



Licensing and Health and Safety Enforcement Committee

TUESDAY 30 NOVEMBER 2021 AT 7.30 PM

Council Chamber, The Forum

The Councillors listed below are requested to attend the above meeting, on the day and at the time and place stated, to consider the business set out in this agenda.

Membership

Councillor Allen	Councillor Link
Councillor Mrs Bassadone	Councillor Peter
Councillor Bhinder (Vice-Chairman)	Councillor Pringle
Councillor Hearn (Chairman)	Councillor Rogers
Councillor Imarni	Councillor Sutton
Councillor Johnson	

For further information, please contact Corporate and Democratic Support on 01442 228209 or via email member.support@dacorum.gov.uk

AGENDA

- 1. MINUTES** (Pages 3 - 5)
To approve the minutes of the meeting held on 21 September 2021.
- 2. APOLOGIES FOR ABSENCE**
To receive any apologies for absence.
- 3. DECLARATIONS OF INTEREST**
To receive any declarations of interest.
- 4. PUBLIC PARTICIPATION**
- 5. REVIEW OF LICENSING ENFORCEMENT POLICY** (Pages 6 - 29)
- 6. REVIEW OF SEX ESTABLISHMENT LICENSING POLICY** (Pages 30 - 55)

DACORUM BOROUGH COUNCIL

LICENSING AND HEALTH AND SAFETY ENFORCEMENT COMMITTEE

21 SEPTEMBER 2021

Present-

MEMBERS:

Councillor Hearn (Chairman), Allen, Bassadone, Bhinder, Johnson, Link, Peter, Pringle, Rogers and Sutton

OFFICERS:

Nathan March	Licensing Team Leader
Nargis Sultan	Legal Governance Team Leader
Trudi Angel	Corporate & Democratic Support Officer (Minutes)

The meeting began at 7.30 pm

1. MINUTES

The minutes of the meeting held on 29 June were agreed by the members present and then signed by the Chairman.

2. APOLOGIES FOR ABSENCE

Apologies for absence were received on behalf of Councillor Woolner.

3. DECLARATIONS OF INTEREST

There were no declarations of interest.

4. PUBLIC PARTICIPATION

There was no public participation.

5. REVIEW OF LICENSING ENFORCEMENT POLICY

N March introduced the report. He said the Licensing Enforcement Policy had worked effectively over the past five years but was due for review. He highlighted there were a few minor changes;

- 2.9 - Encourage rather than facilitate training as this was unrealistic for the Licensing team to deliver due to the increasing workload and being short of experienced staff.
- 4.20/4.24 – The mention of pre-application advice as new service since last reviewed.

- 4.36 – The addition of the Group Manager as new role.
- Page 18 – (exclude offences) has been widened to include possibility of committee and prosecution rather than picking from options.

The highest profile aspect of the policy has been the use of the ‘three strikes’ for taxi infringements.

He welcomed questions from the committee.

Councillor Bhinder referred to page 15 regarding enforcement options. He queried how the Enforcement Officers managed the difference between a licensee contravening an agreement with DBC and the law.

N March advised that Licensing were responsible for some aspects of the law, such as the legislation in relation to the Licensing Act and taxi drivers etc. A lot of licences will have conditions which are set locally rather than through legislation, but it didn’t make a significant difference in terms of how we approach those. The team would look at the severity of each case and the best way to resolve the issue.

Councillor Bhinder drew the committee’s attention to the list under 4.1 as he felt it was very useful and interesting. He then asked why there was such a long gap (21 days) between the decision notice being issued and the revoking of a licence.

N March explained it was a legal requirement for the individual to have an opportunity to appeal the decision to the Magistrates Court. He advised that if an appeal is lodged in those 21 days, it would need to be heard before any further action could be taken, which could take some time depending on court availability. He highlighted that they could suspend or revoke a licence with immediate effect if there was a public safety concern.

Councillor Rogers asked how much notice would have to be given to revoke a licence if there was an urgent matter. He also asked how long conditions could be placed on a licence or if it could only be used for the short-term.

N March advised it depended on the licence as food safety concerns would be dealt with by Environmental Health so he couldn’t advise on that. If it was a licensed premises that was connected with serious crime and disorder the Police had the power to immediately take action to close a premises down and this matter would be heard at a committee. If there was a serious concern with a taxi driver and the Police provide enough evidence we could revoke a licence with agreement between either the Team Leader (Licensing), Group Manager (Legal and Corporate Services), Assistant Director (Corporate and Contracted Services), and the Chair/Vice-Chair of this committee. With any of these situations we must have enough evidence to justify the action.

Councillor Johnson noted that the draft policy at Appendix A stated 2021-2025 but should be 2021-2026.

N March confirmed he would amend the dates.

Decision

That a 4 week consultation be carried out on the draft Licensing Enforcement Policy, with responses to be reported to a future meeting of the Committee.

6. REVIEW OF GAMBLING ACT STATEMENT OF PRINCIPLES

N March introduced the report. He advised that consultation was carried out over July - August 2021 and 4 responses were received which could be found at Annex A. He highlighted an error in the report on page 31 which states 'gambling trade representative body', this should say Responsible Authority. He said the changes were minor, such as contact details for a responsible authority.

GambleAware provided general advice on supportive services for people with gambling problems, and his suggestion was that whilst it wasn't something for the policy, the DBC website could be updated to sign post these services.

In addition to the policy, the Council has a Local Area Profile, which was not consulted on, but assists applicants in considering relevant local information when making an application.

He welcomed questions from the committee.

Councillor Allen referred to the consultation response from GambleAware and asked if their work linked to the local area profiles in any way.

N March advised that the local area profile was basic geographic information. He said each operator would have to produce risk assessments for each premise and these would be checked when inspections are carried out. The risk assessments should refer and be relevant to the local area. GambleAware information and data was separate but could be looked at alongside the local area profiles for a different prospective.

Councillor Allen asked if there was any intention to explore that appeal and to identify areas at particular risk.

N March replied that was something Community Safety could look at as one of their priorities if they felt it was relevant. He said he could feed that via the Joint Action Group.

Councillor Pringle wondered how granular the information was about problem gambling and GambleAware were a charity with limited resources. She questioned if we had a breakdown of more detailed information of the Borough.

N March advised he didn't have that information and Licensing only dealt with the physical side of gambling. He suggested that online/mobile gambling was more likely to be a problem and that was dealt with by the Gambling Commission nationally.

Decision

That the Committee endorse the revised draft Statement of Principles under the Gambling Act 2005 for the period 2022 – 2025, and refer it to Full Council for approval and adoption.

The meeting finished at 7.50 pm.

Agenda Item 5



AGENDA ITEM:5

Report for:	Licensing and Health & Safety Enforcement Committee
Date of meeting:	30 November 2021
PART:	I
If Part II, reason:	

Title of report:	Review of Licensing Enforcement Policy
Contact:	Phil Wortley – Licensing Officer, Corporate and Contracted Services
Purpose of report:	To present revised version of the Council's Licensing Enforcement Policy for adoption.
Recommendations	1. That Committee adopt the document at Appendix A as the Council's Licensing Enforcement Policy for a 5-year period from the 14 December 2021.
Corporate objectives:	<ul style="list-style-type: none"> • A clean, safe and enjoyable environment • Delivering an efficient and modern council • Building strong and vibrant Communities • Ensuring economic growth and prosperity
Implications:	This is an existing policy which is due to be reviewed, with only minor changes proposed. No new implications are expected to arise as a result.
Consultees:	Public consultation has been carried out on the proposed revision, with the results reported within this report.
Background papers:	Draft Licensing Enforcement Policy 2021-2026
Glossary of acronyms and any other abbreviations used in this report:	

1. BACKGROUND

- 1.1. The Council publishes various policies in respect of its other licensing functions. While there is no statutory duty to do so, publication is seen as best practice, as it offers guidance to applicants and other persons on how the authority will exercise its powers, and helps to ensure consistency in the Council's decision-making.
- 1.2. At its meeting on 21 September 2021, the Committee agreed consultation on updated draft versions of its licensing enforcement policy. Public consultation was carried out over a 4-week period in October 2021, and the result is reported below.

2. LICENSING ENFORCEMENT POLICY

- 2.1. The Council exercises a wide range of licensing powers across numerous pieces of legislation, many of which contain enforcement provisions, such as offences for carrying out particular conduct, or powers of entry and inspection to premises where licensable activities are carried on, with or without licences. These powers are underpinned by generic enforcement legislation, such as the Police and Criminal Evidence Act 1984, and associated codes of practice.
- 2.2. The enforcement policy contains guidance for licensed businesses and persons affected by such businesses on how we will exercise our legal powers. It also brings together expectations created under a number of charters, codes of practice and statutory guidance, which we will also take into account when exercising our powers.
- 2.3. The current enforcement policy was last reviewed in 2016 and there are few changes proposed from the current version.
- 2.4. One comment was received on the provisions of the draft enforcement policy during consultation, as follows:

From a licensed driver:

I have had a look at the enforcement policy consultation.

What I will mention is general feelings re consistency/lack of consistency re who is checked out consistently and who isn't from the council's licensing department.

These are feelings I have felt for years and please bear in mind that I am someone that worked at the then brand new Leisure World multi leisure centre from its opening in August 1995 for the best part of its first 2 years, then I was moved/promoted to train as a Manager in Reading before returning to the Hemel cinema in Feb 98 and leaving in December 1999.

From November 1998 I was working part time as a Private Hire Driver too and became a full time Hackney Carriage Driver in the year 2000 which I did as my only job up until the first Covid lockdown in March 2020.

I do feel over the years/decades that there has been an over emphasis in scrutiny in general/inspections/joint operations on Taxi/Private Hire Drivers where when I worked in Cinema/Leisure world, there were no checks whatsoever, not on were we practising age checks, was the leisure complex ok on cosmetics or not.

When I worked at the cinema/LW complex, broken seats, ripped carpets, leaking toilets occurred frequently.

Anything like that on the Taxi/Private Hire MOT's would constitute a fail on DBC's licensing compliance checks/tests.

Around 2005 I noticed the occasional Police sniffer dogs doing quick checks on people queuing outside the night clubs at Jarman Park but never have I ever heard of licensing/Police doing checks within Pub and clubs and late night bars on are they operating correctly re not serving underage people, people already drunk, and checking on if drugs are being consumed in the toilets.

From what I have heard from customers over the years and when they talk among themselves, is that drug taking openly in pub toilets is rife and has been for years.

How come councils and Government are not bothered and or seem to act against these kind of things but want Taxi/Private Hire drivers to be acting against such things if they get an inkling such things are about to happen with people they drive?

I find it very inconsistent.

I also wonder why when Pub car parks are full with cars at the weekends, that there never has been any Police checking if people are under the limit or not before they drive?

I have noticed when there is big football events going on and on New Year's Eve too, people seem to drive out of pub car parks in almost like a fast convoy way afterwards..

While I could be wrong, I have suspected the reason why people are so quick to leave in that way is because they may well be over the limit, don't want to pay for cabs to get to and from the pubs.

I have been told a couple of times "there isn't the resources to do these checks on pubs and clubs" but why is there resources for fairly constant checks/scrutiny on Taxis/Private Hire Drivers but not on these other licensed operators where the things Government/Councils say they are partly worried about and want Taxi/PH drivers to try and act against, but seem to give pub/clubs a pass on such things?

- 2.5. Given that the concerns raised reflect the application of the policy rather than the document itself, it is difficult to consider that any changes are appropriate to the document as a result of the above response.
- 2.6. The key concerns raised by the respondent are 'consistency'. This supports maintaining a policy which guides how the Council will conduct itself in its regulatory functions. However, it is not possible or appropriate to approach the wide variety of different licensing regimes that the policy covers with a 'one fits all' manner, primarily because all have different legislation which determines what the Council can and can't do.

3. RECOMMENDATION

- 3.1. That Committee adopt the document at Appendix A as the Council's Licensing Enforcement Policy for a 5-year period from the 14 December 2021.**



Licensing Enforcement Policy

2021 – 2026

Date of publication	*****2021
Version no.	4.0 DRAFT
Review date	***** 2026

Working in partnership, to create a Borough which enables the communities of Dacorum to thrive and prosper

Affordable Housing ♦ Regeneration ♦ Building Community Capacity ♦ Safe and Clean Environment ♦ Dacorum Delivers

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1. About this document

- 1.1. Dacorum Borough Council has a responsibility to protect the community it serves, using the legislative powers delegated by central government. The Council implements, administers and enforces a range of legislation intended to protect public safety, local economies and the environment from adverse effects of the provision of licensable activities.
- 1.2. The purpose of this Licensing Enforcement Policy is to set out the general principles and approach that Dacorum Borough Council will follow when taking enforcement or compliance actions under licensing legislation. The Policy aims to ensure that all enforcement action is conducted in accordance with the Better Regulation principles of proportionality, accountability, consistency, transparency and targeting.
- 1.3. Our primary objective is to achieve regulatory compliance. The Licensing Enforcement Policy therefore provides guidance to officers, businesses and the general public on the way in which we will exercise our enforcement powers to achieve compliance with the legislation enforced by the Licensing Section. However, the emphasis is primarily on the methods and principles that we will follow, and this document does not attempt to create a comprehensive list of the powers open to us.
- 1.4. This policy was adopted by the Council’s Licensing, Health & Safety and Enforcement Committee on the xx xxxx 2021, and will be periodically reviewed to ensure its continued accuracy in light of any significant changes in legislation, Codes of Practice or centrally issued guidance, or case law.
- 1.5. While we will have regard to this policy when exercising our powers, the Council will continue to consider each matter on its individual merits and circumstances. Nothing in this policy shall bind the Council to a particular action, or otherwise affect the Council’s discretion to take legal or other enforcement action, in light of the circumstances of a particular case, where this is considered to be in the public interest.
- 1.6. A draft version of this policy was consulted upon prior to adoption, with representatives of licence-holders, statutory agencies, and local residents and businesses invited to comment. All responses were considered prior to the adoption of the final policy.

2. General principles

- 2.1. In accordance with the Better Regulation principles, we will aim to ensure that any action taken to enforce or ensure compliance with legislative requirements is:
 - Proportionate
 - Accountable
 - Consistent
 - Transparent
 - Targeted
- 2.2. Dacorum Borough Council is a signatory of the Hertfordshire Local Enterprise Partnership's "*Better Business for All*" charter, which furthers the above principles and aims to lessen the impact of regulation on businesses. For more information, please visit <http://www.hertfordshirelep.com/Better-Regulation.aspx>
- 2.3. In the first instance, licensing officers will look to advise businesses, especially small and medium enterprises; residents; and other organisations, on issues of compliance and regulation. When attending premises or carrying out inspections, officers will identify themselves by name and will produce identification, unless carrying out authorised covert investigations. Contact details for an appropriate officer will be provided in the event of any further action being required.
- 2.4. When taking enforcement action, in addition to this policy we shall also have regard to the provisions within any overarching Council-wide Enforcement Statement.

Proportionality

- 2.5. The Council accepts that any enforcement action should be proportionate to the risks and the perceived severity of the breach, ensuring that the most serious risks are effectively targeted. We will take into account the circumstances of each case and the response of the licence holder or person concerned. The attachment of conditions to licences will follow the same principles and the Licensing Section will work with licensees to assist them in meeting their legal obligations without incurring disproportionate or unnecessary expense.
- 2.6. We will carry out our duties in a fair and reasonable manner. Except in circumstances where immediate action is required, officers will provide an opportunity to discuss the case and, if possible, resolve any point of difference before any formal action is taken. In circumstances where immediate action is considered necessary, an explanation of why such action is necessary will be given at the time. This explanation will subsequently be confirmed in writing.
- 2.7. In considering enforcement action, account will be taken of relevant codes and guidance from legal authorities, public authorities and industry bodies.
- 2.8. Advice will be put clearly and simply and confirmed in writing on request. Explanations of what action is necessary, why it is necessary and over what timescale will be given.
- 2.9. In appropriate circumstances licensing officers may encourage training and education where this is needed to address problems attracting enforcement action.

Accountability

- 2.10. This policy, which guides the enforcement actions taken by officers on behalf of the Council, is determined by the Licensing and Health & Safety Enforcement Committee, which is comprised of democratically elected Councillors. The Committee shall also be responsible for the exercise of many

of the stronger powers available to the Council, including most cases warranting the revocation of a licence. The outcomes of other enforcement actions initiated by officers, such as prosecutions, shall be reported to the Committee at regular intervals.

Consistency

2.11. Decisions on enforcement always involve a degree of judgement and the circumstances of each case will inevitably differ in detail. The guidance from official sources that is provided for officers is reviewed on a regular basis and may directly affect enforcement decisions, as may case law. As a result there may be instances when enforcement appears from the outside to be inconsistent.

2.12. However, we will try to ensure that enforcement action is consistent by:

- Following current internal procedural and guidance notes
- Taking into account guidance from other authoritative bodies - e.g. the Home Office; Department for Culture Media and Sport; Department for Transport; Driver and Vehicle Licensing Agency; Driver and Vehicle Standards Agency; the Gambling Commission; the Local Government Association
- Taking account of new legislation or guidance impacting on licensing powers
- Taking account of new case law impacting on licensing matters
- Liaising with other enforcement agencies as appropriate – for example, Hertfordshire Constabulary, Hertfordshire Fire & Rescue Service, Hertfordshire Trading Standards, the Security Industry Authority, the Gambling Commission, DVSA, the RSPCA (in respect of animal welfare matters), and other departments of Dacorum Borough Council, such as Regulatory Services (environmental health issues), Residents Services (anti-social behaviour issues), and Planning
- Adopting an inter-agency approach where the Licensing Enforcement Officers' powers cannot be engaged – for example, ensuring that information gathered in respect of problems such as noise nuisance or anti-social behaviour at licensed premises, but where such evidence is insufficient to justify direct action, is shared with the relevant authorities, who may be able to take alternate action to remedy the issue.

2.13. To help achieve greater consistency on a regional basis, we will actively participate in local authority liaison schemes with neighbouring authorities where available.

2.14. These measures will be further supported by training for enforcement officers, and managerial checks on performance.

Transparency

2.15. We will be open about how work is to be carried out, or why it may be necessary to take enforcement action.

2.16. We will provide information and advice, wherever possible in plain language and in a suitable medium. A clear distinction will be made between what is legally required, and what is advice or guidance and is desirable but not compulsory, in written and verbal communications.

2.17. If requested officers will confirm in writing any verbal advice given.

2.18. In circumstances where remedial work is required, this will be set out clearly and simply in writing. Where there is a contravention of legislation we will indicate which legislation is being contravened and what measures can be taken to achieve legal compliance and acknowledge that other means of achieving the same effect may be taken. Clear guidance will be given as to what action must be taken in order to comply with the legislation and what is recommended as good practice.

2.19. Where immediate action is necessary, an explanation of why such action is necessary will be given, and this will be confirmed in writing.

Targeting

2.20. Enforcement activities are primarily targeted towards activities carrying high risks or where there could be a considerable impact as the result of non-compliance either with licensing conditions or the legislation. Enforcement activities may be targeted towards individuals who are primarily responsible for an activity, who have the greatest responsibility to ensure compliance with the law or who have been subject to previous enforcement action. From time to time we will engage in enforcement activities which are directed towards issues where there is a need to draw attention to the existence of legislation and its enforcement. These may represent national concerns as expressed by central government or its agencies, or local concerns as voiced by Members of the Council, residents or businesses.

2.21. We will undertake programmes of inspection and enforcement in respect of all of the activities for which we issue licences. Each licensing function is assessed against risk and this will be taken into account in establishing the nature and frequency of any inspections or enforcement activity. In the determining the level of risk Officers will consider the following:

- The nature of the licensing function
- The previous history relating to the licensing function
- The nature and extent of complaints received by the Council
- Information received from other agencies or departments
- Safety and public protection issues.

2.22. Where complaints relating to a licensable activity or licence holder are received they will be investigated, and evidence, experience, and this policy will be used to determine an appropriate enforcement action.

Equalities and human rights

2.23. This policy and all associated enforcement decisions take account of the following provisions of the Human Rights Act 1998. In particular, due regard is given to the following:

- Right to a fair trial;
- Right to respect for privacy and family life, home and correspondence.

2.24. We will endeavour to ensure that all parties affected by our enforcement and compliance activities, including both formal and informal action undertaken, receive fair and equitable treatment irrespective of their race, ethnicity, gender, sexuality, disability status or any other identifying characteristic.

3. Visits and inspection of premises (powers of entry)

- 3.1. Many pieces of licensing legislation which we enforce convey powers of entry, allowing authorised council officers to enter and inspect premises, vehicles or other structures which are being used for licensable activities, or where intelligence suggests such use otherwise than in accordance with a licence, permit or registration.
- 3.2. When we exercise a statutory power of entry, we will have regards to the Home Office's Code of Practice on Powers on Entry¹, published pursuant to the Protection of Freedoms Act 2012.
- 3.3. We anticipate that most visits to, and routine inspections of, licensed premises will be pre-arranged and carried out with the licence-holder's knowledge and consent – particularly inspections required to assess the suitability of premises prior to the grant or renewal of a licence. In such cases, the purpose of and procedures for inspections will be outlined either within application guidance and related licensing policies, or when arranging the visit or inspection.
- 3.4. For other compliance and enforcement visits and inspections, we will follow any applicable statutory prerequisites to powers of entry. We will consider whether it is appropriate and practicable to give prior notice of the visit or inspection, and will do so where we are satisfied that pre-notification will not undermine or defeat the purpose of that inspection. However, we retain the right to carry out unannounced visits or inspections where we consider this appropriate and necessary. This is likely to be the case where we receive complaints or allegations of misconduct or breaches of licences which may, if true, be detrimental to public safety and require immediate remedial action to resolve. In such circumstances, the powers of entry and purpose of the inspection will be explained to a responsible person at the start of the visit or inspection.
- 3.5. We will attempt to notify and gain consent of the owner, occupier or appropriate representatives (e.g. premises manager or member of shop staff) of premises which are to be inspected under a power of entry at or before the start of a visit or inspection. However, where exercising a statutory power of entry, such visits or inspections may proceed without consent if this is deemed to be necessary and any other applicable legal prerequisites have been satisfied. Where consent to enter premises is refused or withdrawn, we will document our efforts to obtain that consent, and this evidence may be referred to in any subsequent proceedings. We will also explain to any person who appears to be responsible for the premises the effect of the statutory power of entry and any consequences of obstructing authorised officers in the course of their duties.
- 3.6. Where appropriate for the exercise of our own statutory powers, licensing officers may accompany other authorised officers exercising relevant powers of entry at licensed premises, or be accompanied during inspections under licensing powers by authorised officers from agencies with statutory responsibilities for that premises. Examples of such joint working may include officers authorised by: other Dacorum Borough Council departments, such as Planning, Regulatory Services (environmental health), Anti-Fraud or Anti-Social Behaviour; the Gambling Commission; Hertfordshire Constabulary; Hertfordshire Fire & Rescue Service; Hertfordshire Public Health; Hertfordshire Trading Standards; Home Office Immigration Enforcement; and the Security Industry Authority. From time-to-time, we may also be accompanied by professional advisers appointed by the Council, including vehicle mechanics or veterinary surgeons/practitioners. We will however aim to ensure that the number of persons inspecting premises remains reasonable and proportionate.
- 3.7. Where prior judicial approval to utilise powers of entry is required, we will follow the applicable legislation and maintain appropriate records of steps to obtain such approval.

¹ <https://www.gov.uk/government/publications/powers-of-entry-code-of-practice>

4. Enforcement options

4.1. In any situation which requires action to ensure compliance with legislation, officers will consider the following when deciding on the most appropriate enforcement action:

- The degree of risk from the situation
- The particular circumstances of the case and likelihood of its continuation or recurrence
- Whether any harm was caused
- The aim to eliminate any financial gain or benefit from non-compliance
- The general attitude of the offender to his or her responsibilities
- The past history of the person(s), company or premises involved
- The impact of the enforcement choice in encouraging others to comply with the law.
- The likely effectiveness of the various enforcement options
- Any legal guidance
- Any Guidance document or Policy Statement issued by the Council, whether adopted under a statutory requirement or published in pursuit of the transparency principle.

4.2. Where the law has been contravened, there is a range of enforcement options available to seek compliance with the law, including both formal and informal measures. Under normal circumstances, a process of escalation will be used until compliance is achieved. Exceptions would be where there is a serious risk to public safety or the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment.

4.3. As a general rule, the following options for enforcement action are open to the Council:

- To take no action
- To refer the matter to another service or agency
- Informal action – written or verbal warnings
- To administer a simple caution
- Hearings and reviews
- Refusal, suspension and revocation of licence
- Prosecution
- Exercising closure powers under the Anti-Social Behaviour Crime and Policing Act 2014

No action

4.4. In certain circumstances, contravention of the law may not warrant any action. This may be where the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has already ceased to trade in contravention of the law and will certainly not reoffend, or where the offender is infirm and formal action could seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.

Referrals to other agencies and partnership working

4.5. From time to time matters under investigation are found to fall more appropriately under the enforcement regime of another regulatory body or agency, e.g. Police, Fire Authority, Planning Department, Trading Standards or the Gambling Commission. In all cases of referred enforcement the person(s) under investigation will be notified of the reasons for referral in writing.

Informal actions

4.6. For minor breaches of the law we may give verbal or written advice. We will clearly identify any

contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of non-compliance.

- 4.7. Sometimes advice will be given about 'good practice'. In such cases, we will clearly distinguish between what steps they must carry out to comply with the law, and additional advisory steps.
- 4.8. Informal action will be recorded on departmental files and will be used as a basis for judgements on future enforcement action if there are recurrent problems with an individual or premises.
- 4.9. Failure to comply with recommendations arising from informal actions, or repeated misconduct, could result in an escalation of enforcement action.

Simple cautions

- 4.10. In certain cases, a simple caution may be offered instead of prosecution. It should be noted that, although not a conviction, a caution still represents an admission of the commission of a criminal act, and as such may be formally recorded and appear on future criminal records checks, or be cited during future legal actions. In circumstances where a simple caution is offered and refused then the case will usually proceed to court.
- 4.11. A caution may be offered if:
 - It is a first offence,
 - Evidence of offences warranting prosecution exists,
 - The offender admits the offence and agrees to be cautioned,
 - The offender is committed to preventing the likelihood of a re-occurrence, and
 - It is in the public interest as detailed in the Code for Crown Prosecutors.
- 4.12. When considering whether to offer a simple caution, we will take into account the wilfulness with which the offence was committed, the subsequent attitude of the offender and the views of the victim. An offer of a simple caution will always be accompanied by a full explanation of the effects and implications of acceptance, and a suitable period of time will be given to allow the full consideration of the offer.
- 4.13. There is no inherent right to be offered a simple caution as a means of disposal of an investigation. In all cases, decisions on whether to offer a caution will be made by the Council, following consultation between the officer investigating the applicable misconduct and the Council's Legal team.

Hearings and Reviews

- 4.14. Certain behaviour, conduct or incidents may give cause for the referral of a licence to the Council's Licensing Committee to allow that licence to be reviewed or reconsidered. Although different legislative areas make specific provisions and processes for action of this type, typical circumstances that may warrant such action include:
 - Where the licence-holder has been convicted of a relevant offence, or has otherwise committed a criminal act
 - Where the licence-holder or their staff have failed to comply with a condition of the licence
 - Where the licence-holder has behaved in a way which calls into question their suitability to hold a licence
 - Where the licence-holder has behaved in a way which is likely to have put the public at risk, or
 - Where the proprietors of licensed premises have failed to take suitable and sufficient action to promote the licensing objectives of the Licensing Act 2003 or Gambling Act 2005.

4.15. Where cases are referred to a Committee, we will:

- Give sufficient notice of the date on which the matter is to be considered
- Give proper notice to the licence-holder of the allegations against them
- Give notice to other affected parties with a right of appearance
- Allow the licence holder to obtain appropriate representation, if desired
- Provide the licence holder with the opportunity to address the Committee, present his/her case and provide supporting evidence
- Ensure the matter is determined in an impartial manner in accordance with the rules of natural justice
- Provide a written notice of the decision with reasons, and details of any right of appeal.

Licensing Act 2003

4.16. Under the Licensing Act 2003, where a review of a premises licence is carried out under sections 52, 53C or 167 of the Act, the options available to the Licensing Committee are:

- To take no action
- To modify the conditions of the licence
- To exclude a licensable activity from the scope of the licence
- To remove the Designated Premises Supervisor
- To suspend the licence for a period not exceeding three months
- To revoke the licence

4.17. Where a review of a club premises certificate is carried out under section 88 of the Act, the options available to the Licensing Committee are:

- To take no action
- To modify the conditions of the certificate
- To exclude a qualifying club activity from the scope of the certificate
- To suspend the certificate for a period not exceeding three months
- To revoke the certificate

4.18. The following powers have been delegated to the Council's licensing officers:

- To make representations on behalf of the licensing authority in respect of applications under sections 17, 29, 34, 41A, 51, 53A, 71, 84, 86A, 87 or 167
- To apply for the review of a premises licence under section 51, and make appropriate supporting representations at the resulting committee hearing
- To apply for the review of a club premises certificate under section 87, and make appropriate supporting representations at the resulting committee hearing

4.19. The above powers shall be utilised only in cases where there is sufficient demonstrable evidence to support the grounds for representation or application, and where the content of the representation or application cannot be made by another responsible authority, either because the matter concerned falls outside of their statutory remit, or because the evidence that supports the representations is held by licensing officers (for example, evidence of a previous breach of the conditions of a licence).

4.20. In all cases, an officer exercising a power under this section shall not have any involvement in the provision of chargeable pre-application advice, the administration of the application, nor the presentation of the application to the Committee determining the application (although that officer

may appear at the hearing as the review applicant or representor, as applicable).

Gambling Act 2005

4.21. Under the Gambling Act 2005, where review of a premises licence is carried out under section 202 of the Act, the options available to the Licensing Committee are: -

- To take no action
- To exclude a default condition attached to the licence under section 168, or remove or amend an exclusion; or to add, remove or amend a condition under section 169.
- To suspend the licence for a period not exceeding three months
- To revoke the licence

4.22. The following powers have been delegated to the Council's Licensing Enforcement Officers:

- To make representations on behalf of the licensing authority in respect of applications under sections 159, 187, 188, 195, 197, 200 or 204
- To apply for the review of a premises licence under section 197, and make appropriate supporting representations at the resulting committee hearing
- To initiate reviews of premises licences of a particular class under section 201, and make appropriate supporting representations at the resulting committee hearing(s)

4.23. The above powers shall be utilised only in cases where there is sufficient demonstrable evidence to support the grounds for representation or application, and where the content of the representation or application cannot be made by another responsible authority, either because the matter concerned falls outside of their statutory remit, or because the evidence that supports the representations is held by licensing officers (for example, evidence of a previous breach of the conditions of a licence).

4.24. In all cases, an officer exercising a power under this section shall not have any involvement in the provision of chargeable pre-application advice, the administration of the application, nor the presentation of the application to the Committee determining the application (although that officer may of course appear at the hearing as the review applicant or representor, as applicable).

Hackney Carriage / Private Hire Vehicles and Drivers

4.25. When considering an application for the grant of a licence, the Council must be satisfied that the applicant is a "fit and proper" person to hold a licence, and may refuse the application if it is not so satisfied. The term 'fit and proper' covers a wide array of matters, and is discussed in further detail in the council's published guidelines on this topic.

4.26. A number of powers are provided within the Local Government (Miscellaneous Provisions) Act 1976 for the revocation, suspension or refusal of renewal of licences issued in respect of hackney carriage and private hire drivers, vehicles and operators.

4.27. In respect of hackney carriage and private hire drivers, section 61 permits the Council to suspend, revoke or refuse to renew an driver's licence on any of the following grounds

- a) that he has since the grant of the licence—
 - i) been convicted of an offence involving dishonesty, indecency or violence; or
 - ii) been convicted of an offence under or has failed to comply with the provisions of the Town Police Clauses Act 1847 or of Part II of the 1976 Act; or
- b) any other reasonable cause.

- 4.28. A decision to suspend or revoke a licence under section 61 will take effect 21 days after notification of the decision. The Council may, however, direct that a suspension or revocation shall have immediate effect, if this appears necessary in the interests of public safety.
- 4.29. Two distinct enforcement powers exist in respect of hackney carriage and private hire vehicles. Section 60 allows for the suspension, revocation or refusal to renew a vehicle's licence on any of the following grounds:
- a) that the hackney carriage or private hire vehicle is unfit for use as a hackney carriage or private hire vehicle;
 - b) any offence under, or non-compliance with, the provisions of the 1847 Act or of Part II of the 1976 Act by the operator or driver; or
 - c) any other reasonable cause.
- 4.30. In addition, section 68 provides a power for the inspection and testing of vehicles and their taximeters, and the suspension of licences if they are found to be unsatisfactory. Under this power, suspensions remain in place until the vehicle has been re-inspected and found to be satisfactory, but the licence shall be deemed to have been revoked if such re-inspection has not been completed within a period of two months from the initial inspection.
- 4.31. In respect of private hire operators, section 62 permits the Council to suspend, revoke or refuse to renew an operator's licence on any of the following grounds
- a) any offence under, or non-compliance with, the provisions of this Part II of the 1976 Act;
 - b) any conduct on the part of the operator which appears to the district council to render him unfit to hold an operator's licence;
 - c) any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; or
 - d) any other reasonable cause.
- 4.32. In accordance with the judgement of the Administrative Court in *R (on the application of Singh) v Cardiff City Council*², the Council may take action to suspend a licence under the above powers in order to ensure the remedy of a defect (for example, a fault on a vehicle affecting its roadworthiness or appearance), or as a sanction against a licence-holder following an incident of non-compliance. However, suspension must be regarded as a final outcome – it may not be used as an interim measure, for example to provide time for further investigations to take place. This represents a significant change from the way in which the power of suspension was previously used by a large number of councils.
- 4.33. On occasion, a licence-holder may be subject to an allegation against him, or may be charged with an offence, which if substantiated would cast doubts over their fitness and propriety to continue to hold such a licence. Such allegations may come to light via a number of channels – for example, via declaration by the applicable licence-holder, notification under the common law police disclosure scheme, by way of a complaint from a member of the public, or through observations made by an officer carrying out his duties.
- 4.34. Where allegations are of a particularly serious nature and give rise to a genuine and urgent concern for the protection of the public, the Council may give consideration to the immediate revocation of a licence. It is expected that such action will usually relate to drivers and as such be taken under section 61 of the 1976 Act – however, where allegations concern the suitability of a vehicle or operator, similar action may be taken under the respective powers. Such action will be reserved for

² [2012] EWHC 185 (Admin)

the most serious allegations only – for example, if a licence-holder is linked to a sexual or violent offence, an incident of hate crime, disqualification from driving, or is subject to a medical condition affecting their ability to drive safely, which calls in question whether the Council would be fulfilling its public protection duty by continuing to licence that individual pending the investigation into the allegations.

- 4.35. It is noted that receipt of an allegation or the fact that charges have been brought are not confirmation of an individual's misconduct in respect of that matter, and this policy does not seek to prejudice judicial or other processes which will be followed, nor should a revocation of a licence in line with this policy be taken as any kind of evidence or statement on the conduct of the individual concerned. Where feasible, all reasonable steps will be taken to allow the licence-holder to answer the allegations and put his case, prior to a decision being made. This will not necessarily mean at a formal hearing, but may include a telephone call, interview, email or letter. Where possible, the Council shall take further steps to try and establish the facts behind the allegation prior to determining whether to take action – however, it is noted that this may not always be possible, for instance, if a criminal investigation is ongoing. That said, the Council's primary responsibility in this legislative area is ensuring the safety of the public, and in the absence of a power of interim suspension, immediate revocation will be considered where deemed appropriate for the protection of the public.
- 4.36. The power to take such action shall be delegated to the Licensing Team Leader, Legal Governance Team Leaders, the Group Manager for Legal Governance and the Assistant Director – Corporate and Contracted Services, and may only be exercised following consultation with the chairman or vice-chairman of the Licensing Committee. A formal record of this process shall be kept, to be referred to in the event of an appeal to a magistrates' court against the revocation of the licence. Written notice of a decision to revoke a licence shall be given in accordance with legal requirements.
- 4.37. In the event of revocation of a licence in such circumstances, should the allegation subsequently be found to be baseless or any charges dismissed, the former licence-holder shall be permitted to make a new application to effectively reinstate his previous licence, without payment of an application fee or, at officer's discretion, being required to submit to the full range of checks that would ordinarily be required on a new application. The processing of any such application shall, insofar as is possible, be expedited, but will be considered fully against the statutory grounds for granting the licence. Any licence granted as a result of such application shall be valid for a duration not exceeding the period left on the previous licence at the time of revocation.
- 4.38. Generally, the powers discussed in the preceding paragraphs will be exercised in response to the most serious allegations or infractions. From time-to-time, complaints and allegations may be made to the licensing authority regarding misconduct by a licence-holder of a less serious type which would not by itself warrant severe action such as the revocation of a licence, but which may if regarded cumulatively give rise to concerns regarding the fitness or propriety of a person.
- 4.39. To offer an alternative mechanism to deal with such matters, the authority has developed a 'three strikes' policy for taxi and private hire licence-holders. Further details of how this scheme shall operate are given at Annex A.

Prosecution

- 4.40. A prosecution will only be brought where there is sufficient evidence to provide a realistic prospect of conviction and it is in the public interest to do so. In determining whether it is in the public interest, we will consider the Code for Crown Prosecutors guidance. The following list indicates some possible public interest factors in favour of a prosecution:

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

Closure powers

- 4.41. The Anti-Social Behaviour Crime and Policing Act 2014 created new powers for police and local authorities to close premises which are causing significant nuisance or disorder. These powers replaced previous powers allowing the police to close alcohol-licensed premises under the Licensing Act 2003, consolidating them with various other statutory closure powers, and extending them to include other types of premises, both licensed and unlicensed. It is expected that this power will be reserved for the most serious incidents of nuisance and disorder, where it is not appropriate to use other powers.
- 4.42. As these powers are available to a range of Council officers, it is not considered appropriate for the Licensing Authority alone to create policy or guidance on the exercise of these powers which would bind the entire local authority. Licensing officers exercising such powers will have regard to any relevant guidance issued by the Government, or policy as may be compiled by the Council, and where applicable will liaise with the police and/or other relevant Council departments authorised to exercise closure powers prior to taking such action.
- 4.43. Where a closure order is made in respect of premises licensed for the supply of alcohol, provision of regulated entertainment or supply of late night refreshment, review proceedings under the Licensing Act 2003 will automatically be commenced. The Licensing Authority will deal with these proceedings in full accordance with the relevant statutory requirements, and will also have regard to earlier provisions of this policy regarding the carrying out of reviews under the 2003 Act.
- 4.44. Where a closure order is made in respect of premises licensed under another enactment, the licensing authority will typically consider whether it would be appropriate to take any action to revoke, restrict or refuse to renew the relevant licence, as may be the case, under the applicable licensing legislation, if this would ensure that the nuisance or disorder which led to the order being made would not continue nor reoccur in the longer term.

5. Authorisation and delegation of functions

- 5.1. Only officers authorised by the Council under delegated powers will be permitted to undertake investigations, inspections and visits, or other enforcement actions. Officers will only be authorised to deal with such investigations if they have the experience and specialist knowledge to undertake such action in accordance with established procedures. They will follow the relevant procedures and guidelines in carrying out their duties. Officers are issued with a personal identity card and evidence of their authorisation(s), which will be carried with them at all times and will be shown upon request.
- 5.2. Decisions about what enforcement action is appropriate are based upon professional judgement, legal guidance, statutory codes of practice and priorities set by the Council and/or Central Government, as well as the individual circumstances of a particular case.
- 5.3. Where appropriate, decisions about enforcement actions will involve consultation between or approval from:
 - Investigating officer(s)
 - Licensing Team Leader
 - Assistant Director – Corporate and Contracted Services Legal Services department

6. Notification and publication of enforcement actions

- 6.1. If we receive information (e.g. from a complainant) that may lead to enforcement action against an individual or a business we will notify that individual or business as soon as practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- 6.2. During the progression of enforcement investigations/actions, parties involved will be kept informed of progress.
- 6.3. The Council will normally publicise details of any convictions, which would serve to draw attention to the need to comply with the law or deter others. Where appropriate, the media will be provided with factual information about charges that have been put before the Courts. In addition, details of convictions may be recorded on public registers where the Council is under an obligation to record such data, or included within statistical datasets returned to central government and other statutory agencies. Records of cautions administered by the authority may also be recorded on national databases, where they can be accessed by other enforcement agencies.

7. PACE interviews – Police and Criminal Evidence Act 1984

- 7.1. Questioning of persons will be carried out by way of a formal interview where there is suspected involvement in criminal offences. All formal interviews will be conducted with regard to the Act and associated Codes of Practice, with a formal record made of the content of the interview. This may comprise a written transcript, or audio or video recording.

8. Regulation of Investigatory Powers Act 2000

- 8.1. During an investigation into suspected non-compliance with legislation, the Council may need to undertake directed covert surveillance. This may include using sound or video monitoring. From time to time, we may also carry out enforcement operations utilising covert human intelligence sources.
- 8.2. In circumstances where it is necessary to use covert surveillance or sources, we will ensure that any statutory prerequisites under the Regulation of Investigatory Powers Act 2000 (RIPA) are complied with. In all cases where the use of covert surveillance or intelligence sources is proposed, such operations will only be undertaken with the express authorisation of a senior officer appointed by the Council for that purpose.
- 8.3. Requests for RIPA authorisation will be made in writing by the investigating officer. All such requests will be accompanied by a statement which details why the proposed conduct is appropriate and proportionate, how it is to be undertaken, who is likely to be involved and any impact that might result from the surveillance.
- 8.4. In deciding whether or not to authorise the proposed activity, the authorised officer will have regard to any policies and issues relevant to the investigation and any alternative methods of conducting the investigation. Surveillance authorisations will only last for as long as necessary and will be reviewed on a regular basis.
- 8.5. An authorisation for covert directed surveillance or use of human intelligence sources will not be valid unless an order has been made by a justice of the peace approving the grant of the authorisation.
- 8.6. The Council maintains a register of authorised covert surveillance operations under the Regulation of Investigatory Powers Act. Authorisations will not be made public whilst there is an ongoing investigation.

Annex A – Three strikes policy for taxi & private hire licences

1. The Council operates a policy for dealing with complaints, allegations and witnessed incidents of misconduct or infractions of a type which is not considered sufficiently serious in itself to justify a review of a person's suitability to hold a taxi or private hire driver, vehicle or operator licence, but which may give rise to such concerns if repeated or if regarded cumulatively with other such incidents.
2. Where complaints are substantiated for an applicable infraction, we may consider issuing a formal written warning, particularly if it would be disproportionate or inappropriate to take formal legal action for the infraction. Such warnings shall be issued only in situations where the investigating officer (or a reviewing officer) is satisfied that the infraction was committed, such as if they personally observed the infraction being committed, or if the results of the investigation into a complaint lead them to conclude on the balance of probabilities that the infraction was committed.
3. If a driver, operator or vehicle proprietor should receive three warnings for any combination of applicable infractions within a rolling period of two years, they shall be referred to the Council's Licensing Sub-Committee, for a review hearing into that individual's suitability to continue to hold the relevant licence.
4. In conducting such reviews, the Sub-Committee will take account of all of the pertinent facts, and of any representation made by the driver, operator or proprietor before considering what action, if any, would be appropriate to take. The Sub-Committee may also have regard to any previous warnings or Committee determinations in reaching a decision. The options available to the Sub-Committee, depending upon the severity of the infractions and any previous record of misconduct, will typically be: to take no further action; to warn the licensee as to their future conduct; to suspend the licence for a specified period, or until such time as certain conditions have been satisfied; or to revoke the licence.
5. The existence of this guidance does not bind the Council, its officers or members to reach a particular decision in every case, and if the circumstances of a particular case support doing so it shall be open to the Council to select a different course of action in respect of that case, such as prosecution for a single infraction of a type listed below, or issuing an informal warning which does not count towards the cumulative total.
6. The following lists of applicable infractions are non-exhaustive, and similar infractions may be regarded in the same way, even if not specifically referred to below.

Applicable infractions – operators

- Failing to declare convictions / cautions in a timely manner
- Failing to produce operator licence on request
- Failing to maintain operators records complying with licence conditions, or to produce on request
- Touting of hire car services
- Abusive/improper behaviour by operator or staff
- Use of unapproved door signs on vehicles
- Obstruction of authorised officer or constable
- Making false statement to authorised officer or constable
- Making a false statement in connection with a licence or application

Applicable infractions – drivers / vehicle proprietors

- Failing to declare convictions / cautions / motoring endorsements in a timely manner
- Failing to report accident
- Failing to produce vehicle/driver licence on request
- Failing to wear driver badge
- Failing to produce vehicle insurance certificate on request
- Failing to return licence plate / badge (following expiry, suspension or revocation)
- Using vehicle which is mechanically unsound / unsafe / excessively soiled
- Using vehicle at a time when it would not satisfy compliance standards
- Charging more than metered fare / use of incorrect tariff / previously agreed fare
- Non-display of fare card
- Prolonging journeys
- Tampering with taximeter seal, altering taximeter with intent to mislead
- Meter, radio or other equipment installed in dangerous position
- Non-display / incorrect display of licence plates
- Non-display of roof sign / door signs
- Display of roof/taxi sign on vehicle other than a hackney carriage
- Failure to carry first aid kit / fire extinguisher in vehicle
- Abusive/improper behaviour
- Injuring or endangering any person or property through wanton and furious driving or other wilful misconduct
- Driver improperly attired
- Touting
- Misuse of taxi ranks (obstructing or hindering other driver, preventing hiring)
- Hackney carriage driver refusing fare from taxi rank
- Private hire vehicle stopping on taxi rank
- Leaving hackney carriage unattended in public place
- Carrying excessive number of passengers
- Failing to deliver lost property to police station
- Obstruction of authorised officer or constable
- Making false statement to authorised officer or constable
- Making a false statement in connection with a licence or application

Police infractions

In addition to work undertaken by Dacorum council officers, Hertfordshire Constabulary officers may issue warnings which will have the same effect under this policy, for any of the above infractions, or for the following general violations:

- Minor offences under Road Traffic Acts in respect of a hackney carriage or private hire vehicle
- Minor offences under the Road Vehicles (Construction and Use) Regulations in respect of a hackney carriage or private hire vehicle
- Minor public order offences in the course of use of a hackney carriage or private hire vehicle

In all cases, issue of a warning under this scheme by a police officer shall represent an alternative disposal option, and police shall retain the right to instead utilise any other disposal method (e.g. fixed penalty notice or legal proceedings) for any applicable offence where deemed appropriate.

Excluded offences

The following offences are deemed sufficiently serious that they will be excluded from this scheme, with prosecution and/or Committee referral likely to result from a single incident:

- Plying for hire without HCV licence (or driving or standing for hire)
- Using an unlicensed vehicle for private hire
- Driving a licensed vehicle without a valid HC/PH driver's licence
- Employing an unlicensed driver to drive a licensed vehicle
- Operating unlicensed vehicles, or operating vehicles without an operator's licence
- Refusing to accept booking to carry disabled passenger, or passenger with assistance dog

N.B. Licences issued by any other council do not permit any person to drive, use or operate any vehicle as a hackney carriage or private hire vehicle within Dacorum, and persons doing so are 'unlicensed' in the above.

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Annex B – Contacting us

Complaints about businesses or persons providing licensable activities

If you wish to make a complaint or provide feedback about alleged unlicensed activity or breach of conditions of a licence then you can contact the Licensing Section:

- Via our website: www.dacorum.gov.uk/licensing
- By email, to: licensing@dacorum.gov.uk
- By post, to:
**Licensing
Dacorum Borough Council
The Forum
Marlowes
Hemel Hempstead
Herts
HP1 1DN**

If you make a complaint outside of normal office hours we will respond when the office re-opens.

Complaints made to the Licensing Section will be investigated by a Licensing Enforcement Officer who will also inform you of the progress and outcome of your complaint. For many complaints we may need you to make a formal written statement (which we will assist with if required), and if we take legal action we may ask you to attend court to give evidence.

Complaints about the Licensing Section

We understand that, from time to time, persons may not be completely satisfied with the service that they receive from the Licensing Section, and we would encourage any person who feels this way to let us know, so that we can develop and improve our service. We will ensure that complaints about our service are investigated fairly and thoroughly using the Council's Complaints Procedure (details of which can be found on the Council's website at www.dacorum.gov.uk).

Complaints or comments about the Licensing Section can be made:

- Via our website: www.dacorum.gov.uk/CustomerComplaints/
- By phone, to: **01442 228000 and at the prompt ask for Complaints**
- By post, to:
**Complaints
Dacorum Borough Council
The Forum
Marlowes
Hemel Hempstead
Herts
HP1 1DN**

In cases where disputes still cannot be resolved, we will ensure that any rights of complaint or appeal against the Council's actions are explained with an indication of the likely time-scales involved.

To make an application or for further guidance, please visit our website:
www.dacorum.gov.uk/licensing

For informal advice or queries, please email:
licensing@dacorum.gov.uk

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Agenda Item 6



AGENDA ITEM: 6

Report for:	Licensing and Health & Safety Enforcement Committee
Date of meeting:	30 November 2021
PART:	I
If Part II, reason:	

Title of report:	Review of Sex Establishment Licensing Policy
Contact:	Phil Wortley – Licensing Officer, Corporate and Contracted Services
Purpose of report:	To present proposed updates to the Council's Sex Establishment Licensing Policy and to seek approval to commence public consultation in respect of the revised documents.
Recommendations	That consultation be carried out on the draft Sex Establishment Licensing Policy, with responses to be reported to a future meeting of the Committee.
Corporate objectives:	A clean, safe and enjoyable environment Maintain a clean and safe environment Ensuring efficient, effective and modern service delivery
Implications:	This is an existing policy which is due to be reviewed, with only minor changes proposed. No new implications are expected to arise as a result.
Consultees:	This report proposes that public consultation be carried out on the revised policies, and the results reported back to the Committee.
Background papers:	Draft Sex Establishment Licensing Policy 2022-2027
Glossary of acronyms and any other abbreviations used in this report:	

1. BACKGROUND

- 1.1. The Council publishes policies in respect many of its licensing functions. While there is no statutory duty to do so, publication is seen as best practice, as it offers guidance to applicants and other persons on how the authority will exercise its powers, and helps to ensure consistency in the Council's decision-making.
- 1.2. The Council's policy in respect of the licensing of sex establishments is due to be reviewed and renewed.

2. SEX ESTABLISHMENT LICENSING POLICY

- 2.1. The Council has adopted schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, so as to enable the regulation of sex establishments (sex shops, sex cinemas and sexual entertainment venues). At present there are two licensed venues within Dacorum.
- 2.2. The current sex establishment licensing policy was last reviewed in 2016, and is due to expire in February 2022.
- 2.3. There have been no significant emerging issues, legislative change or case law in regards to this area of licensing in the last 5 years, so only very minor changes have been proposed. Due to the similarities with the current policy, and in the absence of expected statutory change affecting this regulatory area, it is proposed that the revised policy have effect for a further 5 years.
- 2.4. The draft sex establishment licensing policy for 2022-2027 is appended to the report.

3. CONSULTATION AND TIMESCALES

- 3.1. It is considered important that those persons who may be affected by this policy should have the opportunity to comment upon and influence the proposals, and as such public consultation is proposed. As this is a non-statutory policy, there are no formal requirements relating to consultation. As such it is intended to publish the draft policy on the Council's website, with notification sent to key parties, including elected representatives, parish and town councils, and trade bodies. Details of the sex establishments policy will also be sent to the relevant licence-holder.
- 3.2. A four week consultation is proposed.

4. RECOMMENDATIONS

- 4.1. **That consultation be carried out on the draft Sex Establishment Licensing Policy with responses to be reported to a future meeting of the Committee.**



Sex Establishment Licensing Policy

2022 – 2027

Date of publication	*****
Version no.	4.0
Review date	*****

Working in partnership, to create a Borough which enables the communities of Dacorum to thrive and prosper

Affordable Housing ♦ Regeneration ♦ Building Community Capacity ♦ Safe and Clean Environment ♦ Dacorum Delivers

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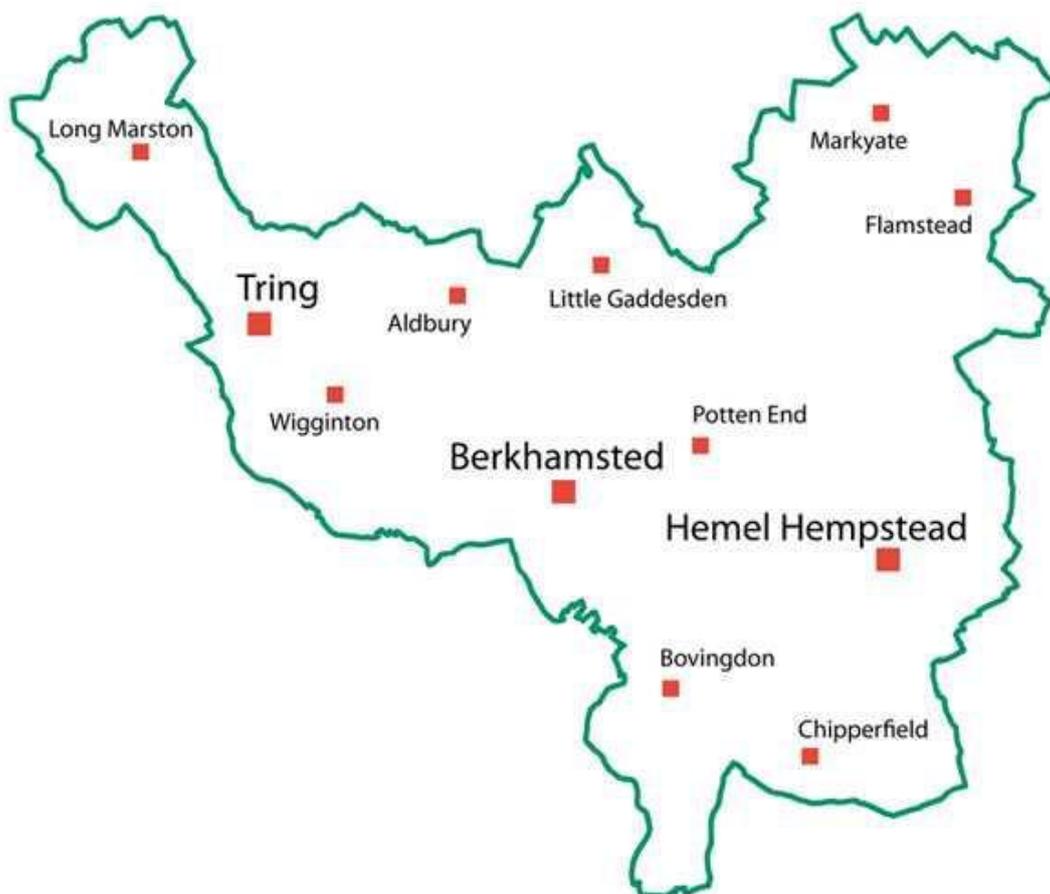
About Dacorum

The borough of Dacorum is situated in west Hertfordshire and has a mixture of strong urban and rural identities. It includes the towns of Hemel Hempstead, Berkhamsted and Tring as well as a number of villages from Long Marston in the west to Flaunden in the south-east. Over a third of the borough's 210 square kilometres have been designated as part of the Chilterns Area of Outstanding Natural Beauty, while most of the rest has high landscape quality and potential.

Hemel Hempstead was one of the first "New Towns" built after the Second World War. Its development reflects the original concept of the new town as a series of integrated communities with individual identity and neighbourhood focus. The rapid growth of Hemel Hempstead is reflected in the large number of buildings of similar age and appearance.

The remainder of the borough is rural, surrounding two market towns, Berkhamsted and Tring. Although agriculture is no longer a major employment sector in Dacorum, outside towns the communities value their rural heritage as well as expecting good modern services. The conservation of building and landscape are important considerations in Dacorum, balanced with concerns to maintain thriving businesses in town centres. Dacorum Borough Council works closely with the 16 town and parish councils, which represent communities in rural areas of the Borough.

Dacorum has a population of 149,700¹, and is the largest of the Hertfordshire districts by headcount. Further information about Dacorum and the demographics of its populace can be found on the Council's website via "Statistics about Dacorum".²



¹ Office of National Statistics resident population estimates June 2014

² <http://www.dacorum.gov.uk/statistics-about-dacorum>

1. General principles

- 1.1. Dacorum Borough Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”) in 1984 so as to require sex shops and sex cinemas in the borough to operate under licences issued by the Council. In 2011 the same schedule, with amendments under section 27 of the Policing and Crime Act 2009, was re-adopted to enable the Council to also license sexual entertainment venues in the borough.
- 1.2. In licensing sex establishments, the Council takes no moral position on the activities being provided therein, and recognises that Parliament has made it lawful to operate sex establishments, and that such businesses are a legitimate part of the retail and leisure industries. The role of Dacorum Borough Council as a licensing authority is to administer and ensure compliance with the licensing regime in accordance with the law.
- 1.3. Both the 1982 Act and the 2009 Act can be viewed on the Government’s legislation website, www.legislation.gov.uk
- 1.4. In producing this policy, we have had regard to relevant provisions of the following pieces of legislation, in addition to the provisions of the 1982 Act and the 2009 Act:-
 - the Crime and Disorder Act 1998 (in particular, section 17);
 - the Regulators’ Compliance Code (made under the Legislative and Regulatory Reform Act 2006);
 - part 3 of the Provision of Services Regulations 2009.
- 1.5. We recommend that potential operators take into consideration the Local Planning Framework, which is set out in the Local Development Scheme (available on our website, www.dacorum.gov.uk) for details about the local planning authority’s approach to granting planning permission for developments where such activities may take place. Licensing and Planning operate separate, albeit linked, regulatory regimes, each taking into account differing considerations, and the grant of authorisation under one scheme will not indicate the likelihood of authorisation being granted under the other. Both a licence and relevant planning permission will usually be necessary prior to the commencement of a business providing sex-related activities.

Applying for a licence

- 1.6. Businesses operating premises, vehicles, vessels or stalls, as sex shops, sex cinemas, or sexual entertainment venues, must hold appropriate licences issued by the relevant local authority, or have had the licence requirement in respect of their business waived by the authority.
- 1.7. Applications must contain such particulars as specified by the authority and must be made in accordance with the provisions of schedule 3 of the 1982 Act. Our application forms and further information on the application process may be obtained from the Licensing team or via our website (www.dacorum.gov.uk/licensing). Applications may also be made to the authority electronically, via our website.
- 1.8. Applicants must give public notice of their applications, both at the site of the premises (or stall, vehicle or vessel) and in a local newspaper, and templates for these notices are available from the Licensing team. Failure to give notice in accordance with the statutory provisions will invalidate an application and no refund of the application fee will be available in such circumstances.
- 1.9. The Act allows for objections to be made against applications for sex establishment licences, and these may come from any person, regardless of whether they live or work near to the proposed sex establishment. This power also extends to every type of application for a licence, including renewals,

transfers and variations in addition to new licences. Objections must be given to the Council no later than 28 days after the date of the application. In addition, the police are a statutory consultee for all applications, and must be given notice of all applications, by way of service by the applicant of a copy of the application form (unless the application was made via the Council's electronic application facility).

1.10. Any objections must:-

- Be made in writing to the local authority;
- Indicate the name and address of the author of the objection (which will not be revealed to the applicant without the objector's consent);
- Indicate the application to which the objection relates;
- Indicate the general grounds for making the objection.

1.11. Where objections citing legitimate concerns are received, or other concerns in respect of the discretionary grounds for refusal arise, that application will be considered at a public hearing by a Sub-Committee under delegated powers.

1.12. We will take the following approach when making decisions on applications:

- Each case will be decided upon its merits. The Council will not apply a rigid rule to its decision making, although regard will be given to this policy, and to the relevant legislation and case law, in reaching any decision;
- The absence of objections will not in itself constitute grounds for automatic approval of an application. If licensing officers believe that any of the grounds for refusal (as outlined later in this document) may be engaged, the Council may refer an application to its Sub-Committee for consideration, and for that application to be amended or refused if believed necessary. Similarly, the existence of objections will not lead to an application automatically being refused, but rather will start a process of examination of the issues that may arise if the licence were to be granted.
- Persons making objections can include individuals, residents/tenants associations, community associations, businesses and trade associations. Councillors and MPs can also make objections. Ward councillors may represent objectors, where they have been requested to do so by that objector, at any hearing about the application, but may not also sit on the sub-committee determining the application in question;
- The Council will give clear reasons for its decisions.

1.13. Although the Council must consider all objections given in respect of an application prior to making its decision, less weight will be attached to those objections which are considered to be frivolous or vexatious, or which relate to moral opposition to the licensable activities (as these are outside the scope of the 1982 Act). In reaching any decision in this respect, we will rely upon the accepted dictionary definition of frivolous or vexatious.

Exchange of information

1.14. The Council may from time to time exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the police and other partners to fulfil its statutory objective of reducing crime in the area. Data may also be released in accordance with statutory provisions under the Data Protection Act 1998, the Freedom of Information Act 2000, and associated legislation.

- 1.15. Details of applications and the anonymised contents of objections referred to the sub-committee for determination will be published in reports which will be made publicly available in accordance with the Local Government Act 1972.
- 1.16. The names and addresses of persons making objections will not be disclosed to the applicant without their consent. The information will, however, be shared with the councillors sitting on the relevant sub-committee and their advisors.

Grounds for refusal of applications or revocation of licences

1.17. A number of grounds for refusing applications for sex establishment licences are set out in paragraph 12 of schedule 3 to the 1982 Act.

1.18. Applications for licences cannot lawfully be granted if:

- a) The applicant is under the age of 18 years;
- b) A licence held by the applicant has previously been revoked, which would disqualify him or her from obtaining or holding a licence in the area of that authority for 12 months from the date of revocation;
- c) The applicant, where this is an individual, is not resident in an EEA state or was not resident throughout the period of six months immediately preceding the date when the application was made;
- d) The applicant, where this is a body corporate, is not incorporated in an EEA state;
- e) The applicant has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

1.19. The authority may also decide to refuse applications for licences if:-

- a) The applicant is considered unsuitable to hold the licence, by reason of having been convicted of an offence or for any other reason;
- b) The business to which the licence relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- c) The number of sex establishments, either generally or of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the Council considers appropriate for that locality;
- d) The grant or renewal of the licence would be inappropriate having regard to:-
 - The character of the relevant locality, or
 - The use to which any premises in the vicinity are put, or
 - The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

1.20. "Relevant locality" means, in relation to premises, the locality where they are situated. In considering the question of the "relevant locality" the Council may take into account the following:-

- The size of the neighbourhood;
- The presence of important thoroughfares or use of the locality as a gateway district;

- The density and proximity of residential accommodation;
- The proximity of parks and children’s play areas;
- The nature, density and proximity of other retail units and their uses;
- The proximity of schools;
- The proximity of community buildings;
- The proximity of places of religious worship;
- The proximity of premises licensed for the sale by retail of alcohol and the provision of entertainment regulated under the Licensing Act 2003.

1.21. The authority will decide each application on its individual merits. However, there are a number of localities in which it is believed that the grant of a sex establishment licence would be inappropriate, due to the historic character of those localities, or that they are areas of mixed commercial use with a high density of families and younger persons frequenting premises in the vicinity. Therefore, for the purposes of paragraph 12(3)(c) of schedule 3 to the 1982 Act, the Council considers ‘nil’ to be the appropriate number of sex establishments in these localities. The localities to which this paragraph relates include:

- a) Hemel Hempstead Old Town Nil policy zone– see map of locality at Annex E
- b) Berkhamsted town centre Nil policy zone – see map of locality at Annex F
- c) Tring town centre Nil policy zone – see map of locality at Annex G

1.22. In addition to the above geographic areas, the authority will also pay close attention to the character and usage of other premises in the locality of a proposed sex establishment, and will generally not be minded to grant an application for a sex establishment which is within 200 metres of:

- a) A school, nursery, educational institution or other premises used wholly or primarily by children and young persons
- b) Places of religious worship
- c) Transport hubs and interchanges
- d) Areas in which the primary use of premises is for residential accommodation
- e) A community centre or similar premises

1.23. Applications for licences for premises which are within localities mentioned in the preceding paragraphs will, as with any application, be determined on their merits. However, the authority would expect to see, as part of any application, details from the applicant as to how their premises would operate in a way so as to be compatible with the character of the locality and usage of other premises in the vicinity, prior to determining that application.

1.24. Where applications relate to the use of a vehicle, vessel or stall as a sex establishment, the above provisions will be interpreted accordingly.

1.25. Licences may also be revoked or have renewal applications refused, subject to certain procedural requirements and due consideration, on most of the grounds set out above.

Length of licence

1.26. Unless there are exceptional reasons otherwise, licences will be granted for the maximum duration of one year, in the interests of proportionality and to provide certainty to those operating lawful businesses.

Waivers

- 1.27. Any request for a waiver from the requirement to hold a sex establishment licence will be considered on its own merits and those merits will be taken fully into account prior to a decision being made.
- 1.28. The authority does not consider that it would generally be appropriate to grant a waiver from the requirement to hold a sex establishment licence in respect of a business that solely or primarily provides licensable, sex-related activities on a commercial basis (i.e. for consideration and with a view to profit).
- 1.29. Instead, the authority views the ability to seek a waiver as an option for businesses that provide the licensable activities as a minor, ancillary part of their overall trade, and will not make a profit directly from the provision of those activities. An example may be the display of pornographic materials as a stimulus for subjects at a fertility clinic.

Fees

- 1.30. The authority will require payment of an application fee with every application for a licence. These fees will be reviewed and set ahead of every financial year, and fee levels will be made available from the Licensing team or via our website. In setting fees, we will have regard to any relevant guidance, and to the requirements of the EU Services Directive and applicable case law.

2. Types of sex establishment

- 2.1. The Local Government (Miscellaneous Provisions) Act 1982 defines 'sex establishments' as three different types: Sexual Entertainment Venues, Sex Shops and Sex Cinemas.
- 2.2. Each type of establishment has a specific definition, and provides a combination of particular activities. Sex establishments can be either a premises, vehicle, vessel or stall, but not a private dwelling-house to which there is no public admission. The Council has set standard conditions that will apply to all sex establishment licences, and further conditions applying to each particular type of sex establishment. If an application is considered by a sub-committee, it may apply further specific conditions if it is deemed necessary.

Sexual entertainment venues

- 2.3. Sexual entertainment venues are considered to be "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer".
- 2.4. "Relevant entertainment" is defined in schedule 3 of the 1982 Act (as amended by section 27 of the 2009 Act) as: "any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)". An audience can consist of just one person, e.g. a performance in a private booth.
- 2.5. Each type of performance or display will be judged on its own merits, but the following entertainment will generally be deemed to be "relevant entertainment":-
 - Lap dancing;
 - Pole dancing;
 - Table dancing;
 - Nude or topless waitress service;
 - Strip shows;
 - Peep shows;
 - Live sex shows.
- 2.6. Premises providing relevant entertainment on no more than 11 occasions per year, with each occasion lasting no more than 24 hours and separated from another occasion by at least a month, are exempt from the licensing requirement. For example, a pub that provided two events annually with strip-tease entertainment, on the 1st September and the 2nd October, would not require a licence. However, if the events were held on the 1st September and the 30th September, a licence would be required.
- 2.7. Entertainment which is not classed as "relevant entertainment" may still require licensing under the Licensing Act 2003.

Sex shops

- 2.8. Sex shops are used to a "significant degree" for the sale, hire, exchange, lending, display or demonstration of sex articles or other items intended for use in connection with or to stimulate or encourage sexual activity, or acts of force or restraint associated therewith. Articles containing reading matter or imagery, including printed material, sound recordings or video recordings (certified with an 'R18' rating, indicating pornographic content) which portray, stimulate or encourage sexual activity or associated acts of force or restraint, or depict genital organs, urinary or excretory functions, will also fall within the definition of a sex article.

2.9. The phrase “significant degree” is not defined in legislation, although the courts have previously considered its meaning. When considering whether or not a business is selling a significant degree of sex articles and needs a licence, the Council will consider:

- the ratio of sex articles to other aspects of the business;
- the absolute quantity of sales;
- the character of the remainder of the business;
- the nature of the displays in the business;
- turnover generated by sales of sex articles;
- the format of any literature, publicity or advertising materials;
- other factors which appear to be materially relevant.

2.10. For the purposes of the Act, it is immaterial as to whether the sex shop is open for customers to visit, or is used to supply goods to fulfil orders made by mail or via the internet. However, it should be noted that the supply of pornographic video recordings by remote order is an offence under the Video Recordings Act 1984.

Sex cinemas

2.11. Sex cinemas are those premises, vehicles vessels or stalls used to a significant degree for the exhibition of moving pictures which portray or are intended to stimulate or encourage sexual activity or associated acts of force or restraint, or which depict genital organs or urinary or excretory functions. These films will have been certified by the BBFC and rated ‘R18’, indicating hardcore pornographic content.

2.12. The showing of films rated by a film classification body as ‘18’, which may contain limited (usually simulated) sexual activity will not in itself require a sex establishment licence. However, such films could only be publicly exhibited under an authorisation issued through the Licensing Act 2003, and would not be authorised by way of a sex establishment licence. A premises wishing to exhibit both R18-rated films and those with lower certificates would require both types of licence.

2.13. Films with sexual content which form exhibits (or parts thereof) in galleries and museums are also exempt from licensing, so long as they are organised by an exempted non-commercial society or similar, certified under section 6(6) of the Cinemas Act 1985.

2.14. Typically sex cinemas will exhibit films for the benefit of an audience, and for these purposes an audience may comprise a single person.

2.15. Exhibitions of films within a dwelling-house to which there is no public admission do not fall within the licensing requirements.

3. Consideration of applications

- 3.1. The Council considers that the suitability of the applicant and how he/she intends to operate his/her business are important factors in the consideration of an application. As sex establishments cater for a particular adult audience, the use of the premises for any of the purposes set out in section 2 of this Policy could impact on the area in which it is situated. For that reason we expect any applicants for sex establishment licences to demonstrate not only that they have taken steps to apply our conditions in preparing their operating procedures, but have also carefully considered the following when compiling their applications:-
- a) The visual impact of the premises on the surrounding area: this may be due to its appearance, signage, promotional material, and the use of any visible smoking area by its staff and customers. Applications should clearly indicate how any operator aims to ensure that activities taking place in the premises are not visible outside.
 - b) What measures will be put in place to prevent access by persons who are under 18.
 - c) Is the premises directly accessible, or is access or egress shared with another property?
 - d) The interior design and layout of the establishment, which would need to take into account the following factors:
 - Are there enough operational members of staff to adequately oversee the welfare of both performers and customers:
 - Is the whole of the area given over for use as a sex establishment visible, well lit, with no small or poorly lit alcoves or rooms which are not easily accessible;
 - Is the premises on one level – premises over several floors could complicate operating procedures and make it more difficult to provide CCTV, which is a standard condition.
 - e) Setting 'House Rules' – in particular for sexual entertainment venues – to include health, safety and welfare provisions for both staff and customers. These should include the following:
 - Providing a good 'physical environment' for performers, i.e. safe and secure changing facilities, adequate temperature regulation, rest areas and cooking facilities.
 - Setting out clear information on any commission fees or fines, and keeping records and receipts of such.
 - Clearly displaying rules for customer behaviour and ensuring these are adhered to.
 - Ensuring that performers are aware of any licensing conditions, Council policy and operating procedures and house rules of the venue.
 - Providing a sufficient number of door staff to patrol the premises at all times that the premises is providing sexual entertainment.
 - Putting measures in place to ensure the safety and welfare of both performers and customers in private booths; this could be by way of ensuring that booths are not fully enclosed, and the installation of panic buttons.
 - Introducing a policy outlining safety measures for performers when they leave the premises at the end of a shift.
 - f) Ensuring that all performers are signed up to a Code of Conduct, that will incorporate details of the measures outlined above.
 - g) Ensuring that the opening hours of the premises do not cause a detrimental impact on the locality in which the premises is situated. For example ensuring customers leaving the premises late at night do not cause a disturbance to local residents – how would the operator ensure that disturbance was minimised.
 - h) How will incidents of anti-social behaviour linked to the operation of the premises be addressed

and discouraged.

- i) Evidence of overall good record keeping, including full details and evidence of age verification and UK employment entitlement of staff members and performers.
- j) What provisions are to be provided for smokers – this could be operational staff, customers or performers.
- k) The sourcing of products and goods for sale only from reputable suppliers.
- l) Arrangements for the regular cleaning and upkeep of all areas of the premises.

3.2. Applicants will also be required to submit plans to accompany their applications. We expect plans to be drawn to an appropriate scale, to be clear and legible, and to include the following information:-

- The extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
- The location of points of access to and egress from the premises and, if different, the location of escape routes from the premises;
- The area(s) within the premises used for the relevant licensable activities (e.g. the locations in which sexual entertainment or exhibition of sex films will occur);
- Fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment.
- In a case where the premises includes a stage, podiums or raised areas, the location and height of each stage, podium or raised area relative to the floor;
- In a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
- In the case where the premises includes any room(s) containing public conveniences, the location of the room(s);
- The location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment;
- In the case of sexual entertainment venues, any changing or dressing facilities provided for the use of performers, and any areas in which other non-relevant entertainment is provided;
- The location of a kitchen, if any, on the premises.

The above items may be shown on the plan through the use of symbols or colour-coding, in which case a legend should also be provided to indicate the meaning of each symbol and colour used.

3.3. Applications for vehicles, vessels and stalls should be accompanied by a site plan drawn to an appropriate scale, showing the location at which the sex establishment would operate.

3.4. The Council may attach conditions to licences. Annex A sets out the standard conditions that will apply to all types of sex establishment licences, while additional conditions applying to each type of sex establishment are located at Annexes B, C and D, respectively.

3.5. Consideration may be given to the amendment or removal of certain conditions on a case by case basis, where the applicant can provide suitable evidence that inclusion of a particular condition would be disproportionate to the provision of the relevant activities.

3.6. Where it would be reasonable to do so, a sub-committee determining an application for a licence can also impose additional proportionate conditions on licences.

4. Review of Policy

- 4.1. This policy will be kept under review and updated in light of any significant changes in legislation, case law or national guidance. We will also carry out periodic reviews of the policy to ensure that it remains appropriate to the current operating environment.
- 4.2. This policy was last reviewed in 2016, and consultation on the proposed amendment was carried out between September 2016 and November 2016. Consultation was conducted with the proprietors of businesses affected by this policy and other persons affected by the activities carried on at licensed premises, vehicles, vessels or stalls.
- 4.3. We will consider any viable and sensible recommendations made in respect of our policy (unless they are not in line with central or local government policy and legislation). If you wish to comment on the policy please email licensing@dacorum.gov.uk and your comments will be considered during future policy reviews.

5. Complaints

- 5.1. If you wish to make a complaint about alleged unlicensed activity or breach of a licence then you can contact the Licensing team during normal office hours, using the contact details below. If you need to make a complaint outside of normal office hours then you can leave a message either by telephone or email which will be responded to when the office re-opens. Complaints made to the Licensing team will be investigated by a Licensing Enforcement Officer who will also inform you of any action taken as a result of your complaint.

Licensing
Dacorum Borough Council
The Forum
Marlowes
Hemel Hempstead
Herts
HP1 1DN

Telephone: 01442 228000, and at the prompt ask for Licensing
Email: licensing@dacorum.gov.uk

- 5.2. We understand that, from time to time, persons may not be completely satisfied with the service that they receive from the Licensing team, and we would encourage any person who feels this way to let us know, so that we can develop and improve our service. We will ensure that complaints about our service are investigated fairly and thoroughly using the Council's Complaint Procedure (details of which can be found on the Council's website at www.dacorum.gov.uk). Complaints can be made via our website, using the form at www.dacorum.gov.uk/CustomerComplaints, or by calling 01442 228000 and asking for the Complaints Service. In cases where disputes still cannot be resolved, we will ensure that any rights of complaint or appeal against the Council's actions are explained with an indication of the likely time-scales involved.

Annex A – Standard conditions applying to sex establishment licences

The following conditions will attach to all sex establishment licences issued by the licensing authority, pursuant to paragraph 13(1) of schedule 3 to the 1982 Act:

1. In these conditions, unless otherwise stated, the following expressions shall have the following meanings:
 - a. “Sex Establishment” and “Sexual Entertainment Venue” “Sex Shop” and “Sex Cinema” shall have the meanings ascribed to them in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009.
 - b. “Sex Shop” and “Sex Article” shall have the meanings ascribed to them in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
 - c. “Premises” means a building or part of a building and any forecourt, yard or place of storage used in connection with a building or part of a building which is the subject of a licence for a Sex Establishment granted under the said Schedule.
 - d. “Approval of the licensing authority” or “Consent of the licensing authority” means the approval or consent of the licensing authority in writing and “Approve”, “Approved” and “Approving” shall be construed accordingly.
 - e. “The licensing authority” means Dacorum Borough Council.
2. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a Sex Establishment, the special conditions shall prevail.
3. The granting of a licence for a Sex Establishment shall not be deemed to convey any approval or consent which may be required under any enactment by law, order or regulation other than Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

Conduct and Management of Sex Establishments

4. Where the Licensee is a body corporate or unincorporated body, any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the licensing authority within 14 days of such change and such written details as the licensing authority may require in respect of any new director, secretary or manager are to be furnished in writing within 14 days of a notice in writing from the licensing authority.
5. The Licensee or a responsible person nominated by him or her in writing for the purpose of managing the Sex Establishment in his or her absence, and of whom details (including photographs) have been supplied to and approved by the licensing authority, shall be personally responsible for, and present at the premises (or part of it), used as a Sex Establishment during the whole time it is open to the public.
6. The names of both the Licensee and the person nominated by him or her to be responsible for managing the Sex Establishment in his or her absence shall be prominently displayed within the Premises so as to be readily visible to any person visiting the Sex Establishment.
7. The Licensee or the person nominated by him or her to be responsible for managing the Sex Establishment in his or her absence shall maintain a daily register. It must record the name and address of the person who is to be responsible for managing the Sex Establishment that day and the names and addresses of those employed and present on that day in the premises. The register is to be completed each day within one hour of the Sex Establishment’s opening for business and is to be available for inspection by the Police and by authorised officers of the licensing authority.

8. The Licensee shall retain control over the part of Premises used as a Sex Establishment and shall not sell, let, sub-let, licence or otherwise part with possession or occupation of any part of the Premises and the Licensee shall ensure that the licensing authority is notified immediately, in writing, in the event that any part of the Premises is affected by the termination of a lease or any other event affecting the Licensee's occupation or control of the premises.
9. The Licensee shall maintain good order in the Premises.
10. No person under the age of 18 years shall be admitted to the Sex Establishment and persons who appear to be under the age of 25 years shall be required to provide photographic proof of age prior to admission. A notice to this effect, of a size and in a form and position to be approved by the licensing authority, shall be displayed at all times on the outside of the Premises.
11. The Licensee shall ensure that the public are not admitted to any part or parts of the Premises other than those which have been approved for such access by the licensing authority.
12. No part of the Premises shall be used for the purposes of prostitution at any time.
13. The Licensee shall ensure that neither he or she nor any other person shall seek to obtain custom for the Sex Establishment by means of personal solicitation anywhere in the Borough of Dacorum.
14. The Licensee shall comply with all applicable statutory provisions and any regulations made thereunder.
15. The copy of the licence and the copy of these Regulations required to be exhibited in accordance with paragraph 14(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 shall be reproductions to the same scale as those issued by the licensing authority. The copy of the licence and the copy of these Regulations shall be displayed in a manner and position approved by the licensing authority.
16. A change from one type of sex establishment to another shall not be effected without the Consent of the licensing authority.
17. No display, advertisement, word, letter, model, sign, placard, board, notice, device, design, representation, decoration, pattern, picture, photograph, writing, symbol, object or any matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the Premises except:
 - a. Any notice of a size and in a form and position approved by the licensing authority which is required to be displayed so as to be visible from outside the Premises by law, or by any condition or special condition of a licence granted by the licensing authority.
 - b. Such display, advertisement, word, letter, model, sign, placard, board, notice, device, design, representation, decoration, pattern, picture, photograph, writing, symbol, object or any matter or thing (whether illuminated or not) as shall have been approved by the licensing authority.
18. No external loudspeakers shall be used or installed at the Premises without the approval of the licensing authority.
19. No exterior lighting shall be used or installed at the Premises without the approval of the licensing authority.
20. The Premises shall be maintained in good repair and condition.

21. Bright lighting in all parts of the Premises, in positions and in a form and of a level of luminance approved by the licensing authority, shall be in operation continuously during the whole of the time the Sex Establishment is open to the public.
22. The number, size and position of all doors or openings provided for the purpose of the ingress and egress of the public shall be approved by the licensing authority and shall comply with the following requirements:
 - a. All such doors or openings approved by the licensing authority shall be clearly indicated on the inside by the word "EXIT".
 - b. Doors and openings which lead to parts of the Premises to which the public are not permitted to have access shall have notices placed over them marked "PRIVATE".
 - c. Save in the case of emergency, no access shall be permitted through the Premises to any unlicensed premises adjoining or adjacent to the Premises.
23. The Licensee shall make provision in the means of access both to and within the Sex Establishment for the needs of members of the public visiting the Sex Establishment who are disabled.
24. Alterations or additions, whether internal or external and whether permanent or temporary, to the structure, lighting or layout of the Premises shall not be made except with the prior approval of the licensing authority.
25. All parts of the Premises' fixtures, fittings and displays shall be kept in a clean and seemly condition to the satisfaction of the licensing authority.

Safety

26. The Licensee shall take all appropriate precautions for the safety of the public and employees.
27. The Licensee shall ensure that CCTV is installed and maintained in working order and in use at all times to the satisfaction of Hertfordshire Constabulary, and that any images are both retained for a period of at least 31 days and made available on request to a police officer or authorised officer of the licensing authority.
28. The Licensee shall provide promptly copies of any documents required by a police officer or by an authorised officer of the licensing authority in relation to compliance with this Licence.

Annex B – Standard conditions applying to sexual entertainment venues

The following conditions will attach to sex establishment licences issued by the licensing authority in respect of sexual entertainment venues, pursuant to paragraph 13(1) of schedule 3 to the 1982 Act:

1. Any individual employed on the Premises to conduct activities of a security operative (within the meaning of Part 1 of Schedule 2 to the Private Security Industry Act 2001) must be licensed by the Security Industry Authority.
2. The Licensee shall ensure that a suitable number of trained staff are employed and present to supervise the interior of the Premises (“floor supervisors”) at all times whilst performances are being given under this licence.
3. The Licensee shall ensure that, during the hours the Sexual Entertainment Venue is open for business, every floor supervisor wears a badge of a type approved by the licensing authority indicating his or her name and that he or she is a floor supervisor.
4. Performers shall be aged not less than 18 years. The Licensee shall maintain adequate records of the names, addresses and dates of birth of performers, including adequate identity and age checks.
5. The Licensee shall ensure to the licensing authority’s satisfaction (including, where required, obtaining planning or building control consents) that the interior of the part of the Premises used as a Sexual Entertainment Venue is not visible from the outside of the Premises or from any other part of the Premises used for a purpose other than that of a Sexual Entertainment Venue. At no point may performers be visible from outside the Premises or from any other part of the Premises used for a purpose other than that of a Sexual Entertainment Venue.
6. Where the licensing authority has specified a capacity figure in writing, the Licensee shall ensure that that figure is not exceeded at the premises at any time whilst sexual entertainment is taking place.
7. Performers shall only perform on the stage area, or in such other areas of the licensed Premises as may be approved in advance by the licensing authority and shall only perform to seated customers.
8. Performers shall remain clothed in public areas and all other areas except while performing in areas specified by the licensing authority as where sexual entertainment may be provided.
9. Performers shall dress fully at the end of each performance.
10. Performers shall not accept any telephone number, e-mail address, address or contact information from any customer, except in the form of a business card which must be surrendered to the Licensee or his or her representative before leaving the Premises.
11. A Performer is never to be alone in the company of a customer except in an area open to the public within the Premises.
12. The Licensee shall ensure a sufficient number of staff are employed inside the Premises whilst sexual entertainment is provided to supervise the Performers and manage customers.
13. No Performer shall perform nude or semi-nude dancing of any description unless in an approved area and with a floor supervisor present within five metres of the Performer.
14. Performers are never to be in the company of one or more customers except in an area open to the

public within the Premises.

15. The Licensee shall ensure that during the performance of a table dance:-

- a. Customers are seated in an upright position against the back of the booth or seat with their hands by their sides or on a table in front of them before a Performer can start a table dance;
- b. Customers remain seated during the entire performance of the dance;
- c. For the purpose of restraint only, Performers only touch a customer above the customer's chest with their hands only;
- d. Performers do not sit next to, or on, or straddle, the customer;
- e. Performers do not place their feet on the seats.

16. The Licensee shall ensure that during performances to which this licence relates: -

- a. Performers do not perform any act that clearly simulates any sexual act;
- b. Performers do not intentionally touch a customer any time during the performance (i.e. any contact shall only be entirely accidental or entirely due to a third party);
- c. Performers do not use inappropriate, suggestive or sexually graphic language at any time;
- d. Performers do not intentionally touch the genitals or breasts of another performer or knowingly permit another Performer intentionally to touch their genitals or breasts;
- e. Performers do not engage in communications that could be deemed as acts of prostitution or solicitation, even if the performer has no intention of carrying out the act;

17. The Licensee shall ensure that during performances to which this Licence relates:-

- a. Customers do not dance at any time except in areas approved by the licensing authority as being separate from areas for sexual entertainment;
- b. Customers remain appropriately clothed at all times.

18. Management of the premises shall maintain a document specifying all applicable house rules and disciplinary procedures, which shall be made available on request to any member of staff, performer or licensing officer. The disciplinary procedure shall not include provision to "fine" performers or otherwise impose pecuniary penalties, but may provide for verbal or written warnings, suspension of a performer's right to perform at the premises, or revocation of a performer's right to perform at the premises.

Annex C – Standard conditions applying to sex shops

The following conditions will attach to sex establishment licences issued by the licensing authority in respect of sex shops, pursuant to paragraph 13(1) of schedule 3 to the 1982 Act:

Goods available in Sex Shops

1. All Sex Articles and other things displayed for sale, hire, exchange or loan within the Sex Shop shall be clearly marked to show to persons who are inside the Sex Shop the respective prices to be charged.
2. All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase and a notice to this effect is to be prominently displayed within the Sex Shop so as to be readily visible to any person visiting the Premises, provided that this condition does not require films or video films to be exhibited (played).
3. No film or video film shall be exhibited, sold, hired, exchanged or loaned unless it has been passed by the British Board of Film Censors and bears a certificate to that effect and is a reproduction authorised by the owner of the copyright of the film or video film so certified.
4. The licensee shall, without charge, display and make available in the Sex Shop such free literature on counselling on matters related to sexual problems, on AIDS and on sexually transmitted diseases as may be published by the Family Planning Association and/or by other similar organisations as may be specified by the licensing authority. Such literature is to be displayed at all times in a prominent position adjacent to all payment points in the Sex Shop so as to be readily visible to any person at any such payment point.

External Appearance

5. A door control system shall be fitted and maintained in use at all times so as to prevent the external door and the internal (lobby) door from being opened at the same time. Guidance should be sought from the Fire Officer so as to ensure that suitable emergency access can be maintained. The entrance to the Premises shall be of a material, or covered with a material, which will render the interior of the Premises invisible to passers-by and a sample of such material shall be submitted to, and approved (which shall include approving the colour and design) by, the licensing authority.
6. Suitable and sufficient vertical blinds shall be fitted to the interior aspect of the front windows of the Premises and shall be kept closed at all times so as to ensure that the interior of the Premises is permanently obscured from the view of passers-by. Details of the positioning, material, colour and design of such blinds, with a sample, shall be submitted to, and approved by, the licensing authority.
7. Any facility for previewing a film, video recording or similar material shall be physically separated from the display area of the Sex Shop in such a manner that no material being displayed by way of preview shall be visible or audible outside the preview area.
8. No fastenings of any description (other than any fastening necessary to secure the facility specifically referred to in the immediately preceding condition) shall be fitted upon any booth or cubicle within the Sex Shop, nor shall more than one person (including any employee) be present in any such booth or cubicle at any time.

Annex D – Standard conditions applying to sex cinemas

The following conditions will attach to sex establishment licences issued by the licensing authority in respect of sex cinemas, pursuant to paragraph 13(1) of schedule 3 to the 1982 Act:

1. No sex articles or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema.
2. The Licensee shall not supply or permit to be supplied to any person, other than a person employed to work on the premises, any article of food or drink whether for consumption on or off the premises.
3. No fastenings of any description shall be fitted upon any booth or cubicle within the Sex Establishment, nor shall more than one person (including any employee) be present in any such booth or cubicle at any time.
4. No film or video film shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification and bears a certificate to that effect, and is a reproduction authorised by the owner of the copyright of the film or video film so certified. Any such film or video film shall comply with the Video Recordings Act 1984.

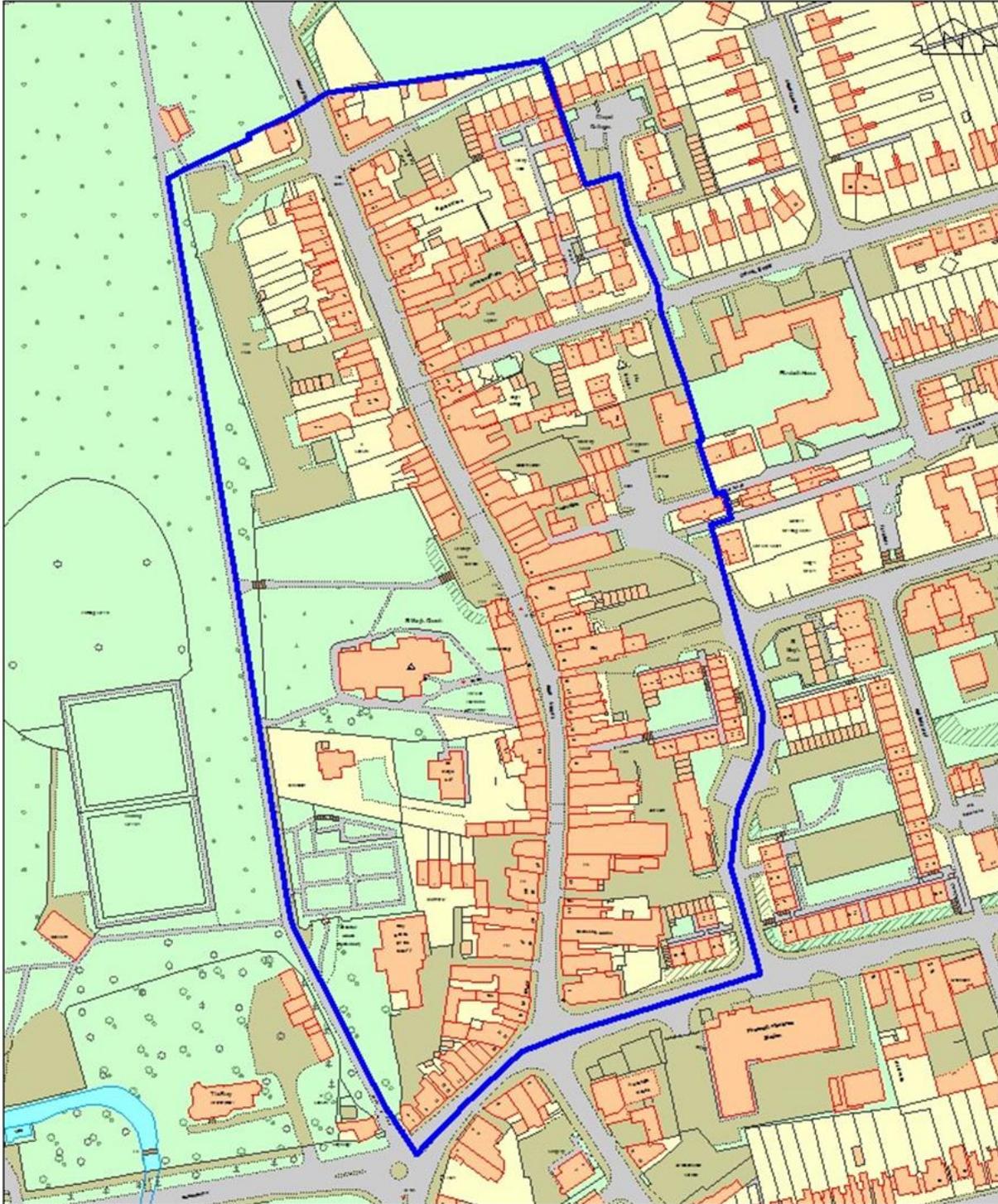
Annex E – Hemel Hempstead Old Town Nil policy zone



Dacorum Borough Council

Licensing

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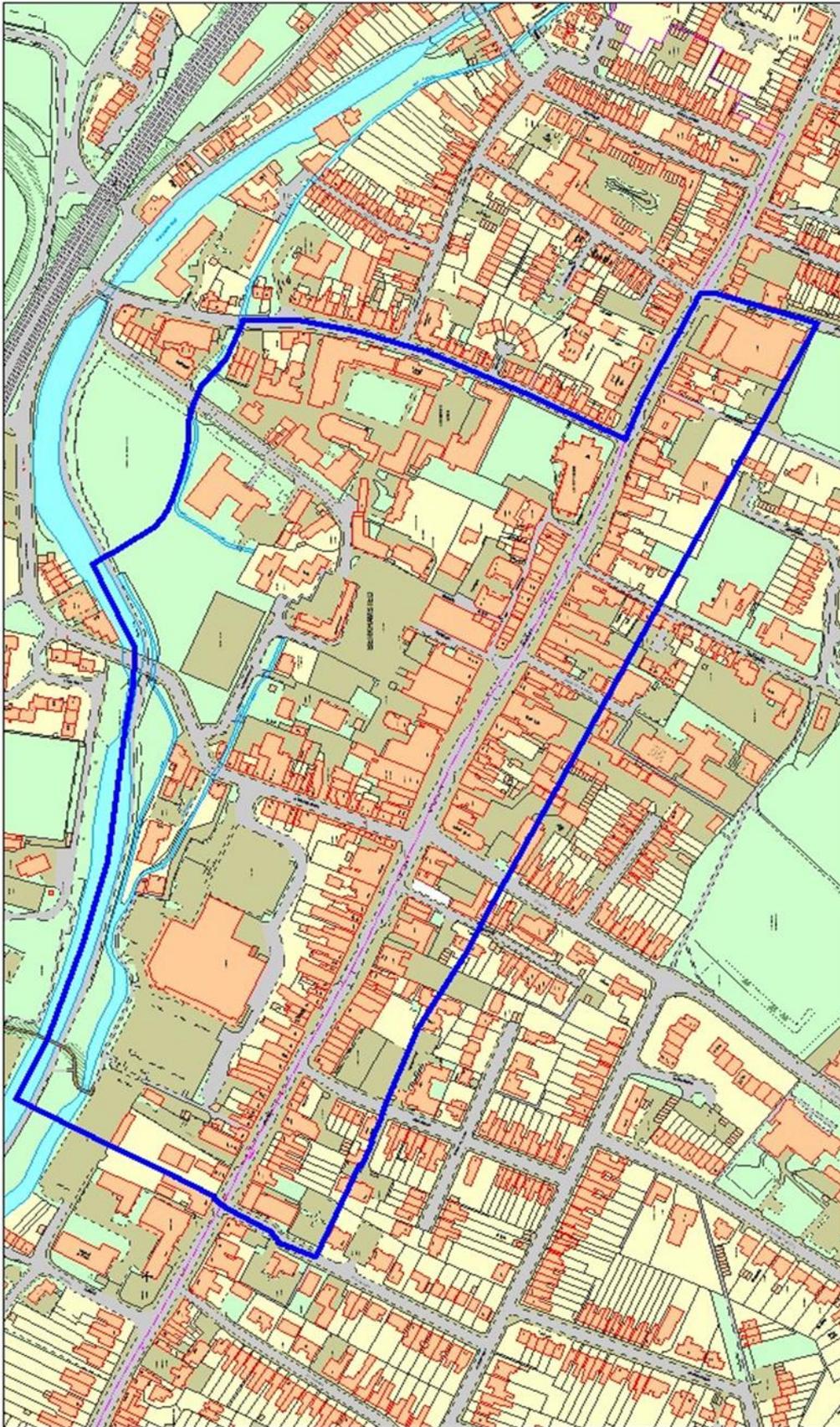
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Annex F – Berkhamsted Town Centre Nil policy zone

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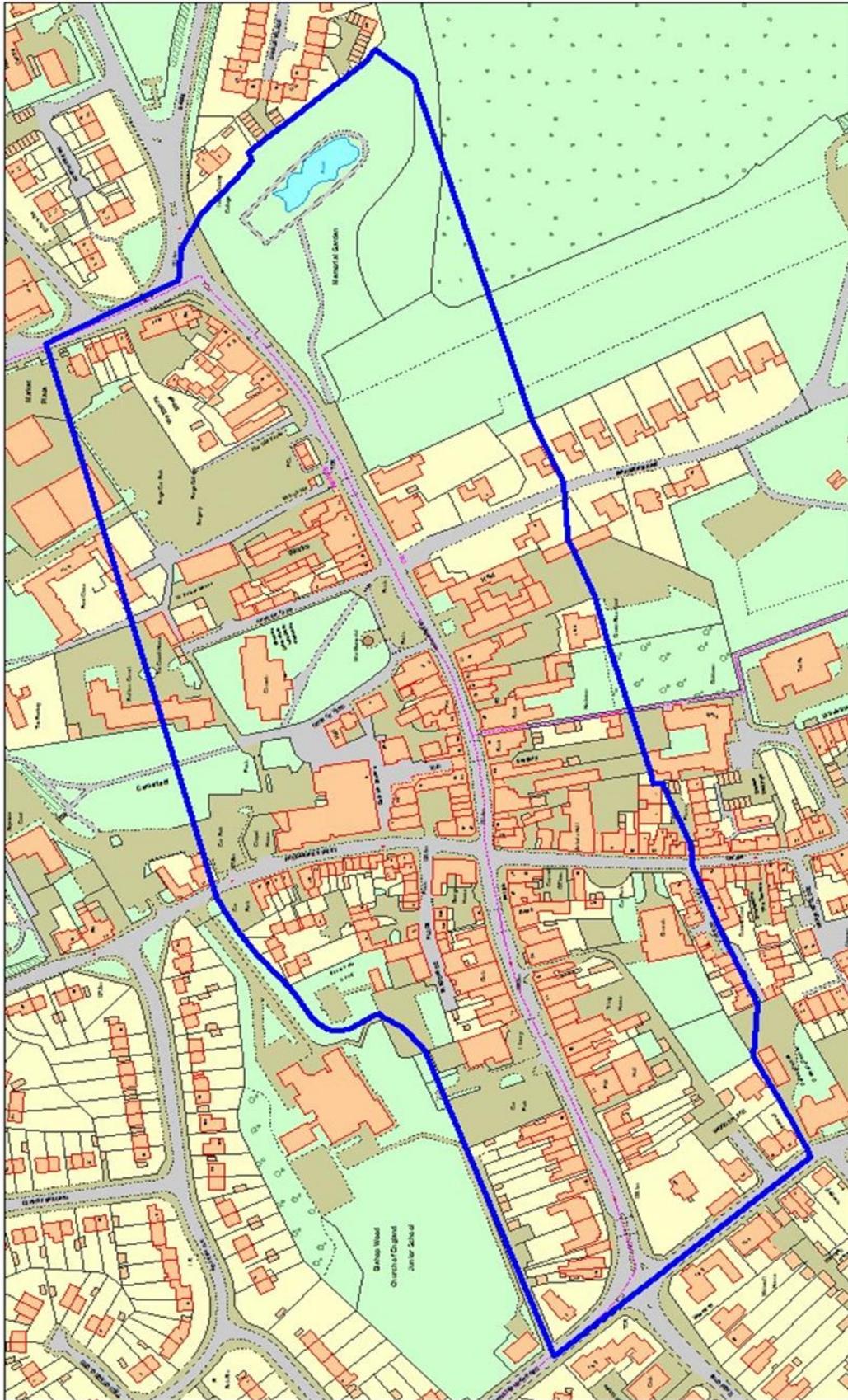
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Annex G – Tring Town Centre Nil policy zone



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