

To: Members of the Licensing
Committee

Date: 5 June 2014

Direct Dial: 01824 712568

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Dear Councillor

You are invited to attend a meeting of the **LICENSING COMMITTEE** to be held at **9.30 am** on **WEDNESDAY, 11 JUNE 2014** in the **COUNCIL CHAMBER, RUSSELL HOUSE, RHYL**.

PLEASE NOTE: THERE WILL BE AN INFORMAL TRAINING SESSION FOR MEMBERS IMMEDIATELY FOLLOWING THE MEETING REGARDING A RECENT APPEAL CASE

Yours sincerely

G Williams
Head of Legal and Democratic Services

AGENDA

PART 1 - THE PRESS AND PUBLIC ARE INVITED TO ATTEND THIS PART OF THE MEETING

1 APOLOGIES

2 APPOINTMENT OF CHAIR

To appoint a Chair of the Licensing Committee for the ensuing year.

3 APPOINTMENT OF VICE CHAIR

To appoint a Vice Chair of the Licensing Committee for the ensuing year.

4 DECLARATIONS OF INTEREST

Members to declare any personal or prejudicial interests in any business identified to be considered at this meeting.

5 URGENT MATTERS

Notice of items which, in the opinion of the Chair, should be considered at the meeting as a matter of urgency pursuant to Section 100B(4) of the Local Government Act, 1972.

6 MINUTES OF THE LAST MEETING (Pages 7 - 10)

To receive the minutes of the Licensing Committee held on 5 March 2014 (copy enclosed).

7 DRAFT SUPPLEMENTARY PLANNING GUIDANCE - HOT-FOOD TAKEAWAYS (Pages 11 - 24)

To consider a report by the Head of Planning and Public Protection (copy enclosed) seeking members' views on the draft Supplementary Planning Guidance document on hot-food takeaways prior to public consultation.

8 PROPOSED AMENDED PENALTY POINT POLICY AND PROCEDURE (Pages 25 - 44)

To consider a report by the Head of Planning and Public Protection (copy enclosed) presenting an amended Penalty Point Policy and procedure for approval.

9 PROPOSED HACKNEY CARRIAGE INTENDED USE POLICY (Pages 45 - 52)

To consider a report by the Head of Planning and Public Protection (copy enclosed) presenting the Hackney Carriage Intended Use Policy for approval to full Council for adoption.

10 PROPOSED REVISED RELEVANCE OF CONVICTION POLICY FOR HACKNEY CARRIAGE AND PRIVATE HIRE OPERATORS AND DRIVERS (Pages 53 - 72)

To consider a report by the Head of Planning and Public Protection (copy enclosed) presenting a revised Relevance of Conviction Policy for hackney carriage and private hire vehicle drivers and operators for approval.

11 LICENSING COMMITTEE FORWARD WORK PROGRAMME 2014/15 (Pages 73 - 76)

To consider a report by the Head of Planning and Public Protection (copy enclosed) presenting the committee's forward work programme for approval and updating members on relevant issues.

PART 2 - CONFIDENTIAL ITEMS

EXCLUSION OF PRESS AND PUBLIC

It is recommended in accordance with Section 100A(4) of the Local Government Act 1972, that the Press and Public be excluded from the meeting during consideration of the following items of business because it is likely that exempt information as defined in paragraphs 12 and 14 of Part 4 of Schedule 12A of the Act would be disclosed.

12 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - APPLICANT NO. 051260 (Pages 77 - 86)

To consider a confidential report by the Head of Planning and Public Protection (copy enclosed) seeking members' determination of an application for a licence to drive hackney carriage and private hire vehicles from Applicant No. 051260.

13 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - APPLICANT NO. 051261 (Pages 87 - 96)

To consider a confidential report by the Head of Planning and Public Protection (copy enclosed) seeking members' determination of an application for a licence to drive hackney carriage and private hire vehicles from Applicant No. 051261.

MEMBERSHIP

Councillors

Joan Butterfield
Bill Cowie
Richard Davies
Hugh Irving
Pat Jones

Barry Mellor
Win Mullen-James
Peter Owen
Arwel Roberts
Cefyn Williams

COPIES TO:

All Councillors for information
Press and Libraries
Town and Community Councils

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LICENSING COMMITTEE PROCEDURE FOR THE DETERMINATION OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVER LICENCE APPLICATIONS AND REVIEWS OF EXISTING LICENSED DRIVERS

STEP	DESCRIPTION
1.	The Chair to welcome and introduce the applicant/licence holder to all parties present.
2.	Solicitor to ask the applicant/licence holder to confirm that he/she has received the report and the Committee procedures. If applicant confirms same, move onto step 4.
3.	If it should occur that the applicant/licence holder states that the report has not been received, then such matter will be addressed at this stage. Members may wish to consider adjourning the matter, for a short period, in order for the applicant/licence holder to read the report.
4.	Head of Planning and Public Protection (or representative) briefly introduces the application/review
5.	The applicant/licence holder is requested to present his/her case The applicant/licence holder can call any witnesses he/she chooses in support of the application, for which advance notice should have been given to the Licensing Officers.
6.	Committee Members can question the applicant/licence holder and or his witnesses
7.	Technical officers are invited to present any findings (Licensing/Community Enforcement, First Contact Team (Social Services), School Transport.)
8.	The Committee Members followed by the applicant/licence holder can ask questions of the technical officers
9.	The applicant/licence holder will be invited to make a final statement, if they so wish
10.	The following will be requested to leave the meeting whilst the application/review is discussed by Members – the applicant/licence holder, all third parties, Head of Planning and Public Protection, technical officers NB The only people remaining should be – Committee Members, translator, committee’s legal adviser and the minute taker

11.	The committee members will consider the application/review taking into account the evidence heard
12	Should Committee Members prove it necessary to recommence the asking of questions and recall any party to provide further information or clarification, all persons who have withdrawn from the meeting will be invited to return. After the question(s) have been determined all third parties will be asked to withdraw again for Members to consider all evidence.
13.	When the Members have reached their decision, all parties will be recalled and the applicant/licence holder will be informed of the Members decision by the Chairman.
14.	The Chair will inform the applicant/licence holder of the decision reached. This will include any specific conditions or penalties which may have been imposed. If necessary the Council's Solicitor to provide further clarification of the decision and its implications to the applicant/licence holder.
15.	If the decision is to refuse or there is a decision to suspend or revoke, the Council's Solicitor to inform the applicant/licence holder of the right of appeal to the Magistrates' Court (the decision letter will also include these details).
16.	For an existing licensed driver (issued by Denbighshire), and the decision involves a resolution by the Committee to suspend or revoke the existing licence, Members may do so under either: <ul style="list-style-type: none"> 1. Section 61 (2A) of the Local Government (Miscellaneous Provisions) Act 1976. 2. Section 61 (2B) of the Local Government (Miscellaneous Provisions) Act 1976. This decision will have IMMEDIATE EFFECT and can only be used when the grounds for suspension/revocation are a public safety matter. <p>The Solicitor will explain to the licence holder the implications of the decision.</p>
17.	The applicant/licence holder will be informed of the decision in writing as soon as practicable.
18.	The applicant/licence holder will be invited to discuss any matter they are unsure of with Licensing Officers after the Committee

LICENSING COMMITTEE

Minutes of a meeting of the Licensing Committee held in Council Chamber, County Hall, Ruthin on Wednesday, 5 March 2014 at 9.30 am.

PRESENT

Councillors Joan Butterfield, Bill Cowie, Richard Davies, Stuart Davies, Pat Jones, Barry Mellor, Peter Owen, Arwel Roberts and Cefyn Williams (Chair)

ALSO PRESENT

Principal Solicitor (AL); Licensing Officers (NJ & JT) and Committee Administrator (KEJ)

1 APOLOGIES

Councillors Hugh Irving and Win Mullen-James.

2 DECLARATION OF INTERESTS

No declarations of personal or prejudicial interest had been raised.

3 URGENT MATTERS

No urgent matters had been raised.

4 MINUTES

The minutes of the Licensing Committee held on 4 December 2013 and Special Licensing Committee held on 20 December 2013 were submitted.

Matters Arising – 20 December 2013

Page 16 – Item No. 4 Review of a Licence (Driver No. 046577) – In response to a question from the Chair officers confirmed that a letter of apology had been sent to the passenger concerned and a copy lodged with the Licensing Section.

***RESOLVED** that the minutes of the meetings held on 4 December 2013 and 20 December 2013 be received and confirmed as a correct record.*

EXCLUSION OF PRESS AND PUBLIC

***RESOLVED** that under Section 100A of the Local Government Act 1972, the Press and Public be excluded from the meeting for the following item of business on the grounds that it would involve the likely disclosure of exempt information as defined in Paragraphs 12 and 14 of Part 4 of Schedule 12A of the Act.*

5 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - APPLICANT NO. 043844

[This item was brought forward on the agenda with the consent of the Chair]

A confidential report by the Head of Planning and Public Protection (previously circulated) was submitted upon –

- (i) an application received from Applicant No. 043844 for a licence to drive hackney carriage and private hire vehicles following reinstatement of his DVLA Licence;
- (ii) the Licensing Committee held on 27 June 2013 having revoked the Applicant's licence to drive hackney carriage and private hire vehicles after he was disqualified from driving for six months under the totting up procedure;
- (iii) the Applicant having also been brought before the Licensing Committee for a licence review in December 2012 and January 2013;
- (iv) the Council's current policy with regard to the relevance of convictions, and
- (v) the Applicant having been requested to attend the meeting in support of his application and to answer members' questions thereon.

The Applicant was present and following introductions confirmed he had received the report and committee procedures. The Licensing Officer (JT) summarised the report and explained the matter had been brought before the committee to assess the Applicant's suitability to hold a licence given his record as a licensed driver.

The Applicant explained the circumstances leading up to his disqualification, including his last motoring offence in October 2012, and was keen to reassure the committee that he did not routinely speed. He added that he had learnt a hard lesson and had experienced hardship as a result of the disqualification. The Applicant had continued to work for the same company in a different role during his period of disqualification and he advised that both his employer and customers were keen for him to return to work as a taxi driver. Finally the Applicant informed members that he enjoyed being a taxi driver and wished to continue with that profession.

In response to members' questions the Applicant explained the circumstances surrounding his speeding conviction and reference to the appropriate use of speed in the Driver Assessment Report produced in January 2013 following his completion of the Driving Awareness Course. He also confirmed that he did not have any pending motoring convictions.

In his final statement the Applicant submitted a reference from his employer attesting to his good character which was read out by the Chair. He added that he had been driving for twenty four years and had never been involved in an accident, emphasising that he was a safe driver.

The committee adjourned to consider the application and it was –

RESOLVED that the application for a hackney carriage and private hire vehicle drivers licence from Applicant No. 043844 be granted.

The reasons for the Licensing Committee's decision were as follows –

Members carefully considered the report and the Applicant's submission in support of his application, including his character reference. In determining the Applicant's suitability the committee accepted the Applicant's explanation surrounding the motoring convictions and considered that he had served his time in that regard. His character reference had also gone a long way towards supporting him; his employers had shown belief in him and valued him as an employee and had continued to employ him in an administrative capacity throughout the duration of his driving ban. It was also noted that granting the application complied with the Council's policy with regard to the relevance of convictions. Consequently members expressed confidence in the Applicant's ability to transport the public safely and decided to grant the application. However, the Applicant was warned that any future transgression would be severely dealt with.

The committee's decision and reasons therefore were conveyed to the Applicant.

OPEN SESSION

Upon completion of the above business the meeting resumed in open session.

6 APPLICATION FOR RENEWAL OF A SEX ESTABLISHMENT LICENCE

The Licensing Officer (JT) submitted a report by the Head of Planning and Public Protection (previously circulated) seeking members' determination of a renewal application for a sex establishment licence received from Adult World in respect of premises situated at 43 – 47 Queen Street, Rhyl.

The Licensing Officer referred to the payment terms for the renewal fee and for clarity an amendment was made to the wording of the recommendation. In response to questions the Licensing Officer confirmed the fees for both new licences and renewal applications and advised that those fees would soon be subject to review.

RESOLVED that the application for renewal of a Sex Establishment Licence held in respect of premises at 43 – 47 Queen Street, Rhyl be granted with the option of paying the renewal fee of £2600 by ten monthly instalments.

7 LICENSING COMMITTEE FORWARD WORK PROGRAMME 2014/15

A report by the Head of Planning and Public Protection was submitted (previously circulated) updating members on relevant issues and presenting the Licensing Committee's future work programme for approval. The work programme included reviews of licensing policies together with proposals to adopt new regional policies.

The Licensing Officer (NJ) elaborated upon particular areas of the report and members noted the forthcoming consultation on two policies drafted by the All Wales Licensing Technical Panel. Councillor Stuart Davies felt that members should be consulted in the first instance before licence holders and other interested parties.

RESOLVED that the report be noted and the Licensing Committee's Forward Work Programme for 2014/15 as detailed at Appendix 1 to the report be approved.

The meeting concluded at 10.15 a.m.

Report To: Licensing Committee

Date of Meeting: 11th June 2014

Lead Member / Officer: Cllr. David Smith, Public Realm
Angela Loftus, Planning & Public Protection Policy
Manager

Report Author: Claire MacFarlane, Planning Officer

Title: Draft Supplementary Planning Guidance – Hot-food takeaways

1. What is the report about?

1.1 This report accompanies a draft Supplementary Planning Guidance (SPG) document on hot-food takeaways which, once adopted, will be used in the determination of planning applications.

2. What is the reason for making this report?

2.1 To provide information, and request comments, regarding the content of the draft SPG prior to seeking approval from Planning Committee to undertake a public consultation.

2.2 Members of the Local Development Plan (LDP) Member Steering Group have requested that the draft SPG be presented to Licensing Committee prior to approval by Planning Committee.

3. What are the Recommendations?

3.1 The recommendation is that Licensing Committee receives this report and draft SPG for information, and provides comments to inform the final draft for consultation.

4. Report details.

4.1 Following the adoption of the LDP on 4th June 2013, Council agreed to carry forward the existing series of SPGs, including SPG 11 – Hot food takeaways. However, given the differences between the previous Unitary Development Plan (UDP) and LDP policies, and changing context since the current SPG was adopted in 2003, it is considered appropriate to produce an updated SPG on this topic. If adopted, the updated SPG will be a material planning consideration when assessing planning applications.

4.2 The SPG supplements the LDP policies by providing further guidance (for the Council, developers and the public) on acceptable locations and operational matters which must be addressed as part of any planning application. It is proposed to carry forward the majority of the requirements included in the

current SPG. The main change in guidance is the proposed introduction on the restriction of new hot-food takeaways within 400m of any school boundary.

- 4.3 The draft SPG will be presented to Planning Committee on 30th July for approval to consult. The public consultation period would be a minimum of 8 weeks and is anticipated to start in September 2014. The results of the consultation will be reported back to Planning Committee with a final SPG for adoption.

5. How does the decision contribute to the Corporate Priorities?

- 5.1 *Corporate priorities 2012-17.* Once adopted, the SPG will contribute to the following Council priority:
- Developing the local economy – by providing guidance for businesses seeking to develop takeaways in Denbighshire.

6. What will it cost and how will it affect other services?

- 6.1 Receiving this report for information, and subsequent adoption of the SPG, is not anticipated to create any additional cost.

7. What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision? The completed EqIA template should be attached as an appendix to the report.

- 7.1 An EqIA is not considered necessary for this information report. The guidance contained within the draft SPG supplements the policies in the LDP, for which a full EqIA was undertaken in May 2011.

8. What consultations have been carried out with Scrutiny and others?

- 8.1 Formal public consultation will be carried out following approval by Planning Committee. Informal consultation on the draft SPG has been carried out with officers in the Housing & Community Development Service, Planning & Public Protection Service, Education Service, Highways & Environmental Services and Public Health Wales.
- 8.2 Member input on the content of the SPG has also been provided through a workshop session held with the LDP Members Steering Group.

9. Chief Finance Officer Statement

- 9.1 Any costs associated with this guidance should be contained within existing budgets.

10. What risks are there and is there anything we can do to reduce them?

- 10.1 Without an updated SPG, the Council will be unable to implement the requirements it considers necessary when determining planning applications for hot-food takeaways. The existing SPG supplements the policies in the

Unitary Development Plan, which was replaced by the LDP in June 2013, and is therefore out of date.

11. Power to make the Decision

11.1 Planning & Compulsory Purchase Act (2004).

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DENBIGHSHIRE COUNTY COUNCIL

SUPPLEMENTARY PLANNING GUIDANCE: HOT FOOD TAKEAWAYS

MAY 2014

1. INTRODUCTION

- 1.1 This note is one of a series of Supplementary Planning Guidance notes (SPGs), amplifying the development plan policies and other issues in a clear and concise format with the aim of improving the design and quality of new development. The notes are intended to offer broad guidance which will assist members of the public and officers in discussions prior to the submission of planning applications and assist officers in handling and members in determining planning applications.

2. STATUS AND STAGES IN PREPARATION

- 2.1 The Council's SPGs are not part of the adopted development plan. The Welsh Government has confirmed that following public consultation and subsequent Local Planning Authority (LPA) approval, SPG can be treated as a material planning consideration when LPAs, Planning Inspectors and the Welsh Government determine planning applications and appeals. This SPG document was formally approved for consultation by Denbighshire County Council's Planning Committee on XXXX.
- 2.2 These notes have been prepared in accordance with guidance contained in Planning Policy Wales (November 2012); Local Development Plans Wales (December 2005); and Welsh Government Technical Advice Notes.

3. BACKGROUND

- 3.1 This SPG is intended to assist with proposals for hot food takeaways. In dealing with these the Council seeks to balance the need to find beneficial use for vacant shops, the commercial interests and requirements of such proposals with the need to safeguard the viability and character of the commercial area or ensuring acceptable amenity standards to residents of nearby properties.
- 3.2 The Town and Country Planning (Use Classes) Order 1987 subdivides different types of use into separate Classes of Use. Hot food takeaways (along with restaurants, public houses, cafes and wine bars) fall within Class A3. Hot food takeaways are defined as establishments whose primary business is the sale of hot food for consumption off the premises. In determining the primary use of the premises, consideration will be given to:

- The proportion of space designated for food preparation and other servicing in relation to designated customer circulation space
- The number of tables or chairs to be provided for customer use.

3.3 The table below provides examples of the shop types that would normally be considered as hot food takeaways. However, this list is not exhaustive.

Examples of hot food takeaway shop types	Examples of shop types not considered as hot food takeaways
Chicken shops	Restaurants
Fish and chip shops	Cafes
Pizza shops	Public houses
Kebab shops	Wine bars
Chinese, Indian or other takeaway shops	Night clubs
Drive-through premises	

4. PLANNING POLICY

- 4.1 Potential applicants should refer to refer to policies RD 1 and PSE 8 of the Council’s Local Development Plan (LDP) which outlines the general policies and criteria under which such proposals are determined. The broad aims of these policies, in respect of hot-food takeaways, are:
- To enhance the vitality and viability of town centres
 - To prevent an unacceptable imbalance of retail and non-retail uses
 - To locate hot-food takeaways where they maintain the viability and character of the surrounding area.

5. GENERAL LOCATION

- 5.1 In assessing the suitability of the location of proposals, the following guidance will apply:
- Generally such proposals are acceptable in defined town centres subject to their satisfying the criteria in LDP policy PSE 8.
 - Hot food takeaways may also be considered acceptable outside of defined town centres (and within development boundaries). However the Council will ensure that the number and concentration of such units does not detract from the function, character and attractiveness of the centre.
 - Particular care needs to be exercised in locating such uses in or near primarily residential areas, including residential accommodation above or adjacent to the proposal.

- 5.2 **Proposals for new hot food takeaways will not be allowed within 400 metres of the boundary of a school or tertiary college.** The close proximity of such outlets to schools can tempt children to consume cheap energy-dense and nutrient-poor foods. The Welsh Health Survey (2012) found that 34% of children in Wales are overweight or obese, which has significant implications for long-term health and associated costs to health services.
- 5.3 The Healthy Eating in Schools (Wales) Measure 2009 places a duty on Local Authorities and school's governing bodies to take action to promote healthy eating by pupils. This is supported by the 'Appetite for Life' guidelines on food and nutrition standards in schools, which can be undermined by the provision of hot food takeaway outlets close to schools. NICE public health guidance 'Prevention of cardiovascular disease' (2010) and the 'All Wales Obesity Pathway' (2010) also recommend that Local Authorities should limit the number of fast food outlets in specific areas, such as close to schools.

6. OTHER CONSIDERATIONS

- 6.1 Having established the general suitability of the location in policy terms the other main issues in relation to hot food takeaways can be summarised as follows:

- Noise and disturbance;
- Concentration / clusters of similar uses;
- Hours of opening;
- Traffic, Parking and Access;
- Smells, and;
- Litter.

The majority of these concerns can be mitigated by condition and careful thought to the location and operation of the takeaway use.

6.2 Noise and Disturbance

- Takeaways generate frequent comings and goings of customers, whether by foot or by car.
- Such activity may generate noise that becomes a nuisance from customers congregating on the street, car doors slamming and car radios where the proposed use is located in a primarily residential area, although problems may arise where the use is located in a town centre with flats above.
- For the above reasons, planning permission is generally not granted in primarily residential areas.
- Adequate noise insulation measures will need to be undertaken to the walls and ceiling of the property, before the use commences.

6.3 Concentration / Clusters of Similar Uses

- Generally across the County these uses are dispersed. However, there are pockets where there is concentration of such uses, including premises (pubs/clubs/restaurants) which have a distinctive character and late night opening. Different considerations may apply here in respect of additional uses and opening hours.
- Concentrations or clusters of such uses should be avoided as they often have an adverse impact on the character of an area.

6.4 Hours of Opening

- Whereas most businesses usually operate from approximately 9.00 a.m. to 5.30 p.m., hot food takeaways tend not to open until lunch time and owners may request that the premises be permitted to remain trading until the early hours of the following morning.
- It is often necessary to use planning conditions to limit the opening hours to minimise disturbance to the surrounding community. However, one set of time limits would not be appropriate throughout the County because areas vary so much. An application must be determined on its own merits. It may be acceptable for proposed hot food takeaways in areas where late night opening occurs to remain trading until midnight or beyond. Other town centres/locations should be more controlled, whereas proposals which have residential properties in the vicinity should not remain trading until late evening in the interests of the amenity of local residents.

6.5 Traffic, Parking & Access

- Hot food takeaways located in the larger town centres will probably attract a large number of customers by foot. However, those on main routes out of towns and in local shopping parades or village centres will attract a large proportion of car-borne customers requiring short stay parking very close to the property. Properties outside town centres should, therefore, have a readily accessible vehicular parking area in close proximity to the site (e.g. lay-by to the front). A rear service yard or a public car park some distance away is unlikely to be used and properties on double yellow lines outside town centres are normally unsuitable.
- Adequate visibility for cars entering and leaving the premises will be required and proposals at or near junctions especially traffic - controlled junctions are unlikely to be supported, especially if there are no off-street parking or servicing arrangements.

6.6 Smells

- Cooking smells from takeaways can cause amenity problems for nearby residents
- Problems relating to smells should be mitigated by the installation of suitably designed extraction facilities.

- The actual design will vary from premises to premises, but all should be located to the rear of the property, with a colour and design such that the unit does not appear as an incongruous feature in the street scene. It is normally considered that modern equipment, combined with high level ventilation is adequate to reduce smell nuisance to tolerable levels except in the most sensitive of location.
- A condition requiring that a scheme for the extraction of cooking odours be approved by the local planning authority, and that the equipment be installed prior to the use commencing, will be attached to planning approval. The use of charcoal filters will not be acceptable.
- Where practicable and especially in conservation areas or on listed buildings, a flue liner inside an existing chimney should be used.

6.7 Litter

- However careful the owner/operator, hot food takeaways have a tendency to generate litter. Whilst this is essentially outside his/her control the proprietor should make every effort to keep the area around the premises litter-free. A legal agreement to that effect is one solution, perhaps offered by the developer, for example some larger national chains.
- Where appropriate, a condition to require the operator to provide (at his/her expense) containers for the deposit of litter, in accordance with details to be submitted to the Local Authority, will be attached to planning approval.

7. PLANNING PERMISSION

7.1 Hot food takeaways (along with restaurants, public houses, cafes and wine bars) fall within Class A3 which allow the use of a property for the sale of food or drink for consumption off the premises. Hence, it would be possible to change a property currently selling one type of hot food, e.g. fish and chips, to one selling a different type of hot food, e.g. Chinese take-away, without requiring planning permission. However, if it is intended to use a property as a hot food take-away which is currently not used for that purpose then a change of use planning application will be required. Operators of bakery shops and sandwich shops which sell a small proportion of hot food would not normally be required to apply for planning permission as a hot food take-away, depending on the scale of the operation.

8. OTHER LEGISLATION

8.1 Proposals will also require any approvals under other legislation e.g. Environmental Protection, and Building Regulations. Applicants must ensure compliance with these requirements.

9. CONTACTS

Planning & Public Protection Policy Team

Tel: 01824 706916

Email: ldp@denbighshire.gov.uk

Development Management Team

Tel: 01824 706727

Email: planning@denbighshire.gov.uk

Draft Supplementary Planning Guidance -
Hot-food takeaways
11th June 2014

Equality Impact Assessment

Draft Supplementary Planning Guidance - Hot-food takeaways

Contact: Angela Loftus, Planning & Public Protection Service
Updated: 11/06/14

1. What type of proposal / decision is being assessed?

A new or revised policy

2. What is the purpose of this proposal / decision, and what change (to staff or the community) will occur as a result of its implementation?

The purpose of this report is to provide information, and seek comments, on a revised draft Supplementary Planning Guidance for hot-food takeaways. Approval will subsequently be sought from Planning Committee to carry out a public consultation, after which the adopted revised SPG will replace the existing SPG on hot-food takeaways.

3. Does this proposal / decision require an equality impact assessment? If no, please explain why.

*Please note: if the proposal will have an impact on people (staff or the community) then an equality impact assessment **must** be undertaken*

No	The report is an information report on proposed updated planning guidance relating to the development of new hot-food takeaways. The content of the SPG does not set policy but merely provides additional explanation and information for Members, Officers and developers in applying the LDP policies. The LDP underwent a full EqIA in 2010.
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4. Please provide a summary of the steps taken, and the information used, to carry out this assessment, including any engagement undertaken

(Please refer to section 1 in the toolkit for guidance)

The Denbighshire Local Development Plan (LDP) is the overarching policy document under which all SPG sit and this underwent an EqIA in 2010.

5. Will this proposal / decision have a positive impact on any of the protected characteristics (age; disability; gender-reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation)?
(Please refer to section 1 in the toolkit for a description of the protected characteristics)

No

6. Will this proposal / decision have a disproportionate negative impact on any of the protected characteristics (age; disability; gender-reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation)?

No

7. Has the proposal / decision been amended to eliminate or reduce any potential disproportionate negative impact? If no, please explain why.

No	Not required
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8. Have you identified any further actions to address and / or monitor any potential negative impact(s)?

No	Not required
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Action(s)	Owner	By when?

9. Declaration

Every reasonable effort has been made to eliminate or reduce any potential disproportionate impact on people sharing protected characteristics. The actual impact of the proposal / decision will be reviewed at the appropriate stage.

Review Date:	December 2014
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Name of Lead Officer for Equality Impact Assessment	Date
Angela Loftus	11.06.14

Please note you will be required to publish the outcome of the equality impact assessment if you identify a substantial likely impact.

Agenda Item 8



REPORT TO:	Licensing Committee
DATE:	11 th June 2014
LEAD OFFICER:	Head of Planning and Public Protection
CONTACT OFFICER:	Senior Licensing Officer licensing@denbighshire.gov.uk 01824 706451
SUBJECT:	Proposed amended Penalty Point Policy and Procedure

1. PURPOSE OF THE REPORT

- 1.2 To present, to Members, an amended Penalty Point Policy and procedure for their consideration.

2. EXECUTIVE SUMMARY

- 2.1 For Members to consider approving an amended penalty point policy and procedure to secure further improvement in standards for Hackney Carriage Proprietors, Drivers and Vehicles and Private Hire Operators, Drivers and Vehicles.

3. BACKGROUND INFORMATION

- 3.1 Members will be aware that the current hackney carriage and private hire condition book (“the blue book”) contains a penalty point scheme which was approved by Members a number of years ago. This scheme was never implemented due to concerns at the time over the legality of such a scheme, in particular for offences that may have already been considered through the Magistrates Courts or via fixed penalty points on driving licences. The current Penalty Point scheme can be found at Appendix A.
- 3.2 Recent case law, R (application of Singh) v Cardiff City Council [2012] EWCH 1852 (Admin) considered the legality of penalty points schemes for taxi drivers’ licences. Justice Singh found that the introduction and enforcement of a penalty point scheme was not unlawful in principle.
- 3.3 We have also obtained specialist legal advice confirming that a Penalty Point policy can be adopted.
- 3.4 While it is lawful to adopt a penalty point’s scheme it must not remove the

authority's discretion. There should be no automatic revocation of a licence, which would leave no room for judgment or discretion. There should be an appropriate appeals process.

- 3.5 It has been the practice for authorised officer dealing with hackney carriage and private hire enforcement to deal with breaches of policy and or legislation through a graduated enforcement approach ranging from verbal advice to suspension/revocation of licence.
- 3.6 The council's key responsibility under the licensing legislation is to ensure that only "fit and proper persons" become (and remain as) licensed hackney carriage / private hire drivers or operators. This is to ensure the safety of those using these services and the public in general.
- 3.7 The Penalty Points Scheme is designed to identify those drivers, vehicle proprietors or operators who repeatedly behave in a manner which, if taken as a whole, indicates that they are not fit and proper persons to hold a licence. It is a means by which officers can identify and record both serious and also relatively low-level breaches of an unacceptable nature. The Scheme will act as a record of a licensed individual's behaviour and conduct, and will provide the Council with guidance as to whether a person is "fit and proper" to hold the relevant licence.
- 3.8 The Penalty Points Scheme is not intended to work in isolation, but rather in conjunction with other enforcement options. It provides a formalised, graduated and transparent enforcement approach. It will improve the level of compliance within the licensed trade, and help to improve the standards, safety and protection of licensed drivers. It will also support the best interests of the travelling public, safeguarding their welfare and interests.
- 3.9 The Penalty Points Scheme is intended to refer drivers/operators/proprietors back before Members of the Licensing Committee once a licence holder has reached 20 points or more, to provide the licence holder with an opportunity to put forward representations before a decision is made as to whether any further action is to be taken.
- 3.10 The proposed revised Penalty Point Policy and Procedure can be found at Appendix B.

4. **CONSULTATION**

- 4.1 Contrary to usual practice, Officers sought approval from the Head of Planning and Public Protection, to deviate from our existing Policy

Process, and consult with the licensed trade and interested parties before presenting it to Members of the Licensing Committee. The purpose of this change was to minimise any delay in Members making a decision on this important policy, and to avoid any need to have to report back again to Members after the consultation period had ended.

- 4.2 Members will be aware that they were included as part of the consultation process, along with all Elected Members, Town and Community Councils, all licence holders, and trade associations.
- 4.3 As a result of the consultation, we received an extremely low response (3 in total). A summary of the responses can be found at Appendix C.
- 4.4 It is worthy of note that one of the main Taxi operators in the County are fully supportive of the scheme, and have been invited along to the meeting, along with all other individuals that had responded to the consultation.

5. **RECOMMENDATION**

- 5.1 For Members to consider approving the revised Penalty Point Policy and Procedure found at Appendix B, and in doing so agree to replacing the existing Penalty Point Scheme detailed at Appendix A.
- 5.2 To further approve the Officer's recommendations as detailed in the last column of Appendix C to this report.
- 5.3 To implement the scheme from the 1st August 2014, with a grace period of one month before enforcement of the scheme is introduced.

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EXISTING PENALTY SYSTEM

- In an attempt to ensure all licensees and vehicles remain suitable to carry members of the public, the Council has adopted a penalty system
- The chart below shows how the system works
- Should licenses be suspended or revoked, the licensee always has the right of appeal. This is achieved by lodging an appeal with a Magistrates Court within 21 days of the written notice of suspension or revocation
- The imposing of penalty points is not negotiable
- Licensees will receive notification in writing of the reason for penalty points and the number of points obtained
- The minimum period of suspension will be 20 days
- This period may increase and is mainly dependant on how points were obtained

EXAMPLE: A driver reaching 20 points made up of relatively minor offences will be suspended for 20 days

For more major offences, a period of 60 days may be warranted

Officers will keep records of this to maintain continuity

LICENCE	OFFENCE	PENALTY	MAX	
DRIVER	Failure to notify convictions and/or driving offences	10	20	*
	Failure to notify change of name and/or address	3	20	
	Failure to notify medical condition	10	20	
	Speeding (in any vehicle)	As endorsed multiplied by 2	20	
LICENCE	OFFENCE	PENALTY	MAX	
	Other endorsed traffic offences	As endorsed	20	*
	Failure to display ID badge	6	20	*
	Overcharging	10	20	
	Overloading	20	20	
	Plying for hire illegally	20	20	
	Non-compliance of dress code	3	20	
	Refusal to carry Assistance Dog	4	20	
OPERATOR/ HC PROP	Failure to keep proper records of bookings	4	20	
	Using an unlicensed vehicle	20	20	
	Employing an unlicensed driver	20	20	
	Failure to keep record of vehicle and drivers	4	20	

	Failure to ensure vehicle attends at appointed time	5	20	
	Failure to notify criminal convictions	10	20	
	Failure to display current fares, if applicable	7	20	
	Failure to notify change of Operating address	6	20	
PRIVATE HIRE VEHICLE AND HACKNEY CARRIAGE LICENSEE	Failure to display official plate(s) door stickers	10	20	
	Failure to comply with advertisement conditions	5	20	
	Failure to report damage to vehicle	4	20	
	Failure to ensure vehicle is clean and tidy	2-6	20	*
	Failure to ensure vehicle meets Construction & Use Regs	2-20	20	*
	Failure to notify adaptation to vehicle	5	20	
	Failure to carry fire extinguisher and/or first aid kit	7	20	
	Failure to notify criminal convictions	10	20	
	Failure to comply with Council's fixed scale of fares	5-10	20	*
ALL LICENSEES	Failure to comply with Authorised officer or Constable, or failure to assist	7	20	

- * Convictions: this is dependent on the relevance of the conviction. Serious offences may warrant an immediate revocation of licence, regardless of penalty points obtained not reaching 20.
- * Driving offence: serious driving offences, such as without due care, failing to stop after an accident, driving whilst under the influence of drink or drugs may warrant an immediate suspension or revocation regardless of penalty points obtained not reaching 20.
- * Failing to display the identification badge: customers, parents and Officers of the Council and Police must be able to see that drivers are properly licensed.
- * Clean, tidy, Construction & Use: this could mean anything from a bulb missing on number plate light to having four illegal tyres. Licensing Officer to determine penalty points.
- * Failure to comply with Council's fares: this could range from not having a meter in the Hackney Carriage to having a meter with an incorrect tariff. Licensing Officer to determine penalty points
 - **Penalty points obtained will be deleted if no further points have been gained within 2 years (date taken from the most recent "offence")**
 - **The Council reserve the right to suspend and revoke licences under the provisions of the relevant legislation regardless of the penalty points obtained not reaching 20**
 - **The maximum of 20 can be made up of all offences**
 - **Points obtained will be kept strictly confidential, held by the Licensing Officer, and will not be divulged to any other person**

PENALTY POINT POLICY AND PROCEDURE

1 INTRODUCTION

- 1.1 The existing hackney carriage and private hire conditions were approved in March 2011. Officers are reviewing the set of conditions and are making incremental changes to the condition book. The existing conditions makes reference to an existing Penalty Point procedure.
- 1.2 This document details a revised Penalty Point procedure used by the Council to deal with minor breaches or infringements of legislation or unacceptable behaviour committed by those licensed as Drivers and Operators and vehicle proprietors, in much the same way that points can be attached to a DVLA driving licence.

2 POLICY STATEMENT

- 2.1 The aim of this policy is to improve the levels of compliance of licensing regulations and requirements and to help raise standards, safety and the protection of members of the public affected by the actions of licensed drivers and operators and vehicle proprietors.
- 2.2 The Council is committed to ensure that only fit and proper persons become, and remain, as hackney carriage and private hire drivers and Operators and vehicle proprietors.
- 2.3 The procedure also seeks to improve the level of transparency and consistency in which the licensing system is administered and enforced.

3. PURPOSE OF THE PROCEDURE

- 3.1 The penalty point procedure is designed to work in conjunction with other enforcement options, identifying those drivers, operators or vehicle proprietors who repeatedly behave in a manner which, if taken as a whole, indicates that they are not fit and proper persons to hold a licence.
- 3.2 The Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 (the relevant legislation covering such licences), only allows for the suspension or revocation of a licence, or the prosecution of a licence holder where they commit an offence under the above legislation. Therefore there is no system in place to deal with minor breached or infringements, which in isolation are not serious enough to warrant the suspension or revocation of a licence.

4. WHO IS COVERED BY THE PROCEDURE

- 4.1 Penalty Points may be awarded against anyone holding a hackney carriage and private hire driver licence or a Private Hire Operator Licence

or Vehicle Proprietor.

5. ISSUING OF PENALTY POINTS

- 5.1** Officers will investigate allegations of offences, by licensed operators, drivers or vehicles owners. When considering what action to take the Council officers will take into account all available and appropriate evidence, such as eye witness accounts and their reliability, the views of the licence holder who may be affected by the outcome of the investigation, etc.. The outcome of investigations may result in a wide range of potential actions. This procedure deals with the option of penalty points. For other enforcement action please refer to the relevant procedures.
- 5.2** Once the conclusion to issue penalty points, letters will be sent to all persons/organisations involved in the allegation(s) detailing the findings and decision of the Council officer. A record of the decision will be kept on the relevant licensed driver's, licensed vehicle owner's, or operator's file, including copies of any "Penalty Points Notice(s)" issued, where applicable.
- 5.3** The points will be issued by an Officer or the Committee will be confirmed in writing within 14 days of their issue.
- 5.4** Any points incurred under the Scheme are completely separate from any points which may be attached by the Police, through fixed penalty notices, or the Courts, through convictions to DVLA driving licences.
- 5.5** Confirmed infringements or breaches will act as an ongoing record of a driver's, licensed vehicle owner's or operator's behaviour and conduct, so as to ascertain whether they are a fit and proper person to hold such a licence.
- 5.6** Where a licence holder accumulates 20 or more penalty points in a 24 month rolling period (a period of 24 consecutive months determined on a rolling basis with a new 24 month period beginning each day) the matter will be referred to the Council's Licensing Committee. The Committee will be required to determine whether the driver or operator is a fit and proper person. The following action can be taken by the Committee:
- i. Take no action
 - ii. Issue a warning
 - iii. Issue additional penalty points
 - iv. Suspend a licence as a punitive sanction
 - v. Suspend a licence to correct a fault, defect, or breach
 - vi. Revoke or refuse to renew a licence
- 5.7** Periods of suspension will be determined by the Licensing Committee and will depend on the nature of the offence, breach, or infringement and the individual's compliance history. A determination will also be made as to whether the suspension or revocation is on the grounds of public safety, thereby having immediate effect.

- 5.8** Where a driver, proprietor or operator reaches the 20 points and is referred to the Committee it will not preclude all relevant information being disclosed. This will include any other penalty points, complaints, warnings, and suspensions etc. The 20 points will be a referral trigger.
- 6. A BREACH OR INFRINGEMENT IS DISCOVERED**
- 6.1** If there is good evidence that there was a breach or inappropriate behaviour and it is considered appropriate to do so, the licence holder will be issued with a penalty point notice.
- 6.2** The penalty point notice will describe the infringement or breach, date and time it took place, and how many points have been issued to the licence holder.
- 6.3** The Council reserve the right to not impose penalties points under this scheme where in the opinion of the Officers the allegations are either frivolous, vexatious or repetitious, or made, in the Officers opinion, to further personal grievances or which are not made within a reasonable time period, to be determined by the Council depending on the individual circumstances, of the breach having occurred.
- 7. HOW TO REPORT AN INFRINGEMENT**
- 7.1** Complaints from members of the public, residents or businesses concerning any breaches of conduct will be subject to investigation by Officers, and only where there is clear, verifiable evidence of an infringement eg a photograph of an illegally parked vehicle, then the Council may issue a penalty point notice based on that evidence. These investigations may be dealt with by way of issuing penalty points under this scheme or in serious cases automatic referral to the Licensing Committee.
- 7.2** A form that guides how to report an infringement is available on the Council's website at www.denbighshire.gov.uk/licensing/taxis
- 8. INFRINGEMENTS/BREACHES COVERED BY THE SCHEME**
- 8.1** A full list of infringements and breaches covered by this Scheme can be found at Appendix 1.
- 9. APPEALS**
- 9.1** If no appeal is lodged within 10 days of receiving the Notice, then the Council will take the view that the licence holder has accepted the penalty points.
- 9.2** If a licensee wishes to appeal against the issue of a "penalty points notice" he/she must do so in writing, stating the reasons of the appeal, within 10 working days from the date of issue of such a notice, to the

Council's Head of Planning and Public Protection or in his/her absence the Public Protection Manager, who, in consultation with the Chairman of the Licensing Committee, will have the discretion to:-

- i. uphold the Council Officer's decision – retain the number points on the "penalty points notice"; or
- ii. cancel the issue of the "penalty points notice" to the licensee.

9.3 There is no appeal beyond the decision made by the Head of Public Protection. However, should a licensee be subsequently reported to the Licensing Committee for accumulating 20 penalty points, he/she has the opportunity to raise the validity of the points issued.

10. RE-APPLYING FOR A LICENCE

10.1 If a licence holder has had their licence revoked, they may apply for a new licence, but its Council Policy that such an application under the Penalty Point Scheme will not be entertained until a suitable period from the date of revocation has elapsed, as detailed below:

- i. where the penalty points which resulted in the revocation included any infringements that attracted 10 or more points, then this period will be 24 months
- ii. where none of the infringements individually attracted more than 10 points, then this period is reduced to twelve months

10.2 It should not be assumed that an application for a new licence, following revocation under this Scheme, will automatically be granted. Any application will be subject to the Council's normal application process and consideration of whether the applicant is a fit and proper person to hold a licence.

11. DELEGATION OF FUNCTIONS

11.1 The Head of Planning and Public Protection Public Protection can delegate authority to the Public Protection Manager to issue penalty points in accordance with this policy. The Public Protection Manager can also delegate this function to an authorised Officer of the Council.

12. REVIEW OF THE SCHEME

12.1 This Policy will be reviewed every three years. Notwithstanding this, the policy will continue to be evaluated and may be updated at any time, subject to the appropriate consultation.

APPENDIX 1 – PENALTY POINT SCHEME

FOR MINOR BREACHED OR INFRINGEMENTS BY HACKNEY CARRIAGE AND PRIVATE HIRE OPERATORS, DRIVERS AND VEHICLE PROPRIETORS

SCALE OF PENALTY POINTS

REF No	BREACH/OFFENCE OR INFRINGEMENT	PENALTY POINTS
1	Use/Cause/Permit a vehicle to be driven with a defect contrary to Road Vehicle (Construction & Use) Regs 1986 (as amended) (per defect)	10
2	Serious contravention of a Road Traffic Act requirement or other legislation relating to vehicle, driver or operator licensing eg hackney carriage charging more than the prescribed fee	10
3	Failing to produce Certificate of Compliance, MOT certificate, driving licence or insurance certificate, which is valid on the day of request, within 7 days of being requested	5
4.	Obstructing an authorised officer of Police Officer	10
5	Failure to carry an assistance dog without an exemption notice	5
6	Using or allowing a vehicle to be used subject to a suspension issued by an Authorised Officer or Police Officer	10
7	Using a vehicle for which the licence has been suspended or revoked	10
8	Using an unlicensed vehicle or licensed vehicle without Insurance	10
9	Driver using a handheld mobile phone, handheld two way radio, eating or drinking whilst the vehicle is in motion	5
10	Presenting a vehicle for testing in an unsafe or dangerous Condition	10
11	Providing false or misleading information on licence application form / failing to provide relevant information or the relevant fee (including dishonoured cheques)	10
12	Failure to submit a licensed vehicle that is 5 years old, or more for a 6 monthly MoT and provide documented proof to the Council that it has passed such a test. The Council will expect to see documentary evidence that such a test has been carried out within 4 weeks of the due date of the MoT test.	5
13	Operator failing to keep proper records or keep records in accordance with the licence conditions	5
14	Failing to notify the Council of details of road traffic collision within the prescribed time limit	5
15	Minor abusive behaviour to a member of the public or a licensed driver	10
16	Failure to behave in a civil and orderly manner (including rude or aggressive behaviour)	10
17	Using insulting or threatening words or disrespectful behaviour towards any Officer of the Council	10
18	Plying for hire by private hire drivers.	10
19	Carrying more passengers than the capacity stated on the vehicle licence.	10
20	Failure to carry an up to date fire extinguisher.	5

21	Failure to carry an up to date first aid kit	5
22	Failure to wear private hire or hackney carriage driver's badge.	5
23	Refusal to accept hiring without reasonable cause e.g. drunk or rude customer	5
24	Failure to observe rank discipline – taxi drivers (e.g. plying for hire outside the markings of one of the County's taxi ranks).	5
25	Failure to give assistance with loading/unloading luggage to or from any building or place.	5
26	Failure to attend punctually at appointed time and place without sufficient cause.	5
27	Leaving a Hackney Carriage unattended whilst on a designated rank	5
28	Failure to comply with the Driver Dress Code	5
29	Failure to comply with the Code of Good Conduct	5
30	Displaying any feature on a private hire vehicle that may suggest that it is a taxi vehicle.	5
31	A licensed vehicle with illegal tyres	10
32	Failure to carry a legal spare wheel and tools.	5
33	Failure to use authorised roof light on a hackney carriage vehicle.	5
34	Failure to display the external/internal licence plate or signs as required.	5
35	Displaying unsuitable or inappropriate sited signs or advertisements in or on the vehicle.	5
36	Presenting a vehicle for testing in an unsafe or dangerous condition	10
37	Charging hackney carriage passenger more than the metered or agreed fare	10
38	Failure to return a vehicle licence plate within 7 days after request	5
39	Using a non-approved or non-calibrated taximeter	5
40	Unreasonably prolonging a journey or any misconduct regarding the charging of fares	10
41	Failure to notify the Council, in writing, of any conviction, caution, fixed penalty or similar within 7 working days	10
42	Failure to attend punctually at appointed time and place without reasonable cause	5
43	Failure to carry Driver/Vehicle Conditions in vehicle	5
44	Displaying unsuitable, inappropriate or unauthorised signs or advertisements in or on a vehicle	5
45	Failure to notify the Council, in writing, of a change of address within 7 working days	5
46	Failure to notify, in writing, a change in medical circumstances	5
47	Unsatisfactory condition of a vehicle (interior or exterior)	5
48	Any other offence/breach/infringement not specifically covered in this scheme	5-10
49	Driving or parking in a manner likely to cause inconvenience, distress or danger to	5

	members of the public	
50	Parking in contravention of public highway parking restrictions	5
51	Parking/stopping or picking up or dropping passengers on zigzags of a pedestrian crossing or school entrance	10
52	Sounding the vehicle horn to announce arrival or to tout for business	5
53	Failing to display Hackney Carriage fare card in vehicle	5
54	Occupying/parking in a loading bay	5
55	Failure to present vehicle for inspection by an authorised officer at required time/location	5
56	Private Hire driver charging or attempting to charge more than the fare agreed with the customer by the operator	10
57	Private hire vehicle parking/waiting on or near of a taxi rank without a booked fare	5
58	Contravention of any byelaw or condition not specified above	5-10

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APPENDIX C

PROPOSED REVISED PENATY POINT POLICY AND PROCEDURE

Section of Policy	Summary response received:	Officer's comments	Officer's recommendations
Appeals 9.1 & 9.2	Proof will be required that the appellants has received the required notice before points are accepted	Officers will endeavour to hand deliver any notice, but where this is not possible the notice will be sent recorded delivery.	No change
Two year span regarding accumulating penalty points	Find this unfair due to the driver's badge and plate lasting only 12 months. Suggest 12 months rather than 2 years.	Officers have discussed at length this issue, with the interested parties, and consideration has been given to trial the scheme for an agreed timescale with regards to imposing points over a 12 month period rather than 2 years	Recommend the following amendment to 5.6: For a trial period of 12 months, where a licence holder accumulates 20 or more penalty point in a 12 month rolling period (a period of 12 consecutive months determined on a rolling basis with a new 12 month period beginning each day). The matter will be referred back to Members of the Committee in 12 months time for review of the scheme.
Delegation of Functions	Is it wise to delegate authority under this	Senior Officers have delegated authority	No change

11.1	part of the proceedings to an individual?	to carry out a number of functions within the remit of the service and in this instance for the scheme to run effectively it is important that they are authorised to issue penalty points where necessary	
Appendix 1 - general	Why are all points either 5 or 10, with nothing higher , lower or in between?	This scheme is going to be a challenge to administer and by only imposing 5 and 10 points, it will ease any administrative burdens.	No change
Ref No. 3 - Failing to produce Certificate of compliance etc	This is low, subject to proof of receipt of notice	Officers feel this is the correct amount of point imposed	No change recommended
Ref No. 8 – Using an unlicensed vehicle or licensed vehicle with insurance	Not high enough	In certain circumstances, other enforcement action may be the most appropriate action ie prosecution/referral to police	No change recommended
Ref No. 12 – Failure to submit a licensed vehicle that is 5 years old or more for a 6 monthly MOT	Our company have enormous difficulty in testing vehicles since the Bodelwyddan garage has opened. Due to where it's situated 56 miles round trip away from us. Our work is school transport and social service for DCC. Our contracts are mainly feeders to large buses around farms, and country roads. We cannot fit the tests in at the garage at Bodelwyddan during term time, as there is not enough time to come back in time for school. It was devastating to be told last August that Bodelwyddan garage could not carry out any tests during August as their garage staff were taking their holidays. At present we are taking	All vehicles under 5 years old are required to undergo a 6 monthly compliance at any Council authorised testing station . Once vehicles are over 5 years old, one of the 6 monthly compliance tests must be carried out at Fleet Services. The other 6 monthly compliance test can be undertaken at any Council authorised testing station. The purpose of this is to ensure consistency throughout the testing regime.	The whole taxi and private hire policy (Blue Book) are being reviewed and the testing regime will form part of this review. No change recommended

	the vehicles at 7pm to Bodelwyddan for testing, after taking the vehicles back to their drivers we are arriving home approx. 11pm. There must be a better solution.		
Ref No. 25 – Failure to give assistance with loading/unloading luggage to or from any building or place	Slightly high. Courteous as it may be, they are hired as drivers not personal assistants ?	Licensed drivers should act in a professional manner at all times, and offer assistance to any passenger	No change recommended
Ref No.27 – Leaving a hackney carriage unattended whilst on a designated rank	Nature calls at any time. Drivers have to leave their vehicles to smoke and take a break as most drivers work 12 hours or more. A good 99% of drivers make sure vehicle is in that their unattended sight	If a driver has left his/her vehicle for a comfort break or smoke, then they are not available for immediate hire and are not able to move up the rank. Some Drivers have in the past abused the use of the ranks by leaving their vehicles unattended at a rank for more than a comfort/smoking break eg visit to shops etc. It is the opinion of Officers that in these circumstances vehicles should find alternative parking when not available for hire. It is also an offence under legislation to leave a vehicle unattended on a rank. Officers will use their discretion when considering imposing such points.	No change recommended
Ref No. 32 – Failure to carry a legal spare wheel and tools	There is a legal obligation re spare wheel. Does this also apply to tools?	Yes, without the appropriate tool a damaged tyre/wheel cannot be removed.	No change recommended
Ref No. 39 – Using a non-approved or non-calibrated taximeter	Is this consistent with Penalty Point No. 2	No 2 and 39 are different. Point 39 is when the proprietor has not had his/her taximeter calibrated to the Council's table of fares and charges	No change recommended
Ref No. 49 – Driving or parking in a	Too lenient?	Officers agree that for parts of this	Recommend the

manner likely to cause inconvenience, distress or danger to members of the public		infringement eg danger to members of the public, a more stringent penalty should be imposed	following amendment: 5-10 points
Ref No. 50 – Parking in contravention of public highway parking restrictions	Parking at the rear of the taxi rank. There is insufficient space for the amount of taxis that are now operating in Rhyl. This problem has been ongoing for years. In the daytime drivers are asked to move on by Traffic Wardens or Police Officers. At night the rules are different. There are no Traffic Wardens and the Police have more important issues to deal with. Therefore we find this unfair and unenforceable	There are double yellow lines at the rear of the Rhyl High Street rank which drivers continually ignore and use for extra “rank” space. This is an on-going issue that has been raised with Highways and solutions are being looked at. Due to a taxi being parked on yellow lines behind the rank, resulted in a road traffic collision. Parking at the rear of a rank can cause serious obstruction.	No change recommended
Ref No.52 – Sounding the vehicle horn to announce arrival or to tout for business	Draconian perhaps	It is an offence to sound your horn between the hours of 23:00 and 06:00. Officers feel that this can cause annoyance to neighbours	No change recommended
Ref No. 54 – Occupying/parking in a loading bay	After consultation with the Traffic Wardens, any vehicle can park for 10 minutes in any Loading area, therefore the proposed penalty points would be illegal	Some Drivers are continually abusing the “10 minute rule” and are moving on when requested, but then returning after 10 minutes. This is an on-going matter that is causing massive problems especially on the Rhyl High Street Rank as there is a loading bay immediately in front of the rank. Officers will use their discretion when considering imposing such points.	No change recommended
Ref No. 55 – Failure to present vehicle for inspection by an authorised office at required time/location	Slightly low?	Officers take on board the comments received	Recommend the following amendment: 10 points
General comments	Support the Council in the		

	implementation of this policy. Frankly if anyone objects to the implementation of this policy, they obviously have things to hide, or operate in a way not deemed appropriate as per the policy. You have our full support on this initiative.		
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Agenda Item 9



REPORT TO:	Licensing Committee
DATE:	11 th June 2014
LEAD OFFICER:	Head of Planning and Public Protection
CONTACT OFFICER:	Senior Licensing Officer licensing@denbighshire.gov.uk 01824 706451
SUBJECT:	Proposed Hackney Carriage Intended Use Policy

1. PURPOSE OF THE REPORT

- 1.2 To present to Members a proposed Hackney Carriage Intended Use Policy, for their consideration.

2. EXECUTIVE SUMMARY

- 2.1 For Members to consider approving a policy regarding the intended use of hackney carriage vehicle licences granted in the County.

3. BACKGROUND INFORMATION

- 3.1 It was recognised by members of the Director of Public Protection Wales (DPPW) Licensing Technical Panel that Authorities were receiving significant number of applications and enquiries from hackney carriage proprietors and drivers who reside outside the Council area.
- 3.2 It is entirely lawful for a hackney carriage licensed by one authority to undertake pre-booked hirings (private hire) outside of the authority Area. This could lead to a situation where a significant number of hackney carriages licensed by an authority, undertakes private hire work entirely outside of that Council area.
- 3.3 Whilst the current situation is not unlawful, it is not ideal from an enforcement point of view for vehicles to be operating predominantly outside of the local authority area where they are licensed. This makes it more difficult for Officers to monitor and enforce.
- 3.4 Enforcement Officers are not able to carry out compliance or enforcement duties in other Local Authority areas. It is also very difficult to monitor vehicles easily if they rarely operate within their area and this could have significant safety issues.

- 3.5 The authority does not currently have regard to whether an applicant for a hackney carriage licence intends their vehicle, if licensed, to be used predominantly for the purpose of private hire bookings outside of the County. In addition the Council currently has no means of ascertaining if the proprietor of a hackney carriage vehicle intends to operate within the County or if the vehicle will be used predominantly for the purpose of private hire work outside of the County
- 3.6 The DPPW Licensing Technical Panel recognised the safety implications of vehicles who operated in the manner stated above and referred to the High Court judgment in the case of Newcastle City Council v Berwick upon Tweed Council [2008] when drafting up a policy. The following statements were made in this judgement –
- a) *“It was the intention behind the licensing system that it should operate in such a way that the authority licensing hackney carriages is the authority for the area in which those vehicles are generally used”*
 - b) *“A licensing authority, properly directing itself, is entitled and indeed obliged to have regard to whether in fact the applicant intends to use that hackney carriage predominantly, or entirely, remotely from the authority’s area”*
 - c) *“It must be desirable for an authority issuing licences to hackney carriages to be able to restrict the issuing of those licence to proprietors and drivers which are intending to ply for hire in that authority’s area”*
 - d) *“While I cannot at the moment conceive of it being rational to grant a licence to those who intend to operate their hackney carriages remotely from [the local authority’s area] I am not prepared to say that it is bound to be unlawful”*
 - e) *“There will be proprietors who wish to use their vehicles in a number of different authorities’ areas and in that case no doubt there will be flexibility in the exercising of the discretion. Matters such as where the proprietor is based and where most of the business comes from will be material matters to consider”.*
- 3.7 The DPPW recommend that the policy is adopted by all Local Authorities in Wales. This is to ensure a consistent and transparent approach across Wales when determining the intended use of hackney carriage vehicles.

4. **CONSULTATION**

- 4.1 Contrary to usual practice, Officers sought approval from the Head of Planning and Public Protection, to deviate from our existing Policy Process, and consult with the licensed trade and interested parties before presenting it to Members of the Licensing Committee. The purpose of

this change was to minimise any delay in Members' making a decision on this important policy, and to avoid any need to have to report back again to Members after the consultation period had ended.

4.2 Members will be aware that they were included as part of the consultation process, along with all Elected Members, Town and Community Councils, all licence holders, and trade associations.

4.3 As a result of the consultation, we have not received any objections to the proposed Intended Use Policy for Hackney Carriage vehicles.

4.4 It is worthy of note that one of the main Taxi operators in the County are fully supportive of the Policy, and have been invited along to the meeting, along with all other individuals that had responded to the consultation.

5. **RECOMMENDATION**

5.1 That Members support the proposed Intended Use Policy and recommend to Full Council the adoption of such policy.

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INTENDED USE POLICY FOR HACKNEY CARRIAGE VEHICLES

Applications for the new grant of a hackney carriage licence

Applicants for new licences will be expected to demonstrate a bona fide intention to ply for hire within the Denbighshire County under the terms of the licence for which an application is being made.

There will be a presumption that applicants who do not intend to entirely or predominantly ply for hire within Denbighshire will not be granted a hackney carriage licence authorising them to do so. Each application will be decided on its merits.

Even where the applicant intends to ply for hire entirely or predominantly in Denbighshire, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be compromised) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

Applications for the renewal of a hackney carriage licence

Section 60 of Local Government (Miscellaneous Provisions) Act 1976 also gives the Council a broad discretion to refuse to renew a licence for any reasonable cause and this intended use policy will also apply for renewals in the same way as for the grant of the licence. Each application will be decided on its merits.

Applications for the transfer of a hackney carriage licence

Should the hackney carriage licence be transferred to another proprietor during the term of the licence, the new proprietor will be asked to inform the Council whether he has a bona fide intention to use the vehicle to ply for hire within Denbighshire. New proprietors should note the obligation under section 73 of the Local Government (Miscellaneous Provisions) Act 1976 to give to an authorised officer information which may reasonably be required by him for the purpose of carrying out his functions under the legislation. Where there is a failure to provide the requested information, the Council will give serious consideration to exercising its powers of suspension of the licence under section 60 of the 1976 Act until such information is forthcoming, in addition to its powers under section 73.

New proprietors of licensed hackney carriages will be expected to have a bona fide intention to ply for hire within Denbighshire under the terms of the licence in respect of the vehicle being transferred.

If the new proprietor of a licensed hackney carriage is found to have no intention to ply for hire entirely or predominantly within Denbighshire and/or intends to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will

be compromised) then, subject to the merits of the particular case, consideration will be given (either at renewal or earlier) to the suspension or revocation of the licence under section 60 of the Local Government (Miscellaneous Provisions) Act 1976. Where the new proprietor proposes to operate remotely from the administrative area of Denbighshire there will be a presumption that his licence will be revoked. Each case will however be decided on its merits.

Applications for the replacement of a hackney carriage licence

When a proprietor replaces a licensed vehicle, applicants seeking the grant of hackney carriage licence for a vehicle intended to replace another licensed vehicle will be asked to inform the Council of their intended use of the vehicle. There will be a presumption that applicants who no longer intend to ply for hire entirely or predominantly within Denbighshire will not have the new hackney carriage licence granted. Even where the applicant intends to ply for hire entirely or predominantly in Denbighshire if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be compromised) then, subject to the merits of the particular case, there will be a presumption that the application will be refused.

Where a licence has been granted under the terms that the applicant intends to ply for hire entirely or predominantly within Denbighshire but is subsequently found not to be plying for hire entirely or predominantly in Denbighshire and/or to be trading in another authority's area for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be compromised) there will be a presumption that the licence will be revoked.

Each application will be decided on its merits. However the presumptions that intended use is to ply for hire entirely or predominantly within Denbighshire will be rebuttable in exceptional circumstances. Whilst it is neither possible nor prudent to draw up a list of what might amount to exceptional circumstances, an applicant who claims that exceptional circumstances exist will be expected to be able to satisfy the Council that it would not compromise the purposes of the legislation or compromise public safety if the licence were granted, renewed or if were not suspended or revoked as the case may be.

Reasons for intended use Policy

The Council of Denbighshire wishes to ensure that applications for the grant of hackney carriage licences are determined in accordance with the guidance given by the High Court in its judgment, and the Declaration made in the case of Newcastle City Council v Berwick upon Tweed Council [2008].

The Council is required to register the name of the new proprietor of a vehicle. It seems to the Council also to open up an obvious route to

circumvent the decision of the High Court, unless precautionary steps are taken. It is intended to put the Council in a position to respond responsibly to the transfer of a Denbighshire hackney carriage into the name of someone who operates outside the Denbighshire County or remotely from it.

Unless there has been a change in the proprietor's intentions with regard to plying for hire within the administrative area of Denbighshire, there should be no reason why he/she should not be granted a licence for a replacement vehicle. On the other hand, an applicant who obtained the first licence on the expressed intention of plying for hire entirely or predominantly within the administrative area of Denbighshire, and who on application to replace that vehicle with another discloses that he/she no longer so intends, effectively engages the presumption against grant that is mentioned earlier.

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Agenda Item 10



REPORT TO:	Licensing Committee
DATE:	11 th June 2014
LEAD OFFICER:	Head of Planning and Public Protection
CONTACT OFFICER:	Senior Licensing Officer licensing@denbighshire.gov.uk 01824 706451
SUBJECT:	Proposed revised Relevance of Conviction Policy for Hackney Carriage and Private Hire Operators and Drivers

1. PURPOSE OF THE REPORT

- 1.2 To present to Members a proposed revised Relevance of Conviction Policy for hackney carriage and private hire drivers and operators, for their consideration.

2. EXECUTIVE SUMMARY

- 2.1 For Members to consider approving a revised policy regarding the relevance of convictions for Hackney and Private Hire Drivers and Operators.

3. BACKGROUND INFORMATION

- 3.1 Members will be aware that as an Authority we have adopted guidance on relevant convictions as a part of the hackney carriage and private hire conditions book (Blue Book) .These guidelines have been used by both Members and Officers, to assist in the determination of applications for driver licences from individuals who have relevant convictions on their Disclosure and Barring Service reports. The Council's existing relevance of conviction guidance is attached at Appendix A.
- 3.2 Local Authorities in Wales have been reviewing the guidelines in respect of relevant convictions, and have decided through the Directors of Public Protection Wales (DDPW) Licensing Technical Panel to recommend an updated guidance which is relevant to current situations arising in taxi licensing. The proposed revised guidance is attached at Appendix B.
- 3.3 The DPPW recommend that the policy is adopted by all Local Authorities in Wales. This is to ensure a consistent and transparent approach across Wales when determining whether or not an applicant or an existing

licence holder is a fit and proper person to hold a hackney carriage or private hire driver/ operator licence.

3.4 The aim of this policy is to protect the safety of the public. The Licensing Authority is concerned to ensure:

- That a person is a fit and proper person;
- That the person does not pose a threat to the public;
- That the public are safeguarded from dishonest persons;
- The safeguarding of children and young persons;
- The safeguarding of vulnerable persons;
- That the public have confidence in their use of licensed vehicles.

3.5 Where Officers have delegated powers to grant licences, they will refer to these guidelines when making a decision to grant a licence. In all other cases applications for licences will be referred to the Licensing Committee. Whilst Officers and Members will have regard to the guidelines contained in the policy, each case will be considered on its individual merit and, where the circumstances demand, the Committee/Officer may depart from the guidelines.

4. **CONSULTATION**

4.1 Contrary to usual practice, Officers sought approval from the Head of Planning and Public Protection, to deviate from our existing Policy Process, and consulted with the licensed trade and interested parties before presenting it to Members of the Licensing Committee. The purpose of this change was to minimise any delay in Members' making a decision on this important policy, and to avoid any need to have to report back again to Members after the consultation period had ended.

4.2 Members will be aware that they were included as part of the consultation process, along with all Elected Members, Town and Community Councils, all licence holders, and trade associations.

4.3 As a result of the consultation, we have not received any objections to the proposed Relevance of Conviction Policy.

4.4 It is worthy of note that one of the main Taxi operators in the County are fully supportive of the Relevance of Conviction Policy, and have been invited to the meeting, along with all other individuals that had responded to the consultation.

5. **RECOMMENDATION**

- 5.1 That Members approve and adopt the revised Hackney Carriage and Private Hire Conviction Policy found at Appendix B to this report.

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THE REHABILITATION OF OFFENDERS ACT 1974

(EXCEPTIONS) (AMENDMENT) ORDER 2002

The above Order places a requirement on all taxi drivers and applicants for a licence to drive taxis, to disclose ALL previous convictions.

The Rehabilitation of Offenders Act, 1974, (as regards to “spent” convictions), does now not apply to taxi drivers.

If you would like to discuss the affect a conviction may have on your application, you can speak to the Licensing Manager, in confidence, on 01824 706451.

Denbighshire County Council

Guidelines Relating to the Relevance of Convictions

Hackney Carriage and Private Hire Vehicle Drivers

GENERAL POLICY

1. Each case will be decided on its own merits.
2. A person with a conviction or convictions need not be permanently barred from obtaining a licence but should be expected to remain free of conviction for 3 - 5 years, according to the circumstances, before an application is considered.
3. In cases or more serious offences which have lead to a term of imprisonment, the time periods given will run from the date the applicant was released from prison or detention centre or similar establishment, and not the date of conviction.
4. The following examples afford a **general guide** on the action to be taken where convictions or police cautions are revealed.
5. In all cases the overriding concern should be the protection of the public.
6. In all cases, the Rehabilitation of Offenders Act 1974 will be adhered to regarding convictions classed as being “spent”.
7. Where, in these guideline, an “application” is mentioned, this also refers to a “re-application” upon revocation of a current licence.

TRAFFIC OFFENCES

- ◆ Convictions for minor traffic offences, such as obstruction, contravention of waiting regulations etc should not prevent a person from making an application.
- ◆ If an applicant has previously accrued sufficient penalty points to require a period of disqualification, and has not been required to undergo a further driving test, then a licence may be granted after its restoration, with a strict warning as to the high standards that are required of licensed drivers.

- ♦ If an applicant has had a driving licence revoked following six or more penalty points accrued during the first two years since passing their driving test, then a period of 12 months free of further conviction **after** passing a further driving test should have elapsed before an application is considered.
- ♦ If an applicant has been ordered to retake a driving test after a period of disqualification for other offences which attract penalty points, then 6 months free of conviction, **after** passing the driving test, should have elapsed before an application is considered.

TRAFFIC OFFENCES INVOLVING DISQUALIFICATION

- ♦ An isolated conviction for driving without due care and attention should not prevent a person from making an application.
- ♦ If an applicant has been convicted of an offence of dangerous driving, or other offence involving obligatory disqualification, and ordered to take an extended driving test at the end of the period of disqualification, a period of 12 months free of conviction, **after** passing the driving test, should have elapsed before an application is considered.

DRIVING WITHOUT INSURANCE OR DRIVING WHILST DISQUALIFIED

- ♦ As licensed drivers are responsible for the safety of members of the public who are travelling in their vehicles, a serious view will always be taken of a conviction for driving without insurance or driving whilst disqualified.
- ♦ An applicant will generally have to show a period of at least 6 months free of conviction from these types of offences before an application is considered.
- ♦ If an applicant has been disqualified from driving as a result of convictions of this type, then the 6 months period shall run from the date of restoration of the licence.
- ♦ If an applicant has more than 1 conviction of this type within the last 3 years, then a period of 12 months, from the date of restoration of the licence, must have elapsed before an application is considered.

PLYING FOR HIRE

- ♦ This is regarded as a serious offence as the vehicle insurance may be invalidated if the driver is found guilty of plying for hire in a vehicle other than a hackney carriage in the controlled district.
- ♦ A period of at least 6 months free of convictions should be shown before an application is considered.
- ♦ If a licence is granted, a strict warning will be given as to the conduct expected of licensed drivers.

FAILING TO WEAR IDENTIFICATION BADGE

- ♦ A serious view will be taken of a person convicted of failing to wear the identification badge whilst acting as a licensed driver.
- ♦ An isolated conviction will not prevent an application being considered, however, if granted then a strict warning will be given as to the conduct expected of a licensed driver.
- ♦ If an applicant has been convicted of this offence more than once, then a period of 3 months free of conviction shall have elapsed before an application is considered.

DRUNKENNESS AND OTHER RELATED OFFENCES

I) WITH A MOTOR VEHICLE

- ♦ A serious view will always be taken of convictions of driving or being in charge of any vehicle whilst under the influence of drink or drugs or failing to provide a specimen for analysis.
- ♦ If an applicant has been disqualified and ordered to take either an extended driving test or a driving test, then a period of 12 months free of conviction **after** passing the necessary test, should have elapsed before an application is considered.

- ♦ If no further driving test has been ordered, then 6 months free of conviction after the restoration of the driving licence, should have elapsed before an application is considered.
- ♦ If the offence arose as a result of the persons being in charge of, or driving a licensed vehicle and ordered to take a further test, then a period of 2 years free of conviction after passing the necessary test should have elapsed before an application is considered.
- ♦ If no driving test has been ordered, then a period of 12 months free of conviction, after the restoration of the licence should have elapsed before an application is considered.
- ♦ If an applicant has more than 1 conviction of this type then grave doubts should arise as to the applicants suitability to hold a licence.
- ♦ At least 3 years must elapse after the restoration of the driving licence and passing any further driving tests if required, before an application is considered.
- ♦ If there is **any** suggestion that the applicant is an alcoholic or illegal drug user, a special medical examination should be arranged by a medical practitioner nominated by the Council.
- ♦ This examination must be certified as satisfactory before an application is considered.
- ♦ If it is ascertained that the applicant is an alcoholic or illegal drug user then no application will be considered until 5 years has elapsed after any treatment has been completed.

ii) NOT IN A MOTOR VEHICLE

- ♦ An isolated conviction for a drink related offence should not debar an applicant from obtaining a licence
- ♦ A number of convictions for this type of offence may indicate a medical problem necessitating further examination as mentioned before.
- ♦ In some cases a warning will be given as to the standards expected of licensed drivers.

iii) DRUGS

- ♦ An applicant with a conviction for a drug related offence should be required to show a period of at least 3 years free of conviction before an application is considered, or 5 years after detoxification treatment if the applicant was an addict

INDECENCY OFFENCES

- ♦ Applicants with conviction for indecent exposure, indecent assault, importuning, or of any offence of a sexual nature should be refused a licence until a period of 3- 5 years free from conviction has elapsed.
- ♦ If the applicant was required to register on the National Sex offenders Register as a result of an offence, then no application will be considered whilst the applicant remains on the Register.
- ♦ An applicant with more than one conviction of this type of offence will not be considered suitable to license until a period of at least 5 years has elapsed following the most recent conviction.
- ♦ If a conviction of this type arose as a result of the person acting as a licensed driver then no application will be considered for at least 5 years after the conviction or, if longer, the conclusion of the sentence imposed.
- ♦ In all cases, if a licence is granted, then it will reduce to 6 months, after which time the person must undergo another criminal record check
- ♦ If no further convictions have been obtained, the next licence will be issued for the usual 12 months
- ♦ If further convictions have been obtained with the 6 month period of licence, no further application will be considered until a period of at least 5 years free of conviction has elapsed.

VIOLENCE

- ♦ A firm line will be taken with applicants with conviction for grievous bodily harm, wounding, assault or any other type of offence of a violent nature.

- ♦ An applicant must be free of convictions for at least 3 years before an application is considered.
- ♦ In all cases, if a licence is granted, a strict warning will be given as to the standards expected of licensed drivers

DISHONESTY

- ♦ A serious view will be taken of any conviction involving dishonesty.
- ♦ In general a period of 3-5 years free of conviction should be required before an application is considered.

POLICE CAUTIONS

- ♦ A Police caution is considered and administered where a person comes to the notice of the Police for the first time, and the person admits the offence.
- ♦ A Police caution is considered to be similar to a conviction, as, if the person is convicted at court of a similar offence within 5 years of the caution being administered, then the caution can be brought to the attention of the court and any sentence passed would be regarded as being a second conviction and, therefore, a higher sentence may be imposed.
- ♦ In general, an application showing a caution may be considered and approved but the overriding consideration should be the protection of the public.

OTHER OFFENCES

- ♦ Where a binding order, anti-social behaviour order or a restraining order has been imposed by a court, no application will be considered whilst that order is still current.
- ♦ A period free of at least 6 months (or 12 months for anti-social behaviour orders) of convictions must have elapsed, after expiry of the order, before an application is considered.
- ♦ In general, the overriding consideration should be the protection of the public.

SERIOUS OFFENCES

If an offence or conviction is deemed to be “serious”* and if granting a licence would be of detriment to the protection of the public, the Council will **not** grant a licence, subject to each application being considered on its own merits. * *to be determined by the Head of Planning and Public Protection Services.*

CONVICTION POLICY

1.0 Introduction

1.1 The purpose of this policy is to provide guidance on the criteria taken into account by the council when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire driver / operator licence.

1.2 The aim of this policy is to protect the safety of the public. The Licensing Authority is concerned to ensure:

- That a person is a fit and proper person;
- That the person does not pose a threat to the public;
- That the public are safeguarded from dishonest persons;
- The safeguarding of children and young persons;
- The safeguarding of vulnerable persons;
- That the public have confidence in their use of licensed vehicles.

1.3 This policy aims to provide guidance to any person with an interest in public and private hire licensing. In particular, but not exclusively:

- Applicants for driver / operator licences
- Existing licensed drivers / operators whose licences are being reviewed
- Licensing Officers and Police
- Members of the Licensing Committee/ Panel (or other relevant decision making body)
- Magistrates and Crown Court hearing appeals against local authority decisions

1.4 Where licensing officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant a licence. In all other cases applications for licences will be referred to the licensing committee/panel (or other relevant decision-making body). Whilst officers and the committee/panel will have regard to the guidelines contained in the policy, **each case will be considered on its individual merits** and, where the circumstances demand, the committee/officer may depart from the guidelines.

1.5 Where applicants fail to disclose any previous convictions; cautions; warnings; penalty notices, orders or reprimands on their application form including any pending court proceedings or other matters they may be referred to the Licensing Committee for determination.

2.0 General policy

2.1 Each case will be decided on its own merits.

- 2.2 A person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to:
- a. Remain free of conviction for an appropriate period (as set out below); and
 - b. Show evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence).
- 2.3 For the purposes of this Policy, “other matters to be considered” may include but are not limited to the following:
- a) Criminal / motoring convictions;
 - b) Court Martial;
 - c) Cautions;
 - d) Fixed penalty notices or other penalty notices;
 - e) Anti-social behaviour orders or other similar orders;
 - f) Breach of licensing conditions;
 - g) Formal Warnings or Reprimands;
 - h) Charges or matters awaiting trial;
 - i) Fitness and propriety.
- 2.4 Where an applicant has a conviction(s) or other matter(s) to be considered for a criminal offence, the council cannot review the merits of the conviction or other matter.
- 2.5 Where an applicant / licence holder has a conviction or other matter to be considered for an offence of aiding, abetting, attempting, conspiring, counselling, procuring, causing, permitting or inciting any of the criminal or motoring convictions / matters specified in this guidance, they will be considered relevant for the substantive matter.
- 3.0 Appeals**
- 3.1 Any applicant who has been refused a driver / operator licence, or a licensed driver / operator whose licence has been suspended or revoked has a right to appeal to the Magistrates’ Court within 21 days of receipt of the notice.
- 4.0 Powers**
- 4.1 Powers to grant driver / operator licences are contained within Section 51, Section 55 and Section 59 of the Local Government (Miscellaneous Provisions) Act 1976 (the Act).
- 4.2 Powers to suspend, revoke or refuse to renew a driver’s licence are contained within Section 61 of the Act, where the applicant/licence holder has been convicted of an offence involving dishonesty, indecency,

violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.

- 4.3 Section 61 (2B) allows the Licensing Authority, if it appears that in the interests of public safety, to suspend or revoke a driver's licence with immediate effect. A Decision Notice explaining why this decision has been taken will be issued to the driver and will have effect when the notice is given to the driver. The driver may appeal this decision but may not drive during the appeal period.
- 4.4 Section 62 of the Act allows the Licensing Authority to suspend, revoke or refuse to renew an operator's licence if the applicant/licence holder has been convicted of an offence under or non compliance with the provisions of Part II of the Act; or grounds of any conduct on the part of the operator which appears to the Council to render him unfit , or due to any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted or any other reasonable cause.
- 4.5 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the Licensing Authority to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Therefore the Licensing Authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.

5.0 Consideration of disclosed criminal history

- 5.1 Under the provisions of Sections 51, 55, and 59, of the Act, the Licensing Authority is required to ensure that an applicant for the grant or renewal of a driver / operator licence is a 'fit and proper' person to hold such a licence. However, if an applicant / licence holder has any matters to be considered, the Licensing Authority may take into account:

:

- How relevant the offence(s) are to the licence being applied for;
- How serious the offence(s) were;
- When the offence(s) were committed;
- The date of conviction and age of applicant at time of conviction;
- Sentence imposed by the court;
- Whether they form part of a pattern of offending;
- Any other factors that might be relevant.

6.0 Violence

6.1 Licensed drivers have close regular contact with the public. A serious view will be taken with those who have a conviction(s) or other matter(s) to be considered involving violence. An application will normally be refused or existing licence suspended or revoked if the applicant / licence holder has a conviction for an offence that involved the loss of life.

6.2 In other cases anyone of a violent disposition is unlikely to be licensed until **at least 3 years** free of such conviction(s) or other matter(s) to be considered. However, given the range of the offences that involve violence, consideration must be given to the nature of the offence.

6.3 Unless there are exceptional circumstances, an application will normally be refused or existing licence suspended or revoked where the applicant / licence holder has a conviction for an offence such as:

- Murder;
- Manslaughter;
- Manslaughter or culpable homicide while driving;
- Terrorism offences;
- Or any similar offences or offences which replace the above.

6.4 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for an offence listed below and the conviction(s) or other matter(s) to be considered is **less than 10 years** prior to the date of application:

- Actual bodily harm which is racially / religiously aggravated;
- Arson;
- Assault Police;
- Common assault which is racially / religiously aggravated;
- Criminal damage which is racially / religiously aggravated;
- Grievous bodily harm with intent;
- Malicious wounding or grievous bodily harm which is racially aggravated;
- Possession of firearm;
- Resisting arrest;
- Riot;
- Robbery;
- Violent disorder;
- Similar offences or offences which replace the above.

6.5 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for an offence listed below and the

conviction(s) or other matter(s) to be considered is **less than 3 years** prior to the date of application:

- Affray;
- Assault occasioning actual bodily harm;
- Common assault;
- Criminal damage;
- Obstruction;
- Possession of a weapon (or imitation weapon) or any other weapon related offence other than a firearm;
- S5 Public Order Act 1986 offence (harassment, alarm or distress);
- S.4 Public Order Act 1986 offence (fear of provocation of violence);
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress);
- Similar offences or offences which replace the above.

6.6 An application will normally be refused if an applicant has more than one conviction or other matter to be considered in the last **10 years** for an offence of a violent nature.

7.0 Sex and indecency offences

7.1 As licensed drivers often carry unaccompanied and vulnerable passengers, a firm line is to be taken with those who have convictions or other matters to be considered for sexual offences. An application will normally be refused or existing licence suspended or revoked for convictions or other matters to be considered for the more serious sexual offences. For other offences, applicants will be expected to show a substantial period free of conviction or other matter to be considered for such offences before an application will be approved.

7.2 Unless there are exceptional circumstances, an application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for an offence such as:

- Assault by penetration;
- Exploitation of prostitution;
- Indecent assault;
- Offences involving children or vulnerable adults;
- Possession of indecent photographs, child pornography etc;
- Rape;
- Sexual assault;
- Trafficking for sexual or other exploitation;
- Similar offences or offences that replace the above.

7.3 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for an offence listed below and the conviction(s) or other matter(s) to be considered is **less than 7 years** prior to the date of application:

- Indecent exposure;
- Soliciting (kerb crawling);
- Similar offences or offences which replace the above.

7.4 In addition to the above the Licensing Authority is unlikely to grant a licence to any applicant who is currently on the Sex Offenders Register.

7.5 An application will normally be refused if an applicant has more than one conviction or other matter to be considered for a sexual offence.

8.0 Dishonesty

8.1 An applicant or existing licence holder is expected to be a trustworthy person. They deal with cash transactions and valuable property which may be left in their vehicles. Licence holders are required to deposit such property with police within 24 hours. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal or agreed fare, etc. Overseas visitors can be confused by our currency and may be vulnerable to an unscrupulous driver. For all these reasons, a serious view is taken of any conviction involving dishonesty.

8.2 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for an offence listed below and the conviction or other matter to be considered is **less than 3 years** prior to the date of application:

- Benefit fraud;
- Burglary;
- Conspiracy to defraud;
- Forgery;
- Fraud;
- Handling or receiving stolen goods;
- Obtaining money or property by deception;
- Other deception;
- Taking a vehicle without consent;
- Theft;
- Similar offences or offences which replace the above.

9.0 Drugs

9.1 A serious view is taken of any drug related offence. The Licensing Authority will consider the nature and quantity of the drugs involved within the following offences:

- Cultivation of a controlled drug;
- Importation of a controlled drug;
- Production of a controlled drug;
- Supply of a controlled drug;
- Or similar offences.

9.2 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for any of the above offences and has not been free of conviction(s) or other matters to be considered for **at least 5 years**.

9.3 An application will normally be refused or an existing licence suspended or revoked where the applicant has more than one conviction or other matter to be considered for offences related to the possession of drugs and has not been free of conviction or other matter to be considered for **at least 5 years**.

9.4 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has an isolated conviction or other matter to be considered for an offence related to the possession of drugs within **the last 3 years**. Consideration should be given to the nature and quantity of the drugs involved.

9.5 If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) may be required. If the applicant was an addict then they would normally be required to show evidence of **3 years** free from drug taking.

10.0 Driving offences involving the loss of life

10.1 A very serious view is to be taken of any applicant or existing licence holder who has a conviction or other matter to be considered for a driving offence that resulted in the loss of life.

10.2 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for any of the offences listed below and has not been free of conviction or other matter to be considered for **7 years**.

- Causing death by careless driving whilst under the influence of drink or drugs;
- Causing death by dangerous driving;
- Or any similar offences.

10.3 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for any of the offences listed below and has not been free of conviction or other matter to be considered for **5 years**.

- Causing death by careless driving;
- Causing death by driving: unlicensed, disqualified or uninsured drivers.

11.0 Drink driving/driving under the influence of drugs

11.1 A serious view will be taken of a conviction(s) or other matter(s) to be considered for driving or being in charge of a vehicle while under the influence of alcohol / drugs. A single conviction or other matter to be considered may not result in an application being refused or an existing licence being suspended or revoked, provided that **at least 3 years** have elapsed since the ending of the disqualification. A conviction or other matter to be considered for 'refusing or failing to provide a specimen' will be treated in the same way.

11.2 Applicants with more than one conviction or other matter to be considered for driving or being in charge of a vehicle under the influence of alcohol / drugs or refusing or failing to provide a specimen are unlikely to be granted a licence unless a period of **10 years** has elapsed after the restoration of the driving licence following the last conviction or other matter to be considered.

12.0 Motoring Convictions

12.1 Major Traffic Offences

12.2 For the purposes of this Policy the following motoring offences are classed as 'Major Traffic Offences':

AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving while disqualified by order of Court
BA30	Attempting to drive while disqualified by order of Court
DD40	Dangerous driving

DD90	Furious driving
IN10	Using a vehicle uninsured against third party risks
LC20	Driving otherwise than in accordance with a licence
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability
LC50	Driving after a licence has been revoked or refused on medical grounds
MS50	Motor racing on the highway
MS60	Offences not covered by other codes
MS90	Failure to give information as to identity of driver, etc.
UT50	Aggravated taking of a vehicle

12.3 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction or other matter to be considered for a major traffic offence and has not been free of the conviction or other matter to be considered for **at least 6 months**.

12.4 An applicant with more than one Major Traffic Offence, within the last 5 years will normally be refused and no further application should be considered until a period of **at least 3 years** free from such convictions or other matters to be considered have elapsed.

12.5 If any conviction or other matter to be considered for a Major Traffic Offence results in a disqualification, applicants should refer to the section of these guidelines entitled "disqualification".

12.6 **Disqualification from driving**

12.7 The Licensing Authority will treat a period of a disqualification as being that which a driver would have been eligible to serve, and may disregard the decision of a court to waive or reduce a disqualification period either on the grounds of exceptional hardship under S.35 of the Road Traffic Offenders Act 1988 or for "special reasons" under S.34 of the Road Traffic Offenders Act 1988.

12.8 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a recent conviction or other matter to be considered resulting in a period of disqualification of less than 56 days unless a period of **at least 6 months** has elapsed from the end of the disqualification period.

12.9 An application will normally be refused or an existing licence suspended or

revoked where the applicant / licence holder has a recent conviction or other matter to be considered resulting in a period of disqualification of up to 12 months unless a period of **at least 12 months** has elapsed from the end of the disqualification period.

12.10 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a recent conviction or other matters to be considered resulting in a period of disqualification of 12 months or more, unless a period of **at least 18 months** has elapsed from the end of the disqualification period.

12.11 The Licensing Authority will not normally grant an application for a private hire or hackney carriage driver's licence from a person who has been disqualified from driving for a period of 5 years or more, unless a period of **at least 7 years** has elapsed from the end of the disqualification period.

13.0 Minor Traffic Offences

13.1 Other Traffic Offences not listed within this policy will be treated as 'Minor Traffic Offences'. A minor driving offence is one that incurs between 1 and 3 penalty points.

13.2 Where an applicant / licence holder has one conviction or other matter to be considered for a minor driving offence, this will not usually result in refusal or suspension / revocation.

13.3 More than one minor traffic conviction or other matter to be considered may result in a refusal, particularly where there are several convictions or other matters to be considered for the same offence e.g. speeding. A licensed driver may be referred to the Licensing Committee where there are more than two offences.

14.0 Outstanding charges or summonses

14.1 If the individual is the subject of an outstanding charge or summons their application can continue to be processed, but in the interest of public safety the matter will be considered and may be deferred for determination until proceedings are concluded.

15.0 Non-conviction information

15.1 If an applicant or existing licence holder has been arrested or charged, but not convicted, for a serious offence which suggests he/she could be a danger to the public, consideration should be given to refusing or suspending / revoking the application / licence.

16.0 Repeat offending

- 16.1 While it is possible that an applicant may have a number of convictions or other matters to be considered that individually meet the above guidelines, an application will normally be refused where an applicant has a record of repeat offending which shows a lack of regard for the well being of others or for property, unless a period of **at least 10 years** has elapsed since the most recent conviction or other matters to be considered.

17.0 Breach of Legislation, Byelaw or Licence Condition

- 17.1 An applicant who has a conviction or other matters to be considered for a breach of legislation, byelaw or licence condition is unlikely to be granted a licence unless a period of **at least 12 months** has elapsed since the most recent breach.
- 17.2 An existing licence holder found to be in breach of legislation, byelaw or licence condition is on the first occasion, likely to be warned in writing as to future conduct, provided that the breach did not compromise the safety of passengers or that the public were not put at risk.
- 17.3 Where an existing holder is found to have more than one breach of licensing legislation, byelaw or licence condition, or a single serious breach, the Licensing Committee may suspend or revoke the licence.
- 17.4 The above is irrespective of any legal proceedings which may be pending or have been taken.

Final version: Dated 13th September 2013

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Agenda Item 11



REPORT TO:	Licensing Committee
DATE:	11 th June 2014
LEAD OFFICER:	Head of Planning and Public Protection
CONTACT OFFICER:	Senior Licensing Officer licensing@denbighshire.gov.uk 01824 706451
SUBJECT:	Forward Work Programme 2014/15

1. PURPOSE OF THE REPORT

- 1.2 To advise Members of some minor changes to the Forward Work Programme for 2014/15 that was originally approved in March 2014.

2. EXECUTIVE SUMMARY

- 2.1 A proposed revised Forward Work Programme is attached, at Appendix 1, for Members to consider and approve.

3. BACKGROUND INFORMATION

- 3.1 Members will be aware that at the last meeting of the Licensing Committee, Members approved an 18 month Forward Work Programme.

- 3.2 Officers would now like to make some minor changes as detailed below:

1. Move the Scrap Metal Dealers Policy report to the September meeting. The proposed policy is being drafted by the All Wales Licensing Technical Panel and it was envisaged that the Policy would be finalised and available for Members to consider at the June meeting. Unfortunately the policy is still under review and it is therefore proposed to present the policy to Members at the September meeting.
2. To add to the September meeting, a new report for Members to consider approving the Department of Transport's Model Hackney Carriage Byelaws for the whole of the County.

4. RECOMMENDATION

- 4.1 For Members to note the contents of the report and to approve the amendments to the Forward Work Programme, as detailed at 3.2 above.

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REPORT TO: LICENSING COMMITTEE

DATE: 11th June 2014

REPORT BY: THE HEAD OF PLANNING AND PUBLIC PROTECTION

SUBJECT: LICENSING COMMITTEE WORK PROGRAMME 2014/15

DATE	REPORT	COMMENT
June 2014	Review of Hackney Carriage and Private Hire policy: Conviction Policy Intended Use Policy Penalty Point Scheme	Report for Members to approve the proposed policies
September 2014	Review of Hackney Carriage and Private Hire Policy: Driver Dress Code Code of Conduct	Report for Members to approve the proposed policy
	The Scrap Metal Dealers Act 2013 Policy	Report for Members to approve the proposed North Wales Policy
	Hackney Carriage Byelaws	Report for Members to consider adopting Model Byelaws
December 2014	Review of the existing Sex Establishment Policy	Report for Members consideration
March 2015	Review of the existing Street Trading Policy	Report for Members consideration and approval for Officers to consult all interested parties
	Sex Establishment Renewal	Report for Members to consider the renewal of existing Sex Establishment Licence
June 2015	Review of the existing Hackney Carriage and Private Hire Policy relating to Vehicles	Report for Members to consider and approve the proposed amendments to policy
September 2015	Review of the existing Hackney Carriage and Private Hire Policy relating to Operators	Report for Members to consider and approve the proposed amendments to policy

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