

Public Document Pack

17 November 2017

Our Ref Licensing and Appeals
Committee/28.11.17
Your Ref.
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To: Members of the Committee: Councillor Michael Muir (Chairman), Councillor Ian Albert, Councillor David Barnard, Councillor Elizabeth Dennis, Councillor Faye S Frost, Councillor Jean Green, Councillor Gary Grindal, Councillor Simon Harwood, Councillor Ben Lewis, Councillor Sandra Lunn, Councillor Paul Marment, Councillor Jim McNally, Councillor Gerald Morris and Councillor Mike Rice.

You are invited to attend a

MEETING OF THE LICENSING AND APPEALS COMMITTEE

to be held in the

**LETCHWORTH GARDEN CITY HERITAGE FOUNDATION,
FOUNDATION HOUSE, ICKNIELD WAY, LETCHWORTH
GARDEN CITY**

On

TUESDAY, 28TH NOVEMBER, 2017 AT 7.30 PM

Yours sincerely,



David Miley
Democratic Services Manager

Agenda **Part I**

Item	Page
1. APOLOGIES FOR ABSENCE	
2. MINUTES - 6 OCTOBER 2015 To take as read and approve as a true record the minutes of the meeting of the Committee held on 6 October 2015.	(Pages 1 - 6)
3. NOTIFICATION OF OTHER BUSINESS Members should notify the Chairman of other business which they wish to be discussed by the Committee at the end of the business set out in the agenda. They must state the circumstances which they consider justify the business being considered as a matter of urgency. The Chairman will decide whether any item(s) raised will be considered.	
4. CHAIRMAN'S ANNOUNCEMENTS Members are reminded that any declarations of interest in respect of any business set out in the agenda, should be declared as either a Disclosable Pecuniary Interest or Declarable Interest and are required to notify the Chairman of the nature of any interest declared at the commencement of the relevant item on the agenda. Members declaring a Disclosable Pecuniary Interest must withdraw from the meeting for the duration of the item. Members declaring a Declarable Interest which requires they leave the room under Paragraph 7.4 of the Code of Conduct, can speak on the item, but must leave the room before the debate and vote.	
5. PUBLIC PARTICIPATION To receive petitions, comments and questions from the public. At the time of preparing the agenda no requests to speak had been received. Any public participation received within the agreed time scale will be notified to Members as soon as practicable.	
6. UPDATE ON LICENSING MATTERS ORAL REPORT OF THE LICENSING MANAGER <i>To consider an oral update from the Licensing Manager on various Licensing matters.</i>	
7. CONSIDERATION OF AMENDMENTS TO THE STREET TRADING POLICY REPORT OF THE HEAD OF HOUSING & PUBLIC PROTECTION <i>To consider proposed amendments to the Street Trading Policy.</i>	(Pages 7 - 46)

8. **CONSIDERATION OF AMENDMENTS TO THE STREET COLLECTIONS POLICY** (Pages 47 - 66)
REPORT OF THE HEAD OF HOUSING & PUBLIC PROTECTION
To consider proposed amendments to the Street Collections Policy.
9. **CONSIDERATION OF AMENDMENTS TO THE HOUSE TO HOUSE COLLECTIONS POLICY** (Pages 67 - 88)
REPORT OF THE HEAD OF HOUSING & PUBLIC PROTECTION
To consider proposed amendments to the House to House Collections Policy.
10. **CONSIDERATION OF AMENDMENTS TO THE SEX ESTABLISHMENT POLICY** (Pages 89 - 118)
REPORT OF THE HEAD OF HOUSING & PUBLIC PROTECTION
To consider proposed amendments to the Sex Establishment Policy.

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NORTH HERTFORDSHIRE DISTRICT COUNCIL

LICENSING AND APPEALS COMMITTEE

Minutes of a meeting held in the Council Offices, Gernon Road, Letchworth Garden City on Thursday, 6 October 2015 at 7.30p.m.

MINUTES

PRESENT: *Councillors: M.R.M. Muir (Chairman), Jean Green, Simon Harwood, Joan Kirby, Ben Lewis, Jim McNally, Alan Millard, Gerald Morris and Mike Rice.*

IN ATTENDANCE: *Licensing Manager, Head of Housing and Public Protection, Advisory and Litigation Lawyer and Committee & Member Services Officer.*

ALSO PRESENT: *Councillor Bernard Lovewell (Executive Member for Housing and Environmental Health) and Heather Morris (Licensing Officer).*

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors D.J. Barnard, Faye S. Frost, Gary Grindal and Lorna Kercher.

2. MINUTES

RESOLVED: That the Minutes of the meeting of the Committee held on 12 December 2013 be approved as a true record of the proceedings and signed by the Chairman.

3. NOTIFICATION OF OTHER BUSINESS

There was no notification of other business.

4. CHAIRMAN'S ANNOUNCEMENTS

The Chairman advised that, in line with the Code of Conduct, any Declarations of Interest should be declared immediately prior to the item in question.

5. PUBLIC PARTICIPATION

There was no public participation.

6. PROGRESS OF LICENSING MEASURES IN RELATION TO THE PREVENTION OF CHILD SEXUAL EXPLOITATION

The Licensing Manager gave an oral report in response to a question from a Member regarding the progress of Licensing measures in relation to the prevention of child sexual exploitation.

He advised that there were three areas of Licensing which had been considered.

Sections addressing child sexual exploitation were included in the Statement of Licensing Policy 2016-2021 (Section 5 of the Licensing Act 2003) and the Statement of Licensing Principles for 2016–2019 (Section 349 of the Gambling Act 2005), both of which were being considered at this meeting.

The Policy in respect of Taxi Licensing was due for renewal in 2016. In the interim, NHDC would be providing training sessions for staff and taxi drivers on how to recognise signs of child sexual exploitation. These sessions would be held during the day and evening of 9 November 2015 and Members were welcome to attend.

RESOLVED: That the oral report of the Licensing Manager be noted.

REASON FOR DECISION: To keep the Committee updated on the progress of Licensing measures in relation to the prevention of child sexual exploitation.

7. ADOPTION OF A STATEMENT OF LICENSING POLICY FOR THE PERIOD 2016–2021 REQUIRED BY VIRTUE OF SECTION 5 OF THE LICENSING ACT 2003

Prior to the item being heard Councillor Michael Muir declared a Declarable Interest as he held licenses to sell alcohol. He stated that he would not take part in any debate or vote regarding this item.

Councillor Muir, as Chairman, suggested the Committee may wish to consider Councillor Jim McNally to Chair the meeting for this item. The Members agreed and Councillor Jim McNally took the Chair.

The Licensing Manager presented a report of the Head of Housing and Public Protection summarising the responses to the public consultation regarding the Council's proposed Statement of Licensing Policy 2016-2021 in respect of the Licensing Act 2003, and requesting the Committee to make a recommendation to Council in respect of the Policy. The following appendix was submitted with the report:

Appendix A - Proposed Statement of Licensing Policy 2016-2021.

The Licensing Manager informed Members that it was a statutory requirement to have a Policy and that it was an opportunity for the Council to shape a Licensing Vision.

The Policy was intended to be used for guidance and advice to applicants and Responsible Authorities about what NHDC would be looking for and applications would be considered having regard to this Policy.

The Policy encompassed the steer given by Members over a number of years, included statutory and regulatory obligations and, for the first time, included a Vision for Licensing.

A list of potential conditions was included in the document. This list aimed to help applicants to suggest appropriate condition and Members of a Licensing Hearing to word any conditions proportionally and appropriately.

The Policy included a section regarding Child Sexual Exploitation which aimed to impress on applicants their responsibilities in respect of recognising this and the Hertfordshire Safeguarding Board could make representations regarding applications.

It was important the Members understood how the terms "appropriate" and "proportionate" were used in Licensing and that it was important that decisions were both.

North Hertfordshire had a number of large outdoor events held in the area and these had the potential for public safety issues to occur. North Hertfordshire District Council was well respected as an example of how to manage, in licensing terms, this type of event and the experience gained over a number of years had been included in a dedicated section, which promoted the use of event planning.

Applications received that either did not mention adult entertainment or were presented with the section left blank, would be treated as if this would not take place at all, and any License would impose a condition of no adult entertainment.

Public Health was now part of the Licensing responsibility and this section of the Policy gave an opportunity to work with other agencies such as the Police and Hospitals regarding issues such as increased alcohol consumption.

In response to concern expressed by Members regarding the serving of dangerous drinks and additives, the Head of Housing and Public Protection advised that, in addition to Licensing laws, action could be brought using other laws. Such as the Health and Safety at Work Act.

For the first time the Policy included sections regarding some local licensing issues such as street trading and "A" boards.

The Police Reform and Social Responsibility Act 2011 introduced two new powers. Early Morning Restriction Orders (EMRO) restricted hours during which licensing activities could take place and the Late Night Levy (LNL) was effectively a tax on late night licensing activity to fund additional resourcing such as policing and street cleaning.

It was suggested that the not be introduced as there was currently no evidence to support the use of these powers, however any decision could be changed in the future.

Another section in the Policy explained how representations and petitions regarding Licensing applications would be considered.

The Licensing Manager informed Members that all statutory agencies had been consulted about and supported the proposed Licensing Policy.

In response to a question, the Licensing Manager advised that there was a period of consultation regarding applications received and that representations were considered by the Licensing Sub-Committee, who would impose any conditions appropriate.

There was a debate regarding whether or not separate processes should be included in the Policy regarding children under 11 years of age and those 12 to 16.

The Head of Housing and Public Protection advised that NHDC had never had any comment from bodies responsible for the Safeguarding of children regarding any pub in North Hertfordshire.

It was proposed and seconded that the Head of Housing and Public Protection be requested to write to Hertfordshire County Council to express the Committee's disappointment that it had not responded to the consultation regarding this Policy and the general lack of engagement as a Responsible Authority. HCC should also be advised of North Hertfordshire District Council's adopted approach to child protection for example the expansion of the Operating Schedule Risk Assessment.

It was also proposed and seconded that the Head of Housing and Public Protection be requested to amend the wording of the Policy in order to express the Council's belief that the protection of children is paramount and therefore ask that applicants consider risk assessing their business regarding the presence of children and offer suitable conditions regarding this.

RESOLVED:

- (1) That the Head of Housing and Public Protection be requested to write to Hertfordshire County Council to:
 - (i) Express the Committee's disappointment that it had not responded to the consultation regarding this Policy and the general lack of engagement as a Responsible Authority;
 - (ii) Advise HCC of North Hertfordshire District Council's adopted approach to child protection for example the expansion of the Operating Schedule Risk Assessment.
- (2) That, the Head of Housing and Public Protection be requested to amend the wording of the Policy in order to express the Council's belief that the protection of children is paramount and therefore ask that applicants consider risk assessing their business regarding the presence of children and offer suitable conditions regarding this;

(3) That, subject to (2) above, the proposed Statement of Licensing Policy 2016-2021 in respect of the Licensing Act 2003, as attached at Appendix A to the report, be supported.

RECOMMENDED TO COUNCIL: That the Statement of Licensing Policy 2016-2021 in respect of the Licensing Act 2003 as amended, as attached at Appendix A to the report, be adopted.

REASON FOR DECISION: To ensure the publication of a new Policy every five years, as required by Section 5 of the Licensing Act 2003; and to enable the new Policy to be published by 7 January 2016, in order to comply with this statutory requirement.

Councillor Muir resumed the Chair.

8. ADOPTION OF A STATEMENT OF LICENSING PRINCIPLES FOR THE PERIOD 2016–2018 REQUIRED BY VIRTUE OF SECTION 349 OF THE GAMBLING ACT 2005

The Licensing Manager presented the report of the Head of Housing and Public Protection summarising the responses to the public consultation regarding the Council's proposed Statement of Licensing Principles 2016-2018 in respect of the Gambling Act 2005, and requesting the Committee to make a recommendation to Council in respect of the Statement of Principles. The following appendices were submitted with the report:

Appendix A – Gambling Act 2005: Proposed Statement of Licensing Principles;
Appendix B – Summary of Consultation responses; and
Appendix C – Consultation responses.

The Licensing Manager advised that, as the Policy had worked well in the past therefore few amendments had been necessary and none of them significant.

The Government had introduced the requirement for applicants to provide a Local Area Risk Assessment and a section had been included in the Policy regarding Safeguarding.

The Policy had received support from the Responsible Authorities and the comments from Coral and ABB had been taken into account.

The Campaign for Fairer Gambling was seeking support for their aim to change the stake limits on Fixed Odds Betting Terminals from the current maximum of £100 to £2 and it was for Members to consider.

Members agreed that Fixed Odds Betting Terminals were easy to use and had the potential for users to lose a lot of money in a short space of time. They expressed concern at the high stake level and generally supported the campaign to reduce the stake. They clarified that NHDC was not anti Gambling, but were purely concerned about the stake levels of FOBTs.

The Advisory and Litigation Lawyer agreed that, if the Committee wished to support the sentiments regarding FOBTs, he would consider the best way to take this forward.

In response to a query regarding enforcement and inspections, Members were advised that NHDC and Area Compliance Officers inspected gambling premises and that there was a Performance Indicator regarding inspections.

RESOLVED: That the proposed Statement of Licensing Principles 2016-2018 in respect of the Gambling Act 2005, as attached at Appendix A to the report, be supported.

RECOMMENDED TO COUNCIL: That the proposed Statement of Licensing Principles 2016-2018 in respect of the Gambling Act 2005, as attached at Appendix A to the report, be adopted.

REASON FOR DECISION: To comply with the requirement to publish a Statement of Licensing Principles every three years, in accordance with Section 349 of the Gambling Act 2005: and to enable the new Policy to be published by 3 January 2016, in order to comply with this statutory requirement.

The meeting closed at 8.50 pm.

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Chairman

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**LICENSING AND APPEALS COMMITTEE
28 NOVEMBER 2017**

PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

7

TITLE OF REPORT: CONSIDERATION OF AMENDMENTS TO THE STREET TRADING POLICY

REPORT OF THE: HEAD OF HOUSING AND PUBLIC PROTECTION
EXECUTIVE MEMBER: HOUSING AND ENVIRONMENTAL HEALTH
COUNCIL PRIORITY: PROSPER AND PROTECT

1. EXECUTIVE SUMMARY

- 1.1 Licensing of street trading, whilst governed by national legislation, provides for local discretion. Having a clear and transparent policy will assist applicants' understanding of the process and facilitate consistent decision-making by the Council.
- 1.2 Any Council Policy should be kept under review to ensure it remains fit for purpose therefore a public consultation was recently undertaken in respect of some minor amendments to the Policy.
- 1.3 This report seeks Members' approval of amendments to the existing Policy.

2. RECOMMENDATIONS

- 2.1 That the Committee:
 - (i) Consider the results of the public consultation and support the policy amendments;
 - (ii) Determine that the proposed amendments are minor in so far as they do not amend the licensing principles or main focus of the existing Policy;
 - (iii) Recommend that the Executive Member for Housing and Environmental Health approves the policy amendments under delegated powers;
 - (iv) Request officers to continue to investigate the available options, in conjunction with Hertfordshire County Council, in respect of the regulation of tables/chairs and 'A' boards.

3. REASONS FOR RECOMMENDATIONS

- 3.1 The existing policy has worked well since its adoption with effect from 2 April 2012 therefore no significant amendments were deemed necessary.
- 3.2 This view was supported by the responses to the public consultation.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Consideration was given to the incorporation of table/chairs and 'A' Board licensing within this Policy however this function is predominately one for the County Council, in their role as the Highways Authority, under Part VIIA of the Highways Act 1980.
- 4.2 Further consideration would need to be given to the financial and resourcing impact on the Council of undertaking the administration and enforcement of this discretionary function.
- 4.3 The Council would be reliant on information from the County Council in respect of the precise location of the highway, given that this function is restricted to regulating objects on the highway; definite highways maps are not currently available.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The proposed amendments to the existing policy were highlighted in red and publicised on a specific licensing consultation webpage on the Council's website. All existing consent holders and consultees were contacted and signposted to the consultation page.
- 5.2 Given the potential to impact directly on town centres, a report summarising the proposed amendments was presented to each Area Committee.
- 5.3 The Executive Member for Housing and Environmental Health was consulted throughout the process.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on 5 May 2017.

7. BACKGROUND

- 7.1 The Local Government (Miscellaneous Provisions) Act 1982 Section 3 and Schedule 4 provides the legal framework for the control of street trading in England and Wales. The legislative framework is not an automatic entitlement and Council's must formally adopt the legislation if it wishes to regulate street trading in its area.
- 7.2 On 26 April 2005, the Council resolved to adopt the legislation and designate all streets within the conurbations of Baldock, Hitchin, Letchworth Garden City and Royston as consent streets. The Council further resolved to designate the main arterial roads within North Hertfordshire as consent streets but restricting trading to lay-bys. No streets within the rural villages were designated for the purpose of street trading regulation.
- 7.3 In order to ensure a clear and transparent licensing process, a Street Trading Policy was drafted during 2011 to seek to address some of the issues that had arisen since the Council's original adoption of the legislative provisions for the regulation of street trading.

- 7.4 The Policy sought to simplify the street trading process in a way that would not prohibit the provision of community and not-for-profit events in the town centres, whilst ensuring appropriate safeguards for the public.
- 7.5 Annual Town Centre Consents, Market/Special Event Consents and Council Land Consents were introduced whereby organisations such as BIDs could hold a consent for the town centre and allow community and not-for-profit organisations to utilise that consent rather than having to apply for their own. Equally, a Market/Special Event Consent could be obtained for community events, specialised markets, etc. rather than individual consents having to be obtained.
- 7.6 To ensure maximum flexibility, rather than designating streets as prohibited streets that would prevent street trading at all times, the Policy included a list of streets where an application would ordinarily be refused. This would allow a consent to be granted on a street that was temporarily subject to a road closure to facilitate an event whilst refusing an application at all other times due to the unsuitability of the street.
- 7.7 Following a public consultation, the Street Trading Policy was adopted to take effect from 2 April 2012.

8. RELEVANT CONSIDERATIONS

- 8.1 To assist the Committee with their deliberations, every proposed amendment is highlighted in red in the proposed Policy attached as Appendix C.

Policy Duration

- 8.2 In order to ensure that a policy is reviewed periodically, historically each policy has included the date by when it should be reviewed. If this date is passed, the Policy doesn't lapse but is at risk of challenge for not being kept under review. As part of the consultation it was proposed to extend the policy duration from five years to seven years, however Letchworth Area Committee expressed concern that changing circumstances could render a period of seven years as too long.
- 8.3 On reflection, a fixed term policy could be considered inappropriate particularly with ever-changing legislative or local requirements. A policy should be kept under regular review with the ability to amend or re-consult where necessary. As policy is a matter for Members, it is felt that the Executive Member for Housing and Environmental Health is best placed to determine when a policy should be amended or reviewed.
- 8.4 The Policy therefore has no fixed duration but will be kept under periodic review by the Executive Member who will have the authority to amend, approve for continuation or require a full consultation prior to a new policy being considered by Cabinet.

Lay-by Configuration

- 8.5 Trading on the arterial roads designated as consent streets is restricted to lay-bys only. The Highways Agency have responded to consultations for recent applications by providing a plan detailing the only lay-by design where they would support an application for street trading consent. To assist applicants, this layout plan has been incorporated within the Policy with a supporting paragraph explaining that only applications complying with the approved design is likely to receive consent.

Streets where Consent would ordinarily be Refused

- 8.6 Each Area Committee was specifically asked whether they wished to amend the list of streets currently included within those where consent would ordinarily be refused. Each Committee was content with the existing designations therefore no amendments are proposed.

Annual Consents with Quarterly Payments

- 8.7 Currently, individual consent holders pay for their consents quarterly and receive a quarterly consent. In order to increase efficiency, the Policy proposes to issue an annual consent subject to quarterly payments being received prior to the expiry of each quarter. At the suggestion of the Letchworth Area Committee, consent holders will be encouraged to enter into a direct debit arrangement with the Council to ensure each quarterly payment is received in a timely manner.

Council Land Consents

- 8.8 When a community or not-for-profit organisation wishes to organise an event on Council owned land they need to apply for a land licence; if the event involved street trading a separate application would be required for street trading consent. This is unnecessary duplication for voluntary organisations therefore it is proposed that an application for a land licence for the use of Council land also includes street trading consent.

Tables/Chairs and 'A' Boards

- 8.9 Both the Hitchin and the Letchworth Area Committees raised serious concerns in respect of the proliferation of 'A' Boards in the town centres and, to a lesser degree, tables and chairs on the town centre footways.
- 8.10 Section VIIA of The Highways Act 1980 regulates the provision of advertising structures and tables and chairs on the highway and is a function that can be undertaken either at County or District level. As this function would place a significant administrative and enforcement burden on the Council for which it could only recover its reasonable costs through licensing fees, it has historically been regarded as a County function.
- 8.11 In addition to the increased workload of this discretionary function, another significant obstacle to the Council undertaking this regulation is that there are no definitive maps available outlining the extent of the highway in each town. As regulation is restricted to the highway, the Council would be unable to effectively undertake this function without such clarification.
- 8.12 This Policy doesn't propose to include the licensing of advertising structures or tables and chairs on the highway for the reasons stated above. This report does however include a recommendation that officers investigate the options for future regulation of these structures which can be considered by Members at the appropriate time. As any proposal to include this additional regulation would be a significant amendment to the Policy, any proposal would be subject to a full public consultation and a decision being taken by Cabinet.

Clarification

- 8.13 Since the adoption of the Street Trading Policy, a number of minor administrative issues have arisen whereby some clarification of the wording of the Policy was necessary. The main areas for clarification have been the process for determining a departure from policy, revocation of a consent and the ability to amend standard consent conditions. This clarification has been included within the amended Policy.

Additional Standard Conditions suggested by Environmental Health

- 8.14 Environmental Health has a statutory duty to undertake regulation of the practices of businesses or individuals selling food to the public; they also have a statutory duty to ensure the health & safety of the public.
- 8.15 To supplement this role, the Environmental Health Team suggested some additional standard conditions during the consultation period that would assist them with ensuring the public remain protected. These conditions relate to matters such as Town Centre Consent holders being required to obtain certain information from food traders in advance of events, requiring infrastructure within a food vending vehicle/stall to promote food hygiene and health & safety best practice, and requiring risk assessments for any traders providing live animals as part of any event.
- 8.16 As protecting the public is one of the four objectives of the Policy, all suggested Environmental Health conditions have been included.

Definition of Minor Amendments

- 8.17 The Council's Constitution reserves "*to prepare and agree to implement policies and strategies other than those reserved to Council*" for Cabinet and all new licensing policies, other than those reserved to Council, have been referred to Cabinet for adoption. Once a policy has been adopted by Cabinet, an Executive Member has the authority for "*making minor amendments to adopted strategies, policies and procedures*".
- 8.18 The Constitution is however silent on the definition of a minor amendment therefore a definition can be sought from the existing adopted Policy. The current Policy adopted by Cabinet included a section entitled "Amendments to Policy". Within that section, a *substantial amendment* was defined as one that is likely to have:
- (i) *a significant financial effect on licence holders; or*
 - (ii) *a significant procedural effect on licence holders; or*
 - (iii) *a significant effect on the community.*

The Policy then clarifies that a minor amendment is defined as any amendment that does not fall within the scope of a *substantial amendment* and:

"Any minor amendments to this Policy may be authorised by the Executive Member for Housing and Environmental Health"

In the absence of a definition of minor in the Constitution, the existing Policy can be considered an indication of Cabinet's interpretation of minor when considering the initial adoption of the Policy.

- 8.19 It is suggested that none of the proposed amendments fall within the scope of the *substantial amendment* definition therefore are classified as minor amendments that can be made by the Executive Member. This is further supported by the fact that the four licensing objectives of the Policy remain unchanged.
- 8.20 If the Committee support the contention that the amendments to the existing Policy are minor then the amendments can be authorised by the Executive Member. If however the Committee believe the amendments are not minor and, in effect, a new Policy should be adopted then the proposed Policy should be referred to Cabinet.

9. LEGAL IMPLICATIONS

- 9.1 By virtue of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, adoption of a local policy in respect of street trading regulation is a matter for the Council's Executive.
- 9.2 The Licensing and Appeals Committee's terms of reference within the Council's Constitution includes at section 8.2.3:

"to consider all Licensing matters with the exception of the statements of licensing policy under the Licensing Act 2003 and the Gambling Act 2005 and those matters delegated to the Licensing Sub-Committee and the Strategic Director of Planning, Housing and Enterprise."

The Committee's role therefore is to consider the draft policy in light of the public consultation and decide whether to make a recommendation to the Executive in respect of adopting the proposed amendments.

As part of that consideration, the Committee should determine whether or not the proposed amendments should be considered 'minor amendments' that could be dealt with by the Executive Member under delegated powers.

In the absence of a definition of 'minor' within the Constitution, the Committee should have regard to the definition of 'minor amendment' within the existing adopted policy.

- 9.3 If the Committee determine that the proposed amendments are 'minor', section 14.8.1(l) of the Constitution states that an Executive Member has authority for:

"making minor amendments to adopted strategies, policies and procedures."

- 9.4 If the Committee determine that the proposed amendments are not 'minor' based on the definition included within the existing adopted policy then authority for adopting a new policy falls with Cabinet by virtue of section 5.6.1 of the Constitution that includes within the terms of reference for Cabinet:

"to prepare and agree to implement policies and strategies other than those reserved to Council."

10. FINANCIAL IMPLICATIONS

- 10.1 The amended policy would have no additional financial implications for the Council. Case law has determined that a Council can recover its reasonable costs of administration and enforcement through licensing fees.

11. RISK IMPLICATIONS

- 11.1 The risk to the Council of not periodically reviewing and amending policy is that the Policy may become outdated and no longer fit for purpose. Given that the Policy is a fundamental element of consistent decision making, a policy that was not fit for purpose would increase the risk of judicial challenge.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 The proposed Policy does not place any barriers or unique requirements on any person on the grounds of ethnicity, gender, religion or any other protected characteristic. Officers work with all applicants and consent holders, where appropriate, to ensure that the Council's duty under the Equality Act 2010 is met, for example, guidance notes could be provided in other languages upon request.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and "go local" policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 The policy will not place any new human resource implications on the Council.

15. APPENDICES

- 15.1 Appendix A - Schedule of consultation responses.
15.2 Appendix B - External consultation responses.
15.3 Appendix C - Street Trading Policy (incorporating the proposed amendments).

16. CONTACT OFFICERS

Report Author

- 16.1 Steve Cobb, Licensing Manager
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Consultees

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17. BACKGROUND PAPERS

17.1 [Local Government \(Miscellaneous Provisions\) Act 1982](#)

17.2 [Highways Act 1980](#)

17.3 [Existing Street Trading Policy](#)

APPENDIX A

Summary of Responses to Proposed Amendments to the Street Trading Policy

Consultee	Observations	Comment / Action Taken	Amendments to Policy
Baldock and District Committee	<u>Suggested condition:</u> The consent holder shall be responsible for the removal of any litter within the vicinity of the consent site, with the definition of vicinity being determined on a case by case basis.	Agreed that the inclusion of litter clearance requires more clarity in the standard conditions.	Standard Condition No. 10 amended to include litter.
Hitchin Committee	Concerns expressed about the proliferation of 'A' Boards	Not a matter for the Policy however a separate recommendation has been made to address these concerns	None
Letchworth Committee Page 15	Policy duration should be a maximum of five years not seven years as proposed	Fixed term policies are not practicable due to the every changing nature of local licensing. A more practical solution would be for the relevant Executive Member to retain control over the review of the Policy, authorising minor amendments where appropriate or referring the Policy to Cabinet in the event of significant amendments.	Section 1.4 delegates the responsibility for reviewing the Policy to the relevant Executive Member.
	Annual consents with quarterly payments should not be granted without the applicant signing a direct debit mandate to guarantee payment	A direct debit mandate can be cancelled at any time so does not guarantee payment. Equally, due to the nature of some street trading, not all applicants have bank accounts. Applicants are entitled to pay by other means such as cheque, postal order, etc. and should not be precluded by the requirement of a direct debit mandate.	Applicants will be encouraged to sign a direct debit mandate to secure continuity of trade.
	Concerns expressed about the proliferation of 'A' Boards	Not a matter for the Policy however a separate recommendation has been made to address these concerns	None
Royston and District Committee	No comments	N/a	None

Southern Rural Committee	No comments	N/a	None
NHDC Environmental Health	Suggested conditions relating to food safety (see Appendix B)	Suggested conditions are reasonable requirements to assist with ensuring the public remain safe	Suggested conditions incorporated into Policy
	Suggested conditions relating to health & safety (see Appendix B)	Suggested conditions are reasonable requirements to assist with ensuring the public remain safe	Suggested conditions incorporated into Policy

APPENDIX B

From: Christine Walker-Wells
Sent: 31 October 2017 08:05
To: Licensing
Subject: Consultation of draft street trading policy

Good morning Licensing,

Please find comments for addition into the street trading policy.

Commercial Team of Environmental Health would like to add to the policy at 3.2 Applications in that:

- Town Centre Consent applications must meet the conditions set out in the (relevant) Annex.
- Individual applications for high risk, open food sales or displaying animals capable of E. coli 0157 bacteria transmission must meet the conditions set out in the (relevant) Annex.
- For individual street trading consents, where relevant, evidence of food hygiene training, food hygiene registration, gas appliance certification must be provided upon application. The conditions forming the Annex relate to structural standards. Officers from Environmental Health during their routine inspections will monitor compliance with all aspects of food hygiene and health & safety legislation, which go beyond the requirements for the street trading licence. Individuals applying for street trading consent must be mindful of their responsibility to ensure adequate & satisfactory food hygiene and health & safety controls be in place whilst trading.

High risk, open food is defined as foods that are ready to eat, perishable and handled, made or assembled by persons staffing the business.

The following specific conditions should be added as Annex(es).

Town Centre Consents

The conditions relate to regular events (such as weekly markets where they are not Charter Markets) and specific events (such as Food Festivals and supported events) organised by the consent holder.

Environmental Health request that consent holders provide relevant information to the Commercial Team (Environmental Health) regarding the traders.

- For regular events, provide trader information for high risk, open food traders upon the renewal of your street trading consent where the street trading policy applies. New trader information must be received by the Commercial Team before they begin to trade at the regular events, where they are not trading upon the renewal of the street trading consent. Information provided to North Hertfordshire District Council's Environmental Health Commercial Team shall be provided in the manner detailed below.
 - Name of food trader
 - Registered name of food business
 - Registered address of food business (including postcode)
 - Food hygiene rating & Date awarded

- Type of food sold
- Inspecting Authority
- For specific & supported events, information should be received regarding high-risk, open food traders* four (4) weeks before the event in the manner detailed below.
 - Name of food trader
 - Registered name of food business
 - Registered address of food business (including postcode)
 - Food hygiene rating & Date awarded
 - Type of food sold
 - Inspecting Authority

Where high-risk open food traders intend to trade using an organisation's street trading consent, but register later than 4 week before the event, they must provide the above relevant information upon receipt of trader registration.

- Traders that bring live animals capable of E. coli 0157 bacteria transmission, these traders must provide the organiser with the following information;
 - Name of Trader
 - Trading name of business
 - Address of business (including postcode)
 - Suitable and sufficient risk assessment that manages E. coli 0157 hazard.

Before consent is offered to the trader with live animals, the Town Centre Consent holder must assess the controls in the risk assessment and determine their suitability. Through the course of the event, the Town Centre Consent Holder must ensure that the control measures in the risk assessment are being implemented.

Provide trader information, listed above to Environmental Health four (4) weeks before traders with live animals are intending to trade.

All informations relating to the above information must be forwarded to env.health@north-herts.gov.uk within the time frames, detailed above.

- Whilst traders operate in accordance with your street trading consent, you must ensure that traders serving high-risk open food/displaying live animals must
 - Have a means to wash hands hygienically. In practice, they must have a suitable wash hand basin supplied with hot and cold potable water, soap and hygienic hand drying facilities. Where traders are not able to ensure person hygiene through the provision of adequate hand wash facilities, Town Centre consent holders must take steps to stop the trader from operating.
 - Have adequate arrangements and/or facilities for the hygienic storage and disposal of hazardous and/or inedible substances and waste (solid & liquid) to be available. Used water and waste products must be contained until suitable methods for disposal are available.
- Traders using portable gas appliances must have a current Gas Safe Certificate from a competent person.

Individual Street Trading Consent

Businesses applying for street trading consent must ensure the following;

- They are registered as a food business with the relevant local authority (place where van, vehicle, barrow, cart is stored overnight). Evidence of this to be provided.
- The food handler(s) serving high risk, open foods are suitably trained in food hygiene matters to Level 2 in Food Hygiene & Safety
- The van, vehicle, barrow, cart or stall must have a means to wash hands hygienically. In practice, they must have a suitable wash hand basin supplied with hot and cold potable water, liquid soap and hygienic hand drying facilities.
- Surfaces in contact with food are to be in a sound condition and be easy to clean, and where necessary, disinfect. This will require the use of smooth, washable, corrosion-resistant and non-toxic materials.
- Adequate arrangements and/or facilities for the hygienic storage and disposal of hazardous and/or inedible substances and waste (solid & liquid) to be available. Used water and waste products must be contained until suitable methods for disposal are available.
- Traders using portable gas appliances must have a current Gas Safe Certificate from a competent person.

Traders that bring live animals capable of E. coli 0157 bacteria transmission, the following information must be provided upon application;

- Trading name of business
- Address of business (including postcode)
- Suitable and sufficient risk assessment that manages E. coli 0157 hazard.

Should you have any queries, please do not hesitate to contact me.

With kind regards,

Christine Walker-Wells
Senior Environmental Health Officer
North Hertfordshire District Council
Town Lodge
Gernon Road
Letchworth Garden City
SG6 3JF

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Street Trading Licensing Policy

Effective from: 1st January 2018

CONTENTS

	Section	Pages
1	Introduction	2 - 4
2	Designation of streets for the purpose of street trading	4 - 5
3	Applications for street trading consents	5 - 10
4	Consent conditions	10 - 11
5	Enforcement	11
6	Departure from policy	11 - 12
7	Fees and charges	12
8	Definitions	13
	Appendix	Pages
A	Consent street map: Hitchin	14
B	Consent street map: Letchworth Garden City	15
C	Consent street map: Baldock	16
D	Consent street map: Royston	17
E	Standard consent conditions	18 -24
F	Schedule of streets, or parts of streets, where consent applications will ordinarily be refused	25
G	Acceptable lay-by layout for trading adjacent to an arterial road	26

1.0 INTRODUCTION

1.1 The Policy

1.1.1 This document states North Hertfordshire District Council's policy on Street Trading as defined by the Local Government (Miscellaneous Provisions) Act 1982 (Section 3 and Schedule 4).

1.2 The Objectives of this Policy

1.2.1 This Policy has been adopted with view to securing the following objectives:

- (i) **to enhance the towns centres of Baldock, Hitchin, Letchworth Garden City, and Royston;**
- (ii) **to protect public health through the control of street trading within the District of North Hertfordshire;**
- (iii) **to ensure that traders operate within the law and act fairly in their dealings with the public; and**
- (iv) **to prevent nuisance, unsafe practices and anti social behaviour.**

1.3 The Law

1.3.1 The Local Government (Miscellaneous Provisions) Act 1982 (Section 3 and Schedule 4) provides the legal framework for the control of street trading in England and Wales. The legislative framework, however, is not an automatic entitlement and councils must formally adopt the legislation if they wish to regulate street trading in their areas.

1.3.2 On 26 April 2005, the Council resolved to make all streets within the conurbations of Baldock, Hitchin, Letchworth Garden City and Royston consent streets, with the exception of any streets designated as prohibited streets. It further resolved to make arterial roads within the District of North Hertfordshire consent streets but with trading limited to lay-bys only. The resolution also stated that no street within the District shall be a licence street.

1.3.3 Street trading is defined as *"the selling or exposing or offering for sale of any article, including a living thing, in a street."*

1.3.4 Streets are further defined as *"any road, footway, beach, or other area to which the public have access without payment or any service area as defined by section 329 of the Highways Act 1990."* It is important to note that there is no reference to land ownership and so street trading legislation would also apply to privately-owned areas such as supermarket car parks, business parks, etc.

1.3.5 The main purpose of this legislation is to establish an appropriate licensing regime which prevents undue nuisance, interference or inconvenience to the public brought about by street trading. This legislation provides local authorities with the power

(but no duty) to designate specific areas within their administrative boundaries as either:

- (i) Prohibited Streets
those which are not open to street traders;
- (ii) Consent Streets
where street trading is prohibited without local authority consent;
- (iii) Licence Streets
where trading is prohibited without a local authority licence

1.3.6 Local authorities can place conditions on any Consent or Licence. The Act also creates offences associated with trading in Consent or Licence Streets without the necessary authority: the person guilty of such an offence may be liable, on conviction, to a fine of up to £1000.

1.3.7 There are a number of exemptions provided in the Act that are not to be considered street trading:

- trading as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871
- a market trader operating at a Charter or licensed market venue within the terms of the Charter or licence
- trading at a Charter Fair
- trading as a news vendor selling only newspapers and /or periodicals
- trading at a petrol filling station
- trading carried on in a street linked to an adjoining shop where the street trading is an extension of the shop's ordinary business
- trading as a roundsman
- where permission has been granted from the Highway Authority pursuant to Section 115 of the Highways Act 1980 to trade from an object or structure placed in, on, or over the highway
- charitable street collections authorised by the Police, Factories, etc (Miscellaneous Provisions) Act 1916.

1.3.8 The granting of permissions for the placing of tables and chairs outside of a business providing refreshment, or the placing of advertising boards outside of any business, is provided for by section 115 of the Highways Act 1980.

1.3.9 The licensing powers provided by section 115 of the Highways Act 1980 are available to both District and County Councils in two-tier authority areas. As the legislation is designed to ensure that highways are kept free of obstructions and nuisance, the Council is of the opinion that Hertfordshire Highways, acting as the Highway Authority on behalf of Hertfordshire County Council, is best placed to administer this function.

1.3.10 The Council will not, therefore, issue any permission pursuant to section 115 of the Highways Act 1980. All applications for tables and chairs, or advertising structures, on the highway should be directed to Hertfordshire Highways.

1.4 Policy Duration and Amendments

- 1.4.1 This Policy will take effect from 1 January 2018 and will be kept under review and amended as and when necessary to reflect changes in legislation, case law, statutory guidance and best practice.
- 1.4.2 Administrative amendments to this Policy, required by virtue of legislative changes, revised statutory guidance or a Council restructure, may be made by the Licensing Manager. Amendments under this section are restricted to those required to accurately reflect the current legal or administrative position rather than amendments that change the focus of local policy.
- 1.4.3 The Policy will be periodically reviewed to ensure it remains fit-for-purpose and either amended where necessary or approved for continuation by the Executive Member for Housing and Environmental Health.
- 1.4.4 In the event of any significant amendment to the Policy, a full public consultation will be undertaken prior to consideration by the Licensing and Appeals Committee who will make a recommendation for consideration by Cabinet.
For the purpose of this section, a significant amendment is defined as one that:
- (i) will have significant financial impact on applicants, licence holders or the public;
 - (ii) will have a significant procedural impact on applicants, licence holders or the public; or
 - (iii) may not be perceived by the trade or the public to be consistent with the policy objectives set out in section 1.2 above.

2.0 DESIGNATION OF STREETS FOR THE PURPOSES OF STREET TRADING

2.1 Prohibited Streets

- 2.1.1 It has been decided to maximise the opportunity for street trading within the four towns and, therefore, no prohibited streets are designated within North Hertfordshire.

2.2 Consent Streets

- 2.2.1 All streets, with reference to the wide statutory definition in paragraph 1.3.4 above, within the main conurbations of North Hertfordshire have been collectively determined to be Consent Streets for the purpose of the Local Government (Miscellaneous Provisions) Act 1982.
- 2.2.2 Maps showing the boundaries of each town as regards Consent Street status are attached in **Appendices A to D**.
- 2.2.3 Furthermore, the following arterial roads have also been designated as Consent Streets however street trading is likely to be restricted to lay-bys **conforming to the layout in Appendix G** only:
- A10, A505, A507, A602, A600

- 2.2.4 The Council will continually monitor the impact of street trading on its consent streets with a view to promoting the objectives of this policy. Whilst it is the Council's intention not to designate any prohibited streets, it is acknowledged there will be areas that are less suitable for trading than others.
- 2.2.5 To address this issue, the Council will include within this policy a schedule of streets, or parts of streets, where consent permit applications will ordinarily be refused, save for exceptional circumstances. This schedule is attached as **Appendix F**. The schedule will be subject to amendment, as circumstances dictate, in accordance with the provisions of section 7 of this Policy. An applicant seeking consent to trade on a street identified as one where permission will ordinarily be refused should contact the licensing team to discuss the proposed application and the reasons why the street will ordinarily be deemed unsuitable for trading.

2.3 Undesignated Streets

- 2.3.1 All streets not explicitly included within the list of consent streets in paragraph 2.2 above, for example those within the rural villages, have not been designated as either prohibited streets, consent streets or licence streets.
- 2.3.2 The regulation of street trading and, therefore, this Policy does not apply to undesignated streets.

3.0 APPLICATIONS FOR A STREET TRADING CONSENT

3.1 Advice for New Applicants

- 3.1.1 New applicants are advised to contact the Council at their earliest opportunity, preferably before an application is made. This allows the authorised officers to provide advice, as well as clarifying any areas of uncertainty.
- 3.1.2 The Council can also provide advice in relation to other legal requirements of a new consent holder, for example, planning permission or building control approval.

3.2 Applications

- 3.2.1 All applications must be made on the Council's prescribed application form.
- 3.2.2 Each application must be accompanied by the prescribed application fee. An application will not be considered as duly made until the prescribed application fee has been received.
- 3.2.3 The following will also be required to be submitted with the application:
- (i) Where the proposed street activity is from a fixed position, a copy of a map of at least 1:1250 scale. The map should clearly identify the proposed site position by marking the site boundary with a red line.

- (ii) Confirmation that adequate levels of third party and public liability insurance is, or will be, in place during street trading activity.
- (iii) In the case of privately-owned land, confirmation of the landowner's consent to trade on the land.

3.3 Processing of an Application

- 3.3.1 On receipt of the application form an acknowledgment will be sent to the applicant.
- 3.3.2 An officer may visit the applicant and inspect the vehicle, barrow, cart, van, portable stall or other vehicle or premises which the applicant intends to trade from.
- 3.3.3 The application will either be:
 - (i) granted and a trading consent will be issued with conditions attached; or
 - (ii) refused and the fee will be refunded, less an administrative charge as appropriate, to the applicant.
- 3.3.4 The Council may have regard to the number, nature and type of traders already trading within a consent area when determining an application.
- 3.3.5 Before a Street Trading Consent is granted or renewed the Council will carry out a consultation process with various persons and groups as deemed appropriate to the application. In particular, the following organisations or persons will be consulted:
 - (i) Hertfordshire Highways
(acting as the highway authority on behalf of the County Council);
 - (ii) Hertfordshire Constabulary;
 - (iii) The Council's Environmental Health Commercial Team
(with respect to food hygiene matters); and
 - (iv) In respect of privately-owned land, the landowner
 - (v) Where the Council deem appropriate, occupiers of adjoining land.

Written observations from the above organisations and occupiers of adjacent properties may be taken into consideration when determining an application.

- 3.3.6 There is no right of appeal against a variation of a condition, or refusal to grant or renew a Street Trading Consent.

3.4 Key Considerations

- 3.4.1 The Council will normally grant a street trading consent unless, in its opinion:

- (i) a significant effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site; or
- (ii) where there are concerns over the recorded level of personal injury accidents in the locality where the street trading activity will be sited; or
- (iii) there would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes; or
- (iv) there is already adequate like provision in the immediate vicinity of the site to be used for street trading purposes; or
- (v) there is a conflict with Traffic Orders such as waiting restrictions; or
- (vi) the site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes; or
- (vii) the trading unit obstructs the safe passage of users of the footway or carriageway; or
- (viii) the pitch interferes with sight lines for any road users, for example at road junctions, or pedestrian crossing facilities; or
- (ix) the site does not allow the consent holder, staff and/or customers to park in a safe manner; or
- (x) the street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.

3.4.2 **The Council will normally refuse an application for a street trading consent where the applicant has previously had a Consent revoked.**

3.5 Consents

3.5.1 Consents may be issued for a period of up to twelve consecutive months, quarterly or weekly.

3.5.2 All Consents that have not been renewed by their expiry date will automatically cease to exist and trading must cease until such time as a new Consent has been granted.

3.5.3 **To enable maximum flexibility for an applicant, any consent issued for lay-by trading will authorise the provision of trading from anywhere within the identified lay-by as opposed to a specific location therein.**

3.5.4 **The issuing of a Consent only authorises trading in accordance with the requirements The Local Government (Miscellaneous Provisions) Act 1982 (Section 3 and Schedule 4). The consent holder must ensure that they comply with any other**

statutory provisions relating to their business.

- 3.5.5 The Council acknowledges that overly burdensome regulation and cost will discourage town centre community and cultural activity, particularly the requirement for each individual trader to obtain their own Consent. In order to encourage town centre activity, the Council have developed multiple user Consents that will simplify this process (see sections 3.6, 3.7 and 3.8).

3.6 Town Centre Consents

- 3.6.1 The Council will issue Town Centre Consents that cover areas of land that are suitable for street trading use. Each Town Centre Consent will be accompanied by a plan clearly identifying those areas covered by the Consent. This will remove the need for each individual trader to obtain a Consent and should encourage town centre activity.
- 3.6.2 The Consents can be issued for a maximum period of twelve months and will **ordinarily be issued to** a named individual. Where the application is made by an organisation, they must nominate a named individual who will be responsible for managing the use of the consent.
- 3.6.3 The consent holder will be responsible for ensuring compliance with the conditions attached to the Consent at all times whilst the consent is being used to facilitate street trading.
- 3.6.4 The consent holder, or in the case of organisations the individual nominated to manage the use of the consent, will be able to allow his/her Consent to be used by commercial or not-for-profit organisations, however, no charge can be made for the use of the Consent by not-for-profit organisations.
- 3.6.5 Any person or organisation may apply for a Town Centre Consent, however, in order for a Consent to be granted the Council will require proof of the landowner's permission for street trading to take place on their land.
- 3.6.6 The consent holder will be required to keep records of all traders that use the Town Centre Consent including: date, trading location, name and company name (where appropriate), address, vehicle registration and contact telephone number.
- 3.6.7 The consent holder will be required to keep records of all traders that are refused use of the Town Centre Consent including, date, name and company name (where appropriate), address, contact number and reason for refusal.
- 3.6.8 In determining whether or not to allow an individual or organisation the use of a Town Centre Consent, the consent holder, or in the case of organisations the individual nominated to manage the use of the Consent, must make the determination in accordance with the principles contained within paragraph 3.4 above.
- 3.6.9 Town Centre Consents do not provide exclusive control over trading in the designated area. Traders are still able to apply direct to the Council for an individual consent for that area under paragraph 3.5 above.

3.7 Special Events / Markets Consent

- 3.7.1 In order to remove the requirement for each individual trader to obtain their own consent, the Council will issue Special Events / Markets Consents that facilitate multi-user street trading for markets or community events.
- 3.7.2 The consents will be issued for the duration of a specified event only and will **ordinarily** be to a named individual. Where the application is made by an organisation they must nominate a named individual who will be responsible for managing the use of the Consent.
- 3.7.3 The consent holder will be responsible for ensuring compliance with the conditions attached to the Consent at all times whilst the Consent is being used to facilitate street trading.
- 3.7.4 The consent holder, or in the case of organisations the individual nominated to manage the use of the Consent, will be able to allow his/her Consent to be used by commercial or not-for-profit organisations, however, no charge can be made for the use of the consent by not-for-profit organisations.
- 3.7.5 Any person or organisation may apply for a Special Events / Markets Consent, however, in order for a Consent to be granted the Council will require proof of the landowner's permission for street trading to take place on their land.
- 3.7.6 The consent holder will be required to keep records of all traders that use the Special Events / Markets Consent including: date, trading location, name and company name (where appropriate), address, vehicle registration and contact telephone number.
- 3.7.7 Special Events / Markets Consents do not provide exclusive control over trading in the designated area. Traders are still able to apply direct to the Council for an individual consent for that area under paragraph 3.5 above.

3.8 Council Land Consents

- 3.8.1 In order to remove the requirement for each individual trader to obtain their own consent, the Council will issue Council Land Consents that facilitate multi-user street trading on Council owned land.
- 3.8.2 The consents will be issued for the duration of a specified event only and will **ordinarily** be to a named individual. Where the application is made by an organisation they must nominate a named individual who will be responsible for managing the use of the consent.
- 3.8.3 The consent holder will be responsible for ensuring compliance with the conditions attached to the consent at all times whilst the consent is being used to facilitate street trading.
- 3.8.4 The consent holder, or in the case of organisations the individual nominated to manage the use of the consent, will be able to allow his/her consent to be used by

commercial or not-for-profit organisations, however, no charge can be made for the use of the consent by not-for-profit organisations.

- 3.8.5 The consent holder will be required to keep records of all traders that use the Council Land Consent including: date, trading location, name and company name (where appropriate), address, vehicle registration and contact telephone number.
- 3.8.6 Any person or organisation may apply for a Council Land Consent, however, in order for a Consent to be granted the Council will require the applicant to obtain a land licence through the Council's Safety Advisory Group.
- 3.8.7 **No separate application will be required for a Council Land Consent provided an application for a land licence has been made. The issuing of a land licence by the Council encompasses a Council Land Consent for the purposes of street trading.**
- 3.8.8 Council Land Consents do not provide exclusive control over trading in the designated area. Traders are still able to apply direct to the Council for an individual consent for that area under paragraph 3.5 above.

3.9 Annual Consents with Quarterly Payments

- 3.9.1 The Council acknowledge that the cost of an annual Consent can sometimes prove prohibitive to new and small street trading businesses, particularly food and drink vendors in lay-bys.
- 3.9.2 To assist such commercial activity the Council will offer the grant of a twelve month Consent, subject to quarterly fee payments in advance.
- 3.9.3 Each Consent will be issued for a **twelve** calendar month period upon the payment of the **initial** quarterly fee. Provided that the subsequent quarterly fees are paid prior to the **due date, the Consent will remain until such time as the total consent period** has reached twelve consecutive calendar months.
- 3.9.4 Once a consent period of twelve consecutive calendar months has been reached, a renewal application will be required which will be subject to the normal consultation process.
- 3.9.5 If the requirements of section 3.9.3 above are not complied with, the annual Consent will automatically cease to have effect, save for exceptional circumstances at the Council's discretion, and no further trading in connection with that Consent will be permitted until such time as a new Consent has been granted.
- 3.9.6 **To ensure continuity of trade, applicants are encouraged to sign a direct debit mandate so that each quarterly payment is made in accordance with section 3.9.3.**

4.0 CONSENT CONDITIONS

- 4.1 Any Street Trading Consent issued by the Council will be subject to the consent conditions detailed in **Appendix E** of this Policy.

- 4.2 In response to changing circumstances, the Council may wish to add, alter or amend the conditions on a trading Consent. Any amendments or variations to Consents or conditions that are requested by consent holders must be made in writing. An administration fee will be charged to the consent holder for any amendments or variations made.
- 4.3 **The Licensing Manager is authorised to add, alter or amend the conditions added to a Consent based on the individual circumstances of each application.**
- 4.4 There is no right of appeal against the Council's decision to refuse to grant, amend, vary **or revoke** a Consent.
- 4.5 In the event of a breach of any of the conditions attached to a Consent, the Head of Housing and Public Protection (**or any other officer to whom this authority has been delegated**) may revoke the consent forthwith. In the event of a revocation, the Council will not be liable to pay any compensation arising from the revocation nor will the Consent Holder be entitled to a refund of any of the Consent fee.
- 4.6 **Prior to the revocation of a Consent, the facts relating to the proposed revocation will be set out by the Council and sent to the consent holder. The consent holder may then submit written representation stating any mitigating circumstances and/or reasoning why the Consent should not be revoked. Any representation submitted by the consent holder will be considered as part of the decision whether or not to revoke the Consent.**

5.0 ENFORCEMENT

- 5.1 It is recognised that well-directed enforcement activity by the Council benefits not only the public but also responsible members of the trade.
- 5.2 In pursuing its objectives of detailed in this Policy, the Council will operate a proportionate enforcement regime in accordance with the Council's Housing and Public Protection Statement of Enforcement Policy and Practice.
- 5.3 The responsibility for the overall supervision of street trading lies with the Head of Housing and Public Protection.

6.0 DEPARTURE FROM POLICY

- 6.1 In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this policy document and the principles set out therein.
- 6.2 Notwithstanding the existence of this Policy, each application or enforcement measure will be considered on its own merits with regard to the licensing objectives. **However it is likely that departures from policy will be restricted to exceptional circumstances, not used to circumvent the reasonable requirements of the Policy.**
- 6.3 **Substantial departure from Policy**
Where it is necessary for the Council to depart substantially from this Policy, clear and compelling reasons for doing so will be given. The Head of Housing and Public Protection may authorise a departure from the Policy in accordance with this section

if he/she considers it necessary in the specific circumstances and will advise Councillors via the Members Information Service (MIS).

6.4 Minor departure from Policy

Where an applicant is able to demonstrate that a minor departure from this Policy, based on the individual circumstances of that application, would still ensure that the policy objectives are achieved, the Licensing Manager may authorise a Consent to be issued.

7.0 FEES AND CHARGES

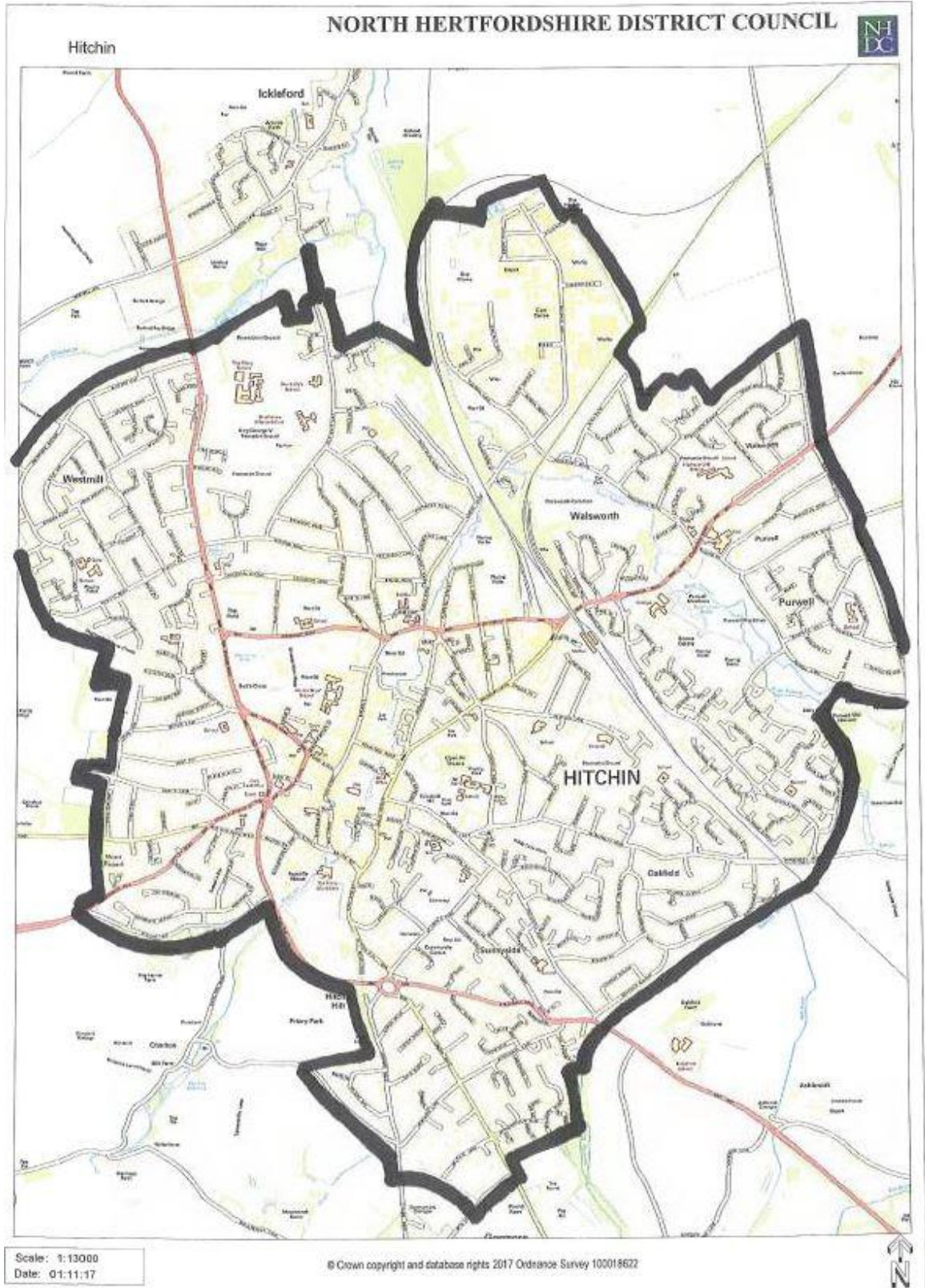
- 7.1 The fees charged by the Council for Consents to trade should cover the reasonable cost of administering and enforcing the service.
- 7.2 The fees will be reviewed at least on an annual basis and published on the Council's website. **The Head of Housing and Public Protection is authorised to set street trading fees on behalf of the Council.**
- 7.3 Should the consent holder wish to vary the Consent at any time during the life of the Consent, an administration fee will be charged. This includes the transfer of a Consent.
- 7.4 Where a trading consent is surrendered during the life of the Consent no refund will be made by the Council
- 7.5 At its absolute discretion the Council may charge different fees for consents that are for different durations or locations, such as a pro rata rate for occasional consents or concessionary consents in certain circumstances.
- 7.6 Not-for-profit organisations will be exempt from application fees.

8.0 DEFINITIONS

TERM	DEFINITION
Authorised Officer	an officer of the Council authorised by it to act in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982.
Consent	a consent to trade on a street granted by the Council, pursuant to Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
Consent Holder	the person or company to whom the consent to trade has been granted by the Council.
Consent Street	means a street in which street trading is prohibited without the consent of the Council
Council	means North Hertfordshire District Council
Head of Housing and Public Protection	the current post holder (or the Head of Service of the appropriate Service Area following any Subsequent restructure), or any nominated Deputy authorised by the Council's Scheme of Delegation
Executive Member for Housing and Environmental Health	the Elected Member responsible for Housing and Public Protection (or the appropriate Service Area following any subsequent restructure), who is a member of Cabinet
Street	includes: any road, footway, beach or other area to which the public have access without payment; and A service area as defined in section 329 of the Highways Act 1980, and also includes any part of a street.
Street Trading	the selling or exposing or offering for sale of any article (including a living thing) in a street.

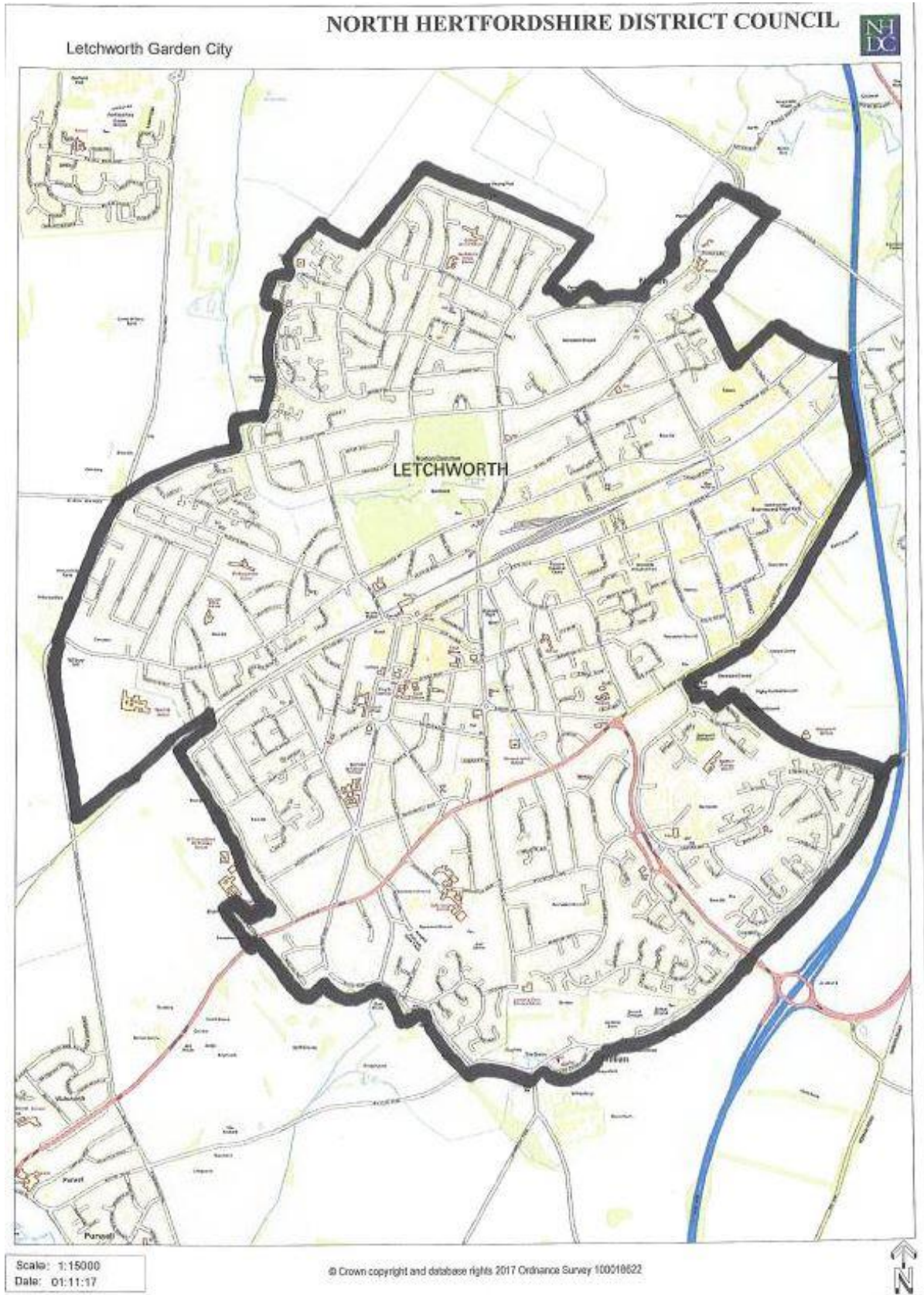
APPENDIX A

CONSENT STREET MAP: HITCHIN



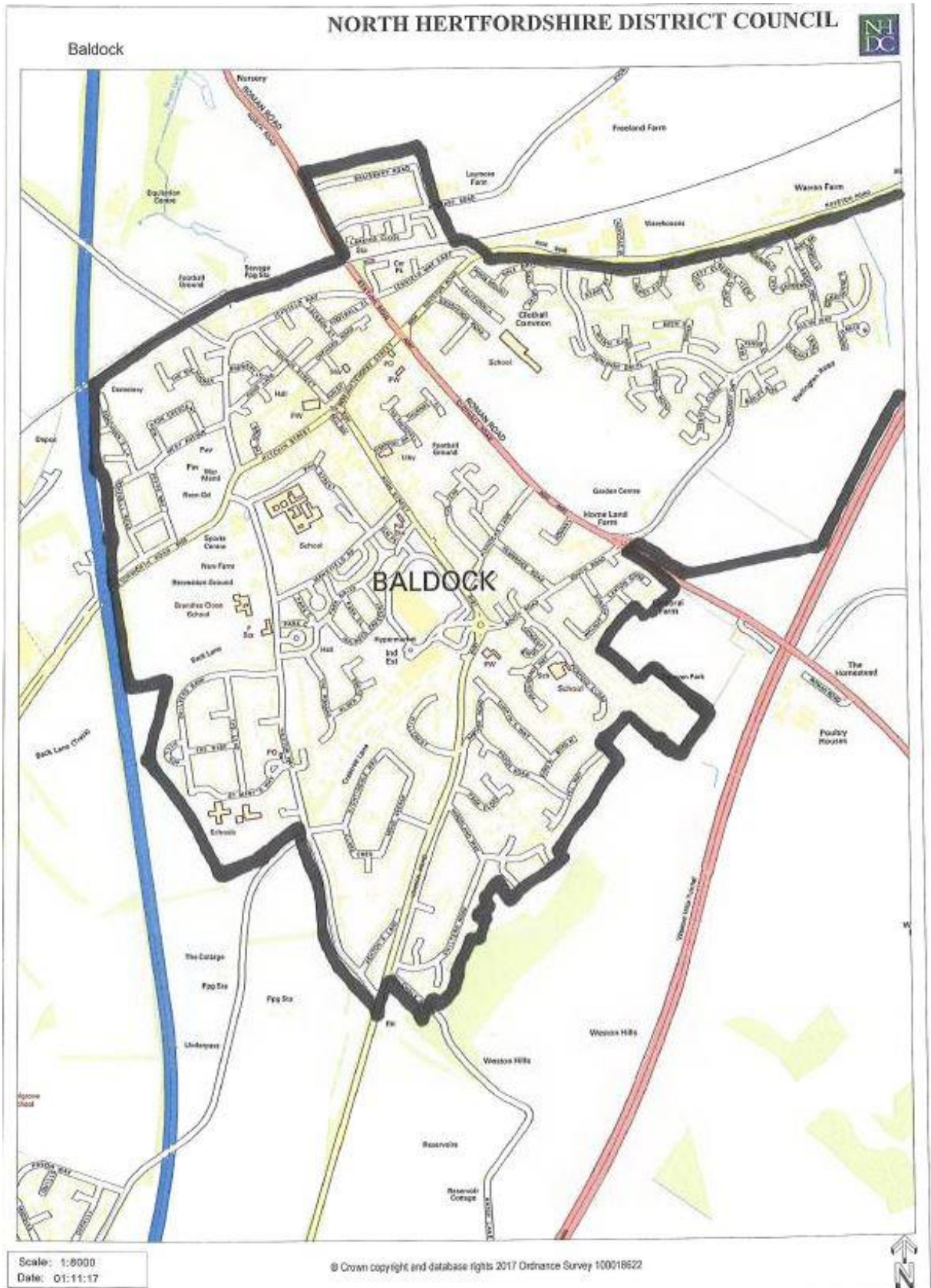
APPENDIX B

CONSENT STREET MAP: LETCHWORTH GARDEN CITY



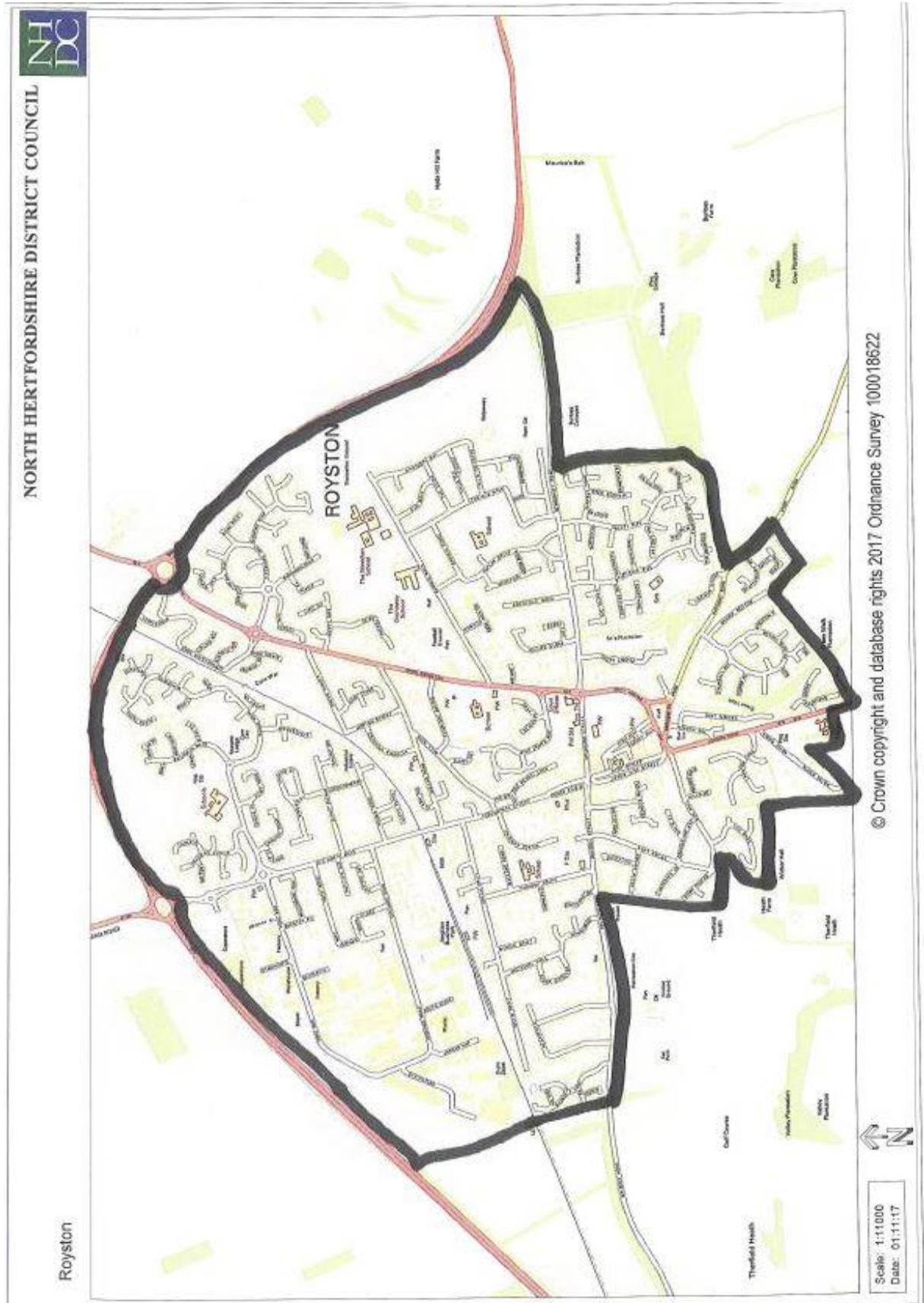
APPENDIX C

CONSENT STREET MAP: BALDOCK



APPENDIX D

CONSENT STREET MAP: ROYSTON



APPENDIX E

STANDARD CONDITIONS APPLICABLE TO STREET TRADING CONSENTS

Standard Conditions applicable to all Consents

1. The Consent granted by the Council is personal to the Consent Holder.
2. The Consent may only be transferred to another person or body with the prior written consent of the Head of Housing and Public Protection.
3. Any van, vehicle, barrow, cart or stall must be maintained in a neat, tidy and safe condition.
4. The Consent Holder shall not use the street for any trading purpose other than the purpose as permitted by the Consent and then only at the specified location during the permitted hours.
5. Unless specified otherwise in the Consent, the van, vehicle, barrow, cart or stall, including any permitted temporary furniture and advertising, shall be removed from the Consent site, **including the street in which the consent site is located**, at the end of each day's trading.
6. Any temporary furniture (for example, tables and chairs at food vending vans) or temporary advertising material (such as 'A' boards or other signage) will only be permitted at, or in the vicinity of, the van, vehicle, barrow, cart or stall if specified on the Consent.
7. The Consent Holder shall ensure that no advertisements relating to the activities permitted by the Consent are placed or affixed to any structures on the highway or highway land (including street furniture, road signs and grass verges). Any advertisement on private land must have permission from the landowner, proof of which must be provided to the Council in writing prior to the advertising being positioned.
8. The Consent Holder shall not cause any obstruction of the street or cause danger to any persons using it and shall not do anything, or permit anything to be done, which, in the opinion of an Authorised Officer of the Council, may be deemed a nuisance or annoyance or danger to any member of the public.
9. The Consent Holder shall not seek to attract attention or custom by shouting or making undue noise or by permitting the playing of music, music re-producing or sound amplification apparatus or any musical instruments, radio or television sets whilst trading under this Consent, other than as specified in the Consent.
10. The Consent Holder shall maintain the area in the vicinity of any van, vehicle, barrow, cart or stall specified within the Consent in a clean and tidy condition at all times **including the removal of all litter associated with the street trading from the immediate vicinity of the consent site, with vicinity being given its ordinary meaning based on the specific location of each consent site.**

11. The Environmental Protection Act 1990 places a duty of care on individuals and businesses to dispose of waste originating from their trade in a certain manner. The Consent Holder shall ensure that refuse originating from their trade is disposed of by a licensed waste carrier and shall leave the site clear of refuse at the completion of each day's trading. No water or waste material shall be discharged on to the highway or any adjacent property.
12. The Council may remove and store or dispose of any furniture, equipment, advertisement or other structure placed on the street by the Consent Holder, or any person acting on behalf of the Consent Holder, that is not authorised by the Consent or has not been authorised in writing by the Council. The Council shall not be responsible to the Consent Holder for the safe keeping of any furniture, equipment, advertisement or other structure and may levy reasonable charges for the removal, storage and/or disposal thereof.
13. A copy of the Consent must be carried by the Consent Holder, or any person acting on behalf of the Consent Holder, at all times whilst trading and must be produced on demand when required by a Police Officer or an Authorised Officer of the Council.
14. The Consent Holder shall display a suitable sign stating his or her name and trade. The sign must be approved in writing by an Authorised Officer of the Council.
15. The Consent Holder and his/her employees or assistants shall wear suitable clothes appertaining to the trading undertaken and maintain a professional appearance at all times.
16. The Consent Holder shall notify the Head of Housing and Public Protection in writing at North Hertfordshire District Council, PO Box 10613, Nottingham, NG6 6DW of any criminal convictions or other legal proceedings arising out of the use or enjoyment of the Consent.
17. The Consent Holder shall carry public liability insurance of not less than £10 million, evidence of which shall be supplied to the Council prior to the grant of the Consent.
18. The Consent Holder must take adequate precautions to prevent the risk of fire at the van, vehicle, barrow, cart or stall. All hot food vendors are required to comply with current fire safety legislation. Where gas cylinders are used, an annual gas safety certificate is required to ensure the safety of all gas cooking and heating equipment.
19. A serviceable fire blanket and foam fire extinguisher shall be provided at all vans, vehicles, barrows, carts or stalls selling hot food.
20. All hot food vans, vehicles, barrows, carts or stalls are required to carry a basic first aid kit. The Consent Holder and hot food vendors should know how to give first aid to treat victims of cuts and burns. All hot food vans, vehicles, barrows, carts or stalls should have access to a minimum of one mobile telephone that must be serviceable at all times whilst trading.
21. In the case of food vending vans, vehicles, barrows, carts, or stalls, at least one person involved in the preparation and sale of food must hold a current Level 2 food safety

certificate accredited by the Chartered Institute of Environmental Health, or an equivalent qualification, and must be present at the site during all trading hours.

22. With the exception of Town Centre Consents, Special Events / Markets Consents and Council Land Consents, the Consent Holder must be the principal trader and have day to day control of the van, vehicle, barrow, cart or stall. The Consent Holder may employ any other person to assist in operating the van, vehicle, barrow, cart or stall and shall notify the Council of the name and address of such persons. Anyone who operates a van, vehicle, barrow, cart or stall other than the Consent Holder must be authorised in writing by the Council. An administrative fee will be payable for such authorisations.
23. The Consent Holder shall permit the Council, or any other statutory body, to have access to the area designated within a Consent at any time without notice for any purpose whatsoever including, but not limited to, carrying out works to the highway or private land, or inspecting the same, or otherwise.
24. The Council may revoke the Consent at any time.
25. The Consent Holder will return the Consent to the Council immediately upon revocation or surrender.
26. In the event of the Consent being surrendered or revoked before the expiry date, no refunds will be given.
27. Upon the termination or revocation of the Consent, the consent holder shall immediately remove the vehicle, barrow, cart, stall or any other associated equipment from the consent site and ensure the consent site is free from any associated litter or other deposits..
28. Any consent holder wishing to sell hot food or drink after 23:00hrs must also hold a valid premises licence issued under the Licensing Act 2003 authorising the sale of late night refreshment at the consent site.
29. The Council may at any time vary these Conditions without notice.

Additional Conditions for Static Pitches

1. Any van, vehicle, barrow, cart or stall shall only be positioned within the designated area as outlined on the plan attached to the Consent.
2. Nothing contained herein shall be construed as the grant or purported grant by the Council of any tenancy protected by the Landlord and Tenant Act 1954, or any permission under the Town and Country Planning Act 1990, or any statutory modification or re-enactment thereof for the time being in force.

Additional Conditions for Static Pitches selling food or displaying animals

1. Any trader selling food must be registered as a food business with the relevant local authority (place where van, vehicle, barrow, cart is stored overnight) and provide

evidence of such registration.

2. Food handlers serving high risk, open foods¹ shall be suitably trained in food hygiene matters to Level 2 in Food Hygiene & Safety.
3. The van, vehicle, barrow, cart or stall must have a means to wash hands hygienically. In practice they must have a suitable wash hand basin supplied with hot and cold potable water, liquid soap and hygienic hand drying facilities.
4. Surfaces in contact with food are to be in a sound condition and be easy to clean and, where necessary, disinfect. This will require the use of smooth, washable, corrosion-resistant and non-toxic materials.
5. Adequate arrangements and/or facilities for the hygienic storage and disposal of hazardous and/or inedible substances and waste (solid and/or liquid) must be available. Used water and waste products must be contained until suitable methods for disposal are available.
6. Traders using portable gas appliances must have a current Gas Safe Certificate from a competent person.
7. Traders that bring live animals capable of E. coli O157 bacteria transmission must provide the following information and obtain consent for the use of said animals prior to the animals being displayed under this Consent.

Additional Conditions for Town Centre Consents

1. The Consent Holder will be responsible for ensuring compliance with all consent conditions at all times when the consent is in use.
2. The Consent Holder may make a reasonable charge for the use of a Town Centre Consent by organisations, businesses or individuals using the Consent for commercial purposes.
3. The Consent Holder may not make any charge for the use of a Town Centre Consent by organisations or individuals using the Consent for registered charitable or not-for-profit purposes.
4. The Consent Holder must keep records of each stallholder that uses the Town Centre Consent, to include:
 - date of use;
 - location of stall and/or pitch number;
 - name and company/organisation name;
 - trader's home address;
 - trader's vehicle registration; and
 - trader's contact telephone number

¹ foods that are ready to eat, perishable and handled, made or assembled by persons staffing the business

5. The Consent Holder must keep records of each stallholder that is refused use of the Town Centre Consent, to include:
 - date of proposed use;
 - location of proposed stall;
 - name and company/organisation name;
 - trader's home address;
 - trader's contact telephone number; and
 - reason for refusal
6. In determining whether or not to allow an individual or organisation the use of a Town Centre Consent, the Consent Holder must make his/her determination in accordance with the principles contained within paragraph 3.4 of the Street Trading Policy.

Additional Conditions for Town Centre Consents or Special Events/Markets
Consents selling food or displaying animals

These conditions relate to regular events (such as weekly markets, other than Charter Markets) and specific events (such as Food Festivals, specialist markets, and other similar supported events).

1. For regular events, the Consent Holder must provide to the Council's Environmental Health Officer, trader information for high risk, open food² traders upon the initial application and renewal of each Consent. New trader information must be received by the Council's Environmental Health Officer before they begin to trade at the regular events unless provided as part of an application for grant or renewal. Information provided to the Council's Environmental Health Officer must include:
 - (a) Name of food trader
 - (b) Registered name of food business
 - (c) Full registered address of food business
 - (d) Food hygiene rating and date awarded
 - (e) Type of food sold
 - (f) Inspecting authority
2. For specific or supported events, the Consent Holder must provide to the Council's Environmental Health Officer, trader information for high risk, open food³ traders no later than four (4) weeks prior to the commencement of the event. Information must include:
 - (a) Name of food trader
 - (b) Registered name of food business
 - (c) Full registered address of food business
 - (d) Food hygiene rating and date awarded
 - (e) Type of food sold
 - (f) Inspecting authority

² foods that are ready to eat, perishable and handled, made or assembled by persons staffing the business

³ foods that are ready to eat, perishable and handled, made or assembled by persons staffing the business

Where high-risk, open food traders⁴ intend to trade using a Town Centre or Special Events/Markets Consent, but register less than four (4) weeks prior to the event, the trader must provide the required information immediately upon receipt of registration.

3. Traders that bring live animals capable of E. coli 0157 bacteria transmission, these traders must provide the Consent Holder with the following information:
 - (a) Name of trader
 - (b) Trading name of business
 - (c) Full address of business
 - (d) Suitable and sufficient risk assessment that manages E. coli 0157 hazard

Before permitting the use of live animals at an event utilising a Consent, the Consent Holder must assess the controls in the risk assessment and determine their suitability. Through the course of the event, the Consent Holder must ensure that the control measures in the risk assessment are implemented.

All information required to comply with this condition must be provided to the Council's Environmental Health Officer via env.health@north-herts.gov.uk no later than four (4) weeks prior to animals being provided at events utilising a Consent.

4. Whilst traders operate in accordance with a Town Centre or Special Events/Markets Consent, the Consent Holder must ensure that traders serving high-risk, open food⁵ and/or displaying live animals must:
 - (a) Have a means to wash hands hygienically. In practice, they must have a suitable wash hand basin supplied with hot and cold potable water, soap and hygienic hand drying facilities. Where traders are not able to ensure person hygiene through the provision of adequate hand wash facilities, the Consent Holder must take steps to stop the trader from operating
 - (b) Have adequate arrangements and/or facilities for the hygienic storage and disposal of hazardous and/or inedible substances and waste (solid and liquid) to be available. Used water and waste products must be contained until suitable methods for disposal are available.
5. Traders using portable gas appliances must have a current Gas Safe Certificate from a competent person.

Additional Conditions for Special Events / Markets Consents

1. The Consent Holder will be responsible for ensuring compliance with all consent conditions at all times when the consent is in use.
2. The Consent Holder may make a reasonable charge for the use of a Special Event / Market Consent by organisations, businesses or individuals using the Consent for commercial purposes.

⁴ foods that are ready to eat, perishable and handled, made or assembled by persons staffing the business

⁵ foods that are ready to eat, perishable and handled, made or assembled by persons staffing the business

3. The Consent Holder may not make any charge for the use of a Special Event / Market Consent by organisations or individuals using the Consent for registered charitable or not-for-profit purposes.
4. The Consent Holder must keep records of each stallholder that uses the Special Event / Market Consent, to include:
 - date of use;
 - location of stall and/or pitch number;
 - name and company/organisation name;
 - trader's home address;
 - trader's vehicle registration; and
 - trader's contact telephone number

Additional Conditions for Council Land Consents

1. The Consent Holder will be responsible for ensuring compliance with all consent conditions at all times when the consent is in use.
2. The Consent Holder may make a reasonable charge for the use of a Council Land Consent by organisations, businesses or individuals using the Consent for commercial purposes.
3. The Consent Holder may not make any charge for the use of a Council Land Consent by organisations or individuals using the Consent for registered charitable or not-for-profit purposes.
4. The Consent Holder must keep records of each stallholder that uses the Council Land Consent, to include:
 - date of use;
 - location of stall and/or pitch number;
 - name and company/organisation name;
 - trader's home address;
 - trader's vehicle registration; and
 - trader's contact telephone number

APPENDIX F

SCHEDULE OF STREETS, OR PARTS OF STREETS, WHERE CONSENT PERMIT APPLICATIONS WILL ORDINARILY BE REFUSED

1.0 Baldock

- (i) Old slip road off South Road at the roundabout with London Road

2.0 Hitchin

None

3.0 Letchworth Garden City

- (i) Arena Parade
- (ii) Gernon Road
- (iii) Station Road
- (iv) A505 (Letchworth Gate) from the junction with the A1 (Junction 9) to the junction with the A505 (Pixmore Way / Baldock Road roundabout)
- (v) Norton Way South between the junctions with Gernon Road and Station Road
- (vi) Rushby Mead between the junctions with Birdshill and Hillshott

4.0 Royston

None

5.0 Arterial Roads

- (i) All arterial roads with the exception of designated lay-bys **with raised kerbing separating the lay-by from the carriageway (see Appendix G).**

APPENDIX G

ACCEPTABLE LAY-BY LAYOUT FOR TRADING ADJACENT TO AN ARTERIAL ROAD

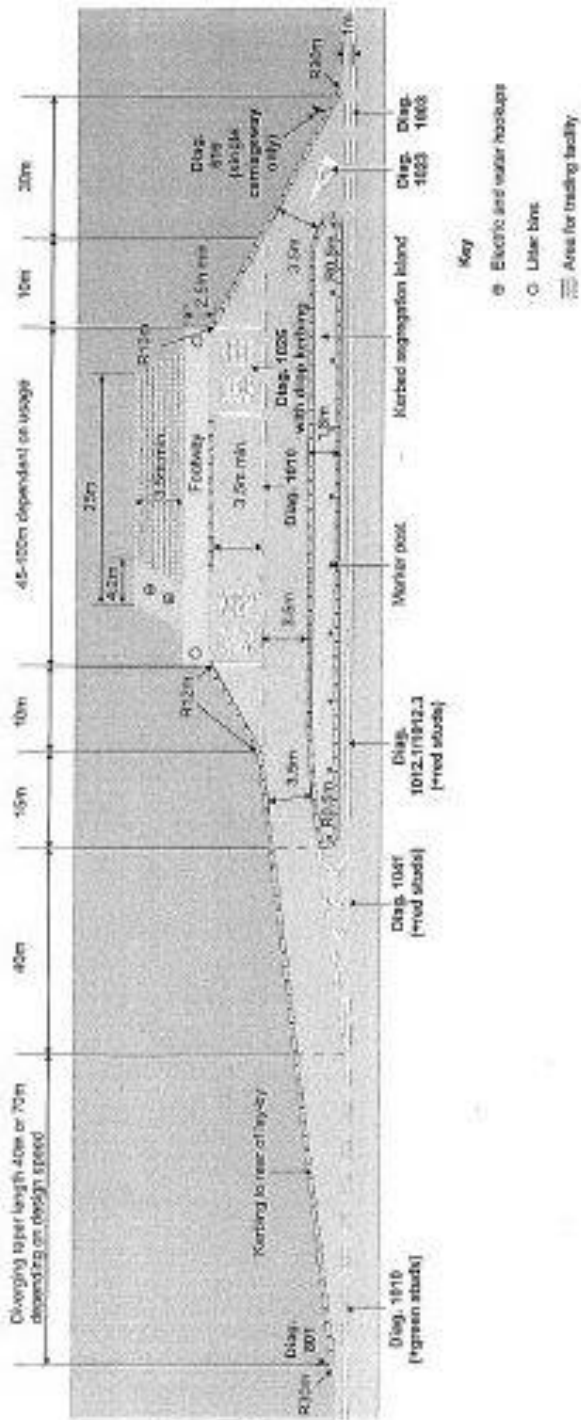


Figure 4/4: Geometric Layout of Type A lay-by with Trading Facility

**LICENSING AND APPEALS COMMITTEE
28 NOVEMBER 2017**

PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

8

TITLE OF REPORT: CONSIDERATION OF AMENDMENTS TO THE STREET COLLECTIONS POLICY

REPORT OF THE HEAD OF HOUSING AND PUBLIC PROTECTION
EXECUTIVE MEMBER: HOUSING AND ENVIRONMENTAL HEALTH
COUNCIL PRIORITY: PROSPER AND PROTECT

1. EXECUTIVE SUMMARY

- 1.1 Licensing of street collections, whilst governed by national legislation, provides for local discretion. Having a clear and transparent policy will assist applicants' understanding of the process and facilitate consistent decision-making by the Council.
- 1.2 Any Council Policy should be kept under review to ensure it remains fit for purpose therefore a public consultation was recently undertaken in respect of some minor amendments to the existing Policy.
- 1.3 This report seeks Members' approval of amendments to the existing Policy.

2. RECOMMENDATIONS

- 2.1 That the Committee:
 - (i) Consider the results of the public consultation and support the policy amendments;
 - (ii) Determine that the proposed amendments are minor in so far as they do not amend the licensing principles or main focus of the existing Policy;
 - (iii) Recommend that the Executive Member for Housing and Environmental Health approves the policy amendments under delegated powers;

3. REASONS FOR RECOMMENDATIONS

- 3.1 The existing policy has worked well since its adoption with effect from 2 April 2012 therefore no significant amendments were deemed necessary. The Executive Member for Housing and Environmental Health approved some previous minor amendments to the Policy on 2 November 2015.
- 3.2 No responses were received from the public consultation.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 No alternative options were considered as the existing Policy, as previously amended by the Executive Member for Housing and Environmental Health, has worked well to date.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The proposed amendments to the existing policy were highlighted in red and publicised on a specific licensing consultation webpage on the Council's website.
- 5.2 The Executive Member for Housing and Environmental Health was consulted throughout the process.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on 22 August 2017.

7. BACKGROUND

- 7.1 The Police, Factories, etc. (Miscellaneous Provisions) Act 1916, as amended by the Local Government Act 1972, requires all collections of money, or sales of articles, in a street or public place, for the benefit of charitable or other purposes, to be regulated by local authorities. The legislation is not adoptive and applies automatically in each local authority area.
- 7.2 The Act defines a street as *"any highway and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not"*.
- 7.3 Whilst not defined in the Act, case law has defined public place as *"a place where the public has access"*. No right of access need apply, only the ability to obtain access.
- 7.4 It is often assumed that collections can be held in shop doorways or car parks without a permit because they are being held on privately owned land and so do not constitute a street or public place. This is not the case as the legislation does not mention the ownership of the land or treat collections on privately owned land as exempt from the regulations. Indeed a street or public place could be indoors in certain circumstances, for example the communal area of a shopping arcade or shopping centre. Equally, a public place could be a private supermarket car park.
- 7.5 For clarity, however, collections taking place within shop premises by means of a static collecting box do not fall within the remit of street collections.
- 7.6 In order to fall within the remit of this legislation, the collection of money or sale of articles must be for the benefit of 'charitable or other purposes'. In the absence of a definition of this term in the Act, it follows that the definition given in the House to House Collections Act 1939 would apply, that is *"any charitable, benevolent or philanthropic purpose, whether or not the purpose is charitable within the meaning of any rule of law"*. Any sale of articles in the street or a public place for private gain would fall within the remit of street trading legislation.

- 7.7 The purpose of the legislation is to ensure that collectors are properly authorised, that the collections do not cause a nuisance to the public, that donations are receipted and stored in a secure way, and that the total proceeds are properly accounted for and forwarded to the appropriate charitable organisation.
- 7.8 Unless persons who wish to undertake charitable street collections hold a permit from the local authority, it is an offence for any person to undertake such a collection. Equally, it is an offence if a collector undertakes a collection under a permit but fails to comply with the street collections regulations as prescribed.
- 7.9 Section 5 of the Act allows a local authority to prescribe regulations providing that it follows a set procedure and obtains approval from the Secretary of State. On 15th February 1974, the Secretary of State published The Charitable Collections (Transitional Provisions) Order 1974 which contained Model Street Collection Regulations that local authorities could choose to adopt which, if adopted, constituted approved regulations under Section 5 of the Act.
- 7.10 On 21 March 1974 the Council formally adopted the Model Street Collection Regulations which have applied to all street collection permits issued by the Council since their adoption.
- 7.11 There is no right of appeal through the courts against the refusal to grant, or revocation of, a permit. That said, any decision must be reasonable as any decision would be subject to a complaint to the Local Government Ombudsman or challenge through a judicial review.

8. RELEVANT CONSIDERATIONS

- 8.1 To assist the Committee with their deliberations, every proposed amendment is highlighted in red in the proposed Policy attached as Appendix A.

Policy Duration

- 8.2 In order to ensure that a policy is reviewed periodically, historically each policy has included the date by when it should be reviewed. If this date is passed, the Policy doesn't lapse but is at risk of challenge for not being kept under review.
- 8.3 A fixed term policy could be considered inappropriate particularly with ever-changing legislative or local requirements. A policy should be kept under regular review with the ability to amend or re-consult where necessary. As policy is a matter for Members, it is felt that the Executive Member for Housing and Environmental Health is best placed to determine when a policy should be amended or reviewed.
- 8.4 The Policy therefore has no fixed duration but will be kept under periodic review by the Executive Member who will have the authority to amend, approve for continuation or require a full consultation prior to a new policy being considered by Cabinet.

Period of Notice for Applications

- 8.5 The existing Policy reflects the Model Street Collection Regulations and requires an application to be served with a minimum of twenty-eight days notice prior to the intended collection. In practice, this period of notice is in excess of that reasonably needed by the Council to process the application and has served to preclude some worthwhile collections within the district.

- 8.6 The proposed Policy includes an amendment reducing the period of notice from twenty-eight days to fourteen days which gives the Council sufficient time to process the application whilst allowing greater flexibility for applicants.
- 8.7 Additionally, there may be occasions such as a national emergency or an unforeseen urgent local charitable need where fourteen days notice may preclude much needed charitable assistance. The proposed Policy therefore includes a reduced notice period of seven days for exceptional circumstances at the discretion of the licensing manager so that genuine emergencies can be accommodated.

Clarification

- 8.8 Since the adoption of the Street Collection Policy, a number of minor administrative issues have arisen whereby some clarification of the wording of the Policy was necessary. The main area for clarification has been the process for determining a departure from policy. This clarification has been included within the amended Policy.
- 8.9 Clarification has been included to make clear that departures from policy are not intended to circumvent the adopted requirements but are reserved for genuine circumstances that members may not have considered as part of the adoption of the Policy or any subsequent amendments.
- 8.10 Additionally, the Policy provides for minor departures from Policy to be granted by the licensing manager.

Definition of Minor Amendments

- 8.11 The Council's Constitution reserves "*to prepare and agree to implement policies and strategies other than those reserved to Council*" for Cabinet and all new licensing policies, other than those reserved to Council, have been referred to Cabinet for adoption. Once a policy has been adopted by Cabinet, an Executive Member has the authority for "*making minor amendments to adopted strategies, policies and procedures*".
- 8.12 The Constitution is however silent on the definition of a minor amendment therefore a definition can be sought from the existing adopted Policy. The current Policy adopted by Cabinet included a section entitled "Amendments to Policy". Within that section, a *substantial amendment* was defined as one that is likely to have:
- (i) *a significant financial effect on permit holders; or*
 - (ii) *a significant procedural effect on permit holders; or*
 - (iii) *a significant effect on the community.*

The Policy then clarifies that a minor amendment is defined as any amendment that does not fall within the scope of a *substantial amendment* and:

"Any minor amendments to this Policy may be authorised by the Executive Member for Housing and Environmental Health"

In the absence of a definition of minor in the Constitution, the existing Policy can be considered an indication of Cabinet's interpretation of minor when considering the initial adoption of the Policy.

- 8.13 It is suggested that none of the proposed amendments fall within the scope of the *substantial amendment* definition therefore are classified as minor amendments that can be made by the Executive Member. This is further supported by the fact that the four licensing objectives of the Policy remain unchanged.
- 8.14 If the Committee support the contention that the amendments to the existing Policy are minor then the amendments can be authorised by the Executive Member. If however the Committee believe the amendments are not minor and, in effect, a new Policy should be adopted then the proposed Policy should be referred to Cabinet.

9. LEGAL IMPLICATIONS

- 9.1 By virtue of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, adoption of a local policy in respect of street collection regulation is a matter for the Council's Executive.
- 9.2 The Licensing and Appeals Committee's terms of reference within the Council's Constitution includes at section 8.2.3:

"to consider all Licensing matters with the exception of the statements of licensing policy under the Licensing Act 2003 and the Gambling Act 2005 and those matters delegated to the Licensing Sub-Committee and the Strategic Director of Planning, Housing and Enterprise."

The Committee's role therefore is to consider the draft policy in light of the public consultation and decide whether to make a recommendation to the Executive in respect of adopting the proposed amendments.

As part of that consideration, the Committee should determine whether or not the proposed amendments should be considered 'minor amendments' that could be dealt with by the Executive Member under delegated powers.

In the absence of a definition of 'minor' within the Constitution, the Committee should have regard to the definition of 'minor amendment' within the existing adopted policy.

- 9.3 If the Committee determine that the proposed amendments are 'minor', section 14.8.1(l) of the Constitution states that an Executive Member has authority for:

"making minor amendments to adopted strategies, policies and procedures."

- 9.4 If the Committee determine that the proposed amendments are not 'minor' based on the definition included within the existing adopted policy then authority for adopting a new policy falls with Cabinet by virtue of section 5.6.1 of the Constitution that includes within the terms of reference for Cabinet:

"to prepare and agree to implement policies and strategies other than those reserved to Council."

10. FINANCIAL IMPLICATIONS

- 10.1 The amended policy would have no additional financial implications for the Council. No fee can be charged for administering this process and the proposed amendments to the Policy place no additional financial burden on the Council.

11. RISK IMPLICATIONS

- 11.1 The risk to the Council of not periodically reviewing and amending policy is that the Policy may become outdated and no longer fit for purpose. Given that the Policy is a fundamental element of consistent decision making, a policy that was not fit for purpose would increase the risk of judicial challenge.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 The proposed Policy does not place any barriers or unique requirements on any person on the grounds of ethnicity, gender, religion or any other protected characteristic. Officers work with all applicants and consent holders, where appropriate, to ensure that the Council's duty under the Equality Act 2010 is met, for example, guidance notes could be provided in other languages upon request.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and "go local" policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 The policy will not place any new human resource implications on the Council.

15. APPENDICES

- 15.1 Appendix A - Proposed Street Collection Policy including amendments.

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17. BACKGROUND PAPERS

17.1 [The Police, Factories, etc. \(Miscellaneous Provisions\) Act 1916](#)

17.2 [Existing Street Collection Policy](#)

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Street Collections Licensing Policy

Effective from: 1st January 2018

Contents

	Section	Page(s)
1	Introduction	2 - 3
2	Applications for a Street Collection Permit	3 - 4
3	Regulations Pertaining to Street Collections in North Hertfordshire	4 - 5
4	Enforcement	5
5	Departure from Policy	5
6	Fees and Charges	5 - 6
7	Definitions	6

Appendices

A	Regulations made by North Hertfordshire District Council with regard to Street Collections	7 – 9
B	List of specific pitches	10
C	Form of Statement	11

1.0 INTRODUCTION

1.1 This document states North Hertfordshire District Council's policy on the regulation of Street Collections. District Councils, and other specified authorities, may make regulations in respect of Street Collections by virtue of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916, as amended by the Local Government Act 1972.

1.2 The Objectives of this Policy

1.2.1 This Policy has been adopted with view to securing the following objectives:

- (i) To enhance the towns centres of Baldock, Hitchin, Letchworth Garden City, and Royston;
- (ii) To ensure that promoters and collectors are properly authorised;
- (iii) To ensure that the money collected is done so in a secure way and the total proceeds collected are properly accounted for; and
- (iv) To minimise nuisance to residents and visitors to the District of North Hertfordshire

1.3 The Law

1.3.1 It is unlawful in the United Kingdom to collect money or sell articles, for the benefit of charitable or other philanthropic purposes, on any street or public place other than in accordance with regulations made by a local authority such as North Hertfordshire District Council.

1.3.2 A 'street' is defined as '*any highway and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not*'.

1.3.3 A 'public place' is defined as a '*place where the public has access*'.

1.3.4 It is often assumed that collections can be held in shop doorways or car parks without a permit because they are being held on privately owned land and so do not constitute a street or public place. This is not the case as the legislation does not mention the ownership of the land or treat collections on privately owned land as exempt from the regulations. Indeed a street or public place could be indoors, for example the communal area of a shopping arcade or shopping centre.

1.3.5 Local authorities issue Street Collection Permits under Section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916, as amended by the Local Government Act 1972. This type of licence does not attract an application fee but typically councils impose the following types of restrictions:

- (i) Street collections are usually to be made by charities only;
- (ii) Collections are to take place in town centres only;
- (iii) Money is to be collected in appropriate vessels only; and
- (iv) The person organising the collection is required, after it has taken place, to make a statement to the licensing authority as regards the sums received.

1.3.6 The purpose of these restrictions is to ensure that collectors are properly authorised, that donations are receipted and stored in a secure way, and that the total proceeds are properly accounted for. Additionally, councils often impose limitations on how many Street Collection Permits will be granted for a specific area at any one time. This is to prevent collections from becoming a public nuisance.

1.4 Policy Duration

1.4.1 This Policy will take effect from 1 January 2018 and will be kept under review and amended as and when necessary to reflect changes in legislation, case law, statutory guidance and best practice.

1.4.2 Administrative amendments to this Policy, required by virtue of legislative changes, revised statutory guidance or a Council restructure, may be made by the Licensing Manager. Amendments under this section are restricted to those required to accurately reflect the current legal or administrative position rather than amendments that change the focus of local policy.

1.4.3 The Policy will be periodically reviewed to ensure it remains fit-for-purpose and either amend where necessary or approved for continuation by the Executive Member for Housing and Environmental Health, save for subsection 1.4.4.

1.4.4 In the event of any significant amendment to the Policy, a full public consultation will be undertaken prior to consideration by the Licensing and Appeals Committee who will make a recommendation for consideration by Cabinet.

For the purpose of this section, a significant amendment is defined as one that:

- (i) will have significant financial impact on applicants, licence holders or the public;
- (ii) will have a significant procedural impact on applicants, licence holders or the public; or
- (iii) may not be perceived by the trade or the public to be consistent with the policy objectives set out in section 1.2 above.

2.0 APPLICATIONS FOR A STREET COLLECTION PERMIT

2.1 Advice for New Applicants

2.1.1 New applicants are advised to contact the Council at their earliest opportunity, preferably before an application is made. This allows the authorised officers to provide advice, as well as clarifying any areas of uncertainty.

2.2 Applications

2.2.1 All applications must be made on the Council's prescribed application form and can be made either electronically or by hard copy.

2.2.2 Applications must be received at least **fourteen (14) days** before the requested collection date. In **exceptional** circumstances such as a national emergency or the unforeseen urgent need of a local charity, an application may be accepted with only **seven (7) days** notice at the discretion of the Licensing Manager.

- 2.2.3 The application form will need to include the location from which they would like the collector(s) to be located (including an alternative in the case of a collection already being authorised in that location) during the date/time of the collection and the number of collectors to be used. The locations for the allocated collection points can be found at **Appendix B** to this policy.

2.3 Processing of an Application

- 2.3.1 On receipt of the application form, an acknowledgment will be sent to the applicant. Once the application has been determined, the applicant will either receive a permit or a letter explaining the reason why the application has been refused.
- 2.3.2 If you make your application electronically, tacit consent will apply. If a valid electronic application is received and not determined within a specified period, the application will be deemed to be granted. Further details of tacit consent and timescales are available on the Council's website.
- 2.3.3 The permit issued will designate the area that the permit applies to and the number of collectors permitted for the duration of the collection period.

2.4 Key Considerations

- 2.4.1 In addition to the requirements of the Regulations contained with **Appendix A**, the Council has the following policy regarding the grant of Street Collection Permits:
- (i) The Council will grant Street Collection Permits only in respect of the town centres of Baldock, Hitchin, Letchworth Garden City, and Royston.
 - (ii) A maximum of two (2) Street Collection Permits will be granted in the same town centre on the same date.
 - (iii) Collections will ordinarily be expected to take place between the hours of 10:00hrs and 18:00hrs.
 - (iv) The use of animals in conjunction with street collections will not ordinarily be permitted, however, consideration will be given to the use of animals on request where integral to the charitable organisation (for example, guide dogs when collecting for Guide Dogs for the Blind).
 - (v) Deductions for travel expenses to and from the place of collection are not ordinarily allowed.
 - (vi) Moving collections, such as carnival processions and other similar events, which involve collecting from the public along a route, will require a Street Collection Permit. These permits, however, may be granted in addition to those specified in sub-paragraphs 2.4.1 (i) and 2.4.1 (ii) above.

3.0 REGULATIONS PERTAINING TO STREET COLLECTIONS IN NORTH HERTFORDSHIRE

- 3.1 On 21st March 1974, North Hertfordshire District Council adopted the Model Street Collection Regulations made under The Charitable Collections (Transitional Provisions) Order 1974. Paragraph 5 of this Order provided for the Model Street Collection Regulations, if adopted, to be deemed to be street collection regulations

made under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916.

3.2 Having reviewed the Model Street Collection Regulations adopted on 21st March 1974, the Council are satisfied that they are still relevant and appropriate for street collections in North Hertfordshire.

3.3 The Model Street Collection Regulations, applicable to all Street Collection Permits issued by North Hertfordshire District Council, are presented in **Appendix A**.

4.0 ENFORCEMENT

4.1 It is recognised that well-directed enforcement activity by the Council benefits not only the public but also responsible permit holders.

4.2 In pursuing its objectives as detailed in this Policy, the Council will operate a proportionate enforcement regime in accordance with the Council's Housing and Public Protection Statement of Enforcement Policy and Practice.

5.0 DEPARTURE FROM POLICY

5.1 In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this policy document and the objectives set out therein.

5.2 Notwithstanding the existence of this Policy, each application or enforcement measure will be considered on its own merits with regard to the licensing objectives. **However, it is likely that departures from policy will be restricted to exceptional circumstances, not used to circumvent the reasonable requirements of the Policy.**

5.3 Substantial departure from Policy

Where it is necessary for the Council to depart substantially from this Policy, clear and compelling reasons for doing so must be given. The Head of Housing and Public Protection may authorise a departure from the Policy in accordance with this section if he/she considers it necessary in the specific circumstances and will advise Councillors of such decisions via the Members Information Service (MIS).

5.4 Minor departure from Policy

Where an applicant is able to demonstrate that a minor departure from this Policy, based on the individual circumstances of that application, would still ensure that the policy objectives are achieved, the Licensing Manager may authorise a licence to be issued.

6.0 FEES AND CHARGES

6.1 North Hertfordshire District Council makes no charge for the processing of a Street Collection Permit.

6.2 The Council will, however, make a nominal charge for the production of replacement Permits.

7.0 DEFINITIONS

TERM	DEFINITION
Authorised Officer	An officer of the Council authorised by it to act in accordance with the provisions of the Police, Factories, etc (Miscellaneous Provisions) Act 1916.
collection or street collection	A collection of money or a sale of articles for the benefit of charitable or other philanthropic purposes.
Head of Housing and Public Protection	the current post holder (or the Head of Service of the appropriate Service Area following any Subsequent restructure), or any nominated Deputy authorised by the Council's Scheme of Delegation
Executive Member for Housing and Environmental Health	the Elected Member responsible for Housing and Public Protection (or the appropriate Service Area following any subsequent restructure), who is a member of Cabinet
public place	a place where the public has access, including private land and indoor communal areas of shopping centres, arcades, etc
street	any highway and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not
the Council	North Hertfordshire District Council

APPENDIX A

REGULATIONS MADE BY NORTH HERTFORDSHIRE DISTRICT COUNCIL WITH REGARD TO STREET COLLECTIONS

In pursuance of Section 5 of the Police, Factories etc. (Miscellaneous Provisions) Act 1916, as amended by Section 251 and Schedule 29 to the Local Government Act 1972, the North Hertfordshire District Council (hereinafter referred to as "the Council") hereby make the following Regulations with respect to the places where and the conditions under which persons may be permitted in any street or public place within the District of North Hertfordshire to collect money or sell articles for the benefit of charitable or other purposes.

1. In these Regulations, unless the context otherwise requires:

'collection' means a collection of money or a sale of articles for the benefit of charitable or other purposes and the word 'collector' shall be construed accordingly;

'promoter' means a person who causes others to act as collectors;

'the licensing authority' means North Hertfordshire District Council;

'permit' means a permit for a collection;

'contributor' means a person who contributes to a collection and includes a purchaser of articles for sale for the benefit of charitable or other purposes;

'collecting box' means a box or other receptacle for the reception of money from contributors.

2. No collection, other than a collection taken at a meeting in the open air, shall be made in any street or public place within the District of North Hertfordshire unless a promoter shall have obtained from the licensing authority a permit.
3. Application for a permit shall be made in writing not later than **fourteen (14) days** before the date on which it is proposed to make the collection, provided that the licensing authority may reduce said period if satisfied that there are exceptional reasons for doing so.
4. No collection shall be made except upon the day and between the hours stated in the permit.
5. The licensing authority may, in granting a permit, limit the collection to such streets or public places or such parts thereof as it thinks fit.
6.
 - (1) No person may assist or take part in any collection without the written authority of a promoter.
 - (2) Any person authorised under paragraph (1) above shall produce such written authority forthwith for inspection on being requested to do so by a duly authorised officer of the licensing authority or any constable.

7. No collection shall be made in any part of the carriage way of any street which has a footway provided that the licensing authority may, if it thinks fit, allow a collection to take place on the said carriage way where such collection has been authorised to be held in connection with a procession.
8. No collection shall be made in a manner likely to inconvenience or annoy any person.
9. No collector shall importune any person to the annoyance of such person.
10. While collecting:
 - (a) a collector shall remain stationary; and
 - (b) a collector or two collectors together shall not be nearer to another collector than 25 metres:

Provided that the licensing authority may, if it thinks fit, waive the requirements of this Regulation in respect of a collection which has been authorised to be held in connection with a procession.

11. No promoter, collector or person who is otherwise connected with a collection shall permit a person under the age of sixteen years to act as a collector.
12.
 - (1) Every collector shall carry a collecting box.
 - (2) All collecting boxes shall be numbered consecutively and shall be securely closed and sealed in such a way as to prevent them from being opened without the seal being broken
 - (3) All money received by a collector from contributors shall immediately be placed in a collecting box.
 - (4) Every collector shall deliver, unopened, all collecting boxes in his possession to a promoter.
13. A collector shall not carry or use any collecting box, receptacle or tray which does not bear displayed prominently thereon the name of the charity or fund which is to benefit nor any collecting box which is not duly numbered.
14.
 - (1) Subject to paragraph (2) below a collecting box shall be opened in the presence of a promoter and another responsible person.
 - (2) Where a collecting box is delivered, unopened, to a bank, it may be opened by an official of the bank
 - (3) As soon as a collecting box has been opened, the person opening it shall count the contents and shall enter the amount with the number of the collecting box on a list which shall be certified by that person.
15.
 - (1) No payment shall be made to any collector
 - (2) No payment shall be made out of the proceeds of a collection, either directly or indirectly, to any other person connected with the promotion or conduct of such collection for, or in respect of, services connected therewith, except such payments as may have been approved by the licensing authority.
16.
 - (1) Within one month after the date of any collection the person to whom a permit has been granted shall forward to the licensing authority:

- (a) a statement in the form set out in Appendix C, or in a form to the like effect, showing the amount received and the expenses and payments incurred in connection with such collection, and certified by that person and a qualified accountant;
- (b) a list of the collectors;
- (c) a list of the amounts contained in each collecting box;

and shall, if required by the licensing authority, satisfy it as to the proper application of the proceeds of the collection.

- (2) The said person shall also, within the same period, at the expense of that person and after a qualified accountant has given his certificate under paragraph (1)(a) above, publish in such newspaper or newspapers as the licensing authority may direct a statement showing the name of the person to whom the permit was granted, the area to which the permit relates, the name of the charity or fund to benefit, the date of the collection, the amount collected and the amount of the expenses and payments incurred in connection with such collection.
- (3) The licensing authority may, if satisfied that there are special reasons for so doing extend the period of one month referred to in paragraph (1) above.
- (4) For the purposes of this Regulation 'a qualified accountant' means a member of one or more of the following bodies:

- the Institute of Chartered Accountants in England and Wales;
- the Institute of Chartered Accountants of Scotland
- the Association of Certified Accountants;
- the Institute of Chartered Accountants in Ireland.

17. These Regulations shall not apply:

- (a) in respect of collection taken at a meeting in the open air; or
- (b) to the selling of articles in any street or public place when such articles are sold in the ordinary course of trade.

18. Any person who acts in contravention of any of the foregoing regulations shall be liable on summary conviction to a fine not exceeding [level 1 on the standard scale]¹.

¹ Words substituted by Criminal Justice Act 1998 c.33 Pt V s.55 (October 12, 1988 as SI 1988/1676)

APPENDIX B

ALLOCATED COLLECTION SITES

Baldock

Outside of Baldock Community Centre
In front of the War Memorial
Outside of Days in the High Street
Outside of Tesco
Outside of the Methodist Church in Whitehorse Street
At the High Street Farmers' Market (2nd Saturday of every month only)
At the High Street Market (Wednesdays only)

Hitchin

Outside of Sainsbury's
Outside of Waitrose
Outside of Wilkinson's
Outside of Marks & Spencer
Outside of NatWest
Outside of the bakery in Church Yard
Outside of St Mary's Church entrances in Church Yard
At the junction of Churchgate and Market Place
At the junction of The Arcade and the High Street
Outside of Poundland on the High Street

Letchworth Garden City (Town Centre)

On the Broadway between Morrison's and Arena Parade
Outside of Sainsbury's on Eastcheap
Outside of Alders on Eastcheap
Outside of The Platform on Station Road
Outside of HSBC on Station Road
Outside of The Gallery on Station Road
At the entrance to The Arcade on Station Road
Outside of W H Smith on Leys Avenue
Outside of the Butchers Shop on Leys Avenue
Outside of the National Spiritual Church on Leys Avenue

Letchworth Garden City (Garden Square Shopping Centre)

At the junction of Central Approach and Eastcheap
Outside of Poundland
Outside of Halifax on Commerce Way

Royston

On Angel Pavement
Outside of Store 21 on the High Street
Outside of The Jolly Postie on The Cross
In Fish Hill Square
In the Market Place
Outside of Morrison's
Outside of Tesco Extra (Tesco Metro at Market Hill is not suitable for collections)

APPENDIX C

FORM OF STATEMENT

Name of the person to whom the permit was granted:

Address of the person to whom the permit was granted:

Name of charity or fund which is to benefit:

Date of collection: _____

Proceeds of Collection		Expenses and Application of Proceeds	
	£ p		£ p
From collecting boxes:		Printing & stationery	
.....		Postage	
.....		Advertising	
.....		Collecting boxes	
.....		Badges	
.....		Emblems	
.....		Other items:	
.....		
.....		
Interest on proceeds:		Payment approved under Regulation	
.....		15(2)	
Other items:		Disposal of Balance:	
.....		(insert particulars)	
.....			
.....			
Total		Total	

CERTIFICATE OF THE PERSON TO WHOM THE PERMIT WAS GRANTED

I certify that to the best of my knowledge and belief the above is a true account of the proceeds, expenses and application of the proceeds of the collection.

Date: (Signed)

CERTIFICATE OF ACCOUNTANT

I certify that I have obtained all the information and explanations required by me and that the above is in my opinion a true account of the proceeds, expenses and application of the proceeds of the collection.

Date: (Signed)

Qualifications:

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**LICENSING AND APPEALS COMMITTEE
28 NOVEMBER 2017**

PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

9

TITLE OF REPORT: CONSIDERATION OF AMENDMENTS TO THE HOUSE TO HOUSE COLLECTIONS POLICY

REPORT OF THE HEAD OF HOUSING AND PUBLIC PROTECTION
EXECUTIVE MEMBER: HOUSING AND ENVIRONMENTAL HEALTH
COUNCIL PRIORITY: PROSPER AND PROTECT

1. EXECUTIVE SUMMARY

- 1.1 Licensing of house to house collections, whilst governed by national legislation, provides for local discretion. Having a clear and transparent policy will assist applicants' understanding of the process and facilitate consistent decision-making by the Council.
- 1.2 Any Council Policy should be kept under review to ensure it remains fit for purpose therefore a public consultation was recently undertaken in respect of some minor amendments to the existing Policy.
- 1.3 This report seeks Members' approval of amendments to the existing Policy.

2. RECOMMENDATIONS

- 2.1 That the Committee:
 - (i) Consider the results of the public consultation and support the policy amendments;
 - (ii) Determine that the proposed amendments are minor in so far as they do not amend the licensing principles or main focus of the existing Policy;
 - (iii) Recommend that the Executive Member for Housing and Environmental Health approves the policy amendments under delegated powers;

3. REASONS FOR RECOMMENDATIONS

- 3.1 The existing policy has worked well since its adoption with effect from 2 April 2012 therefore no significant amendments were deemed necessary.
- 3.2 No responses were received from the public consultation.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 No alternative options were considered as the existing Policy has worked well to date.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The proposed amendments to the existing policy were highlighted in red and publicised on a specific licensing consultation webpage on the Council's website.
- 5.2 The Executive Member for Housing and Environmental Health was consulted throughout the process.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on 22 August 2017.

7. BACKGROUND

- 7.1 The House to House Collections Act 1939 requires all house to house collections for a charitable purpose to be licensed by local authorities. The legislation is not adoptive and applies automatically in each local authority area.
- 7.2 The Act defines a charitable purpose as *“any charitable, benevolent or philanthropic purpose, whether or not the purpose is charitable within the meaning of any rule of law”*.
- 7.3 A collection is defined within the Act as *“an appeal to the public, made by means of visits from house to house, to give, whether for consideration or not, money or other property”*.
- 7.4 In order to fall within the remit of this legislation, therefore, the collection must be one that is made wholly or partly for charitable purposes whether it be the collection of money, or any other items that may subsequently be sold for money, where either the money or the items are given for charitable purposes. This would encompass collections where the promoter is collecting items for subsequent sale, such as clothing, where the promoter guarantees to remit a set percentage, or minimum amount, to charitable purposes.
- 7.5 Additionally the collection must be made by going from door to door, not from standing in the street. The collection does not necessarily have to be made by knocking on the door and making personal contact, it can equally be made by leaving envelopes or collection bags for collection on a specified date.
- 7.6 Significantly, the Act also defines a house as *“including a place of business”*.
- 7.7 Given that the collection for charitable purposes also includes all business premises, it would also include collectors going from shop to shop, rose sellers travelling from pub to pub, and similar collections. On reflection, whilst the legislation refers to house to house collections, it would be better referred to as door to door collections.
- 7.8 The purpose of the legislation is to ensure that collectors are properly authorised, that the collections do not cause a nuisance to the public, that donations are receipted and stored in a secure way, and that the total proceeds are properly accounted for and forwarded to the appropriate charitable organisation.

- 7.9 The Secretary of State may issue an Exemption Certificate to the promoter of a collection where collections are to take place throughout the whole, or a substantial part, of England provided he/she is satisfied that the collection pursues a charitable purpose. The holder of an Exemption Certificate does not have to obtain a licence from the local authority to undertake collections, although historically promoters with Exemption Certificates notify the local authority of their planned collection dates out of courtesy.
- 7.10 Some larger charities such as Christian Aid and the RNLI have secured Exemption Certificates, however, most of the smaller charities operating locally do not have Exemption Certificates and, therefore, need to apply to the Council for a licence.
- 7.11 Unless persons who wish to undertake charitable collections hold an Exemption Certificate issued by the Secretary of State, it is an offence for any person to promote or make collections from door to door for charitable purposes without first obtaining a licence from the local authority.
- 7.12 Section 4 of the Act provides for the Secretary of State to prescribe regulations regulating the manner in which collections may be carried out, including the conduct of promoters and collectors. There is no opportunity for local authorities to prescribe additional regulations or attach licence conditions.
- 7.13 The Secretary of State published the House to House Collections Regulations 1947, subsequently amended by the House to House Collections Regulations 1963, which took effect from 29th December 1947. These regulations, included as Appendix A to the Policy, apply to all licences issued by the Council under the House to House Collection Act 1939.
- 7.14 There is no right of appeal through the courts against a decision to refuse or revoke an application, however, there is a right of appeal to the Secretary of State whose decision is final. Additionally, any decision must be reasonable as any decision could also be subject to a complaint to the Local Government Ombudsman or through a judicial review.

8. RELEVANT CONSIDERATIONS

- 8.1 To assist the Committee with their deliberations, every proposed amendment is highlighted in red in the proposed Policy attached as Appendix A.

Policy Duration

- 8.2 In order to ensure that a policy is reviewed periodically, historically each policy has included the date by when it should be reviewed. If this date is passed, the Policy doesn't lapse but is at risk of challenge for not being kept under review.
- 8.3 A fixed term policy could be considered inappropriate particularly with ever-changing legislative or local requirements. A policy should be kept under regular review with the ability to amend or re-consult where necessary. As policy is a matter for Members, it is felt that the Executive Member for Housing and Environmental Health is best placed to determine when a policy should be amended or reviewed.
- 8.4 The Policy therefore has no fixed duration but will be kept under periodic review by the Executive Member who will have the authority to amend, approve for continuation or require a full consultation prior to a new policy being considered by Cabinet.

Clarification

- 8.5 Since the adoption of the House to House Collection Policy, a number of minor administrative issues have arisen whereby some clarification of the wording of the Policy was necessary. The main area for clarification has been the process for determining a departure from policy. This clarification has been included within the amended Policy.
- 8.6 Clarification has been included to make clear that departures from policy are not intended to circumvent the adopted requirements but are reserved for genuine circumstances that members may not have considered as part of the adoption of the Policy or any subsequent amendments.
- 8.7 Additionally, the Policy provides for minor departures from Policy to be granted by the licensing manager.

Definition of Minor Amendments

- 8.8 The Council's Constitution reserves "*to prepare and agree to implement policies and strategies other than those reserved to Council*" for Cabinet and all new licensing policies, other than those reserved to Council, have been referred to Cabinet for adoption. Once a policy has been adopted by Cabinet, an Executive Member has the authority for "*making minor amendments to adopted strategies, policies and procedures*".
- 8.9 The Constitution is however silent on the definition of a minor amendment therefore a definition can be sought from the existing adopted Policy. The current Policy adopted by Cabinet included a section entitled "Amendments to Policy". Within that section, a *substantial amendment* was defined as one that is likely to have:
- (i) *a significant financial effect on licence holders; or*
 - (ii) *a significant procedural effect on licence holders; or*
 - (iii) *a significant effect on the community.*

The Policy then clarifies that a minor amendment is defined as any amendment that does not fall within the scope of a *substantial amendment* and:

"Any minor amendments to this Policy may be authorised by the Executive Member for Housing and Environmental Health"

In the absence of a definition of minor in the Constitution, the existing Policy can be considered an indication of Cabinet's interpretation of minor when considering the initial adoption of the Policy.

- 8.10 It is suggested that none of the proposed amendments fall within the scope of the *substantial amendment* definition therefore are classified as minor amendments that can be made by the Executive Member. This is further supported by the fact that the four licensing objectives of the Policy remain unchanged.
- 8.11 If the Committee support the contention that the amendments to the existing Policy are minor then the amendments can be authorised by the Executive Member. If however the Committee believe the amendments are not minor and, in effect, a new Policy should be adopted then the proposed Policy should be referred to Cabinet.

9. LEGAL IMPLICATIONS

9.1 By virtue of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, adoption of a local policy in respect of house to house collection regulation is a matter for the Council's Executive.

9.2 The Licensing and Appeals Committee's terms of reference within the Council's Constitution includes at section 8.2.3:

"to consider all Licensing matters with the exception of the statements of licensing policy under the Licensing Act 2003 and the Gambling Act 2005 and those matters delegated to the Licensing Sub-Committee and the Strategic Director of Planning, Housing and Enterprise."

The Committee's role therefore is to consider the draft policy in light of the public consultation and decide whether to make a recommendation to the Executive in respect of adopting the proposed amendments.

As part of that consideration, the Committee should determine whether or not the proposed amendments should be considered 'minor amendments' that could be dealt with by the Executive Member under delegated powers.

In the absence of a definition of 'minor' within the Constitution, the Committee should have regard to the definition of 'minor amendment' within the existing adopted policy.

9.3 If the Committee determine that the proposed amendments are 'minor', section 14.8.1(l) of the Constitution states that an Executive Member has authority for:

"making minor amendments to adopted strategies, policies and procedures."

9.4 If the Committee determine that the proposed amendments are not 'minor' based on the definition included within the existing adopted policy then authority for adopting a new policy falls with Cabinet by virtue of section 5.6.1 of the Constitution that includes within the terms of reference for Cabinet:

"to prepare and agree to implement policies and strategies other than those reserved to Council."

10. FINANCIAL IMPLICATIONS

10.1 The amended policy would have no additional financial implications for the Council. No fee can be charged for administering this process and the proposed amendments to the Policy place no additional financial burden on the Council.

11. RISK IMPLICATIONS

11.1 The risk to the Council of not periodically reviewing and amending policy is that the Policy may become outdated and no longer fit for purpose. Given that the Policy is a fundamental element of consistent decision making, a policy that was not fit for purpose would increase the risk of judicial challenge.

12. EQUALITIES IMPLICATIONS

12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment,

victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

- 12.2 The proposed Policy does not place any barriers or unique requirements on any person on the grounds of ethnicity, gender, religion or any other protected characteristic. Officers work with all applicants and consent holders, where appropriate, to ensure that the Council's duty under the Equality Act 2010 is met, for example, guidance notes could be provided in other languages upon request.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and "go local" policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 The policy will not place any new human resource implications on the Council.

15. APPENDICES

- 15.1 Appendix A - Proposed House to House Collection Policy including amendments.

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17. BACKGROUND PAPERS

- 17.1 [House to House Collections Act 1939](#)
17.2 [Existing House to House Collection Policy](#)



House to House Collections Licensing Policy

Effective from: 1st January 2018

CONTENTS

	Section	Page(s)
1	Introduction	2 - 3
2	Applications for House to House Collection Licence	3 - 5
3	Regulations Pertaining to House to House Collections in North Hertfordshire	5
4	Enforcement	6
5	Departure from this Policy	6
6	Fees and Charges	6
7	Definitions	7
	Appendix	
A	North Hertfordshire District Council House to House Licence Regulations	8 – 13
B	Including: Schedule to the House to House Collections Act 1939	14 - 15

1.0 INTRODUCTION

1.1 This document states North Hertfordshire District Council's policy on house to house collections as defined by the House to House Collections Act 1939 and regulated by the House to House Collections Regulations 1947.

1.2 The Objectives of this Policy

- 1.2.1 This Policy has been adopted with view to securing the following objectives:
- (i) to enhance the towns centres of Baldock, Hitchin, Letchworth Garden City, and Royston; and
 - (ii) to ensure collectors operate within the law and act fairly in their dealings with the public

1.3 The Law

1.3.1 House to house collections, as defined by the House to House Collections Act 1939, are required to be licensed by local authorities. House to house collections are defined as "an appeal to the public, made by means of visits from house to house, to give, whether for consideration or not, money or other property". They include, therefore, collections of money, or any other items that may be sold for money, where the proceeds are given to any charitable, benevolent or philanthropic purpose (for example, charity clothing collection bags).

1.3.2 For the purpose of the House to House Collection Act 1939, the term 'house' also includes places of business. This provision, therefore, also covers collections made within places such as shops, offices and public houses where the collectors go from premises to premises collecting money, or other property, and the proceeds of such collections are given to charity (for example, rose sellers in public houses and restaurants).

1.3.3 Unless those who wish to conduct a collection possess an 'Exemption Certificate' issued by the Secretary of State, it is an offence for any person to promote or make collections from door to door for charitable purposes without the promoter first obtaining a licence from this Council to do so.

1.3.4 Some larger charities such as *Christian Aid* and *Help the Aged* have secured Exemption Certificates from the Secretary of State; however, most of the smaller charities operating locally do not have Exemption Certificates and, therefore, they need to apply for, and be granted, a licence before they can collect money door to door within the District. There is no application fee associated with a house to house collection licence.

1.4 Policy Duration

1.4.1 This Policy will take effect from 1 January 2018 and will be kept under review and amended as and when necessary to reflect changes in legislation, case law, statutory guidance and best practice.

1.4.2 Administrative amendments to this Policy, required by virtue of legislative changes, revised statutory guidance or a Council restructure, may be made by the Licensing Manager. Amendments under this section are restricted to those required to accurately

reflect the current legal or administrative position rather than amendments that change the focus of local policy.

1.4.3 The Policy will be periodically reviewed to ensure it remains fit-for-purpose and either amended where necessary or approved for continuation by the Executive Member for Housing and Environmental Health, save for subsection 1.4.4.

1.4.4 In the event of any significant amendment to the Policy, a full public consultation will be undertaken prior to consideration by the Licensing and Appeals Committee who will make a recommendation for consideration by Cabinet.

For the purpose of this section, a significant amendment is defined as one that:

- (i) will have significant financial impact on applicants, licence holders or the public;
- (ii) will have a significant procedural impact on applicants, licence holders or the public;
or
- (iii) may not be perceived by the trade or the public to be consistent with the policy objectives set out in section 1.2 above.

2.0 APPLICATIONS FOR A HOUSE TO HOUSE COLLECTION LICENCE

2.1 Advice for New Applicants

2.1.1 Applicants are advised to contact the Council at their earliest opportunity, preferably before an application is made. This allows the Authorised Officers to provide advice, as well as clarifying any areas of uncertainty.

2.2 Applications

2.2.1 All applications must be made on the Council's prescribed application form.

2.2.2 Applications should be made at least one calendar month before the first proposed collection date, where upon giving a satisfactory application, a House to House Collection Licence may be granted.

2.2.3 Given the time required to assess an application against the objectives of this policy and the key considerations below, any application received with less than one calendar month's notice prior to the first proposed collection date is likely to be refused, save for exceptional circumstances at the Council's discretion.

2.3 Processing of an Application

2.3.1 On receipt of the application form an acknowledgment will be sent to the applicant.

2.3.2 Where the applicant is unfamiliar to the Council, a **Disclosure & Barring Service (DBS)** Disclosure may be required in order to provide the necessary information to make a decision on whether the collection will be undertaken by 'fit and proper' persons (see 2.4.1 (iv) below).

2.4 Key Considerations

2.4.1 The Council will normally grant a house to house collection licence unless it is of the opinion:

- (i) that the total amount of money likely to be applied for charitable purposes as the result of the collection (including any amount already so applied) is inadequate in proportion to the value of the proceeds likely to be received (including any proceeds already received);
- (ii) that remuneration received, or is likely to be received, by any person associated with the collection is excessive in relation to the total proceeds received, or likely to be received, from the collection;
- (iii) that the grant of a licence would be likely to facilitate the commission of an offence under section 3 of the Vagrancy Act 1824, or that an offence under that section has been committed in connection with the collection.
- (iv) that the applicant or the holder of the licence is not a 'fit and proper person' to hold a licence by reason of the fact that he has been convicted in the United Kingdom of any of the offences specified in the Schedule to the House to House Collections Act 1939 (see Appendix A), or has been convicted of any offence of fraud or dishonesty, or of an offence of a kind the commission of which would be likely to be facilitated by the grant of a licence.
- (v) that the applicant or the holder of the licence, in promoting a collection in respect of which a licence has been granted to him, has failed to exercise due diligence to ensure:
 - that persons authorised by him to act as collectors, for the purpose of the collection, were fit and proper persons;
 - compliance with the regulations on the part of persons so authorised: and
 - that prescribed badges or prescribed certificates of authority are not obtained by persons other than persons so authorised.
- (vi) that the applicant or holder of the licence has refused to, or neglected to, furnish the Council with such information as they may reasonably require to determine the application and ensure compliance with the regulations.

2.4.2 Where a house to house collection licence has been granted, the Council will ordinarily revoke the licence if it is of the opinion that any of the circumstances listed in paragraph 2.4.1 (i) to (vi) subsequently apply.

2.5 **Waiving a need for a licence**

2.5.1 There are two circumstances where the need for a licence from the Council can be waived following the intervention of other authorities.

2.5.2 If the Secretary of State is satisfied that a person pursues a charitable purpose throughout the whole of, or a substantial part of, England and Wales, and wants to promote collections for that purpose, he may then direct by Order that the promoter shall be exempt from the requirement to obtain licences from this Council. All collections exempt from licensing requirements would be described in the Order.

2.5.3 Where the chief constable for a police area is satisfied that the purpose of a collection is local in character and that the collection is likely to be completed within a short period of time, he may grant the promoter of the collection a certificate in the prescribed form. Where such a certificate is granted, a licence from the Council is not required and the provisions of the regulations shall not apply to a collection made in conformity with such certificate.

2.6 Licences

- 2.6.1 The Council, by law, cannot grant a house to house collection licence for a period longer than twelve months.
- 2.6.2 Once granted the applicant will be issued with two documents, one to be kept for use during collections and another to be sent to The Stationary Office (TSO), formerly Her Majesty's Stationery Office (HMSO). The TSO will then issue a Certificate of Authority and the required number of prescribed badges for each collector to wear whilst collecting.

2.7 Obligations of the Licensee

- 2.7.1 The House Collections Act 1939 and the House to House Collections Regulations 1947 specifies the obligations of all those involved in house to house collections. A copy of the House to House Collections Regulations 1947 is appended to this policy as **Appendix A**.
- 2.7.2 The key obligations during a collection are as follows:
- the necessary written permission has been obtained from the Council;
 - no collection must be undertaken in a manner which will inconvenience or annoy any person;
 - every collector must wear a standard badge and carry a Certificate of Authority;
 - collectors must produce their badge, on demand, to the occupant of any house, any police officer or authorised officer of this Council;
 - all collectors must be over sixteen years old;
 - if a collector is carrying a collecting box, it must be sealed, numbered and clearly display the name of the charity or fund which is to benefit.
- 2.7.3 The key obligations following a collection are as follows:
- collectors must not be given access to the contents of collection boxes prior to their being returned to the promoter for opening and counting.
 - boxes should only be opened in the presence of the promoter and another responsible person. Once the boxes have been opened, the contents should be counted immediately and the amount collected in each box recorded.
 - after the collection the promoter must complete a prescribed returns form and return it to the Council within one month of the expiry of the permit. The promoter must certify the return and have it countersigned by a qualified accountant.

3.0 REGULATIONS PERTAINING TO HOUSE TO HOUSE COLLECTIONS IN NORTH HERTFORDSHIRE

- 3.1 Paragraph 4 of the House to House Collections Act 1939 makes provision for the Secretary of State to prescribe regulations in respect of house to house collections.
- 3.2 The House to House Regulations 1947 were issued by the Secretary of State and came into force on 29th December 1947.
- 3.3 No further regulations have been made by the Secretary of State and so the House to House Regulations 1947 remain in force for all licences issued by North Hertfordshire District Council.
- 3.4 The House to House Regulations 1947 are attached to this Policy at **Appendix A**.

4.0 ENFORCEMENT

- 4.1 It is recognised that well-directed enforcement activity by the Council benefits not only the public but also those responsible for organising charitable collections.
- 4.2 In pursuing its objectives, detailed in this Policy, the Council will operate a proportionate enforcement regime in accordance with the Council's Housing and Public Protection Statement of Enforcement Policy and Practice.

5.0 DEPARTURE FROM POLICY

- 5.1 In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this policy document and the objectives set out therein.
- 5.2 Notwithstanding the existence of this Policy, each application or enforcement measure will be considered on its own merits with regard to the licensing objectives. **However, it is likely that departures from policy will be restricted to exceptional circumstances, not used to circumvent the reasonable requirements of the Policy.**
- 5.3 Substantial departure from Policy
Where it is necessary for the Council to depart substantially from this Policy, clear and compelling reasons for doing so must be given. The Head of Housing and Public Protection may authorise a departure from the Policy in accordance with this section if he/she considers it necessary in the specific circumstances and will advise Councillors of such decisions via the Members Information Service (MIS).
- 5.4 Minor departure from Policy
Where an applicant is able to demonstrate that a minor departure from this Policy, based on the individual circumstances of that application, would still ensure that the policy objectives are achieved, the Licensing Manager may authorise a licence to be issued.

6.0 FEES AND CHARGES

- 6.1 This Council makes no charge for the grant of a house-to-house collection licence.
- 6.2 Once a licence has been issued, however, a Certificate of Authority and prescribed badges for all collectors will need to be obtained from The Stationery Office (a nominal charge is made for these documents) before collections can commence.
- 6.3 The nearest TSO office is:

The Stationery Office (TSO), Orders, PO Box 29, Norwich, NR3 1GN
Tel: 01603 622211

7.0 DEFINITIONS

TERM	DEFINITION
Authorised Officer	an officer of the Council authorised by it to act in accordance with the provisions of the House to House Collections Act 1939
charitable purpose	any charitable, benevolent, or philanthropic purpose.
collection	an appeal to the public made by means of visits from house to house to give, whether for consideration or not, money or other property.
collector	a person who makes the appeal in the course of such visits.
Head of Housing and Public Protection	the current post holder (or the Head of Service of the appropriate Service Area following any subsequent restructure), or any nominated Deputy authorised by the Council's Scheme of Delegation.
Executive Member for Housing and Environmental Health	the Elected Member responsible for Housing and Public Protection (or the appropriate Service Area following any subsequent restructure), who is a member of Cabinet
proceeds	means, in relation to a collection, all money and all other property given, whether for consideration or not, in response to the appeal.
promoter	a person who causes others to act as collectors for the purposes of the collection.
the Council	North Hertfordshire District Council

APPENDIX A

**Extract from the House to House Collections Regulations 1947
(as amended by the House to House Collections Regulations 1963)
forming the Regulations for House to House Collection Licences
pursuant to section 4 of the House to House Collections Act 1939**

Title and extent

1. (1) These regulations may be cited as the House to House Collections Regulations 1947, and shall come into operation on the twenty-ninth day of December 1947.
- (2) These regulations shall not extend to Scotland.

Interpretation

2. (1) In these regulations, unless the context otherwise requires:
 - 'The Act'* means the House to House Collections Act 1939;
 - 'chief promoter'*, in relation to a collection, means a person to whom a licence has been granted authorising him to promote that collection or in respect of whom an order has been made directing that he shall be exempt from the provisions or subsection (2) or section 1 of the Act as respects that collection;
 - 'collecting box'* means a box or other receptacle for monetary contributions, securely closed and sealed in such a way that it cannot be opened without breaking the seal;
 - 'licence'* means a licence granted by a licensing authority under section 2 of the Act;
 - 'order'* means an order made by the Secretary of State under section 3 of the Act;
 - 'prescribed badge'* means a badge in the form set out in the Fourth Schedule to these regulations;
 - 'prescribed certificate of authority'* means a certificate in the form set out in the Third Schedule to these regulations;
 - 'receipt book'* means a book of detachable forms of receipt consecutively numbered with counterfoils or duplicates correspondingly numbered;
 - 'street collection'* means a collection or sale to which regulations made under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916 apply;
- (2) A mark shall for the purposes of these regulations be deemed to have been made on a collecting box if it is made on a wrapper securely gummed to the collecting box.
- (3) The Interpretation Act 1889 applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

Local collections of a transitory nature

3. (1) Every certificate granted under subsection (4) of section 1 of the Act shall be in the form set out in the First Schedule to these regulations, and sections 5 and 6 and subsections (4) and (5) of section 8 of the Act shall be set forth on the back of every such certificate.
- (2) Where such a certificate is granted as aforesaid, the provisions of these regulations shall not apply, in relation to a collection made for the purpose specified on the certificate, within the locality and within the period so specified, to the person to whom the certificate is granted or to any person authorised by him to act as a collector for the purposes of that collection.

Applications for licences and orders

4. (1) An application for a licence shall be in the form set out in the Second Schedule to these regulations, and shall give the particulars there specified.
- (2) An application for a licence or for an order shall be made not later than the first day of the month preceding that in which it is proposed to commence the collection.

Responsibility of promoters as respects collectors

5. (1) Every promoter of a collection shall exercise all due diligence:
 - (a) to secure that person authorised to act as collectors for the purposes of the collection are fit and proper persons; and
 - (b) to secure compliance on the part of persons so authorised with the provisions of these regulations.

Certificates of authority, badges, collecting boxes and receipt books

6. (1) No promoter of a collection shall permit any person to act as a collector, unless he has issued or caused to be issued to that person:
 - (a) a prescribed certificate of authority duly completed (except as regards the signature of the collector) and signed by or on behalf of the chief promoter of the collection;
 - (b) a prescribed badge, having inserted therein or annexed thereto a general indication of the purpose of the collection; and
 - (c) if money is to be collected, a collecting box or receipt book marked with a clear indication of the purpose of the collection and a distinguishing number, which indication and number shall, in the case of a receipt book, also be marked on every receipt contained therein in addition to the consecutive number of the receipt.
- (2) Every promoter of a collection shall exercise all due diligence to secure:
 - (a) that no prescribed certificate of authority, prescribed badge, collecting box or receipt book is issued, unless the name and address of the collector to whom it is issued have been entered on a list showing in respect of any collecting box or receipt book the distinguishing number thereof; and
 - (b) that every prescribed certificate of authority, prescribed badge, collecting box or receipt book issued by him or on his behalf is returned when the collection is completed or when for any other reason a collector ceases to act as such.

- (3) In case of a collection in respect of which a licence has been granted:
- (a) every prescribed certificate of authority shall be given on a form obtained from Her Majesty's Stationery Office, and every prescribed badge shall be so obtained; and
 - (b) every prescribed certificate of authority shall be authenticated, and the general indication on every prescribed badge of the purpose of the collection shall be inserted therein or annexed thereto, in a manner approved by licensing authority for the area in respect of which the licence was granted.

Duties of collectors in relation to certificates and badges

7. Every collector shall:
- (a) sign his name on the prescribed certificate of authority issued to him and produce it on the demand of any police constable or of any occupant of a house visited by him for the purpose of collection;
 - (b) sign his name on the prescribed badge issued to him and wear the badge prominently whenever he is engaged in collecting; and
 - (c) keep such certificate and badge in his possession and return them to a promoter of the collection on replacement thereof or when the collection is completed or at any other time on the demand of a promoter of the collection.

Age Limits

8. No person under the age of sixteen years shall act or be authorised to act as a collector of money.

Importuning

9. No collector shall importune any person to the annoyance of such person, or remain in, or at the door of, any house if requested to leave by any occupant thereof.

Collecting of Money

10. (1) Where a collector is collecting money by means of a collecting box, he shall not receive any contribution save by permitting the person from whom it is received to place it in a collecting box issued to him by a promoter of the collection.
- (2) Where a collector is collecting money by other means than a collecting box, he shall, upon receiving a contribution from any person, forthwith and in the presence of such a person enter on a form of receipt in a receipt book issued to him by a promoter of the collection and on the corresponding counterfoil or duplicate the date, the name of the contributor and the amount contributed, and shall sign the form of receipt, the entries and signature being in ink or indelible pencil, and shall hand the form of receipt to the person from whom he received the contribution.

Duty of collectors to return boxes and books

11. Every collector, to whom a collecting box or receipt book has been issued, shall:
- (a) when the collecting box is full or the receipt book is exhausted, or
 - (b) upon the demand of a promoter of the collection, or
 - (c) when he does not desire to act as a collector, or
 - (d) upon the completion of the collection,

return to a promoter of the collection that collecting box with the seal unbroken or that receipt book with a sum equal to the total amount of the contributions (if any) entered therein.

Examination of boxes and books

12. (1) Subject as provided in paragraph (2) of this regulation, a collecting box when returned shall be examined by, and, if it contains money, be opened in the presence of, a promoter of the collection and another responsible person.
- (2) Where a collecting box is delivered unopened to a bank, it may be examined and opened by an official of the bank in the absence of a promoter of the collection.
- (3) As soon as a collecting box has been opened, the contents shall be counted and the amount shall be entered with the distinguishing number of the collecting box on a list, which shall be certified by the persons making the examination.
- (4) Every receipt book when returned and all sums received therewith shall be examined by a promoter of the collection and another responsible person, and the amount of the contributions entered in the receipt book shall be checked with the money and entered with the distinguishing number of the receipt book on a list, which shall be certified by the persons making the examination.

Provision for envelope collections

13. (1) Where the promoter of a collection to whom an order has been granted informs the Secretary of State that he desires to promote an envelope collection, and the Secretary of State is of opinion that the collection is for a charitable purpose of major importance and is suitably administered, the Secretary of State may, if he thinks fit, give permission for the promotion of an envelope collection.
- (2) Where an envelope collection is made in accordance with this regulation:
- (a) every envelope used shall have a gummed flap by means of which it can be securely closed;
 - (b) no collector shall receive a contribution except in an envelope which has been so closed; and
 - (c) these regulations shall have effect subject to the following modifications:
 - (i) sub-paragraph (c) of paragraph (1) of regulation 6 shall not apply;
 - (ii) regulation 10 shall not apply;
 - (iii) regulations 11 and 12 shall have effect as if each envelope in which a contribution is received were a collecting box;
 - (iv) in regulation 11 for the words 'with the seal unbroken' there shall be substituted the word 'unopened';
 - (v) in paragraph (3) of regulation 12 for the words 'As soon as a collecting box has been opened' there shall be substituted the words 'As soon as the envelope has been opened' and the words 'with the distinguishing number of the collecting box' shall be omitted.
- (2) In this regulation 'envelope collection' means a collection made by persons going from house to house leaving envelopes in which money may be placed and which are subsequently called for.

Promoters to furnish accounts

14. (1) The chief promoter of a collection in respect of which a licence has been granted shall furnish an account of the collection to the licensing authority by which the licence was granted within one month of the expiry of the licence:

Provided that if licences are granted to the same person for collections to be made for the same purpose in more than one licensing area a combined account of the collections made in all or any of those licensing areas may, by agreement between the chief promoter and the respective licensing authorities be made only to such of the respective licensing authorities as may be so agreed.

- (2) The chief promoter of a collection in respect of which an order has been made shall furnish an account annually to the Secretary of State so long as the order remains in force, and if the order is revoked a final account shall be furnished within three months of the date of the revocation of the order.
- (3) The licensing authority or the Secretary of State may extend the period within which an account is required to be furnished to the authority or to him, as the case may be, if satisfied that there are special reasons for so doing.
- (3) The chief promoter of a collection which is made in connection in whole or in part with a street collection of which an account is required to be furnished to a licensing authority by regulations made under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916, may, if the said licensing authority agrees, combine the accounts of the house to house collection, in so far as it is made in connection with the street collection, with the accounts of the street collection, and the amount so included in the combined account shall not be required to form part of the account required to be furnished under paragraph (1) or, as the case may be, paragraph (2) of this regulation, so, however, that in the case of an account furnished under said paragraph (2) the account shall show, in addition to an account in respect of moneys received from house to house collections not made in connection with a street collection, a statement showing the total proceeds of all combined collections, the total expenses and the balance applied to charitable purposes.

Form and certification of accounts

15. (1) The account required by the preceding regulation:
- (a) where money has been collected, shall be furnished in the form set out in the Fifth Schedule to these regulations and, where property has been collected and sold, shall be furnished in the form set out in the Sixth Schedule to these regulations, and in either case shall be certified by the chief promoter of the collection and by an independent responsible person as auditor; and
- (b) where property (other than money) has been collected and given away or used, shall be furnished in the form set out in the Seventh Schedule to these regulations and shall be certified by the chief promoter and by every person responsible for the disposal of the property allocated.

Vouching of accounts

16. (1) Every account furnished under paragraph (a) of regulation 15 of these

regulations shall be accompanied by vouchers for each item of the expenses and application of the proceeds and, in the case of a collection of money, by every receipt book used for the purposes of the collection and by the list referred to in paragraph (2) of regulation 6 of these regulations and the list referred to in regulation 12 of these regulations.

- (2) Paragraph (1) of this regulation shall not apply to an account certified by an auditor who is a member of an association or society of accountants incorporated at the date of these regulations or is on other grounds accepted as competent by the authority to which the account is submitted, but where in such case the vouchers, receipt books and lists mentioned in the said paragraph (1) are not submitted with an account, the chief promoter shall ensure that they are available for three months after the account is submitted and shall, if the authority to which the account was submitted so requires at any time within that period, submit them to that authority.

Disposal of disused certificates of authority, etc

17. (1) The chief promoter of a collection shall exercise all due diligence to secure that all forms of prescribed certificates of authority and prescribed badges obtained by him for the purposes of the collection are destroyed when no longer required in connection with that collection or in connection with a further collection which he has been authorised to promote for the same purpose.

FORM OF PRESCRIBED CERTIFICATE OF AUTHORITY

<p><u>HOUSE-TO-HOUSE COLLECTIONS ACT</u></p> <p>COLLECTOR'S CERTIFICATE OF AUTHORITY</p> <p><i>(Here insert name of collector in block letters)</i></p> <p>of <i>(here insert address of collector)</i></p> <p>is hereby authorised to collect for</p> <p><i>(here insert the purpose of the collection)</i></p> <p>in <i>(here insert the area within which the collector is authorised to collect, being an area within which the collection has been authorised)</i></p> <p>*during the period <i>(here insert the period during which the collector is authorised to collect, being a period during which the collection has been authorised)</i></p>	
<p style="text-align: center;"><i>Signature of collector -</i></p>	<p style="text-align: center;"><i>Signed -</i></p>

* This entry may be omitted in the case of a collection in respect of which an order has been made.

Regulation 7 is to be set forth on the back of the certificate.

FORM OF PRESCRIBED BADGE

Front

HOUSE TO HOUSE COLLECTIONS ACT
AUTHORISED COLLECTOR'S BADGE

Back

Collector's Signature -

(Note: Supplies of the above prescribed certificate and badge may be obtained from **Stationary Office Publications Centre, PO Box 276, London SW8 5DT**)

APPENDIX B

Schedule to the House to House Collections Act 1939

(Offences to which paragraph 2.4.1 (iv) of this Policy applies)

- Offences under sections forty-seven to fifty-six of the Offences against the Person Act 1861
- Robbery, burglary and blackmail
- Offences in Scotland involving personal violence or lewd, indecent, or libidinous conduct, or dishonest appropriation of property.
- Offences under the Street Collections Regulation (Scotland) Act 1915
- Offences under section five of the Police , Factories etc Miscellaneous Provisions) Act 1916

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**LICENSING AND APPEALS COMMITTEE
28 NOVEMBER 2017**

PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

10

TITLE OF REPORT: CONSIDERATION OF AMENDMENTS TO THE SEX ESTABLISHMENT POLICY

REPORT OF THE HEAD OF HOUSING AND PUBLIC PROTECTION
EXECUTIVE MEMBER: HOUSING AND ENVIRONMENTAL HEALTH
COUNCIL PRIORITY: PROSPER AND PROTECT

1. EXECUTIVE SUMMARY

- 1.1 Licensing of sex establishments, whilst governed by national legislation, provides for local discretion. Having a clear and transparent policy will assist applicants' understanding of the process and facilitate consistent decision-making by the Council.
- 1.2 Any Council Policy should be kept under review to ensure it remains fit for purpose therefore a public consultation was recently undertaken in respect of some minor amendments to the Policy.
- 1.3 This report seeks Members' approval of amendments to the existing Policy.

2. RECOMMENDATIONS

- 2.1 That the Committee:
 - (i) Consider the results of the public consultation and support the policy amendments;
 - (ii) Determine that the proposed amendments are minor in so far as they do not amend the licensing principles or main focus of the existing Policy;
 - (iii) Recommend that the Executive Member for Housing and Environmental Health approves the policy amendments under delegated powers;

3. REASONS FOR RECOMMENDATIONS

- 3.1 The existing policy has worked well since its adoption with effect from 4 January 2011 therefore no significant amendments were deemed necessary.
- 3.2 This view was supported by the fact that no adverse responses to the public consultation were received.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 An alternative option would be a Sex Establishment Policy that may differ in content and extent, for example a different local interpretation of suitable locations for sex establishments.
- 4.2 An alternative option would be to have a 'nil resolution' policy that automatically precludes any new applications for sex establishments. Whilst the legislation does not explicitly provide for this, case law has established that there is the opportunity for an application to be refused on the grounds of location and sufficiency of such premises within the area, where the Council has the option of determining the sufficiency of a specific area to be 'nil'.
- 4.3 Having considered all options, the proposed amendments to the existing Policy are considered to be the most suitable option.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The proposed amendments to the existing policy were highlighted in red and publicised on a specific licensing consultation webpage on the Council's website. All existing licence holders were contacted and signposted to the consultation page.
- 5.2 The Executive Member for Housing and Environmental Health was consulted throughout the process.
- 5.3 No consultation responses were received.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on 22 August 2017.

7. BACKGROUND

- 7.1 The Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 provides the legal framework for the control of sex establishments in England and Wales. The legislative framework is not an automatic entitlement and Council's must formally adopt the legislation if it wishes to regulate street trading in its area.
- 7.2 Having adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ("the Act") with effect from 1 March 1983, the Council are able to control and regulate sex shops, sex cinemas and sexual entertainment venues¹ within North Hertfordshire. No such premises would be able to lawfully operate without first having obtained a licence from the Council.
- 7.3 In order to ensure a clear and transparent licensing process, the Council adopted its first modern, effective policy with effect from 3 April 2008 that ensured that the trade and the public had a Policy that fully explained the licensing process. It also ensured consistency of approach by the Council ensuring fairness to the trade.

¹ Any live performance involving nudity for the purpose of sexually stimulating an audience (introduced by virtue of the Policing and Crime Act 2009) for example, lap dancing or pole dancing
LAC (28.11.17)

- 7.4 The Policy was reviewed and amended with effect from 4 January 2011 following a public consultation process, incorporating the new provisions for regulating sexual entertainment venues that did not exist when the original Policy was adopted. In order to regulate the new sexual entertainment venue provisions, Schedule 3 of the Act, as amended, had to be adopted. The Council adopted the revised Schedule 3 of the Act on 11 November 2010.

8. RELEVANT CONSIDERATIONS

- 8.1 To assist the Committee with their deliberations, every proposed amendment is highlighted in red in the proposed amended Policy attached as Appendix A.

Policy Duration

- 8.2 In order to ensure that a policy is reviewed periodically, historically each policy has included the date by when it should be reviewed. If this date is passed, the Policy doesn't lapse but is at risk of challenge for not being kept under review.
- 8.3 A fixed term policy could be considered inappropriate particularly with ever-changing legislative or local requirements. A policy should be kept under regular review with the ability to amend or re-consult where necessary. As policy is a matter for Members, it is felt that the Executive Member for Housing and Environmental Health is best placed to determine when a policy should be amended or reviewed.
- 8.4 The Policy therefore has no fixed duration but will be kept under periodic review by the Executive Member who will have the authority to amend, approve for continuation or require a full consultation prior to a new policy being considered by Cabinet.

Exchange of Information

- 8.5 Given the nature of the sex establishment industry, there may be occasions whereby the Council need to share information with partner agencies for the purpose of detecting or reducing crime in the district. Whilst legislative provision exists to facilitate this process, clarification of the Council's responsibility in this regard has been included as an amendment to the existing Policy.

Safeguarding Children and Vulnerable Adults

- 8.6 The Council is acutely aware of its safeguarding responsibilities and has included a new section within the Policy outlining the expectations placed on licence holders. Clarification has been included that the Council will place *significant weight* on safeguarding issues when assessing the fitness of an applicant to hold a licence.

Fees

- 8.7 The recent conclusion of the *Hemming*² case has confirmed the existing licensing fee principles of recovering the reasonable cost of administration and enforcement. In order to comply with the EU Services Directive³, a Council may only charge the reasonable cost of administration of an application as an upfront application fee. Enforcement costs, including those of investigating unlicensed premises, can be

² R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2017] UKSC 50

³ Provision of Services Regulation 2009 (SI 2009/2999)
LAC (28.11.17)

recovered by way of an annual fee after the grant of the licence. Clarification of this fee setting principle has been included as an amendment to the existing Policy.

Grounds for Refusal

- 8.8 Whilst the grounds for refusal, split between mandatory refusal and discretionary refusal, are contained within the Act, it was deemed appropriate to assist applicants, licence holders and the public to include a new section within the Policy outlining these grounds. This provides all necessary information in one document and ensures transparency.

Standard Conditions

- 8.9 As the district has only one sex shop, previous policy conditions related specifically to sex shops. If the current position were to change, the existing Policy does not adequately cover sex cinemas or sexual entertainment venues therefore the appendices detailing standard conditions for each establishment type have been amended.
- 8.10 A separate appendix has been introduced detailing standard conditions applicable to all sex establishments with an appendix for each establishment type.
- 8.11 The standard conditions specifically relating to sex shops remain predominately as the existing Policy however some minor clarification has been included.
- 8.12 The standard conditions specifically relating to sexual entertainment venues have been enhanced, incorporating best practice identified in other Council's policies particularly those with sexual entertainment venues within their district.
- 8.13 New conditions relating specifically to sex cinemas have been included within the amended Policy, incorporating best practice from Council's with sex cinemas within their district.

Clarification

- 8.14 Since the adoption of the Sex Establishment Policy, a number of minor administrative issues have arisen whereby some clarification of the wording of the Policy was necessary. The main areas for clarification have been the Council's position in regard to the right to waive the need for a licence, the definition of character of the locality, the process for determining a revocation of a licence and data protection issues in respect of hearings to determine applications. This clarification has been included within the amended Policy.

Definition of Minor Amendments

- 8.15 The Council's Constitution reserves *"to prepare and agree to implement policies and strategies other than those reserved to Council"* for Cabinet and all new licensing policies, other than those reserved to Council, have been referred to Cabinet for adoption. Once a policy has been adopted by Cabinet, an Executive Member has the authority for *"making minor amendments to adopted strategies, policies and procedures"*.

- 8.16 The Constitution is however silent on the definition of a minor amendment therefore a definition can be sought from the existing adopted Policy. The current Policy adopted by Cabinet included a section entitled “Amendments to Policy”. Within that section, a *substantial amendment* was defined as one that is likely to have:
- (i) a significant financial effect on licence holders; or
 - (ii) a significant procedural effect on licence holders; or
 - (iii) a significant effect on the community.

The Policy then clarifies that a minor amendment is defined as any amendment that does not fall within the scope of a *substantial amendment* and:

“Any minor amendments to this Policy may be authorised by the Executive Member for Housing and Environmental Health”

In the absence of a definition of minor in the Constitution, the existing Policy can be considered an indication of Cabinet’s interpretation of minor when considering the initial adoption of the Policy.

- 8.17 It is suggested that none of the proposed amendments fall within the scope of the *substantial amendment* definition therefore are classified as minor amendments that can be made by the Executive Member. This is further supported by the fact that the four licensing objectives of the Policy remain unchanged.
- 8.18 If the Committee support the contention that the amendments to the existing Policy are minor then the amendments can be authorised by the Executive Member. If however the Committee believe the amendments are not minor and, in effect, a new Policy should be adopted then the proposed Policy should be referred to Cabinet.

9. LEGAL IMPLICATIONS

- 9.1 By virtue of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, adoption of a local policy in respect of sex establishment regulation is a matter for the Council’s Executive.
- 9.2 The Licensing and Appeals Committee’s terms of reference within the Council’s Constitution includes at section 8.2.3:

“to consider all Licensing matters with the exception of the statements of licensing policy under the Licensing Act 2003 and the Gambling Act 2005 and those matters delegated to the Licensing Sub-Committee and the Strategic Director of Planning, Housing and Enterprise.”

The Committee’s role therefore is to consider the draft policy in light of the public consultation and decide whether to make a recommendation to the Executive in respect of adopting the proposed amendments.

As part of that consideration, the Committee should determine whether or not the proposed amendments should be considered ‘minor amendments’ that could be dealt with by the Executive Member under delegated powers.

In the absence of a definition of ‘minor’ within the Constitution, the Committee should have regard to the definition of ‘minor amendment’ within the existing adopted policy.

- 9.3 If the Committee determine that the proposed amendments are ‘minor’, section 14.8.1(l) of the Constitution states that an Executive Member has authority for:

“making minor amendments to adopted strategies, policies and procedures.”

- 9.4 If the Committee determine that the proposed amendments are not ‘minor’ based on the definition included within the existing adopted policy then authority for adopting a new policy falls with Cabinet by virtue of section 5.6.1 of the Constitution that includes within the terms of reference for Cabinet:

“to prepare and agree to implement policies and strategies other than those reserved to Council.”

10. FINANCIAL IMPLICATIONS

- 10.1 The amended policy would have no additional financial implications for the Council. Case law has determined that a Council can recover its reasonable costs of administration and enforcement through licensing fees.

11. RISK IMPLICATIONS

- 11.1 The risk to the Council of not periodically reviewing and amending policy is that the Policy may become outdated and no longer fit for purpose. Given that the Policy is a fundamental element of consistent decision making, a policy that was not fit for purpose would increase the risk of judicial challenge.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 The proposed Policy does not place any barriers or unique requirements on any person on the grounds of ethnicity, gender, religion or any other protected characteristic. Officers work with all applicants and consent holders, where appropriate, to ensure that the Council’s duty under the Equality Act 2010 is met, for example, guidance notes could be provided in other languages upon request. The amendments within the revised Policy seek to ensure that victimisation does not occur within these premises.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and “go local” policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 The policy will not place any new human resource implications on the Council.

15. APPENDICES

- 15.1 Appendix A - Proposed amended Sex Establishment Policy.

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17. BACKGROUND PAPERS

- 17.1 [Local Government \(Miscellaneous Provisions\) Act 1982](#)
- 17.2 [Existing Sex Establishment Policy](#)

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Sex Establishment Licensing Policy

Effective from: 1st January 2018

Contents

1	Introduction	2
2	Licence applications	2 - 5
3	Determination of applications	5 - 8
4	Power to prescribe conditions	8
5	Revocation of a licence	8
6	Hearing procedure	8 - 9
7	Operation and management	9
8	Enforcement	9 - 10
9	Policy duration and amendments	10
10	Definitions	10 - 12

Appendix

A	Standard conditions for all Sex Establishments	13 - 15
B	Standard conditions for all Sex Shops	16 - 17
C	Standard conditions for all Sexual Entertainment Venues	18 - 21
D	Standard conditions for all Sex Cinemas	22

1 INTRODUCTION

1.1 This document states North Hertfordshire District Council's policy on the regulation of Sex Establishments.

1.2 The Law

1.2.1 The Local Government (Miscellaneous Provisions) Act 1982 introduced a licensing regime to control Sex Establishments. North Hertfordshire District Council adopted Schedule 3 of the Act on 11th January 1983 (effective from 1st March 1983 onwards). This means that the Council can control and regulate the operation of certain kinds of Sex Establishment within its District. No Sex Establishment can operate unless it has obtained a licence from the Council – any such licence will contain conditions that will restrict how that Premises may trade.

1.2.2 Under Section 17 of the Crime and Disorder Act 1998, local authorities must have regard to the likely effect of the exercise of their functions on, and do all that they can to prevent, crime and disorder in their area. This Policy has regard to the likely impact of such licences on related crime and disorder in the District.

1.2.3 Where applicable, the Council will involve the **Community Safety Partnership (CSP)** in decision-making in relation to actual crime and disorder.

1.2.4 This Policy should be read in conjunction with, and without prejudice to, other existing National and European Union legislation, such as the Human Rights Act 1998, **the Provision of Services Regulations 2009** and the **Equality Act 2010**.

1.3 Exchange of Information

1.3.1 **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 North Hertfordshire. Data may also be released in accordance with statutory provisions under the Data Protection Act 1998, the Freedom of Information Act 2000, and any other subsequent associated legislation.**

2. LICENCE APPLICATIONS

2.1 Right to Waiver

2.1.1 The Council may, upon application, waive the requirement for a Sex Establishment licence in any case where it considers that to require a licence would be unreasonable or inappropriate.

2.1.2 Each application for a waiver will be considered on its own merits, however, **the Council does not consider that it would ordinarily be appropriate to grant a waiver in respect of a business that solely or primarily provides licensable sex-related activities on a commercial basis, i.e. with a view to making a profit.**

2.1.3 The Council considers that the most appropriate use of a waiver would be as an option for businesses that provide licensable sex-related activities as a minor, ancillary part of their overall trading which would not ordinarily be the reason for customers to visit the Premises.

2.2 Application Details

2.2.1 The applicant will be required to make their application in accordance with the prescribed requirements detailed in Clause 10 of Schedule 3 of the Act.

2.3 Fitness of the Applicant

2.3.1 An applicant must be a fit and proper person to hold a licence. In determining suitability for a new licence, or a transfer of an existing one, the factors to be considered by the Council will include, but are not limited to:

- a) previous and current relevant knowledge and experience of the applicant;
- b) any evidence of the operation of any existing or previous licence(s) held by the applicant, including any licence held in any other District or Borough;
- c) any report about the applicant and management of the Premises received from statutory objectors;
- d) any concerns raised by statutory bodies in relation to safeguarding of children or vulnerable adults.

2.3.2 Whilst every application will be considered on its merits the Council will be unlikely to grant an application from any person, or for the benefit of any person, with unspent relevant criminal convictions.

2.4 Impact of the Sex Establishment

2.4.1 In considering applications for the grant of new licences or variation of conditions, the Council will assess the likelihood of such a grant causing adverse impacts, particularly to local residents. The Council will take the following general matters into account:

- a) type of activity;
- b) duration of proposed licence;
- c) proposed hours of operation;
- d) layout and condition of the Premises;
- e) the use to which premises in the vicinity are put;
- f) the character of the locality in which the Premises are situated, including but not limited to:
 - (i) the density and proximity of residential accommodation; and
 - (ii) the presence of important thoroughfares or use of the locality as a gateway area;
 - (iii) the intended use of the area as an area of regeneration.

2.4.2 In considering all applications for the grant of new licences or applications for variation of conditions the Council will take into account the potential impacts of the application on:

- a) crime and disorder [see 2.5 for more information];

- b) cumulative impact of licensed premises in the area, including hours of operation [see 2.6 for more information];
- c) the character of the locality in which the Premises is situated [see 2.7 for more information].

2.4.3 In considering all applications for renewal of a licence the Council will take into account:

- a) crime and disorder [see 2.5 for more information];
- b) the character of the locality in which the Premises is situated [see 2.7 for more information].

2.5 Crime and Disorder

2.5.1 The issues that will be considered are:

- a) levels of recorded crime in the area of a Sex Establishment that give the police cause for concern;
- b) past demonstrable adverse impact from the licensed activity;
- c) whether appropriate measures have been agreed and put into effect by the applicant/licence holder to mitigate any adverse related impacts.

2.6 Cumulative Impact

2.6.1 Without prejudice to any other sections of this Policy, the Council will consider the cumulative effect of all licensed premises within the location of a Premises being considered.

2.6.2 Whilst an individual Premises alone may not have sufficient adverse effect on a location to cause the Council concern, the combined effect of more than one such Premises may be sufficient to cause concern.

2.7 The Location of Premises

2.7.1 In accordance with relevant case law, the Council shall decide on the suitability of a particular locality for a Sex Establishment as a matter of fact to be determined by the particular circumstances of each case and not by the prescription of boundaries as stated on a map.

2.7.2 The Council is mindful of its power to determine that no Sex Establishment should be located in a particular locality, **in other words that the appropriate number of licensed Premises for a particular locality is zero.**

2.7.3 Notwithstanding the above, licences are likely to only be granted in predominately commercial areas or non-residential rural areas and the Council is mindful of its power to determine each application on its own merits. Applications will not normally be granted if they are to be within:

- a) areas that are exclusively, or predominantly, residential in character; or
- b) the vicinity of residential properties; or
- c) 200 metres of a school or any other premises used by children or vulnerable adults; or
- d) a publicly accessible open space that is regularly frequented by children or vulnerable adults; or

- e) 200m of a place of worship; or
- f) areas with a level of recorded crime that give the police cause for concern; or
- g) areas that are likely to be adversely effected due to the cumulative impact of existing Sex Establishments; or
- h) 200 metres of an existing Sex Establishment (where one exists and the appropriate number of licensed Premises for that locality has not be reached).

2.8 Safeguarding Children and Vulnerable Adults

2.8.1 The Council recognises that safeguarding responsibilities do not just apply on licensed Premises, indeed children should not be able to gain access. Licence holders should be equally aware of children and vulnerable adults in the proximity of Premises that may be waiting for others.

2.8.2 Licence holders are encouraged to ensure that's suitable management controls are in place to safeguard children and vulnerable adults. Measures may include, but are not limited to:

- a) awareness training for staff;
- b) regular patrols of the Premises, including external areas and the immediate proximity, to identify children and vulnerable adults;
- c) monitoring of patrons as they leave the Premises;
- d) recording and reporting safeguarding concerns to the police.

2.8.3 The Council will place significant weight on safeguarding issues and/or concerns when determining the fitness of an applicant/licence holder to obtain or hold a licence.

2.9 Consultation Arrangements

2.9.1 The Council may directly consult local residents and/or occupants of nearby premises in relation to applications for the grant, renewal, variation or transfer of a licence in addition to any statutory public notices required by the Act.

3. DETERMINATION OF APPLICATIONS

3.1 General

3.1.1 In determining an application relating to a Sex Establishment licence the Council will assess the application on its merits having regard to the content of this Policy, the relevant legislation and any relevant guidance that may be issued from time to time.

3.1.2 Where it is necessary for the Council to depart substantially from this policy, clear and compelling reasons for doing so will be given. Only a Licensing and Appeals Sub-Committee may authorise a departure from the policy if it feels it appropriate for a specific application.

3.1.3 The sub-committee will ordinarily consider granting licences of a one year duration however may consider it appropriate to grant a licence for a shorter term base don the individual circumstances of the application.

3.2 Grant of a new Licence

- 3.2.1 All applications for the grant of a new licence will be determined by a Licensing and Appeals Sub-Committee, irrespective of whether representations are received.
- 3.2.2 The Council will give the applicant(s) the opportunity of appearing before and being heard by a Licensing and Appeals Sub-Committee prior to its determination.
- 3.2.3 In determining an application for the grant, renewal, transfer or variation of a licence, the Council must have regard to any representations that it has received.

3.3 Renewal, Transfer or Variation of an Existing Licence

- 3.3.1 The granting of an application for renewal, transfer or variation of an existing licence will be considered by the Head of Housing and Public Protection unless representations are received.
- 3.3.2 Where representations are received, the application will be referred to a Licensing and Appeals Sub-Committee for determination.
- 3.3.3 **In the absence of any representations**, if the Head of Housing and Public Protection is minded to refuse such an application, the application will be referred to a Licensing and Appeals Sub-Committee for determination.

3.4 Fees

- 3.4.1 **Having regard to the Supreme Court judgement *R (on the application of Hemming (t/a Simply Please Ltd) and others) v Westminster City Council*, the fees charged by the Council for licences will only cover the reasonable cost of administering and enforcing the licensing regime.**
- 3.4.2 **The fees will be reviewed at least on an annual basis and published on the Council's website. The Head of Housing and Public Protection is authorised to set Sex Establishment licensing fees on behalf of the Council.**
- 3.4.3 **The fee for the grant of a new Sex Establishment licence will consist of two separate parts:**
 - a) **the cost of administering the application, [the application fee] and**
 - b) **the cost of enforcing the legislation during the licence period [the annual fee].**
- 3.4.4 **At the point of the initial application for a grant of a Sex Establishment licence, only the application fee specified in 3.4.3 above will be chargeable. The annual fee specified in 3.4.3 above will only be chargeable upon the grant of a licence and must be paid prior to the licence being issued.**
- 3.4.5 **In the event of an application being refused, the application fee will not be refunded however the annual fee, should it have been paid voluntarily at the time of application, would be fully refundable.**

3.5 Grounds for Refusal

3.5.1 The Act provides five mandatory grounds and four discretionary grounds for refusal of a Sex Establishment licence. Any refusal will be linked to one or more of these nine grounds with appropriate reasons given for the decision.

3.5.2 Mandatory Grounds

The mandatory grounds for refusal of a Sex Establishment licence are that the applicant:

- a) is under eighteen (18) years of age;
- b) is, for the time being, disqualified from holding a Sex Establishment licence;
- c) is not a body corporate, and is not resident (or has not been resident) in an EEA state for six (6) months immediately preceding the date of the application;
- d) is a body corporate which is not incorporated in an EEA state;
- e) has in the period of twelve (12) months preceding the date of the application 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.

3.5.3 Discretionary Grounds

The discretionary grounds for refusal of a Sex Establishment licence are that:

- a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
- b) if the licence were to be granted, 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 of such a licence if he made the application himself;
- c) the number of Sex Establishments, or Sex Establishments of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality;
- d) the grant would be inappropriate, having regard to:
 - i) the character of the relevant locality;
 - ii) the use to which any premises in the vicinity are put;
 - iii) the layout, character or condition of the Premises, vehicle, vessel or stall in respect of which the application is made.

Further guidance on the criteria the Council will use to determine these discretionary grounds can be found within this Policy.

3.6 Representations

3.6.1 The Council is under a duty to consider any representations made within the prescribed twenty-eight (28) day consultation period starting on the day following the receipt of a valid application.

3.6.2 Case law has established that there is discretion to hear later representations provided the applicant is given the opportunity to deal with those objections.

3.6.3 In order to ensure a fair hearing for all parties, the Council will ordinarily accept late representations providing that they are relevant. The applicant will be given a period

of no less than ten (10) working days to consider all representations prior to a Licensing and Appeals Sub-Committee hearing.

4. POWER TO PRESCRIBE CONDITIONS

- 4.1 Section 13 of Schedule 3 of the Act provides a power for the Council to specify standard conditions in relation to Sex Establishment licences.
- 4.2 The Council's standard conditions are detailed in **Appendices A to D** of this Policy. Appendix A lists conditions that will be applied to all Sex Establishment licences. Appendices B, C and D list the additional standard conditions, based on the specific type of establishment, which will be applied in addition to Appendix A.
- 4.3 All licences will be granted, renewed, transferred or varied subject to these standard conditions unless expressly excluded or varied by a Licensing and Appeals Sub-Committee.
- 4.4 Notwithstanding the above, a Licensing and Appeals Sub-Committee may impose specific non-standard conditions on a licence where they are deemed necessary based on the specific individual merits of the application.

5. REVOCATION OF A LICENCE

- 5.1 The Council is aware that it may consider the revocation of a Sex Establishment licence either upon receipt of representations or by act unilaterally.
- 5.2 The decision to revoke a licence is reserved for a Licensing and Appeals Sub-Committee who will determine the application in accordance with the procedure detailed in section 6 of this policy.
- 5.3 Any decision to revoke a licence will be accompanied by appropriate reasons for the decision and will relate to either:
 - a) any of the mandatory grounds listed in section 3.5.2 of this policy; or
 - b) the first two discretionary grounds listed in section 3.5.3 a) and b) of this Policy.
- 5.4 Revocation of a licence automatically disqualifies its holder from holding or obtaining another licence within North Hertfordshire for a period of twelve (12) months. It does not prevent him holding a licence in another local authority area therefore the Council reserve the right to inform any other local authority, upon request, of any licences revoked within North Hertfordshire, including reasons for the revocation.

6. HEARING PROCEDURE

- 6.1 Where the Council is required to determine an application by reference to a Licensing and Appeals Sub-Committee, the applicant and persons making representations will be advised of the date, time and venue of the hearing **and invited to attend**.
- 6.2 In preparation for the hearing, all parties will receive a copy of the licensing officer's report **no less than ten (10) working days** prior to the hearing. The report will

contain a summary of the application, **full copies of all relevant representations** and any other relevant information.

- 6.3 At the hearing, all parties will have the opportunity to address the Sub-Committee and ask questions of fact of other parties. The Sub-Committee may also ask questions of all parties that they feel relevant to the determination process.
- 6.4 The Sub-Committee will communicate their decision at the end of the hearing and all parties will receive written confirmation of the decision within seven (7) days.
- 6.5 **The names and addresses of persons making representations will be published in the licensing officer's report which will be made publicly available in accordance with the Local Government Act 1972. Other personal data such as telephone numbers and email addresses will not be included within the report.**
- 6.6 **The names and addresses of persons making representations may be withheld from the publicly available licensing officer's report upon request however this information will be provided to members of the Licensing and Appeals Sub-Committee and their advisors. Should a person having made a representation wish to speak at the Licensing and Appeals Sub-Committee hearing they will have to identify which representation within the licensing officer's report was submitted by them.**

7. OPERATION AND MANAGEMENT

- 7.1 The Council requires all licensees to ensure that they and their employees comply with all relevant licence conditions and health and safety regulations.
- 7.2 In terms of management of licensed Premises, the Council strongly encourages, where possible and appropriate, that licensees:
- a) work with statutory agencies such as the police, and the Council in order to create and maintain a safe environment, both within licensed Premises and in the environs around them;
 - b) develop crime prevention strategies in consultation with the police and the Council, particularly those whose Premises are located in areas with high levels of recorded crime.
 - c) develop strategies and procedures to increase access for disabled people to the Premises.
 - d) ensure that all relevant staff be appropriately trained in areas such as health and safety, first aid, **safeguarding** and fire precautions.
- 7.3 It is the responsibility of the applicants(s)/licence holder(s) to ensure that all other relevant statutory permissions are obtained prior to the operation of the Premises.

8. ENFORCEMENT

- 8.1 It is recognised that well-directed enforcement activity by the Council benefits not only the public but also the responsible members of the trade.

- 8.2 In pursuing its objective of encouraging responsible businesses, the Council will operate a proportionate enforcement regime in accordance with the Council's Housing and Public Protection Statement of Enforcement Policy and Practice.

9. POLICY DURATION AND AMENDMENTS

- 9.1 This Policy will take effect from 1 January 2018 and will be kept under review and amended as and when necessary to reflect changes in legislation, case law, statutory guidance and best practice.
- 9.2 Administrative amendments to this Policy, required by virtue of legislative changes, revised statutory guidance or a Council restructure, may be made by the Licensing Manager. Amendments under this section are restricted to those required to accurately reflect the current legal or administrative position rather than amendments that change the focus of local policy.
- 9.3 The Policy will be periodically reviewed to ensure it remains fit-for-purpose and either amended where necessary or approved for continuation by the Executive Member for Housing and Environmental Health, save for section 9.4.
- 9.4 In the event of any significant amendment to the Policy, a full public consultation will be undertaken prior to consideration by the Licensing and Appeals Committee who will make a recommendation for consideration by Cabinet.
For the purpose of this section, a significant amendment is defined as one that:
- (i) will have significant financial impact on applicants, licence holders or the public;
 - (ii) will have a significant procedural impact on applicants, licence holders or the public; or
 - (iii) may not be perceived by the trade or the public to be consistent with the policy objectives set out in section 1.2 above.

10. DEFINITIONS

- 10.1 **The Act**
Local Government (Miscellaneous Provisions) Act 1982
- 10.2 **Authorised Officer**
any Officer of the Council authorised under the Council's Scheme of Delegation as contained within the Constitution
- 10.3 **the Council**
North Hertfordshire District Council
- 10.4 **Head of Housing and Public Protection**
the current post-holder (or the Head of Service of the appropriate Service Area following any subsequent restructure), or any nominated Deputy authorised by the Council's Scheme of Delegation
- 10.5 **Licence Holder**
a person who holds a Sex Establishment Licence under the Act
- 10.6 **this Policy**
North Hertfordshire District Council's Sex Establishment Policy

- 10.7 **Premises** *(as defined in section 2 of Schedule 3 of the Act)*
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 Sex Establishment Licence granted under the Act
- 10.8 **Sex Establishment**
A Sex Establishment means either a Sexual Entertainment Venue a Sex Shop or a Sex Cinema as defined below in extracts from the Act.
- 10.9 **Sexual Entertainment Venue** *(as defined in Section 3 of Schedule 2A of the Act)*
- (1) In this Schedule “Sexual Entertainment Venue” means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.
 - (2) In this paragraph “relevant entertainment” means:
 - (a) any live performance; or
 - (b) any 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 the audience (whether verbally or other means).
 - (3) The following are not Sexual Entertainment Venues for the purposes of this Schedule:
 - (a) Sex Cinemas and Sex Shops;
 - (b) premises which the provision of relevant entertainment as mentioned in sub-paragraph (1) is such that, at the time in question and including any relevant entertainment which is being provided at that time:
 - (i) there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months ending with that time;
 - (ii) no such occasion has lasted for more than 24 hours; and
 - (iii) no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasion falls within the 12 month period mentioned in sub-paragraph (i));
 - (c) premises specified or described in an order made by the relevant national authority.
- 10.10 **Sex Cinema** *(as defined in Section 3 of Schedule 3 of the Act)*
- (1) In this Schedule, “Sex Cinema” means any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which:
 - (a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage:
 - (i) sexual activity; or
 - (ii) acts of force or restraint which are associated with sexual activity;

or
 - (b) are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions, but does not include a dwelling-house to which the public is not admitted.
 - (2) No premises shall be treated as a Sex Cinema by reason only:
 - (a) if they may be used for an exhibition of a film (within the meaning of paragraph 15 of Schedule 1 to the Licensing Act 2003) by virtue of an authorisation (which the meaning of section 136 of that Act), of their use in accordance with that authorisation; or

- (b) of their use for an exhibition to which section 6 of that Act (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of section 6(6) of the Cinemas Act 1985.

10.11 **Sex Shop** *(as defined in Section 4 of Schedule 3 of the Act)*

- (1) In this Schedule “Sex Shop” means any premises, vehicle, vessel or stall 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:
 - (i) sexual activity; or
 - (ii) acts of force or restraint which are associated with sexual activity.
- (2) No premises shall be treated as a Sex Shop by reason only of their use for the exhibition of moving pictures by whatever means produced.
- (3) In this Schedule “sex article” means:
 - (a) anything made for use in connection with, or for the purpose of stimulating or encouraging:
 - (i) sexual activity; or
 - (ii) acts of force or restraint which are associated with sexual activity; and
 - (b) anything to which sub-paragraph (4) below applies.
- (4) This sub-paragraph applies:
 - (a) to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
 - (b) to any recording of vision or sound, which:
 - (i) is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or
 - (ii) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

10.12 **Children**

A person under eighteen (18) years of age

10.13 **Vulnerable Adults**

A person eighteen (18) years of age or above who is, or may be, in need of community care services by reason of disability, age or illness; and is, or may be, unable to take care of, or unable to protect, him or herself against significant harm or exploitation.

APPENDIX A

Standard Conditions Applicable to Licences for Sex Establishments

The following conditions will be attached to all Sex Establishment licences issued by North Hertfordshire District Council pursuant to paragraph 13(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, unless otherwise amended by a Licensing and Appeals Sub-Committee

1 General

- a) These standard conditions will apply to all licences unless disapplied or varied by a Licensing and Appeals Sub-Committee.
- b) 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 the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982.
- c) In the event of a conflict between these standard conditions and any special conditions contained in a licence relating to a Sex Establishment, the special conditions shall prevail.

2 Conduct and Management of Sex Establishment

- a) 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 Council within fourteen (14) days of such change. Such written details as the Council may require in respect of any new director, secretary or manager are to be furnished within fourteen (14) days of a request in writing from the Council.
- b) The licensee or some responsible person nominated by him in writing for the purpose of managing the Sex Establishment in his absence shall be in charge of and upon the Premises during the whole time they are open to the public. Details of any responsible person nominated by the licensee (including photographs) must be supplied to and approved in writing by the Council before managing the Premises.
- c) The name of the person responsible for the management of a Sex Establishment shall be prominently displayed within the Premises.
- d) The licensee shall maintain a daily register. It must record the name and address of any person who is to be responsible for managing the Sex Establishment in his absence and the names and addresses of those employed in the Sex Establishment. The register is to be completed each day within **sixty (60)** minutes of the Sex Establishment opening for business and is to be available for inspection by the police and by authorised officers of the Council.
- e) The licensee shall retain control over all portions of the Premises and shall not let, licence or part with possession of any part of the Premises.
- f) The licensee shall maintain good order in the Premises.

- g) No person under the age of eighteen (18) years shall be admitted to the Premises or employed in the business of a Sex Establishment.
- h) 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 by the Council.
- i) No part of the Premises shall be used by prostitutes (male or female) for the purposes of solicitation or of otherwise exercising their profession.
- j) Neither the licensee or any employer or other person shall seek to obtain custom for the Sex Establishment by means of personal solicitation anywhere in the District of North Hertfordshire.
- k) The licensee shall comply with all statutory provisions and any regulations made thereunder.
- l) The licensee shall ensure that during the hours the Sex Establishment is open for business every employee, with the exception of any performer in a Sexual Entertainment Venue, wears a badge of a type to be approved by the Council indicating his name and that he is an employee.
- m) The copy of the licence and of these standard conditions 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 Council. The copy of the licence shall be displayed, framed and exhibited to the satisfaction of the Council. A clean and legible copy of these standard conditions shall be retained on the Premises and available upon request.
- n) No change of use of any portion of the Premises from that approved by the Council shall be made without the consent of the Council. Other statutory permissions may also be required.
- o) Change from one type of Sex Establishment to another shall not be effected with the written consent of the Council.

3 External Appearance

- a) No display, advertisement, word, letter, model, sign, placard, board, notice, device representation, drawing, writing, or any matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the Premises except:
 - i) any notice of a size and in a form approved by the Council which is required to be displayed so as to be visible from outside the Premises by law, or by any conditions of a licence granted by the Council.
 - ii) such display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing, or any matter or thing as shall have been approved by the Council.
- b) No external loudspeakers shall be used or installed at the Premises without the written consent of the Council
- c) No exterior lighting shall be used or installed at the Premises without the written consent of the Council.

4 State, Condition and Layout of the Premises

- a) The Premises shall be maintained in good repair and condition.
- b) Lighting in all parts of the Premises as approved by the Council shall be in operation continuously during the whole of the time the Sex Establishment is open to the public.
- c) 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 Council and shall comply with the following requirements:
 - i) all such doors or openings approved by the Council shall be clearly indicated on the inside by the word "exit".
 - ii) 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".
 - iii) save in the case of emergency, no access shall be permitted through the Premises to any unlicensed Premises adjoining or adjacent.
- d) The external doors to the Sex Establishment shall be fitted with a device to provide for their automatic closure and such device to provide for their automatic closure and such devices shall be maintained in good working order.
- e) 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.
- f) Alterations or additions either 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 Council.
- g) All parts of the Premises shall be kept in a clean and wholesome condition to the satisfaction of the Council.

5 Safety

- a) The licensee shall take all reasonable precautions for the safety of the public and employees.
- b) The licensee shall comply with any fire prevention and safety measures that may be required of him by The Regulatory Reform (Fire Safety) Order 2005.
- c) The Premises shall be provided with fire appliances suitable to the fire risks of the Premises and such fire appliances shall be maintained in a proper working order and shall be available for instant use.

APPENDIX B

Standard Conditions for Sex Shops

The following conditions will be attached to all Sex Shop licences issued by North Hertfordshire District Council pursuant to paragraph 13(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, unless otherwise amended by a Licensing and Appeals Sub-Committee, and in addition to the standard Sex Establishment conditions listed in Appendix A.

1 Times of Opening

- a) Unless amended by a Licensing and Appeals Sub-Committee, the usual permitted hours shall be:

Mondays	0900hrs – 1900hrs
Tuesdays	0900hrs – 1900hrs
Wednesdays	0900hrs – 1900hrs
Thursdays	0900hrs – 1900hrs
Fridays	0900hrs – 1900hrs
Saturdays	0900hrs – 1900hrs

- b) Unless amended by a Licensing and Appeals Sub-Committee, a Sex Shop shall not be open on Sundays, Good Friday, Easter Day, Christmas Day or any public holiday.

2 Goods available in Sex Shops

- a) All sex articles and other things displayed for sale, hire, exchange or loan within a Sex Shop shall be clearly marked to show to persons who are inside the Sex Shop the respective prices to be charged.
- b) 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 excludes films or video films from this requirement.**
- c) No film or video film shall be exhibited, sold, **hired, exchanged or loaned** 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.
- d) The licensee shall, without charge, display and make available in the Sex Shop such free literature on counselling of matters related to sexual problems **and on sexually transmitted diseases** as may be published by the Family Planning Association and by such other similar organisations as may be specified by the Council. Such literature is to be displayed in a prominent position approved by the Council adjacent to all payment points in the Sex Shop **so as to be readily visible to any person at any such payment point.**
- e) A Sex Shop shall be conducted primarily for the purpose of the sale of goods by retail.

3 External Appearance

- a) 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 shall be so provided with a partition as to ensure that the interior of the Premises remain invisible to such passers by when the entrance is open.
- b) Windows and openings to the Premises other than entrances shall not be **permanently** obscured otherwise than with the consent of the Council but shall have suspended behind them, in a position and at an position approved by the Council, opaque screens or blinds of a type and size approved by the Council **so as to ensure that the interior of the Premises is obscured from the view** of passers-by.
- c) 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.
- d) **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.**

APPENDIX C

Standard Conditions for Sexual Entertainment Venues

The following conditions will be attached to all Sexual Entertainment Venue licences issued by North Hertfordshire District Council pursuant to paragraph 13(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, unless otherwise amended by a Licensing and Appeals Sub-Committee, and in addition to the standard Sex Establishment conditions listed in Appendix A.

1. The licence holder will have a suitable management structure in place to deal with any issues or problems that may arise at all times whilst the venue is operating as a Sexual Entertainment Venue.
2. The licence holder 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 licence holder 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. No performers under the age of eighteen (18) years will be permitted.
5. The licence holder will retain a personnel file on each performer detailing as a minimum the following information:
 - (i) full name and address (including written proof of name and address)
 - (ii) photographic proof of ID
 - (iii) proof of entitlement to work
 - (iv) contract of employment
6. The licence holder 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.
7. Where the licensing authority has specified a capacity figure in writing, the licence holder shall ensure that that figure is not exceeded at the premises at any time whilst sexual entertainment is taking place.
8. Suitable and secure changing facilities must be provided for all performers away from the main performance area. No public access to the changing facilities will be permitted.
9. 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.

10. 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.
11. Performers shall dress fully at the end of each performance.
12. 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 licence holder or his or her representative before leaving the Premises.
13. A Performer is never to be alone in the company of a customer except in an area open to the public within the Premises.
14. The licence holder shall ensure a sufficient number of staff are employed inside the Premises whilst sexual entertainment is provided to supervise the Performers and manage customers.
15. 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.
16. Performers are never to be in the company of one or more customers except in an area open to the public within the Premises.
17. The licence holder shall ensure that during performances to which this licence relates:
 - (i) Performers do not perform any act that clearly simulates any sexual act
 - (ii) 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)
 - (iii) Performers do not use inappropriate, suggestive or sexually graphic language at any time
 - (iv) Performers do not intentionally touch the genitals or breasts of another performer or knowingly permit another Performer intentionally to touch their genitals or breasts
 - (v) 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
 - (vi) Sex toys must not be used by performers and penetration of the genital area by any means must not take place.
18. There must be no physical contact between performers and patrons before, during or after a performance (other than the transfer of money to the performers' hands at the beginning or conclusion of a performance).
19. The licence holder shall ensure that during any performances to which this Licence relates:
 - (i) customers do not dance at any time except in areas approved by the licensing authority as being separate from areas for sexual entertainment; for the avoidance of doubt, audience participation in a performance is not permitted.

(ii) customers remain fully clothed at all times

20. No person under eighteen (18) years of age must be on the Premises when the entertainment authorised by the licence is taking place.
21. The licence holder will provide an operating schedule for the venue which will contain, as a minimum, details of:
 - (i) staff training records and personnel files
 - (ii) a performers' code of conduct (including as a minimum, policies on alcohol and drugs misuse, liaison with patrons policy and welfare policy)
 - (iii) performers' personnel files
 - (iv) management structure
 - (v) security log (including details required in condition 5 above and any incidents dealt with by security)
 - (vi) venue health & safety policy (including appropriate risk assessments)
 - (vii) fire risk assessment and emergency evacuation plan
 - (vii) house rules and disciplinary procedures
22. Where a Sexual Entertainment Venue offers private performances of lap-dancing, hostess facilities, or similar, there shall be prominently and legibly displayed a comprehensive tariff of all charges and prices which shall be illuminated and placed in such a position that it can easily be read by persons before entering the main entertainment area. No employee shall stand in such a position as to obscure the notice.
23. No charge for any service, including the company of a hostess, shall be made to a patron unless the patron has specifically ordered the service having first been made aware of the cost.
24. No charge shall be made to any patron for any drink provided for a hostess or performer unless that patron has specifically ordered it having first been made aware of the cost.
25. A minimum of two (2) SIA-registered door supervisors will be on duty at all times whilst the venue is being operated as a Sexual Entertainment Venue. A further SIA-registered door supervisor must be provided for each one hundred (100) patrons or part thereof over and above one hundred (100) patrons. The licence holder will keep a record of the name and badge number of all door supervisors employed at the Premises.
26. 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.
27. Closed Circuit Television (CCTV) must be installed, maintained and operated to the satisfaction of Hertfordshire Constabulary at all times when the Premises is open to the public and providing licensable activities. It must cover all areas where performances take place and at the entrance to the Premises.
28. All CCTV tapes, or other medium used for CCTV recording, must be stored for twenty-eight days with accurate time and date markings, and must not be removed from the Premises unless requested by Hertfordshire Constabulary or the licensing authority; after this period, recordings may be destroyed. Destruction records must

include the name and position within the organisation of the person(s) who destroyed the recordings, the reason for the destruction and the identity of the tape or other medium that was destroyed. All recordings kept for the twenty-eight day period must be original recordings; copies of the recordings should not be taken unless requested by Hertfordshire Constabulary or the licensing authority.

29. There must be no display visible outside the Premises, either in writing, symbols, photographs, or other images, which indicates that entertainment involving nudity or sexual performances takes place on the Premises. Performances shall not be the subject of any advertising involving the distribution of leaflets, promotion by canvassers or touting.
30. The authorised entertainment must only take place in the designated areas approved by the Council and identified on the plan attached to the licence.
31. The licence holder shall ensure that during the performance of a table dance:
 - (i) 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
 - (ii) customers remain seated during the entire performance of the dance
 - (iii) for the purpose of restraint only, Performers only touch a customer above the customer's chest with their hands only
 - (iv) Performers do not sit next to, or on, or straddle, the customer
 - (v) Performers do not place their feet on the seats

APPENDIX D

Standard Conditions for Sex Cinemas

The following conditions will be attached to all Sex Cinema licences issued by North Hertfordshire District Council pursuant to paragraph 13(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, unless otherwise amended by a Licensing and Appeals Sub-Committee, and in addition to the standard Sex Establishment conditions listed in Appendix A.

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 licence holder 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 Cinema, nor shall more than one (1) 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 or any subsequent associated legislation.