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20 December 2007

## **S U M M O N S**

**MEETING:** Licensing Board  
**DATE:** 8 January 2008  
**TIME:** 6.00pm  
**PLACE:** Committee Room 1, Town Hall, Gosport  
**Democratic Services contact:** Catherine McDonald

LINDA EDWARDS  
BOROUGH SOLICITOR

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### **MEMBERS OF THE BOARD**

Councillor Mrs Cully (Chairman)  
Councillor Farr (Vice Chairman)

Councillor Ms Ballard	Councillor Foster-Reed
Councillor Carter	Councillor Jacobs
Councillor Champion	Councillor Rigg
Councillor Davis	Councillor Smith
Councillor Foster	Councillor Ward

The Mayor (Councillor Gill) (ex officio)  
Chairman of Policy and Organisation Board (Councillor Cully) (ex-officio)

### **FIRE PRECAUTIONS**

(To be read from the Chair if members of the public are present)

**In the event of the fire alarm (continuous ringing) or controlled evacuation alarm (intermittent ringing) sounding, please leave the room immediately.**  
**Proceed downstairs by way of the main stairs or as directed by GBC staff, follow any of the emergency exit signs. People with disability or mobility issues please identify yourself to GBC staff who will assist in your evacuation of the building.**

**IMPORTANT NOTICE:**

- If you are in a wheelchair or have difficulty in walking and require access to the Committee Room on the First Floor of the Town Hall for this meeting, assistance can be provided by Town Hall staff on request

If you require any of the services detailed above please ring the Direct Line for the Democratic Services Officer listed on the Summons (first page).

**NOTE:**

- i. Members are requested to note that if any member wishes to speak at the Board meeting then the Borough Solicitor is required to receive not less than 24 hours prior notice in writing or electronically and such notice shall indicate the agenda item or items on which the member wishes to speak.
- ii. Please note that mobile phones should be switched off for the duration of the meeting.

AGENDA

RECOMMENDED  
MINUTE  
FORMAT

**PART A ITEMS**

1. APOLOGIES FOR NON-ATTENDANCE
2. DECLARATIONS OF INTEREST

*All Members present are required to declare, at this point in the meeting or as soon as possible thereafter, any personal or personal and prejudicial interest in any item(s) being considered at this meeting.*

3. MINUTES OF THE MEETING OF THE BOARD HELD ON 19 NOVEMBER 2007 [copy herewith].

4. DEPUTATIONS – STANDING ORDER 3.5

*(NOTE: The Board is required to receive a deputation(s) on a matter which is before the meeting of the Board provided that notice of the intended deputation and its object shall have been received by the Borough Solicitor by 12 noon on Friday, 4 January 2008. The total time for deputations in favour and against a proposal shall not exceed 10 minutes).*

5. PUBLIC QUESTIONS – STANDING ORDER 3.6

*(NOTE: The Board is required to allow a total of 15 minutes for questions from Members of the public on matters within the terms of reference of the Board provided that notice of such Question(s) shall have been submitted to the Borough Solicitor by 12 noon on Friday, 4 January 2008).*

6. APPLICATION FOR A SEX ESTABLISHMENT LICENCE

*To advise the Licensing Board of an application for a Sex Establishment Licence for Premises situated at 147a Forton Road, Gosport.*

PART II  
Contact Officer:  
Tom Dagens  
Principal  
Environmental  
Health Officer  
Ext 5516

7. ANY OTHER ITEMS

*Which by reason of special circumstances the Chairman determines should be considered as a matter of urgency*

**Continued next page**

8. EXCLUSION OF PUBLIC

To consider the following motion:

**RECOMMENDATION:**

That in relation to the following items the public be excluded from the meeting, as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during the items there would be disclosure to them of exempt information within Paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972, and further that in all the circumstances of the cases, the public interest in maintaining the exemptions----- outweighs the public interest in disclosing the information, for the reasons set out in the reports.

**PART B ITEMS  
FOLLOWING THE EXCLUSION OF PRESS AND PUBLIC**

Item No.	Item	Paragraph no. of Part I of Schedule 12A of the Act	
9.	Review of a Dual Hackney Carriage and Private Hire Vehicle Driver Licence	Paragraph 1 <b>Reason:</b> The report contains personal data which is identified as sensitive material	PART II Contact Officer: Clive Tizard Licensing Officer Ext 5609 Russell
10.	Renewal of a Hackney Carriage Vehicle Driver Licence	Paragraph 1 <b>Reason:</b> The report contains personal data which is identified as sensitive material	PART II Contact Officer: Russell Bray Senior Licensing Officer Ext 5553
11.	Review of a Dual Hackney Carriage and Private Hire Vehicle Driver Licence	Paragraph 1 <b>Reason:</b> The report identifies sensitive material regarding the applicant.	PART II Contact Officer: Russell Bray Senior Licensing Officer Ext 5553

**A MEETING OF THE LICENSING BOARD  
WAS HELD ON 19 NOVEMBER 2007**

**Councillors**

The Mayor (Councillor Gill) (ex officio), Chairman of the Policy and Organisation Board (Councillor Cully) (ex-officio); Councillors Ms Ballard, Carter (P), Champion (P), Mrs Cully (P), Davis (P), Farr (P), Foster (P), Foster-Reed (P), Jacobs (P), Rigg (P), Smith (P) and Ward (P).

It was reported that, in accordance with Standing Orders, notice had been received that Councillor Chegwyn would replace Councillor Ms Ballard for this meeting.

**Also in attendance**

Mr Orhan Kaplan, Mr Baran, Mr Orhan Arda and Miss Dawn Chalton

**30 APOLOGIES**

Apologies for inability to attend the meeting were submitted on behalf of the Mayor and Councillor Ms Ballard.

**31 DECLARATIONS OF INTEREST**

There were no declarations of interest

**32 MINUTES**

RESOLVED: That the Minutes of the meeting of the Licensing Board held on 4 September 2007 be approved and signed by the Chairman as a true and correct record.

**33 DEPUTATIONS**

There were no deputations.

**34 PUBLIC QUESTIONS**

There were no public questions.

## **PART II**

### **35 ANY OTHER BUSINESS**

The Licensing Officer advised Members that in January 2008 an amendment to the Private Hire Vehicle legislation would remove the loophole currently existing whereby stretch limousines were exempt from the requirement for a Private Hire Vehicle Licence. From this date all operators of stretch limousines would be required to apply for a Private Hire Vehicle Licence and the vehicles themselves would also become liable for the same checks as applied to all other Private Hire vehicles.

Attempts were being made to identify any operators of stretch limousines within the Borough, although it was believed that most vehicles seen in Gosport were operated from businesses outside the Borough. Members were requested to note the licence number of any such vehicle they saw in the Borough and report it to the Licensing Officers. Licensing Officers within Hampshire were liaising to build up a picture of the businesses operating stretch limousines in the County so that appropriate action could be taken when the new legislation came into force.

### **36 EXCLUSION OF THE PUBLIC**

RESOLVED: That in relation to the following items the public be excluded from the meeting, as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during the items there would be disclosure to them of exempt information within Paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972, and further that in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons set out in the reports.

### **37 APPLICATION FOR THE ISSUE OF A HACKNEY CARRIAGE VEHICLE DRIVER'S LICENCE**

Consideration was given to an exempt report of the Environmental Services Manager (a copy of which is inserted in the Minute Book as Appendix 'A') advising the Board of an application for the issue of a Hackney Carriage Vehicle Driver's Licence.

The report was exempt from publication as the public interest in maintaining the exemption outweighed the public interest in disclosing the information by reason that it contained personal information that was not considered appropriate to be released to the public.

RESOLVED: That the application for the issue of a Hackney Carriage Vehicle Driver's Licence be not approved. However, the Applicant was invited to make a further application in six months' time.

### **38 REVIEW OF A HACKNEY CARRIAGE VEHICLE DRIVER'S LICENCE**

Consideration was given to an exempt report of the Environmental Services Manager (a copy of which is inserted in the Minute Book as Appendix 'B') advising the Board of a review of a Hackney Carriage Vehicle Driver's Licence.

The report was exempt from publication as the public interest in maintaining the exemption outweighed the public interest in disclosing the information by reason that it contained personal information that was not considered appropriate to be released to the public.

**RESOLVED:** That no action to suspend the Hackney Carriage Vehicle Driver's Licence be taken at this time. The Driver was directed to be of good behaviour and appear before the Board in February 2008 when his Licence was due for renewal.

The meeting commenced at 6.00 pm and concluded at 8.15 pm.

CHAIRMAN

## Agenda item no. 6

<b>Board/Committee:</b>	LICENSING BOARD
<b>Date of meeting:</b>	8 <sup>TH</sup> JANUARY 2008
<b>Title:</b>	APPLICATION FOR A SEX ESTABLISHMENT LICENCE
<b>Author:</b>	ENVIRONMENTAL SERVICES MANAGER
<b>Status:</b>	FOR DECISION

### **Purpose**

To advise the Licensing Board of an application for a Sex Establishment Licence for premises situated at 147a Forton Road, Gosport.

### **Recommendation**

The Licensing Board must determine the application received from Mr John David Coughlan.

## **1.0 Background**

- 1.1 This Council is required to licence Sex Establishments. A sex establishment is defined as “any premises... used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating (a) sex articles or (b) other things intended for use in connection with or for the purpose of stimulating or encouraging sexual activity: acts of force or restraint which are associated with sexual activity”. Local Government (Miscellaneous Provisions) Act 1982.
- 1.2 The Policy and Organisation Board at its meeting on 25 June 2003 agreed an entertainment policy for the Borough. In relation to sex establishments this policy requires that:
- The hours of opening shall be restricted to Sunday - Thursday 09:00 - 20:00, Friday and Saturday 09:00 - 22:00.
  - Licences shall be granted in predominantly commercial streets.
  - No more than two sex establishment licences will be granted in the Borough.
  - In considering the location of new applications the Council will take into account the proximity of places of worship, schools, community facilities and public buildings.



- The Council will also consider the cumulative adverse impact of existing sex related licensed activities in the vicinity and proximity to areas with the highest levels of recorded crime (as identified in the Crime and Disorder audit).
- 1.4 In determining the applications for sex establishments, the Licensing Board are required to consider only those matters identified in the relevant Schedule. These matters formed the basis of the Council's policy and are identified in the report.
  - 1.5 A previous application for a Sex Establishment Licence for these premises, submitted by the same applicant was refused by the Licensing Board at their meeting on the 9<sup>th</sup> October 2006.
  - 1.6 Since this matter was first considered by the Licensing Board two inspections have been carried out to investigate complaints. These inspections have confirmed that the premise do not at present operate as a sex establishment. The complaints concern the window display and the ability to view directly into the shop from the street.

## **2.0 Report**

- 2.1 An application for a sex establishment licence has been received from Mr John David Coughlan, a director of P L Limited for premises at 147a Forton Road, Gosport. The application is provided as Appendix A.
- 2.2 This Council has adopted a policy on sex establishments; this policy identifies specific requirements for such premises. In relation to the policy the application received from Mr Coughlan addresses the following requirements:

- **Opening hours**

The proposed hours of business are Monday – Saturday 10:00 – 18:00, it is not proposed to trade on Sundays. These hours are within those required by the Council's policy.

- **Licences for sex establishments will only be granted in predominantly commercial streets**

The premises are sited at a major road junction in an area of mixed residential and commercial use. 147a Forton Road is located in a local shopping centre, defined within the Gosport Borough Local Plan 2006. Forton Road is part of the A32, one of the principal access roads into and out of the Borough (P1 Appendix B identifies the location of the applicants premises in Forton Road). Appendix B is a map of the Forton Road area in the immediate vicinity of 147a. This has been provided to identify the position of premises identified in the report which are relevant to the application. The premises immediately adjoining the applicants are all of a commercial nature and include a community store, bingo hall, hot

food takeaways and a tattooist. Opposite the premises is a large veterinary practice, a tyre fitting bay and a large supermarket.

Residential premises are situated along both sides of Forton Road in close proximity to the applicant's premises, The Crossways and to the rear of the premises in Lees Lane and St Johns Close. The closest residential accommodation is situated in Trafalgar Square immediately to the rear of the premises, Appendix B, P19.

The area is covered by the borough CCTV system.

- **No more than two sex establishment licences will be granted in the Borough**

At present only one sex establishment licence has been granted in the Borough.

- **The Proximity of places of worship and schools**

The Salvation Army Citadel in The Crossways is 50 Meters from the premises (P2). A pre school group operates from these premises Monday to Friday. The Gosport Spiritualist Church is 100 meters away (P3), St John the Evangelist Church, which runs a daily play scheme is 130 Meters away (P4), There is a Jehovah's Witness Hall in Moreland Road 170 meters away (P5). St Faiths Church is 360 metres away in a direct line (P6), access to St Faiths from 147a Forton Road would be via Lees Lane and Leesland Road which would be a greater distance of travel.

The closest school is St Vincent's 6<sup>th</sup> Form College in Forton Road; this is 400 Metres from the premises (P7). Newtown CE Primary School is located off of Albert Road and the cycle track. The school is 520 metres from the premises in a direct line (P8).

- **The proximity of community facilities or public buildings.**

There are no public buildings in the area. There are two public houses in proximity to the applicant's premises, the Trafalgar is the nearest (P9) 20 meters away and Madeline's which approximately 130 metres away (P10). There is a public car park in Whites Place (P11) and the Forton Road Surgery is situated at the head of the car park (P12). The Crown Bingo Hall is 40 metres away (P13).

Playing fields are located opposite St Vincent's College (P14) and Forton Recreation Ground (P15).

There are two private clubs used by families in the area, the Wallpaper Manufacturers Sports and Social Club in Whites Place (P16) 60 Meters away and the Gosport Working Mens and Trades Union Club in Lees Lane (P17) which is 70 Meters away

- **Cumulative adverse impact of existing sex related licensed activities in the vicinity.**

A Sex Establishment Licence was granted to premises trading as Utopia in September 2005. Utopia is located at 353 Forton Road which is approximately 540 metres from the applicant's premises, (Appendix B, P18).

- **Proximity to areas with the highest levels of recorded crime (as identified in the crime and disorder audit).**

With reference to the crime and disorder audit the area has a low level of recorded crime.

### **2.3 Consultations.**

2.4 As required by the enabling legislation the application has been advertised on the premises for the statutory period. In addition, an advertisement has been placed in the local newspaper advising the general public of the application. A copy of the application has been lodged with the Hampshire Constabulary for comment. In line with Home Office guidance, the applicant has previously been requested to submit a Criminal Records Bureau check. The applicant, Mr Coughlan completed a CRB criminality check as part of the application process in 2006, this confirmed that at that time Mr Coughlan had no recorded offences. Mr Coughlan has provided a written declaration that he has since that time not incurred any criminal convictions. Mr Coughlan operates sex establishments in three other local authority areas (Aldershot, Andover and Stockport). Enquiries with all three licensing authorities have confirmed that the applicants existing premise have been operated in accordance with statutory requirements and the licences issued by those authorities

2.5 As a result of advertising the application 5 letters of objection have been received within the statutory time scale. These letters are provided as Appendix C. Objectors have raised concerns over a concentration of sex establishments in the Forton Road area. Other matters raised in the letters that may be considered by the Board are the unsuitability of the location with its proximity a confectionary shop, Mace Express at 149 Forton Road and a veterinary practice. Concerns over the explicit window display and lack of a lobby to the external door permitting passers by to see into the shop have also been raised

2.6 Concerns were raised regarding the sighting of the statutory notification in the premises window. A licensing officer visited the premises and reported no problems with the notice however the notice was subsequently re sited to a lower position in the window.

2.7 Finally concerns over this council's ability to monitor compliance with any conditions attached to a licence have been expressed.

- 2.8 At the time of preparing this report no response has been received from Hampshire Constabulary.

## **2.9 Conditions**

- 2.10 Whilst the Council has adopted Schedule 3 of the Act that permits the licensing of sex establishments it has not adopted standard conditions to apply in all cases. However, the Act does permit the council to impose conditions on any licence granted relevant to that application.

- 2.11 Mr Coughlan has indicated the he would be prepared to accept the following works as conditions of a licence:

- Provide a lobby to the entrance door to prevent passers by looking into the shop.
- Provide blinds to the front window.
- Provide internal CCTV.
- Provide an internal self closing door.

- 2.12 In addition the following conditions were attached to the licence issued in respect of Utopia:

- No external advertising.
- No Neon signs in the window.
- No displays in the window.
- The operating times in the application to be conditioned into the licence.

## **3.0 Risk Assessment**

- 3.1 The council has a statutory duty to determine the application.

## **4.0 Conclusion**

- 4.1 The application is properly made and the Council is able to determine it with reference to the relevant legislation and the Council's own policy in this matter.

- 4.2 No objection has been received from Hampshire Constabulary to either the applicant or the application.

- 4.3 The applicant has no criminal record and is known to operate a number of similar premises satisfactorily.

- 4.4 The premises are situated in a mixed commercial and residential area. The premises are located in a local shopping area defined by this Council.

- 4.5 Sensitive premises have been identified in the area in close proximity to the applicant's premises.
- 4.6 In determining the application the Council must have regard to the views of the objectors.
- 4.7 If the licence is granted it may be subject to conditions deemed necessary by the Licensing Board.
- 4.8 The licence will normally remain in force for one year, the Licensing Board may specify a shorter period if it wishes.
- 4.9 The Licensing Board may refuse to grant the licence on one or more of the grounds specified in Part II Schedule 3 Section 12(3) Local Government (Miscellaneous Provisions) Act 1982. In making its decision under this section the Licensing Board must have regard to the Council's policy requirements. The applicant has a limited right of appeal to the Magistrates Court against refusal on the grounds set out in Part II Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 12(3) (a) and (b) . The applicant also has a right of appeal in respect of any condition that the licence is subject to.

## **5.0 Financial implications**

- 5.1 The cost of defending any appeal against granting of the licence.

## **6.0 Legal Considerations.**

- 6.1 Local Government (Miscellaneous Provisions) Act 1982
- 6.2 Control of sex establishments is contained in section 2 and schedule 3 of the Act. In order to utilise the provisions of Schedule 3 which specifically deals with sex establishments the Act and Schedules must be formally adopted. This Council adopted these provisions in November 1982.
- 6.3 The Act prohibits a person from operating a sex establishment other than in accordance with the terms of a licence granted by the licensing authority. Where a licence is issued it is subject to the terms, conditions and restrictions as specified in the licence. Licences are usually granted for one year and are subject to renewal. At the discretion of the licensing authority a licence may be granted for a period of less than one year. A licence once granted may be transferred on application.
- 6.4 The Act prescribes set criteria where a licence shall not be granted, these criteria are:
- The applicant is under 18.

- The applicant has had a licence revoked within the last twelve months.
- The applicant fails to meet the UK residency criteria (i.e. not less than six months resident in the UK immediately prior to the application).
- The applicant has previously had a licence refused within the preceding twelve months.
- The Applicant is unsuitable for reasons of having committed an offence or any other reason.
- That if the licence were granted the business would be managed or carried on for the benefit of a person who would have been refused a licence under the provisions stated above.

If the above criteria are satisfied the Licensing Board may refuse on one or more of the following grounds:

- That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason.
- That if the licence were granted, renewed or transferred the business to which it 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.
- That the number of sex establishments in the relevant locality at the time of the application is made is equal to or exceeds the number which the authority considers appropriate.
- The grant or renewal of the licence would be inappropriate having regard to:
  - The character of the relevant locality.
  - The use to which the premises in the locality are put.
  - The layout, character or condition of the premises in respect of which the application is made.

6.5 The Act stipulates that once a licence is granted a constable or authorised officer of the licensing authority may enter the premises at any reasonable time to determine compliance with the Act.

#### 6.6 **Video Recordings Act 1984**

6.7 Prohibits the sale of R18 rated material other than from licensed sex shops.

#### 6.8 **Human Rights Act 1998**

6.9 Article 8 to the convention on human rights states that there is a right of respect for private and family life and that a public authority shall not interfere with this except in accordance with the law, in the interests of national security, economic well being, prevention of crime and disorder, protection of health or morals or for the protection of the rights and freedoms of others.

- 6.10 The procedures adopted by the Licensing Board in determining licences are believed to comply with article 6, the right to a fair trial. In addition there is a right of appeal against the Licensing Boards decision to the Magistrates Court.

**6.11 Crime and Disorder Act 1998**

- 6.12 Section 17 of this act requires a local authority “to exercise its various functions with due regard to the likely effects of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area”. Granting a sex shop licence without consideration of the effect that such an action may have in relation to crime and disorder would be contrary to the Act.

The hearing is subject to special procedures outlined in Appendix D of this report.

<b>Financial Services comments:</b>	Not applicable
<b>Legal Services comments:</b>	Covered in the body of the report
<b>Service Improvement Plan implications:</b>	Not applicable
<b>Corporate Plan</b>	Not applicable
<b>Risk Assessment</b>	Covered in the body of the report
<b>Background papers:</b>	<p>Report to Full Council, November 1982 "Adoption of the Local Government (Miscellaneous Provisions) Act 1982".</p> <p>Report to the Policy and Organisation Board 25<sup>th</sup> June 2003, "An Entertainment Policy for the Borough".</p> <p>Minutes of the Licensing Board 9<sup>th</sup> October 2006 "Application for a Sex Establishment Licence"</p>
<b>Appendices/Enclosures:</b>	<p>Appendix A. Application received from Mr Coughlan PL Limited.</p> <p>Appendix B. Location map of premises</p> <p>Appendix C 5No letters of objection to application</p> <p>Appendix D. Procedure Note for Licensing Board Hearings – Sex Establishments.</p>
<b>Report author/Lead Officer:</b>	<p>T Dagens, PEHO</p> <p>02392 545516</p> <p>dageth01@gosport.gov.uk</p>



## **Appendix A**

**Application received from Mr John David Coughlan**

## **Appendix B**

**Location map of premises referred to in this report.**

**Appendix C**  
**Letters of objection**

## Appendix D

### Procedure note for Licensing Board Hearings – Sex Establishments.

**The following guidance has been prepared by the Councils legal advisor to assist members of the Licensing Board in procedural matters when determining applications relevant to sex establishments.**

Part 2 Local Government (Miscellaneous Provisions) Act 1982 relates to the control of sex shop establishments. Recent case law has provided guidance as to how a hearing should be conducted. In R v Birmingham City Council and others, ex parte Quietlynn and Others (1985) 83 LGR 461, the High Court concluded that the proper approach of authorities is the following:

1. It is not necessary to afford objectors a hearing although local authorities have discretion to do so.
2. That discretion should be exercised sparingly having regard to the risk of unfairness to the applicant.
3. It should only be exercised if the local authority can be satisfied that:
  - (a) only those objectors whose written objections have been received before the end of the 28 day period are heard;
  - (b) those objectors can be confined to putting forward only those points which are relevant to consideration of the grounds of refusal and which have been notified in writing to the applicant under paragraph 19 (16) Local Government (Miscellaneous Provisions) Act 1982;
  - (c) if the objectors are heard before the hearing afforded to the applicant that the applicant is given the opportunity of hearing and noting what the objectors say; and
  - (d) that if the objectors are heard on the same occasion as the hearing afforded to the applicant (and this is a course which should rarely if ever be adopted without the consent of the applicant ) the chairman can ensure that the proceedings are conducted as a hearing of the applicant's case for grant, renewal or transfer of the licence and not as an adversarial contest between the opposing views of the applicant and of the objectors (including in the latter category the chief officer of police).'

This approach was followed in Sheptonhurst Limited v Wakefield Metropolitan District Council (1987) The Times, 18 November. Lord Justice Woolf held that the Licensing Board has discretion as to how the hearing to determine the application should be conducted.

The Licensing Board firstly needs to decide whether or not they wish to afford objectors a hearing having regard to the approach outlined above. The licensing board must have regard to the prejudice to the applicant if it decides to afford the objectors a hearing. There is a danger that the board may be drawn into considering that its task is to decide between the relative merits of the case put forward by the applicant and the objections advanced by the objectors.

If the licensing board do wish to afford objectors a hearing, and proposes that the objectors are heard at the licensing board where the applicant is being heard, the board should seek the consent of the applicant. If the applicant does consent then the board can hear the objectors and applicant on the same occasion.

In the event that the Board decides to hear from objectors then the Council's usual hearing procedure cannot be used. A draft hearing procedure / chairman's record is attached, which has been drafted having regard to the case law.

## **Summary**

1. The Board needs to determine whether or not it will hear objectors.
2. If they do so the hearing of the application may only proceed at the same occasion as the applicant addresses the board if the applicant consents.
3. If the board decides to afford the objectors a hearing and the applicant consents to this being at the same time as the applicant makes their address then the Board must agree a hearing procedure and one has been drafted in regard to the case law, and is provided below.

## Hearing Procedure and Chairman's Record

Date of Board .....

Application.....

### PRELIMINARY

The Chairman will ask the applicant or anyone representing them to introduce those present at the hearing.

☐

The Chairman asks if there are persons who have made written representations to the Council within the statutory timescales that wish to be heard.

☐

The Chairman will then announce whether the board, in exercising their discretion, have decided to afford the objectors a hearing.

☐

The Chairman will ask whether the applicant agrees consents to the objectors being heard at the same time.

☐

### CHAIRMAN

If the board has decided to hear objections the Chairman will ask persons present who have submitted written objections to the Council within the statutory time scales wishing to address the Licensing Board to introduce themselves and identify their letter of objection. Late objections will not be heard.

☐

The Chairman will suggest to objectors who have notified the board of their intention to speak that they may wish to elect a spokesperson to make submissions on their behalf. If necessary the Chairman will briefly adjourn for the objectors to appoint a spokesperson.

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The Chairman will remind parties that: -

- The hearing will not be an adversarial contest between opposing parties. Cross-examination is not permitted. Objectors addressing the board are allowed a maximum of 5 minutes to make their submissions.
- The purpose of the hearing is to allow the applicant to have an opportunity to respond to objections that are relevant for the purpose of Section 12 Local Government (Miscellaneous Provisions) Act 1982.
- Only objectors who have made written representations within the statutory timescales may address the board.
- The objectors that have asked to address the board are confined to putting forward only those points that they have raised in their original representations, which are relevant to the grounds of refusal pursuant to Section 12 Local Government (Miscellaneous Provisions) Act 1982.
- Objectors may not ask questions or comment on the applicant's address to the licensing board

☐

The Chairman will then ask the Licensing Officer to outline the application and objections received within the statutory period that are relevant to the grounds of refusal by reference to the report that has been distributed in advance of the hearing.

☐

The Chairman and other members of the Licensing Board to ask any relevant questions of the Licensing Officer.

☐

## **OBJECTORS**

(If the board has decided to grant objectors a hearing) The Chairman invites those objectors, who have made representations within the statutory timescales, and have made known their intention to address the Board, to make their submissions. Each objector that addresses the board is asked to give their name before they make their submission.

☐

The Chairman and other members of the Licensing Board to ask any relevant questions of the objector.

☐

## APPLICANT

The applicant is invited to address the Licensing Board on the oral submissions made by the objectors and the written representations that are relevant to any of the statutory grounds of refusal.

☐

The Chairman and other members of the Licensing Board to ask any relevant questions of the applicant.

☐

The Chairman will ask the applicant if he has said all that he wants to say.

☐

## DETERMINATION

The Chairman will advise the parties if the Licensing Board is retiring to consider its decision in private. \*

☐

\*Members of the Licensing Board discuss and make their decision. They may retire in private to do this. If, during their deliberations the Licensing Board require any legal advice they will ask the legal officer to advise them during their deliberations (which may be in private). The legal officer will advise all parties of the advice that was given to the Licensing Board when the hearing resumes in public session.

The Chairman then relays the decision and the reasons for the decision, and any conditions placed on the licence (if granted).

☐

## POST HEARING

The written Notice of the Determination will be prepared by the Officer from Legal and Democratic Services in consultation with the Chairman and to be signed by the Chairman.

☐