



CABINET

19 April 2017

A meeting of the CABINET will be held on Thursday, 27th April, 2017, 6.00 pm in Committee Room 1 - Marmion House

A G E N D A

NON CONFIDENTIAL

1 Apologies for Absence

2 Minutes of the Previous Meeting (Pages 1 - 4)

3 Declarations of Interest

To receive any declarations of Members' interests (pecuniary and non-pecuniary) in any matters which are to be considered at this meeting.

When Members are declaring a pecuniary or non-pecuniary interest in respect of which they have dispensation, they should specify the nature of such interest. Members should leave the room if they have a pecuniary or non-pecuniary interest in respect of which they do not have a dispensation.

4 Question Time:

To answer questions from members of the public pursuant to Executive Procedure Rule No. 13

5 Matters Referred to the Cabinet in Accordance with the Overview and Scrutiny Procedure Rules

None

6 Housing White Paper (Pages 5 - 32)

(The Report of the Portfolio Holder for Regeneration)

7 Tamworth Future Development and Infrastructure (Pages 33 - 44)

(The Report of the Portfolio Holder for Regeneration)

- 8 Taxi Licensing Policy - Amendment and Update** (Pages 45 - 132)
(The Report of the Portfolio Holder for Communities)
- 9 Charging for Requested Food Hygiene Rating Scheme (FHRS) re-inspections/re-visits** (Pages 133 - 142)
(The Report of the Portfolio Holder for Environment and Culture)
- 10 Busking Framework** (Pages 143 - 148)
(The Report of the Portfolio Holder for Environment and Culture)
- 11 Dementia Action Alliance - Action Plan Progress Report** (Pages 149 - 162)
(The Report of the Chief Executive)
- 12 Updated RIPA Policy** (Pages 163 - 212)
(The Report of the Solicitor to the Council and Monitoring Officer)

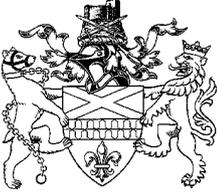
Yours faithfully



Chief Executive

People who have a disability and who would like to attend the meeting should contact Democratic Services on 01827 709264 or e-mail committees@tamworth.gov.uk preferably 24 hours prior to the meeting. We can then endeavour to ensure that any particular requirements you may have are catered for.

To Councillors: D Cook, R Pritchard, S Claymore, S Doyle, J Goodall and M Thurgood.



MINUTES OF A MEETING OF THE CABINET HELD ON 6th APRIL 2017

PRESENT: Councillors D Cook (Chair), R Pritchard (Vice-Chair), S Claymore, S Doyle, J Goodall and M Thurgood

The following officers were present: Anthony E Goodwin (Chief Executive), Andrew Barratt (Corporate Director Growth, Assets and Environment) and Matthew Bowers (Head of Managed Growth, Regeneration and Development)

107 APOLOGIES FOR ABSENCE

There were no apologies

108 MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting held on 16 March 2017 were approved and signed as a correct record.

(Moved by Councillor S Claymore and seconded by Councillor M Thurgood)

109 DECLARATIONS OF INTEREST

There were no Declarations of Interest.

110 QUESTION TIME:

None

111 MATTERS REFERRED TO THE CABINET IN ACCORDANCE WITH THE OVERVIEW AND SCRUTINY PROCEDURE RULES

None

112 SMALL BUSINESS GRANTS

The Portfolio Holder for Regeneration seeking approval for a Start-Up Business Grant Scheme for individuals wishing to start up in self-employment or business and young businesses that have been trading for no more than 3 years. The report is also seeking approval for amendments to Grants Sub Committee constitution and a virement of £20,000 from the Voluntary and Community sector budget, GS1002 57025 to the Economic Development and Regeneration budget, GS0402 34537 per annum for a 3 year period, until 31st March 2020.

RESOLVED:

- That the Members
- 1 approved the principles of the Start-up Business Grant;
 - 2 recommend Full Council to amend the Cabinet Grants (Sub Committee) constitution to include the addition of the Start-up Business Grants Scheme;
 - 3 agreed that Cabinet Grants (Sub Committee) makes final decisions on all Start Up Business Grants applied for on a quarterly basis;
 - 4 agreed that an annual budget is created within the Economic Development and Regeneration service area, GS0402 34537 by way of a virement of £20,000 from the Voluntary and Community sector budget, GS1002 57025 per annum subject to annual budget agreements and reviews up until 31st March 2020;
 - 5 agreed that the impact and need for a business grants scheme be reviewed on an annual basis through the business planning process and relevant key performance indicators; and
 - 6 agreed that after 3 years a report on the success of the project be formally reported to Cabinet detailing at a minimum impact, outcomes and learning.

(Moved by Councillor S Claymore and seconded by Councillor D Cook)

113 TAMWORTH CONSERVATION AREAS

The Report of the Portfolio Holder for Regeneration seeking approval of the draft Conservation Area Management Plans (CAMP) for each of the seven Conservation Areas and reported the results of the 6 week public consultation on each of the documents.

RESOLVED: That the Members approved and adopted as the final version the draft Conservation Area Management Plans (CAMP) for each of the following Conservation Areas March 2017:-

- Albert Street/Victoria Road
- Amington Green
- Amington Hall
- Dosthill
- Hospital Street
- Tamworth Town Centre
- Wilnecote

(Moved by Councillor S Claymore and seconded by Councillor R Pritchard)

Leader

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THURSDAY, 27 APRIL 2017

REPORT OF THE PORTFOLIO HOLDER FOR REGENERATION**HOUSING WHITE PAPER****EXEMPT INFORMATION**

None

PURPOSE

To seek approval to submit a response to the Government's Housing White Paper Consultation on behalf of Tamworth Borough Council.

RECOMMENDATIONS

That Cabinet approves the comments to be made in response to the Housing White Paper consultation.

EXECUTIVE SUMMARY

In February 2017 the Government published a White Paper titled '*Fixing our broken housing market*' (referred to as the Housing White Paper) setting out how it intends to boost housing supply to create a more efficient housing market in Britain over the long term whilst addressing people's housing needs and aspirations in the short term.

The White Paper sets out a number of proposals that the Government are seeking to implement in order to better meet people's housing needs. These proposals would affect local authorities and developers as well as local communities, housing associations, lenders and infrastructure providers.

The White Paper contains four chapters, each of which set out a broad policy objective.

Chapter 1 – Planning for the right homes in the right places

Chapter 2 – Building homes faster

Chapter 3 – Diversifying the market

Chapter 4 – Helping people now

Within each of the chapters is a series of proposals intended to achieve the four broad objectives. In relation to planning, these proposals include such things as:

- Ensuring every part of the country has an up-to-date plan in place and introducing a requirement to review plans every 5 years;
- Removing the requirement for each Local Authority to have its own plan allowing for more collaborative strategic plans for wider areas such as combined authority areas;
- Encouraging more and better joint working on cross-boundary issues by expecting authorities to prepare a Statement of Common Ground;
- Standardising the assessment methodology to determine an area's objectively assessed housing need;
- Amending the test of what is expected of a 'sound' plan to avoid unnecessary

- work and challenge at examination;
- Ensuring Local Authorities have a clear strategy for maximising the use of suitable land;
 - Maintaining the existing strong protection for Green Belt;
 - Making more land available for homes in the right places, by maximising the contribution from brownfield and surplus public land;
 - Enabling Local Authorities to dispose of land with the benefit of planning permission they have granted themselves;
 - Ensuring at least 10% of sites allocated for residential development in Local Plans are half a hectare or less in size;
 - Supporting custom-build homes with greater access to land and finance;
 - Encouraging more institutional investors into housing and supporting housing associations and local authorities to build more homes;
 - Holding Local Authorities to account through a new housing delivery test;
 - Ensuring infrastructure is provided in the right place at the right time;
 - Supporting developers to build out more quickly by tackling unnecessary delays;
 - Holding developers to account for the delivery of new homes;

In order to test the proposals set out in the White Paper, the Government has issued a consultation which consists of 38 questions and runs until the 2nd May 2017. The consultation is open to anyone who wants to take part and covers the proposals contained within chapters 1 and 2 of the White Paper only. A separate consultation paper called *'Planning and Affordable Housing for Build to Rent'* was published alongside the Housing White Paper which covers some of the proposals within chapter 3 and runs until the 1st of May 2017.

This report seeks approval to submit to the Government the draft responses to both consultations set out in the appendices as the response of Tamworth Borough Council. The response reflects the views expressed by officers from the Planning and Housing Services and from Members of the Planning Committee.

OPTIONS CONSIDERED

Responding to the consultation is optional and so the Council could decide not to submit a response. However, this would mean that the views of the Council on proposals that have the potential to impact on Tamworth and its residents in future would not be considered.

RESOURCE IMPLICATIONS

There are no resource implications arising as a result of this report, with the exception of officer time taken in responding to the consultation.

LEGAL/RISK IMPLICATIONS BACKGROUND

None

SUSTAINABILITY IMPLICATIONS

None

BACKGROUND INFORMATION

REPORT AUTHOR

Richard Powell, Planning Policy and Delivery Officer, x274

LIST OF BACKGROUND PAPERS

Department for Communities and Local Government 'Fixing our broken housing market'

Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590464/Fixing_our_broken_housing_market_-_print_ready_version.pdf

Department for Communities and Local Government 'Planning and Affordable Housing for Build to Rent':

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589939/Build_To_Rent_consultation_document.pdf

APPENDICES

- 1) Draft Tamworth Borough Council response to the Housing White Paper consultation.
- 2) Draft Tamworth Borough Council response to the "Planning and Affordable Housing for Build to Rent" consultation

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Appendix 1 – Housing White Paper Consultation Questions and proposed responses

Question 1

Do you agree with the proposals to:

a) Make clear in the National Planning Policy Framework that the key strategic policies that each local planning authority should maintain are those set out currently at paragraph 156 of the Framework, with an additional requirement to plan for the allocations needed to deliver the area's housing requirement?

b) Use regulations to allow Spatial Development Strategies to allocate strategic sites, where these strategies require unanimous agreement of the members of the combined authority?

c) Revise the National Planning Policy Framework to tighten the definition of what evidence is required to support a 'sound' plan?

A. Yes

B. Yes

C. Yes

Question 2

What changes do you think would support more proportionate consultation and examination procedures for different types of plan and to ensure that different levels of plans work together?

Local Examinations are costly. The cost could be reduced by making hearing sessions shorter though better timetabling and/or allowing written representations on parts of the examination and just having hearing sessions on the most important issues.

Joint examinations for neighbouring authorities with related issues would also save time and money by preventing the same issues having to be discussed at multiple examinations.

Rationalising publicity requirements, in particular the removal of the requirement to publish notice in local paper which is costly and not necessarily the best method for getting information out. Local areas know their areas best and how best to make residents aware so some flexibility in publicity would increase efficiency.

Question 3

Do you agree with the proposals to:

a. amend national policy so that local planning authorities are expected to have clear policies for addressing the housing requirements of groups with particular needs, such as older and disabled people?

b. from early 2018, use a standardised approach to assessing housing requirements as the baseline for five year housing supply calculations and monitoring housing delivery, in the absence of an up-to-date plan?

A. Yes - although there is a cost of understanding those needs. It would also require working closely with strategic housing colleagues and other organisations such as the Clinical Commissioning Group and county councils.

Also, if the policies are intended to deliver the different types of housing as a proportion of the dwellings to be provided on residential developments, this raises the issue of viability as a result of specialist accommodation requirements. The indicative site thresholds for any allocated sites would also have to take additional types of housing into account on top of overall market housing need.

B. Yes – although the approach would need to reflect the local market.

Question 4

Do you agree with the proposals to amend the presumption in favour of sustainable development so that:

a) authorities are expected to have a clear strategy for maximising the use of suitable land in their areas?;

b) it makes clear that identified development needs should be accommodated unless there are strong reasons for not doing so set out in the NPPF?;

c) the list of policies which the Government regards as providing reasons to restrict development is limited to those set out currently in footnote 9 of the National Planning Policy Framework (so these are no longer presented as examples), with the addition of Ancient Woodland and aged or veteran trees?

d) its considerations are re-ordered and numbered, the opening text is simplified and specific references to local plans are removed?

A. Yes - although maximising the use of land isn't necessary sustainable and so it should be made clear that the principles of sustainability still apply.

B. Yes

C. Yes

D. Under the 'decision-taking' section, the 'Unless material considerations indicate otherwise' footnote is confusing and would be better placed within the text of points a) and b) to make it clearer.

Question 5

Do you agree that regulations should be amended so that all local planning authorities are able to dispose of land with the benefit of planning consent which they have granted to themselves?

Yes – consideration would need to be given to how issues normally included in s106 agreements would be dealt with as local authorities would not be able to enter into an agreement with themselves.

Question 6

How could land pooling make a more effective contribution to assembling land, and what additional powers or capacity would allow local authorities to play a more active role in land assembly (such as where ‘ransom strips’ delay or prevent development)?

The main benefit would arise from a faster CPO process. Land pooling would require staff resources with specialist skills in site assembly, de-risking and CPO. It would necessitate a new commercial approach to development for local authorities and the need to identify and promote opportunities. The model used in Germany allows for pooling before land allocation takes place and the uplift in land value is retained within the scheme. Local Plans are more long term and land allocation is in place well in advance which would lead to an expectation on land value.

Question 7

Do you agree that national policy should be amended to encourage local planning authorities to consider the social and economic benefits of estate regeneration when preparing their plans and in decisions on applications, and use their planning powers to help deliver estate regeneration to a high standard?

Yes - although we do not consider that the planning system is leading to low standard of estate regeneration or the lack of regeneration. The difficulty with estate regeneration includes homes in multiple ownerships, particularly as a result of right to buy, the timely and costly process of CPO, the lack of funding in HRA to deliver. Also the impact on the local housing market for what can be several years as a reduction in stock and need to decant existing residents adds extra pressure to those on housing waiting lists.

Consideration should be given to speeding up the CPO process, encouraging the HCA to take a lead role and properly fund estate regeneration particularly where there are enhanced social and economic benefits, including the ability to deliver more homes to meet local needs.

Experience has shown that regeneration schemes present unique challenges. Aspirations to improve design standards have been resisted on grounds of cost. Designs are often poor utilising standard house types from elsewhere in the Midlands. Landscaping is often poor and designed to be low maintenance to keep costs down. Car parking is also an issue with displaced vehicles from development sites not being accommodated elsewhere.

Question 8

Do you agree with the proposals to amend the National Planning Policy Framework to:

a) highlight the opportunities that neighbourhood plans present for identifying and allocating small sites that are suitable for housing?;

b) encourage local planning authorities to identify opportunities for villages to thrive, especially where this would support services and help meet the authority's housing needs?;

c) give stronger support for 'rural exception' sites – to make clear that these should be considered positively where they can contribute to meeting identified local housing needs, even if this relies on an element of general market housing to ensure that homes are genuinely affordable for local people?;

d) make clear that on top of the allowance made for windfall sites, at least 10% of sites allocated for residential development in local plans should be sites of half a hectare or less?;

e) expect local planning authorities to work with developers to encourage the sub-division of large sites?; and

f) encourage greater use of Local Development Orders and area-wide design codes so that small sites may be brought forward for development more quickly?

A. Neighbourhood plans are not for every place so guidance shouldn't restrict LPA's from allocating small sites in their plans. Small sites often come forward as a result of owners' initiative and it is difficult to predict when they will be available.

B. Yes - although Tamworth does not contain villages under this definition.

C. Yes - again, agree in principle but it is not entirely relevant to Tamworth.

D. We would agree with the principle of allocating small sites; however experience shows that it is difficult to allocate these types of sites as landowners do not always promote them as available or deliverable. It could be quite costly to identify and allocate potential sites.

We would query the reasoning behind choosing 10% as this seems a very arbitrary figure. If, for example, only 5 small sites can be identified, does that limit the total number of allocated sites to 50? It needs to be an aspirational target rather than a requirement with an onus on LPAs to explain why if it hasn't been achieved.

Furthermore, there is a risk that by including a minimum % of sites, it will reduce the overall supply of housing and affordable housing.

E. The wording should be amended to encourage developers to sub divide, particularly to meet needs for older people or self-build or gypsy and traveller for example. In practice this would be difficult to achieve as most large sites in Tamworth have outline planning permission and developers would not be inclined to co-operate. What level of encouragement would be required to meet the expectation? If a developer is unwilling to enter into a discussion about sub-division of a site, has the LPA met the expectation simply by asking the question?

F. Yes – Will Permission in Principle address this? There could be a cost implication of producing design advice.

Question 9

How could streamlined planning procedures support innovation and high-quality development in new garden towns and villages?

No comment – not applicable to Tamworth

Question 10

Do you agree with the proposals to amend the National Planning Policy Framework to make clear that:

a) authorities should amend Green Belt boundaries only when they can demonstrate that they have examined fully all other reasonable options for meeting their identified development requirements?

b) where land is removed from the Green Belt, local policies should require compensatory improvements to the environmental quality or accessibility of remaining Green Belt land?

c) appropriate facilities for existing cemeteries should not to be regarded as ‘inappropriate development’ in the Green Belt?

d) development brought forward under a Neighbourhood Development Order should not be regarded as inappropriate in the Green Belt, provided it preserves openness and does not conflict with the purposes of the Green Belt?

e) where a local or strategic plan has demonstrated the need for Green Belt boundaries to be amended, the detailed boundary may be determined through a neighbourhood plan (or plans) for the area in question?

f) when carrying out a Green Belt review, local planning authorities should look first at using any Green Belt land which has been previously developed and/or which surrounds transport hubs?

Government should undertake strategic review of green belt policy and green belt sites.

These amendments do nothing to clarify the government’s position on green belt sometimes most sustainable site may be Green Belt.

A. Some guidance on what ‘reasonable options’ are would be helpful. For example, if you only have Green Belt and flood zone 3, which is most ‘reasonable’ to develop on?

B. How would this be achieved if land to be improved is in different ownership? Also, does all Green Belt have to be ‘accessible’ in order to serve its purpose? The most accessible Green Belt land would surely be the most likely to be removed from the Green Belt to be used for development. Improving accessibility to remaining land would likely increase pressure to release that land for development in areas, like Tamworth, where land is in short supply. There may be instances where improvements to accessibility are not an option. Would this prevent other land from being removed from the Green Belt?

C. No comment.

D. No - individual developments should be considered on their own merits. Their appropriateness in the Green Belt should be considered irrespective of whether or not they are under a NDO.

E. No – Green Belt is a strategic policy and should be determined at that level; neighbourhood plans not subject to same level of rigour.

F. Yes – in line with brownfield first and other sustainability policies.

Question 11

Are there particular options for accommodating development that national policy should expect authorities to have explored fully before Green Belt boundaries are amended, in addition to the ones set out above?

No comment.

Question 12

Do you agree with the proposals to amend the National Planning Policy Framework to:

a) indicate that local planning authorities should provide neighbourhood planning groups with a housing requirement figure, where this is sought?;

b) make clear that local and neighbourhood plans (at the most appropriate level) and more detailed development plan documents (such as action area plans) are expected to set out clear design expectations; and that visual tools such as design codes can help provide a clear basis for making decisions on development proposals?;

c) emphasise the importance of early pre-application discussions between applicants, authorities and the local community about design and the types of homes to be provided?;

d) makes clear that design should not be used as a valid reason to object to development where it accords with clear design expectations set out in statutory plans?; and

e) recognise the value of using a widely accepted design standard, such as Building for Life, in shaping and assessing basic design principles – and make clear that this should be reflected in plans and given weight in the planning process?

A. No - neighbourhood groups should be given a housing requirement number by default, not just where one is sought.

B. Yes - all plan documents should set out clear design expectations including visual tools

C. Yes – the Localism Act requirement to consult on big schemes has never been brought in through regulation. Pre-app is important, but there is a danger that costs/benefits are not clearly explained and with some statutory undertakers now charging it may be more difficult to attract developers to undertake pre-app in the future. Costs of pre-app advice could be offset against fees (either as a deduction from the application fee or reducing the application fee by a set percentage if pre-app is undertaken).

There is a need to engage with local communities and councillors at an earlier stage. Current guidance says we should only engage with the community on developments of more than 200 dwellings. Engagement has to be done correctly though and should add real value rather than just ticking boxes. Anecdotal evidence suggests that some discussions can have a negative impact on development timescales.

D. Yes - however design is very much a subjective thing and policy can be very much open to interpretation. Even with design expectations set out in a statutory plan, it still may not be clear cut in all cases.

E. Yes.

Question 13

Do you agree with the proposals to amend national policy to make clear that plans and individual development proposals should:

a) make efficient use of land and avoid building homes at low densities where there is a shortage of land for meeting identified housing needs?;

b) address the particular scope for higher-density housing in urban locations that are well served by public transport, that provide opportunities to replace low-density uses in areas of high housing demand, or which offer scope to extend buildings upwards in urban areas?;

c) ensure that in doing so the density and form of development reflect the character, accessibility and infrastructure capacity of an area, and the nature of local housing needs?;

d) take a flexible approach in adopting and applying policy and guidance that could inhibit these objectives in particular circumstances, such as open space provision in areas with good access to facilities nearby?

Agree in principle. However, barriers to achieve include communities view to see density kept as surrounding area - in character, developers desire to have low density development to maximise profit, incorporate other types of home such as self-build and bungalows. Furthermore, minimum densities could be linked to minimum space standards to ensure good quality high density development.

A. High density development is not always appropriate as it can result in town cramming. A blanket policy on density would not always be appropriate, the character of the area also needs to be considered.

B. Acceptable in principle but again the character of the area would need to be taken into consideration, extending upwards may not be appropriate in all locations.

C. Yes – see answers to A and B

D. Yes

Question 14

In what types of location would indicative minimum density standards be helpful, and what should those standards be?

This should be left to LPAs to determine as previous attempts in PPG 3 at setting minimum targets were not successful.

Question 15

What are your views on the potential for delivering additional homes through more intensive use of existing public sector sites, or in urban locations more generally, and how this can best be supported through planning (using tools such as policy, local development orders, and permitted development rights)?

If these locations can support and demonstrate the need for development it should be supported. The intensity of development should evolve from the site characteristics, its sustainability and infrastructure, not ownership. Using action area plans, design codes, design briefs and LDOs these matters can be addressed and sites bought forward irrespective of ownership.

Agreement of shared priorities across public sector organisations and clarity on future use of buildings/land is important to enable identification of potential sites at an early stage and put together funding to unlock difficult sites.

Question 16

Do you agree that:

a) where local planning authorities wish to agree their housing land supply for a one-year period, national policy should require those authorities to maintain a 10% buffer on their 5 year housing land supply?;

b) the Planning Inspectorate should consider and agree an authority's assessment of its housing supply for the purpose of this policy?

c) if so, should the Inspectorate's consideration focus on whether the approach pursued by the authority in establishing the land supply position is robust, or should the Inspectorate make an assessment of the supply figure?

A. Most LPA already include flexibility so we would support this in principle but not if it was an additional buffer. Would this system even be required if the proposed standardised formula for calculating need and 5-year supply was in place?

B. Yes - there isn't an obvious better alternative than PINS for the task, but it could add significantly to their workload.

C. The assessment should focus on the approach but a level of vetting of the supply figure may be required. If the purpose of the proposal is to state whether or not a sufficient housing land supply exists, then they would only need to say if the LPAs calculations are right or wrong. But, the inspector would surely have to come up with a figure to judge the LPA's claim against if they were making a thorough assessment.

Question 17

In taking forward the protection for neighbourhood plans as set out in the Written Ministerial Statement of 12 December 2016 into the revised NPPF, do you agree that it should include the following amendments:

a) a requirement for the neighbourhood plan to meet its share of local housing need?;

b) that it is subject to the local planning authority being able to demonstrate through the housing delivery test that, from 2020, delivery has been over 65% (25% in 2018; 45% in 2019) for the wider authority area?

c) should it remain a requirement to have site allocations in the plan or should the protection apply as long as housing supply policies will meet their share of local housing need?

A. Yes.

B. No - the 65% target over the wider area could disadvantage neighbourhood plan areas with up to date plans and sufficient allocated sites through no fault of their own.

C. Yes - allocations should still be a requirement

Question 18

What are your views on the merits of introducing a fee for making a planning appeal? We would welcome views on:

a) how the fee could be designed in such a way that it did not discourage developers, particularly smaller and medium sized firms, from bringing forward legitimate appeals;

b) the level of the fee and whether it could be refunded in certain circumstances, such as when an appeal is successful; and

c) whether there could be lower fees for less complex cases.

A. Not charging up front; perhaps an agreement to pay at the end if required? Or have penalties for frivolous appeals, which would be determined by the inspector. This would strengthen the position of LPA's who would take the view that some developers would be put off appealing because of the cost – it may lead to more member overturns on political, not planning grounds. Applicants would be unlikely to be put off if they thought they would get their fee back if they won.

B. Fees could be set based on size of development or development value rather than a flat rate fee. Potentially the fee could be refunded where an appeal is successful or where it is unsuccessful but it was a genuine appeal (this links back to the idea of penalties for frivolous appeals instead of fees for all).

C. A sensible suggestion, but who determines the level of complexity and at what point during the process? Would the complexity be known before the fee was due to be paid? Perhaps the fee should be set on the basis of the time taken to process the appeal (both PINS and the LPA) benchmarking

has been done on how long planning applications take to process and a similar exercise could be undertaken with respect to appeals. Simple appeals would naturally be cheaper.

Question 19

Do you agree with the proposal to amend national policy so that local planning authorities are expected to have planning policies setting out how high quality digital infrastructure will be delivered in their area, and accessible from a range of providers?

How would the LPA be expected to influence the number of providers? There are no powers to enforce this. The same requirement doesn't exist for other infrastructure requirements. Policies could be used to ensure on-site infrastructure is appropriate, but off-site works would have to be delivered by other means.

Question 20

Do you agree with the proposals to amend national policy so that:

- the status of endorsed recommendations of the National Infrastructure Commission is made clear? and;***
- authorities are expected to identify the additional development opportunities which strategic infrastructure improvements offer for making additional land available for housing?***

Point 1: Yes.

Point 2: Shouldn't the development opportunities already be known if the Government is at the point of investing in the infrastructure? What happens if no additional opportunities are able to be identified at the point funding is committed?

Question 21

Do you agree that:

- a) the planning application form should be amended to include a request for the estimated start date and build out rate for proposals for housing?***
- b) that developers should be required to provide local authorities with basic information (in terms of actual and projected build out) on progress in delivering the permitted number of homes, after planning permission has been granted?***
- c) the basic information (above) should be published as part of Authority Monitoring Reports?***
- d) that large housebuilders should be required to provide aggregate information on build out rates?***

Whilst information may be interesting it is difficult to see how the information may be used. It presents challenges such as should there be a threshold on the size of development (would suggest

not), what constitutes a large housebuilder, and if it is an outline consent then the level of detail may not be known and will either be estimated or not provided at all which starts to weaken the usefulness of the data.

Need to consider if it will be required with PIP.

Resource implications for additional monitoring . What happens if they do not submit

A. No - there would be no point to collecting the data if the accuracy can't be assessed. The commencement would be required to be within the life of any permission granted anyway. Developers would naturally suggest that they are raring to go – what is the penalty for not starting in accordance with their estimated start date.

B. Yes - this would be more useful than projected start date information because more accurate information should be available. However, should LPAs take this info at face value when it could be in the developer's interest to not provide accurate information (where s106 trigger points could be reached for example)? NHBC returns lag well behind completions so accuracy of information submitted must be questioned.

C. Again, the accuracy of the data would be questionable and would need to be published with disclaimers to that effect. Council tax and planning have difficulty in getting accurate information now – what would change?

D. This data would be meaningless without context. Some sites will be more complex than others, but aggregated data wouldn't take account of that. Any developers building out hard to deliver sites (which should be encouraged) could come out looking bad.

Question 22

Do you agree that the realistic prospect that housing will be built on a site should be taken into account in the determination of planning applications for housing on sites where there is evidence of non-implementation of earlier permissions for housing development?

No – there could be a multitude of reasons why previous permissions have not been implemented on a site and to penalise an applicant who may be able to develop a site based on previous circumstances beyond their control would be counterproductive and not conducive to good working relationships between LPAs and developers. Times change and sites that may have been unviable in the past may become viable. If previous permissions have not been implemented for reasons that make the site unsuitable for housing, those reasons may be material considerations sufficient to refuse the application anyway.

Question 23

We would welcome views on whether an applicant's track record of delivering previous, similar housing schemes should be taken into account by local authorities when determining planning applications for housing development.

This proposal could unfairly penalise applicants who take on riskier sites where a failure to deliver on a site for valid reasons could count against them in future. Every site is different and so schemes that

may seem 'similar' on paper may in fact have quite different requirements for delivery. Also, as planning permission enures for the benefit of the land, who makes the application is almost irrelevant as any other party could implement (or not implement) the permission at a later date.

Question 24

If this proposal were taken forward, do you agree that the track record of an applicant should only be taken into account when considering proposals for large scale sites, so as not to deter new entrants to the market?

We do not consider that the proposal should be taken forward for the reasons outlined above. However, were the proposal to be taken forward, the exclusion of smaller sites assumes that all new entrants to the market would be restricted to smaller sites when this may not be the case. What would happen in the event of an applicant with a good track record gaining planning permission for a site and then selling part of that site to another developer with a poor track record who does not deliver?

Question 25

What are your views on whether local authorities should be encouraged to shorten the timescales for developers to implement a permission for housing development from three years to two years, except where a shorter timescale could hinder the viability or deliverability of a scheme? We would particularly welcome views on what such a change would mean for SME developers.

Changing the timescales for implementation would make little difference to housing delivery as an applicant could do the minimum required to implement a permission at which point they are no longer restricted by the statutory timeframe.

We do however consider that for outline planning permissions the period for submission of reserved matters should be shortened to two years, with a commencement within the following year which would then give an overall time of 3 years in line with the full consent option.

Question 26

Do you agree with the proposals to amend legislation to simplify and speed up the process of serving a completion notice by removing the requirement for the Secretary of State to confirm a completion notice before it can take effect?

Yes. If LPAs will be expected to serve more notices to speed up delivery, the implications for the LPA of non-compliance by the developer would need to be clarified. Would the LPA be required to step in and complete the development and then try and recover the cost from the developer?

Question 27

What are your views on whether we should allow local authorities to serve a completion notice on a site before the commencement deadline has elapsed, but only where works have begun? What impact do you think this will have on lenders' willingness to lend to developers?

It is unlikely that a development would start within a short time of obtaining permission and then not be completed. If a developer was to carry out the minimum required works to have commenced the development, for the purposes of preventing the permission from lapsing, it is more likely that this would occur just before the commencement deadline.

Once a development has commenced, the commencement deadline should no longer be relevant and, if the development is being unreasonably delayed, serving a completion notice should be a valid option. This would depend on what was considered to be a reasonable time between commencement and completion.

Question 28

Do you agree that for the purposes of introducing a housing delivery test, national guidance should make clear that:

a) The baseline for assessing housing delivery should be a local planning authority's annual housing requirement where this is set out in an up-to-date plan?

b) The baseline where no local plan is in place should be the published household projections until 2018/19, with the new standard methodology for assessing housing requirements providing the baseline thereafter?

c) Net annual housing additions should be used to measure housing delivery?

d) Delivery will be assessed over a rolling three year period, starting with 2014/15 – 2016/17?

A. Yes – but where a plan has only recently been adopted it should be noted that delivery in the first few years will be a result of the situation prior to the plan being adopted and will not be a fair reflection of the new effectiveness of the new plan.

B. Yes

C. Yes

D. No - a longer period should be considered, perhaps 5 years as the longer period would be more effective at evening out peaks and troughs and give a more accurate picture of delivery.

Question 29

Do you agree that the consequences for under-delivery should be:

a) From November 2017, an expectation that local planning authorities prepare an action plan where delivery falls below 95% of the authority's annual housing requirement?;

b) From November 2017, a 20% buffer on top of the requirement to maintain a five year housing land supply where delivery falls below 85%?;

c) From November 2018, application of the presumption in favour of sustainable development where delivery falls below 25%?;

d) From November 2019, application of the presumption in favour of sustainable development where delivery falls below 45%?; and

e) From November 2020, application of the presumption in favour of sustainable development where delivery falls below 65%?

A. This depends on what would be required to be included in an action plan. If the action plan created a significant amount of work, then the threshold should be lower than 95% as a single year of slightly low delivery could trigger the need for an action plan.

B. LPA's already include a buffer when calculating their housing targets to allow for market conditions or unforeseen problems with delivery. It is unclear whether the 20% buffer proposed would be on top of the annual requirement or on top of the whole five year supply figure including the existing buffer. It is also unclear at what point the 20% buffer would take effect as it would be based on figures released in November when most five year supply calculations would not be determined until the end of the financial year. How soon could the additional buffer be removed once delivery picks up? In places such as Tamworth where we unable meet our housing need, if delivery falls below 85% then do neighbouring authorities have to pick up the additional 20%?

C,D,E. No – it is unclear how this would work in the event that a LPA has an up-to-date five year supply of housing land. LPAs have very limited influence over the delivery of housing once permission is granted. In small local authority areas, like Tamworth, where the housing requirement number is small, a small reduction in delivery could have a significant impact on the delivery rate percentage. This could leave the system open to exploitation where developers could ensure a period of low delivery in order to trigger the presumption in favour to open up unallocated sites despite there being an up-to-date five year supply in place.

Question 30

What support would be most helpful to local planning authorities in increasing housing delivery in their areas?

Better support for comprehensive strategic infrastructure planning would be helpful especially as there are significant numbers dwellings either permitted or proposed within and immediately adjacent to Tamworth.

More help from the Homes and Communities Agency for smaller local authorities as the focus currently appears to be on larger metropolitan areas and a more consistent and simplified approach to programmes of support which currently are frequently changing and not always followed through.

The removal of Right to Buy (RTB), or at the very least the retention of 100% of RTB receipts for local authorities to enable more properties to be built and/or purchased to provide affordable housing. The current 30% retention is not sufficient to increase the housing numbers or replace sales on a like for like basis.

Question 31

Do you agree with our proposals to:

a) amend national policy to revise the definition of affordable housing as set out in Box 4?;

b) introduce an income cap for starter homes?;

c) incorporate a definition of affordable private rent housing?;

d) allow for a transitional period that aligns with other proposals in the White Paper (April 2018)?

A. The definition of affordable would be more helpful if it was clearer and simpler. It would be helpful to have consistency in terms of the definition and in terms of the number of products available.

B. Yes – an income cap on starter homes should be supported, however the cap should be relative to the local market conditions rather than a blanket rule of £80,000.

C. As above, the addition of extra affordable products makes the definition of affordable housing less clear and should be avoided where possible.

D. Yes.

Question 32

Do you agree that:

a) national planning policy should expect local planning authorities to seek a minimum of 10% of all homes on individual sites for affordable home ownership products?

b) that this policy should only apply to developments of over 10 units or 0.5ha?

A. No - national policy should require LPAs to consider a variety of affordable products tailored to the local market. The viability of each individual development will affect the type and amount of affordable provision on site. Setting a figure of 10% could lead to developments that could support more affordable units providing the minimum amount as minimum expectations often become maximums.

B. As outlined above, we do not consider that the 10% policy is appropriate in general. However, if it were to be implemented it should be able to apply to sites of 10 units or less where affordable units would be viable.

Question 33

Should any particular types of residential development be excluded from this policy?

If the policy were to be introduced, it would be sensible to exclude certain types of specialist accommodation.

Question 34

Do you agree with the proposals to amend national policy to make clear that the reference to the three dimensions of sustainable development, together with the core planning principles and policies at paragraphs 18-219 of the National Planning Policy Framework, together constitute the Government's view of what sustainable development means for the planning system in England?

No comment.

Question 35

Do you agree with the proposals to amend national policy to:

a) Amend the list of climate change factors to be considered during plan-making, to include reference to rising temperatures?

b) Make clear that local planning policies should support measures for the future resilience of communities and infrastructure to climate change?

A. Yes.

B. Yes.

Question 36

Do you agree with these proposals to clarify flood risk policy in the National Planning Policy Framework?

Yes— any clarification would be welcomed.

Question 37

Do you agree with the proposal to amend national policy to emphasise that planning policies and decisions should take account of existing businesses when locating new development nearby and, where necessary, to mitigate the impact of noise and other potential nuisances arising from existing development?

Yes - but this appears a step backwards to the advice that was contained in previous PPGs and PPSs. We have always adopted this approach and it's enshrined in local policy. It should be made clear what impacts are to be considered as this could give rise to an increased number of objections to planning applications on grounds that are not material considerations.

Question 38

Do you agree that in incorporating the Written Ministerial Statement on wind energy development into paragraph 98 of the National Planning Policy Framework, no transition period should be included?

No Comment.

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Appendix 2: 'Planning and Affordable Housing for Build to Rent' Consultation Response

Questions 1 – 4 are excluded as they are questions about the organisation and not about proposals within the consultation.

Q 5: Do you consider there are market and regulatory failures impeding the rapid development of the Build to Rent market that merit national policy intervention? Please add comments.

There is not currently a significant Build to Rent market in Tamworth. The majority of new developments in the borough are built for sale and this could be keeping Build to Rent developments out of the local market. Anecdotal evidence suggests that there is a negative public perception of private rented provision (poor standards, short term, unaffordable, unscrupulous landlords, poor image etc.).

Q 6: Do you agree with the proposal to refer explicitly to Build to Rent in the National Planning Policy Framework?

Build to Rent should not be specifically supported through policy at the expense of other models of residential development, but it would be helpful if the differences between the different models could be made clear along with how the different models can operate together to meet local need.

Q 7: Do you think that Government should set a policy expectation on Affordable Private Rent in the National Planning Policy Framework, or not? (Please state your reasons).

No – Affordable Private Rent should form part of the broader policy expectations for affordable housing. The proposed minimum of 20% Affordable Private Rent is significantly higher than the proposed 10% minimum expectation for affordable housing outlined in the Housing White Paper. The expected provision of all forms of affordable housing should allow sufficient flexibility to allow for an appropriate level of delivery based on market conditions and individual development characteristics.

Q 8: Will a policy expectation in the National Planning Policy Framework send a sufficiently strong signal to support Affordable Private Rent as the main vehicle for affordable housing in Build to Rent? (Please state your reasons).

Yes – however as noted in response to the previous question, the proposed expectation of 20% Affordable Private Rent is significantly higher than the proposed 10% minimum expectation for affordable housing outlined in the Housing White Paper. This could lead to applicants exploring other options to reduce their affordable units obligation. A more flexible, needs based approach may be required locally and so any policy should encourage Affordable Private Rent as a first option, but allow sufficient flexibility to meet local needs where appropriate.

Q 9: Do you consider that Affordable Private Rent could play a useful role in the delivery of affordable housing in the area(s) where you live or operate?

Yes – as part of a range of affordable options that fit local need.

Q 10: Do you consider that the efficiencies arising through on-site provision of Affordable Private Rent can materially improve the viability of Build to Rent, compared to other affordable housing tenures?

The consultation document offers examples of a number of possible advantages to on-site provision of Affordable Private Rent but no evidence to support the claims. There are likely to be examples of different delivery methods for affordable housing in this type of scheme being successful. Without any evidence or previous experience of different affordable housing delivery methods in Build to Rent schemes, it would be difficult to come to any conclusion in response to this question.

Q 11: Do you consider that there could be unintended consequences of Affordable Private Rent if it is accepted as a form of affordable housing?

Yes – if it is used inappropriately where other forms of affordable housing would be better suited to meet the local need, it could lead to an increase in pressure on existing social housing stock.

Q 12: If your answer to Q11 is yes, would these consequences be mitigated by limiting Affordable Private Rent only to Build to Rent schemes?

Yes – but even then it would be important to ensure that the Affordable Private Rent units were meeting an identified local need and not being delivered at the expense of other, more appropriate, solutions.

Q 13: Do you think it is reasonable for Planning Authorities to specify minimum tenancy lengths in Build to Rent schemes? Please add your reasons, and give examples of such agreements where appropriate.

We would support the principle of longer tenancies where they would provide greater stability for tenants, especially families, and support sustainable communities. However, we would question whether this is within the remit of the planning system or whether it should be delivered by another mechanism. If the intention is to ask the developer to enter into an obligation under s106 of the Town and Country Planning Act 1990 (as amended); then this type of obligation is unlikely to meet the requirements of the statutory tests.

Q 14: Do you agree that Build to Rent tenancies should be for at least three years (with a one month break option for the tenant after the first six months), for all customers in the development who want one?

Yes – this could provide a number of benefits as outlined in our response to question 13.

Q 15: Does the definition of Build to Rent set out on page 20 capture all of the appropriate elements? (If not, please state why, and what criteria should apply).

Yes – there are no other elements that we would consider to be missing at this time.

Q 16: Do you agree that the National Planning Policy Framework should put beyond doubt that Affordable Private Rent qualifies as affordable housing in Build to Rent schemes? (If not, please state why).

Yes – any clarity on the definition of what constitutes affordable housing is to be welcomed.

Q 17: Do you agree with the proposed definition of Affordable Private Rent set out on page 21? (If not, please state why, and what criteria should apply).

Yes.

Q 18: The Government intends to set the parameters of Affordable Private Rent as:

- **a minimum of 20 per cent of the homes to be discounted;**
- **the discount to be set at minimum of 20 per cent relative to the local market;**
- **an offer of longer tenancies of three years or more;**
- **the discount to apply indefinitely (subject to a “claw-back” arrangement if Affordable Private Rent homes are withdrawn).**

Taken as a whole, are these parameters: (i) reasonable; (ii) too onerous; (iii) insufficient? Which, if any of them, would you change and why?

As stated in response to previous questions, the inclusion of a 20% minimum could cause difficulties. Any target should be in line with broader affordable housing requirements. The consultation document states “Where a scheme cannot sustain the level of provision indicated above, then it would be for the local planning authority to determine what type and level of affordable housing provision is warranted – whether Affordable Private Rent or otherwise.” It would be helpful to allow LPAs the freedom to set rates in advance of an application being received (perhaps where sites are allocated in a Local Plan) in line with local market conditions and site specific requirements.

Q 19: Should the parameters for Affordable Private Rent appear on the face of the National Planning Policy Framework or within Planning Practice Guidance?

We feel that the parameters relate more to guidance than policy and so should be included in the Planning Practice Guidance rather than the NPPF.

Q 20: The Government is minded to leave determination of eligibility and nomination criteria for Affordable Private Rent to negotiation between the developer and the local authority. Do you support this position? Will it affect take-up of the policy? Please give your reasons.

We would support this position in order to give flexibility based on local circumstances.

Q 21: The Government considers there is no need for a fixed minimum covenant period, so long as appropriate claw-back arrangements are provided for. Do you agree?

A fixed minimum covenant period could deter potential entrants to the build to rent market and so we would support the position of not having a fixed term covenant period so long as appropriate claw-back arrangements are in place to recover any planning obligations (not just affordable housing) that were not required as a result of the tenure model but would have been required were the scheme to be built for sale.

Q 22: Do you think Government should (a) prescribe the basis for calculating the amount of claw-back, (b) set a possible basis for calculating the amount of claw-back in guidance, or (c) leave the amount of claw-back to be agreed between the local authority and the applicant?

The Government should set the framework for calculating the amount of claw-back in order to ensure the claw-back process proceeds quickly. However, the framework should have sufficient flexibility to allow the LPA to recover all appropriate obligations in relation to the development or any part of it.

Q 23: Should the Government's Build to Rent and Affordable Private Rent policy be identical across the whole of England or does it need to be set differently between London and the rest of England? If it should be set differently, please use the comments box to tell us how and why the policy should vary in London from the rest of England.

The policy should have sufficient flexibility to allow it to be appropriately implemented in any part of the country as market conditions vary across the whole of the country. This would be preferable to a one rule for London and another for everywhere else approach.

The Build to Rent and Affordable Private Rent policies are most likely to be frequently used in larger cities, but the policies should not be constructed in a way that makes them difficult to implement in smaller towns when appropriate.

Q 24: Would it be helpful for Government to produce model clauses (which would not be mandatory) that could be used in Section 106 agreements to give effect to Affordable Private Rent?

Model clauses would be helpful as a basis for more specific clauses to be used to suit local circumstances.

Q 25: Is a transitional period of six months appropriate for the introduction of the policy? (If not, why not?)

It is considered too short a time period. There are a number of new burdens being placed on local planning authorities such as PIPs, Brownfield Registers etc over the next 6 months. This would be a further change to the system which may require changes to processes, policies and evidence bases and as such a longer time period should be considered.

Q 26: Does the summary Equalities Statement in Annex A represent a fair assessment of the equalities impacts of the policy proposals in this consultation? Please provide any further evidence on this issue, including how any negative impacts might be minimised and positive impacts enhanced.

No, we consider it not a fair assessment as the policy may negatively impact on certain sections of the community in terms of the effect this may have on ability to meet their needs as referenced above.

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THURSDAY, 27 APRIL 2017

**REPORT OF THE LEADER OF THE COUNCIL, PORTFOLIO HOLDER FOR
REGENERATION****TAMWORTH FUTURE DEVELOPMENT AND INFRASTRUCTURE****EXEMPT INFORMATION**

None

PURPOSE

To inform Cabinet of the options available to them for formally raising their concerns regarding the negative implications of proposed and promoted developments on and around the Borough boundaries. These options will relate to potential local collaboration with neighbouring authorities and, the potential to escalate and seek Central Government intervention if necessary.

RECOMMENDATIONS

1. That the Leader and Chief Executive write to Lichfield District Council and North Warwickshire Borough Council reiterating the concerns expressed previously and set out in this report about the lack of strategic planning currently taking place and the potential impacts this may have.
2. That the aforementioned Councils be invited to adopt a more collaborative approach and work with Tamworth Borough Council on planning for future development and infrastructure from a more strategic perspective.
3. That the Leader and Chief Executive write to the Secretary of State for Communities and Local Government setting out the concerns expressed in this report and together with the details of the Council's efforts to resolve the matter locally.
4. That the Secretary of State be asked for his assistance to work with us and provide advice and guidance on assessing the options at a strategic level for collaboration and better joint working when planning the future development needs and taking advantage of the options for further growth in support of our efforts to deliver managed economic and housing growth to meet local needs and our obligations as an active member of the GBSLEP.
5. That the Leader and Chief Executive write to the GBSLEP setting out the concerns expressed in this report and ask for their assistance in addressing the issues raised.

EXECUTIVE SUMMARY

Locally and nationally there is growing concern from elected members and local communities in relation to the impact of proposed development sites by neighbouring authorities and sites being promoted for development in and around the boundaries of certain local authorities.

At a local level, this is clearly the case as demonstrated by the proposed and promoted developments on the Council's boundaries from both neighbouring authorities – Lichfield District Council and North Warwickshire District Council.

Tamworth has an up to date Local Plan. It was adopted in February 2016 and plans for the development needs of the town until 2031. The plan has considered the impact of the full amount of Tamworth's development needs on infrastructure and has policies to mitigate this impact.

There is concern that the cumulative impact of Tamworth's planned growth together with development sites being planned for by Lichfield and North Warwickshire Councils, and potential speculative planning applications in all three areas will have a serious detrimental impact on the infrastructure of Tamworth if not planned for properly i.e. collaboratively at a strategic level. The current situation can be summarised as follows:

1. Lichfield District Council is currently preparing its allocations document for which a consultation is taking place on the latest draft. This allocates land for the development of housing on the northern edge of Tamworth and in Fazeley. Furthermore, it also states that 6.5ha of land for employment uses will go towards meeting Tamworth's needs in Fradley. Lichfield is aiming to submit this document to the Secretary of State in July 2017.
2. North Warwickshire is currently preparing its revised Local plan to incorporate site allocations. A consultation has recently taken place and Cabinet approved a response in March. It is proposing to allocate land adjacent to the Eastern boundary of Tamworth for 1,191 homes and a further 2,071 in and around Polesworth and Dordon. It also proposes to allocate 8.5 hectares south-west of the A5 at Junction 10 of the M42 adjoining Centurion Park for the needs of Tamworth primarily for B1, B2 and B8 uses. It is planning to submit its plan in November 2017 but is also continuing to explore options for delivery. Whilst NWBC have commissioned a strategic transport assessment through Warwickshire County Council this was not used to inform the latest draft of the plan and at the time of writing is not completed. It is uncertain if this will be made public when it is completed.
3. Whilst both LDC and NWBC have identified that between them they will meet Tamworth's unmet employment land needs and where this will be met, neither has confirmed how much of Tamworth's unmet housing needs are being met between them, how this is split or the location for this unmet need.

It is clear that the level of growth being planned for in and around Tamworth exceeds the development needs of Tamworth and is greater than the unmet needs arising from Tamworth. The Tamworth plan only considered the infrastructure requirements based on Tamworth's needs.

The three Councils have not undertaken any joint work to examine the impact on infrastructure of the cumulative planned and proposed development will have and what mitigation is needed which is cause for significant concern.

There is growing concern that there is increasing pressure for development beyond that currently being planned for by the 3 Councils and speculative planning applications are being prepared. Again, the concern is that this will lead to piecemeal development without any consideration of the cumulative impacts of development on infrastructure. It is likely that this pressure will increase as a result of other areas not being able to meet their development needs and this will exaggerate the impact.

Furthermore, it would appear that there is a lack of strategic planning across the area leading to piecemeal development as a result of administrative boundaries. There are instances where development in one authority is being planned adjacent to planned development in another but there is little or no consideration being given to how the development will function cohesively as one.

Finally, there is no mechanism in place across the three authorities to capture the financial benefits that development brings, through either New Homes Bonus, NNDR, Council Tax or developer contributions that could be used to deliver infrastructure and services to mitigate and serve this new development. This is viewed as a missed opportunity particularly as all three authorities are active, voting members of either the Greater Birmingham & Solihull Local Enterprise Partnership or the West Midlands Combined Authority and play an important role in the economic geography of the West Midlands conurbation. All of this gives rise to a concern that the Duty to Cooperate is not working between the three local authorities.

Tamworth Borough Council remains committed to delivering its development needs in the most sustainable way possible in order to ensure economic growth and improved quality of life for its residents. The Leader of the Council and Chief Executive have publically stated the Borough's commitment to sustainable, managed growth a fact evidenced by the allocation of human and financial resources. However, the administrative boundary and current working arrangements is a potential barrier to achieving this. Consequently, the Council has been proactive in assessing the scale and scope of the problem and in seeking local, collaborative mechanisms for resolving matters. It is the Council's view that there are several options for addressing the matter. These include a) preparing

joint plans or plans at a more strategic level; b) changes to the administrative boundary, or c) special planning models such as an Urban Development Area.

It is with these in mind that it is recommended that both LDC and NWBC are formally contacted in order to reiterate the stated concerns of Tamworth Borough Council and to seek commitment to a formal, collaborative approach to addressing the stated issues and concerns. That both authorities be invited to jointly undertake a further piece of work designed to consider the infrastructure impacts and necessary mitigations in respect of the proposed and promoted developments. They will be asked to agree to adopt a collaborative approach to planning for new development where the implications impact on more than one LPA. It is also proposed that they are invited to consider a revision to the MoU.

Finally, the scale and scope of the potential implications are such that the risks to the infrastructure supporting a thriving and growing town within the functioning economic geography of the GBSLEP and WMCA warrant bringing to the attention of the Secretary of State for Communities and Local Government. With this in mind it is recommended that the Leader and Chief Executive write to the Secretary of State to set out these concerns; keep him apprised of the situation and seek his advice, guidance and if necessary, involvement in supporting the Councils as they consider the options available at a strategic level for improved collaboration and joint working.

OPTIONS CONSIDERED

The Borough Council could take no action but this would have detrimental implications on future prosperity as outlined in the report. The potential options for improving the current position are also outlined in the report.

RESOURCE IMPLICATIONS

There are no direct resource implications arising as a consequence of this report.

LEGAL/RISK IMPLICATIONS BACKGROUND

The legal implications of the Duty to Cooperate are highlighted in the report.

SUSTAINABILITY IMPLICATIONS

The report identifies that a consequence of a lack of collaborative working could be less sustainable form of development.

BACKGROUND INFORMATION

Context

Tamworth is one of the smallest Local Authorities in terms of geographical size in England. However, as a Borough of 76,813 (2011 Census) it is an urban area of significant size, the largest town in Staffordshire after Stoke City. As such it exerts significant economic influence over a wider rural area including smaller settlements such Polesworth, Dordon and Fazeley in the administrative areas of Lichfield and North Warwickshire. Since its designation as an Expanded Town in the 1950's has grown substantially and has achieved a wide range of social, economic and transport facilities.

Town and Country Planning History – Development Plans

In terms of planning for future development needs, due to the increasing size of the town, the small administrative area, environmental constraints such as floodzone and policy constraints such as greenbelt, it has been recognised for some time, (for example the 1996-2011 Staffordshire and Stoke-on-Trent Structure Plan (adopted 2001) and the West Midlands Regional Spatial Strategy Phase 2 Revision (commenced 2005)), that Tamworth's future development needs would need to be addressed through a wider assessment of development potential involving neighbouring authorities, Lichfield and North Warwickshire.

The draft RSS Phase 2 Revision contained within policy an expectation that Tamworth, North Warwickshire and Lichfield Councils would jointly consider the most appropriate locations for development prior to producing their next Development Plan Document (Local Plan).

To this end the three Council in 2008 commissioned a joint piece of work to examine how the scale of housing development identified within the submitted RSS Phase Two Revision could be most effectively accommodated, with a particular focus on Tamworth and its environs considering the infrastructure requirements arising from housing and employment growth and how these may impact on the scale and timing of growth.

In 2010 the intention to abolish RSS was made by Government, and with it the requirement for our neighbouring authorities to have to plan for a certain level of housing growth for Tamworth. The Duty to Cooperate was introduced through Section 110 of the Localism Act which transposes the Duty to Co-operate into the Planning and Compulsory Purchase Act 2004 (as amended) and introduces section 33A, which sets out a duty to co-operate in relation to the planning of sustainable development "the Duty". The Duty applies to all local planning authorities, county councils and prescribed bodies and requires that they must co-operate with each other in maximising the effectiveness with which development plan documents are prepared. The Localism Act 2011 states that in particular the Duty requires that engagement should occur constructively, actively and on an on-going basis during the plan-making process and that regard must be had to the activities of other authorities.

Tamworth and Lichfield Councils, along with Cannock Chase Council commissioned work to understand the projected housing needs of the area in 2011. Following the completion of this work and other pieces of evidence relating to employment needs and land availability in July 2012 a Memorandum of Understanding (MoU) was signed between Tamworth, Lichfield and North Warwickshire Councils. This MoU confirmed that Tamworth was unable to meet all of its housing needs and that Lichfield and North Warwickshire Councils would provide 500 units each. It also stated that the 500 for Lichfield would be located north of Anker Valley. The rationale behind this decision was to maximise growth in this area to ensure the necessary infrastructure (the Anker Valley and Amington Link Roads) could be delivered. In respect of employment land at that time, based on evidence and discussions with officers at North Warwickshire and Lichfield it was then agreed that Tamworth could accommodate its identified employment land needs within the Borough boundary. Notwithstanding this, there was acknowledgment that employment areas in Lichfield and North Warwickshire, (principally at Fazeley and Birch Coppice) also contributed to providing jobs and stimulating economic activity within Tamworth.

In August 2012 Birmingham City Council notified Councils in the West Midlands area that initial work on their Core Strategy had identified a shortfall between their housing need and how much they could deliver.

The 3 Councils prepared their Local Plans on this basis. Tamworth submitted its Local Plan in November 2012 but following correspondence with the Planning Inspectorate and an Exploratory Meeting, the Council took the decision to withdraw the Local Plan in March 2013. This was due to the concerns raised by the Inspector about the deliverability of the Anker Valley site, the principle, timing and impact of the homes in Lichfield and North Warwickshire and the process that would have to be followed to make the plan sound would mean a delay that the Inspector felt was too long.

North Warwickshire had submitted its plan in January 2013 and Lichfield in March 2013.

Tamworth Council sought to address the Inspectors concerns and new evidence was prepared and existing work updated and refreshed. A key piece of work (the BWB report) commissioned by the Council, Lichfield Council and Staffordshire County Council was a study to assess and appraise a number of potential transport packages associated with the Anker Valley Sustainable Urban Extension (SUE) to the northwest of Tamworth. The SUE contains land within both Lichfield District Council and Tamworth Borough Council and at the time in the withdrawn plan and in Lichfield's submitted Plan was expected to deliver a combined residential development of some 2,150 to 2,400 dwellings, with associated local centre and primary school.

The hearing sessions for Lichfield's Plan took place during June and July 2013. In September 2013 the Inspector issued his initial findings. These findings concluded that the plan was unsound in that it had not made adequate provision for the objective assessment of housing need contained in the evidence base, but that this could be remedied by identifying a site or sites to accommodate the additional growth, along with extending the Plan period by a further year. Lichfield undertook to produce further work to address these concerns.

The BWB report was completed in September 2013. The conclusion of that report was that no more than 500 homes could be constructed without further impacting on the local highway network, particularly the Upper Gungate corridor. It stated that a further 200 units could be delivered with some demand management measures. This assumed completion of the Upper Gungate “pinch point” works.

This had the impact of severely reducing the amount of land available at Anker Valley and therefore impacted on Tamworth’s ability to meet its own housing needs. The shortfall was estimated to increase to around 2000 homes.

Tamworth Borough Council made representations to the North Warwickshire and Lichfield examinations which were ongoing to make them aware of this situation. In addition Tamworth made representations objecting to the identification of a broad location to the north of Tamworth in Lichfield for 1000 homes on the basis of the identified constraint on the Upper Gungate corridor.

The final report from the Inspector in relation to North Warwickshire was received in September 2014 and for Lichfield in January 2015. In response to the issue of unmet need arising from Tamworth and from Birmingham the Inspectors recommended Main Modifications as follows for North Warwickshire:

This Council has a proven track record in cooperating with neighbouring authorities in strategic planning matters. It commits to working collaboratively with other authorities, and in particular Birmingham and Tamworth, to objectively establish the scale and distribution of any emerging housing and employment shortfalls. In the event that work identifies a change in provision is needed in the Borough of North Warwickshire an early review of the North Warwickshire Local Plan will be brought forward to address this”. (MM4)

And for Lichfield:

That the Council will carry out an early review or partial review of the plan if further housing provision is needed to meet the needs of Birmingham or Tamworth. Alternatively, in the case of Tamworth, the need for further housing provision could be dealt with through the Lichfield District Local Plan: Allocations document (MM1)

Furthermore, in relation to the broad location identified to the North of Tamworth. The Inspector was convinced by Lichfield and the promoter of the site that further highway work “has far to go before it reaches its conclusion and that the Broad Development Location should be retained in the Plan as there is a reasonable prospect that some additional housing, over and above that which it has been resolved to permit [165 units in Lichfield at Browns Lane and 535 units in Tamworth at Anker Valley], will be able to be accommodated”. The Inspectors report also stated:

If it transpires that the Broad Development Location as a whole is not capable of delivering something in the order of 1,000 dwellings then MM1 provides the mechanism through which additional land could be identified either through a review of the Plan or through the preparation of the Lichfield District Local Plan: Allocations document.

Tamworth Borough Council continued work on its Local Plan evidence base. The draft Local Plan recognised the need for housing for the period 2006-2031 is 6,250. The Plan based the needs for other development land and infrastructure was based on this figure. The Plan was submitted in late 2014. A public examination took place in the summer of 2015, the Inspectors report was received and the Plan adopted in February 2016. The Plan sets out that there is a housing need of 6,250 homes and a minimum of 32ha of employment land. The Plan makes provision for a minimum of 4,425 homes and a minimum of 18ha of employment land. It also set out that a further 1,825 homes and a minimum of 14ha would need to be accommodated in Lichfield and North Warwickshire.

NWBC are currently producing a new local plan that combines the existing adopted Core Strategy with allocated sites. Policy LP39 sets out that 1,191 homes will be allocated adjacent to Tamworth Borough Council at land west of Robeys Lane and 2,071 homes in and around Polesworth and Dordon. Further sites area also allocated in Kingsbury, Shuttington, Warton and Wood End for a total of 181 homes. Policy LP40 sets out that 8.5ha of employment land will be allocated at Centurion Park to meet Tamworth needs. NWBC hope to submit the plan to the Secretary of State for examination in November 2017.

LDC are currently preparing their allocations to document to support their Core Strategy. Policy FZ1 proposes to allocate 209 homes in Fazeley. Policy NT1 proposes to allocate 1000 homes to the north

of Ashby Road at Arkall Farm and 165 homes north of Browns Lane. Policy EMP1 allocates 23.7ha of land for employment uses and states “the provision of 6.5 hectares of employment land to assist in meeting the employment land needs of Tamworth Borough which have not been met within the Borough boundary”. LDC hope to submit the plan to the Secretary of State in July 2017.

Town and Country Planning History – Planning Applications

In addition to work on the Development Plans in each Authority there have been planning applications submitted on individual sites. An application for up to 1000 homes at Arkall Farm in Lichfield District was submitted in May 2014 and has a resolution to grant in February 2017. An application for development for 165 homes at Browns Lane in Lichfield District was submitted in January 2014 and permission issued in February 2015. An application for 535 homes at Anker Valley in Tamworth was submitted in April 2014 and permission issued April 2015.

HMA

There remains a continued shortfall between planned sites for housing and housing needs across the Greater Birmingham and Black Country Housing Market Area. Work has been commissioned across the area to examine how this shortfall could be addressed. There remains concerns that this shortfall may increase further as the Black Country have identified problems in addressing needs arising from their areas.

Future Development

The application for 1,000 homes north of Ashby Road on Arkall Farm has brought to the fore concerns about delivering the infrastructure to meet future development needs. Furthermore, proposed allocations around Tamworth in the Lichfield Part 2 Local Plan and the new Local Plan for North Warwickshire have raised concerns about the impact on Tamworth and its infrastructure and the surrounding infrastructure. Whilst recognising that there are unmet development needs for Tamworth that Lichfield and North Warwickshire should be planning for (1,825 homes and a minimum of 14ha of employment land), there is concern that the current proposals and known developer interest was far in excess of the total number of homes and employment land needed for Tamworth and the infrastructure planned for to support that known development need.

The Plan in Appendix A aims to show a selection of housing sites in and around Tamworth. The focus has aimed to look at those places where there is a strong relationship with Tamworth. It should be noted that some information has been gleaned on a ward basis. These are sites which have been constructed, have had planning permission granted, are allocated in development plans, are proposed to be allocated in forthcoming plans and where there is known developer interest through enquiries or submissions to Strategic Housing Land Availability Assessments.

In summary:

	<u>Tamworth</u>	<u>Lichfield</u>	<u>North Warks</u>	<u>Total</u>
Homes completed 2006-2016	1,516	124 (Fazeley) 1 (Hopwas) 6 (Wigginton) (all 2008-2016)	48 (Polesworth) 48 (Dordon) 27 (Kingsbury) 2 (Shuttington) 3 (Warton) 50 (Wood End) 1 (Freasley) (2006-2016)	1,826
	TOTAL 1,516	TOTAL 131	TOTAL 179	
Homes with Planning Permission as at 31 st March 2016	2,304	112 (Fazeley) 1 (Hopwas) 165 (Wigginton)	157 (Polesworth) 41 (Dordon) 30 (Kingsbury) 6 (Shuttington) 15 (Warton) 12 (Wood End) 88 (Overwood Road, Tamworth)	3,031

	TOTAL 2,304	TOTAL 378	(2006-2016) TOTAL 349	
Homes allocated in a development plan without consent	1317 (including: Dunstall Lane 800; Cottage Farm Road 54; Bus depot 40; Beauchamp employment area 34; Coton House Farm 77; Coton Hall Farm 35; Spinning School Lane 74; Former railway sidings 30) TOTAL 1317	No allocations in adopted plan	No allocations in adopted plan	1317
Homes proposed to be allocated in forthcoming plans	0	1000 (arkall farm) 165 (Browns Lane) 209 (Fazeley) TOTAL 1,374	1191 (Robeys Lane) 2071 (Polesworth & Dordon) 41 (Kingsbury) 24 (Shuttington) 88 (Warton) 28 (Wood End) TOTAL 3,443	4,817
Number of homes where there is known developer interest	500 (Land south-west of Dosthill) TOTAL 500	300 (north of Gillway) 85 (north of Browns Lane) TOTAL 385	48 (Overwoods road) 133 (south of Dosthill) 500 (Robeys Lane) 893 (land to west of M42 and north of b5000) 389 (land south of B5000 and West of M42) 1150 (land north of railway, Polesworth) TOTAL 3,113	3,998
Total	5,637	2,268	7,084	14,989

It is clear that there are sufficient sites that have been built, have planning consent or are proposed in draft plans to meet and exceed the housing needs of Tamworth. It must be recognised that some of these homes will meet the needs of places beyond Tamworth, such as those at Fazeley, Polesworth and Dordon. However, the key concern is that in preparing the plans for Tamworth consideration to the infrastructure needed to support development has only considered the needs identified in Tamworth, i.e. 6,250 homes. It should also be recognised that whilst some work has taken place on infrastructure to support individual proposals no further work has looked at infrastructure across the wider geography over the 3 authorities.

Furthermore, there have been no mechanisms put in place to capture contributions from developers or the benefits of New Homes Bonus towards providing infrastructure in Tamworth or infrastructure across a larger geography.

In addition to the residential sites with planning consent, those allocated or proposed to be allocated in development plans and sites being promoted, there are employment land sites adjacent to Tamworth. North Warwickshire is proposing to allocate 8.5ha of land at Centurion Park to meet Tamworth's

employment land needs. This site is currently under construction. Furthermore, a site to the west of the M42 and south of the A5 was recently granted planning permission for 25.4ha.

Duty to Cooperate

As described above, each Local Authority has a duty to co-operate in relation to the planning of sustainable development “the Duty”. Acknowledged by the Government in the recent Housing White Paper (see elsewhere on this agenda) that the Duty has not been successful. The White Paper sets out a number of actions to address this, including preparing statements of common ground, allowing spatial development strategies to allocate strategic sites, provision of funding to encourage collaboration and the Secretary of State directing Local Authorities to work together on a joint plan.

There have been a series of Memorandum of Understandings that have been signed by the three authorities that have sought to articulate an agreed framework for co-operation.

Whilst each Council has agreed to contribute 500 homes each, and have agreed to take a proportion of the unmet housing needs arising from the Greater Birmingham HMA, of which some of Tamworth’s unmet needs are part, there is no agreement on if the full 825 remaining homes is being met by LDC and NWBC, how that is split between them or the location for that development.

It is recognised that when it comes to employment needs, NWBC are currently proposing to allocate 8.5ha and LDC 6.5ha to meet Tamworth’s needs. There is no evidence to demonstrate that all of Tamworth’s unmet needs have been addressed (the Tamworth Plan identifies a **minimum** of 32ha of employment land) and there is no formal agreement or an updated MoU to confirm the position.

It seems that rather than dealing with Tamworth’s unmet needs in a strategic manner, they are being dealt with in an opportunistic manner. It is recognised that the consented and proposed development around Tamworth will be a contribution to meeting Tamworth’s unmet needs but there is a failure to recognise the impact on the infrastructure within Tamworth and this causes serious concerns.

There is also a concern about the piecemeal nature of the proposed developments because of administrative boundaries leading to poorer quality developments which will impact on communities that finally live there. For example, there are two sites in Tamworth which are allocated in the adopted plan and have planning permission granted where there is also a proposal in a neighbouring authority to allocate land to abut each of these developments. Each site will provide a primary school which could mean that in both instance there are two schools within a few hundred metres of each other. They have not been jointly masterplanned to ensure they act as comprehensive developments. So, rather than having two large planned urban extensions there will be four. This leads to a poorer quality development, missed opportunities and missed efficiencies.

Options / White Paper

The Government has acknowledged in its recent Housing White Paper (considered elsewhere on this agenda) that the Duty to Cooperate has not been successful in every area. Whilst relationships with neighbouring authorities are positive and officers meet to discuss progress of their plans and highlight any issues, the three authorities have not worked together jointly on a piece of work for some years. Given the issues described above and the likelihood of the need for future planning across the sub region, this approach cannot be considered to be satisfactory.

There are alternatives to the current approach of three separately produced plans for the three Councils. The three authorities could produce a joint plan to cover strategic issues across the total geography of the three authorities or a strategic plan to cover an area covering Tamworth and its hinterland. This could be based on existing governance structures or a more formal Joint Committee. A similar approach could be the creation of a Joint Planning Unit which could see the resources and powers of the three authorities pooled into a combined team. This could include plan making and decision making powers. Another variant of this model could be an Urban Development Company. It could focus on the urban area of Tamworth and its hinterland and seek to explore future opportunities for growth and the infrastructure required to enable it. This could explore how Tamworth could continue to play its role in the wider economic geography of the West Midlands conurbation, exploit the opportunities that growth in this area will present, for example that associated with HS2. A further approach would be to seek a change to administrative boundaries. None of these approaches is without issues of governance, cost and change. These could be explored further with our neighbouring authorities and the advice of the Government could be sought to further understand the implications of these.

REPORT AUTHOR

Matthew Bowers, Head of Managed Growth, Regeneration and Development
Anthony E. Goodwin, Chief Executive Officer

LIST OF BACKGROUND PAPERS

Tamworth Borough Council Duty to Cooperate Statement October 2014 :

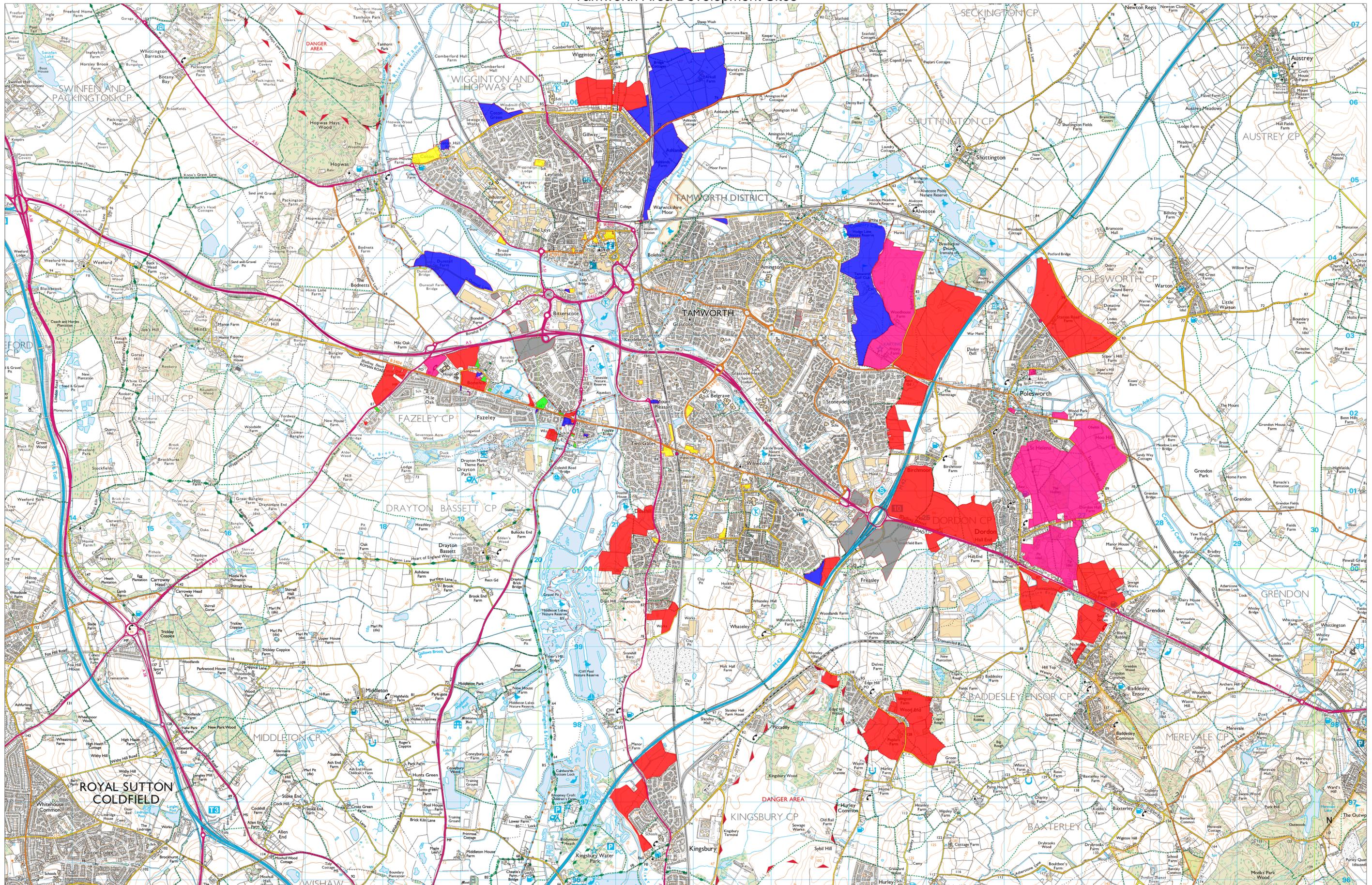
http://www.tamworth.gov.uk/sites/default/files/planning_docs/A_local-plan/A14%20Duty%20To%20Co-op%20Submission%20Statement.pdf

APPENDICES

A) Plan of sites with planning permission, allocated in development plans, proposed in draft development plans and known interest

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Tamworth Area Development Sites



Development sites

- Completed Site
- Known Interest Site
- Local Plan Allocation Site
- Permitted Site
- Proposed Plan Site
- Employment Site

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27 APRIL 2017

- **REPORT OF THE PORTFOLIO HOLDER FOR COMMUNITIES AND PUBLIC HEALTH**

TAXI LICENSING POLICY – AMENDMENT AND UPDATE**EXEMPT INFORMATION**

Nil

PURPOSE

To advise members on updates and amendments to Tamworth Borough Council's Taxi Licensing Policy 2017-2022.

RECOMMENDATIONS

That Cabinet recommends the draft policy for approval at full Council

EXECUTIVE SUMMARY

The Policy is at Appendix 1 to the Report and reflects the new arrangements for the delivery of the Taxi Licensing service. The main amendments are listed in the background paper and summarised below;

- Applicants making their own arrangements for application and renewal rather than Tamworth Borough Council for the administration of the service.
- Increasing awareness of safeguarding and child exploitation measures by voluntary attendance at training offered by the Council. (To date all but three drivers have attended the scheme).
- Following an application for executive plating being considered by Licensing Committee on 2 March 2017 and noting there is currently no mechanism within the Councils adopted policy on this matter, the Committee recommended Cabinet considers including amendment to current policy and to delegate responsibility for dealing with applications to officers.

RESOURCE IMPLICATIONS

Provision is made in the Council's budget for the taxi licensing service, which is run on a cost recovery basis. In addition to this, a budget exists to cover the costs of officer time for enforcement and enquiries.

Members are reminded that failure of the Authority to review and publish the Taxi Licensing Policy on a regular basis may result in a Judicial review being brought against the Council.

LEGAL/RISK IMPLICATIONS

Decisions in relation to a licence are likely to amount to consideration of civil rights and obligations with the result that Article 6 (1) of the Human Rights Act 1998 is engaged. Should parts of the industry believe the authority's Taxi Licensing Policy is not sound it would be open to them to undertake judicial review proceedings.

SUSTAINABILITY IMPLICATIONS

An effective Taxi Licensing service will enable the three corporate priorities, 'Living a quality life in Tamworth', 'Growing Strong in Tamworth' and 'Delivering quality services in Tamworth' to be met.

BACKGROUND INFORMATION

Tamworth Borough Council has responsibility for licensing Hackney Carriage and Private Hire vehicles, drivers and operators within the Borough of Tamworth.

The policy will remain in existence for a period of five years, during which time it shall be kept under review and revised as appropriate or after any significant legislative change. There are no substantive changes and draft reflects the current arrangements following the change of fitness testing provider and changes to the types of licence that are available.

The Local Government (Miscellaneous Provisions) Act 1976 requires that identification (licence) plates be displayed on licensed private hire vehicles, and that licensed drivers of those vehicles wear a driver's badge.

For vehicles used by the "general public," display of identification plates on a licensed vehicle and of the driver's badge is important in terms of public safety and reassurance. They indicate to the travelling public and to enforcement authorities that prior to being licensed both the vehicle and the driver have been subjected to checks to ensure their (the public's) safety.

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. For example, vehicles used by Government Ministers or celebrities.

The legislation does give us discretion to exempt vehicles from the need to display the Council's approved identification plate and, where that exemption applies, the requirement for the driver to wear a private hire driver's badge. We will only exercise these discretionary powers in rare cases, where we are satisfied that there is a genuine operational business need and business requirement, and where we are certain that the safety of the public will not be compromised as a result. This is consistent with current practice at neighbouring authorities.

There is no "right" to plate exemption, nor is there any right of appeal against the Council's decision NOT to exercise its discretion and allow an exemption. In creating a policy Tamworth Borough Council does not seek to provide a definitive list of vehicle it considers to be suitable (subject to use) for exemption from the requirement to display external identification plates.

The policy outlines the type of operational business need and business requirement and describes the minimum standard of vehicle comfort and type appropriate before we will consider an application for plate exemption. The policy should be read in conjunction with our existing policy relating to private hire vehicles and establishes additional criteria that the Council (and its officers) will take into account when determining an application for a private hire vehicle to be exempt from displaying

external identification plates.

An application for a vehicle to be exempted from displaying an external identification plate must be made by the vehicle proprietor using the appropriate application form. Additional documentation may be requested 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.

REPORT AUTHOR

"If Members would like further information or clarification prior to the meeting please contact Steve Lewis, Head Of Environmental Health. Ext 437"

LIST OF BACKGROUND PAPERS

1. Draft Taxi Licensing Policy 2017-2022.
2. List of Amendments to Draft Taxi Licensing Policy 2017-2022.

Hackney Carriage and Private Hire Licensing Guidance

As of 11 April 2017

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PART 1 – INTRODUCTION

Scope

- 1.0 The Hackney Carriage and Private Hire Guidance is applicable to the licensing of hackney carriage and private hire drivers and vehicles and to the licensing of private hire operators.

Purpose

- 1.1 The fundamental purpose of licencing is to protect the safety and welfare of the public who live, work and visit Tamworth. The importance of a thriving hackney carriage and private hire trade to the growth and prosperity of Tamworth local economy is recognised; however, the safety and welfare of the public is the overriding principle that will be considered when matters are dealt with under the Guidance.
- 1.2 Tamworth Borough Council ('the Council') is particularly concerned to ensure:
- the safeguarding of children, young persons and adults with care and support needs who are at risk of abuse and neglect;
 - that any person who applies to be a hackney carriage or private hire vehicle driver or operator is a fit and proper person and does not pose a threat (in any form) to the public;
 - that the public are safeguarded from dishonest persons; and
 - that vehicles used to convey passengers are safe and fit for the purpose for which they are licensed.
- 1.3 This document provides guidance to any person with an interest in hackney carriage and private hire licensing; in particular, but not restricted to:
- persons who wish to apply for hackney carriage and private hire vehicle, drivers or operator licences;
 - persons who hold existing licences, including those that are the subject of review;
 - the Council, in its capacity as the licensing authority, including licensing officers, members of the relevant licensing committees and the internal panel (or other relevant decision making bodies);
 - licensing consultants, solicitors and barristers advising and/or representing applicants/licence holders; and
 - magistrates and judges hearing appeals against Council decisions.
- 1.4 The Guidance is also designed to put the Council's licensing requirements into context.

Consultation and Communication

- 1.5 In determining this Guidance, the views of relevant stakeholders have been taken into consideration.

- 1.6 In order to deliver a transparent, accountable and efficient licensing service the Council is committed to ongoing communicating and consultation with all stakeholders. In particular, the Council welcomes the opportunity to communicate and consult with representatives of the hackney carriage and private hire trade to enable and encourage the exchange of views and information in relation to the Guidance, conditions, changes in the law and reviews. The specific methods to achieve this communication and consultation will be determined as required.

Review

- 1.7 This Guidance will be reviewed periodically, however, it will be the subject of continuous evaluation and, if necessary, formally reviewed at any time. At the time of review all relevant stakeholders will again be consulted. Any licensed driver, proprietor or operator may request a review of the policy at any time.

Legislative framework

- 1.8 The operation of the Council's licensing service is undertaken in accordance with relevant legislation and applicable licence conditions. The primary legislation relating to hackney carriage and private hire licensing is contained in the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. In addition, the service is provided in accordance with all relevant Council policies, but in particular the following:

- Equal Opportunities Policy
- Disability and Discrimination
- Race Equality Scheme
- Data Protection Policy
- Enforcement Policy

- 1.9 This Guidance and associated conditions do not address health and safety at work requirements. Drivers and operators are required to ensure all relevant health and safety at work provisions are satisfied.

Conditions

- 1.10 The Council will adopt any reasonable conditions that it deems necessary and appropriate to ensure that proprietors, operators, drivers and vehicles comply with relevant legislation and the fundamental purpose of the guidance, i.e. to protect the safety and welfare of the public. Any licensed driver, vehicle proprietor operator may request a review of any condition or any element of this Guidance at any time. Requests will be dealt with on their individual merits. Those initiatives that lead to the improvement of any element of the service in particular enhancing the safety of the public are actively sought.

Safeguarding Children and Adults at Risk

- 1.11 All local authorities, including district/borough councils in England, have a responsibility to safeguard and promote the welfare of children and adults with care and support needs who are at risk of abuse and neglect. Safeguarding children and adults who are at risk is everyone's responsibility. Abuse is not acceptable and must not be tolerated. Often children and adults at risk do not realise they are a victim of abuse, or are unable to protect themselves from harm. This is why it is important that action is taken and people know what to do when they have safeguarding concerns. It is paramount that all individuals working either directly or indirectly with children and adults at risk have an understanding of safeguarding commensurate to their role, and know how to recognise and

report safeguarding concerns, in relation to children and/or adults at risk. Tamworth Borough Council provides safeguarding awareness training for all taxi drivers, the training includes information on recognising and responding to concerns in relation to child exploitation and trafficking (for further information please see **Appendix A**).

PART 2 – LICENSING PRINCIPLES, PROCESS AND DELEGATION

Introduction

- 2.0 The Council has adopted Part II of the Local Government (Miscellaneous Provisions) Act 1976 and, together with the provisions contained in the Town Police Clauses Act 1847, the Council carries out the licensing of hackney carriage drivers and vehicles and private hire drivers, vehicles and operators.
- 2.1 This part focusses on the principles the Council will follow when administering licence applications, reviewing conditions, setting fees and setting the table of fares. It explains the roles and duties of the Licensing Committee, the Sub-Committee and officers of the Council.

Licensing principles

- 2.2 The Council aims to provide a clear, consistent and responsive service to prospective and current licence holders, members of the public and other stakeholders. This includes the provision of advice to prospective applicants, including advice on the effect that convictions, etc. may have on any application, and to existing licence holders. The Council will be mindful of the needs of the applicant but this will be balanced against the over-riding duty that the Council has to protect the safety and welfare of the public.
- 2.3 All licence applications will be considered and determined on their own individual merits.

Licensing process and delegation of functions

- 2.4 The Council has delegated its licensing function to the Licensing Committee and further delegated authority to Licensing committee, additionally, officers of the Council who will determine all applications in accordance with this Policy.
- 2.5 Whilst officers and the relevant committees will, in the majority of cases, follow the guidance, there may be specific circumstances that require a departure from the guidance. In such circumstances, the reasons for departing from the guidance will be made clear.

Committees

- 2.6 Licensing Committee

This Committee is made up of 13 members of the Council. It deals with conditions of licence, the setting of fees and charges and hackney carriage fares.

Decisions

- 2.8 The Council has the power to refuse to grant or renew licences and also to suspend or revoke existing licences in accordance with relevant legislative provisions. In addition, the Council may choose to issue written warnings.
- 2.9 Any decision to refuse to grant or renew a licence or to suspend or revoke an existing licence, including the decision to suspend or revoke with immediate effect or to issue a written warning will be made in accordance with the Council's scheme of delegation and other relevant procedures.

- 2.10 Where applications are to be determined, the officer, and/or Licensing committee will take into consideration the facts of the application, any information and/or evidence provided by other interested parties including, but not restricted to, officers from the Council with responsibility for safeguarding and officers from Staffordshire Police together with the recommendation made by the licensing officer presenting the report. Applicants will be given the opportunity to submit written and/or verbal representations as appropriate.
- 2.11 Following the determination of an application by the Council the applicant will receive a copy of the decision in writing. This written decision will be delivered as soon as is practicable after the decision has been made. This will include information on the right of appeal where appropriate.

Appeals

- 2.12 Parties aggrieved by a decision of the Council have a right of appeal. This must be lodged with the relevant Court in accordance with the relevant statutory provisions. The Council strongly advises parties to promptly seek appropriate independent legal advice in such circumstances.

Working in partnership

- 2.13 The Council aims to work in partnership when dealing with hackney carriage and private hire licensing issues. Such partnerships will include (but are not restricted to) relevant hackney carriage and private hire trade associations, neighbouring authorities, Staffordshire Police, Driver and Vehicle Standards Agency (DVSA), Revenues and Benefits teams and consumer groups.

PART 3 – LICENSABLE ACTIVITIES

Introduction

- 3.1 This part of the Guidance focusses on the licensable activities and the necessary steps required to obtain and to hold such a licence. These steps will include the standards that applicants must attain and the conditions that apply. Where appropriate, any reference to 'applicant' is deemed to include existing licence holders.
- 3.2 The following are applicable to all licence types:
- Where an applicant has failed to declare relevant information or provided false information the application is likely to be refused; where this relates to an existing licence, the licence is likely to be suspended or revoked. Applicants are reminded that it is an offence to knowingly or recklessly make a false declaration or omit any material particularly when giving information required by the application for a licence;
 - All licence fees payable at the time of application are non-refundable;
 - In the event that an application for a licence is paid by cheque, the licence will not be valid until such time as the cheque has cleared. In the event that the cheque does not clear and the licence has been issued, the licence will be null and void with immediate effect;
 - The application process must be completed within 6 months unless prevented from doing so by matters that are outside the applicant's control, e.g. external delays in the DBS process, otherwise the application process will cease to progress further and the process must recommence from the beginning;
 - Where a licence has been surrendered or revoked a new application must be submitted in accordance with the relevant new licence procedures before the Council will consider the application;
 - When a licence expires, the Council will not permit any 'periods of grace' for the submission of a renewal application.

Appointments

- 3.3 The Council (Customer Services) runs an appointment system. Applicants will not be seen without an appointment. To assist drivers and operators to make appointments in a timely manner, the Council will notify all operators, drivers and the proprietors of vehicles that their licence is due to expire and are given sufficient notice for their applications before the expiry of a licence.

Criminal record disclosure

- 3.4 The Council follows the Disclosure and Barring Service (DBS) Code of Practice for Registered Persons and Other Recipients of Disclosure Information (April 2009) and abides by the handling of DBS certificate information requirements on the secure storage, handling, use, retention and disposal of disclosure certificates and certificate information. Further information about the DBS can be found on the GOV.UK website at <https://www.gov.uk/government/organisations/disclosure-and-barring-service/about>.

- 3.5 Drivers who undertake contract work for Staffordshire County Council e.g. Education are advised to contact them in order to ascertain the standard of criminal record disclosure required and any other requirements in this respect. The Staffordshire County Council will share information with the Licensing Team about individuals and businesses that apply and/or tender to deliver passenger transport contracts.
- 3.6 All drivers are encouraged to register for the DBS Update Service <https://www.gov.uk/dbs-update-service> further information can be found at. Any drivers who have registered for this service need to supply the last Certificate number during their application process.

3a. HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVERS

Summary

- 3a.1 Any person who drives a hackney carriage must hold the appropriate vehicle driver's licence. Hackney carriage vehicle driver's licences are issued in accordance with section 46 of the Town Police Clauses Act 1847.
- 3a.2 Any person who drives a private hire vehicle licence must hold the appropriate vehicle driver's licence. Private hire vehicle driver's licences are issued in accordance with section 51 of the Local Government (Miscellaneous Provisions) Act 1976.
- 3a.3 The Council issues a dual Hackney Carriage and Private Hire licence entitling the driver to drive both vehicles.

Fit and proper person

- 3a.4 Licensed drivers provide a public service. The Council will not licence anyone to drive a hackney carriage or private hire vehicle unless it is satisfied that they are a fit and proper person.
- 3a.5 In considering the fit and proper person test, all applicants on initial application and renewal must complete an enhanced Disclosure and Barring Service (DBS) check and undergo a medical examination. The Council may also make additional enquiries with Staffordshire Police (and other relevant police forces, where appropriate), other relevant local authorities and any other appropriate organisation, agency or person in order to ensure the Council is in a position to make as accurate an assessment of the applicant's fitness to hold a licence as is reasonably practicable.
- 3a.6 With specific reference to existing licence holders, where there is any cause for a licence to be reviewed, the Council may request the licence holder to consent to a further enhanced DBS check the cost of which lies with the licence holder. Where a licence holder refuses to consent to a further check the Council will take this into consideration in determining their continuing fitness to hold a licence.
- 3a.7 When assessing the fitness of an applicant to hold a drivers licence, the Council will consider the applicant's criminal history as a whole, together with all other relevant evidence, information and intelligence including their history (e.g. complaints and positive comments from the public, compliance with licence conditions and willingness to co-operate with licensing officers) whilst holding a licence from the Council or any other authority. Particular attention will be given to patterns of behaviour, irrespective of the time-scale over which they have occurred, both in terms of proven criminal offences and other behaviour/conduct that may indicate the safety and welfare of the public may be at risk from the applicant.
- 3a.8 In addition, an important element associated with the fitness to hold a licence is the appearance and behaviour of a licensed driver. Consequently, the Council requires all licensed drivers to maintain a reasonable standard of appearance and behaviour when in contact and dealing with other road users, pedestrians, customers, the general public, other licensed operators and drivers of hackney carriage and private hire vehicles, Council officers and elected members at all times. Applicants and licensed drivers must also co-operate with any reasonable request made by an authorised officer of the Council or any police officer.

- 3a.9 It must also be recognised that the Council will consider all criminal history, behaviour and conduct irrespective of whether the specific history, behaviour or conduct occurred whilst drivers were directly engaged in hackney carriage or private hire licensed work at the time or whether they occurred during the drivers' own personal time.

Criminal record disclosure

- 3a.10 As referred to above, hackney carriage and private hire vehicle drivers are required to undertake an enhanced criminal record disclosure (DBS check) and due to the nature of the occupation such drivers are deemed to be an exempt occupation under the provisions of the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act (Exceptions) Order 2003.
- 3a.11 The effect of this, in relation to hackney carriage and private hire drivers, is to render the Rehabilitation of Offenders Act 1974 inapplicable and therefore convictions are deemed never to be spent. As a result, all convictions, including cautions, will be taken into account when considering a person's suitability to hold a driver's licence. Consequently, applicants are required to provide details of all convictions and cautions, including driving endorsements and disqualification periods relating to 'major' traffic offences.
- 3a.12 Although cautions are generally not as serious as convictions, they do require an admission of guilt before they can be issued and are therefore a valuable indication as to an applicant's character and whether they are a fit and proper person to hold or be granted a licence.
- 3a.13 A criminal record does not automatically bar an applicant from holding a drivers licence; however, it will be a significant factor when determining whether a licence ought to be granted or not. Where an applicant has previous criminal convictions, these will be considered in line with the guidance set out in **Appendix H**. However, the over-riding consideration will always be to ensure the safety and welfare of the public.
- 3a.14 Applicants must have a UK traceable DBS record of at least 5 years or if the applicant has not been resident in the UK for an unbroken period of at least 5 years have obtained a Certificate of Good Conduct from the Consulate of the applicant's country of origin. The Council may contact the relevant Embassy, High Commission, solicitor or other appropriate body to verify any documents provided. Proof of a right to work in the United Kingdom will also be required. Contact details for Embassies and High Commissions can be found from the Foreign & Commonwealth Office (FCO) on the GOV.UK website at <https://www.gov.uk/government/world>. The FCO may be contacted for further assistance by telephone on 020 7008 1500, by email at fcocorrespondence@fco.gov.uk or by post at the FCO, King Charles Street, London, SW1A 2AH.

Period of licence

- 3a.15 Except in exceptionally circumstances Driver licences will be issued for a period of three years.

Application process

- 3a.16 The application form must be fully completed and include all relevant information, supporting documentation and appropriate fee. If any part of the application form is incomplete or the relevant information or supporting documentation is not provided, the applicant will be requested to provide the missing

information/documentation and informed that the application will not be processed until such time as all the information/documentation is provided. The full fee for the licence (which includes the cost of the DBS check, unless applicants provide proof of online subscription to the DBS update service, and the initial knowledge test) is payable at the time the application is submitted.

New applications

3a.17 All new applicants must be at least 21 years old and have held a full DVLA/EC/EEA category B driving licence for at least 1 year at the time of application. The 1 year period is calculated from the date of issue of the full driving licence.

3a.18 In addition, applicants must:

- Submit a completed application form
- Pay the appropriate licence fee
- Provide a passport sized photograph countersigned in accordance with passport rules to prove the applicant's identity
- Have a satisfactory enhanced DBS report
- Where applicable have a satisfactory report in respect of the enquiries made through Staffordshire (or other relevant force), other local authorities and any other organisation, agency or person that the Council has deemed appropriate to seek information from
- Pass the Council's knowledge test
- Provide a completed medical examination form (Group 2)

Renewal applications

3a.19 On renewal of an existing licence, applicants must:

- Submit a completed application form
- Pay the appropriate licence fee
- Currently on all applications the applicant's must provide a passport sized photograph countersigned in accordance with passport rules to prove the applicant's identity
- Complete a DBS disclosure – or provide proof of registration to the DBS Update Service
- Where required, pass a Group 2 medical examination (refer to paragraphs 3a.30 to 3a.40 below to determine whether a medical examination is/is not required)

3a.20 Providing the above are satisfied, the Council will renew the licence subject to the receipt of a satisfactory enhanced DBS report and satisfactory reports through Staffordshire Police (or other relevant force), other local authorities and any other

organisation, agency or person that the Council has deemed appropriate to seek information from.

3a.21 To allow continuous driving, a licence application must be received by the Council by the 1st day of the month of the expiry month to allow the Council sufficient time to process the renewal application. Once a licence expires, is revoked (subject to a statutory appeal process) or surrendered, it ceases to exist.

3a.22 Once a licence ceases to exist, a renewal application will not be accepted by the Council and the applicant must submit a new driver's licence application which will be processed in accordance with the Council's new application procedures.

Arranging DBS

3a.23 Appointments are made by the applicant booking an appointment with the Council's Customer Services department with the applicant to complete a DBS application form, knowledge test.

Applicants can subscribe to the DBS Update Service, but proof of subscription reference number and the last DBS certificate number must be provided.

Knowledge test

3a.24 Applicants for a licence to drive a hackney carriage or private hire vehicle will be required to take and pass the Council's knowledge test. This test is aimed at assessing the driver's knowledge of streets, locations, attractions, entertainment venues and general geography of the Council's administrative area in order to satisfy the Council that they will be able to convey passengers who may be unfamiliar with the locality. This test will be conducted in English. Details of what is required in the knowledge test are provided within the application pack.

3a.25 Normal examination conditions will apply during the knowledge test. Any person found to be using unfair means during the test will be excluded from the test and will be required to take a fresh test and pay the appropriate fee. This may also affect their fitness and propriety to be granted a licence.

3a.26 The charge for the initial knowledge test is included in the licence fee. Where an applicant fails the knowledge test there is an additional fee for every subsequent test and every missed test. Once an appointment has been allocated for the test, the applicant must give 2 clear working days' notice to cancel an appointment otherwise they will be required to pay the test fee. In such circumstances the Council will deem that the applicant has failed the test.

3a.27 An applicant is permitted to take the knowledge test up to a maximum of 3 times per application, subject to the additional re-test fees being paid. Where an applicant fails the knowledge test three times, the application will be refused, subject to a manager who has responsibility for licensing permitting a further test or tests where the circumstances are considered appropriate. The applicant will not be permitted to re-apply for a drivers licence until the expiry of a 12 month period from the date of the last failed knowledge test.

3a.28 The holder of a driver's licence may be required to satisfactorily undertake a further knowledge test or tests at the discretion/request of the Council.

3a.29 Failure to submit to or pass any knowledge test will permit the Council to refuse to grant or renew a driver's licence or to revoke or suspend the licence as required.

Medical requirements

- 3a.30 The Council is permitted to satisfy itself that an applicant for a licence is physically fit and remains so during the currency of any licence. Consequently, all applicants for a hackney carriage or private hire vehicle driver's licence are required to undertake a medical examination on initial application, at defined intervals thereafter and at any other such time as the Council requires to ensure their fitness to drive. The standards required are set out in the DVLA publication 'At a Glance Guide to the Current Medical Standards of Fitness to Drive' (May 2014). The standard required is the 'Group 2 Entitlement'. No grandfather rights are given by the Council in relation to medical matters.
- 3a.31 Applicants must undertake the medical examination and provide a satisfactory medical certificate before a licence is issued. Every 5 years upto the age of 45, or sooner if stipulated by the examining doctor.
- 3a.32 Applicants aged 45 to 65 will be required to undertake a medical examination every 3 years, or sooner if stipulated by the examining doctor. Applicants must provide satisfactory medical certificate.
- 3a.33 Applicants over the age of 65 must undertake a medical examination and provide a satisfactory medical certificate annually, or sooner if stipulated by the examining doctor.
- 3a.34 In particular, applicants must consider the medical conditions listed in **Appendix I** as the Council may refuse to grant an application or revoke an existing licence where an applicant has any of the listed conditions. Where relevant, the applicant must comply with the additional requirements detailed in **Appendix I**.
- 3a.35 If once licensed, the driver's medical circumstances change during the currency of the licence, the driver must inform the Council within 7 days. The Council may require the driver to immediately undertake a further medical examination and provide an approved medical certificate confirming the outcome of this examination and the driver's fitness (or otherwise) to continue as a licenced driver.
- 3a.36 Should an authorised officer of the Council have reason to believe that a licensed hackney carriage or private hire vehicle driver has a medical condition that renders them unfit to drive, a further medical examination will be requested.
- 3a.37 All medical examinations must be carried out by the Council's appointed Medical examiner who is a - General Practitioner (GP) registered with the General Medical Council. The Council reserves the right to refer any medical matters to its own appointed Medical Officer whose decision on the fitness (or otherwise) of a driver to continue as a licensed driver will be final.
- 3a.38 The Council will not grant or renew, as the case may be, any driver's licence unless the foregoing provisions are complied with and the driver can demonstrate that they are medically fit to hold a drivers licence.
- 3a.39 With respect to current licence holders, if it is deemed necessary to do so, a licence may be revoked or suspended in the interests of protecting the public until further medical examination(s) has/have been carried out or if the licence holder is unable to demonstrate that they are medically fit to hold a drivers licence.
- 3a.40 Medical exemptions involving the carriage of disabled persons and assistance dogs may apply to new applicants or licensed drivers who suffer from certain medical conditions. Where this is the case, the applicant/licensed driver must submit to a rigorous medical examination and provide sufficient proof that they

have a history of a specific health problem(s) that means they qualify for such a medical exemption. However, the Council reserves the right to refuse to grant a licence if deemed appropriate to do so.

DVLA and other relevant driving licences

- 3a.41 A person applying for a drivers licence must be at least 21 years old and have held a full DVLA/EC/EEA category B driving licence for at least 1 year at the time of application. This includes European Union (EU), European Economic Area (EEA) and Northern Irish licences.
- 3a.42 Throughout the currency of the licence, the driver must possess a full driving licence in accordance with the above requirements.
- 3a.43 Applicants are required to produce the original of their driving licence. Copies will not be accepted.
- 3a.44 All applicants holding driving licences issued by agencies other than the DVLA must produce a certificate to show a driving record from the country of issue.
- 3a.45 The Council will not provide photocopies of any driver's driving licence from Council records.

English speaking

- 3a.46 The applicant is expected to complete the knowledge test without any translation being offered. And must be able to show they are capable of completing a receipt.

Licence conditions

- 3a.47 The applicable conditions with which a driver holding a hackney carriage, private hire or drivers licence must comply are set out at **Appendix B**. These conditions are in addition to any matters set out within the main body of the Policy.

Main legal requirements

- 3a.48 Production of documents

The driver must, on request, produce for inspection their driver's licence forthwith or within 5 days to either the Council's offices or a police station.

- 3a.49 Driver's badges and licences

There are two badges issued. One must be worn by the driver at all times when driving the licensed vehicle and the badge must be plainly and distinctly visible.

The second badge must be displayed in a prominent position within the vehicle to be seen by members of the public.

- 3a.50 All drivers of vehicles licensed for hackney purposes of which they are not the operator, must before commencing driving that vehicle, deposit a copy of their driver's licence with the operator for retention by him until such time as the driver ceases to be permitted or employed to drive the vehicle or any other vehicle of his.
- 3a.51 On ceasing to be a licensed driver through suspension, revocation, refusal to renew or expiry of the driver's licence, the licence holder must return the badge

and licence to the Council within 7 days (or earlier if the Council so demands) of the suspension, revocation, refusal to renew or expiry becoming effective.

3a.52 Journeys

Drivers must not unnecessarily prolong a journey, in distance or in time.

3a.53 Vehicles permitted to be driven for private hire and hackney carriage purposes

Only vehicles licensed by the Council are permitted to be used for hackney carriage and private hire purposes.

3a.54 Driving licensed vehicles

Only drivers who are licensed by Tamworth Council are permitted to drive vehicles that are licensed by this authority. The only exceptions to this are when the vehicle is undergoing a fitness test and needs to be driven by the MOT examiner or it is being driven by a qualified mechanic for the purposes of a vehicle service, recovery or maintenance or otherwise permitted by legislation.

3a.55 Touting

A proprietor or driver of a hackney carriage, when standing or plying for hire, must not call out or otherwise importune any person to hire such vehicle and must not make use of the services of any other person for this purpose.

3a.56 Plying for hire

Drivers of private hire vehicles must NOT 'ply for hire'. The Council's interpretation of 'plying for hire' is set out at **Appendix G** and is based on relevant legislation and case law.

3a.57 Transporting children

As a minimum, drivers must comply with the requirements set out in the table below.

Category	Front seat	Rear seat	Who is responsible?
Child up to 3 years	Correct child restraints must be used	Correct child restraint must be used. If a restraint is not available in a licensed hackney carriage or private hire vehicle, the child may travel unrestrained.	Driver
Child from 3rd birthday up to 135 cm in height or 12th birthday, whichever they reach first	Correct child restraints must be used	Where seat belts are fitted, the correct child restraint must be used. The child must use adult belt if the correct child restraint is not available as follows: in a licensed hackney carriage or private hire vehicle; or for a short distance in an unexpected necessity; or two occupied child restraints prevent fitting of a third. A child 3 years and over may travel unrestrained in the rear seat of a vehicle if seat belts are not fitted in the rear.	Driver
Child over 135 cm in height or 12 or 13 years old	Seat belt must be worn if available*	Seat belt must be worn if available.	Driver
Passengers aged 14 years and over		Seat belt must be worn if available.	Passenger

*Vehicles built before 1965 are not required to have fitted seatbelts.

3a.58 Smoking in vehicles

Drivers must not, at any time, smoke or permit passengers to smoke in their vehicle as required by the Health Act 2006 and the Smoke-Free (Exemptions and Vehicles) Regulations 2007.

3a.59 Refusing to convey passengers

A driver of a hackney carriage who is waiting at a rank/stand must not refuse to carry a passenger without a reasonable excuse.

3a.60 Overcharging

Drivers of hackney carriages must not charge more than is permitted under the current table of fares.

3a.61 Persons riding without consent

Drivers of hackney carriages must not permit persons to be carried in the vehicle unless they have the consent from the person who is actually hiring the vehicle.

3a.62 Unauthorised drivers

Licensed drivers of hackney carriages must not allow any persons to drive a hackney carriage unless they are authorised to do so by the proprietor and hold an appropriate license to do so.

3a.63 Unattended vehicles

Hackney carriage drivers must not leave their vehicle unattended in any street or public place or venue, where in contravention to parking regulations.

3a.64 Obstruction

Hackney carriage drivers must not obstruct other hackney carriage drivers/vehicles from undertaking their normal hiring and driving activities.

3b. HACKNEY CARRIAGES

Summary

- 3b.1 Hackney carriages are licensed in accordance with the provisions contained in the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.
- 3b.2 Commonly known as 'taxis', hackney carriages are licensed to stand for hire at a taxi rank or can be hailed in the street in the administrative area of the Council with which it is licensed and may also undertake pre-booked journeys anywhere in the country.
- 3b.3 The Council does not limit the number of hackney carriage licences that it will issue.
- 3b.4 The Council will not licence a vehicle for hire and reward which is licensed by another local authority or allow or permit a hackney carriage identification plate issued by another authority to be displayed on the vehicle.
- 3b.5 All hackney carriages must be capable of providing for at least one wheelchair. Transitional arrangements set out at paragraph 3b.7 apply.

Relevant licensable area

- 3b.6 The Council will not operate separate zones for licensing of hackney carriages and the relevant licensable area will be the whole administrative area of the Council.

Intended use of vehicles

- 3b.7 A person applying for a licence for a hackney carriage vehicle should do so with the intention of using the vehicle in the administrative area of Tamworth Borough Council. Where the intention is to use a hackney carriage licensed vehicle in another council's area for private hire, then the applicant should apply to that council for an appropriate licence. 3b.9 In accordance with section 57 of the Local Government (Miscellaneous Provisions) Act 1976, a person applying for a hackney carriage licence will be required to indicate whether the vehicle will be used primarily within the administrative area of Tamworth Borough Council or outside the area. Details will be required as to the proportion of business that will be carried out both within and out of Tamworth Borough Council's administrative area. In addition, details of the location of business carried on outside the Council's area will be required. Applications received where the primary use of the vehicle is or is likely to be outside the Council's area will be refused.
- 3b.8 Full details of the Council's intended use policy for the licensing of hackney carriages is set out at **Appendix J**.

Period of licence

- 3b.9 Vehicle licences will be issued for 12 months.

Applicant

- 3b.10 The applicant for a vehicle licence must be the person who is the legal owner of the vehicle concerned and entitled to have the ownership of the vehicle registered under the provisions of Regulation 10 of the Road Vehicles (Registration and Licensing) Regulations 2002 in their own name. Prior to licensing and thereafter, as required, satisfactory evidence must be produced to demonstrate compliance with this requirement.

Vehicles

3b.11 The Council requires all hackney carriage vehicles to comply with the following requirements:

Safety

3b.12 Every new type of taxi must comply in all respects with the requirements of the Motor Vehicle (Type Approval) Regulations 1980, the Motor Vehicle (Type Approval) Regulations (Great Britain) 1984, the Motor Vehicles (EC Type Approval) Regulations 1998 and with any further national or international legislation as may be applicable. They must also comply in use with the Road Vehicles (Construction and Use) Regulations 1986 (C & U). Every new type of taxi offered for approval must comply in all respects with British and European vehicle regulations and be "type approved" to the requirements of the M1 category of European Whole Type Approval Directive 2007/46/EC as amended. Those taxis which have not been "type approved" to the M1 category (e.g. conversions) must be presented with approved certification that the specific vehicle meets the requirements of that category. Each vehicle must also have passed the Council's fitness test.

Other Requirements

3b.13 Vehicles must not seat more than eight passengers (not including the driver). Any alterations to the manufacturer seating configuration must be inspected and certified by DVSA and:

- (a) Be a Light Passenger Vehicle as defined by section 85 of the Road Traffic Act 1988 and have a minimum of 4 wheels
- (b) Provide sufficient means by which any person in the carriage may communicate with the driver.
- (c) Entire external bodywork of the vehicle must be of a uniform colour. (This does not prohibit the display of advertisements as authorised by the Council.
- (d) All paintwork must be maintained in a high gloss finish of a uniform colour (but note the specific requirement at 'c' above) and free from dents, scratches or rust.
- (e) Have a watertight roof or covering.
- (f) Provide at least two windows on each side of the vehicle of which one window on one side must have a means of opening/closing.
- (g) Tinted windows will only be permitted in accordance with the manufacturers or specialist coachbuilder's specification and must comply with the Road Vehicles (Construction & Use) Regulations 1986 as amended.
- (h) Have seats that are properly cushioned and covered.
- (i) Have a floor provided with a proper carpet, mat, or other suitable covering.
- (j) Have fittings and furniture in a clean condition and be well maintained and in every way fit for public service.

- (k) Provide means for securing luggage if the carriage is so constructed as to carry luggage.
- (l) All seats must have unobstructed access. (No tilting or sliding seats) :-
have a three point seatbelt as specified in the Road Vehicle (Construction and Use) Regulations 1986 (as amended)
- (m) Have a minimum of four passenger doors including an entry/exit point for the driver if a vehicle other than a taxi approved to the specifications of the Public Carriage Office.
- (n) Be maintained in a sound mechanical and structural condition at all times.
- (o) Have a spare pneumatic tyre or suitable manufacturers repair kits. Where tyres, including the spare must comply with the vehicle manufacturer's specification and any relevant legislation.
- (p) Be maintained in a clean and safe condition at all times from both exterior and interior perspectives.
- (q) Have provision for the legal transportation of a minimum of one wheelchair at all times.

Application process

- 3b.14 The application form must be fully completed and include all relevant information, supporting documentation and appropriate fee. If any part of the application form is incomplete or the relevant information or supporting documentation is not provided, the applicant will be requested to provide the missing information/documentation and informed that the application will not be processed until such time as all the information/documentation is provided. The full fee for the licence is payable at the time the application is submitted.
- 3b.15 The application process to licence a hackney carriage vehicle is the same for a new or renewal application.
- 3b.16 Any person wishing to licence a hackney carriage vehicle must submit:
- a completed application form;
 - the appropriate licence fee;
 - a valid Certificate of fitness
 - a valid certificate of insurance for public hire
 - all vehicles must have current Vehicle Excise Duty (Road Tax) this can be checked online
 - the V5 registration certificate
 - the vehicle is fitted with a taximeter in accordance with the requirements

3b.17 Taximeters must be:

- certified by a notified body in accordance with the Measuring Instruments Directive (MID) (2004/22/EC), in particular Annex 007;
- fitted with a device, the use/action of which will bring the taximeter into action and cause the word 'HIRED' to appear on the face of the taximeter and such a device must be capable of being locked in a position such that the machinery of the taximeter is not in action and that no fare is recorded on the face of the taximeter;
- calibrated against an appropriate standard to ensure the tariff charged does not exceed the maximum fares agreed by the Council;
- calendar controlled;
- fixed to the vehicle with appropriate seals/appliances to prevent any person from tampering with the meter except by breaking, damaging, or permanently displacing the seals/appliances; and
- have the word 'FARE' printed on the face of the meter in plain letters so as clearly to apply to the fare recorded thereon.

Fitness test requirements

3b.18 Fitness tests are required in accordance with the following requirements:

- Vehicles must be submitted for an fitness test in accordance with Tamworth borough Council's testing policy at intervals (and any other inspection deemed necessary by an authorised officer).
- Vehicles are tested every 6mnths when under 4years of age, and at 4 monthly intervals when over 4 years of age.
- Fitness tests must be undertaken by a 'Nominated Tester' or Authorised Vehicle Examiner at a Vehicle Testing Station appointed under Section 45 of The Road Traffic Act 1988 and the Motor Vehicles Test Regulations 1981; the cost of all tests must be met by the vehicle operator.
- The vehicle must have a valid fitness test throughout the licence period.
- With respect to a licensed vehicle, in the event of a proprietor failing to present to the Council a fitness test certificate as required (unless delayed or prevented by sufficient cause accepted and agreed by the Council), the Council may suspend the licence and require the proprietor of that hackney carriage to return the plate to them within 72 hours.

V5 registration certificate

3b.19 The Council accepts that a full V5 registration form in the new owner's name is not always available upon first licence; however, the V5/2 green section of the V5 form must be produced, or a bill of sale. Where the green section has been produced on first licensing the vehicle, a full V5 form in the new owner's name must be produced to the Council within 7 days of the form being received by the owner of the vehicle. A V5 form or proof of purchase must be produced upon transfer of a vehicle licence.

Renewal of a licence

- 3b.20 To allow the vehicle's licence to be renewed, a renewal application form must be received by the Council at least 10 working days prior to the expiry date of the original licence to allow the Council sufficient time to process the renewal application. Once a licence expires, is revoked (subject to a statutory appeal process) or surrendered, it ceases to exist. In such circumstances the vehicle must not be used after the expiry date until the renewal plate has been issued.
- 3b.21 Once a licence ceases to exist a renewal application will not be accepted by the Council and the applicant must submit a new vehicle licence application which will be processed in accordance with the Council's new application procedures.

Vehicle not fit for the conveyance of passengers

- 3b.22 Where a proprietor has notified the Council that damage has occurred to a vehicle, otherwise than in accordance with relevant road traffic legislation, or an inspection of the vehicle by an officer of the Council has determined that a vehicle is not fit for the purpose of conveying passengers, an authorised officer of the Council will decide if the condition is such that the vehicle may continue in service or not. If not, the Council may at that time suspend the licence and require the proprietor of the vehicle to return the vehicle's plate to them within 72 hours. The suspension will be lifted and the plate returned at such time when the condition of the vehicle is demonstrated, to the satisfaction of the Council, to be fit for conveying passengers. The officer may require the proprietor to arrange for a further MOT test to be undertaken and certificate produced before the vehicle will be permitted to operate; this is at the discretion of the authorised officer.

Advertising

- 3b.23 Proprietors may advertise on hackney carriages in accordance with the conditions set out at **Appendix K**. This is subject to prior approval from the Council.

Closed circuit television (CCTV)

- 3b.24 Proprietors of hackney carriage vehicles are permitted to install closed circuit television (CCTV) systems providing such systems are installed in accordance with the appropriate legal framework and the Council has been notified, in writing, of their intention to do so. The relevant legislation must be adhered to.

Trailers

- 3b.25 Hackney carriages are permitted to tow trailers when undertaking the licensable activity, providing the conditions set out at **Appendix L** are complied with.

Ranks

- 3b.26 The Highways section of Staffordshire County Council will work with the hackney carriage trade, Licensing and Staffordshire Police to determine where ranks/stands ought to be situated.
- 3b.27 Where a driver is plying for hire and is illegally parked or if, in the opinion of an officer of the Council or police officer, the driver is plying for hire in a dangerous location, the driver's licence may be reviewed and such conduct may be deemed a reasonable cause to revoke or suspend the licence or to take any other appropriate action.

LPG converted vehicles

- 3b.28 The Council must be satisfied that any vehicle that has been converted to LPG has been converted correctly prior to a licence being issued. To this end, the Council will undertake checks with the UK LPG Vehicle Register.
- 3b.29 With respect to new applications, where it is established that a conversion has not been undertaken correctly and/or the vehicle is unsafe in any way, the Council will refuse the application.
- 3b.30 In the event that an LPG conversion has been undertaken on a vehicle during a current licenced period and the proprietor of the vehicle fails to notify the Council within 7 days of the conversion and provide the LPG Association Conversion Certificate, the Council will suspend the vehicle licence until such time as the certificate is produced. If the certificate is not produced within 28 days from the date the licence was suspended the Council will revoke the licence.
- 3b.31 In the case of a conversion that has been undertaken on a vehicle during a current licenced period and it is subsequently established that the conversion has not been undertaken correctly and/or the vehicle is unsafe in any way, the Council will suspend the licence until such time as the conversion has been undertaken correctly and/or it is demonstrated to the satisfaction of the Council that the vehicle is safe. If this does not occur within a period of 28 days from the date the licence was suspended the Council will revoke the licence.

Hackney carriage fares

- 3b.32 The hackney carriage trade will be expected to apply for any change to the hackney carriage fares. Any proposed changes will be notified to all hackney carriage licence holders, considered by Licensing Committee and advertised in the local press before they are adopted. This does not preclude the Council from putting forward changes to the fares or taking a decision not to accept the application from the trade.

Licence conditions

- 3b.33 The applicable conditions relevant to a hackney carriage licence are set out at **Appendix C**. These conditions are in addition to any matters set out within the main body of the Policy.

Main legal requirements

- 3b.34 Change of proprietor

The proprietor must give notice to the Council of any transfer in his interest in the hackney carriage vehicle to a person other than the proprietor whose name is specified in the licence. Such notice must be given, in writing, within 14 days specifying the name and address of the person to whom the vehicle has been transferred.

- 3b.35 Change of address

The proprietor of a hackney carriage must notify the Council in writing, within 7 days, of any change of their address.

- 3b.36 Retention of drivers licences

Where a Hackney Carriage is working for an Operator they must ensure that each driver's licence is lodged with the operator before the driver is employed to carry out work and must retain the licence in their possession for the period during which the driver remains in their employ. When a driver leaves their employment, the operator must return the driver's licence unless the licence holder has been guilty of misconduct in which case the operator may retain the licence and must issue a summons to have the cause of complaint determined by the Courts. (Note: If the Courts find that the licence has been improperly retained they have the powers to order its return and to award compensation.)

3b.37 Inspection

The proprietor must present their hackney carriage for inspection/testing by the Council as required per year.

3b.38 The proprietor must provide, on request, the address where the hackney carriage is kept and allow the Council to inspect/test the vehicle at that address.

3b.39 Accidents

The proprietor, notwithstanding their responsibilities under relevant road traffic legislation, must report to the Council any accident as soon as reasonably practicable. However, where the vehicle has suffered accident damage that materially affects the safety, performance or appearance of the vehicle, or the comfort or convenience of fare paying passengers, the driver must notify the Council within 72 hours.

3b.40 Production of documents

The proprietor must, on request, produce for inspection the hackney carriage vehicle licence and insurance certificate within 7 days.

3b.41 Return of identification plate

Where a licence is revoked, suspended or expires, the proprietor, when required by the Council to do so must return the identification plate within 7 days.

3b.42 Transporting children

As a minimum, vehicles must be capable of complying with the requirements set out in the table below.

	Front seat	Rear seat	Who is responsible?
Child up to 3 years	Correct child restrains must be used	Correct child restraint must be used. If a restraint is not available in a licensed hackney carriage or private hire vehicle, the child may travel unrestrained.	Driver
Child from 3rd birthday up to 135 cm in height or 12th birthday, whichever they reach first	Correct child restraints must be used	Where seat belts are fitted, the correct child restraint must be used. The child must use adult belt if the correct child restraint is not available as follows: in a licensed hackney carriage or private hire vehicle; or for a short distance in an unexpected necessity; or two occupied child restraints prevent fitting of a third. A child 3 years and over may travel unrestrained in the rear seat of a vehicle if seat belts are not fitted in the rear.	Driver
Child over 135 cm in height or 12 or 13 years old	Seat belt must be worn if available*	Seat belt must be worn if available.	Driver
Passengers aged 14 years and over	Seat belt must be worn if available*	Seat belt must be worn if available.	Passenger

*Vehicles built before 1965 are not required to have fitted seatbelts.

3b.43 Ranks

Hackney carriage ranks/stands are provided in accordance with the Local Government (Miscellaneous Provisions) Act 1976. The Council may appoint ranks/stands for hackney carriages. It is not a mandatory statutory requirement for the Council to do so. Before providing ranks/stands the Council will liaise with the police and the highways department of the Council.

3b.44 Fares

Drivers undertaking journeys ending outside the Council's area and in respect of which no fare and no rate of fare was agreed before the journey commenced must not charge more than that indicated on the taximeter or more than the current table of fares allows.

3b.45 Where a hackney carriage is used for a private hire contract the fare charged must not exceed the fares set down in the current table of fares.

3c. PRIVATE HIRE VEHICLES

Summary

- 3c.1 Private hire vehicles are licensed in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1976. Private hire vehicles must not have the appearance of a hackney carriage vehicle.
- 3c.2 When considering whether a vehicle is a private hire vehicle by the nature of the work it does, Tamworth Borough Council shall have regard to the document Private Hire Vehicle Licensing - A note for guidance from the Department for Transport (August 2011)
- 3c.3 The Council does not limit the number of private hire vehicle licences that it will issue.
- 3c.4 The Council will not licence a vehicle for hire and reward which is licensed by another local authority or allow or permit a private hire vehicle identification plate issued by another authority to be displayed on the vehicle.

Period of licence

- 3c.5 Vehicle licences will be issued for 12 months.

Applicant

- 3c.6 The applicant for a vehicle licence must be the person who is the legal owner of the vehicle concerned and entitled to have the ownership of the vehicle registered under the provisions of Regulation 10 of the Road Vehicles (Registration and Licensing) Regulations 2002 in their own name. Prior to licensing and thereafter, as required, satisfactory evidence must be produced to demonstrate compliance with this requirement.

Vehicles

- 3c.7 The Council requires private hire vehicles to comply with the following requirements:

Safety

- 3c.8 Every new type of taxi must comply in all respects with the requirements of the Motor Vehicle (Type Approval) Regulations 1980, the Motor Vehicle (Type Approval) Regulations (Great Britain) 1984, the Motor Vehicles (EC Type Approval) Regulations 1998 and with any further national or international legislation as may be applicable. They must also comply in use with the Road Vehicles (Construction and Use) Regulations 1986 (C & U). Every new type of taxi offered for approval must comply in all respects with British and European vehicle regulations and be "type approved" to the requirements of the M1 category of European Whole Type Approval Directive 2007/46/EC as amended. Those taxis which have not been "type approved" to the M1 category (e.g. conversions) must be presented with approved certification that the specific vehicle meets the requirements of that category. Each vehicle must also have passed the Council's fitness test.

Other Requirements

- 3c.9 Vehicles must not seat more than eight passengers (not including the driver) and:

- a) Be a Light Passenger Vehicle as defined by section 85 of the Road Traffic Act 1988 and have a minimum of 4 wheels;
- b) Provide sufficient means by which any person in the carriage may communicate with the driver;
- c) All paintwork must be maintained in a high gloss finish of a uniform colour and free from dents, scratches or rust;
- d) Have a watertight roof or covering;
- e) Provide at least two windows on each side of the vehicle of which one window on one side must have a means of opening/closing.
- f) Tinted windows will only be permitted in accordance with the manufacturers or specialist coachbuilder's specification and must comply with the Road Vehicles (Construction & Use) Regulations 1986 as amended.
- g) Have seats that are properly cushioned and covered;
- h) Have a floor provided with a proper carpet, mat, or other suitable covering.
- i) Have fittings and furniture in a clean condition and be well maintained and in every way fit for public service.
- j) Provide means for securing luggage if the carriage is so constructed as to carry luggage;
- k) All seats must have unobstructed access. (No tilting or sliding seats) :-
- l) All seats must have have a three point seatbelt
- m) Have a minimum of four passenger doors including an entry/exit point for the driver.
- n) Be maintained in a sound mechanical and structural condition at all times.
- o) Have a spare pneumatic tyre, or manufacturers repair kit. All tyres, including the spare must comply with the vehicle manufacturer's specification and any relevant legislation.
- p) Be maintained in a clean and safe condition at all times from both exterior and interior perspectives.

Application process

- 3c.10 The application form must be fully completed and include all relevant information, supporting documentation and appropriate fee. If any part of the application form is incomplete or the relevant information or supporting documentation is not provided, the applicant will be requested to provide the missing information/documentation and informed that the application will not be processed until such time as all the information/documentation is provided. The full fee for the licence is payable at the time the application is submitted.
- 3c.11 The application process to licence a private hire vehicle is the same for a new or renewal application.

3c.12 Any person wishing to licence a private hire vehicle must submit:

- a completed application form;
- the appropriate licence fee;
- a valid fitness test (in accordance with the requirements set out at paragraph 3c.12 below);
- a valid certificate of insurance for private hire
- Evidence that appropriate Vehicle Excise Duty (Road Tax) has been paid, e.g. email confirmation from the DVLA or Post Office receipt; (which can be checked online)

- the V5 registration certificate. (The Council accepts that a full V5 registration form in the new owner's name is not always available upon first licence; however, the V5/2 green section of the V5 form must be produced, or a bill of sale. Where the green section has been produced on first licensing the vehicle, a full V5 form in the new owner's name must be produced to the Council within 7 days of the form being received by the owner of the vehicle. A V5 form or proof of purchase must be produced upon transfer of a vehicle licence.)
- evidence of compliance with the relevant European Emission Standards as set out in paragraph 3C.8 either at the point of vehicle construction or by a subsequent adaption or conversion approved by the Council - the compliance must be relevant to the engine installed in the vehicle and this must be reflected in the V5 registration certificate; and

Fitness test requirements

3c.13 Fitness test are required in accordance with the following requirements:

- Vehicles must be submitted for an fitness test in accordance with Tamworth borough Council's testing policy at intervals (and any other inspection deemed necessary by an authorised officer).
- Vehicles are tested every 6mnths when under 4years of age, and at 4 monthly intervals when over 4 years of age.
- Fitness tests must be undertaken by a 'Nominated Tester' or Authorised Vehicle Examiner at a Vehicle Testing Station appointed under Section 45 of The Road Traffic Act 1988 and the Motor Vehicles Test Regulations 1981; the cost of all tests must be met by the vehicle operator.
- The vehicle must have a valid fitness test throughout the licence period.
- With respect to a licensed vehicle, in the event of a proprietor failing to present to the Council a fitness test certificate as required (unless delayed or prevented by sufficient cause accepted and agreed by the Council), the Council may suspend the licence and require the proprietor of that hackney carriage to return the plate to them within 72 hours.

V5 registration certificate

3c.14 The Council accepts that a full V5 registration certificate in the new owner's name is not always available upon first licence; however, the V5/2 green section of the V5 form must be produced. Where the green section has been produced on first licensing the vehicle, a full V5 form in the new owner's name must be produced to

the Council within 7 days of the form being received by the owner of the vehicle. A V5 form or proof of purchase must be produced upon transfer of a vehicle licence.

Renewal of a licence

- 3c.15 To allow the vehicle's licence to be renewed, a renewal application form must be received by the Council at least 10 working days prior to the expiry date of the original licence to allow the Council sufficient time to process the renewal application. Once a licence expires, is revoked (subject to a statutory appeal process) or surrendered, it ceases to exist.
- 3c.16 Once a licence ceases to exist a renewal application will not be accepted by the Council and the applicant must submit a new vehicle licence application which will be processed in accordance with the Council's new application procedures.

Vehicle not fit for the conveyance of passengers

- 3c.17 Where a proprietor has notified the Council that damage has occurred to a vehicle, otherwise than in accordance with relevant road traffic legislation, or an inspection of the vehicle by an officer of the Council has determined that a vehicle is not fit for the purpose of conveying passengers, an authorised officer of the Council will decide if the condition is such that the vehicle may continue in service or not. If not, the Council may at that time suspend the licence and require the proprietor of the vehicle to return the vehicle's plate to them within 72 hours. The suspension will be lifted and the plate returned at such time when the condition of the vehicle is demonstrated, to the satisfaction of the Council, to be fit for conveying passengers. The officer may require the proprietor to arrange for a further MOT test to be undertaken and certificate produced before the vehicle will be permitted to operate; this is at the discretion of the authorised officer.

Advertising

- 3c.18 Proprietors may advertise on private hire vehicles in accordance with the conditions set out at **Appendix K**. This is subject to prior written approval from the Council.

Closed circuit television (CCTV)

- 3c.19 Proprietors of private hire vehicles are permitted to install closed circuit television (CCTV) systems providing such systems are installed in accordance with the appropriate legal framework and the Council has been notified, in writing, of their intention to do so. The relevant legislation must be adhered to.

Trailers

- 3c.20 Private hire vehicles licensed by the Council are permitted to tow trailers when undertaking the licensed activity providing that the conditions set out at **Appendix L** are complied with at all times.

Meters

- 3c.21 Private hire vehicles will not require a meter. However if a meter is fitted, it must be:
- certified by a notified body in accordance with the Measuring Instruments Directive (MID) (2004/22/EC), in particular Annex 007;
 - fitted with a device, the use/action of which will bring the taximeter into action and cause the word 'HIRED' to appear on the face of the taximeter and such a device must be capable of being locked in a position such that the machinery

of the taximeter is not in action and that no fare is recorded on the face of the taximeter;

- calibrated against an appropriate standard to ensure the tariff charged does not exceed the maximum fares agreed by the Council;
- calendar controlled
- fixed to the vehicle with appropriate seals/appliances to prevent any person from tampering with the meter except by breaking, damaging, or permanently displacing the seals/appliances; and
- have the word 'FARE' printed on the face of the meter in plain letters so as clearly to apply to the fare recorded thereon.

LPG converted vehicles

3c.22 The Council must be satisfied that any vehicle that has been converted to LPG has been converted correctly prior to a licence being issued. To this end, the Council will undertake checks with the UK LPG Vehicle Register.

3c.23 With respect to new applications, where it is established that a conversion has not been undertaken correctly and/or the vehicle is unsafe in any way, the Council will refuse the application.

3c.24 In the event that an LPG conversion has been undertaken on a vehicle during a current licenced period and the proprietor of the vehicle fails to notify the Council within 7 days of the conversion and provide the LPG Association Conversion Certificate, the Council will suspend the vehicle licence until such time as the certificate is produced. If the certificate is not produced within 28 days from the date the licence was suspended the Council will revoke the licence.

3c.25 In the case of a conversion that has been undertaken on a vehicle during a current licenced period and it is subsequently established that the conversion has not been undertaken correctly and/or the vehicle is unsafe in any way, the Council will suspend the licence until such time as the conversion has been undertaken correctly and/or it is demonstrated to the satisfaction of the Council that the vehicle is safe. If this does not occur within a period of 3 months from the date the licence was suspended the Council will revoke the licence.

Licence conditions

3c.26 The applicable conditions relevant to a private hire vehicle licence are set out at **Appendix D**. These conditions are in addition to any matters set out within the main body of the Policy.

Main legal requirements

3c.27 Change of proprietor

The proprietor must give notice to the Council of any transfer in his interest in the private hire vehicle to a person other than the proprietor whose name is specified in the licence. Such notice must be given, in writing, within 14 days specifying the name and address of the person to whom the vehicle has been transferred.

3c.28 Inspection

The proprietor must present their private hire vehicle for inspection/testing by the Council as required, up to a maximum of 3 times per year.

3c.29 The proprietor must provide, on request, the address where the private hire vehicle is kept and allow the Council to inspect/test the vehicle at that address.

3c.30 Accidents

The proprietor, notwithstanding their responsibilities under relevant road traffic legislation, must report to the Council any accident as soon as reasonably practicable. However, where the vehicle has suffered accident damage that materially affects the safety, performance or appearance of the vehicle, or the comfort or convenience of fare paying passengers, the driver must notify the Council within 72 hours.

3c.31 Production of documents

The proprietor must, on request, produce for inspection the private hire vehicle licence and insurance certificate within 7 days.

3c.32 Return of identification plate

Where a licence is revoked, suspended or expires, the proprietor, when required by the Council to do so must return the identification plate within 7 days.

3c.33 Transporting children

As a minimum, private hire vehicles must be capable of complying with the requirements set out in the table below.

	Front seat	Rear seat	Who is responsible?
Child up to 3 years	Correct child restraints must be used	Correct child restraint must be used. If a restraint is not available in a licensed hackney carriage or private hire vehicle, the child may travel unrestrained.	Driver
Child from 3rd birthday up to 135 cm in height or 12th birthday, whichever they reach first	Correct child restraints must be used	Where seat belts are fitted, the correct child restraint must be used. The child must use adult belt if the correct child restraint is not available as follows: in a licensed hackney carriage or private hire vehicle; or for a short distance in an unexpected necessity; or two occupied child restraints prevent fitting of a third. A child 3 years and over may travel unrestrained in the rear seat of a vehicle if seat belts are not fitted in the rear.	Driver
Child over 135 cm in height or 12 or 13 years old	Seat belt must be worn if available*	Seat belt must be worn if available.	Driver
Passengers aged 14 years and over	Seat belt must be worn if available*	Seat belt must be worn if available.	Passenger

*Vehicles built before 1965 are not required to have fitted seatbelts.

3c.34 Ranks/stands

3d. Private Hire Executive vehicles

- 3d.1 The Council will consider requests to licence a vehicle for Private Hire Vehicle Executive Plating. This is a licence that will allow for discreet plating but can only be used for trips of an executive nature and not for general private hire use.
- 3d.2 Vehicles must be pre-approved by an authorised officer and must be such, in the opinion of the licensing officer, of such quality and character to be considered an executive vehicle.
- 3d.3 The applicable conditions relevant to a private hire vehicle licence are set out at **Appendix E**. These conditions are in addition to any matters set out within the main body of the Policy.

3e. PRIVATE HIRE OPERATORS

Summary

3e.1 Private hire operators are licensed in accordance with the Local Government (Miscellaneous Provisions) Act 1976. Any person who wishes to take bookings, in the course of a business, for a private hire vehicle must hold a private hire operator licence.

Period of licence

3e.2 Operator licences will be issued for a period of 5 years.

Application process

3e.3 The application form must be fully completed and include all relevant information, supporting documentation and appropriate fee. If any part of the application form is incomplete or the relevant information or supporting documentation is not provided, the applicant will be requested to provide the missing information/documentation and informed that the application will not be processed until such time as all the information/documentation is provided. The full fee for the licence (including the cost of a DBS check, where appropriate) is payable at the time the application is submitted.

3e.4 The application process to licence a private hire operator is the same for a new or renewal application.

3e.5 Any person (including a sole trader, partnership or company) wishing to become a licensed private hire operator must submit:

- a completed application form (where the application relates to a partnership or a company, the application form must provide the name, address and date of birth of all partners, directors/company secretaries, as appropriate);
- the appropriate licence fee;
- a list of the vehicles and drivers which they operate

Criminal record disclosure

3e.6 In addition, all applicants (including sole traders, partnerships and companies) for a private hire operator's licence must prove that they are a fit and proper person to hold an operator's licence.

3e.7 Have a satisfactory enhanced DBS check

Enquiries may be made through Staffordshire Police (or other relevant force), other local authorities and any other organisation, agency or person that the Council has deemed appropriate to seek information from

3e.8 **N.B** For partnerships or companies, the above requirements apply to all partners and directors/company secretaries who are directly involved in the management of drivers. Where there is no direct involvement with the management of drivers, all partners and directors/company secretaries are required to provide a satisfactory basic criminal record disclosure from Disclosure Scotland. Applicants can apply to Disclosure Scotland online at www.disclosurescotland.co.uk or contact them by telephone on 0870 609 6006, by email at info@disclosurescotland.co.uk, by fax 0870 609 6996 or in writing to Disclosure Scotland at PO Box 250, Glasgow, G51 1YU.

3e.9 The Council adopts the same principles when determining whether an applicant is a fit and proper person to hold a private hire operator's licence as it does to persons applying for a drivers licence. In this respect, applicants are required to have due regard, as appropriate, to the requirements and information set out at paragraphs 3a.4 to 3a.16 of this guidance.

3e.10 Applicants must have a UK traceable DBS record of at least 5 years or if the applicant has not been resident in the UK for an unbroken period of at least 5 years have obtained a Certificate of Good Conduct from the Consulate of the applicant's country of origin. The Council may contact the relevant Embassy, High Commission, solicitor or other appropriate body to verify any documents provided. Proof of a right to work in the United Kingdom will also be required. Contact details for Embassies and High Commissions can be found from the Foreign & Commonwealth Office (FCO) on the GOV.UK website at <https://www.gov.uk/government/world>. The FCO may be contacted for further assistance by telephone on 020 7008 1500, by email at fcocorrespondence@fco.gov.uk or by post at the FCO, King Charles Street, London, SW1A 2AH.

Operator's premises

3e.11 The Council will not grant an operator's licence unless the operator can demonstrate to the Council that they have the appropriate planning consent required to operate their business.

3e.12 The Council will only grant operator licences applicable to the physical premises from which the operator's business will be run.

3e.13 The Council will not grant an operator's licence to apply to any physical premises that falls out of the administrative area of Tamworth Borough Council.

3e.14 There are a number of specific conditions set out in the operator licence conditions that apply to premises. Operators must be particularly mindful of complying with these and should they fail to do so the Council will consider revoking the operator's licence.

Insurance

3e.15 Any premises that provide access to members of the public must be covered by Public Liability insurance for a minimum of £5,000,000.

3e.16 The operator must also obtain information as to any requirement for them to have Employers Liability indemnity; if there is such a requirement, it must be for a minimum of £1,000,000.

Record keeping

3e.17 Operators must keep records in accordance with the conditions attached to their licence. Such records must be available upon request from an authorised officer of the Council or a police officer

Vehicle not fit for the conveyance of passengers

3d.18 Where an operator has notified the Council that damage has occurred to a vehicle, otherwise than by an accident that has led to the involvement of the relevant insurance company, or an inspection of the vehicle by an officer of the Council has determined that a vehicle is not fit for the purpose of conveying passengers, an

authorised officer of the Council will decide if the condition is such that the vehicle may continue in service or not. If not, the Council may at that time suspend the licence and require the proprietor of the vehicle to return the vehicle's plate to them 72 hours. The suspension will be lifted and the plate returned at such time when the condition of the vehicle is demonstrated, to the satisfaction of the Council, to be fit for conveying passengers. The officer may require the proprietor to arrange for a further MOT test to be undertaken and certificate produced before the vehicle will be permitted to operate; this is at the discretion of the authorised officer.

Closed circuit television (CCTV)

3e.19 Operators are permitted to install closed circuit television (CCTV) systems in premises to which the public have access to make bookings or to wait providing such systems are installed in accordance with the appropriate legal framework and the Council has been notified, in writing, of their intention to do so.

Licence conditions

3e.20 Applicable conditions relevant to a private hire operator licence are set out at **Appendix E**. These conditions are in addition to any matters set out within the main body of the Policy.

Main legal requirements

3e.21 Contract

Every contract for the hire of a private hire vehicle is deemed to be made with the operator who accepted the booking for that vehicle whether or not the operator provided the vehicle.

3e.22 Production of records/documents

Any records required to be retained in accordance with the licence must be produced, on request, to any authorised officer of the Council or to any police officer. The operator licence must also be produced if requested.

3e.23 Transporting children

As a minimum, operators must ensure the vehicles they operate are capable of complying with the requirements set out in the table below.

	Front seat	Rear seat	Who is responsible?
Child up to 3 years	Correct child restrains must be used	Correct child restraint must be used. If a restraint is not available in a licensed hackney carriage or private hire vehicle, the child may travel unrestrained.	Driver

<p>Child from 3rd birthday up to 135 cm in height or 12th birthday, whichever they reach first</p>	<p>Correct child restrains must be used</p>	<p>Where seat belts are fitted, the correct child restraint must be used. The child must use adult belt if the correct child restraint is not available as follows: in a licensed hackney carriage or private hire vehicle; or for a short distance in an unexpected necessity; or two occupied child restraints prevent fitting of a third.</p> <p>A child 3 years and over may travel unrestrained in the rear seat of a vehicle if seat belts are not fitted in the rear.</p>	<p>Driver</p>
<p>Child over 135 cm in height or 12 or 13 years old</p>	<p>Seat belt must be worn if available*</p>	<p>Seat belt must be worn if available.</p>	<p>Driver</p>
<p>Passengers aged 14 years and over</p>	<p>Seat belt must be worn if available*</p>	<p>Seat belt must be worn if available.</p>	<p>Passenger</p>

*Vehicles built before 1965 are not required to have fitted seatbelts.

PART 4 – COMPLIANCE, ENFORCEMENT AND COMPLAINTS

Summary

- 4.0 This part of the Policy sets out the manner in which the Council approaches compliance and enforcement, including the way in which complaints will be dealt with, as it relates to hackney carriage and private hire licensing.

Compliance and enforcement

- 4.1 The Council's licensing officers will work closely with the hackney carriage and private hire trades to achieve compliance with the relevant legislation and the Council's conditions of licence. The Council will do so in accordance with the Council's Enforcement Policy. In addition, hackney carriage and private hire vehicle drivers and operators must comply with all reasonable requests made by officers of Tamworth Borough Council and the police.
- 4.2 The Council will work closely with other enforcement authorities, particularly Staffordshire Police when dealing with licensed and unlicensed vehicles and drivers, especially concerning cross boundary related issues.

Complaints

- 4.3 Where appropriate, complainants will be encouraged to raise complaints with the relevant licence holder or business concerned. However, the Council will also respond to complaints in line with its Enforcement Policy and will use complaint information to assist in the determination of licensing decisions.

Part 5 - CONSULTATION

- 5.0 In determining this Guidance, the views of relevant stakeholders have been taken into consideration.
- 5.2 In order to deliver a transparent, accountable and efficient licensing service the Council is committed to ongoing communicating and consultation with all stakeholders. In particular, the Council welcomes the opportunity to communicate and consult with representatives of the hackney carriage and private hire trade to enable and encourage the exchange of views and information in relation to the Guidance, conditions, changes in the law and reviews. The specific methods to achieve this communication and consultation will be determined as required.
- 5.3 The views of relevant stakeholders will be considered in any major changes to this guidance.

PART 6 – LICENSING CONTACT DETAILS

Contact details

For information, advice and guidance relating to hackney carriage and private hire licensing please contact:

Tamworth Borough Council
Marmion House
Lichfield Street
Tamworth
Staffordshire
B79 7BZ

Telephone: 01827 709445

Email: general email: publicprotection@tamworth.gov.uk

www.tamworth.gov.uk

Tamworth Borough Council is open
Monday - Thursday 8.45am - 5.10pm
Friday - 8.45am - 5.05pm

CHILD SEXUAL EXPLOITATION AND TRAFFICKING OF CHILDREN AND YOUNG PEOPLE

Introduction

- A1.0 Set out below is information for hackney carriage and private hire vehicle drivers and operators to help them report, to the relevant authorities, matters of concern that could relate to the safety of children in relation to child sexual exploitation and trafficking.

General information

- A1.1 Tamworth Borough Council's Licensing Service is helping to tackle child sexual exploitation and trafficking by working together with key partners particularly Staffordshire Police, Children and Adult Services within the County Council and the Staffordshire Safeguarding Children Board.
- A1.2 Through agencies working together and sharing information, we aim to identify and prevent sexual exploitation, disrupt the activities of perpetrators, protect children and young people and prosecute perpetrators of sexual exploitation. Sharing information with Staffordshire Police and Staffordshire Children Social Care First Response Service helps to protect young people from harm. Safeguarding children and young people is everyone's business and everyone's responsibility.
- A1.3 Child sexual exploitation is a crime that can affect any child, anytime, anywhere regardless of their social or ethnic background. Sexual exploitation of children and young people involves exploitative situations, contexts and relationships where young people (or a third person or persons) receive something, e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money, etc. as a result of them performing, and/or another or others performing on them, sexual activities. Violence, coercion and intimidation are commonly involved in such exploitative relationships.
- A1.4 Child sexual exploitation involves perpetrators grooming children and using their powers to sexually abuse them. Sexual exploitation of children and young people can take many forms, whether it occurs through a seemingly 'consensual' relationship with an older boyfriend, or a young person having sex in return for attention, gifts, alcohol or cigarettes. Child sexual exploitation does not always involve physical contact; it can also occur through the use of technology.

How hackney carriage and private hire vehicle drivers and private hire operators can help tackle child sexual exploitation.

- A1.5 Drivers of hackney carriages and private hire vehicles as well as private hire operators are in a good position to help identify victims of sexual exploitation because, through the transport services they provide, drivers and operators regularly come into contact with children and young people. This means that licenced drivers and private hire operators are in an ideal position to help protect young people. In particular, drivers should ask themselves the following questions when picking up a fare:

- Does your customer appear to be under 18 years old?
- Are they with a much older person and appear to be in a relationship?
- Do you think that they are under the influence of alcohol or drugs?
- Are you taking them to a hotel, party or secluded location? If so, ask yourself why?
- Are children/young people being taken regularly to the same localities? If so, ask yourself why?

A1.6 If the answers to any of the questions above gives you even the slightest cause for concern, these concerns should be reported in accordance with the relevant provisions relating to the ‘Safety of children and adults at risk’ detailed in the Council’s Hackney Carriage and Private Hire Licensing Guidance.

A1.7 If you have reason to suspect that a child is being abused or at risk of abuse it is your responsibility to report your concerns and share information with Staffordshire Police (Tel: 101) and Staffordshire Children Social Care First Response Service (Tel: 08001313126).

A1.8 If a child is in immediate danger phone 999

A1.9 Further information about Safeguarding Children can be found at:

<http://www.staffsscb.org.uk/Home.aspx>

HACKNEY CARRIAGE/PRIVATE HIRE VEHICLE DRIVERS LICENCE - CONDITIONS OF LICENCE

General

- B1.0 The list of conditions set out below is not finite. Additional information regarding all aspects of driver licensing is available in Tamworth Borough Council's Hackney Carriage and Private Hire Licensing Policy. The Policy must be read in conjunction with the specific conditions set out below. Any legal requirements that apply to the operation of a driver's licence are regarded as if they are conditions of the licence, whether specifically listed or referred to below or in the policy or not. Where reference is made to legal requirements either in the conditions below or in the Council's policy, drivers are advised that such references are not exhaustive and it is the driver's responsibility to ensure they are fully aware of all relevant legal requirements with which they must comply.
- B1.1 All references to 'driver' in the conditions set out below mean a driver who holds a driver's licence issued by the Council in accordance with the Council's Hackney Carriage and Private Hire Licensing Policy and relevant legislation.

Fit and proper person

- B1.2 Throughout the currency of the licence, the driver must continue to be a fit and proper person to hold the licence. In this respect, the driver must have due regard to the relevant provisions of the Council's policy, be aware of the checks that will be undertaken by the Council and act in accordance with the responsibilities that being a fit and proper person would reasonably place on a licensed driver.
- B1.3 In particular, during the currency of a licence, the driver must notify the Council, in writing, within 72 hours, if:
- They receive any warnings, cautions, fixed penalties or driving endorsements;
 - Are arrested (whether or not charged with an offence);
 - Are charged with any criminal offence;
 - Are convicted of any criminal offence; or
 - Allegations are made of their involvement in criminal activity.

Driver's badge and licence

- B1.4 Loss of a driver's badge must be reported immediately to the Council and the local police. An incident number must be obtained from the police and the number given to the Council. The driver must immediately obtain a new driver's badge from the Council for which a fee will be charged. If the original badge is then found, it must be returned to the Council.
- B1.5 Drivers must display a photocopy of their driver's badge, issued by the Council, on the inside of the windscreen of the vehicle (where the tax disc used to appear) so as to be plainly visible at all times to fare paying passengers.

Insurance

- B1.6 It is the responsibility of a driver with a drivers licence to ensure they are correctly insured to drive the vehicle.

Conduct

- B1.7 The driver MUST, at all times, when driving a hackney carriage or private hire vehicle:

- Wear their driver's badge around their neck using the council issued lanyard and badge holder ensuring that their photograph and licence details are visible.
- Be clean and respectable in their dress and person and maintain a high standard of personal hygiene.
- Behave in a civil and orderly manner towards all persons including, but not limited to, other road users, pedestrians, customers, the general public, other licensed operators and drivers of hackney carriage and private hire vehicles, police officers, officers and elected members of the Council.
- Be courteous to passengers, e.g. greeting passengers and opening vehicle doors on behalf of passengers.
- Take all reasonable steps to assist passengers when they are entering or alighting from the vehicle and to convey them, subject to any instructions given by them, to their destination by the shortest practicable route and to ensure their safety.
- When requested to do so by a passenger, convey a reasonable amount of luggage and afford reasonable assistance in the loading and unloading of any luggage.
- When, having agreed or been hired to attend a specific location at an appointed time with their vehicle, unless delayed/prevented from doing so by some sufficient/reasonable cause, punctually attend at such appointed time and place.
- Show due consideration when driving through residential areas.

- B1.8 The driver MUST NOT, at any time, when driving a hackney carriage or private hire vehicle:

- Use offensive, abusive, profane or insulting language or behaviour.
- Smoke or permit passengers to smoke in their vehicle.
- Without the express permission of the hirer, eat or drink in the vehicle. (Drivers are only permitted to eat or drink in a vehicle when the vehicle is stationary.)
- Cause or permit sound emitted from any radio/sound reproducing instrument or equipment in the vehicle to be an annoyance/nuisance to any person, whether inside or outside the vehicle.

- Sound their vehicle's horn to alert passengers of the vehicle's arrival.
- permit persons to be carried in the vehicle unless they have the consent from the person who is actually hiring the vehicle.
- allow any persons to drive a vehicle unless they are authorised to do so by the proprietor and hold an appropriate license to do so.
- leave their vehicle unattended in any street or public place or venue.
- obstruct other drivers/vehicles from undertaking their normal hiring and driving activities.

Animals

- B1.9 When driving a hackney carriage or private hire vehicle, a driver must not carry any animal belonging to them, the proprietor or operator of the vehicle or in their custody whilst fare paying passengers are being conveyed in the vehicle.
- B1.10 In general the transportation of animals belonging to or in the custody of any fare paying passengers is permitted at the discretion of the vehicle owner/company and if undertaken must be in the rear of the vehicle in the foot well or floor pan of the vehicle.
- B1.11 However, assistance dogs (unless the driver holds a medical exemption) **MUST** be transported when requested by a passenger. Drivers **MUST NOT** impose a charge for carrying assistance dogs. Assistance dogs may be permitted to travel in the front of the vehicle.

Medical exemption

- B1.12 Where a driver is exempt on medical grounds from carrying wheelchair bound passengers or assistance dogs, they must carry the Council issued letter confirming the exemption in the vehicle at all times.

Change of particulars

- B1.13 The driver must notify the Council, in writing, of any change of particulars which may occur during the currency of their licence, including any change of address or change of employer/operator. Any such change must be notified within 14 days. Where a change of address occurs, the driver must also amend the address on their driving licence and produce their driving licence showing the new address to the Council within 7 days of receipt from the issuing body, e.g. DVLA. Both the paper and the plastic photo card licence must be produced.

Roof signs

- B1.14 The driver of a hackney carriage must ensure that the roof signs are maintained and kept in such condition that the information is clearly visible to public view at all times and that the light in the sign is connected to the meter switch such that the light is switched on when the hackney carriage is available for hire and switched off when the hackney carriage is not available for hire.

Passengers

B1.15 The driver must not convey or permit to be conveyed in a licensed hackney carriage or private hire vehicle a greater number of passengers than the number prescribed in the relevant vehicle licence.

B1.16 The driver of the licensed vehicle must only carry one person in the front of the vehicle beside the driver unless the vehicle has been specifically designed to carry more.

Transporting children

B1.17 Drivers must inform parents/carers that the decision to permit children to travel in the vehicle, without the correctly sized seat restraints (as permitted by relevant legislation) and with the obvious risks associated with such an action, remains with the parent/carer responsible for the children and not with the driver of the vehicle.

Lost property

B1.18 After fare passengers have alighted from the hackney carriage or private hire vehicle, the driver must, as soon as is practicable, search the vehicle for any property which may have been left. Where such property is found and irrespective of the value, the driver must, if it has not been claimed by or on behalf of the passenger (or their representative) who left it within 24 hours, hand it, in the case of a private hire driver to their operator or in the case of a hackney carriage driver directly to a police station as soon as is practicable.

Parking between bookings

B1.19 Where drivers are driving in the Council's area, they must as soon as they have dropped passengers at their required destination and unless prevented from doing so by another booking, return to a suitably safe place to park.

Meters

B1.20 Where taximeters are fitted to vehicles, the driver must not cause the fare recorded thereon to be cancelled or concealed until the hirer has had an opportunity to examine the meter and has paid the fare (or credit has been given).

B1.21 The driver must ensure:

- the meter is sufficiently illuminated so that when it is in use it is visible to all passengers;
- the meter is used for the whole of any journey;
- the fare or charge is calculated from the point at which the hirer commences the journey and does not exceed that displayed on the meter on the completion of such journey;
- the meter is only brought into action at the commencement of the hirer's journey; and
- the correct tariff for that journey is displayed.

Fares

- B1.22 The driver must not demand from the hirer a fare in excess of any fare previously agreed between the operator and the hirer, or if the vehicle is fitted with a taximeter and no previous agreement as to the fare, the fare shown on the face of the taximeter.
- B1.23 The driver must, if requested by a fare paying passenger, provide a written receipt for any fare paid.

Identification plates

- B1.24 Drivers must not cause or suffer any vehicle plate to be concealed from public view whilst the vehicle is being used for hackney carriage or private hire purposes.

Condition of vehicle

- B1.25 A driver must not drive a licensed vehicle if he has reason to believe that the vehicle is in an unsafe, dangerous or illegal condition. He is advised to inform the operator or proprietor of the vehicle immediately of any defect arising in the vehicle whilst under his control.

Accidents

- B1.26 The driver must, notwithstanding their responsibilities under relevant road traffic legislation, report to the operator or proprietor any accident involving a hackney carriage or private hire vehicle under their control as soon as is practicable. However, where the vehicle has suffered accident damage that materially affects the performance or appearance of the vehicle, or the comfort or convenience of fare paying passengers, the driver must notify the operator or proprietor within 72 hours.

Complaints

- B1.27 A driver must advise passengers of their right to refer any complaint to the Council.

HACKNEY CARRIAGE LICENCE – CONDITIONS OF LICENCE

Council's Vehicle Licensing Criteria

C1.0 All vehicles presented for licensing as hackney carriages must be purpose built wheelchair accessible London type cabs which comply with the specifications of the Public Carriage Office of the Metropolitan Police.

Conditions of Licence

C1.2 Requirements of the Hackney Carriage Byelaws, the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.

C1.3 Hackney Carriage Byelaws

1 Throughout these byelaws "the Council" means the Mayor Aldermen and Burgesses of the Borough of Tamworth, acting by the Council, and "the district" means the Borough of Tamworth.

2.

a) The proprietor of a hackney carriage shall cause the number of the licence granted to him in respect of the carriage to be legibly painted or marked on the outside and inside of the carriage, or on plates affixed thereto. (Plate provided for outside and Tariff Card provided for inside).

b) A proprietor of a hackney carriage shall:

not wilfully or negligently cause or suffer any such number to be concealed from public view while the carriage is standing or plying for hire;

not cause or permit the carriage to stand or ply for hire with any such painting, marking or plate so defaced that any figure or material particular is illegible.

3. The proprietor of a hackney carriage shall:

provide sufficient means by which any person in the carriage may communicate with the driver;

cause the roof or covering to be kept water tight;

provide any necessary windows and a means of opening and closing with not less than one window on each side;

cause the seats to be properly cushioned or covered;

cause the floor to be provided with a proper carpet, mat, or other suitable covering;

cause the fittings and furniture generally to be kept in a clean condition well maintained and in every way fit for public service;

provide means of securing luggage if the carriage is so constructed as to carry luggage;

provide an efficient fire extinguisher which shall be carried in such a position as to be readily available for use;

provide at least two doors for the use of persons conveyed in such carriage and a separate means of ingress and egress for the driver;

cause the carriage to be fitted with a "TAXI" sign which shall be capable of illumination and which shall be illuminated during the hours of darkness only when the carriage is standing or plying for hire within the Borough. For the purpose of this Byelaw "the hours of darkness" shall be the hours in which lighting up times operate in the Borough. The sign shall be attached to the roof or rack, and be of overall size not less than 9 inches long and 4 inches high and showing the work "TAXI" to the front of the carriage in letters not less than 3 inches high and of proportionate width;

cause the carriage to be fitted with an interior light of sufficient brightness to reasonably illuminate the interior of the carriage;

cause the carriage to be provided with a spare wheel and tyre in such a condition that it is readily available for use in the case of a punctured or damaged tyre or wheel together with all the necessary tools and equipment for readily effecting the replacement.

- 4 The proprietor of a hackney carriage shall cause any taximeter with which the carriage is provided to be so constructed, attached and maintained as to comply with the following requirements, that is to say:
- a) the taximeter shall be fitted with a key, flag or other device the turning of which will bring the machinery of the taximeter into action and cause the work "HIRED" to appear on the face of the taximeter;
 - b) such key, flag, or other device shall be capable of being locked in such a position that the machinery of the taximeter is not in action and that no fare is recorded on the face of the taximeter;
 - c) when the machinery of the taximeter is in action there shall be recorded on the face of the taximeter in clearly legible figures a fare not exceeding the rate or fare which the proprietor or driver is entitled to demand and take for the hire of the carriage by distance in pursuance of the byelaw in that behalf;
 - d) the word "FARE" shall be printed on the face of the taximeter in plain letters so as clearly to apply to the fare recorded thereon;
 - e) the taximeter shall be so placed that all letters and figures on the face thereof are at all times plainly visible to any person being conveyed in the carriage, and for that purpose the letters and figures shall be capable of being suitably illuminated during any period of hiring;
 - f) the taximeter and all the fittings thereof shall be so affixed to the carriage with seals or other appliances that it shall not be

practicable for any person to tamper with them except by breaking, damaging or permanently displacing the seals or other appliances.

5. A proprietor of a hackney carriage shall not tamper with or permit any person to tamper with any taximeter with which the carriage is provided, with the fittings thereof, or with the seals affixed thereto.
6. A proprietor of a hackney carriage, when standing or plying for hire, shall not, by calling out or otherwise, importune any person to hire such carriage and shall not make use of the services of any other person for the purpose.
7. The proprietor of a hackney carriage who has agreed or has been hired to be in attendance with the carriage at an appointed time and place, shall unless delayed or prevented by some sufficient cause, punctually attend with such carriage at such appointed time and place.
8. A proprietor of a hackney carriage shall not convey or permit to be conveyed in such carriage any greater number of persons than the number of persons determined by the Council and specified on the plate attached to the outside of the carriage.
9. Every proprietor of a hackney carriage who knowingly conveys in the carriage the dead body of any person shall immediately thereafter notify the fact to the Medical Officer of Health/Consultant for Communicable Disease Control via Tamworth Borough Council.
10. The Proprietor of a hackney carriage shall not permit the exhibition of any advertisement in or upon such carriage, unless it shall have been previously approved by the Council.
11. The proprietor or driver of a hackney carriage shall be entitled to demand and take for the hire of the carriage the rate of fare prescribed by the Council in accordance with Section 65 of the Local Government (Miscellaneous Provisions) Act 1976 the rate or fare being calculated by distance unless the hirer expresses at the commencement of the hiring his desire to engage by time.

Where a hackney carriage furnished with a taximeter is hired by distance the proprietor shall not be entitled to demand and take a fare greater than that recorded on the face of the taximeter, save for any extra charges authorised by the Council which it may not be possible to record on the face of the taximeter.

12.
 - a) The proprietor of a hackney carriage shall cause a statement of the fares fixed by the byelaw in that behalf to be exhibited inside the carriage, in clearly distinguishable letters and figures.
 - b) The proprietor of a hackney carriage bearing a statement of fares in accordance with this byelaw shall not wilfully or negligently cause or suffer the letters or figures in the statement to be concealed or rendered illegible at any time while the carriage is plying or being used for hire.

13. The proprietor or driver of a hackney carriage shall immediately after the termination of any hiring or as soon as practicable thereafter carefully search the carriage for any property which may have been accidentally left therein.
14. The proprietor or driver of a hackney carriage shall, if any property accidentally left therein by any person who may have been conveyed in the carriage be found by or handed to him:
 - a) carry it as soon as possible and in any event within 48 hours if not sooner claimed by or on behalf of its owner, to the office of the Council, and leave it in the custody of the officer in charge on his giving a receipt for it;
 - b) be entitled to receive from any person to whom the property shall be re-delivered an amount equal to five pence in the pound of its estimated value (or the fare for the distance from the place of finding to the office of the Council, whichever be the greater) but not more than five pounds.

Penalties

- C1.4 Any person contravening the byelaws shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale and in the case of a continuing offence to a further fine of two pounds for each day after written notification of the offence has been given by the Council.

Requirement of the Town Police Clauses Act 1847

Employment of Unlicensed Drivers

- C1.5 The licensee may not employ to drive the licensed vehicle any person who does not have a current hackney carriage driver's licence issued by Tamworth Borough Council.

Notification of Change of Address

- C1.6 The licensee shall notify the Council of any change in address during the currency of the licence and shall return the licence to the Offices of the Council for endorsement with the new particulars of address.

Retention of Driver's Licence by Proprietor

- C1.7 The licensee shall retain the hackney driver's licence of any person employed to drive the licensed vehicle for such time as that driver is so employed and upon termination of that employment it shall be returned to him.

Suspension of Licence

- C1.8 The proprietor shall not permit the vehicle to be used as a hackney carriage at any time whilst the licence is suspended or at any time whilst the vehicle's hackney licence plate is not displayed on the vehicle.

Demanding more than the Agreed Fare

- C1.9 A proprietor who by prior arrangement with the hirer agrees to carry out any hiring for less than the rate of fare prescribed by the Council shall not demand more than the agreed fare.

Agreements to Carry Passengers a Discretionary Distance for a Fixed Sum

- C1.10 If the proprietor agrees to carry a hirer a distance at the discretion of the proprietor, for a fixed sum, the proprietor is not permitted to carry the hirer for a distance less than the hirer should have been entitled to travel according to the rates prescribed by the Council, for the sum agreed.

Penalty for Overcharging

- C1.11 Any proprietor convicted of taking from a hirer more than the rate of fare prescribed by the Council shall be liable to a penalty not exceeding level 3 on the standard scale.

Persons Riding with the Consent of the Hirer

- C1.12 The proprietor may not allow any person to ride in the carriage without the consent of the hirer.

Requirements of the Local Government (Miscellaneous Provisions) Act 1976

Transfer of Vehicle

- C1.13 If the licensee transfers his interest in a licensed vehicle to another person he shall within 14 days give notice in writing of the transfer to the Council, specifying the name and address of the person to whom the vehicle has been transferred.

Testing of the Vehicle

- C1.14 The licensee shall present the licensed vehicle for testing at such time and place as may be reasonably required on up to three occasions during any period of 12 months.

Return of Vehicle Identity Plate

- C1.15 On the revocation, expiry or suspension of the vehicle licence, the licence and identification plates provided by the Council shall be returned to the Council within 7 days of the receipt of the request for such return.

Conditions of Licence made under Section 47 Local Government (Miscellaneous Provisions) Act 1976

Vehicle Insurance

- C1.16 The licensee shall notify the Council of any change of details of insurance cover for the vehicle during the currency of the licence.

C1.17 The licensee shall produce to the Council evidence of renewal and continuity of insurance cover throughout the term of the licence.

Accidents

C1.18 All accidents in which the vehicle is involved of any nature, whether resulting in personal injury or damage to the licensed vehicle or not, shall be notified to the Council, on the accident report form provided on request by the Council, within 72 hours of such accident.

Licence Plates

C1.19 The licensed vehicle shall be fitted with the Council licence plate which is to be affixed to the rear of the vehicle at or above bumper height in a vertical plane at or as close to as is practicable the centre line of the vehicle. The plate shall not be in any way obscured by the fitting of a towing bracket, tow ball or any other equipment.

Cleanliness and Safety of the Vehicle

C1.20 The vehicle proprietor shall

- a) Ensure that the external coachwork of the vehicle is maintained at all times in a clean condition and in good repair and free from rust.
- b) Ensure that all fire extinguishers provided in accordance with the byelaws shall be of the general purpose dry powder type with a minimum capacity of 0.9kg to BS EN3 2009.

(Note: Existing extinguishers provided on vehicles currently licensed may be continued to be carried until used or considered no longer serviceable when they must be replaced with one in accordance with the above specification).

- c) Provide and maintain in the vehicle a suitable first aid box the contents of which must be as follows:

CONTENTS	
Guidance Leaflet on First Aid	1
Sterile Elastoplast Dressings Assorted	20
Sterile Triangular Bandage - 90cm x 127 cm	2
Safety Pins	6
Sterile Lint Dressings - BPC No 8 Medium	1
Sterile Lint Dressings - BPC No 9 Large	1
Moist Cleansing Wipes	10
Scissors, Blunt Ended	1
Elastoplast Dressing Strip - 6.3cm x 15cm	1
First Aid Windscreen Sticker	1

The box must be carried in such a position as to be readily visible and available for immediate use.

Interior Identification Sign

C1.21 The licensee shall ensure that the interior notice provided by the Council on which is shown the licence number and seating capacity of the vehicle is at all times displayed in a conspicuous position inside the vehicle.

Citizens Band Radios etc

C1.22 The proprietor shall not permit any radio communications equipment to be fitted in the vehicle other than the apparatus which may be fitted so as to enable the vehicle driver to communicate with the vehicle operating base. In particular the vehicle may not be fitted with a Citizens Band radio and no driver may use such a radio in the licensed vehicle.

Vehicle Specification

C1.23 The licensee shall not during the currency of the licence alter the specification, design or appearance of the vehicle without the prior consent of the Council's authorised officer.

Convictions to Licensees

C1.24 The licensee shall notify the Council of any convictions under the Town Police Clauses Act 1847, The Local Government (Miscellaneous Provisions) Act 1976 or the Road Traffic Acts in relation to Hackney Carriages or involving dishonesty.

The notification which shall be in writing shall include:

- a. Date of Conviction
- b. Court where case heard
- c. Nature of Offence
- d. Penalty imposed

and shall be given to the Council within 7 days of such conviction.

Notices

C1.25 Any notices or notifications required to be given to the Council in accordance with these conditions of licence or required by the Local (Government) Miscellaneous Provisions Act 1976 shall be in writing and handed personally to an officer of the Council at the Ground Floor Reception, Marmion House, Lichfield Street, Tamworth B79 7BZ or left deposited in the Council's official letterbox at that address within the time stated.

Exceptional Age Policy

C1.26 Hackney Carriages vehicles licensed by Tamworth Borough Council can continue to have their licenses renewed until they reach 12 years of age from the date of registration.

C1.27 Private Hire vehicles licensed by Tamworth Borough Council can continue to have their licenses renewed until they reach 8 years of age from the date of registration

C1.28 If the licence holder wishes to continue to renew the vehicle licence after its standard working life then application can be made for an annual extension to the licence as follows:

- a. The owner of a hackney carriage or private hire vehicle whose vehicle is approaching 12 years or 8 years of age respectively will be required to notify the Licensing Authority in writing at the time of making an application for the grant of a licence that they wish to extend the operating life of their existing vehicle by twelve months in accordance with the Exceptional Vehicle Age Policy.
- b. In subsequent years the owner of a hackney carriage or private hire vehicle, who has been granted a licence in accordance with the Exceptional Vehicle Age Policy at the last date of licensing, shall notify the Licensing Authority at least six months prior to submitting a renewal application, that he intends to seek a further extension to the operating life of the vehicle. Any failure to provide such notification to the Licensing Authority will exclude the vehicle from being considered under this policy.
- c. The examination and inspection of any vehicle in accordance with this policy shall take place on the second scheduled test date preceding the renewal date for the vehicle's licence. This applies to initial requests for consideration under this policy and all subsequent requests.
- d. The criteria detailed below are in addition to all current vehicle test criteria requirements.
- e. The Licensing Authority's test station shall be authorised to examine and approve the vehicle's mechanical condition in accordance with this policy.
- f. A duly authorised officer of the Licensing Authority or its nominee will undertake an inspection of the vehicle to assess its general condition and appearance in accordance with the criteria detailed below: -

C1.29 Criteria

- a) The vehicle must have a full, unbroken, continuous history of testing for its Certificate of Fitness
- b) In order for a vehicle to be considered suitable for an operating extension under this policy it must have successfully passed two of its last three fitness tests on first submission in the twelve months preceding the second scheduled test date.

- c) The bodywork of the vehicle must be in near perfect condition with no substantial dents, damage or corrosion being evident.
- d) Paintwork should be unblemished and have a good overall colour match.
- e) The interior and exterior trim must be complete.
- f) All interior fittings must be in place and working.
- g) No excessive loose wiring should be evident hanging from the dashboard.
- h) All carpets, where provided, must be in a clean well-fitted and secure state with no unduly worn areas.
- i) The boot and luggage compartment must be clean, uncluttered and watertight.
- j) There shall be no evidence of leakage of fuel from the vehicles fuel filler cap.

PRIVATE HIRE VEHICLE LICENCE - CONDITIONS OF LICENCE

General

- D1.0 The list of conditions set out below is not finite. Additional information regarding all aspects of private hire licensing is available in the Council's Hackney Carriage and Private Hire Licensing Policy and this must be read in conjunction with the specific conditions set out below. Any legal requirements that apply to the operation of a private hire licence are regarded as if they are conditions of the licence, whether specifically listed below or in the policy or not. Where reference is made to legal requirements either in the conditions below or in the Council's policy, proprietors are advised that such references are not exhaustive and it is the proprietor's responsibility to ensure they are fully aware of all relevant legal requirements with which they must comply.

Test requirements

- D1.2 All vehicles must meet the Council's safety and fitness test requirements. Where a vehicle is the subject of any test during the application process or during the currency of any licence and it is determined that the vehicle is not fit for the purpose of conveying passengers the proprietor must notify the Council as soon as is reasonably practicable, and in any case within 72 hours of the occurrence.

LPG converted vehicles

- D1.3 The proprietor must notify the Council, within 7 days, of any LPG conversion and provide the LPG Association Conversion certificate.

External vehicle licence plates

- D1.4 The external plates (front and rear) identifying the vehicle as a private hire vehicle as issued by the Council and required to be exhibited on the vehicle pursuant to Section 47 of the Local Government (Miscellaneous Provisions) Act 1976 shall be:

- securely fixed to the outside front and rear of the vehicle in a conspicuous position;
- maintained, kept clean and in such a condition that the information on the plates is clearly visible to the public at all times;
- displayed at all times and in such a manner as to be easily removable by an authorised officer of the Council or a police officer;
- returned to the Council within 7 days of revocation or expiry (if not renewed) of the vehicle's licence; where the licence is suspended, be returned if required.

- D1.5 **AND** at no time, during the currency of the vehicle licence, is it permitted for the licence plates to be removed from the licensed vehicle.

- D1.6 Any existing licence plates must be returned to the Council before new licence plates for a vehicle will be issued, **Page 105** in licences transfers.

Internal signage

D1.7 Tariff Card

The tariff card must be displayed in a prominent position so that it can be easily viewed by passengers.

D1.8 Interior markings

The proprietor must clearly mark and maintain inside the vehicle, in such a position as to be clearly visible at all times a no smoking sign.

D1.9 In addition a drivers badge must displayed in a prominent position so that it can be easily viewed by passengers.

Advertising

D1.10 Proprietors must obtain approval from the Council prior to carrying advertisements on their private hire vehicle.

D1.11 Materials that are used for advertisements must be of a quality not easily defaced, soiled or detached.

D1.12 Reflective material must not be used.

D1.13 Advertising signs must not be illuminated.

D1.14 Advertisements may be affixed directly onto the exterior and/or internal body of the vehicle in such a position as not to obscure Council issued plates and all other required signs.

D1.15 Advertisements must comply with the relevant conditions set out in the Council's Policy.

D1.16 Private hire vehicles are prohibited from displaying the words 'taxi' or 'cab' in the singular or plural or the word 'hire' unless the word 'hire' forms part of the relevant company name or any word or similar meaning or appearance to any of these words, whether alone or as part of another word.

Closed circuit television (CCTV)

D1.17 Proprietors wishing to install closed circuit television (CCTV) in their private hire vehicle, must notify the Council, in writing, of their intention to do so.

D1.18 The CCTV system must be installed in accordance with the appropriate legal framework.

Trailers

D1.19 Proprietors must ensure any trailer:

- is inspected annually with the vehicle to which it relates;
- has a plate that relates to the towing vehicle(s); and
- complies with the relevant conditions set out in the Council's Policy.

Meters

D1.20 Whilst the fitting of meters is not mandatory in private hire vehicles, if meters are fitted, then the following conditions apply:

- When the machinery of the meter is in action there must be recorded on the face of the meter in figures clearly legible and free from ambiguity, a fare not exceeding the rate of fare which the proprietor or driver is entitled to demand and take for the hire of the vehicle by distance.
- The meter must be so placed that all the letters and figures on the face thereof shall be at all times plainly visible to any person being conveyed in the vehicle and for that purpose the letters and figures must be capable of being illuminated during any period of hiring.
- The meter must be set to reflect the current table of fares approved by the Council, or to an alternative table of fares that is in all cases lower than the Council approved table. Where the meter is set to an alternative table that table must be prominently displayed in addition to the approved table. A lesser fare than that shown on the taximeter at the end of a journey may be charged.
- When hired, a meter must be used for the whole of any journey.

Signs

D1.21 Private hire vehicles must not display a roof sign.

D1.22 All vehicles must display Council issued signs (side plates) on the upper portion of the front driver door and the front passenger door of the vehicle using the adhesive backed signs provided. These signs will carry the Council logo, PHV licence number and the words 'Prebooked Only'. The signs must be kept intact, clean and firmly attached to the vehicle doors as described above. The use of magnetic panels is prohibited. The removal of the signs is prohibited whilst the vehicle is licensed by Tamworth Borough Council. In the event that a side plate is lost it is the responsibility of the proprietor of the vehicle to notify the Council within 72 hours and to obtain a replacement sign.

Change of proprietor/address

D1.23 Any change in the proprietor of a private hire vehicle or the proprietor's address must be notified to the Council, in writing, during the period of the licence within 7 days of such change taking place by the proprietor.

MOT

D1.24 The vehicle must have a valid MOT throughout the licence period.

Insurance

D1.25 Satisfactory evidence must be produced that there is in force, for the use of the vehicle, a policy of insurance covering the carriage of passengers for hire or reward or such security as complies with the requirements of Part VI of the Road Traffic Act 1988.

D1.26 The proprietor must ensure that at all times a list is maintained of all licensed drivers authorised under the policy to drive the vehicle and must make such a list available to an authorised officer of the Council or a police officer at all reasonable times, when so required.

Vehicle Excise Duty (Road Tax)

D1.27 The vehicle must have valid Road Tax throughout the licence period.

Alterations to vehicles

D1.28 No material alteration or change in the mechanical or structural specification, design, condition or appearance of the vehicle is permitted without the written approval of the Council.

Damage to vehicles

D1.29 Notification must be given by the proprietor to the Council as soon as reasonably practicable and in any case within 72 hours of the occurrence of any accident/damage to the vehicle that materially affects the safety, performance or appearance of the vehicle, or the comfort or convenience of persons carried therein.

Inspection/examination

D1.30 The proprietor must permit any authorised officer of the Council or any police officer, at all reasonable times, to inspect and examine the vehicle and to request driver identification and insurance details. A drivers badge, certificate of insurance and MOT must be produced either during the inspection/examination or to an officer of the Council or police officer within 5 days.

Convictions

D1.31 The proprietor or where the proprietor is a partnership or a company, all partners or directors/company secretaries, as appropriate, during the period of the licence must, within 72 hours, disclose to the Council, in writing, if:

- They receive any warnings, cautions, fixed penalties or driving endorsements;
- Are arrested (whether or not charged with an offence);
- Are charged with any criminal offence;
- Are convicted of any criminal offence; or
- Allegations are made of their involvement in criminal activity.

Private Hire Vehicle – Executive Vehicle Supplementary conditions of Licence

Introduction

- E1.1 The Private Hire Vehicle Executive Licence, is granted subject to complying with the following conditions of licence in addition to the standard private hire vehicle conditions.
- E1.2 The 'Licence Holder' is the proprietor of the vehicle.
- E1.3 All references to the "Council" in these conditions mean Tamworth Borough Council, Marmion House, Lichfield Street, Tamworth, Staffordshire, B79 7BZ.

Type of Work

- E1.4 Once a vehicle has been licenced as a Private Hire Executive Licence the vehicle can only be used for work of an Executive nature and not for day to day local usage. The proprietor must be able to produce, when requested by the Licensing Office, information on bookings taken. The Licensing Officer will have the right to remove the Executive Licence and revert it to a normal Private Hire Licence if booking information is supplied on request or it is not felt that at least 90% of work undertaken is of an executive nature.

Vehicle Type

- E1.5 Only vehicles pre-approved by the Licensing Officer will be accepted as executive vehicles.
- E1.6 Executive Vehicles must be, in the opinion of the licensing officer, of such quality and character as to be considered as an executive vehicle.

Seating

- E1.7 Vehicles will be licensed for a maximum of 8 passengers only, regardless of the number of seats available within the vehicle. Proprietors of such vehicles must sign a declaration that they are aware that their vehicle is only licensed for 8 passengers and agree to ensure that no more than 8 people are carried under any circumstances.
- E1.8 Seating must have adequate dimensions and leg room in the opinion of the licensing officer.
- E1.9 On L-shaped seats, only one seat on the right angled corner will be accepted.

Vehicle Testing

- E1.10 All Executive Vehicles under the age of 4 years will attend two vehicle compliance checks per year and one licensing officer check.
- E1.11 All Executive Vehicles over the age of 4 years will attend three vehicle compliance checks per year and one licensing officer check.
- E1.12 Vehicle compliance checks will take place at Tamworth Borough Council's approved garage.

- E1.13 Failure of any of these checks will mean an immediate suspension of the private hire executive vehicles licence, until repairs can be made, the test has been re-taken and the vehicle has been found to be satisfactory.
- E1.14 In addition to this, all proprietors should undertake their own documented monthly checks to the council's specification.
- E1.15 Stretched limousines must have Individual Vehicle Approval (IVA) (<https://www.gov.uk/vehicle-approval/individual-vehicle-approval>) to be registered and licensed. For those built before 29 July 2011 a Certificate of Fitness (COIF) is accepted.
- E1.16 Stretched limousines are still required to undertake the Councils fitness tests. In the event that a stretched limousine cannot be tested at the Council's appointed vehicle testing station then they may be tested at a suitable testing station authorised beforehand by Tamworth Borough Council. A separate inspection form provided by Tamworth Borough Council must be completed by the testing station completing the test.

Electrical Equipment

- E1.17 If applicable, the controls for any driver screen and/or sunroof should be isolated, so the driver alone may operate them

Provisions of Alcohol

- E1.18 Alcoholic drinks provided in the vehicle shall be under the terms of any legislative requirements relating to the sale and supply of alcohol. No persons under 18 years of age shall be permitted to drink alcohol within the vehicle

Spares and Repairs

- E1.19 A spare tyre, of an approved type only, and the appropriate tools to make the repair (or an approved repair kit) must be carried, or a contract be in place with a repairer / recovery company who can supply such parts immediately in the event of a flat tyre.

Licence Plates

- E1.20 All Private hire Executive Vehicles must at all times display the square licence badge in the internal left corner of the vehicles front windscreen. The rectangular licence plate shall be attached to the backing plate supplied by the Council and position either above or below the rear vehicle registration number plate, or as determined by an authorised officer.
- E1.21 The licence plates must not be obstructed from view, inside or outside the vehicle, at any time.
- E1.22 The interior licence plate should be produced on demand by an authorised officer

Revocation and Modification of Conditions

- E1.22 The Council reserves the right (as its own behest and at any time) to revoke, vary, or modify any of these conditions and/or to make sure additional conditions as it may deem requisite, either generally or in respect of any particular licence or occasion.

E1.24 The following sections of the general private hire vehicle conditions ONLY are suspended for Executive Vehicles:

- Type size and Design
- Testing of Vehicles
- Minibus Type Vehicles
- Advertising Signs
- Licence Plates and Identification Signs
- Exception Vehicle Age Policy

PRIVATE HIRE OPERATOR LICENCE - CONDITIONS OF LICENCE

Guidance for Applicants

- F1.0 The proprietor must ensure that at all times a list is maintained of all licensed drivers on 55 of the Local Government (Miscellaneous Provisions) Act 1976 requires that the Local Authority shall not issue an operators licence unless satisfied that the applicant is a fit and proper person to hold a licence.

Submission of Police Record

- F1.1 The applicant is required to submit with any application for grant or renewal of the licence the record of convictions, if any, obtained from the Police under the Subject Access provisions of Data Protection Act 1998.
- F1.2 The envelope containing the reply from the Police must be brought, unopened to the Tamworth Borough Council Offices at Marmion House, Lichfield Street, Tamworth and opened in the presence of a member of the licensing staff.
- F1.3 Should any record reveal unspent convictions involving drug offences, dishonesty, sexual offences or violence, and should the applicant wish the application to proceed, the circumstances will be reported to the Council's Licensing Committee for a decision on the application to be made. The applicant or personal representative of the applicant will be entitled to appear before the Committee and speak in support of the application.

Knowledge of Legislation

- F1.4 New applicants for operator's licences should, on interview, be able to demonstrate a knowledge of the legislation and the restrictions under which private hire vehicles must be operated.

Consent Requirements

- F1.5 The applicant should be able to show that either:
- a. Planning permission has been granted for the operating base

or

 - b. That having regard to the premises and the mode of operation that planning permission is not required

or

 - c. That a formal application has been submitted for planning permission. If a business is operated without the appropriate planning permission in defiance of any planning enforcement notice, then this would be regarded as evidence that the licensee should not be considered a fit and proper person to hold a licence for those premises, and refusal or revocation would ensue.
 - d. If the operating premises specified in the application are owned by the Council, the permission of the department responsible for the letting or

leasing of the property should be obtained prior to submission of the application

Duration of Licence

F1.16 Licences are issued for a period of five years.

Conditions to Private Hire Operators Licences

Change of Address

F1.17 The licensee shall notify the Council of any change of home or business address, within 7 days of any such change.

F1.18 Record of Bookings

F1.19 The licensee shall ensure that the following details of bookings shall be entered in a record book, or loose leaf file system or electronic system) prior to the commencement of the journey in respect of which the booking was made.

- a) Name of the hirer
- b) Time and date of hiring
- c) Pick up point
- d) Destination of passenger(s)
- e) Councils' licence plate number of the vehicle used for the booking.
- f) Council's identification badge number of driver undertaking the booking
- g) If at the time of booking a quotation has been given for the fare to be charged, the amount of that quotation.

Record of Vehicles

F1.20 The licensee shall ensure that the following details be recorded for each vehicle operated:

- a) Vehicle registration mark
- b) Council's licence plate number
- c) Name and address of proprietor of the vehicle.
- d) Date of expiry of the Private Hire or Hackney Carriage licence.
- e) Expiry date of the insurance certificate or cover note for the vehicle together with details of the type of cover provided ie for public or private hire.

Record of Drivers

F1.21 The licensee shall ensure that the following details be recorded for each driver used in connection with the business:

- a) The driver's name
- b) The driver's Council identification badge number
- c) The date of expiry of the driver's Hackney Carriage or Private Hire driver's licence issued by the Council.

Complaints Register

F1.22 The licensee shall ensure that a complaints record book be kept in which are recorded the following details:

- a) Date of complaint
- b) Date and time of incident complained of
- c) Name and, if known, address of complainant
- d) Nature of complaint
- e) Licence number of vehicle if subject of complaint
- f) Licence number of driver if subject of complaint
- g) Any action taken by the operator in respect of the complaint

F1.23 All records required to be kept by conditions 2,3,4 and 5 above shall be made available for inspection by any authorised officer of the Council or any police constable and, if not immediately available for inspection at the operator's premises must, within 72 hours of the making of such a request, be produced for inspection.

F1.24 The licensee must ensure, that when bookings are accepted and a pick-up or response time given to a hirer, that the appropriate vehicle be despatched to fulfil that booking so as to arrive punctually unless such vehicle is delayed due to unforeseen circumstances beyond the control of the operator.

F1.25 Any lost property returned to the operator shall, if it cannot be returned to it's rightful owner within 48 hours, be handed over to the Tamworth Police at Tamworth Police Station, Spinning School Lane, Tamworth.

F1.26 The licensee shall ensure that any waiting/booking rooms provided for customers are kept clean and in good repair.

F1.27 The licensee, if convicted of any offence during the currency of the licence, must disclose any such conviction to the Council within 7 days of conviction. The disclosure must include the date of conviction, the Court where the hearing took place, details of the offence and the penalty imposed.

- F1.28 The licensee shall ensure that any records required to be kept in accordance with these conditions of licence are kept and made available for inspection for a minimum period of 6 months from the date of the last entry in the record book or file.
- F1.29 The licensee shall retain a certified copy of the private hire driver's licence of any driver used about his business, for as long as that driver is so used and shall make such licences available for inspection at all reasonable times at the request of any authorised officer of the Council or any police constable.

PLYING FOR HIRE

G1.0 Only licensed hackney carriages are permitted to ply for hire. It is **ILLEGAL** for a private hire vehicle to ply for hire. This means:

- a) Private hire vehicles **MUST NOT** carry passengers if the journey has not been pre-booked with a private hire operator by the passenger.
- b) All private hire vehicle journeys **MUST** be pre-booked through a licensed private hire operator.
- c) All bookings **MUST** be made by prospective passengers themselves directly with a private hire operator who will despatch the vehicle. Prospective passengers may instruct a third party, e.g. a restaurant manager, to make a booking on their behalf but this third party **MUST NOT** be the private hire vehicle driver.
- d) A driver of a private hire vehicle is **NOT** permitted to make the booking on behalf of a prospective passenger.
- e) Private hire operators **MUST NOT** accept any booking made by a driver on behalf of a passenger.
- f) Private hire vehicle drivers are **NOT** permitted to make their vehicles available for immediate hire. This means that private hire vehicle drivers **MUST NOT** physically position their vehicles in such a way as to be waiting in any area that is on view to the public to invite custom, e.g. allowing prospective customers to approach the vehicle and ask, 'Are you free?'
- g) In most cases, the vehicle will not be insured during a journey that has not been correctly pre-booked.
- h) Private hire vehicles **MUST NOT** wait at any taxi rank/stand.
- i) Private hire vehicle **MUST NOT** be hailed in the street.

G1.1 Further information about the relevant legislation is available in the Town Police Clauses Act 1847, in particular Section 45, and in Part II of the Local Government (Miscellaneous Provisions) Act 1976, in particular Section 64.

RELEVANCE OF CRIMINAL CONVICTIONS AND CAUTIONS

Introduction

- H1.1 The purpose of this appendix is to provide additional guidance to assist determine whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire vehicle drivers and/or an operator licence as it relates specifically to convictions and cautions.
- H1.2 The guidance has been produced to assist the Council in its decision-making and to maintain the consistency of the decisions made. It has also been formulated to provide clearer information to current and potential applicants, with a view to minimising the cost and time spent on the licensing process by both the Council and the applicant.
- H1.3 The aim of the guidance is not to punish the applicant twice for a conviction or caution but to ensure that public safety is not compromised. The Council cannot review the merits of any conviction.
- H1.4 Each case is to be decided on its own individual merits and, where the circumstances demand, the decision making body may depart from the guidance in which case the reasons for this will be made clear.

Legislation

- H1.5 Sections 51, 55 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 sets out that the Council must not grant a driver's licence or an operator's licence unless they are satisfied that the person is a **fit and proper person** to hold such a licence.
- H1.6 Sections 61 of the Local Government (Miscellaneous Provisions) Act 1976 allows the Council to suspend, revoke or refuse to renew a driver's licence if they have, since the grant of the licence, been convicted of an offence involving dishonesty, indecency or violence; or been convicted of an offence under or failed to comply with the provisions of the Town Police Clauses Act 1847 or Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.
- H1.7 Sections 62 of the Local Government (Miscellaneous Provisions) Act 1976 allows the Council to suspend, revoke or refuse to renew an operator's licence if they have committed any offence under, or failed to comply with, the provisions of Part II of the Act; where any conduct appears to render the operator unfit to hold a licence; any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; or any other reasonable cause.
- H1.8 Therefore, the wording of the legislation makes it clear that the Council may grant a licence **ONLY** if it is satisfied that the person is fit and proper; the onus is on the applicant to prove this, **NOT** the Council to demonstrate that they are not.

Defining a ‘fit and proper person’

H1.9 There is no legal definition as to what definitively constitutes a ‘fit and proper person’. However, because of the potentially vulnerability of the passengers that drivers and operators may come into contact with, e.g. elderly people, unaccompanied children, the disabled, those who may have consumed excessive quantities of alcohol, lone females and foreign visitors, it is incumbent on the Council to take a very robust stance when deciding whether or not a person is fit and proper to hold a licence granted by the Council.

H1.10 In essence, a fit and proper person will be:

- Honesty and trustworthy - drivers and operators have, for example, access to a large amount of personal information that could be misused and significant opportunities to defraud drunken, vulnerable or foreign people or to steal property left in cars.
- Not abusive, violent or threatening – abusive, violent or threatening behaviour is not acceptable conduct on the part of a driver/operator even when they are subjected to unpleasant or dishonest passenger behaviour.
- A competent and safe driver - they are expected to be professional drivers and must be fully aware of all road traffic legislation, conditions attached to their driving licence, the safety of their passengers and the safety of their vehicles at all times; passengers rely on their driver to get them to their destination safely and using the most direct route, therefore, a good knowledge of the area that they are working in is also appropriate.
- Able to communicate effectively with passengers – in the main this means able to read, speak, write and understand English.
- In good physical and mental health – to ensure they do not put passengers at risk through, for example, suffering a heart attack whilst conveying passengers.

The Council’s approach when considering convictions

H1.11 The disclosure of any convictions or cautions will not necessarily mean an applicant is not a fit and proper person and, therefore, automatically prevented from being issued a licence. However, the Council will have regard to all convictions, spent or live, and they will be assessed accordingly. Consideration will be given, but not restricted to, the following:

- How relevant the offence(s) are to the licence being applied for.
- How serious the offence (s) were.
- When the offence(s) were committed.
- The date of conviction.
- Circumstances of the individual concerned.
- The extent of any mitigating factors.
- Sentence imposed by the court.
- Whether the offence(s) form part of a pattern of offending or indicate a pattern of unacceptable behaviour.
- Any other character check considered reasonable, e.g. personal references.

- Any other factor that may be relevant.

H1.12 **AND** to guide the Council's consideration, the implications of the answer to the following question will also be applied:

- Would I allow my daughter or son, granddaughter or grandson, spouse, mother or father, or any other person I care for or any vulnerable person I know, to get into a vehicle with this person alone?

H1.13 If the Council has any doubts as to the fitness of an applicant/existing licenced driver, then an application must be refused or licence suspended/revoked until those doubts can be effectively allayed through the provision of further adequate evidence.

H1.14 If the applicant or holder of a licence has notified the Council of a conviction but is appealing against it to a higher court the matter will be referred to the Licensing Panel or the Licensing & Safety Sub-committee for a decision as to whether the licence ought to be suspended until such an appeal is heard.

Patterns of behaviour

H1.15 A series of offences or a pattern of behaviour/conduct over a period of time is more likely to give cause for concern than an isolated conviction/incident. However, that is not to say that an isolated conviction/incident cannot give cause for concern in its own right, particularly where it relates to a serious matter. In such circumstances, the Council will give significant consideration to refusing to grant a licence or to suspending and/or revoking an existing licence.

H1.16 A serious view will always be taken where an applicant shows any tendency towards criminal and/or unacceptable/inappropriate behaviour patterns. In such instances, the Council is unlikely to consider such an applicant/existing licence holder to be a fit and proper person to hold a licence and will give significant consideration to refusing to grant a licence or to suspending/revoking an existing licence.

Rehabilitation periods

H1.17 Detailed guidance (effective March 2014) on the Rehabilitation of Offenders Act 1974 is available on the GOV.UK website at <https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974>

H1.18 A person with a conviction for an offence need not be automatically barred from obtaining a licence. However, they would be expected to remain free of conviction for an appropriate period of time (as set out in Tables A and B below) and demonstrate adequate evidence that they are a fit and proper person to hold a licence. The onus is on the person to produce such evidence.

NB Simply remaining free of conviction will not generally be regarded as adequate evidence that a person is a fit and proper person.

Table A

Sentence	Rehabilitation period (applies from the end date of the sentence, including any licence period)
Custodial sentence* of over 48 months, or a public protection sentence**	Never spent
Custodial sentence* of over 30 months and up to and including 48 months	7 years
Custodial sentence* of over 6 months and up to and including 30 months	4 years
Custodial sentence of 6 months or less	2 years
Community order	1 year

*Custodial sentence includes both an immediate custodial sentence and a suspended sentence.

**Public protection sentence means a sentence of imprisonment imposed for specified sexual and violent offences as set out in Schedule 15 of the Criminal Justice Act 2003. (Equivalent provisions of the Armed Forces Act 2006 are also applicable.)

Table B

Sentence	Rehabilitation period (applies from the date of conviction)
Endorsement for a road traffic offence imposed by the court or a FPN; or if a driving licence is revoked or refused on medical grounds by the DVLA (or other body responsible for issuing the driving licence)	5 years*
Penalty points for a road traffic offence	3 years
Driving disqualification**	when the disqualification ceases to have effect
Community order with no specified end date	2 years
Fine	1 year
Conditional discharge	Period of the order
Absolute discharge	None
Conditional caution	3 months or when the caution ceases to have effect if earlier
Simple caution	Spent immediately
Compensation order	On the discharge of the order (i.e. when it is paid in full); individuals must obtain and retain proof of payment from the court
Binding over order; Attendance centre order; Hospital order (with or without a restriction order)	Period of the order

* Where a driving licence is revoked/refused on medical grounds by the DVLA (or other body), the Council will not grant a licence until medical proof of acceptable physical and mental fitness is provided.

**'Disqualified' – refers to the period of disqualification actually served in order to take account of the fact that a court may reduce the period of disqualification; an applicant must provide evidence to prove that the court agreed a reduction in the period of disqualification.

H1.19 Where a person does not satisfy the rehabilitation periods referred to in the tables above, then the Council will refuse to grant a new licence or revoke or suspend an existing licence until the applicant is in a position to satisfy them.

H1.20 The specific periods of rehabilitation are not intended to be taken as definitive time periods by which an applicant/licence holder is automatically granted a licence simply on the basis that the rehabilitation period has elapsed. Rather they are intended to give parameters for consideration when taken with the overall history of an applicant/licence holder in order to assist the Council to determine whether an applicant/existing licence holder is a fit and proper person or not. The rehabilitation periods will not be considered in isolation.

H1.21 The Council will not grant a licence to an applicant who has been convicted of a specified sexual or violent offence unless significant and exceptional circumstances apply.

Licensing offences

H1.22 In addition to the consideration of rehabilitation periods, where an existing licence holder is found guilty of hackney carriage or private hire related offences such as, but not restricted to, plying for hire, over-charging, refusing to carry disabled persons or multiple breaches of licence conditions, licence holders will be referred to the Licensing Panel and/or the Licensing and Safety Sub-committee with a view to determining whether the licence ought to be suspended and/or revoked.

Right of appeal

H1.23 Any applicant refused a driver's or operator's licence on the grounds that they are not a fit and proper person to hold such a licence, or who has had their licence suspended or revoked or had a condition attached with which they disagree has a right of appeal by way of written complaint, to the magistrates' court within 21 days of the notice of decision.

Conclusion

H1.24 Any applicant having a previous or current conviction should not, in principle, debar them from obtaining a hackney carriage or private hire driver's licence. However, previous convictions are a significant factor in the decision making process and it will inevitably be more difficult for such applicants to obtain a licence. It is this Council's policy to consider the protection of the public above all else by ensuring all licensed drivers are honest, will not be a threat to the public, in good health, are safe and competent drivers and are able to maintain their vehicles to a safe standard. In doing so, the Council will focus on the background of an applicant as a whole and will not consider individual offences and their rehabilitation periods identified above in isolation from other factors, in particular patterns of unacceptable or inappropriate behaviour and conduct that may not necessarily be linked to proven convictions.

ADDITIONAL MEDICAL FITNESS GUIDANCE

11.0 The following conditions are a bar to the grant of a licence:

A. Epileptic Attack

Applicants must have been free of epileptic seizures for at least ten years and not have taken anti-epileptic medication during this ten year period.

B. Insulin Treated Diabetes

Applicants for a private hire or hackney carriage driver licence will be required to satisfy the Council that they meet the medical requirements which would allow a C1 (small lorry) Group 2 licence to be issued. If found to be suffering from Diabetes Mellitus, the applicant must provide a medical report from a hospital consultant specialising in diabetes confirming:

the applicant has been undergoing insulin treatment for over four (4) weeks;

during the 12 months prior to the date of the licence application, the applicant has not suffered a hypoglycaemic episode requiring the assistance of another whilst driving; and,

the applicant has a history of responsible diabetic control and is at minimal risk of a hypoglycaemic attack resulting in incapacity.

The applicant will also be required to submit a signed declaration that:

they will comply with the directions for treatment given to him/her by the doctor supervising that treatment;

immediately report to the Council in writing, any change in diabetic condition; and

provide to the Council as and when necessary, evidence that blood glucose monitoring is being undertaken at least twice daily and at times relevant to driving a hackney carriage or private hire vehicle during employment.

C. Eyesight

- I. Applicants must be able to read in good daylight a number plate at 20.5 metres, (67 feet), and if glasses or corrective lenses are required to do so, these must be worn while driving. In addition applicants must have a visual acuity of at least 6/9 in the better eye; and visual acuity of a least 6/12 in the worst eye; and if these are achieved by correction the uncorrected visual acuity in each eye must be no less than 3/60.
- II. A licence will also be refused or revoked if an applicant has uncontrolled diplopia, (double vision), or does not have a normal binocular field of vision.

D. Other Medical Conditions

In addition to those medical conditions covered by legislation, applicants (or licence holders) are likely to be refused if they are unable to meet the national recommended guidelines in the following cases:

- Within 3 months of myocardial infarction, any episode of unstable angina, CABG or coronary angioplasty;
- A significant disturbance of cardiac rhythm occurring within the past 5 years unless special criteria are met;
- Suffering from or receiving medication for angina or heart failure;
- Hypertension where the BP is persistently 180 systolic or over, or 100 diastolic or over;
- A stroke or TIA within the last 12 months;
- Unexplained loss of consciousness within the past 5 years;
- Meniere's or other conditions causing disabling vertigo, within the past 1 year, and with a liability to reoccur;
- Recent severe head injury with serious continuing after effects, or major brain surgery;
- Parkinson's disease, multiple sclerosis or other 'chronic' neurological disorders likely to affect limb power or co-ordination;
- Suffering from psychotic illness in the past 3 years, or suffering from dementia;
- Alcohol dependency or misuse, or persistent drug or substance misuse or dependency in the past 3 years;
- Insuperable difficulty in communicating by telephone in an emergency;
- Any other serious medical condition which may cause problems for road safety when driving a Hackney Carriage or Private Hire Vehicle;
- If major psycho tropic or neuroleptic is being taken;
- Any malignant condition within the last 2 years likely to metastasise to brain or lung or malignant melanoma

INTENDED USE AND LICENSING OF HACKNEY CARRIAGES

Reasons for Policy

- J1.0 The Council wishes to ensure that applications for the grant of hackney carriage licences are determined in accordance with the guidance given by the High Court in its judgment, and the declaration made in the case of Newcastle City Council v Berwick upon Tweed Council [2008].

Applications for the grant of a new hackney carriage licence

- J1.2 Applicants for new licences will be expected to demonstrate a bona fide intention to ply for hire within the administrative area of Tamworth Borough Council under the terms of the licence for which application is being made.
- J1.3 There will be a presumption that applicants who do not intend to a material extent to ply for hire within the administrative area of Tamworth Borough Council will not be granted a hackney carriage licence authorising them to do so. Each application will be decided on its individual merits.
- J1.4 Even where the applicant intends to ply for hire to a material extent in the administrative area of Tamworth Borough Council, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

Applications for the renewal of a hackney carriage licence

- J1.5 Applicants for renewals of licences will be required to inform the Council whether they have a bona fide intention to ply for hire within the administrative area of Tamworth Borough Council under the terms of the licence for which application is being made.
- J1.6 There will be a presumption that applicants who do not intend to a material extent to ply for hire within the administrative area of Tamworth Borough Council will not be granted a hackney carriage licence authorising them to do so. Section 60 of Local Government Miscellaneous Provisions Act 1976 gives the Council a broad discretion to refuse to renew a licence for any reasonable cause. Each application will be decided on its merits.
- J1.7 Even where the applicant intends to ply for hire to a material extent in the administrative area of Tamworth Borough Council, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

Transfer of ownership – when a licensed vehicle is transferred from one person to another

- J1.8 Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 requires that the proprietor of the licensed vehicle who transfers his interest to another must, within 14 days of the transfer, give written notice to the Council of the name and address of the transferee of the hackney carriage. The Council has no power to refuse to register the new proprietor: see *R v Weymouth Borough Council, ex p Teletax (Weymouth) Ltd* [1947] KB 583.
- J1.9 Provided requisite notice has been given in accordance with section 49 of the Local Government (Miscellaneous Provisions) Act 1976 the Council will register the transferee of a licensed hackney carriage as the new proprietor. This is a legal requirement.
- J1.10 The transferee of a licensed hackney carriage will be asked to inform the Council whether he has a bona fide intention to use the vehicle to ply for hire within the administrative area of Tamworth Borough Council. In addition, where the transferee resides outside the administrative area of Tamworth Borough Council, the transferee will be required to keep records of all pickups on the Tamworth Borough Council approved record sheets and these records shall be made available for inspection upon request. Transferees should note the obligation under section 73 of the Local Government (Miscellaneous Provisions) Act 1976 to give to an authorised officer information which may reasonably be required by him for the purpose of carrying out his functions under the legislation. Where there is a failure to provide the requested information or to keep the records, the Council will give serious consideration to exercising its powers of suspension of the licence under section 60 of the 1976 Act until such information is forthcoming, in addition to its powers under section 73.
- J1.11 Transferees of existing licences will be expected to have a bona fide intention to ply for hire within the administrative area of Tamworth Borough Council under the terms of the licence in respect of the vehicle being transferred.
- J1.12 Where the transferee of a licensed hackney carriage is found to have no intention to ply for hire to a material extent within the administrative area of Tamworth Borough Council and/or intends to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular case, consideration will be given (either at renewal or earlier) to the suspension or revocation of the licence under section 60 of the 1976 Act. Where the transferee proposes to operate remotely from the administrative area of Tamworth Borough Council there will be a presumption that his licence will be revoked. Each case will be decided on its merits.
- J1.13 The Council is required to register the name of the new proprietor of a vehicle. It seems to the Council also to open up an obvious route to circumvent the decision of the High Court referred to in paragraph 1.0 above, unless precautionary steps are taken. The paragraphs in this section are intended to put the Council in a position to respond responsibly to the transfer of a Tamworth hackney carriage into the name of someone who operates outside the administrative area of Tamworth Borough Council or remotely from it.
- J1.14 Unless there has been a change in the proprietor's intentions with regard to plying for hire within the administrative area of Tamworth Borough Council, there should be no reason why he should not be granted a licence for a replacement vehicle. On the other hand, an applicant who obtained his first licence on the expressed intention of plying for hire to a material extent within the administrative

area of Tamworth Borough Council, and who on application to replace that vehicle with another discloses that he no longer so intends, effectively engages the presumption against grant that is mentioned earlier.

Change of vehicle – when a proprietor replaces a licensed vehicle

J1.15 Applicants seeking the grant of hackney carriage licence for a vehicle intended to replace another licensed vehicle will be asked to inform the Council of their intended use of the vehicle. There will be a presumption that applicants who no longer intend to ply for hire to a material extent within the administrative area of Tamworth Borough Council will not have the new hackney carriage licence granted. Even where the applicant intends to ply for hire to a material extent in the administrative area of Tamworth, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular case, there will be a presumption that the application will be refused.

Revocation of licence

J1.16 Where a licence has been granted under the terms that the applicant intends to ply for hire to a material extent within the administrative area of Tamworth Borough Council but is subsequently found not to be plying for hire to a material extent in the administrative area of Tamworth Borough Council and/or to be trading in another authority's area for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) there will be a presumption that the licence will be revoked.

Exceptional circumstances

J1.17 Each application will be decided on its merits. However the presumptions that intended use is to ply for hire to a material extent within the administrative area of Tamworth Borough Council will be rebuttable in exceptional circumstances. Whilst it is neither possible nor prudent to draw up a list of what might amount to exceptional circumstances, an applicant who claims that exceptional circumstances exist will be expected to be able to satisfy the Council that it would not frustrate the purposes of the legislation or compromise public safety if the licence were granted, renewed or if were not suspended or revoked as the case may be.

ADVERTISING ON HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES

- K1.0 Advertisements will not be permitted by Tamworth Borough Council if, in Tamworth Borough Council's reasonable opinion, the advertisement falls within any of the following categories:
- a. does not comply with the law or incites someone to break the law;
 - b. does not comply with the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing;
 - c. is likely to cause widespread or serious offence to members of the public on account of the nature of the product or service being advertised the wording or design of the advertisement or by way of inference;
 - d. depicts men, women or children in a sexual manner or displays nude or semi-nude figures in an overtly sexual context (**NB** whilst the use of underdressed people in most underwear advertising may be seen as an appropriate context, gratuitous use of an overtly sexual nature will be unacceptable);
 - e. depicts or refers to indecency or obscenity or uses obscene or distasteful language including that set out in a foreign language;
 - f. relates to lap-dancing, 'gentlemen's clubs', escort agencies or massage parlours;
 - g. depicts direct or immediate violence to anyone shown in the advertisement;
 - h. condones or provokes anti-social behaviour;
 - i. contains images or messages, which relate to matters of public controversy and sensitivity;
 - j. refers to or portrays (or gives the impression of portraying) a living person unless the written consent of that person is obtained and is produced to Tamworth Borough Council;
 - k. contains negative references to Tamworth Borough Council's services or those services provided or regulated by other local authorities;
 - l. relates to a political party or parties or a political cause;
 - m. relates to or advertises alcohol or tobacco;
 - n. in the case of digital media, poses a health and safety risk as a result of flickering or other visual imagery

CONDITIONS APPLICABLE TO THE USE OF TRAILERS

- L1.1 The use of trailers is only permitted for vehicles of the multi-passenger type (more than 4 passenger seats) and on pre-arranged journeys where passenger's luggage cannot be safely accommodated within the vehicle.
- L1.2 The licensed towing vehicle's insurance must cover the towing of a trailer.
- L1.3 Trailers must not be left unattended anywhere on the highway.
- L1.4 The speed restrictions applicable to trailers must be observed at all times.
- L1.5 A spare wheel for the trailer and adequate tools to change a wheel must be carried at all times by a licensed vehicle whilst towing a trailer.
- L1.6 The towing of a trailer by a licensed vehicle shall only permit the conveyance of luggage and belongings owned by a passenger whilst the vehicle is hired by a passenger within the vehicle.
- L1.7 The tow bar must comply with the type approval regulations in respect of all tow bars fitted to cars after August 1998.
- L1.8 Drivers of vehicles towing trailers must ensure that they have the correct driving licence group to permit them to tow the relevant trailer, as per the DVLA guidance (info 30) Driving Licensing Requirements for Towing Trailers in Great Britain.
- L1.9 Trailers must be inspected at initial licensing and annually thereafter by a garage approved by the Council for that purpose.
- L1.10 An additional plate will be issued by the Council for each vehicle licensed to tow trailers and the relevant plate must be affixed to the rear of the trailer near the vehicle number plate.
- L1.11 Un-braked trailers shall be less than 750 KGs gross weight.
- L1.12 Trailers over 750 KGs gross weight shall be braked acting on at least two road wheels.
- L1.13 The towing vehicle must have a kerb weight of at least twice the gross weight of the trailer.
- L1.14 A suitable lid or other approved means of enclosure shall be fitted to secure the contents within the trailer when in use and to keep it watertight.
- L1.15 The maximum permissible length of the trailer shall be 7 metres including the drawbar and coupling.
- L1.16 The width of the trailer shall not be greater than the towing vehicle subject to no trailer being wider than 2.3 metres.
- L1.17 The maximum length for braked trailers is 5.54 metres.

- L1.18 The trailer must at all times comply with all Road Traffic legislation requirements, in particular those as laid down in the Road Vehicles (Construction and Use) Regulations 1986.
- L1.19 The trailer shall not display any form of sign or advertisement not required or approved by the Council or Road Traffic legislation.

**AMENDMENTS TO TAMWORTH BC
Hackney Carriage and Private Hire Licensing Guidance 2017-2022**

Page	Subject and Comment
41	Appendix A – Child Sexual Exploitation and Trafficking of Children and Young People Includes information on Tamworth Borough Council's approach to safeguarding in relation to taxi driver licensing within the guidance;
61	Appendix E Private Hire Executive Vehicle Licence - Conditions of Licence Previous policy silent on above matter, included to reflect changing nature of business need whilst maintaining safeguards and protection, discussed at Licensing Committee 2 March 2017.

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THURSDAY, 27 APRIL 2017

REPORT OF THE PORTFOLIO HOLDER FOR ENVIRONMENT AND CULTURE
CHARGING FOR REQUESTED FOOD HYGIENE RATING SCHEME (FHRS) RE-INSPECTIONS/RE-VISITS

EXEMPT INFORMATION

NIL

PURPOSE

The Food Hygiene Rating Scheme (FHRS) has been in place in Tamworth Borough Council since April 2012. Currently all visits made to premises are conducted at no cost to the business, which includes requested second visits to the business for the sole purpose of increasing their “star” rating, which is to their business benefit.

The Food Standards Agency (FSA) announced on the 13th March 2017 that Local Authorities in England may introduce a charging regime using existing powers available to the Council under the Localism Act to make a charge for requests received for an FHRS re-rating inspection.

RECOMMENDATIONS

That Cabinet approve the introduction of a charge based on the hourly rate of officers for re-rating inspections based upon full cost recovery with effect from 1 June 2017, reviewed in line with the fees and charges policy annually thereafter.

EXECUTIVE SUMMARY

Following the trial of charging for requested FHRS re-inspections/re-visits with some local authorities in England, using existing powers in the Localism Act 2011, the FSA have now confirmed a change in their policy which will allow the use of these powers by local authorities in England to introduce full cost recovery for requested FHRS re-inspections / re-visits.

There are safeguards built into the rating system, Tamworth Borough Council is statutorily obliged to visit premises to assess food safety on the basis of risk. Those posing a high risk being inspected more frequently and often being subject to formal enforcement action. Additionally, visits are conducted in accordance with the FHRS Brand Standard to ensure that businesses receive the correct rating at the time of the initial inspection. Tamworth Borough Council is obliged to provide visits to premises to assess safety and standards under the Food Safety Act 1990. Once the rating has been confirmed and any works completed the business can request a re-rating visit. There will be differences from the existing FHRS scheme. Currently:-

- a) a food business can only make one request for a re-rating visit following each planned statutory food inspection. This can be made at any time provided that any required improvements have been made; and
- b) businesses provide details of the improvements they have made along with their re-rating request, and if it is considered that sufficient evidence has been provided, there is a three month “stand still” period. An unannounced visit will then normally take place within three months from the end of the “stand still” period.

Under the proposed charging regime:-

- a) there is no limit on the number of requests that can be made by individual businesses; and
- b) the "stand-still" period will not be applied and the re-rating inspection must be carried out within three months of the receipt of the request and payment of the fee.

The business would not need to provide evidence as to the current position, however, if the work is not carried out there will be no change to the rating. It is entirely in the interest of the business to demonstrate an increase in their published rating, as it gives the public greater confidence that their food is prepared safely in accordance with the necessary legislation.

RESOURCE IMPLICATIONS

There is a net saving to the Council for this service as it is currently delivered free of charge. The estimated income receivable is £1,400 based on an average fee of £200 for the seven revisits conducted last year. This is likely to increase as the FHS gains popularity. Furthermore it is reasonable to assume that businesses will want to request more re-rating inspections in order to show the best rating & compete for trade.

LEGAL/RISK IMPLICATIONS

Section 1 of the Localism Act 2011 gives local authorities the power to charge for a service which is not a statutory function. The advice refers to re-inspections made at the request of the food business operator to re-assess the food hygiene rating and does not cover interventions carried out as part of statutory duties i.e. the planned interventions that the Borough is required to undertake in accordance with the food law code of practice.

SUSTAINABILITY IMPLICATIONS

An effective Food Safety Service will enable the three corporate priorities, 'Living a quality life in Tamworth', 'Growing Strong in Tamworth' and 'Delivering quality services in Tamworth' to be met. In particular creating a level playing field in ensuring that food sold in Tamworth is safe for the public.

BACKGROUND INFORMATION

The majority of the re-rating work needs to be completed by the officers who are already authorised for official food control work. There were seven (7) requests for revisits in the last financial year. The proposed charge would be set using locally collected data on the time taken for an average re-rating request and the appropriate hourly rates for the officers completing the work including overheads. The charge would need to be reviewed annually taking into account the most recent data unless a mandatory national or regional fee is subsequently prescribed. The FSA has collected data from local authorities, which concludes that, on average a re-rating inspection would take four (4) hours. The latest data from Wales indicates a different picture suggesting the time spent is approximately five hours though this includes a significant travel element and well over an hour to produce the final report. We have collected and analysed data from our re-rating requests, including both the inspection and office administration elements, and the average time spent was four (4) hours.

Any business that has obtained a rating of less than five (5), the top score can request a follow up re-rating inspection once they have made any improvements brought to their attention following the first inspection. The purpose of the re-rating is

to establish if a higher rating can be obtained and thence displayed to the public. Without this, there would be no opportunity for another rating to be given to an improved business until the next planned full inspection.

The frequency of planned food safety inspections varies from every six months to three years. The frequency of inspection is determined by the risks posed by the food business and uses the national Food Law Code of Practice's scoring process to calculate this risk and any follow-up required. It is important to distinguish a re-rating inspection from other official control revisits that might be conducted as part of our usual food safety work.

Whilst a business in England can still choose whether they wish to display a rating sticker in their premises or not under the current voluntary scheme, it is worth emphasising that all ratings are already published by the FSA on their [ratings website](#), so consumers can easily view all the ratings throughout the UK via a PC, tablet or even on a smartphone.

The Food Hygiene Rating Scheme is a key element of improving food safety and standards of food hygiene in food businesses.

One key difference between the current English voluntary scheme and the two mandatory schemes in Wales and Northern Ireland is that both mandatory schemes enable a charge to be made for re-rating inspections.

Cost recovery from businesses would occur only where they make a commercial decision and choose to request a re-rating inspection. The legislation that allows for charges already exists and the preferred charge option is based on full cost recovery using an established model that meets the Borough's Financial Regulations.

REPORT AUTHOR

"If Members would like further information or clarification prior to the meeting please contact Steve Lewis, Head Of Environmental Health. Ext 437"

LIST OF BACKGROUND PAPERS

1. **Food Standards Agency Correspondence Ref: ENF/E/17/020**, dated 13 March 2017

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To: Heads of Environmental Health Service

<p>Title: Charging for requested Food Hygiene Rating Scheme (FHRS) re-inspections/re-visits</p>	<p>Date: 13 March 2017</p>
<p>Summary: Following the trial of charging for requested FHRS re-inspections/re-visits with some local authorities in England, using existing powers in the Localism Act (2011) the FSA can now confirm a change in policy allowing use of these powers by local authorities in England¹ to introduce cost recovery for requested FHRS re-inspections / re-visits.</p>	<p>Category: Food Hygiene</p>
<p>Action required Consider introducing charging for requested FHRS re-inspections/re-visits</p>	<p>Notification type: For Information /Possible Action</p> <p>Ref: ENF/E/17/020</p>

Dear Colleague,

Please bring to the attention of all relevant officers in your Authority.

Following the trial of charging for requested FHRS re-inspections/re-visits with some local authorities in England, using existing powers in the Localism Act (2011) (see **ENF/E/16/053** dated 12th September 2016) FSA can now confirm a change in policy allowing use of these powers by local authorities in England² to introduce cost recovery for requested FHRS re-inspections / re-visits.

The legal basis underpinning this is available at [appendix 1](#).

Please note:

- The decision to use existing powers in the Localism Act (2011) to charge businesses for requested FHRS re-inspections/re-visits is for individual local authorities to take
- These powers allow for fees on a cost recovery basis only and it is for each local authority to calculate their own costs

¹ The Localism Act 2011 does not apply to Port Health Authorities

² The Localism Act 2011 does not apply to Port Health Authorities

- Local authorities should seek the advice of their own legal and finance teams on charging using these powers (for example on cost calculation, VAT, invoicing / payment etc.)
- Local authorities should ensure that appropriate governance and approval within the authority is in place

The guidance issued by HM Treasury 'managing public money' is a useful reference:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf.

Section 6 of this guidance – box A6 1A – gives information on what to consider when calculating fees.

The FHRS [Brand Standard](#) has been amended to reflect this change to policy. The key points are:

- The 'standstill' period will no longer apply when a fee is charged and the requested re-inspection/re-visit must be carried out within three months of receipt of the request or, where payment is required in advance, the payment of the fee
- there will be no limit on the number of requested re-inspections/re-visit a business can make, and the fee may be charged for each re-inspection/re-visit carried out; and
- The LA considerations when deciding whether or not to agree to a request are unchanged

The standard letter informing businesses achieving a rating of 0 – 4 has been amended to reflect the change. A copy for use when charging is introduced accompanies this letter.

These changes align the voluntary scheme in England with the statutory schemes in Northern Ireland and Wales, where the Food Hygiene Rating Act (Northern Ireland) 2016 and the Food Hygiene Rating (Wales) Act 2013 both include the provision to charge for requested re-inspections /re-visits .

If you have any queries or comments, please contact the FHRS team at hygieneratings@foodstandards.gsi.gov.uk

Regards

Angela Towers
Head of Food Hygiene Rating Team
Angela.Towers@foodstandards.gsi.gov.uk

Appendix 1 - the legal basis

Legal advice

Legal advice received by the Food Standards Agency (FSA) indicates that powers available to local authorities in England under the [Localism Act \(2011\)](#) allows for the recovery of costs for FHRS re-inspection/re-visits requested by businesses..

Please note: the advice refers to re-inspections made at the request of the food business operator to re-assess the food hygiene rating and does not cover interventions carried out as part of statutory duties i.e. the planned interventions that you are required to undertake in accordance with the food law code of practice.

A summary of the legal advice received by the Agency can be found below. You will wish to make your legal team aware of this advice and discuss with them your intention to introduce charging for this service at your authority.

It is for each local authority to decide to use these powers and to calculate the costs (see para 10).

Summary of legal advice

Introduction

1. In September 2010, the FSA [published its views on certain legal issues](#) associated with the Food Hygiene Rating Scheme (FHRS).
2. The publication included a section describing the Agency's views as to whether local authorities had power to charge food business operators who requested re-inspection by the local authority for the purposes of reassessing a food hygiene rating.
3. The Agency's view, at that time, was that local authorities did not have power to charge for re-inspections under either domestic food hygiene law (the UK having chosen not to introduce charges for official controls under Regulation (EC) No. 882/2004), or under section 93 of the Local Government Act 2003 (the local authority power to charge for 'discretionary' services).
4. However, since the publication of the Agency's views, new legislation in England and Wales affecting local authorities' powers (including powers to charge) has been passed in the form of the Localism Act 2011. Accordingly, the Agency has re-visited the question of whether local authorities in England have power to charge for re-inspections in light of new powers available to them under the 2011 Act. The Agency's conclusions in

respect of this question are set out, below, and should be read as a supplement to its publication of September 2010.

Will local authorities be able to use the Localism Act 2011 to charge for re-inspections/re-visits requested by food business operators?

5. The Localism Act 2011 contains a range of measures which devolve more powers to local authorities in England and Wales. One of these measures – a new general power of competence for local authorities - is relevant to the operation of the FHRS.

6. The new power, conferred by section 1 of the Act, means that local authorities may now do anything an individual generally could do and, in certain circumstances, may charge for what is done.

7. The Agency's view is that the adoption and implementation of the FHRS by local authorities falls within the general power. The Agency considers that providing a re-inspection upon request by a food business operator, in circumstances where there is no statutory requirement to provide that re-inspection, falls within the general power, too.

8. It is necessary, therefore, to consider whether the circumstances in which the Act allows local authorities to charge for things done under the general power are satisfied. Broadly speaking, the circumstances are that:

- a service is provided on a non-commercial basis by the local authority to a person who has agreed to the service being provided;
- that service is or could be done using the new general power;
- the local authority is not under any statutory duty to provide the service; and
- the local authority does not have any other power to charge for the service.

9. The Agency considers that each of these circumstances apply to re-inspections because:

- a re-inspection can be properly described as a service which a local authority provides on a non-commercial basis to a food business operator with that food business operator's agreement;
- the FHRS is a non-statutory scheme in England, meaning that the local authority is under no statutory duty to perform a re-inspection; and
- for the reasons set out in the Agency's [publication of September 2010](#), the local authority does not have any other power to charge a food business operator for a re-inspection.

10. The question of whether to charge for re-inspections is, of course, entirely a matter for the local authority. The Localism Act 2011 sets out further obligations for local authorities in respect of the imposition of charges, and local authorities will need to satisfy themselves that all relevant obligations are met so that any charge they make in connection with an FHRS re-inspection is lawful.

**Food Standards Agency
Regulatory Delivery Division
July 2016**

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THURSDAY, 27 APRIL 2017

REPORT OF THE PORTFOLIO HOLDER FOR ENVIRONMENT & CULTURE**FRAMEWORK FOR BUSKING WITHIN TAMWORTH****EXEMPT INFORMATION****PURPOSE**

To provide a working framework to enable busking to be encouraged and regulated within the town centre and public places within Tamworth.

RECOMMENDATIONS

That Cabinet approve the framework for the effective regulation of busking.

EXECUTIVE SUMMARY

Members will recall the previous report on the 1st October 2015 where cabinet approved the Arts in Unusual Spaces programme. One of the recommendations was to endorse the Arts Council England Bid and programme of work associated with it. Part of that programme of work detailed the Music Outside programme and how the council could encourage and support more music and live performance in our outdoor spaces. A key element of this is how the authority deals with busking in public areas and the approved funding bid detailed that the authority would develop and adopt a busking framework approved by members.

The Council is committed to creating a vibrant Town centre and wants to add live performance to that offer. However we are also keen to ensure the quality of the experience for those visiting and working in the town centre. The framework will aim to encourage live performances but will also ensure potential issues can be managed. With identified busking locations and a clear code of practice it enables the authority to strike the right balance between encouraging these added extras to the town centre whilst ensuring they are conducted in an appropriate manner; for example we have had previous issues with the type and quality of performance. The framework will allow us to reduce this impact.

Creating a framework for busking is something the authority has explored for a number of years and we are now at the stage of formalising our approach. To ensure good practice the Arts and Events team have liaised with the Local Authority Outdoor Events Group and followed the approaches of other authorities that have proved successful. In addition we have appraised the work of colleagues in Environmental Health and Community Safety. The framework aims to be the first port of call for those wishing to perform in the town centre on an informal basis and for those who have concerns over performances taking place. There are a range of existing statutory powers relating to noise nuisance, public order and obstruction. These formal powers will only be used as a last resort if there are persistent issues and this guidance is not being observed.

OPTIONS CONSIDERED

RESOURCE IMPLICATIONS

There are none arising directly from this report.

Compliance to the framework will be monitored by officers as part of their normal duties.

LEGAL/RISK IMPLICATIONS BACKGROUND

SUSTAINABILITY IMPLICATIONS

BACKGROUND INFORMATION

There is currently no formal approach for busking in the town centre often making it difficult for the authority to manage and making performers unsure of what they can and can't do.

This can result in residents and visitors experiencing a negative impact when visiting or otherwise trying to enjoy the town centre experience.

REPORT AUTHOR

Laura Patrick

Elanor Hazlehurst

LIST OF BACKGROUND PAPERS

Cabinet Report- October 1st 2015- Arts and Events Programme 2016-17

APPENDICES

Appendix 1- Busking Framework

BUSKING



WHAT IS BUSKING?

For the purposes of this guidance, 'busking' will be used to describe performances of music, dance, street theatre or art in a public space undertaken with the intention of entertaining or engaging with members of the public.

Busking performances are normally spontaneous, impromptu and informal in nature.

A NEW APPROACH:

Tamworth wants to encourage buskers to perform to enhance the vitality of the town centre and provide pleasure to residents and visitors. This guidance aims to support a culture of community, consideration for others and negotiation.

Most complaints about busking apply to a small number of performers and usually relate to noise levels, repetitive performances or obstruction.

Most issues can be resolved amicably without the need for a formal complaint.

The aim of this guidance is to provide a framework for buskers and others to resolve issues before they escalate. There are a range of existing statutory powers relating to noise nuisance, public order and obstruction. These formal powers will only be used as a last resort if there are persistent issues and this guidance is not being observed*.





Background

The town centre and Castle Grounds are licenced for the purpose of regulated entertainment for planned times and dates applied for in advance, with certain parameters for informing the police and other bodies for events and to ensure the protection of children and to prevent noise nuisance or complaint.

Code of Practice

You do not need permission to busk or provide street entertainment (excluding events – please visit to confirm event dates www.tamworthartsandevents.co.uk) in Tamworth, however we have adopted a Code of Practice for buskers who wish to perform in the town centre in order to enhance the shopping experience and atmosphere. This Code of Practice will be used by officers to take appropriate action if complaints are received.

Nuisance

On occasions, busking may become a nuisance, particularly for people living or working in the town centre. As a result, both the local authority and the police receive complaints about the volume and sometimes the nature of busking and street entertainment and about obstruction of the public highway caused by gatherings.

Restrictions

Ankerside Shopping Centre is privately owned and prior permission should be sought from the centre managers.

Middle Entry is a public thoroughfare, however due to the covered walkway this may result in a higher level of complaints and buskers may be asked to move along more frequently.

Legal

Under the Environmental Protection Act 1990, noise in the street from musical instruments may be a statutory nuisance and the local authority is able to take legal action to abate the nuisance and prohibit or restrict its recurrence. This may include the seizure of musical instruments.

The police and the council will not normally institute legal action where the Code is observed. However, breaches make an offender liable to prosecution. It should also be noted that persons other than the police or the council may institute action under the same laws, whether or not the Code is observed.

Fees

There are currently no fees for busking in the town, providing all buskers comply with code of practice.

Busking Code of Practice

- Music or voice shall not be amplified to a level or to be so loud that either can be plainly heard at a distance of 50 metres. Mains or generator-powered amplification is not permitted.
- Buskers may require a valid Performing Rights Society (PRS) license. While the authority is not the governing body, we may request to see the license. Advice can be obtained by calling PRS on 0800 068 4828.
- Busking must not be intrusive, a nuisance in nearby premises or affect the public or the use of public telephones.
- Entertainers shall not obstruct the highway. Entertainers are also responsible for ensuring that the highway is not obstructed by people gathering to listen to or watch the performance (note: Highway includes any footpath, pavement or open pedestrian area or place.)
- Entertainers shall not make use of the street furniture, such as public seats, lampposts and railings.
- Pitches chosen shall satisfy the above criteria and must not be within 50 metres of another busker. (Please see preferred busking areas*)



- Entertainment is only permitted between the hours of 10am and 4pm (unless as part of an organized event)
- The appearance and quality of an act should demonstrate a positive intention to entertain passers-by, not to solicit money through sympathy ie begging.
- No sign shall be displayed inviting payment (except where a collection for charity has been authorised by the council or the Charity Commissioners). Any monies received must be at the sole discretion of the public.
- Entertainers shall not perform in a manner which is dangerous to themselves or to the public.
- Jugglers and circus skill entertainers must have proof of public liability insurance which must be available on request. All necessary precautions must be taken to protect the audience from harm.
- No animals are to be used in any performance of street entertainment.
- Only one entertainer or a group of entertainers (maximum 6) will be allowed to busk in any one place at once, without prior permission from Tamworth Borough Council.
- Entertainers from a wide range of backgrounds will be welcome and will be expected to work in consideration of the Council's Equality and Diversity Policy.
- Entertainers deemed to be breaching diversity guidelines or causing offence, distress and alarm to the public will be immediately asked to terminate their performance.
- Entertainers should remain standing unless the performance or health issue requires you to be seated. If your performance requires this, you MUST NOT sit directly on the ground – a suitable folding chair must be used.
- Entertainers must stop performing immediately when requested to do so by a Police officer or council officer.
- Entertainers will not be permitted to sell any type of merchandise, including CDs and tapes, unless a Tamworth Borough Council Street Trading license has been issued. Please contact Environmental Management on 01827 709445 for guidance.

- Entertainers will not be permitted to perform if, when questioned by a council or police officer, they are under the influence of drugs or alcohol.
- Entertainers will not be permitted to busk during major events in the town centre without prior approval from the Outdoor Events Officer.
- Time slots limited to 20 minutes without a significant break. Performances should not be of a repetitive nature.

*Preferred Busking Areas

■ Barclays Bank



■ Town Hall



■ Home Bargains



■ Under Canopy



On Market Days (Tuesday/Friday/Saturday) please contact Market Management to make arrangements: lsdpromotions.co.uk

Please note that while there are no preferred busking spots in other Tamworth Borough Council owned locations, the framework will still apply.

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27th April, 2017

REPORT OF THE CHIEF EXECUTIVE OFFICER

**ACHIEVING DEMENTIA FRIENDLY COMMUNITY STATUS
& PROGRESS RELATING TO MENTAL HEALTH NEEDS IN TAMWORTH****EXEMPT INFORMATION**

Not Applicable

PURPOSE

The primary purpose of this report is to provide Cabinet with a Progress Report relating to the resolution passed in respect of **Minute No. 11** of Cabinet on 16th June, 2016.

The report also provides an update on the Council's response to the national campaign jointly promoted by MIND/LGA entitled "**Time to Change**" and the wider mental health agenda.

RECOMMENDATIONS

That Cabinet agree to:

1. Endorse the actions undertaken by members and officers to date in
 - a) Enabling and supporting the establishment of the **Tamworth Dementia Action Alliance**;
 - b) Integrating the purpose and principles of **Time to Change** into an Employee Wellbeing Policy supported by an **Employer Pledge**;
2. Approve the respective Action Plans designed to support both work streams
 - **Tamworth Dementia Alliance Action Plan**
 - **Time to Change Action Plan**;
3. Acknowledge the outstanding effort and contributions made by key members, officers and the community;
4. Agree to receive a further report setting out any future successes and/or resource/legal/financial or other implications associated with the achievement of **Dementia Friendly Community** status.

EXECUTIVE SUMMARY

Building upon the increased focus upon tackling the causes and consequences of mental health issues at a County and Regional level the Borough Council's **Healthier & Safer Scrutiny Committee** submitted a request to Cabinet recommending that the Council seek to take a lead in facilitating/enabling Tamworth to achieve Dementia Friendly Community status. The Cabinet having resolved to accept the recommendations in principle tasked the Chief Executive to produce an Action Plan (attached as Appendix A) designed to achieve the stated outcomes (Minute 121 refers).

This report seeks to capture the excellent progress and current position relating to the Action Plan, Application Process and the work of the Dementia Action Alliance membership. This is set out at Appendix B.

In addition to this dedicated work stream, the decision by central Government that require mental health matters to be considered, addressed and recognised on an equal footing to

physical health led to an extremely positive response from the NHS within their STPs; the WMCA in respect of their emerging strategy and more locally by Health & Wellbeing Boards and their Annual Plans.

The public sector also responded both quickly and positively recognising that it had a key role to play in terms of early intervention and prevention both as a **Community Leader & Place Shaper** but also as an **Employer**.

This report will also set out how, at the local level, Tamworth Borough Council has engaged in this response and how, through its partners and relationships with the community, it has made a difference.

OPTIONS CONSIDERED

Not applicable.

RESOURCE IMPLICATIONS

There are none arising directly from this report. In the event that Tamworth is successful in achieving the relevant status there may be costs associated with the installation or location of signage to this effect.

LEGAL/RISK IMPLICATIONS BACKGROUND

There are none arising directly from this report.

SUSTAINABILITY IMPLICATIONS

There are none arising directly from this report.

BACKGROUND INFORMATION

There is clear evidence drawn from both the Joint Strategic Needs Assessment and data from the Health Intelligence Unit stating that the number of people affected by Dementia and Alzheimer's Disease is increasing. Of greater concern is the fact that this data only relates to **diagnosed** cases; other evidence suggests that there is a worrying failure to diagnose a fact, reflected in the local CCG Operating Plan for 2017 onwards. Plans to remedy the situation are also included in the Operating Plan and will be addressed by GPs.

Recent studies into the role of district and borough councils in improving and sustaining community wellbeing including, the concept of Locality based commissioning, delivery and support devised here in Tamworth clearly show the Council's that invest in early intervention and prevention techniques can have a positive impact upon their employees, their communities and individuals both in terms those living with dementia, but the frail and elderly in several and of course, those who care for them.

This workstream represents a unified approach from organisations, communities and individuals to support this process through the promotion of knowledge and understanding; activity based engagement and interaction; formal action and behaviour change.

REPORT AUTHOR

Anthony E. Goodwin
Chief Executive &
Executive Director Community Services

All primary information provided by
Karen Clancy
Leader Officer
Tamworth Dementia Action Alliance

LIST OF BACKGROUND PAPERS

- Tamworth Borough Council - Annual Report & Corporate Plan 2016/2017
- Staffordshire Health & Wellbeing Strategy
- Staffordshire Mental Health Strategy - "Mental Health is Everybody's Business"

- South East Staffs & Seisden Peninsula CCG - Operating Plan 2016/2017
- Public Health England – “Healthy Ageing in the West Midlands”
- Tamworth Borough Council – Healthier Housing Strategy (Revised 2016)

APPENDICES

- A** National Dementia Declaration Action Plan
- B** Progress report against the Tamworth Dementia Action Alliance Action Plan and Related Activity.
- C** Tackling the Causes & Consequences of Mental Health Issues

NATIONAL DEMENTIA DECLARATION ACTION PLAN

1) Details of Applicant/Applicant's Organisation

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2) Summary of Organisation

A Borough Council located in the south east corner of Staffordshire with a population of around 78,000. The Council continues to provide a full suite of high quality services to local people: Waste Collection & Recycling; Environmental Heath & Streetscene, Planning & Building Control; Housing & Homeless Support; Economic Growth & Regeneration. The Council also supports Leisure & Cultural provision, community safety and Elections.

3) Better outcomes for people with dementia and their carers – A role for the Council

Having regard for the seven outcomes, the Council believes it is well placed to make a significant and sustainable contribution through its 3 thematic priorities:

a) Living a quality life in Tamworth

Priorities within this theme articulate the Council's commitment to supporting individuals and communities who are vulnerable or at risk of becoming so; to enabling residents to improve their health and quality of life and to tackle the causes of inequalities.

b) Growing stronger together in Tamworth

The focus here whilst primarily upon economic growth and skills, it is also about understanding the needs of all our residents in order to create a safe and supportive environment – both physically and culturally and through community engagement.

c) Delivering quality services in Tamworth

This theme presents an enormous opportunity for jointly reviewing and co-designing services; improving access to them and the quality of them and to raise awareness of the issues facing those living with dementia.

4) Potential Challenges

Had this initiative been isolated or independent from the Council's current core business, then rolling out the action plan may have been more difficult. Given that the Council, HWBB, CCG and Public Health have all included references to improving services for or awareness of mental health issues locally, this is likely to assist the Council in its ambitions.

There may well be capacity and resource constraints across the various partnership networks however; the approach is viewed as a 'marathon' and not a 'sprint'. A further challenge from partners may relate to competing priorities again, this can be factored in to future planning.

In short, the Council is of the view that the outcome justifies the investment of capacity because of the clear links between the ambitions of the Council and the DAA.

Anthony E. Goodwin
Chief Executive Officer
Tamworth Borough Council

Purpose

The overarching purpose of this Action Plan is to provide a route map designed to meet the ambitions of the Council specifically relating to Dementia; namely:

- To secure membership of the Staffordshire & Stoke on Trent Dementia Action Alliance;
- To establish a Local Dementia Action Alliance in Tamworth; and
- To work towards becoming a **Dementia Friendly Community**

Strategic & Policy Context

The recently adopted Corporate Priorities focus upon 3 distinct yet connected themes:

Living a quality life in Tamworth	- People -
Growing stronger together in Tamworth	- Place -
Delivering quality services in Tamworth	- Organisation -

The ultimate aim of a Dementia Friendly Community is to create a "place" where people living with dementia are understood, respected and supported and are confident they can contribute to community life.

The "people" in this place will be aware of and understand dementia, and those "people" with dementia will feel included and involved, and have choice and control over their day to day lives.

As an "organisation", itself a microcosm of the communities it serves we will seek to ensure that our members, partners and employees demonstrate the same understanding and respect as they go about their daily business and also when planning services for the future.

The aims of the Dementia Action Alliance align seamlessly with the following corporate objectives:

- **Support and Protect individuals and communities that are or may become**

vulnerable;

- Enable residents to improve their health and quality of life;
- Work together to tackle the causes of inequality in Tamworth;
- Work with customers to improve their access to services; and
- Enable greater public engagement in local decision making.

Specific Actions	
The following list of actions will, subject to Members endorsement, be submitted in support of the Council's application for membership of the Staffordshire & Stoke on Trent Dementia Action Alliance .	
DA1	Awareness
	<p>DA1 a) Seek to ensure that all key staff and elected members undertake to attend a Dementia Friends session delivered by an accredited person.</p>
	<p>DA1 b) Appoint a "Member Champion" and "Lead Officer" to support the wider role out of Dementia Friends sessions internally and externally.</p>
	<p>DA1 c) Extend awareness of and access to Dementia Friends sessions to our key partners (if not already engaged).</p>
	<p>DA1 d) Explore opportunities to support people living with dementia when reviewing or designing services, eg:</p> <ul style="list-style-type: none"> • Assisted bin collections • Text "Reminders" for appointments; payments; collections; elections etc • Access to cultural and heritage venues
	<p>DA1 e) The Council's communications team will be advised on the use of language using DEEP's.</p> <p>Dementia Engagement & Empowerment Project and the Dementia Words Matter Guide.</p>
DA2	Local/Community Engagement
	<p>DA2 a) Include local people affected by dementia in all engagement processes relating to decision making, service re-design; relevant policies and practices;</p>
	<p>DA2 b) Capture insight and information from those affected by dementia to support informed decision making;</p>
	<p>DA2 c) Incorporate "Dementia Awareness Week" into the events calendar for 2017 and to promote the event through current channels and networks.</p>
DA3	Council Staff
	<p>DA3 a) The Council will ensure that its current policies and procedures and any future reviews reflect the needs and support necessary for employees who may be caring for someone living with dementia or, working with a</p>

		diagnosis of dementia;
	DA3 b)	Information and advice literature will be displayed and available in all publicly accessibly buildings.
DA4	Establishing a Local Dementia Action Alliance	
	DA4 a)	<p>The Council, through its extensive partnership and community networks will seek to promote wider awareness of dementia for the purpose of establishing a Local Dementia Action Alliance. These networks will include:</p> <ul style="list-style-type: none"> • Tamworth Strategic Partnership • Tamworth & Lichfield Business & Economic Partnership • Tamworth Headteachers Forum • Local Housing & Health Groups • Town Team • Locality Hubs • Licensed Taxi Alliance
DA5	Access to Information & Advice	
	DA5 a)	Contact details of all relevant support organisations/groups will be incorporated onto the Council's website and internal Intranet.
	DA5 b)	Literature provided by both the Alzheimer's Association and the Dementia Action Alliance will be displayed and available from Council Offices.
	DA5 c)	Customer facing staff will be briefed on how to signpost customers to the relevant professional support providers.
DA6	Environmental & Service Access Considerations	
	DA6 a)	<p>The needs of people living with or affected by dementia will be considered alongside those of other groups requiring additional support; reasonable adjustments or specialist consideration. This will apply to:</p> <ul style="list-style-type: none"> • Access to information, services and facilities; • Planning and designing outdoor public spaces/facilities; • Work place assessments <p>*Future public information outlets to be developed to "Safe Place" standards eg., TIC.</p>
	DA6 b)	Incorporate the needs of people living with dementia

**NATIONAL DEMENTIA DECLARATION ACTION PLAN
PROGRESS REPORT
APRIL 2017**

Introduction

In effect, this report sets out the details relating to progress against the Action Plan agreed by Cabinet on 16th June, 2016 and attached as **Appendix A** to the covering report.

So as to commence the journey towards becoming a **Dementia Friendly Community**, Council officers made contact with the Alzheimer's Society and through them, the regional co-ordinator for the **Dementia Action Alliance (DAA)**. In summary, the relationship between the Alzheimer's Society and the DAA arose in response to a challenge from the then Prime Minister, for organisations from all sectors to work together with communities to transform the lives and experiences of those living with dementia and those who care for them.

Start-Up

The journey to becoming a **Dementia Friendly Community** is an iterative one and deliberately so. Ordinarily, the journey to becoming a **Dementia Friendly Community** can take of number of years indeed, the supporting guidance states precisely that. On reflection, the timescale is designed to accommodate and encourage participation and wider engagement from communities that do not have the access to facilities, knowledge, advice and support as some others might but still have the desire, need and enthusiasm to pursue the status.

At a local level, the Council took the decision at the start of the process that it would apply its influence, capacity and resources to facilitate progress, to enable action and to provide support and structure as necessary in order to assist the 'alliance' to succeed. This has been achieved with the excellent support of members, officers and our communities.

- **Progress Update - Dementia**

In order to understand the scale and scope of progress to date, it is essential to understand the situation prior to the Council's decision. In an attempt to establish a baseline for this purpose, the point at which the Borough Council applied for membership of the Staffordshire Dementia Action Alliance has been used. The Action Plan in support of this application was also endorsed by Cabinet on 16th June, 2016 and is attached as **Appendix A**.

- Tamworth Borough Council's application for membership of the Staffordshire & Stoke on Trent DAA was formally approved on 23rd August, 2016.
- The primary task at this point is to deliver the specific actions set out in the plan that supported the application. These are detailed under the thematic headings of:

- **Establishing an LDAA**
- **Awareness**
- **Local & Community Engagement**
- **Employees & Staff**
- **Access to Information & Advice**
- **Service Access Considerations**

There is considerable cross over between these “themes” which allows for some to be delivered simultaneously with others or, for progress against one theme to impact upon another. Locally, the decision was taken to establish the local DAA in order to create capacity, increase awareness and growth the knowledge base.

- **Establishing a Local Dementia Action Alliance**

The cross-over also relates to the fact that membership of DAAs is hierarchical – so, the police are members of the **Staffordshire DAA** and therefore ‘de facto’ members of the **Tamworth DAA**. Consequently, when the **Tamworth Dementia Action Alliance** was first convened on 9th January, 2017 following a ‘soft’ promotion campaign it had five ‘de facto’ members and only one new recruit from Tamworth; the Rotary Club of Tamworth Anker. The **TDAA** now boasts fifteen full members with other provisionally ‘signed up’ pending head office approval.

What does warrant mention is the fact that all ‘de facto’ members regularly attend meetings and the local membership includes the **Sainsbury’s** superstore the only store in the group located across the West Midlands region to ‘sign up’. This can be attributed to the links formed by Councillor Mrs. Clements with local management who have engaged in the campaign and undertaken training.

For the record, it has been the dedication and enthusiasm of key individuals such as Councillor Mrs. Clements and the designated lead officer for the Council, Karen Clancy that have accelerated progress to the position it is in at this time.

- **Awareness**

- The Council very quickly provided both a member and officer lead in order to provide single points of contact for both groups.

Member Champion Councillor Andrew James
Officer Lead Mrs. Karen Clancy
CMT Sponsor Anthony E. Goodwin

- Key to raising awareness was the role out of **Dementia Friends** training to elected members, key officers and staff, the members of the **TDAA** and local communities. Dedicated training for elected members was delivered by Cllr. Mrs. Clements. The first elected member to achieve **Dementia Champion** status, Cllr. Clements not only delivered member training but a range of training to groups, clubs and other organisations all of which served to contribute to the advanced position the TDAA now enjoys.
- Simultaneously, ‘Communities Together’ CIC delivered a series of **Dementia Friends** training sessions to key officers and staff in addition to training for groups, clubs and other organisations which again accelerated this process. Both “trainers” are active in support of the TDAA.

Continuing under the **Awareness** theme, work continues in identifying tangible opportunities to support people living with dementia in terms of service delivery. Recent examples include the use of **TEXTS** reminders or prompts relating to 'Payments' or 'Appointments' or even to put the relevant bin out for collection. The use of appropriate 'language' is also under review for all communication applications.

- **Local Community Engagement**

This theme is very much about the next level of awareness and includes living, working or simply being with those who live with dementia and their carers. The opportunity to progress this sensitive area has been presented by the fact that a local couple with personal experience of the challenges facing those living with dementia. Ultimately, the intention is to set up a group that can advise and assist the TDAA in its efforts to promote awareness and understanding.

A potential step towards this is an application to the 'Silver Social Action Fund' to train 15 volunteers aged over 60 to work in this area.

Using information, data and insight drawn from those directly affected together with data from CCGs, Public Health & Care and mental health practitioners will improve future planning and decision making.

The third action under this 'theme' relates to the inclusion of National Dementia Awareness Week into the established 'Events Calendar'.

Considerable progress has already been made in preparation for the event which runs from **Sunday, 14th May 2017 to Saturday, 20th May, 2017**. Led by the TDAA with support from the Borough Council lead officers a Market Stall has been provided free of charge by the contractor for use as a **Promotions Hub** the week of the event.

In addition to a range of activities planned for the week, progress has been made on a number of fronts designed to increase awareness.

Safety Town – annual event involving around 800 Year 5 students will see all of them receive adapted training from Lee Bates of "Communities Together" CIC.

Other 'awareness' projects involve the locating of signage on local Fire Appliances and Borough Council vehicles depicting the **Dementia Friendly Community** logo and, the creation of a "sensory garden" planted in the colour of the **Dementia Friendly Community** logo.

Funding and sponsorship has been identified for all projects.

- **Employees & Council Outlets**

In specific relation to **Dementia Friendly Communities**, the Council will ensure that all policies and procedures relating to its employees who either live with dementia or care for someone who does will be amended to reflect any specific needs.

With regard to general information, dedicated leaflet stands/wallets have been located in major outlets such as Marmion House reception.

An elected member champion was nominated and seconded and a lead officer appointed to take the entire project forward. The Council's Chief Executive will act as the projects "sponsor".

Dementia Friends training has been delivered to key elected members by Councillor Mrs. Clements; to officers working face to face with the public by Lee Bates of Communities Together CIC and to a wider public audience by both colleagues and other trained **Dementia Champions**. The number of **Dementia Friends** has increased by over 750 since the TDAA was established.

Given the 'cross-over' between themes mentioned earlier, this summarises the progress made to date. It is likely that further outcomes may be achieved by the time Cabinet meet to consider the report, these will be reported verbally at the meeting.

- **Wider Mental Health Matters**

The Borough Council has a strong link with the mental health agenda via the CEO's role as a Member of the WMCA Mental Health Commission.

Furthermore, following Government's decision to afford mental health the same level of consideration and emphasis as physical health and wellbeing, the Council was swift to reflect this in its policies and plans. **Appendix C** to this report sets out the details of the Council's first response to the Governments repositioning of Mental Health issues.

TACKLING THE CAUSES & CONSEQUENCES OF MENTAL HEALTH ISSUES

APRIL 2017

Introduction

“Mental Health and Wellbeing are to be acknowledged and treated in precisely the same way as Physical Health and Wellbeing”. This was very much the meaning of the statement of intent issued by the Prime Minister earlier this year.

Clearly, this ‘shift’ in emphasis holds consequences for district and borough councils such as Tamworth both in terms of its role as a Community Leader and Place Shaper and as an ‘employer’ in its own right.

The ongoing work relating to dementia and Alzheimer’s is a clear indication of the actions of an established ‘community leader’ as it shows the Council working at different levels. Examples of the Council taking the lead; enabling and supporting others and using its influence to facilitate progress are all evident in the covering report and at **Appendix B**. This section of the report relates to its role as an ‘employer’ and in particular, how it has responded to the urgent need to tackle and remove the stigma and discrimination associated with mental health.

Background

The Time to Change Employer Pledge signals a commitment to changing how we think and act about mental health in the workplace and make sure that employees who are facing these problems feel supported.

- 1 in 6 British workers are affected by conditions like anxiety, depression and stress every year;
- Mental ill-health is the leading cause of sickness absence in the UK, costing an average of £1,035 per employee per year;
- 95% of employees calling in sick with stress gave a different reason;
- According to the annual CIPD Absence Management survey Over two-fifths (41%) of organisations have seen an increase in reported mental health problems (such as anxiety and depression) over the last twelve months;
- 4 in 10 employees are afraid to disclose mental health problems to their employer;
- Mind’s recent research found that 56% of employers said they would like to do more to improve staff wellbeing but don't feel they have the right training or guidance;
- Stress and mental health issues account for 402 days lost in the last 12 months (1st Jan to 31st Jan 2016) at TBC;
- This is equivalent to at least £40,000 lost due to known mental health and stress related issues. Studies suggest this could be as low as a twentieth of the cost;
- Wellbeing has a direct link to our equalities agenda and our pledge to MERIT (Making Equality Real in Tamworth).

There is significant evidence to show that looking after the mental health of our employees makes business sense and increases productivity. Encouraging them to talk about their mental health can make a real difference to sickness absence rates, presenteeism levels, staff wellbeing and productivity. It also means that they are more likely to seek support before reaching crisis point resulting in them being signed off sick for longer periods

- 10% reduction in absence as a result of tackling stress and mental health issues would equal £335,000 per annum. This is the equivalent of have 12 extra staff across the organisation.

Over 450 employers have already made the pledge across all sectors from FTSE 100 companies and leading retailers to Government departments and local authorities. Tackling stress and mental health in the workplace has direct benefits and ensures our ambition to be an employer of choice is protected.

To support the campaign we have already circulated details of online resources and trained 10 Mental Health First Aiders, who are available to employees to give immediate support and intervention. An Employee Wellbeing Policy and Time to Change Action Plan has been developed ratified by CMT for consultation with staff initially.

Recent discussions with the Trade Unions have made this area a priority. A recent joint regional survey led by UNITE was formally presented at the December Trade Union Liaison Group and a formal request has been made by the UNISON branch to begin discussing the campaign.

Cross reference has already been made to the Dementia Action Plan in drafting the action plan.

Employee Wellbeing Policy

This Policy has been developed from best practice and ongoing discussions with the trade unions. It identifies the wide range of tools we can employ at Tamworth Borough Council to support staff experiencing difficulty and general provisions for health and wellbeing to promote positive issues within the work place.

The Policy will then be presented for formal adoption by Appointments & Staffing Committee.

Time to Change Action Plan

So, what does this mean in real terms?

The Action Plan is based around seven key principles:

- Demonstrate senior level buy-in;
- Demonstrate accountability and recruit Employee Champions;
- Raise awareness about mental health;
- Update and implement policies to address mental health problems in the workplace;
- Ask staff to share personal experiences of mental health problems;
- Equip line managers to have conversations about mental health;

- Provide information about mental health and signpost to support services.

Most of the activity is already informally underway and reasonably well developed from good practice. Formalising these actions into the action plan and signing up to the Pledge will send a very strong signal to staff and trade unions regarding our commitment addressing mental health in the workplace.

Signing the Time to Change Employer Pledge is free and provides dedicated support throughout the (6 week) process as well as a year of support after making the formal pledge. This includes coaching on our action plan, connections to other employers and free masterclasses where we can learn from leading employers on how they have achieved success. We will also receive support to recruit Champions who will essentially drive this campaign forward. Champions will separately have access to training, peer support as well as access to working groups that involve champions from other organisations. At least 2 employees have approached the HR team separately to confirm they would like to promote and support the organisation in promoting better mental health. One as a union member and another as a person who has direct experience of stress/mental health issues.

Progress Since signing the Time to Change Employer Pledge:

- 95% said it had a positive impact on their organisation;
- 80% of organisations agreed that it had helped to raise awareness of mental health amongst staff;
- 50% reported a rise in staff disclosure of mental health problems, which helps to intervene early and prevent long term sickness.

Since the campaign was first introduced in 2016, £1,950 has already been invested in training 10 Mental Health First Aiders across the organisation. Plans and funding is in place for a further 12 to be trained later this year. This programme is delivered by Oakwood Training and is a formally recognised and transferable qualification.

Advice and guidance has been sought from our onsite Counselling service – The Listening Centre to feed into the action plan and for consultation on our policy.

All other resources to support this are available free from the Mind campaign. Much of the work to raise awareness will be driven by the Mental Health Champions, who are volunteers. These would need a little regular time to carry out activities to raise awareness.

A pledge event can be held after 6 weeks to formally sign up to the campaign and the timing of this report is such to allow a formal pledge to be made as part of the Employee Wellbeing Day planned for Tuesday 23rd May.

CABINET

27 APRIL 2017

REPORT OF THE SOLICITOR TO THE COUNCIL

REGULATION OF INVESTIGATORY POWERS ACT 2000 ADOPTION OF POLICY AND PROCEDURE

EXEMPT INFORMATION

None

PURPOSE

This report advises Members of the proposed amendments to the Corporate Policy governing the Regulation of Investigatory Powers Act 2000 in light of the new requirements introduced by recent legislative change and Home Office Guidance and seeks their consideration and recommendations in relation thereto.

RECOMMENDATIONS

That the Committee

- 1. considers the changes to the RIPA policy on Directed Surveillance, Covert Human Intelligence Sources (CHIS) and Acquisition of Communications Data,**
- 2. satisfies itself that the changes meet the requirements imposed on the Council in terms of the legislation and Codes of Practice, and**
- 3. recommends approval to Council.**

EXECUTIVE SUMMARY

The Council has a number of statutory functions that involve officers investigating the conduct of others with a view to bringing legal action against them. The Council has also been given powers under the Regulation of Investigatory Powers Act 2000 (RIPA) which enable it to carry out Directed Surveillance in certain strict circumstances. RIPA provides a legal framework for the control and regulation of surveillance and information gathering techniques which public bodies such as Tamworth Borough Council have to comply with. These powers have been amended and changed in accordance with various pieces of legislation. The last change resulted in a revised RIPA Policy being approved by the Council on 15 March 2016. The Protection of Freedoms Act 2012 now requires that local authority authorisations under RIPA for Directed Surveillance or CHIS can only become effective on the granting of an order approving the authorisation by a Justice of the Peace. Further a local authority can now only have an authorisation under RIPA for the use of Directed Surveillance where the local authority is investigating criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco under the Licensing Act 2003 of the Children

and Families Act 2014.

| No Directed Surveillance has been carried out by the Council since 2011 and it is not envisaged that there will be any appreciable change in the foreseeable future. By adhering to this proposed Policy the Council will ensure that the acquisition and disclosure of data is lawful, necessary and proportionate so that the Council is not held to be in breach of Article 8 (the right to respect for private family life, home and correspondence) of the European Convention on Human Rights.

The current policy prepared in 2016 did not reflect recent changes to legislation and Home Office Codes of Practice.

The attached draft policy and protocol will ensure that the acquisition and disclosure of data is lawful, necessary and proportionate, so that the Council is not held to be in breach of the Human Rights Act and that data obtained under such measures would be used to assist in the successful prosecution of relevant criminal offences. The draft policy and protocol was considered by Audit and Governance Committee on 9 February 2017, the Committee considered the changes to the RIPA policy on Directed Surveillance, Covert Human Intelligence Sources (CHIS) and Acquisition of Communications Data, was satisfied that the changes meet the requirements imposed on the Council in terms of the legislation and Codes of Practice, and recommended approval to Cabinet and Council.

OPTIONS CONSIDERED

The Policy is to a large extent defined by the requirements of RIPA and the most recent Home Office Codes of Practice. The recommended policy is consistent with the new policies and guidance; there is little scope if any to do otherwise.

RESOURCE IMPLICATIONS

There are no direct resource implications arising from the adoption of the policy and procedure. Any applications and training costs will be met from existing budgets.

LEGAL/RISK IMPLICATIONS

Failure to follow the policy and procedure could result in the Council being open to challenge, unnecessary legal risk and ultimately responsible in damages for any breach of the Codes of Practice and Human Rights legislation. The Office of Surveillance Commissioners would also severely criticise such failure and the adverse publicity arising therefrom could damage the Council's reputation and not serve in its best interests.

The policy and procedure will provide guidance to staff on the processing and procedure to obtain a RIPA authorisation, reducing the risk of legal challenge to the procedure itself and the evidence obtained.

Risk has been identified in the following areas: training of Officers, Collateral Intrusion and changes to legislation and procedures surrounding RIPA, However this has been addressed, regular training of Officers takes place, the Netconsent function and email is used to disseminate the policy and inform training events. The Solicitor to the Council reviews the policy regularly to ensure legislative and Home Office

compliance. Quarterly reports are made to Audit & Governance Committee and an annual report to full Council. Finally provision exists in the policy itself to mitigate any other associated risks.

SUSTAINABILITY IMPLICATIONS

Under current arrangements the Policy and training requirements are currently sustainable and remain so for the foreseeable future.

REPORT AUTHOR

Jane Marie Hackett, Solicitor to the Council and Monitoring Officer tel 01827 709258

LIST OF BACKGROUND PAPERS

Regulation of Investigatory Powers Act 2000

Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012

The Protection of Freedoms Act 2012

Home Office – Covert Surveillance and Property Interference Code of Practice

Home Office – Covert Human Intelligence Sources Code of Practice

APPENDIX 1

Proposed RIPA Policy and Procedure

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**REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)
POLICY STATEMENT, STRATEGY & GUIDANCE NOTES**

Document Status: Final

Originator: J M Hackett

Updated: J M Hackett

Owner: Solicitor to the Council – Corporate Services

Version: 01.01.03

Date: 17/01/2017

Approved by Audit & Governance Committee

Document Location

This document is held by Tamworth Borough Council, and the document owner is Jane Marie Hackett, Solicitor to the Council – Corporate Services.

Printed documents may be obsolete. An electronic copy will be available on Tamworth Borough Councils Intranet. Please check for current version before using.

Revision History

Revision Date	Version Control	Summary of changes
	1.01.01	Scheduled review
December 2008	1.01.02	Scheduled review
September 2010	1.01.03	Scheduled review
September 2011	1.01.04	Scheduled review
December 2012	1.01.05	Scheduled review
November 2014	1.01.06	Scheduled review
April 2015	1.01.07	Scheduled review
February 2016	1.01.08	Scheduled review
January 2017	1.01.09	Scheduled review

Approvals

Name	Title	Approved
Audit & Governance Committee	Committee Approval	Yes
Council	Council Approval	Yes
CMT	Group Approval	Yes
John Wheatley	Executive Director – Corporate Services	Yes
Jane Marie Hackett	Solicitor to the Council and Monitoring Officer	Yes

Document Review Plans

This document is subject to a scheduled annual review. Updates shall be made in accordance with business requirements and changes and will be with agreement with the document owner.

Distribution

The document will be available on the Intranet and the website.

TAMWORTH BOROUGH COUNCIL

POLICY & PROCEDURE

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)



Jane Marie Hackett
Solicitor to the Council
Tamworth Borough Council

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Section A

Introduction

1. OBJECTIVE: SUSTAINABLE COMMUNITIES; SAFER AND STRONGER COMMUNITIES

Tamworth Borough Council is committed to improving the quality of life for the communities of Tamworth which includes benefiting from an attractive place to live, meeting the needs of local people and employers with opportunities for all to engage in community life. It also wishes to maintain its position as a low crime borough and a safe place to live, work and learn. Although most of the community comply with the law, it is necessary for Tamworth to carry out enforcement functions to take full action against those who flout the law. Tamworth Borough Council will carry out enforcement action in a fair, practical and consistent manner to help promote a thriving local economy.

2. HUMAN RIGHTS ACT 1998 – ARTICLE 8 – RIGHT TO RESPECT FOR PRIVATE & FAMILY LIFE, HOME AND CORRESPONDENCE

The Human Rights Act 1998 brought into UK domestic law much of the European Convention on Human Rights and Fundamental Freedoms 1950. Article 8 of the European Convention requires the Council to respect the private and family life of its citizens, their homes and their correspondence. Article 8 does, however, recognise that there may be circumstances in a democratic society where it is necessary for the state to interfere with this right.

3. USE OF COVERT SURVEILLANCE TECHNIQUES AND HUMAN INTELLIGENCE SOURCES

The Council has various functions which involve observing or investigating the conduct of others, for example, investigating anti-social behaviour, fly tipping, noise nuisance control, planning (contraventions), fraud, licensing and food safety legislation. In most cases, Council officers carry out these functions openly and in a way which does not interfere with a person's right to a private life. However, there are cases where it is necessary for officers to use covert surveillance techniques to undertake a specific investigation. The use of covert surveillance techniques is regulated by the Regulation of Investigatory Powers Act 2000 (RIPA), which seeks to ensure that the public interest and human rights of individuals are appropriately balanced. This document sets out the Council's policy and procedures on the use of covert surveillance techniques and the conduct and use of a Covert Human Intelligence Source. You should also refer to the two Codes of Practice published by the Government. These Codes are on the Home Office website and supplement the procedures in this document. The Codes are admissible as evidence in Criminal and Civil Proceedings. If a provision of these Codes appear relevant to any court or tribunal, it must be taken into account.

The Codes of Practice for both Covert Surveillance and Covert Human Intelligence Sources can be obtained by following the link below:

<https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice>

There are also two other guidance documents relating the procedural changes regarding the authorisation process requiring Justice of the Peace approval from the 1st November 2012. These have been issued by the Home Office to both Local Authorities and Magistrates.

<http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/local-authority-ripa-guidance/>

4. ACQUISITION OF COMMUNICATIONS DATA

RIPA also regulates the acquisition of communications data. Communications data is data held by telecommunications companies and internet service providers. Examples of communications data which may be acquired with authorisation include names, addresses, telephone numbers, internet provider addresses. Communications data surveillance does not monitor the content of telephone calls or emails. This document sets out the procedures for the acquisition of communications data. You should also refer to the Code of Practice which is available on the Home Office website.

Acquisition and Disclosure of Communications Data Revised Draft Code of Practice:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426248/Acquisition_and_Disclosure_of_Communications_Data_Code_of_Practice_March_2015

Section B

EFFECTIVE DATE OF OPERATION AND AUTHORISING OFFICER RESPONSIBILITIES

1. The Policy and Procedures in this document have been amended to reflect the latest Codes of Practice which are in force and the legislative amendments which require Justice of the Peace (JP) approval for all Local Authority RIPA applications and renewals, which came in effect on 1 November 2012, changes in website addresses and application forms, as well as to reflect recommendations arising out of inspection by the Office of Surveillance Commissioners and their guidance documents. It is essential, therefore, that Authorising Officers, take personal responsibility for the effective and efficient observance of this document and the Office of Surveillance Commissioners (OSC) guidance documents.
2. It will be the responsibility of Authorising Officers to ensure that their relevant members of staff are suitably trained as 'Applicants'.
3. Authorising Officers will also ensure that staff who report to them follow this Policy and Procedures Document and do not undertake or carry out surveillance activity that meets the criteria as set out by RIPA without first obtaining the relevant authorisations in compliance with this document.
4. Authorising Officers must also pay particular attention to health and safety issues that may be raised by any proposed surveillance activity. Under no circumstances, should an Authorising Officer approve any RIPA form unless, and until they are satisfied that
 - the health and safety of Council employees/agents are suitably addressed
 - risks minimised so far as is possible, and
 - risks are proportionate to the surveillance being proposed.

If an Authorising Officer is in any doubt, prior guidance should be obtained from the Solicitor to the Council.

5. Authorising Officers must also ensure that, when sending copies of any Forms to the Solicitor to the Council (or any other relevant authority), that they are sent in **sealed** envelopes and marked '**Strictly Private & Confidential**'.
6. In Accordance with the Codes of Practice, the Senior Responsible Officer (SRO) who is the Solicitor to the Council is responsible for
 - the integrity of the process in place within the public authority to authorise directed and intrusive surveillance
 - compliance with Part II of the 2000 Act, and with this code;
 - engagement with the Commissioners and inspectors when they conduct their inspections, and
 - where necessary, overseeing the implementation of any post inspection action plans recommended or approved by a Commissioner.

The Solicitor to the Council is also the RIPA Co-ordinator. The key responsibilities of the RIPA Co-ordinator are set out in Section G of this document.

7. The Chief Executive in consultation with Corporate Management Team has power to appoint Authorising Officers for the purposes of RIPA. Authorising Officers will only be appointed on the Chief Executive being satisfied that suitable training on RIPA has been undertaken.
8. The Solicitor to the Council will review the policy every six months and annual reports on performance of the policy will be presented to Council.
9. Quarterly reports on the use of RIPA will be considered by the Audit and Governance Committee.

Section C

GENERAL INFORMATION ON RIPA

1. The Human Rights Act 1998 requires the Council, and organisations working on its behalf, pursuant to Article 8 of the European Convention, to respect the private and family life of citizens, their homes and their correspondence.
2. The European Convention did not, however, make this an absolute right, but a qualified right. Accordingly, in certain circumstances, the Council may interfere in the citizen's right mentioned above, if such interference is:-
 - (a) **in accordance with the Law;**
 - (b) **necessary** in the circumstances of the particular case; **and**
 - (c) **proportionate** to what it seeks to achieve.
3. The Regulation of Investigatory Powers Act 2000 ('RIPA') provides a statutory mechanism (ie. 'in accordance with the law') for authorising **covert surveillance** and the use of a '**covert human intelligence source**' ('CHIS') – eg. undercover agents. It seeks to ensure that any interference with an individual's right under Article 8 of the European Convention is necessary and proportionate. In doing so, RIPA and this Policy and Procedure document seeks to ensure both the public interest and the human rights of individuals are suitably balanced.
4. Directly employed Council staff and external agencies working for the Council are covered by the Act for the time they are working for the Council. All external agencies must, therefore, comply with RIPA and the work carried out by agencies on the Council's behalf, must be properly authorised by one of the Council's designated Authorising Officers. They may also be inspected by the OSC in respect of that particular operation. This should be pointed out during the instruction and contract stage. It is also important that the Authorising Officer is aware of the abilities of the operatives to ensure they are capable of undertaking the surveillance. Please refer to Section H and to the paragraph on "Authorising Officers."
5. If the correct procedures are not followed, evidence may be disallowed by the courts, a complaint of maladministration could be made to the Ombudsman and/or the Council could be ordered to pay compensation.

Section D

WHAT RIPA DOES AND DOES NOT DO

1. RIPA:

- requires prior authorisation of directed surveillance.
- prohibits the Council from carrying out intrusive surveillance.
- requires authorisation of the conduct and use of a CHIS.
- requires safeguards for the conduct and use of a CHIS.

2. RIPA does not:

- make lawful conduct which is otherwise unlawful.
- prejudice or affect any existing powers available to the Council to obtain information by any means not involving conduct that may be authorised under this Act. For example, the Council's current powers to obtain information from the DVLA or from the Land Registry as to the ownership of a property.

3. If the Authorising Officer or any Applicant is in any doubt, s/he should ask the Solicitor to the Council BEFORE any directed surveillance and/or CHIS is authorised, renewed, cancelled or rejected.

Section E

TYPES OF SURVEILLANCE

'**Surveillance**' includes:

- monitoring, observing and listening to persons, watching or following their movements, listening to their conversations and other such activities or communications. It may be conducted with or without the assistance of a surveillance device.
- recording anything mentioned above in the course of authorised surveillance.

Surveillance can be overt or covert.

Overt Surveillance

Most of the surveillance carried out by the Council will be done overtly – there will be nothing secretive, clandestine or hidden about it. They will be going about Council business openly. Similarly, surveillance will be overt if the subject has been told it will happen (e.g. where a noisemaker is warned (preferably in writing) that noise will be recorded).

Covert Surveillance

Covert Surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place. (Section 26(9)(a) of RIPA).

RIPA regulates two types of covert surveillance, (Directed Surveillance and Intrusive Surveillance) and the use of Covert Human Intelligence Sources (CHIS).

Directed Surveillance

Directed Surveillance is surveillance which:-

- is **covert**; and
- is **not intrusive surveillance** (see definition below – the Council cannot carry out any intrusive surveillance).
- is not carried out as an immediate response to events which would otherwise make seeking authorisation under the Act reasonable, eg. spotting something suspicious and continuing to observe it; and
- it is undertaken for the purpose of a **specific investigation** or operation in a manner **likely to obtain private information** about an individual (whether or not that person is specifically targeted for purposes of an investigation). (*Section 26(10) RIPA*).

Private Information in relation to a person includes any information relating to his private and family life, his home or his correspondence. The fact that covert

surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. Prolonged surveillance targeted on a single person will undoubtedly result in the obtaining of private information about him/her and others with whom s/he comes into contact. Private information may include personal data such as names, addresses or telephone numbers. Where such information is acquired by means of covert surveillance of a person having a reasonable expectation of privacy, a directed surveillance authorisation is appropriate.

Similarly, although overt town centre CCTV cameras do not normally require authorisation, if the camera is tasked for a specific purpose, which involves prolonged surveillance on a particular person, authorisation will be required. The way a person runs his/her business may also reveal information about his or her private life and the private lives of others. Privacy considerations are likely to arise if several records are examined together to establish a pattern of behaviour.

For the avoidance of doubt, only those Officers appointed as ‘Authorising Officers’ for the purpose of RIPA can authorise ‘Directed Surveillance’ IF, AND ONLY IF, the RIPA authorisation procedures detailed in this Document, are followed.

Intrusive Surveillance

This is when it:-

- is covert;
- relates to residential premises and private vehicles, even if used on a temporary basis and
- involves the presence of a person in the premises or in the vehicle or is carried out by a surveillance device in the premises/vehicle. Surveillance equipment mounted outside the premises will not be intrusive, unless the device consistently provides information of the same quality and detail as might be expected if they were in the premises/vehicle.

This form of surveillance can be carried out only by police and other law enforcement agencies. Intrusive surveillance relates to the location of the surveillance, and not any consideration of the information that is likely to be obtained. Council officers cannot carry out intrusive surveillance.

“Proportionality”

This term contains three concepts:-

- the surveillance should not be excessive in relation to the gravity of the matter being investigated;
- the least intrusive method of surveillance should be chosen; and
- collateral intrusion involving invasion of third parties’ privacy and should, so far as possible, be minimised.

Proportionality involves balancing the intrusiveness of the activity on the subject and others who might be affected by it against the need for the activity in operational

terms. The activity will not be proportionate if it is excessive in the circumstances of the case, or if the information which is sought could reasonably be obtained by other less intrusive means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair. The interference with the person's right should be no greater than that which is required to meet the aim and objectives.

The onus is on the Authorising Officer to ensure that the surveillance meets the tests of **necessity and proportionality**.

The codes provide guidance relating to proportionality which should be considered by both applicants and Authorising Officers :

- balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
- explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
- evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

When considering the intrusion, it is important that the Authorising Officer is fully aware of the technical capabilities of any proposed equipment to be used, and that any images are managed in line with the Data Protection Act and Home Office Guidance. These issues have a direct bearing on determining proportionality.

Section F

Covert Human Intelligence Source (CHIS)

Staff will need to know when someone providing information may become a CHIS, and in these circumstances the Council is required to have procedures in place should this be necessary. However, if it appears that use of a CHIS may be required, Authorising Officers must seek legal advice from the Solicitor to the Council.

A CHIS could be an informant or an undercover officer carrying out covert enquiries on behalf of the council. However, the provisions of the 2000 Act are not intended to apply in circumstances where members of the public volunteer information to the Council as part of their normal civic duties, or to contact numbers set up to receive information such as the Fraud Hot Line. Members of the public acting in this way would not generally be regarded as sources.

Under section 26(8) of the 2000 Act a person is a source if:

- a) he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);
- b) he covertly uses such a relationship to obtain information or to provide access to any information to another person; or
- c) he covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

By virtue of section 26(9)(b) of the 2000 Act a purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if, the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.

By virtue of section 26(9)(c) of the 2000 Act a relationship is used covertly, and information obtained as above is disclosed covertly, if and only if it is used or, as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

Conduct and Use of a Source

The **use of a source** involves inducing, asking or assisting a person to engage in the conduct of a source or to obtain information by means of the conduct of such a source.

The **conduct of a source** is any conduct falling within a), b), or c), mentioned above, or which is incidental to anything falling within those sections.

The **use of a source** is what the Authority does in connection with the source and the **conduct** is what a source does to fulfill whatever tasks are given to them or which is incidental to it. **The Use and Conduct require separate consideration before authorisation.**

When completing applications for the use of a CHIS, the applicant must state who the CHIS is, what they can do and for which purpose.

When determining whether a CHIS authorisation is required, consideration should be given to the covert relationship between the parties and the purposes mentioned in a, b, and c above.

Management of Sources

Within the provisions there has to be;

- (a) a person who has the day to day responsibility for dealing with the source and for the source's security and welfare (**Handler**)
- (b) at all times there will be another person who will have general oversight of the use made of the source (**Controller**)
- (c) at all times there will be a person who will have responsibility for maintaining a record of the use made of the source

The **Handler** will have day to day responsibility for:

- dealing with the source on behalf of the authority concerned;
- directing the day to day activities of the source;
- recording the information supplied by the source; and
- monitoring the source's security and welfare;

The Controller will be responsible for the general oversight of the use of the source.

Tasking

Tasking is the assignment given to the source by the Handler or Controller by asking him to obtain information, to provide access to information, or to otherwise act, incidentally, for the benefit of the relevant public authority. Authorisation for the use or conduct of a source is required prior to any tasking where such tasking requires the source to establish or maintain a personal or other relationship for a covert purpose.

In some instances, the tasking given to a person will not require the source to establish a personal or other relationship for a covert purpose. For example, a source may be tasked with finding out purely factual information about the layout of

commercial premises. Alternatively, a Council Officer may be involved in the test purchase of items which have been labelled misleadingly or are unfit for consumption. In such cases, it is for the Council to determine where, and in what circumstances, such activity may require authorisation.

Should a CHIS authority be required, all of the staff involved in the process should make themselves fully aware of all of the aspects relating to tasking contained within the CHIS codes of Practice

Management Responsibility

The Council will ensure that arrangements are in place for the proper oversight and management of sources including appointing a Handler and Controller for each source prior to a CHIS authorisation.

The Handler of the source will usually be of a rank or position below that of the Authorising Officer.

It is envisaged that the use of a CHIS will be infrequent. Should a CHIS application be necessary, the CHIS Codes of Practice should be consulted to ensure that the Council can meet its management responsibilities.

Security and Welfare

The Council has a responsibility for the safety and welfare of the source and for the consequences to others of any tasks given to the source. Before authorising the use or conduct of a source, the Authorising Officer should ensure that a risk assessment is carried out to determine the risk to the source of any tasking and the likely consequences should the role of the source become known. The ongoing security and welfare of the source, after the cancellation of the authorisation, should also be considered at the outset.

Record Management for CHIS

Proper records must be kept of the authorisation and use of a source. The particulars to be contained within the records are;

- a. the identity of the source;
- b. the identity, where known, used by the source;
- c. any relevant investigating authority other than the authority maintaining the records;
- d. the means by which the source is referred to within each relevant investigating authority;

- e. any other significant information connected with the security and welfare of the source;
- f. any confirmation made by a person granting or renewing an authorisation for the conduct or use of a source that the information in paragraph (d) has been considered and that any identified risks to the security and welfare of the source have where appropriate been properly explained to and understood by the source;
- g. the date when, and the circumstances in which the source was recruited;
- h. the identities of the persons who, in relation to the source, are discharging or have discharged the functions mentioned in section 29(5)(a) to (c) of the 2000 Act or in any order made by the Secretary of State under section 29(2)(c);
- i. the periods during which those persons have discharged those responsibilities;
- j. the tasks given to the source and the demands made of him in relation to his activities as a source;
- k. all contacts or communications between the source and a person acting on behalf of any relevant investigating authority;
- l. the information obtained by each relevant investigating authority by the conduct or use of the source;
- m. any dissemination by that authority of information obtained in that way; and
- n. in the case of a source who is not an undercover operative, every payment, benefit or reward and every offer of a payment, benefit or reward that is made or provided by or on behalf of any relevant investigating authority in respect of the source's activities for the benefit of that or any other relevant investigating authority.

Juvenile Sources

Special safeguards apply to the use or conduct of juvenile sources (i.e. those under the age of 18). On no occasion can a child under 16 years of age be authorised to give information against his or her parents or any person with parental responsibility for him or her. Only the Chief Executive, or in his absence, the Deputy Chief Executive can authorise the use of a juvenile as a source.

Vulnerable Individuals

A Vulnerable Individual is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself or herself, or unable to protect himself or herself against significant harm or exploitation.

A Vulnerable Individual will only be authorised to act as a source in the most exceptional of circumstances. Only the Chief Executive, or in his absence, the Executive Director Corporate Services can authorise the use of a vulnerable individual as a source.

Test Purchases

Carrying out test purchases will not normally require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information and, therefore, the purchaser will not normally be a CHIS. For example, authorisation as a CHIS would not normally be required for test purchases carried out in the ordinary course of business (e.g. walking into a shop and purchasing a product over the counter).

By contrast, developing a relationship with a person in the shop, to obtain information about the seller's suppliers of an illegal product (e.g. illegally imported products) will require authorisation as a CHIS. Similarly, using mobile hidden recording devices or CCTV cameras to record what is going on in the shop will require authorisation as directed surveillance. A combined authorisation can be given for a CHIS and also directed surveillance. However it will be necessary to complete the relevant separate application forms.

Authorising Officers should consider the likelihood that the test purchase will lead to a relationship being formed with a person in the shop. If the particular circumstances of a particular test purchase are likely to involve the development of a relationship Authorising Officers must seek legal advice from the Solicitor to the Council.

If several shop premises are included on one application for Directed Surveillance, each premises will be required to be assessed by the Authorising Officer individually on their own merits.

Anti-Social Behaviour Activities (e.g. Noise, Violence, Race etc.)

As from 1 November 2012 there is no provision for a Local Authority to use RIPA to conduct covert activities for disorder such as anti-social behaviour, unless there are criminal offences involved which attract a maximum custodial sentence of six months. Should it be necessary to conduct covert surveillance for disorder which does not meet the serious crime criteria of a custodial sentence of a maximum of six months, this surveillance would be classed as surveillance outside of RIPA, and would still have to meet the Human Rights Act provisions of Necessity and Proportionality

Persons who complain about anti-social behaviour, and are asked to keep a diary, will not normally be a CHIS, as they are not required to establish or maintain a relationship for a covert purpose. Recording the level of noise (eg. the decibel level) will not normally capture private information and, therefore, does not require authorisation.

Section G

THE ROLE OF THE RIPA CO-ORDINATOR

Key Responsibilities of the RIPA Co-ordinator

In this document the RIPA Co-ordinator is the Solicitor to the Council. The key responsibilities of the RIPA Co-ordinator are to:

- Retain all applications for authorisation (including those that have been refused), renewals and cancellations for a period of at least **three years** together with any supplementary documentation;
- Provide a unique reference number and maintain the central register of all applications for authorisations whether finally granted or refused (see section below);
- Create and maintain a spread sheet for the purpose of identifying and monitoring expiry dates and renewal dates although the responsibility for this is primarily that of the officer in charge and the Authorising Officer;
- Retain an oversight of the authorisation process
- Monitor types of activities being authorised to ensure consistency and quality throughout the Council;
- Ensure sections identify and fulfil training needs;
- Periodically review Council procedures to ensure that they are up to date;
- Assist Council employees to keep abreast of RIPA developments by organising training and raising RIPA awareness throughout the Council;
- Provide a link to the Surveillance Commissioner and disseminate information on changes on the law, good practice etc. Officers becoming aware of such information should, conversely, send it to the RIPA Co-ordinator for this purpose;
- Check that Authorising Officers carry out reviews and cancellations on a timely basis.

Central Record of Authorisations

A centrally retrievable record of all authorisations will be held by the RIPA Co-ordinator (Solicitor to the Council) which must be up-dated whenever an authorisation is granted, renewed or cancelled. These records will be retained for a period of **three years** from the ending of the authorisation and will contain the following information:

- The type of authorisation;
- The date the authorisation was given;

- The date approved by the Magistrate
- The name and title of the Authorising Officer;
- The unique reference number of the investigation (URN);
- The title of the investigation or operation, including a brief description and the names of the subjects, if known;
- Whether the investigation will obtain confidential information;
- Whether the authorisation was granted by an individual directly involved in the investigation;
- The dates the authorisation is reviewed and the name and title of the Authorising Officer;
- If the authorisation is renewed, when it was renewed and the name and title of the Authorising Officer;
- The date the authorisation was cancelled.
- Joint surveillance activity where Council staff have been authorised on another agencies authorisation will also be recorded.

Access to the data will be restricted to the RIPA Co-ordinator and Authorising Officers to maintain the confidentiality of the information.

Section H

AUTHORISATION PROCEDURES

1. Directed surveillance and the use of a CHIS can only be lawfully carried out if properly authorised, and in strict accordance with the terms of the authorisation.

Authorising Officers

Forms can only be signed by Authorising Officers. The Authorising Officers are:

Chief Executive	Tony Goodwin
Executive Director Corporate Services	John Wheatley
Corporate Director Growth Assets & Environment	Andrew Barratt

Appointment of the aforesaid officers is subject to the training requirements set out in the paragraph below.

Authorisations under RIPA are separate from delegated authority to act under the Council's Scheme of Delegation and any internal departmental Schemes of Management.

RIPA authorisations are for specific investigations only, and must be renewed or cancelled at the earliest opportunity once the specific surveillance is complete. **The authorisations do not lapse with time.**

Authorising officers should not normally be responsible for authorising operations in which they are directly involved, although it is recognised that this may sometimes be unavoidable, especially in the case of small organisations, or where it is necessary to act urgently or for security reasons. Where an authorising officer authorises such an investigation or operation the centrally retrievable record of authorisations should highlight this and the attention of a Commissioner or Inspector should be invited to it during the next inspection.

Training

Authorising Officers will only be appointed if the Chief Executive is satisfied that they have undertaken suitable training on RIPA. Evidence of suitable training is to be supplied in the form of a certificate/confirmation from the trainer to the effect that the Authorising Officer has completed a suitable course of instruction.

The Solicitor to the Council will maintain a Register of Authorising Officers and details of training undertaken by them.

If the Chief Executive is of the view that an Authorising Officer has not complied fully with the requirements of this document, or the training requirements then that Officer's authorisation can be withdrawn until they have undertaken further approved training or has attended a one-to-one meeting with the Chief Executive.

Grounds for Authorisation

On 1 November 2012 two significant changes came into force that effects how local authorities use RIPA.

- **Approval of Local Authority Authorisations under RIPA by a Justice of the Peace:** The amendments in the Protection of Freedoms Act 2012 mean that local authority authorisations under RIPA for the use of Directed Surveillance or use of Covert Human Intelligence sources (CHIS) can only be given effect once an order approving the authorisation has been granted by a Justice of the Peace (JP). **This applies to applications and renewals only, not reviews and cancellations.**
- **Directed surveillance crime threshold:** The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 (“the 2012 Order”) states that a local authority can now only grant an authorisation under RIPA for the use of **Directed Surveillance** where the local authority is investigating (1) criminal offences which attract a maximum custodial sentence of six months or more or (2) criminal offences under sections 146, 147 or 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1933 relating to the sale of alcohol or tobacco products to children.

The crime threshold, as mentioned is only for Directed Surveillance.

Therefore the only lawful reason is **prevention and detection of crime** in respect of its Core Functions. As from 1 November 2012 there is no provision for a Local Authority to use RIPA to conduct covert activities for disorder such as anti-social behaviour unless there are criminal offences involved which attract a maximum custodial sentence of six months.

APPLICATION PROCESS

No covert activity covered by RIPA or the use of a CHIS should be undertaken at any time unless it meets the legal criteria (see above) and has been authorised by an Authorising Officer and approved by a JP/Magistrate as mentioned above. The activity conducted must be in strict accordance with the terms of the authorisation.

The effect of the above legislation means that all applications and renewals for covert RIPA activity will have to have a JP’s approval. It does not apply to Reviews and Cancellations which will still be carried out internally.

The procedure is as follows;

All applications and renewals for Directed Surveillance and use of a CHIS will be required to have a JP’s approval.

The applicant will complete the relevant application form ensuring compliance with the statutory provisions shown above. The application form will be submitted to an Authorising Officer for consideration. If authorised, the applicant will also complete

the required section of the judicial application/order form. Although this form requires the applicant to provide a brief summary of the circumstances of the case on the judicial application form, this is supplementary to and does not replace the need to supply the original RIPA authorisation as well.

It will then be necessary within Office hours to arrange with Her Majesty's Courts & Tribunals Service (HMCTS) administration at the magistrates' court to arrange a hearing. The hearing will be in private and heard by a single JP.

The Authorising Officer will be expected to attend the hearing along with the applicant officer. Officers who may present the application at these proceedings will need to be formally designated by the Council under section 223 of the Local Government Act 1972 to appear, be sworn in and present evidence or provide information as required by the JP. If in doubt as to whether you are able to present the application seek advice from the Solicitor to the Council.

Upon attending the hearing, the officer must present to the JP the partially completed judicial application/order form, a copy of the RIPA application/authorisation form, together with any supporting documents setting out the case, and the original application/authorisation form.

The original RIPA application/authorisation should be shown to the JP but will be retained by the local authority so that it is available for inspection by the Commissioners' offices and in the event of any legal challenge or investigations by the Investigatory Powers Tribunal (IPT).

The JP will read and consider the RIPA application/ authorisation and the judicial application/order form. They may have questions to clarify points or require additional reassurance on particular matters. These questions are supplementary to the content of the application form. **However the forms and supporting papers must by themselves make the case. It is not sufficient for the local authority to provide oral evidence where this is not reflected or supported in the papers provided.**

The JP will consider whether he or she is satisfied that at the time the authorisation was granted or renewed, there were reasonable grounds for believing that the authorisation was necessary and proportionate. They will also consider whether there continues to be reasonable grounds. In addition they must be satisfied that the person who granted the authorisation or gave the notice was an appropriate designated person within the local authority and the authorisation was made in accordance with any applicable legal restrictions, for example that the crime threshold for directed surveillance has been met.

The JP may decide to:

Approve the Grant or renewal of an authorisation

The grant or renewal of the RIPA authorisation will then take effect and the local authority may proceed to use the technique in that particular case. The duration of the authorisation commences with the magistrate's approval.

Refuse to approve the grant or renewal of an authorisation

The RIPA authorisation will not take effect and the local authority may **not** use the technique in that case.

Where an application has been refused the applicant may wish to consider the reasons for that refusal. If more information was required by the JP to determine whether the application/authorisation has met the tests, and this is the reason for refusal the officer should consider whether they can reapply, for example, if there was information to support the application which was available to the local authority, but not included in the papers provided at the hearing.

For, a technical error, the form may be remedied without going through the internal authorisation process again. The officer may then wish to reapply for judicial approval once those steps have been taken.

Refuse to approve the grant or renewal and quash the authorisation or notice

This applies where the JP refuses to approve the application/authorisation or renew the application/authorisation and decides to quash the original authorisation or notice. However the court must not exercise its power to quash the application/authorisation unless the applicant has had at least 2 business days from the date of the refusal in which to make representations. If this is the case the officer will inform the Legal section who will consider whether to make any representations.

Whatever the decision the JP will record their decision on the order section of the judicial application/order form. The court administration will retain a copy of the local authority RIPA application and authorisation form and the judicial application/order form. The officer will retain the original application/authorisation and a copy of the judicial application/order form.

If approved by the JP, the date of the approval becomes the commencement date and the three months duration will commence on this date, The officers are now allowed to undertake the activity.

The original application and the copy of the judicial application/order form should be forwarded to the Central Register and a copy retained by the applicant and if necessary by the Authorising Officer.

A local authority may only appeal a JP decision on a point of law by judicial review. If such a concern arises, the Legal team will decide what action if any should be taken.

If it is intended to undertake both directed surveillance and the use of a CHIS on the same surveillance subject, the respective applications forms and procedures should be followed and both activities should be considered separately on their own merits. An application for an authorisation must include an assessment of the risk of any collateral intrusion or interference. The Authorising Officer will take this into account, particularly when considering the proportionality of the directed surveillance or the use of a CHIS.

Application, Review, Renewal and Cancellation Forms

Applications

All the relevant sections on an application form must be completed with sufficient information for the Authorising Officer to consider Necessity, Proportionality and the Collateral Intrusion issues. Risk assessments should take place prior to the completion of the application form. Each application should be completed on its own merits of the case. **Cutting and pasting or using template entries should not take place as this would leave the process open to challenge.**

All applications will be submitted to the Authorising Officer via the Line Manager of the appropriate enforcement team in order that they are aware of the activities being undertaken by the staff. Applications whether authorised or refused will be issued with a unique number by the Authorising Officer, taken from the next available number in the Central Record of Authorisations.

If authorised the applicant will then complete the relevant section of the judicial application/order form and follow the procedure above by arranging and attending the Magistrates Court to seek a JP’s approval. The duration of the authorisation commences with the magistrate’s approval. (see procedure above RIPA application and authorisation process)

Duration of Applications

Directed Surveillance	3 Months
Renewal	3 Months
Covert Human Intelligence Source	12 Months
Juvenile Sources	1 Month
 Renewal	 12 months

All Authorisations must be cancelled by completing a cancellation form. They must not be left to simply expire. (See cancellations page 16)

Reviews

The reviews are dealt with internally by submitting the review form to the authorising officer. In such circumstances seek advice from the RIPA Co-ordinator. There is no requirement for a review form to be submitted to a JP. However if a different surveillance techniques is required it is likely a new application will have to be completed and approved by a JP.

Regular reviews of authorisations should be undertaken to assess the need for the surveillance to continue. The results of a review should be recorded on the central record of authorisations. Particular attention is drawn to the need to review authorisations frequently where the surveillance provides access to confidential information or involves collateral intrusion.

In each case the Authorising Officer should determine how often a review should take place. This should be as frequently as is considered necessary and practicable and they will record when they are to take place on the application form. This decision will be based on the circumstances of each application. However reviews will be conducted on a monthly or less basis to ensure that the activity is managed. It will be important for the Authorising Officer to be aware of when reviews are required following an authorisation to ensure that the applicants submit the review form on time.

Applicants should submit a review form by the review date set by the Authorising Officer. They should also use a review form for changes in circumstances to the original application so that the need to continue the activity can be reassessed. However if the circumstances or the objectives have changed considerably, or the techniques to be used are now different a new application form should be submitted and will be required to follow the process again and be approved by a JP. The applicant does not have to wait until the review date if it is being submitted for a change in circumstances.

Managers or Team Leaders of applicants should also make themselves aware of when the reviews are required to ensure that the relevant forms are completed on time.

Renewal

Should it be necessary to renew a Directed Surveillance or CHIS application/authorisation, this must be approved by a JP.

Applications for renewals should not be made until shortly before the original authorisation period is due to expire but the applicant must take account of factors which may delay the renewal process (e.g. intervening weekends or the availability of the relevant authorising officer and a JP to consider the application).

The applicant should complete all the sections within the renewal form and submit the form to the authorising officer.

Authorising Officers should examine the circumstances with regard to Necessity, Proportionality and the Collateral Intrusion issues before making a decision to renew the activity. A CHIS application should not be renewed unless a thorough review has

been carried out covering the use made of the source, the tasks given to them and information obtained. The Authorising Officer must consider the results of the review when deciding whether to renew or not. The review and the consideration must be documented.

If the authorising officer refuses to renew the application the cancellation process should be completed. If the AO authorises the renewal of the activity the same process is to be followed as mentioned earlier for the initial application.

A renewal takes effect on the day on which the authorisation would have ceased and lasts for a further period of three months.

Cancellation

Cancellation should take place at the earliest opportunity.

The cancellation form is to be submitted by the applicant or another investigator in their absence. The Authorising Officer who granted or last renewed the authorisation must cancel it if they are satisfied that the directed surveillance no longer meets the criteria upon which it was authorised. Where the Authorising Officer is no longer available, this duty will fall on the person who has taken over the role of Authorising Officer or the person who is acting as Authorising Officer.

As soon as the decision is taken that directed surveillance should be discontinued, the applicant or other investigating officer involved in the investigation should inform the Authorising Officer. The Authorising Officer will formally instruct the investigating officer to cease the surveillance, noting the time and date of their decision. This will be required for the cancellation form. The date and time when such an instruction was given should also be recorded in the central record of authorisations (see paragraph 5.18 in the Codes of Practice). **It will also be necessary to detail the amount of time spent on the surveillance as this is required to be retained by the Senior Responsible Officer.**

The officer submitting the cancellation should complete in detail the relevant sections of the form and include the period of surveillance and what if any images were obtained and any images containing third parties. The Authorising Officer should then take this into account and issues instructions regarding the management and disposal of the images etc.

The cancellation process should also be used to evaluate whether the objectives have been achieved and whether the applicant carried out what they stated was necessary in the application form. This check will form part of the oversight function. Where issues are identified they will be brought to the attention of the line manager and the Senior Responsible Officer (SRO). This will assist with future audits and oversight.

Before an Authorising Officer signs a Form, they must:-

- (a) Be mindful of this Policy & Procedures Document and the training undertaken
- (b) Be satisfied that the RIPA authorisation is:-

- (i) **in accordance with the law;**
- (ii) **necessary** in the circumstances of the particular case on the ground mentioned

and

- (iii) **proportionate** to what it seeks to achieve. (see section on proportionality)

- (c) In assessing whether or not the proposed surveillance is proportionate, consider other appropriate means of gathering the information.

The authorisation will not be proportionate if it is excessive in the overall circumstances of the case. Each action authorised should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary. The fact that a suspected offence may be serious will not alone render intrusive actions proportionate. Similarly, an offence may be so minor that any deployment of covert techniques would be disproportionate. No activity should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means.

The following elements of proportionality should therefore be considered:

- balance the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
- explain how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- consider whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
- evidence, what other methods have been considered and why they were not implemented.

The least intrusive method will be considered proportionate by the courts.

- (d) Take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (**collateral intrusion**). Measures must be taken wherever practicable to avoid or minimise (so far as is possible) collateral intrusion. This matter may be an aspect of determining proportionality;
- (e) Set a date for review of the authorisation and review on only that date;
- (f) Obtain a Unique Reference Number (URN) for the application from the Solicitor to the Council on 01827 709258
- (g) Ensure that a copy of the RIPA Forms (and any review/cancellation of the same) is forwarded to the Solicitor to the Council, Central Register, **within 5**

working days of the relevant authorisation, review, renewal, cancellation or rejection.

Additional Safeguards when Authorising a CHIS

When authorising the conduct or use of a CHIS, the Authorising Officer must also:-

- (a) be satisfied that the **conduct** and/or **use** of the CHIS is proportionate to what is sought to be achieved.
- (b) Be satisfied that **appropriate arrangements** are in place for the management and oversight of the CHIS and this must address health and safety issues through a risk assessment;
- (c) Consider the likely degree of intrusion of all those potentially affected;
- (d) Consider any adverse impact on community confidence that may result from the use or conduct or the information obtained;
- (e) Ensure **records** contain particulars and are not available except on a need to know basis.
- (f) Ensure that if the CHIS is under the age of 18 or is a vulnerable adult the Authorising Officer is the Chief Executive or in his absence, the Deputy Chief Executive.

The Authorising Officer must attend to the requirement of section 29(5) RIPA and of the Regulation of Investigatory Powers (Source Records) Regulations 2000. It is strongly recommended that legal advice is obtained in relation to the authorisation of a CHIS.

Any person granting or applying for an authorisation will also need to be aware of particular sensitivities in the local community where the surveillance is taking place and of any similar activities being undertaken by other public authorities which could impact on the deployment of surveillance. It is therefore recommended that where an authorising officer from a public authority considers that conflicts might arise they should consult a senior officer within the police force area in which the investigation or operation is to take place.

Urgent Authorisations

As from 1 November 2012 there is now no provision under RIPA for urgent oral authorisations.

Section I

WORKING WITH / THROUGH OTHER AGENCIES

When some other agency has been instructed on behalf of the Council to undertake any action under RIPA, this document and the forms in it must be used (as per normal procedure) and the agency advised or kept informed, as necessary, of the various requirements. The agency must be made aware explicitly what they are authorised to do. The agency will be provided with a copy of the application form (redacted if necessary) or at the least the authorisation page containing the unique number.

Equally, if Council staff are authorised on another agencies RIPA authorisation, the staff will obtain a copy of the application form (redacted if necessary), or at the least the authorisation page containing the unique number, a copy of which should be forwarded for filing within the central register. They must ensure that they do not conduct activity outside of that authorisation.

Provisions should also be made regarding any disclosure implications under the Criminal Procedures Act (CPIA) and the management, storage and dissemination of any product obtained.

When another agency (e.g. Police, Customs & Excise, Inland Revenue etc):-

- (a) wishes to use the Council's resources (e.g. CCTV surveillance systems), that agency must use its own RIPA procedures and, before any Officer agrees to allow the Council's resources to be used for the other agency's purposes, the Officer must obtain a copy of that agency's RIPA form (redacted if necessary) or at the least the authorisation page containing the unique number for the record (a copy of which must be passed to the Solicitor to the Council for the Central Register) Should this be an urgent oral authorisation they should obtain a copy of the contemporaneous notes of what has been authorised by the Authorising Officer in line with current guidance. A copy of these notes will be forwarded for filing in the central register.
- (b) wish to use the Council's premises for their own RIPA action, the Chief Officer or Head of Service should, normally, cooperate with the same, unless there are security or other good operational or managerial reasons as to why the Council's premises should not be used for the agency's activities. Suitable insurance or other appropriate indemnities may be sought, if necessary, from the other agency for the Council's cooperation in the agent's RIPA operation. In such cases, however, the Council's own RIPA forms should not be used as the Council is only 'assisting' not being 'involved' in the RIPA activity of the external agency.

If the Police or any other Agency wish to use Council resources for general surveillance, as opposed to specific RIPA operations, an appropriate letter requesting the proposed use, extent of remit, duration, who will be undertaking the general surveillance and the purpose of it must be obtained from the police or other Agency before any Council resources are made available for the proposed use.

If in doubt, please consult with the Solicitor to the Council at the earliest opportunity.

Section J

RECORD MANAGEMENT

The Council must keep detailed records of all authorisations, renewals, cancellations and rejections in Departments and a Central Register of all Authorisation Forms will be maintained and monitored by the Solicitor to the Council.

Records Maintained in the Department

The following documents must be retained by the Department authorising the surveillance:

- a copy of the Forms together with any supplementary documentation and notification of the approval given by the Authorising Officer;
- a record of the period over which the surveillance has taken place;
- the frequency of reviews prescribed by the Authorising Officer;
- a record of the result of each review of the authorisation;
- a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;
- the date and time when any instruction was given by the Authorising Officer;
- the Unique Reference Number for the authorisation (URN).

Central Register maintained by the Solicitor to the Council

Authorising Officers must forward a copy of the form to the Solicitor to the Council for the Central Register, within 5 working days of the authorisation, review, renewal, cancellation or rejection. The Solicitor to the Council will monitor the same and give appropriate guidance to Authorising Officers from time to time, or amend this document in the light of changes of legislation or developments through case law.

Retention and Destruction of Material

The retention of the material obtained during a RIPA operation is governed by the Criminal Procedures Investigations Act (CPIA) 1996 and the Data Protection Act 1998.

Arrangements are in place for the secure handling, storage and destruction of material obtained through the use of directed surveillance or CHIS. Authorising Officers, through their relevant Data Controller, must ensure compliance with the appropriate data protection requirements under the Data Protection Act 1998 and

any relevant codes of practice produced by individual authorised relating to the handling and storage of material.

The Council will retain records for a period of at least five years from the ending of the authorisation. The Office of the Surveillance Commissioners (OSC) can audit/review the Council's policies and procedures, and individual authorisations. The Office of the Surveillance Commissioners will also write to the Council from time to time, requesting information as to the numbers of authorisations made in a specific period. It will be the responsibility of the Solicitor to the Council to respond to such communications.

Errors

There is a requirement as set out in the OSC procedures and Guidance 2011 to report all covert activity that was not properly authorised to the OSC in writing as soon as the error is recognised. This would be known as an error. This includes activity which should have been authorised but wasn't or which was conducted beyond the directions provided by the authorising officer. It is therefore important that when an error has been identified it is brought to the attention of the SRO in order to comply with this guidance. The Council has a responsibility to report to the Inspector at the commencement of an inspection all activity which should have been authorised but wasn't. This is to confirm that any direction provided by the Chief Surveillance Commissioner has been followed. This will also assist with the oversight provisions of the Councils' RIPA activity.

This does not apply to covert activity which is deliberately not authorised because an authorising officer considers that it does not meet the legislative criteria, but allows it to continue. This would be surveillance outside of RIPA. (See oversight section below)

Section K

ACQUISITION OF COMMUNICATIONS DATA

What is Communications Data?

Communication data means any traffic or any information that is or has been sent by or over a telecommunications system or postal system, together with information about the use of the system made by any person.

Powers

There are two powers granted by S22 RIPA in respect of the acquisition of Communications Data from telecommunications and postal companies (“Communications Companies”).

S22 (3) provides that an authorised person can authorise another person within the same relevant public authority to collect the data. This allows the local authority to collect the communications data themselves, i.e. if a private telecommunications company is technically unable to collect the data, an authorisation under this section would permit the local authority to collect the communications data themselves.

In order to compel a communications company to obtain and disclose, or just disclose communications data in their possession, a notice under S22 (4) RIPA must be issued. The sole grounds to permit the issuing of a S22 notice by a permitted Local Authority is for the purposes of “preventing or detecting crime or of preventing disorder”. The issuing of such a notice will be the more common of the two powers utilised, in that the Communications Company will most probably have means of collating and providing the communications data requested.

Single Point of Contact

In accordance with the Home Office Acquisition and Disclosure of Communications Data Code of Practice the Council is required to have a “the Council Single Point of Contact” is NAFN. The role of the SPoC is to enable and maintain effective co-operation between a public authority and communications service providers in the lawful acquisition and disclosure of communications data. Before an officer can be a SPoC specialist training recognised by the Home Office has to be undertaken. A SPoC must also register his or her details with the Home Office. The Solicitor of the Council is SPoC for Tamworth Borough Council.

Details of the training undertaken is kept in the Central Register.

The functions of the SPoC are to:

- Assess, where appropriate, whether access to communications data is reasonably practical for the postal or telecommunications operator;

- Advise Applicants and Authorising Officers on the practicalities of accessing different types of communications data from different postal or telecommunications operators
- Advise Applicants and Authorising Officers on whether communications data falls under section 21(4)(a), (b) or (c) of RIPA
- Provide safeguards for authentication
- Assess any cost and resource implications to both the Council and postal or telecommunications operator.

The Senior Responsible Officer

In accordance with the Code of Practice each public authority must have a Senior Responsible Officer who is responsible for:

- The integrity of the process in places within the public authority to acquire communications data;
- Compliance with Chapter II of Part 1 of RIPA and with the Code;
- Oversight of the reporting of errors to the Interception of Communications Commissioner's Office (IOCCO) and the identification of both the cause of errors and the implementation of processes to minimise repetition of errors;
- Engagement with the IOCCO inspectors when they conduct their inspections and;
- Where necessary, oversee the implementation of post – inspection action plans approved by the Commissioner

The Council's Senior Responsible Officer is the Solicitor to the Council.

Application Forms

Only the approved Accessing Communications Data forms referred to in Appendix 4 must be used. The forms have to be downloaded and completed in the Applicants handwriting

Procedure

All applications to obtain communications data must be channelled through the SPoC. If an investigating officer is considering making an application to obtain communications data they should contact the SPoC for advice and to obtain the appropriate forms.

In completing the forms the investigating officer must address the issues of necessity, proportionality and collateral intrusion. The following is guidance on the principles of necessity, proportionality and collateral intrusion.

“Necessity” should be a short explanation of the crime (together with details of the relevant legislation), the suspect, victim or witness and the telephone or communications address and how all these three link together. It may be helpful to outline the brief details of the investigation and the circumstances leading to the application as this will assist with justifying necessity. The source of the telephone number or communications address should also be outlined. E.g. if the number was

obtained from itemised billing or a business flyer there should be specific identifiers such as the telephone number or exhibit number.

As regards “proportionality” there should be an outline of what the investigating officer expects to achieve from obtaining the data and explain how the level of intrusion is justified when taking into consideration the benefit the data will give to the investigation. The investigating officer should give an explanation as to why specific date/time periods of data have been requested. An explanation of what is going to be done with the communications data once it is acquired and how that action will benefit the investigation will assist with the justification of proportionality. The investigating officer should outline what other checks or methods have been tried e.g. visiting other known addresses, ringing the number etc. or why such methods are not deemed feasible.

“Collateral intrusion” should also be addressed on the suspect or individual in question to demonstrate that the intrusion is not arbitrary or unfair. There will only be minimal collateral intrusion in relation to subscriber checks or none will be identified at the time of making the application. In some case it will be clear that the suspect has been contacted on the actual telephone number by the complainant or the investigating officer and therefore this reduces the potential for collateral intrusion. Investigating officers should also mention whether it is known that the telephone number (or other type of data) has been used to advertise the business, either in the press/internet or on business cards/flyers as this would also be evidence to show that the suspect is actually using the telephone number and further reduce the potential for collateral intrusion. Collateral intrusion becomes more relevant when applying for service use data and investigating officers should outline specifically what collateral intrusion may occur, how the time periods requested impact on collateral intrusion and whether they are likely to obtain data which is outside the realm of their investigation.

Once the investigating officer has completed the application form it should be passed to the SPoC together with a draft Notice to the Communications Service Provider. If the SPoC is satisfied that the application should proceed, the Application and the draft Notice to the Communications Service Provider will be considered by an Authorising Officer¹. If the SPoC decides that the application is not justified it will be rejected. If the SPoC requires further information in order to consider the application this will be requested from the investigating officer and recorded on the SPoC Log Sheet.

The Authorising Officer must consider:

- (a) whether the case justifies the accessing of communications data for the **purposes of preventing or detecting crime or of preventing disorder** and why obtaining the data is **necessary** in order to achieve the aims of the investigation and on the grounds permitted to the Council;

and

- (b) whether obtaining access to the data by the conduct authorised, or required of the postal or telecommunications operator in the case of a notice, is **proportionate** to what is sought to be achieved.

The Authorising Officer will complete the Application Form as appropriate.

If the Authorising Officer becomes directly involved in the operation, such involvement and their justification for undertaking the role of Authorising Officer must be explicit in the written considerations on the Application Form or alternatively the application should be passed to another Authorising Officer for consideration.

If the accessing of communications data is authorised the Authorising Officer will sign the Notice to the Communication Service Provider, complete the date/time of issue and return all forms to the SPoC

The SPoC will then issue the Notice to the Communications Service Provider

1. NOTE: The Code of Practice referred to in paragraph 5 above refers to "Designated Persons" as those whose authority is obtained with regard to the application. However, for the purposes of this policy and procedure the term "Authorising Officer" will be used for that of "Designated Person".

Duration

Authorisations and notices are only valid for one month. A shorter period should be specified if this is satisfied by the request. An authorisation or notice may be renewed during the month by following the same procedure as obtaining a fresh authorisation or notice.

An Authorising Officer shall cancel an authorisation or notice as soon as it is no longer necessary or the conduct is no longer proportionate to what is sought to be achieved. The duty to cancel a notice falls on the Authorising Officer who issued it.

Record Management

Applications, authorisations and notices for communications data must be retained by the SPoC until audited by the IOCCO. All such documentation must be kept in locked storage.

Errors

Where any errors have occurred in the granting of authorisations or the giving of notices, a record shall be kept and a report and explanation sent to the IOCCO as soon as reasonably practicable.

Oversight

The IOCCO will write to the Council from time to time requesting information as to the numbers of applications for communications data and confirmation as to whether there have been any errors which have occurred when obtaining data communications. It will be the responsibility of the Solicitor to the Council to respond to such communications.

Section L

CONCLUSION

Obtaining an authorisation under RIPA and following the guidance and procedures in this document will assist in ensuring that the use of covert surveillance or a CHIS is carried out in accordance with the law and subject to safeguards against infringing an individual's human rights. Complying with the provisions of RIPA protects the Council against challenges for breaches of Article 8 of the European Convention on Human Rights.

Authorising Officers will be suitably trained and they must exercise their minds every time they are asked to sign a Form. They must never sign or rubber stamp Form(s) without thinking about their personal and the Council's responsibilities.

Any boxes not needed on the Form(s) must be clearly marked as being 'NOT APPLICABLE', 'N/A' or a line put through the same. Great care must also be taken to ensure accurate information is used and is inserted in the correct boxes. Reasons for any refusal of an application must also be kept on the form and the form retained for future audits.

For further advice and assistance on RIPA, please contact the Solicitor to the Council (who is also the Monitoring Officer).

APPENDIX 1

A FORMS

DIRECTED SURVEILLANCE

All forms can be obtained from:

<https://www.gov.uk/government/collections/ripa-forms--2>

The form has to be downloaded and completed in the applicant's handwriting. The Authorising Officer must also complete the relevant section of the form in handwriting. The original form has to be passed to the Solicitor to the Council.

Application for Authorisation Directed Surveillance

Application for Review of a Directed Surveillance Authorisation

Application for Renewal of a Directed Surveillance Authorisation

Application for Cancellation of a Directed Surveillance Authorisation

APPENDIX 2

B FORMS

CONDUCT OF A COVERT HUMAN INTELLIGENCE SOURCE

All forms can be obtained from:

<https://www.gov.uk/government/collections/ripa-forms--2>

The form has to be downloaded and completed in the applicant's handwriting. The Authorising Officer must also complete the relevant section of the form in handwriting. The original form has to be passed to the Solicitor to the Council.

Application for Authorisation of the conduct or use of a Covert Human Intelligence Source (CHIS).

Application for Review of a Covert Human Intelligence Source (CHIS) Authorisation.

Application for renewal of a Covert Human Intelligence Source (CHIS) Authorisation.

Application for Cancellation of an authorisation for the use or Conduct of a Covert Human Intelligence Source.

APPENDIX 3

C FORMS

ACQUISITION OF COMMUNICATIONS DATA

All forms can be obtained from the Home Office: RIPA Codes of Conduct website:

<https://www.gov.uk/government/collections/ripa-forms--2>

The form has to be downloaded and completed in the applicant's handwriting. The Authorising Officer must also complete the relevant section of the form in handwriting. The original form has to be passed to the Solicitor to the Council.

Part I Chapter II request schedule for subscriber information

Specimen Part I Chapter II authorisation

Specimen Part I Chapter II Notice

Chapter II application for communications data

Guidance notes regarding chapter II application form

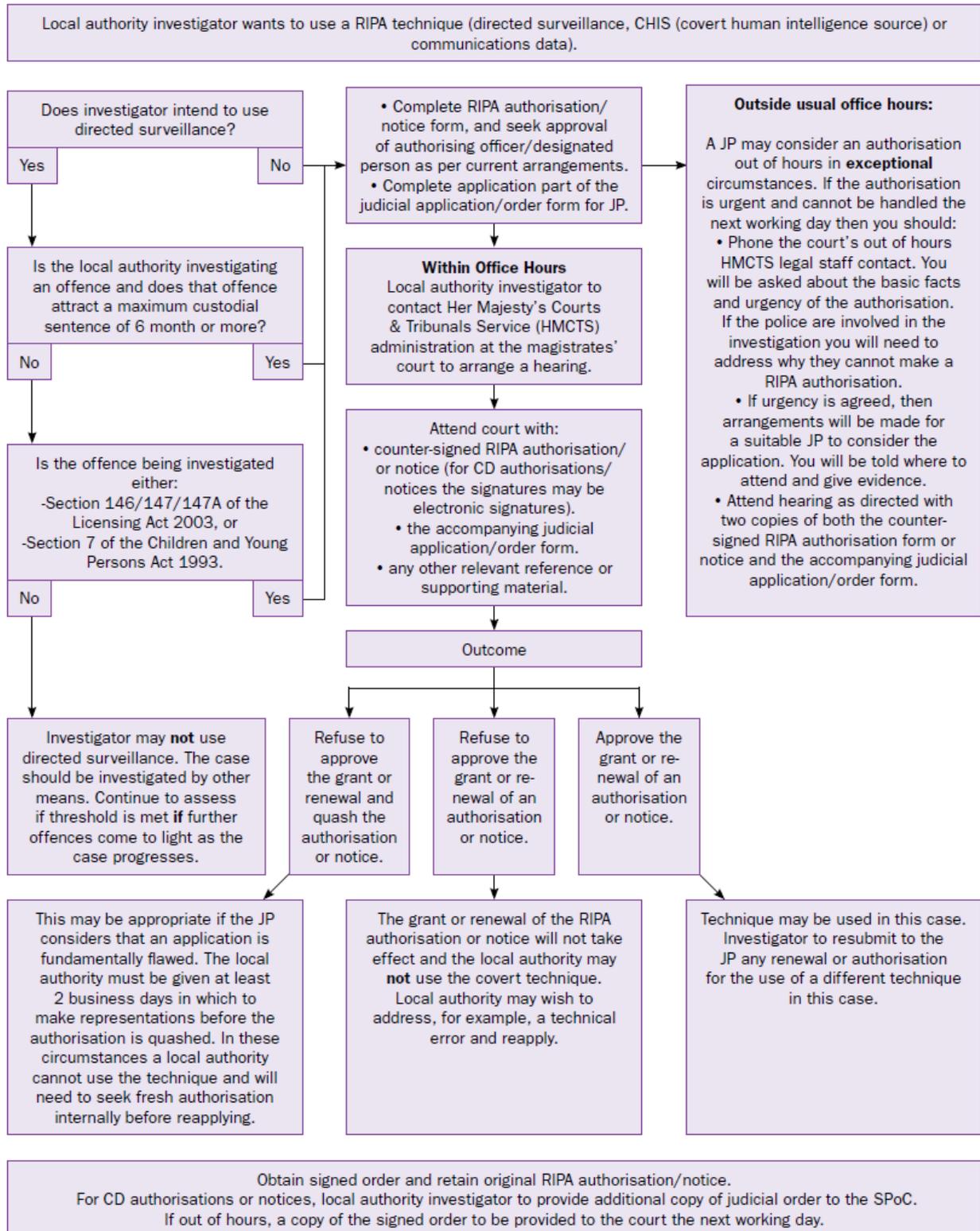
RIPA Section 22 notice to obtain communications data from communications service providers

Reporting an error by a CSP to the IOCCO

Reporting an error by a public authority to the IOCCO

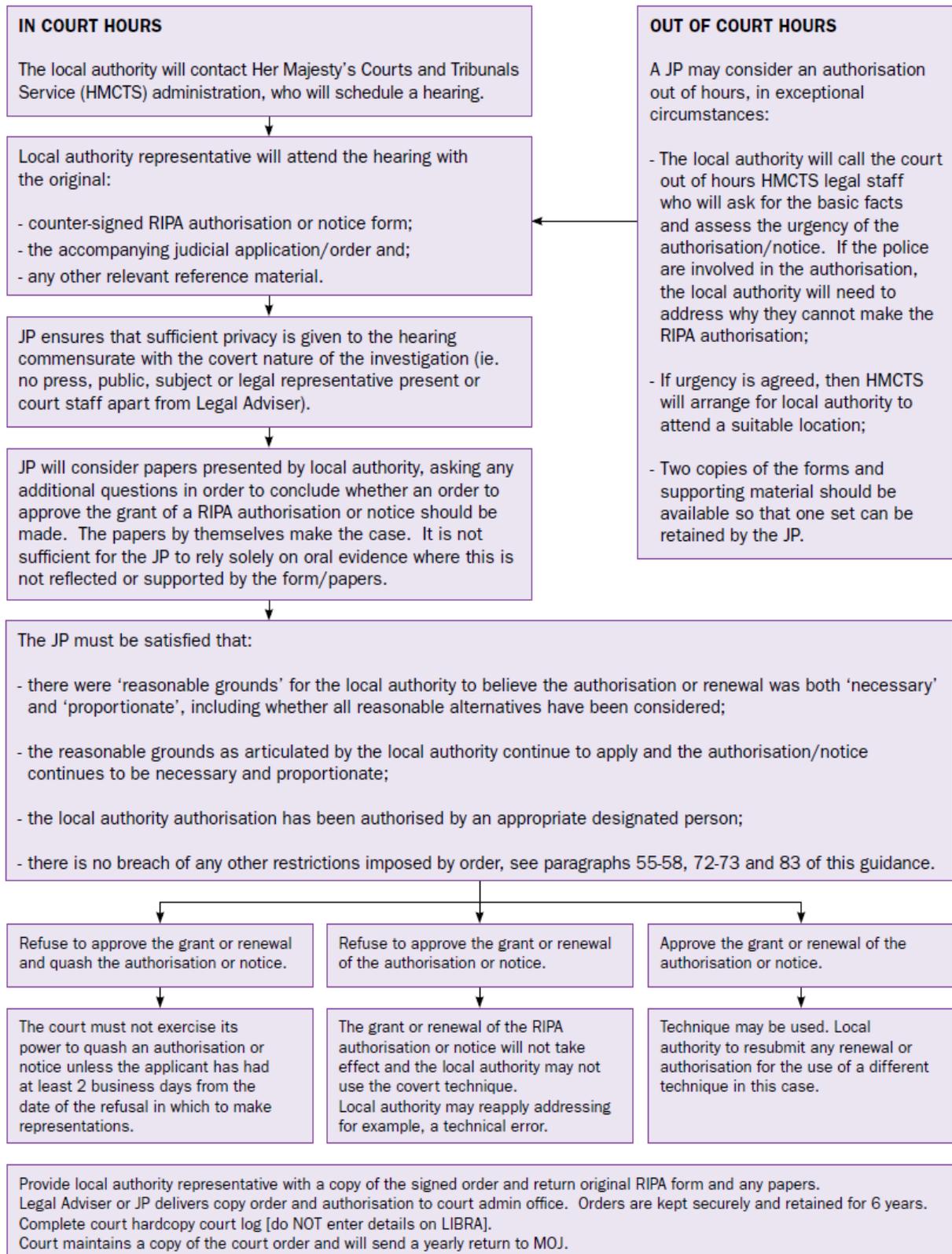
Annex A Local Authority Procedure

LOCAL AUTHORITY PROCEDURE: APPLICATION TO A JUSTICE OF THE PEACE SEEKING AN ORDER TO APPROVE THE GRANT OF A RIPA AUTHORISATION OR NOTICE



Annex B JP Procedure

PROCEDURE: LOCAL AUTHORITY APPLICATION TO A JUSTICE OF THE PEACE SEEKING AN ORDER TO APPROVE THE GRANT OF A RIPA AUTHORISATION OR NOTICE



Application for judicial approval for authorisation to obtain or disclose communications data, to use a covert human intelligence source or to conduct directed surveillance. Regulation of Investigatory Powers Act 2000 sections 23A, 23B, 32A, 32B.

Local authority:.....

Local authority department:.....

Offence under investigation:.....

Address of premises or identity of subject:.....
.....
.....

Covert technique requested: (tick one and specify details)

- Communications Data**
- Covert Human Intelligence Source**
- Directed Surveillance**

Summary of details
.....
.....
.....
.....
.....
.....

Note: this application should be read in conjunction with the attached RIPA authorisation/RIPA application or notice.

Investigating Officer:.....

Authorising Officer/Designated Person:.....

Officer(s) appearing before JP:.....

Address of applicant department:.....
.....

Contact telephone number:.....

Contact email address
(optional):.....

Local authority
reference:.....

Number of
pages:.....

Order made on an application for judicial approval for authorisation to obtain or disclose communications data, to use a covert human intelligence source or to conduct directed surveillance. Regulation of Investigatory Powers Act 2000 sections 23A, 23B, 32A, 32B.

Magistrates' court:.....

Having considered the application, I (tick one):

- am satisfied that there are reasonable grounds for believing that the requirements of the Act were satisfied and remain satisfied, and that the relevant conditions are satisfied and I therefore approve the grant or renewal of the authorisation/notice.
- refuse to approve the grant or renewal of the authorisation/notice.
- refuse to approve the grant or renewal and quash the authorisation/notice.

Notes

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Reasons

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.....
.....
.....

Signed:

Date:

Time:

Full name:

Address of magistrates' court: