have notices placed over them marked 'private' and remain closed other than for the purposes of the ingress and egress of management, staff and performers.

Entertainers/Performers

Condition 25

An appropriate room shall be set aside to provide a changing and rest area for entertainers. Arrangements shall be made to ensure that there is restricted public access to this room which shall be maintained at all times whilst the licensable

activities are taking place and until such time as all performers using the dressing room have finished.

Condition 26

At all times during the performance, performers shall have direct access to a dressing room without passing through or in close proximity to the audience.

Condition 27

On leaving the premises performers, who wish to be, shall be escorted by a staff member to their vehicle or other safe location

Condition 28

Performers shall be aged not less than 18 years old.

Condition 29

Only the performers shall provide the entertainment, no audience participation shall be permitted.

Condition 30

No performance shall include a sex act with any other performer, persons in the audience or with the use of any object or animal.

Condition 31

In the event of the relevant entertainment being performed for private viewing, the patron shall be informed of the duration and price of the relevant entertainment and the details shall be specified in a clearly visible notice in each area designed for private relevant entertainment.

Condition 32

Any person who can be observed from the outside of the premises must be properly and decently dressed. Scantily clad individuals shall not exhibit in the entranceway or in an area of the premises open to the public that is not designated area for relevant entertainment.

Condition 33

All performers shall be aware of the management operation that will include a written policy on the conduct of performers.

Condition 34

Photography or videoing of performances should not be allowed.

Condition 35

There shall be routine checking of employment records and evidence that all prospective staff and performers have the right to work in the UK.

Condition 36

Performers should not be permitted to arrange contacts or liaisons, exchange telephone numbers or other means of making contact while on the premises
Staffing

Condition 37

During any lap dancing performance, or private dance, performers may not:

- Touch customers in any way
- Performer must not be within 30cms (12”) from any part of a patron
- Climb onto furniture provided for patrons
- Simulate sex acts
- Use sex articles

Sale of Goods

Condition 38

Neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a Sex Entertainment Venue.

Display of Tariff and Charges

Condition 39

There shall be prominently and legibly displayed a comprehensive tariff of all charges and prices which shall be illuminated and placed in such a position that it can easily and conveniently be read by persons before entering the premises. No employee shall stand in such a position as to obscure the notice.

Condition 40

Where a charge is to be made for the company of a hostess or other companion this shall be identified on the tariff of charges to the satisfaction of the Council.

Condition 41

No order shall be accepted unless the customer has been provided with a copy of the said tariff and has been given sufficient time and opportunity to read it.

Condition 42

No charge shall be made to the customer for any drink provided for the hostess or companion unless that customer has specifically ordered it having first been made aware of the cost.

Use of Premises

Condition 43

No change from a sex shop or sexual entertainment venue to a sex cinema or from a sex cinema to a sex shop or sexual entertainment venue shall be effected without the consent of the Council.

Pool of Possible Additional Conditions

Age Restriction

Condition a

All members of staff at the premises shall seek credible photographic proof of age evidence from any person who appears to be under the age of 25 years and who is seeking access to the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence, or proof of age card carrying a 'PASS' logo.

Security

Condition b

Door supervisors, registered in accordance with the Security Industry Authority (SIA) shall be on duty at all times when relevant entertainment is taking place.

Condition c

An adequate number of door supervisors shall be on duty on the premises whilst relevant entertainment takes place. There shall be at least one door supervisor on each entrance, in each separate part of the premises and on the door to the dressing room.

Condition d

CCTV to be installed to a standard agreed by police to cover all public areas, including all access and egress points in accordance with CCTV Code of Practice. Maintained and serviced on a regular basis and records to be kept. The system to have an incorporated recording facility and recordings to be stored for one calendar month. The CCTV system to be fully operational throughout the hours that the premises are open for licensable activity. Access of the recordings to be made available at any reasonable time to Police and Local Authority officers upon request. Staff will be fully trained in the CCTV system and there will be at least one member of staff on duty during trading hours who is able to provide a recording of any incident in a format that can be taken away to be viewed.

Entertainers/Performers

Condition e

Whilst dancers are performing there shall be a minimum distance of one metre between the dancer and the seated customers and prominent, clear notices shall be displayed at each table stating this requirement

Condition f

There shall be no physical contact between customers and the dancers at any time except for the placing of money or tokens in a garter or into the hands of the dancer at the beginning or conclusion of a performance.

Staffing

Condition g

All staff employed to work at any premises licensed as a sex establishment shall be required to provide an enhanced criminal records bureau disclosure to the Licensing Authority in which the premises is located.

Appendix C

Feedback Form - Draft 'Licensing Sex Shops, Sex Cinemas and Sexual Entertainment Venues Policy'

Respondent	Comment	Ref	Officers comments and recommendation to Licensing and Appeals Committee

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Update on Local Authority Lottery – Verbal Presentation

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Overview of Licensing 2015-16 - Verbal Presentation

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Agenda Item 8

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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Agenda Item 9

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**ANY REPORTS APPEARING AFTER THIS PAGE CONTAIN EXEMPT
INFORMATION**

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Agenda Item 10

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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