

**City of Durham**

At a Meeting of the **CABINET** held in the Gala Theatre, Durham, on Monday, 3<sup>rd</sup> December, 2007, at 2.00 p.m.

**Present:** Councillor Reynolds (in the Chair)  
and Councillors Bell, Dickie, Jackson, Rae, Southwell, Thomson and Woods.

**Also Present:** Councillors Bartle, Carr, Kellett, Marsden, Mitchell, Robinson, M.J.A. Smith, Turnbull and Wilkinson.

**391. DECLARATIONS OF INTEREST**

There were no Declarations of Interest submitted.

**392. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Pitts and van Zwanenberg.

**393. MINUTES**

The Minutes of the Meeting held on 28<sup>th</sup> November, 2007, were confirmed as a correct record and signed by the Chair.

**Portfolio Member Recommendations or Items Requiring a Cabinet Decision**

**394. "THE JOURNEY" FUNDING AND PUBLIC ART POLICY, DELIVERY AND FUTURE FUNDING**

The Portfolio Holder for Leisure and Culture and Head of Cultural Services submitted a comprehensive report seeking approval to pledge financial support to "The Journey" and to note the work being undertaken to support other Public Art initiatives within the District under the Percentage for Art Supplementary Planning Guidance and the Council's partnership with Durham City Arts.

**Resolved:** (i) That £50,000 be pledged to "The Journey" Charitable Trust to enable the provision of a new bronze statue based on the existing timber piece created by Fenwick Lawson.

(ii) That the Council procure and commission the bronze on behalf of "The Journey" Charity once sufficient funds have been raised.

(iii) That the Council take reasonable maintenance responsibility for the piece once sited on Council property.

(vi) That the Head of Cultural Services bring forward a report detailing the Public Art Action Plan which will be used to implement the outcomes of the Percentage for Art Policy in due course.

**Note:** *Councillor Carr entered the Meeting at 2.05 p.m.*

**Reports for Information**

**395. TEMPORARY ICE RINK, MILLENNIUM PLACE**

The Head of Cultural Services submitted a report to provide an update on the free temporary public ice rink in Millennium Place in January and February, 2008.

**Resolved:** That the report be noted.

**396. IN PRIVATE**

**Portfolio Member Recommendations or Items Requiring a Cabinet Decision**

**397. KERBSIDE RECYCLING CONTRACT**

The Portfolio Holder for Environment and Head of Environment and Leisure Services submitted a comprehensive report seeking approval to award the contract for the delivery of a service for the kerbside collection of materials for recycling within City of Durham District.

**Resolved:** (i) That the requirement of Contract and Procurement Rule 3 for this procurement, pursuant to Contract Procurement Rule 8, be waived.

(ii) That approval be given to award the contract to Greencycle as the preferred supplier at the variant bid price of £54.57 per tonne.

(iii) That the contract period of 2 years with an option for an additional 2 years be approved.

(iv) That approval be given to expand the kerbside collection service to incorporate plastics and cardboard.

(iv) That approval be given to purchase 40,000 reusable bags/sacks at approximately £2.50 per unit.

The Meeting terminated at 2.15 p.m.

Chair

## Agenda Item 5(a)

STATUS PUBLIC

<b>Portfolio Member/Director</b> Councillor Dennis Southwell/ Paul Darby	<b>Portfolio</b> Finance
<b>Subject</b> Housing Benefit – Review of Localities / Broad Rental Market Area Boundaries	<b>Date</b> 17 December 2007
	<b>Forward Plan</b> Yes
<b>Contact Officer</b> Caterina Blackburn, Benefit Manager Tel : 0191 301 8646 Email : <a href="mailto:cblackburn@durhamcity.gov.uk">cblackburn@durhamcity.gov.uk</a>	<b>Previous Minutes</b>  None
<b>Purpose of Report</b> <p>The purpose of this report to is identify changes to the locality rent boundary applicable to the City Council, as notified by the Department of Works and Pensions (DWP) and applicable to all new claimants and existing claimants upon review of their claims after 29 October 2007. The report identifies the implication to this policy change on existing claimants and sets out proposals to minimise the financial hardship that may be faced as a result of these changes.</p>	
<b>Executive Summary</b> <p>The Rent Service is an executive agency of the Department for Work and Pensions (DWP). One of its functions is to provide local authorities with rental determinations. These determinations are locality based and are used to calculate benefit entitlement.</p> <p>Local Authorities who administer Housing Benefits receive 100% grant (in the form of subsidies paid by the DWP) based on benefit awarded in accordance with the Benefit regulations. The amount of benefit awarded and subsidy received for claimants in private sector accommodation is based on the local rent levels determined by the Rent Officer – the ‘the local reference rent’.</p> <p>The local reference rent is the midpoint of a range of rents for all types of property with the appropriate number of rooms in the same ‘locality’ as a tenant’s home. The range of rents used does not include any rents that are exceptionally high or low.</p> <p>The Rent Service has recently undertaken a fundamental national review of the locality boundaries and made changes on the basis of this. Previously the City Councils locality reference rent area was broadly in accordance with the District boundaries. The new locality boundary has been extended to include to the West – Allenheads; to the North – up to Burnhopfield; to the East – as far as Haswell; and to the South – Cockfield, Evenwood. These changes came into affect 29 October 2007 and essentially mean that the local reference rent amounts (and therefore the benefit that can be paid and fully recovered from DWP) have decreased – being the impact of lower rental value properties now falling within the boundary applicable to the City Councils area. Appendix A sets out details of the new Locality boundary, applicable from 29 October 2007.</p>	

**Executive Summary (Continued...)**

Clearly the changes could result in hardship for many existing claimants who will have taken tenancies on the basis of their benefit entitlement being a certain amount. This DWP policy change will most affect families living in 2-3 bedroom private sector accommodation, and, if the reduction in entitlement is passed on, may cause some to lose their homes, putting additional pressure on the Council's homelessness team.

**Portfolio Member Recommendations or items Requiring a Cabinet Decision**

That Cabinet note the changes in locality rent boundaries and its impact on local reference rents from 29 October 2007 and agree the following recommendations: -

- That the Benefit Service make discretionary housing payments up to the value of the Local Reference Rent applicable prior to 29 October 2007 for all existing claimants up until the point in time that the Local Reference Rents exceed the levels applicable prior to the changes introduced 29 October 2007;
- That the Benefit Service apply the new Local Reference Rent to all new claimants and to existing claimants once the new Local Reference Rents exceed the levels applicable prior to the changes introduced 29 October 2007; and
- That the Benefit Service consult with the private sector landlords of existing claimants to inform them of the changes and potential impact on their tenants, with a view to influencing any rent increases in 2008/09 whilst the new Local Reference Rents catch up with the levels applicable prior to 29 October 2007.

**Reasons for Recommendations**

To limit the impact on existing claimants as a result of the changes in locality rent boundaries and its impact on local reference rents and therefore benefit entitlement and their ability to afford to keep living in their existing accommodation.

**Alternative Options to be Considered**

Do nothing – apply the revised Local Reference Rents to all new and to existing claimants at the date of review of their benefit claim.

Whilst this would present the least cost option it is not recommended as the reductions in Benefit entitlement would have an effect on 106 existing claimants / families at the date of their next review – 48 this year and a further 58 next year - through no fault of their own. With this brings the real possibility of arrears building up and possible eviction action being taken by private sector landlord in some cases. This would put extra pressure on the Council's homelessness section and possibly result in social migration within the District and possibly out of the District.

**Consultation**

The content of this report and the associated appendices has been considered and approved by the Councils Officers Management Team, including the three statutory officers.

Officers were informed at a meeting with the Rent Service in March that there was to be a review of the localities. The understanding at that time, shared by other local authorities and the local contacts at the Rent Service, was that the review related to the Broad Rental Market Area and therefore Local Housing Allowance which comes into effect April 2008 (a report on the implications of this will be presented to Cabinet shortly) and would only impact on new claimants.

**Consultation (Continued...)**

Officers were only informed in mid September that the locality review was to be implemented and that it would affect the Local Reference Rent and therefore current Housing Benefit claimants. At that meeting Jackie Scott, Rent Service Area Valuation Manager, indicated that she would look to agree an implementation date with all authorities affected by the change in a locality. With the intention that it would be possibly April 2009, this would enable Local Authorities to review their policies and budgets and to inform the families that would be detrimentally affected.

This did not happen and the new locality was imposed from the 29<sup>th</sup> October 2007 – as notified by the Rent Service on 22<sup>nd</sup> October 2007. The Director of Financial Services has written to both the DWP and the Rent Service to express disappointment with the way this has been handled and to point out the hardship that this change could cause to existing claimants within the District.

From discussions with the DWP it is clear that they are aware of this problem and have given an undertaking to monitor the situation. This is of no comfort to the authorities (such as the City Council) and its claimants that are faced with the consequences of this decision. To impose the change 7 months into the year and expect an authority to deal with the consequences when its Discretionary Housing Payments budget is fully allocated would appear unreasonable.

**Financial, Legal and Risk Implications**

Provisional analysis shows that potentially 106 existing claimants / families could be affected by these changes. 48 claimants / families, due for review in the period 29 October 2007 to 31 March 2008, could be adversely affected by the changes this year. 12 claimants / families receiving over £10 a week less and 1 family receiving £25 a week less. The total potential impact for the remaining part of this financial year being a loss of benefit to these claimants of £3,954 (See Appendix B – Potential Impact : Loss of Benefit Entitlement)

The full year impact in 2008/09, assuming that the Local Reference Rent applicable from 29 October 2007 remains unchanged next year for the 106 existing claimants / families could be £34,146 (See Appendix B – Potential Impact: Loss of Benefit Entitlement).

If Cabinet decided that it did not wish to pass on these reductions in entitlement to the 106 existing claimants / families then it the Benefit Service would need to award Discretionary Housing Payments. Such payments are permitted providing they do not exceed 2.5 times the “allowance” paid by the DWP for such discretionary payments. Subsidy is only payable on “allowance” threshold – currently £15,391. Gross payments over this figure – up to the maximum permitted £38,478 – do not attract subsidy and therefore are borne by the General Fund. Potential additional costs (if discretionary payments are made up to the maximum permitted levels) are therefore £23,087. The Benefit Manager will need to carefully control the amount of discretionary payments to ensure that these limits are not breached.

There are no legal implications arising from this report. The changes introduced are imposed through National regulations and apply equally to all authorities. The proposals outlined in the report are within existing powers.

### **Financial, Legal and Risk Implications (Continued...)**

In terms of risk implications there is the possibility that 106 existing claimants / families could (at the date of their next review) - through no fault of their own – face a cut in their disposable income. This would bring about the real possibility of arrears building up and possible eviction action being taken by private sector landlord in some cases. This would put extra pressure on the Council's homelessness section and possibly result in social migration within the District and possibly out of the District. Additionally, if these reductions are passed on the Council (as administrator of the Benefits system) could face bad publicity from private tenants faced with the loss of benefit

### **Resource Implications**

Officers have attended meetings with both the DWP and Rent Service and lobbied / written strongly worded letters to both regarding the impact of these changes. Further officer time will be needed to consult with the private sector landlords of existing claimants to inform them of the changes and the potential impact on their tenants when their benefit entitlement is reviewed, with a view to influencing any rent increases in 2008/09 whilst the new Local Reference Rents catch up with the levels applicable prior to 29 October 2007.

### **Timescale for Action**

The changes to the locality boundaries and Local Reference Rents came into affect 29 October 2007. This will be applied to all new claimants.

There are an estimated 48 existing claimants / families due to have their benefit reviewed that could be affected between 29 October 2007 and 31 March 2008. To date 3 have been already been reviewed, with the new Local Reference Rents being used to calculate base entitlement and applications for discretionary housing payments have been invited for the shortfall / reduction in benefit as a consequence. Any discretionary housing benefit applications will be processed immediately following Cabinet consideration of this report.

### **Associated Policies and Plans**

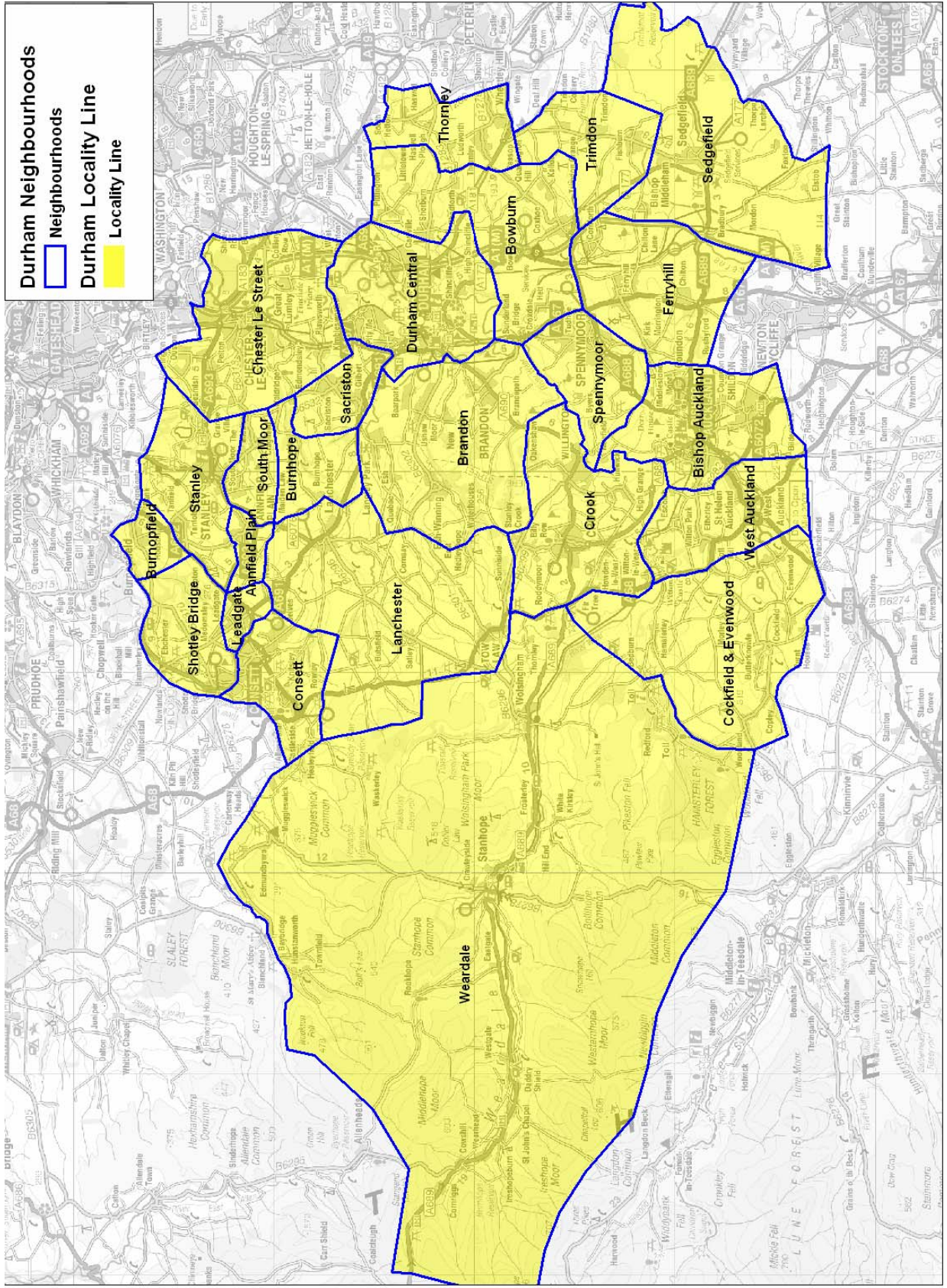
- Benefits Service Business Plan 2007/08
- Discretionary Housing Payments Policies - Benefits Service Procedure Notes
- Annual Revenue and Capital Budgets 2007/08

### **Supporting Documents**

- APPENDIX A – Rent Reference Locality Boundaries : 29 October 2007 +
- APPENDIX B – Potential Impact : Loss of Benefit Entitlement

### **Background Papers**

- Minutes from March meeting with Rent Service
- Minutes from September meeting with Rent Service
- Implementation letter – October 2007
- Minutes from post implementation meeting with Rent Service - November 2007



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**Potential Impact Loss of Benefit Entitlement**

<b>Number of Families Affected</b>	<b>Benefit Reduction (£ per week)</b>
46	0.01 - 5.00
30	5.01 - 10.00
25	10.01 - 15.00
4	15.01 - 20.00
1	20.01 - 25.00

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## Agenda Item 5(b)

STATUS PUBLIC

<b>Portfolio Member/Director</b> Councillors Anji Rae and Les Thomson/ Angelo Moscardini	<b>Portfolio</b> Environment and Communities
<b>Subject</b> Partnership Working to Deliver "Go Warm Durham City"	<b>Date</b> 17th December 2007
	<b>Forward Plan</b> No
<b>Contact Officer</b> Mick Straughair – tel: 0191 301 8514 Email : <a href="mailto:mstraughair@durhamcity.gov.uk">mstraughair@durhamcity.gov.uk</a>	<b>Previous Minutes</b> None
<b>Purpose of Report</b> <p>To recommend to Cabinet a proposed working partnership between Domestic Energy Solutions and the City of Durham Council to deliver a scheme entitled, 'Go Warm Durham City' in line with "The Affordable Warmth Strategy".</p>	
<b>Executive Summary</b> <p>City of Durham Council has recognised the need to support efforts to tackle Fuel Poverty by becoming signatory to the Affordable Warmth Strategy, adopted by Durham District Partnership.</p> <p>Following evaluation of various options for delivery of a scheme to alleviate Fuel Poverty in the District, the Council initiated a pilot scheme conducted during the winter 2006 / spring 2007 with PowerGen, called 'Heatstreets'. This scheme was delivered within the Pelaw / Gilesgate Ward, however it was deemed a failure due to Powergen's inconsistent approach to household survey / assessment, failure to meet deadlines, and poor quality reporting of information. Powergen were consequently ruled out as a future partner for delivery of a District Wide scheme.</p> <p>Officers of the Council have since been investigating other schemes and initiatives which would be beneficial to the residents of the City of Durham.</p> <p>One such scheme initiated by the Government, invited applications to a newly established Community Energy Efficiency Fund. In order to maximise the chances of a successful funding bid, authorities throughout this region made a partnership application coordinated by a North East Community Interest Company called Domestic Energy Solutions (DES). The application was successful and DES has now been awarded some £835,000 to deliver this scheme across County Durham.</p> <p>This proposed scheme will involve the assessment of 3,500 homes across the District of Durham by 31<sup>st</sup> March 2008 and then make available funding / subsidies to enable the appropriate energy saving works to be carried out. Subject to assessment of the success of this initial phase, a further 3,000 homes will be assessed over the next 2 years.</p> <p>Wards will be selected for coverage in accordance with recorded levels of social deprivation. Should householders in lower priority wards wish to receive an assessment, then this will be arranged following a phone call to the Council or DES.</p>	

The DES team will themselves directly employ a number of benefits advisers and carry out a screening operation of all households which request assistance and help them process any claims. Where cases are more complicated, the team will refer them directly to the relevant agency or local authority to help them pursue their claim.

Council owned households will not be included within household assessment and survey as they are already insulated in excess of decent homes standards.

### **How it Will Work**

After ward based marketing and a joint letter from the local authority and DES to private householders, an assessment team directly employed by DES will systematically visit all homes in areas agreed with the Council. The assessment data will be used to determine levels of fuel poverty and (based on a benefits entitlement check) confirm which households qualify for free or heavily subsidised insulation measures. All households which complete an assessment form will receive four energy efficient light bulbs.

The households of identified 'Priority Customers' will receive a detailed survey, and an appointment will be made with the householder for fitting of energy efficiency measures FREE of charge

Homes requiring insulation measures will be surveyed and the necessary work booked in whenever possible on the spot. Installation will then be carried out within two to four weeks. Where there is a need for heating support, households which qualify under the Government's Warm Front scheme will be automatically referred to EAGA for action.

The households of identified 'Able to Pay' customers will be offered a subsidised price of £99 for fitting of appropriate energy efficiency measures (loft or cavity wall insulation). This figure will be achieved through Scottish Power subsidising the costs of fitting measures and has been arrived through negotiation between DES and Scottish Power.

Householders will receive further benefits advice, if following assessment they are found to be entitled to benefits they do not currently claim.

### **Portfolio Member Recommendations or items Requiring a Cabinet Decision**

That Cabinet :-

- Approve the "Go Warm Durham City" initiative in partnership with DES,
- Agree to the initial pilot period until 31<sup>st</sup> March 2008 covering 3,500 homes and, following a successful evaluation, extend the scheme to a further 3,000 homes over the next 2 years.

### **Reasons for Recommendations**

- To comply with the actions as detailed in the "Affordable Warmth Strategy".
- To obtain external funding / subsidies for energy saving measures on the private housing stock within the City of Durham boundaries.
- To enable the Council to meet it's own obligations under the Home Energy Conservation Act.

<p><b>Alternative Options to be Considered</b></p> <ul style="list-style-type: none"> <li>• To do nothing.</li> <li>• Continue to investigate other similar schemes.</li> </ul>
<p><b>Financial, Legal and Risk Implications</b></p> <ul style="list-style-type: none"> <li>• There are no identifiable risk implications associated with this scheme. All staff on the project, with the exception of the actual installation teams are either directly employed by, or managed, directly from within the DES management team thus ensuring appropriate customer focus training and service.</li> <li>• No capital costs will be incurred by the Council through our involvement as a partner in this scheme.</li> </ul>
<p><b>Resource Implications</b></p> <p>Staff resources devoted to this scheme will be minimal.</p> <p>All staff on the project, with the exception of the actual installation teams are either directly employed by, or managed, directly from within the DES management team thus ensuring appropriate customer focus training and service.</p> <p>The quality of the service and the work carried out will be closely monitored by DES managers and Council Officers with random checks, sample quality checks on each contractor and a customer survey to determine whether they were satisfied with the service provided.</p>
<p><b>Timescale for Action</b></p> <p>As soon as practicable</p>
<p><b>Associated Policies and Plans</b></p> <p>Affordable Warmth Strategy</p>
<p><b>Supporting Documents</b></p> <p>None</p>
<p><b>Background Papers</b></p> <p>None</p>

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## Agenda Item 5(c)

STATUS PUBLIC

<b>Portfolio Member/Director/Head of Service</b> Councillor Sue Pitts/Elizabeth Hall	<b>Portfolio</b> Leisure and Culture
<b>Subject</b> Review of the Council's Licensing Policy	<b>Date</b> 17 <sup>th</sup> December 2007
	<b>Forward Plan</b> Yes
<b>Contact Officer</b> – Licensing Manager – Jane Kevan Tel: 0191 3018786; email: <a href="mailto:jkevan@durhamcity.gov.uk">jkevan@durhamcity.gov.uk</a>	<b>Previous Minutes</b> n/a
<p><b>Purpose of Report</b> – The Licensing Act 2003 requires all Councils to prepare, consult on and publish a Statement of Licensing Policy. The Policy sets out how the licensing authority will judge applications for licensing the sale of alcohol, refreshment at night and/or public entertainment, within the statutory framework of the Act.</p>	
<p><b>Executive Summary</b></p> <p>The Act requires a licensing authority to prepare and publish a statement of its licensing policy every three years. The current policy was published in December 2004. During the three year period, the policy must be kept under review and the licensing authority may make such revisions to it as it considers appropriate.</p> <p>The Licensing Committee considered revisions to the policy at its meeting on 4<sup>th</sup> July 2007, having regard to the revised Guidance issued under Section 182 of the Licensing Act 2003 in June 2007.</p> <p>Consultation responses on the draft revisions to the licensing policy were invited from 10<sup>th</sup> July 2007. Responses were requested to be submitted by 12<sup>th</sup> October 2007. In addition to the statutory consultees, other people and organisations that may have been interested in responding to the consultation were identified.</p> <p>The draft revised policy has also been on the Council's website and featured in the September/October 2007 edition of Durham City News.</p> <p>The consultation exercise has been conducted in accordance with the Cabinet Code of Practice on Written Consultation, allowing a minimum of 12 weeks for responses.</p> <p>The revised policy must be adopted and published before 7<sup>th</sup> January 2008 and a cumulative impact survey will then be carried out.</p> <p>14 responses were received during the consultation period. A summary of these responses is attached as appendix A.</p> <p>Licensing law is part of a holistic approach to the management of Durham City. The Licensing Policy must be integrated with local crime prevention, planning, transport, tourism, race equality schemes and cultural strategies. A Licensing Policy is also partially determined by the legislation and DCMS guidance.</p> <p>Licensing Policies must promote the four licensing objectives set by government: the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm.</p>	

<p>The summary of responses includes an appraisal with reference to the licensing objectives, legislation and DCMS guidance.</p>
<p><b>Portfolio Member Recommendations or items Requiring a Cabinet Decision</b></p> <p>It is recommended that the Cabinet approve the proposed revised Statement of Licensing Policy for the City of Durham attached as appendix B, to publish a revised Statement of Licensing Policy, necessary to undertake the licensing authority's responsibilities imposed by the Licensing Act 2003.</p>
<p><b>Reasons for Recommendations</b></p> <p>As a review of the Licensing Policy is required, and to respond to comments made by those who responded to the consultation.</p>
<p><b>Alternative Options to be Considered</b> – not applicable.</p>
<p><b>Financial, Legal and Risk Implications</b></p> <p>The statement of licensing policy must be right. If an appeal concludes it is deficient, Magistrates can declare it illegal. Matters already concluded or ongoing will be lost as the decisions were based on a defective document. Also, a licensing policy can be subject to a judicial review.</p>
<p><b>Resource Implications</b></p> <p>There would be an initial cost to the Council to commission the survey and officers would need to contribute to the process. It is not known at this stage what the costs would be. However, it should be possible to absorb the costs of the survey within the current licensing budget.</p>
<p><b>Timescale for Action</b> – The Council's Statement of Licensing Policy must be reviewed by December 2007. As the necessary consultation should allow 12 weeks for responding, any proposed changes to the Licensing Policy should be pursued as soon as possible.</p>
<p><b>Associated Policies and Plans</b> – N/A</p>
<p><b>Supporting Documents</b> – Appendix A – Summary of Consultation Responses Appendix B – Licensing Policy</p>
<p><b>Background Papers</b></p> <p>Draft revised Licensing Policy – Durham City Council Licensing Act 2003 Revised Guidance issued under Section 182 of the Licensing Act 2003</p>



### **Summary of Responses to the Licensing Policy Review Consultation**

14 responses were received. Half of these were from local residents, mostly supporting the policy but critical of some of the licences issued. Some of these comments highlighted the need for clarification early in the policy of its purpose and limitations.

No policy change has been made in respect of some of the comments, either because the issues raised are not relevant to the four licensing objectives set by statute and are therefore not in the remit of the licensing policy, or because of the over-riding factor that each application will be considered on its individual merits.

This summary has been separated into three sections: support, criticism, and comments leading to the licensing policy being changed.

#### **Support**

1. Punch Taverns and three other respondents support a cumulative impact policy. Unfortunately, the licensing policy must be revised before any recommendations of a Cumulative Impact survey will be made. A further consultation and review may be necessary in 2008.

#### **Criticism**

1. Various policies should be more specific.
2. Two local residents consider policy 6e insufficient, and that the licensing authority should notify local residents of applications.
3. Some local residents and the MP consider parts of the policy are not followed or implemented.

#### **Comments leading to change**

1. Section 2: "only" removed from reference to the DCMS guidance.
2. Section 3: references to the Alcohol Harm Reduction Plan and Nightsafe added.

3. Section 6a: “where practical” removed from “toilets to remain open for at least 30 minutes after the terminal hour where practical”.
4. Policy 6d: changed “disabled people” to “people with a disability”.
5. Policy 9 removed as the British Beer & Pub Association noted it was contrary to the Act which states no terminal hour is to be stipulated unless there are grounds for appropriate restrictions.
6. Section 9 (now merged with Section 8): “close consultation” changed to “Durham County Council as Highway Authority will need to be consulted”.
7. Section 10 partially rolled into section 4.
8. Section 13 (now section 10): “gangs of noisy youths” changed to “groups of noisy people” and “leaving” changed to “placement”.
9. Policy 14 (now 11): residential accommodation and community centres added.
10. Section 17 (now section 14): reference to the Best Bar None scheme added, “and participate in” added to the reference to Pubwatch, and reference to the local harm reduction strategy added.
11. Section 18 (now 15): references to taking drugs in licensed premises and to drinks “spiking” added.



**DRAFT STATEMENT OF  
LICENSING POLICY**

***DECEMBER 2007***

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**1. DURHAM CITY-**

Durham City is located centrally within the county and has grown from an ancient cathedral city to become the major administrative, judicial and educational centre of County Durham. The city, a World Heritage Site, is the main urban area, and is surrounded by 26 small villages, a mixture of former colliery and rural settlements. The City of Durham covers some 18,700 hectares and has a resident population of 90,700. The ethnic minority population of the City of Durham District accounts for 2.3% of the total population (2001 census). The University has 12,700 students and the area attracts approximately 3.7 million visitors per year.

The growth of licensed premises in Durham has been marked since the mid 1990's. Development of the evening economy is regarded as a key element of the City Council's strategy for City Centre regeneration and cultural development. As such there is a need to make appropriate provision for licensed premises in a strategic and balanced way.

Durham enjoys cultural diversity. Evening leisure and entertainment is commercially and culturally important but it must take place in sympathy with people living nearby. The authority is keen to help Pubwatch, Nightsafe, Durham Constabulary and other organisations tackle problems relating to late night crime and public nuisance.

The Council supports the provision of culture and arts events such as live music, theatre, street art and circuses. The licensing authority monitors the impact of licensing on the provision of regulated entertainment, particularly live entertainment. Only necessary, proportionate and reasonable licensing conditions will be imposed so that licensing requirements do not deter such events.

CCTV surveillance is provided by the City Council to create a more secure and safer environment for all of those who live, work, visit, study or trade in the District, including a means of allowing full enjoyment of the City Centre's facilities. The CCTV system is operated fairly taking into account equality and diversity issues and within the law, and only for the purposes either established or subsequently agreed in the CCTV Code of Practice. CCTV operators are licensed under the Security Industry Authority to monitor Public Space Surveillance.

## **2. LEGAL BACKGROUND**

The **Licensing Act 2003** repealed most of the previous legislation relating to alcohol, entertainment and late night refreshment house licensing and replaced it with a totally new licensing regime, with responsibility for liquor licensing being transferred from the Magistrates' Court (Licensing Justices) to licensing authorities.

The Act empowers the licensing authority to grant or reject applications for the sale of alcohol, the provision of entertainment or late night refreshment. Conditions can be attached to licences to address concerns of safety, protect children from harm, prevent crime and disorder and protect residential amenity. The licensing authority could, for example, restrict licensed hours in appropriate cases to reduce possible late night disturbance. However, although licensing law is part of a holistic approach to the management of the city centre economy, it is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals after they leave licensed premises. Also, the ability of licensing authorities to take decisions is to a certain extent limited either by provisions in the Act and Regulations made under the Act or to a lesser extent by guidance from the Secretary of State for the Department of Culture, Media and Sport (DCMS).

This Licensing Policy has three main purposes:

- To confirm the boundaries and powers of the authority to elected Members of the Licensing Committee
- To inform licence applicants and local residents how the Licensing Act may be applied to applications for premises in the Durham City district
- To support a case in a court of law if the authority has to show how it arrived at its licensing decisions.

Each application will be considered on its individual merits so the Licensing Policy is only a guide to how applications will be considered. The Policy is a statement of intent and not binding.

It should be noted that the licensing authority itself is not a responsible authority and that the Act only gives the authority discretion on whether to grant applications for new premises licences or variations to licences and to impose conditions on granting licences if representations relevant to the licensing objectives have been made.

### **Policy 1**

**The Council will prepare and regularly review a Statement of Licensing Policy, in accordance with the Licensing Act 2003, which will serve as a basis for determining licence applications.**

## Policy 2

**The Statement of Licensing Policy will have regard to all relevant Government legislation.**

This policy statement has taken full account of the DCMS guidance as required by the Secretary of State. The licensing authority may deviate from the guidance if there is appropriate justification.

In addition, in formulating this policy document the Council has had regard to the provisions of the **European Convention on Human Rights** that everyone has the right to respect for their home and private life and that every person is entitled to the peaceful enjoyment of their possessions (including a licence).

As a consequence of the **Human Rights Act 1998** the Council will ensure that in exercising its licensing functions there is no breach of a convention right.

The Council has also taken into account the provisions of the **Crime and Disorder Act 1998**. This requires local authorities to have regard to the likely effect of the exercise of their functions on crime and disorder in their area and to take all reasonable steps to prevent such crime and disorder.

The Council will also recognise the **Race Relations Act 1976**, as amended by the **Race Relations (Amendment) Act 2000**, and eliminate unlawful discrimination and promote racial equality of opportunity and good relations.

### 3. **SCOPE OF POLICY**

As well as Government legislation the Statement of Licensing Policy is required to have regard to all relevant Council Policies.

#### **Policy 3**

**The Council's Statement of Licensing Policy will have regard to all relevant Council Policies that should be taken into account in preparing licence applications.**

The Licensing Act is concerned with the sale of alcohol, the provision of certain entertainment and late night refreshment. Activities that require a licence under the Licensing Act 2003 and covered by this policy include:

- Retail sale of alcohol
- Supply of hot food or drink from premises from 11.00pm to 5.00am
- Supply of alcohol or provision of regulated entertainment to club members
- Provision of entertainment listed below (known as regulated entertainment) to the public or club members or with a view to profit:
  - Film exhibitions
  - Performances of a play
  - Indoor sporting events
  - A boxing or wrestling entertainment
  - Live music performances
  - Playing of recorded music
  - Dance performances
  - Provision of facilities for making music
  - Provision of dancing facilities

It should be noted however that there are a number of exemptions to the above list outlined in Sections 173-175 of the Licensing Act 2003.

The licences covered by the Act may be grouped in four categories as follows:

- **Personal Licences** (licensing of individuals for the retail sale of alcohol)
- **Premises Licences** (the licensing of premises for the retail sale of alcohol, the provision of regulated entertainment or late night refreshment)
- **Club Premises Certificates** (the supply of alcohol or the provision of regulated entertainment to certain clubs)
- **Temporary Event Notices** (the permitting of certain licensable activities on a temporary basis)

The scope of the policy covers new applications, renewals where appropriate, transfers and variations of licences and certificates including where applicable temporary premises licences. It will also include review of licences and certificates if complaints are received. Such a review could lead to the revocation of a licence or certificate.



In general a reference in this policy to a licence will include a club premises certificate.

Among a range of relevant Council policy documents are the Corporate Plan, the Community Strategy, the Alcohol Harm Reduction Plan, the Nightsafe Strategy and the Crime & Disorder Strategy. Other important policies are included in the Local Plan, which is in due course to be replaced by the Local Development Framework. This Statement of Licensing Policy is therefore integrated with local crime prevention, planning, transport, tourism, race equality schemes and cultural strategies, and any other plans introduced for the management of the city centre and night-time economy.

The licensing authority has established protocols with the local police on enforcement issues.

Also, arrangements will be made for the Licensing Committee to receive, when appropriate, reports on the needs of the local tourist economy to ensure that these needs are reflected in its considerations.

#### **4. LICENSING OBJECTIVES**

In carrying out its licensing functions the licensing authority promotes the key licensing objectives set out in the Act. These are:

- **the prevention of crime and disorder;**
- **public safety;**
- **the prevention of public nuisance;** and
- **the protection of children from harm.**

To achieve these objectives the authority uses its full range of powers and all relevant responsibilities including its planning controls, taxi licensing controls, crime and disorder policies and powers.

#### **Policy 4**

**The Licensing Policy will accord with the Council's service aims, statutory duties and responsibilities.**

The Council's service aims, duties and responsibilities are embedded in legislation that includes reference to Building Regulations, Environmental Protection, Taxis/Hackney Carriages and Town & Country Planning.

The licensing authority has made appropriate partnership arrangements, working closely with the Police, the Fire Service, Durham County Council, University of Durham, local businesses, community representatives and local people in meeting these objectives through various groups which include the Licensing Strategy Group (the appropriate forum for meetings to address current issues of concern), Crime & Disorder Reduction Partnership and Durham City Forum.

The licensing authority gives comprehensive reasons for its decisions on applications, addressing the extent to which the decision has been made with regard to the Licensing Policy, in anticipation of the right of appeal generally available to applicants and objectors.

The following factors will be taken into account:

- (a) the type of use and the number of customers likely to attend the premises
- (b) the proposed hours of operation;
- (c) the level of public transport accessibility for customers either arriving or leaving the premises and the likely means of public or private transport
- (d) the means of access to the premises, which should have customer entrances and exits on the principal pedestrian routes;
- (e) the level of likely car parking demand on surrounding residential streets, historic core and distributor roads and its effect on local residents, in

comparison with the existing situation; and effect on residential parking and the movements of priority traffic;

- (f) the scope for mitigating any impact;
- (g) how often the activity occurs.

With any adverse impact it may be possible to take steps to mitigate or prevent the impact and if such measures are reliable an activity may be licensed.

In accordance with Government advice, the decisions taken by the licensing authority will obviously be focused on matters within the control of individual licensees and others granted relevant permissions and the steps they can take to achieve the licensing objectives. Accordingly, these matters will centre on the premises and places being used for licensable activities and the most likely impact of those activities on members of the public living, working or engaged in normal activity in the area concerned.

In taking its decisions the licensing authority accepts the difficulty a licence holder has in preventing anti-social behaviour by individuals once they are beyond the direct control of that licence holder. However, it will also take into account that the licensing objective of preventing public nuisance will not be achieved if patrons from licensed premises regularly engage in anti-social activities to the detriment of nearby residents or businesses. Furthermore it will also take into account the Council's responsibility under the Crime and Disorder Act 1998 to do all it can to prevent crime and disorder in the District.

The aim of the policy is, therefore, to achieve a balanced approach to these difficult issues.

## 5. **PERSONAL LICENCES**

The licensing authority recognises it has very little discretion regarding the granting of these licences. In general provided an applicant has a qualification determined by Department of Culture Media and Sport (DCMS) and does not have certain serious criminal convictions the application has to be granted.

If an applicant has a relevant conviction the Police can oppose the application. If an objection is lodged a hearing must be held.

### **Policy 5**

**The licensing authority will grant a personal licence application if it is satisfied that crime prevention has been adequately addressed.**

In the event of a hearing, prompted by an objection from the Police, the licensing authority will consider carefully whether the granting of a licence will be in the interests of the crime prevention objective. It will consider the seriousness and relevance of the conviction(s), the period that has elapsed since the offence(s) were committed and any mitigating circumstances.

**Reason:** Prevention of crime is both an objective of the Licensing Act 2003 and an important responsibility of the Council under the Crime and Disorder Act 1998. A person holding a personal licence should be a person who is not only properly qualified but also a person who will assist the fight against crime. Granting a licence to a known criminal in many cases undermines rather than promotes the crime prevention objective.

## 6. PREMISES LICENCES AND CLUB PREMISES CERTIFICATES

This section is divided into two subsections which relate to:

- Applications
- Consultation

### **Applications**

#### **Policy 6a**

**The licensing authority will expect individual applicants to prepare an operating schedule, in accordance with the Licensing Act, addressing the key licensing objectives.**

The operating plan should have regard to the nature of the area where the premises are situated, the type of premises concerned, the licensable activities to be provided, operational procedures and the needs of the local community. In this respect the licensing authority will expect the plan to demonstrate how it is intended that the premises will be “good neighbours” both to residents and to other venues and businesses.

In particular it will expect the applicant to be proposing practical steps to prevent disturbance to local residents. In relation to noise from within the building, the licensing authority may expect the applicant to have carried out sound tests to ascertain whether there is sound leakage. This noise could not only relate to music but also from air handling equipment or patrons. If there is sound leakage the licensing authority will expect it to have been addressed in practical ways such as:

- Keeping doors and windows closed and providing adequate mechanical ventilation
- Reducing sound levels and installing a sound limiting device to prevent sound exceeding the appropriate level
- Installing soundproofing measures to contain sound and vibration

The licensing authority expects popular venues, which attract queues, to formulate a system to avoid disturbance to residents. This can sometimes be achieved by simply ensuring that the direction of the queue is away from residential accommodation.

However, excessive noise and/or disorder require more rigorous action. It is important that queues formed later in the evening are supervised to keep noise to a minimum. This action can also stop drug dealers from passing on drugs during the queuing process but the prime purpose is to prevent noise and disturbance. Door supervisors will generally carry out this role, but they must be given clear instructions as to their duties and responsibilities and where necessary they should be adequately supervised. Where a condition is attached to a licence requiring door supervisors, they must be licensed with the Security Industry Authority.

If customers will be leaving the premises particularly late at night or early in the morning the licensing authority will expect the applicant to have included in the operating schedule such practical steps as:

- Erecting prominent notices at the exits to the premises asking customers to leave quietly and not to slam car doors.
- At appropriate times making loudspeaker announcements to the same effect.
- Instructing door staff to ask customers leaving the premises to leave the area quietly.
- Reducing the volume of music towards the end of the evening and where appropriate playing quieter, more soothing music as the evening winds down.
- Giving free lollipops to customers as they leave.
- Where appropriate considering car jockey schemes.
- Availability of licensed taxis or private hire vehicles to take patrons from the premises.
- In appropriate cases door supervisors or a manager patrolling nearby streets to assess for themselves whether there is a problem and how best to deal with it.
- Banning from premises people who regularly leave in a noisy fashion.
- Ensuring that there is an adequate level of lighting outside the premises.
- Where there is a private forecourt, patrons are prevented from using it for eating and drinking etc. after 11.00pm.
- Toilets to remain open for at least 30 minutes after the terminal hour.
- Where the terminal hour is after 11.00pm, support for late night public transport.

**Reason:** One of the greatest irritations to residents trying to sleep is the sound of music from licensed premises. Such an escape of sound might preclude the grant of a licence, or if one has already been granted, for it to be reviewed with a view to possible revocation. It might also lead to a Noise Abatement notice being issued under the Environmental Protection Act, administered by the Environmental Health Section. Responsible applicants and licensees will wish to avoid the need for such action, as they will wish to comply with the licensing objective of preventing public nuisance.

There can be little doubt that a well-managed licensed venue can benefit the local community. Conversely there is clearly a risk of local residents being disturbed particularly if the venue is open late at night.

People leaving the premises can cause significant problems and customers may be less inhibited about their behaviour and may be unaware of the noise they are creating. Similarly, the Smoke-Free Regulations will result in more customers being outside licensed premises and licence holders are responsible for ensuring these customers do not cause any disturbance.

At a late hour any noise will be more marked and create disturbance for residents. Clearly a responsible applicant or licensee will wish to further the licensing objectives of preventing public nuisance by introducing practical measures such as those referred to above to prevent such nuisance.

The outside of premises should be sufficiently well lit so as to complement policing initiatives and proper management of premises. The design of such lighting should however be sensitive to other local interests and be compatible with wider issues of environmental quality.

### **Policy 6b**

**The licensing authority will expect the premises to be constructed to the highest possible standards of safety.**

The applicant will be required to comply with Health and Safety at Work and Fire Safety legislation and where appropriate the Technical Standards published by the District Surveyors Association and as outlined in Building Regulations.

The licensing authority will also expect the operating schedule to detail how the premises will be properly managed and maintained to ensure public safety at all times, which will include appropriate training and risk assessments. An accredited body should verify the latter.

**Reason:** Public safety is a very important licensing objective as it is about protecting the safety and even the lives of patrons. It is the wish of the licensing authority that anyone visiting a licensed venue in the City of Durham can do so in complete safety as they will be visiting premises that have been constructed with safety in mind and are well managed and maintained.

### **Policy 6c**

**The licensing authority will expect the applicant to provide an operating schedule that will indicate action proposed to prevent crime and disorder.**

The elements of the plan may include the following:

- Use of CCTV both within and outside the premises
- A designated premises supervisor who will meet the conditions specified for personal licence holders
- Metal detection and search facilities
- Procedures for risk assessing promotions and events such as “happy hours” for the potential to cause crime and disorder, and plans for minimising such risks
- Measures to prevent the use or supply of illegal drugs
- Employment of licensed door supervisors and other appropriately trained staff
- Participation in an appropriate Watch Scheme or other body designed to ensure effective liaison with the local community

**Reason:** Prevention of crime is both an objective of the Licensing Act 2003 and an important responsibility of the Council under the Crime and Disorder Act 1998. It is important, therefore, that the applicant be able to demonstrate to the licensing authority the practical steps that will be taken to further this objective.

#### **Policy 6d**

**The licensing authority will expect the needs of people with a disability to be addressed in the operating schedule.**

The licensing authority will require applicants to provide reasonable facilities and access for people with disabilities. In many cases it may be helpful to all concerned for licensing authority officers to discuss with applicants and /or their advisers the draft operating schedule before it is submitted.

**Reason:** It is important that wherever practicable, people with a disability should not be treated in a less advantageous way than able-bodied people. In addition there are responsibilities under the Disability Discrimination Act 1995 not to treat disabled people in a less advantageous way.

Pre-submission consultation will help ensure that the operating schedule properly addresses all the issues of concern to the licensing authority.

#### **Consultation**

#### **Policy 6e**

**The licensing authority notes applicants must take the necessary steps to ensure that all those affected by an application are made aware of it and have the opportunity to make representations.**

The licensing authority will also carry out consultation by means of the Licensing Strategy Group in addition to the statutory consultation required or permitted by the Act and the Licensing Procedures Order 2003.

**Reason:** The grant of a licence could have a significant impact on the lives or businesses of those living or working in the vicinity of premises for which a licence is sought. It is important, therefore, that all those likely to be affected by an application are made aware of it and of the opportunity to make representations.



## 7. **DETERMINATION OF APPLICATIONS**

As an overriding principle the licensing authority, in determining a licence application, will ensure that each application is determined on its individual merits.

### **Conditions**

#### **Policy 7**

**The licensing authority will impose conditions on licences that reflect the particular circumstances of each application and that are deemed reasonable and necessary to meet the licensing objectives.**

Where appropriate, conditions from the DCMS “menu” of conditions may be used. Licence conditions will not be imposed where the licensing authority considers other regulatory regimes provide sufficient protection to the public e.g. health and safety at work and fire safety legislation.

Conditions should be fair, clearly related to the Council’s policies, duties and responsibilities, transparently justifiable, and reasonable.

The licensing authority will avoid conditions that duplicate other regulatory regimes as much as possible. For example, legislation governing health and safety at work and fire safety will place a range of general duties on the self-employed, employers and operators of venues in respect of employees and of the general public when on the premises. Tailored conditions relating to public safety may be necessary only if existing regulations will not cover the unique circumstances that may arise in connection with licensable activities, particularly regulated entertainment, at specific premises.

However, the licensing authority is likely to consider it appropriate to have a condition requiring text or radio pagers to licences for pubs and nightclubs operating in the city centre where there is a high density of licensed premises.

**Reason:** The view of the licensing authority is that there should not be a list of standard conditions, some of which may be inappropriate to individual premises. Conditions should be tailored to the premises and activities concerned with a view to ensuring that the licensing objectives are achieved.

## 8. LOCATION

It is the view of the Government that longer licensing hours should be encouraged in the interests of avoiding a concentration of disturbance whilst ensuring that nuisance is minimised to local residents. The Government believes that shops and public houses should generally be permitted to sell alcohol during the hours they intend to open. Entertainment providers should be encouraged to provide a range of entertainment during their operating hours to promote live music, dancing and theatre for the wider cultural benefit of the community.

The licensing authority understands the view of the Government but considers that it is self evident that the risk of disturbance to local residents is greater when licensable activities continue late at night and into the early hours of the morning. For example the risk of residents' sleep being disturbed by patrons leaving licensed premises is obviously greater at 2.00am than at 11.00pm.

### **Policy 8**

**The licensing authority will seek to strike a fair balance between the benefits to a community of a licensed venue and the risk of disturbance to local residents.**

The licensing authority will consider any closing time applied for and any relevant representations submitted.

**Reason:** This policy is aimed at the fulfilment of the licensing objective of "preventing public nuisance". It is necessary to consider, amongst other things, the level of impact that could arise from noise and vibration, litter, parking, arrivals and departures of customers, crowds and queuing; and whether any impact is particularly unacceptable late at night. The following may be considered:

- (a) If the application relates to premises in a predominantly commercial area, such as part of the City Centre (as defined in the Council's Local Plan)
- (b) if there is a high level of accessibility to public transport services
- (c) if there is an appropriate amount of car parking, readily accessible to the premises, and in places where vehicular movement will not cause demonstrable adverse impact to local residents
- (d) If the operating schedule indicates that the applicant is taking appropriate steps to comply with the licensing objective of preventing public nuisance.

Exceptions may be made to permit a later closing time where it can be demonstrated that:

- (a) the licensed activities would not be likely to cause adverse impact especially on local residents, and that, if there is a potential to cause adverse impact, appropriate measures will be put in place to prevent it
- (b) there will not be any increase in the cumulative adverse impact from these or similar activities, in an adjacent residential area
- (c) there is a particularly high level of public transport accessibility to and from the premises at the appropriate times

- (d) The activity will not be likely to lead to a demonstrable increase in car parking demand in surrounding residential streets or historic core or on primary distributor routes out of the city centre.
- (e) Premises in the vicinity operate staggered hours to alleviate congestion.

This part of the policy is based on a broad distinction between the approach to be taken in certain predominantly commercial areas of the city centre and the rest of the District.

Any activity involving public entertainment or eating or drinking on the premises has the potential to impact adversely on the surrounding area due to noise, smells or congestion on the footway. It may also be caused by customers being noisy when leaving, leaving litter or taking up on-street car parking space needed by residents. The impact of noise generated by these activities, especially customers departing either on foot or in cars, is particularly intrusive at night when ambient noise levels are much lower.

Much of this District is very sensitive to the impact of licensed activities because it is either residential in character or close to residential areas. Many shopping areas are abutted by residential areas, including housing above commercial premises. The impact of traffic and parking related to licensed premises can be considerable. Even where a majority of customers arrive on foot or by public transport, the additional parking demand may be significant, especially where there are already a number of licensed premises. The impact may be felt by local residents in preventing them from parking close to their homes and by increasing the danger from traffic in residential streets.

However, some commercial areas in the District may be more suitable locations for licensed activities, especially for those, which have late opening hours or attract significant numbers of people. In the city centre, more customers are likely to travel by public transport and the activities may help bring vitality to the area after normal shopping hours.

Late at night, the impact of licensed activities is more likely to be objectionable to residents living within or close to a licensed activity. The ambient noise level will be lower so that noise disturbance from activities becomes relatively more noticeable.

Persons visiting entertainment venues that close after the main public transport services have shut down are more likely to use private cars and seek to park in residential streets close to the activity. The licensing authority considers, therefore, that even in commercial areas midnight is an appropriate normal limit to opening hours for these reasons, but the policy allows for the possibility of a later closing time if it can be shown that there will not be an adverse impact.

In commercial areas, where a closing time of midnight may be permitted, criteria (b) and (c) emphasise the importance of good public transport services or off-street car parking. Both these factors would reduce the likelihood of customers parking in nearby residential areas. To reduce the need for car use to a minimum, the level of transport accessibility would need to be appropriate to the number of people

expected and there should be good access to any publicly available off-street car parking.

An entertainment use attracting large numbers of people should be very close to bus routes, for instance, or a travel plan should be submitted outlining alternative arrangements. For the same reasons, the level of public transport accessibility will be an important factor in considering any exceptions to the normal closing times in any location. Durham County Council as the Highway Authority will need to be consulted.

At any time of day, it is important that bus services and essential traffic are not delayed by car parking, which contravenes parking and bus priority regulations. Therefore, an assessment will need to be made of the likely travel methods of customers and where any car parking is likely to take place. Parking demand from licensed premises is likely to increase late at night when public transport is less frequent and when customers may feel more secure travelling by car.

## 9. SATURATION AND CUMULATIVE EFFECT

In determining an application the licensing authority will take into account, in the interests of public safety and the avoidance of nuisance, the cumulative effect that the existence of a saturation of premises in one area may have. A saturation of licensed premises can attract customers to the area that has an impact on the surrounding area beyond the control of individual licence holders.

In June 2007 the Council resolved to commission a cumulative impact survey. It is hoped that a survey will be completed in early 2008. Depending on the recommendations of the survey, there may then be consultation on a further review of the licensing policy.

Where the cumulative effect of many licensed premises within an area gives rise to problems of public disorder and nuisance in the surrounding area the licensing authority may consider it not appropriate for any further licensed premises to be established or variations to existing licences to be made in the area in the interests of public safety and the avoidance of nuisance.

The impacts associated with licences can accumulate where there are a number of activities within an area. In some places an additional activity may be unacceptable because of the cumulative effect of an area saturated with licensed premises.

However, all applications must be considered on individual merit.

### **Policy 9**

**Pending a cumulative impact survey, in considering new licences or variations to existing licences, the applicant will be required to demonstrate to the satisfaction of the licensing authority that the granting of the licence will not aggravate any existing problems.**

**Reason:** The impact from licensed premises increases considerably in areas where there are concentrations of such premises. The adverse effects from licensed uses are particularly acute in some areas of the District where there is inadequate infrastructure.

In these areas the licensing authority considers the only way to fulfil the licensing objective of preventing public nuisance **is may be** to refuse to grant new licences or vary existing licences except in exceptional circumstances where it can be shown that the granting of a licence will not add to existing problems.

## **10. TABLES AND CHAIRS OUTSIDE PREMISES**

The provision of tables and chairs outside the premises either on the highway or on private land can enhance the attractiveness of the venue. It can have the benefit of encouraging a continental style café culture. However, late at night these tables and chairs can contribute to noise problems. This is because they can encourage patrons and passers by to loiter rather than disperse. In certain situations they can be taken over by groups of noisy people.

The placement of tables and chairs on the public highway will need the consent of the County Council as Highway Authority. On private land no consent is needed.

### **Policy 10**

**The licensing authority may restrict use of the highway for the placement of tables and chairs as an extension to commercial premises intended for open-air refreshment purposes.**

In predominantly commercial areas such as shopping centres the licensing authority will normally allow the use of tables and chairs outside but expect them to be removed before the premises close.

In the case of tables and chairs on private land the licensing authority will expect the applicant to propose how the licensing objectives of public safety and the prevention of public nuisance will be met.

**Reason:** This policy is designed to strike a fair balance between the needs of those wishing to enjoy refreshment in the open air and the need to prevent safety and nuisance problems.

## 11. **SEX RELATED ACTIVITIES**

Where the activities proposed under the licence include those of a sex-related nature (e.g. topless waitresses, striptease or table dancing) the licensing authority will take into account the increased risk to the licensing objectives. For the sake of convenience the term “striptease” in this part of the policy should be taken to refer to any entertainment or service involving exposure of private parts or the sexual stimulation of patrons.

### **Policy 11**

**Each application will be considered on its individual merits but the licensing authority will discourage applications for licences which involve a sex related element near schools, places of worship, hospitals, residential accommodation, community centres, youth clubs or other premises where significant numbers of children are likely to attend.**

Where such licences are granted it will impose conditions designed to ensure that children are not admitted to and cannot witness these activities and to prevent crime and disorder problems. For example:

The area proposed for striptease shall:

- (a) be in a position where the performance cannot be seen from the street;
- (b) be in a designated area of the premises with segregation from the audience;
- (c) be in a position where the performers will have direct access to the dressing room without passing through or in close proximity to the audience.

Whilst striptease entertainment is taking place no person under the age of 18 shall be on the licensed premises and a clear notice shall be displayed at each entrance to the premises in a prominent position, so that it can easily read by persons entering the premises, in the following terms:

**“NO PERSON UNDER 18 WILL BE ADMITTED”**

To prevent the possibility of children seeing unsuitable advertisements the policy of the licensing authority will be to attach conditions to the effect that “Except with the consent of the licensing authority there shall be no external advertising of the striptease entertainment either at the premises or in its immediate vicinity.”

In considering the grant of applications involving striptease the licensing authority will also have regard to the increased risk of nuisance to nearby residents and will consider rejecting the application or attaching appropriate conditions.

**Reason:** These policies are designed to further the licensing objective of protecting children by preventing them being exposed to unsuitable material or acts. They are

also designed to further the crime prevention and prevention of nuisance objectives by recognising the increased risk of nuisance of illegal activities such as performers offering “extras” to customers or the plying for trade by prostitutes.



## 12. **CONTROLS**

Various measures exist to enable local authorities and other public bodies to deal with nuisance issues and disorder which emanate from the anti-social behaviour of customers as they move away from licensed premises. There is however a requirement for licensing authorities to take the effectiveness of such measures into account when assessing new applications.

### **Policy 12**

**The licensing authority will give careful consideration to licence applications that may result in adverse impact upon the amenity of the neighbouring population in the late evening/early morning.**

Other available mechanisms for addressing issues of customers behaving badly away from licensed premises are:

- Planning controls
- Positive measures to create a safe and clean town centre environment in partnerships with local businesses, transport operators and other departments of the Council.
- Powers of local authorities to designate parts of the local authority area such as places where alcohol may not be consumed publicly.
- Police enforcement of the normal law concerning disorder and anti-social behaviour, including the issue of fixed penalty notices.
- The prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk.
- The confiscation of alcohol from adults and children in designated areas.
- Police powers to close down instantly for up to 24 hours any licensed premises or temporary events on the grounds of disorder, the likelihood of disorder or excessive noise emanating from the premises.
- The power of the Police, other responsible authority or a local resident or business to seek a review (possible revocation) of the licence or certificate in question.

### **13. PROTECTION OF CHILDREN**

The protection of children from harm is one of the key licensing objectives. Nevertheless the licensing authority will not normally impose conditions requiring or prohibiting the admission of children to any premises believing this should remain a matter of discretion of the licence holder and has taken account of the view of Department of Culture Media and Sport (DCMS) that the use of licensed premises by children should be encouraged. However, it will where necessary impose conditions designed to protect children.

The licensing authority endorses the Secretary of State's recommendation of the Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks, as it is an important weapon in protecting children from harm.

The licensing authority recognises the Social Services Department, Durham County Council as being competent in giving advice on matters relating to the protection of children from harm.

#### **Policy 13**

**The licensing authority will take appropriate measures to provide strict protection for children against harm.**

The introduction of additional controls is likely to be necessary at premises:

- Where there have been convictions for serving alcohol to minor or with a reputation for under-age drinking
- With a known association with drug taking or dealing
- Where there is a strong element of gambling on the premises
- Where entertainment of an adult or sexual nature is commonly provided
- Where the supply of alcohol for consumption is the exclusive or primary purpose of the services provided at the premises

In such circumstances while it may sometimes be necessary to impose a complete prohibition this would be only rarely imposed. The licensing authority would normally be more likely to impose requirements such as:

- Limitations on the hours when children may be present
- Age limitations below 18
- Limitations or exclusions when certain activities are taking place
- Requirements for accompanying adults
- Full exclusion of people under 18 from the premises when any licensable activities are taking place

Where there is provision of entertainment specifically for children (e.g. a children's disco) the licensing authority will require the presence of sufficient adults (who are required to be present in relation to the provision of such entertainment specifically for children) who must have undergone the relevant Police checks. It must be made clear to the organisers of the children's entertainment that they will be required to

carry out the relevant safety checks to control the access and egress of the children and assure their safety.

Where the exhibition of films is permitted the licensing authority will expect the age restrictions of the British Board of Film Classification (BBFC) in respect of the film to be exhibited to be complied with. Only in exceptional cases will variations of this general rule be granted by the licensing authority and then only with appropriate safeguards.

In relation to specialist Film Festivals where it is desired to show films not classified by the BBFC the licensing authority will, provided adequate notice has been given, classify the films concerned. To achieve consistency and the protection of children the licensing authority will use the guidelines published by the BBFC.

**Reason:** These policies are designed to allow flexibility for the licensee, to ensure that where appropriate licensed premises are “user friendly” for children but to ensure they are adequately protected.

## 14. ALCOHOL

Although alcohol misuse traditionally focuses on health issues, it can also lead to antisocial behaviour, crime and disorder. The licensing authority will encourage licensees to consider managing strategies to respond to this, such as the use of CCTV and contributing to a Police presence.

### **Policy 14**

#### **The Council will consider the likelihood of alcohol harm**

The following factors will, in particular, be taken into account for where alcohol is sold:

- Whether the premises have made an application and been approved under the Best Bar None awards scheme
- Whether the premises belong to and participate in a Pubwatch scheme
- Whether there will be posters or other publicity advising alcohol will not be sold to under 18s and that proof of age will be required
- How harm caused by alcohol misuse may be minimised
- Whether bar staff are trained in responsible service
- Whether there may be promotions that may encourage heavy/binge drinking
- Whether information is displayed in premises relating to sensible drinking messages/what a unit is/how to access support
- Limitations on the hours children may be present
- Limitations on parts of the premises to which children may have access
- Whether there is adequate seating for customers
- Whether door supervisors work at the premises
- How capacity is controlled

**Reason:** In 2004 the Government published its Alcohol Harm Reduction Strategy. This identifies a number of priorities that licensing authorities will take into account when making decisions on relevant applications. The strategy proposes a new "code of good conduct" to be run locally by a partnership including the industry and Police but to be led by the licensing authority. This partnership includes a requirement on those managing premises where alcohol is available to be socially responsible. There is also now a local harm reduction strategy.

## 15. **DRUGS**

Almost every recent survey indicates that more people are taking illegal drugs and are using a wider range than ever before. This is particularly true of what are often referred to as 'recreational drugs'. Their misuse can hold serious dangers and has even led to fatalities.

Other factors may have contributed to these deaths, such as lack of drinking water, excessive drinking of water, an overly hot environment with inadequate ventilation, or a lack of adequate information about drugs.

Drugs alter the way people behave, so their distribution and possession is controlled by law. Controlled drugs are usually manufactured and supplied illegally, which attracts criminal involvement in their distribution. Drugs manufactured illegally often vary in quality and strength. This puts people taking such drugs in danger. Drinks "spiking" may also be an issue.

The licensing authority recognises that drug use by young people in a club environment is not something that is relevant to all licensed premises. However, many entertainment venues such as nightclubs and dance venues can be popular both with drug users and suppliers.

### **Policy 15**

**The licensing authority will require licensees of venues to take all reasonable steps to prevent the entry of drugs into their premises, to take appropriate steps to prevent drugs changing hands and being used within the premises and to otherwise adopt precautionary measures to address the consequences of drug misuse.**

The licensing authority will expect licensees to be following the recommendations of the book "Safer Clubbing" issued by London Drug Policy Forum and endorsed by the Home Office.

It is hoped that licensees will follow these recommendations on a voluntary basis as failure to do so could lead to the licence being reviewed with the possibility of revocation. In appropriate cases the licensing authority will consider imposing the recommendations detailed in these recommendations by way of licence conditions.

**Reason:** The purpose of this policy is to further the crime prevention objective and to ensure public safety by preventing a tragic loss of life caused by drug abuse, overheating and other factors.

## 16. **PLANNING**

Planning, building control and licensing regimes will be separated to avoid duplication and inefficiency. However, any premises for which a licence is required must also have an authorised use under town planning legislation.

Typically, this could be for:

- “Use for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises” (Use Class A3);
- Assembly and leisure (Use Class D2) which includes concert hall, dance hall and indoor/outdoor sports and recreation;
- Retail shop licensed for the sale of alcohol e.g. an off licence (Use Class A1);
- A hotel that has a restaurant or bar included in its authorised use (Use Class C1).

The references to use class come from the Town and Country Planning (Use Classes) Order 1987. The order classifies uses and labels them with a letter and a number. Not all uses come within a use class.

The Council’s Planning Policies are set out in its Local Plan supplemented by guidance on A3 uses (Restaurants, takeaways, public houses etc.). Government guidance in the form of Planning Policy Guidance Notes (PPG) and Regional Planning Policy Guidance Notes (RPG) is also relevant.

The strength of these policies is that there is an obligation both on the Council, as local planning authority and the decision-maker on any appeal, to give considerable weight to them. This helps to ensure consistency in the decision making process.

In general, planning permissions authorise a type of use, whereas licences relate to a particular premises and operator and may only cover a part of the premises. A planning permission is attached to the premises and is usually permanent. Unlike a licence it cannot normally be reviewed and if necessary revoked. Furthermore planning is only concerned with the premises and the use and hours proposed. It takes no account of the suitability or otherwise of the applicant.

Within certain limits, the activity may change without a new planning permission. A planning permission for an entertainment use, for instance, may cover activities that can have a wide range of different impacts in the locality. The precise nature of the impacts of the specific activities proposed by a prospective licence holder needs to be considered when an application is made for a licence.

In some cases where an application is made for a licence the town planning use will already be authorised by a previous planning permission or because the premises has long-standing lawful use. Therefore, a new application for planning permission is often not required. However, three points must be made:

- (i) The existing planning permission might, and if recently granted is very likely to, have conditions restricting the use of the premises in some way: e.g. the hours of operation. In that case, anybody seeking a licence to operate beyond those hours would first need to obtain a revised planning consent or a relaxation or removal of the condition.
- (ii) The existence of a planning permission (or lawful use) where there is no condition on the usage does not mean that a licence for the late hours of operation or a particular entertainment would necessarily be appropriate. Similarly, if an existing planning permission has conditions on the hours of operation, it does not follow that a licence for a particular activity will be granted up to the time specified in the planning permission.
- (iii) Where a long standing planning permission has no conditions on hours, or where there is lawful use without planning permission it is likely there has been no rigorous conditions of late night impact during the planning process. Experience within the City has revealed the importance of these issues and planning permissions are no longer likely to be granted without such constraints.

## **Policy 16**

**The licensing authority will not normally consider an application for a licence unless the applicant can demonstrate that the premises have either an appropriate (in terms of the activity and hours sought) planning consent, or an appropriate certificate of lawful use or development.**

Exceptions may only be made where the applicant can demonstrate compelling reasons why the application should be considered although the planning status of the premises has not been finalised.

**Reason:** This policy is simply to avoid unnecessary duplication and thus comply with DCMS guidance. The Licensing and Planning Committees will keep each other advised of their actions to ensure that a licensing application will not be a re-run of the planning application and will not cut across decisions taken by the local authority planning committee or following appeals against decisions taken by that committee.

## **17. OTHER STRATEGIES**

The Council will integrate its various strategies to achieve the licensing objectives in the interests of clarity for applicants and effective determination.

Applicants for licences will be expected to have taken local crime prevention strategies, planning and transportation policies and tourism and cultural strategies into account in determining their operating plans. The Council's Crime and Disorder Strategy and its implementation will provide the appropriate guidance.

Applicants will also be expected to address the prevention and clearance of litter and other waste materials measures arising from the use of the premises.

### **Enforcement**

Where necessary, enforcement action will be taken in accordance with the principles of the Enforcement Concordat/Regulatory Compliance Code and the Council's Enforcement Policy.

In particular regard will be had to the fundamental principles recommended by the Better Regulation Executive for good enforcement:

- Proportionality
- Accountability
- Targeting
- Consistency
- Transparency

The licensing authority has established protocols with the local Police and Fire Service on enforcement issues to avoid duplication and to provide for the most efficient deployment of Council, Police and Fire Authority officers in respect of inspections of licensed premises and the enforcement of licensing law.

Furthermore, the policy of the licensing authority will always be a light touch inspection regime for the well managed and maintained premises with a targeted and graduated inspection and enforcement regime for problem and high-risk premises.

Finally, the licensing authority endorses the Secretary of State's recommendation to strongly remind applicants of the need to obtain licences from Phonographic Performance Limited and the Performing Right Society, and to observe other copyright arrangements. Failure to observe the law in this area could lead to an application for the review of the premises licence or the club premises certificate on the grounds of the crime prevention objective.



**18. DELEGATION OF FUNCTIONS**

The licensing authority will delegate its functions under the Licensing Act 2003 as follows:

<b>Matter to be dealt with</b>	<b>Full Committee</b>	<b>Sub-Committee</b>	<b>Officers</b>
Application for personal licence		If a police objection	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/ club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/ club premises certificate		If a relevant representation made	If no relevant representation made
Application to vary designated premises supervisor		If a police objection	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases
Applications for interim authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc.			All cases

Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of a police objection to a temporary event notice		All cases	

## 19. USEFUL CONTACTS

Useful Contacts	Name	Contact Details
Application forms and guidance	Licensing Section	<p>Licensing Section            Legal &amp; Administration Services            City of Durham Council            Telephone: 0191 3018730            e-mail: <a href="mailto:licensing@durhamcity.gov.uk">licensing@durhamcity.gov.uk</a></p> <p>Postal address:            17 Claypath            Durham            DH1 1RH</p> <p>Office address:              Unit 1 Damson Way            Dragonville Industrial Estate            Durham            DH1 2YN</p>
Policy issues	Jane Kevan	<p>Licensing Manager            Legal &amp; Administration Services            City of Durham Council            Telephone: 0191 3018786            e-mail: <a href="mailto:jkevan@durhamcity.gov.uk">jkevan@durhamcity.gov.uk</a></p> <p>Addresses as above.</p>
Planning	Allan Simpson	<p>Development Control Manager            City of Durham Council            Telephone: 0191 3018704            e-mail:  <a href="mailto:allansimpson@durhamcity.gov.uk">allansimpson@durhamcity.gov.uk</a></p> <p>Postal address as above.</p> <p>Office address:            Byland Lodge            Hawthorn Terrace            Durham            DH1 4TD</p>
Environmental Health (health & safety, noise, food)	Neil Laws	<p>Environmental Health Manager            Environment and Leisure Services            City of Durham Council            Telephone: 0191 3018767            e-mail: <a href="mailto:nlaws@durhamcity.gov.uk">nlaws@durhamcity.gov.uk</a></p> <p>Addresses as Licensing Section.</p>

Building Control	Stuart Bell	Building Control Manager City of Durham Council Telephone: 0191 3018785 e-mail: <a href="mailto:sbell@durhamcity.gov.uk">sbell@durhamcity.gov.uk</a>  Addresses as Development Control.
Durham Constabulary	North Area Licensing Unit	Licensing Unit Police Office Newcastle Road Chester le Street DH3 3TY Telephone: 0191 3752351 e-mail: <a href="mailto:NALU@durham.pnn.police.uk">NALU@durham.pnn.police.uk</a>
County Durham and Darlington Fire and Rescue Service	Fire Safety Section	Fire and Rescue Service Headquarters Framwellgate Moor Durham DH1 5JR Telephone: 0191 3324303 e-mail: <a href="mailto:firesafety@ddfir.gov.uk">firesafety@ddfir.gov.uk</a>
Children	Service Development Officer, Children in Need	Social Services Department 2 <sup>nd</sup> Floor Durham County Council County Hall Durham DH1 5UG Telephone: 0191 3834625
Trading Standards	Chris Cooper	Divisional Manager Trading Standards Durham County Council County Hall Durham DH1 5UB Telephone: 0191 3834468 e-mail: <a href="mailto:chris.cooper@durham.gov.uk">chris.cooper@durham.gov.uk</a>
CCTV	Joy Dwyer	Senior City Care Manager City of Durham Council Telephone: 0191 3868769 e-mail: <a href="mailto:jdwyer@durhamcity.gov.uk">jdwyer@durhamcity.gov.uk</a>  Postal address as Licensing Section.
Highway Authority	Highway Management (Northern Area)	Highway Management (Northern Area) Durham County Council County Hall Durham DH1 5UB Telephone: 0191 3833000

Durham Drug and Alcohol Action Team	DAAT Coordinator	Durham Drug and Alcohol Action Team 1 <sup>st</sup> Floor Adelaide House Adelaide Court Belmont Business Park Durham DH1 1TW Telephone: 0191 3837812
City Centre Strategy	Durham City Forum	C/O Centre Management Suite Prince Bishops Shopping Centre High Street Durham DH1 3UJ Telephone: 0191 3832932
Primary Care Trust	Durham and Chester le Street Primary Care Trust	John Snow House Durham University Science Park Durham DH1 3YG 0191 3011300
Door Supervisors	Security Industry Authority	P O Box 9 Newcastle upon Tyne NE82 6YX Telephone: 08702 430100 e-mail: info@the-sia.org.uk
Public Performance and Broadcasting Rights	Phonographic Performance Limited	1 Upper James Street London W1R 3HG Telephone: 0207 437 0311 Website: www.ppluk.com
Copyright of Music Composers	Performing Right Society	29/33 Berners Street London W1P 4AA Telephone: 0207 580 5544 Website: www.prs.co.uk

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