



**Democratic Support**

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#plymlicensing

## LICENSING COMMITTEE

Tuesday 10 December 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 - 4)

To confirm the minutes of the meeting of the Licensing Committee held on 17 September 2013 and the Licensing Sub Committee meetings held on -

- 17 September, 2013 (Pages 5 – 8)
- 24 September, 2013 (Pages 9 – 18)
- 15 October, 2013 (Pages 19 - 22)
- 26 November 2013 (Pages 23 – 28)

#### 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. INFORMATION REGARDING DELEGATED DECISIONS FOR APPLICATIONS FOR THE GRANT/VARIATION OF PREMISES LICENCES AND CLUB PREMISES CERTIFICATES

(Pages 29 - 32)

The Director for Place will submit a report.

#### 6. SCRAP METAL DEALERS ACT 2013 - DETERMINING SUITABILITY

(Pages 33 - 42)

The Director for Place will submit a report.

#### 7. CONTROL OF PUBLIC PERFORMANCES OF HYPNOTISM

(Pages 43 - 50)

The Director for Place will submit a report.

## **8. 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 Committee 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.

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## Licensing Committee

Tuesday 17 September 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.

Apology for absence: Councillor Mrs Nicholson.

Also in attendance: Ann Gillbanks, Senior Lawyer, Andy Netherton, Manager Health Safety and Licensing, and Katey Johns, Democratic Support Officer.

The meeting started at 10 am and finished at 10.39 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.*

#### 14. **DECLARATIONS OF INTEREST**

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

#### 15. **MINUTES**

Agreed the minutes of the –

- Licensing Committee held on 23 July 2013;
- Licensing Sub-Committees held on 23 July and 6 August 2013.

#### 16. **CHAIR'S URGENT BUSINESS**

There were no items of Chair's urgent business.

#### 17. **SCRAP METAL DEALERS ACT 2013**

The Director for Place submitted a report informing Members that existing law controlling the buying and selling of scrap metal had been repealed and replaced by the Scrap Metal Dealers Act 2013. In attendance to present the report and respond to any questions raised was Andy Netherton, Manager Health, Safety and Licensing.

The report outlined the key provisions of the Scrap Metal Dealers Act and the proposed local implementation arrangements, including the future role for Committee Members. Details of the report included –

- the dramatic increase in the international price of ferrous scrap metal over recent years had resulted in a significant increase in the theft and illegal trade of stolen metal, estimated to cost the economy £220m per year;

- a summary of current legal controls;
- that there were currently 24 scrap metal dealers or itinerant collectors registered with Public Protection Service with no registration fee payable;
- there were currently seven motor salvage operators registered with the Public Protection Service with a registration fee of £81.50 payable, lasting three years;
- a summary of the new Scrap Metal Dealers Act 2013 which –
  - made provision for two types of licence (valid for three years) –
    - a site licence (authorises any site in a local authority);
    - a collector's licence (authorises the licensee to carry on a business as a mobile collector in a local authority area)
  - made it an offence for any scrap metal dealer, including collectors, to buy scrap metal for cash;
  - provided the police and licensing authorities with new powers to enter and inspect sites as well as close down unlicensed sites;
  - allowed local authorities to set licence fees from 1 September 2013;
  - came into full effect from 1 December 2013;
- the role of the Licensing Committee.

In response to questions raised, Members were informed that –

- (i) there was no specific training in relation to the new Act planned for Members, as the process for considering licensing applications would be the same. An element would, however, be included as part of Member's annual Licensing training programmed for the start of the new municipal year;
- (ii) the definition of a scrap metal dealer was very wide and further guidance on the interpretation of this was still awaited from the Home Office;
- (iii) dealers who were new to the register would receive an initial site visit and be revisited after the first 12-months of operation;
- (iv) applicants and site managers would have to satisfy the licensing authority they were a suitable person to carry on a business as a Scrap Metal Dealer, this would include a requirement for a Basic Disclosure Certificate and consultation with the Police and the Environment Agency (future Home Office guidance in this regard was still awaited);
- (v) a national register of licences would be maintained by the Environment Agency;
- (vi) the three main offence-related areas were in respect of metal theft, waste management and fraud;
- (vii) only where relevant offences had been committed could two specified conditions be added – no other conditions were available – and those conditions related to:
  - restrictions on opening hours;
  - any metal received must not be altered until after 72 hours

- (viii) any cost to the authority would be borne by the fees charged;
- (ix) local authorities would be responsible for setting the fees (which had not yet been set), and Plymouth would be benchmarking with other authorities as well as holding discussions with the Devon Licensing Forum. It was recognised that if fees were set too high, people would look for ways to operate outside of the system;
- (x) it would not be possible to reduce fees for collectors that were already licensed by other authorities, the process regarding fees was set out and had to be followed. As such, there was no saving of time on checks so the same fees would apply;
- (xi) anyone wishing to register a new site would still require other relevant approvals such as planning;
- (xii) it was not known whether the Act applied to marine salvage but this would be investigated and a response reported back to Committee Members.

Members thanked the officer for his attendance and congratulated him on a well-written and easy-to-understand report. The Committee noted –

- (xiii) the contents of the report;
- (xiv) 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.

Agreed 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.

18. **EXEMPT BUSINESS**

There were no items of exempt business.

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## Licensing Sub Committee

Tuesday 17 September 2013

### PRESENT:

Councillor Rennie, in the Chair.  
Councillor Parker, Vice Chair.  
Councillors Mrs Bowyer and John Smith (Fourth Member).

Also in attendance: Ann Gillbanks, Senior Lawyer, Marie Price, Licensing Officer, and Katey Johns, Democratic Support Officer.

The meeting started at 11 am and finished at 11.31 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.*

### 13. APPOINTMENT OF CHAIR AND VICE-CHAIR

Agreed that Councillor Rennie is appointed Chair and Councillor Parker is appointed Vice-Chair for this meeting.

### 14. DECLARATIONS OF INTEREST

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

(Councillor John Smith (Fourth Member) left the meeting).

### 15. CHAIR'S URGENT BUSINESS

There were no items of Chair's urgent business.

### 16. ST BUDEAUX ROYAL BRITISH LEGION LTD., 74 NORMANDY WAY, PLYMOUTH - VARIATION OF CLUB PREMISES CERTIFICATE

The Committee having –

- (i) considered the report from the Director for Place;
- (ii) considered the representation in the form of a petition from Other Parties;
- (iii) heard from the applicants that:

They are striving to run a successful members Club and would welcome the opportunity to bring their licence in to line with other licenses in the local area;

To date they have never had any issues which have involved either the

Police or Environmental Health Department and feel that extending the licence for the extra hour on a Sunday would not impact on the residents of Normandy Way;

All other variations refer to internal activities within the Club which would enable them to carry out sporting and entertainment activities at short notice without further reference to the licensing department;

In response to Members' questions the applicant advised that parking in the area was mainly residents' parking and that patrons rarely used their cars and therefore did not cause parking nuisance;

(vi) considered representations under the licensing objectives as follows:

a) **Prevention of Public Nuisance –**

The club is situated in the middle of a residential area next to young families, and working households and elderly persons. It is a problem neighbour now with parking and traffic coming and going, noise from car doors;

Smokers talk loudly at the front of the club;

Since the club sold their garages and car park land there has been problem with parking;

The issue is not only the extension of selling drinks until midnight it is the dispersal factor well after that time;

Houses have bedrooms above road level and noise and sounds carry more late at night.

b) **Prevention of Crime and Disorder –**

None

c) **Protection of Children from Harm –**

None

d) **Public Safety –**

None

e) **Other representations –**

None

In light of the applicant's admission that persons use the front of the building for smoking and possible noise raised by concerned residents, Members consider it is appropriate for the

promotion of the licensing objectives that a condition that no more than 8 persons at any one time should be smoking at the front of the premises and that this should be controlled by a club committee member or designated member of club management.

Agreed that having taken into account all of the above representations the variation application be GRANTED as requested with the addition of the following clause –

that no more than 8 persons at any one time should be smoking at the front of the premises and that this should be controlled by a club committee member or designated member of club management.

17. **EXEMPT BUSINESS**

There were no items of exempt business.

18. **GRANT OF PERSONAL LICENCE (EI)**

Application withdrawn.

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## Licensing Sub Committee

Tuesday 24 September 2013

### PRESENT:

Councillor Rennie, in the Chair.  
Councillor Mrs Bowyer, Vice Chair.  
Councillors Singh (fourth member) and John Smith.

Also in attendance: Sharon Day (Lawyer), Catherine Fox (Lawyer – observing), Rachael Harris (Senior Environmental Health Officer), David McIndoe (Police), Rhodri Morgan (Environmental Health Officer), Fred Prout (Senior Licensing Officer), Helen Rickman (Democratic Support Officer).

The meeting started at 10.10 am and finished at 5.15 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.*

### 19. APPOINTMENT OF CHAIR AND VICE-CHAIR

Agreed that Councillor Rennie is appointed as Chair and Councillor Mrs Bowyer is appointed as Vice Chair for this meeting.

### 20. DECLARATIONS OF INTEREST

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

### 21. CHAIR'S URGENT BUSINESS

There were no items of Chair's Urgent Business.

### 22. COOPERAGE, 134 VAUXHALL STREET, PLYMOUTH - GRANT OF PREMISES LICENCE

The Committee having –

- (a) considered the report from the Director for Place;
- (b) heard from the applicant that:
  - as the building had been empty for some time the applicant wanted to reopen it as they considered it to be a viable business. Their intention was to run the premises without causing a disturbance to their neighbours and would work with local residents to ensure no problems were caused by the operation of the premises. They considered that the premises would be an asset to the community;

- the premise was not within the cumulative impact zone;
- they were looking to attract a mixed clientele;
- the premises would operate in three different areas. There would be a wine bar where soft music would be played, a function room and a back room where live music would take place. These three areas would not operate with music at the same time as they would compete against each other. There would not be any raves at the premises;
- in light of the objections from local residents the applicant stated that live music would cease at 12.30am and from that point onwards wind down music would be played;
- the sound system which had been within the premises would be replaced with a smaller one and speakers would not be on the party walls. These measures would prevent the noise disturbance which residents had previously suffered. Additionally they were prepared to have a sound limiter;
- they had undertaken some sound insulation works and would undertake further ones as they became necessary. However they were unable to supply sufficient details to allow environmental health to be able to comment on whether the insulation would be sufficient;
- they did not know what the acoustic properties of the building were at present and that they may need to make further alterations if there were problems with noise;
- the capacity of the premises would be 1000 people however the applicant did not envisage this number attending and considered that 750 people would be more realistic. They stated that the capacity figure may need addressing;
- there would be eight CCTV cameras inside the premises and eight CCTV cameras outside. This would be well advertised. The monitor would be in an office on the first floor but would not be monitored by staff continuously;
- they would ensure that they had sufficient doorman to deal with the number of people on the premises;
- the closing time of the premises was earlier than nearby premises to help with the dispersal of patrons;
- some events would be ticketed;
- they would have two different entrances to cope with any queues; maybe a pre bought ticket entrance and a pay on entry entrance;

- they did not believe there would be queues as they considered that people would drift in and leave in dribs and drabs;
  - there would be two free of charge telephones within the premises which would help with dispersal;
  - patrons would not be allowed to take drinks outside and door staff would be responsible for managing this;
  - the roof terrace smoking area would have a capacity of 100/120 people however they would cap it at 30;
  - they would erect a fence around the roof terrace smoking area to stop litter being dropped into the garage below and to stop people jumping across into the neighbouring garden;
  - they would limit the use of the smoking areas to 30 people at a time and they would be monitored by door staff/staff however they acknowledged that they would not be able to prevent people talking in these areas;
  - this was a 'suck and see' situation and if granted the licence they would work with local residents to sort out any issues;
- (c) heard and considered written representations under the licensing objectives as detailed below:

Prevention of Crime and Disorder:

The Police told the committee that:

- (1) by way of background information the premises was on the periphery of the Cumulative Impact Area and the majority of crime occurs in the area 7pm and 7am the next morning (ENTE period). The premises last operated as a nightclub in 2006. They provided figures which showed that in 2010, 87 alcohol related and violent crime offences were committed within the ENTE period (76% of that sort of crime within that area), in 2011, 66 such offences within the ENTE period (72% of that sort of crime within that area) and in 2012, 79 such offences were committed within the ENTE period (74% of that type of crime within that area);
- (2) the police had concerns in relation to patrons congregating on the pavements outside. They said that if the premises had a capacity of about 500 (although the applicant confirmed the capacity would be 1000) patrons queuing would occupy a large part of the public pavement and this could spill onto Sutton Harbour. This would increase the potential for public disorder and anti social behaviour bearing in mind that it was likely that those attending will already have been drinking.

The police did not consider that the applicant had indicated in the operating schedule how they intended to manage the problems associated with the queues; the committee considered that this was relevant and took into account what the applicant had said in that they didn't believe that queues would form; the committee felt that the applicant's belief was unrealistic. The committee considered that due to the geography of the area and the narrowness of the pavement and surrounding lanes there was no suitable location for queues to be safely managed and that even having door supervisors would not resolve the potential issues with crime and disorder and public safety;

- (3) additionally the Police raised concerns in relation to the smoking areas which were to be situated on three different levels, the first and second smoking areas were to be situated at the front of the premises on Vauxhall Street and at the rear on Sutton Harbour respectively. The police were concerned that the proximity of smokers to the passing pedestrians would substantially increase the potential for aggressive/boisterous and noise interaction which had the potential to have a significant negative impact on levels of alcohol related violence, disorder and anti-social behaviour. They stated that due to the narrowness of the pavement at the front of the premises it was totally unsuitable for use as a smoking area and it would lead to pedestrians being forced into the road. In relation to the third smoking area which was positioned on the roof the police raised concerns that there was nothing within the operating schedule to say how the area would be controlled by the management. They were concerned that articles could be thrown down from the roof possibly injuring people below. The police were concerned that there was an over reliance on CCTV; the committee considered this to be relevant and were not satisfied that these areas could be policed by the applicant and they did not have a clear and coherent plan. Due to the geography of the area the premises was situated in there was no suitable place for a smoking area without having a knock on effect on crime and disorder and public safety as outlined by the police. This was especially so when they considered the information from Environmental Health that there was a potential for 20% of the capacity of the premises to be smokers;
- (4) finally the Police explained that the premises were close to several residential properties and that the effect of 1000 people entering and exiting until 0230 hours would inevitably generate noise, anti social behaviour and alcohol related crime. The police did not consider that there was sufficient detail as to how the premises would deal with the dispersal of patrons at the end of trading. They were concerned that as there was no designated taxi rank within Vauxhall Street this may lead to taxis routinely stopping and creating problems with free flow of traffic along Vauxhall Street but also that people waiting for taxis would generate noise, litter and public order issues. Also the police considered that the dispersal policy proposed was ineffective as it did not specify numbers for door supervisors and what would happen when the customer leaves the premises. In their opinion the policy relied on the



complete cooperation from customers and did not detail how uncooperative customers would be dispersed or taken into account the geography of the area; the committee considered this to be relevant and agreed that there was no clear dispersal policy that would deal with the capacity of this premises and that what was being suggested by the applicant relied too much on the cooperation of customers. Also due to the geography of the area the committee's opinion was that dispersal would be a problem, and that there would not be a taxi company within the city who would be able to deal with the numbers of people potentially leaving the premises;

Other Parties told the committee that:

- (5) granting the licence would cause problems with drunkenness and anti-social behaviour (such as vomiting/urinating in the street/criminal damage) and late night noise would cause disturbance in a primarily residential neighbourhood. The entrance to the premises was sited in a poorly lit narrow lane which would provide a fertile environment for a wide range of criminal and anti-social activity; the committee considered this to be relevant and due to the proposed capacity of the premises agreed this would be a potential problem;
- (6) there was a concern that granting the licence would create a threatening atmosphere particularly to female residents and the elderly; the committee considered this to be relevant and whilst they understood these concerns they did not consider this was within the control of the applicant;
- (7) that to grant a licence until 2.30am would have a cumulative impact on Vauxhall Street and Sutton Harbour area as it would inflate the number of customers using the premises in the vicinity and leaving in the early hours; there was already problems in the area from existing premises from drunken behaviour, swearing and shouting. This would impact on noise and anti-social behaviour and policing levels were not adequate to cope with any more volume of criminal behaviour; the committee considered this to be relevant and agreed that the proposed capacity had the potential to add to the existing problems in the area;
- (8) the smoking area was a cause for concern as the flat roof area was separated from Century Quay's garden area by a small gap of about one metre and there was a concern of a real risk of criminal activity from this area because it would allow people to pass from the Cooperage to the flats; the committee considered this to be relevant and whilst they considered what the applicant had said with regard to the fence they had other concerns regarding the use of the roof area, these are dealt with later in this decision;
- (9) there was concern that there would be drug taking on the premises; the committee considered this to be relevant however they were satisfied by the applicant's strict drug policy outlined in the application;

Prevention of Public Nuisance

Environmental Health told the committee that:

- (10) the premises were located within a mixed use area with residential premises within 20 metres of the building. There were four late night licensed premises located within 200m of the premises;
- since the premises last operated there had been a residential block built adjoining the premises. When it last operated complaints of noise were received by Environmental Health from local residents;
  - if granted there was a significant potential for the music noise breakout from the premises, the smoking area, people noise and noise from taxi vehicles as customers arrive and leave the premises;
  - issues of particular concern were:
    - noise breakout and transmission from the premises;
    - queuing patrons outside the premises;
    - use and management of outdoor areas, particularly the smoking area and its supervision;
    - the dispersal of customers from the premises (1000+ people leaving the premises);
  - due to the fact that the premises intended to operate of three levels (Bar, Large Function Suite and Live Band venue) there was the potential for three distinct noise sources to be produced from one venue and the applicants operating schedule did not demonstrate how they would mitigate any potential noise impact on the local community or any noise transmission through the fabric of the premises to neighbouring premises. Environmental Health had recommended to the applicant that a noise survey be carried out;
  - there was a potential for hundreds of people to converge on the narrow Tin Lane area. There were concerns as to how the noise from queues would be managed, with regard to noise and safety on the highway;
  - there were already complaints from this area with regard to existing premises causing a noise nuisance from the public within that area and granting the licence with a possible high capacity would mean that it could have a negative knock on effect on the local area;
  - the smoking areas also presented concerns with regard to noise breakout;

- there was also a potential for noise problems from taxis affecting local residents and the potential was for people being dropped or waiting for taxis to impact on people already queuing for entry to the premises;
- the committee considered the matters raised above to be relevant. They noted that no noise survey had been carried out despite the recommendation by Environmental Health and that no evidence had been provided by the applicant in relation to the sound proofing that would allow the committee to be satisfied that the premises could contain noise. With regard to the smoking area, due to the geography of the area within which the premises is situated and the number of people using it committee considered that this would still cause a problem even with management controls. With regard to the potential problems with noise the committee were satisfied that there would be problems with noise from patrons queuing and dispersing due to the capacity of the premises and the geography of the area;

Other Parties told the committee that:

- (11) concerns were raised about the ability to contain noise (including vibration) and music (including live music) within the premises and the fact that noise would transfer to adjoining and neighbouring premises which would interfere with sleep due to the hours requested. Additionally residents would not be able to enjoy their home or sit on their balconies on a Sunday afternoon if the licence was granted due to noise from the premises. Some residents had suffered significant sound penetration when the premises had operated previously and were concerned this would happen again; the committee considered this to be relevant and accepted that this was a potential problem and that there was no evidence from the applicant that the building would be able to contain noise and prevent noise transfer;
- (12) concerns were raised about litter, glass (both inside and outside the premises), packaging and cigarette ends would be a significant problem; the committee considered this to be relevant but they had not heard anything to suggest that the applicant would not deal with the problems outlined above;
- (13) there would be problems with taxis dropping off and picking up in the early hours of the morning, with car engines and slamming doors causing disturbance and also potentially blocking roads; the committee considered this to be relevant and accepted that this is a potential problem to which there would seem to be no suitable solution due to the geography of the area and the proximity of the premises to residential properties;

- (14) there would be problems with the dispersal of patrons as it will be noisy and disorder issues were likely to arise; the committee considered this to be relevant and agreed that due to the geography of the area, lack of dispersal policy and proposed capacity that this would be likely to lead to these issues;
- (15) the flat roof smoking area raised concerns as noise and smoke may not be retained and this would affect the use and enjoyment of residents' gardens and their properties. Some of the flats have bedrooms overlooking the flat roof area. The use of the front area for smoking could also prevent residents entering their properties; the committee considered this to be relevant and agreed that there was no suitable place for a smoking area;
- (16) there was a concern that an increase in bins and collection of waste disposal would exacerbate a problem which already existed in the vicinity; the committee considered this to be relevant but were satisfied that the applicant would deal with this issue appropriately;

#### Protection of Children from Harm

Other Parties told the committee that:

- (17) they had concerns about underage drinking and drug abuse; the committee considered this to be relevant but were satisfied that the applicant had a good policy which would address these concerns;
- (18) extended exposure to loud music and the use of smoking areas would affect children's sleep and their ability to concentrate; the committee considered this to be relevant and the committee were not satisfied on the evidence produced that the premises could contain sound or that there were suitable sites for smoking areas;
- (19) as the premises are so close to domestic premises, alcohol fuelled anti-social behaviour and inappropriate language will be readily observable by children of all ages; the committee considered this to be relevant and accept that this is a potential problem but considered this was outside of the applicant's control;

#### Public Safety

Environmental Health told the committee that:

- (20) there were concerns on whether there were sufficient sanitary conveniences provided at the premises as it had not been possible to assess this due to no capacity being stated in the application. Queues for using these facilities can often be pinch points for disorder; the committee considered this to be relevant and from the evidence heard were satisfied that there were insufficient toilets within the premises; the number of toilets provided would need to be agreed by the

applicant with Environmental Health;

- (21) with regard to the smoking area there were concerns on how any queues forming to gain access to the smoking area would be managed to protect public safety; the committee considered this to be relevant and the committee did not consider that the roof area was suitable for use as a smoking area;
- (22) there were concerns that the roof smoking area had not been tested to ensure that it was structurally sound; the committee considered this to be relevant and were satisfied that there was no evidence that this area was suitable and safe for use by the public;
- (23) there were concerns as to how the queues would be managed to protect public safety as the premises are situated on the corner junction of two roads and queues could push pedestrians onto the highway; the committee considered this to be relevant and accepted this was a potential problem. The committee did not consider that the geography of the area was suitable to accommodate queues to the premises;

Other Parties told the committee that:

- (24) there were issues of fire safety due to the fact that the building is dilapidated and so close to residential premises. There were also concerns that the capacity be such that patrons could be evacuated safely; the committee considered this to be relevant but felt that the applicant had a good fire safety policy and noted that there had been no representations from the fire authority who are responsible for safety on this point;
- (25) there were concerns from residents that public safety would be undermined by threats to the public from drunks, broken glass and littering (including the possibility of patrons taking drinks outside). Cigarette butts could also be a fire hazard in the flat roof smoking area and if dropped down into the garages below; the committee considered this to be relevant and did not consider the flat roof smoking area to be suitable for use as a smoking area. The remainder of the concerns outlined above were not within the applicants control;
- (26) as the capacity of the premises was not known there was a concern about patrons exiting on to Vauxhall Street and Sutton Wharf which are both major traffic routes; the concern was that without careful shepherding there would be traffic incidents when allied with alcohol consumption; the committee considered this to be relevant and agreed that due to the capacity of the premises this was a potential problem. The committee did not consider that these concerns could be satisfactorily dealt with by the applicant due to the geography of the area;

- (27) as there are no dedicated parking facilities or taxi ranking facilities this would result in double parking/fly parking on busy through roads; the committee considered this to be relevant and could see the potential public safety risk due to the capacity of the premises and dispersal issues. The committee agreed that there was no suitable solution regarding potential problems from taxis;
  - (28) there was a concern for patrons who may be affected by heat inside the premises if the windows and doors were kept closed for sound protection; the committee considered this to be relevant and accepted the applicant's assurance that there would be air conditioning within the premises;
  - (29) due to the location of the premises near to the water there was a concern that drunken patrons would jump or fall into the water and be injured or killed; the committee considered this to be relevant and had heard evidence that this area was not fenced off however this was a factor that was beyond the applicant's control;
- (d) The committee considered the representations made by the applicant and the relevant representations made as detailed above. In reaching their decision the committee had considered whether any conditions could be attached to any licence granted to address the concerns raised however they were of the opinion that there were no conditions they could attach that would ensure the promotion of the licensing objectives.

They had also considered whether any licensable activities could be removed or amended or hours of operation adjusted to allow the grant of the licence and to ensure that the licensing objectives were promoted. However the committee did not consider that any such adjustments could be made.

Therefore in light of the above the committee agreed it was appropriate and proportionate to refuse the application for the grant of the premises licence as if the licence was granted it was considered that it would undermine the licensing objectives as detailed under each of the licensing objectives set out above.

23. **EXEMPT BUSINESS**

There were no items of exempt business.

## Licensing Sub Committee

Tuesday 15 October 2013

### PRESENT:

Councillor Rennie, in the Chair.  
Councillor Gordon, Vice-Chair.  
Councillor Singh.

Apology for absence: Councillor Parker (Fourth Member).

Also in attendance: Sharon Day (Lawyer), Catherine Fox (Lawyer – observing), Fred Prout (Senior Licensing Officer) and Katey Johns (Democratic Support Officer).

The meeting started at 10.30 am and finished at 11.50 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.*

#### 24. APPOINTMENT OF CHAIR AND VICE-CHAIR

Agreed that Councillor Rennie is appointed Chair and Councillor Gordon is appointed Vice-Chair for this meeting.

#### 25. DECLARATIONS OF INTEREST

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

#### 26. CHAIR'S URGENT BUSINESS

There were no items of Chair's urgent business.

#### 27. POLISH SHOP GUCIO 1, 64 DEVONPORT ROAD, PLYMOUTH, PL3 4DF - GRANT OF PREMISES LICENCE

The Committee having –

- (i) considered the report from the Director for Place;
- (ii) heard from the applicant that:
  - The shop will sell Polish food and drink
  - For the present time the applicant will only sell beer.
  - This is only a small store and will not contribute to any anti-social behaviour
  - The applicant has another store on Mutley Plain where there have been no problems
  - The shop will provide a safe welcoming environment and will contribute to the local community

- The shop has four CCTV cameras in operation which will help prevent any potential problems
- The applicant has posters outside the premises saying no drinking in front of the store
- The applicant is aware of the rules regarding age related sales and has the appropriate Challenge 25 policy in place. He is aware that he could lose his licence if underage sales were made.
- The applicant knows his customers and this will help prevent the possibility of underage sales
- The applicant is aware of the legal and personal consequences of breaking any licensing rules
- The applicant will fully cooperate with the responsible authorities and the local community.
- There has been only one representation
- If the licence is not granted then it will not be economical to run the shop as a business.

(vi) considered written representations under the licensing objectives as follows:

a) **Prevention of Public Nuisance**

An additional licenced premises would increase the noise. This was considered to be relevant however the committee did not think that there would be any significant impact taking into account the times of operation of the proposed licence.

As this was an off sales establishment there was a probability of an increase in litter. This was considered to be relevant however the committee felt that there was the potential litter problems from any shop and they did not think that the granting of a premises licence would create any additional problems.

b) **Prevention of Crime and Disorder –**

There are a large number of licensed premises in close proximity of the premises there is a strong possibility of additional antisocial behaviour. This was considered to be relevant however the committee felt that the steps outlined in the applicant's operating schedule were sufficient to address any potential problems.

c) **Protection of Children from Harm**

Any likelihood of underage sales should be discouraged. This was considered to be relevant however the committee felt that the steps outlined in the applicant's operating schedule were sufficient to address the concerns outlined.



d) **Public Safety –**

As this is not an eating establishment the alcohol would be taken out and thereby increase risks with caps and bottles etc to the public.

This was considered to be relevant however the committee felt that there was the potential for litter problems with any shop and did not consider that the granting of a premises licence would create any additional problems.

e) **Other representations –**

That there is no need for another premises in the area and there is a large existing off licence which is open until 10pm. This was not considered to be relevant as it did not relate to one of the four licensing objectives.

When reaching its decision the Committee has to have regard to its licensing policy and the guidance issued by the Home Office.

The licensing policy provides for a special policy in respect of the area where the premises is situated. The policy states that where an application for grant is made in that area, there is a presumption that the application will be refused where a relevant representations are received and it is anticipated that the application will add to the problems of crime and disorder and/or public nuisance in the area and the applicant has been unable to demonstrate, within their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

Relevant representations have been received from a local councillor that to grant the application will impact on the licensing objectives as it will add to the existing problems with noise and antisocial behaviour in the area.

The committee agreed that having taken account of the representations above they did not consider that application would add to existing problems noise, litter and antisocial behaviour in the area and decided to depart from their own policy. The licence was therefore granted as applied for subject to conditions consistent with the applicant's operating schedule and the mandatory conditions contained within the Licensing Act 2003.

28. **EXEMPT BUSINESS**

There were no items of exempt business.

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## Licensing Sub Committee

Tuesday 26 November 2013

### PRESENT:

Councillor Rennie, in the Chair.  
Councillor Parker, Vice Chair.  
Councillors Monahan and Mrs Nicholson (fourth member).

Also in attendance: Catherine Fox (Lawyer – observing), Ann Gillbanks (Senior Lawyer), Fred Prout (Senior Licensing Officer) and Helen Rickman (Democratic Support Officer).

The meeting started at 10.00 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.*

### 29. APPOINTMENT OF CHAIR AND VICE-CHAIR

Agreed that Councillor Rennie is appointed Chair and Councillor Parker is appointed Vice-Chair for this meeting.

### 30. DECLARATIONS OF INTEREST

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

### 31. CHAIR'S URGENT BUSINESS

There were no items of Chair's urgent business.

### 32. BACARO BITES, 6 QUAY ROAD, PLYMOUTH - REVIEW OF PREMISES LICENCE

The Committee having –

- (a) considered the report from the Director of Place;
- (b) heard from a representative of Devon and Cornwall Police that protection of children from harm objective was not being upheld as detailed below –
  - despite the failure of two Test Purchase Operations in February and April 2013 and the subsequent suspension of the premises licence under Section 169A of the Licensing Act 2003 in July 2013 the DPS had failed to effectively supervise and implement an under-age sales policy at the premises.

- the test purchase operations referred to are as detailed below:-
  - 15 February 2013, 21:30hrs – two vodka and cokes were sold to a 16 year old test purchaser by a male bar person, he admitted the sale stating he had made a mistake. The bar person was issued a PND on 20 February 2013 which has been paid;
  - 26 April 2013, 21:35hrs – three vodka and cokes were sold to a 16 year old test purchaser buy a female bar person, she admitted the sale. The bar person was issued a PND on 20/02/13 which has been paid;
  - 6 June 2013, 16:05-10:20hrs at Charles Cross Police Station the Designated Premises Supervisor for Bacaro was interviewed by a police constable and an officer from Plymouth City Council Trading Standards Department. The DPS accepted the two sales and did not challenge any of the evidence presented. The DPS admitted getting a copy of a letter from the Trading Standards Officer in between the two sales and as a result of this she arranged further training with all staff through an independent training company. This training was delivered on 21 July 2013. She stated all new staff would now get an induction package which they will have to pass and sign for on receipt. Both sellers of the alcohol to children on 15 February 2013 and 26 April 2013 have been given written final warnings by the DPS. A new refusals register operating from the till is now in operation;
  - these breaches of license were dealt with under section 169A (2) of the Licensing Act 2003 by Superintendents closure notice between 06:00hrs on 12 July 2013 to 06:00hrs on 14 July 2013;
  - 26 September 2013, 21:07-21:10hrs – three Bottles of lager were sold to a 16 year old test purchaser by a male bar person, he admitted the sale. The bar person was issued with a PND;
  - 3 October 2013– at Charles Cross Police Station the Designated Premises Supervisor for Bacaro was spoken to by two Police licensing officers concerning the failure of a Test Purchase Operation. She was informed that the case would be sent to the Plymouth City Licensing Authority for Review of her Licence for Bacaro. She was also asked about what measures she had put in place after the Superintendents Closure notice on 12 to 14 July 2013;
- the Police representative proposed to the Committee that the following conditions were added to the premises licence -

- under the Protection of Children from Harm licensing objective
  - 1 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, using the SWERCOTS on-line training pack or equivalent, 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 12 months and should specify the time, date and details of the persons both providing the training and receiving the training;
  - 2 all staff shall be trained in the requirements of the Challenge 25 policies;
  - 3 all staff shall be suitably trained in the operating procedures for refusing service to any person who is drunk or is under-age or appears to be under-age;
  - 4 the Premises Licence Holder or Designated Premises Supervisor shall ensure a sales refusal register is maintained to include details of all alcohol sales refused and the reason for the refusal. The refusals register should be made available to an authorised enforcement officer on request;
  - 5 a till prompt system shall be installed to assist staff by reminding them to challenge for ID when a sale is made;
  - 6 the Premises Licence Holder or Designated Premises Supervisor shall have a written age verification policy in relation to the sale or supply of alcohol. This policy will include documented steps taken to prevent Under 18s from purchasing alcohol and will specify a Challenge 25 proof of age requirement before sales of alcohol are made as approved by the Plymouth City Council Trading Standards responsible authority;
  - 7 the Licence Holder or Designated Premises Supervisor shall ensure that new bar staff, supervisors and managers receive induction in the legality and procedure of alcohol sales, prior to undertaking the sale of alcohol. Training shall be signed and documented and training records be made available to an enforcement officer on request for up to 12 months;

- under the Prevention of Crime and Disorder licensing objective;

- 1 any person managing or supervising staff in the sale of alcohol or other licensable activity in the absence of the DPS shall be the holder of a personal licence obtained from a nationally recognised body;
- 2 an incident book shall be maintained 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 book shall be available for inspection at all reasonable times by an authorised officer of relevant responsible authority. The records will be retained for at least 12 months;
- 3 all door staff shall be trained in the requirements of the Challenge 21 policies, the identification and recognition of drunks and the correct procedures to be followed when refusing service;
- 4 all door supervisors will wear high visibility clothing and display their SIA badge in an approved method (i.e. arm display badge holder) at all times;
- 5 the Premises Licence Holder and/or Designated Premises Supervisor shall ensure that the following details for each door supervisor are contemporaneously entered into a bound register kept for that purpose:
  - (i) Full name;
  - (ii) SIA Certificate number and/or badge number, or registration number of any accreditation scheme recognised by the Licensing Authority (including expiry date of that registration or accreditation);
  - (iii) The time they began their duty;
  - (iv) The time they completed their duty;
  - (v) The full details of any agency through which they have been allocated to work at the premises, if appropriate;
- 6 the register shall be available at all reasonable times to an authorised officer of the Licensing Authority or a police constable;
- 7 this register is to be kept at the premises at all times and shall be so maintained as to enable an authorised officer to establish the particulars of all door staff engaged at the premises during the period of not less than 12 months prior to the request.

- under the Prevention of Public Nuisance licensing objective:
    - I Premise Licence Holder and/or Designated Premises Supervisor or Door Supervisors will be responsible for ensuring the safe, quiet and orderly dispersal of customers from the premises and the immediate vicinity of the premises.
  - under the Public Safety licensing objective:
    - I the Premises Licence Holder and/or Designated Premises Supervisor and/or Door Supervisors shall ensure that any outside area included in the Licence will be controlled in a safe and effective manner to the same standard operated within the premises building and will pay special attention to the impact that the use of the outside area has on the surrounding community;
  - the police advised that the DPS had accepted the conditions under the heading protection of children from harm and that the conditions under the other licensing objectives were also accepted and she will make an application to have these added to the licence via minor variation;
- c heard from the premises licence holder/DPS as follows-
- the DPS confirmed the information given to the Police on the 6 June 2013;
  - the DPS had arranged for an outside company to conduct training with her staff;
  - the DPS had implemented a check under the Challenge 25 age Policy and specified that only passport, drivers licence and PASS cards would only be accepted as forms of ID;
  - the DPS had also implemented a refusal register which is logged via the till system and recorded on the till receipt;
  - the DPS stated that she felt badly let down by her staff and intended to spend more time at the premises to supervise her staff and enforce her policies;
  - the DPS had also subsequently terminated the employment of the staff involved in the latest incident;
  - the DPS read out two letters of support from the police regarding her overall management of the premises;

- the DPS did accept the police report and felt let down by her staff;
- the DPS made an assurance that by agreeing the conditions this would not happen again;
- the DPS had been in the trade herself for over 12 years and in this premises since 2005 and had pride in the premises and what she does;
- that apart from the matters which were the subject of this review there were no other Police record of violent incidents at the premises;
- that they were a member of the best bar none;
- to increase the vigilance of the door staff the DPS had prepared a statement regarding the admittance of underage people that the door staff sign at the beginning of each shift;
- the DPS had made a major management decision to let the previous manager go and was taking a more active role in managing the premises including adhoc checks when she would not normally be on duty;
- the DPS believed that the rules were important and that with the conditions which were agreed with the Police further incidents should not occur.

The Committee was concerned that three test purchases had been undertaken at the premises and all had failed and noted that one of the test purchases took place after a period of closure by the exercise of Police powers under s.169(A) (2) Licensing Act 2003

The Committee considered that the seven conditions proposed by the Police under the heading of Protection of Children from Harm would adequately address the future concerns for the control of sale of alcohol to children.

The Committee were unable to consider the Police remaining proposed conditions under the headings Prevention of Crime and Disorder, Prevention of Public Nuisance and Public Safety as no representations or evidence had been put before them for consideration under these licensing objectives in this review application. But the committee did acknowledge that the premises licence holder made an assurance that she would add these conditions to the licence by way of minor variation.

Having taken into account all of the representations and the assurances given by the DPS at the hearing the Committee agreed it was appropriate to impose upon the premises licence the seven conditions put forward by the Police under the heading of Protection of Children from Harm.

33. **EXEMPT BUSINESS**

There were no items of exempt business.



**Subject:** Information regarding delegated decisions for applications for the grant / variation of premises licences and club premises certificates

**Committee:** Licensing Committee  
**Date:** 10 December 2013  
**Cabinet Member:** Councillor Brian Vincent  
**CMT Member:** Anthony Payne (Director for Place)  
**Author:** Fred Prout (Senior Licensing Officer)  
**Contact:** Tel: 01752 304792  
e-mail: [licensing@plymouth.gov.uk](mailto:licensing@plymouth.gov.uk)  
**Ref:** ERS/LIC/PREM  
**Key Decision:** None  
**Part:** I

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**Purpose of the report:**

Applications have been received from various premises within Plymouth for the grant / variation of a premises licence under Sections 17 and 34 or the grant / variation of a club premises certificate under Schedule 8 and Section 84 of the Licensing Act 2003.

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

This report links to the delivery of the City and Council objectives and outcomes within the plan.

In particular: Growing

See [http://www.plymouth.gov.uk/corporate\\_plan.pdf](http://www.plymouth.gov.uk/corporate_plan.pdf)

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

Not applicable

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

Members should be aware that Section 17 of the Crime and Disorder Act 1998 puts a statutory duty on every Local Authority to exercise its various functions with due regard to the need to do all that it reasonably can do to prevent crime and disorder in its area.

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**Equality and Diversity:**

Has an Equality Impact Assessment been undertaken? No

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**Alternative options considered and rejected:**

None.

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**Published work / information:**

For more information please see the below links.

**Licensing Policy**

[http://www.plymouth.gov.uk/statement\\_of\\_licensing\\_policy.pdf](http://www.plymouth.gov.uk/statement_of_licensing_policy.pdf)

**Licensing Act**

<http://www.legislation.gov.uk/ukpga/2003/17/contents>

**Licensing Act Guidance**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/209526/1167-A\\_Licensing\\_Act\\_2003\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209526/1167-A_Licensing_Act_2003_2_.pdf)

**Background papers:**

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

**Sign off:**

Fin		Leg	18996 /ag/27. 11.13	Mon Off		HR		Assets		IT		Strat Proc	
Originating SMT Member													
Has the Cabinet Member(s) agreed the content of the report? No													

- 1.1 Since the introduction of the Licensing Act regime in 2005 applications have been received for the grant and variation of premises licences and club premises certificates. Some of these applications have received representations from responsible authorities or interested parties and have been mediated out by agreement with both the applicant and the respective responsible authority without the need to bring the applications before the committee for determination.

## 2.0 RESPONSIBLE AUTHORITIES

### 2.1 *Environmental Health*

Prime Café Bar  
Barcelona

City Centre  
City Centre

### 2.2 *Devon and Cornwall Police*

Jakes  
Prime Café Bar  
Zuzimo  
Barcelona  
Devon Kebab  
Newmarket Inn

City Centre  
City Centre  
Bretonside  
City Centre  
Union Street  
City Centre

### 2.3 *Trading Standards*

Mini Delhi

Prince Rock

## 3.0 CONSIDERATIONS

- 3.1 Section (9.27) of the Guidance issued under section 182 of the Licensing Act 2003 and section 18(3)(a) of the act states that a hearing does not have to take place if there are representations but all parties can reach an agreement through a mediation process. When written agreement has been made representations are then withdrawn and the agreed conditions are included within their operating schedule. In such cases officers can determine the application.
- 3.2 The premises listed above are ones that have been dealt with by way of mediation and written agreement for the period between 16 May 2013 until 22 November 2013 and this report is submitted for the information of the committee.

R. Carton  
Manager of Public Protection Service

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**PLYMOUTH CITY COUNCIL**

**Subject:** Scrap Metal Dealers Act 2013 – Determining Suitability  
**Committee:** Licensing Committee  
**Date:** 10 December 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

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**Purpose of the report:**

This report provides an update of the key provisions of the Scrap Metal Dealers Act 2013 (the Act) following on from the initial report that was presented to Members on the 17 September 2013. This report also sets out the implementation arrangements and the role that Members will play in its decision-making.

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**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.

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**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 have been determined by Executive Decision by the Cabinet Member for the Environment.

It is anticipated that this new licensing regime will attract an indicative income of £8K for the first 3 year licensing period.

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**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.

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**Equality and Diversity:**

Has an Equality Impact Assessment been undertaken? No

**Recommendations and Reasons for recommended action:**

- I. Members note the contents of the report

**Alternative options considered and rejected:**

None

**Published work / information:**

[Scrap Metal Dealers Act 2013](#)

[Home Office Guidance – Determining suitability to hold a scrap metal dealers licence](#)

[Scrap Metal Dealers Fees](#)

[Scrap Metal Dealers Committee Report – 17 September 2013](#)

**Background papers:**

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

**Sign off:**

Fin	CF/PlaceFES D1314.28.11 .13	Leg	18998/ag/28. 11.13	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 Background

- 1.1 The international price of ferrous scrap metal increased dramatically over recent years, which has seen a significant increase in the theft and illegal trade of stolen metal, at national level which is estimated to cost the economy £220m per year. Metal theft across the country has regularly targeted infrastructure such as power lines, railway signals and manhole covers. Metal theft has also included parts of local war memorials.
- 1.2 This report will provide an update to Licensing Committee of the key provisions of the Scrap Metal Dealers Act 2013 (the Act) following on from the previous report presented on the 17 September 2013. This report sets out the implementation arrangements and the role that Committee members will play in its decision-making, see **Appendix I**.
- 1.3 This Act brings together the current registration schemes for Scrap Metal Dealers and Motor Salvage Operators and replaces them with a single licensing regime. No person may carry on a business as a Scrap Metal Dealer unless licensed under the Act.
- 1.4 The Act has introduced the principle of cashless transactions to enable transparency and traceability within the scrap metal trade.

### 2.0 Fees

- 2.1 Since the initial report scrap metal fees have been set by Executive Decision and are as follows;

#### Scrap Metal Dealers Fees 2013/2014

##### New Applications

Site Licence	£305
Collectors	£228

##### Renewals

Site Licence	£251
Collectors	£182

##### Variation

Site to Collector	£48
Collector to Site	£110
Change of Site Manager	£48
Change of Details	£35
Duplicate/Replacement of licence	£10.50

A licence will last for three years from the date of issue.

- 2.2 The Act allows every local authority to set its own fees for the administration of the licensing regime based on full cost recovery and having regard to the guidance issued by the Home Office and Local Government Association.

The following are examples of activities which have been included in the calculation;

- Setting up the new licensing regime.

- Providing advice and guidance to applicants on what will be a new process.
- Processing and granting a licence such as considering applications and assessing the suitability of the applicant.
- Consulting other agencies and bodies when considering if an applicant is a suitable person.
- Costs of issuing the licence.
- Providing information for inclusion in the national register of dealers.
- Site inspections and ensuring compliance with the law.
- Working with partners to ensure compliance.
- Staff and resources associated with supporting the service.
- Support provided by legal services and democratic services
- On-costs associated with building costs, heating and lighting.

Fees cannot be used to cover the following activities;

- Enforcement action against unlicensed dealers.
- Costs associated with appeals and the costs of defending an appeal.
- Costs associated with defending a Judicial Review regarding a failure to have regard to Home Office fee guidance.

Refunds for unsuccessful applications will be issued. The proportion of the fee retained will reflect the costs associated with the application.

- 2.3 As this is a new system the fees have been based on best estimates of the work and time required, including set up costs. In accordance with best practice the fees will be reviewed to ensure that income balances costs over a 3 year period.

### **3.0 Types of Licence**

3.1 There are two types of licence

- (i) A Site Licence with authorises an operator to carry on a business as a scrap metal dealer
- (ii) A Collector's Licence allows the collector to carry on a business as a mobile collector throughout Plymouth.

3.2 A dealer can only hold one type of licence in any one local authority area.

3.3 It should be noted the wording of the Act and subsequent statutory guidance is ambiguous as to whether the holder of a site licence in Plymouth can 'collect' scrap metal within this administrative district. It appears that the general intention of the Act was to enable a site licence holder to collect by arrangement or appointment, but not collect door-to-door as an itinerant collector.

### **4.0 Suitability Test**

4.1 The Act states that the Council must not issue a licence unless it is satisfied the applicant is a suitable person to carry on a business as a scrap metal dealer, this is known as the 'suitability test'. The Council can have regard to any information it considers relevant that may call into question the applicant's suitability to hold a licence.



For a company or partnership, any person whether a partner, company secretary, any director or site manager may be considered under this test.

4.2 Officers and Members should consider the following information as part of this suitability test;

Whether the applicant or any site manager has been convicted of any relevant offence

The applicant or any relevant persons as described above are required to submit a Basic Disclosure Certificate that declares any unspent convictions and cautions, as part of their application. The Act prescribes that only relevant offences may be considered when determining an application. For the purposes of the Act a relevant offence includes convictions connected to the collection or disposal of waste materials, including 'attempting or conspiring.....inciting or aiding, abetting, counselling or procuring the commission' of any offence falling within the schedule or 'encouraging or assisting crime' in connection with the proceeds of crime. The full list of relevant convictions is attached marked **Appendix 2**.

A conviction for a relevant offence will not automatically lead to refusal however as part of the investigation officers would consult with the police on factors such as the severity of fine, pattern of offending, frequency and time gap since the last offence would be considered.

Officers have agreed a protocol to consult the local police on all applications.

If a person has been convicted of a relevant offence or is convicted of a relevant offence once a licence has been issued, the Council may wish to consider imposing one or both of the following conditions. This would be a matter for Licensing Sub-Committee to consider.

- (i) That the dealer must not receive scrap metal except between 9am and 5pm on any day;
- (ii) That all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.

Whether the applicant or any site manager has been the subject of any relevant enforcement action

Relevant enforcement action would include ongoing investigations where the applicant or relevant person has been charged and proceedings in respect to that offence have not been concluded. Only once the action is completed can it be considered as to whether it impacts on that person's suitability to hold a licence.

The Environment Agency (EA) has prescribed is national consultation protocol to establish whether any relevant enforcement action is being undertaken. This involves checking the EA public register in the first instance in order to establish whether the applicant has the appropriate waste carriers permit in place. Where no permit is in place or where the Council has additional concerns, enquiries can be made using the established email contact point.

Any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal)

To our knowledge no applicant has previously been refused the issue of a licence made under the Scrap Metal Dealers Act 1964 in Plymouth. Appropriate routine checks will be made with neighbouring Council's or the home authority in which the applicant lives and any information submitted will be considered as part of the suitability test.

Any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal)

Licensed operators will be subject of routine inspection or complaint investigation. As part of these checks or where officers have concerns officers will contact the Police and Environment Agency as part of the investigation.

Any previous revocation of a scrap metal licence (and the reasons for the revocation)

The Council would investigate any information received during the application process and take the appropriate action.

Whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this Act are complied with

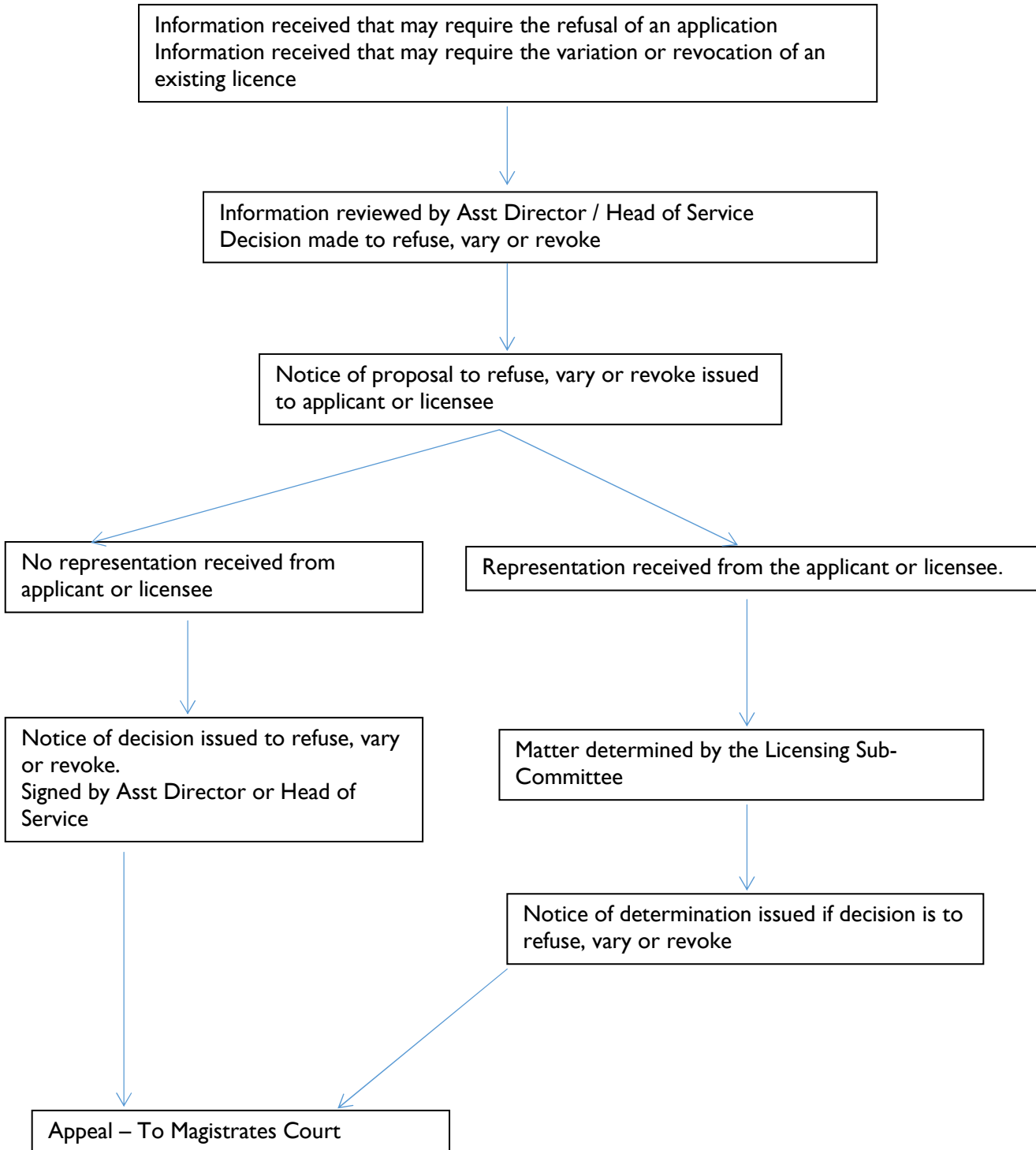
During routine inspections or complaint investigations officers will assess the adequacy of procedures that ensures traceability of scrap metal transactions. The licensee has to be able to verify the identity of the supplier, be able to demonstrate cashless transactions and record the type and quantity of the materials bought.

The Act states that a council can consider any information it considers relevant in determining the suitability of an applicants. The applicant's behaviour in the operation of their business may be relevant such as they have been operating without planning permission or that they are not registered the Information Commissioners Office under the Data Protection Act. The lack of planning permission in itself may not be sufficient to not grant a licence but it may be considered together with a range of other behaviours that suggest that the applicant is not suitable to hold a licence.

- 4.3 Having considered all the relevant information the Assistant Director and Head of Service responsible for the licensing function will grant, vary or refuse an application. In cases where the Council are not satisfied that the person is a suitable person, the applicant will receive a 'notice of proposal' setting out reasons of its intention to refuse the issue of a licence. The applicant will be given a period of not less than 14 days to make a representation, which can be in writing or notice that they wish to do so in person. If no formal representation is received the application will be refused
- 4.4 Members resolved on the 17 September 2013 that where representations are submitted (whether in writing or the applicant wishes to make them orally), these would be considered by Licensing Sub-Committee. Where Members resolve to uphold the officer's decision to refuse to grant then the applicant has a right of appeal in the Magistrates Court.
- 4.5 The suitability test requirements also apply to existing licence holders, so where information is received that calls into question that person's right to remain a licence holder or whether the licence should be revoked this will be considered in the same way as for a new applicant.
- 5.0 Conclusion**
- 5.1 The Council is expected to be in the position to issue licences by the 1 December 2013 however delays with the issue of disclosures certificates by the Disclosure Scotland mean that this target date may not be achieved. We are currently putting in place measures that will allow us to issues licences as soon as we are in possession of all the relevant information.

- 5.2 Following the completion of the initial application process, officers intend to follow up premises or collectors who made initial enquiries to ascertain whether or not a licence is required.
- 5.3 It was never attended that businesses such as plumbers, electricians, house clearance and skip hire companies, where scrap metal is generated or collected incidental to the main activity of the business, should be caught by the provisions of this Act. Whether or not a licence is required will be a question of degree depending on the amount a scrap metal generated and the working practices of that business. Officers are ensuring that all dealers have every opportunity to apply for a licence prior to the introduction of the enforcement provisions on the 1 December 2013.
- 5.4 A further update will be provided to Members on the day of the total number of applications received and their current status.

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



**Schedule of Relevant Convictions set by the Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013****Relevant offences**

- Control of Pollution (Amendment) Act 1989: Sections 1, 5 or 7
- Customs and Excise Management Act 1979: Section 170 & 170B (where the specific offence concerned relates to scrap metal)
- Environment Act 1995: Section 110
- Environmental Permitting (England and Wales) Regulations 2007: Regulation 38
- Environmental Permitting (England and Wales) Regulations 2010: Regulation 38
- Environmental Protection Act 1990: Sections 33, 34 or 34B
- Food and Environment Protection Act 1985: Section 9
- Fraud Act 2006: Section 1 (where the specific offence concerned relates to scrap metal or is an environment-related offence)
- Hazardous Waste (England and Wales) Regulations 2005
- Hazardous Waste (Wales) Regulations 2005
- Landfill (England and Wales) Regulations 2002: Regulation 17(1)
- Legal Aid, Sentencing and Punishment of Offenders Act 2012: Section 146
- Pollution Prevention and Control (England and Wales) Regulations 2000
- Proceeds of Crime Act 2002: Sections 327, 328, 330, 331 & 332
- Producer Responsibility (Packaging Waste) Regulations 2007
- Scrap Metal Dealers Act 1964
- Scrap Metal Dealers Act 2013
- Theft Act 1968: Sections 1, 8, 9, 10, 11, 17, 18, 22 or 25 (where the specific offence concerned relates to scrap metal or is an environment-related offence)
- Transfrontier Shipment of Waste Regulations 1994
- Transfrontier Shipment of Waste Regulations 2007
- Vehicles (Crime) Act 2001: Part 1
- Waste (Electrical and Electronic Equipment) Regulations 2006
- Waste (England and Wales) Regulations 2011: Regulation 42
- Water Resources Act 1991: Section 85, 202 or 206

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**PLYMOUTH CITY COUNCIL**

**Subject:** Control of Public Performances of Hypnotism  
**Committee:** Licensing Committee  
**Date:** 10 December 2013  
**Cabinet Member:** Councillor Brian Vincent (Environment)  
**CMT Member:** Anthony Payne (Director of Place)  
**Author:** David Hughes, Senior EHO (Licensing)  
**Contact details** Tel: 01752 304158  
E-mail: david.hughes@plymouth.gov.uk  
**Ref:**  
**Key Decision:** No  
**Part:** I

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**Purpose of the report:**

There is a duty on licensing authorities to control public performances of hypnotism, mesmerism or any similar act or process which produces or is intended to produce in any person any form of induced sleep or trance in which the susceptibility of the mind of that person to suggestion or direction is increased or intended to be increased.

The Council has not adopted standard conditions to be attached to licences to control public performances of hypnotism defined by the Hypnotism Act 1952, since the introduction of the Licensing Act 2003.

The purpose of this report is to consider procedures for the issue of consents for hypnotism to be performed and to adopt conditions to ensure the safety of the public at performances.

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

Growing:

The balance of regulation against the need to protect residents is part of creating a consistent regulatory environment in which legitimate businesses can operate.

Caring:

Appropriate controls will allow decision-makers to consider the impact on safety and wellbeing of contributors and its impact on the local community.

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

The Act does not prescribe a fee and as such no fee is payable. Applications for hypnotism are extremely rare and the costs of processing applications will be met from existing revenue budgets.

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

Section 17 of the Crime and Disorder Act 1998 puts a statutory duty on every Local Authority to exercise its various functions with due regard to the need to do all that it reasonably can do to prevent crime and disorder in its area.

The adoption of the standard conditions and the assessment of applications are intended to protect those persons attending and being part of any hypnotism demonstration. No-one under 18 years old may take part.

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**Equality and Diversity**

Has an Equality Impact Assessment been undertaken? No

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**Recommendations & Reasons for recommended action:**

That Members consider this report and to:

Adopt the model conditions contained in Home Office Circular Guidance 39/1996 (Appendix I) which are to be applied to any future authorisation.

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**Alternative options considered and rejected:**

Not to adopt standard conditions - The standard conditions provides applicants and responsible authorities with a common framework within which to conduct any performance of hypnotism in a safety and equitable manner. The model standard conditions provide current best practice. Standard conditions can be amended or added to as each application is taken on a case by case basis.

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**Published work / information:**

None.

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**Background papers:**

[Hypnotism Act 1952](#)  
[Home Office Circular Guidance 39/1996](#)

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**Sign off:**

Fin	CF/PlaceFESDI 314009.18.11.13	Leg	18997/ag/2 8.11.13	HR		Corp Prop		IT		Strat Proc	
Originating SMT Member: Anthony Payne											
Have you consulted the Cabinet Member(s) named on the report? Yes											



## **1.0 Introduction**

- 1.1 A performance of hypnotism is not a licensable activity under the Licensing Act 2003. Local authorities can only give permission for a display or performance of hypnotism under the Hypnotism Act 1952 (as amended). Any embedded conditions relating to hypnotism from the previous licensing regimes are no longer valid as hypnotism is not a licensable activity under the Licensing Act 2003.
- 1.2 The Hypnotism Act 1952 (The Act) states that no person shall give an exhibition, demonstration or performance of hypnotism on any living person at or in connection with an entertainment to which the public are admitted, whether on payment or otherwise, at any place unless the controlling authority have authorised that exhibition, demonstration or performance.

## **2.0 Effect of the Hypnotism Act 1952**

- 2.1 The Hypnotism Act 1952 makes it a criminal offence to conduct hypnotism for public entertainment unless consent has been given by the Licensing Authority.
- 2.2 Hypnotism has been defined in Section 6 of the Act as follows  
'hypnotism' includes hypnotism, mesmerism and any similar act or process which produces or is intended to produce in any person any form of induced sleep or trance in which the susceptibility of the mind of that person to suggestion or direction is increased or intended to be increased but does not include hypnotism, mesmerism or any such similar act or process which is self-induced.
- 2.3 The Act imposes a restriction on hypnotising anyone under 18.
- 2.4 Legitimate scientific or medical hypnotism are exempt from the need for licensing provided that it is not undertaken for public entertainment.

## **3.0 Consideration of Applications**

- 3.1 The Home Office Circular Guidance 39/1996 outlines the form that any application should take and requests the following;
- Applications shall be in writing and signed by the applicant or his agent
  - Details of any previous offences under the Act, refusals or withdraw of consents
  - Applications shall normally be made not less than 28 days in advance of the performance,
  - The Licensing Authority will respond within 7 to 14 days,
  - The applicant must forward a copy of the application to the chief officer of police,
  - The Council may forward a copy of the application to the local fire authority if it is considered necessary.
- 3.2 The Constitution and Scheme of Delegation allow officers to grant applications where no objections are received, subject to the standard conditions or any additional conditions agreed with the applicant.

## **4.0 Conclusions**

- 4.1 It is open for the Licensing Authority to impose such conditions as it may see fit on any hypnotism consent. The Guidance which was released prior to the changes under the Licensing Act 2003 remains current.

It is proposed that the model conditions which are attached marked as **Appendix I**, strike a balance between legitimate concerns for public safety and the ability for hypnotists to operate are adopted.

- 4.2 The proposed conditions include a requirement to admit authorised officers to allow for inspection as the Act only gives a right of entry to police officers. This additional requirement is considered proportionate in regulating any public event of hypnotism and failure to admit an authorised officer would be a breach of condition and therefore a criminal offence.
- 4.3 The Licensing Authority reserve the right to consult with any organisation or public body on any application for consent i.e. Police, Fire Authority and local community representatives.

## STANDARD CONDITIONS TO BE ATTACHED TO LICENCES FOR THE PERFORMANCE OF STAGE HYPNOTISM

### Consents

1. Any exhibition, demonstration or performance (hereafter referred to as a "performance") of hypnotism (as defined in the Hypnotism Act 1952) on any person requires the express written consent of the licensing authority and must comply with any attached conditions. The authority may consent under the provisions of the Hypnotism Act 1952.

### Applications

2. An application for consent under condition 1 shall be in writing and signed by the applicant or his agent and shall normally be made not less than 28 days in advance of the performance concerned. This period may be reduced in the case of a hypnotist who has performed at the same venue within the last three years without any problems occurring. The authority will normally respond within 7-14 days; less where the hypnotist has previously performed at the same venue. The applicant must at the same time forward a copy of the application to the chief officer of police; and the authority may also copy it to the local fire authority if it considers this necessary.
3. The application shall contain the following:
  - (a) the name (both real and stage, if different) and address of the person who will give the performance (hereafter referred to as the "hypnotist"), along with details of their last three performances (where and when); and
  - (b) a statement as to whether, and if so giving full details thereof, the hypnotist has been previously refused, or had withdrawn, a consent by any licensing authority or been convicted of an offence under the Hypnotism Act 1952 or of an offence involving the breach of a condition regulating or prohibiting the giving of a performance of hypnotism on any person at a place licensed for public entertainment. (Refusal of consent by another authority does not necessarily indicate that the particular hypnotist is unacceptable and will not of itself prejudice the application.)

### Conditions

4. The following conditions shall apply to any consent given:

#### Publicity

- (a) No poster, advertisement or programme for the performance which is likely to cause public offence shall be displayed, sold or supplied, by or on behalf of the licensee either at the premises or elsewhere;
- (b) Every poster, advertisement or programme for the performance which is displayed, sold or supplied shall include, clearly and legibly, the following statement:

‘Volunteers, who must be aged 18 or over can refuse at any point to continue taking part in the performance’

#### Insurance

- (c) The performance shall be covered by public liability insurance for the sum of £5M. The hypnotist must provide evidence of this to the local authority if requested; and it must be available for inspection at the performance;

Physical arrangements

- (d) The means of access between the auditorium and the stage for participants shall be properly lit and free from obstruction;
- (e) A continuous white or yellow line shall be provided on the floor of any raised stage at a safe distance from the edge. This line shall run parallel with the edge of the stage for its whole width. The hypnotist shall inform all subjects that they must not cross the line while under hypnosis, unless specifically told to do so as a part of the performance;

Treatment of audience and subjects

- (f) Before starting the performance the hypnotist shall make a statement to the audience, in a serious manner, identifying those groups of people who should not volunteer to participate in it; explaining what volunteers might be asked to perform; informing the audience of the possible risks from embarrassment or anxiety; and emphasising that subjects may cease to participate at any time they wish. The following is a suggested statement, which might be amended as necessary to suit individual styles so long as the overall message remains the same:

"I shall be looking for volunteers aged over 18 who are willing to be hypnotised and participate in the show. Anyone who comes forward should be prepared to take part in a range of entertaining hypnotic suggestions but can be assured that they will not be asked to do anything which is indecent, offensive or harmful. Volunteers need to be in normal physical and mental health and I must ask that no-one volunteers if they have a history of mental illness, are under the influence of alcohol or other drugs or are pregnant."

- (g) No form of coercion shall be used to persuade members of the audience to participate in the performance. In particular, hypnotists shall not use selection techniques which seek to identify and coerce onto the stage the most suggestible members of the audience without their prior knowledge of what is intended. Any use of such selection techniques (e.g. asking members of the audience to clasp their hands together and asking those who cannot free them again to come onto the stage) should only be used when the audience is fully aware of what is intended and that participation is entirely voluntary at every stage;
- (h) If volunteers are to remain hypnotised during an interval in the performance, a reasonable number of attendants as agreed with the licensing authority shall be in attendance throughout to ensure their safety;

Prohibited actions

- (i) The performance shall be so conducted as not to be likely to cause offence to any person in the audience or any hypnotised subject;
- (j) The performance shall be so conducted as not to be likely to cause harm, anxiety or distress to any person in the audience or any hypnotised subject. In particular, the performance shall not include:-
  - (i) Any suggestion involving the age regression of a subject (i.e. asking the subject to revert to an earlier age in their life; this does not prohibit the hypnotist from asking subjects to act as if they were a child etc.);
  - (ii) Any suggestion that the subject has lost something (e.g. a body part) which, if it really occurred, could cause considerable distress;
  - (iii) Any demonstration in which the subject is suspended between supports (so-called "catalepsy");
  - (iv) The consumption of any harmful or noxious substance;

- (v) Any demonstration of the power of hypnosis to block pain (e.g., pushing a needle through the skin);
- (k) The performance shall not include giving hypnotherapy or any other form of treatment;

Completion

- (l) All hypnotised subjects shall remain in the presence of the hypnotist and in the room where the performance takes place until all hypnotic suggestions have been removed;
- (m) All hypnotic or post-hypnotic suggestions shall be completely removed from the minds of the subjects and the audience before the performance ends. All hypnotised subjects shall have the suggestions removed both individually and collectively and the hypnotist shall confirm with each of them that they feel well and relaxed (the restriction on post-hypnotic suggestions does not prevent the hypnotist telling subjects that they will feel well and relaxed after the suggestions are removed);
- (n) The hypnotist shall remain available for at least 30 minutes after the show to help deal with any problems which might arise. (Such help might take the form of reassurance in the event of headaches or giddiness but this condition does not imply that the hypnotist is an appropriate person to treat anyone who is otherwise unwell.)

Authorised Access

- (o) Where...
  - (i) A constable; or
  - (ii) An authorised officer of the licensing authority; or
  - (iii) An authorised officer of the fire authority

...has reason to believe that a performance is being, or is about to be, given he may enter the venue with a view to seeing whether the conditions on which approval for the performance was granted are being complied with.

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