

Notice of Meeting

Licensing Committee

Date: Thursday, 01 December 2016

Time: 17:30

Venue: Crosfield Hall (Romsey), Broadwater Road, Romsey, Hampshire,
SO51 8GL

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Legal and Democratic Service

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The recommendations contained in the Agenda are made by the Officers and these recommendations may or may not be accepted by the Committee.

PUBLIC PARTICIPATION SCHEME

If members of the public wish to address the meeting they should notify the Legal and Democratic Service at the Council's Beech Hurst office by noon on the working day before the meeting.

Membership of Licensing Committee

MEMBER		WARD
Councillor J Budzynski	Chairman	Winton
Councillor A Johnston	Vice Chairman	Romsey Extra
Councillor N Anderdon		Chilworth, Nursling and Rownhams
Councillor A Beesley		Valley Park
Councillor A Brook		Alamein
Councillor Z Brooks		Millway
Councillor J Cockaday		St Mary's
Councillor D Denny		St Mary's
Councillor D Drew		Harewood
Councillor P Hurst		Tadburn
Councillor P Lashbrook		Penton Bellinger
Councillor P Mutton		Penton Bellinger
Councillor J Ray		Cupernham
Councillor I Richards		Abbey
Councillor A Tupper		North Baddesley

Licensing Committee

Thursday, 01 December 2016

AGENDA

The order of these items may change as a result of members of the public wishing to speak

- 1 Apologies
- 2 Public Participation
- 3 Declarations of Interest
- 4 Urgent Items
- 5 Minutes of the meeting held on 3 November 2016
- 6 **Mobile Home Sites - Licensing Conditions and Enforcement** 4 - 18
This report proposes to vary licence conditions and to delegate authority to ensure enforcement of such conditions.
- 7 **Hackney Carriage and Private Hire Vehicle Licensing Guidelines (Policy) - Driver Assessments** 19 - 25
To consider a revision to the Hackney Carriage and Private Hire Vehicle Licensing Guidelines.
- 8 **Delegations of Function - Charity Street Collections** 26 - 42
A report recommending delegation of the responsibility for administering Street Collection licences.
- 9 **Licensing Enforcement Policy and Service Standards** 43 - 59
To adopt Service Standards and a revised Enforcement Policy.

ITEM 6 Mobile Home Sites – Licensing Conditions and Enforcement

Report of the Head of Housing and Environmental Health (Portfolio: Housing and Environmental Health)

Recommended:

- 1. That the Council approves the standard licence conditions based on the 2008 Model Standards.**

Recommended to Council:

- 2. That the Council delegates authority to amend standard licence conditions to the Head of Housing and Environmental Health.**
- 3. That the Council delegates authority to the Head of Housing and Environmental Health to take necessary enforcement action under the Mobile Homes Act 2013 and authorisation of officers accordingly.**

SUMMARY:

- The Council adopted the 2008 Model Standards for Caravan Sites in January 2016. A review of all sites has been completed and it is proposed licence conditions are varied to ensure they are compliant with the 2008 Model Standards and to ensure that they are enforceable.
- The licence conditions would be set based on standard licence conditions with delegated authority to the Head of Housing and Environmental Health to make minor alterations.
- That authorisation to enforce site licence conditions be delegated to the Head of Housing and Environmental Health

1 Introduction

- 1.1** The Council licenses sites on which caravans, mobile homes or park homes are sited.
- 1.2** The Council adopted the Government's 2008 Model Standards in January 2016. A full inspection programme of all the Council's licensed sites has been undertaken. Deficiencies between the condition of the current sites and the model standards have been identified.
- 1.3** The Council needs to determine the appropriate action in response to these deficiencies and to delegate authority to the Head of Service to carry out any necessary variation to licence conditions and subsequent enforcement.

2 Background

- 2.1 The Caravan Sites and Control of Development Act 1960 (CSCDA 1960) came into force on 29th August 1960. Part 1 of the Act introduced a licensing system to be operated by Councils in order to regulate the establishment and operation of caravan sites.
- 2.2 The Council has 12 licensed caravan sites where there are multiple caravans. There are other sites which have been issued a licence for a single caravan which are not subject to the Model Standards 2008.
- 2.3 The current conditions attached to multiple site licences are either non-existent or dated as some of the licences date back to 1960.
- 2.4 The Mobile Homes Act 2013 gives the Council the power to serve compliance notices and to carry out works in default to remedy breaches of site licence conditions. There is no current authorisation to delegate these powers to officers.
- 2.5 The delegated authority to grant and vary licences under the Caravan Sites and Control of Development Act 1960 currently rests with the Environmental Health Manager. Due to changes in structure, the Environmental Health Manager does not have any line manager responsibility for the team which deals with Caravan Sites.
- 2.6 The term caravan in this report covers mobile homes or park homes.
- 2.7 The Government produced two guidance documents for local authorities when the Mobile Homes Act 2013 came into force:
 - 2.7.1 Mobile Homes Act 2013: advice to local authorities on the new regime for applications for the grant or transfer of a site licence (referred to in this document as “Licensing Guidance”); and
 - 2.7.2 Mobile Homes Act 2013: a best practice guide for local authorities on enforcement of new site licensing regime (referred to in this report as the “Enforcement Guidance”)
- 2.8 The Model Standards for Caravan Sites in England 2008 also contain guidance notes.

3 Corporate Objectives and Priorities

- 3.1 The improvement of standards in park homes fits with the Council’s “Live” priority to ensure that residents of these home sites live on good quality and well run sites and their rights are protected. The charge of an annual fee makes the Council accountable and committed to annual inspections to ensure standards are maintained.

4 Consultations/Communications

- 4.1 A letter was sent to all existing site licence holders in September 2015 regarding our proposal to adopt 2008 model standards.
- 4.2 One response was received and the licence holder was concerned that the existing licence conditions would automatically change and wouldn't be applicable to the current site.
- 4.3 Letters have also been sent to all site licence holders before their inspections were carried out stating our intention to review licence conditions. Many residents who have been on site during our inspections have been spoken to about our proposals to review licence conditions.
- 4.4 In line with the Government guidance, licence holders will be sent a draft copy of the proposed licence conditions and given 28 days to make any representations. These representations will be considered prior to issue of the final licence with the aim to reach agreement with the site licence holder. However the Licensing Guidance states that the licence holder does not have to be in agreement with the proposed condition before the Council introduce it.
- 4.5 The Licensing Guidance also refers to consultation with occupiers. It states that local authorities may choose to consult a Residents' Association on the site or the home owners directly on the licence conditions it is proposing, although there is no requirement to do so.
 - 4.5.1 For the purposes of the review of licence conditions being carried out currently, it is not considered necessary to consult all residents on all sites. However where there is a residents association on a site the Council will notify them that the licence is currently being consulted on. Should residents make comments, the Council will consider them along with representations from the licence holder but the Council is not duty bound to have regard to them.
- 4.6 Hampshire Fire and Rescue Service will be consulted on all draft licence conditions as they may have enforcement responsibility on some sites under the Regulatory Reform (Fire Safety) Order 2005. Local authorities cannot include conditions which relate to matters that are or could be imposed by or under this Order.

5 Options

- 5.1 Options available for Members to consider are:
 - 5.1.1 To delegate authority to the Head of Housing and Environmental Health to grant and vary licences under the Caravan Sites and Control of Development Act 1960 including appropriate licence conditions.

- 5.1.2 To approve the use of the attached licensing conditions with delegation to the Head of Housing and Environmental Health to include such conditions as he considers appropriate, having regard to the needs and characteristics of the particular site.
- 5.1.3 To delegate authority to the Head of Housing and Environmental Health to consider representations made by site licence holders during the consultation phase of issuing or varying licence conditions and to alter licence conditions accordingly.
- 5.1.4 To delegate authority to the Head of Housing and Environmental Health to authorise enforcement action under the Mobile Homes Act 2013.
- 5.1.5 To determine the appropriate course of action to address the deficiencies identified, and whether to apply the terms of the model standards 2008 directly to sites or allow discretion.

- 5.2 Members are asked to determine the appropriate course of action for dealing with non compliances on the site. The Enforcement guidance refers to varying conditions on existing sites. It states (in paragraph 4.7):

“The Government’s view is that if an existing licence condition is adequate and enforceable under the new licensing provisions; and there are no exceptional circumstances to warrant changing it, then a local authority should not do so. However, where existing conditions are ambiguous, irrelevant or outdated, they should be reviewed and revised as necessary to ensure that they are appropriate and reasonable and importantly, that they are enforceable.”

- 5.3 Deficiencies mainly relate to the following areas:

- 5.3.1 Separation between homes less than 6 metres (or less than 5.25 metres if facing walls are clad with Class 1 fire resisting material) as per the 2008 model Standards. The enforcement guidance refers to spacing issues and states:

“4.16 Historical spacing issues cannot usually be resolved quickly or easily. They can arise in a number of ways, for example:

- The site operator, knowingly or otherwise, has sited a park home in breach of the spacing distance in the site licence condition
- The home owner has added a porch or other structure to the home with/without the site operators knowledge.

4.17 In deciding the best way forward, a balance needs to be made between the need to upgrade conditions and the extent of any negative impact that enforcement may have on existing home owners in terms of disturbance or possible adverse affect on the re-sale value of the their home.

4.18 A sensible approach is to draw a line in the sand; accept existing contraventions and then put site licence conditions in place that, going forward, are clear and can be enforced. For example, to make it a condition that the site operator must inform the licensing authority when a new home is to be sited or when alterations to the site layout are proposed.”

The options available are:

- (a) to apply the 6 metre separation distance to all existing units as per the 2008 model standards.
 - (i) Where caravans are located between 5.25 and 6 metres apart to require facing walls to be of Class 1 fire resisting construction or units to be moved within an appropriate time frame (depending on space around caravans to enable them to be relocated)
 - (ii) Where caravans are located less than 5.25 metres apart to require units to be moved within an appropriate time frame (depending on space around caravans to enable them to be relocated)
 - (iii) If caravans cannot be relocated then one will need to be removed. This should be done when one reaches the end of its useful life.
- (b) to leave existing caravans in their current location until the first one reaches the end of useful life then remove and not replace
- (c) to require caravans to be resited immediately which may result in the loss of a pitch and a caravan would have to be removed from site.

5.3.2 Structures made of combustible materials, such as timber sheds, located in the separation distance between caravans.

- (a) Recommended option – require replacement with non combustible structure or resite outside separation distance
- (b) Alternative option – take no action

5.3.3 Caravans located too close to the boundary

- (a) Recommended option – risk assess depending on proximity and privacy issues from other side of boundary with a view to no action unless overlooked or close to fire risk.

5.3.4 General maintenance and upkeep of the site such as roads and pathways.

- (a) Recommended option to include a condition to require these to be maintained and kept in good repair.

5.3.5 Siting of caravans on unsuitable bases

- (a) Recommended option to give licence holder a year to relocate to a suitably constructed base
- (b) Alternative option – to leave caravans in place at licence holder discretion

6 Option Appraisal

- 6.1 To delegate authority to the Head of Housing and Environmental Health will ensure expedient decisions can be taken in line with the Council's adopted policies.
- 6.2 The licence conditions to be issued are based on the 2008 model standards and are attached as Appendix One. The discretion to apply the conditions with minor variations to be delegated to the Head of Housing and Environmental Health will ensure that licence conditions can be determined without recourse to Licensing Committee.
- 6.3 In relation to the option detailed in 5.2.1, if the Council chose to take no action and a fire occurs in one of the caravans, there is potential that this could spread to adjacent caravans. Requiring caravans to be relocated immediately would involve a lot of expense as homes would have to be relocated via crane, and some homes have extensions or conservatories attached, and the bases may have to be extended before caravans can be relocated. If there are too many caravans on the site this may mean that one has to be removed which may create an issue by making someone homeless. To ensure that caravans are clad with appropriate fire resisting material will mitigate the fire risk. The lack of privacy issues are not life threatening and can be dealt with in the longer term when the caravan has reached the end of its useful life and is due to be taken off site. This will minimise inconvenience for the occupier (who is often the caravan owner).
- 6.4 In relation to the option detailed in 5.2.2 regarding the combustible units in the separation distance; the cost implications of compliance are less although may still be the responsibility of the caravan owner who put it there rather than the site licence holder. To leave them in situ causes a fire risk as it provides a stepping point for the fire to spread. Alternative methods of compliance such as cladding with fire resistant material could be considered depending on the location of the structure in relation to the caravans.

7 Resource Implications

- 7.1 The proposed option would mean more of existing staff time would be spent on enforcement. Should enforcement progress to compliance notice, the cost of staff time can be recharged to the site licence holder.

8 Legal Implications

- 8.1 The Council will be able to enforce the legal requirements of the Mobile Homes Act 2013 and the conditions on caravan site licences.

9 Equality Issues

- 9.1 Many of the mobile home sites are semi-retirement and potentially occupied by vulnerable elderly persons. Ensuring that the sites are efficiently run and in compliance with site licence conditions will ensure that we safeguard the health and wellbeing of the occupants.

10 Other Issues

10.1 Community Safety - None

10.2 Environmental Health Issues

10.2.1 Ensuring compliance with effective site licence conditions should reduce the complaints and enquiries from residents and neighbours of sites.

10.3 Sustainability and Addressing a Changing Climate

10.3.1 Improvements in fire resistance could be linked to external insulation improvements and potential grant funding in appropriate circumstances to ensure a greater level of energy efficiency of the building.

10.4 Property Issues - None

10.5 Wards/Communities Affected - All

11 Conclusion

11.1 Delegating authority to the Head of Housing and Environmental Health will ensure Caravan site licences can be issued appropriately without needing to refer to Council for decisions on standard conditions or minor variations.

11.2 Decisions made on the approach the Council should take will allow officers to determine appropriate conditions and take appropriate enforcement action to ensure residents on caravan sites are protected and living in safe sites.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	1		
Author:	Deborah Vincent	Ext:	8211
File Ref:			
Report to:	Licensing Committee	Date:	1 December 2016

Test Valley Borough Council

Caravan Sites and Control of Development Act 1960 (as amended)

Conditions attached to Site Licence Number:

Address of Site:

Date of Issue:

NOTE: Site licence conditions are based on the Model Standards 2008 for Caravan Sites in England. They are specific to the above site. It is a criminal offence for a park owner to fail to comply with these conditions.

All correspondence shall be addressed to: Private Sector Housing, Test Valley Borough Council, Beech Hurst, Weyhill Road, Andover, SP10 3AJ. Telephone: 01264 368000; email: phousing@testvalley.gov.uk

The term Caravan includes a mobile or park home.

1.0 The Site

- 1.1 Caravans located on the site shall be for residential use only.
- 1.2 The total number of caravans on the site shall not exceed XX at any one time, except where this is increased by virtue of a relevant planning permission.
- 1.3 All caravans on the site shall comply with the definition of caravan contained in the Caravan Sites and Control of Development Act 1960 Section 29(1) and the Caravan Sites Act 1968 section 13.
- 1.4 Caravans to be located on the site must comply with the current edition of BS3632 at the time of manufacture.
- 1.5 The site owner shall provide the local authority with a plan of the site within 28 days of the date of any written request, and at any time when there is a material change to the boundaries or layout of the site.
 - 1.5.1 The plan supplied shall be to a reasonable scale to clearly show the layout of the site including all relevant structures, features and facilities. In particular:
 - 1.5.1.1 Caravans including their enclosure boundaries and all garages, sheds, covered stores, car ports, covered walkways and car parking spaces associated with them.
 - 1.5.1.2 Site buildings and other permanent structures
 - 1.5.1.3 Roads, paths and their associated lighting

- 1.5.1.4 Fire points and fire hydrants
 - 1.5.1.5 Electrical distribution points
 - 1.5.1.6 Compounds for storage of liquefied petroleum gas
 - 1.5.1.7 Cess pools, septic tanks and connections to the public sewerage system
 - 1.5.1.8 Communal refuse stores
 - 1.5.1.9 Recreation space
- 1.6 The boundaries of the site from any adjoining land shall be clearly marked by a man made or natural feature, such as permanent fence, wall, hedge or river, or combination thereof.
- 1.7 No caravan or combustible structure shall be positioned within 3 metres of the boundary of the site without prior written consent of the local authority.

2.0 Density and Spacing

- 2.1 Except where the written prior approval of the local authority has been obtained, or in the case mentioned in paragraph 2.2 and subject to paragraphs 2.3-2.10, every caravan shall where practicable be spaced at a distance of no less than 6 metres (the separation distance) from any other caravan which is occupied as a separate residence. The separation distance shall be maintained at all times.
- 2.2 Where the facing walls of both caravans have been fitted with cladding from Class 1 fire rated material, the separation distance between these caravans may be reduced to a minimum of 5.25 metres with the prior written approval by the local authority.
- 2.3 Every caravan shall be located more than 2 metres away from a road or communal car park, and no more than 50 metres away from a road within the site.
- 2.4 A porch attached to the caravan may protrude one metre into the separation distance but shall not exceed 2 metres in length and 1 metre in depth. The porch shall not exceed the height of the caravan. Where a porch is installed only one door is permitted at that entrance to the home, either on the porch or on the home.
- 2.5 Eaves, drain pipes and bay windows may extend into the separation distance, provided the total distance between the fixtures on two facing park homes shall not be less than 5 metres; except where a prior approved reduction to separation distance under sub paragraph 2.2 applies in which case the total distance shall not be less than 4.25 metres.

- 2.6 Any structure including steps, ramps, sheds etc. (except garage or car port) which extends more than 1 metre into the separation distance shall be of non-combustible construction (e.g. metal or concrete). There shall be a 4.5 metre clear distance between the structure and any adjacent caravan and the structure shall not impede a safe means of escape in event of fire.
- 2.7 *Existing sites only (if appropriate)* A shed or covered storage space shall not be less than 4.5 metres from any other caravan unless:
 - 2.7.1 The structure is clad externally with incombustible materials then the distance from any other caravan shall be not less than 3 metres.
 - 2.7.2 The structure is wholly constructed of incombustible materials then the distance from any other caravan shall not be less than 1.5 metres.
- 2.8 A garage or car port will only be permitted within the separation distance if it is of non-combustible construction.
- 2.9 Windows in permitted structures within the separation distance shall not face towards the caravan on either side.
- 2.10 Fences and hedges, where permitted and forming the boundary between adjacent park homes, shall be a maximum of 1.5 metres high. Hedges shall be regularly pruned to prevent them becoming a fire bridge between units.
- 2.11 Private cars may be parked in the separation distance provided that they do not obstruct entrances to park homes or the access around them and they are a minimum of 3 metres from an adjacent caravan.
- 2.12 The following units have an agreed separation distance less than the minimum detailed above.

Unit Numbers	Date agreed	Restrictions

3.0 Roads, Gateways and Overhead Cables

- 3.1 All roads, gateways and turnings shall be designed to provide safe adequate access for emergency vehicles (and any new caravans brought onto the site) and shall be kept clear from obstruction at all times.
- 3.2 New roads shall be constructed and laid of suitable bitumen macadam, concrete with a suitable compacted base, or other suitable material approved in writing before construction commences, by the local authority.

- 3.3 All roads shall have adequate surface water/storm drainage and shall be assessed regularly to ensure the drainage is adequate. Records of the assessments shall be retained and produced to the local authority for inspection on request.
- 3.4 New two way roads shall not be less than 3.7 metres wide, or if they are designed for and used by one way traffic, not less than 3 metres wide.
- 3.5 One way systems shall be clearly signposted.
- 3.6 *(if applicable)* Existing roads that are less than 3.7 metres wide shall be provided with passing places where practicable to do so.
- 3.7 Vehicular access and all gateways to the site must be a minimum of 3.1 metres wide and have a minimum height clearance of 3.7 metres.
- 3.8 Suitable turning facilities shall be provided on any cul-de-sac road exceeding 20 metres in length.
- 3.9 Roads shall be maintained and kept in good condition at all times.
- 3.10 Any traffic calming measures in place on the site shall comply with the relevant current legal standards. In particular, speed humps that are installed shall be clearly designated and shall not be greater than 100mm high. A clear sign warning of speed humps shall be placed at the site entrance.
- 3.11 Cable overhangs shall meet statutory requirements (having regard to the current Electrical Safety Quality and Continuity Regulations). No cable overhang shall be less than 5.8 metres, unless a lower height has been agreed in writing by the local authority.
- 3.12 Where an electrical cable is within easy reach of a property, it shall be fully insulated and protected from interference.

4.0 Footpaths and Pavements

- 4.1 Every caravan shall be connected to a road by a suitable footpath with a hard surface.
- 4.2 All footpaths shall be maintained in good condition at all times.
- 4.3 Where practicable, communal footpaths shall not be less than 0.9metres wide.

5.0 Lighting

- 5.1 Site roads, communal car parking, communal footpaths and pavements shall be adequately lit between dusk and dawn to allow the safe movement of pedestrians and vehicles around the site during the hours of darkness.

6.0 Bases

- 6.1 Every caravan shall stand on a concrete base or hard-standing, which shall extend over the whole area occupied by the caravan and extend a sufficient distance outwards from its entrance or entrances to enable occupants to enter and leave safely.
- 6.2 Hard standings shall be constructed to the industry guidance, current at the time of siting, taking into account local conditions. The base shall be sufficient to handle the load placed upon it by the caravan and its contents.
- 6.3 Hard standings shall be maintained in good condition by the site owner at all times.

7.0 Maintenance of Common Areas, including Grass, Vegetation and Trees

- 7.1 Every part of the site to which the public have access shall be kept in a clean and tidy condition.
- 7.2 Every road, communal footpath and pavement on the site shall be maintained in good condition, good repair and clear of rubbish at all times.
- 7.3 Grass and vegetation in communal areas shall be cut and removed at frequent and regular intervals.
- 7.4 Trees within the site shall (subject to the necessary consents) be maintained and ensure that they pose no risk to occupants or visitors to the site.
- 7.5 Any cuttings, litter or waste shall be removed from the immediate surrounds of a pitch.

8.0 Supply and Storage of Gas etc.

- 8.1 Gas and oil installations and the storage of supplies shall meet current statutory requirements, relevant standards and Codes of Practice.
- 8.2 Liquefied Petroleum Gas (LPG) cylinders must not be positioned or secured in such a way as to impede access or removal in the event of an emergency.

9.0 Electrical Installations

- 9.1 The site shall be provided with a safe electricity network of adequate capacity to meet all reasonable demands of the caravans and other facilities and services on site.
- 9.2 The electrical network installations must be designed, installed, tested, inspected and maintained in accordance with the provisions of the current relevant statutory requirements.

- 9.3 Any work on electrical installations and appliances shall be carried out only by persons who are competent to do the particular type of work being undertaken, in accordance with the provisions of the current statutory requirements. A suitably qualified person includes a registered member of a competent person scheme authorised by the Department of Communities and Local Government or other authorising government department.
- 9.4 Any work on the electrical network within the site shall be done by a competent person fully conversant with the appropriate statutory requirements.

10.0 Water supply

- 10.1 All pitches on the site shall be provided with a piped water supply, suitable for drinking, which is sufficient in all respects to meet all reasonable demands of the caravans situated on them, particularly with regard to quantity and pressure.
- 10.2 All new water supplies shall be designed, installed, inspected, tested and maintained by a competent person in accordance with all current legislation, regulations and relevant British or European Standards.
- 10.3 All repairs and improvements to water supplies and installations shall be carried out by a competent person qualified in the particular work being undertaken and in accordance with the current relevant legislation and British or European standards.
- 10.4 All reasonably practicable steps shall be taken to protect water supply pipes from the risk of frost or damage.

11.0 Drainage and Sanitation

- 11.1 Surface water drainage shall be provided where appropriate to avoid standing pools of water.
- 11.2 There shall be satisfactory provision for foul and waste water drainage to the site by connection to a public sewer or sewage treatment works or by discharge to a properly constructed septic tank or cesspool approved in writing by the local authority.
- 11.3 Each pitch shall be provided with a connection to the foul water drainage system, the connection shall be made air tight when not in use.
- 11.4 All drainage and sanitation provision shall be in accordance with all current legislation and British or European Standards.
- 11.5 Any work on drains and sewers shall be carried out only by persons who are qualified in the particular type of work being undertaken and in accordance with current legislation and British or European Standards.

12.0 Domestic Refuse Storage and Disposal

- 12.1 Where communal refuse bins are provided these shall be non-combustible and housed within a properly constructed bin store.
- 12.2 All refuse disposal shall be in accordance with all current legislation and regulations.

13.0 Vehicle Parking

- 13.1 Car parking spaces shall be provided on the site for at least one private car per park home.
- 13.2 Visitor parking shall be provided on site, in addition to residents parking, in a ratio of not less than one per every five caravans.
- 13.3 All car parking spaces shall be levelled and surfaced with suitable materials.
- 13.4 Each car parking space shall be of minimum dimension 2.4 x 4.8 metres with sufficient room to manoeuvre into and out of the space.

14.0 Communal Recreation Space

- 14.1 On sites where it is practical to do so, suitable space equivalent to about one tenth of the total area of the site shall be allocated for recreational purposes.

15.0 Notices and information

- 15.1 The name of the site shall be displayed on a sign in a prominent position at the entrances to the site.
- 15.2 The current name, address and telephone number of the licence holder and manager and emergency contact numbers, shall be displayed at the entrance to the site, or otherwise clearly and prominently identified where the information can be found.
- 15.3 The following information shall be displayed on a noticeboard in a prominent position on site, or details of where they can be viewed (on site) and between which times (which must be reasonable), or where occupiers can request copies from:
 - 15.3.1 A copy of the site licence or front page of the said licence and details of where the full licence can be viewed
 - 15.3.2 A current plan of the site with roads and pitches marked on it
 - 15.3.3 A copy of the most recent periodic electrical inspection report
 - 15.3.4 A copy of the site owner's certificate of public liability insurance
 - 15.3.5 A copy of local flood warning system and evacuation procedures, if applicable further to condition 16.

15.3.6 A copy of the fire risk assessment for the site

15.4 All notices shall be suitably protected from the weather and from direct sunlight.

16.0 Flooding

16.1 The site owner shall establish whether the site is at risk from flooding by referring to the Environment Agency's flood Map.

16.2 Where there is a risk of flooding, the owner shall consult the Environment Agency for advice on the likelihood of flooding, the depth and velocities that might be expected, the availability of a warning service and on what appropriate measures to take.

17.0 Fire Safety measures

17.1 The site owner shall make available the latest version of the fire risk assessment carried out under the Regulatory Reform (Fire Safety) Order 2005 or subsequent order for inspection by residents and when demanded, a copy shall be made available to the local authority and Hampshire Fire and Rescue Service.

17.2 The site owner shall put in place appropriate fire points, fire fighting equipment and fire warnings as deemed necessary by the fire risk assessment.

17.3 All alarm and fire fighting equipment shall be installed, tested and maintained in working order by persons who are qualified in the particular type of work being undertaken.

17.4 A clearly written and conspicuous notice shall be provide and maintained at each fire point to indicate the action to be taken in case of fire. This notice shall include the following:

“on discovering a fire:

17.4.1 Ensure that the caravan or site building involved is evacuated.

17.4.2 Raise the alarm

17.4.3 Call the fire brigade (the nearest phone is sited at.....)”

17.5 A record shall be kept of all testing and remedial action taken and this must be made available for inspection at all times by, or on behalf of the local authority or Hampshire Fire and Rescue Service. Where requested in writing, this shall be made available for inspection within 7 days of the request.

ITEM 7 Hackney Carriage and Private Hire Vehicle Licensing Guidelines (Policy) – Driver assessments

Report of the Head of Legal and Democratic (Portfolio: Corporate)

Recommended:

That the revision to the Hackney Carriage and Private Hire Vehicle Licensing Guidelines relating to driver assessments be adopted so that driver assessments are undertaken by a provider approved by the Head of Legal and Democratic.

SUMMARY:

- The Hackney Carriage and Private Hire Vehicle Licensing Guidelines require drivers to undertake the Driving and Vehicle Standards Agency (DVSA) Taxi Driver Test where there is need for the driver's competency to be tested.
- The DVSA have advised that they will cease to provide such tests and so a change to the current policy is recommended to allow for alternative providers to deliver such assessments.

1 Introduction

- 1.1 Legislation enables local authorities to administer licences for hackney carriages and their drivers and private hire drivers and operators and their vehicles. In 2007 this Committee adopted a Hackney Carriage and Private Hire Vehicle Licensing Guidelines document that sets out the Council's approach to these areas of licensing. The document is in essence the Council's policy on taxi and private hire licensing and includes requirements for those seeking to be licensed drivers.

2 Background

- 2.1 Hackney Carriages and Private Hire Vehicles form a vital part of the public transport network within the Borough. The Hackney Carriage and Private Hire Vehicle Licensing Guidelines policy document states that "Any driver who accumulates 9 points on his licence will have his driver's licence suspended pending the completion of the DVSA Taxi Drivers Test". Whilst the very nature of their occupation potentially places taxi drivers more at risk of attracting motoring convictions, there comes a point at which a driver will have accumulated sufficient number of penalty points such that their continued position as a licensed driver may be called into doubt.

- 2.2 In addition, the Guidelines require drivers with certain motoring convictions to undertake and pass the DVSA Test if they are to be licensed. The specific situations where passing the test is necessary are set out in the extract of the Guidelines attached as Annex 1 to this report.
- 2.3 Regrettably the DVSA have reviewed their services and decided that they will no longer provide the Taxi Driver Test as from early 2017. It is therefore necessary to find an alternative provider and revise the policy accordingly. A number of local authorities in Hampshire already make use of the Blue Lamp Trust for undertaking driver assessments and it is suggested that this organisation undertake tests in future. The Blue Lamp Trust is a charitable organisation supported by Hampshire Constabulary and Hampshire Fire and Rescue Service which provides driver education and training amongst other services. Any profits created from operating the Trust are used to operate the Bobby Scheme which provides tangible support to vulnerable people in the County, particularly victims of domestic burglary and of domestic violence. The Trust also bids for community funding from central and local government and to makes grants to local schemes working towards reducing crime, the fear of crime and the risk of fire in the County.
- 2.4 Whilst there is no suggestion that the Blue Lamp Trust will at any time cease to provide driver assessments, it is suggested that rather than alter the policy to make specific reference to them the policy merely state that drivers will undertake an assessment using a provider approved by the Head of Legal and Democratic. This will allow for any additional or alternative providers without the need to seek specific approval each time.

3 Corporate Objectives and Priorities

- 3.1 Hackney Carriage and Private Hire licensing falls within the broader remit of public safety. In deciding whether a licensed driver should be issued with and then retain their licence, the overriding consideration will be the protection of the public. As drivers are employed in a position of trust where safety is of the utmost importance, the Council's policy is that once drivers accumulate a certain number of penalty points or have certain motoring convictions, the licence will be suspended pending the driver satisfactorily undertaking a driver assessment.

4 Consultations/Communications

- 4.1 There has been no consultation with the taxi trade on this matter as only a handful of drivers have in recent years been required to undertake the DVSA test and so a change in provider is of no significant impact.

5 Options

- 5.1 There is no alternative option as the DVSA will cease to provide driver assessments and so if not revised the current policy will become outdated. It is the view of officers that requiring drivers to undertake assessments when there is concern over their suitability to hold a licence is appropriate and necessary.

6 Resource Implications

- 6.1 There are no direct resource implications as a result of this recommendation. The cost of undertaking the driver assessment will continue to be met by the driver. The content of the driver assessment is set out in Annex 2 to this report.

7 Legal Implications

- 7.1 There are no specific implications as a result of the revision to the current policy.

8 Equality Issues

- 8.1 The Committee may wish to know that a previous Department for Transport National Travel Survey showed that taxis and private hire vehicles are commonly used by younger people and those on low incomes who do not have access to a household car and for whom such vehicles provide an essential safe form of transport. Women aged 16 to 20 years make the greatest number of trips in taxis and private hire vehicles.

9 Other Issues

- 9.1 Community Safety – see paragraph 3.1 above.
- 9.2 Environmental Health Issues – none.
- 9.3 Sustainability and Addressing a Changing Climate – none.
- 9.4 Property Issues – none.
- 9.5 Wards/Communities Affected – the whole Borough.

10 Conclusion

- 10.1 Whilst not a statutory requirement it is considered good practice and an integral part of ensuring that drivers are “fit and proper” to have a policy requiring driver competency to be assessed when there are concerns as a result of motoring convictions. A revision to the policy is necessary to account for the decision of the DVSA to cease providing the Driver Taxi Test.

<u>Background Papers (Local Government Act 1972 Section 100D)</u> Department for Transport National Travel Survey 2005 Reports to Licensing Committee 31 July 2007 and 11 October 2011			
<u>Confidentiality</u> It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	2		
Author:	Michael White	Ext:	8013
File Ref:	MW/		
Report to:	Licensing Committee	Date:	1 December 2016

ANNEX 1

MINOR TRAFFIC OFFENCES e.g. obstruction, waiting in a restricted street, speeding etc., should not prevent a person from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicant's DVLA driving licence then a Hackney Carriage or Private Hire Drivers licence may be granted after its restoration but only in accordance with the following:

One year clear of driving from disqualification and attending and completing in its entirety the Driving & Vehicle Standards Agency (DVSA) Taxi Drivers Test* before the issue of any licence.

Any driver who accumulates 9 or more points on his/her licence will have his/her driver's licence suspended pending the completion of the DVSA Taxi Drivers Test*.

Any driver who has an endorsement for careless driving/undue care and attention will be expected to provide a full account of the charge.

Any driver who has more than 2 miscellaneous traffic offences (as per the endorsement offence codes applied by the courts) in one year will have his/her licence suspended pending the completion of the DVSA Taxi Drivers Test*. An explanation of the codes is available in DVLA leaflet INS57P Driver Licensing Information.

MAJOR TRAFFIC OFFENCES such as an isolated conviction for reckless driving or driving without due care and attention etc. should normally merit a warning as to future driving and advice on the standard expected of a hackney carriage and private hire vehicle driver. More than one conviction for this type of offence within the last two years should merit refusal and no further application would be considered until a period of 1 to 3 years free from convictions has elapsed. Attendance at the DVSA Taxi Drivers Test* will be compulsory prior to any licence being granted.

However, the following offences should be specifically looked at in accordance with this policy.

Reckless Driving – Licence granted after 3 years from conviction. Attendance at the DVSA Taxi Drivers Test* will be compulsory prior to any licence being granted.

Drink Driving with a Motor Vehicle - A serious view will be taken of convictions of driving or being in charge of a vehicle while under the influence of drink or drugs. An isolated incident will not necessarily debar an applicant but this guidance will be considered.

A licence may be granted after 3 years for isolated incident of drunkenness; more than one conviction for drunkenness will result in a 5 year clear period from conviction before an application could be considered. Attendance at the DVSA Taxi Drivers Test* will be compulsory prior to any licence being granted.

If there is any suggestion that the applicant is an alcoholic, a special medical examination will be required before an application is entertained. If the applicant is found to be an alcoholic a period of 5 years must elapse after treatment is complete before a further licence application will be considered. Attendance at the DVSA Taxi Drivers Test* will be compulsory prior to any licence being granted.

Drunkenness not in a Motor Vehicle - an isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a 1 year period free of convictions is required before an application will be considered.

Driving Without Insurance – Licence may be granted after 2 years free from further convictions.

Taking a Vehicle Without Consent – Licence may be granted after 2 years free from convictions. Attendance at the DVSA Taxi Drivers Test* will be compulsory prior to any licence being granted.

*The DVSA Test is due to be phased out at the end of 2016 and the Council is in the process of finding a suitable alternative test.



Taxi Driving Assessment

Important Information (please read carefully)

For the test to take place you must;

- Bring your driver's licence with you; this must be presented before the assessment.
- Your licence should be at your current address and in date.
- If you have the older style paper licence then you will need to bring an appropriate form of photo identification such as a passport.
- Eyesight must conform to current legislation (20m / 68ft) so if you require glasses /contact lenses then bring these with you.
- You must provide a vehicle for the assessment.
- The vehicle must be right hand drive, in a roadworthy condition and comply with current road legislation i.e. taxed, insured, and fit for purpose.
- Be punctual, if you are later than 5 minutes the test may be cancelled at the discretion of the examiner and you will still be charged.
- Appropriate footwear should be worn, for example, no flip flops, sandals or high heels.

The Assessment

We recommend that candidates take a driving lesson with an approved driving instructor prior to attending the assessment.

Please allow 1 hour for the assessment. You will be asked 2 maintenance related questions (show me / tell me) and expected to drive for approximately 45 minutes on a variety of road types and be asked to perform 2 reversing manoeuvres with the possibility of an emergency stop. There will be a 10 to 15 minute debrief at which point you will be advised of the result.

A maximum of 9 driving faults are allowed. If you exceed 9 driving faults or commit a serious or dangerous fault, this will result in a failure.

Please note that if you take your assessment in an automatic you will not be licenced by your authority to drive a manual vehicle.

You may cancel or change the appointment date up to 5 working days prior to the test without incurring costs, after which you will not receive a refund and there will be no discount for rebooking.

We wish you luck with the assessment, if you require any further clarification or advice then please contact the office on 0300 777 0157.

ITEM 8 Delegation of function – Charity Street Collections

Report of the Head of Legal and Democratic Services (Portfolio: Corporate)

Recommended to Council:

That the responsibility for deciding the grant or refusal of Street Collection licences in accordance with the Police, Factories, etc. (Miscellaneous Provisions) Act 1916 be delegated to Andover Town Council and Romsey Town Council for collections conducted solely in their respective administrative areas with effect from a date to be agreed by the Head of Legal and Democratic Services.

SUMMARY:

- The Borough Council currently issues permissions for charitable street collections to be undertaken across the Borough.
- Following negotiations with Andover and Romsey Town Councils it is proposed to delegate to them responsibility for the administration of collections in their respective areas.

1 Introduction

- 1.1 The Police, Factories, etc (Miscellaneous Provisions) Act 1916 allows local authorities to regulate public collections of money for ‘charitable or other purposes’. This legislation is normally used by national and local charities to undertake ‘flag days’ and other similar forms of fund raising where the public are asked to make a monetary donation. The Act gives no guidance as to the meaning of ‘other purposes’ but it is generally understood to mean that organisations or activities which although not charitable are charitable or non-profit making in character, will require a street collection licence.
- 1.2 The legislation applies to collections held “in any street or public place”. Whilst the meaning of street is understood there is no definition of ‘public place’ and it is generally regarded as meaning any place to which the public have access as a right and not merely as a fact. Thus a licence would not be required for a collection held inside a shop or a public house, or in the foyer of a cinema or theatre. A meeting held in the open air is specifically excluded from the definition of public place.

- 1.3 Licences not only apply to the collection of money but also to the sale of articles for charitable purposes. The legislation does not apply to the sale of articles if “sold in the ordinary course of trade and for the purpose of earning a livelihood” although in those cases a Street Trading Consent may be required. Nor does the legislation apply to the common practice amongst the larger charities of collecting direct debit mandates from the public. However, for many years the Borough Council has encouraged those organisations wishing to undertake direct debit sign up campaigns to check with the Borough Council to ensure there is no clash with other collections and no change to this practice is proposed.

2 Background

- 2.1 The Head of Legal and Democratic Services has delegated authority to issue licences. The Borough Council’s current policy was approved in 2012 and appears in the addendum to the Service Level Agreement in the Annex to this report.
- 2.2 If a street collection licence is granted then the regulations made by the Council, attached as an addendum to the Service Level Agreement in the Annex to this report, will automatically apply. The purpose of these limitations is to ensure that collectors are properly authorised, that donations are receipted and stored in a secure way and that the total proceeds are properly accounted for. Returns show a huge difference between the funds collected by various organisations. This differential can be brought about by a number of factors including the locality of the collection, the number of collectors and the popularity/support for the particular cause. The regulations will continue in place as any change to them involves a lengthy process of seeking Home Office approval.
- 2.3 Street Collection applications are common; 88 applications were received in 2015 of which 50 were for Andover, 31 for Romsey, four were for other locations within the Borough and just three were for the whole Borough. Applications are processed on a first come first served basis and allocated as detailed in the policy. The current economic climate has meant continued demand from charitable organisations all hoping to arrange collections on their preferred date. Whilst the actual number of applications is minimal some time can be spent communicating with charities in assisting them find an available collection date.
- 2.4 On occasions complaints have been received about unlicensed collections. These invariably take place on a Saturday and the Borough Council is unaware of them until after the event when it is difficult if not impossible to take any action. In both Andover and Romsey, the Town Councils through the Town Centre Managers are already taking a greater role in activities in the town centres and thus it is suggested have a greater interest in ensuring that collections have been licensed. In addition, many of the local Andover and Romsey charities wanting to hold a collection are already likely to be interacting with their Town Council in respect of other matters.

3 Corporate Objectives and Priorities

- 3.1 The regulation of street collections is a statutory function that does not specifically align with any of the Council's priorities. However, collections are a significant issue for those charitable organisations wishing to raise funds and collecting for a particular charitable cause can be an emotive issue.

4 Consultations/Communications

- 4.1 Romsey Town Council resolved to accept the delegated function at a Council meeting on 15 September 2015 and Andover Town Council did so at a Council meeting held on 25 February 2016. No consultation with charities has been undertaken in respect of the matters raised within this report. Street Collection licences are issued to a wide range of local and national charities such that meaningful consultation would be difficult to achieve. It is the view of officers that the proposed delegation will not adversely impact upon any charitable organisation that currently applies for a Street Collection licence in Test Valley and in certain cases the proposed policy may actually assist some organisations.

5 Options and Option Appraisal

- 5.1 The options available to members are either to delegate the responsibility to Andover and Romsey Town Councils or to continue as at present. As both Town Councils have indicated a willingness to undertake the function then it is recommended that responsibility be delegated. Delegating the Street Collections function in Andover and Romsey to the Town Councils is proposed as it will: allow the Borough Council to concentrate on its core licensing activities; potentially assist local Andover and Romsey charities where they may already have some contact with their Town Council; and fit in with the Town Councils' wishes to take a holistic approach to the management of activities in the town centre.

6 Resource Implications

- 6.1 There are no direct resource implications as a result of the report as applications for street collections do not attract any fee. Delegation of this function will free up approximately 79 hours of officer time which will be spent undertaking other licensing related work.

7 Legal Implications

- 7.1 As mentioned above, the regulation of street collections is a statutory function and so the Council must fulfil its responsibilities in determining any applications. There is no statutory right of appeal against the refusal of a street collection licence and the only way the local authority's decision could be challenged would be by application to the High Court for a review of the decision. A formal legal agreement will be drawn up with both Town Councils delegating responsibility for the function in accordance with section 101 of the Local Government Act 1972.

8 Equality Issues

8.1 There are no directly relevant issues relating to equality and diversity and thus an Equalities Impact Assessment has not been undertaken.

9 Other Issues

9.1 Community Safety – none.

9.2 Environmental Health/Sustainability Issues – none.

9.3 Property Issues – none.

9.4 Wards/Communities Affected – all Andover and Romsey wards within the areas of Andover Town Council and Romsey Town Council.

10 Conclusion

10.1 The legislation regarding charity collections is archaic and takes little account of modern methods of charity fund raising. New Charities Act legislation is designed to modernise the law around street collections, but the relevant provisions are not yet in force and there appears to be no prospect of them being brought into force in the foreseeable future. Further the current difficult economic situation has meant continued demand from charitable organisations all hoping to arrange collections on their preferred date. Both Andover and Romsey Town Councils have indicated a willingness to undertake responsibility for administering Street Collection licences in their respective areas. Formal delegation of the function to the Town Councils is recommended as it will allow the Borough Council to concentrate on its core licensing activities; potentially assist local Andover and Romsey charities where they may already have some contact with their Town Council; and fit in with the Town Councils’ wishes to take a holistic approach to the management of activities in the town centre.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
Council Minute 640, 1985			
Report to Licensing Committee 23 May 2012			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	1		
Author:	Michael White	Ext:	8013
File Ref:	MW/		
Report to:	Licensing Committee	Date:	1 December 2016

ANNEX

DATED _____ 2016

BETWEEN

Test Valley Borough Council

And

Andover Town Council

AGREEMENT

Under Section 101 Local Government Act 1972

for the delegated discharge of the functions relating to

Charity Street Collection Licences

**William Lynds
Head of Legal and Democratic Services
Test Valley Borough Council
Beech Hurst
Weyhill Road
Andover
Hampshire
SP10 3AJ**

THIS AGREEMENT is made the _____ day of _____ 2016 BETWEEN **Test Valley Borough Council** of Beech Hurst, Weyhill Road, Andover, Hampshire SP10 3AJ (hereinafter called “the Borough Council”) of the one part and **Andover Town Council** of 66c High Street, Andover SP10 1NG (hereinafter called “the Town Council”) of the other part.

WHEREAS:

- (1) By virtue of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916 the Borough Council are the licensing or otherwise competent authority for the functions of issuing Charitable Street Collection Licences
- (2) The Borough Council have agreed to delegate the discharge of the functions in respect of part of the Borough of Test Valley to the Town Council in the manner and upon the terms hereinafter contained
- (3) It is provided by Section 101 of the Local Government Act 1972 that a local authority may arrange for the discharge of any of their functions by any other local authority
- (4) The Borough Council and the Town Council are local authorities for the purposes of the Local Government Act 1972

NOW THEREFORE IT IS HEREBY AGREED AND DECLARED AS

FOLLOWS ON the _____ day of _____ Two Thousand and Sixteen and for that part of the Borough of Test Valley which falls within the boundary lines of the Town of Andover only, the

Town Council shall carry out the functions in a fit and proper manner with sufficient and proper resources including appropriate staff suitably supervised by a person or persons with knowledge of the functions in accordance with and in compliance with

- (i) All Acts made by parliament and any statutory instruments and regulations made thereunder or which are otherwise expressed to be applicable thereto. In this respect the regulations attached as Annex 2 to this Agreement shall apply to all collections administered by the Town Council
- (ii) Byelaws and policies made by the Borough Council or its predecessors in title which apply to and are designed to regulate the functions or part thereof within the area over which the Town Council have been delegated authority to exercise the functions and
- (iii) Case law and common law applicable to the exercise of the functions

FOR the purposes of this Agreement the functions are (the Act of Parliament described is designed to be by way of information only and does not purport to set out the full statutory basis for the functions or the administration thereof) the receipt, processing, determination and issue of Street Collection Licences in accordance with the Police, Factories, etc. (Miscellaneous Provisions) Act 1916.

ALL and any appeals whether by way of an appeal to the Magistrates or otherwise against a decision made by the Town Council (unless otherwise instructed in writing by an authorised officer of the Borough

Council) in the exercise of the functions hereby delegated shall be immediately referred to the Borough Council who shall thereafter notwithstanding the provisions of this Agreement be entitled to defend, settle, negotiate or otherwise deal with the appeal as the Borough Council shall in its absolute discretion see fit and the Town Council shall be entitled to make representations in respect thereof and shall provide such information, documents or other assistance as the Borough Council shall require.

THE Borough Council remains the licensing or otherwise competent authority in regard to the functions herein delegated to the Town Council and is the licensing or otherwise competent authority in regard to those functions for the remainder of the administrative area of the Borough of Test Valley and both parties to this Agreement recognise and acknowledge the importance of ensuring that the functions delegated to the Town Council and those retained by the Borough Council are exercised as consistently as is reasonably possible with similar requirements and considerations and shall ensure that the general policy framework attached as Annex 1 to this Agreement applied by the Borough Council elsewhere within its administrative area shall apply within the administrative area of the Town Council.

- (i) Any party proposing a variation in procedure (apart from those of a purely minor administrative nature) shall not implement the said variation until the other party has been given a reasonable opportunity to consider the said variation and make written representation thereto and/or require that discussions are held

and concluded between representatives of the Borough Council and the Town Council whereupon the said variation can then be implemented subject to such amendments as shall have been agreed between the parties hereto

- (ii) The Borough Council shall inform the Town Council of and the Town Council shall apply all general policies of the Borough Council in regard to the functions herein delegated to the Town Council. Where the Town Council require to determine a policy or policies in regard to such functions at variance with a policy or policies notified to the Town Council in accordance with the provisions hereof the Town Council prior to the implementation of such proposed amended policy or policies shall inform the Borough Council in writing of such proposed change or changes and thereafter implement only such of those changes as the Borough Council may in writing approve.

BY virtue of Act of Parliament the Town Council may levy no charge in respect of the functions delegated to them by this Agreement. The Borough Council will not pay the Town Council any sum of money in relation to the undertaking of the functions allowed for in this Agreement.

THIS Agreement shall be reviewed within three years of the date of commencement contained within this Agreement and thereafter on the three yearly anniversary of the said date of commencement (or in either case earlier by agreement between the Borough Council and the Town Council) by officers and members of both parties and such

review shall entitle the Borough Council and the Town Council to agree to the amending of the Agreement (if appropriate).

EITHER party hereto shall be entitled to terminate this Agreement upon the expiry of six months' notice of termination in writing given to the other party. Prior to the expiration of the said notice period and for such period thereafter as the Borough Council shall require the Borough Council and the Town Council shall co-operate fully to ensure that the Borough Council is able to continue with the provision of the functions when they revert back to the Borough Council on the expiry of the said notice period and in particular the Town Council shall

- (i) Hand over all documents, files and other papers held by the Town Council and which relate to the Town Council's exercise of the functions
- (ii) Assist the Borough Council in the identification and interpretation of work in progress
- (iii) Advertise to the public that the functions are to revert back to the Borough Council

THE Town Council may arrange for the discharge of any of the functions under this Agreement by a committee, sub-committee or an officer of the Town Council.

EXCEPT as may otherwise be provided by the Agreement and without prejudice to any statutory rights and duties of the Borough Council and Town Council any dispute as to the terms of the Agreement shall be referred for decision to a joint committee of five members of the Borough Council and five members of the Town Council.

IF this Agreement is terminated or varied in any way the Borough Council shall not be liable to pay the Town Council or any employee thereof any compensation or damages or other costs of whatever description and/or extent.

THE Town Council shall indemnify the Borough Council against any and all claims made against the Town Council or Borough Council arising out of the Town Council exercising or failing to exercise the functions delegated to the Town Council under this Agreement.

IN WITNESS whereof the Borough Council have executed this Agreement as their deed and have caused their Common Seal to be hereunto affixed and the Town Council have hereunto signed this Agreement as their deed

THE COMMON SEAL OF TEST

VALLEY BOROUGH COUNCIL

was hereunto affixed in the presence

of:

SIGNED as their Deed by

and

two members of the Andover

Town Council this _____

day of _____ 2016 in the

presence of:

ANNEX 1

Test Valley Borough Council Street Collections – Policy

1. This policy applies to all charitable street collections held in Test Valley and shall apply to the whole of the Borough. Each area of the Borough for which permission is sought will be considered separately for the purpose of granting licences to ensure that only one collection is made at any one time.

2. Applications for collections which are contrary to this policy will be refused unless the Head of Administration considers the circumstances to be exceptional.

3. Applications for street collections will be accepted up to one year in advance.

4. The issue of a street collection licence does not entitle the holder to collect in private or business premises without having first obtained the consent of the owner / management. If going from one premises to another then a separate House to House Collections Licence will be required.

5. In order to allow as many organisations as possible an opportunity of collecting, no individual organisation will be granted more than one collection for any area within Test Valley. The following exceptions to this policy will apply:

(a) Poppy Appeal collections organised by the Royal British Legion will be permitted for up to fourteen consecutive days preceding Remembrance Sunday.

(b) Collections on behalf of Children in Need Appeal.

(c) Collections on behalf of Comic Relief Appeal.

(d) Collections on behalf of Naomi House Hospice.

(e) Collections on behalf of the Help for Heroes charity.

(f) Wings Appeal collections organised by the RAFA will be permitted for a maximum of ten consecutive days.

6. Applications for collections relating to emergency disasters will be considered on a case by case basis, even if they do not fall within the requirements of this policy.

7. Where the statement of return has been nil or there has been a failure to submit a statement of return this will usually result in any subsequent applications in the following two year period from the same organisation being refused.

8. Where a collection licence has been issued but the collection is unable to take place, the Licensing Section must be informed at least seven days before the collection was due to take place. Failure to do so will usually result in

subsequent applications from the same organisation being refused for a two year period.

9. If, in the opinion of the Head of Administration, any proposed collection may be of a controversial or political nature the application will be referred to the Licensing Committee for determination.

10. Test Valley Borough Council reserves the right to require an applicant to submit a basic criminal records disclosure to assist in determining their suitability to conduct a charitable collection.

Aims

The aims of Test Valley Borough Council are to:

- Safeguard the interests of both donors and beneficiaries;
- Facilitate well organised collections by bona fide charitable organisations and to ensure that good standards are met, and;
- Prevent unlicensed collections from taking place.

Objectives

In order to achieve its aims, Test Valley Borough Council has identified the major issues and seeks to address them through this policy with the intention of:

- Ensuring impartiality and fairness in determining applications;
- Accommodating all eligible requests, subject to capacity, and bearing in mind that certain days and locations are especially sought after;
- Providing equality of opportunity for would be collectors;
- Avoiding causing undue nuisance to the public;
- Setting fair maximum limits for applying organisations, and;
- Achieving a fair balance between local and national causes.

Test Valley Borough Council recommends that all organisations adhere to the Institute of Fundraising's Code of Fundraising Practice. A copy of this code of practice can be found at www.institute-of-fundraising.org.uk.

Licensing Section
Legal and Democratic Service
Test Valley Borough Council
April 2012

ANNEX 2

Regulations made by The Borough Council of Test Valley with regard to Street Collections

In pursuance of Section 5 of the Police, Factories etc (Miscellaneous Provisions) Act 1916, as amended by Section 251 and Schedule 29 to the Local Government Act 1972, The Borough Council of Test Valley hereby makes the following regulations with respect to the places where and the conditions under which persons may be permitted in any street or public place within the Borough of Test Valley to collect money or sell articles for the benefit of charitable or other purposes:-

1. In these Regulations, unless the context otherwise requires:-

“collection” means a collection of money or a sale of articles for the benefit of charitable or other purposes and the word “collector” shall be construed accordingly;

“promoter” means a person who causes others to act as collectors;

“permit” means a permit for collection;

“contributor” means a person who contributes to a collection and includes a purchaser of articles for sale for the benefit of charitable or other purposes;

“collecting box” means a box or other receptacle for the reception of money from contributors.

2. No collection, other than a collection taken at a meeting in the open air, shall be made in any street or public place within the administrative area of the Borough Council of Test Valley unless a promoter shall have obtained a permit from The Borough Council of Test Valley.

3. Application for a permit shall be made in writing not later than one month before the date on which it is proposed to make the collection:

Provided that The Borough Council of Test Valley may reduce the period of one month if satisfied that there are special reasons for so doing.

4. No collection shall be made except upon the date and between the hours stated in the permit.

5. The Borough Council of Test Valley may, in granting a permit, limit the collection to such streets or public places or such parts thereof as it thinks fit.

- 6.** (1) No person may assist or take part in any collection without the written authority of a promoter.
- (2) Any person authorised under paragraph (1) above shall produce such written authority forthwith for inspection on be requested to do so by a duly authorised officer of The Borough Council of Test Valley or any constable.

- 7.** No collection shall be made in any part of the carriageway of any street which has footway:

Provided that The Borough Council of Test Valley may, if it thinks fit, allow a collection to take place on the said carriageway where such collection has been authorised to be held in connection with a procession.

- 8.** No collection shall be made in a manner likely to inconvenience or annoy any person.
- 9.** No collector shall importune any person to the annoyance of such person.

- 10.** While collecting:-

- (a) a collector shall remain stationary; and
- (b) a collector or two collectors together shall not be nearer to another collector than 25 metres:

Provided that The Borough Council of Test Valley may, if it thinks fit, waive the requirements of this Regulation in respect of a collection which has been authorised to be held in connection with a procession.

- 11.** No promoter, collector or person who is otherwise connected with a collection shall permit a person under the age of sixteen years to act as a collector.

- 12.** (1) Every collector shall carry a collecting box.
- (2) All collecting boxes shall be numbered consecutively and shall be securely closed and sealed in such a way as to prevent them being opened without the seal being broken.
- (3) All money received by a collector from contributors shall immediately be placed in a collecting box.
- (4) Every collector shall deliver, unopened, all collecting boxes in his possession to a promoter.

- 13.** A collector shall not carry out or use any collecting box, receptacle or tray which does not bear displayed prominently thereon the name of the charity or fund which is to benefit nor any collecting box which is not duly numbered.
- 14.** (1) Subject to paragraph (2) below a collecting box shall be opened in the presence of a promoter and another responsible person.
- (2) Where a collecting box is delivered, unopened, to a bank, it may be opened by an official of the bank.
- (3) As soon as a collecting box has been opened, the person opening it shall count the contents and shall enter the amount with the number of the collecting box on a list which shall be certified by that person.
- 15.** (1) No payment shall be made to any collector.
- (2) No payment shall be made out of the proceeds of collection, either directly or indirectly, to any other person connected with the promotion or conduct of such collection for, or in respect of, services connected therewith, except such payments as may have been approved by The Borough Council of Test Valley.
- 16.** (1) Within one month after the date of any collection the person to whom a permit has been granted shall forward to The Borough Council of Test Valley :-
- (a) a statement in the form set out in the Schedule to these Regulations, or in a form to the like effect, showing the amount received and the expenses and payments incurred in connection with such collection, and certified by that person and either a qualified accountant or an independent responsible person acceptable to The Borough Council of Test Valley;
- (b) a list of the collectors;
- (c) a list of the amounts contained in each collecting box;
- and shall, if required by The Borough Council of Test Valley, satisfy it as to the proper application of the proceeds of the collection.
- (2) The said person shall also, within the same period, at the expense of that person and after a qualified accountant or independent person has given his certificate under paragraph (1) a) above, publish in such newspaper or newspapers as The Borough Council of Test Valley may direct a statement showing the name of the person to whom the permit has been granted, the area to which

the permit relates, the name of the charity or fund to benefit, the date of the collection, the amount collected and the amount of the expenses and payments incurred in connection with such collection.

(3) The Borough Council of Test Valley may, if satisfied there are special reasons for so doing extend the period of one month referred to in paragraph (1) above.

(4) For the purposes of this Regulation “a qualified accountant” means a member of one or more of the following bodies:-

The Institute of Chartered Accountants in England and Wales;

The Institute of Chartered Accountants of Scotland;

The Association of Certified Accountants;

The Institute of Chartered Accountants in Ireland.

17. These Regulations shall not apply:-

(a) in respect of a collection taken at a meeting in the open air; or

(b) to the selling of articles in any street or public place when the articles are sold in the ordinary course of trade.

These Regulations shall come into operation upon the expiration of the period of one month beginning with the date on which they are confirmed by the Secretary of State. They shall have effect in substitution for those contained in the Schedule to the Charitable Collections (Transitional Provisions) Order 1974 and adopted by the Borough Council of Test Valley on 27th February, 1974, which, as having effect by virtue of that adoption, are hereby revoked.

The foregoing Regulations are hereby confirmed by the Secretary of State and shall be published by the insertion of an announcement in two successive issues of two newspapers circulating in the Borough of Test Valley stating that such Regulations have been made and confirmed and that copies can be obtained on application to Test Valley Borough Council.

Home Office
QUEEN ANNE’S GATE.
2nd June 1981

Any person who acts in contravention of any of the foregoing Regulations shall be liable on summary conviction to a fine not exceeding twenty-five pounds.

ITEM 9 Licensing Enforcement Policy and Service Standards

Report of the Head of Legal and Democratic (Portfolio: Corporate)

Recommended:

- 1. That the Enforcement Policy and Service Standards set out as Annexes to this report are adopted in respect of all the licensing functions, except Scrap Metal Dealer licensing, and any associated enforcement work undertaken by the Licensing Section of the Legal and Democratic Service.**

Recommended to Cabinet:

- 2. The Enforcement Policy and Service Standards set out as Annexes to this report are adopted in respect of Scrap Metal Dealer licensing and any associated enforcement work undertaken by the Licensing Section of the Legal and Democratic Service.**

SUMMARY:

- The Legal and Democratic Service is responsible for a number of areas of work where enforcement action may be necessary. As such it is appropriate to have an Enforcement Policy giving customers an indication of what they can expect when dealing with the Council.
- A revised Policy is recommended for adoption together with Service Standards which describe the level of service that customers should expect.

1 Introduction

- 1.1** The Licensing Section of the Legal and Democratic Service is the enforcing authority, either in its own right or jointly with others such as the Police, for a number of areas of work covering such matters as taxis, alcohol and gambling. As such it is appropriate that the Service has adopted a Policy which indicates to our customers how enforcement action will be taken.
- 1.2** The existing Policy was adopted in 2006 and has been reviewed taking account of relevant guidance from the central government Department for Business, Energy and Industrial Strategy who issue advice via their Regulatory Delivery office. The revised Policy is attached as Annex 2 to this report. A separate Service Standards document, attached as Annex 1 to this report, has been produced which explains in more general terms how the licensing functions are delivered and the general approach of the Council in dealing with customers of the Licensing Section.

2 Background

- 2.1 In 1999 the government launched the Enforcement Concordat as an initiative to promote fair enforcement practice; the Borough Council signed up to this in October 2000 and subsequently an Enforcement Policy was adopted in 2006 which took account of the Concordat. In recent years government has increased its attention on the need for local authority regulators to be fair and proportionate in their dealings with business and various items of guidance and best practice have been produced by the Better Regulation Delivery Office now known as Regulatory Delivery.

3 Corporate Objectives and Priorities

- 3.1 The functions delivered by the Licensing Section of the Legal and Democratic Service are all statutory functions which do not directly relate to the Council's corporate aims. However, a great many of the functions have an important role to play in terms of public safety, welfare and amenity, and there is often a careful balance to be struck between the protection of those interests on the one hand whilst at the same time not unduly frustrating the growth of business on the other.

4 Consultations/Communications

- 4.1 No external consultation has been undertaken in respect of the Policy or Service Standards. However, as both are based on established national guidance it is not considered there would be any objections to adoption of the documents.

5 Options and Option Appraisal

- 5.1 The only option would be to not adopt the revised Policy and Service Standards. This would leave the Council with the current outdated Policy and no Service Standards. Whilst this is not critical it would mean that at some future date the Council may face criticism from an aggrieved party against whom enforcement action has been taken.

6 Resource Implications

- 6.1 There are no direct resource implications as a result of the recommendation.

7 Legal Implications

- 7.1 The Enforcement Policy as mentioned above complies with government guidance and so reflects current requirements and best practice. As licensing of Scrap Metal Dealers is an executive function and cannot be delegated to the Licensing Committee it is necessary to have a separate recommendation to Cabinet to approve the Policy and Standards in respect of that function only.

8 Equality Issues

- 8.1 An Equalities Impact Assessment (EQIA) has not been undertaken as the proposed recommendation does not represent a significant policy change. Adopting a revised Enforcement Policy and Service Standards will ensure quality and equality of service provision.

9 Other Issues

- 9.1 Community Safety – none specifically although see paragraph 3.1 above.
- 9.2 Environmental Health Issues – none specifically but some licensing functions may impact upon the environment.
- 9.3 Sustainability and Addressing a Changing Climate – none.
- 9.4 Property Issues – none.
- 9.5 Wards/Communities Affected – none directly but potentially the whole Borough.

10 Conclusion

- 10.1 With responsibilities for a range of public facing services it is appropriate for the Licensing Section of the Legal and Democratic Service to adopt an Enforcement Policy that reflects current requirements and best practice. The adoption of Service Standards will clearly set out to our customers what they can expect when dealing with the Council in respect of these services.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
Report to Licensing Committee 14 September 2006			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	2		
Author:	Michael White	Ext:	8013
File Ref:	MW/		
Report to:	Licensing Committee	Date:	1 December 2016

ANNEX 1

What you can expect from the Licensing regulatory service in Test Valley Borough Council – our Service Standards

Contents:

[Areas we regulate](#)

[How we deliver our services](#)

[Working with you](#)

[Helping you to get it right](#)

[Inspections and other compliance visits](#)

[Responding to non-compliance](#)

[Requests for our service](#)

[How to contact us](#)

[Our Team](#)

[Working with others](#)

[Having your say](#)

This document explains what you can expect of the Licensing regulatory service in Test Valley Borough Council.

Whether you are running a business, are an employee or a member of the public, we are committed to providing you with an efficient, courteous and helpful service and this document tells you how we aim to do that and what standards we will meet.

Areas we regulate

We deliver services in the following areas:

- Licensing Act 2003 – alcohol, regulated entertainment and late night refreshment
- Gambling Act 2005 – gambling premises, gaming machines and lotteries/raffles/draws
- Hackney Carriages and Private Hire Vehicles – commonly referred to as taxis and mini-cabs but this can also include chauffeur services
- Charitable Street and House to House Collections
- Sex Establishments – Sex Cinemas, Sex Shops and Sexual Entertainment Venues
- Tables and Chairs on the Highway – Pavement cafes
- Scrap Metal Dealers

How we deliver our services

We make a fundamental contribution to the maintenance and improvement of public safety, quality of life and wellbeing. Our aims are to:

- Protect the public, businesses and the environment from harm
- Support the local economy to grow and prosper

We determine our activities by assessing the needs of local people and our business community, and considering the risks that require addressing. We do this through corporate consultation and through using data and other information available to the Council and its partners. In this way we ensure our resources are targeted appropriately, in the light of these local needs and of national priorities.

We are committed to being transparent in our activities. We ask customers to complete an online customer satisfaction survey to see how we are doing.

We carry out all our activities in a way that supports those we regulate to comply and grow:

- We ensure that information, guidance and advice is available to help you to meet legal requirements (see [Helping you to get it right](#)).
- We carry out inspections and other activities to check compliance with legal requirements, and we target these checks where we believe they are most needed (see [Inspections and other compliance visits](#)).
- We deal proportionately with breaches of the law as set out in our Enforcement Policy, including taking firm enforcement action when necessary (see [Responding to non-compliance](#)).
- We provide a range of services to businesses, including, advisory visits and information (see [Requests for our service](#)).

Our services will be delivered in accordance with the requirements of the [Regulators' Code](#).

Working with you

In all your dealings with us you can expect, and will receive, an efficient and professional service. Our officers will:

- Be courteous and polite
- Always identify themselves by name in dealings with you, and provide you with contact details
- Seek to gain an understanding of how your business operates
- Provide details of how to discuss any concerns you may have
- Agree timescales, expectations and preferred methods of communication with you
- Ensure that you are kept informed of progress on any outstanding issues.

We recognise that your business will receive advice and inspections from other organisations, and we will do our best to work with them to ensure that you receive the best service.

Helping you to get it right

We want to work with you to help your business to be compliant and successful and it is important to us that you feel able to come to us for advice when you need it. We won't take enforcement action just because you tell us that you have a problem.

We make information and guidance on meeting legal requirements available at <http://www.testvalley.gov.uk/business/licensingandregulation/licensing/>

Where you need advice that is tailored to your particular needs and circumstances we will:

- Discuss with you what is required to achieve compliance
- Provide advice that supports compliance and that can be relied on
- Provide clear advice that can be easily understood and implemented
- Distinguish legal requirements from suggested good practice
- Ensure that any verbal advice you receive is confirmed in writing if requested
- Acknowledge good practice and compliance.

Whilst we cannot promise to always do so, we will endeavour to visit you at your premises and these visits are free.

More details of the services we provide can be found at

<http://www.testvalley.gov.uk/business/licensingandregulation/licensing/>

Some aspects of licensing are subject to the national Primary Authority Scheme. More information on this can be found at

<https://www.gov.uk/government/publications/primary-authority-overview>

Inspections and other compliance visits

We monitor and support compliance in a number of different ways including through inspections, test purchases¹, advisory visits and complaint investigations. These visits will always be based on an assessment of risk – we won't visit without a reason.

We will give you notice that we intend to visit unless we have specific reason to believe that an unannounced visit is more appropriate.

¹ Test purchases may consist of mystery shopper type exercises to check taxi fares are being charged correctly or checking compliance with the Premises Licence mandatory condition regarding sale of alcohol at cost price plus VAT. Test purchasing of age related products such as alcohol and cigarettes is the responsibility of Hampshire County Council Trading Standards Service and/or Hampshire Constabulary. Whilst under age test purchasing of gambling premises could be undertaken by the Borough Council, this is not currently planned.

When we visit you our officers will:

- Explain the reason and purpose of the visit
- Carry their identification card at all times, and present it on request when visiting your premises
- Exercise discretion in front of your customers and staff
- Have regard to your approach to compliance, and use this information to inform future interactions with you
- Provide information, guidance and advice to support you in meeting your statutory obligations, if required
- Provide a written record of the visit where requested.

Where a visit is necessary as part of an application for a licence, registration or permit the cost of any visit is included in the licence fee charged. Please note that some fees are set by statute but for other fees the level is set by the Council.

<http://www.testvalley.gov.uk/aboutyourcouncil/accesstoinformation/councilfinances/feesandcharges/>

Responding to non-compliance

Where we identify any failure to meet legal obligations, we will respond proportionately, taking account of the circumstances, in line with our Enforcement Policy.

We deal proportionately with breaches of the law as set out in our Enforcement Policy available at

<http://www.testvalley.gov.uk/business/licensingandregulation/licensing/adviceinformation/>

including taking firm enforcement action when necessary.

Where we require you to take action to remedy any failings we will:

- Explain the nature of the non-compliance
- Discuss what is required to achieve compliance, taking into account your circumstances
- Clearly explain any advice, actions required or decisions that we have taken
- Agree timescales that are acceptable to both you and us, in relation to any actions required
- Provide in writing details of how to appeal against any advice provided, actions required or decisions taken, including any statutory rights to appeal
- Explain what will happen next
- Keep in touch with you, where required, until the matter is resolved

Requests for our services

We clearly explain the services that we offer, including details of any fees and charges that apply

<http://www.testvalley.gov.uk/aboutyourcouncil/accesstoinformation/councilfinances/feesandcharges/>

In responding to requests for our services, including requests for advice and complaints about breaches of the law, we will:

- Acknowledge your request within 3 days
- Tell you when you can expect a substantive response
- Seek to fully understand the nature of your request
- Explain what we may or may not be able to do, so that you know what to expect
- Keep you informed of progress throughout our involvement
- Inform you of the outcome as appropriate

Our response times and expected resolution times is available at

<http://www.testvalley.gov.uk/aboutyourcouncil/howarewedoing/customerchart er/>

<http://www.testvalley.gov.uk/aboutyourcouncil/howarewedoing/councilperformance/>

However, please be aware that our officers will exercise their judgment to determine whether a more prompt response is required.

How to contact us

You can contact us by:

Telephone: 01264 368000

Email: licensing@testvalley.gov.uk

Web: www.testvalley.gov.uk

By post: Licensing Section, Beech Hurst, Weyhill Road, Andover, Hampshire SP10 3AJ

Or in person: Beech Hurst, Weyhill Road, Andover, Hampshire SP10 3AJ

We will seek to work with you in the most appropriate way to meet your individual needs. We can make information available in different formats, and have access to translation and interpretation services.

If you contact us we will ask you for your name and contact details to enable us to keep in touch with you as the matter progresses. We treat all contact with the service in confidence unless you have given us permission to share your details with others as part of the matter we are dealing with on your behalf or there is an operational reason why we need to do so. We will respond to anonymous complaints and enquiries only where we judge it appropriate to do so. Ordinarily, we will expect complaints to be submitted in writing or via email.

Personal data will be managed in accordance with The Council's Data Protection Policy.

<http://www.testvalley.gov.uk/atoz/D/772>

Our Team

We have a dedicated team of officers who have the appropriate qualifications, skills and experience to deliver the services provided. We have arrangements in place to ensure the on-going professional competency of all officers.

Where specialist knowledge is required in an area outside of our expertise we will liaise with both neighbouring authorities and other regulatory organisations, to call on additional resources as necessary.

Working with others

We work closely with other council services such as Planning, Economic Development and Environmental Health and our aim is to provide a streamlined service to you.

We are part of a much wider regulatory system in the Test Valley area

<http://www.testvalley.gov.uk/resident/communityandleisure/workingwithcommunities/mylocalarea/ward-interactive-map/>

We have good working relationships with other regulators such as the Gambling Commission

<http://www.gamblingcommission.gov.uk/>

And Hampshire County Council Trading Standards

<http://www3.hants.gov.uk/tradingstandards.htm>

This enables us to deliver a more joined up and consistent service. This includes sharing information and data on compliance and risk, where the law allows, helping target regulatory resources.

Having your say

Complaints and appeals

Where we take enforcement action, there is often a statutory right to appeal. We will always tell you about this at the appropriate time.

We are always willing to discuss with you the reasons why we have acted in a particular way, or asked you to act in a particular way. You can contact Mr Michael White, Licensing Manager

mwhite@testvalley.gov.uk

We manage complaints about our service, or about the conduct of our officers, through the Council's Corporate Complaints Policy. Details can be found at:

<http://www.testvalley.gov.uk/aboutyourcouncil/howarewedoing/complaintscommentsandfeedback/complaint/>

<http://www.testvalley.gov.uk/forms/showform.asp>

Or to the Complaints & Improvements Officer

Tel: 01264 368000

E-mail complaints@testvalley.gov.uk

Feedback

We value input from you to help us ensure our service is meeting your needs. We would like to hear from you whether your experience of us has been good or in need of improvement. This helps us to ensure we keep doing the right things and make changes where we need to. We use customer satisfaction surveys from time to time but we would welcome your feedback at any time. You can provide feedback in the following ways:

Telephone: 01264 368000

Email: licensing@testvalley.gov.uk

Web: www.testvalley.gov.uk

By post: Licensing Section, Beech Hurst, Weyhill Road, Andover, Hampshire SP10 3AJ

Or in person: Beech Hurst, Weyhill Road, Andover, Hampshire SP10 3AJ

Any feedback that we receive will be acknowledged, considered and where appropriate responded to.

Developing our services with you

Where possible we will consult with a number of groups to ensure that we are delivering our services to meet your needs. In the past these have included Andover Pubwatch, Romsey Pubwatch and the Test Valley Taxi Association although at the time of writing only Romsey Pubwatch is active. The Council currently works with local communities including businesses and residents.

If you are interested in finding out more about the work of these groups, or participating in one, please visit

<http://www.testvalley.gov.uk/aboutyourcouncil/consultation-portal/>

Dated: xxth December 2016

Name: Michael White

Job title: Licensing Manager

Review Due: xxth December 2017

Legal and Democratic Service – Enforcement Policy

The Legal and Democratic Service undertakes a number of enforcement roles. In carrying out these responsibilities it aims to adhere to the Government's Better Regulation principles.

Any enforcement undertaken by the Council will embrace the principles contained within this general policy and will be in accordance with the law.

Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires Test Valley Borough Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function. For local authorities, the specified functions include those carried out by the Licensing Section such as enforcement of the:

- a) Licensing Act 2003
- b) Gambling Act 2005
- c) Town Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976 as it relates to hackney carriages and private hire vehicles
- d) Local Government (Miscellaneous Provisions) Act 1982 as it relates to Sex Establishments
- e) Highways Act 1980 as it relates to pavement cafes and similar
- f) Scrap Metal Dealers Act 2013
- g) House to House Collections Act 1939 and Police, Factories, Etc. (Miscellaneous Provisions) Act 1916 as it relates to charitable collections

We will exercise our regulatory activities in a way which is:

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and

- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

Regulators' Code

Test Valley Borough Council has had regard to the [Regulators' Code](#) in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

Human Rights Act 1998

Test Valley Borough Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

Data Protection Act 1998

Where there is a need for Test Valley Borough Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1998.

The Code for Crown Prosecutors

When deciding whether to prosecute Test Valley Borough Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- a. Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, Test Valley Borough Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

- b. Public Interest Test - is it in the public interest for the case to be brought to court?

Test Valley Borough Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us in [Appendix C](#).

Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority. Please also see section A below for further mention of Primary Authority.

We are committed to avoiding imposing unnecessary regulatory burdens and assessing whether similar outcomes could be achieved by less burdensome means than enforcement.

This policy will be published and made publicly available on the Test Valley Borough Council website.

This policy was approved at a meeting of the Council's Licensing Committee held on (TBA)

We will undertake our approach to enforcement by:

Complying with the Council's Equality Policy in being non discriminatory and treating all persons and businesses equally.

Providing a courteous and efficient service, with officers identifying themselves by name, providing a contact point, telephone number, & e-mail address.

Responding to all service requests and to administer and implement the local authority's statutory responsibilities.

Actively working with business and the public to advise on and assist them to comply with the law.

Responding to requests for information or advice and as necessary pass the enquirer to the relevant statutory agency if the subject matter falls outside the jurisdiction of the Service.

Providing guidance, in plain language, and advice to business, the public and other interested parties except where this may give rise to conflict of interests.

Ensuring that those affected by our activities are aware of the local authority's complaints procedure. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescales involved.

Aiming to ensure that the enforcement of the statutory provisions are in accordance with the relevant guidance and codes of practice made there under.

Aiming that before enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required e.g. imminent risk to safety.

Giving an explanation at the time and confirming in writing within five working days, in cases where immediate action is considered necessary.

Ensuring, where there is a right of appeal against such formal action, advice on the appeal mechanism is clearly set out in writing at the time the action is taken.

Conduct of investigations

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Test Valley Borough Council:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

Enforcement Actions available to Test Valley Borough Council in respect of Criminal and Civil breaches

A. Compliance Advice, Guidance and Support

Test Valley Borough Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter (sometimes called an 'informal caution') will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

Test Valley Borough Council recognises that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and Test Valley Borough Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, Test Valley Borough Council recognises that there is likely to be an on-going need for compliance advice and support, to prevent further breaches.

B. Voluntary Undertakings

Test Valley Borough Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. Test Valley Borough Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

C. Statutory (Legal) Notices

In respect of many breaches Test Valley Borough Council has powers to issue statutory notices. These include: 'Stop Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

D. Injunctive Actions, Enforcement Orders etc.

In some circumstances Test Valley Borough Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

Test Valley Borough Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, Test Valley Borough Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

E. Simple Caution

Test Valley Borough Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents

to the simple caution. Where a simple caution is offered and declined, Test Valley Borough Council is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how Test Valley Borough Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

F. Prosecution

Test Valley Borough Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute Test Valley Borough Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where Test Valley Borough Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s) and it is in the public interest to do so.

Before deciding that prosecution is appropriate, Test Valley Borough Council will consider all relevant circumstances carefully. The following list indicates some possible public interest factors in favour of a prosecution:

- There is or has been a significant risk or negative impact arising from a serious legal contravention or a number of lesser contraventions
- There has been some actual harm done to a third party, or that harm was reasonably foreseeable
- The attitude of the offender(s) is such that there is cause to believe that they knew that they were breaking the law or, if they did not, any reasonable person in their position should have known (this could take account of the past history of the case which may illustrate previous blatant or reckless disregard for the law)
- A conviction is likely to result in a significant sentence
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance (e.g. complainant in a noise nuisance case)
- The defendant has previous convictions or cautions which are relevant to the present offence
- There are grounds for believing that the offence is likely to be continued or repeated for example by a history of recurring conduct
- The offence, although not serious in itself, is widespread in the area where it was committed
- An officer has been obstructed

- The cumulative effect of such breaches would be serious even if the breach itself was not
- A prosecution will have a significant deterrent effect.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

G. Refusal/Suspension/Revocation of Licences

Test Valley Borough Council issues a number of licences and permits. Test Valley Borough Council also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, Test Valley Borough Council may take previous breaches and enforcement action into account.

Test Valley Borough Council
xx December 2016