

Licensing Committee AGENDA



THE PUBLIC MAY ATTEND THIS MEETING

Please note this meeting will be audio recorded.

Date: Wednesday, 14 May 2014

Time: 19:15

Venue: Committee Room1, Braintree District Council, Causeway House, Bocking End, Braintree, Essex, CM7 9HB

Membership:

Councillor J S Allen
Councillor M J Banthorpe (Chairman)
Councillor J Baugh
Councillor T G Cunningham
Councillor J G J Elliott
Councillor J H G Finbow
Councillor M J Fincken
Councillor M E Galione

Councillor C Gibson
Councillor M Green
Councillor S A Howell
Councillor H D Johnson
Councillor J A Pell
Councillor L S Walters
Councillor S A Wilson
Councillor B Wright

Members are requested to attend this meeting, to transact the following business:-

Page

PUBLIC SESSION

1 Apologies for Absence

2 Member Declarations

To declare the existence and nature of any Disclosable Pecuniary Interest, other Pecuniary Interest, or Non-Pecuniary Interest relating to items on the Agenda having regard to the Code of Conduct for Members and having taken appropriate advice where necessary before the meeting.

3 Minutes of the Previous Meeting

To approve as a correct record the Minutes of the meeting of the Licensing Committee held on 5th March 2014 (copy previously circulated).

4 Public Question Time

(See paragraph below)

5 Application for a Pavement Permit - Picture Palace, Fairfield Road, BRAINTREE 5 - 28

6 Statement of Licensing Policy for Sex Establishments 29 - 88

7 Hackney Carriage Proprietors' Licences - Allocation Policy 89 - 104

8 Hackney Carriage and Private Hire Vehicles - Changes to Door Livery 105 - 114

9 Executive Vehicles - Exemption from Requirement to Display an External Vehicle Identification Plate 115 - 132

10 Urgent Business - Public Session

To consider any matter which, in the opinion of the Chairman should be considered in public by reason of special circumstances (to be specified) as a matter of urgency.

11 Exclusion of the Public and Press

To agree the exclusion of the public and press for the consideration of any items for the reasons set out in Part 1 of Schedule 12(A) of the Local Government Act 1972.

At the time of compiling this agenda there were none.

PRIVATE SESSION

12 Urgent Business - Private Session

To consider any matter which, in the opinion of the Chairman, should be considered in private by reason of special circumstances (to be specified) as a matter of urgency.

E WISBEY
Governance and Member
Manager

Contact Details

If you require any further information please contact Alison Webb on 01376 552525 or e-mail alison.webb@braintree.gov.uk

Public Question Time

Immediately after the Minutes of the previous meeting have been approved there will be a period of up to 30 minutes when members of the public can speak.

Members of the public wishing to speak should contact the Council's Member Services Section on 01376 552525 or email alison.webb@braintree.gov.uk at least 2 working days prior to the meeting.

Members of the public can remain to observe the whole of the public part of the meeting.

Health and Safety

Any persons attending meetings at Causeway House are requested to take a few moments to familiarise themselves with the nearest available fire exit, indicated by the fire evacuation signs. In the event of a continuous alarm sounding during the meeting, you must evacuate the building immediately and follow all instructions provided by a Council officer who will identify him/herself should the alarm sound. You will be assisted to the nearest designated assembly point until it is safe to return to the building.

Mobile Phones

Please ensure that your mobile phone is either switched to silent or switched off during the meeting.

Comments

Braintree District Council welcomes comments from members of the public in order to make its services as efficient and effective as possible. We would appreciate any suggestions

regarding the usefulness of the paperwork for this meeting, or the conduct of the meeting you have attended.

Please let us have your comments setting out the following information

Meeting Attended..... Date of Meeting.....

Comment.....

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Contact Details:

APPLICATION FOR A PAVEMENT PERMIT – PICTURE PALACE, FAIRFIELD ROAD, BRAINTREE		Agenda No: 5
Corporate Priority: Portfolio areas - People and Place Report presented by: John Meddings Report prepared by: John Meddings		
Background Papers: <ol style="list-style-type: none"> 1. Application made by JD Wetherspoon with respect to the Picture Palace, Fairfield Road, Braintree - (Appendix 1) 2. Consent letter from Essex Highways - (Appendix 2) 3. Representations received during consultation from local residents - (Appendix 3) 		Public report
Options: <ol style="list-style-type: none"> 1. To GRANT the application for a Pavement Permit 2. To GRANT the application for a Pavement Permit for reduced hours than those detailed. 3. To GRANT the application for a Pavement Permit with additional conditions deemed necessary. 4. To REFUSE the application for a Pavement Permit. 		Key Decision: No
Executive Summary: <p>To consider an application by JD Wetherspoon for a Pavement Permit for the use of the pavement area outside the Picture Palace, Fairfield Road, Braintree. The Council's Pavement Permit Policy specifies that, if representations are made within the consultation period, and subject to the appropriate consents being given, the application will be referred to the Council's Licensing Committee for determination.</p>		

Decision: To consider the following options:-

1. To **GRANT** the application for a Pavement Permit
2. To **GRANT** the application for a Pavement Permit for reduced hours than those detailed.
3. To **GRANT** the application for a Pavement Permit with additional conditions deemed necessary.
4. To **REFUSE** the application for a Pavement Permit.

Purpose of Decision:

Members of the Licensing Committee are requested to consider an application made by JD Wetherspoon with respect to the Picture Palace, Fairfield Road, Braintree.

Corporate Implications

Financial:	Not applicable
Legal:	Section 115E(1)(a) and (b) of Highways Act 1980
Safeguarding	Not applicable
Equalities/Diversity	Not applicable
Customer Impact:	Not applicable
Environment and Climate Change:	Not applicable
Consultation/Community Engagement:	Application subject to a 28 day public consultation period in accordance with Braintree District Council's Pavement Permit Policy.
Risks:	None applicable
Officer Contact:	John Meddings
Designation:	Licensing Officer
Ext. No.	2213
E-mail:	john.meddings@braintree.co.uk

1 **Background**

1.1 In February 2003, Members adopted the provisions under Section 115E(1)(a) and (b) of the Highways Act 1980 which empowers a Council to grant permission to local businesses that wish to use objects or structures on, in, or over a highway to which this part of the Act applies-

- (I) for a purpose which will result in the production of income;
- (II) for the purpose of providing a centre for advice or information; or
- (III) for the purpose of advertising

1.2 This effectively enables the Council to grant a permit for the use of tables and chairs on the public highway.

1.3 The Council's Pavement Permit Policy specifies that, if representations are made within the specified consultation period, and subject to the appropriate consents being given, the application will be referred to the Council's Licensing Committee for determination.

1.4 The application by JD Wetherspoon for a Pavement Permit for the Picture Palace, Fairfield Road, Braintree was received and validated on 7th February 2014. The Permit, if granted, will allow the following for a period of one year:

6 tables
12 chairs

Monday to Sunday 09:00hrs to 20:00hrs

1.5 A plan of the area accompanies this report, with the area covered by the application cross-hatched (Appendix 1).

2 **Consultation**

2.1 As part of the regulatory procedure, the Council must prepare a notice and arrange for it to be displayed in a clear position on the premises for a period of 28 days. In accordance with the Council's Policy, an Officer visited the premises and confirmed that the appropriate notice was displayed in a prominent position on the premises.

2.2 The Council must also identify and serve a notice on any "frontagers with an interest" and the owners and occupiers of any premises likely to be materially affected by the application. In this case, it was deemed that there were no "frontagers with an interest" and notices were served on owners and occupiers of premises likely to be materially affected by the application.

2.3 As part of the consultation process, the Council must seek the consent of the Highway Authority (Essex Highways). Consent was received from Essex Highways, subject to conditions, on 2nd April 2014 (Appendix 2).

- 2.4 The Council's Pavement Permit Policy requires additional consultation to be carried out with the following bodies:
- Braintree District Council
- Forward Plans
 - Development Control
 - Environmental Health
 - Health & Safety
 - Pollution
 - Ward Members
- Essex Police
Essex Fire and Rescue
- 2.5 During the consultation period the Council received representations from three local residents (Appendix 3).
- 2.6 Due to the application requesting hours beyond 18:00hrs any decision on the application has to be made by the Licensing Committee. This is in accordance with Braintree District Council's Pavement Permit Policy.
- 3 **Miscellaneous**
- 3.1 If the Permit is granted standard conditions will be attached.



The Licensing Section
 Causeway House
 Bocking End
 Braintree
 Essex
 CM7 9HB

Application for PAVEMENT PERMIT
Under the Highways Act 1980 – Part VIIA

IMPORTANT – Notes to Applicant

Please read the guidance provided with this application before completing this form.
 Failure to supply any information requested may delay your application.

1. Applicant details

Name (including name of business if applicable):

J D WETHERSPOON

Full Postal Address:

LEGAL DEPARTMENT
 WETHERSPOON HOUSE
 REEDS CRESCENT
 WATFORD WD24 4QL - % EMMA FALLOON

Daytime contact telephone number:

01923 477948

Mobile number:

E-mail address:

efalloon@jdwetherspoon.co.uk

2. Details of Application Site

Name of Establishment/Business:

PICTURE PALACE .

Address of Application Site:

FAIRFIELD ROAD
 BRAINTREE
 CM7 3HA .

Telephone Number:

01376 550 255

E-mail address:					
Premises Licence Number if applicable: <u>B11/92.</u>					
3. Days and Hours during which the tables and chairs will be on the street. (See note 2e)					
Monday		From	0900	To	2000
Tuesday		From	0900	To	2000
Wednesday		From	0900	To	2000
Thursday		From	0900	To	2000
Friday		From	0900	To	2000
Saturday		From	0900	To	2000
Sunday		From	0900	To	2000 .


4. Place of Storage (Please specify the place of storage of the tables and chairs and other items when not on the highway)
INSIDE THE PREMISES .

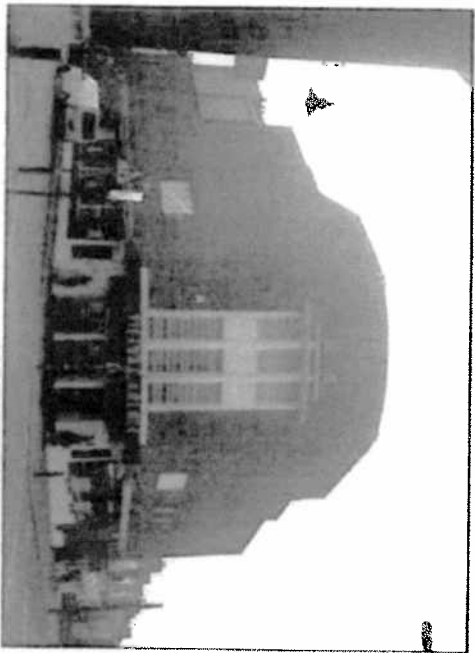
5. Number of tables applied for	SIX
6. Number of persons to be seated	TWELVE .

7. Dimensions of area of street to be used (in metric)	1.2m x 11m = 13.2m ²
8. Please give number and details of table and chairs and all other items of furniture including fencing, umbrellas, barriers etc.	SIX TABLES AND TWELVE CHAIRS - DESIGN DETAIL ATTACHED POST AND CANVAS BARRIER.

Checklist	
<ul style="list-style-type: none"> I have made or enclosed payment of the fee £250.00 I have enclosed a copy of an Ordnance Survey site plan Scale 1:1250 showing the location of the tables, chairs and other items to be placed on the highway. Confirmation from the Highways Records if the status of the application site Evidence of public liability insurance Other associated permissions i.e Planning and any appropriate licences under the Licensing Act 2003 	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>

5. Licence Fee Payable - £250.00 for 12 month permit

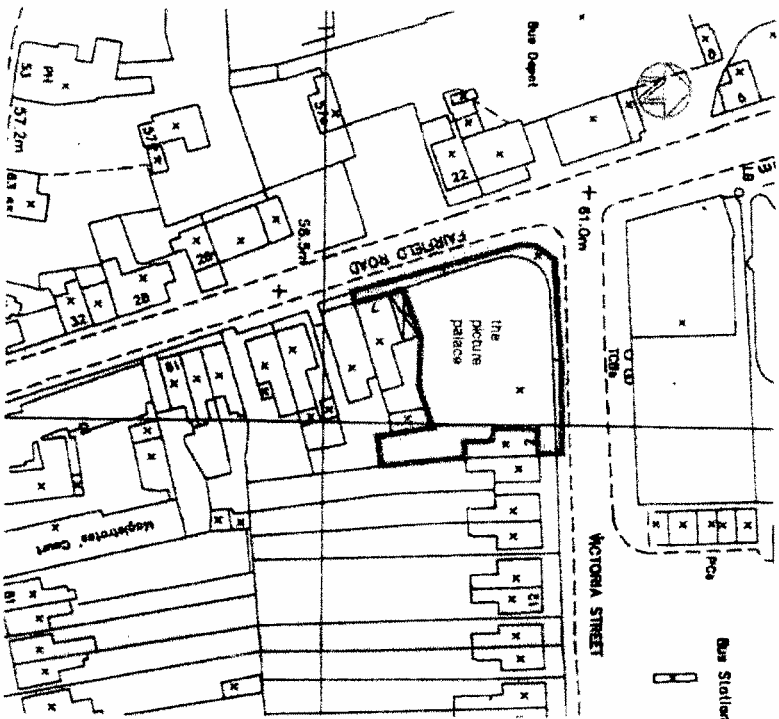
Signature of Applicant	 FOR JD WETHERSPON
Please print name	E. FALLON
Name of Company (if applicable)	JD WETHERSPON
Position in company (if applicable)	LICENSING ADMINISTRATOR



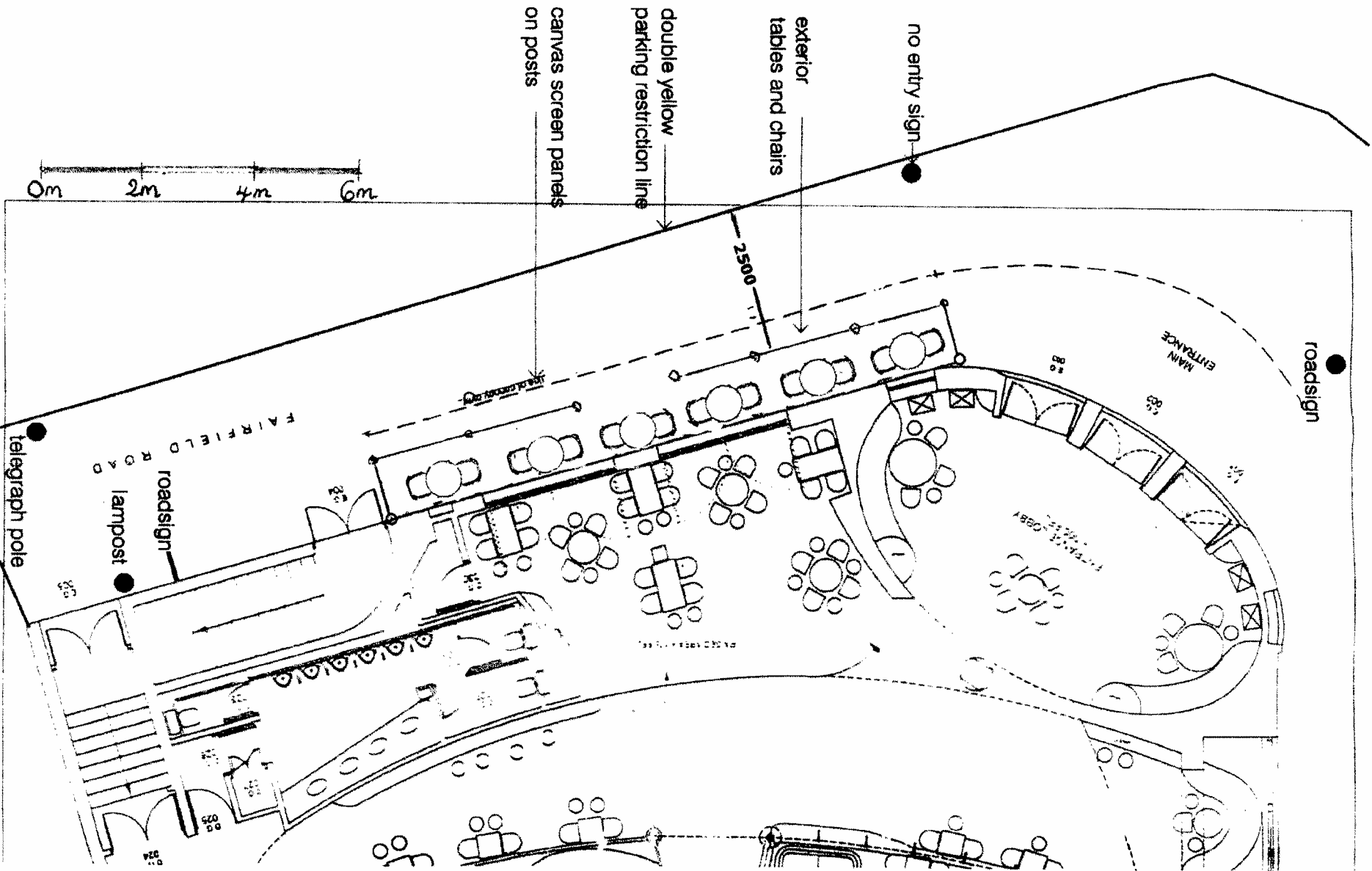
FRONT ELEVATION AT JUNCTION OF
FAIRFIELD ROAD WITH VICTORIA STREET



FAIRFIELD ROAD ELEVATION



LOCATION PLAN @ 1:1250



PART GROUND FLOOR PLAN @ 1:100

Ref	Project	Task	Scale	Date	Drawn by	Checked by
ID WETHERSPON PLC	PICTURE PALACE FAIRFIELD ROAD BRAintree ESSEX CM7 9HA	LOCATION PLAN PROPOSED EXTERIOR PAVEMENT CAFE PLAN AND EXTERIOR PHOTOGRAPHS	VARIOUS Job No 6618	30/06/07 L01	LS Revision	



30th July 2013
TO WHOM IT MAY CONCERN

Website www.willis.com
Direct Line 01473 222624
Office Fax 01473 222575
E-mail Paynell@willis.com

Our Reference: PP17/CRS/LP

Dear Sirs,

As Insurance Brokers to J D Wetherspoon PLC we are writing to confirm that our clients hold the following policies:

Cover	Public and Products Liability
Insurer	CNA Insurance Company Limited
Policy Number	CA0003396-13
Period	31 July 2013 to 30 July 2014 both days inclusive
Limit of Liability	<p>Public Liability GBP 10,000,000 any one occurrence or series of occurrences arising out of any one event unlimited in the period of Insurance</p> <p>Products Liability GBP 10,000,000 any one occurrence or series of occurrences arising out of any one event and in the aggregate in the period of Insurance</p>

Subject otherwise to the terms, conditions, exceptions and exclusions of the policy.

This letter is provided as a courtesy to our client as a matter of information only and confers no rights on the holder. Our duties in relation to this insurance are to our client and we accept no duty of care or responsibility to you or any other third party and any liability to you or any third party is excluded. This letter does not amend, extend or alter the coverage afforded by the policies, nor does it purport to set out all of the policies' terms, conditions and exclusions. The policy terms, conditions, limits and exclusions may alter after the date of this document or the insurance may terminate or be cancelled, and the limits shown may be reduced by paid claims. We have no obligation to advise you of any changes which may be made to the policies or to advise you of their cancellation or termination.

Signed on behalf of WILLIS LIMITED



Liam Payne



Authorised Signatory

Willis Limited
Friars Street
Ipswich
Suffolk

A Lloyd's broker, authorised and regulated by the Financial Services Authority. Registered office 51 Lime St, London EC3M 7DQ. Registered number 181116 England and Wales.

Braintree District Council

Town and Country Planning Act 1990 (as amended)

Application No.: 13/01215/FUL

Date Received: 24th October 2013

APPLICANT:

J D Wetherspoon PLC
Wetherspoon House
Reeds Crescent
Watford
WD24 4QL

AGENT:

DESCRIPTION :

Placing of tables and chairs on public highway on Fairfield Road to form an external eating and drinking area for the Picture Palace

LOCATION :

J D Wetherspoons Fairfield Road Braintree Essex CM7 3HA

APPROVED PLAN(S):

Location Plan

Plan Ref: L.01

Proposed Elevations

Plan Ref: 11039-100

The Braintree District Council as local planning authority hereby gives notice of its decision to **GRANT** planning permission in accordance with the above plan(s) and subject to the following conditions and reasons:

- 1 The development hereby permitted shall be begun on or before the expiration of three years beginning with the date of this permission.

Reason

This Condition is imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

- 2 The development hereby permitted shall be carried out in accordance with the approved plans listed above.

Reason

For the avoidance of doubt and in the interests of proper planning.

- 3 There shall be 2.5 metres of clear unobstructed footway at all times.

Reason

In the interest of highway safety to ensure accordance with Policy DM 1 of the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Planning Decision Notice

13/01215/FUL

Page 1 of 4

4 There shall be no tables and chairs in the designated area outside the following hours:-

Monday - Sunday 09:00 - 22:00 including Bank and Public Holidays. Outside of these hours the site shall be kept clear.

Reason

In the interests of residential neighbour amenity

Policies:

The Development Plan policies taken into account when deciding this application are listed below. The policies can be viewed in full at Causeway House or on the Council's website – www.braintree.gov.uk

Braintree District Local Development Framework Core Strategy

CS9 Built and Historic Environment

Braintree District Local Plan Review

RLP49 Pedestrian Networks
RLP90 Layout and Design of Development
RLP95 Preservation and Enhancement of Conservation Areas
RLP112 Town Centre Uses

In forwarding the decision for this application, I have to draw your attention to the following:-

- 1 Please be aware that the granting of planning permission for this development does not eliminate the requirement to apply to the Environmental Services Department for a Pavement Permit. You are advised to seek advice on the requirements for a Pavement Permit from the Licensing Department, Mr. John Meadings on 01376 551414.
- 2 All works affecting the highway must be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made to the Essex County Council on 0845 603 7631.

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and has granted planning permission in accordance with the presumption in favour of sustainable development, as set out in the National Planning Policy Framework.

Dated: 12th December 2013

Signed: _____



Planning Decision Notice

13/01215/FUL

Page 2 of 4

Tessa Lambert
Development Manager
Causeway House, Bocking End, Braintree, Essex CM7 9HB

Planning Decision Notice

13/01215/FUL

Page 3 of 4

Appeals against conditions

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice.
- If this is a decision to refuse planning permission for a minor commercial application, and you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.
- Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at www.planningportal.gov.uk/pcs.
- The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

Land Purchase

If proposals are refused, whether by the Local Planning Authority or by the Secretary of State, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council for the area in which the land is situated a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990 as amended.

Compensation

In certain circumstances, a claim may be made against the Local Planning Authority for compensation where permission is refused by the Secretary of State on appeal or on a reference of an application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990 as amended.

Planning Decision Notice

Essex Legal Services
New Bridge House
60-68 New London Road
Chelmsford
Essex CM2 0PD



ENVIRONMENTAL

02 APR 2014

HEALTH

Mr Daniel Mellini
Environmental Health Manager
Braintree District Council
Causeway House
Bocking End
Braintree
CM7 9HB

Our Ref: AWT/HIGH/8842
Your Ref:
Date: 31 March 2014

Dear Sir

Re: Tables and chairs – The Picture Palace, Fairfield Road, Braintree

With reference to your application to the Network Management Team at Essex Highways for the County Council's consent to your Council exercising its powers to grant permission for the authorisation of the placing of tables and chairs on the footway of Fairfield Road, outside the premises known as The Picture Palace, Fairfield Road, Braintree, for the purpose of providing refreshment facilities, the matter has now been considered.

Section 115E of the Highways Act 1980 authorises your Council to grant a personal permission to do on, in or over certain highways anything which the Council under that legislation could do itself. Section 115C authorises the Council to provide, maintain and operate facilities for refreshment on such highways. Section 115H requires your Council to have the consent of the highway authority to your exercising your powers under section 115E.

I am pleased to advise that, subject to the completion of any other statutory procedures required, including but not limited to giving relevant notice under section 115G, consent is hereby given under section 115H of the Highways Act 1980 to your Council granting permission under section 115E of the said Act to the proprietors of the said premises J.D Wetherspoon, (the 'Licensee') to provide and operate refreshment facilities involving the placing of tables and chairs within the highway.

The area of highway to which this consent relates is shown on the attached plan. The seating area comprises approximately 13.2 square metres and is within the Fairfield Road footway immediately abutting the premises on the west.

Nothing in this consent shall limit the powers of the Council to fulfil its functions in monitoring the use of the highway for the provision of private commercial refreshment facilities.

This consent is initially valid for one year from the date hereof. Any licence to be granted by your Council shall be determined on the anniversary of its granting after the service of a one month's notice or immediately in the event of the licensee being in breach of any of the conditions listed below under which the provisions of refreshment facilities within the highway is permitted.

This consent is granted subject to the following conditions:

1. The tables and chairs should be contained within removable barriers which should separate the table and chairs from the highways. The barriers must have a minimum overall height of 800mm and a gap of no more than 150 mm between the base or tapping rail and the ground. They must be manoeuvrable enough to allow them to be removed from the highways into the main premises at the close of business. It is recommended that the barriers are in a contrasting colour to the highway surface to provide maximum impact for the visually impaired.
2. The Licensee shall attach no fixtures to or make excavation of any kind in the surface of the highway which shall be left entirely undisturbed.
3. The Licensee shall make no claim or charge against the County Council in the event of the furniture or other objects being lost, stolen or damaged in any way from whatever cause.
4. The Licensee shall indemnify County Council as highway authority against all actions, proceedings, claims, demands and liability which may at any time be taken made or incurred arising out of the grant of this permission and for this purpose must take out at the Licensee's expense a policy of public liability insurance in the sum of at least five million pounds in respect of any one event.
5. The Licensee shall not place furniture on the highways outside the permitted area of use, an area of 13.2 square metres.
6. The Licensee shall remove from the highways the barriers tables and chairs to permit works in or the use of the highways by the County Council, the police, fire and ambulance services, any statutory undertaker or telecommunications code operator and shall make no claim against the County Council for any loss of revenue.
7. The Licensee shall not place any furniture on the permitted areas before 6.00 am and shall remove all furniture from the permitted area when the premises are closed for trading.
8. No furniture is to be placed or kept on the permitted areas when the premises are not open for trading.

It is understood that permission is likely to be for 6 tables and 12 chairs within the authorised area. Specifications of all apparatus are to be agreed with the Network Management Office (Tim Olley).

The County Council also asks that, upon the Council utilising its powers under s.115E granted by this consent, that a copy of any licence issued to the Licensee shall also be forwarded to the County Council; and that the County Council shall be informed promptly if this licence ceases to be utilised.

Yours sincerely



Philip Thomson
Director for Essex Legal Services

DX: 155940 Chelmsford 18

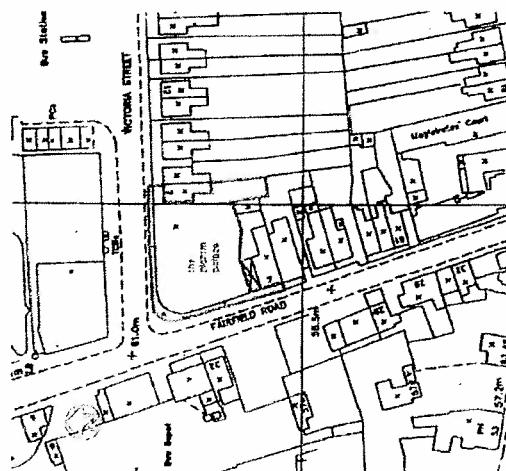
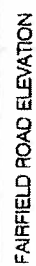
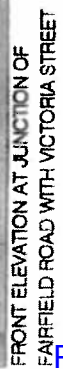
Telephone: 01245 506722

Fax: 01245 506769

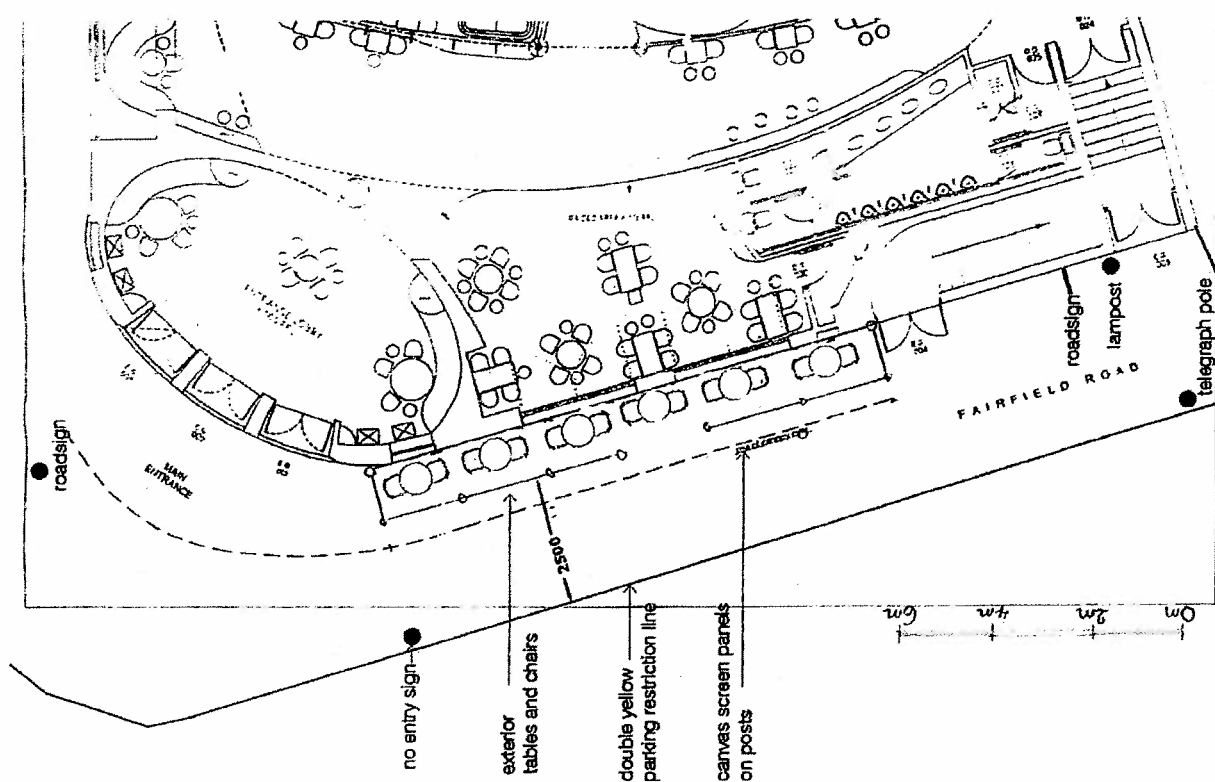
Internet: www.essex.gov.uk

Email: alan.timms@essex.gov.uk

P.S. The Licensee is required within one month of the permission being granted to make an application to the County Council in relation to other fixtures and fittings oversailing the highway at the premises i.e. hanging baskets and a canopy.



LOCATION PLAN @ 1:1250



PART GROUND FLOOR PLAN @ 1:100

Project	Title	Scale	Date	Drawn by	Approved by
NO 10 WETHERSPOON, P.C.	LOCATION PLAN PROPOSED EXTERIOR PAVEMENT CAPE PLAN AND EXTERIOR PHOTOGRAPHS	VARIOUS	30/08/07	L.S.	
		1:500	09/10/07	Revised	
		1:100	11/11/07		

Meddings, John

From: john gill [mailto:john.gill@braintree.gov.uk]
Sent: 04 March 2014 19:48
To: Licensing

Follow Up Flag: Follow up
Flag Status: Completed

15, Fairfield Road
Braintree, Essex.
CM7 3HA

Ref No: 14/00263/PP

Dear Sir/Madam,

I am writing in response to the application by J. D. Wetherspoon to have permission to use part of the public footpath in Fairfield Road to site six tables and twelve chairs.

My objections/concerns are:

1. The footpath slopes downhill, so the tables will also be sloping, which does not make a very suitable platform on which to stand glasses.
2. Having lived in the road for 54 years I know that this is possibly the most windy place in the town, which will make empty glasses very vulnerable to being blown off of the tables. Should this happen broken glass on the footpath would create quite a public health hazard.
3. My main concern is that the proposed seating area is not very visible from inside the pub, so how well will it be supervised and how often will it be checked for empty glasses, dirty plates, cutlery and serviettes if food is taken outside.

The other eating/drinking places in the town can be easily seen by staff from inside the premises unlike the proposed venue.

I hope that a site visit will be undertaken before a decision is made, and maybe my concerns will clearly be seen.

I would also like to add that a similar application to this one was submitted and refused only a few years ago.

Yours faithfully

John Gill

Sent from Windows Mail

Meddings, John

From: trudie gill [REDACTED]
Sent: 06 March 2014 10:33
To: Licensing
Subject: Ref: 14/00263/PP

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Dear Sir/Madam,

I am writing in response to J D Wetherspoons application to use part of the footpath in Fairfield Road to have 6 tables and 12 chairs.

I feel I need to object to this application due to a few concerns I have.

- 1) As the footpath slopes where the tables are going to be placed, this is going to be a very unstable surface for glasses, plates etc.
- 2) I've lived in Fairfield Road for 19 years and my husband has lived here for 43 years and the place where the tables will be is possibly the windiest place in Braintree, so what concerns me is that empty glasses would very easily be blown off of the tables onto the footpath causing a health hazard. Being a dog owner this will just be another place where there will be a lot of broken glass that I'll have to make sure my dog doesn't walk through.
- 3) What concerns me most is that the seating area is not going to be very visible from inside the pub, so how often will it be checked and supervised for empty glasses, dirty plates, cutlery and serviettes from food that has been eaten out there.

The other establishments around the town that have outside eating/drinking areas can be seen by the staff from inside the premises unlike where Wetherspoons want to place theirs.

Hopefully a site visit will be made before any decisions are made and also a similar application was submitted a few years ago and was refused.

Yours faithfully

Trudie & Andrew Gill
19 Fairfield Road
Braintree
Essex. CM7 3HA

Sent from my iPad

STATEMENT OF LICENSING POLICY FOR SEX ESTABLISHMENTS (INCLUDING SEX SHOPS, SEXUAL ENTERTAINMENT VENUES AND SEX CINEMAS)		Agenda No: 6
<p>Corporate Priority: People feel good – Supporting vulnerable people in our community, promoting safe and healthy living, encouraging flourishing communities</p> <p>Report presented by: John Meddings</p> <p>Report prepared by: John Meddings</p>		
<p>Background Papers:</p> <ol style="list-style-type: none"> 1. Braintree District Council's Statement of Licensing Policy for Sex Establishments (including Sex Shops, Sexual Entertainment Venues and Sex Cinemas) 2014 (Appendix 1). 2. Consultation response (Appendix 2). 3. Equality Impact Assessment (Appendix 3). 		Public report
<p>Options:</p> <ol style="list-style-type: none"> 1. To approve the Statement of Licensing Policy for Sex Establishments 2. To approve the Statement of Licensing Policy for Sex Establishments with amendments deemed appropriate by Members. 		Key Decision: No
<p>Executive Summary:</p> <p>To provide information to determine whether the Council should adopt the Statement of Licensing Policy for Sex Establishments.</p>		
<p>Decision: To consider the following options and to Recommend to Cabinet:-</p> <ol style="list-style-type: none"> 1. To agree that the Statement of Licensing Policy for Sex Establishments be adopted without amendment. 2. To agree that the Statement of Licensing Policy for Sex Establishments be adopted with amendments. 		

Purpose of Decision:

To allow the Licensing Authority to make transparent and robust decisions in relation to existing and future Sex Establishments within the District.

Corporate Implications

Financial:	None
Legal:	None
Safeguarding	Having a Policy in relation to sex establishments can give a greater level of protection to the more vulnerable members of the community.
Equalities/Diversity	See equality impact assessment (Appendix 3)
Customer Impact:	None
Environment and Climate Change:	None
Consultation/Community Engagement:	A 3 month consultation has taken place.
Risks:	The current situation of not having a Policy in place leaves the Council open to legal challenge.
Officer Contact:	John Meddings
Designation:	Licensing Officer
Ext. No.	2213
E-mail:	John.meddings@braintree.gov.uk

1. Background

- 1.1 This Policy sets out the Council's approach to regulating sex establishments and the procedures it will adopt in relation to applications for Sex Establishment Licences.

The Policy is intended as a guide to applicants, licence holders, objectors and Members of the Licensing Committee and provides information on what the Council expects to see in relation to an application. The advice and guidance contained in the Appendices attached to the Policy is intended only to assist applicants and other parties and should not be interpreted as legal advice. All parties are advised to seek their own legal advice if they are unsure of any of the requirements of the legislation in so far as they relate to the licensing of Sexual Entertainment Venues. It should be noted that the Council, as the Licensing Authority, is required to implement the licensing regime in accordance with the law and not in accordance with any moral codes.

- 1.2 Braintree District Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on 14th October 1982. This provided the Council with the ability to license sex establishments. The Policing and Crime Act 2009 amended the Miscellaneous Provisions Act, in so far as it related to the licensing of sex establishments, by adding the new category of "Sexual Entertainment Venue".
- 1.3 On 13th October 2011, the Council resolved to re-adopt Schedule 3 of the Miscellaneous Provisions Act, as amended by the Policing and Crime Act, thereby requiring all premises operating as sex establishments in the Council's area to be licensed. The definition of sex establishments now includes sexual entertainment venues. Adoption of Schedule 3 also allows the Council to set terms, conditions and fees for the grant, renewal, transfer and variation of such licences and the number of licences that may be issued in the area. The provisions of the Act came into effect, after advertisement, in the Braintree District area on 31st January 2012.
- 1.4 The legislation allows for the Authority to impose a numerical control on the number of sex establishments in a particular locality. Further, it is specifically provided that nil may be an appropriate number. To date the Council has not imposed a restriction on the number of Sex Establishment Licences that can be issued.
- 1.5 The District currently has no licensed sex shops, sex cinemas or sexual entertainment venues.
- 1.6 During the consultation, the Council received an application for a Sex Shop that is currently subject to consultation.

2. Licensing Committee Approval of Draft Policy

- 2.1 On 22nd January 2014 the Licensing Committee approved the draft Statement of Licensing Policy for Sex Establishments for the purpose of public consultation, subject to the word 'even' contained in paragraph 57 of Part 5 of Appendix G (Standard Conditions) of the policy being deleted.

3. Consultation

- 3.1 The draft Statement of Licensing Policy for Sex Establishments was available for public consultation following the Licensing Committee meeting of 22nd January 2014 for a period of 12 weeks.
- 3.2 Letters advising of the consultation were sent to Responsible Authorities, Members and other persons who would have an interest in the Policy.
- 3.3 The Policy was made available for viewing via the Council's website.
- 3.4 Only one response was received following consultation. This is attached to the report at Appendix 2.

4. Changes to the Existing Draft Policy

- 4.1 The original draft Policy has been amended to take account of new guidance, legislation and any other information pertinent to the Policy which is new.
- 4.2 Two sections have been re-written to reflect these changes.
- 4.3 Section 8, pages 6 – 7, which relates to fees, has been completely re-written.
- 4.4 Section 20, page 13, which relates to enforcement has been amended by adding two paragraphs (20.2 and 20.2.1) and the order of the section has been changed.

5. Equality Impact Assessment

- 5.1 An Equality Impact Assessment has been conducted in relation to the possible implications of the Policy on equality. The assessment revealed that the Policy intends to treat everyone equally but unintentionally, people from a protected group could be particularly disadvantaged, or treated less favourably than others.

Braintree District Council

Statement of Licensing Policy for Sex Establishments (including Sex Shops, Sexual Entertainment Venues and Sex Cinemas)

This policy sets out the Council's approach to regulating sex establishments and the procedures it will adopt in relation to applications for sex establishment licences.

The policy is intended as a guide to applicants, licence holders, objectors and members of the licensing committee and provides information on what the Council expects to see in relation to an application. The advice and guidance contained in the appendices attached to the policy are intended only to assist applicants and other parties and should not be interpreted as legal advice. All parties are advised to seek their own legal advice if they are unsure of any of the requirements of the legislation in so far as they relate to the licensing of sexual entertainment venues. It should be noted that the Council, as licensing authority, is required to implement the licensing regime in accordance with the law and not in accordance with any moral codes.

Any comments on this policy should be sent to:-

Braintree District Council
Licensing Team
Food, Health & Safety and Licensing
Causeway House
Bocking End
Braintree
Essex
CM7 9HB

Or by e-mailing licensing@braintree.gov.uk or by telephoning 01376 557790

Contents

1.	Adoption of Legislation	3
2.	Definition of Sex Establishment	3
3.	Existing Premises	3
4.	Location of Licensed Premises	3 - 4
5.	Impact	4
6.	Suitability of Applicant	4 - 5
7.	Applications	5 - 6
8.	Fees	6 - 8
9.	Advice and Guidance	8
10.	Grant, Renewal or Transfer of a Licences	9
11.	Variation of Licences	9
12.	Objections	9 - 10
13.	Determining Applications	10 - 11
14.	Conditions	11
15.	Refusal of Licences	11
16.	Appeals	11 - 12
17.	Revocation of Licences	12
18.	Cancellation of Licences	12
19.	Complaints	12
20.	Enforcement	13 - 14
21.	Human Rights	14
22.	Updates to this policy	14

Appendix A - Definitions

Appendix B - Requirements for applicants

Appendix C - Applicants Forms

Appendix D - Fees

Appendix E - Newspaper Advertisement and Site Notice

Appendix F - Refusals and Revocations of Licences

Appendix G - Standard Conditions

1. Adoption of legislation

- 1.1 Braintree District Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on 14 October 1982. This provided the Council with the ability to licence sex establishments. The Policing and Crime Act 2009 amended the Miscellaneous Provisions Act, in so far as it related to the licensing of sex establishments, by adding the new category of “sexual entertainment venue”.
- 1.2 On 13 October 2011 the Council resolved to re-adopt Schedule 3 of the Miscellaneous Provisions Act, as amended by the Policing and Crime Act 2009, thereby requiring all premises operating as sex establishments in the Council’s area to be licensed. The definition of sex establishments now includes sexual entertainment venues. Adoption of Schedule 3 also allows the Council to set terms, conditions and fees for the grant, renewal, transfer and variation of such licences and the number of licences that may be issued in the area. The provisions of the Act came into effect, after advertisement, in the Braintree District area on 31 January 2012.

2. Definition of ‘Sex Establishment’

- 2.1 A ‘sex establishment’ is defined under the Act as a ‘sex shop’, a ‘sex cinema’ or a ‘sexual entertainment venue’. Full definitions of those terms can be found in **Appendix A** to this policy.

3. Existing Premises

- 3.1 The District currently has no licensed sex shops, sex cinemas or sexual entertainment venues. To date the Council has not imposed a restriction on the number of sex establishment licences that can be issued.

4. Location of Licensed Premises

- 4.1 The Council has a discretion to refuse to grant or renew licences for sex establishments on the grounds that the licence would be inappropriate having regard to the character of the locality or the use of premises in the vicinity. Without prejudice to other elements of the policy, and whilst treating each new application on its own merits, the Council’s policy is ordinarily to refuse licences on these grounds for premises that are in close proximity to;

- (a) residential accommodation;
- (b) schools, nurseries and other premises used by children and vulnerable persons;
- (c) parks or other recreational areas used by children and other vulnerable persons;
- (d) religious centres and places of religious worship;
- (e) youth, community and leisure centres;
- (f) access routes to and from premises listed above;
- (g) historic buildings or visitor attractions;
- (h) an area designated either as an area under regeneration, or due to be regenerated.

5. Impact

5.1 The Council, in considering whether the discretionary grounds for refusal apply and whether the licence should be refused on such grounds, will take into account the following, where it is relevant to do so:

- (a) the type of activity, the duration of the licence and the proposed hours of operation;
- (b) the layout and condition of the premises;
- (c) any cumulative and adverse impact of existing sexually related licensable activities in the same locality as the proposed premises;
- (c) crime and disorder issues;
- (d) any evidence relating to actual or likely noise or disturbance caused by the premises;
- (e) the character of the locality;
- (f) the use of other premises in the vicinity.

6. Suitability of the Applicant

6.1 The Council, in considering whether the applicant or applicants are fit and proper to hold a licence will take into account the following, where it is relevant to do so:

- (a) the operation of existing or previous licences held by the applicant, including their track record of compliance;
- (b) their experience and knowledge of the type of sex establishment they are applying to run;
- (c) their ability to comply with the licensing requirements and minimise the impact of the business on local residents and businesses;
- (d) any reports concerning the applicant received from the Police or any other source;
- (e) the honesty of the applicant(s);
- (f) whether the applicant(s) intend to operate the premises or employ other people to do so;

- (g) whether the management proposed will deliver compliance with operating conditions through managerial competence; presence; a credible management structure including individuals experienced in running premises of this nature; enforcement of rules internally through training, monitoring and the publication of rates for performers and customers; a viable business plan;
- (h) whether management can be relied upon to act in the best interests of the performers;
- (i) whether there is a written welfare policy for performers and how this is to be enforced;
- (j) what system is in place to ensure that performers are adults and entitled to live and work in the UK;
- (k) whether management can be relied upon to protect the public by, for example, transparent charging and freedom from solicitation.

7. Applications

- 7.1 An application for the grant, renewal, transfer or variation of a licence must be made in writing to the Council in accordance with the requirements shown in **Appendix B** of this policy document.
- 7.2 A specimen example of the Council's application form and also a notice for the newspaper and public advertisements of the application are attached as **Appendix C and also Appendix E** of this policy document.
- 7.3 An application can be served on the Council as follows:-
 - (a) on-line via Public Access at www.braintree.gov.uk/licensing or <https://www.gov.uk/>
 - (b) by post to Licensing Team, Braintree District Council, Causeway House, Bocking End, Braintree, Essex, CM7 9HB.
- 7.4 The Council encourages applicants to serve their applications and other notices electronically. In line with the Provision of Service Regulations 2009, where an application for the grant, renewal or transfer of a licence is submitted electronically, the Council will send a copy of the application to the Chief Officer of Police not later than 7 days after the date that the application is received. In all other cases, it will still be the responsibility of the applicant to serve a copy to the Police within 7 days of submitting an application to the Council.
- 7.5 The Council expects that any premises for which a licence is required should have either planning consent or lawful use under planning legislation for the intended use and hours of operation. The Council will not treat licensing applications as a re-run of a planning application however, and it will not seek to impose licensing conditions which duplicate conditions that have been imposed on a planning consent.

- 7.6 The Council will notify relevant Ward Councillors of an application in their area.

8. Fees

- 8.1 The power to set fees has been passed to individual authorities so that any fees levied in each local area are set by reference to the actual costs to each authority.
- 8.2 The application process involves paying a non-returnable application fee. The fees will be reviewed annually by the Council and the current schedule of fees is shown at **Appendix D**.
- 8.3 When setting the fees for the licensing Sex Establishments, the authority has taken into account guidance, legislation and case law.
- 8.4 The Council has taken into account guidance related to fees which was available at the time of publication of this policy. In particular “Open for business, LGA guidance on locally set fees January 2014” and Scrap Metal Dealer Act 2013: guidance on licence fee charges produced by the Home Office was relevant.
- 8.5 The LGA guidance details what costs could be included when determining a licence fee, including the cost associated with an initial application and compliance post approval but also what shouldn't be included in the licence fee.

8.5.1 Initial application costs could include:

- Administration – This could cover basic office administration to process the licence application, such as resources, photocopying, postage or the cost of handling fees through the accounts department. This could also include the costs of specialist licensing software to maintain an effective database, and printing licences.
- Initial visit/s – This could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Councils will need to consider whether the officer time includes travel. It would also be normal to include ‘on-costs’ in this calculation. Councils will need to consider whether ‘on-costs’ include travel costs and management time.
- Third party costs – Some licensing processes will require third party input from experts, such as veterinary attendance during licensing inspections at animal related premises.
- Liaison with interested parties – Engaging with responsible authorities and other stakeholders will incur a cost in both time and resources.
- Management costs – Councils may want to consider charging an average management fee where it is a standard process for the application to be reviewed by a management board or licensing

committee. However, some councils will include management charges within the 'on-costs' attached to officer time referenced below.

- Local democracy costs – Councils may want to recover any necessary expenditure in arranging committee meetings or hearings to consider applications.
- On costs – including any recharges for payroll, accommodation, including heating and lighting, and supplies and services connected with the licensing functions. Finance teams should be able to provide a standardised cost for this within each council.
- Development, determination and production of licensing policies – The cost of consultation and publishing policies can be fully recovered.
- Web material – The EU Services Directive requires that applications, and the associated guidance, can be made online and councils should effectively budget for this work.
- Advice and guidance – This includes advice in person, production of leaflets or promotional tools, and online advice.
- Setting and reviewing fees – This includes the cost of time associated with the review, as well as the cost of taking it to a committee for approval.

8.5.2 Compliance costs could include:

- Additional monitoring and inspection visits – Councils may wish to include a charge for risk based visits to premises in between licensing inspections and responding to complaints.

As with the initial licensing visit, councils can consider basing this figure on average officer time, travel, administration, management costs and on costs as suggested above.

- Local democracy costs – Councils may want to recover any necessary expenditure in arranging committee meetings or hearings to review existing licences or respond to problems.
- Registers and national reporting – some licensing schemes require central government bodies to be notified when a licence is issued. The costs of doing this can be recovered.

8.5.3 Unrecoverable costs

- Enforcement costs against unlicensed premises
- Defending appeals or judicial reviews

8.6 The authority must be mindful of the principles of the EU Services Directive (Directive 2006/123/EC of The European Parliament and of the Council of 12 December 2006 on services in the internal market)

8.7 The general principles of the Services Directive apply to all processes and administrative procedures that need to be followed when establishing or running a service or retail business, including the setting, charging and processing of fees for licences. The core

principles of the Directive, non-discriminatory; justified; proportionate; clear; objective; made public in advance; transparent and accessible – apply to fee setting.

- 8.8 In particular, the Directive requires that charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme. The Council must not use fees covered by the Directive to make a profit or act as an economic deterrent to deter certain business types from operating within an area.
- 8.9 Under the Services Directive the Council must ensure that full details of any fees are easily accessible online, including the ability to make payments online. The Council must be able to separate out the cost of processing an initial application from those costs associated with the on-going administration of a scheme, because this latter element cannot be charged to unsuccessful licence applicants.
- 8.10 To comply with this requirement in practice, The Council will charge an applicant the full fee from the outset but will ensure that if an application is rejected, a proportion of the fee (the part of the fee the reflects the ongoing cost of administering the licence once an application has been approved) will be returned.
- 8.11 The authority is aware of case law, of which the Court of Appeal case of R (Hemming (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2013] EWCA Civ 591; [2013] WLR (D) 203 is especially relevant.
 - 8.11.1 The case determined means that costs of enforcement action against unlicensed premises cannot be recovered through the licence fee.
- 8.12 The Council is mindful and has taken into account there is currently no guidance or case law describing the point at which recoverable compliance costs switch over to unrecoverable enforcement costs.
- 8.13 At the time of publication, the Council is aware that Hemming v Westminster is likely to be appealed to the Supreme Court with a possible reference being made to Europe for determination. If that happens, there may be more to follow on this issue with, hopefully, greater clarification on the legal position.

9. Advice and Guidance

- 9.1 The Council will seek to liaise with applicants and, wherever possible and necessary, mediate between applicants and objectors in order to achieve a satisfactory outcome for all stakeholders. Applicants are advised to discuss their proposals with the Council and any interested parties prior to an application being made.

10. Grant, renewal or transfer of licences

- 10.1 The Council may grant to any applicant and renew a licence for the use of any premises as a 'sex establishment' on such terms and conditions as specified by the Council which are shown in **Appendix G** of this policy document.
- 10.2 A licence once granted will usually remain in force for 12 months, but can be issued for a shorter period if deemed appropriate. In order to continue operating as a sex establishment the licence holder must make a renewal application to the Council at least 28 days prior to the expiry of the existing licence.
- 10.3 An application to transfer a licence to any other person may be made.
- 10.4 Where an application for renewal or transfer of a licence is made at least 28 days before the expiry of the existing licence, the licence shall remain in force until such time as the application has been determined.

11. Variation of licences

- 11.1 The holder of a licence may apply to the Council to vary the terms, conditions or restrictions on, or subject to which, the licence is held.

12. Objections

- 12.1 Anyone wishing to object to an application must do so in writing within 28 days of the application being made to the Council. Representations can be made via-

- (a) post to Licensing Team, Food, Health & Safety and Licensing, Causeway House, Bocking End, Braintree, Essex, CM7 9HB;
- (b) personal service to Licensing Team, Food, Health & Safety and Licensing, Causeway House, Bocking End, Braintree, Essex, CM7 9HB;
- (c) e-mail to licensing@braintree.gov.uk;
- (d) online via Public Access at braintree.gov.uk/licensing
- (e) fax to 01376 557726;

The objection must state the grounds on which it is made.

- 12.2 A person making a representation must state their full name and address and their grounds for objecting to the application and indicate

whether or not they consent to have their name and address revealed to the applicant. The Council will not consider objections that are frivolous, vexatious or relate to moral grounds. Moral objections cannot be made under the terms of the Act.

- 12.3 The Council has the discretion to consider representations made after the 28 day consultation period. The Council's acceptance of late representations will be assessed on a case by case basis having regard to the length of delay, the mitigating reason or circumstances that caused the delay and the amount of time before the hearing date that the applicant has to consider the representation.
- 12.4 Where written objections are made the Council will provide copies to the applicant. However, the Council will not divulge the identity of the objector/s to the applicant without their permission to do so.
- 12.5 Where objections are made and are not withdrawn, a hearing before the Licensing Committee or Licensing Sub Committee will normally be held within 20 working days of the end of the objection period, unless all parties agree in writing beforehand that a hearing is no longer necessary. The Council may, under certain circumstances need to hold a hearing later than 20 working days after the end of the objection period and may do so at its discretion.
- 12.6 There is no explicit provision in the legislation for objectors to be heard at a Licensing Committee or Sub Committee hearing. However it is likely that in most cases the Council will use its discretion to allow objectors or their representative to put their case at a hearing. The Council must be notified in writing by the objector, prior to the hearing, if they wish someone else to speak on their behalf.

13. Determining applications

- 13.1 The Council reserves the right to consider each application in its own right and on its own merit.
- 13.2 When considering applications, the Council will have regard to:
 - (a) The Local Government (Miscellaneous Provisions) Act 1982
 - (b) The Human Rights Act 1998
 - (c) The Provision of Services Regulations 2009
 - (d) Section 19 of the Crime and Disorder Act 1998
 - (e) The Equality Act 2010
 - (f) Any supporting or accompanying regulations;
 - (g) This Statement of Licensing Policy.
- 13.3 When determining applications, the Council will take account of any written objections, comments or observations made by the Chief

Officer of Police and any objections made by other persons or interested parties such as statutory agencies or authorities.

14. Conditions

14.1 No condition will be imposed by the Council that cannot be shown to be necessary, reasonable and proportionate to the application that has been submitted.

14.2 In the event that conditions are attached to the grant of a licence they will be adapted to the operating circumstances and requirements of the individual premises and may also take into account any objections, comments or observations received, particularly where they have been received from the Chief Officer of Police.

14.3 The Council will attach those conditions shown in **Appendix G** which are relevant to the activities granted to the sex establishment licence applied for. These conditions are not exhaustive however and further conditions may be attached on the advice of a responsible authority such as the Police for example, or may be attached by the Council's Licensing Committee or Licensing Sub-Committee as they believe necessary, reasonable and proportionate at any licensing hearing that the Council has had to convene to consider relevant objections to an application submitted for a sex establishment licence.

15. Refusal of Licences

15.1 Except where the Council is prohibited from granting, renewing, varying or transferring a licence, it will not refuse a licence without first;

- notifying the applicant or holder of the licence in writing of the reasons;
- giving the applicant or holder of the licence the opportunity of appearing and making representations before a Licensing Committee or Sub Committee as may be determined by the Council.

15.2 The circumstances in which the council must or may refuse a licence are shown in **Appendix F** of this policy document.

16. Appeals

16.1 In all cases for the grant, renewal or transfer of a sex establishment licence, applicants that are aggrieved by a decision of the Council relating to a refusal on mandatory issues are entitled to appeal to the Magistrates' Court. Appeals against refusals on discretionary grounds are not permissible unless they relate to the suitability of persons

involved in the business. Under certain circumstances that are set out under paragraph 12(3)(c) or (d) Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 an applicant or objector can challenge a refusal of an application by way of seeking a judicial review of the Council's decision.

17. Revocation of Licences

17.1 The Council may revoke a licence;

- on any of the grounds specified in paragraph 1 of **Appendix F** of this policy document;
- on either of the grounds specified in paragraph 3(a) and (b) of **Appendix F** of this policy document.

17.2 The Council will not revoke a licence without first giving the holder of the licence the opportunity of appearing and making representations before a Licensing Committee or Sub-Committee.

18. Cancellation of Licences

18.1 The licence-holder may surrender the licence at any time and may request the Council in writing to cancel the licence.

18.2 Where the Council is satisfied that it is necessary for the purpose of winding up the estate of the deceased licence-holder, it may extend or further extend the period for which the licence remains in force.

19. Complaints

19.1 Wherever possible and appropriate the Council will give early warning to licence holders of any concerns which have been identified at premises and of the need for any improvements to the way that the premises is operated. It is hoped and expected that licence holders will actively participate in such dialogue.

20. Enforcement

- 20.1 The Council is responsible for the administration and enforcement of the licensing regime and will carry out its regulatory functions in a fair, open and consistent manner.
- 20.2 In producing this policy the Council has had regard to the Regulators Code which came into statutory effect on 6 April 2014, replacing the Regulators' Compliance Code. The code provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate.
- 20.2.1 The code requires regulators to consider the following:
- Regulators should carry out their activities in a way that supports those they regulate to comply and grow
 - Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
 - Regulators should base their regulatory activities on risk
 - Regulators should share information about compliance and risk
 - Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
 - Regulators should ensure that their approach to their regulatory activities is transparent
- 20.3 Specifically, the Council is committed to:
- (a) be proportionate – to only intervene when necessary and when remedies will be appropriate to the risk posed;
 - (b) be accountable – to justify decisions, be subject to public scrutiny and allow opportunities to resolve differences before enforcement action is taken, unless immediate action is needed;
 - (c) be consistent – to implement rules and standards fairly;
 - (d) be transparent – to be open and to provide clear explanations of what is needed, by when and the rights of appeal.
 - (e) target its regulatory action at cases in which action is needed.
- 20.4 The Council recognises and acknowledges the interests of residents, visitors and businesses and will actively work closely with its partners to assist licence holders to comply with the law and the conditions attached to their licence.
- 20.5 Necessary, reasonable and proportionate enforcement action will be taken by the Council against those who commit serious offences or consistently break the law or breach the conditions of their licence.
- 20.6 The Council has set clear standards of service and performance that the public and businesses can expect. In particular, an enforcement

policy has been adopted that explains how the Council will undertake its role and how the principles of effective enforcement will be achieved.

- 20.7 This policy is freely available from the Council, as are details of its corporate complaints procedures, both of which can also be viewed on the Council's website; www.braintree.gov.uk or further details can be provided by the Councils Customer Service Centre by e-mailing csc@braintree.gov.uk or by phoning customer services on 01376 552525

21. Human Rights

- 21.1 When considering transitional applications or new applications, the Council will take into account rights that the applicant has under Article 1, Protocol 1 of the European Convention of Human Rights (peaceful enjoyment of possessions) and Article 10 (freedom of expression). The Council also acknowledges that 'freedom of expression' extends to the right to use particular premises as a sexual entertainment venue in line with the judgment in *Belfast City Council v Miss Behavin' Ltd* in 2007.

22. Updates to this policy document

- 22.1 The Council may update this policy document with any changes that have been made by legislation or accompanying guidance, or to the Council's own terms and conditions. The policy will be reviewed as and when the Council considers it appropriate. If the Council considers that the changes are of significant importance to applicants or to other interested parties the Council will put those changes out to public consultation. Minor amendments to this policy document will be made at the Council's discretion and will not be subject to any public consultation or comment.

Appendix A

Definitions

- **The Act** – refers to the Local Government (Miscellaneous Provisions) Act 1982
 - **Authorised Officer** - any Officer of the Council authorised under the Council's Scheme of Delegation as detailed within the Council's Constitution
 - **The Council** - refers to Braintree District Council
 - **Licence Holder** - a person or persons who holds a sex establishment licence under the Act
 - **This Policy** - refers to Braintree District Council's sex establishment policy
 - **Premises** - 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. It includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted.
 - **Sex Establishment** - as defined in section 2 of Schedule 3 of the Act. A Sex Establishment means a sexual entertainment venue, a sex shop or a sex cinema as defined below in extracts from the Act.
 - **Sexual Entertainment Venue** - as defined by Paragraph 2A of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as inserted by Section 27 of the Policing & Crime Act 2009.
 - **Relevant National Authority** – in relation to England means the Secretary of State.
- (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. (An audience can consist of just one person).

The organiser means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. While in most instances this is likely to refer to the manager of the premises, it could also mean a person who is responsible for organising the entertainment on behalf of persons responsible for the management of the premises. This will therefore mean that the organiser must be a person who is in a position of responsibility over the provision of the

relevant entertainment and will not be interpreted as meaning a member of staff employed to work during the provision of relevant entertainment).

(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).

Paragraph 2A(14) of Schedule 3 defines a “**display of nudity**” as being in the case of a woman, it means the exposure of her nipples, pubic area, genitals or anus and in the case of a man; it means exposure of his pubic area, genitals or anus.

However, a display of nudity included in for example a part of a theatre or drama performance, will not require a sex establishment licence unless it is being 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.

Spontaneous entertainment - Where activities take place at a premises that would ordinarily be considered as relevant entertainment but are not provided for financial gain of the organiser or entertainer such as a

spontaneous display of nudity or a lap dance by a customer or guest, the premises will not be considered as a sexual entertainment venue by virtue of those circumstances alone.

Sex Cinema as defined in Section 3 of Schedule 3 of the Act-

- (1) In this Schedule, “**sex cinema**” means any premises, 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 (within 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.

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.

Some general propositions which might be taken into account when deciding on what constitutes a “**Sex Shop**”:

- Proportionality is not the only test – a large display in a department store might suffice, even though it represents only a small proportion of overall sales of the store.
- The degree of sex articles compared to non-sex articles.
- Character of the business
- The nature of the display
- The nature of the articles themselves

(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.

Appendix B

Requirements for applying for grant, variation, transfer or renewal of a sex establishment licence

Grant of a licence

- 1) To apply for the grant of a sex establishment licence an applicant must: -
 - a) send the Council: -
 - i) a completed application
 - ii) a plan to the scale of 1:100 of the premises to which the application relates;
 - iii) an application fee ;
 - b) display a notice on or near the premises;
 - c) advertise the application in a local newspaper;
 - d) send a copy of the application and plan to the Chief Officer of Police, Essex Police, Licensing Unit, Blyths Meadow, Braintree, Essex, CM7 9HB within 7 days of making the application to the Council.

Plan requirements

- 2) The plan shall show:
 - a) the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
 - b) the location of points of access to and egress from the premises;
 - c) the location of escape routes from the premises;
 - d) in a case where the premises is to be used for more than one licensable activity, the area within the premises used for each activity;

- e) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
 - f) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
 - g) in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
 - h) in the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
 - i) the location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment; and
 - j) the location of a kitchen, if any, on the premises.
- 3) The plan may include a legend through which the matters mentioned or referred to above are sufficiently illustrated by the use of symbols on the plan.

Public Notices

- 4) A notice must be displayed at or on the premises to which the application relates for a period of not less than 28 consecutive days from the day following the day the application was given to the Council, where it can be conveniently read from the exterior of the premises.
- 5) Where the premises frontage extends for more than 50 metres, a further identical notice must be displayed every 50 metres along the external perimeter of the premises abutting any highway.
- 6) The notice must be on pale blue paper sized A4 or larger and printed legibly in black ink or typed in black in a font size equal to or larger than 16.
- 7) The notice must state: -
 - a) details of the application and activities that it is proposed will be carried on or from the premises,

- b) the full name of the applicant,
 - c) the postal address of the premises, or in the case where there is no postal address, a description of the premises sufficient to enable the location and extent of the premises to be identified,
 - d) the date, being 28 days after that on which the application is given to the council, by which representations may be made to the Council and that representations should be made in writing,
 - e) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine (£5000) for which a person is liable on summary conviction for the offence.
- 8) A similar notice must be published in a local newspaper or similar publication within 7 days of giving the application to the Council.

Variation of a licence

- 9) The holder of a licence may apply at any time for any variation of the terms, conditions or restrictions on, or subject to which, the licence is held.
- 10) The process of applying for a variation is the same as that for applying for an initial grant except that a plan of the premises is not required unless the application involves structural alterations to the premises.

Renewal of a licence

- 11) The holder of a licence may apply for renewal of the licence. In order for the licence to continue to have effect during the renewal process, a valid application together with the appropriate fee must be submitted 28 days
before the current licence expires.
- 12) The process of applying for renewal of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

Transfer of a licence

- 13) A person may apply for transfer of a licence at any time.
- 14) The process of applying for transfer of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

For details on how the Council intends to process applications, including those to which objections are made, please see Section 7 of this policy document entitled '**Applications**'.

Appendix C



Braintree District Council

Application for Grant or Renewal of Licence for Sex Establishment

Local Government (Miscellaneous Provisions) Act 1982

1. If the application is made on behalf of an individual, please state:-

Full Name:

Permanent Address:

.....

.....

.....

Date of Birth..... Place of Birth.....

2. If the application is made on behalf of a corporate or unincorporated body, please state:-

Full name of body:

Address of registered

or principal office

.....

.....

3. Give full names and private addresses of all directors or other persons responsible for management of the establishment:

i) Name & Address

.....

.....

Date of Birth..... Place of Birth.....

ii) Name & Address

.....

.....

Date of Birth..... Place of Birth.....

4. Have you any convictions recorded against you? Or, if a corporate or unincorporated body, has that body or any of its directors or other persons responsible for its management? If so please detail below. Please note that all convictions (other than spent convictions) must be disclosed.

Person/Body Convicted	Date of Conviction	Offence	Sentence (including suspended sentence)

5. Have you been resident in the United Kingdom throughout a period of six months immediately preceding the date of this application? **YES/NO**

6. If the application is made on behalf of a corporate body is that body incorporated in the United Kingdom? **YES/NO**

7. Full address of premises proposed for use as a Sex Establishment
-
-

8. On which days do you wish to trade?
-

9. During which hours do you wish to trade?
-

10. Are the premises to be used as a sex shop? **YES/NO**
Are the premises to be used as a sex cinema? **YES/NO**

Are the premises to be used as a sex encounter establishment? **YES/NO**

11. Have you ever been refused a licence for a Sex Establishment? **YES/NO**
If YES, please give details:

.....
.....

12. Have you ever held a licence for a Sex Establishment? **YES/NO**
If YES, please give details:

.....
.....

I hereby certify that the details given in this application are correct to the best of my knowledge and belief. This application is accompanied by the prescribed fee.

Signed.....

Status (e.g. Director, Manager).....

Date.....

Notes

1. This application must be accompanied by the prescribed fee
New applications £2,136
Renewal applications £816
Transfer applications £306
2. Please return the completed application form to Licensing Services Manager,
Braintree District Council, Causeway House, Bocking End, Braintree,
Essex CM7 9HB

Appendix D

Fees (2014/15)

Grant £2,136

Renewal £816

Transfer £306

Appendix E

Example of Newspaper Advert and Site Notice

BRAINTREE DISTRICT COUNCIL Sex Establishment Licence Application

Notice of application for the grant/renewal/transfer (delete as applicable) of a sex establishment licence pursuant to Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982

TAKE NOTICE that on (date) (name of applicant(s) applied to Braintree District Council for the grant/renewal/transfer (delete as applicable) of a sex establishment licence

NAME AND ADDRESS OF PREMISES/LOCATION OF VEHICLE/VESSEL/STALL (delete as applicable):

(Please note that the precise address or location, sufficient to identify the location and extent of the premises, must be given)

DAYS AND HOURS OF OPERATION:

ACTIVITY; Sex Shop/sex cinema/ sexual encounter venue (delete as applicable)

INSPECTING THE APPLICATION: The application may be inspected at the offices of Braintree District Council Licensing Team, Food, Health & Safety and Licensing, Causeway House, Bocking End, Braintree, Essex CM7 9HB

OBJECTIONS: Any person wishing to support or object to this application should do so in writing to the Braintree District Council Licensing Team Food, Health & Safety and Licensing, Causeway House, Bocking End, Braintree, Essex CM7 9HB

or by email to licensing@braintree.gov.uk The grounds for objection must be stated in general terms and received by the Council by no later than (date – insert 28 days after the date of the application)*)

Please note that any written representations received in response to this application may be required to be made available for public inspection in accordance with the Local Government (Access to Information) Act 1985.

Signed

Name

Organisation

Address

Date

Please note that for site notices the notice must be printed on pale blue A4 paper in a black font.

Appendix F

Refusals and revocations of licences

1. The council must refuse to grant or transfer a licence to: -
 - (a) a person under the age of 18;
 - (b) a person who is for the time being disqualified from holding a licence;
 - (c) a person who is not resident in the United Kingdom or was not so resident throughout the period of 6 months immediately preceding the date upon which the application was made;
 - (d) a body corporate which is not incorporated in the United Kingdom;
 - (e) a person who has, within the period of 12 months immediately preceding the date upon which the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.
2. The Council may refuse-
 - (a) an application for grant or renewal of a licence on one or more of the grounds shown in paragraph 3 below;
 - (b) an application for transfer of a licence on either or both of the grounds shown in paragraph 3 (a) and (b) below.
3. The grounds for refusal are-
 - (a) That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
 - (b) That if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
 - (c) That the number of sex establishments in the relevant locality that the application is made is equal to or exceeds the number which the Council considers is appropriate for that locality;
 - (d) That the grant or renewal of the licence 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; or
 - iii. The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
4. Nil may be an appropriate number for the purposes of paragraph (3)(c) above.

Appendix G

Standard Conditions applicable to Licences for Sex Establishments

Notes

- (i) Except where the context demands otherwise the singular includes the plural and the masculine includes the feminine.
- (ii) Nothing in these conditions shall be construed as interfering with (i) the discretion of the licensee or his representative regarding the admission of any person or (ii) the need to strictly comply with all relevant statutory requirements.
- (iii) These conditions are divided as follows-
 - Part 1 General
 - Part 2 Conditions which apply to all premises
 - Part 3 Conditions which apply to sex shops
 - Part 4 Conditions which apply to sex cinemas
 - Part 5 Conditions which apply to sexual entertainment venues
- (iv) In these rules all references to the British Standard (BS) shall be deemed to refer to the current standard.
- (v) A premises licence may also be required for the operation of a sex cinema.

Part 1 General

1. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.
2. The grant 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.

Part 2 Conditions which apply to all premises

Exhibition of Licence

1. The copy of the licence and these Regulations which are 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 required to be displayed as aforesaid shall be suitably framed and exhibited in a position that it can easily be seen by all persons using the premises. The copy of these Regulations shall be retained in a clean and legible condition.

Responsibility of Licensee

2. The licensee shall take all reasonable precautions for the safety of the public and employees and, except with the consent of the Council, shall retain control over all areas of the premises.
3. The premises shall not be used for regulated entertainment, exhibition or display of any kind unless the Council's consent has been first obtained and any necessary licence granted.

Conduct and Management of the Premises

4. The licensee, or a responsible person over 18 years of age and 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 it is open to the public. Such written nomination shall be continuously available for inspection by an officer authorised in writing by the Council. The person in charge shall not be engaged on any duties which will prevent him from exercising general supervision and he shall be assisted as necessary by suitable adult persons to ensure adequate supervision. The person in charge shall be conversant with these rules, a copy of which shall be held on the premises.
5. The licensee, or the responsible person approved under Regulation 4, shall maintain a daily register to be kept on the premises in which he shall 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 to be completed each day within 30 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.
6. The Licensee shall ensure that, during the hours the sex establishment is open for business, every employee wears a badge of a type to be approved by the Council bearing a photograph of the employee and indicating his name and that he is an employee.
7. A notice showing the name of the person responsible for the management of a sex establishment shall be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.

8. Where the licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director, secretary or manager are to be furnished within 14 days of a request in writing from the Council.
9. The licensee shall ensure that no part of the premises is used by prostitutes (male or female) for the purposes of soliciting or any other immoral purpose.
10. 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.
11. Neither the licensee nor any employee or other person shall seek to obtain custom by means of personal solicitation outside or in the vicinity of the premises.
12. No person under the age of 18 shall be admitted to the premises or employed in the business of the sex establishment.

External Appearance

13. No display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation, drawing, writing or any other 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 condition of a licence granted by the Council.
 - (ii) Such display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation, drawing, writing, or any matter or thing as shall have been approved by the Council.
14. The entrances, windows and openings 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.

State, Condition and layout of the premises

15. The premises shall be maintained in good repair and condition.

16. The number, size and position of the doors or openings provided for the purposes of the ingress and egress of the public shall be to the satisfaction of 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 opening other than exits 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) No access shall be permitted through the premises to any other premises adjoining or adjacent except in the case of emergency.
17. The external doors to the premises shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order. The external door shall only be opened at such times as person(s) require access and egress to the interior of the premises.
18. The licensee shall make provision in the means of access both to and within the premises for the needs of members of the public visiting the premises who are disabled.
19. 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.
20. All parts of the premises shall be kept in a clean and wholesome condition to the satisfaction of the Council.

Maintenance of the means of Escape

21. The means of escape provided for all persons on the premises shall be maintained unobstructed, immediately available and clearly identifiable in accordance with the approved arrangements.
22. All fire resisting and smoke stop doors shall be maintained, self-closing and shall not be secured open.

Fire Appliances

23. The premises shall be provided with fire appliances suitable to the fire risks on the premises, and such fire appliances shall be maintained in proper working order and shall be available for instant use.

24. The licensee shall comply with any fire precautions and safety measures that may be required of him by the Fire Authority.
25. Portable fire appliances shall be examined at least once a year and periodically tested in accordance with the current British Standard by a competent person and the date of such test shall be clearly marked on the appropriate extinguishers or on stout tabs securely attached to them. Extinguishers which incorporate an anti-freeze agent shall be examined and recharged in compliance with the manufacturer's instructions.

Lighting

26. The licensee or any other person concerned in the conduct or management of the licensed sex establishment shall, in the absence of adequate daylight, ensure that adequate lighting is maintained to the satisfaction of the Council in all parts of the premises to which the public and staff have access and is in operation continuously during the whole time the premises are open to the public.
27. The normal lighting levels and the lighting to 'EXIT' notices shall be maintained at all times and shall not in any circumstances be extinguished or dimmed while the public are on the premises provided that, so long as there is sufficient daylight in any part of the premises, artificial light need not be used in any part.

Electrical Installations

28. The electrical installation for the premises shall be maintained in a safe working condition, as prescribed in the current edition of the Regulations for electrical installations issued by the Institute of Electrical Engineers.
29. Unless the Council decides otherwise an inspection certificate, as prescribed in the current edition of the Regulations for electrical installations issued by the Institute of Electrical Engineers, for the electrical installation associated with the premises shall be submitted to the Council at least once every five years or such other time specified on the certificate. The certificate shall be signed by a qualified engineer.

Change of Use

30. No change of use of any portion of the premises from that approved by the Council shall be made until the consent of the Council and the Police has been obtained.

31. The Licensing Authority and Essex Police must be informed should the licensee seek to change the use of the establishment to another form of sex establishment.

Sale of goods

32. Neither sex articles nor 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 or a sexual entertainment venue.

Admission of Authorised Officers

33. Officers of the Council, Police, and other authorised agencies who are furnished with authorities which they will produce on request, shall be admitted immediately at all reasonable times and at any time the premises are open for business to all parts of the premises.

Part 3 Conditions which apply to Sex Shops

1. It is permitted to play music or words either via national or local radio stations or any pre-recorded means, but no material whatsoever of an adult theme or nature can be played or broadcast, whether by means of sound or moving picture.

Goods available in Sex Establishments

2. All sex articles and other things displayed for sale, hire, exchange or loan within a sex shop shall be clearly marked to show persons who are inside the sex shop the respective prices being charged.
3. All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase, hire, exchange or loan and a notice to this effect is to be prominently displayed within the sex establishment.
4. No film or video film shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Censors, and bears a certificate to that effect, or approved by the Council and is a reproduction authorised by the owner of the copyright of the film or video film so certified.

Part 4 Conditions which apply to Sex Cinemas

Film Categories

1. The categories U, PG, 12, 15, 18 and RESTRICTED 18 have the following effect:

U	Universal – Suitable for all
PG	Parental Guidance. Some scenes may be unsuitable for young children.
12	Passed only for persons of 12 years and over.
15	Passed only for persons of 15 years and over.
18	Passed only for persons of 18 years or over
RESTRICTED (18)	Passed only for persons of 18 or over who are members (or their guests) of a properly constituted club.

Exhibition of Films

2. 'Film exhibition' means film exhibitions as defined in the Cinemas Act 1985, i.e. any exhibition of moving pictures which is produced otherwise than by the simultaneous reception and exhibition of (a) television programmes, broadcast by the British Broadcasting Corporation or the Independent Broadcasting Authority or (b) programmes included in a cable programme service which is or does not require to be licensed under Section 4 of the Cable and Broadcasting Act 1984.
3. No film shall be exhibited at the premises unless:
 - (a) it is a current news reel; or
 - (b) it has been passed by the British Board of Film Classification as a U, PG, 12, 15, 18, or RESTRICTED (18) film

- (c) it has been passed by the Council as a U, PG, 12, 15, 18, or RESTRICTED (18) film.

Restricted (18) films

4. Films in the RESTRICTED (18) category may be shown at the premises only with the Council's prior written consent and in accordance with the terms of any such consent.

Unclassified Films

5. Not less than twenty-eight days' notice in writing shall be given to the Council of any proposal to exhibit any other film which has not been classified as specified above. Such a film may only be exhibited if the Council's written consent has been obtained and in accordance with the terms of any such consent.

"Persons under 18" Notice

6. No person appearing to be under the age of 18 shall be admitted to any part of the programme and the licensee shall display in a conspicuous position at the entrance to the premises a notice in clear letters in the following terms:

PERSONS UNDER 18 CANNOT BE ADMITTED TO THIS CINEMA
FOR ANY PART OF THE PROGRAMME

Category Notices

7. A representation or written statement of the terms of any certificates given by the British Board of Film Censors or the British Board of Film Classification shall be shown on the screen immediately before the showing of any film to which it relates and the representation or statement shall be shown for long enough and in a form large enough for it to be read from any seat in the auditorium.

Timetable of Films

8. The licensee shall display in a conspicuous position, to the satisfaction of the Council, at each entrance to the premises, during the whole time the public are being admitted to the premises and so as to be easily seen and read by the public, a timetable of the films on exhibition.

Advertisements

9. No advertisement displayed at the premises of a film to be exhibited at the premises shall depict as a scene or incident in the film any scene or incident which is not included in the film as certified by the British Board of Film Censors or the British Board of Film Classification or approved for exhibition by the licensing authority, as the case may be.

10. Where the licensing authority has given notice in writing to the licensee of the premises objecting to an advertisement on the ground that, if displayed, it would offend against good taste or decency or be likely to encourage or incite crime or lead to disorder or be offensive to public feeling, that advertisement shall not be displayed at the premises without the prior consent in writing of the licensing authority.

Objection to exhibition of film

11. Where the licensing authority has given notice in writing to the licensee of the premises prohibiting the exhibition of a film on the ground that it contains material which, if exhibited, would offend against good taste or decency or would be likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling, that film shall not be exhibited in the premises except with the prior consent in writing of the licensing authority.

Additional conditions for 'Club' cinemas showing films in the restricted classification

- 12.
- (i) No club showing films in the 'restricted 18' category may operate in a multi-screen complex whilst persons under 18 are being admitted to any performance in the complex unless the Council's written consent has first been obtained.
 - (ii) When the programme includes a film in the 'restricted 18, category the licensee shall display in a conspicuous position at the entrance to the premises a notice in clear letters in the following terms:

"CINEMA CLUB – MEMBERS AND GUESTS ONLY.
PERSONS UNDER 18 CANNOT BE ADMITTED TO
THIS CINEMA FOR ANY PART OF THE PROGRAMME"
(In the case of a multi-screen complex where consent has been granted the notice shall specify the particular part of the premises in which films in the 'restricted 18' category are being exhibited).
 - (iii) The timetable of films required by rule 52 shall include the following addition to the categories shown;

"Category RESTRICTED 18" passed only for persons of 18 years and over who are either members of the cinema club or who are guests of a member".
 - (iv) All registers of members and their guests shall be available for immediate inspection by the Council's

officers during any performance, or at any other reasonable time.

- (v) Tickets shall in no circumstances be sold to persons other than members.
- (vi) No persons under 18 years of age shall be employed in any capacity at licensed premises which are operating as cinema clubs.
- (vii) Subject to prior written consent by the Council, a subscription may entitle the club member to attend other clubs under the same management.
- (viii) Membership rules for these club cinemas shall include the following –
 - (a) The club rules must be submitted to the Council 14 days before the club commences operations and notice of all rule changes shall be given to the Council within 14 days of the change.
 - (b) Only members and their guests shall attend exhibitions of moving pictures classified in a restricted classification.
 - (c) Membership shall be open to persons of both sexes of not less than 18 years of age. Applications for membership, including both name and address, shall be in writing, signed by the applicant, and if deemed necessary such applicants shall provide satisfactory references and proof of age.
 - (d) No person shall be admitted to membership until the expiration of at least 24 hours after such written application has been approved by the licensed proprietors.
 - (e) New members shall be supplied with a personal copy of the club rules before being admitted to membership and be given a copy of any rule changes within 14 days of the change.
 - (f) An annual subscription shall be fixed for the club and shall run for 12 months from the date of registration. Membership may be renewed annually at the subscription for the time being in force, but the licensed proprietors may refuse to renew any membership without assigning reason for such refusal.

- (g) Members shall be entitled on any day to bring not more than one guest to accompany the member, and the name of the guest shall be entered in the visitors' book and counter-signed by the member.
- (h) On admission a member and his guest shall be bound by the rules of the club and by any by-laws and regulations made thereunder.
- (i) Tickets shall be sold only to members on the production of a membership card and members shall, if required, sign an acknowledgement for the ticket or tickets issued.
- (j) Membership cards shall be personal to the member and shall not be transferable to any other person.
- (k) Neither membership tickets nor guest tickets shall be transferable.
- (l) No member shall introduce as a guest any persons under the age of 18 or any persons whose application for membership had been refused. The proprietors will reserve the right to refuse admission to any person.
- (m) Proof of identity, or of age, or of any particulars of any guest shall be produced by any member or guest if demanded by the licensed proprietors.
- (n) Members shall undertake to behave in a proper and orderly manner. Any member or guest acting in a manner which is offensive, or a nuisance or annoyance to others may be refused admission or expelled from the premises. A member may also be deprived of membership.

Sale of Sex Article

13. Neither sex articles nor 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'.

Part 5 Conditions which apply to Sexual Entertainment Venues

Performances of Relevant Entertainment

1. The performance of relevant entertainment within the premises shall not be visible from any area outside of the premises at any time.

Age Restrictions

2. A prominent clear notice shall be displayed at each entrance to the premises advising customers that no person under 18 will be admitted and they may be asked to produce evidence of their age.
3. Members of staff at the premises shall seek “credible photographic proof of evidence” from any person who appears to be under the age of 25 years and who is seeking access to the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence, or Proof of Age card carrying a “PASS” logo.

Club Rules

4. The premises must provide a copy of its Club Rules to the Council and to Essex Police for consideration and approval.
5. All performers and staff shall be aware of the Club Rules.
6. All dancers, staff and door supervisors shall read a copy of the rules relating to operating relevant entertainment. They shall sign and date a copy which shall be retained by the premises as part of their due diligence.

Management Operation Manual

7. A management operation manual detailing all aspects of procedure when the premises are operating relevant entertainment shall be produced and approved by the Council. This document shall be reviewed annually and the manual as reviewed shall be submitted for approval of the Council together with the application for renewal of the licence.

Performers

8. Performers shall be aged not less than 18 years and the “Challenge 25” scheme will be used to manage this.
9. All performers shall be aware of the management operation manual.

10. A log book shall be maintained on the premises detailing the names and start and finish times of individual performers involved in all forms of adult entertainment.
11. At all times during the performance, performers shall have direct access to a dressing room without passing through, or in close proximity to, the audience.
12. On leaving the premises performers, who wish to be, shall be escorted by staff member to their vehicle or other safe location.

Performances

13. Whilst dancers are performing in any public area there shall be a minimum distance of one metre maintained between the dancer and the seated customers. Prominent, clear notices shall be displayed at each table stating this requirement.
14. There shall be no physical contact between customers and the dancers except for the placing of money or tokens in a garter or into the hands of the dancer at the beginning or conclusion of a performance. A "touch and go" policy will operate i.e. any person/customer touching dancers will be ejected from the premises and barred from those premises.
15. No performances shall include any sex act with any other performer, persons in the audience or with the use of any object.
16. No audience participation shall be permitted.
17. Signs displaying the rules on the performance of relevant entertainment will be displayed throughout the premises and be clearly visible to patrons. This will include any private individual booth area.
18. In the event of the relevant entertainment being performed for private viewing, the patron shall be informed of the duration and price of the relevant entertainment, and the details shall be specified in a clearly visible notice in each area designated for private relevant entertainment. Each such area shall be capable of being continually monitored by a member of staff.
19. No performer or member of staff shall sit on, straddle, stroke, fondle or make any form of sexual contact with a customer at any time.

Door Supervisors

20. One SIA registered door supervisor per 75 customers shall be on duty on the premises whilst relevant entertainment takes place plus

there shall be at least one door supervisor on each entrance in each separate part of the premises and on the door to the dressing room.

21. The door supervisors shall be on duty at the premises at all times when the premises provide relevant entertainment.
22. The premises shall be a member of the Pub/Townlink Radio scheme.

Closed Circuit Television (CCTV)

23. A high quality CCTV system shall be installed to cover all entrances and exits to the premises and areas where relevant entertainment will take place, with the exception of the performers' changing area. This system must be installed and fully operational before the premises opens for the licensable activity applied for. All cameras shall continually record whilst the premises are open to the public and video recording shall be kept available for a minimum of 31 consecutive days with date and time stamping.
24. At the time of installation or upgrading of any CCTV system it shall comply with the current and relevant Police guidelines for Standard Minimum closed circuit television requirements. To obtain a clear head and shoulders image of every person entering the premises on the CCTV System, persons entering the premises should be asked to remove headwear, unless worn as part of religious observance.
25. A member of staff who is fully trained in the use of the system shall be on duty at all times when the premises are open until the premises are clear of customers, cleared of staff and closed.
26. Within 24 hours of a request made by Essex Police or the Licensing Authority, the premises will provide the CCTV footage requested.

Crime Survey

27. Upon completion of a crime survey by Essex Police, the licence holder shall act accordingly with all recommendations of the survey in so far as they relate to licensable activities.

Layout of premises

28. The approved activities shall take place only in the areas designated by the Licensing Authority.
29. All dance booths are to be equipped with a panic alarm for safety.

30. Arrangements shall be put in place to restrict access to the dressing room at all times when the relevant entertainment is taking place, and until such time as all performers have vacated it. The performers' dressing rooms will be off-limits to all non-employees.
31. The layout within the areas used by customers shall not undergo substantial change without the prior written consent of the Licensing Authority.

Sale of goods

32. Neither sex articles nor 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 'Sexual Entertainment Venue'.

Door Policy

33. No entry to be permitted to any customer who is considered by the management or door staff to be incapable of controlled or acceptable behaviour, especially those who may be showing signs of having been intoxicated through alcohol or drugs.
34. The rules for the venue will be explained to all customers before entry is permitted.
35. One member of door staff will be present at the entrance to the venue at all times during opening hours.
36. Door staff will carry two-way radios at all times.
37. Dress code will be smart at all times; no sportswear will be permitted.

Operation of the Venue

38. A copy of the house customer rules will be on display at the entrance to the venue and in the bar area.
39. Waitresses/Waiters and bar staff must remain fully clothed at all times.

Supervision of Performers

40. Proof of citizenship or working permits must be provided.
41. No working auditions will be permitted; a cooling off period of three days is enforced at all times.

42. All performers and staff must complete an emergency contact form before working within the venue.
43. Performers must sign a 'contract' before working stating that they have read, understood and will abide by the performer rules and rules of the house while working in the venue.
44. A member of staff will be in the private dance area at all times whilst private dances are taking place.
45. No dances will be permitted without supervision from a member of staff.
46. Performers must be provided with a full briefing on the Club rules.

Customer and Performer Conduct

There should be published rules on customer conduct and performer conduct and the rules should contain as a minimum the following requirements, and the licensee shall ensure that the rules are enforced.

47. Any customer who is offensive either by language or action towards the performer will be ejected from the venue. They will also be barred from entry on any future occasion.
48. Strictly no photographing or videoing of performances or performers before, during or after the performance will be allowed. All customers' mobile phones will be switched off whilst on the premises. Anyone found breaching this condition will be ejected from the venue and barred from entry on any future occasion.
49. Any customer found in possession of drugs, attempting to consume drugs or selling drugs will be detained by the security staff and the Police will be called. They will also be barred from entry on any future occasion.
50. Throwing of money at performers will not be permitted before, during or after the performance, nor will the giving of any other gift. Anyone breaching this condition will be ejected from the venue and barred from entry on any future occasion.
51. Customers will not be allowed to pass on personal details such as business cards or telephone numbers to performers before, during or after a performance.
52. Payment must be made to the performer only and strictly in advance of the performance taking place.

Performer Conduct

53. No performer will be allowed to carry or use any sex toy, sex aid or other paraphernalia.
54. No performer will be allowed to wear bondage or sadomasochist clothing or paraphernalia. No accessories such as sex toys or aids are to be carried or used by the performers.
55. No handing out of cards, telephone numbers or personal contact information to customers or any other persons by performers.
56. Performers must not encourage customers to touch them in any way before, during or after a performance.
57. Performers found in possession, using or attempting to sell drugs or under the influence of drugs before, during or after a performance will be immediately dismissed and the Police notified.
58. Performers will instruct all customers to keep their hands by their sides at all times during a private dance.
59. Any approach by a customer to make personal contact with a performer must be immediately reported to the management or security.
60. Performers will not be permitted to enter any part of the venue other than the private dance area and dressing room areas while fully nude.

APPENDIX 2

I am pleased to see that BDC has now got round to formulating a policy on sex establishment licensing. By and large I think the policy is fairly well presented, but I think the factors in the general proposition on p16 are too narrow. I would expand the reference to "character of the business" to read "character and turnover of the business including mail order and online sale of sex articles".

I would add "format of any publicity or advertising materials" and "other factors which appear to be materially relevant".

The main problem, however, is that all this is going to be worthless window dressing (I am tempted to say "a teaser" in the present context) if the policy is not accompanied by a positive attitude to implementation and enforcement.

Unfortunately it seems to me that there is at BDC a culture of seeking excuses for inaction, maybe conditioned by issues of cost and departmental budget. Setting out a policy and then failing to apply it properly brings the law and the council into disrepute.

I assume I received a specific invitation to comment on this policy because of my exchange of emails with Theresa Debbage and Lisa Lebesque in late 2011 and early 2012. I had raised an issue about BDC's attitude to what I still regard as an unlicensed sex shop at 14 Coggeshall Road, Braintree. Incidentally, it seems I am not alone in that view - see comments on the Daily Gazette website after the article reporting the committee meeting on 22 January:

http://www.gazette-news.co.uk/news/local/braintree/10955531.Braintree_Council_set_to_agree_sex_shop_policy/

In the course of that exchange of emails (which I can forward if not now readily available at BDC) I was told that the owners of the business at 14 Coggeshall Road had agreed to alter their window displays and change their website. It is fair to say that the window displays have generally been less offensive (no more women in spiked dog collars on leashes) though not particularly tasteful and not something I would really want children to see. The website remains substantially as before:

<http://www.adultstore4u.co.uk/index.php>

It is really quite clear that sex articles are the primary sales target and it is implausible in the extreme that such items do not account for the greater part (or at least "a significant degree") of the business. I was not given any meaningful information on turnover and BDC's refusal to take account of internet sales was quite incomprehensible except as an aspect of the culture I have criticised above, but in any case BDC should not put too much reliance on self serving figures likely to be provided by the proprietors of the business.

I look forward to hearing from you and in particular to seeing a review of the flawed policy of inaction in respect of 14 Coggeshall Road.

Appendix 3

EQUALITY IMPACT ASSESSMENT

This should be carried out during the development stage of a new project, strategy, policy or service or when you are reviewing an existing project, strategy, policy or service.

By understanding and meeting people's differing needs we can provide more effective services.

Name and brief description of project, strategy, policy or service being assessed

Sex Establishment/Entertainment Venue Licensing Policy

To determine a policy with respect to the licensing of Sex Establishments that is fair, equitable, transparent, provides accountability, certainty, consistency and does not directly or indirectly discriminate on any grounds against any section of the population.

Braintree District Council has resolved to adopt legislation which incorporates "sexual entertainment venues" within the categories of sex establishments regulated by the Council. The Licensing Authority has decided to set out a Sex Establishment/Entertainment Venue Licensing Policy and to undertake consultation with appropriate service users, businesses and potential licence holders.

This policy has been produced in accordance with the powers conferred by the Local Government (Miscellaneous Provisions) Act 1982 and the Policing and Crime Act 2009, and also in accordance with "Sexual Entertainment Venues: Guidance for England and Wales" published by the Home Office in March 2010.

This policy shall apply throughout the administrative area of Braintree District Council from the date of adoption. The licences specified in the Acts and covered by this policy are sex establishments (shops and cinemas) and sexual entertainment venues. The Council will adopt and carry out its function to licence sex establishments/entertainment venues with a view to protecting the public by administering the licensing regime in accordance with the law, considering each application on its merit, and adopting standard conditions. Additional conditions may be imposed by the Licensing Committee if considered reasonable and necessary. Any complaints will be investigated and appropriate follow up action taken. When taking enforcement action the Council as the Licensing Authority will have regard to Braintree District Council's Enforcement Policy.

The results of the three month consultation undertaken in early 2014 highlighted no additional negative impacts that were not already highlighted in this document.

Information used to analyse the impact on people affected by the project, strategy, policy or service

State who will be affected, the relevant information you are using to assess how it will affect them, note any relevant consultation, surveys, etc.

Who will be affected by the policy?

- * Any person wishing to apply for a Sex Establishment licence issued under The Local Government (Miscellaneous Provisions) Act 1982.
- * Any persons wishing to enter a Sex Establishment/Entertainment Venue
- * Residential properties in the general vicinity of a Sex Establishment/Entertainment Venue
- * Commercial business in the general vicinity of a Sex Establishment/Entertainment Venue
- * The wider population

Information used to assess how the policy will affect stakeholders:

- * The Local Government (Miscellaneous Provisions) Act 1982.
- * The Royal Town Planning Institute's Gender and Spatial Planning Good Practice Note 7
- * Results of a 3 month consultation

Other information used:

- * Equality Act 2010
- * Sex licensing, The Institute of Licensing, Phillip Kolvin QC, 2010

Use the information above to assess the impact of your project, policy, strategy or service on people from the following protected groups: (these are defined by the Equality Act 2010)

Protected Group		Positive Impact/ Benefit	Negative Impact/ Disadvantage	Explanation – State how
Age	Children 0-16	√		<p>Young people under the age of 18 will be affected by the policy and the requirements of legislation.</p> <p>Under 18's will not be allowed to make an application for a Sex Establishment Licence in accordance with legislation.</p> <p>Under 18's will not be permitted to enter a licensed establishment in accordance with legislation.</p> <p>The authority believes that the age restriction specified above provides a positive impact/benefit on the protected group specified.</p>

	Young People 17-25	√		<p>Young people under the age of 18 will be affected by the policy and the requirements of legislation.</p> <p>Under 18's will not be allowed to make an application for a Sex Establishment Licence in accordance with legislation.</p> <p>Under 18's will not be permitted to enter a licensed establishment in accordance with legislation.</p> <p>The authority believes that the age restriction specified above provides a positive impact/benefit on the protected group specified.</p>
	Ages 26-59	√		No negative impact identified
	Older People 60+	√		No negative impact identified
Disability Include disabled people and/or carers	Blind/Partially Sighted	√		No negative impact identified
	Deaf/Hearing Impaired	√		No negative impact identified
	Wheelchair user/mobility difficulties	√		No negative impact identified
	Learning Difficulties	√		No negative impact identified
	Mental Health Difficulties	√		No negative impact identified
Gender	Men		√	<ul style="list-style-type: none"> • Single gender clubs • Protection of performers from harassment and threat to their dignity • The fear of the opposite sex being less welcome into a particular gender specific club

	Women		√	<ul style="list-style-type: none"> • The fear of women using the vicinity of premises • Single gender clubs • Protection of performers from harassment and threat to their dignity • The fear of the opposite sex being less welcome into a particular gender specific club
	Transgender		√	<ul style="list-style-type: none"> • Single gender clubs • Protection of performers from harassment and threat to their dignity • The fear of the opposite sex being less welcome into a particular gender specific club
	Pregnancy & Maternity impact	√		No negative impact identified
	Marriage & Civil Partnership	√		No negative impact identified
Race	White	√		No negative impact identified
	Asian	√		No negative impact identified
	Black	√		No negative impact identified
	Mixed Dual Heritage	√		No negative impact identified
Religion/Belief	Buddhist		√	Perceived offence caused by the presence of a sex establishment
	Christian		√	Perceived offence caused by the presence of a sex establishment
	Hindu		√	Perceived offence caused by the presence of a sex establishment
	Jewish		√	Perceived offence caused by the presence of a sex establishment
	Muslim		√	Perceived offence caused by the presence of a sex establishment

	Sikh		√	Perceived offence caused by the presence of a sex establishment
	Other – please specify	n/a	n/a	
Sexual Orientation	Lesbian Gay men Heterosexual Bi-sexual	√ √ √ √		
Other (optional)	Use to define Impact on any groups specific to this Strategy, Policy or Function not listed above.			

If you identified any negative impacts above then either:

(a) Your proposal, policy or service is treating people from a protected group above less favourably because of their age, disability, gender, race, religion, or sexual orientation

or

(b) Your proposal, policy or service is intended to treat everyone equally but, unintentionally, people from a protected group above can be particularly disadvantaged or treated less favourably than other others

√

PLEASE TICK WHICHEVER APPLIES

If you ticked (a) this is direct discrimination, which is illegal and you cannot proceed

If you ticked (b):

1. Can any negative impacts be minimized or removed? If so state what changes you will make.

N/a

2. If you cannot minimize or remove negative impacts they must be justified and you must state your justification

Age

Standard conditions attached to a sex shop licence state that no person under the age of 18 may be admitted to the premises and a notice to this effect must be displayed on the outside of the premises. The notice must state “No person under the age of 18 allowed. People under the age of 25 will be required to show proof of their age.” Standard conditions attached to a Sexual Entertainment Venue licence state that no person under the age of 18 years will be permitted in the premises whilst any live performance of sexual entertainment or live display of nudity is taking place, and a notice must be clearly displayed at the entrance to the premises stating “No person under 18 will be admitted”. There is also a standard condition that performers must be aged 18 years or over. The policy states that the authority will consider the character of the relevant locality when considering an application and will particularly take account of the density and proximity of various types of premises including parks and children’s play areas, educational establishments and youth clubs. It is likely that any premise licensed as a sexual establishment venue will already be licensed under the Licensing Act 2003. This primary legislation provides for various offences and requirements associated with the protection of children and the sale and consumption of alcohol by children.

Gender

The fear of women using the vicinity of premises – The Council has a discretion to refuse to grant or renew licences for sex establishments on the grounds that the licence would be inappropriate having regard to the character of the locality or the use of premises in the vicinity. Without prejudice to other elements of the policy, and whilst treating each new application on its own merits, the Council’s policy is ordinarily to refuse licences on these grounds for premises that are in close proximity to;

- (a) residential accommodation;
- (b) schools, nurseries and other premises used by children and vulnerable persons;
- (c) parks or other recreational areas used by children and other vulnerable persons;
- (d) religious centres and places of religious worship;
- (e) youth, community and leisure centres;
- (f) access routes to and from premises listed above;
- (g) historic buildings or visitor attractions;

(h) an area designated either as an area under regeneration, or due to be regenerated.

However the Statement of Licensing Policy for Sex Establishments (including Sex Shops, Sexual Entertainment Venues and Sex Cinemas) and the Equality Impact Assessment does not take into account any planning considerations that may arise from an application.

Single Gender clubs – The legislation, guidance and policy are directed to the consideration and processing of applications from any person and premises that meets the statutorily directed criteria which must be adhered to in the application process. The licensing authority holds a neutral stance in relation to all matters providing the application criteria are met by the applicant. The only reasons for rejecting an application stem from the statutory requirements of the application process and the only representations and objections that may be considered by the licensing authority that may lead to a decision not to grant a licence relate exclusively to the requirements of agreed policy and legislation. An application could not for example be rejected simply on the grounds on an exclusive gender issue.

Protection of performers from harassment and threat to their dignity – The policy has been designed in part with the protection of performers in mind and conditions although specific to each venue aim to ensure the protection of specified employees.

The fear of the opposite sex being less welcome into a particular gender specific club – The policy is silent on this subject and does not aim to impose a condition(s) on a licensed premises to require a particular gender entrance to a particular venue. Each operator will be required to ensure compliance with any specific legal requirement that may apply to prevent discrimination.

Religion or belief

Some people may have a religion or belief that is offended by sex establishments/entertainment venues. The policy notes that it is lawful to operate such venues and that such businesses are a legitimate part of the retail and leisure industries. The licensing authority's role is to administer the licensing regime in accordance with the law. This law empowers local people and the community to be involved in the licensing process. The policy also states that the authority will consider the character of the relevant locality when considering an application and will particularly take account of the density and proximity of various types of premises including religious buildings.

If you identified any positive impacts is there anything further you can do to increase or extend the positive benefits? If so state what changes you will make

The policy will be reviewed and any identified benefits will be included in any future revisions.

Completed By: D Mellini

Approved By (Senior Manager) L Crabb

Service: Licensing

Date : 16th April 2014

Each service should retain the signed copy of the Assessment.

An electronic copy should be sent to angve@braintree.gov.uk for publication on the Council's website – this is a requirement to ensure that we meet our statutory duties under the Equality Act 2010.

HACKNEY CARRIAGE PROPRIETORS' LICENCES - ALLOCATION POLICY		Agenda No: 7
<p>Corporate Priority: People feel good – Supporting vulnerable people in our community, promoting safe and healthy living, encouraging flourishing communities. Building a prosperous District – Boost employment skills and support businesses, promoting and improving our town centres, securing appropriate infrastructure and housing growth. An organisation that delivers value – Providing value for money, delivering excellent customer service, improving our services through innovation.</p> <p>Report presented by: John Meddings Report prepared by: John Meddings</p>		
<p>Background Papers:</p> <ol style="list-style-type: none"> 1. Draft Hackney Carriage Proprietors' Licences - Allocation Policy (Appendix 1) 2. Equality Impact Assessment (Appendix 2) 		Public Report
<p>Options:</p> <ol style="list-style-type: none"> 1. Members APPROVE the proposed Policy for the allocation of Hackney Carriage Proprietors' Licences. 2. Members APPROVE the proposed Policy for the allocation of Hackney Carriage Proprietors' Licences with amendments. 3. Members DO NOT APPROVE the proposed Policy for the allocation of Hackney Carriage Proprietors' Licences. 		Key Decision: No
<p>Executive Summary:</p> <p>This report provides details of the proposed Policy for allocating Hackney Carriage Proprietors' Licences (hereafter referred to as HCPL).</p> <p>The current Policy for the allocation of HCPLs was introduced by the former Regulatory Committee on 27th February 2003. The decision was made in 2003 to change the Policy following a survey undertaken on behalf of the Council to ascertain whether there were a sufficient number of licensed Hackney Carriages in the District. The Committee replaced the method of allocating HCPLs by withdrawing the waiting list system and</p>		

introduced a “Register of Interest” and a number of entry requirements to be placed on the Register. At that time no formal procedure for allocating plates apart from the “Register of Interest” was adopted and the Policy has not been reviewed since 2003. Since the introduction of the Policy, no plates have been allocated. However, due to different circumstances the Council has received a number of HCPLs that now need to be allocated.

The Council must ensure that the Policy of allocation is fair, transparent and meets the requirements of the Equality Act 2010.

Decision: To consider the following options:-

1. To **APPROVE** the proposed Policy for the allocation of Hackney Carriage Proprietors’ Licences.
2. To **APPROVE** the proposed Policy for the allocation of Hackney Carriage Proprietors’ Licences with amendments.
3. To **NOT APPROVE** the proposed Policy for the allocation of Hackney Carriage Proprietors’ Licences.

Purpose of Decision:

To enable the Council to have a fair and transparent Policy on how it issues existing and additional Hackney Carriage Proprietors’ Licences in the future.

Corporate Implications

Financial:	The Authority may receive a challenge (via judicial review) from any aggrieved person that the process of re-issuing Hackney Carriage Proprietors’ Licences was not fair and transparent.
Legal:	<p>The Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 places on Braintree District Council as the Licensing Authority the duty to carry out its licensing functions in respect of Hackney Carriages and Private Hire vehicles.</p> <p>The Authority must be mindful of all other legislation that relates to the proposed Policy and ensure that the proposed procedure is lawful and will not be subject to challenge.</p>
Safeguarding	None arising out of this report
Equalities/Diversity	<p>The Equality Act 2010 consists of a general duty for the Authority as both employer and service provider, to have due regard to the need to:</p> <ul style="list-style-type: none"> • Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act. • Advance equality of opportunity between people who share a protected characteristic and people who do

	<p>not share it.</p> <ul style="list-style-type: none"> • Foster good relations between people who share a protected characteristic and people who do not share it. <p>An equality impact assessment has been completed with respect to the proposed Policy (Appendix 2).</p>
Customer Impact:	None arising out of this report.
Environment and Climate Change:	None arising out of this report.
Consultation/Community Engagement:	A three month consultation has taken place with the licensed trade and wider community.
Risks:	None arising out of this report.
Officer Contact:	John Meddings
Designation:	Licensing Officer
Ext. No.	2213
E-mail:	John.meddings@braintree.gov.uk

1. Background

- 1.1 The Council has responsibility for the licensing of Hackney Carriages and Private Hire vehicles, drivers and Private Hire Operators within the district of Braintree.
- 1.2 The Council currently limits the number of HCPLs issued under Section 37 of the Town Police Clauses Act 1847 (as amended by section 16 of the Transport Act 1985).
- 1.3 The Council currently limits the number of licences issued to 84.
- 1.4 The current Policy for the allocation of HCPLs was introduced by the Regulatory Committee on 27th February 2003. The decision was made to change the Policy following a survey undertaken on behalf of the Council to ascertain whether there was a sufficient number of licensed Hackney Carriages in the District at that time. The Committee replaced the existing method of allocating HCPLs by withdrawing the waiting list system and introduced a "Register of Interest" and entry requirements to be placed on the register. At that time no formal procedure for allocating plates apart from the "Register of Interest" was adopted and the Policy has not been reviewed since 2003.
- 1.5 Since the introduction of the Policy, no plates have been allocated. However, due to differing circumstances, the Council has received a number of plates that now need to be allocated.
- 1.6 As a result, the Council must ensure that the Policy of allocation is fair, transparent and meets the requirements of the Equality Act 2010.
- 1.7 An HCPL returns to the Local Authority for allocation for various reasons, for example on the death of the holder, or if a holder fails to renew.

2. Consultation

- 2.1 A three month consultation has taken place between 7th October 2013 and 6th January 2014.
- 2.2 The draft Policy was also placed on the Council's website for comment.
- 2.3 There are no specific legal implications at this stage. All of the proposals are within the Council's licensing powers provided under the Town and Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. However, it is essential that all of the proposals and any alternative options, are subject to proper and meaningful consultation with the trade and the public and that all representations are properly taken into account before any final decisions are taken regarding the adoption of these Policy changes. Failure to properly consult could lead to parts of the Policy and decisions being challenged by way of judicial review proceedings on the grounds of procedural unfairness.
- 2.4 The Council should take into consideration all comments raised and alternative proposals before deciding whether, or not to introduce the Policy.

- 2.5 Several meetings have taken place between the Council and the local Taxi Association subsequent to the close of consultation to discuss how best Hackney Carriage plates should be issued.
- 2.6 In response to the consultation and various meetings with the trade the proposed policy has been amended to reflect the following:
- Increase the number of years before the licence can be transferred (sold), from 3 years to 5 years.
 - The conditions attached to the proprietor's licence will also be amended to reflect the increase from 3 to 5 years.
 - *No new Hackney Carriage proprietor's licence may be sold or transferred for a period of five years from issue.*
 - *Should the successful applicant already be an existing Hackney Carriage proprietor's licence holder, they will be required to undertake not to sell or transfer any existing licences for a period of five years.*
- 2.7 Detailed discussion has taken place between the trade and the Council about the possibility of restricting any new proprietors' licences to specific areas of need, such as Kelvedon and Halstead. However, this is specifically prohibited under legislation and although other options were explored no viable solution was found.
- 3. Equality**
- 3.1 The Equality Act 2010 consists of a general duty for the Council, as both employer and service provider, to have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and people who do not share it.
 - Foster good relations between people who share a protected characteristic and people who do not share it.
- 3.2 The Equality Act 2010 covers the following protected characteristics of: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It also applies to marriage and civil partnership, but only in respect of the requirement to eliminate discrimination.
- 3.3 An equality impact assessment has been completed with respect to the introduction of the proposed Policy and this is attached at Appendix 2 to the report.

Proposed Policy for the Allocation of Hackney Carriage Proprietors' Licences (consultation 7th October 2013 – 7th January 2014)

1. Introduction

- 1.1 This report provides information in relation to the allocation of Hackney Carriage proprietors' licences in Braintree District. There may be other options that the Licensing Committee wishes to consider.

2. Background

- 2.1 In 2013 Braintree District Council conducted a review of its policy in relation the allocation of Hackney Carriage proprietors' licences.
- 2.2 Part of this review involved a 3 month consultation (October 2013 to January 2014) involving a wide range of people, e.g. Hackney Carriage and Private Hire trade, local businesses and the public.
- 2.3 The overall objective for this Policy is to enable Braintree District Council to reallocate Hackney Carriage proprietors' licences in a fair and open manner.
- 2.4 There is currently no Policy in place regarding the issue of new Hackney Carriage proprietors' licences.

3. Proposal

3.1 Eligibility

- Must hold a current Hackney Carriage, Private Hire or Dual driver's licence issued by Braintree District Council.
- Not currently hold more than one Hackney Carriage proprietor's licence (including, for the avoidance of doubt, those proprietors who obtained their current licence via transfer).
- Not have had any proprietor's licence (including both Hackney Carriage and Private Hire) revoked during the 5 year period immediately prior to the closing date for registrations of interest to be entered into the lottery.
- Not be a person who has previously held a Hackney Carriage proprietor's licence issued to that individual by the Council (i.e. a free plate).

Vehicle Specification

- Must be wheelchair accessible.
- Must meet the Council's current guidelines in terms of age and specification.

Allocation

- The method of allocation will be by random ballot.
- The ballot will take place at a Licensing Committee or Licensing Sub-Committee meeting as soon as possible once the applications have been scrutinised.
- Lots will be drawn to cover the number of available licences. Then a number of reserves will be drawn to allow for unsuccessful applications.

Example: If two licences are required to be allocated, then the random ballot will take place as soon as practicable. Four lots will be drawn; Lot 1 & Lot 2 will have the opportunity to apply for the available proprietors licence and complete the applications within 28 days. If either of the first two lots is unsuccessful with their applications then Lot 3 will have the opportunity to apply. Then if any of the previous three lots drawn are unsuccessful with their applications then Lot 4 will have an opportunity to apply.

Timescales

- Once the Council has received notification that a Hackney Carriage proprietor's licence will be returned to the Council, the Licensing Team will endeavour to notify all licensed drivers and operators. An advert will also be placed on the Council's website.
- The register of interest will then close one month after it opens. All applications to join the register of interest must be received within a period of one month.
- The vehicle will need to be licensed within 28 days of the ballot.

Conditions

- No new Hackney Carriage proprietor's licence may be sold, or transferred for a period of five years from issue.
- Should the successful applicant already be an existing Hackney Carriage proprietor licence holder, they will be required to undertake not to sell, or transfer any existing licences for a period of five years.

Declaration

- Any person wishing to register an interest in the random selection draw will be required to complete a statutory declaration confirming they meet the above requirements.

Appendix 2

EQUALITY IMPACT ASSESSMENT

This should be carried out during the development stage of a new project, strategy, policy or service or when you are reviewing an existing project, strategy, policy or service.

By understanding and meeting people's differing needs we can provide more effective services.

Name and brief description of project, strategy, policy or service being assessed

To determine a policy with respect to the distribution of Hackney Carriage Proprietors Licences (HCPL), that is fair, equitable and transparent and does not directly or indirectly discriminate on any grounds against any section of the population.

The Council has responsibility for the licensing of hackney carriages, private hire vehicles, drivers and operators within the district of Braintree. Braintree District Council currently limits the numbers of hackney carriage proprietors licences (hereafter referred to as HCPL) under section 37 of the Town Police Clauses Act 1847 (as amended by section 16 of the Transport Act 1985). The authority currently issues 84 (HCPL) licences.

The number of licences issued is reviewed every three years following an independent survey regarding hackney carriage provision in the district. The last survey was undertaken in 2012 by an independent company and the results of the survey were reported to the Licensing Committee on 18 July 2012. The Committee determined that no extra hackney carriage plates be issued at that time.

A Hackney Carriage Proprietors licence will be returned to the Local Authority for re-issue for various reasons, for example on the death of the holder or if a holder fails to renew.

The method by which licences are currently allocated is in accordance with policy agreed by the former Regulatory Committee of 27th February 2003. The policy has not been reviewed since this date and since the introduction of the policy no plates have been allocated, however due to differing circumstances the Council has received a number of plates that now need to be allocated.

Information used to analyse the impact on people affected by the project, strategy, policy or service

State who will be affected, the relevant information you are using to assess how it will affect them, note any relevant consultation, surveys, etc.,

Who will be affected by the policy?

- * Any person wishing to apply for a (HCPL) and who is currently barred from doing so due to the quantity restriction imposed by the authority.
- * Any person wishing to apply for a (HCPL) and who will be barred from doing so as a result of the proposed criteria for selection.

Information used to assess how the policy will affect stakeholders:

- * Results of three months consultation

Other information used:

- * Equality Act 2010
- * Regulatory Committee 27th February 2003 - Minutes 80

Use the information above to assess the impact of your project, policy, strategy or service on people from the following protected groups: (these are defined by the Equality Act 2010)

Protected Group		Positive Impact/ Benefit	Negative Impact/ Disadvantage	Explanation – State how
Age	Children 0-16	√		No negative impact identified
	Young People 17-25	√		No negative impact identified
	Ages 26-59	√		No negative impact identified
	Older People 60+	√		No negative impact identified
Disability Include disabled people and/or carers	Blind/Partially Sighted	√		No negative impact identified
	Deaf/Hearing Impaired	√		No negative impact identified
	Wheelchair user/mobility difficulties	√		No negative impact identified
	Learning Difficulties	√		No negative impact identified
	Mental Health Difficulties	√		No negative impact identified
Gender	Men	√		No negative impact identified
	Women	√		No negative impact identified
	Transgender	√		No negative impact identified
	Pregnancy & Maternity impact	√		No negative impact identified
	Marriage & Civil Partnership	√		No negative impact identified
Race	White	√		No negative impact identified
	Asian	√		No negative impact identified
	Black	√		No negative impact identified
	Mixed Dual Heritage	√		No negative impact identified

Religion/Belief	Buddhist	√		No negative impact identified
	Christian	√		No negative impact identified
	Hindu	√		No negative impact identified
	Jewish	√		No negative impact identified
	Muslim	√		No negative impact identified
	Sikh	√		No negative impact identified
	Other – please specify	√		No negative impact identified
Sexual Orientation	Lesbian	√		No negative impact identified
	Gay men	√		
	Heterosexual	√		
	Bi-sexual	√		
Other (optional)	Use to define Impact on any groups specific to this Strategy, Policy or Function not listed above.			

If you identified any negative impacts above then either:

(a) Your proposal, policy or service is treating people from a protected group above less favourably because of their age, disability, gender, race, religion, or sexual orientation

or

(b) Your proposal, policy or service is intended to treat everyone equally but, unintentionally, people from a protected group above can be particularly disadvantaged or treated less favourably than other others

PLEASE TICK WHICHEVER APPLIES

If you ticked (a) this is direct discrimination, which is illegal and you cannot proceed

If you ticked (b):

1. Can any negative impacts be minimized or removed? If so state what changes you will make.

N/a

2. If you cannot minimize or remove negative impacts they must be justified and you must state your justification

N/A

If you identified any positive impacts is there anything further you can do to increase or extend the positive benefits? If so state what changes you will make

The proposed policy and criteria for selection for the allocation of (HCPL) has been designed to be as fair, transparent and equitable as possible. It is not possible to determine how the policy can increase or extend these positive benefits at this time. Further benefits could be identified by the Licensing Committee or after consultation which will be reflected in the policy and final equality impact assessment.

Completed By: D Mellini  **Approved By (Senior Manager) L Crabb** 

Service: Licensing

Date : 15th April 2014

Each service should retain the signed copy of the Assessment.

An electronic copy should be sent to angve@braintree.gov.uk for publication on the Council's website – this is a requirement to ensure that we meet our statutory duties under the Equality Act 2010.

PROPOSED CHANGE TO HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DOOR LIVERY		Agenda No: 8
<p>Corporate Priority: An organisation that delivers value – Providing value for money, Delivering excellent customer service, Improving our services through innovation</p> <p>Report presented by: John Meddings</p> <p>Report prepared by: Daniel Mellini</p>		
<p>Background Papers:</p> <ol style="list-style-type: none"> Existing Hackney Carriage and Private Hire vehicle door livery (Appendix 1). Proposed Hackney Carriage and Private Hire vehicle door livery (Appendix 2). 		Public report
<p>Options:</p> <ol style="list-style-type: none"> The Committee agrees to the changes to the existing Hackney Carriage and Private Hire vehicle door livery being put forward for consultation without amendment and approved if no adverse comments are received. The Committee agrees to the changes to the existing Hackney Carriage and Private Hire vehicle door livery being put forward for consultation with amendment and approved if no adverse comments are received. The Committee does not agree to the proposed changes to the existing Hackney Carriage and Private Hire vehicle door livery. 		Key Decision: No
<p>Executive Summary:</p> <p>On 25th March 2009, the Licensing Committee agreed to the introduction of a new livery, which would be attached to all Hackney Carriage and non-exempt Private Hire vehicles. The livery was introduced in September 2009 and was rolled-out by September 2010.</p> <p>The existing livery includes signage for the front, back and side of Private Hire Vehicles (PHV) and Hackney Carriage Vehicles (HCV) which identifies the local authority, licence number and the number of passengers licensed to be carried.</p> <p>With respect to the side livery (commonly known as door stickers), the Council has experienced difficulty in sourcing and producing a product of the quality required. The difficulty is caused by the requirement to add information (local authority, licence</p>		

number and the number of passengers licensed to be carried) to the door livery post manufacture.

The number of complaints received from the trade with respect to the quality of the door livery has increased and it is believed that the current cost out ways the benefit derived from displaying the afore-mentioned information.

It is therefore proposed to introduce a new style door sticker without the afore-mentioned information which would eliminate the current problems encountered.

Decision: To consider the following options:-

1. The Committee agrees to the changes to the existing Hackney Carriage and Private Hire vehicle door livery being put forward for consultation **without** amendment and approved if no adverse comments are received.
2. The Committee agrees to the changes to the existing Hackney Carriage and Private Hire vehicle door livery being put forward for consultation **with** amendment and approved if no adverse comments are received.
3. The Committee **does not agree** to the proposed changes to the existing Hackney Carriage and Private Hire vehicle door livery.

Purpose of Decision:

To approve the proposed implementation of a new door livery for Private Hire Vehicles and Hackney Carriage Vehicles for consultation with the trade.

Corporate Implications

Financial:	<p>The cost to the trade of providing the door livery is currently incorporated into Hackney Carriage and Private Hire Vehicle fees. The cost of a replacement door sticker is currently £11, which reflects the material cost of the door livery, time taken to produce the livery with the added information and the equipment needed to do this (printer, toner etc).</p> <p>If the proposal is adopted, it is envisaged that the material cost will reduce significantly and the equipment and time costs will be factored out almost entirely. As a result, the trade and Council will benefit.</p>
Legal:	The Council requires licensed vehicles to display external and internal livery.
Safeguarding	None
Equalities/Diversity	None
Customer Impact:	None

Environment and Climate Change:	Reduction in the use of materials.
Consultation/Community Engagement:	The trade will be consulted via the trade newsletter Grapevine which will be distributed after 14 th May 2014. The consultation period will last approximately six weeks)
Risks:	The proposal is not agreed resulting in continued and unnecessary expense.
Officer Contact:	D Mellini
Designation:	Environmental Health Manager (Food, Health & Safety and Licensing)
Ext. No.	2228
E-mail:	daniel.mellini@braintree.gov.uk

1. Background

- 1.1 On 25th March 2009, the Licensing Committee agreed to the introduction of a new livery, which would be attached to all Hackney Carriage and non-exempt Private Hire Vehicles. The new livery was introduced in September 2009 and rolled-out by September 2010.
- 1.2 The existing livery includes signage for the front, back and side of Private Hire Vehicles and Hackney Carriage Vehicles which identifies the, local authority, licence number and the number of passengers licensed to be carried.
- 1.3 The original purpose of displaying the vehicle licence number and the number of passengers licensed to be carried on the door livery was to provide passengers getting into a vehicle with the relevant information about the vehicle and to provide reassurance that the vehicle was licensed.
- 1.4 In addition to the above, in the event of a complaint or an incident, the identifying vehicle mark could be obtained and supplied to the Council easily.

2. Quality Issues

- 2.1 The Council has become increasingly aware that the quality of the door livery finished product is no longer acceptable.
- 2.2 The issue affecting the door livery does not affect the front, rear and internal plates as different types of material are used.
- 2.3 The door livery is designed in such a way that the majority of the design artwork is produced at manufacture (Appendix 1).
- 2.4 The remainder of the print which includes the licence number and the number of passengers licensed to be carried is added at a later date by the Council's Licensing Team. The print is added to the vinyl via a laser printer.
- 2.5 Due to the nature of the material used and the fact that extra print is required to be fused to the livery, the added print is often produced poorly.
- 2.6 The Council's Licensing Team, in conjunction with the manufacturer, have spent a considerable time and have investigated a number of different options in order to resolve the problem.
- 2.7 At the suggestion of the manufacturer, two different types of printer have been purchased and different types of vinyl used to try to resolve the issue, but the problem still persists.
- 2.8 A number of door stickers have been wasted in an attempt to resolve the matter. Consideration has also been given to pre-printing each sticker as and when needed, but this option would make the process less efficient and more expensive.

- 2.9 The manufacturer has suggested that the Council purchases a very expensive printer, or changes the size of the door livery. However, this will not guarantee that the quality issue will be resolved.
- 2.10 The Council's Licensing Team has received a number of complaints from the trade regarding the quality of the door livery. These complaints generally relate to the door livery prematurely peeling off from a vehicle and the cost attributed to providing a replacement.

3. Solution

- 3.1 It is considered that in order to resolve the issue, the most satisfactory course of action will be to produce a new door livery without any variable information printed on it post manufacture (Appendix 2).
- 3.2 It is considered that the travelling public will not be adversely affected by the changes proposed. However, it is felt that the door livery size should be increased from 420mm x 148mm to 400mm x 200mm to ensure that the public can be confident of getting into a licensed vehicle.
- 3.3 This solution will make the process of producing the door livery far more efficient and will reduce the cost to the trade.
- 3.4 In order to resolve complaints received from the trade, it is proposed to adopt different types of vinyl and to provide clearer instructions about applying the vinyl onto a vehicle.

4. Consultation

- 4.1 The trade will be consulted on the proposed changes via the Council's trade magazine Grapevine, which is circulated to all drivers, Operators and Hackney Carriage proprietors. The consultation will also be advertised on the Council's website.
- 4.2 The consultation will last for a period of six weeks.
- 4.3 If no adverse comments are received following consultation it is proposed that the Committee should authorise Officers to introduce the new door livery with immediate effect.



Braintree
District Council

LICENSED TO CARRY: PASSENGERS

NO BOOKING NO RIDE

PRIVATE HIRE

PREM



Braintree
District Council

LICENSED TO CARRY: PASSENGERS

OFFICIALLY LICENSED

HACKNEY CARRIAGE



**NO BOOKING
NO RIDE**

PRIVATE HIRE



**OFFICIALLY
LICENSED**

HACKNEY CARRIAGE

EXEMPTION FROM REQUIREMENT TO DISPLAY AN EXTERNAL VEHICLE IDENTIFICATION PLATE POLICY		Agenda No: 9
<p>Corporate Priority: People feel good – Supporting vulnerable people in our community, promoting safe and healthy living, encouraging flourishing communities</p> <p>Report presented by: John Meddings</p> <p>Report prepared by: John Meddings</p>		
<p>Background Papers:</p> <ol style="list-style-type: none"> 1. Private Hire Plate Exemption Policy and Conditions (Appendix 1). 2. Equality Impact Assessment (Appendix 2). 		Public report
<p>Options:</p> <ol style="list-style-type: none"> 1. The Committee agrees that the draft Policy be put forward for consultation without amendment. 2. The Committee agrees that the draft Policy be put forward for consultation with amendment. 		Key Decision: No
<p>Executive Summary:</p> <p>To provide information to determine whether the Council should put forward for consultation a Policy that will allow certain Private Hire vehicles, which are deemed to be of an “executive” type, to be exempt from the requirement to display external identification plates.</p>		
<p>Decision: To consider the following options:-</p> <ol style="list-style-type: none"> 1. The Committee agrees that the draft ‘Exemption from Requirement to Display an External Vehicle Identification Plate’ Policy be put forward for consultation without amendment. 2. The Committee agrees that the draft ‘Exemption from Requirement to Display an External Vehicle Identification Plate’ Policy be put forward for consultation with amendment. 		

Purpose of Decision:

To allow the Licensing Authority to make transparent decisions on which vehicles will be considered for an exemption from displaying a plate and livery.

Corporate Implications

Financial:	None
Legal:	None
Safeguarding	Exempt vehicles will not initially be identifiable as licensed vehicles.
Equalities/Diversity	See Equality Impact Assessment (Appendix 2)
Customer Impact:	None
Environment and Climate Change:	None
Consultation/Community Engagement:	A six week consultation will take place. This will involve the trade and the wider public.
Risks:	The current situation of not having a Policy in place leaves the Council open to challenge.
Officer Contact:	John Meddings
Designation:	Licensing Officer
Ext. No.	2213
E-mail:	John.meddings@braintree.gov.uk

1. **Background**

- 1.1 The displaying of external identification plates on a licensed Private Hire vehicle and the wearing of a driver's badge are important in terms of public safety and reassurance. They indicate to the traveling public that prior to being licensed, both the vehicle and the driver have been subject to checks, to ensure their safety.
- 1.2 However, there are a small number of occasions when the requirement to display external identification plates may have commercial implications.
- 1.3 The display of identification plates externally may also deter some corporate customers from using a service.
- 1.4 The Council is seeking to adopt a formal written Policy for the first time.
- 1.5 Currently, if an Operator wishes to request a plate exemption, an appointment is made with the Licensing Enforcement Officer and an inspection of the vehicle is carried out (this is in addition to the normal test carried out by the nominated vehicle inspection centre). The Licensing Enforcement Officer will assess the request, establish the type of work the vehicle will be used for and will then identify if the vehicle can be issued with an exemption.
- 1.6 If the Committee adopts the proposed Policy this will inform customers of the Council's expectations, it will lay down a Policy and it will establish conditions in relation to exemptions. In addition, the introduction of an application form and notice will ensure that requests are formally documented.

2. **Key Issues**

- 2.1 Research has indicated that Councils which consider exemptions do so for individual vehicles only and not on a fleet basis; and that they take into account some, or all, of the following factors:
- Make and model of the vehicle;
 - The type of work undertaken by the Private Hire vehicle;
 - How work differs significantly from that of regular Private Hire work;
 - The type of customer;
 - The number of regular Private Hire journeys carried out by the vehicle;
 - Any relevant history of the applicant in respect of breaches of condition, or legislation;
 - The cost of a vehicle is not sufficient reason alone for requesting an exemption;
 - Vehicles must be of a high specification standard.

- 2.2 Where Councils grant an exemption, the Council will/may require one, or more of the following to apply:
- The Council will issue a written notice, which must be carried in the vehicle at all times that it is being used for hire and reward under Section 75(3) of the Local Government (Miscellaneous Provisions) Act 1976;
 - It may require the vehicle to display a smaller, less conspicuous plate on the rear of the vehicle (often referred to as an “Executive Plate”);
 - It may require the vehicle to display a small, discreet identifying discrete plate in the style of a tax disc, or similar, on the windscreen near to the vehicle duty licence;
 - The display of ‘No Smoking’ stickers inside the vehicle is subject to other legislation and remains a condition of any exemption granted.

3. Legal and Policy Implications

- 3.1 The Local Government (Miscellaneous Provisions) Act 1976 requires that Private Hire vehicles display an external identification plate and that drivers of those vehicles wear a driver’s badge.
- 3.2 The same legislation also allows the Council to determine that vehicles are exempt from the need to display an identification plate.
- 3.3 It is not intended that all Private Hire vehicles licensed by the Council should be exempt from the Council’s requirement to display an external identification plate. However, the Council recognises that there may be circumstances when it would be appropriate for vehicles operating a type of service to be considered suitable for such an exemption.
- 3.4 In the creation of a Policy, Braintree District Council does not seek to provide a definitive list of vehicles which it considers to be suitable (subject to use) for exemption from the requirement to display an external identification plate.
- 3.5 This Policy provides guidance to potential applicants on the standards of vehicle comfort and equipment that the Council considers should be the minimum standard of comfort and vehicle type before the Council would consider such an application. This Policy should be read in conjunction with the Council’s conditions relating to Private Hire vehicles and establishes additional criteria that the Council (and its Officers) will take into account when determining applications for a Private Hire vehicle to be exempt from displaying external identification plates.

4. Consultation

- 4.1 On approval by the Licensing Committee, the draft Policy will be subject to consultation. This will be a six week consultation involving the trade and the general public. Once the consultation has ended, responses will be collated and presented to the Licensing Committee.

5. Equality Impact Assessment

- 5.1 An Equality Impact Assessment has been conducted in relation to this Policy to determine the possible implications on equality. The assessment revealed that the Policy intends to treat everyone equally.

6. Fees

- 6.1 The fee for a Private Hire vehicle with an exemption from displaying plates and door signage will remain the same as a Private Hire vehicle without an exemption. The reduced cost of not producing the front plate and door signage is off-set by the additional cost of inspecting the vehicle.

APPENDIX 1



PRIVATE HIRE PLATE EXEMPTION POLICY AND CONDITIONS

Section 75(3) Local Government (Miscellaneous Provisions) Act 1976 “exemption from displaying plates” notice

1. STATEMENT OF INTENT

- 1.1 The aim of this policy is to ensure public safety whilst taking a balanced approach to licensing requirements. Its objective is the provision of an exemption to allow ‘executive vehicles’ to operate without displaying external identification plates.

2. INTRODUCTION

- 2.1 The displaying of an external identification plate on a licensed vehicle and a driver’s badge is important in terms of public safety and reassurance. They indicate to the travelling public that, prior to being licensed, both the vehicle and the driver have been subject to checks to ensure their (the public’s) safety.
- 2.2 However, there are occasions when the requirement to display an external identification plate may have the opposite effect in terms of customer safety and could have commercial implications for the operating business. The display of Local Authority licence plates externally may also deter some corporate customers from using a service; and, in some circumstances, the identification of a vehicle as a licensed vehicle may allow “high risk” passengers to be more readily targeted putting both them and the driver at risk.
- 2.3 The Local Government (Miscellaneous Provisions) Act 1976 requires that Private Hire vehicles display an identification plate (licence plate) and that the drivers of those vehicles wear a driver’s badge. The same legislation also allows Braintree District Council to exempt vehicles from the need to display an identification plate and, where that exemption applies, the requirement to wear a Private Hire driver’s badge.
- 2.4 It is not intended that all Private Hire vehicles licensed by Braintree District Council should be exempt from the Council’s requirement to display an external identification plate. However, the Council recognises that there may be circumstances when it would be

appropriate for vehicles operating the type of service to be considered suitable for such an exemption.

- 2.5 In creating its policy, Braintree District Council does not seek to provide a definitive list of vehicles it considers to be suitable (subject to use) for exemption from the requirement to display external identification plates.
- 2.6 This policy provides guidance to potential applicants on the standards of vehicle comfort and equipment that the Council considers should be the minimum standard of comfort and vehicle type before the Authority would consider such an application. This policy should be read in conjunction with the Council's existing policy relating to Private Hire vehicles and establishes additional criteria that the Council (and its Officers) will take into account when determining applications for a Private Hire vehicle to be exempt from displaying external identification plates.
- 2.7 Potential applicants will need to demonstrate that the vehicle will be used exclusively for executive clients and/or special occasions. Examples of such journeys include corporate events, conferences, exhibitions and meetings, chauffeured services and school proms

3. THE POLICY

- 3.1 Exemptions from displaying external identification plates (vehicle licence plates) may be in respect of individual vehicles only. Applications for exemptions relating to a fleet of vehicles will not be allowed.
- 3.2 Each application will be assessed on its own merits and each vehicle will be inspected by an authorised Council Officer to ensure that it is fit for purpose.
- 3.3 Applications for exemption from the requirement to display an external identification plate on the front and rear of a Private Hire vehicle along with side stickers may be considered where the following requirements are met;
 - Vehicles may be of any colour.
 - The vehicle to be exempted is of a high quality both in terms of brand and condition.
 - A vehicle presented for a licence is to be no older than three years at first application (this shall include any change of vehicle in respect of an existing licence). The age of the vehicle will be taken from the vehicle registration document, or in the case of imported vehicles from the relevant importation certificates. (If the applicant feels that their vehicle should be an exception to the age limit, the application will be referred to a Sub-Committee of the Licensing Committee). Once the

exemption has been approved it can then be maintained beyond the three years providing that it continues to meet the rest of the policy standards.

- Limousines presented for a licence are to be no older than 10 years at first application (this shall include any change of vehicle in respect of an existing licence). The age of the vehicle will be taken from the vehicle registration document or in case of imported vehicles from the relevant importation certificates. (If the applicant feels that their vehicle should be an exception to the age limit, the application will be referred to a Sub-Committee of the Licensing Committee). Once the exemption has been approved it can then be maintained beyond the 10 years providing that it continues to meet the rest of the policy standards.
 - Vehicles will be larger than the Ford Mondeo class vehicles and will normally be the accepted luxury brands such as Mercedes Benz, BMW, Jaguar, Rolls Royce, Bentley and Lexus. The highest specification executive type cars from other manufacturers may also be considered. American style stretched vehicles may also qualify for exemption.
 - The vehicle will be in an immaculate condition with no visible defects, dents, or blemishes to the external bodywork, or internal trim.
 - The vehicle is to be used for executive, or special occasion work only, good examples of these are:
 - Transport to and from Business Corporate Events, Conferences, Exhibitions and Meetings.
 - Chauffeured services.
 - School Proms
- 3.4 Applications may only be made by a person holding a Private Hire operator's licence issued by Braintree District Council.
- 3.5 Where a proprietor wishes to make an application for a vehicle to be exempt from displaying an external identification plate they will be required to complete the appropriate section on the vehicle application form.
- 3.6 The Council may require applicants to provide any additional documentation as reasonably necessary to allow the Council to make an informed decision. Where such documentation is not provided to the satisfaction of the Council the application will be refused.
- 3.7 Where an application is granted and a vehicle is exempted from displaying its external identification plate an exemption notice will be issued as soon as practicable after the decision is made.
- 3.8 Irrespective of when an exemption notice is granted the initial exemption notice will expire on the same day as the expiration of the

vehicle's current Private Hire licence, unless it is otherwise surrendered, or revoked. Thereafter any renewed exemption notice will last for a period of time that is coterminous with that vehicle's Private Hire licence unless either the licence, or notice is otherwise surrendered or revoked.

- 3.9 Exemption notices may be renewed annually subject to the vehicle under-going a re-inspection by a Licensing Officer to ensure that it continues to be fit for purpose.
- 3.10 The authority to determine any application for an exemption notice is by virtue of this policy delegated to the Council's Licensing Officer.
- 3.11 In the event of an applicant being dissatisfied with the decision of the Officer, the applicant may make a written application for a review of the decision by a Sub-Committee of the Licensing Committee.
- 3.12 Other than where to do so would conflict with the requirements of this policy, all vehicles granted an exemption notice must, in addition to the requirements of this policy, comply with the requirements for Private Hire vehicles.

4. FEES

- 4.1 The fee for a Private Hire vehicle with an exemption from displaying plates and door signage will remain the same as a Private Hire vehicle without an exemption. The reduced cost of not producing the front plate and door signage is off-set by the additional cost of inspecting the vehicle.

5. CONDITIONS

THE BELOW CONDITIONS APPLY TO ALL PRIVATE HIRE VEHICLES GRANTED AN EXEMPTION BY BRAINTREE DISTRICT COUNCIL FROM THE REQUIREMENT TO DISPLAY AN EXTERNAL IDENTIFICATION PLATE, AND ARE IN ADDITION TO THE CRITERIA AND CONDITIONS SET OUT IN THE PRIVATE HIRE CONDITIONS.

- a) The identification plate and exemption notice provided by the Council pursuant to the requirements of the Local Government (Miscellaneous Provisions) Act 1976 shall remain the property of the Council.
- b) Any vehicle granted an exemption from displaying an external identification plate will be required to have the identification plate normally displayed on the rear of the vehicle affixed to the inside of the boot lid. The plate when so affixed **must** be readily visible when that boot lid is raised.

- c) In the event of loss or damage rendering such plate or notice unserviceable the proprietor shall make immediate application for a replacement.
- d) The exemption notice issued by the Council will be carried in the vehicle at all times and will be produced upon request to an authorised Officer of the Council or any Police Officer.
- e) When operating under the exemption notice the windscreen badge issued by the Licensing Authority will be displayed at the nearside of the front windscreen at all times.
- f) The proprietor will not display in, on, or from the vehicle any advertisement, signage, logos, or insignia advertising the operating company, or the vehicle's status as a Private Hire vehicle.
- g) During the period of the exemption notice the driver of the vehicle whilst engaged on Private Hire work will be smartly dressed in either a formal chauffeur's uniform, or a business suit with collar and tie.
- h) The proprietor shall within one working day notify the Council of any change in the use of the vehicle.
- i) The proprietor shall not use the vehicle for Private Hire purposes other than for executive use (i.e. not for 'normal' airport journeys, or daily Private Hire use).
- j) The driver and passenger front side window glass and the front windscreen must be clear. However, tinted windows can be fitted to the side and rear window glass of the vehicle provided that they comply with current legislation.
- k) The exemption will cease to have effect on selling, or transferring the vehicle to another party. The person to whom the exemption is granted must inform the Council of the sale/transfer of ownership immediately and in writing, and provide details of the new owner. The exemption notice must be returned to the Council along with the Private Hire vehicle identification plate unless being sold to another Private Hire operator licensed by the Council; in which case, only the exemption notice has to be returned.
- l) A taximeter will not be installed in the vehicle.

Appendix 2

EQUALITY IMPACT ASSESSMENT

This should be carried out during the development stage of a new project, strategy, policy or service or when you are reviewing an existing project, strategy, policy or service.

By understanding and meeting people's differing needs we can provide more effective services.

Name and brief description of project, strategy, policy or service being assessed

To determine a policy with respect to the providing of a plate exemption for eligible Private Hire Vehicles, that is fair, equitable, transparent, provides accountability, certainty, consistency and does not directly or indirectly discriminate on any grounds against any section of the population.

The aim of this policy is to ensure public safety whilst taking a balanced approach to licensing requirements. Its objective is the provision of an exemption to allow 'executive vehicles' to operate without displaying external identification plates.

The displaying of the external identification plate on a licensed vehicle is important in terms of public safety and reassurance. The plates indicate to the travelling public that prior to being licensed the vehicle has been subjected to checks to ensure their (the public's) safety.

However, there are occasions when the requirement to display an external identification plate may have the opposite effect in terms of customer safety and could have commercial implications for the operating business. The display of Local Authority licence plates externally may also deter some corporate customers from using the service; and in some circumstances the identification of the vehicle as a licensed vehicle may allow "high risk" passengers to be more readily targeted putting both them and the driver at risk.

The Local Government (Miscellaneous Provisions) Act 1976 requires that private hire vehicles display an identification plate (licence plate) and drivers of those vehicles wear a driver's badge. The same legislation also allows Braintree District Council to exempt vehicles from the need to display an identification plate and, where that exemption applies, the requirement to wear a private hire driver's badge.

It is not intended that all private hire vehicles licensed by Braintree District Council should be exempt from the Council's requirement to display an external identification plate, however the Council recognises that there may be circumstances when it would be appropriate for vehicles operating the type of service to be considered suitable for such an exemption. In creating its policy Braintree District Council does not seek to provide a definitive list of vehicles it considers to be suitable (subject to use) for exemption from the requirement to display external identification plates.

The policy provides guidance to potential applicants on the standards of vehicle comfort and equipment that the Council considers should be the minimum standard of comfort and vehicle type before the Authority would consider such an application. This policy should be read in conjunction with the council's existing policy relating to private hire vehicles and establishes additional criteria that the Council (and its officers) will take into account when determining applications for a private hire vehicle to be exempt from displaying external identification plates.

The first reading of the policy will be presented to the Licensing Committee on 14 May 2014. The Council will then consult with the Private Hire trade for a period of at least 6 weeks for views on the policy proposal.

Information used to analyse the impact on people affected by the project, strategy, policy or service

State who will be affected, the relevant information you are using to assess how it will affect them, note any relevant consultation, surveys, etc.,

Who will be affected by the policy?

- * Any person who holds a Braintree District Council issued Private Hire Operator licence or Private Hire Vehicle licence.

Information used to assess how the policy will affect stakeholders:

- * Results of six weeks consultation

Other information used:

- * Equality Act 2010

Use the information above to assess the impact of your project, policy, strategy or service on people from the following protected groups: (these are defined by the Equality Act 2010)

Protected Group		Positive Impact/ Benefit	Negative Impact/ Disadvantage	Explanation – State how
Age	Children 0-16	√		No negative impact identified
	Young People 17-25	√		No negative impact identified
	Ages 26-59	√		No negative impact identified
	Older People 60+	√		No negative impact identified
Disability Include disabled people and/or carers	Blind/Partially Sighted	√		No negative impact identified
	Deaf/Hearing Impaired	√		No negative impact identified
	Wheelchair user/mobility difficulties	√		No negative impact identified
	Learning Difficulties	√		No negative impact identified
	Mental Health Difficulties	√		No negative impact identified
Gender	Men	√		No negative impact identified
	Women	√		No negative impact identified
	Transgender	√		No negative impact identified
	Pregnancy & Maternity impact	√		No negative impact identified
	Marriage & Civil Partnership	√		No negative impact identified
Race	White	√		No negative impact identified
	Asian	√		No negative impact identified

	Black	√		No negative impact identified
	Mixed Dual Heritage	√		No negative impact identified
Religion/Belief	Buddhist	√		No negative impact identified
	Christian	√		No negative impact identified
	Hindu	√		No negative impact identified
	Jewish	√		No negative impact identified
	Muslim	√		No negative impact identified
	Sikh	√		No negative impact identified
	Other – please specify	√		No negative impact identified
Sexual Orientation	Lesbian	√		No negative impact identified
	Gay men	√		
	Heterosexual	√		
	Bi-sexual	√		
Other (optional)	Use to define Impact on any groups specific to this Strategy, Policy or Function not listed above.			

If you identified any negative impacts above then either:

(a) Your proposal, policy or service is treating people from a protected group above less favourably because of their age, disability, gender, race, religion, or sexual orientation

or

(b) Your proposal, policy or service is intended to treat everyone equally but, unintentionally, people from a protected group above can be particularly disadvantaged or treated less favourably than other others

PLEASE TICK WHICHEVER APPLIES

If you ticked (a) this is direct discrimination, which is illegal and you cannot proceed

If you ticked (b):

1. Can any negative impacts be minimized or removed? If so state what changes you will make.

N/a

2. If you cannot minimize or remove negative impacts they must be justified and you must state your justification

N/A

If you identified any positive impacts is there anything further you can do to increase or extend the positive benefits? If so state what changes you will make

The proposed policy and criteria has been designed to be as fair, transparent and equitable as possible. It is not possible to determine how the policy can increase or extend these positive benefits at this time. Further benefits could be identified by the Licensing Committee or after consultation which will be reflected in the policy and final equality impact assessment.

Completed By: D Mellini



Approved By (Senior Manager) L Crabb



Service: Licensing

Date : 17th April 2014

Each service should retain the signed copy of the Assessment.

An electronic copy should be sent to angve@braintree.gov.uk for publication on the Council's website – this is a requirement to ensure that we meet our statutory duties under the Equality Act 2010.

