

**Report of City Solicitor**

**Report to Corporate Governance and Audit Committee**

**Date: 20<sup>th</sup> September 2013**

**Subject: Decision Making Framework; Annual Assurance Report**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. This is the annual report to the committee concerning the Council's decision making arrangements. For the first time the report brings together arrangements for planning and licensing matters together with all other decisions taken by officers.
2. From the review, assessment and ongoing monitoring carried out, the Head of Governance Services, Head of Licensing and Registration and Chief Planning Officer have reached the opinion that, overall, decision making systems are operating soundly and that arrangements are up to date, fit for purpose, effectively communicated and routinely complied with.

**Recommendations**

3. Members are requested to consider and note the positive assurances provided in this report.

## **1 Purpose of this report**

- 1.1 This is the annual report to the committee concerning the Council's decision making arrangements. For the first time the report brings together arrangements for planning and licensing matters together with all other decisions taken by officers.
- 1.2 This report provides one of the sources of assurance which the Committee is able to take into account when considering the approval of the Annual Governance Statement.
- 1.3 Members are asked to consider the results of monitoring shared within the body of this report and to note the assurances given by the Head of Governance Services, the Head of Licensing and Registration and the Chief Planning Officer, that the decision making framework in place within Leeds City Council is up to date, fit for purpose, effectively communicated and routinely complied with.

## **2 Background information**

### Previous Reports

- 2.1 The committee has received previous assurance reports separately in respect of Executive decision making, planning and licensing matters. The most recent reports to be received in each respect were:-
  - Decision Making Framework; Annual Assurance Report – 28<sup>th</sup> September 2012
  - Assurances of the process by which planning decisions are taken by the Council – 23<sup>rd</sup> April 2012
  - Licensing Decision Making Framework – 27<sup>th</sup> March 2013

This report seeks to update the committee in respect of each of these decision making areas.

### Executive Decision Making Framework

- 2.2 The Council's decision making framework comprises of the systems and processes through which decision making is directed and controlled. Whilst a number of these systems and processes are put in place in direct response to primary and secondary legislation, others reflect the implementation of locally adopted definitions and choices made to ensure maximum transparency and accountability within Council practice and procedure.
- 2.3 The principal systems and processes are set out in the Council's Constitution as follows;

## Part 2 - Articles of the Constitution

- 2.3.1 **Article 1** (describing the powers and purpose of the Council and the purpose of the constitution), **Article 3** describing the rights of Citizens (for example rights to attend meetings, rights in respect of the forward plan, access to information regarding decisions), **Article 4** – the budget and policy framework of the Authority, **Article 6** the role of function of Scrutiny Boards, **Article 7** the role, form and composition of the Executive, **Articles 8-10** describing the role, function and membership requirements of committees and **Article 13** (which describes requirements relating to decision making);

## Part 3 - Responsibility for Functions

- 2.3.2 The responsibility for Council, Local Choice and Executive functions and how these have been delegated to committees and officers. (Each Director documents how these functions are discharged within their directorate by making and maintaining a sub delegation scheme.)

## Part 4 – Procedure Rules

- 2.3.3 Rules in relation to the decision making processes which make provision for decision making in relation to Executive and Council functions by both Members and officers.

## Part 5 - Codes and Protocols

- 2.3.4 Codes of conduct for members and officers (specifically arrangements for members and officers to register and declare relevant interests) and protocols describing the respective roles of members and officers in decision making.
- 2.4 In addition to these documented processes there are a number of Statutory Officers appointed to ensure that the Council acts within its powers and budgets. Of particular relevance to decision making are:-

### The Head of Paid Service

- 2.4.5 In Leeds the Chief Executive, responsible for ensuring that the Council appoints and directs a staff compliment sufficient to ensure that it can fulfil its functions.

### The Monitoring Officer

- 2.4.6 In Leeds the City Solicitor, responsible for ensuring that the Council acts at all times within its legal authority.

### The Chief Finance Officer

- 2.4.7 Also known as the Section 151 Officer, in Leeds the Deputy Chief Executive and Director of Resources, responsible for ensuring that the Council acts at all times within its financial capacity.

### Licensing Matters

- 2.5 A separate framework supports decision making in relation to the Licensing Act 2003, Gambling Act 2005, taxi and private hire and miscellaneous licensing (scrap metal dealers, motor salvage dealers, sex establishment licence, place of marriage, hypnotism, house to house collections and street collections).
- 2.6 Under the legislative framework certain licences are automatically granted in the absence of objections in accordance with the legislation, whilst other applications are decided in accordance with policies determined and reviewed by Councillors as required. Details of the policy reviews currently being undertaken are set out at paragraph 3.51 below. Dependant on the type of licence, Officers or Licensing Sub Committee make individual decisions in accordance with relevant law and policy.

### Planning Matters

- 2.7 The framework for decision making in relation to planning matters in England and Wales is plan-led. This involves the authority in preparing plans that set out what can be built and where. All decisions on applications for planning permission should be made in accordance with the Development Plan unless material planning considerations indicate otherwise.
- 2.8 The decision on whether to grant permission is within the context of the development plan and other material considerations which includes national and local planning policy and guidance. Material considerations cover a wide variety of matters including impact on neighbours and the local area.
- 2.9 All applications are publicised so the public are aware of them and some are subject to more detailed consultation (depending on their scale and sensitivity).

## **3 Main issues**

### **EXECUTIVE DECISION MAKING**

- 3.1 The Head of Governance Services has responsibility to ensure that the Council's decision making arrangements are up to date, fit for purpose, effectively communicated, routinely complied with and monitored.

### **Amendments to the Decision Making Framework**

- 3.2 As in any other municipal year it has been necessary to review and amend the Constitution in order to implement changing legislation and to ensure that it remains an accurate reflection of practice and procedure within the Council. Changes have taken place in accordance with Article 15 of the Constitution. Any amendments made by the Monitoring Officer in the 2012/13 Municipal Year were recorded as Significant Operational Decisions and published on the Council's web site, amendments made by the Leader of Council or Executive Board were reported to the next available meeting of the Council, and decisions to be taken by

Full Council were first considered by the General Purposes Committee in order that recommendations could be made.

### Executive Arrangements Regulations

- 3.3 As previously reported, in August 2012 the Secretary of State introduced The Local Authorities (Executive Arrangements) (England) Regulations 2012 to govern executive decision making within local authorities. A review of the arrangements in place in Leeds at the time indicated that minimal changes were necessary to existing practice and procedure to meet the requirements set out in the regulations. Appropriate amendments were made to the way in which decisions were publicised and recorded and steps were taken to ensure that these changes were embedded throughout the Council's decision making practice.
- 3.4 In particular the regulations have led to the following changes:-
- 3.4.1 The Forward Plan has been restyled the List of Forthcoming Key Decisions. The list differs from the Plan in that it can be amended in real time, allowing items to be added to the list responsively and ensuring that there is no unnecessary delay in taking a Key decision, whilst publishing the Council's intention that the decision will be taken no less than 28 clear calendar days prior to taking it in accordance with the regulations.
- 3.4.2 The general exception and special urgency provisions allowing decisions to be taken at less notice continue to apply. Statistics in relation to the use of the General Exception and Special Urgency in Leeds are detailed at paragraphs 3.16 to 3.22 of this report.
- 3.4.3 Procedures have been introduced to provide notice of the Executive's intention to consider part or parts of the agenda for Executive Board or Area Committee meetings in private. There is no equivalent procedure for decisions to be taken by officers as, by their nature, these decisions are never taken in public.
- 3.4.4 In accordance with the report received in September 2012, the Head of Governance Services wrote to DCLG outlining Leeds City Council's practice and procedure, particularly in respect of recording Significant Operational Decisions, and indicating the Council's intention to maintain this practice in the absence of requirements to extend recording further to include all Administrative Decisions. In the absence of a response to the contrary the Head of Governance Services concludes that the practice in Leeds is sufficient to fulfil the regulations.
- 3.5 During the annual review of the Constitution, which takes place each year to ensure that the Constitution is up to date and fit for purpose, appropriate amendments were made to ensure that these arrangements are captured clearly and concisely within the Council's Executive and Decision Making Procedure Rules and Access to Information Procedure Rules. Appropriate consequential amendments were also made to the Constitution.

### Delegation of Functions

- 3.6 The Constitution documents the delegation of Council and Executive functions to Officers. In turn a framework has been established whereby those functions are sub delegated (normally by Directors) to other officers of the Council. These arrangements provide for transparency in terms of officer accountabilities. In summary for 2013;-
- 3.6.5 Each of the 10 officers who have functions delegated to them through the Constitution is required to make a new sub delegation scheme each municipal year to reflect the Executive Arrangements determined by the Leader (and those determined by Full Council concerning Council Functions).
- 3.6.6 The Head of Governance Services maintains a record of sub delegation schemes as they are made and amended by Directors and can confirm that each Director (or Chief Officer) with functions delegated to them through the Constitution made and reviewed their own sub delegation scheme in the 12/13 Municipal Year. In addition each of the 10 officers with delegations under the 13/14 constitution signed off a new sub delegation scheme following the Annual Meeting in May 2013.
- 3.6.7 Since then the City Solicitor, Assistant Chief Executive (Citizens and Communities), the Chief Planning Officer, the Director of Environment and Housing and the Director of Resources / Deputy Chief Executive have each amended their sub delegation scheme.
- 3.6.8 These amendments, which are publicised as Significant Operational Decisions, reflect the requirement that each scheme should contain an accurate representation of the way in which functions are carried out and the officers with authority to make decisions under the scheme. In this way they ensure transparency of decision making within the Council in relation to both Council and Executive functions.

### **Performance Monitoring**

- 3.7 To provide a test of the extent to which the council's arrangements are routinely complied with a suite of performance indicators have been established. These are explored further below. In order to ensure continuity of reporting to the Committee these statistics cover the period from September 2012 to August 2013.

### Publication of Agendas

- 3.8 The Council is required to publish agendas and reports for committees five clear working days in advance of a meeting. This requirement is contained within Section 100B of the Local Government Act 1972 for Council Committees and in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012 for Executive committees. Both pieces of legislation also contain exception provisions for meetings to be called at short notice.

- 3.9 The Head of Governance Service has established a target for 99% of agendas to be issued and published within the five day statutory deadline<sup>1</sup>; this being a reasonable measure of timely transparency and an indication of the extent to which exception provisions are utilised to call meetings at short notice.
- 3.10 Of 305 meetings which took place within the reporting period covered by this report, 7 agendas were not issued within the 5 clear day deadline.
- 3.11 Overall this gives a performance of 98% of agendas published within the required notice period. This continues the trend of improvement on the 3 previous years which show performance indicators as follows:-

2010	95%
2011	96%
2012	97%
2013	98%

#### Publication of Minutes

- 3.12 There is no statutory framework stipulating the time period for the publication of committee minutes. To enable the decisions of the Council to be accessible and transparent the Head of Governance Service has established a local target; this being for 100% of draft minutes to be published on the Council's internet site within ten working days.
- 3.13 In addition, to enable speed of implementation and facilitate Call In, all Executive Board minutes are published within 48 hours of the Executive Board meeting.
- 3.14 Of 305 committee meetings which have taken place within the period covered by this report, 11 sets of draft minutes were published outside the deadline. This gives a performance indicator of 96% draft minutes published within the required period.
- 3.15 This continues the standard set in the 3 previous years which show performance indicators as follows:-

2010	96%
2011	96%
2012	96%
2013	96%

#### Key Decisions on the List of Forthcoming Key Decisions

- 3.16 As Members are aware, a significant element of the decision making framework concerns requirements surrounding the pre-notification of an intention to take a Key decision. These provisions seek to ensure transparency of decision making and allow representations from stakeholders etc.

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<sup>1</sup> Licensing Sub Committee's are not bound by these statutory requirements but, for completeness, are included in the monitoring information.

3.17 The Council Business Plan contained a target for 89% of Key decisions to have appeared in the Forward Plan. The appearance of items on the list of forthcoming Key decisions for 28 days prior to decisions being taken (as required by the new regulations) is not reflect in the new Best Council Plan, but is none the less subject of monitoring by the Head of Governance Services.

3.18 During the period covered by this report of 242 Key decisions taken 11 were not on the Forward Plan or List of Forthcoming Key Decisions as appropriate. This gives a performance indicator of 95% Key decisions on the List of Forthcoming Key Decisions.

3.19 This continues the trend of improvement on the 4 previous years which show performance indicators as follows:-

2010	89%
2011	84%
2012	93%
2013	95%

3.20 Each of these decisions was taken in accordance with the general exception provisions contained in Regulations. Having considered the reasons given for urgency the Head of Governance Services has noted that:-

- one was a result of the cross over between the Forward Plan and new list arrangements in which the publication requirement extended from 14 to 28 days;
- three were urgent because of pressures to secure or spend grant funding in the current economic climate;
- one was urgent because a supplier had given notice to cease operation where the Council has statutory duties to provide gas servicing to property, and failure to do so could endanger life and property;
- one was the result of an unforeseen increase in the capital cost of the scheme, taking it over the threshold for a Key decision in circumstances where the scheme needed to progress during the school holidays; and
- the remaining five related to procurement decisions and the reasons given indicated that the circumstances could have been avoided through improved planning.

3.21 The Head of Governance Services is of the view that the steps taken through the transforming procurement project to ensure better management of procurement, together with the increased ownership of decision making within directorates and the on-going programme of training offered to officers involved in the decision making process will continue to minimise the number of Key decisions taken without having been included on the List of Forthcoming Key Decisions for the required 28 calendar days.



- 3.22 The Head of Governance Services is able to confirm that the Special Urgency Provisions, enabling an Executive Decision to be taken at less than 5 days' notice, have not been used during this period.

#### Eligible Decisions Open for Call In

- 3.23 The Council has established arrangements for significant Executive decisions<sup>2</sup> to be available for Call In. This allows for Overview and Scrutiny Committees to request that a decision, which has been taken, but not yet implemented, be considered by the relevant Scrutiny Committee. This mechanism is an important element of democratic accountability arrangements in place at Leeds and was reflected in the Council Business Plan which required that 95% of eligible decisions should be open for Call In. Again this requirement is not reflected in the new Best Council Plan but continues to be monitored by the Head of Governance Services.
- 3.24 Of 328 eligible decisions taken only 11 (6 decisions taken by officers and 5 taken by Executive Board) were not open for call in. This gives a performance of 96% Key decisions being available for Call In.
- 3.25 This shows a slight improvement on the level recorded in 2012. The 4 previous years show performance indicators as follows:-

2010	99%
2011	98%
2012	96%
2013	97%

- 3.26 In the reporting period all those decisions exempted from Call In were exempted on the grounds of urgency: six decisions were urgent because of deadlines imposed by statute, procedure or funding agencies: one had been planned but costs rose unexpectedly and required a Key decision to be made and implemented instead of the planned Significant Operational Decision, and the remaining four appear to have been circumstances that could have been avoided through appropriate planning and preparation.
- 3.27 Again the Head of Governance Services is satisfied that the implementation of transforming procurement, increased ownership of decision making within directorates and on-going training in relation to the decision making framework will continue to improve the number of decisions appropriately open to call in.

#### Decisions Not Treated as Key

- 3.28 At its meeting of 18<sup>th</sup> June 2013 the Scrutiny Board (Sustainable Economy and Culture) considered a request for scrutiny in relation to the decision making process supporting the implementation of charging arrangements for Party in the Park.

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<sup>2</sup> All decisions of Executive Board and all Key decisions of officers are eligible for Call In provided that they are not decisions made in accordance with the Budget and Policy Framework Procedure Rules (as part of the development of the budget and policy framework) and they have not been the subject of a previous call in.

- 3.29 The Board noted that this was the first occasion on which the constitutional mechanism for identifying decisions which appear to have been wrongly treated had been invoked. The Scrutiny Board were asked to determine whether the decision should have been treated as a key decision, and if so whether to exercise the right to require the Executive to submit a report to Council setting out particulars of the decision together with the Leader's opinion as to whether the decision was or was not a key decision and the reasons for that opinion.
- 3.30 Representations were considered from both the Councillor who had submitted the request for Scrutiny and the Director to whom the function is delegated. The discussion included consideration of both the financial criteria and the significance of the impact of the decision on local people.
- 3.31 The Scrutiny Board resolved that the decision in relation to the proposal to introduce charges for Party in the Park was correctly treated and therefore no further action is required by scrutiny on this occasion. However, the meeting expressed the importance of the Call In mechanism within the decision making framework as enabling scrutiny by councillors. It was considered that this request for Scrutiny was an appropriate way in which to carry out the responsibility of councillors to ensure that the delegation scheme they had agreed was properly implemented.

#### Implementation of Key Decisions

- 3.32 A sample of 15 Key decisions has taken across all directorates<sup>3</sup> in order to assess the timeliness with which decisions are implemented.
- 3.33 Whilst it has been confirmed that all 15 decisions sampled have been fully implemented it was noted that only 8 of the decisions sampled set out clear information as to the proposed start date in the body of the report.
- 3.34 In order to provide increased focus on the need to ensure timely implementation of decisions the Head of Governance Services has amended the Council's Corporate Report Writing Guidance to indicate that officers should include:-
- details of the steps required in order to implement the preferred option as set out in their report; and
  - a recommendation outlining the timescales proposed for implementation and naming the officer accountable for implementation.

These details will then be reflected in the minutes of any meeting of the Executive Board, or in the Delegated Decision Notice relating to any Key Decision taken by an officer.

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<sup>3</sup> Neither the Director of Public Health nor the City Solicitor had taken Key decisions within the sample period and they are not therefore included within the survey.

## **Embedding the Decision Making Framework**

### Training

- 3.35 The Head of Governance Services has continued to provide training in relation to Council Structures and Decision Making throughout the past Municipal Year. In the 2013/14 Municipal Year this training offer has been broadened to include:-
- 3.35.1 Participation in the Corporate Induction event through the Knowledge Café: providing information in relation to the context of the political organisation in which officers are employed, and details as to further information and learning resources available;
- 3.35.2 A restructured decision making course, placing increased emphasis on the political environment in which decisions are taken;
- 3.35.3 An amended political awareness course, offering an opportunity to meet and learn from a senior elected Member; and
- 3.35.4 A set of workshop sessions in relation to report writing, focussing on the use of reports to support decision making in order to achieve the Best Council ambition;

### Decision Making Toolkit

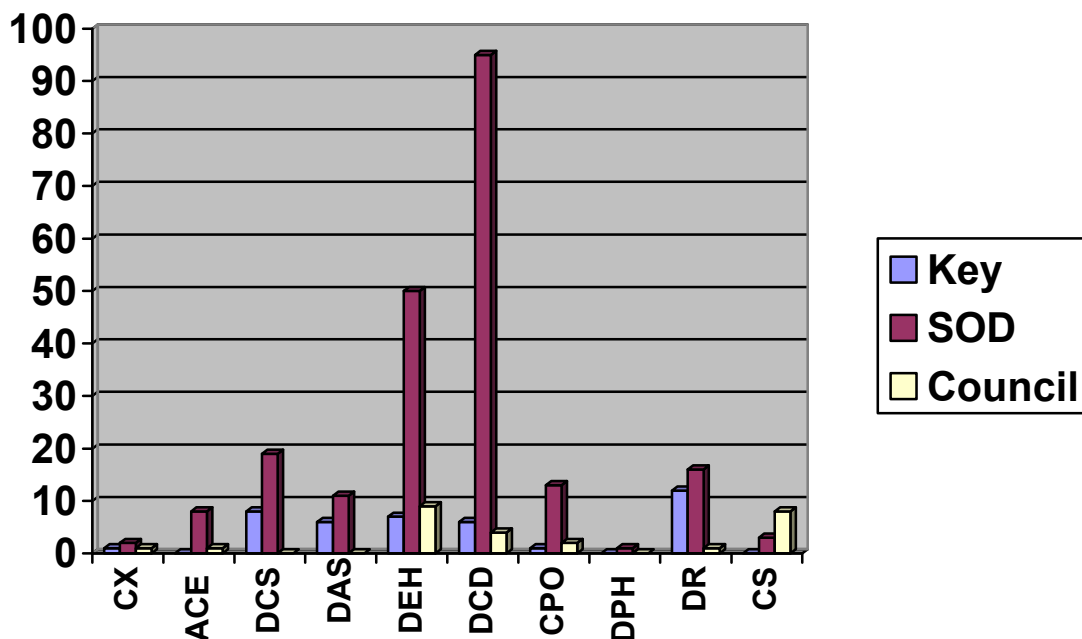
- 3.36 In addition to the training events on offer the Head of Governance Services has used the re-launch of the Council's intranet site, to establish a Decision Making Toolkit, providing one place in which officers can access:-
- Links to items published on the Council's web site including the constitution, sub delegation schemes, the list of forthcoming key decisions, and records of decisions taken by officers;
  - Advice in the form of briefing notes, frequently asked questions and How To guides;
  - Corporate guidance; and
  - Templates for the addition of decisions to the list of forthcoming key decisions, delegated decisions and reports.
- 3.37 The Head of Governance Services ensures that when any of the items included in the toolkit is amended or updated, information is shared via the Corporate Communications 'Essentials' bulletin and a link included to the toolkit. Feedback received from officers using the toolkit has been complimentary.

### Migration of Publishing Requirements

- 3.38 As part of the review of Governance Services undertaken during the Enabling Corporate Centre Project, the Head of Governance Services undertook to hand over to Directorates the control of publication of decisions made within each Directorate. As part of this project the Head of Governance Services ensured that:-

- Officers nominated by each directorate were trained in the use of the Modern Gov software used to publish decisions;
- Manuals were created to support directorate staff in using the software;
- Advice and guidance has been made available to officers as and when required, using both staff in governance services and a peer support group; and
- Key decisions published on the Council’s website have been checked to ensure compliance with the decision making framework.

3.39 The transfer of responsibility took place on 1st May 2013, enabling directorates to take fuller control of decision making processes and therefore enabling them to be increasingly responsive to individual directorate governance arrangements. The chart below shows the distribution of recorded decisions taken by officers between 1<sup>st</sup> May and 31<sup>st</sup> August 2013. Of the 287 decisions recorded by officers in that period, 41 were Key, 220 Significant Operational and 26 Council decisions. 37% (105) of these decisions were taken by or on behalf of the Director of City Development, and 23% (66 decisions) were taken by or on behalf of the Director of Environment and Housing.



3.40 A discussion at Corporate Leadership Team on 20<sup>th</sup> August 2013 confirmed that the governance framework for decision making is up to date and fit for purpose. It was felt that the migration of responsibility for publishing requirements, in conjunction with the learning offer, lead to a shared understanding of the legislative framework for decision making. This shared understanding has in turn lead to an increased awareness of the need to plan decisions in order that they can be taken and implemented in a timely manner.

## **DECISIONS IN RELATION TO LICENSING MATTERS**

- 3.41 The Head of Licensing and Registration has responsibility to ensure that the Council's arrangements in respect of licensing matters are up to date, fit for purpose, effectively communicated, routinely complied with and monitored.

### Entertainment and Miscellaneous Licensing Decisions

- 3.42 As Members are aware the Council is required to take a variety of licensing decisions in accordance with the Licensing Act 2003, Gambling Act 2005 and other miscellaneous legislation providing for the licensing of scrap metal dealers, motor salvage dealers, sex establishment licence, place of marriage, hypnotism, house to house collections and street collections.
- 3.43 The table set out at Appendix A to this report shows the number of applications received for 2010, 2011, 2012 and the period between January and June in 2013. The table indicates the numbers of decisions made by Licensing Sub-Committee after representations were received. Members should note that where no representations have been received the legislation dictates certain licences must be granted.
- 3.44 Since the last report, HM Government has introduced new legislation on the licensing of scrap metal dealers. As this is an executive function, the refusal of applications will be delegated to officers through the sub delegation scheme, until such time as it becomes a council function when it will be delegated to Licensing Committee. Guidance on refusals is being developed and will be approved through the DDN that will deal with the matter of fees, application process, forms and guidance.

### Taxi and Private Hire Licensing Decisions

- 3.45 As Members are aware, the granting, suspension, revocation and enforcement of an individual hackney carriage (HC) or private hire (PH) licence whether for a vehicle, driver or operator is a council function under the Local Government Act 2000. In Leeds, these functions are concurrently delegated to the Licensing Committee and to the Assistant Chief Executive (Citizens and Communities) under the Scheme of Delegation approved annually at full Council. The Assistant Chief Executive (Citizens and Communities) has sub-delegated that power to the Head of Licensing and Registration, the Section Head of Taxi & Private Hire Licensing and, in some circumstances, to Principal Managers, Licensing Officers and Licensing Supervisors. All decisions taken by officers are taken in accordance with policy and guidance decided by Members of Licensing Committee.

3.46 The figures for 2010, 2011, 2012 and for January to August 2013 for applications, renewals, refusals, suspensions and revocations of taxi and private hire driver licences are set out in the table below.

	Applications	Refusals	Suspensions	Revocations
2010	629	18	86	69
2011	508	15	129	46
2012	794	16	74	37
2013 (1 <sup>st</sup> January to 31 <sup>st</sup> August)	415	6	59	15

3.47 When considering the above information it is important to note that there is no direct correlation between the number of suspensions and revocations in any one year. For example, the number of licences revoked in any one year will include a proportion which were suspended in the previous year.

3.48 It is also important to note that many decisions result from the application of other legislation and the decisions of other bodies such as the courts or DVLA. As explained earlier in this report, many officer decisions flow directly from the application of an approved council policy.

3.49 The legal provisions relating to the grant, refusal, suspension and revocation of Licences set out statutory Rights of Appeal to the Magistrates Court against almost all the decisions that would take effect. In the period between 1<sup>st</sup> January and 31<sup>st</sup> August 2013 25 appeals have been received. The reason for these appeals and the outcomes are set out below:-

Type of Appeal	Volume	Result
Against conviction	1	Refused
Against conviction and sentence	3	Dismissed
		Withdrawn for training, no costs against Council
		Withdrawn

Type of Appeal	Volume	Result
Against refusal	2	Refused
		Allowed
Against revocation	10	Remain suspended
		Withdrawn
		Refused x 2
		Appellant unable to attend
		Re-listed x 2
		Dismissed x 2
		Allowed in part
Against sentence	1	Withdrawn
Against suspension	7	Dismissed
		Refused x 2
		Withdrawn x 3
		Badge returned
Refusal to renew	1	Licence will be granted
<b>Total</b>	<b>23</b>	

### Licensing Policy Review

- 3.50 As Members are aware, the licensing decision making framework is dependent upon a comprehensive list of policies agreed, as appropriate, by the then Licensing and Regulatory Panel, the now Licensing Committee, Executive Board or Full Council. These policies are regularly reviewed by Licensing Committee in response to changes in legislation, law and practice, or other circumstances. Any changes are carried out after a full public consultation.
- 3.51 The report which Members received in March 2013 set out details of planned policy reviews. Since this time the following progress has been made:-

- The Statement of Licensing Policy for the Licensing Act 2003 is presently out for public consultation before returning to Licensing Committee in September to be agreed at Full Council in November 2013;
- The Statement of Licensing Policy for the Licensing of Sex Establishments, incorporating amendments to deal with local concerns, was agreed at Executive Board on 17th July 2013, to take effect from 1<sup>st</sup> September 2013;
- Taxi and private hire licensing policies in Groups 1 and 2 have been reviewed and are in place, and initial consultation on group 3 policies closed on 3<sup>rd</sup> May 2013. This group of policies are now being reviewed with a view to returning to Licensing Committee in late 2013 / early 2014 prior to further consultation;
- A working group has been established to consider the proposed new policy to direct officers when exercising their delegated power to suspend a licence with immediate effect. Public consultation on the proposals closed on Friday 12<sup>th</sup> April 2013. Officers are currently collating responses to the feedback with a view to returning to Licensing Committee in late 2013/early 2014; and
- A working group has also been established to consider;
  - i. The Hackney carriage and private hire driver renewal process (including the length of licences issued; up to 3 years);
  - ii. How the transfer of a Hackney carriage licence is processed upon the death of a proprietor;
  - iii. How consultation can be more effective with the trades; and
  - iv. Third party applications to renew a licence on behalf of an absent licence holder.

There are two further scheduled meetings with the trade and Members in September and October before returning to the Licensing Committee.

- 3.52 This review process ensures that all policies remain up to date and are fit for purpose, reflecting the up to date position on changes to legislation or law and practice.
- 3.53 Licensing policies are published on the council's website and form part of a comprehensive training programme designed for new Members of the Licensing Committee. Newly recruited officers are provided training in the policies as part of their initial appraisal process and can only take decisions after they have completed their training. Only a limited number of officers can take decisions at different levels in accordance with the scheme of delegation. All training is monitored through the appraisal process and regular meetings with their line manager.
- 3.54 Reports on the numbers of licences granted and any delegated decisions are provided to Licensing Committee so they can monitor the effectiveness of the licensing decision making framework and the policies that guide it. Entertainment



Licensing and Taxi and Private Hire Licensing last provided reports to Licensing Committee in July and August 2013 respectively.

#### Regular CRB Disclosures for Taxi and Private Hire Licence Holders

- 3.55 As reported in March 2013 the intention remains to introduce 3 yearly Disclosure and Barring Service (DBS) checks for Taxi and Private Hire License holders. The finer details of these arrangements have yet to be determined , however the committee will be advised of progress in future reports.

### **DECISIONS IN RELATION TO PLANNING MATTERS**

- 3.56 The Chief Planning Officer has responsibility to ensure that the Council's arrangements in respect of planning matters are up to date, fit for purpose, effectively communicated, routinely complied with and monitored.
- 3.57 The planning service is committed to continuous improvement and seeks to ensure that the decision making process is transparent, fit for purpose and is accountable. A number of actions and service improvements have taken place over the last year which help provide assurance in the decision making process and these are described below.

#### Decision Making Framework for Planning Matters

##### Delegation Scheme

- 3.58 The Chief Planning Officer is authorised to carry out functions on behalf of the council. The delegation scheme forms part of the Constitution and was last reviewed and approved by Full Council in May 2013.
- 3.59 All planning applications are considered to fall within the delegation scheme and will be determined by officers under the sub-delegation scheme, unless they fall into defined exceptional categories which were detailed in the previous report to this Committee.

##### Sub Delegation Scheme

- 3.60 The scheme sets out which functions have been sub-delegated by the Chief Planning Officer to other officers and any terms and conditions attached to the authority sub-delegated by the Chief Planning Officer. The latest sub delegation scheme was approved on 4<sup>th</sup> July 2013.

##### Officer conflict of interest

- 3.61 Officer conflict of interest, declaration of interests and public and member access to the declared interest of officers in high risk posts has been discussed at Scrutiny Board (Housing and Regeneration) and at Executive Board in recent months.

- 3.62 At the 11 January 2013 meeting of the Standards and Conduct Committee, the Chief Planning Officer presented a report responding to the concerns of the Committee, about planning officer conflicts of interest and declaration of interests. The report clearly outlined the measures and procedures that are involved in the development management process for officers to declare or make known any beneficial interest in land and property and how potential conflicts of interest are avoided.
- 3.63 An independent review of the controls in place to detect any potential conflicts of interest on the decisions made in respect of planning applications was also carried out in 2012-13. A report of the Head of Internal Audit was presented to the Scrutiny Board (Housing and Regeneration) following the review, which gave the Board a high level assurance that key controls were in place within the planning application process to mitigate the risk of planning decisions being subject to a conflict of interest and inappropriate external influence.
- 3.64 A report to the Executive Board on 17 July 2013 described a number of practical steps that will be taken to provide additional assurances that employees are declaring interests, arrangements for Members in accessing the register of employee interests and arrangements for making information public about employees' interests, where those interest relate to their decision making or advisory role. Executive Board agreed to a number of actions to strengthen the process, which are being progressed.

#### Restructure of planning service

- 3.65 Changes have been made to planning officer responsibilities through a restructure of the service. A principal planning officer or more senior officer has responsibility for an area committee area, meaning there is a single and consistent point of contact for MPs, members and community groups in an area. These new arrangements will help planning officers gain a clearer understanding of the local and political concerns, resulting in better communication and greater sensitivity brought to the decision making process. The arrangements are mirrored in local planning teams, helping to ensure integration into policy work and the preparation of neighbourhood plans.

#### Review of the Plans Panels

- 3.66 In 2012, an all-party working group of members and council officers reviewed the arrangements for the operation of the plans panels. The review recommended amending the geographical boundaries for the area panels to balance up workloads and for the creation of a new panel, which would deal with the largest and strategic applications received by the authority. Full Council agreed to the creation of three new panels – North and East, South and West and City Panel. Each panel is authorised to discharge functions within its own geographical area and in the case of the City Panel, to deal with strategic applications. The area planning teams have also been aligned to the new plans panel boundaries through the restructure of planning services, as described in more detail at paragraph 3.65 above.

- 3.67 The new panel arrangements have provided the opportunity for the use of the three phase process: pre-application presentation, position report and final determination for the largest and most complex applications. This has led to more Plans Panel involvement throughout the life of an application and first time decision making, even on the most complex schemes. There is strong evidence that applications dealt with through this approach also deliver more predictable outcomes in a timely fashion.
- 3.68 The new arrangements have also made provision for additional ward member and/or community involvement at the pre-application stage, by providing a speaking opportunity following the developers' presentation. This provides a greater balance between the role of the applicant and views of the community and ensures there is appropriate focus on the largest and most sensitive applications, in order to fully deal with the issues, resulting in a more transparent and accountable planning decision making process.
- 3.69 The new panel arrangements have also allowed opportunities for special meetings for very significant development proposals including the energy from waste proposals, NGT and large scale housing schemes. This has meant that there is the appropriate level of scrutiny afforded to particularly sensitive or strategic proposals.

#### Governance Documents

- 3.70 The importance of ensuring that the council's procedures for decision making on planning applications are lawful, accountable, transparent, fair and in compliance with the principles of good governance and best practice is crucial to ensuring public confidence in the system. Two key documents have been revised and updated in 2012-13:

#### Planning Code of Good Practice

- 3.70.1 On 1 July 2012 the new standards regime under the Localism Act 2011 came into force and introduced a mandatory requirement for local authorities to adopt a local code of conduct. As a result of the new Members Code, the Standards and Conduct Committee embarked on a review of the local codes, including the *Code of Practice for the Determination of Planning Matters* and asked the Joint Plans Panel to review the code to assess the appropriateness of its style, function and purpose. Consequently, a new guide was drafted and was approved by the Joint Plans Panel in June 2013. The new guide, *Planning Code of Good Practice*, is more practical in its approach and supportive in its tone and assists members in keeping decisions safe and mitigating the risk of possible challenge.

#### Protocol for Public Speaking at Plans Panel

- 3.70.2 Following the changes to the Plans Panel arrangements in September 2012 and the introduction of a public speaking opportunity at the pre-application stage, the protocol for public speaking has been fully reviewed with the changes agreed by the Joint Plans Panel in June 2013.

## Planning Performance and Workload – January 2012 - August 2013

3.71 The number of planning applications received in 2012-13 was down by 3.5% compared with 2011-12, with major applications seeing the greatest reduction in numbers, being 6.1% down on the previous year's levels. However, there has been a real improvement in performance in determining applications in 2012-13, with improvements across all application types. The service uses several measures to determine the quality of decision making: number of lost appeals, numbers of complaints and upheld complaints. Performance in these areas compares favourably with previous years.

3.72 A total of 3,976 decisions were made in 2012-13, compared with 4,137 in 2011-12. 3,849 decisions were made by officers under the delegation scheme. The delegation rate for the year was therefore 96.8%, a small increase on 2011-12 where the delegation rate was 95.9%.

3.73 The government sets national performance targets for decision making on planning applications as follows:

- 60% of major applications determined within 13 weeks
- 65% of minor applications determined within 8 weeks
- 80% of other applications determined within 8 weeks

For 2012-13, Leeds also had a local target for major applications of 75% determined in 13 weeks and 80% of minors in 8 weeks.

3.74 Performance during 2012-13 is described below, in comparison with 2011-12:

	<b>Majors</b>	<b>Minors</b>	<b>Others</b>
<b>2011-12</b>	56.3%	76.9%	85.1%
<b>2012-13</b>	61.3%	77.4%	88.9%
<b>2013-14 (1<sup>st</sup> January to 31<sup>st</sup> August 2013)</b>	70.83%	75.27%	83.77%

3.75 The table above shows a marked improvement in performance, particularly for major applications, where 2012-13 shows an 8.1% increase of applications determined in time, compared with 2011-12. In quarter 4 of 2012-13, 76% of major applications were in time. Within the national context, only 56%<sup>4</sup> major applications were determined within 13 weeks, therefore Leeds performance is not only a significant improvement on last year's figures, but is also higher than the national rate of determination. Overall, in 2012-13, 85% of applications of all types were determined in time.

3.76 The number of out of time major applications still in the system at the end of 2012-13 was 34, a decrease of 22 from 56 at the end of 2011-12. This provides a sound platform for the coming year where a target of 70% of major applications

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<sup>4</sup> Department of Communities and Local Government Planning Applications: October to December 2012 (England) 12.4.2012

determined in 13 weeks has been set. The number of out of time non-major applications at the end of the year was 119. All out of time applications are being actively progressed to reach a conclusion. New performance reporting arrangements have been introduced in August 2013 by the Government which means that timescales can be negotiated to extend the period of time in which to determine applications. In future, all applications determined within the statutory time period or the agreed extended time period will be counted as being "in time". The service is proactively working with applicants to negotiate new determination dates.

#### Planning Performance Agreements

- 3.77 The Government strongly encourages the use of PPAs for the largest and most complex applications. The service determined 9 Planning Performance Agreements (PPA) in 2012-13, all within the agreed timescales. Within the system are a further 21, which are signed and are under consideration. In the first four months of 2013-14, six PPAs have been completed, all of them within agreed timescales.
- 3.78 The Growth and Infrastructure Act 2013 makes provision for developers to submit planning applications directly to the Planning Inspectorate where the local planning authority has a poor record of performance on major applications. Local Planning Authorities will be placed in "special measures" if they determine 30% or fewer major applications in time and have more than 20% of major appeal decisions overturned. It is very unlikely that the service will be placed in special measures based on the current criteria. The use of PPAs has been embedded in our practice for a number of years but it is likely that the service will try to make increasing use of PPAs to deal with complex applications which would take such applications outside the statistics and allow them to be determined in bespoke timescales, commensurate with their complexity.

#### Appeals

- 3.79 In 2012-13, there were 187 appeal decisions, which represents about 4.7% of the total number of decisions made in the year.
- 3.80 There has been a steady improvement in the performance levels of dismissed appeals on the authority's decision to refuse on planning applications over the last few years, but it has slipped a little in 2012-13 to 67% from 69% in 2011-12. A number of appeals on smaller applications were allowed in March 2013.

#### Decisions Contrary to Officer Recommendation

- 3.81 Decisions on planning applications must be taken in accordance with the Development Plan unless material considerations indicate otherwise. From time to time the Panel may attach different weight to the potential planning considerations and therefore, take a decision which differs from the officer recommendation.
- 3.82 Where this occurs, Members must be able to give a clear basis and reason for not taking the officer recommendation. It is important to ensure, as far as possible, that any decision made will be capable of surviving a legal challenge or appeal.

The consequence of a high level of decisions contrary to the officer recommendation is that it may appear that members and officers are not working well together, with the potential risk of a lack of confidence in the planning system in Leeds.

- 3.83 Considerable work has taken place over the last few years to ensure that officer reports are robust, to improve member training and to ensure better pre-application involvement.
- 3.84 During 2012-13, 127 decisions were made by the three plans panels. This compares with 171 decisions in 2011-12.
- 3.85 During the year, eight decisions were made that were not in accordance with the planning officer's recommendation; this represents 6.3% of the total number of decisions made by Members and only 0.2% of the total decisions made by the Local Planning Authority. This is similar to the figure for the last two years and a continuous improvement over time, since the peak in 2006-07 when almost a quarter of decisions made were contrary to the officer's recommendation.
- 3.86 Of the eight decisions, five were refusals, of which three went onto appeal the decision. All three decisions were allowed on appeal. So far in 2013-14, there have been three decisions not in accordance with the officer recommendation.

#### Ombudsman Complaints

- 3.87 The planning service received 22 Ombudsman complaints in 2012-13 compared with 23 in 2011-12. Due to the restructuring of cases by the Ombudsman, these include requests for Preliminary Information pending full investigation. 14 of these were closed on arrival and required no investigation and two older full cases were closed during the year by Local Settlement.
- 3.88 Both complaints related to officers not taking into account the amenity of existing homes when assessing a planning application for a new development on the adjacent site. Both resulted in financial settlements to the complainants, totalling £6,500, because of the loss of amenity they suffered as a result of the new development's implementation.
- 3.89 Between April and July 2013, five Ombudsman complaints have been made, four of which were closed with no action required and one which was outside the jurisdiction of the Ombudsman.

#### Embedding the Framework for Planning Matters

##### Training for officers

- 3.90** The service places considerable emphasis on ensuring officers are up to date with current legislation, best practice and government initiatives. Regular in-service planning officer case workers meetings take place every six to eight weeks and are a forum for cascading information, inviting guest speakers and sharing of good practice. The meeting allows for two way communication on a range of issues and is an effective forum for ensuring there is a consistent approach

across the planning teams. It also ensures that officers have all the information they require in order to make high quality robust decisions.

- 3.91 There have also been a number of in house training sessions over the year on issues which are topical and have an immediate impact on the operation of the service, including, the National Planning Policy Framework, Ethical Framework, material considerations, Community Infrastructure Levy, planning conditions, Section 106 agreements and enforcement. The government's planning reform agenda has meant that there have been many significant changes recently and officers have needed to keep up to date and understand the implications of the changes on the service in order to deal effectively with applications and make high quality decisions.
- 3.92 A number of officers have accessed external training courses on the government's reform agenda; information from the courses has been cascaded to colleagues at case workers meetings.
- 3.93 The service is committed to learning from past errors by identifying the learning points arising from complaints and putting measures in place to minimise the risk of them occurring again. This year, a presentation to the case workers meetings centred on the relationship of new development to existing properties and ensuring that the impact had been fully taken into account and addressed in officer reports. Training has also been provided by a Local Government Ombudsman Investigator on the common grounds for upholding complaints and advised officers how to make reports as robust as possible to minimise the risk of challenge on decisions.

#### Training for Plans Panel Members

- 3.94 All members of the Plans Panel must receive prescribed compulsory training in order for them to be able to sit on the Plans Panel. Article 8 of the Council's Constitution makes specific reference to this principle; however, nowhere does it say what the prescribed training comprises. Arrangements have now been formalised, clarifying what is compulsory training for members and what is additional. This clarity provides the assurance that sufficient training has been undertaken in order for members to fulfil their responsibilities correctly.
- 3.95 A new training opportunity has been offered to members this year: in house sessions with members "shadowing" planning officers in the office environment. Feedback from members has been very positive with members saying they have a deeper understand the planning process from accessing the training.
- 3.96 A range of other training and learning opportunities have been offered to members, including Planning Reform Update by Dr Hugh Ellis Chief Planner Town and Country Planning Association and through the Leeds and Bradford Planning training series programme, training on planning policy, heritage and conservation, health and housing and neighbourhood planning.

## Relationships with Partners and Customers

### Working with partners

- 3.97 The Leeds Planning and Developers Forum, a group comprising developers, agents, planning officers, parish councillors and community representatives continues to meet regularly, providing an essential forum for communication and for sharing ideas and best practice. At the meeting in July 2013, a special meeting was held with the Plans Panel Chairs and the Executive Board Member for Neighbourhoods, Planning and Support services, where current issues and concerns were discussed.

### Pre-application engagement guide

- 3.98 Following a request from Scrutiny Board (Housing and Regeneration), a guide for developers has been produced which sets out the Council's expectations for pre-application engagement between developers and their advisors, ward members and local communities. Although pre-application engagement is not a mandatory requirement, it is considered to be good practice and can lead to more successful developments, in a timely way using local expertise and knowledge to help shape the proposal. The guide sets out the process, roles and responsibilities and provides clarity and transparency at the pre-application stage of a proposal.

### Customer Service

- 3.99 A customer survey was carried out in January 2013 to ascertain the level of satisfaction with the planning service. The survey only received a 7% response rate. Of those who responded, 51 % rated the service as excellent or good. However, the main areas highlighted for improvement were communication with objectors and the lack of information and notification of an application's outcome, not being aware of how to track applications on Public Access and lack of acknowledgement to any comments made. This resulted in respondents commenting that they didn't feel their representation was taken into consideration when a recommendation was reached. To avoid criticisms relating to inadequate consideration of the issues, or claims of unclear reasoning behind an officer's recommendation, officer reports need to ensure they robustly address, among other things the substance of objections and the views of those who have been consulted and their materiality in the decision making process. This relatively low level of satisfaction is a concern and a number of actions are in place to address the issues raised and are being progressed as part of the service's submission for the Customer Service Excellence award. Work has already been undertaken to improve clarity in reports, but clearly there is still more to do. Further work is also in progress on Public Access to ensure that customers have all the information they need to understand how the process works and what happens to any comments made. This will provide additional transparency and accountability to the process.
- 3.100 Further work is planned to investigate different methods of ascertaining customer satisfaction levels with the aim of increasing the overall customer response rate.



- 3.101 The Development Enquiry Centre was re-awarded Customer Services Excellence (CSE), with no non-compliances in April 2013. This is the first time this has been achieved and shows the continuous improvement of the service. It is intended to start the roll out of CSE to the whole of planning services and customer services during 2013 with the assessment of the whole service to take place in March / April 2014.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 Full consultation in relation to the licensing policies adopted in accordance with the reviews described in paragraph 3.51 above ensure that those policies take into account the views of both trade and public.
- 4.1.2 The Council's Performance Management Team monitor performance indicators in respect of consultation and engagement.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 Equality and cohesion screening assessments are carried out on all reviews of licensing policies referred to in paragraph 3.51 above.
- 4.2.2 The Council's Performance Management Team monitor performance indicators in respect of equalities.

### **4.3 Council policies and City Priorities**

- 4.3.1 The new Best Council Plan sets out the Council's ambition to become the best Council in the UK, using a civic enterprise leadership style, in which the council is more enterprising, businesses and partners more civic, and the citizens of Leeds more actively engaged in the work of the city.
- 4.3.2 In conjunction with the Council's values, particularly that of being open, honest and trusted, this ambition is captured in the Council's decision making framework which is designed to ensure open and honest decision making, enabling engagement of the public with Key decisions taken by Members or officers.

### **4.4 Resources and value for money**

- 4.4.1 Some licence fees are set by legislation, others are open to local discretion. The authority to set fees for licence applications is delegated to the relevant Director, however generally approval is sought via licensing committee.
- 4.4.2 The council currently has to subsidise the cost of providing the Licensing Act licensing function in this area as the statutory fees do not cover the full costs associated with the process. The Government has recognised this as an issue affecting licensing authorities across the country and is currently looking to review the regulations that will allow councils to set licence fees locally to help cover true costs.

4.4.3 When setting licence fees the authority is unable to include costs for enforcement against unlicensed operators, and any costs associated with certain local policies and schemes may also have to be borne by the authority.

4.4.4 Fees for taxi and private hire licensing are set locally to cover the costs of providing the service. The legislation states that funds raised from taxi and private hire licensing fees must be held in a ring-fenced account and used for providing the taxi and private hire licensing function only. These arrangements are fully complied with in Leeds.

4.4.5 Given the assurances made by the Head of Governance Services as a result of the implementation and monitoring of the Council's decision making framework it is considered that the systems and processes in place represent an appropriate use of resources and good value for money.

#### **4.5 Legal Implications, Access to Information and Call In**

4.5.1 The Head of Governance Services is satisfied that the arrangements put in place through the Council's decision making framework meet all legal requirements.

4.5.2 Proper implementation of the decision making framework ensures appropriate access to information for both elected Members and the public.

#### **4.6 Risk Management**

4.6.1 The Head of Governance Services and Head of Licensing and Registration give assurance that the systems and processes that form part of the Council's decision making framework are functioning well and that there are no risks identified by this report.

### **5 Conclusions**

5.1 From the review, assessment and ongoing monitoring carried out the Head of Governance Services has reached the opinion that, overall, decision making systems are operating soundly and that there are no fundamental control weaknesses

### **6 Recommendations**

6.1 Members are requested to consider and note the positive assurances provided in this report.

### **7 Background documents<sup>5</sup>**

7.1 None

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<sup>5</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

## Appendix A

			2010	2011	2012	2013 (1 <sup>st</sup> January to 31 <sup>st</sup> August)
Licensing Act 2003	Premises Licences	Number of applications	1065	1006	1034	726
		Number of committee decisions	134	177	152	30
	Club Premises Certificates	Number of applications	8	8	5	2
		Number of committee decisions	3	4	2	0
	Personal Licences	Number of applications	498	467	517	321
		Number of committee decisions	6	5	5	3
	Temporary Event Notices	Number of applications	1490	1741	1741	935
		Number of committee decisions	0	23	6	1
Gambling Act 2005	Premises Licences	Number of applications	12	14	14	7
		Number of committee decisions	4	3	0	2
	Permits	Number of applications	94	55	13	20
		Number of committee decisions	1	0	0	0
	Small Society Lottery Registrations	Number of applications	66	50	65	32
		Number of committee decisions	0	0	0	0
	Temporary/ Occasional Use Notices	Number of applications	4	0	0	0
		Number of committee decisions	0	0	0	0
Miscellan eous	Marriage Act Premises Registrations	Number of applications	16	18	13	16
		Number of committee decisions	0	0	0	0
	Sex Establishment Licences	Number of applications	3	8	12	4
		Number of committee decisions	0	0	7	2
	Scrap Metal Dealers Registrations	Number of applications	11	21	59	24
		Number of committee decisions	0	0	0	0
	Motor Salvage	Number of applications	6	5	3	1

	Operators Registrations	Number of committee decisions	0	0	0	0
	Street Collection Permits	Number of applications	154	161	237	123
		Number of committee decisions	0	0	0	0
	House to House Collection Permits	Number of applications	25	39	27	19
		Number of committee decisions	0	0	0	0
	Hypnotist Licences	Number of applications	2	2	2	3
		Number of committee decisions	1	0	0	0