

Public Document Pack



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6 September 2013

LICENSING COMMITTEE

Tuesday 17 September 2013
10 am
Council House (Next to the Civic Centre), Plymouth

Members:

Councillor Rennie, Chair
Councillor Gordon, Vice-Chair
Councillors Mrs Bowyer, Drear, K Foster, Jordan, Dr. Mahony, Monahan, Morris,
Mrs Nicholson, Parker, Singh, John Smith, Kate Taylor and Wright.

Members are invited to attend the above meeting to consider the items of business overleaf.

Tracey Lee
Chief Executive

LICENSING COMMITTEE

AGENDA

PART I – PUBLIC MEETING

1. APOLOGIES

To receive apologies for non-attendance submitted by Committee Members.

2. DECLARATIONS OF INTEREST

Members will be asked to make any declarations of interest in respect of items on this Agenda.

3. MINUTES

(Pages 1 - 16)

To confirm the minutes of the –

- Licensing Committee meeting held on 23 July 2013
- Licensing Sub-Committee meetings held on –
 - 23 July 2013
 - 6 August 2013

4. CHAIR'S URGENT BUSINESS

To receive reports on business which, in the opinion of the Chair, should be brought forward for urgent consideration.

5. SCRAP METAL DEALERS ACT 2013

(Pages 17 - 24)

The Committee will consider a report regarding the Scrap Metal Dealers Act 2013.

6. EXEMPT BUSINESS

To consider passing a resolution under Section 100A(4) of the Local Government Act 1972 to exclude the press and public from the meeting for the following item(s) of business on the grounds that it (they) involve(s) the likely disclosure of exempt information as defined in paragraph(s) ? of Part I of Schedule 12A of the Act, as amended by the Freedom of Information Act 2000.

PART II - PRIVATE MEETING

AGENDA

MEMBERS OF THE PUBLIC TO NOTE

that under the law, the Panel is entitled to consider certain items in private. Members of the public will be asked to leave the meeting when such items are discussed.

NIL.

Licensing Committee

Tuesday 23 July 2013

PRESENT:

Councillor Rennie, in the Chair.

Councillor Gordon, Vice Chair.

Councillors Mrs Bowyer, Drean, K Foster, Jordan, Dr. Mahony, Monahan, Morris, Parker, Singh, John Smith, Kate Taylor and Wright.

Apologies for absence: Councillor Mrs Nicholson.

Also in attendance: Andy Netherton (Health, Safety and Licensing Manager), Fred Prout (Licensing Officer), Martin Worthington (Devon and Cornwall Police), Ann Gillbanks (Senior Lawyer) and Helen Rickman (Democratic Support Officer).

The meeting started at 10.05 am and finished at 10.50 am.

Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.

9. **DECLARATIONS OF INTEREST**

There were no declarations of interest in accordance with the code of conduct.

10. **MINUTES**

Agreed that the minutes of 28 May 2013 Licensing Committee are approved as a correct record.

11. **CHAIR'S URGENT BUSINESS**

There were no items of Chair's Urgent Business.

12. **ENFORCEMENT ACTIVITY REPORT 2012/13**

Andy Netherton (Health, Safety and Licensing Manager), Fred Prout (Senior Licensing Officer) and Martin Worthington (Devon and Cornwall Police) provided the Committee with an update on the Enforcement Activity Report 2012/13.

Members were informed that –

- (a) the majority of licensing applications were dealt with by licensing officers and responsible authorities allowing cases to be mediated out;
- (b) there had been a 12% increase in the volume of reactive work over the last 12 months and a 63% increase since 2009/10;

- (c) the Licensing Sub Committee undertook 19 meetings which detailed 20 reports, 13 applications/ variations and 3 licence revocations;
- (d) amendments to the Licensing Act 2003 effective from April 2012 enabled licensing authorities to suspend a licence for non-payment of an annual fee;
- (e) an informal consultation had taken place with key agencies and the trade regarding the Late Night Levy. A consultation exercise would be undertaken to review the existing policy; the use of the new powers was currently being considered by Cabinet Members. The consultation would look at the potential levy, how it could be used and where it should apply across the city;
- (f) if the Late Night Levy was agreed, any monies received would go directly to Community Safety Partnerships to help people affected by the evening and night time economy;
- (g) the period for a Temporary Events Notice (TEN) to operate was increased to seven days from three days; conditions could be transferred from an existing licence to TENS;
- (h) during 2012/13 there was a 12% decrease in formal noise complaints;
- (i) the Out of Hours noise service operating hours were being reviewed;
- (j) an underage sales test purchase initiative took place in February, March and April 2013; plain clothed police officers reviewed how premises were being managed and there was a 69% failure rate for on licence purchases for operation 1 in February. By operation 3 in April this number had reduced to 33% failure rate;
- (k) where licensed premises failed a test purchase a fixed penalty notice would be issued with a fine of £80;
- (l) the mystery shop exercise pinpointed glass management, cleanliness of toilets and behaviour management of customers as areas for improvement;
- (m) income for 2012/13 gambling establishment fees was £56,193 with expenditure estimated to be approximately £55,500 ; as the difference between the future fee income and expenditure was no more than 10% this would not be brought to the Committee to be reviewed;
- (n) a new sex establishment policy was approved in January 2012; two applications were received under the new regime and both were granted;
- (o) two sex shops remain in Plymouth under the same legislation;

- (p) the introduction of a revised Scrap Metal Dealer's Act was expected in 2013; reforms would support recent changes designed to curtail activities of metal theft – changes included preventing cash transactions;
- (q) as a result of the Anti-Social Behaviour, Crime and Policing Bill, Criminal Behaviour Orders would replace Anti-Social Behaviour Orders and DPPOs would be replaced with Community Protection Orders; a report on this would be brought to the Licensing Committee when the final legislation is introduced;
- (r) partnership working was going well as enforcement agencies were meeting on a regular basis to discuss enforcement options for problem premises;
- (s) licensees, managers and staff were encouraged to participate in community schemes such as Best Bar None, Pubwatch and Clubwatch; Best Bar None was considered to be one of the largest community schemes in the country;
- (t) test purchase operations for alcohol would continue at licensed premises;
- (u) the Government has agreed to de-regulate in the following ways:
 - to introduce a Community and Ancillary Sellers Notice – this would allow ancillary sellers and community groups to sell alcohol without the need to go through the formal process of applying for a Premises Licence;
 - there would be no requirement for a Premises Licence where only late night refreshment is provided;
 - the total number of Temporary Event Notices that could apply to any premises would be increased from 12 to 15 each calendar year;
 - further consultation was to take place on the possible abolition of Personal Licenses;
 - there will be no ban on multi-buy promotions for alcohol;
 - the plan to introduce a minimum unit price would not be taken forward at this time;
- (v) Government was looking to tighten up on Licensable activity in the following ways:
 - amending the mandatory condition relating to the irresponsible drinks promotions;
 - there will be a requirement for premises to list the price of smaller measures of alcohol; if a customer does not specify a measure of alcohol when placing an order there will be a requirement for the customer to be made aware that smaller measures are available;

- there will be no sales of alcohol below the duty and VAT on the product;
- (w) Government has not taken forward the following proposals:
- a standard date for the payment of annual fees;
 - the removal of the requirement to display notices of application in local newspapers;
- (x) there had been no announcement about the intention to include health as a licensing objective;
- (y) the two premises that repeat sold in the Under Age Sales Test Purchase Initiative were both given an option to not sell alcohol for 48 hours; this was a significant penalty for them as it was a hot weekend and significant loss of revenue was guaranteed;
- (z) Chief Inspector Drummond-Smith made an announcement yesterday regarding the glass policy; whilst not frequent, glass injuries could have a devastating effect and injuries could be life changing;

In response to questions raised it was reported that –

- (aa) it was expected that the consultation would be available to view in the new few weeks;
- (bb) members would be provided with a copy of the consultation document once available;
- (cc) it was expected that the Devon and Somerset Fire and Rescue Service would respond to the formal consultation on the Late Night Levy and Early Morning Restriction Orders;
- (dd) Underage Sales Test purchases were repeated if a premises failed the test;
- (ee) the premises for the Underage Sales Test purchase Initiative were selected as a result of intelligence led information received;
- (ff) Andy Netherton would email Councillor Parker a copy of the Sex Establishment Policy;
- (gg) there were approximately six scrap dealers in Plymouth; it was not considered that there were any rogue scrap dealers currently;
- (hh) fly tipping was not considered to be an issue with scrap metal as metal would always have a residual value;

- (ii) the £80 fixed penalty notice fine had a good turnover rates of fees collected;
- (jj) proxy sales were a big issue in Plymouth; the Community Safety Partnership was doing a project this year to look into this matter;
- (kk) it was a criminal offence to supply alcohol to a child under the age of 18 on a licensed premises;
- (ll) it was the decision of the enforcement authority to decide when the 48 hour sanction would begin if a premises failed a test purchase operation;
- (mm) the police, licensing officers and the committee considered they worked well together;
- (nn) Newquay had trialled the glass policy; there was a significant reduction in incidents;
- (oo) a couple of premises on the Barbican had a policy whereby plastic cups were used instead of glasses due to incidents where people were throwing glasses into the water or at each other;

Agreed that –

- 1 the report is noted;
- 2 Andy Netherton would email Councillor Parker with a copy of the Sex Establishment Policy

Under this item Members were invited to go out with licensing officers and the police to experience the night time economy in Plymouth.

13. **EXEMPT BUSINESS**

There were no items of exempt business.

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Licensing Sub Committee

Tuesday 23 July 2013

PRESENT:

Councillor Rennie, in the Chair.
Councillor John Smith, Vice-Chair (Fourth Member substituting for Councillor Singh).
Councillor Jordan.

Apology for absence: Councillor Singh.

Also in attendance: Ann Gillbanks, Senior Lawyer, Marie Price, Licensing Officer, Rachael Harris, Environmental Health Officer, Fred Prout, Senior Licensing Officer, Annette Laurie, Waterfront Partnership Manager, and Katey Johns, Democratic Support Officer.

The meeting started at 11 am and finished at 12.22 pm.

Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.

1. APPOINTMENT OF CHAIR AND VICE CHAIR

Agreed that Councillor Rennie is appointed as Chair and Councillor John Smith is appointed as Vice-Chair for this meeting.

2. DECLARATIONS OF INTEREST

There were no declarations of interest made by councillors in accordance with the code of conduct.

3. CHAIR'S URGENT BUSINESS

There were no items of Chair's urgent business.

4. EXEMPT BUSINESS

Agreed to consider passing a resolution under Section 100A(4) of the Local Government Act 1972 to exclude the press and public from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act, as amended by the Freedom of Information Act 2000.

5. NEW STREET TRADING CONSENT SITE - SPUD 'O' LICOUS (E3)

The Sub-Committee having –

- (a) considered the report of the Director for Place;

- (b) heard from the applicant who expanded on his application;
- (b) heard representations from:
 - the Council's Public Protection Service;
 - the Plymouth Waterfront Partnership;
 - Councillor McDonald, ward councillor.

Agreed that the application is refused as the vehicle proposed to be used fails to meet the required size specifications and the food proposed to be sold does not comply with the street trading conditions.

6. **NEW STREET TRADING CONSENT SITE - HOE NEWSTAND (E3)**

The Sub-Committee having -

- (a) considered the report of the Director for Place;
- (b) heard from the applicant who expanded on his application;
- (b) heard representations from:
 - the Council's Public Protection Service;
 - the Plymouth Waterfront Partnership;
 - Councillor McDonald, ward councillor.

Agreed that consent for the site Hoe Road (Lido West) (Site No 5) is granted subject to –

- (1) agreement of the Waterfront Manager, in consultation with the Plymouth Waterfront Advisory Board and the Chair of Licensing, on the size, type and design of the temporary structure;
- (2) the following additional conditions:
 - hours of opening – 8m to 8 pm
 - to sell newspapers, magazines (not adult magazines), periodicals, sweets, confectionary (but not chewing gum), small gift items and non-alcoholic drinks (hot or cold);
 - to provide hand washing facilities and ensure any scales used are adequately cleaned in respect of sale of weighed sweets.

Licensing Sub Committee

Tuesday 6 August 2013

PRESENT:

Councillor Rennie , in the Chair.
Councillor Kate Taylor, Vice Chair.
Councillors Drean and Mrs Bowyer (Fourth Member).

Also in attendance: Fred Prout (Senior Licensing Officer), Marie Price (Licensing Officer), Ann Gillbanks (Senior Lawyer), David McIndoe (Devon and Cornwall Police) and Helen Rickman (Democratic Support Officer).

The meeting started at 10.00 am and finished at 12.30 pm.

Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.

7. APPOINTMENT OF CHAIR AND VICE-CHAIR

Agreed that Councillor Rennie is appointed as Chair and Councillor Kate Taylor is appointed as Vice-Chair for this meeting.

8. DECLARATIONS OF INTEREST

There were no declarations of interest in accordance with the code of conduct.

(Councillor Mrs Bowyer left the meeting after this item)

9. CHAIR'S URGENT BUSINESS

There were no items of Chair's Urgent Business.

10. REVIEW OF PREMISES LICENCE - CUBA, 1 SHERWELL ARCADE, PLYMOUTH

The Committee having –

- (a) considered the report from the Director for Place;
- (b) considered written representations and heard from a representative of Devon & Cornwall Police that the crime prevention objective was not being upheld as detailed below–
 - between 1 April 2012 and 30 June 2013 there have been a total of 73 offences linked to Cuba of these 24 relate to violent offences, accounting for 35% of overall crime linked to the location (and during this period on

at least three occasions glasses or bottles were used as weapons);

- ABH accounted for 12 offences (45% of all violence);
- Malicious Wounding x 5 offences (22% of all violence);
- s.20 GBH x 3 offences (14% of all violence);
- Drunk and Disorderly x 2 offences (9% of all violence);
- 1 x Affray and 1x Common Assault;
- in all but one of the violent offences recorded for the location the offender was a stranger to the complainant;
- in 16 of the violent offences the offender was perceived as “in drink” by the complainant;
- in 6 of the violent offences the complainant has indicated that they were “in drink”;
- 5 complainants specified that they were not in drink (all were staff/door staff at the premises);
- the majority of offenders linked to violent offences at the location are males (19 offences);
- the others were offences involving female offenders assaulting female complainants;
- there were 3 violent offences involving the use of glass/bottle recorded throughout the specified period;
- there have been a further 40 offences at the location that are not violence related, a majority of which relate to theft offences;
- theft offences account for 51% of all overall crime at the location (35 offences);
- following the research into the statistics a further offence involving a bottle was reported. At about 1.40am on Friday 26 July 2013 the DPS of Cuba was on duty when a scuffle occurred in the downstairs bar, as he tried to deal with this he was struck on the back of the head by a male holding a bottle by the neck. This caused a cut to the back of his head. The incident was captured on CCTV;
- with this latest event this means that there have been at least four occasions where glasses or bottles were used as weapons;

- the Committee was told that it is now a police policy that where a premise has more than 2 incidents of violence involving the use of glasses or bottles as weapons that a premises should be required to introduce the use of plastic drinking vessels and bottles;
- the premise licence holder has agreed conditions with the police which the police consider are appropriate to address the concerns they have on this matter;

(c) considered written representations and heard from the premises licence holder

- that the premises licence holder has owned and managed Cuba for 14 years and over this time has worked hard to make the bar successful, employing many people and entertaining, feeding and refreshing many years of students and local people;
- they are a member of both Pubwatch and Clubwatch schemes and are accredited members of Plymouth Best Bar None;
- since the review application was made by the Police have worked in partnership to produce a set of conditions that address the concerns that they have raised;
- Cuba experiences over 300,000 customer visits per annum and the number of incidents that have occurred over 14 years is small in relation to the number of visits but that any incident is unacceptable and anything that can reduce these incidents is something that would be reviewed and supported;
- as a market leader they are happy to innovate therefore we are in agreement about the need for the use of polycarbonate glassware and bottles within the venue. Have been successfully serving all spirits and shots in polycarbonate glassware since 2008 and we now feel that a move to a completely polycarbonate glassware would be appropriate in the current trading environment. In addition to the agreed conditions the following should also be attached to the premises licence:
 - all bottle beers, ciders & RTD products, draught beers and ciders, spirits, cocktails and soft drinks shall be served in non-glass containers after 00.00hrs until the close of business. Wine and champagne will be served in toughened glass;
 - the use of polycarbonate and plastic bottles is not appropriate before 0.00hrs. Cuba is a multi-use venue and caters to a variety of different customers. Restaurant food is served until late. In the evenings the venue caters for people finishing work, customers who have seen a show, been to a gig or watched a movie and the cocktail crowd. It is not until 1am that the venue

becomes a late night venue with dance floor and DJ's catering to students and like-minded people and these customers need to be able to be treated differently;

- the venue's own records show that for the 15 month period between 1 April 2012 and 29 July 2013 there was a single recorded assault attributed to Cuba before midnight. This assault was recorded as an ABH and occurred outside the premise when a member of bar staff refused a customer service as he was drunk. The only assaults where a glass or bottle have been used as a weapon have occurred after 1.30am;
- no evidence has been presented by the Police that says that it is appropriate for the promotion of the four licensing objectives to prevent the use of glass before 00:00hours (midnight);

(d) having taken into account all the relevant representations made, the members agreed:

- (1) that it was appropriate and proportionate to add conditions to the licence as agreed by both parties and to add the extra conditions proposed by Mr Dunkley related to the use of polycarbonate glassware.

Conditions to be applied to the licence:

- all staff will be fully trained to perform their role. They will also be trained in the contents of the premises licence including times of operation, licensable activities and all conditions;
- the training will be recorded in documentary form that will be available for inspection on at the time of a request by a member of any relevant authority. The records will be retained for at least 12months;
- incident reports shall be completed to record any activity of a violent, criminal or anti-social nature. The record will contain the time and date, the nature of the incident, the people involved, the action taken and details of the person responsible for the management of the premises at the time of the incident;
- the incident reports will be available for inspection at the time of request by a member of any relevant authority. The records will be retained for at least 12 months;
- the Premises shall employ door staff from 0000hrs to close of business every day;
- the door staff will control the entrance to the premises and ensure the capacity is never exceeded. That is 230 for the venue;

- the Premises Licence holder and/or DPS will ensure door staff are properly briefed and trained to manage queues in a safe and efficient manner;
- the Premises Licence Holder and the DPS will maintain a register of door staff employed at the premises. The register will detail the day, time and date the door staff commenced duty, full name legibly written, SIA licence number, the name of the employer, the time duty ends and the name of the person in charge of the premises on that date. The register will be kept at the premises and be available for inspection at the time of request by a member of any relevant authority. The records will be retained for at least 12 months;
- the Premises Licence Holder will ensure that a CCTV system which is fully compliant with the guidance contained in the Information Commissioner's Office (ICO) guidance document (www.informationcommissioner.gov.uk) regarding installation of CCTV is provided at the premises;
- the CCTV will cover all areas of the premises to which the public have access including any outside areas;
- images will be retained for a minimum of 21 days;
- the system will be capable of downloading images to a recognizable viewable format;
- at all times the premises are open for business a member of staff will be available who is capable of operating the system and downloading images at the request of police or a member of a responsible authority;
- the CCTV system will be capable of obtaining clear facial recognition images and a clear head and shoulders image of every person entering or leaving the premises;
- the Premises Licence Holder or Designated Premises Supervisor shall ensure that all bar staff, supervisors and managers are trained in the legality and procedure of alcohol sales prior to undertaking the sale of alcohol and then at least every six months;
- training shall be signed and documented and training records will be kept on the premises and be made available to an enforcement officer on request;
- the documentation relating to training should extend back to a period of one year and should specify the time, date and details of the persons both providing the training and receiving the training;

- all bottled beers, ciders & RTD products, draught beer & ciders, spirits, cocktails and soft drinks shall be served in non-glass containers after 00.00hrs until the close of business. Wine and champagne will be served in toughened glass;
- change “staff banned from drinking on duty” to “staff prohibited from consuming alcoholic drinks whilst on duty”;
- remove “Records maintained of any material incidents within or in immediate vicinity of premises” as it has been superseded by new conditions;
- remove “Licensed door staff to appropriate levels as necessary” as it has been superseded by new conditions;
- remove “CCTV system installed both internally and externally” as it has been superseded by new conditions;

11. **MR GUNEY NACI 1. TRANSFER OF PREMISES LICENCE 2. VARY LICENCE TO SPECIFY INDIVIDUAL AS PREMISES SUPERVISOR**

The Committee having –

- (a) considered the report from the Director of Place;
- (b) heard from the applicant in respect of both applications that:
 - he had put some posters up in the premises regarding the Challenge 25 procedure;
 - he had started a refusal register;
 - he had gone online and printed some information explaining the details of the Challenge 25 procedure;
 - he believed he should be given a second chance with this application as he was training himself with information he had got from the internet;
 - he was trying harder to obey the rules for this new property;
 - he had made some approaches to officers but had not received any information or CDs to carry out training;
 - he has been a victim of violence in his previous property for refusing to sell alcohol and tobacco to underage individuals;
- (c) heard from a representative of Devon and Cornwall Police that the applications would undermine the crime prevention objective as follows:

- that on the 30 April 2013 the applicant (who was at the time the Premises Licence Holder and DPS of a Corner Shop at 81 North Hill Plymouth) appeared before the Council's Licensing Sub Committee for a review of their licence brought by the Police;
 - at that meeting the Committee revoked the premises licence of the Corner Shop as a result of the repeated sale of alcohol to minors;
 - the police considered that the applicant had a total disregard for operating within the licensing act provisions; he did not understand the requirements of managing a premises selling alcohol and did not take up several offers for help and advice in managing the premises and also in provision of suitable training;
 - his previous premises was subject to three test fails;
 - at the time of the last review of the Corner Shop premises, underage sales were still allowed during the review application period;
 - the Corner Shop was left with such a poor reputation that a cool-off period was required until September as it was a magnet for people requiring underage sales under the old management;
 - Mr Naci has been provided with information, both by the police and Plymouth City Council officers, as to where he could obtain accredited training which had not been taken up;
 - at no time had Mr Naci demonstrated he was willing to properly engage with responsible authorities and officers of the council to resolve the issue of management of sales;
 - the council trading standards officer had sent Mr Naci an email which contained a link to SWERCOTS training which he had not acknowledged to the officer and had made no effort to complete this online training;
 - the police had no confidence that Mr Naci would work with them in the future to remedy the previous faults with underage sales and therefore requested that the application be refused;
- (d) the Committee had concerns that –
- Mr Naci couldn't recall the conditions of his licence when asked by the police;
 - the accuracy of Mr Naci's information about the members of staff working at his premises;

- he had not completed the accredited SWERCOTS training and had not demonstrated sufficiently that he understood the need to keep records or how to store and record information about sales and training of staff;
- the police felt that he was unable to engage with the responsible authorities and council officers;
- Mr Naci had a lack of understanding of the identification types he was able to accept under Challenge 25;
- Mr Naci failed to demonstrate that he had sufficient knowledge of the licensing legislation and the conditions of his licence;
- the diary which was presented as the record of refusals was incomplete and did not contain sufficient information to identify who the person was and the nature of the refusal;
- Mr Naci has made little or no effort to prove that he has adequately satisfied the necessary/ requirements to be a premise licence holder and premise supervisor;

(e) having taken into account all the representations made:

- (1) the Committee consider it necessary for the promotion of the crime prevention objective that both applications should be rejected as they are satisfied by the Police evidence that the grant of the licence would be detrimental to the promotion of the crime prevention objective.

12. **EXEMPT BUSINESS**

There were no items of exempt business.

PLYMOUTH CITY COUNCIL

Subject: Scrap Metal Dealers Act 2013
Committee: Licensing Committee
Date: 17 September 2013
Cabinet Member: Cllr Vincent
CMT Member: Anthony Payne, Director for Place
Author: Andy Netherton
Contact details: Email: Andy.netherton@plymouth.gov.uk
Ref:
Key Decision: No
Part: I

Purpose of the report:

The existing law that controls the buying and selling of scrap metal has been repealed and replaced by the Scrap Metal Dealers Act 2013. The changes introduced by this Act are in response to increasing metal theft.

This report has been prepared to provide information to the Committee regarding the changes and details of how the licensing process will be operated within the City.

The Licensing Committee will continue to determine applications where objections are received and will also determine variations and revocations. There are certain aspects of the licensing process that may be suitable for delegation to officers and recommendations for delegations are contained within the report.

The Brilliant Co-operative Council Corporate Plan 2013/14 -2016/17:

Growing –

The regulation of illegal operators will ensure that correctly operated businesses are not unfairly disadvantaged.

The administration of the licensing regime for scrap metal dealers will be undertaken in a way that minimises burdens on business but will ensure the reduction of metal theft within the City.

The reduction of metal theft will reduce the financial costs borne by those businesses that are affected.

Implications for Medium Term Financial Plan and Resource Implications:**Including finance, human, IT and land:**

The Act allows for the introduction of locally set fees to cover the costs of administering and ensuring business compliance.

Fees will be determined through a delegated decision by the Cabinet Member for the Environment.

Other Implications: e.g. Child Poverty, Community Safety, Health and Safety and Risk Management:

The increase in metal theft has particularly affected the railways and other transport infrastructure. Local communities have suffered through the theft of roof materials from places of worship, schools and other buildings. The reduction of metal theft will benefit businesses, local communities and public authorities.

Equality and Diversity:

Has an Equality Impact Assessment been undertaken? No

Recommendations and Reasons for recommended action:

1. Members note the contents of the report
2. That the Assistant Director and Head of Service responsible for the licensing function be authorised to:-
 - Serve a notice of a proposal to refuse an application for a scrap metal dealer licence under the Scrap Metal Dealers Act 2013.
 - Serve a notice of a proposal to vary or revoke a scrap metal dealer licence issued under the Scrap Metal Dealers Act 2013.
 - Issue a notice of determination for the refusal, variation or revocation of a licence under the Scrap Metal Dealers Act 2013 where the applicant has not made representations to the authority in respect of the proposal to refuse or vary or revoke a licence.
3. That Members note that the Licensing Sub Committee will determine cases where an applicant or licensee has made a representation in response to a notice of proposal to refuse, vary or revoke a licence issued under the Scrap Metal Dealers Act 2013 in accordance with the Council's existing scheme of delegation.

The recommended delegations will provide an efficient and effective decision making process whilst retaining an appropriate level of oversight and decision making by the Licensing Committee.

Alternative options considered and rejected:

Further delegation to officers would not be compliant with the current scheme of delegation contained within the Council's Constitution.

The retention of all functions by the Licensing Committee would place additional burdens on the Committee and could raise issues of predetermination where representations are received by applicants or licensees.

Published work / information:

[Scrap Metal Dealers Act 2013](#)

[Plymouth City Council Constitution \(Updated 18 July 2013\)](#)

Background papers:

Title	Part I	Part II	Exemption Paragraph Number						
			1	2	3	4	5	6	7

Sign off:

Fin		Leg	18334/ag /3.9.13	Mon Off		HR		Assets		IT		Strat Proc	
Originating SMT Member													
Has the Cabinet Member(s) agreed the content of the report? Yes													

Scrap Metal Dealers Act 2013

1.0 Purpose

- 1.1 This report is intended to inform the Licensing Committee of the key provisions of the Scrap Metal Dealers Act 2013 and the proposed local implementation arrangements, including the future role for Committee members.
- 1.2 The Licensing Committee is also asked to note the compliance and enforcement arrangements which will be put into place.

2.0 Background

- 2.1 The international price of ferrous scrap metal increased dramatically over recent years. The consequences of this at a national level has been a significant increase in the theft and illegal trade of stolen metal, which is estimated to cost the economy £220m per year. The growth of metal theft across the country has included thieves regularly targeting infrastructure such as power lines, railway signals and manhole covers. Metal theft has also included parts of local war memorials.
- 2.2 In response to this national trend Richard Otterway MP tabled a Private Members Bill which was sponsored by the Home Office. The Bill proposed an overhaul of the regulatory framework governing the trade of scrap metal. The Bill received Royal Assent on 28 February this year and became the Scrap Metal Dealers Act 2013.

3.0 Current Legal Controls

- 3.1 The Scrap Metal Dealers Act 1964 obliges every licensing authority to maintain a register of all persons carrying on a business in their area operating as a Scrap Metal Dealer. A Scrap Metal Dealer is defined as someone whose business is to buy and sell scrap metal.
- 3.2 There are currently 24 scrap metal dealers or itinerant collectors registered with the Public Protection Service. There is no registration fee.
- 3.3 The Vehicle (Crimes) Act 2001 and the Motor Salvage Operators Regulations 2002 provide the framework for the registration of people or businesses if they operate a business which involves the disposal of written off vehicles and the sale/re-use of salvageable parts from motor vehicles. The purpose of this registration scheme was to curtail the illegal trade in stolen vehicles.
- 3.4 There are currently 7 Motor Salvage Operators registered. The registration lasts for three years and a fee of £81.50 is required.
- 3.5 Legislative changes in 2012 prevented cash payments for scrap metal with some exemptions for itinerant collectors. All enforcement activities under the current Scrap Metal Dealer and Motor Salvage Operator regimes are carried out by the police.

4.0 Scrap Metal Dealers Act 2013

4.1 This Act brings together the current registration schemes for Scrap Metal Dealers and Motor Salvage Operators and replaces them with a single licensing regime.

4.2 The main provisions of the Act are as follows:-

- No person may carry on a business as a Scrap Metal Dealer unless licensed under the Act. Licences will be issued for three years. Licences can be refused, varied and revoked by the licensing authority with an appeal to the Magistrates Court. There is no ability to transfer a licence
- There are two types of licence
 - (i) A Site Licence (authorises any site in a local authority area).
 - (ii) A Collector's Licence (authorises the licensee to carry on a business as a mobile collector in a local authority area).
- The licensing authority will be able to set fees locally for licences. However when determining fees regard must be given to the Home Office guidance.
- Applicants and site managers will have to satisfy the licensing authority they are a 'suitable person' to carry on a business as a Scrap Metal Dealer. This includes a requirement for a Basic Disclosure Certificate and consultation with the Police and the Environment Agency. Future Home Office guidance will provide greater clarity as to the factors which will need to be considered in making this decision, including relevant offences.
- A national register of licences will be maintained by the Environment Agency.
- The Act makes it an offence for any Scrap Metal Dealer including collectors to buy scrap metal for cash. Detailed records are to be kept for receipt and disposal of metal, including the verification of a seller's full name and address, description of the metal and vehicle registration numbers.
- Provides the police and licensing authorities with new powers to enter and inspect sites. The Act introduces closure powers for unlicensed sites by the police and licensing authorities.
- Only where relevant offences have been committed can two specified conditions be added. No other conditions are available. These conditions relate to restrictions on opening hours (9.00am to 5.00pm) and metal received must not be altered for up to 72 hours.

4.3 The transition timeline is as follows:

1 September 2013

Licence fees may be set

1 October 2013

The main provisions of the Act commence including the offence of buying scrap metal for cash. Existing registered businesses will be deemed to have a licence under the Act from 1 October provided the dealer submits an application for a licence on or before 15 October. Their deemed licence will last until the council either issues them with a licence or gives them notice of the decision to refuse them a licence. They will be able to continue trading pending an appeal against the decision not to grant a licence.

Other scrap metal dealers, not previously registered, will be able to apply for a licence from 1 October but will have to wait until a licence is granted before they can legally trade.

1 December 2013

All offence provisions within the Act commence.

- 4.4 The definition of a scrap metal dealer is very wide and is defined as someone who carries on a business which consists wholly or partly of buying or selling scrap metal. The Act and its explanatory notes do not offer any further guidance on the interpretation of the definition. We are currently waiting for national guidance from the Home Office. It is likely that if the sale of metal is incidental to the main type of work then a licence may not be needed, for example plumbers and electricians. The Home Office and the Local Government Association have also indicated that waste collections and civic amenity sites operated by Local Authorities will not require a licence.

5.0 Compliance and Enforcement Arrangements

- 5.1 Operation Tornado is an existing multi-agency partnership led by the Police that monitor business compliance with the existing legislation and to minimise metal theft. This involves joint inspections to registered sites and the investigation of potentially illegal activities. Roadside checks of vehicles are also undertaken.
- 5.2 For applications under the new Act it is proposed that the licensing authority and the police will initially carry out joint visits to assess the level of compliance with licence conditions and ensure consistency throughout the trade.
- 5.3 A partnership approach is also proposed for investigating businesses that are suspected to be operating outside the licensing regime.

6.0 Role of the Licensing Committee

- 6.1 The 2013 Act provides a staged approach to the refusal, variation or revocation of an application and licence. Appendix 1 shows the process as a flow chart.

Stage 1

Where the authority considers it necessary to refuse, vary or revoke a licence the applicant or licensee must be given a notice specifying what the authority proposes to do and the reasons for it.

The applicant or licensee will be provided with a period of time in which to make a representation.

It is proposed that a decision to issue this notice would be made by the Head of Service or Assistant Director, with responsibility for the licensing function.

Stage 2

If no representation is received the licence may be refused, varied or revoked in accordance with the original notice.

If a representation is received it may also request for an oral hearing to determine any action

Stage 3

It is proposed that where any representation is received by an applicant or licensee the matter will be determined by the Licensing Sub Committee in accordance with the Council's existing scheme of delegation..

- 6.2 The existing scheme of delegation from the Council Constitution allows officers to approve applications where there are no objections.

7.0 Fees

- 7.1 Fees are to be locally set but must be in accordance with Home Office guidance. Any fee must also comply with the Provision of Services Regulations 2009 and as such must reflect on the costs associated with the administration and compliance work required under the 2013 Act.
- 7.2 In accordance with the Constitution, this will be a matter for the Cabinet Member for the Environment to determine.

APPENDIX I

Flow chart showing the process for the refusal, variation or revocation of a licence

