

# West Devon Planning & Licensing Committee



West Devon  
Borough  
Council

<b>Title:</b>	<b>Agenda</b>								
<b>Date:</b>	<b>Tuesday, 15th November, 2016</b>								
<b>Time:</b>	<b>10.00 am</b>								
<b>Venue:</b>	<b>Chamber - Kilworthy Park</b>								
<b>Full Members:</b>	<p style="text-align: center;"><b>Chairman</b> Cllr Sanders <b>Vice Chairman</b> Cllr Parker</p> <p><i>Members:</i></p> <table style="margin-left: auto; margin-right: auto;"> <tr> <td>Cllr Baldwin</td> <td>Cllr Mott</td> </tr> <tr> <td>Cllr Benson</td> <td>Cllr Moyse</td> </tr> <tr> <td>Cllr Cann OBE</td> <td>Cllr Pearce</td> </tr> <tr> <td>Cllr Hockridge</td> <td>Cllr Roberts</td> </tr> </table>	Cllr Baldwin	Cllr Mott	Cllr Benson	Cllr Moyse	Cllr Cann OBE	Cllr Pearce	Cllr Hockridge	Cllr Roberts
Cllr Baldwin	Cllr Mott								
Cllr Benson	Cllr Moyse								
Cllr Cann OBE	Cllr Pearce								
Cllr Hockridge	Cllr Roberts								
<b>Interests – Declaration and Restriction on Participation:</b>	Members are reminded of their responsibility to declare any disclosable pecuniary interest not entered in the Authority's register or local non pecuniary interest which they have in any item of business on the agenda (subject to the exception for sensitive information) and to leave the meeting prior to discussion and voting on an item in which they have a disclosable pecuniary interest.								
<b>Committee administrator:</b>	Member.Services@swdevon.gov.uk								

**1. Apologies for absence**

**2. Declarations of Interest**

Members are invited to declare any personal or disclosable pecuniary interests, including the nature and extent of such interests they may have in any items to be considered at this meeting.

*[If Councillors have any questions relating to predetermination, bias or interests in items on this Agenda, then please contact the Monitoring Officer in advance of the meeting]*

**3. Items Requiring Urgent Attention**

To consider those items which, in the opinion of the Chairman, should be considered by the Meeting as matters of urgency (if any).

**4. Confirmation of Minutes**

**1 - 4**

Meeting held on 18 October 2016

**5. Planning Applications & Enforcement Reports**

**(a) 2173/16/FUL**

**5 - 12**

Bay Tree House, The Crescent, Crapstone, PL20 7PS

Proposed two storey detached dwelling, demolition of existing garage, alterations to existing utility and garden room, new detached double garage and reinstatement of original vehicle entrance

For Letters of Representation and further supplementary information select the following link:

<http://www.westdevon.gov.uk/planningdetails?RefType=APPPlanCase&KeyNo=0&KeyText=162226>

**(b) 3001/16/VAR**

**13 - 18**

Land Adjacent To 25, 26, 27, 28 & 29 Hillside Drive, Okehampton

Variation of condition number 2 of planning consent 01324/2014 to allow revisions to approved drawings.

For Letters of Representation and further supplementary information select the following link:

<http://www.westdevon.gov.uk/planningdetails?RefType=APPPlanCase&KeyNo=0&KeyText=163054>

**(c) 2544/16/FUL** **19 - 26**

Land to Rear Of 65 Exeter Road, Okehampton, EX20 1QF

Alternative proposal for construction of dwelling

For Letters of Representation and further supplementary information select the following link:

<http://www.westdevon.gov.uk/planningdetails?RefType=APPPlanCase&KeyNo=0&KeyText=162597>

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|-----------|--|----------------|
| <b>6.</b> | <b>Planning Appeals Update</b>   | <b>27 - 28</b> |
| <b>7.</b> | <b>Planning Performance Indicators</b>   | <b>29 - 34</b> |
| <b>8.</b> | <b>To consider changes to the Constitution of the Council in relation to the delegation of powers for determination of certain licensing functions</b> | <b>35 - 44</b> |
| <b>9.</b> | <b>To consider approval of policy in relation to the licensing of Taxi Drivers</b>   | <b>45 - 94</b> |

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# Agenda Item 4

At a Meeting of the **PLANNING & LICENSING COMMITTEE** held at the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **18th** day of **OCTOBER 2016** at **10.00am**

**Present:**

Cllr P R Sanders – Chairman	
Cllr G Parker – Vice-Chairman	
Cllr R E Baldwin	Cllr M J R Benson
Cllr W G Cann OBE	Cllr L J G Hockridge
Cllr C Mott	Cllr D E Moyse
Cllr T G Pearce	Cllr A Roberts

COP Lead Development Management (PW)  
Solicitor (SN)  
Senior Specialist Environmental Health (JK)  
Specialist Licensing (NW)  
Senior Case Manager – Strategy and  
Commissioning (KT)

**In attendance:** Cllrs D Cloke, A F Leech and J Yelland

**\*P&L 25 URGENT BUSINESS**

The Chairman asked that an explanation be given as to the reason for the deferral of application 00938/2015. The COP Lead Development Management advised that, since the agenda had been published, concerns had arisen relating to the Public Right of Way that dissected the application site and until further information was forthcoming, Members would not be in a position to make a decision on the application.

**\*P&L 26 DECLARATION OF INTEREST**

Members were invited to declare any interests in the items of business to be considered and the following were made:

Cllr C Mott declared a personal interest in Agenda Item 9 (Minute \*P&L 32 below refers) by virtue of knowing the applicant. She remained in the meeting and took part in the debate but abstained from the vote.

Cllr G Parker also declared a personal interest in Agenda Item 9 (Minute \*P&L 32 below refers) by virtue of knowing one of the referees. He remained in the meeting and took part in the debate and vote.

**\*P&L 27 CONFIRMATION OF MINUTES**

The Minutes of the Planning and Licensing Committee Meeting held on 20<sup>th</sup> September 2016 were confirmed and signed by the Chairman as a correct record.

**\*P&L 28 PLANNING APPEALS UPDATE**

The Committee received and noted the updated list of Planning Appeals including enforcement appeals.

**\*P&L 29 PLANNING PERFORMANCE INDICATORS**

The COP Lead Development Management presented the Performance Indicators and outlined the key information for Members consideration.

The Chairman confirmed that this information would be included on each Committee meeting agenda in the future.

**\*P&L 30 EXCLUSION OF PUBLIC AND PRESS**

**RESOLVED**

That in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting during consideration of the following items of business as the likely disclosure of exempt information as defined in paragraph 1 of Schedule 12A to the Act is involved.

**\*P&L 31 DETERMINATION OF WHETHER TO GRANT A JOINT HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER LICENCE, IN EFFECT TO DETERMINE WHETHER THE APPLICANT CAN BE DEEMED A FIT AND PROPER PERSON IN LIGHT OF PREVIOUS CRIMINAL CONVICTIONS AND OTHER RELEVANT MOTORING OFFENCES.**

Consideration was given to an exempt report which sought to determine whether an applicant was a 'fit and proper' person to hold a Hackney Carriage Driver Licence with this Authority in accordance with section 59 of the Local Government (Miscellaneous Provisions) Act 1976.

The Licensing Specialist introduced the report. The Applicant and a representative were in attendance at the meeting and were given the opportunity to address the Committee. Some Members asked questions of the Applicant, his representative and the Licensing Specialist.

(At this point, the Chairman adjourned the meeting to enable the Committee to make a decision. The Solicitor remained in the meeting in an advisory capacity).

**The Decision**

The Chairman then proceeded to announce the decision as follows:

Members of the Licensing Committee have considered very carefully your application for a Hackney Carriage and Private Hire Driver Licence.

- We have read the Licensing Officer's report, which you have had sight of.
- We have read the details on the Disclosure and Barring certificate, and DVLA record taking into consideration the nature of the offences and when these were committed.
- We have listened very carefully to what you have told today and read the references provided.

- The main priority of the licensing regime is to ensure public safety. As this is a civil matter, the evidence of proof is based on the balance of probabilities, the onus being on yourself to satisfy the Authority that you are a 'fit and proper person' to continue to drive a Hackney Carriage or Private Hire Vehicle.

The Committee has decided to refuse the renewal of your Joint Hackney Carriage and Private Hire Driver Licence.

**\*P&L 32**

**DETERMINATION OF WHETHER TO GRANT A JOINT HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER LICENCE, IN EFFECT TO DETERMINE WHETHER THE APPLICANT CAN BE DEEMED A FIT AND PROPER PERSON IN LIGHT OF PREVIOUS CRIMINAL CONVICTIONS AND OTHER RELEVANT MOTORING OFFENCES.**

Consideration was given to an exempt report which sought to determine whether an applicant was a 'fit and proper' person to hold a Hackney Carriage Driver Licence with this Authority in accordance with section 59 of the Local Government (Miscellaneous Provisions) Act 1976.

The Licensing Specialist introduced the report. The Applicant was in attendance at the meeting and was given the opportunity to address the Committee. The Applicant provided a number of references for consideration by the Committee. Some Members asked questions of the Applicant and the Licensing Specialist.

(At this point, the Chairman adjourned the meeting to enable the Committee to make a decision. The Solicitor remained in the meeting in an advisory capacity).

**The Decision**

The Chairman then proceeded to announce the decision as follows:

Members of the Licensing Committee have considered very carefully your application for a Hackney Carriage and Private Hire Driver Licence.

- We have read the Licensing Officer's report, which you have had sight of.
- We have read the details on the Disclosure and Barring certificate, and DVLA record taking into consideration the nature of the offences and when these were committed.
- We have listened very carefully to what you have told today and read the references provided.
- The main priority of the licensing regime is to ensure public safety. As this is a civil matter, the evidence of proof is based on the balance of probabilities, the onus being on yourself to satisfy the Authority that you are a 'fit and proper person' to continue to drive a Hackney Carriage or Private Hire Vehicle.

The Committee has decided to refuse the renewal of your Joint Hackney Carriage and Private Hire Driver Licence.

(The Meeting terminated at 12.55 pm)

Dated this

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**Chairman**



## PLANNING APPLICATION REPORT

**Case Officer:** Tom French

**Parish:** Buckland Monachorum

**Ward:** Buckland Monachorum

**Application No:** 2173/16/FUL

**Agent/Applicant:**

Mr Paul Farnham  
1 Yelverton Terrace  
Meavy Lane  
Yelverton  
PL20 6AF

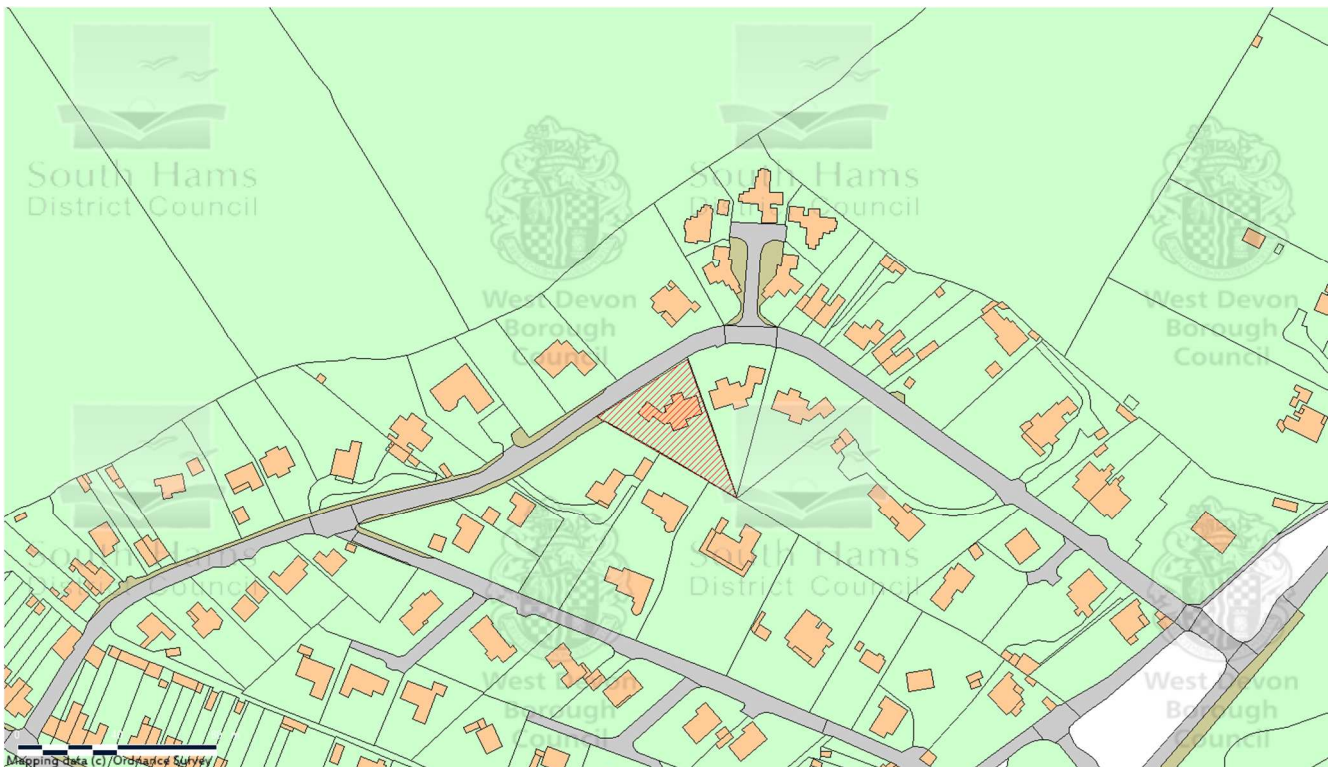
**Applicant:**

Dr & Mrs Roger and Mary Watkins  
Bay Tree House  
Crapstone  
PL20 7PS

**Site Address:** Bay Tree House, The Crescent, Crapstone, PL20 7PS

**Development:** Proposed two storey detached dwelling, demolition of existing garage, alterations to existing utility and garden room, new detached double garage and reinstatement of original vehicle entrance

**Reason item is being put before Committee:** Referred by Cllr Cheadle, concerns regarding an over development of the plot and impact on character of the area.



**Recommendation:** Conditional approval

**Conditions:** (summary of conditions, see end of report for full list)

1. Standard time limit
2. Build in accordance with plans
3. Permitted development rights removed for extensions, additional windows roof lights or dormers, outbuildings, fences and means of enclosure.
4. Samples of materials for the dwelling and boundary treatment to be submitted
5. Drainage details to be submitted/approved
6. Parking to be implemented prior to occupation and retained thereafter for both dwellings
7. Access to Bay Tree House to be re-instated prior to development commencing.
8. Environmental Health condition relating to unsuspected contaminated land
9. Obscurely glazed windows on first floor side windows prior to occupation and retained as such thereafter.
10. Tree protection barriers around protected trees for duration of the works

**Key issues for consideration:**

The main issues for consideration relate to whether the site can accommodate the dwelling proposed and what the subsequent impact upon amenity of the surrounding development would be. Highway safety and parking.

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**Site Description:**

The site contains a two storey detached dwelling sited on a large plot, to the west of the house is an attached double garage and utility room, vehicular access is from the Crescent, the original vehicular access constructed with the dwelling has been blocked, it is proposed that the new dwelling would utilise the existing vehicular access and the new dwelling would use the re-opened original vehicular access.

The Crescent has a mixture of dwellings in terms of age, style and siting. Predominantly, there are detached dwellings set on generous plot, however there are pairs of semi-detached dwellings

**The Proposal:**

The construction of a detached dwelling following the demolition of the double garage and utility room. The external materials used in the new dwelling are lime stucco rendered walls with natural slate roof. The roof pitch is set at a low 30 degrees which matches the existing pitch of Bay Tree House.

**Consultations:**

- County Highways Authority: Standing advice applies
- Environmental Health Section: No objection subject to unsuspected contamination condition
- Buckland Monachorum Parish Council: The proposed development is considered disproportionate both to the site proposed, and the surrounding properties within the Crescent, including the existing property, which would then occupy the complete width of its grounds.

**Representations:** 2 Objection letters received, planning points summarised below

- Loss of privacy to the Coach House and The Glade
- Highway safety concerns over the proposed re-instatement of the original access
- Over development and out of keeping

## Relevant Planning History

### ANALYSIS

Principle of Development/Sustainability:

The application site is within the settlement boundary of Crapstone and therefore the principle of a dwelling in this location is accepted providing the proposal complies with the following policy H28:

*Within defined settlement limits shown on the Proposals Maps small scale residential development will be permitted that is consistent with other policies in the Plan, and where:*

- (i) The scale, design, proportions, materials, character and size of plot of the development is compatible with the surrounding sites and the settlement;*
- (ii) The development would respect the form of the settlement and would not introduce or reinforce undesirable patterns of development;*
- (iii) The development can be safely and adequately accessed;*
- (iv) The amenities of adjacent residents are not adversely affected;*
- (v) The site is not an important open area within the settlement of historic or townscape importance nor is it of nature conservation value;*
- (vi) The development would not represent a visual intrusion of buildings into the landscape beyond the curtilage of existing adjacent development;*
- (vii) The development would provide a satisfactory standard of residential amenity; and*
- (viii) It would not prejudice the development potential of an adjacent site.*

This is the key policy within which the application is assessed. The Parish Council has objected to the scheme raising concerns that the proposal represents an over development of the plot. However, given the policy above, it is considered that infill plots can be accommodated providing the individual plot and proposal is acceptable. In this instance, the plot is generous with a very wide frontage given its triangular shape, there is ample room for the accommodation of the additional dwelling and both dwellings will still have off-street parking and private amenity space. Bay Tree House will occupy most of the width of its reduced plot size, however this is not out of keeping with the semi-detached dwelling located further along the crescent, which occupy most of the width of the respective plots they occupy.

There is no adopted local policy which prevents the development of a garden and Policy H39 does advise:

*Within settlement limits proposals for the redevelopment of large single residential plots will be permitted where the proposed development is compatible with the surrounding residential area in terms of scale, character and materials*

The proposal is therefore assessed on the basis of policy H39 and H28.

Design:

The application proposes the erection of a two storey dwelling. The design of the dwelling is generally consistent with the character and materials within the area. The dwelling is proposed to be rendered with a slate roof. There is a porch proposed on the north elevation which offers outside space under cover for entrance to the dwelling. Overall the materials are considered consistent with the area.

The size of the plot is small when compared with that of Bay Tree House and some of the dwellings within the locality, however there are smaller plot sizes within the local area and it is considered that the proposed dwelling is not an over development of the plot. Comments been made regarding the size of the dwelling in relation to the size of the plot and that this is not consistent with the pattern of development in the area. The vicinity has a mixture of dwellings and the design is not considered out of keeping. The amount of associated amenity space is smaller than that of some of the adjacent dwellings; however, personal preferences may mean that someone would prefer a small garden which requires minimum maintenance. It is considered that the amount of outdoor amenity space is sufficient.

#### Landscape:

The site is currently well screened with mature trees and shrubs on the existing boundaries of Bay Tree House, the trees which run along the border of Bay Tree House and Spectrum House are covered by a Tree Protection Order. Due to the existence of mature landscaping already in place, it is considered that it is not necessary for a further landscaping condition.

#### Neighbour Amenity:

There have been 2 letters of objection relating to concerns with loss of amenity. The key concern with this application relates to the impact of the proposed dwelling upon amenity of the Coach House and Spectrum House, both properties border the southwest boundary of Bay Tree House and will border the proposed dwelling either wholly in the case of the Coach house or partially in the case of Spectrum House. Policy H28 states that the dwelling can only be granted providing that the amenities of adjacent residents are not adversely affected.

The Coach House is a modest two storey dwelling, adjacent to Bay Tree House. It has 2no windows on the northeast elevation, once of which serves a bathroom and the other a bedroom. The existing hedge on the boundary between The Coach House and Bay Tree House precludes any significant degree of overlooking from the Coach House into the garden of Bay Tree House, the proposed dwelling is to be sited to the north of the Coach House, the rear window will be an on oblique angle and will not afford direct views into the windows on the coach house. The angle of the Coach House and the proposed dwelling results in little change to the outlook from these windows, which look towards the main section of Bay Tree House. The Coach House has its amenity area to the front of the property, the proposed dwelling is to be sited directly adjacent to west of Bay Tree House, there will be a modest loss of morning sunlight into the front garden area of The Coach House, however it is not considered to be sufficiently harmful to warrant refusal of the application.

Spectrum House (shown as Attwood house on the OS plans) is sited to the south east of the Coach House, its rear boundary adjoins the boundary of Bay Tree house, due to the proposed dwelling being sited to the north, it is considered that there will be no loss of light to Spectrum House resulting from the development. A row of mature trees runs along the boundary of Bay Tree house and Spectrum House, which offers significant screening between the dwelling and the proposed dwelling, these tress are protected by a TPO and therefore will remain in situ. The rear elevation of the proposed dwelling is 8 metres from the closest point of the boundary with Spectrum House, which the northern corner of the rear garden of Spectrum House where it adjoins the boundaries of Bay Tree House and The Coach House. This is considered a sufficient distance to prevent an undue loss of privacy.

Court House is sited to the north of the proposed dwelling on the opposite side of The Crescent, it is considered that the proposed dwelling does not harm the amenity of the occupier of Court House. In addition, there will be a degree of mutual overlooking from the

first floor rear windows of Bay Tree House as currently exists between Bay Tree House and Melbury House, this is considered to not be out of keeping.

On balance, it is considered that the application would not create so severe a loss of amenity upon the neighbouring properties to result in a refusal of planning consent. The application is considered to accord with the requirements of policy H28 of the Local Plan.

#### Highways/Access:

The proposed dwelling will utilise the existing access which serves Bay Tree House and it is proposed that the original vehicular access which served bay Tree House is re-instated. Highways have offered no objections to the proposal and indicated that standing advice applies. There are no visibility issues with the existing access which is proposed to be used for the new dwelling, the original access which served bay tree House was approved when the dwelling was originally constructed and offers better visibility than the dwelling to the east. The Crescent is a residential road, which is narrow at points and enclosed mainly by hedging and a natural stone wall, these features act as natural speed deterrents and whilst the road, may have more vehicular traffic than it may have had a number of years back, one additional dwelling will not give rise to a significant increase in vehicular movements. Additionally, The Crescent is not a classified road and therefore the original highway access could be re-opened without the need for planning consent.

Each dwelling will be served by a driveway and garage, which will offer sufficient off-street parking provision.

#### Other Matters:

The trees on the boundary with Spectrum House are protected by a Tree Protection Order, the proposed dwelling does not impact on these trees and the construction works can be accommodated without harm to them, however in order to ensure no materials are stored within the root area, a condition is recommended that protective tree fencing be erected within the root area of these trees for the duration of the works to ensure they are not harmed during construction works.

There are no ecology issues associated with the development. The proposed dwelling will be connected to the mains sewer for foul drainage and utilise soakaways for surface water drainage, the existing dwelling has the same arrangement and there is sufficient land to accommodate the necessary soakaways, a condition requiring the details to be submitted and approved is recommended.

#### Planning Policy

***This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004 and, where relevant, with Sections 66 and 72 of the Town and Country Planning Act 1990 (Listed Buildings and Conservation Areas).***

#### Planning Policy

National Planning Policy Framework

#### West Devon Borough Council Core Strategy 2011

SP1 – Sustainable Development

SP9 – Meeting Housing Needs

SP17 – Landscape Character

SP19 – Biodiversity

SP20 – Promoting High Quality Design

## **West Devon Borough Council Local Plan Review 2005(as amended 2011)**

NE10 – Protection of the Countryside and Other Open Spaces

BE19 – Development on Contaminated Land

H28 – Settlements with Defined Limits

H39 – Redevelopment of Single Residential Plots

T9 – The Highway Network

PS2 – Sustainable Urban Drainage Systems

### **Considerations under Human Rights Act 1998 and Equalities Act 2010**

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

### **Conditions**

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.

Reason: To comply with Section 91 of the Town and Country Planning Act, 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the approved plans and documents to be listed on the decision notice.

Reason: For the avoidance of doubt and in the interest of proper planning.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order, 2015 (and any Order revoking and re-enacting this Order), no development of the types described in the following Classes of Schedule 2 shall be undertaken without the express consent in writing of the Local Planning Authority other than those expressly authorised by this permission:-

(a) Part 1, Class A (extensions and alterations including the insertion of windows or roof lights)

(b) Part 1, Classes B and C (roof addition or alteration)

(c) Part 1, Class D (porch)

(d) Part 1, Class E (a) swimming pools and buildings incidental to the enjoyment of the dwellinghouse and; (b) container used for domestic heating purposes/oil or liquid petroleum gas)

(e) Part 1, Class F (hardsurfaces)

(f) Part 1, Class G (chimney, flue or soil and vent pipe)

(g) Part 14, class A & B (Installation of domestic Microgeneration Equipment)

(h) Part 1, (h) Including those classes described in Schedule 2 Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (and any Order revoking and re-enacting this Order)

(i) Part 2, Class A (means of enclosure)

Reason: To enable the Local Planning Authority to exercise control over development which could materially harm the character and visual amenities of the development and locality.

4. No development shall commence until a schedule of materials and finishes, and samples of the materials to be used in the construction of the external surfaces, including roofs, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out only in accordance with the details so approved.

Reason: To enable the Local Planning Authority to consider the details of the materials and their finishes.

5. Details of the proposed boundary treatment shall be submitted to and agreed in writing by the Local Planning Authority prior to their installation and shall be implemented prior to first occupation/use.

Reason: In the interest of visual amenity in order to protect and enhance the amenities of the site and locality.

6. Prior to the commencement of the development hereby approved, details of the surface water design including percolation test results and supporting calculations shall be submitted to and approved in writing by the local planning authority.

Details of maintenance and management responsibility for the drainage system must be submitted to and approved in writing by the local planning authority prior to commencement on site.

Such approved drainage details shall be completed and become fully operational before the development first brought into use. Following its installation the approved scheme shall be permanently retained and maintained thereafter.

Surface water drainage systems design and installation shall be in accordance with CIRIA C697 The SuDS Manual and CIRIA C698 Site Handbook for the Construction of SuDS.

Reason: To safeguard the amenities of the locality and environment and to ensure that the development is adequately drained.

7. The dwelling hereby approved shall not be occupied until the parking, and garaging areas relating to them (and shown on the submitted drawings) have been properly consolidated, surfaced, laid out and constructed. The parking, servicing and garaging areas shall be kept permanently available for the parking and manoeuvring of motor vehicles in connection with the development hereby permitted.

Reason: To ensure that adequate and satisfactory provision is made for the garaging and parking of vehicles clear of all carriageways in the interests of road safety and amenity.

8. Prior to the commencement of the development hereby approved, the vehicular access for 'Bay Tree House' shall be constructed in accordance with the approved plans and maintained permanently thereafter.

Reason: To ensure the existing and proposed dwelling have off-street parking provision.

9. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with.

Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority.

Reason: No site investigation can completely characterise a site. This condition is required to ensure that any unexpected contamination that is uncovered during remediation or other site works is dealt with appropriately

10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re enacting this Order) the windows hereby approved on the first floor side elevations shall be glazed in obscure glass, and have no opening parts 1.7 metres below the finished floor level of the room they serve, and thereafter so maintained.

Reason: To protect the amenity and privacy of residents of adjoining property.

11. Tree protection measures shall be erected around the protected trees on the site for the duration of the construction works, the tree protection measures must adhere to BS5837.

Reason: To ensure the protected trees are protected during development works.



## PLANNING APPLICATION REPORT

**Case Officer:** Tom French  
North

**Parish:** Okehampton Hamlets **Ward:** Okehampton

**Application No:** 3001/16/VAR

**Agent/Applicant:**

Mr Ben Warren  
5 Church Street  
Stoke  
Plymouth  
PL3 6DT

**Applicant:**

Ms Donna Johnson  
Southwestern Housing Society  
Eastbridge House  
Rooksbridge  
BS26 2TN

**Site Address:** Land Adjacent To 25, 26, 27, 28 & 29 Hillside Drive, Hillside Drive, Okehampton, EX20 1FR

**Development:** Variation of condition number 2 of planning consent 01324/2014 to allow revisions to approved drawings.

**Reason item is being put before Committee:** Referred by Cllr Leech, concerns over the impact on adjacent occupiers.



**Recommendation:** Conditional Approval delegated to the COP Lead Development Management in consultation with the Chairman and Vice Chairman of Planning and Licensing Committee, subject to deed of variation of the Section 106 Agreement.

**Conditions:**

1. The development hereby permitted shall be carried out in accordance with the approved plans and documents to be listed on the decision notice.

Reason: For the avoidance of doubt and in the interest of proper planning.

2. The facing and roofing materials to be used in the construction of the development shall be carried out in accordance with the details approved under 00828/2015.

Reason: In the interests of visual amenity.

3. The dwellings hereby approved shall not be occupied until the parking, and servicing areas relating to them (and shown on the submitted drawings) have been properly consolidated, surfaced, laid out and constructed. The parking, servicing and garaging areas shall be kept permanently available for the parking and manoeuvring of motor vehicles in connection with the development hereby permitted.

Reason: To ensure that adequate and satisfactory provision is made for the garaging and parking of vehicles clear of all carriageways in the interests of road safety and amenity.

4. Within 3 months of the date of this consent, details of the surface water design including percolation test results and supporting calculations shall be submitted to and approved in writing by the local planning authority.

Details of maintenance and management responsibility for the drainage system must be submitted to and approved in writing by the local planning authority prior to commencement on site.

Such approved drainage details shall be completed and become fully operational before the development first brought into use. Following its installation the approved scheme shall be permanently retained and maintained thereafter.

Surface water drainage systems design and installation shall be accordance with CIRIA C697 The SuDS Manual and CIRIA C698 Site Handbook for the Construction of SuDS.

Reason: To safeguard the amenities of the locality and environment and to ensure that the development is adequately drained

5. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local

Planning Authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with.

Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority.

Reason: No site investigation can completely characterise a site. This condition is required to ensure that any unexpected contamination that is uncovered during remediation or other site works is dealt with appropriately

6. Notwithstanding the provisions of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking, re-enacting or further amending that Order), no development of the types described in Schedule 2, Part 1, Classes A-E of the Order, including the erection of extensions, porches, garages or car ports, the stationing of huts, fences or other structures shall be carried out on the site, other than that hereby permitted, unless the permission in writing of the Local Planning Authority is obtained.

Reason: To protect the appearance of the area to ensure adequate space about the buildings hereby approved and in the interests of amenity

7. No new windows shall be added to the side elevations of the approved dwellings without the written consent of the Local Planning Authority.

Reason: To protect the amenities of neighbouring occupiers. To comply with Policy H28 of the Local Plan.

8. The windows to the side elevations at first floor level of the proposed semi-detached dwellings and the first floor front window to the detached dwelling serving a bathroom shall be obscure glazed, non-opening and permanently retained as such.

Reason: In the interests of the residential amenities of the adjoining occupiers.

9. The construction Management Programme approved under 00828/2015 shall be adhered to at all times thereafter unless agreed otherwise in writing by the Local Planning Authority.

Reason: In the interest of the residential amenities of the adjoining occupiers.

10. There shall be no removal of the Devon hedgebank on the southern boundary. If any part of the hedgebank becomes seriously diseased, or are damaged, they shall be replaced in the first available planting season with others of such species and size as the Authority may specify.

Reason: In the interests of ecology, visual amenity and the residential amenity of adjoining occupiers.

11. The fencing shown on plan 1042-106 D between the application site and the boundary with Nos 28 and 29 Hillside Drive shall be erected within 3 months of the date of this consent and maintained as shown permanently thereafter.

Reason: In the interests in the amenities of adjacent occupiers.

**Advice notes:**

1. Requirement for adherence to Section 106 agreement

**Key issues for consideration:**

The principal of the development has been established through the approval of application 01324/2014, which was for the erection of 3No affordable dwellings, a pair of semi-detached dwellings at the northern end of the site, and a detached dwelling at the southern end of the site and the subsequent non-material amendment 01188/2015, which altered the internal layout of the proposed dwellings and introduced patio areas serving the 2No semi-detached dwellings with steps leading the lower garden areas. This application seeks to amend the patio area including the position of the steps and the provision of fencing on the eastern boundary. The considerations are the impact of this proposed change on;

- Impact on character of surrounding area;
- Impact on amenities of neighbouring occupiers;

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**Site Description:**

The application site is located immediately to the west of nos. 26 and 25 Hillside Drive and to the east of nos. 18 and 20 Long Barton Avenue. The application site is located within a recently constructed residential estate and surrounded to the north, west and eastern sides by two storey dwellings

**The Proposal:**

This applications seeks to vary the approved plans by raising the detached dwelling by 0.7 metres. This would result in the detached dwelling being 0.2 metres higher than the adjacent dwelling No 25 Hillside Drive

**Consultations:**

- County Highways Authority: No objection
- Okehampton Hamlets Parish Council: None received at time of writing

**Representations:**

2 Objection comments has been received, the planning points are as follows;

- Loss of privacy to 29 Hillside Drive
- Rear boundary of No 29 Hillside Drive was hedgerow, which has been removed
- Raised patio area was not part of application
- Rear of houses were level with back garden on original application
- Insufficient space left for side path

## **Relevant Planning History**

1008/16/VAR - Variation of condition 2 (Approved Plans) of planning consent 01324/2014 to allow for a minor material amendment – Conditional approval

01188/2015 - Non-material amendment to planning consent 01324/2014 first floor layout of all plots revised to include an extra bedroom - Approved

01324/2014 - Erection of 3 dwellinghouses with associated access and parking – Conditional approval

## **ANALYSIS**

This application is concerned with the rear gardens of plots 1 and 2, the pair of semi-detached dwellings at the northern end of the site.

Application 01324/2014 was approved for the 3No dwellings. Approved plan 3702/203 B showed a side path and a patio area and path leading to a garden shed. The level of the rear garden is annotated as 189.810, the finished floor level of the dwellings is shown as 191.200. Plan T6840/02 P – Plan on external works, shows the patio area approved under plan 3702/203 B at 191.185, which is 1.375 metres higher than the garden level below.

Application 01188/2015 amended the proposed site plan by extending the patio areas further into the rear gardens of plots 1 and 2. It also included the provision of stairs which ran parallel with the rear elevations from the boundary between the two plots down to the lower garden area, the sheds were indicated on the northwest and north east corners of the raised patio areas.

The patio areas have not been built in accordance with the plan approved under 01188/2015 plan ref 1942-102 B and this application seeks to regularise this.

The patio areas are in line with the side elevations of the dwellings and the position of the stairs runs up from the side access onto the raised patio. The level of the patio remains unchanged from the previous approvals at 191.185, the side path is at 189.900 which rises minimally to the western part of the rear garden of plot 1 at 189.980.

The application proposes a 2.6 metre fence along the section of the boundary which adjoins the dwellings to the east in Hillside Drive adjacent to the raised patio area. A section plan has been provided which shows the relationship between the patio areas and the rear gardens of 28 and 29 Hillside Drive. The extent of the raised patio is lesser than that approved under 01188/2015 and therefore this scheme proposes a betterment than the existing extant approval. A condition requiring the fence to be erected within 3 months of the date of the consent and maintained at that level is recommended.

The proposed amendments to the raised patio areas are acceptable in respect of the north and western boundaries.

The 2.6 metres fence is 600mm higher than that which could be erected under permitted development for means of enclosure, it is considered that it will not result in an overbearing impact to the rear gardens of 28 & 29 Hillside Drive. The approved plan shows the side access, which is considered sufficient.

***This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004***

**Planning Policy**

*All standard policies listed (delete where not relevant, add others as relevant, including NPPF):*

**West Devon Borough Council Core Strategy 2011**

SP1 – Sustainable Development  
SP5 – Spatial Strategy  
SP6 – Density of Housing Development  
SP20 – Promoting High Quality Design  
SP22 – Okehampton

**West Devon Borough Council Local Plan Review 2005(as amended 2011)**

BE13 – Landscaping and Boundary Treatment  
BE19 – Development on Contaminated Land  
H28 – Settlements with Defined Limits  
T8 – Car Parking  
PS2 – Surface Water Run-off  
PS3 – Sewage Disposal

**National Planning Policy Framework (2012):**

Paras. 49 and 56

**Considerations under Human Rights Act 1998 and Equalities Act 2010**

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

## PLANNING APPLICATION REPORT

**Case Officer:** Tom French

**Parish:** Okehampton **Ward:** Okehampton North

**Application No:** 2544/16/FUL

**Agent/Applicant:**

Stephen Blakeman  
Rose Cottages  
Exbourne  
Okehampton  
EX20 3SH

**Applicant:**

Mr Andrew Clark  
Goldpark  
Sticklepath,  
Okehampton  
EX20 2NG

**Site Address:** Land To Rear Of 65 Exeter Road, Okehampton, Devon, EX20 1QF

**Development:** Alternative proposal for construction of dwelling

**Reason item is being put before Committee:** Referred by Cllr Leech, concerns over impact on adjacent occupiers and drainage.





**Recommendation:** Conditional approval

**Conditions:** (summary of conditions, see end of report for full list)

1. Standard time limit
2. Build in accordance with plans
3. Removal of PD
4. Samples of materials for the dwelling and boundary treatment to be submitted
5. Boundary treatments
6. Drainage details to be submitted/approved
7. Parking to be provided and retained
8. Landscape scheme
9. Environmental Health condition relating to unsuspected contaminated land

**Key issues for consideration:**

The main issues for consideration relate to whether the site can accommodate the dwelling proposed and what the subsequent impact upon amenity of the surrounding development would be. Highway safety, parking and drainage.

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**Site Description:**

The application site is located to the north of 65 Exeter Road, Okehampton. The plot is set within the substantial garden associated with 65, Exeter Road and access is proposed from Baldwin Drive to the north between 18 and 16 Baldwin Drive. The site is surrounded by residential development.

**The Proposal:**

Erection of dwelling and associated works including formation of vehicular access

**Consultations:**

- County Highways Authority: Standing advice applies
- Environmental Health Section: No objection subject to unsuspected contamination condition
- Okehampton Town Council: Objection, concern about surface water drainage not resolved. Visual amenity, ridge line higher than adjacent buildings and appearing overbearing/dominant.
- Drainage Officer: No objection, subject to drainage condition as further details are required.

**Representations:**

None received



## **Relevant Planning History**

00316/2013 - Erection of dwelling and associated works including formation of vehicular access – Conditional approval

## **ANALYSIS**

The application seeks consent for the erection of a 1 1/2 storey dwelling to the rear of 65 Exeter Road. A single storey dwelling was approved under 00316/2013.

### Principle of development

There is a strong history of dwellings being built to the rear of the properties which front Exeter Road with very few plots along this road remaining that do not have this type of development. Whilst some of these dwellings gain access from Exeter Road, there are dwellings which gain access from Baldwin Drive including three dwellings at Baldwin Court which is immediately to the west of the site. The site is within the settlement boundary and therefore there are no principle objections to a dwelling in this location. Policy H28 advises that within defined settlement limits, small scale development will be permitted providing it meets the set criteria. This criterion will be addressed below.

### Pattern of development

Policy H28 advises that the development should respect the form of the settlement and should not introduce or reinforce undesirable patterns of development. As outlined above there is a distinct pattern of development for small residential sites to the rear of the dwellings on Baldwin Drive and Exeter Road. The plots both immediately east and west of the proposal site have been built upon recently in a similar pattern of development. Given the consistent type of development in the area, it is not considered that the proposal would introduce or reinforce an undesirable pattern of development.

### Design

The proposed dwelling will have a natural slate roof with rendered walls and uPVC windows and doors, this is in keeping with the character of the area. The scale of the proposed dwelling is considered appropriate for the area, which contains a mixture of both single and two storey dwellings. As the site is bordered by single storey dwellings to the west in Baldwin Drive, a two storey house on the plot would be overbearing, however the proposed dwelling is considered to be compliant with policy H28 of the Local Plan.

### Highways

The application proposes two parking spaces for this three bedroom property and the level of parking is considered to be acceptable and will allow for off road parking to prevent an impact upon the local highway network. A condition will be attached to ensure that the parking is retained for the occupiers of the new dwelling. The proposal also provides for a turning area so that vehicles can enter and exit the driveway in a forward gear. The application proposes to gain access via a driveway which would pass between no's 16 and 18 Baldwin Drive. The arrangement for vehicular access is the same as was proposed under approved application 00316/2013.

The County Highways department has advised that standing advice applies to this proposal, no objections were raised in relation to the access by County Highways under the previous application. There are existing driveways on Baldwin Drive including the driveway serving three dwellings at Baldwin Court and pedestrians are required to cross the driveways for each individual dwelling on the road. Under the previous approved application, the Highways

engineer had advised that there are no concerns with visibility or the driveway crossing the footpath. The recommended drainage condition will ensure that surface water from the driveway does not affect Baldwin Drive.

### Amenity

The application site is located in a plot surrounded by residential development. To the south of the site is the garden of 65 Exeter Road. To the east is 69a Exeter Road and to the west are the three dwellings within Baldwin Court. To the north are No's 16 and 18 Baldwin Drive. No. 65 Exeter Road will be located at a significant distance from the application site.

The proposed dwelling has a ridge height of 7 metres, the approved scheme under 00316/2013 had a ridge height of 5.4 metres. It is considered that the increase of 1.6 metres in ridge height does not result in an over bearing impact on adjacent occupiers or the proposed dwelling being unduly prominent or out of character with its surroundings.

This application proposed accommodation within the roof of the proposed dwelling. This would consist of 2 bedrooms, a main bathroom and en-suite serving the one of the bedrooms. It is proposed to insert a window in either gable end of the proposed dwelling and 3No roof lights on each roof slope. On the eastern elevation, the roof lights would serve bedrooms and the landing, on the western side they would serve the 2 bathrooms and a bedroom. The distance between the southern elevation and the boundary with 65 Exeter Road is 14 metres, which is sufficient to prevent overlooking. The distance from the north elevation to the boundary with 18 Baldwin Drive is 11.5 metres, which is considered acceptable. The proposed roof lights are to be set 1.75 metres above the finished floor level of the first floor accommodation, due to the height of the windows and the angle they are set at, it is considered that they will not result in a loss of privacy to adjacent occupiers.

It is considered that the loss of direct sunlight to the garden areas of 1 Baldwin Court and 69a Exeter Road will be minimal due to the overall height of the building and the orientation of the roof slope in relation to the plot.

As the application now proposes roof accommodation, it is proposed to remove permitted development rights for extension, this will prevent dormer windows being constructed in the side elevations, which could impact on adjacent occupiers and prevent an over development of the plot.

It is proposed to erect a fence along the southern boundary to separate to two dwellings. Details of this will be requested by condition to ensure a suitable boundary is implemented. The northern boundary is currently a substantial hedge with trees present which will needed to be amended to allow vehicular access. The majority of this hedge will be retained which will prevent overlooking into 16 and 18 Baldwin Drive. Along the new drive there is currently a brick wall along the eastern boundary which prevents overlooking into 16 Baldwin Drive. The landscaping condition will also ensure that the boundary along the driveway is implemented to prevent loss of amenity to 18 Baldwin Drive. However, the majority of the private space of No. 18 is adjacent to 69a Exeter Road and will therefore not be significantly affected. To the east of the site is 69a Exeter Road and along the dividing boundary is a substantial hedge of conifers that offers substantial screening. The level of amenity is considered acceptable. To the west of the site it the development of Baldwin Court. The single storey dwellings are close to the western boundary of the site. However, due to the existing close board fence the private amenity space is not visible from the site and the siting of the roof lights do not result in overlooking.

The separation between the two dwellings is considered to be acceptable and the landscaping condition will ensure that additional landscaping is introduced along this boundary with the closest neighbours.

### Drainage

The drainage officer has reviewed the submitted information, which comprises the results of percolation tests and the proposed positions of soak-aways within the garden area of the proposed dwelling. The application is within the Okehampton Critical Drainage Area, the submitted details of the soak-aways are not sufficient based on the result of the percolation tests, however due to the area of land available, it is considered that there is sufficient room for a soak away scheme to accommodate surface water runoff on the site. Therefore a condition is recommended that notwithstanding the submitted details, the surface water drainage details shall be submitted and approved prior to the development commencing.

***This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004***

### **Planning Policy**

*All standard policies listed (delete where not relevant, add others as relevant, including NPPF):*

#### **West Devon Borough Council Core Strategy 2011**

SP1 – Sustainable Development  
SP9 – Meeting Housing Needs  
SP17 – Landscape Character  
SP19 – Biodiversity  
SP20 – Promoting High Quality Design  
SP21 – Flooding

#### **West Devon Borough Council Local Plan Review 2005(as amended 2011)**

H28 – Settlements with Defined Limits  
T9 – The Highway Network  
PS2 – Sustainable Urban Drainage Systems  
PS3 – Sewage Disposal

### **Considerations under Human Rights Act 1998 and Equalities Act 2010**

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

### **Conditions**

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.

Reason: To comply with Section 91 of the Town and Country Planning Act, 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the approved plans and documents to be listed on the decision notice.

Reason: For the avoidance of doubt and in the interest of proper planning.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order, 2015 (and any Order revoking and re-enacting this Order), no development of the types described in the following Classes of Schedule 2 shall be undertaken without the express consent in writing of the Local Planning Authority other than those expressly authorised by this permission:-

- (a) Part 1, Class A (extensions and alterations including the insertion of windows or roof lights)
- (b) Part 1, Classes B and C (roof addition or alteration)
- (c) Part 1, Class D (porch)
- (d) Part 1, Class E (a) swimming pools and buildings incidental to the enjoyment of the dwellinghouse and; (b) container used for domestic heating purposes/oil or liquid petroleum gas)
- (e) Part 1, Class F (hardsurfaces)
- (f) Part 1, Class G (chimney, flue or soil and vent pipe)
- (g) Part 14, class A & B (Installation of domestic Microgeneration Equipment)
- (h) Part 1, (h) Including those classes described in Schedule 2 Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (and any Order revoking and re-enacting this Order)
- (i) Part 2, Class A (means of enclosure)

Reason: To enable the Local Planning Authority to exercise control over development which could materially harm the character and visual amenities of the development and locality.

4. No development shall commence until a schedule of materials and finishes, and samples of the materials to be used in the construction of the external surfaces, including roofs, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out only in accordance with the details so approved.

Reason: To enable the Local Planning Authority to consider the details of the materials and there finishes.

5. Details of the proposed boundary treatment shall be submitted to and agreed in writing by the Local Planning Authority prior to their installation and shall be implemented prior to first occupation/use.

Reason: In the interest of visual amenity in order to protect and enhance the amenities of the site and locality.

6. Prior to the commencement of the development hereby approved, details of the surface water design including percolation test results and supporting calculations shall be submitted to and approved in writing by the local planning authority.

Details of maintenance and management responsibility for the drainage system must be submitted to and approved in writing by the local planning authority prior to commencement on site.

Such approved drainage details shall be completed and become fully operational before the development first brought into use. Following its installation the approved scheme shall be permanently retained and maintained thereafter.

Surface water drainage systems design and installation shall be accordance with CIRIA C697 The SuDS Manual and CIRIA C698 Site Handbook for the Construction of SuDS.

Reason: To safeguard the amenities of the locality and environment and to ensure that the development is adequately drained.

7. The dwelling hereby approved shall not be occupied until the parking, and garaging areas relating to them (and shown on the submitted drawings) have been properly consolidated, surfaced, laid out and constructed. The parking, servicing and garaging areas shall be kept permanently available for the parking and manoeuvring of motor vehicles in connection with the development hereby permitted.

Reason: To ensure that adequate and satisfactory provision is made for the garaging and parking of vehicles clear of all carriageways in the interests of road safety and amenity.

8. The building works/change of use shall not be implemented until a landscaping scheme has been submitted to and approved by the Local Planning Authority, indicating the boundary treatment of the proposed plots/development.

The scheme submitted shall be fully implemented in the planting season following the completion of the development and the plants shall be protected, maintained and replaced as necessary for a minimum period of five years following the date of the completion of the planting.

Reason: In the interest of visual amenity in order to protect and enhance the amenities of the site and locality.

9. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with.

Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority.

Reason: No site investigation can completely characterise a site. This condition is required to ensure that any unexpected contamination that is uncovered during remediation or other site works is dealt with appropriately.

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**West Devon Borough Council** **Agenda Item 6**  
**PLANNING AND LICENSING COMMITTEE 15-Nov-16**  
**Appeals Update from 10-Oct-16 to 31-Oct-16**

**Ward Bere Ferrers**

APPLICATION NUMBER : **2736/15/OPA** APP/Q1153/W/16/3157958  
APPELLANT NAME: Mrs J Hyde  
PROPOSAL : Outline application with all matters reserved for proposed residential development (resubmission of 00114/2015)  
LOCATION : Land Adjacent To 113 Broad Park Road, Bere Alston, Devon  
APPEAL STATUS : Appeal Lodged  
APPEAL START DATE: 12-October-2016  
APPEAL DECISION:  
APPEAL DECISION DATE:

**Ward Hatherleigh**

APPLICATION NUMBER : **2723/15/OPA** APP/Q1153/W/16/3151032  
APPELLANT NAME: Mrs J Walter  
PROPOSAL : Outline application with all matters reserved for 1no. dwelling  
LOCATION : Tree Tops, Church Road, Highampton, Devon, EX21 5LS  
APPEAL STATUS : Appeal decided  
APPEAL START DATE: 03-August-2016  
APPEAL DECISION: Dismissed (Refusal)  
APPEAL DECISION DATE: 28-October-2016

**Ward Okehampton North**

APPLICATION NUMBER : **0150/16/VPO** APP/Q1153/S/16/3146934  
APPELLANT NAME: Leander Developments Ltd  
PROPOSAL : Application under section 106BA  
LOCATION : Land Adjacent To Baldwin Drive, Radford Way, Okehampton, Devon  
APPEAL STATUS : Appeal decided  
APPEAL START DATE: 24-March-2016  
APPEAL DECISION: Upheld  
APPEAL DECISION DATE: 18-October-2016

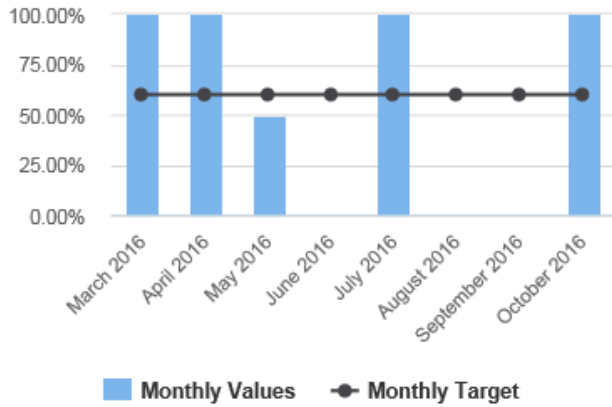
**Ward Milton Ford**

APPLICATION NUMBER : **00452/2015** APP/Q1153/W /3131024  
APPELLANT NAME: Mr & Mrs D Bennett  
PROPOSAL : Retrospective permission for alterations to levels and retention of the building as built in association with part use for an internet sales business (93sqm) and part use for a barn/agricultural store (126sqm) together with the regrading and seeding of land around the existing building and removal of the field shelter.  
LOCATION : Stables, Edgecumbe Road, Milton Abbot, Devon  
APPEAL STATUS : Appeal decided  
APPEAL START DATE: 08-October-2015  
APPEAL DECISION: Dismissed (Refusal)  
APPEAL DECISION DATE: 31-October-2016

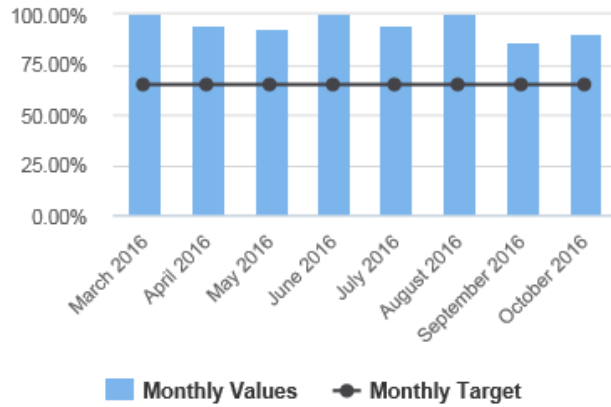
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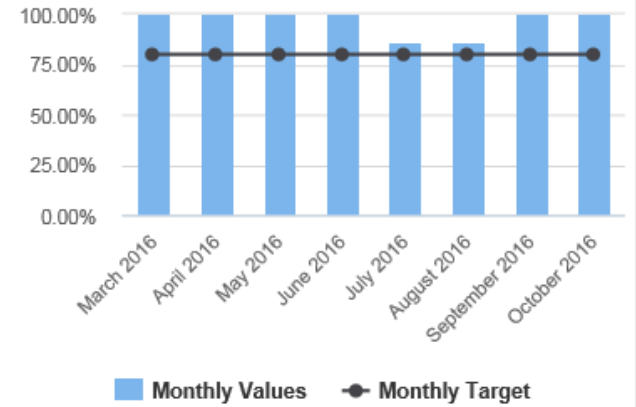
WD-P1 Major applications determined in time



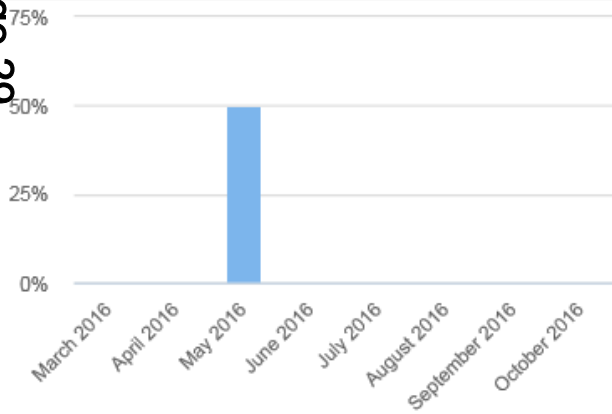
WD-P2 Minor applications determined in time



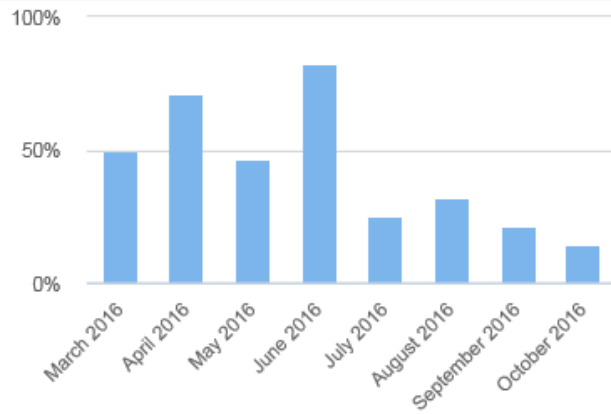
WD-P3 Other applications determined in time



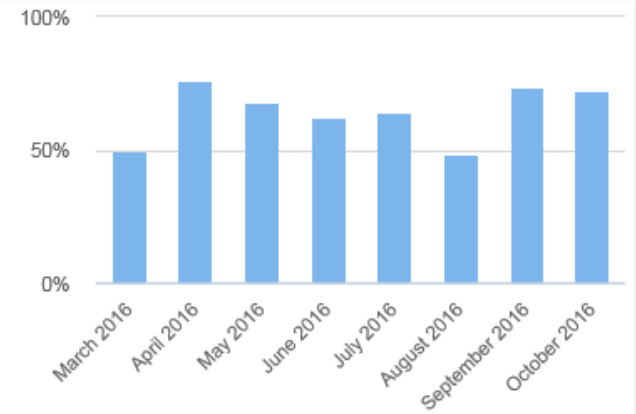
WD-P4 Major applications excluding extensions



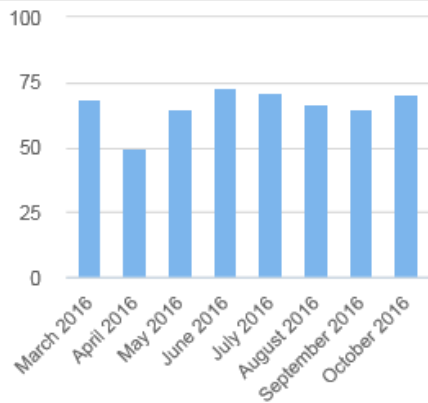
WD-P5 Minor applications excluding extensions



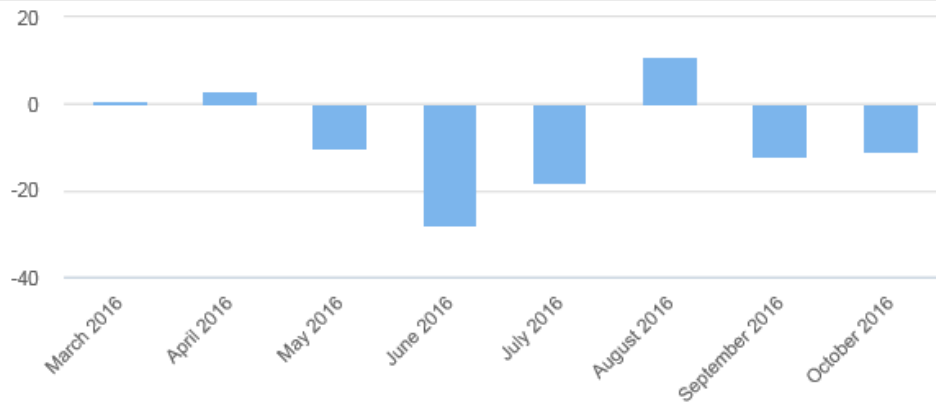
WD-P6 Other applications excluding extensions



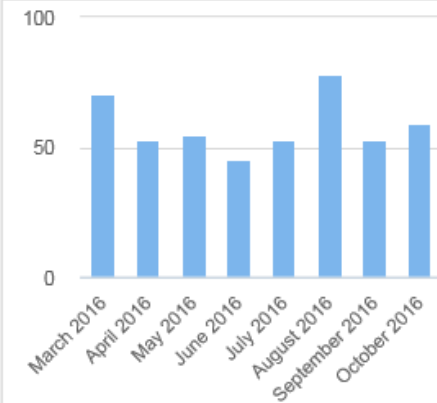
WD-P7 No of apps registered



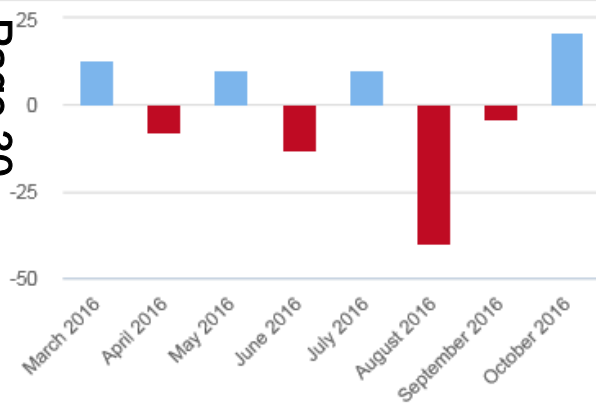
WD-W2PEC38 Application throughput



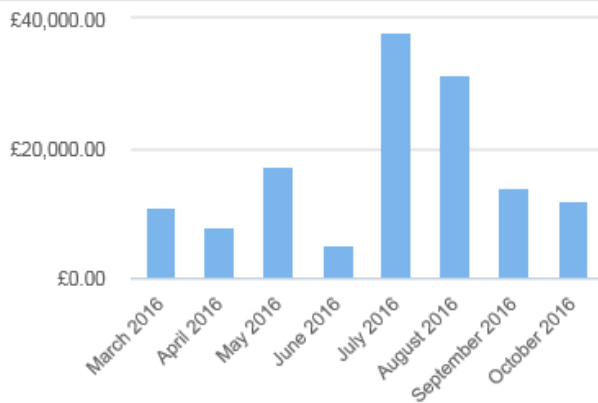
WD-P9 Applications determined



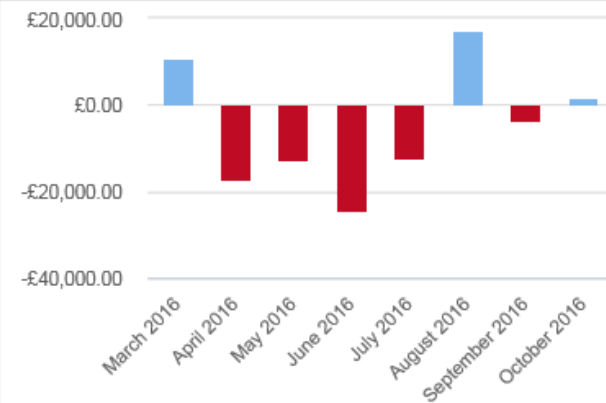
WD-P10 Apps registered compared to last year



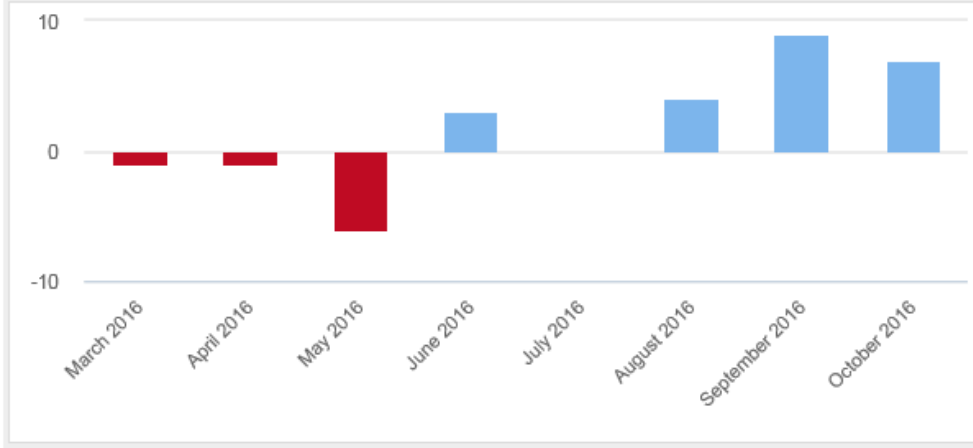
WD-P11 Fee Income from Planning Apps



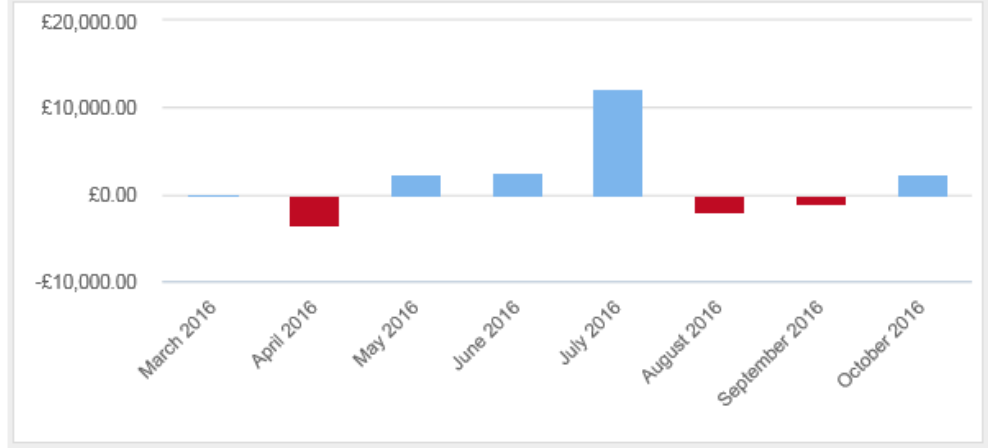
WD-P12 Fee Income from Apps vs prev year



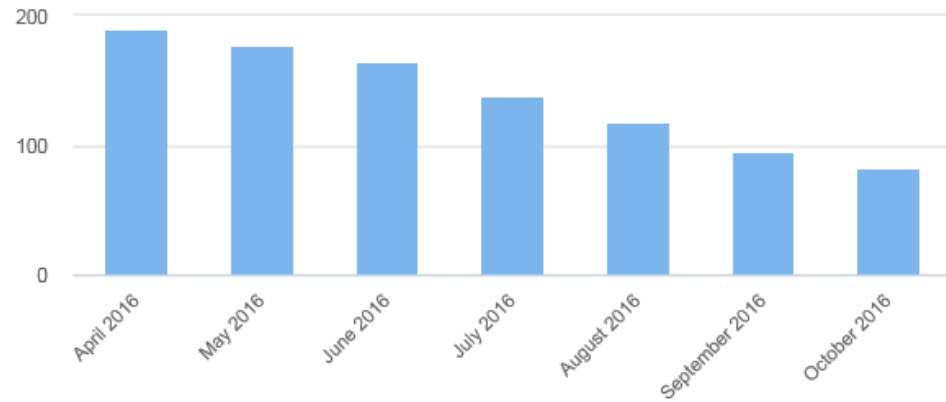
WD-P13 Pre-Apps Received compared to last year



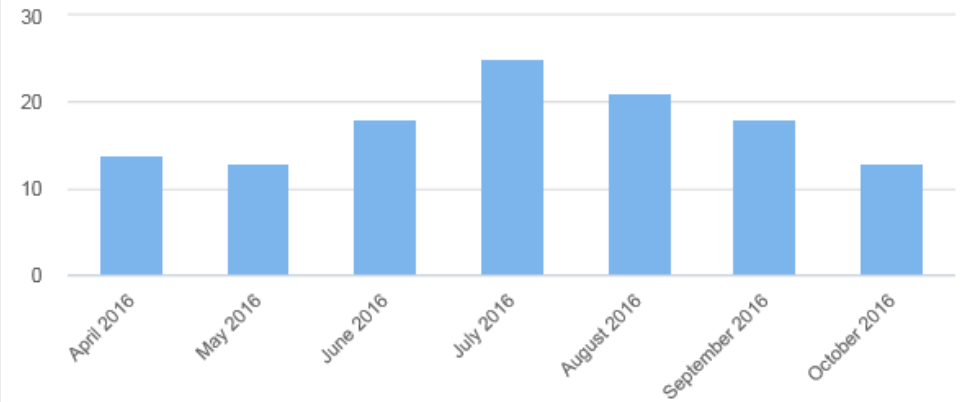
WD-P14 Fee Income from Pre-Apps compared to last year



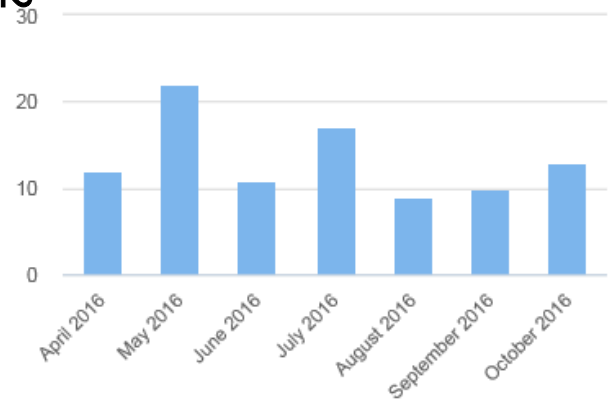
WD-E1 Enforcement Cases Outstanding Backlog



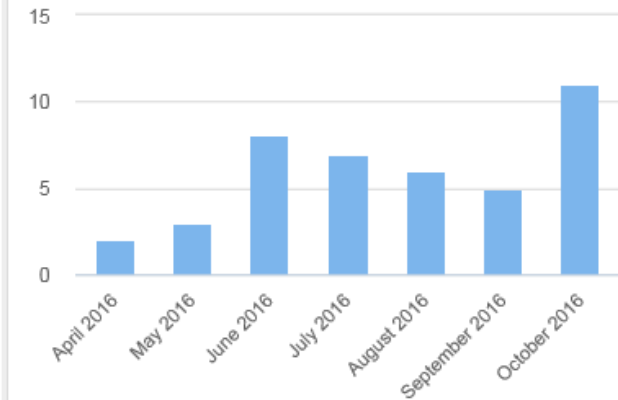
WD-E2 Enforcement Cases Closed Backlog



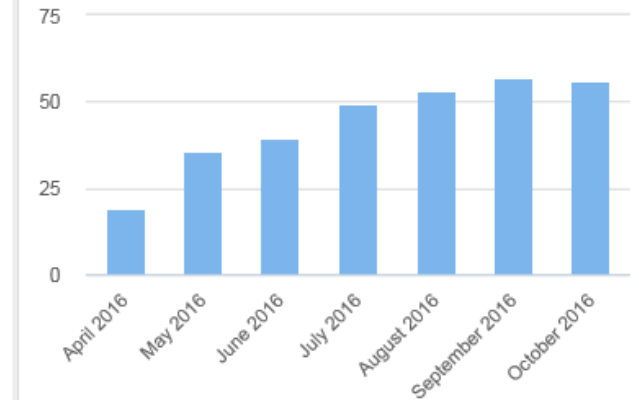
WD-E3 Enf Cases Received (since March 2016)



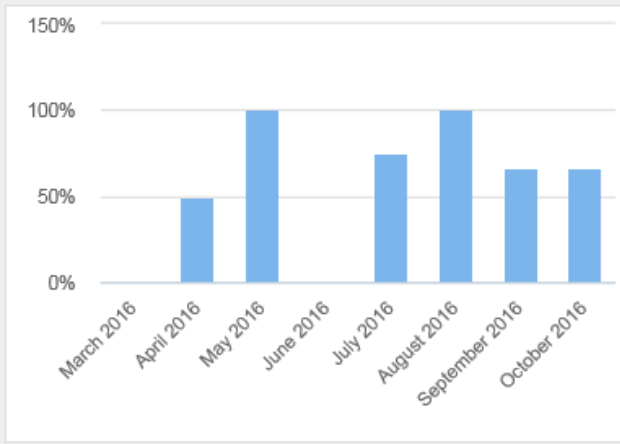
WD-E4 Enf Cases Closed (since March 2016)



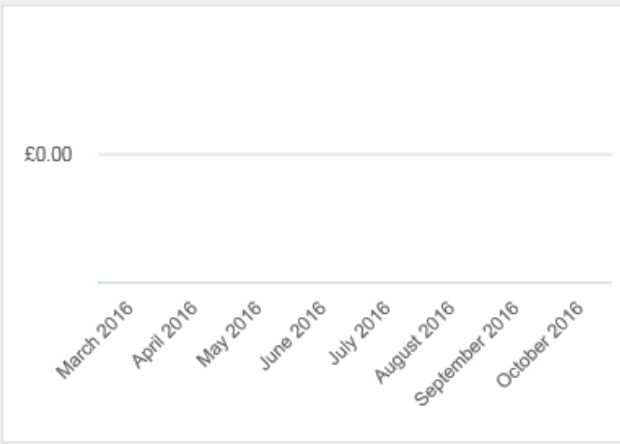
WD-E5 Enforcement Cases Outstanding



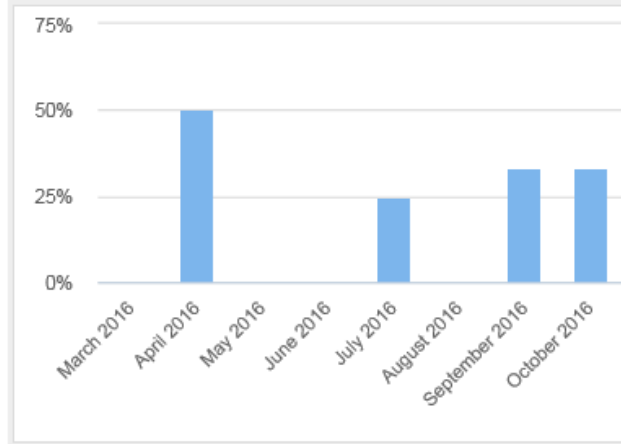
WD-A1 Percentage of Appeal Decisions by Of...



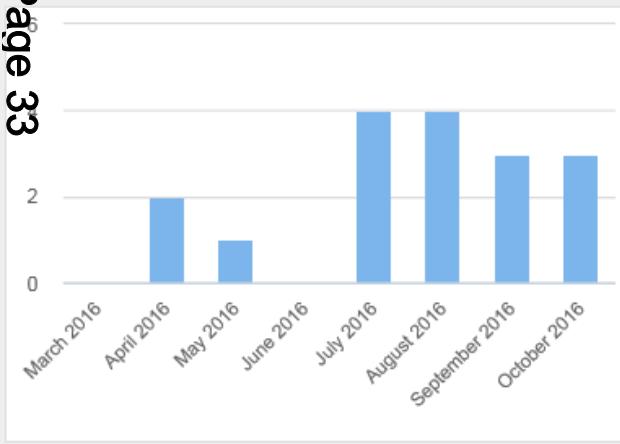
WD-A2 Appeal costs awarded to West Devon...



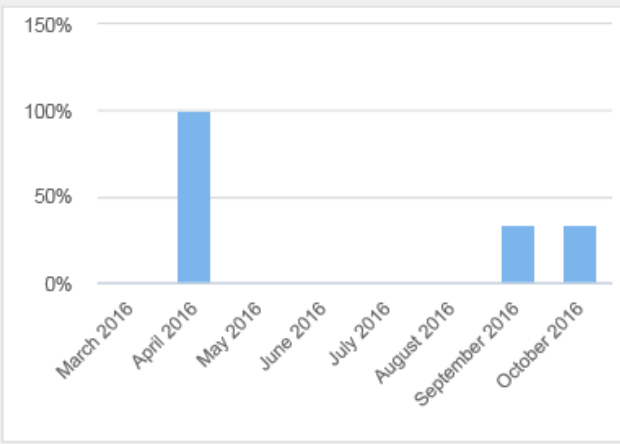
WD-A3 Percentage of Appeal Decisions by Co...



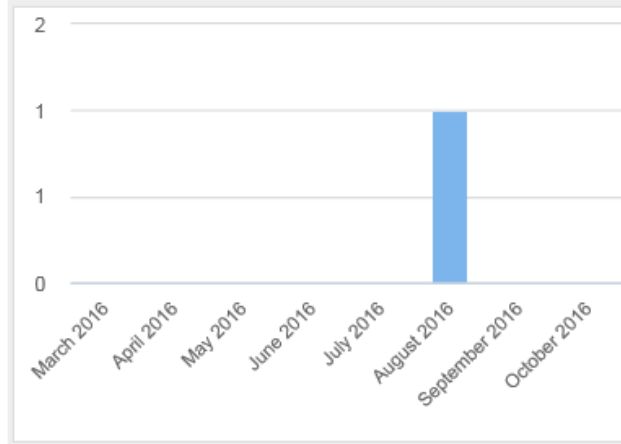
WD-A4 Appeal Decisions



WD-A5 Planning appeals allowed



WD-A6 Appeals allowed where Member decisi...



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# Agenda Item 8

Report to: **Planning and Licensing Committee**  
Date: **15 November 2016**  
Title: **To consider changes to the Constitution of the Council in relation to the delegation of powers for determination of certain licensing functions.**  
Portfolio Area: **Customer First**

Wards Affected: **All**

Relevant Scrutiny Committee: Internal

Urgent Decision: **N** Approval and clearance obtained: **N/a**

Date next steps can be taken: Referral to Full Council, 6<sup>th</sup> December 2016

Author: **Ian Luscombe** Role: **Community of Practice Lead - Environmental Health**  
**Catherine Bowen** **Community of Practice Lead - Legal**

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## **Recommendations:**

1. That the Planning and Licensing Committee recommends that the Council adopts the amendments proposed to the Constitution in relation to the delegation of powers for the determination of licensing decisions, as attached at Appendix A

## 1. **Executive summary**

- 1.1. The Council as the Licensing Authority is involved in the determination of many different licensing functions including caravan sites, premises licences with and without alcohol, houses in multiple occupation, dangerous wild animal licensing, taxi licensing and many others.
- 1.2. The current Constitution allows certain licensing functions to be delegated to the Community of Practice Lead for Environmental Health, sub-committees and full licensing committee. At times it is unclear on whom has the power to grant, refuse, and revoke many of the different licences that we currently issue and as such there is the potential for confusion leading to appeals.
- 1.3. The proposed amendments (attached at Appendix A) seek to clarify the delegation of powers so that the Committee only makes decisions on licences that have minimal technical input and the basis of the determination should be quasi-judicial.
- 1.4. The remainder of the determinations which are either wholly technical or simply procedural will be delegated to the Community of Practice Lead for Environmental Health.

## 2. **Background**

- 2.1. In the past 12 months the Licensing authority has determined over 500 applications, of which only 5 decisions have been made by the Planning and Licensing Committee or sub-committee.
- 2.2. The current Constitution does not stipulate which decisions the Committee can lawfully make under the various legislation that we enforce. The proposal seeks to clarify which types of applications and licences the Committee will determine to refuse, revoke, or suspend, and which will be delegated to the Community of Practice Lead for Environmental Health, other officers or the sub-committee.

## 3. **Outcomes/outputs**

- 3.1. In its current format the constitution is unclear and as such could, potentially, lead to appeals being made by applicants or licence holders on the basis that they don't believe the determination made was lawful. Appeals in regards to licensing decisions are generally to a Magistrates Court.
- 3.2. The changes to the Constitution will allow decisions made by the Council to be made in accordance with a clearer constitutional basis and also provide clarity to applicants as to how their applications will be determined.
- 3.3. The main changes to the existing scheme are;
  - a. Taxi licensing - Currently if a vehicle is deemed unfit or unsafe at renewal or contrary to policy this would have to come to a full Committee, it is proposed that the power to determine the suitability of a vehicle would rest with the Community of Practice Lead for Environmental Health.
  - b. Animal Boarding licenses - Currently the constitution is unclear on who has the power to refuse a licence to which no objection has been received, such as animal boarding licences, pet shop licences, caravan site licences etc. The proposed constitutional changes provides greater clarity over which applications will be considered by the Committee and



which will be determined by officers. Licences that require consultation with the public before issuing a licence and where objections are received, will be heard by the Committee.

c. Taxi Licensing- The proposed changes to the Delegation Scheme provide greater clarity and transparency over actions that can be taken in an emergency (for example, as occurred earlier this year in West Devon where there was a requirement to suspend a Taxi driver following notification from the Police of a serious allegation).

d. General – The proposed changes to the Delegation Scheme remove the right of appeal of officer decisions to committee, this is inappropriate as appeal against a decision should be to Magistrates Court or higher.

e. Taxi Licensing - The draft constitution seeks to change the power to determine vehicle licences from committee to the Community of Practice lead for Environmental Health.

- 3.4. In order to enable the Committee to determine whether the delegation of powers is too restrictive or otherwise, Officers will provide to the Committee, on an annual basis, an update report on the number of licensing applications received, the number approved/ refused/revoked in a year. The Committee may review, and recommend any changes to the Delegation Scheme in the future.

4. **Options available and consideration of risk**

- 4.1. The Council may choose not to change the delegation of powers. This may, potentially, lead to Committee decisions being challenged and decisions not being reached in the most efficient and appropriate way.
- 4.2. If decisions are made that are not fully and clearly supported by the delegation of powers the Council may be challenged and risk financial and reputational harm if a decision is successfully appealed.
- 4.3. Activity that requires a Licence may not be appropriately regulated and give rise to increased risk to public safety, harm to vulnerable children, public nuisance and crime and disorder (the four licensing objectives), or fail to safeguard the health and safety of the public from licensed activities.
- 4.4. Opinion has been sought from the Councils legal services team who support the intention to amend the delegation of powers.

5. **Proposed Way Forward**

- 5.1. That the Planning and Licensing Committee recommends to Council that the amendments proposed to the Constitution in relation to the delegation of powers for the determination of licensing decisions be adopted.
- 5.2. The Council will have an appropriate and clear constitution to support decisions as a Licensing Authority made under licensing legislation.
- 5.3. The Council will reduce the risk of decisions being appealed due to lack of clarity in the existing constitution.

- 5.4. The decision making process will be more efficient and appropriate where determination is based on technical, procedural or quasi-judicial requirements

## 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		<p>The Council has a statutory duty as the Licensing Authority to consider applications made to it under a broad range of legislation. The Council must ensure that all decisions made by it are fair and consistent and comply with the Constitution of the Council</p> <p>The Council is required to have a Delegation Scheme setting out the roles and responsibilities of Council, its Committees and its officers. These are set out in Part 3 of the Council’s Constitution.</p> <p>The Constitution of the Council includes the scheme of delegation for Licensing which sets out the powers of the Councils Officers and committee in resolving issues related to Licensing.</p>
Financial		<p>The financial implications of the report are that there will be a reduction in the risk of the Council receiving financial penalty should a decision that it makes be successfully appealed on the basis that the delegation of powers did not support the decision that had been made.</p>
Risk		<p>The risk to the Council is that we will continue to make decisions that do not appear to be fully supported by the Constitution across a number of areas of Licensing ie taxi’s , premises licenses , dog boarding etc. If the Council is challenged on a decision then we may lose the case on appeal and incur reputational penalty and possibly compensation claims.</p> <p>Another risk is that an activity that the Council should control using the licensing legislation will not control the activity and expose the public to risk of increased harm.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		No impact
Safeguarding		The safety of the public including the safeguarding of vulnerable persons is a fundamental determinant for a number of licences. Ensuring decisions are

		defendable will ensure that licences are not granted that jeopardise this fundamental licensing objective.
Community Safety, Crime and Disorder		Community safety and crime and disorder public is a fundamental determinant for a number of licences.
Health, Safety and Wellbeing		The Licensing constitution will enable the Council to make decisions that ensure that the four Licensing Objectives are met.
Other implications		None

### **Supporting Information**

#### **Appendices:**

Appendix A: proposed amended Delegation Scheme for Licensing

#### **Background Papers:**

[under provisions of the Local Government Act 1972]

**None**

## **iv) Licensing**

### **Responsibilities**

#### **Licensing Committee**

To be responsible for all of the Council's licensing functions

- To review and recommend to Council:
  - the Licensing Statement of Policy
  - the Gambling Statement of Principles
  - the Policy not to permit casinos
- To review and be responsible for all other Licensing Policies
- To determine whether to refuse the grant of a Hackney Carriage / Private Hire Driver or Private Hire Operator License application.
- To determine whether to refuse to grant a licence for the following licensing functions ;
  - Street Trading Licence (South Hams)
  - Zoo Licensing
  - Sex Establishments
  - Houses in Multiple Occupation
- To determine such other applications as referred to the P&L Committee by the Community of Practice Lead for Environmental Health.

#### **Licensing sub-committee**

a) Licensing sub-committees have the following responsibilities in relation to functions under the **Licensing Act 2003**:

- Applications for personal licences - if there is a police objection
- Applications for personal licences with unspent convictions – all cases
- Review of personal licences – if there is a police objection
- Applications for premises licence/club premises certificate – if a relevant representation is made
- Applications for provisional statement – if a relevant representation is made

- Application to vary premises licence/club premises certificate - if a relevant representation is made
- Applications to vary designated premises supervisor – if police objection made
- Applications for transfer of premises licence – if police objection
- Applications for interim authorities – if a police objection
- Applications to review premises licence/club premises certificate – all cases
- Decision to object when Council is a consultee and not relevant authority - all cases
- Determination of a police or Environmental Health objection to a temporary event notice - all cases

b) Licensing sub-committees have the following responsibilities in relation to the **Gambling Act 2005**:

- Application for **premises licence**: if a relevant representation has been made and not withdrawn
- Application for a **variation** to a licence: if a representation has been made and not withdrawn
- Application for a **transfer** of a licence: where representations have been received from the Gambling Commission
- Application for a **provisional statement**: if a representation has been made and not withdrawn
- **Review** of a premises licence
- Application for **club gaming/club machine permits**: where objections have been made and not withdrawn, or where refusal proposed
- **Temporary use notice**: Decision to give a counter notice, or where objection notice received
- **Fees**

### **Community of Practice Lead for Environmental Health**

Shall have the delegated authority:

To determine whether to refuse to grant an application for Hackney Carriage or Private Hire Vehicle Licence.

To determine in consultation with the Chair and Vice-chair of the P&L Committee whether to revoke a Hackney Carriage or Driver licence in situations of urgency ('urgency' to be determined by the Community of Practice Lead for Environmental Health).

To refer such applications which, in the opinion of the Community of Practice Lead for Environmental Health, should be determined by the Licensing Committee.

To determine applications for Licences under the following areas of work not previously delegated to other committees or individuals;

- Public Health (e.g. Animal Boarding Establishments, Dangerous Wild Animals, Pet Shop, Riding Establishments, Skin Piercing and other special treatments).
- Public Safety (e.g. Alcohol and entertainment licences, personal licences, club premises certificates, Hypnotism licences, Gambling licences etc.)
- Housing (e.g. Selective licensing of residential accommodation, Licensing of houses in multiple occupation, Licensing of camping sites, Licensing of caravan sites)
- Environmental (e.g. Environmental Permits, Licensing of scrap metal dealers)

To investigate complaints relating to licensed and licensable activities with the relevant powers of entry in order to undertake these investigation.

To instigate informal or formal action in order to resolve complaints or unlicensed activities and take appropriate action or remedy.

To undertake formal consultations on amendments to policy, (or fares in accordance with the Maximum Chargeable Fare setting policy South Hams only)

Authority **to suspend licences** in situations of urgency where there are reasonable grounds to do so (where urgency is determined by the Community of Practice Lead for Environmental Health)

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# Agenda Item 9

Report to: **Planning and Licensing Committee**  
Date: **15<sup>th</sup> November 2016**  
Title: **Approval of policy in relation to the licensing of Taxi drivers.**  
Portfolio Area: **Customer First**

Wards Affected: **All**

Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y / N**

Date next steps can be taken:  
(e.g. referral on of recommendation or implementation of substantive decision)

Author: **James Kershaw** Role: **Senior Specialist Environmental Health**

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## **Recommendations:**

1. That the Planning and Licensing Committee recommends to Council that the draft Taxi Driver Licensing Policy, is adopted at the meeting on 6<sup>th</sup> December 2016.

## **1. Executive summary**

- 1.1. West Devon Borough Council as the Licensing Authority has the power to issue licences to drivers of Hackney Carriages and Private Hire Vehicles, whom they deem as being fit and proper.

There is no legal definition of what makes a driver a fit and proper person, and it is therefore down to the licensing authority to determine what qualifications they require an applicant to meet in order to be licensed. This policy proposes to set the minimum requirements we will require from new and existing drivers.

- 1.2. The Council's current policy and driver handbook was issued approximately 30 years ago, and is therefore out of date. Ideally a policy of this importance should be reviewed every 3-5 years.
- 1.3. There have also been a number of national incidents in relation to the safeguarding of children and vulnerable adults in the past few years associated with the taxi trade. This policy seeks to ensure that all of our drivers are aware of these issues and know how to act to combat child sexual exploitation, and other criminal activities.

## **2. Background**

- 2.1. In West Devon we currently have 105 Combine Hackney Carriage/ Private Hire Drivers. A licence lasts for between 1 and 3 years. All new drivers are required to provide confirmation of their ability to hold a licence by demonstrating that:-
  - They have held a drivers licence for at least 12 months
  - They have an acceptable criminal record through providing an Enhanced Disclosure and Barring Service certificate.
  - That they meet the Group 2 medical standards
  - Pass a knowledge test demonstrating a good understanding of the local area.
- 2.2. Our current policies are outdated and do not offer adequate protection to users of the taxi service or the taxi drivers themselves, when considering changes to legislation.
- 2.3. Our policy must ensure compliance with Article 13 (2) of Directive 2006/123/EC, given domestic effect by regulation 18(4) of the Provision of Services Regulation 2009 SI No 2999, in that the 'authorisation procedures and formalities' for applicants 'shall not be dissuasive...and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures'.

When drafting the policy, we have taken into account best practice from other authorities in the wake of the recent incidents involving the taxi industry elsewhere in the Country.

The Policy has also been out for public consultation, meetings have been held with the taxi trade, and the policy was sent to various local and national representatives for comments. Comments received and alterations made to the policy can be viewed in Appendix A.

## **3. Outcomes/outputs**

- 3.1. This report seeks that the Committee recommend to the Council at the meeting on the 6<sup>th</sup> December that the Taxi Driver Licensing Policy be adopted for implementation on the 1<sup>st</sup> January 2017.
- 3.2. We will assess the impact of the policy by reporting to the committee on an annual basis the number of applications received that have been

successful/refused, the number of penalty points issued in a 12 month period, the decisions taken by committee in relation to drivers brought to them in the previous 12 months, and the number of successful appeals brought against Council decisions.

- 3.3. The policy will be reviewed in at least 5 years' time, but sooner should circumstances require it.

#### **4. Options available and consideration of risk**

- 4.1. When considering an application for a Driver Licence the Council must ensure that the driver is a "Fit and Proper" person to hold a licence. A person aggrieved by refusal, suspension or revocation of a driver licence can appeal to the Magistrates Court within 21 days of that decision.

Decisions made by the Council need to be defensible. This policy seeks to set a minimum standard that we will expect our licensed drivers to meet. However, notwithstanding this Policy, the Licensing Authority will consider each application and enforcement action on its own merits.

- 4.2. The importance of the taxi trade in providing an essential service in a rural community such as West Devon is recognised, and imposing unduly stringent restrictions may adversely impact the adequate supply of taxis.

Therefore the policy seeks to strike a decent balance between protecting the safety of taxi users and ensuring that the policy does not unnecessarily restrict the ability of applicants to obtain a licence.

- 4.3. When drafting the policy a public consultation was held from the 5<sup>th</sup> September for a period of 6 weeks. During this period the Environmental Health Community of Practice held meetings with the taxi trade on the 13<sup>th</sup> and 15<sup>th</sup> September. The feedback from this consultation and amendments made to the draft policy can be viewed in the appendices to this report.

However based on the feedback received the following amendments were made and paragraphs considered;

Para. 5.9: The requirement for all drivers to hold a UK driving licence within 12 months of being granted a Taxi driver licence is above and beyond the requirements of U.K. law, however it is felt appropriate to require this as we cannot view the penalty point records on foreign licences.

Para. 5.10: There were concerns raised over the knowledge test content by drivers with them believing that requiring knowledge of the full district is unreasonable especially with the introduction of GPS etc. We agree with some of the comments but feel that a knowledge test should remain part of our policy but we will endeavour to work on the content of the test.

Para. 5.14: During the consultation period the DVSA announced the suspension of their testing from the 1<sup>st</sup> January 2017. This would affect all Devon licensing authorities who require new drivers to pass this test before being licensed. The Licensing officers across Devon are in collective negotiations with several providers including the Devon Travel Academy which is run by Devon and Somerset Fire and Rescue Service. The location of this training is likely to be Westpoint Exeter but could be held at any fire station as long as there are enough bookings to warrant it.

The DSFRS training also includes passenger assistance training so we have removed mention of the specified provider being Midas.

Para. 5.17: We have received comments in relation to the frequency of training and whether we would accept training provided by other organisations.

In relation to the frequency of training, other organisations stipulate for other occupations that training should be undertaken every 3-5 years. It is envisaged that the driver policy will be reviewed every 5 years and therefore we can review the content during this review.

In regards to other providers, officers have concerns over the content of these courses and therefore believe drivers should be required to attend our sessions.

Para 5.20: There were a number of concerns raised about requiring drivers to use our nominated medical assessors, mainly due to the location of this assessor being in Plymouth. We have been unable to finalise discussions with the provider and therefore have amended the policy to allow drivers to continue to use their own GP's as well as using our nominated provider should they wish.

Para. 5.21: Comments have been received regarding the frequency of medicals, and the fact that there is no requirement for a medical after an initial application until the age of 45. This policy is in line with the DVSA standards for HGV and Bus drivers and therefore we feel it is appropriate to continue with this frequency.

It is the responsibility of the driver to inform the Licensing Authority of any medical conditions which may impact on their ability to drive, should we receive notification then we would require the driver to provide a medical assessment in a timely manner.

Para. 6.7: Following feedback the requirements for certificates of good conduct have been amended to take into account the impact that the proposals may have had on the children of armed service personnel who may have lived in many different countries. The policy therefore now only applies to countries lived in since the age of 18 rather than 10.

Chapter 9.0: The consultation has shown support for the introduction of a penalty points system, as long as the points are awarded in a fair and consistent manner. The Council intends to do this and we will report the

points awarded in the previous 12 month period as part of the annual report to the committee.

Appendix B Para. 4: Following concerns about the requirement for drivers to hand lost property into a police station within 48 hours of it being discovered, the policy has been amended to allow discretion by the driver as to what items of lost property should be kept and how to ensure it is reunited with the passenger.

Appendix B Para. 9: It was felt inappropriate to stop drivers from eating or drinking in their vehicles and therefore this was removed from the policy.

Also drivers were concerned over the wording about inappropriate conversations and therefore this was amended to make the policy more general.

Appendix D: Concerns have been raised over the frequency of appointments available for new drivers to undertake the knowledge test being once a month. Unfortunately it is felt with current resource levels we are unable to guarantee a greater number of days. We will always endeavour to be flexible with appointments and therefore we have included the word "normally" to the policy to allow for discretion of the officers.

## 5. Proposed Way Forward

- 5.1. This report seeks that the Committee recommend to the Council at the meeting on the 6<sup>th</sup> December that the Taxi Driver Licensing Policy be adopted for implementation on the 1<sup>st</sup> January 2017.

## 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		<p>The Town Police Clauses Act 1847 gave the Local Authority the power to grant licences to Hackney Carriages for the purpose of plying for hire within the district.</p> <p>The Local Government (Miscellaneous Provisions) Act 1976 amended the powers above to state that a licence can only be granted to someone who is a fit and proper person and has held authorisation to drive a motorcar (drivers licence) for at least 12 months.</p> <p>There is no definition of what someone fit and proper and this policy will help to ensure consistency when determining applications and</p>

		<p>other determinations such as when to suspend or revoke a licence.</p> <p>Whilst we may have a policy each application will still need to be determined on its own merits.</p>
Financial		<p>The policy does not have direct financial impacts on the authority. There will be an increase in obtaining a licence due to the additional requirements that applicants will need to meet, however this is at their expense.</p> <p>We will in due course need to review our licensing fees to ensure that they are in line with the decision made in the European Court of Justice in the Hemming &amp; others v Westminster City Council case. Which states that licensing fees should be set at a level that does not dissuade applicants and is at most the cost of the procedure of issuing a license.</p>
Risk		<p>A determination by a licensing authority to refuse, revoke or suspend a licence can be appealed as can conditions attached to a licence. An appeal is made to the magistrates.</p> <p>Failure to having made a determination that is defensible could lead to costs being awarded against us.</p> <p>As has been found across the country where the taxi trade has been implicated in criminal actions there has been a negative reputational impact on those licensing authorities. The proposed policy has been developed taking into account learning from these scandals and other good practice.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		<p>The policy will hopefully have a positive impact on equality and diversity by promoting good practice in disability awareness amongst the taxi trade.</p>
Safeguarding		<p>The policy will hopefully have a positive impact on safeguarding by ensuring that an essential trade are well regulated, and drivers who have access to vulnerable children and adults are aware of the</p>

		signs of abuse and how to report these.
Community Safety, Crime and Disorder		A positive impact by ensuring that drivers who have access to sensitive information about people and their homes are thoroughly vetted.
Health, Safety and Wellbeing		No overarching concerns foreseen
Other implications		None foreseen

**Supporting Information**

**Appendices:**

- A - Consultation feedback
- B - Draft Taxi Driver Policy

**Background Papers:**

Taxi and PHV Licensing Councillors Handbook (England and Wales), Local Government Association

Taxi and Private Hire Vehicle Licensing: Best Practice Guidance, Department for Transport, 2010.

Minutes of the Taxi Trade meetings held on the 13<sup>th</sup> and 15<sup>th</sup> September.

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## Consultation Feedback on Taxi Driver Licensing Policy

### Response from Anonymous member of the public

<u>Paragraph No.</u>	<u>Comments</u>
5.20	<p>An applicant should be able to see their own GP for a medical examination.</p> <p>An obligation to use a Licensing Authority approved medical centre questions: a) the integrity of the applicant's GP (should that GP be happy to see their patient for a medical examination), b) a compromise of Patients' Rights including opting out of the requirement to submit medical history data to another qualified person and the right of a patient to see their own GP.</p> <p>This is also likely to cause inconvenience to the applicant through time and cost of attending the Licensing Authority approved centre. Suggested to be in Plymouth and used by SHDC employees for required medical examinations, this could raise questions of a conflict of interest as applicants are not Council employees.</p>
<u>9c) p.26</u>	<p>As the driver is responsible for the upkeep and cleanliness of the vehicle, they should not be prohibited from staying nourished and hydrated within the vehicle. E.g. in cases of bad weather, traffic jams in hot weather, medical requirements (e.g. Diabetes) etc.</p>
<u>9g) p.27</u>	<p>This should be reworded to: "Drivers should use common sense when initiating conversation so as not to broach subjects which may cause offence."</p>

### Response from Ivybridge Town Council

Set out below is the response to the consultation document:

The courts take a disapproving view of a taxi driver carrying anything that may be used as a weapon albeit as a perceived safety measure.

Appendix A of the draft policy – Hackney Carriage and Private Hire Leasing Criminal Convictions Policy (Section 6) covers many levels of convictions including actual body harm (ABH) and common assault. Section 7 includes convictions for possessing a weapon. In other words the appendix covers convictions rather than giving advice.

However, Appendix B Section 9 deals with the Conduct of Drivers. Perhaps it could include a paragraph to the effect that **the driver must not have about his or her person or within the vehicle anything that could be construed as a weapon.** This would tie in with the theme of the appendix.

### **Response from Sampford Courtenay Parish Council**

Dear Sir/Madam

Travelling regularly around mainland (EU) Europe it's noticeable how many countries such as France adopt a simple **standardised** policy for taxi identification.

The roof of the vehicle has bright red display light for 'in use' and a green one for 'available for hire'. They are clearly visible, always located on the same part of the vehicle roof and offer real clarity regarding availability and what the vehicle is. Here in the UK we appear to have a mix of orange and other displays, i.e. not a uniform means of clear identification.

Perhaps this policy could be adopted in our districts?

### **Response from a Tavistock based Taxi Firm**

PARAGRAPH No		
5.10	COMMENTS	Any knowledge tests must be set against a specific working area or routes. To expect an applicant to know everywhere within west devon is unreasonable and unpractical. If the general working area is either Tavistock or Okehampton then that is the area to be concentrated on. More so for new independent operators as drivers for larger companies will have office control for guidance.
5.13 – 5.16	COMMENTS	Timescale is of utmost importance when recruiting new drivers. Currently taking upto 4 weeks and beyond is restrictive. The DSA are removing the taxi driving assessment test and being expected to take all the PATS courses and safeguarding courses not only takes time, as I suspect there will be limited dates within the month to do these, but they will also mean traveling to the nearest location to get them done. There needs to be regular dates that coincide with each other to make the licencing process a quick as possible and as affordable as possible.
5.21	COMMENTS	If a driver gets initially licenced at 25, potentially not requiring a medical for a further 20 years? I think 5 yr intervals are enough and those over 65 should be subject to a medical every year unless the doctor thinks otherwise. I have two over 65 who are fitter than the younger ones!!
9	COMMENTS	Penalty points are a good idea as long as it is operated correctly

AP A 9.1	COMMENTS	<p>Take lost property to a police station within 24 hrs... where?</p> <p>Tavistock police station does not accept lost property and you have to take it to Plymouth. Having to do that, potentially a few times a week is not practical. Perhaps if there is not a local police station WDBC can hold it at their offices!</p>
AP B 9c	COMMENTS	<p>The driver shall not eat or drink in the vehicle? Its my vehicle!! As long as its clean and tidy why cant we eat when waiting for fares? People complain now that there are not many taxis at dinner time, this will make it worse</p>
AP D step 2	COMMENTS	<p>Tests held one day per month?</p> <p>This needs to be more frequent.</p>

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West Devon  
Borough  
Council

**DRAFT**  
**Hackney Carriage and Private Hire  
Licensing Policy**

Date of commencement: **XX.XX.XXXX**

Version no. 1.0  
Date of Review: **XX.XX.XXXX**

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## **Preface**

This section does not form part of the policy and is for information purposes only.

This Policy will guide the Council, as the “Licensing Authority” when considering applications under the Town Police Clauses Act 1847, Town Police Clauses Act 1889 and Local Government (Miscellaneous Provisions) Act 1976, as amended, which places on West Devon Borough Council the duty to carry out their licensing functions in respect of hackney carriages and private hire vehicles.

This is a general guide that has been prepared for the assistance and guidance of Hackney Carriage and Private Hire Drivers and any other person with an interest in Hackney Carriage and Private Hire licensing in West Devon. It does not stand on its own and West Devon Borough Council, its Officers and Agents, do not accept any responsibility for any loss caused by any person acting as a result of the material enclosed here.

### **If you have any questions or queries about this document:**

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**Phone:** 01803 813600

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**Website:** [www.westdevon.gov.uk](http://www.westdevon.gov.uk)

## Foreword

Hackney carriages and private hire vehicles are an important mode of local transport, and as such have a specific role to play in a united transport system. They are able to provide safe, secure and comfortable transport, providing an on-request door-to-door service in various circumstances, including where public transport may not be available (e.g. in very rural areas), or for those with mobility difficulties.

The aim of the Policy is to control the provision of a robust taxi and private hire licensing system, which makes sure the public travel safely, receive a good level of service and drivers and operators are not overloaded by unnecessary conditions.

In setting out its Policy, the Licensing Authority seeks to promote the following objectives:

- **The safety and health of drivers and the public;**
- **Vehicle safety, comfort and access;**
- **To prevent crime and disorder and to protect the public;**
- **To encourage environmental sustainability.**

Public safety is vital, and the authority seek to make sure through licensing that all taxi and private hire vehicles are fit for purpose and that their drivers and/or operators are fit and proper persons.

This policy provides information and guidance to licence applicants, clarity for licensed vehicle owners, drivers and operators and the public as to the way that the Licensing Authority will undertake its licensing functions. In addition, the policy document looks to help the Licensing Authority in reaching a decision on a particular application or a particular enforcement issue, setting out those matters that will normally be taken into account.

This Policy will be reviewed periodically to take into account information gathered over a period of time, together with the outcomes of any updates in legislation or associated government guidance. Supporting appendices to the Policy may be updated from time to time, and therefore, applicants and all other interested persons are advised to contact the Licensing Department for up-to-date information.

In the preparation and publication of this policy the Licensing Authorities have had regard to the following:

- Guidance issued by the Department for Transport (“Taxi and Private Hire Vehicle Licensing: Best Practice Guidance” – Edition March 2010).
- Law Commission Taxi and Private Hire Services Paper No 347 – May 2014
- Local Government Association Taxi and PHV Licensing Councillor’s Handbook (England and Wales) – March 2015
- Benchmarking with other Authorities
- Consultation with Taxi Trade
- Licensing Objectives.

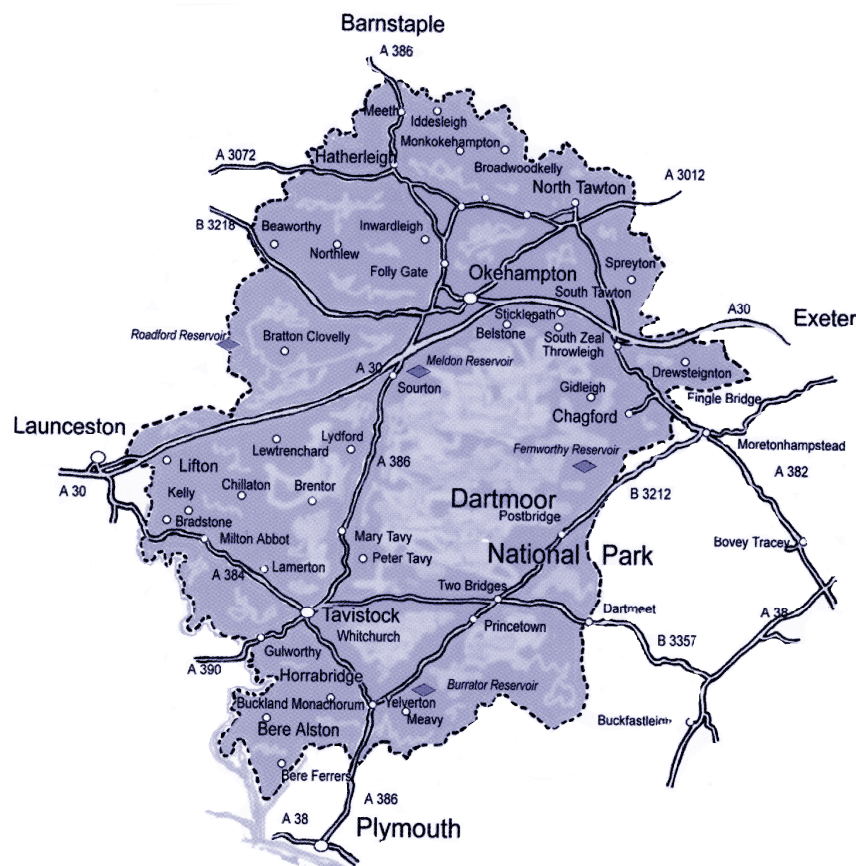
**Nothing in this policy document should be regarded or interpreted as an indication that any requirement of licensing or other law may be overridden.**



## 1. Introduction

- 1.1 This Policy is written pursuant to the provisions of the Town Police Clauses Act 1847, Town Police Clauses Act 1889, Local Government (Miscellaneous Provisions) Act 1976, as amended, Transport Acts of 1980 and 1985, which places on The Council the duty to carry out their licensing functions in respect of hackney carriages and private hire vehicles.
- 1.2 It is recognised that other legislation exists which impacts on taxi licensing, such as the Equality Act 2010 and therefore, aspects of this Policy pay regard to these additional legislative requirements.
- 1.3 It is intended that the Policy will take effect from **XX XX XXXX**.
- 1.4 The Policy relates to hackney carriage and private hire licensing of drivers and operators.
- 1.4 The purpose of this Policy is to assist the Licensing Authority in reaching a decision on any particular application, and in setting out those matters that are normally taken into account. Additionally, the document seeks to provide clear advice for licence holders in terms of the standards expected, and also to provide general advice to service users and the general public.
- 1.5 The Policy is subject to review every five years. Any major changes to policy made between review periods will be preceded by public consultation.

### Licensing Authority Area



## 2 Licensing Objectives & Related Legislation

2.1 The Licensing Authorities are committed to ensuring the provision of a professional hackney carriage and private hire service, by continued monitoring and improvement of standards and procedures, and seeks to promote the following objectives when considering applications, or when assessing the extension of an existing licence:

- **The safety and health of drivers and the public;**
- **Vehicle safety, comfort and access;**
- **To prevent crime and disorder and to protect the public;**
- **To encourage environment sustainability.**

2.2 In promoting these objectives, considerations such as those set out at paragraphs 2.3 and 2.4 will be taken into account by the Licensing Authority, and applicants and licence holders will be expected to continuously show they can meet or exceed specifications set by the Licensing Authority.

2.3 Safety and Health of Driver and the Public:

- Consideration of history of convictions and cautions;
- Driver training, qualification and performance;
- Health and fitness of applicant for driver licence, or existing licence holder;
- Regular driver health checks;
- Knowledge of West Devon Borough Council area.

2.4 Vehicle Safety, Comfort and Access:

- Standards of vehicle appearance and comfort;
- Use and location of ranks;
- Provision of disabled facilities;
- Provision for all age groups;
- Provision of safe and comfortable premises for customers to use if applicable.

2.5 To Prevent Crime and Disorder and to Protect the Public:

- Vetting, qualification, training and monitoring of licence holders;
- Operating rules and disciplinary processes;
- Measures to prevent noise and light nuisance from taxi activities;
- Commitment to work with Licensing Authority, Police and other statutory authorities.

2.6 The Licensing Authority is aware that applying licensing requirements which are unduly severe may unreasonably limit the supply of taxi and private hire services, and can lead to negative safety implications. Therefore, the Licensing Authority has considered each of its licensing requirements in relation to the proportion of risk it aims to address.

2.7 The Licensing Authority also recognises that the licensing function is only one means of securing the delivery of the above objectives. The Licensing Authority will therefore continue to work in partnership with other stakeholders, such as the Police, Crime & Disorder Partnerships and the Vehicle and Operator Services Agency (VOSA) towards the promotion of the objectives.

2.8 In undertaking its licensing function, the Licensing Authority will have regard to the following legislation:

- Town and Police Clauses Act 1847
- Town Police Clauses Act 1889
- Transport Act 1980 & 1985
- Road Traffic Acts
- The Local Government (Miscellaneous Provisions) Act 1976, as amended
- Disability Discrimination Act 1995, as amended
- Environmental Protection Act 1990
- Health Act 2006
- The Smoke-free (Premises and Enforcement) Regulations 2006
- The Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007
- The Equality Act 2010
- The European Convention on Human Rights, which is applied by the Human Rights Act 1998
- The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000
- The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002

2.6 The Licensing Authority will also have regard to other legislation, strategies, policies and a range of guidance in its decision-making.

### **3. Consultation**

3.1 Before determining this Policy, the Licensing Authority have consulted with numerous persons and organisations including the following:

- Taxi Trade within the West Devon area
- Taxi Trade Representative/s
- Department for Transport (including VOSA)
- Devon County Council Highways Transport Services
- Driving Standards Agency
- Chief Officer of Police, Devon & Cornwall Constabulary
- Town and Parish Councils in West Devon Borough Council Area
- Citizens Advice Bureau
- Age UK
- Local and National Representatives of Child Safety Groups
- Living Options Devon
- Local and National Representatives of Disability Groups
- Home Office

3.2 Consultees were permitted to make representations in writing or via electronic means e.g. email response. All consultation responses have been taken into account when finalising the policy.

### **4. Departure from Policy**

4.1 In exercising its discretion in carrying out its functions, the Licensing Authority will have regard to this Policy and the objectives set out within. However, notwithstanding this Policy, the Licensing Authority will consider each application and enforcement action on its own merits.

4.2 Where it is necessary for the Licensing Authority to depart significantly from this Policy, clear and substantive reasons for doing so will be given. Such a decision will not set a precedent for other applications of a similar nature.

## **PART ONE – Hackney Carriage and Private Hire Drivers**

### **5. Drivers' Licensing Requirements**

5.1 Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 require that a district council will not grant a licence to drive a private hire or hackney carriage vehicle unless they are satisfied that the applicant is a 'fit and proper person' to hold a driver's licence.

5.2 The term 'fit and proper person' for the purposes of hackney carriage and private hire licensing is not legally defined. However, in deciding whether a person is fit and proper' to hold a licence, the Licensing Authority will use the test of:

*Would you allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter, or any other person for whom they care, to get into a licensed vehicle with the applicant alone?*

The wording of this test originates from Button, J. T. H. (1999), Taxis – Licensing Law and Practice, Butterworths, London.

5.3 When determining whether a person is "fit and proper", the Licensing Authority will consider the applicant's knowledge of the local area and matters related to the work of a licensed driver; their driving experience; driving qualifications; medical fitness; criminal record; previous history as a licensed driver or operator; any other matter considered relevant to the protection of the public or driver. In addition, the Licensing Authority may also consider further information from other sources, including the Police, other Licensing Authorities and Statutory Agencies.

5.4 A driver will be required to maintain their ability to be a 'fit and proper person' while licensed and must report any driving offences, changes to medical conditions, civil or criminal offences for which they have been interviewed or charged.

5.5 If the Licensing Authority suspects that a driver may no longer meet the standards required, Officers may need to conduct further enquiries to verify any information provided as to the fitness of a person to hold a licence. By submitting an application for a licence or holding a licence, the applicant gives their consent to the release of data where necessary.

5.6 Applicants should note that to make a false statutory declaration is a serious criminal offence, punishable upon conviction by imprisonment for a term not exceeding two years or to a fine to be decided by the court or both. This statutory declaration may in certain circumstances, be forwarded to the police for examination.

### **Dual Driver Licences**

5.7 The Licensing Authority issues a dual Hackney Carriage and Private Hire driver licence to give the holder the flexibility to drive either type of vehicle. Licence holders are required to obey with any conditions or byelaws that are relevant to the work they are carrying out at any time, which will be dependent on the licensed vehicle being used.

## **Driver Knowledge and Proficiency**

- 5.8 Hackney carriage and private hire drivers must hold a valid full UK driving licence (licence issued in accordance with Part III of the Road Traffic Act 1972 (as amended)) and this licence must have been held for no less than 12 months at the time of application.
- 5.9 An applicant who meets the licensing requirements by benefit of an acceptable non-UK driving licence must obtain a full UK driving licence within 12 months of issue of the hackney carriage/private hire driver licence.
- 5.10 Hackney Carriage and Private Hire drivers are expected to have a good working knowledge of West Devon and the surrounding area, as well as the Highway Code and relevant legislation. Applicants will be tested on their knowledge of the above and must pass a test to a set standard. The test will be conducted in English only at the Council Offices. Failure to attend without prior notice will mean forfeiture of any monies paid. Oral tests will only be conducted under exceptional circumstances which can be discussed when initially applying.
- 5.11 Applicants must demonstrate an adequate and reasonable level of spoken English and be able to converse with authorised officers and members of the public. The purpose of the requirement is to ensure that members of the public and drivers are safeguarded by making sure that licensed drivers can communicate and give and understand most instructions. Applicants who cannot demonstrate an adequate or reasonable level of spoken English and/or a suitable qualification will be required to undertake an independent assessment of their spoken English. The procedure for the English assessment is detailed at Appendix E.
- 5.12 If the Licensing Authority has concerns that an existing driver cannot demonstrate an adequate or reasonable level of spoken English and/or a suitable qualification may be referred to the Licensing Committee with the recommendation that they undertake an independent assessment of their spoken English.
- 5.13 Hackney carriage and private hire drivers, as a profession, have a responsibility for the safe transportation of fare-paying passengers. Therefore, the Licensing Authority as part of its application procedure requires that an assessment of the drivers' ability must be obtained by all new applicants. Similarly, where an existing licensed driver receives an endorsement/s or penalty points the Licensing Authority may require that person to undertake the same assessment.
- 5.14 The driving assessment would be achieved by successful completion of a standard taxi driving assessment, as approved by the Licensing Authority. The test is reflective of modern driving practices; the standard is set at a level suitable for the full driving licence holder, which is therefore of a higher level than the learner driver test.
- 5.15 It is a requirement that all applicants for new or renewal applications must have completed a Passenger Assistance Training Scheme (PATS) training course with a certificated trainer, as approved by the Licensing Authority. A certificate to prove that the course has been completed must be presented with the application.
- 5.16 As part of the Councils' commitment to protecting the safety of those most vulnerable in our communities, and recognising the important role that taxi drivers play as eyes and ears within the community there is an additional requirement that all driver renewal

applications shall be accompanied by evidence that the applicant has attended a Safeguarding Awareness Workshop relating to Children and Vulnerable Adults.

- 5.17 All new drivers must attend a Safeguarding Awareness Workshop within 12 months of their licence being granted. Failure to do so will result in the licence being suspended or not renewed.
- 5.18 The Licensing Authority, at its discretion, may require specific training to be undertaken by an applicant or a licensed driver where considered suitable.

### **Medical Examination and Exemptions**

- 5.19 The Licensing Authority requires that all new drivers complete a medical examination prior to making an application, and will require further medical assessments as detailed below. The medical examination will make sure that the applicant/licence holder satisfies all the requirements of the DVLA Group II medical standards of fitness to drive.
- 5.20 The medical assessment may be undertaken by either a Licensing Authority approved medical centre or the driver's own GP surgery. The applicant will be responsible for making sure that their medical records are available to the medical practitioner so that the medical assessment can be completed. A medical certificate in the agreed format must be provided to the Licensing Authority following the assessment, no older than three months at the time of the application being completed.
- 5.21 The requirements for applicants/licensed drivers regarding medical examination are as follows:
- Upon new driver application
  - Every 5 years from the age of 45 years (*in intervening years, licence holders are required to declare that there has been no change in their medical standard*)
  - Every year where the driver is aged 65 years or over.
  - Or any time as required by the Licensing Authority or medical practitioner
- 5.22 Drivers who suffer from certain medical conditions may be required to provide more frequent medical assessments in relation to the specific medical condition.
- 5.23 Where there is any doubt as to the medical fitness of the applicant, the Licensing Authority may ask the applicant to take further medical examination at a Licensing Authority approved medical centre at the applicant's/licence holder's own expense.
- 5.24 Where there remains any doubt about the medical fitness of the applicant/licence holder, following the additional assessment described in the previous paragraph, the Licensing Authority will review the medical evidence. They will then make a final decision as to the suitability of the applicant/licence holder to drive a hackney carriage or private hire vehicle in light of the medical evidence available.
- 5.25 All licence holders are required to inform their Licensing Authority of any illness, condition or any other matter that affects their ability to drive.
- 5.26 Exemption from carrying guide, hearing and certain other assistance dogs accompanying disabled persons, can only be sought on medical grounds. Therefore, applicants will need to show any allergies or phobias by providing medical evidence to the Licensing Authority.

- 5.27 It is important that applications for the exemption are made before taking a medical examination.
- 5.28 If an application for exemption is successful, the Licensing Authority will issue the driver with a Notice of Exemption. This Exemption must be exhibited in the vehicle by fixing it, facing outwards, either on the windscreen or in a prominent position on the dashboard.
- 6. Disclosure Barring Service (DBS), Criminal Disclosures, and Certificates of Good Conduct**
- 6.1 Due to the nature of their role, Hackney Carriage and Private Hire drivers are included as 'exceptions' from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Therefore, all applicants and licensed drivers must reveal on their application form any caution or conviction, even if it is 'spent' for other purposes. All offences will appear on an Enhanced Disclosure and Barring Service (DBS) certificate. There are certain circumstances where old or minor cautions and convictions may be 'protected' and will not appear on a DBS certificate, more information on this can be found in the 'DBS Filtering Guide' available on the DBS website.
- 6.2 The Licensing Authority requires that all new applicants submit to a DBS check upon application for a Hackney Carriage and Private Hire driver licence. The check must be made through the Licensing Authority's electronic DBS checking service.
- 6.3 All new applicants and current licence holders must subscribe to the DBS Update Service for the required annual fee as set by the DBS. If the subscription remains up-to-date, the licence holder will not be required to complete another DBS application unless there are changes to their criminal record status
- 6.4 If the applicant has subscribed to the 'Update Service', their subscription is up-to-date and written authorisation to do so has been given, the Licensing Authority will be able to access the online Update Service to carry out a 'Status Check'. The status will be checked annually, but may be completed at any time if there is reason to do so. For example, if there is the reasonable belief that the licence holder has obtained a criminal conviction which has not been notified to the Licensing Authority.
- 6.5 If the subscription lapses, the next time a DBS check is required a new DBS application must be completed, including the full DBS application fee.
- 6.6 Applicants will be required to prove that they have the correct permissions in place to work in the UK, before being granted a licence. Applicants will be required to provide, amongst other documents, a birth certificate or valid passport. Additional proof of identity will be required for the enhanced DBS check, the full requirements of which may be found on the DBS website. The Licensing Authority will operate its application procedures in line with guidance issued by the UK Border Agency on Prevention of Illegal Working and its associated Code of Practice.
- 6.7 For new driver applications, if you have lived outside of the UK for a continuous period of 6 months or more at any time since your eighteenth birthday, you must obtain a Certificate of Good Conduct which must be under 6 months old. A Certificate of Good Conduct (or equivalent) authenticated and translated by the relevant embassy is required. The GOV.UK website provides information about obtaining these certificates, or similar documents from other countries.

- 6.8 Failure to inform the Licensing Authority, without delay, of any convictions, cautions and fixed penalty notices during the licensing application and/or licensing period (i.e. once the licence is granted) may result in the application being refused or the licence being suspended or revoked. Similarly, where convictions, cautions or fixed penalty notices are notified, depending on the nature of the incident, this may result in suspension or revocation of the driver licence.
- 6.9 All applicants for the grant/renewal of a licence requiring a DBS check, or by request during the licence period, shall be responsible for the costs of gaining the DBS certificate.

### **DVLA Licence Checking**

- 6.12 The Licensing Authority will need an applicant to sign a mandate form in order that a DVLA licence check can be carried out at any time while licensed as a Hackney Carriage and Private Hire driver. This will allow the Licensing Authority to access information relating to DVLA driving licence entitlements and endorsements.

## **7. Relevance of Convictions, Cautions, Fixed Penalties and other relevant information**

- 7.1 When considering convictions and cautions recorded against an applicant or an existing licence holder, the Licensing Authority will have regard to the “Convictions & Cautions Policy” set out in **Appendix A**.
- 7.2 In assessing whether an applicant or licence holder is a ‘fit and proper’ person to hold a licence, the Licensing Authority will consider each case on its own merit.
- 7.3 The Licensing Authority will take account of cautions, whether spent or unspent, fixed penalty notices and other information, but only if they are relevant to an application for a licence or impact on the continuance of an existing driver licence. Upon receipt of the Disclosure and Barring Service check, the Licensing Authority will consider whether any, or all, of the spent convictions have any real relevance to the issue of whether the applicant or licence holder is a fit and proper person to hold a licence. In certain cases, the matter may be referred to the Licensing Committee for a decision.
- 7.4 The Licensing Authority will have regard to fixed penalties when considering if an applicant is a fit and proper person. Failure to inform the Licensing Authority of any fixed penalty notices obtained during the application or licence period may result in possible refusal of the application or suspension or withdrawal of the licence.
- 7.5 In relation to cautions, the Licensing Authorities will have regard to the nature of the incident when considering its relevance to an application or continuance of an existing driver licence.
- 7.6 In relation to previous convictions, the Licensing Authority will have regard to the following:
- Whether the conviction/s are spent or unspent;
  - The nature of the offence/s;
  - The age of the offence/s;
  - The apparent seriousness, as gauged by the penalty applied.



- 7.7 In general terms, the more recent, serious and relevant to the Licensing Authority's licensing objectives the offence is, the less likely the application will be granted or that an existing licence will be permitted to remain in effect.

## **8 Grant and Renewal of Driver Licences**

### New Applications

- 8.1 The Licensing Authority will normally issue a three-year licence unless a reasonable request for a licence of a shorter period is made. The Licensing Authority retain discretion to issue licences of a shorter period if it considers appropriate.

### Renewal Applications

- 8.2 The Licensing Authority will normally issue a three-year licence upon renewal, unless a reasonable request for a licence for a shorter period is made. The Licensing Authority retains discretion to issue licences of a shorter period if it considers this to be reasonable given the individual circumstances.
- 8.3 Applications must be made on the specified application form, which is available to download from the Council's website or upon request to the Licensing Team. The Licensing Authority will not accept the application as being served until all prescribed supporting documentation is provided.
- 8.4 Although there is no statutory duty placed on the Council to issue reminders, holders of existing driver licences will be reminded in advance of their licence expiring and the requirement to renew. It is recommended that drivers note their licence expiry date and apply to renew in good time. It remains the licence holder's responsibility to ensure that licences are renewed in time.
- 8.5 The reminder service is not a statutory requirement. Failure to receive a reminder is not a valid reason for not renewing a licence in time or for supplying the Council with a required document.
- 8.6 Failure to renew a licence before the expiry date will result in the applicant being required to make an application for the grant of a new licence and comply with all the associated requirements of the new application process. If the licence renewal is submitted late as a result of exceptional circumstances it may be accepted. 'Exceptional' in this instance will only apply where failure to renew on time is due to unforeseen circumstances, for example where the applicant has been unable to apply due to an emergency situation.

## **9. Code of Good Conduct and Penalty Point System**

- 9.1 The Licensing Authority has introduced a Code of Good Conduct for Hackney Carriage and Private Hire drivers, which serves to promote the Licensing Authority's licensing objectives. Failure to meet with these standards may lead to the Licensing Authority determining that a licensed driver is no longer a 'fit and proper' person to hold a licence.
- 9.2 The Code is provided at **Appendix B** and should be read together with the other statutory and policy requirements in this document. By accepting a licence from the Licensing Authority, licensed drivers will be deemed to have read and accepted the Council's Code of Good Conduct, therefore agreeing to follow its contents.

## **Penalty Point System**

- 9.3 The introduction of the Penalty Points System is to provide an effective enforcement process for Licensing Officers in respect of Hackney Carriage and Private Hire Driver and Vehicle Licence holders who are found to be in breach of local or national conditions and policies relating to the licensing functions.
- 9.4 The emphasis of the Penalty Points System is to increase and guarantee the safety and wellbeing of members of the public as well as compliance with legal requirements. The system is only intended to ensure compliance by those licence holders who it is proved have breached or are in breach of the rules and regulations that they should be complying with.
- 9.5 The system operates in line with penalty points endorsed on a driving licence and that where 12 unspent penalty points are accumulated this will result in automatic referral to a Licensing Committee. Where a referral is made to a Licensing Committee, it will be that Committee's decision on what further action if any should be taken.
- 9.6 Where penalty points are administered by an Officer and the licence holder wishes to dispute the matter, the licence holder may request for the matter to be referred to a Licensing Committee.
- 9.7 Any licence holder has the right to appeal against a Licensing Committee decision to the Magistrates Court within 21 days of notification of the Committee's decision.
- 9.8 Details on when penalty points may be given are found at **Appendix C**.
- 9.9 The issuing of penalty points does not preclude the Licensing Authority from taking further enforcement action where there has been a breach of any of the regulations of the Local Government (Miscellaneous Provisions) Act 1976 or the Town Police Clauses Acts

## **10. Smoking**

- 10.1 Smoking in a smoke-free place is prohibited under the Health Act 2006. A 'smoke-free place' includes a licensed Hackney Carriage or Private Hire vehicle. In the context of the Health Act, smoking relates to the smoking of cigarettes and other tobacco products.
- 10.2 The driver of a licensed vehicle must not smoke in the vehicle at any time, including when the vehicles is being used for social, domestic and pleasure purposes.
- 10.3 The driver of a licensed vehicle must not allow any other person or fare-paying passengers to smoke in a licensed vehicle.
- 10.4 This also includes a ban on electronic inhaler type cigarettes or vaporisers, which mimic the action of smoking.

## APPENDIX A

### Hackney Carriage and Private Hire Licensing Criminal Convictions Policy

#### 1. Introduction

- 1.1 The purpose of this policy is to provide guidance on the criteria taken into account by the Licensing Authority when deciding whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire driver or operator licence.
- 1.2 The prime aim of the licensing authority is to protect the safety of the public. The licensing authority is concerned to ensure:
- That a person is a fit and proper person
  - That the person does not pose a threat to the public
  - That the public are safeguarded from dishonest person
  - The safeguarding of children, young persons and vulnerable adults
- 1.3 This policy provides guidance to any person with an interest in taxi and private hire licensing. In particular, but not exclusively:
- Applicants for drivers' licences
  - Existing licensed drivers whose licences are being reviewed
  - Licensing officers
  - Members of the licensing committee/ panel (or other relevant decision making body)
  - Magistrates hearing appeals against local authority decisions
- 1.4 Where officers under the Council's Scheme of Delegation, have powers to grant licences, they will use these guidelines when making a decision to grant a licence. In all other cases, applications for licences will be referred to the licensing committee/panel (or other relevant decision-making body). While officers and the committee/panel will have regard to the guidelines contained in the policy, each case will be considered on its individual merits and, where the circumstances demand, the committee/officer may depart from the guidelines.

#### 2. General policy

- 2.1 There may be occasions where it is appropriate to depart from the guidelines, for example where the offence is a one-off occasion or there are mitigating circumstances or alternatively where there are many or continuous offences which may show a pattern of offending and unfitness.
- 2.2 A person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to:
- a. Remain free of conviction for an appropriate period; and
  - b. Show adequate evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence). Simply remaining free of conviction may not generally be regarded as satisfactory evidence that a person is a fit and proper person to hold a licence.

2.3 Where an applicant has been convicted of a criminal offence, the licensing authority cannot review the merits of the conviction [Nottingham City Licensing Authority v. Mohammed Farooq (1998)].

### **3. Appeals**

3.1 Any applicant refused a driver's licence on the grounds that the licensing authority is not satisfied he is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal [Local Government Miscellaneous Provisions Act 1976, s 77 (1)].

### **4. Powers**

4.1 Section 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 allow the licensing authority to suspend, revoke or refuse to renew a licence if the application/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.

4.2 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the licensing authority to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Therefore the licensing authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.

4.3 In this policy the term "disqualification" refers to the period served, in order to take account of the fact that a court may reduce the period of disqualification from driving. An applicant must provide evidence in advance to prove that the court agreed a reduction in the period of disqualification.

### **5. Consideration of disclosed criminal history**

5.1 Under the provisions of Sections 51, 55, and 59, Local Government (Miscellaneous Provisions) Act 1976, the licensing authority is required to ensure that an applicant for the grant or renewal of a hackney carriage and/or a private hire vehicle drivers' licence and/or private hire vehicle operator's licence is a 'fit and proper' person to hold such a licence. However, if an applicant has any convictions, warnings, cautions or charges awaiting trial, the licensing authority will look into:

- How relevant the offence(s) are to the licence being applied for
- How serious the offence(s) were
- When the offence(s) were committed
- The date of conviction
- Circumstances of the individual concerned
- Sentence imposed by the court
- The applicant's age at the time of conviction
- Whether they form part of a pattern of offending
- Any other character check considered reasonable (e.g. personal references)
- Any other factors that might be relevant

5.2 Existing holders of drivers' licences are required to notify the licensing authority in writing within twenty-eight days of receiving a driving licence endorsement, fixed

penalty notice or criminal conviction (including cautions).

- 5.3 Applicants can discuss further what effect a caution/conviction may have on any application by contacting the licensing officer in confidence for advice.
- 5.4 The licensing authority conducts disclosures from the Disclosure and Barring Service (DBS) of any applicant for a driver licence. The licensing authority follows the DBS's Code of Practice on the fair use and storage of disclosure information. A copy is available on request.
- 5.5 Applicants applying for the grant or a renewal of a drivers' licence will be required to get a disclosure at their own expense. The licensing authority stands by the DBS's Policy on the secure storage, handling, use, retention and disposal of disclosure information, which is available on request.
- 5.6 More information about the DBS can be found on their website.
- 5.7 The licensing authority is also permitted to use other records and information that may be available to it in deciding applications or an entitlement to continue holding a licence. This may include information held by the licensing authority or other licensing authorities, and information disclosed by the police.
- 5.8 It is an offence for any person, knowingly or recklessly, to make a false declaration or to omit any material particular in giving information required by the application for a licence. Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.

## **6 Serious offences involving violence**

- 6.1 Licensed drivers have close regular contact with the public. A firm line is to be taken with those who have convictions for offences involving violence. An application will normally be refused if the applicant has a conviction for an offence that involved the loss of life.
- 6.2 In other cases anyone of a violent disposition will normally be refused to be licensed until at least 3 years free of such conviction. However, given the range of the offences that involve violence, consideration must be given to the nature of the conviction.
- 6.3 Unless there are exceptional circumstances a licence will not normally be granted where the applicant has a conviction for an offence such as:
- Murder
  - Manslaughter
  - Manslaughter or culpable homicide while driving
  - Terrorism offences
  - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 6.4 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 10 years prior to the date of application:
- Arson
  - Malicious wounding or grievous bodily harm which is racially aggravated
  - Actual bodily harm which is racially aggravated
  - Grievous bodily harm with intent

- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated
- Violent disorder
- Resisting arrest
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

6.5 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 5 years prior to the date of application:

- Racially-aggravated criminal damage
- Racially-aggravated offence
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

6.6 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 3 years prior to the date of application:

- Common assault
- Assault occasioning actual bodily harm
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Criminal damage
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

6.7 A licence will not normally be granted if an applicant has more than one conviction in the last 10 years for an offence of a violent nature.

6.8 In the event of a licence being granted, not revoked or suspended, a strict warning both verbally and in writing should be administered.

## **7. Possession of a weapon**

7.1 If an applicant has been convicted of possession of a weapon or any other weapon related offence, this will give serious concern as to whether the person is fit to transport the public.

7.2 Depending on the circumstances of the offence, an applicant should be free of conviction for 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), before a licence is granted.

## **8. Sex and indecency offences**

8.1 As licensed drivers often carry unaccompanied and vulnerable passengers, applicants with convictions for sexual offences must be closely examined. Those with convictions for the more serious sexual offences will generally be refused. For other offences,

applicants will be expected to show a substantial period (normally at least 5 years) free of conviction for such offences before a licence will be granted.

- 8.2 (a) Unless there are exceptional circumstances, an application will normally be refused where the applicant has a conviction for an offence such as:
- Rape
  - Assault by penetration
  - Offences involving children or vulnerable adults
  - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 8.3 (b) Before an application is allowed, an applicant should be free of conviction for at least 10 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he/she has a conviction for an offence such as:
- Sexual assault
  - Indecent assault
  - Possession of indecent photographs, child pornography etc.
  - Exploitation of prostitution
  - Trafficking for sexual exploitation
  - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 8.4 (c) Before a licence is granted, an applicant should be free of conviction for at least 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he/she has a conviction for an offence such as:
- Indecent exposure
  - Soliciting (kerb crawling)
  - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 8.5 In addition to the above the licensing authority will not normally grant a licence to any applicant who is currently on the Sex Offenders Register.
- 8.6 A licence will not normally be granted if an applicant has more than one conviction for a sex or indecency offence.

## **9. Dishonesty**

- 9.1 A licensed PHV or taxi driver is expected to be a trustworthy person. They deal with cash transactions and valuable property may be left in their vehicles. Taxi drivers are required to deal with such property in accordance with the standards set out in Appendix B in relation to lost property. PHV drivers must pass lost property to the operator. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers. Furthermore, it is fairly easy for a dishonest driver to defraud the public by demanding more than the legal or agreed fare, etc. Overseas visitors can be confused by our currency and may be vulnerable to a dishonest driver. For all these reasons, a serious view is taken of any conviction involving dishonesty.
- 9.2 In general, a minimum period of 3 years free of conviction or at least 3 years from completion of sentence (whichever is longer) should be required before granting a licence. Offences involving dishonesty include:
- theft
  - burglary

- fraud
- benefit fraud
- handling or receiving stolen goods
- forgery
- conspiracy to defraud
- obtaining money or property by deception
- other deception
- taking a vehicle without consent
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

## **10. Drugs**

- 10.1 A serious view is taken of any drug related offence. The nature and quantity of the drugs, whether for personal use or supply are issues which should be considered.
- 10.2 A licence will not normally be granted where the applicant has a conviction for an offence related to the supply of drugs and has not been free of conviction for 5 years.
- 10.3 A licence will not normally be granted where the applicant has more than one conviction for offences related to the possession of drugs and has not been free of conviction for 5 years.
- 10.4 An application from an applicant who has an isolated conviction for an offence related to the possession of drugs within the last 3-5 years may be granted a licence, but consideration should be given to the nature and quantity of the drugs.
- 10.5 If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) may be required before the licence is granted. If the applicant was an addict then they would normally be required to show evidence of 5 years free from drug taking after detoxification treatment.

## **11 Driving offences involving the loss of life**

- 11.1 A very serious view is to be taken of any applicant who has been convicted of a driving offence that resulted in the loss of life.

A licence will not normally be granted unless the applicant is free of conviction for 7 years or (or at least 3 years must have passed since the completion of the sentence, whichever is longer) if he has a conviction for:

- Causing death by dangerous driving
- Causing death by careless driving whilst under the influence of drink or drugs
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

- 11.2 Before a licence is granted, an applicant should be free of conviction for 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he has a conviction for:

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



## **12 Drink driving/driving under the influence of drugs**

- 12.1 As licensees are professional vocational drivers, a serious view is taken of convictions for driving, or being in charge of a vehicle while under the influence of drink or drugs. An isolated incident would not necessarily exclude an applicant from proceeding on the restoration of his DVLA driving licence but s/he should be warned as to the significant risk to his/her licence status in the event of re-offending. More than one conviction for these offences raises major doubts as to the applicant's fitness to drive the public and would generally cause an application to be refused. At least 3 years, after the restoration of the driving licence following a drink-drive conviction should pass before an application will be considered. If there is any suggestion that the applicant is alcohol or drug dependent, a satisfactory special medical report must be provided before the application can be allowed to proceed.

## **13 Outstanding charges or summonses**

- 13.1 If the individual is the subject of an outstanding charge or summons their application can continue to be processed, but the application will need to be reviewed at the conclusion of proceedings. Where information is received through the Notifiable Occupations Scheme on existing licence holders, consideration will be made at committee.
- 13.2 If the outstanding charge or summons involves a serious offence and the individual's conviction history indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety the application may be put on hold until proceedings are concluded or the licence may be refused.
- 13.3 A suspension or withdrawal of the licence of a driver takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver. [Road Safety Act 2006, s 52, 2A&2B]

## **14 Non-conviction information**

- 14.1 If an applicant has, on more than one occasion, been arrested or charged, but not convicted, for a serious offence which suggests he could be a danger to the public, consideration should be given to refusing the application. Such offences would include serious violent offences and serious sex offences.
- 14.2 In assessing the action to take, the safety of the travelling public must be the paramount concern.

## **15 Cautions**

- 15.1 Admission of guilt is required before a caution can be issued. Every case will be considered on its own merits including the details and nature of the offence.

## **16 Pending Investigation**

- 16.1 The Licensing Authority may, at its discretion, revoke a driver's licence where it deems it necessary to do so pending an investigation by either the Licensing Authority or the

Police. This decision will only be taken where it is thought necessary in the interest of public safety.

## **17 Licensing offences**

- 17.1 Certain offences under taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons would normally prevent a licence being granted or renewed until a period of 3 years has passed.

## **18 Insurance offences**

- 18.1 A serious view will be taken of convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily stop a licence being granted provided he/she has been free of conviction for 3 years; however strict warning should be given to future behaviour. More than one conviction for these offences would normally prevent a licence being granted or renewed.
- 18.2 At least three years should pass (after the restoration of the DVLA driving licence), before a licence would normally be granted for a hackney carriage or private hire drivers licence. An operator found guilty of aiding and abetting the driving of passengers for hire and reward while without insurance will have his/her operators' licence revoked immediately and prevented from holding a licence for three years.

## **19 Overseas residents**

- 19.1 If an applicant has spent six continuous months or more overseas the licensing authority will expect to see evidence of a criminal record check from the country/countries covering the period.

## **20 Licences issued by other licensing authorities**

- 20.1 Applicants who hold a licence with one licensing authority should not automatically assume that their application will be granted by another. Each case will be decided on its own merits.

## **21 Summary**

- 21.1 To summarise, a criminal history in itself may not automatically result in refusal and a current conviction for a serious crime need not bar an applicant permanently from becoming licensed. As the preceding paragraphs indicate, in most cases, an applicant would be expected to remain free from conviction for 3 to 10 years, according to circumstances, before an application can be considered. However, there may be occasions when an application can be allowed before 3 years free from conviction have elapsed.
- 21.2 Any person who has committed an offence and has to wait before an application is positively considered is more likely to value their licence and act accordingly.
- 21.3 While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history must be considered when assessing an applicant's suitability to be licensed. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Obviously some discretion can be afforded if an offence disclosed is isolated and there are mitigating circumstances, but the prime concern is the protection of the public.

## 20 Appeals

- 20.1 Any applicant refused a driver's licence or where a licensed driver's licence is suspended or revoked on the grounds that the Licensing Authority is not a fit and proper person to hold such a licence, there is a right of appeal to this decision to the Magistrates' Court within 21 days of the notice of refusal, suspension or revocation.

## 21 Principles of the Rehabilitation of Offenders Act 1974 (as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012)

- 21.1 Under the 1974 Act, criminal convictions can become spent after a certain period of time, and once spent, for many purposes, can be ignored completely.
- 21.2 The possibility of rehabilitation and the length of time before rehabilitation occurs depends on the sentence imposed, and not the offence committed.
- 21.3 Despite the above, the principles of the Act do not apply to applicants for hackney carriage and private hire drivers' licences. This is because the driving of taxis is listed as a "Regulated Occupation" in relation to which questions may be asked as to the suitability of individuals to be granted a licence.
- 21.4 Although the Act does not prevent judicial authorities (inclusive of the Licensing Authority) from taking spent convictions into account; such convictions are only admissible in so far as they are relevant to the issue as to whether the applicant is a fit and proper person to hold a licence.
- 21.5 The determination as to whether certain convictions are spent, therefore, may be a relevant exercise.
- 21.6 The rehabilitation periods to which reference is most commonly made are set out below. For a detailed commentary on the periods of rehabilitation applicable to all sentencing options, reference will need to be made to a specialist textbook on the Act.

### 21.7 Sentence Rehabilitation Period

Custodial sentence over 4 years	Never spent
Custodial sentence over 30 up to 48 months	7 years
Custodial sentence over 6 up to 30 months	4 years
Custodial sentence less than 6 months	2 years
Community Order	1 year
Buffer period for adults, this applies from the end date of the sentence.	

The following are the rehabilitation periods for sentences that do not have a buffer period and runs from the date of conviction:

Fine	1 year
Conditional discharge	Period of order
Absolute discharge	None
Conditional caution	3 months or when caution stops to having effect
Simple caution	Spent immediately
Compensation order	On the discharge of the order
Binding over, Attendance centre and Hospital order	Period of order
Once a conviction becomes spent it remains spent even if a person is convicted of other offences.	

## APPENDIX B

### Hackney Carriage & Private Hire Driver Code of Conduct

The Council expects Hackney Carriage and Private Hire Drivers to follow the following;

In this code of good conduct 'the Council' means West Devon Borough Council, 'Driver' means a person holding a Hackney Carriage and Private Hire Drivers licence issued by the Council and 'Vehicle' means a Hackney Carriage or Private Hire Vehicle licensed by the Council.

Notes: Failure to follow the Hackney Carriage and Private Hire Drivers Code of Conduct may result in penalty points being issued, suspension or revocation of the licence pursuant to S.61 of the Local Government (Miscellaneous Provisions) Act 1976.

#### 1. Identification of drivers

- a) The driver will at all times whilst using a Hackney Carriage/Private Hire vehicle wear or display their Hackney Carriage and Private Hire Drivers badge in such a position and manner that is plainly visible.
- b) The badge must be shown, if requested, to the hirer of the vehicle or to any 'authorised officer' of the Council or Police Officer, as defined in the Local Government (Miscellaneous Provisions) Act 1976.

#### 2. Hackney Carriage/Private Hire Vehicle

The driver shall not use a Hackney Carriage/Private Hire vehicle unless it conforms with West Devon Borough Council's Hackney Carriage and Private Hire vehicle conditions (see page **XX** onwards).

#### 3. Hackney Carriage and Private Hire Drivers Licence (badge)

- a) The driver will be issued with a Hackney Carriage/Private Hire Drivers licence and identification badge. These documents remain the property of West Devon Borough Council.
- b) At the request of an authorised officer of the Council, the licence and/or identification badge must be returned to the Licensing Department.
- c) The driver shall upon the expiry date (without prior renewal to that expiry date), revocation or suspension of the licence, return the licence and driver's identification badge to the Council immediately.

#### 4. Lost property

- a) The driver should carefully search the vehicle for any property which may have accidentally been left behind after each journey. Driver discretion will be required as to whether the item left behind is likely to have significant monetary or sentimental value.
- b) If the driver has found items of such nature accidentally left in their vehicle they must notify their operator. If the passenger contacts the operator or the Council, the driver must

arrange for the passenger to collect the goods within 48 hours, alternatively, hand in to the nearest police station.

### **5. Licence plate**

a) The driver will make sure that the Hackney Carriage/Private Hire Vehicle licence (plate) is securely fixed to the rear of the vehicle at all times, whether working as a Hackney Carriage/Private Hire vehicle or not.

b) The driver will make sure that the Hackney Carriage/Private Hire Vehicle licence (plate) is not hidden or damaged and is kept clean so that it is clearly visible at all times.

### **6. Convictions, cautions and fixed penalties**

a) Following any conviction or the issue of a fixed penalty notice which results in penalty points being endorsed on the licence holder's DVLA driving licence, the licence holder must notify the licensing authority within 5 working days of the endorsement of the licence.

A further Taxi driving test may be requested by a Licensing Officer if there is a complaint regarding the standard/quality of their driving.

b) In the event of a conviction before a court resulting in disqualification from driving, a licensed driver shall immediately inform the licensing authority and surrender their driver licence.

### **7. Change of address**

a) The driver will notify the Council in writing of any change of address during the period of the licence within 5 working days of such change taking place.

b) The driver's DVLA driving licence must be registered at the driver's current address.

### **8. Accidents**

The driver shall inform the Council in writing or by telephone within 72 hours of any vehicle accident in which the driver is involved (whilst driving a Hackney Carriage/Private Hire Vehicle).

### **9. Conduct of driver**

a) The driver shall at all times be clean and respectable in their dress and person and behave in a civil and orderly manner.

b) The driver shall at all times take all reasonable steps to make sure the safety of passengers carried in, entering or leaving the vehicle.

c) The driver shall not smoke in the vehicle or allow any passengers to smoke in the vehicle (this includes the use of electronic cigarettes / vaporisers).

d) The driver shall not play any audio (other than for the purposes of sending/receiving messages from the Operators base) that is loud, offensive or that causes a nuisance to the hirer.

e) While driving, the driver shall not use their hand-held mobile phone, PDA or any other device.

- f) Drivers should not begin any conversations with a passenger that is likely to cause offence.
- g) Drivers should not possess in their taxis any item that could be construed as an offensive weapon.

## **10. Passengers**

- a) The driver shall not carry more than the number of passengers, including babies and children, stated on the Hackney Carriage/Private Hire Vehicle licence.
- b) The driver shall not allow any child under 12 years of age or under 1.35 metres in height to be carried in the front of the vehicle.
- c) The driver shall not at any time by calling out or otherwise pester any person to hire their vehicle.
- d) The driver shall not rank unlawfully.
- e) The driver shall not permit any person to be carried in the vehicle without the consent of the hirer.

## **11. Written receipts**

The driver shall, if requested by the hirer, provide them with a written receipt for the fare paid.

## **12. Carrying animals**

- a) The driver shall not carry any animals, which belong to, or are in the custody of him/her, in the vehicle when it is being hired.
- b) The driver must (unless in possession of an exemption certificate) accept bookings made by, or on behalf of, a disabled person who is accompanied by a guide, hearing or assistance dog.
- c) The driver must (unless in possession of an exemption certificate) accept a booking by a person who will be accompanied by such a disabled person.
- d) The driver must not make an additional charge for carrying the passenger's assistance dog.
- e) A driver who has a proven medical condition that prevents him/her from carrying an assistance dog in their vehicle must obtain a Driver Exemption Certificate (from the Council on production of medical evidence of the condition). This Certificate must be clearly displayed at all times when driving the Hackney Carriage Vehicle. The driver is responsible for informing their Operator (if applicable) and the Council if they have a medical condition affecting their ability to carry assistance dogs during the period of their licence.

## **13. Health of a driver**

- a) The driver must inform the Council without delay about the start or worsening of any health condition likely to cause them to be a source of danger to the public when driving either now or in the future. Examples are contained in the DVLA Medical Notification Guidance and include, but not limited to:

- giddiness
- fainting
- blackouts
- Epilepsy
- strokes
- Multiple Sclerosis
- Parkinson's Disease
- heart disease
- Angina
- coronaries
- high blood pressure
- Arthritis
- disorder of vision
- mental illness
- alcoholism
- drug taking
- loss of limb or loss of use of limb
- Diabetes

b) Drivers who are in doubt about whether or not their health condition is one which should be reported should consult their Doctor and refer to the DVLA (Group 2) Medical Rules and Standards which are updated every 6 months.

c) All applicants must submit a Certificate of Fitness which must be undertaken at the Council's approved medical centre. When a driver reaches the age of 45, a further Certificate of Fitness is required, then every 5 years until they reach the age of 65 and then annually.

d) The Licensing Office may at any time request the driver be referred to the Councils approved medical centre for a further medical examination.

#### **14. Renewal of licences**

a) Applications to renew a Hackney Carriage/Private Hire Driver licence must be made before the end of the current licence and must be submitted on the appropriate application forms. It is advisable to make an application at least 30 days in advance to ensure that there is no delay or break in licence period.

b) All current Hackney Carriage/Private Hire Drivers licence holders are required to have a DBS check and maintain a subscription to the 'DBS Update Service' for the period of their licence. This will be carried out at the time of submission or renewal application.

c) All current Hackney Carriage Drivers licence holders are to have their DVLA/EU drivers licence checked with the DVLA annually.

Note: Expired licences cannot be renewed. You will be required to successfully complete the new driver application procedure before a badge will be issued.

#### **15. Seat belt regulations**

Hackney Carriage drivers are exempt by virtue of Regulations 5(h) of the Motor Vehicles (Wearing of Seat Belts) Regulations 1982, providing they are seeking hire, answering a call for hire or carrying a passenger, and the vehicle is carrying a plate showing it a licensed Hackney Carriage.

## **16. Child restraints**

- a) If the correct child restraint is not available then a child under 3 years of age may travel unrestrained in the rear of a Hackney Carriage/Private Hire vehicle.
- b) If the correct child restraint is not available then a child aged 3 to 11 and less than 1.35 metres (approx. 4ft 5ins) may use an adult belt when travelling in a Hackney Carriage/Private Hire vehicle.

## **17. Certificate of insurance**

- a) The driver will be responsible for ensuring that they have valid insurance to use their vehicle for Hackney Carriage or Private Hire purposes.

Note: The conditions concerning insurance of motor vehicles are contained in part 6 of the Road Traffic Act 1988.

## **18. Obstruction of an authorised officer**

Any person who:-

- a) wilfully obstructs an authorised officer or constable acting in pursuance of this Act; or
- b) without reasonable excuse fails to obey any requirement properly made to him by such officer or constable; or
- c) without reasonable cause fails to give an officer or constable acting any other assistance or information which he may reasonably require of such person for the purposes of the performance of his functions under this part of the Act or the Act of 1847; shall be guilty of an offence.

Note: The Hackney Carriage/Private Hire Driver's licence is subject to the penalty points system and the licence holder is required to read and comply with the provisions of the system at all times - see penalty points system at **Appendix C**.



## APPENDIX C

<b>Penalty Points System</b>
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Offence/Cause	Penalty/Points	Person Responsible	Period to Stay on File
1. Failure to wear or clearly display HC/PH driver licence	3	Driver	12 months
2. Failure to display HC/PH vehicle licence (plate) correctly	3	Driver	12 months
3. Failure to produce Insurance Certificate within 5 working days on request	3	Driver/Proprietor	12 months
4. Failure to produce Certificate of Compliance within 5 working days on request	3	Driver/Proprietor	12 months
5. Failure to produce DVLA Driving Licence within 5 working days on request	3	Driver	12 months
6. Failure to notify the Licensing Authority of a change of address within 5 working days	3	Driver	12 months
7. Failure to notify the Licensing Authority of damage to vehicle within 3 working days.	3	Driver	12 months
8. Failure to notify the Licensing Authority of vehicle involved in a Road Traffic Accident within 3 working days.	3	Driver	12 months
9. Failure to notify the Licensing Authority of a change of use of a motor vehicle within 5 working days	3	Proprietor	12 months
10. Failure to notify the Licensing Authority of a transfer or purchase of vehicle within 5 working days	3	Proprietor	12 months
11. Upholstery and/or exterior in an unreasonable condition	3	Driver	12 months
12. Failure to display no smoking stickers	3	Driver	12 months
13. Defective Tyres	3 points per defective tyre and or stop notice	Driver	12 months
14. Private Hire Vehicle parking in or at a Hackney Carriage stand	3	Driver	12 months

15. Hackney Carriage Vehicle leaving vehicle unattended in or at a Hackney Carriage stand	3	Driver	12 months
16. Charging more than displayed on the taxi meter (if fitted)	3	Driver	12 months
17. Failure to obey an Officers request	3	Driver	12 months
18. Not displaying Tariff on Meter (where applicable)	6	Driver	12 months
19. Refusal to carry guide dogs, hearing dogs or service dogs (unless exempt)	6	Driver	12 months
20. Making a surcharge for the carriage of wheelchairs	6	Driver	12 months
21. No valid Insurance Certificate	6 and or referral to Licensing Committee	Driver	36 months
22. No valid Certificate of Compliance (MOT)	6 and or referral to Licensing Committee	Driver	36 months
23. Failure to notify the Licensing Authority of a motoring conviction within 5 working days	6 and or referral to Licensing Committee	Driver	18 months
24. Failure to notify the Licensing Authority of a criminal conviction or caution within 5 working days	6 and or referral to Licensing Committee	Driver	18 months
25. Carrying excess passengers	6 and or referral to Licensing Committee	Driver	18 months
26. Being aggressive, and or, using threatening and abusive language towards Licensing Officers	6 and or referral to Licensing Committee	Driver	18 months
27. Any other reasonable cause Section 60 Local Government Miscellaneous Provisions Act 1976	6 and or referral to Licensing Committee	Driver	12 months
28. Failure to attend a Licensing Committee when informed, or requested to do so	1 – 6 for Licensing Committee to determine	Driver	12 months
29. Appearance before a Licensing Committee reference allegations of misconduct	1 – 12 for Licensing Committee to determine	Driver	12 months

## APPENDIX D

### Hackney Carriage & Private Hire Driver Licensing Application Process

The information below details the Licensing Authority's compulsory requirements for new and renewal Hackney Carriage and Private Hire driver licence applications. The following is given as guidance only as to the processes followed and documents required. If an applicant has specific queries they should contact the Licensing Team.

Please note that a driver's licence badge issued by West Devon Borough District Council will allow you to drive only vehicles that are licensed by West Devon Borough District Council.

Please note that as an applicant or driver licensed by West Devon Borough Council, you will be required to visit our Totnes office in person during the application process and on occasion whilst you hold a licence for the purposes of inspection, production of paperwork or for any other reason.

#### Applications for new drivers

The application process will involve you meeting a number of requirements at an additional cost. The steps laid out below are a suggestion of how you may wish to continue to gain all documents necessary to make a valid application:

##### Overview

- Application form
- One passport sized photograph
- Taxi driving test certificate
- Valid passport, birth certificate, or other proof of entitlement to work in the UK
- DBS certificate process through the electronic DBS check provider
- Overseas criminal record check (Certificate of Good Conduct) issued within the last 6 months – where applicable.
- DVLA driving licence photo card (old style paper licences issued before 1998)
- DVLA check mandate form
- Group II medical certificate issued by the designated medical assessment centre or your own GP within the last 3 months
- Passenger Assistance Training Scheme certificate
- Completion of the Licensing Authority Knowledge Test
- Required fee

#### Step 1:

##### Hackney Carriage and Private Hire driver application form

This form requires you to detail any previous convictions and medical issues that you may have that may impact on your ability to obtain a licence in agreement with the Licensing Authority's policies. By submitting this information before completing the other required steps, we are able to give you an early view of whether your application will be successful or not.

As part of our checks we will require you to provide identification to prove your right to work in the UK, as a minimum requirement we will need to see your passport or birth certificate. The Licensing Authority will operate its application procedures in line with guidance issued by the UK Border Agency on Prevention of Illegal Working and its associated Code of Practice.

## **Step 2:**

### Sit and pass the knowledge test.

The knowledge test assesses your knowledge of the local area, the Highway Code, numeracy and the legislation which is relevant to you as a licensed driver. Tests will normally be held on one day per month at the Council offices in Totnes. Applicants may arrange to sit the test on an alternative day at West Devon Borough Council offices in Tavistock if more convenient.

You will need to bring documents to show evidence of your entitlement to work in the UK (valid passport, birth certificate or other proof of entitlement) and proof of address, with you to your knowledge test. Without these documents you will not be able to sit the test.

We only accept and process applications that have successfully completed these tests. The fee for the test must be paid before the test can be taken. The cost of the test is non-refundable and the same fee is payable to re-sit a failed test.

## **Step 3:**

### Apply for Enhanced DBS check and DVLA mandate form

Enhanced DBS checks are undertaken through an electronic checking service. You will need to provide the required identification documents as listed on the DBS website to us so that the check may be submitted. Alternatively you may take your documents to a Crown Post Office to be verified.

The DBS certificate must be presented to us within three months of being issued. You must sign up to the DBS Update Service within **nineteen days** of your certificate being issued. If this is not done, you will be required to submit a new DBS check 12 months after the issue of the licence including payment of the full DBS fee.

If you have any convictions, cautions or fixed penalty notices which fall within the Council's convictions policy, the application will be determined by the Licensing Committee.

A DVLA mandate form must be completed and signed so that we are able to check your DVLA record at any time during your licence period.

## **Step 4:**

### Provide Certificate of Good Conduct (where applicable)

If you have lived outside of the UK for a continuous period of 6 months or more at any time since your tenth birthday, you must obtain a Certificate of Good Conduct which must be under 6 months old. You must contact your Consulate for more information on this, not the licensing department. Asylum seekers who hold a Home Office issued application registration document together with a positive verification letter from the Home Office's Employer Checking Service stating that the named individual is permitted to work in the UK will be exempt from the requirement to submit a recent certificate of good conduct. We will

require to see any Certificate of Good Conduct that you may have regardless of the age of the document.

**Step 5:**

Sit the Taxi driver test as provided by the Licensing Authority approved provider

A certificate showing successful completion of the practical taxi test must be provided. You do not require the wheelchair assessment. You can book your test online at the DVSA website. If you have any queries regarding this element, you must contact the DVSA and not the licensing department. The DSA test may be undertaken at any of the DVSA test centers.

**Step 6:**

Obtain the Passenger Assistance Training Scheme certificate

It is a requirement that all applicants for new or renewal applications must have completed a Passenger Assistance Training Scheme (PATs) training course with a certificated MiDAS trainer which will include modules A, B1, B2, C1, C2. A certificate to prove that the course has been completed must be presented with the application

**Step 7:**

Group II Medical Certificate

Contact your own GP or the Council's appointed medical assessment provider to arrange a Group II medical examination. Group II medical guidance can be found online at GOV.UK. You will need to provide the medical assessor with your medical record for the assessment to be completed.

**Step 8:**

Passport sized photograph

Provide one passport sized photograph of yourself. It must be in colour, clear. If you wear glasses for driving, you must wear the glasses in your photograph. Get your passport ready (or other proof of entitlement to work in the UK) as well as your full EU or UK driving licence, which you must have held for at least 12 months.

**Step 9:**

All steps completed

Once you have received your Enhanced DBS certificate and all other steps have been completed, you can call into our offices on any weekday between 9am and 5pm to submit your application and to make payment.

Please note that you will need to supply all your original certificates which will be returned to you once your application has been processed.

We do not accept incomplete applications under any circumstances.

We will contact you on the telephone number or email address given in your application to let you know when the licence has been issued, or if there are any issues with your

application. If your application is approved you will be sent your driver licence certificate and identification badge by post.

### **Applications for renewal of driver licence**

Applications for renewals must be received by the Council prior to the expiry date of the licence to ensure that the licence does not lapse.

If a licence lapses, the driver will be required to apply for a new driver licence by meeting all the criteria listed in the previous section relating to applications for new driver licences. If the licence renewal is submitted late as a result of exceptional circumstances it may be accepted. 'Exceptional' in this instance will only apply where failure to renew on time is due to unforeseen circumstances, for example where the applicant has been unable to apply due to an emergency situation

#### Overview

- Application form
- One passport sized photograph
- DBS certificate processed through the electronic DBS check provider – **unless signed up to the DBS Update Service**
- Overseas criminal record check (Certificate of Good Conduct) issued within the last 6 months – **where applicable**.
- Copy of DVLA driving licence photo card (old style paper licence issued before 1998)
- DVLA check mandate form (if required)
- Group II medical certificate issued by the designated medical assessment centre or your own GP within the last 3 months (if required)
- Required fee

Further details relating to the above requirements may be found in the previous new driver application section.

Unless a new Enhanced DBS check is required, the renewal application may be submitted by post or handed in to the Council offices. If a new DBS check is required, you will need to contact the Licensing Team to make an appointment (Tuesdays or Thursdays from 9am to 5pm).

If the documentation is complete, the application will be accepted. If any of the required documentation is not submitted then the application may not be processed.

The successful completion of this procedure will be indicated by the issue of a Hackney Carriage and Private Hire driver licence.

### **Suspension / revocation / refusal to renew**

The Licensing Authority has the power to suspend, revoke or refuse to renew a licence.

If considered necessary in the interest of public safety, a suspension or revocation may take immediate effect.

## APPENDIX E

### Spoken English Assessment Test Procedure

(Guidance for Officers and new Applicants)

1. It is a requirement of West Devon Borough Council that ALL new applicants for both Hackney Carriage and Private Hire Driver licenses can demonstrate an adequate and reasonable level of spoken English.
2. The purposes of this requirement are:
  - Ensure that members of the public are safeguarded by ensuring licensed drivers can competently communicate and give and understand most instructions.
  - Ensure that applicants are safeguarded by ensuring licensed drivers can competently communicate and give and understand most instructions.
  - Ensure impartiality and fairness in determining applications.
  - Accommodate all eligible applications.
3. The criteria for all new applicants for Hackney Carriage and Private Hire Driver licences are:
  - (a) Applicants for whom English is not their first language may be asked to provide evidence of having gained a qualification that was taught and assessed in English.
  - (b) Applicants who have some difficulty understanding spoken advice on the telephone or face to face and who have similar issues expressing themselves in English will be asked to provide a certificate showing the successful completion of a course of study or qualification in any subject or skill that was taught and assessed in English. (Examples are but not limited to, GCSE's, 'O Levels' GCE, NVQ, BTEC, RFQ, City and Guilds or similar, Degree, HND, HNC etc or a qualification equivalent to any previously listed issued by a recognised examining body in an English speaking country other than the UK). The weight given to the subject and grade achieved will be assessed on a case by case basis.
  - (c) Applicants who cannot demonstrate an adequate or reasonable level of spoken English and/or a suitable qualification will be required to undertake an independent assessment of their spoken English.
  - (d) Applicants who are clearly fluent English speakers will require no further assessment and may proceed with their application in full.
4. The initial assessment of all new applicants' level of spoken English, whether on the telephone or in person will be made by a Case Manager. Where in the opinion of the Case Manager the applicant does not have an adequate or reasonable level of spoken English the applicant will be informed of the spoken English requirement and procedure.
5. Applicants who have difficulty in clearly expressing themselves and who cannot produce a suitable qualification listed above will be referred to the Licensing

Specialist who will make a second assessment and if necessary advise the applicant of the requirement to undertake the spoken English assessment test.

6. The Licensing Specialist's decision is final.

### **TAKING THE TEST**

7. The spoken English assessment test is a pre-application requirement undertaken at the applicant's own expense at a cost of £40.00 (payable before the test is taken) and must be successfully completed before proceeding with the full application procedure.
8. The applicant will be required to submit a completed application form (no fee to be paid at that time) together with photographic proof of identification i.e. passport and/or driving licence. A photograph will also be taken of the applicant at the time of submission of the application form and the applicant's identity will also be confirmed at the time of taking the test.
9. Tests will be taken in a South Hams or West Devon Council building. (Totnes or Tavistock)
10. If the applicant has a mobile telephone it must be switched off to avoid any interruptions.
11. Applicants will be told that the tests are recorded by the test provider and any attempt to cheat, for example by using their mobile telephone to attempt to get a fluent English speaker to complete the test will be detected by the system and the applicant will be automatically failed and will not be permitted to undertake another test or proceed with their application.
12. Test dates will depend on demand and room booking availability.

### **TEST PROCESS**

13. On the day of the test, the applicant will be escorted to the designated room by a Case Manager. The Case Manager will dial the number to the test provider and pass the telephone to the applicant and leave the room.
14. The English test assessment consists of a 15 minute exercise, taken by telephone during which applicants will be tested on various aspects of their speaking and listening ability.
15. The assessment is provided by a specialist education and testing company and consists of:
  1. Repeating back sentences that are read to the applicant over the phone.
  2. Answering simple questions asked over the phone.
  3. Constructing sentences from fragments read to the applicant over the phone (sentences divided into 3 or 4 parts)
  4. Answering open questions asked over the phone (speaking for up to 30 seconds per question).



16. The test is entirely automated, and questions will be asked by a variety of voices.
17. All of the questions will relate to normal life and the applicant's day-to-day activities; there are no trick questions.
18. The applicant will also be graded separately on sentence usage, vocabulary, fluency and pronunciation, all of which contribute to the overall score.
19. At the end of the test the Case Manager will contact the test provider via the website, access the applicant's result, a report will be produced (a copy of which will be provided to the applicant) with a score indicating their overall ability.
20. The test scoring will be set at CEFR Level B2.
21. For licensing purposes, the Council will require applicants to score at least **56** out of **80**. This indicates a good overall ability in use of the English language, where applicants will be able to speak fluently on a range of everyday topics and be able to give and understand most instructions.
22. When passed, the pass certificate will be downloaded direct from the test providers website the same day and provided to the applicant.
23. Failure to pass the minimum CEFR level B2 (56 out of 80) will require a further test to be taken.
24. There is no right of appeal where the applicant has failed to attain the minimum pass level of 56.
25. Unsuccessful applicants should be given an information sheet with the contacts of local colleges and courses where they may undertake further study to improve their spoken English. All training will be done at the applicant's own expense.
26. No person may re-sit the test within 28 days of taking a previous test.
27. Returning applicants may demonstrate a reasonable standard of spoken English either through the production of a certificate demonstrating the successful completion of an accredited spoken English qualification at level 1 or above, or successfully completing the spoken English assessment test detailed above.
28. Applicants choosing to re-take the spoken English assessment test will have to pay the required fee.

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