



AGENDA

COUNCIL MEETING

Date: Wednesday, 31 March 2021

Time: 7.00 pm

Venue: Virtual Meeting Via Skype*

RECORDING NOTICE

Please note: this meeting may be recorded and the recording may be added to the website.

At the start of the meeting the Chairman will confirm if all or part of the meeting is being audio recorded. The whole of the meeting will be recorded, except where there are confidential or exempt items.

You should be aware that the Council is a Data Controller under the Data Protection Act. Data collected during this recording will be retained in accordance with the Council's data retention policy.

Therefore by entering the meeting and speaking at Council you are consenting to being recorded and to the possible use of those sound records for training purposes.

If you have any queries regarding this please contact Democratic Services.

Quorum = 16

Pages

Information for the Public

*Members of the press and public can listen to this meeting live. Details of how to join the meeting will be added to the website on 30 March 2021.

Privacy Statement

Swale Borough Council (SBC) is committed to protecting the privacy and security of your personal information. As data controller we ensure that processing is carried out in accordance with the Data Protection Act 2018 and the General Data Protection Regulations. In calling to join the meeting your telephone number may be viewed solely by those Members and Officers in attendance at the Skype meeting and will not be shared further. No other identifying information will be made available through your joining to the meeting. In joining the meeting you are providing the Council with your consent to process your telephone number for the duration of the meeting. Your telephone number will not be retained after the meeting is finished.

If you have any concerns or questions about how we look after your personal information or your rights as an individual under the Regulations, please contact the Data Protection Officer by email at

dataprotectionofficer@swale.gov.uk or by calling 01795 417179.

1. Apologies for Absence

2. Minutes

To approve the [Minutes](#) of the Meeting held on 24 February 2021 (Minute Nos. 456 - 475) as a correct record.

3. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.

The Mayor will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:

(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.

(b) Disclosable Non Pecuniary (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.

(c) Where it is possible that a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the Member might be predetermined or biased the Member should declare their predetermination or bias and then leave the meeting while that item is considered.

Advice to Members: If any Councillor has any doubt about the existence or nature of any DPI or DNPI which he/she may have in any item on this agenda, he/she should seek advice from the Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

4. Mayor's Announcements

5. Leader's Statement

6. Questions submitted by the Public

To consider any questions submitted by the public. (The deadline for questions is 4.30 pm on the Wednesday before the meeting – please contact Democratic Services by e-mailing democraticservices@swale.gov.uk or call 01795 417330).

7. Questions submitted by Members

To consider any questions submitted by Members. (The deadline for questions is 4.30 pm on the Monday the week before the meeting – please contact Democratic Services by e-mailing democraticservices@swale.gov.uk or call 01795 417330).

8. Motion - Dyslexia

This Council commits to:

1. Signing the made by Dyslexia pledge
 - (a) The Made by Dyslexia pledge reads “We will endeavour to: Recognise dyslexia as a different and valuable way of thinking. Understand the importance of identifying each dyslexic and their pattern of strengths and challenges. Support which is targeted to enable dyslexics to harness their strengths and flourish. We’ll achieve this through: knowledge skilling up staff in schools and workplaces to recognise, understand and support dyslexia. Discover using digital screeners which make it easy and cost effective to check if you’re dyslexic. Adjustments in tests and assignments so dyslexics can demonstrate their full knowledge and skills.
2. Contacting every school within the Council area to:
 - (a) Encourage them to take up the free training available from Made by Dyslexia campaign (<https://connect-the-spots.madeydyslexia.org/>)
 - (b) To sign the Made by Dyslexia pledge
 - (c) To encourage them to work towards achieving BDA Dyslexia Friendly Quality Mark
 - (d) To share links to resources such as:
 - (i) Free Dyslexia Screening tools: <https://www.nessy.com/uk/screening-for-dyslexia/>
 - (ii) The British Dyslexia Association advice <https://www.bdadyslexia.org.uk/advice/educators>
3. Writing to the local MP, the local Director of Education and to the Secretary of State for Education encouraging them to take the Made by Dyslexia pledge.
4. Engaging with Dyslexia Awareness Week (5 October 2021 – 11 October 2021) and going green for Dyslexia Awareness Week.

(Information in this motion has been gathered from Made by Dyslexia, the British Dyslexia Association and Nessy UK).

Proposed by: Councillor Ben J Martin
Seconded by: Councillor Hannah Perkin

9. Motion to Support the Climate and Ecological Emergency Bill

Council notes:

- (i) This Council declared a climate and ecological emergency on 26 June 2019;
- (ii) Many local authorities have established Citizens' Assemblies that are playing an important role in assisting them in their plans to achieve net zero by 2030 or before; and that
- (iii) There is a Bill before Parliament – the Climate and Ecological Emergency Bill (published as the “Climate and Ecology Bill”) – according to which the Government must develop an emergency strategy that:
 - (a) requires that the UK play its fair and proper role in reducing greenhouse gas emissions consistent with limiting global temperature increase to 1.5 degrees C above pre-industrial temperatures;
 - (b) ensures that all UK's consumption emissions are accounted for;
 - (c) includes emissions from aviation and shipping;
 - (d) protects and restore biodiverse habitats along overseas supply chains;
 - (e) restores and regenerates the UK's depleted soils, wildlife habitats and species populations to healthy and robust states, maximising their capacity to absorb CO² and their resistance to climate heating;
 - (f) sets up an independent Citizens' Assembly, representative of the UK's population, to engage with Parliament and Government and help develop the emergency strategy.

This Council resolves to:

- (i) Support the Climate and Ecological Emergency Bill
- (ii) Inform the local media of this decision;
- (iii) Write to local Gordon Henderson MP, asking him to support the Bill;
- (iv) Write to Helen Whately MP, asking her to express her support for the actions called for in the Bill; and
- (v) Write to the CEE Bill Alliance, the organisers of the campaign for the Bill, expressing its support (campaign@ceebill.uk).

Proposed by: Councillor Tim Valentine

Seconded by: Councillor Alistair Gould

10. Constitutional Amendments: Motions and Amendments

11.	Members' Allowances Scheme - Parental and Sickness leave	23 - 28
12.	Review of Councillor Allowances - Area Committee Special Responsibility Allowance	29 - 38
13.	Review of the current Street Trading Policy	39 - 64
14.	Review of the Statement of Licensing Policy under the Licensing Act 2003	65 - 102
15.	Recommendations for Approval	103 - 104
	Council is asked to note the recommendations from the following meetings, all the subject of separate reports on the Agenda:	
	General Licensing Committee meeting held on 21 January 2021	
	Appointments Sub-Committee Meeting held on 17 March 2021	
	General Purposes Committee Meeting held on 17 March 2021	
16.	Exclusion of the Press and Public	
	To decide whether to pass the resolution set out below in respect of the following item:	
	That under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 1 – Information relating to any individual.	
17.	Management Structure	105 - 112

Issued on Tuesday, 23 March 2021

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact DEMOCRATIC SERVICES on 01795 417330**. To find out more about the work of Council, please visit www.swale.gov.uk

**Chief Executive, Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT**

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Council	
Meeting Date	31 March 2021
Report Title	Constitution amends: Council procedure rules on motions and amendments
Cabinet Member	Cllr Mike Baldock Deputy Leader and Cabinet Member for Planning
SMT Lead	David Clifford, as Monitoring Officer
Head of Service	
Lead Officer	
Key Decision	No
Classification	Open
Recommendations	Council is recommended to: 1. Agree the changes to the council procedure rules set out in the appendices.

1 Purpose of Report and Executive Summary

- 1.1 This report recommends changes to the council procedure rules on motions with notice (Rule 15) and amendments to motions (Rule 17). The main intentions of the changes are to:
- Prevent decisions being taken by means of motions that ought to be taken based on a properly evidenced proposal.
 - Provide that notice has to be given of amendments, with a facility for the mayor to waive this rule.
 - Provide that statutory chief officers can append a note on implications to motions and amendments where necessary.
 - Simplify the readability of Rule 15 by putting the text into a more logical order and splitting it up into sections.

2 Background

- 2.1 Recent council meetings have given rise to some concerns regarding the rules on motions and amendments. The range of subject matter of motions has expanded in recent years, and there have been examples of motions apparently trying to set policy without the benefit of properly considered evidence.
- 2.2 The same issue potentially arises in respect of amendments to motions and amendments to recommendations in reports. Amendments ordinarily have to be notified in advance of meetings in many councils, in order to give officers time to

consider any implications. While this is a sensible rule, it does carry the risk that council meetings could struggle to agree a form of words that would in principle command broad support in the chamber if there was a blanket ban on amendments being proposed during the meeting.

- 2.3 Some amendments to Rule 15 were proposed to GPC during 2019 in an attempt to deal proactively with what were recognised to be potential problems with the increasing use of motions looking to make policy. At that time, the committee took the view that the changes overcomplicated the rules. The proposals in this report are simplified from those considered in 2019.

3 Proposals

- 3.1 Appendix I shows a ‘clean’ version of the current rules. Appendix II shows this marked up with tracked changes, where red text is new or newly deleted and green text is unaltered but relocated. Appendix III shows a ‘clean’ version of the proposed rules. Council is asked to agree the revised wording at Appendix III to for incorporation into the constitution.

4 Alternative Options

- 4.1 As can be seen from Appendix I, the procedure rules already include some wording intended to deal with situations in which motions to council appear to raise issues about proper decision-making, and the wording could be retained in its present form. However, this option is not recommended, as the current wording fails adequately to safeguard the council from motions or amendments which, inadvertently or otherwise, would have the effect of circumventing constitutional decision-making processes.

5 Consultation Undertaken or Proposed

- 5.1 The council procedure rules are largely an internal matter for the council and no external consultation has been undertaken or is proposed regarding this report.

6 Implications

Issue	Implications
Corporate Plan	Ensuring that the wording of the constitution is as robust as possible has the potential to contribute to all the priorities in the corporate plan.
Financial, Resource and Property	No specific implications identified at this stage.
Legal, Statutory and Procurement	There are significant legal risks for the council in being seen to make policy decisions by means of motions to full council. Inter alia these include blurring the lines between executive and non-executive functions, and failing to take decisions in an evidenced way with proper regard to the implications. The

	revised wording at Appendix III has been agreed with the corporate governance team.
Crime and Disorder	No specific implications identified at this stage.
Environment and Climate/Ecological Emergency	No specific implications identified at this stage.
Health and Wellbeing	No specific implications identified at this stage.
Safeguarding of Children, Young People and Vulnerable Adults	No specific implications identified at this stage.
Risk Management and Health and Safety	No specific implications identified at this stage.
Equality and Diversity	At a time in which council meetings are held remotely via skype, it has become customary for the text of amendments proposed during the meeting to be pasted into the instant messenger facility. This is not a format which is easy to read, and it does cause issues for some people, whether due to impairments of sight or of reading. Requiring amendments to be notified in advance will remove the need for this.
Privacy and Data Protection	No specific implications identified at this stage.

7 Appendices

- 7.1 The following documents are to be published with this report and form part of the report:
- Appendix I: 'Clean' version of current wording
 - Appendix II: Current wording marked up with proposed amendments
 - Appendix III: 'Clean' version of proposed new wording

8 Background Papers

- 8.1 The full council procedure rules can be accessed [here](#).

APPENDIX I: CURRENT WORDING

15. Notices of motion

(i) Motions submitted by Members

With the exception of motions which can be moved without notice, written notice of every motion, signed by a proposer and seconder (or appropriate number of Members if the motion is submitted pursuant to Council procedure rule 21) must be given to the proper officer not later than 4.30pm on the Friday before the agenda is despatched. These will be recorded and open to public inspection.

Each motion will be set out on the agenda, in the order of receipt, and dealt with on a first-come-first-served basis, unless the Member giving the notice states in writing that they wish to withdraw the motion or move it to a later meeting.

Motions submitted by Members will be limited to a maximum of 30 minutes debate for each motion, and no more than two motions will be accepted and debated per meeting. No motions to be accepted, subject to the Mayor's discretion in respect of urgent matters, at key budget decision meetings. The latter are defined as the budget setting meeting and the meeting setting the Council's fees and charges.

Amendments to the budget are to be made in writing and delivered to the proper officer by 5pm on the Monday before the meeting. In proposing any changes to the budget, any amendment must ensure that the proposal achieves a balanced budget.

The Mayor may agree to late motions, in addition to the maximum of two that have been accepted for debate, being added to the agenda where she/he is of the opinion they are urgent.

If a motion set out on the agenda is not moved at the meeting, either by the Member that gave the notice or another Member, it shall, unless postponed by the consent of the Council, be treated as withdrawn and shall not be moved without fresh notice.

If the subject falls within the terms of reference of another meeting it shall, upon being moved and seconded, be referred without discussion to the meeting as the Council determines, for consideration and report. Alternatively, the Mayor can decide that the motion can be considered at the Council meeting.

Motions must be about matters which the Council has responsibilities for or which affect the borough.

No Member can have more than two notices of motion on the agenda; any submitted in excess of two will be referred to the subsequent meeting where the same rule applies (i.e. no more than two motions).

If notice is given of any motion which the proper officer considers to be out of order, illegal, irregular or improper, she/he will advise the Mayor that the notice should not be accepted. The Mayor shall determine whether it can be considered, taking this advice into consideration. If the motion is not accepted, the proper officer will let the

Member concerned know the reasons for the rejection and a report of the action will be submitted to the next Council meeting.

[...]

16. Motions without notice

The following motions and amendments may be moved without notice:

[...]

(7) Amendments to motions.

[...]

(19) A Member may move, without comment, the following motions at the conclusion of a speech of another Member:

- (a) to proceed to the next business;
- (b) that the question be now put;
- (c) to adjourn a debate;
- (d) to adjourn a meeting.

[...]

When a motion in any of the terms in rule 17.8 has been moved, no further motion in any of those terms shall be allowed in the course of the debate on the same matter within fifteen minutes unless in the opinion of the Mayor the circumstances have materially altered.

[...]

17.4 Amendments to motions

An amendment shall be relevant to the motion and will either be:

- (a) to refer the matter to an appropriate body or individual for consideration or reconsideration,
- (b) to leave out words,
- (c) to leave out words and insert or add others,
- (d) to insert or add words,

as long as the effect of (b) to (d) is not to negate the motion.

Only one amendment may be moved and discussed at a time, and no further amendment shall be moved until the amendment under discussion has been disposed.

If an amendment is lost, other amendments may be moved on the original motion.

If an amendment is carried, the motion as amended shall take the place of the original motion. This becomes the substantive motion upon which any further

amendments are moved, except such as would have the effect of reviving the original motion.

Amendments to recommendations contained in Cabinet or officer reports to be considered by Council will be debated in the same way as amendments to motions; however, there is no restriction on what the amendment to the recommendation may be.

17.5 Alteration of motion

A Member may alter a motion of which she/he has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.

A Member may alter a motion which she/he has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.

Only alterations which could be made as an amendment may be made.

[...]

APPENDIX II: PROPOSED WORDING SHOWING MARKUP

15. ~~Notices of motion~~ Motions with notice

~~(i) Motions submitted by Members~~

15.1 Notice of motions

With the exception of motions which can be moved without notice, written notice of every motion, signed or forwarded by email by a proposer and seconder (or appropriate number of Members if the motion is submitted pursuant to Council procedure rule ~~2420~~), must be given to the proper officer not later than 4.30pm on the Friday before the agenda is despatched. These will be recorded and open to public inspection.

No more than two motions submitted by Members will be listed on the agenda for debate per meeting. Motions will be listed on the agenda in order of receipt. If notice of more than two motions is received by the proper officer for any meeting, those received after the first two will be added to the agenda for subsequent meetings in the order that they were received. Motions will remain on agendas unless the Member giving notice states in writing the she/he wishes to withdraw the motion or move it to a later meeting.

The Mayor may agree to late motions, in addition to the maximum of two that have been accepted for debate, being added to the agenda where she/he is of the opinion they are urgent.

~~Each motion will be set out on the agenda, in the order of receipt, and dealt with on a first-come-first-served basis, unless the Member giving the notice states in writing that they wish to withdraw the motion or move it to a later meeting.~~

~~Motions submitted by Members will be limited to a maximum of 30 minutes debate for each motion, and no more than two motions will be accepted and debated per meeting. No motions ~~to~~ will be accepted, subject to the Mayor's discretion in respect of urgent matters, at key budget decision meetings. The latter are defined as the budget setting meeting and the meeting setting the Council's fees and charges.~~

~~Amendments to the budget are to be made in writing and delivered to the proper officer by 5pm on the Monday before the meeting. In proposing any changes to the budget, any amendment must ensure that the proposal achieves a balanced budget.~~

~~The Mayor may agree to late motions, in addition to the maximum of two that have been accepted for debate, being added to the agenda where she/he is of the opinion they are urgent.~~

15.2 Treatment of motions

Motions submitted by Members will be limited to a maximum of 30 minutes' debate for each motion.

If a motion set out on the agenda is not moved at the meeting, either by the Member that gave the notice or another Member, it shall, unless postponed by the consent of the Council, be treated as withdrawn and shall not be moved without fresh notice.

If the subject falls within the terms of reference of another meeting it ~~shall~~may, upon being moved and seconded, be referred without discussion to the meeting as the Council determines, for consideration and report. Alternatively, the Mayor can decide that the motion can be considered at the Council meeting.

~~Motions submitted by Members will be limited to a maximum of 30 minutes debate for each motion, and no more than two motions will be accepted and debated per meeting.~~

15.3 Subject of motions

Motions must be about matters which the Council has responsibilities for or which affect the borough.

Motions may seek to set a tone or general direction for future more detailed policy development work by the appropriate Council committees, or to provide an initial stimulus to that work, but the wording of a motion or an amendment must not be such that it could be interpreted as circumventing or seeking to circumvent the Council's constitutional decision-making processes.

Motions about policy areas which are an executive matter should request Cabinet or Cabinet members to undertake the necessary work to enable an executive decision to be taken. Motions about non-executive matters with the potential for budgetary or significant policy implications should request the relevant committee or the Cabinet to undertake the work necessary for a properly evidenced decision to be taken.

The monitoring officer will review the wording of all motions submitted and, in consultation with the Mayor, may if necessary reject a motion on the basis that its wording is in breach of this rule or that it is otherwise out of order, illegal, irregular or improper.

The monitoring officer will work with the Member who wishes to propose the motion to bring the wording into compliance with this rule in a way which is acceptable both to the Member and to the Mayor and monitoring officer, provided this can be completed before the deadline for the submission of motions. Where the Mayor is of the view that it would be helpful, any of the Council's statutory chief officers may append a concise note to a motion or amendment setting out any budgetary or other significant implications.

In the event that no agreement on wording can be reached and the motion is formally rejected by the monitoring officer in consultation with the Mayor, the monitoring officer will advise the member in writing of the reasons for this decision and submit a report of the decision to the next council meeting. This report will be noted without discussion.

In the event that a motion seeking to set a tone or general direction for, or to provide initial stimulus to, future policy development work is moved and seconded but not carried when put to the vote, this will in no way prevent the executive or any relevant committee from working to develop policy along the lines proposed in the motion. In general the rejection of a motion at full council will have no bearing on the future work of the council, the executive or any committee (but refer to Rule 20.2 for the bearing it can have on future motions).

~~No Member can have more than two notices of motion on the agenda; any submitted in excess of two will be referred to the subsequent meeting where the same rule applies (i.e. no more than two motions).~~

~~If notice is given of any motion which the proper officer considers to be out of order, illegal, irregular or improper, she/he will advise the Mayor that the notice should not be accepted. The Mayor shall determine whether it can be considered, taking this advice into consideration. If the motion is not accepted, the proper officer will let the Member concerned know the reasons for the rejection and a report of the action will be submitted to the next Council meeting.~~

[...]

16. Motions without notice

The following motions and amendments may be moved without notice:

[...]

~~(7) Amendments to motions.~~

[...]

(19) A Member may move, without comment, the following motions at the conclusion of a speech of another Member:

- (a) to proceed to the next business;
- (b) that the question be now put;
- (c) to adjourn a debate;
- (d) to adjourn a meeting.

[...]

When a motion in any of the terms in rule ~~17.8~~16(19) has been moved, no further motion in any of those terms shall be allowed in the course of the debate on the same matter within fifteen minutes unless in the opinion of the Mayor the circumstances have materially altered.

[...]

17.4 Amendments to motions

Written notice of every amendment to a motion which has been published in a Council agenda or to a recommendation in a report on a Council agenda, signed or forwarded by email by a proposer and seconder, must be given to the proper officer not later than 4.30pm on the Monday preceding the Council meeting. These will be recorded and open to public inspection.

The Mayor may waive this rule during a Council meeting where it appears to her/him that allowing an amendment to be proposed and seconded without notice having been given would be conducive to enabling the meeting to articulate a common position on the matter under debate.

An amendment shall be relevant to the motion and will either be:

- (a) to refer the matter to an appropriate body or individual for consideration or reconsideration,
- (b) to leave out words,
- (c) to leave out words and insert or add others,
- (d) to insert or add words,

as long as the effect of (b) to (d) is not to negate the motion. This paragraph applies only to amendments to motions, and not to amendments to recommendations contained in reports.

The wording of an amendment must not be such that it could be interpreted as circumventing or seeking to circumvent the Council's constitutional decision-making processes. This rule is described more fully in Council procedure rule 15.3.

Amendments to the budget are to be given made in writing and delivered to the proper officer by 5pm on the Monday before the meeting in the same way as notice of other amendments. The rules on the wording of amendments set out in Council procedure rule 15.3 do not apply to budget amendments, but in proposing any changes to the budget, any amendment must ensure that the proposal achieves a balanced budget.

Amendments will be debated and voted on in the order in which notice was received. The Mayor may waive this rule during the meeting if she/he believes there are good reasons to do so.

Only one amendment may be moved and ~~discussed~~ debated at a time, and no further amendment shall be moved until the amendment under discussion has been disposed.

If an amendment is lost, other amendments may be moved on the original motion.

If an amendment is carried, the motion as amended shall take the place of the original motion. This becomes the substantive motion upon which any further amendments are moved, except such as would have the effect of reviving the original motion.

Amendments to recommendations contained in Cabinet or officer reports to be considered by Council will be debated in the same way as amendments to motions;

~~however, there is no restriction on what the amendment to the recommendation may be.~~

17.5 Alteration of motion

A Member may alter a motion of which she/he has given notice with the consent of the meeting. The meeting's consent will generally be signified without discussion. Where it appears to the Mayor that there is significant dissent, she/he may allow the dissent to be voiced and hold a vote on whether to accept the alteration.

A Member may alter a motion which she/he has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will generally be signified without discussion. Where it appears to the Mayor that there is significant dissent, she/he may allow the dissent to be voiced and hold a vote on whether to accept the alteration.

Only alterations which could be made as an amendment may be made.

[...]

APPENDIX III: PROPOSED WORDING – CLEAN VERSION

15. Motions with notice

15.1 Notice of motions

With the exception of motions which can be moved without notice, written notice of every motion, signed or forwarded by email by a proposer and seconder (or appropriate number of Members if the motion is submitted pursuant to Council procedure rule 20), must be given to the proper officer not later than 4.30pm on the Friday before the agenda is despatched. These will be recorded and open to public inspection.

No more than two motions submitted by Members will be listed on the agenda for debate per meeting. Motions will be listed on the agenda in order of receipt. If notice of more than two motions is received by the proper officer for any meeting, those received after the first two will be added to the agenda for subsequent meetings in the order that they were received. Motions will remain on agendas unless the Member giving notice states in writing she/he wishes to withdraw the motion or move it to a later meeting.

The Mayor may agree to late motions being added to the agenda, in addition to the maximum of two that have been accepted for debate, where she/he is of the opinion they are urgent.

No motions will be accepted, subject to the Mayor's discretion in respect of urgent matters, at key budget decision meetings. The latter are defined as the budget setting meeting and the meeting setting the Council's fees and charges.

15.2 Treatment of motions

Motions submitted by Members will be limited to a maximum of 30 minutes' debate for each motion.

If a motion set out on the agenda is not moved at the meeting, either by the Member that gave the notice or another Member, it shall, unless postponed by the consent of the Council, be treated as withdrawn and shall not be moved without fresh notice.

If the subject falls within the terms of reference of another meeting it may, upon being moved and seconded, be referred without discussion to the meeting as the Council determines, for consideration and report. Alternatively, the Mayor can decide that the motion can be considered at the Council meeting.

15.3 Subject of motions

Motions must be about matters which the Council has responsibilities for or which affect the borough.

Motions may seek to set a tone or general direction for future more detailed policy development work by the appropriate Council committees, or to provide an initial

stimulus to that work, but the wording of a motion or an amendment must not be such that it could be interpreted as circumventing or seeking to circumvent the Council's constitutional decision-making processes.

Motions about policy areas which are an executive matter should request Cabinet or Cabinet members to undertake the necessary work to enable an executive decision to be taken. Motions about non-executive matters with the potential for budgetary or significant policy implications should request the relevant committee or the Cabinet to undertake the work necessary for a properly evidenced decision to be taken.

The monitoring officer will review the wording of all motions submitted and, in consultation with the Mayor, may if necessary reject a motion on the basis that its wording is in breach of this rule or that it is otherwise out of order, illegal, irregular or improper.

The monitoring officer will work with the Member who wishes to propose the motion to bring the wording into compliance with this rule in a way which is acceptable both to the Member and to the Mayor and monitoring officer, provided this can be completed before the deadline for the submission of motions. Where the Mayor is of the view that it would be helpful, any of the Council's statutory chief officers may append a concise note to a motion or amendment setting out any budgetary or other significant implications.

In the event that no agreement on wording can be reached and the motion is formally rejected by the monitoring officer in consultation with the Mayor, the monitoring officer will advise the member in writing of the reasons for this decision and submit a report of the decision to the next council meeting. This report will be noted without discussion.

In the event that a motion seeking to set a tone or general direction for, or to provide initial stimulus to, future policy development work is moved and seconded but not carried when put to the vote, this will in no way prevent the Cabinet or any relevant committee from working to develop policy along the lines proposed in the motion. In general the rejection of a motion at full Council will have no bearing on the future work of the Council, the Cabinet or any committee (but refer to Rule 20.2 for the bearing it can have on future motions).

[...]

16. Motions without notice

The following motions and amendments may be moved without notice:

[...]

(19) A Member may move, without comment, the following motions at the conclusion of a speech of another Member:

- (a) to proceed to the next business;
- (b) that the question be now put;
- (c) to adjourn a debate;

(d) to adjourn a meeting.

[...]

When a motion in any of the terms in rule 16(19) has been moved, no further motion in any of those terms shall be allowed in the course of the debate on the same matter within fifteen minutes unless in the opinion of the Mayor the circumstances have materially altered.

[...]

17.4 Amendments to motions

Written notice of every amendment to a motion which has been published in a Council agenda or to a recommendation in a report on a Council agenda, signed or forwarded by email by a proposer and seconder, must be given to the proper officer not later than 4.30pm on the Monday preceding the Council meeting. These will be recorded and open to public inspection.

The Mayor may waive this rule during a Council meeting where it appears to her/him that allowing an amendment to be proposed and seconded without notice having been given would be conducive to enabling the meeting to articulate a common position on the matter under debate.

An amendment shall be relevant to the motion and will either be:

- (a) to refer the matter to an appropriate body or individual for consideration or reconsideration,
- (b) to leave out words,
- (c) to leave out words and insert or add others,
- (d) to insert or add words,

as long as the effect of (b) to (d) is not to negate the motion. This paragraph applies only to amendments to motions, and not to amendments to recommendations contained in reports.

The wording of an amendment must not be such that it could be interpreted as circumventing or seeking to circumvent the Council's constitutional decision-making processes. This rule is described more fully in Council procedure rule 15.3.

Notice of amendments to the budget is to be given in the same way as notice of other amendments. The rules on the wording of amendments set out in Council procedure rule 15.3 do not apply to budget amendments, but in proposing any changes to the budget, any amendment must ensure that the proposal achieves a balanced budget.

Amendments will be debated and voted on in the order in which notice was received. The Mayor may waive this rule during the meeting if she/he believes there are good reasons to do so.

Only one amendment may be moved and debated at a time, and no further amendment shall be moved until the amendment under discussion has been disposed.

If an amendment is lost, other amendments may be moved on the original motion.

If an amendment is carried, the motion as amended shall take the place of the original motion. This becomes the substantive motion upon which any further amendments are moved, except such as would have the effect of reviving the original motion.

Amendments to recommendations contained in Cabinet or officer reports to be considered by Council will be debated in the same way as amendments to motions.

17.5 Alteration of motion

A Member may alter a motion of which she/he has given notice with the consent of the meeting. The meeting's consent will generally be signified without discussion. Where it appears to the Mayor that there is significant dissent, she/he may allow the dissent to be voiced and hold a vote on whether to accept the alteration.

A Member may alter a motion which she/he has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will generally be signified without discussion. Where it appears to the Mayor that there is significant dissent, she/he may allow the dissent to be voiced and hold a vote on whether to accept the alteration.

Only alterations which could be made as an amendment may be made.

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Council	
Meeting Date	31 March 2021
Report Title	Addition to the members' allowances scheme: Parental and sickness leave
Cabinet Member	Cllr Roger Truelove – Council Leader
SMT Lead	David Clifford, as Monitoring Officer
Head of Service	
Lead Officer	
Key Decision	No
Classification	Open
Recommendations	Council is recommended to: 1. Agree the changes to the members' allowances scheme set out in paragraph 3.3

1 Purpose of Report and Executive Summary

- 1.1 This report recommends additional wording in the members' allowances scheme in order to provide for parental and sickness leave for councillors as recommended by the General Purposes Committee. This amendment is based on a recommendation by Swale's independent remuneration panel.

2 Background

- 2.1 The most recent report on members' allowances by the independent remuneration panel, which was considered by full council during the summer, included a recommendation that the allowances scheme should be amended to include provisions enabling councillors to continue to receive both their basic allowance and any special responsibility allowance (SRA) for up to six months when taking leave from councillor duties as a result of maternity, paternity, adoption or sickness.
- 2.2 A further recommendation was that any councillor covering a role attracting an SRA on an interim basis as a result of this provision should receive the same SRA on a pro-rata basis.
- 2.3 The report noted that there are currently no uniform national provisions to cover councillors for these life events, or any legal requirement for them to benefit from such provisions. However, the view of the panel was that the adoption of these provisions locally would support improvement in the diversity of councillors at Swale.

- 2.4 The council resolved in 2019 to encourage greater diversity among councillors. Improved provision for new parents is expected to contribute towards increasing the diversity of experience, age and background of councillors and those considering standing for office. It will also assist with retaining experienced councillors – particularly women – and making public office more accessible to individuals who might otherwise feel excluded from it.

3 Proposals

- 3.1 The independent remuneration panel did not propose any specific wording for the council to adopt, but did set out what provisions it thought would be appropriate for Swale. It also noted that the LGA had produced a model policy, and gave its reasons for wanting to see something simpler than this adopted in Swale.
- 3.2 Under current legislation, members are able not to attend council meetings for a period of up to six months without this affecting their position as councillors. However, this is clearly not the same as having a definite policy which expressly enables members to take appropriate leave from council duties in specific circumstances. Even if there is no substantive difference in the period of leave permitted, the proposed provisions would create a clear categorical difference between parental, adoption or sickness leave on the one hand and simply not attending meetings for six months on the other.
- 3.3 With this in mind, council is asked to agree to the inclusion of the following points as a new Section 4 in the members' allowances scheme:

4. Maternity, paternity, adoption and sickness leave

- 4.1. *All councillors shall continue to receive their basic allowance in full for a period up to six months in the case of absence from their councillor duties due to maternity, paternity, adoption or sickness absence. In the case of a premature birth, the length of this period will be extended to cover the period between the birth and the due date plus six months from the due date.*
- 4.2. *Councillors entitled to a special responsibility allowance shall continue to receive their allowance in full for a period of six months in the case of absence from their councillor duties due to maternity, paternity, adoption or sickness absence. In the case of a premature birth, the length of this period will be extended to cover the period between the birth and the due date plus six months from the due date.*
- 4.3. *If a replacement to cover the period of absence under these provisions is appointed by council or the leader (or in the case of a party group position the party group) the replacement shall be entitled to claim a special responsibility allowance pro rata for the period over which the cover is provided.*
- 4.4. *Under s85 of the Local Government Act 1972, any councillor who fails to attend a meeting of the council for a period of six months will cease to be a*

member of the council unless the full council resolves to grant a dispensation. This policy neither removes this requirement nor fetters the council's discretion in the granting or withholding of dispensations, but will be a relevant factor in decisions about dispensations in cases in which the primary reason for absence has been and continues to be maternity, paternity, adoption or sickness.

4.5. *Any councillor who decides not to return at the end of their maternity, paternity, adoption or sickness leave must notify the council at the earliest possible opportunity. All allowances will cease from the effective resignation date. If an election is held during a councillor's maternity, paternity, adoption or sickness leave and they are not re-elected, or decide not to stand for re-election, all allowances will cease from the Monday after the election date when they would technically leave office.*

4 Alternative Options

4.1 The council could legitimately decide not to recommend any changes. However, this would not support the council's stated ambition of encouraging greater diversity within its own ranks, and would also fail to implement the recommendation of the independent remuneration panel. This option is therefore not recommended.

4.2 A further alternative option would be to adopt the LGA policy. This option was not favoured by the independent remuneration panel because it too closely resembled a policy aimed at employees based on employment legislation, which does not apply to councillors.

4.3 The panel was of the view that its own recommendations, which are the basis of the proposal in this report, more simply and adequately reflect the situation relating to councillors. Nonetheless, in response largely to points raised by PDRC (see below), some elements of the LGA policy have been incorporated into the proposed wording above. The option to adopt the LGA policy wholesale is therefore not recommended.

5 Consultation Undertaken or Proposed

5.1 A first draft of the proposed wording was considered by PDRC in November. The meeting expressed general support for the direction of travel, but highlighted some potential issues with the text as it stood and made some useful suggestions as to how it could be improved. Several of these have been incorporated into the wording proposed above, mostly drawing on the text of the LGA policy. However, the wording proposed above does maintain the greater simplicity preferred by the Independent Remuneration Panel over the LGA version.

6 Implications

Issue	Implications
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Corporate Plan	Adopting these provisions will support Priority 4 of the corporate plan, “Renewing local democracy and making the council fit for the future”, and more specifically Objective 4.2, “Ensure that all elected members are appropriately supported to lead and improve the council’s engagement with its disparate geographic and demographic communities, and encourage especially the participation of underrepresented groups in the democratic process”.
Financial, Resource and Property	There is possible financial implication in the requirement for a member temporarily carrying out the duties of a member in receipt of an SRA while on leave also to receive an SRA on a pro-rata basis. This is not likely to be a frequent occurrence, and in essence only brings the arrangements in respect of members into line with the existing arrangements for covering periods of parental leave or long-term sickness absence for officers.
Legal, Statutory and Procurement	There is no legal requirement for councillors to be provided with parental or sickness leave, but there is also no prohibition on councils deciding to provide it. These provisions cannot override the six-month rule established in s85 of the Local Government Act, a point which is made clear in the proposed wording.
Crime and Disorder	No specific implications identified at this stage.
Environment and Climate/Ecological Emergency	No specific implications identified at this stage.
Health and Wellbeing	No specific implications identified at this stage.
Safeguarding of Children, Young People and Vulnerable Adults	No specific implications identified at this stage.
Risk Management and Health and Safety	No specific implications identified at this stage.
Equality and Diversity	As set out in the body of the report, it is anticipated that the removal of a potential barrier will make a positive contribution to the ambition of ensuring a diverse and representative range of people feel able to stand for office in Swale.
Privacy and Data Protection	No specific implications identified at this stage.

7 Appendices

7.1 There are no appendices.

8 Background Papers

8.1 The 2020 report by the independent remuneration panel can be accessed [here](#).

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Council	
Meeting Date	31 March 2021
Report Title	Review of Members' Allowances Scheme – Area Committees Special Responsibility Allowance - Report of the Independent Remuneration Panel for Swale
Portfolio Holder	Leader – Councillor Roger Truelove
SMT Lead / Head of Service	David Clifford – Head of Policy, Communications and Customer Services
Lead Officer	Jo Millard – Senior Democratic Services Officer
Key Decision	No
Classification	Open
Recommendation	That Council notes the report of the Independent Remuneration Panel and agrees to amend the Scheme of Members' Allowances to include the Panel's recommendation for Area Committee Chairmen Special Responsibility Allowance.

1. Purpose of Report and Executive Summary

- 1.1 In accordance with the Local Authorities (Members' Allowances) (England) Regulations 2003, the Council is required to appoint an Independent Panel to consider the Council's Members' Allowances Scheme and make recommendations to Full Council.

2 Background

- 2.1 The Regulations require Councils to undertake a review of their Members' Allowances Scheme every four years. The last full review for Swale was undertaken in March 2020 and the recommendations agreed at Full Council in June 2020.
- 2.2 At the time of the 2020 review the Panel recommended a further review in 2021 to consider the Special Responsibility Allowance for Area Committee Chairmen, once the terms of reference had been set and Area Committees had been established. Area Committees commenced in September 2020.
- 2.3 The panel met in February 2021 to consider the Special Responsibility Allowance for Area Committee Chairmen.

3 Proposal

- 3.1 The attached report of the Panel sets out their recommendation in full, and provides commentary on the reasoning behind their recommendation.

4 Alternative Options

- 4.1 Council is required to set a Members' Allowances Scheme and in doing so, it must have regard to the Panel's recommendations. However, the Council does not have to approve the exact recommendations made by the Panel.

5 Consultation Undertaken or Proposed

- 5.1 The Panel interviewed the former Area Committee coordinator and a current Area Committee Chairman.
- 5.2 The Panel's report has been circulated to Group Leaders for comments.
- 5.3 In accordance with Regulations, a notice has been published in three newspapers which are circulated across the Borough. The Notice advised that recommendations had been made by the Panel, a summary of which was included, and that these would be considered by the Full Council on 31 March 2021.

6 Implications

Issue	Implications
Corporate Plan	None for the purposes of this report
Financial, Resource and Property	If the recommendation within the panel's report is agreed, there is a total yearly increase on the current allowance scheme of £8,217.13 (£8,381.46 from April 2021 to include the 2% cost of living award for 2021), for which there is provision in the budget. This then becomes a funding pressure in the 2021/22 financial year and for the 2022/23 base budget. If agreed, the increase should be backdated to September 2020).
Legal, Statutory and Procurement	The Local Authorities (Members' Allowances) (England) Regulations 2003 set out the rules regarding allowances schemes for Members and the requirement to establish an Independent Panel and to consider their recommendations.
Crime and Disorder	None for the purposes of this report
Environment and Climate/Ecological Emergency	None for the purposes of this report
Health & Wellbeing	None for the purposes of this report
Risk Management and Health and Safety	None for the purposes of this report
Equality and Diversity	None identified at this time.
Privacy and data protection	None identified at this time.

7 Appendices

7.1 The following appendices are to be published with this report and form part of the report:

- Appendix 1 – Report of the Independent Remuneration Panel

8 Background Papers

Reports and Minutes considered by previous Council meetings:

[Link to Review Panel report 2020](#)

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**The report of the Independent Remuneration Panel  
appointed to review the allowances paid to Councillors  
of Swale Borough Council**

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February 2021

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1. INTRODUCTION AND BACKGROUND

- 1.1 The Local Authorities (Members' Allowances) (England) Regulations 2003 ("the 2003 Regulations"), as amended, require all local authorities to appoint an independent remuneration panel (IRP) to advise on the terms and conditions of their scheme of councillors' allowances.
- 1.2 Swale Borough Council formally appointed the following persons to undertake this process and make recommendations on its future scheme.

Chris Webb- Local Resident and Former Local Government Officer
Lionel Robbins - Local Resident
Mark Palmer - Development Director, South East Employers (Chair)

- 1.3 Our terms of reference were in accordance with the requirements of the 2003 Regulations, together with "Guidance on Consolidated Regulations for Local Authority Allowances" issued jointly by the former Office of the Deputy Prime Minister and the Inland Revenue (July 2003). Those requirements are to make recommendations to the Council as to:
- (a) the special responsibility allowance for the four Area Committees.

2. CURRENT SCHEME

- 2.1 The last full review of councillors' allowances was undertaken by Swale Borough Council in March 2020. The scheme of allowances was brought into effect in May 2020.
- 2.2 As part of the last review the Panel recommended that no decision on an allowance for the four Area Committees could be made until the Committee terms of reference had been agreed by Council and that the Panels should have been convened with appropriate Chairs appointed.
- 2.3 The four Area Committees have been in place since September 2020 and have all convened meetings and are currently developing work programmes. The Panel was therefore convened on a virtual basis on the 9th February 2021 to consider the applicability and amount of any Special Responsibility Allowance for the four Chairs of the Area Committees.

3. CONSIDERATIONS AND RECOMMENDATIONS

Area Committees (Tier Five)

- 3.1 To determine whether a SRA should be payable to the four Area Committee Chairs and the level of that allowance the Panel reviewed the terms of reference for each of the four committees and undertook interviews with:
- Bob Pullen, Policy Officer and
 - Councillor Steve Davey, Area Committee Chair.
- 3.2 Following the interviews and consideration by the Panel of the role of the Area Committees the Panel recommends that the four Area Committee Chairs receive an allowance of 10% of the Leader's Allowance, £2,054.28.
- 3.3 The Panel is also of the view that the allowance be backdated to when the roles commenced in accordance with the 2003 Regulations, this should be no earlier than May 2020.

WE RECOMMEND: that the four Chairs of the Area Committees receive an allowance of 10% of the Leader's Allowance, £2,054.28 and that the allowance be backdated in accordance with the 2003 Regulations.

- 3.4 We grouped together in Tiers those roles that we judged to have a similar level of responsibility. The outline result of this approach is illustrated in a pyramid of responsibility:



Mark Palmer (Independent Remuneration Panel, Chair)
Chris Webb (Independent Remuneration Panel)
Lionel Robbins (Independent Remuneration Panel)

February 2021

Appendix 1 – Councillor Special Responsibility and Other Allowances

Allowance	Current Amount for 2020-21	Number	Allowance Calculation
Special Responsibility:			
Leader of the Council	£20,545.86	1	370% of BA
Deputy Leader/Cabinet Member	£12,327.72	6	60% of Leader's Allowance
Minority Leader of the Largest Minority Party	£6,163.86	1	30% of Leader's Allowance
Deputy Cabinet Member	£6,163.86	6	30% of Leader's Allowance
Minority Leader of Other Minority Parties	£2,054.28	0	10% of the Leader's Allowance
Scrutiny Committee Chair	£6,163.86	1	30% of Leader's Allowance
Policy Development and Review Committee Chair	£6,163.86	1	30% of Leader's Allowance
Planning Committee Chair	£7,191.00	1	35% of Leader's Allowance
Audit Committee Chair	£2,054.28	1	10% of Leader's Allowance
Licensing Committee Chair	£2,054.28	1	10% of Leader's Allowance
Area Committees	£2,054.28	4	10% of the Leader's Allowance

Co-optees Allowance	£10.20 per meeting		
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Council	
Meeting Date	31st March 2021
Report Title	Review of the current Swale Street Trading Policy
Cabinet Member	Cllr Richard Palmer, Cabinet Member for Community
SMT Lead	Nick Vickers, Chief Financial Officer
Head of Service	Della Fackrell, Resilience & Licensing Manager
Lead Officer	Christina Hills, Licensing Officer
Key Decision	No
Classification	Open
Recommendations	1. Council is asked, following a recent consultation and consideration by the General Licensing Committee, to adopt the draft Swale Street Trading Policy 2021 – 2024 as attached as Appendix I in order that it can be published and come into effect from 1 st April 2021

1 Purpose of Report and Executive Summary

- 1.1 To apprise Members of the steps taken in reviewing the current Swale Street Trading Policy 2013 -2016.
- 1.2 A review of the existing Swale Street Trading Policy 2013 – 2016 and a new draft policy was presented to General Licensing Committee at its meeting of 20th February 2020 where it was approved for public consultation.
- 1.3 Following the public consultation a further report was presented to General Licensing Committee on 21st January 2021 where the draft policy was approved for formal adoption by Council.
- 1.4 Council is requested to approve the revised draft Street Trading Policy under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) attached as **Appendix I**.

2 Background

- 2.1 Under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, a local authority may regulate street trading in their area. Swale BC has adopted these provisions for the whole of its area and on 23rd July 2010 designated all streets in the area as ‘consent streets’.

- 2.2 The effect of this designation is that any street trading in any street is prohibited, subject to legal exemptions, without first obtaining a street trading consent from the Council.
- 2.3 A Street Trading Policy was approved by the Council on 24th July 2013 and which, although set to be reviewed in 2016, is still in existence to date.
- 2.4 The Street Trading Policy outlines how the Council will execute its decision making functions when dealing with applications for Street Trading Consents.
- 2.5 There is no statutory requirement for a local authority to have a formal Street Trading policy; however, a Council can choose to adopt such a policy.
- 2.6 The adoption of a Policy benefits customers as well as reassuring the general public and other public bodies. It also reinforces effective practices and ensures proportionate, consistent and targeted regulator activity, whilst also developing a transparent and effective dialogue and understanding between regulators and those we regulate.

3 Proposals

- 3.1 The existing policy was reviewed by officers. There have been no changes to legislation to take into account. The current policy has been expanded in some areas to provide clarification as to what is defined within the Local Government (Miscellaneous Provisions) Act 1982 and, where appropriate, exemptions contained within the existing policy have been deleted.
- 3.2 The draft Street Trading Policy is attached as **Appendix I**.
- 3.3 The existing policy has been amended as shown below:
 - Removal of '7 metre rule' within the existing policy whereby anyone trading more than 7 metres from the highway was exempted from the requirement of obtaining a Street Trading Consent. This exemption was taken from the London Local Authorities Act 1990 rather than the Local Government (Miscellaneous Provisions) Act 1982 and is not a legal exemption.
 - Removal of the requirement for ice-cream vendors to register and use a specific chime. This was originally imposed to assist with enforcement. However, it leads to complaints from ice-cream vendors that another vendor is using their chime and is difficult to enforce.
 - Ice Cream Vans and Mobile Food Vans will be required to supply details of their proposed routes, streets and stopping places (which may vary from day to day) again to decrease complaints from other traders.

- Removal of the 'Trial Period' which permits individuals, under the control of an existing consent holder, to try their hand at street trading for a limited period of three weeks.
- The surrender and revocation of a Street Trading Consent is now included in the Policy.
- Amendments to the application procedure to make it more comprehensive. This includes the requirement for applicants to obtain a standard Disclosure and Barring Service criminal records check for new and renewal applications and for one-off consents where considered necessary in order to check the suitability of the applicant.
- Event organisers will no longer apply on behalf of all stall holders, instead each individual stall holder will require a separate Street Trading Consent. The reason for this change is because currently the event organiser is the only person who would be legally accountable and the only person that the Council could take enforcement action against, should there be any problem (for example trading in counterfeit goods).
- Enforcement – this section has been expanded.
- Data Retention – this section has been expanded.
- The licensing fees were reviewed taking into account that they needed to reflect the increased administrative burden that will fall to the licensing team with this enhanced policy whilst at the same time ensuring they are not set at a rate that would be prohibitive to applicants for Street Trading Consents. Options were presented to Members of the General Licensing Committee on 21st January 2021 and the fees that were approved are shown as Appendix III of the draft policy.

4 Alternative Options

- 4.1 The Council could choose not to introduce an updated policy on Street Trading, however, to do so would be contrary to best practice and may lead to a lack of clarity on the application of legislation

5 Consultation Undertaken

- 5.1 A consultation ran between 30th March 2020 until 30th June 2020. The methods of consultation and consultees were as previously advised to General Licensing Committee.
- 5.2 Despite a wide reaching consultation, only 5 responses were received. All of them were either in support of the policy or contained proposals for sensible

minor policy amendments. None of them were contentious or contained any objections to the draft policy.

- 5.3 The General Licensing Committee considered the consultation responses at their meeting of 21st January 2021 and agreed amendments to the draft policy in line with officer recommendations.

6 Implications

Issue	Implications
Corporate Plan	Having an adopted Street Trading Policy satisfies the corporate objective of: A Council to be proud of.
Financial, Resource and Property	<p>There are no direct financial implications for Swale Borough Council. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process.</p> <p>There could be traders who previously were informed that they required no street trading consent because they were trading more than 7 metres from the highway. As this was an illegal exemption these traders will now require a street trading consent and to pay the requisite fee.</p>
Legal and Statutory	The relevant legislation in relation to street trading is contained within Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).
Crime and Disorder	It is a criminal offence to trade in the street without an appropriate consent. The policy provides a framework for consistent decision-making.
Environmental Sustainability	No implications.
Health and Wellbeing	No implications.
Risk Management and Health and Safety	It is important that Swale BC has a robust and accountable regulatory regime in relation to street trading in order to ensure fair trading, prevent crime and to protect consumers.
Equality and Diversity	<p>The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.</p> <p>When considering street trading consent applications, only issues provided for in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and provided for in the Street Trading policy for Swale BC will be taken into account. This will ensure a</p>

	consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits.
Privacy and Data Protection	Normal data protection and privacy rules apply.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Draft Swale Street Trading Policy 2021 – 2024.

8 Background Papers

None

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Swale Borough Council



Street Trading Policy

Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982

Version 1.0

1 April 2021

Next Scheduled Review: 1 April 2024

All enquiries relating to this document should be sent to:

Licensing
Swale Borough Council
Swale House
East Street
Sittingbourne
Kent
ME10 3HT

licensing@swale.gov.uk

Issue & Review Register

Summary of Changes	Issue Number & Date	Approved by
See General Licensing Committee report dated 21 January 2021	V0.1	General Licensing Committee

All changes to this document are tracked using a different colour and/or marked with a vertical line at the side of the page.

If amendments have been made, this will be redistributed to all named on the distribution list.

Compiled by:

Date:

Approved by:

Date:

Changes and Corrections

Any changes or corrections required should be notified in writing to:

Licensing
Swale Borough Council
Swale House
East Street
Sittingbourne
Kent
ME10 3HT

Or

licensing@swale.gov.uk

Street Trading Policy 2021-2024

Local Government (Miscellaneous Provisions) Act 1982 Street Trading Local Policy Document

1. Legislation & Policy

- 1.1 Local Authorities have a legal discretion to regulate street trading in their area. Street trading is covered by the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 – Street Trading, which Swale Borough Council adopted in 1993 and resolved to control within its boundaries.

On 23rd July 2010 the Council formally designated all streets within its boundaries as ‘Consent Streets’.

The effect of this designation is that if you want to sell goods on the street (see para 3.2. for definition), you are street trading (see para 3.1 for definition) and you will need to have the appropriate consent from the Council unless you are legally exempt (see para 3.5).

Trading without the required consent is a criminal offence.

- 1.2 Swale Borough Council adopted this policy on 31st March 2021 to become effective on 1st April 2021.

Every three years the Policy will undergo a full review involving widespread consultation with the existing traders, relevant authorities and the general public, any consultation will be in line with Government guidelines.

2. Purpose & Objectives

- 2.1 Street trading can add variety and vibrancy to the character of this Borough as well as diversity of shopping opportunities. The aim of the Council is to give consent to traders who will help to create a vibrant street scene which complements retail activity, community events and activities.
- 2.2 The purpose of this policy is to provide a framework setting out the Council’s procedures which will be used to inform the various decision making processes to ensure a consistent approach and expectations of those engaged in street trading either from an individual pitch as a mobile trader or as part of a large scale event/festival
- 2.3. This policy aims to give clarity and transparency to potential and existing traders, explaining how the Council will promote its objectives and deliver compliance with imposed conditions.

The Council's key objectives are:

- 2.3.1 To protect the public through the control of street trading within Swale by improving standards of food safety, health and safety and environmental management to enhance the image of the area
- 2.3.2 To ensure that permitted street trading is properly regulated as to where, when and how it takes place.
- 2.3.3 To prevent public nuisance by the use of conditions designed to reduce the risk of nuisance from obstruction, noise, refuse, vermin, fumes and smells.
- 2.3.4 To ensure the suitability of the structures used for the sale of goods.
- 2.3.5 To ensure that traders and the people that they employ are 'fit and proper' in accordance with the Act. This will include a requirement for a basic Disclosure and Barring Service Criminal Records check.

3. Street Trading Definition and Exemptions

- 3.1 Street Trading is defined under the Act as 'selling, exposing or offering for sale any article (including a living thing) in a street'.
- 3.2 A 'street' is broadly defined to include any road, footway, beach or other area to which the public have access without payment and a service area as defined in s.329 of the Highways Act 1980.
- 3.3. This can include areas adjacent to a street, car parks and privately owned land where the public have access, without payment, as a matter of fact.
- 3.4 Street trading includes the sale of food and beverages. It does not include the provision of services (such as face painting or hair braiding) even if payment is made.
- 3.5 The following activities are **exempt** from the need to obtain a street trading consent under the Act:
 - 3.5.1 Trading by a person acting as a pedlar under the grant of a Pedlar's Certificate granted under the Pedlars Act 1871 and issued by the police – see 3.7 below
 - 3.5.2 Anything done in a market or fair, the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order. This means markets that have a 'charter' or are permitted by other legislation e.g. The Food Act 1984. All other so called 'markets' will require a Street Trading Consent and for the purposes of this policy will be referred to as 'events' to avoid confusion.

- 3.5.3 Trading in a trunk road picnic area as defined in Section 112 of the Highways Act 1980.
- 3.5.4 Trading carried out as a news vendor selling newspapers or periodicals (only without a stall/receptacle) or one which is not over 1m long or wide or over 2m high.
- 3.5.5 Trading carried out at a petrol filling station.
- 3.5.6 Trading which is carried out at a premises used as a shop or in a street adjoining premises so used and as part of the business of the shop
- 3.5.7 Trading carried out by a 'roundsman' e.g. milk deliveries. However, this does not include ice cream sellers and mobile catering vehicles
- 3.5.8 Use for trading from an object or structure placed on, in or over the highway under Part VIIA of the Highways Act 1980
- 3.5.9 The operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980.
- 3.5.10 Doing anything authorised as a public charitable collection made under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916 – see 11.4 below
- 3.6 Trading at the following events requires a Street Trading Consent but no fee will be charged:
- 3.6.1 Street Trading at Fetes and Carnivals – outdoor events for which no entry fee is charged staged mainly for public entertainment and benefiting charitable concerns. It is expected that at least some of the monies raised will be contributed to the beneficiary individual, organisation or charity.
- 3.6.2 Street Trading at non-commercial or charitable events for which no entry fee is charged organised by not-for-profit organisations and charitable trusts.
- 3.7 As detailed in 3.5 above pedlars acting under a certificate are exempt. However, a pedlars' certificate is not required to sell food, and such sales are not exempt, although some traders do have certificates. If the sale is in a street, then it will be street trading and require the appropriate consent.
- 4. Consideration of an application for a Street Trading Consent - location**
- 4.1 The Council does not designate pitches and applicants must therefore propose trading which is compatible with the location being applied for. When considering the proposal, the Council will have regard to other trading taking place in the immediate vicinity.

The aim of this policy is not to discourage competition, rather to ensure an appropriate mix of trading so as to avoid over saturation of any given area. Every application will be considered on its own merits.

Consent will not usually be given for any fixed locations where:

- 4.1.1. Road safety would be compromised either from the siting of the trading activity itself, or from customers visiting or leaving the site.
 - 4.1.2. There would be a significant loss of amenity to those in the area caused by additional traffic, or disturbance (e.g. noise, odour or fumes, etc.)
 - 4.1.3. There is already significant provision of similar goods in the immediate vicinity of the site to be used for street trading purposes.
 - 4.1.4. There is a conflict with Traffic Management Orders such as waiting restrictions.
 - 4.1.5. The trading obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger.
 - 4.1.6. The Consent Holder, staff and customers have no appropriate place to park in a safe manner, if required
 - 4.1.7. The pitch would be sited on the A249 or M2 as these locations are prohibited by Highways England. Layby's on any other road will be considered on a case by case basis.
 - 4.1.8. The pitch would be on a council owned carpark
- 4.2 The consent holder must be granted permission for the use of any land adjacent to the highway from the landowner and adjoining landowners where appropriate. The granting of a consent does not imply that landowners permission has been granted;

Consent to trade does not imply the grant of planning permission and applicants are strongly recommended to consult the Planning Department to check if permission is required prior to commencement of trading

5. Application Procedure

- 5.1 Only persons aged seventeen or over may apply for consent. However, a person under seventeen may be employed as an assistant.
- 5.2 New applications for sole traders and multiple trader event organisers will be determined following a 28 consecutive day consultation period.
- 5.3 One - Off Consents. The Council will grant one-off consents up to a maximum of 12 times per calendar year. These types of consents include events that are not exempt from street trading requirements under separate legislation.

- 5.3.1 One-off consents can last for up to 4 days
- 5.3.2 Each individual trader at an event must obtain their own consent. However, event organisers can co-ordinate the applications.
- 5.3.3 An application for a one-off consent must be submitted at least 8 weeks before the intended trading and will be determined following a 28 consecutive day consultation period
- 5.4 All applicants for the consents above will be required to provide documents as shown at Appendix I.
- 5.5 Renewal applications - For sole traders and event organisers
- 5.5.1 Applicants should submit their renewal application at least 8 weeks prior to the expiry of their consent if they wish to continue to trade. The Council will normally send reminders of the expiry of consents three months before expiry. It does however, remain the responsibility of the trader to ensure that an application is submitted in time for the consent to be renewed.
- 5.5.2 A renewal application will be determined following a 28 consecutive day consultation period
- 5.5.3 At renewal, the Council will consult to determine if there are any concerns regarding the street trader or if there have been any complaints.
- 5.5.4 Where a renewal application has been made and there have been no justifiable complaints, no enforcement issues and all fees have been paid on time, the consent will normally be renewed.
- 5.5.5 Where a renewal application has been made and there have been complaints or enforcement issues which did not result in revocation then the application may be rejected. The council may choose to consult with such agencies and interested parties it considers relevant in this regard before making a decision.
- 5.5.6 Applicants will need to submit documents as shown in Appendix I.

6. Consent Fees

- 6.1 The Council can charge such fees as it considers reasonable and will recover the cost of administration and compliance.

Payment will be required for the following street trading applications:

- a) An annual consent for a fixed location or non-fixed location (mobile traders)
- b) A six month consent for a fixed location or non-fixed location (mobile traders)
- c) A One-off consent for individual traders where there is no exemption applicable (an event)

The Council's adopted fees, for the above-mentioned applications, are shown in Appendix III of this Policy.

7. How the Council makes its decisions

- 7.1. The Council is bound to act reasonably and consistently with its general obligations (e.g. those under the Human Rights Act and Equalities Act) but has a wide discretion when making a decision to give consent for Street Trading. The Council does not have to rely upon specific statutory grounds in order to refuse an application for Street Trading consent or whether or not to renew that consent.
- 7.2 The Licensing section will assess the proposed location, taking into consideration the concerns raised in Section 4 of this policy. The application will then be consulted with various public serving authorities and Council services. The consultees who will be consulted on all applications are:
 - a) Kent Police
 - b) Kent Fire and Rescue Service
 - c) KCC Highways
 - d) Swale BC Environmental Health
 - e) Swale BC Environmental Response Team
 - f) Swale BC Planning
 - g) Swale BC Property Services
 - h) Swale BC Economy and Community Services
 - i) Swale BC Green Spaces team
 - j) Ward Councillors
 - k) Parish and Town Councils
 - l) KCC Safeguarding Unit

And in some cases:

- m) Other businesses/organisations if it is considered that they are likely to be affected by a successful application

The consultation will run for 28 consecutive days.

- 7.3. A representation will be considered to be relevant if it is made by a person, business or body that is likely to be directly affected by a successful application.

- 7.4 If the Licensing section receives a representation then it will be forwarded to the applicant for their comment. The name and address of the objector will be published unless the Council receive a request for this not to be done for a good reason. The Council will not accept anonymous representations.
- 7.5 Any comments that the applicant may wish to make should be received by the Licensing section within 10 working days of the applicant being notified of the representation.
- 7.6 If the representations cannot be mediated and remain unresolved the application will be referred to the General Licensing Sub-Committee. The hearing will normally take place within 20 days from the end of the consultation period.
- 7.7 A Licensing Officer will be responsible for preparing a report for the General Licensing Committee (who can then delegate this to a Sub-Committee) , which will be made available to the applicant at least five working days before the date of the meeting. The applicant and the persons making representations will be invited to attend and will be advised in writing of the date, time and place when the application will be heard. Any party can be represented by a lawyer or supported by a representative of their choice.
- 7.8 The Committee may grant the consent as applied for or impose additional restrictions limiting the days and/or times when street trading is permitted. In some circumstances the Committee may restrict the goods which may be sold, the size of the trading pitch or any other relevant detail, depending on the specifics of the application. The Committee could also refuse the application.
- 7.9 If an application for consent is refused following a decision by a Licensing Officer, an applicant can make a written appeal to the Resilience and Licensing Manager, who will reconsider the case based on any new evidence given.
- 7.10 If an applicant's appeal is rejected, they will be made aware of the reasons for refusal and advised the only right of appeal against the Council's decision is by way of Judicial Review.
- 7.11 A Judicial Review is where a decision is made by a High Court Judge who will look at all aspects of the application and decide whether or not the Council has acted lawfully
- 7.12 The Council can revoke any street trading consent after it has been given.
- 7.13 In these circumstances, the Council will give notice of any intent to revoke a street trading consent, which will provide a detailed explanation as to why the

consent has been revoked. The Council reserves the right to put any contentious matters before the General Licensing Sub-Committee.

7.14 If an application is refused or renewal is refused or consent is revoked, following a decision made by the General Licensing Sub-Committee applicants will be advised the only right of appeal against the Council's decision is by way of Judicial Review..

7.15 Applicants can also make a formal complaint to the Council at www.swale.gov.uk/compliments-and-complaints

7.16 Where a consent is refused the Council may refund the fee, or a part of it as it considers appropriate. Refunds will be considered on a case by case basis.

8. Surrendering a Street Trading Consent

8.1 The consent holder may at any time surrender in writing the consent issued to them. Where a consent is surrendered, the Council is under a duty to remit or refund the whole or part of the fee paid for the Consent as they consider appropriate as shown at para 9(5) of the Local Government (Miscellaneous Provisions) Act 1982.

9. Conditions

9.1 The Council has adopted standard conditions, as shown in Appendix II, based on the objectives and expectations set out in this policy document as well as the responsibilities of each trader, which will be attached to each Street Trading Consent. Additional conditions may be imposed, or amendments made to the standard conditions, should specific circumstances make this reasonably necessary. Breach of conditions could ultimately lead to enforcement action, which may include, but is not limited to the revocation of a Consent.

9.2 The Council may amend the consent conditions at any time. Any substantial amendment to the standard conditions would involve consultation with all affected parties and the responses being presented before the General Licensing Committee for formal adoption. Once adopted the amended conditions will be imposed on all existing consent holders immediately thereafter or as decided by Committee.

9.3 Failure to comply with our standard conditions may lead to enforcement action, which may include, but is not limited to consent being revoked by the Council. This may affect any future applications.

10. Enforcement

10.1 A person engaging in street trading without consent, trading from a stationary van, barrow, other vehicle or portable stall without specific permission for that

trading or who fails to comply with conditions at time of trading or location, will be guilty of an offence and may be liable to prosecution under paragraph 10 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

10.1.1 It is also an offence to make a false statement which you know to be false in any material respect or which you do not believe to be true in connection with an application for consent.

10.1.2 These offences are punishable on conviction with a fine up to £1,000.

10.2 The aim of enforcement within the borough of Swale, is to protect the health and safety and welfare of the public who may be exposed to risks from unauthorised or poorly run street trading. We aim to:

- a) Ensure that all street traders are fit and proper to trade
- b) Promote compliance with the law
- c) Ensure those who fail to abide by the Standard Conditions or relevant legislation (depending on the nature of the business) are held accountable, which may result in prosecution or revocation of their consent
- d) Be proportionate and consistent in our dealings with applicants and consent holders
- e) Be transparent, open and honest

10.3 Decisions regarding enforcement action will be made in accordance with this policy, the Swale BC Enforcement Policy, Licensing Enforcement Policy and on a case-by-case basis. The enforcement function for any breaches in legislation is currently delegated to the Resilience and Licensing Manager, supported by Licensing Officers.

10.4 In regard to ice cream traders, a 'Code of Conduct', issued by the Department for Environment Food and Rural Affairs (www.defra.gov.uk) provides guidance to traders and Local Authorities on aspects of the trade such as the sounding of chimes. The Local Authority's Environmental Department may refer to this guidance when investigating allegations of noise nuisance.

10.5 The licensing team will only carry out enforcement on Ice Cream Sellers in the following circumstances:

- a) Trading without a consent
- b) Trading in an area not specified on the Street Trading Consent
- c) Trading outside of the permitted hours

10.6 Enforcement of the following will be carried out by other departments of the Council:

- a) Incorrect disposal of waste
- b) Health and Safety/ Food Hygiene and Environmental Issues

- 11. Other Legislative Requirements – This is not intended as an exhaustive list**
- 11.1 Any food traders would need to be compliant with food hygiene regulations. All food businesses that prepare, sell, store or cook foods and drinks need to register as a food business with Environmental Health.
- 11.2 Where food is sold the consent holder must comply at all times with ALL current hygiene legislation.
- 11.3 Exposing vehicles for sale on a road is regulated under Section 3 of the Clean Neighbourhoods and Environment Act 2005. Complaints relating to commercial sales, of two or more vehicles within 500 metres of each other should be reported to Swale BC Environmental Response Team.
- 11.4 Persons collecting money under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916 require a Street Collection Permit from the Council but not a Street Trading Consent.
- 11.5 Some charities employ collectors who canvass the public in order to obtain a direct debit mandate to contribute to the charity (these collectors are sometimes known as ‘chuggers’). This type of collection requires neither a Street Collection Permit nor a Street Trading Consent. However Swale Borough Council does have an expectation that all proposed collectors of this type will contact the Regeneration Officer (Town Centres) to liaise over the location, days and times that this type of activity will take place, especially to ensure that they do not interfere with any markets or events taking place. It is expected that there will be no tables or structures such as gazebos erected by the collectors. Most important is the expectation that direct debit collectors will behave in a respectful and courteous manner toward members of the public and not harass them in any way.
- 11.6 Promotional stands are not covered under this legislation as no sale takes place. However, there is an expectation that anyone wishing to erect such a stand should, in the first instance contact the Regeneration Officer (Town Centre) to check suitable locations so as not to interfere with any events or markets that may be taking place.
- 11.7 Any sale of alcohol will also require a Temporary Events Notice (TEN) under the Licensing Act 2003. The notice period for giving a standard TEN is statutory and is 10 clear working days between and not including serving the notice and the date of the event. A late TEN requires at least 5 clear working days’ notice between and not including serving the notice and the date of the event.
- 11.8 There are limits on the number of standard TEN’s and late TEN’s that can be applied for within a year.

11.9 In respect of a consent issued to an Event Organiser, it is the responsibility of the organiser to ensure that any stall wishing to sell alcohol is aware of the requirement for a TEN.

12. Data Retention

12.1 Under the General Data Protection Regulations the Council has set out the period of time that personal information shall be retained.

12.2 All personal information provided on an unsuccessful application, will be retained for a period of six months before being destroyed.

12.3 All personal information relating to the consent holder, irrespective of its level of sensitivity, will be retained for the period of consent; once the consent has expired or been revoked or the trader notifies the Council they no longer wish to have consent; the information shall be retained for a period of 24 months before being destroyed. DBS checks will not be retained by the Council

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Appendix 1 – Documents to provide on application

New Applications and Renewal Applications	One off consents
<p>A completed and signed street trading consent application form. Applications forms are available online at https://www.swale.gov.uk/street-trading-consent by email at licensing@swale.gov.uk or they can be sent by post on request from the licensing team</p>	<p>A completed and signed street trading consent application form. Applications forms are available online at https://www.swale.gov.uk/street-trading-consent by email at licensing@swale.gov.uk or they can be sent by post on request from the licensing team</p>
<p>The application form must be accompanied by the full fee (unless para 3.6 applies and no fee is due). Details of fees are shown at Appendix III</p>	<p>The application form must be accompanied by the full fee (unless para 3.6 applies and no fee is due). Details of fees are shown at Appendix III</p>
<p>Where the proposed street trading activity is from a fixed position, a plan showing the precise trading position and its proximity to other similar retail outlets within a 100 metre radius. The proposed position and orientation of the stall, van, barrow, cart etc. is to be shown on the plan. The plan shall also include any additional vehicles that will be parked on the site</p>	<p>A location plan showing the exact position of any cart, van, barrow etc</p>
<p>Ice Cream Vans and Mobile Food Vans are exempt from providing location plans unless the van is stationary. However, details should be given of the proposed route/streets/stopping places where it is intended street trading will take place as well as the proposed trading hours. This may vary from day to day.</p>	
<p>One colour photograph of the stall, van, barrow, cart that will be used for street trading activity. The photograph shall show any proposed awnings fully extended, whether integral or not.</p>	<p>One colour photograph of the stall, van, barrow, cart that will be used for street trading activity. The photograph shall show any proposed awnings fully extended, whether integral or not.</p>
<p>Multiple traders and event organisers do not need to provide photographs of the individual pitches but must provide a numbered site plan of pitches together with a list giving the name of each individual trader and the nature of their business that from time to time trade from those pitches. This list should be kept updated and amendments submitted to the licensing team throughout the lifetime of the consent</p>	<p>Event organisers do not need to provide photographs of the individual pitches but must provide a numbered site plan of pitches together with a list giving the name of each individual trader</p>

One passport size colour photograph of the applicant. If there are assistants, then they too must supply a photograph of themselves	One passport size colour photograph of the applicant. If there are assistants, then they too must supply a photograph of themselves
If the land is privately owned, written permission from the land owner, this includes Kent County Council Highways.	If the land is privately owned, written permission from the land owner this includes Kent County Council Highways.
Applicants and where applicable their assistants, must submit a Standard Disclosure and Barring Service criminal records check. This can be obtained as shown below: Email: customerservices@dbs.gsi.gov.uk Phone: 03000 200 190 Address: PO Box 165. Liverpool L69 3JD The original certificate must accompany the application form and must be submitted within one month of issue. The requirement for a DBS does not apply to event organisers.	Where considered necessary, applicants must submit a Standard Disclosure and Barring Service criminal records check. This can be obtained as shown below: Email: customerservices@dbs.gsi.gov.uk Phone: 03000 200 190 Address: PO Box 165. Liverpool L69 3JD The original certificate must accompany the application form and must be submitted within one month of issue. The requirement for a DBS does not apply or event organisers.
Evidence of the right to work in the UK. Documents that demonstrate this are attached as Appendix IV.	Evidence of the right to work in the UK. Documents that demonstrate this are attached as Appendix IV.

Appendix II: General Consent Conditions

1. When consent is granted the consent holder will be issued with formal written consent which shall be available for inspection by authorised officers of the Council or the Police at any time that trading is taking place.
2. When consent is granted the Consent Holder and any assistants will be issued with a badge, which must be worn at all times while street trading.
3. The consent holder shall ensure their street trading activities subject to consent do not create any obstruction to the flow of pedestrians or other traffic using the street or part of the street to which their consent relates or create any danger to persons using it.
4. The consent holder shall ensure that their street trading activities subject to consent do not cause a nuisance or annoyance, to person(s) or residents using the street or part of the street or running a business within the vicinity of where their consent applies.
5. No signs advertising the trading shall be placed where it can cause an obstruction to vehicles or pedestrians using the street.
6. Where food is sold the consent holder must comply at all times with ALL current hygiene legislation.
7. No street trading will take place within 400 metres of a school.
8. Consent holders must identify their preferred method of waste disposal at the time of making their application, and keep records of their waste management, which must be available, upon request by Swale Borough Council's Licensing or Environmental Department or from the Environment Agency.
9. The consent holder shall not deposit trade refuse or litter of any kind on the street or part of the street to which their consent relates; (Note under the Environmental Protection Act 1990 everyone has a duty of care to dispose of any refuse in a correct manner.)
10. The consent holder shall at the end of each trading day or session, whichever is the shortest, clear around their permitted site.
11. It is recommended that a licence holder has a waste management plan in place, to ensure that:

- a) Suitable waste containers will be made available to customers, where it is appropriate, for any potential waste products generated by the sale of goods.
- b) No waste liquids shall be disposed of into any highway channel, gully or manhole or in any other manner which is likely to cause pollution of any surface water channel.
- c) All refuse generated by the business must be taken to a licensed waste disposal site.

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Appendix III: Current Fees and Charges

Annual Consent	£130.00
6 Month Consent	£65.00
One-Off Consent	£10.00

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Appendix IV:

Documents which demonstrate entitlement to work in the UK

1. A passport showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.
2. A passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
3. A Registration Certificate or Document Certifying Permanent Residence issued by the UKVI to a national of a European Economic Area country or Switzerland.
4. A Permanent Residence Card issued by the UKVI to the family member of a national of a European Economic Area country or Switzerland
5. A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the UKVI to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
6. A **current** Immigration Status Document issued by the UKVI to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or previous employer.
7. A birth (short or long) or adoption certificate issued by the UK which includes the name(s) of at least one of the holder's parents or adoptive parents, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
8. A birth (short or long) or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **together with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
9. A certificate of registration or naturalisation as a British citizen, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

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Council	
Meeting Date	31 st March 2021
Report Title	Review of the Statement of Licensing Policy under the Licensing Act 2003
Cabinet Member	Cllr Richard Palmer, Cabinet Member for Community
SMT Lead	Nick Vickers, Chief Financial Officer
Head of Service	Della Fackrell, Resilience & Licensing Manager
Lead Officer	Christina Hills, Licensing Officer
Key Decision	No
Classification	Open
Recommendations	1. Council is asked, following a recent consultation and consideration by the Licensing Act 2003 Committee, to adopt the Statement of Licensing Policy under the Licensing Act 2003 as attached as Appendix I in order that it can be published and come into effect from 1 st April 2021.

1 Purpose of Report and Executive Summary

- 1.1 To apprise Members of the steps taken in reviewing the Statement of Licensing Policy under the Licensing Act 2003.
- 1.2 Council is requested to approve the revised Swale Statement of Licensing Policy under the Licensing Act 2003 attached as **Appendix I**.

2 Background

- 2.1 Section 5 of the Licensing Act 2003 requires licensing authorities to prepare and publish a statement of its licensing policy every five years. The current Statement of Licensing Policy was approved by Full Council on 16 December 2015. It consequently expired on 16 December 2020.
- 2.2 A new policy has to be adopted for the period 1st April 2021 to 31st March 2026, unless it becomes necessary to make further revisions beforehand following changes to legislation, statutory guidance or local circumstances, for example.
- 2.3 A review of the existing policy was undertaken, and a draft policy was presented to the Licensing Act 2003 Committee on 21st January 2021 for approval to be put out to public consultation.

2.4 Following the public consultation, the final draft policy was then presented to the Licensing Act 2003 Committee on 11th March 2021 where it was endorsed by Members. It is now requested that Council formally adopt the Statement of Licensing Policy as required under the provisions of the Licensing Act 2003.

3 Proposals

3.1 A draft Statement of Licensing Policy was drawn up as shown at **Appendix I** based on a review of our existing policy statement and taking into account the Statutory Guidance issued under Section 182 of the 2003 Act.

3.2 The changes made to the Statement of Licensing Policy were of a minor or administrative nature to reflect changes of wording in the statutory guidance or for the sake of greater clarity/accuracy.

4 Alternative Options

4.1 The Licensing Act 2003 requires that a local authority must have an adopted policy before discharging its functions under the Act. The 2003 Act also specifies that consultation must be undertaken before the Statement of Licensing policy is adopted and published.

5 Consultation Undertaken or Proposed

5.1 The 2003 Act requires a consultation process prior to determining the Statement of Licensing Policy. This consultation commenced on 25th January 2021 and ran for four weeks until 19th February 2021.

5.2 Consultees and consultation mechanisms were as outlined to the Licensing Act 2003 Committee.

5.3 Despite the wide-ranging consultation no responses were received. This may be because of the minor nature of the changes and that no consultee had anything they wished to comment on or to propose changes.

6 Implications

Issue	Implications
Corporate Plan	Having an adopted Statement of Licensing Policy under the Licensing Act 2003 satisfies the corporate objectives of: A borough to be proud of: the statement seeks to strike the right balance between promoting and encouraging live and recorded music, dancing, theatre and other forms of entertainment for the

	<p>wider cultural benefit of communities generally but not to cause a disturbance.</p> <p>A community to be proud of: by promoting the four licensing objectives in this way the authority is enriching and enhancing the community whilst maintaining its regulatory and enforcement role.</p> <p>A council to be proud of: the statement will support good decision making processes</p>
Financial, Resource and Property	The Statement of Licensing Policy under the Licensing Act 2003 will not place any new financial resource implications on the Council
Legal and Statutory	Section 5 of the Licensing Act 2003 (as amended) requires a licensing authority to prepare and publish a statement of its policy every five years. During the five-year period, the policy must be kept under review
Crime and Disorder	<p>Fulfilling powers and duties under the Licensing Act 2003 is of direct relevance to the Council's obligations under Section 17 of the Crime and Disorder Act 1998 in that the objectives of the Licensing Act 2003 are:</p> <ul style="list-style-type: none"> a) The prevention of crime and disorder; b) The protection of public safety; c) The prevention of public nuisance; and d) The protection of children from harm
Environmental Sustainability	No implications
Health and Wellbeing	No implications
Risk Management and Health and Safety	The publication of a Statement of Licensing Policy under the Licensing Act 2003 is a statutory requirement and failure to do so by the expiration of the current policy as required may lead to negative publicity and criticism from central government. Close adherence to the mandatory guidance in terms of policy development and consultation will minimise the risk of judicial review at a later date. This risk is further minimised by working in close co-operation with the other licensing authorities within Kent
Equality and Diversity	The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups. There are no implications within the policy that would discriminate against individuals or persons of different groups

Privacy and Data Protection	Normal data protection and privacy rules will apply. Under the 2003 Act the Council is obliged to provide certain information and to keep a public register.
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7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Draft Statement of Licensing Policy 2021 - 2026

8 Background Papers

None

Swale Borough Council



Statement of Licensing Policy under the Licensing Act 2003

Version: 1.0

Dated: 1st April 2021

Next scheduled review: 31st March 2026

All enquiries relating to this document should be sent to:

Licensing
Swale Borough Council
Swale House
East Street
Sittingbourne
ME10 3HT

Licensing@swale.gov.uk

Issue & Review Register

Summary of changes	Issue number & date	Approved by
See Licensing Act 2003 committee report dated 21 January 2021	V0.1	Licensing Act 2003 Committee
See Licensing Act 2003 committee report dated 11 March 2021	V0.2	Licensing Act 2003 Committee

All changes to this document are tracked using a different colour and/or marked with a vertical line at the side of the page.

Compiled by:

Date:

Approved by:

Date:

Changes and Corrections

Any changes or corrections required should be notified in writing to:

Licensing
Swale Borough Council
Swale House
East Street
Sittingbourne
ME10 3HT

Or

licensing@swale.gov.uk

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STATEMENT OF LICENSING POLICY

INTRODUCTION

Every Licensing authority is required to produce a statement of licensing policy and to keep the statement under review. Swale Borough Council (the Council) is the Licensing Authority for the Swale area under the provisions of the Licensing Act 2003 (the Act). This is the Statement of Licensing Policy as determined by the Council in respect of its licensing functions under the Licensing Act 2003. This document sets out the position and view of the Licensing Authority in respect of matters in connection with the discharge of its licensing function including the administration of licensing applications, compliance with licensing conditions and enforcement when necessary.

This Statement of Licensing Policy commences on 1st April 2021 and continues for a five year period. During the five year period the Policy will be kept under review and the authority will make such revisions to it at such times as it considers appropriate. Further licensing statements will be published every five years thereafter or earlier as necessary. All references to the 'Guidance' refer to the latest version of the Home Office Guidance to Licensing Authorities issued under section 182 of the Licensing Act 2003.

The 2003 Act requires the Council to carry out its various licensing functions with a view to promoting the following four licensing objectives:

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

The aims of this Statement of Licensing Policy, in line with the four licensing objectives, are to:

- help build a fair and prosperous society that properly balances the rights of people and their communities with the needs of business.
- minimise any nuisance or disturbance to the public through the licensing process; integrate its aims and objectives with other initiatives, policies and
- promote strategies that will:
 - (1) reduce crime and disorder
 - (2) encourage tourism
 - (3) encourage an early evening and night time economy which is viable, sustainable and socially responsible;
 - (4) reduce alcohol misuse
 - (5) encourage employment
 - (6) encourage the self-sufficiency of local communities;
 - (7) reduce the burden of unnecessary regulation on business
 - (8) encourage and promote live music, dancing and theatre for the wider cultural benefit of communities generally.

The Council will endeavour to work with other Local Authorities to ensure that a consistent approach is taken in licensing matters, whilst respecting the differing needs of individual communities throughout the local authority area.

In the preparation of this policy the Licensing Authority will have given proper regard to the local strategies on crime prevention, planning, transport, culture, tourism and economic

development to ensure proper coordination and integration of the aims and actions of these policies.

The Licensing Act is part of a wider Government strategy to tackle crime, disorder and antisocial behaviour and reduce alcohol harm. The Licensing Authority will continue to develop strategies with the police, and the other enforcement agencies, as appropriate, for the management of the night-time economy. Of critical importance to this is the enforcement of the law relating to the sales of alcohol to drunk and underage people and drunkenness or disorder on, or in the immediate vicinity of licensed premises.

This policy covers a wide variety of premises and activities carried on within them. For this reason, this policy cannot detail all the factors that influence the achievement of the licensing objectives nor can this policy detail all the control measures that may be appropriate. However, there will be zero tolerance of dealing in or using controlled drugs (as defined by the Misuse of Drugs Act 1971) on licensed premises.

Covid-19

The impact of Covid-19 has been unprecedented across many areas of work, with licensed premises specifically impacted by a long period of Central Government led lockdown. As a Licensing Authority, we have had to respond to the pandemic and have implemented changes such as virtual licensing hearings, implementing short term changes to procedures to enable social distancing and considering the policy implications for Swale Borough Council. At the time of reviewing this policy the country is in a third 'lockdown' and there may be more lockdowns to come. We are committed to supporting local licensed premises to operate within whatever regulations are imposed by Central Government at any one time. Licensed premises/holders will be required to comply fully with any new regulations or requirements placed upon them at a national level. We encourage all licensed premises to talk to the Licensing Authority, Police, and other relevant Responsible Authorities at the earliest opportunity if they are uncertain regarding any compliance with any condition or they wish to seek a temporary and/or informal relaxation of conditions. We recognise that policy frameworks change, new or emerging issues arise at both a local and national level which may need to be taken into account when applying this Licensing Policy. We will make new applicants and existing licence holders aware of any changes so that they can ensure they meet any future challenges.

1 CONSULTATION

- 1.1 The Statement of Licensing Policy will be kept under review and where any significant amendments are considered necessary these will only be made after consultation has taken place in accordance with Section 5 of the Act. Amendments required due to a change in legislation that do not impact on the aims and objectives of the Policy or the promotion of the Licencing Objectives will be made with the approval of the Licensing Manager in order for the policy to remain legislatively current.
- 1.2 Proper weight, in accordance with the Guidance, has been given to the views of all those consulted. Those consulted in the preparation of this Policy included:
 - the Chief Officer of Police for Kent

- the fire and rescue authority for Kent
- the Director of Public Health for all areas within Swale Borough
- persons/bodies representative of local premises licence holders
- persons/bodies representative of club premises certificate holders
- persons/bodies representative of local personal licence holders; and
- persons/bodies representative of businesses and residents in the Swale area

1.3 In accordance with the guidance the following persons have also been consulted on this revised statement:

- Kent Police Licensing Team
- the Superintendent of Police for Swale Borough Council area
- all Council members
- all parish councils
- all bordering local authorities
- all other responsible authorities under the Licensing Act 2003
- British Beer & Pub Association
- Shepherd Neame Ltd

2 THE POLICY - BACKGROUND

2.1 When administering licensing matters the Council as the Licensing Authority will promote the four Licensing Objectives set out in section 4 of Part 2 of the Licensing Act 2003. The four licensing objectives are the:

- Prevention of Crime and Disorder
- Prevention of Public Nuisance
- Public Safety
- Protection of Children from Harm

The Licensing Authority gives equal weight to each of these objectives.

2.2 The 2003 Act requires Licensing Authorities to publish a 'Statement of Licensing Policy' (the Policy) that sets out the approach the Licensing Authority will take when administering applications and other processes under the Licensing Act 2003 to ensure the promotion of the licensing objectives.

2.3 This Statement of Licensing Policy has been prepared in accordance with the provisions of the 2003 Act having regard to the amended guidance issued under section 182 of the Act the Police Reform and Social Responsibility Act 2012 and the Live Music Act 2012.

2.4 Swale Borough Council is the Licensing Authority pursuant to the Licensing Act 2003 (the Act) and is responsible for considering a range of licence applications and variations to licences for a number of activities detailed below. The purpose of licensing is to regulate the carrying on of licensable activities on licensed premises, at qualifying clubs and under temporary event notices, (TENs). The activities as defined by the Act are:

- Sale by retail of alcohol
- Supply of alcohol (club)
- The provision of regulated entertainment which includes:
 - the performance of a play
 - an exhibition of a film
 - an indoor sporting event
 - boxing or wrestling entertainment
 - a performance of live music
 - playing of recorded music
 - performance of dance
 - entertainment of a similar description to the above 3. (where they take place in the presence of an audience for the purpose of entertaining them)
 - Provision of late night refreshment

2.5 It should be noted that following the introduction of the Live Music Act 2012, a licence is not required to stage a performance of live music, or the playing of recorded music if:

- it takes place between 8AM and 11PM; and
- it takes place at an alcohol on-licensed premises; and
- the audience is no more than 500 people

You also don't need a licence:

- to put on unamplified live music at any place between the same hours; or
- to put on amplified live music at a workplace between the same hours and provided the audience is no more than 500 people.

2.6 The types of premises likely to be included within the licensing regime include:

- Pubs and night clubs
- Off licences (includes supermarkets/shops selling alcohol)
- Restaurants serving alcohol
- Restaurants serving hot food and drink after 11pm
- Private members clubs/social clubs
- Hotels/guest houses selling alcohol
- Cinemas/theatres
- Community premises and village halls
- Providers of temporary events involving licensable activities

and any other premises at which licensable activities are to be provided.

2.7 The Policy will apply across a range of applications which include the following:

- a) New Premises Licences and Club Premises Certificates
- b) Variations to Premises Licences and Club Premises Certificates
- c) Provisional Statements for proposed premises yet to be built
- d) Transfer of Premises Licences
- e) Disapplication of mandatory condition in respect of alcohol sales at village halls and community premises
- f) Variations of licences to change the Designated Premises Supervisor
- g) Reviews of Premises Licences and Club Premises Certificates
- h) Personal Licences
- i) Temporary Events Notices

2.8 The Licensing Authority also regulates other activities at licensed premises which include sexual entertainment events and gambling, and these are covered in other policies adopted by the Council.

3 LICENSING AUTHORITY GENERAL POLICY CONSIDERATIONS

- 3.1 The Licensing Authority encourages the development of premises which are not alcohol-led, and which are aimed at different sectors of the population, including all ages and genders. Premises that promote the arts, a food offer, or other cultural activities are particularly encouraged.
- 3.2 Where premises such as pubs are alcohol-based, they are encouraged to consider diversifying their provisions so as to encourage a mixed customer-base and wider attractions, including community uses, soft refreshments, snacks and live entertainment. Diversification is important in the promotion of the licensing objectives as well as ensuring a sustainable economic future for premises and the regeneration of areas requiring investment and employment opportunities.
- 3.3 The Licensing Authority recognises the need to promote and encourage live and recorded music, dancing, theatre and other forms of entertainment for the wider cultural benefit of communities generally but not to cause a nuisance. The necessary protection of local residents and the potential for limited disturbance and anti-social behaviour in neighbourhoods will be carefully balanced with the wider benefits.
- 3.4 The Licensing Authority, Environmental Services, Kent Police and Kent and Medway Fire and Rescue welcome pre-application discussions and will offer advice and guidance upon request and where appropriate. The Licensing Authority expects that applicants will have in advance researched and understood the relevant law in relation to their application and their business plans as well as this Policy. Applicants are encouraged to consult with each of the authorities before applying. It is not for licensing officers to determine the business needs and capabilities of an applicant, but advice can be offered in relation to the licensing objectives. In addition, guidance notes are available on the licensing pages of Council's website – www.swale.gov.uk
- 3.5 Licensing officers will also provide advice to other parties on the licensing process where needed in relation to objecting to or supporting applications that may affect them. However, SBC cannot provide legal advice to applicants or other parties.
- 3.6 Supermarkets and other "off" licensed premises selling alcohol
- 3.6.1 The Licensing Authority will generally consider licensing shops, stores and supermarkets to sell alcohol for consumption off the premises throughout their opening times. However, where there are reasons for restricting or amending hours, for example, where premises become the focus of disorder and disturbance, such restrictions or amendments will be considered where relevant representations have been made.
- 3.6.2 All 'off' licensed premises must comply with the Licensing Act 2003 Mandatory Conditions Order in relation to age related sales. The Licensing Authority also expects such premises to consider any appropriate and proportionate additional measures to prevent and deter proxy sales on behalf of under 18's.
- 3.6.3 Licensees should also carefully consider alcohol sales to customers who have or appear to have alcohol related health issues, and whether those customers already appear under the influence of alcohol when attempting to make purchases.
- 3.6.4 The Licensing Authority expects adequate checks to be made and all reasonable steps taken to ensure alcohol delivered by way of online shopping services is not

delivered to minors to prevent a risk of underage consumption. Therefore, the authority requests as part of an application that the Operating Schedule should include the procedures the applicant is intending to operate to ensure the following:

- The person they are selling alcohol to is over the age of 18
- That alcohol is only delivered to a person over the age of 18
- That a clear document trail of the order process from order, despatch from the licensed premises and delivery to the customer is maintained (with times and signatures) and available for inspection by an authorised officer
- The time that alcohol is sold on the website/over the phone and the time the alcohol is delivered is within the hours stated on the licence for the sale of alcohol

3.6.5 Where self-pay till points are made available in stores selling alcohol, provision must be considered for alcohol sales to be identified and approved prior to completion of the purchase.

3.7 Designated Premises Supervisor (DPS) at alcohol licensed premises

3.7.1 Whilst this role has a limited definition under the Licensing Act 2003, it is expected that this person nominated on a licence will normally have overall responsibility for the day to day management and control of the licensed premises and in particular be responsible for the safe receipt, storage and sale of alcohol.

3.7.2 The Licensing Authority would normally expect the DPS to be onsite at the licensed premises for the majority of time when alcohol is being sold subject to working hours legislation and absence for sickness and holidays. The Licensing Authority expects the DPS to provide training to staff in relation to alcohol sales and to authorise the employees the DPS considers competent to sell alcohol on their behalf in writing.

3.7.3 The Licensing Authority expects that a DPS should usually have responsibility for only one licensed premises at a time to ensure good management of the premises and the licensable activities. Where the same person is a nominated DPS on more than one premises licence and representations are made, the Licensing Authority will wish to satisfy itself that the premises in question can properly be managed by that person whilst responsibly promoting the licensing objectives.

3.8 Film Exhibitions

3.8.1 The licensing authority expects licence holders or clubs to include in their operating schedules arrangements for restricting children from viewing age restricted films classified according to the recommendations of the British Board of Film Classification or the licensing authority itself.

3.9 Live Music

3.9.1 It is acknowledged the implementation of the Live Music Act in 2012 has resulted in a lighter touch regulation of live music up to 11pm on alcohol licensed premises, and this is seen as a positive approach for premises wishing to provide live music but a retrograde step for nearby residents and enforcement services. However, the Licensing Authority does not see this as an opportunity for licensees to provide live music events that cause nuisance and disturbance to local residents or businesses.

3.9.2 The Licensing Authority expects that where unregulated live music is proposed at licensed premises, all due care, attention and consideration is taken to prevent

disturbance. The Council will consider using its powers under the Environmental Protection Act 1990 to prevent and control public nuisance caused by poorly managed live music at licensed premises.

3.10 Deregulated Entertainment

3.10.1 Where the further deregulation of schedule 1 of the Licensing Act has reduced the regulatory controls on some regulated entertainment activities, the Licensing Authority will expect licensees to ensure that no nuisance or disturbance is caused to local residents and businesses when providing the deregulated activities. The Licensing Authority will consider using alternative powers as per para 3.9.2

3.11 Late Night Levy (LNL)

3.11.1 Whilst it is acknowledged that the provisions for implementing a late night levy arise from the Police Reform and Social Responsibility Act 2011, any levy will potentially have a direct impact on all licensed premises within the Borough. The Licensing Authority has considered the options around the imposition of a LNL and has no plans at the time of drafting this policy to consider an imposition of the levy. Should evidence arise to support implementing a levy the statutory consultation process will be followed and the authority will use its discretion very carefully in relation to design and impact of a levy.

3.11.2 In advance of any decision to implement a LNL, the authority will enter into discussions with the Police with a view to agreeing the allocation of the Police share of the levy to support the policing of the night time economy within this Borough.

3.12 Early Morning Alcohol Restriction Order

3.12.1 The Licensing Authority has considered the options around the imposition of an Early Morning Alcohol Restriction Order and has no plans at the time of developing this policy to consider such an Order. Should evidence arise to support implementing an EMARO, the statutory consultation process will be followed, and the matter referred to the Full Council for determination.

3.13 Licensing and planning permission

3.13.1 The use of a licensed premises or place may be subject to planning controls. There are several key differences between licensing and planning control, although there is an element of overlap between the departments. Nuisance and crime and disorder are shared concerns of planning and licensing and a combination of planning and licensing powers are required to tackle these problems.

3.14 Need for licensed premises and Cumulative Impact

3.14.1 'Need' concerns the commercial demand for particular licensed premises such as a pub, club or hotel. This is a 'market forces' matter and is not of concern to the Licensing Authority. 'Cumulative Impact' means the potential impact on the promotion of the licensing objectives by a significant or excessive number of licensed premises concentrated in one locality. This is a matter for consideration by the Licensing Authority.

3.14.2 The Licensing Authority acknowledges that a concentration of some types of licensed premises in a locality can result in increased footfall, congregation of the public in the streets and potential for increased crime and disorder, litter and anti-social behaviour,

as well as noise nuisance to local residents. This would be a result of the presence of the number of premises and not attributable to individual businesses. The licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation

3.14.3 The Licensing Authority, having regard to the evidence available, considers that currently there is no particular part of the Borough where there is a negative cumulative impact of licensed premises on any of the licensing objectives. If residents or a Responsible Authority (in particular the Police) provide relevant evidence through a representation in the future that supports the imposition of a Policy that restricts the number of new and/or later opening premises, this will be considered and consulted on.

3.14.4 The absence of an existing cumulative impact or saturation policy does not, however, prevent any responsible authority or other person making representations on a new application for the grant of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives. The Licensing Authority will also take into account the effect on resources, including police resources, to cope with any influx of visitors to an area, particularly late at night.

4 RESPONSIBLE AUTHORITIES AND OTHER PERSONS

4.1 Responsible authorities are public bodies that are statutory consultees that must be notified of applications by the applicant. The full list and contact details can be found at Appendix C and are contained on the Swale Borough Council website at Responsible Authorities.

4.2 When dealing with applications and variations for licences and reviews of premises licences, the Licensing Authority is obliged to consider representations from two categories of persons, referred to as 'Responsible Authorities' and 'Interested Parties'. This allows for a broad range of persons to comment both for and against applications for premises licences and club premises certificates and for reviews.

4.3 The Licensing Authority may only consider representations that are relevant to the promotion of the licensing objectives. We only have discretion on whether to grant applications for new premises licences or variations to existing premises licences, to impose conditions on granting licences if representations relevant to the licensing objectives are made by "interested parties" or by "responsible authorities" within prescribed time limits. Otherwise the application will automatically be granted.

4.4 The Licensing Authority will take care to ensure that concerns raised by Responsible Authorities in relation to their own legislative functions are not taken into account if they are not relevant to the application for a premises licence under the Act, or the promotion of the licensing objectives. It would expect those authorities to use their powers and duties within their statutory roles to control such matters. Any representation made by a Responsible Authority that relates to the promotion of the licensing objectives will be accepted.

4.5 The Licensing Authority must give the appropriate weight to representations made by the Police on crime and disorder matters. The Police are the Licensing Authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. The Licensing Authority will accept all reasonable and

proportionate representations made by the Police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives.

- 4.6 Where an 'Other Person or Persons' request to be represented when seeking to make a representation, the Licensing Authority will require written evidence from the person/s being represented that they have authorised a third party to speak or write on their behalf.
- 4.7 The Licensing Authority will examine closely all representations to ensure that they are not frivolous, repetitive or vexatious. Matters that this authority will look at are likely to include:
- whether there is a history of making representations that are not relevant or which have been previously considered vexatious or frivolous and are intended to cause aggravation or annoyance
 - whether the representation raises a 'relevant' issue
 - whether the representation raises issues specifically to do with the premises and/or the licensable activities that are the subject of the application
 - whether the repetitive representation is one made an unreasonably short time after, and identical or substantially similar to:
 - a ground for review specified in an earlier application for review, for the same premises, which has already been determined, or
 - representations considered by the licensing authority when the premises licence was first granted; or
 - representatives which would have been made when the application for the premises licence was first made and which were excluded by the prior issue of a provisional statement.
- 4.8 The above considerations are not exhaustive, and the Licensing Authority will have regard to anything a person making a representation, or persons representing them, say about his or her status to make representations. Nothing in this Statement should be taken to undermine the right of any person to make a representation on an application or to seek a review of a licence where provision to do so exists.
- 4.9 Public Health, Kent County Council, is now included on the list of Responsible Authorities. It is acknowledged that they may be useful in providing evidence of alcohol related crime and disorder or public nuisance etc. that are directly linked to premises or a cluster of premises. It may also be able to provide relevant information on alcohol related admissions that relate to specific licensed premises.
- 4.10 The Licensing Authority as a Responsible Authority
- 4.10.1 The Licensing Authority has carefully considered its role as a Responsible Authority under the Act. It will achieve a separation of responsibilities through procedures and approved delegations within the authority to ensure procedural fairness and eliminate conflicts of interest. A separation is achieved by allocating distinct functions (i.e. those of Licensing Authority and Responsible Authority) to different officers within the licensing team.
- 4.10.2 The Licensing Authority does not expect to act as a Responsible Authority on behalf of third parties but accepts that there may be rare circumstances where this approach may be required. An example may be where matters arise at premises of which the licensing authority is aware of the negative impact on the promotion of the

licensing objectives and residents, and other third parties have failed to take action by either requesting a review or making representation.

5 EXCHANGE OF INFORMATION

- 5.1 The Licensing Authority will act in accordance with the provisions of the Licensing Act 2003 the General Data Protection Regulation (GDPR) the Data Protection Act 2018 in its exchange of information. Where a protocol is established to set out the mechanism for exchange of information with other regulatory bodies, any such protocol will be made publicly available.

6 HUMAN RIGHTS AND EQUAL OPPORTUNITIES

- 6.1 The Human Rights Act 1998 makes it unlawful for a local authority to act in a way which is incompatible with the European Convention on Human Rights. In making decisions and determining appropriate action the Licensing Authority will have due regard to the Convention and will interpret the LA2003 in a manner consistent with the Human Rights Act 1998.
- 6.2 The Licensing Authority will consider the effect upon people's human rights and adopt a principle of proportionality and the need to balance the rights of the individual with the rights of the community as a whole. Action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society.
- 6.3 The Equality Act 2010 prohibits direct and indirect discrimination on the basis of any of nine protected characteristics, whether in delivering services or in relation to employment. The Licensing Authority will have regard to its obligations under the Equality Act 2010 when interpreting and exercising its powers and responsibilities under the Licensing Act 2003.
- 6.4 Equality Duty supports good decision making – it encourages public bodies to understand how different people will be affected by their activities, so that their policies and services are appropriate and accessible to all and meet people's needs. By understanding the effect of their activities on different people, and how inclusive public services can support and open up people's opportunities, public bodies can be more efficient and effective. The Equality Duty therefore helps public bodies to deliver the Government's overall objectives for public services.
- 6.5 Immigration Act 2016 and Modern Slavery Act 2015.
The Licensing Authority has responsibilities that relate to the prevention of immigration crime, specifically the prevention of illegal working in licensed premises. Licences must not be issued to people who are illegally present in the UK, who are not permitted to work, or who are permitted to work but are subject to a condition that prohibits them from doing work related to the carrying out of a licensable activity.

These provisions apply to licensed premises for alcohol and late night refreshment, (but not entertainment only premises) and personal licences. Other types of authorisation under the Licensing Act 2003 (Club premises certificates and temporary events notices) (TEN's) are not covered. This is due to there being little evidence of immigration abuse in respect of premises authorised under a club premises certificate and it would have been disproportionate to apply the requirements to a TEN.

7 COMPLIANCE AND ENFORCEMENT

- 7.1 It is essential that licensed premises operate in accordance with the Act and promote the licensing objectives. Part of the Licensing Authority's role is to monitor premises and take appropriate action to ensure that the licensing objectives are promoted.
- 7.2 There are a range of offences detailed under Part 7 of the Licensing Act 2003. The Licensing Authority will liaise with the Responsible Authorities to determine enforcement of specific offences on a case by case basis. Offences related to sales of alcohol to minors will be enforced by the Police or Trading Standards Authority unless they form part of a range of offences identified by the Licensing Authority.
- 7.3 The Licensing Authority will work together with the police in promoting the licensing objectives. The Kent and Medway Enforcement Protocol was approved in February 2008 and agrees the appropriate responsibilities and procedures for joint working and enforcement between the two agencies.
- 7.4 The Council is committed to the principles of good enforcement by carrying out these regulatory functions in a fair, open and consistent manner. Inspections, enforcement, and where appropriate, surveillance under the Act will be based on the principles of risk assessment, which includes the targeting of high risk premises which require greater attention, whilst operating a lighter touch in respect of low risk and well managed premises. The risk-based approach is based on Home Office Guidance, the activities authorised and premises compliance history.
- 7.5 The Licensing Authority needs to be satisfied that premises are being run in accordance with the Act and any licensing conditions, which may be attached to the premises licence. Frequency of inspections will be determined on risk-based criteria.
- 7.6 Annual fees and suspension of licences for non-payment
- 7.6.1 The Licensing Authority is required under section 55A of the Licensing Act to suspend premises licenses where the annual fee has not been paid. The Licensing Authority will invoice each licensee when the annual fee is due setting out the fee that is due and the consequences for non-payment. Where the fee has not been paid or there has been no claim of administrative error by the end of 21 days of the due date, the Licensing Authority will serve the required 2 working day notice to suspend the licence.
- 7.6.2 Where a licence is suspended this means that no licensable activities will be authorised to be provided at the premises until the suspension is lifted on receipt of payment of the overdue fee. Officers will conduct enforcement visits to premises where a licence has been suspended and will take the appropriate action in accordance with the Council's enforcement policy.
- 7.6.3 If an operator does not wish to carry on the activities that require the premises licence or certificate anymore it is important the licence or certificate is surrendered to prevent maintenance fees being accrued.

CONSIDERATION OF APPLICATIONS

8 NEW PREMISES LICENCES

8.1 In making decisions about applications for licences the Licensing Authority will have regard to:

- the Licensing Act 2003
- the Statutory Guidance issued under section 182 of the Licensing Act 2003,
- this Statement of Licensing Policy made under section 5 of the Licensing Act 2003

Any decisions made that depart from guidance or policy only do so for reasons set out in the decision.

8.2 Where elements of applications are unclear or unspecific, particularly in relation to operating schedules and trading hours, the Licensing Authority will expect the applicants to provide additional information for clarity on a request from the licensing team.

8.3 Licensing officers will routinely check that the Public Notices at the premises and the Public Notices in newspapers are displayed in accordance with the regulations as part of the validation process.

8.4 Licensing officers will also notify ward councillors to whose ward the application relates.

8.5 Where there are no representations about an application the licence will be automatically granted after 28 days under the terms and conditions applied for. Licensing officers will interpret the detail of the operating schedule and convert that into consistent enforceable licence conditions.

8.6 Where relevant representations are received the application will be referred to the Licensing Sub-committee for determination at hearing, unless all parties agree that a hearing is not necessary. Where applications result in the need for a hearing the process at section 16 of this policy will apply.

9 VARIATIONS TO LICENCES

9.1 From time to time licensees may wish to change the nature of the business vary the trading hours or the licensable activities on offer. These can range from minor changes having little or no impact such as minor changes to the premises plan to more significant changes that will affect the promotion of the licensing objectives. These could include for example, the provision of additional activities, increasing capacities or longer and later trading hours. However, where a variation is so substantial that it significantly changes the nature of the business and layout of the premises it is likely that a new premises licence application will be required rather than a variation.

9.2 An application for a variation must be advertised in accordance with regulations and the Council will expect applications to be advertised to residents and businesses in the vicinity.

- 9.3 The relevant parts of this Statement of Policy to be applied to significant variation applications is the same as for new premises licence applications at section 8 above.
- 9.3 Where applications are made for minor variations officers will consider whether there are any impacts on any of the Licensing Objectives. Where the variation proposed creates a significant impact on any of the Licensing Objectives the application will be rejected, and the applicant advised to seek a standard variation.
- 9.4 Where there is minor impact or no impact on the four licensing objectives Officers will consult with the relevant (if any) responsible authorities.

10 VARIATIONS TO SPECIFY A NEW DESIGNATED PREMISES SUPERVISOR (DPS)

- 10.1 The Licensing Authority expects that usually the nominated DPS on a licence will be involved in and supervising the day to day operation of licensed premises that sell alcohol. Where the person nominated as DPS ceases to undertake that role the Licensing Authority would expect the licensee to replace that person as soon as is reasonably practicable to maintain adequate control of the premises.
- 10.2 Where a DPS notifies the Licensing Authority that he or she has resigned, the licensing officers will enter into immediate discussion with the licensee in relation to the mandatory conditions concerning the sale of alcohol, and provide appropriate advice to prevent unauthorised alcohol sales.
- 10.3 All applications to specify a new DPS must be made by the licence holder or by a person/body authorised in writing to act on the licensee's behalf.
- 10.4 Where there are no representations the default position is to grant the variation.
- 10.5 The Licensing Authority will give the appropriate weight to relevant representations received from the Police about a proposed DPS. Applications that receive relevant representations will be referred for a hearing at which point the Sub Committee may approve or reject the application if it considers it appropriate for the promotion of the crime prevention objective to do so.

11 TRANSFERS OF PREMISES LICENCES

- 11.1 Before a licence transfer can be administered, the Licensing Authority usually expects consent to have been obtained from the previous premises licence holder. If this is not possible the applicant will be expected to demonstrate that he or she has taken all reasonable steps to secure consent to transfer the licence.
- 11.2 It is acknowledged that in some cases licensees leave premises and do not provide any forwarding contact details, or there has been a death or incapacity of the licence holder. In such cases where a licensee cannot reasonably be contacted to give approval, a licence will be transferred in accordance with the requirements of the Act.
- 11.3 Where a relevant Police objection to the transfer is received the application will be determined through the hearings process unless it is agreed by the applicant and Police as unnecessary.

12 PROVISIONAL STATEMENTS FOR PREMISES

- 12.1 A provisional statement is an application made by someone with an interest in premises, which is or is about to be constructed for use for one of the licensable activities or which is or is about to be extended or altered for that purpose or may be applied for, by a person interested in a premises. This option allows potential applicants to obtain advance notice whether a premises licence is likely to be granted on completion of its construction or conversion.
- 12.2 The process for considering an application for a provisional statement is the same as that for a premises licence application, including a schedule of works. The applicant is obliged to give notice of the application in the same way as applying for a premises licence. Responsible authorities and other parties may make representations and there are rights of appeal.
- 12.3 The holder of a provisional statement may apply for a premises licence once the premises are constructed, altered or acquired. The Licensing Authority will be constrained in the matters it can consider when determining the premises licence application, and in terms of representations about premises licence applications that follow the grant of a provisional statement, where the application is for a licence in the same form as the provisional statement and the work described in the schedule of works has been satisfactorily completed.
- 12.4 Representations are excluded where the relevant person could have made the same or substantially the same representations about the provisional statement application but failed to do so without reasonable excuse and there has been no material change in circumstances of the premises or area in the vicinity of the premises since the provisional statement.

13 CLUB PREMISES CERTIFICATES

- 13.1 The Licensing Authority acknowledges the importance and history of members clubs and the privileged position held by clubs historically in relation to alcohol licensing.
- 13.2 Members clubs are able to obtain a club premises certificate to authorise licensable activities for their members and their guests. There is no requirement for any members to hold a personal licence under the Licensing Act 2003, and there is no requirement to specify a designated premises supervisor. It is acknowledged that alcohol is supplied by and for the members through their membership of the club.
- 13.3 In order to apply for a club premises certificate the Licensing Authority must be satisfied that the club is a qualifying club and satisfies the legal conditions set out in the Act. Applicants for a club premises certificate will be required to complete a club declaration form setting out how the club will meet the conditions and definitions stated in the Act. Licensing officers will have delegated authority to make additional enquiries where appropriate in order to satisfy that a proposed club meets the criteria laid out in the Act.
- 13.4 The fundamental principles for premises licence applications set out at section 15 of this Policy will apply to applications for club premises certificates subject to exemptions in respect of the DPS and the requirement for evidence of the club's status.

- 13.5 Any qualifying club wishing to offer licensable activities at events to which non-members will attend will be required to authorise such activities by way of a Temporary Event Notice or by ensuring compliance with the club rules to allow the public to enjoy the clubs facilities and activities without jeopardising the validity of the club premises certificate.
- 13.6 The Licensing Authority expects 'public' events on club premises to be authorised by a Temporary Event Notice. It is expected that club committee members will seek advice from the Licensing Authority prior to providing such activities for non-members to prevent any unauthorised activities.
- 13.7 Where the Licensing Authority identifies that a club no longer meets the conditions set out in section 62 of the Licensing Act 2003 or where the Licensing Authority obtains evidence to demonstrate that a club no longer acts in good faith as a qualifying club, it will give the club a notice withdrawing the club premises certificate.
- 13.8 Suspension of Club Premises Certificates may also occur under section 92A of the LA2003, through failure to pay annual fee. Once granted an annual must be paid each year. Failure to pay the fee with the specified time will result in the Council suspending the licence until such time as the fee is received.

14 REVIEW OF A PREMISES LICENCE OR CLUB PREMISES CERTIFICATE

- 14.1 The Licensing Authority acknowledges that at any stage following the grant of a premises licence matters can arise at premises that raise concern as to the continued promotion of the licensing objectives at licensed premises.
- 14.2 The Act allows a licence to be reviewed where such matters arise. It is expected that most reviews will be applied for by Responsible Authorities.
- 14.3 Although this Licensing Authority is also a Responsible Authority and may bring about a review application, it is not expected that it will act as a Responsible Authority on behalf of other parties (for example, local residents, local councillors or community groups).
- 14.4 Such parties can make relevant representations to the Licensing Authority in their own right, and it is reasonable for the Licensing Authority to expect them to make representations themselves where they are reasonably able to do so. However, if these parties have failed to take action and the Licensing Authority is aware of relevant grounds to make a representation, it may consider acting in its capacity as Responsible Authority.
- 14.5 The Licensing Authority will determine whether a review application is relevant and the validity of a review application will be determined by a licensing officer. This will be on the basis of whether the request for the review is:
- relevant to one or more off the licensing objectives and
 - not frivolous, vexatious or repetitious.
- 14.6 In every review case an evidential basis for the allegations made will need to be submitted to the Council as the Licensing Authority.
- 14.7 The Licensing Authority would expect grounds for a review to be evidence based but will consider each application on its merits.

- 14.8 Where a review application is accepted the Licensing Authority will encourage the parties to enter into mediation during the consultation period to help resolve or narrow issues arising. The Council would be happy to assist in these meetings as appropriate.
- 14.9 All reviews, save where agreed by all parties as unnecessary, will lead to a hearing before a sub-committee. This may be a full hearing or a condensed hearing to consider the outcome of mediation. However other parties who have made representation but not been involved in mediation will be permitted to voice their representations at the hearing in accordance with the Hearings Regulations. The Policy applied to hearings can be found in section 16.
- 14.10 The authority considers that where reviews are raised as a result of serious crime and disorder causing that licensing objective to be undermined, then it is likely that that a revocation of the licence will be considered.

15 APPLICATION TO VARY A PREMISES LICENCE AT COMMUNITY PREMISES TO REMOVE THE MANDATORY REQUIREMENT FOR A DPS

- 15.1 The Licensing Authority acknowledges the value that local community premises bring to their localities and that most are operated and managed by volunteers. The mandatory requirement for a nominated DPS to be in place at alcohol licensed community premises can be burdensome and difficult for an individual to manage at such premises.
- 15.2 The Act allows management committees at community premises to take over the responsibility of the alcohol sales by applying to the Licensing Authority to remove the requirement to have a nominated DPS at the premises to authorise sales of alcohol. The Licensing Authority will, subject to strong evidence that a community premises is well managed by an experienced committee, support applications to remove the mandatory condition requiring all alcohol sales to be authorised by a personal licence holder.
- 15.3 Before considering an application the Licensing Authority will satisfy itself that a premises meets the definition of a community premises. Enquiries will be made as to Where there is a regular 'commercial' or 'non-community based' use or a membership requirement to use the premises it is unlikely that such a premises would meet the definition of a community premises and permission to remove the requirement for a DPS is likely to be refused.
- 15.4 In general it is expected that premises that form part of a church hall or chapel hall or are a village, parish or community hall or other similar building would in most cases meet the definition of a community premises, although each will be considered on its individual merits and the evidence provided or obtained.
- 15.5 The licensing officers will consider, on a case by case basis, all applications to remove the mandatory condition and will ask such questions or seek the necessary evidence to confirm the suitability of the management committee to collectively authorise the supply of alcohol the premises.
- 15.6 Committees that make an application will be expected to have members who are aware of the law relating to the sale of alcohol, contain steps within their operating schedule to prevent offences relating to alcohol sales and also to include appropriate

rules in hiring agreements where the premises is hired out to the public for events that will involve the sale of alcohol.

16 HEARINGS

- 16.1 Any application that has resulted in the submission of relevant representation from any party will be referred to the Licensing Sub-Committee for a hearing and determination in accordance with the Licensing Act 2003 and the Licensing Act 2003 (Hearings) Regulations 2005.
- 16.2 A sub-committee will consist of three suitably trained members of the Licensing Committee. The sub-committee will be advised on the law by a member of the Council's Legal Services Team. That legal team member will not be involved in the application process to prevent a conflict of interest by ensuring a clear separation of roles.
- 16.3 This Statement of Policy will play a key role in achieving consistency in decision making.
- 16.4 Where representations are made only by Responsible Authorities, the Licensing Authority would expect applicants and Responsible Authorities to enter into negotiation or mediation prior to a hearing in an attempt to resolve or narrow issues before attending the licensing hearing and to achieve an outcome satisfactory to all parties.
- 16.5 Parties will be advised of the hearing date and procedure in advance and in accordance with the statutory process. At all hearings the sub-committee will have regard to the Guidance issued under section 182 of the Act. This authority may use its discretion where there are strong and defensible reasons for departing from the Guidance and where it considers it right to do so. In any such case this authority will clearly express and explain its reasons for doing so.
- 16.6 The Licensing Authority must give the appropriate amount of weight to representations made by the Police on crime and disorder matters. It will give appropriate weight to all representations made by all parties based on the content and relevance to the promotion of all licensing objectives.
- 16.7 All decision notices will be in writing and will include clearly stated reasons to explain a decision on an application.

17 LICENCE CONDITIONS

- 17.1 A key concept in the Licensing Act is that conditions that are attached to licences or certificates are tailored to suit the individual style and characteristics of the premises and its activities and the impact of those activities. Those conditions must be appropriate and proportionate in order to promote the licensing objectives at that premises.
- 17.2 All licences that authorise the sale of alcohol will be subject to the mandatory conditions set out in the Act and Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 as amended (and any subsequent Mandatory Conditions that are introduced).
- 17.3 Applicants will be expected to include appropriate steps to promote the licensing objectives within their operating schedule which will be converted to conditions on a

premises licence or club premises certificate. Those steps will be expected to be proportionate, achievable, enforceable and relevant to the business in question and will ensure the promotion of each of the four licensing objectives.

- 17.4 Where applications receive valid representations and are subject to a hearing, the sub-committee will consider the evidence provided within representations, the detail of the application, the nature of the premises and business and only where appropriate and proportionate will attach conditions to a licence to secure the promotion of the licensing objectives in light of the evidence provided.
- 17.5 Decisions on individual licence conditions will be made on a case by case basis, and where there are concerns over the effective promotion of the licensing objectives, the applicant will be given the opportunity to offer suggestions on how the objectives can be met. This authority will work closely with all parties and the applicant in establishing workable, enforceable and reasonable conditions for new and variation applications.
- 17.6 In all cases the Licensing Authority will have regard to the Guidance when considering the implementation of licence conditions.
- 17.7 In all cases conditions will aim to promote the licensing objectives, be unambiguous and enforceable, appropriate to the activities and the business, achievable and applicable to the premises and the areas around the premises which is within the licensee's control.
- 17.8 The Licensing Authority recognises the need to avoid, so far as possible, duplication with other regulatory systems including Health and Safety at Work, Fire Safety, Food Hygiene and Nuisance Control. However, these regulations may not cover the unique circumstances of some activities and entertainment. In these circumstances, the council may therefore, where necessary, attach conditions to premises licenses for the promotion of the licensing objectives.

Conditions to promote the Prevention of Crime and Disorder.

- 17.9 Under the Act the Licensing Authority has a duty to promote the licensing objectives, and, a further duty under the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the borough.
- 17.10 Wholesale of alcohol. Since 1 April 2017, businesses which sell alcohol (for example, retailers of alcohol and trade buyers) need to ensure that the UK wholesales they buy from have been approved by HMRC under the Alcohol Wholesaler Registration Scheme (AWRS). They will need to check their wholesalers Unique registration Number (URN) against the HMRC online database. This is an ongoing obligation and if a business is found to have bought alcohol from an unapproved wholesaler, they may be liable to a penalty or could even face a criminal prosecution and their alcohol stock seized. Any trader who buys alcohol from a wholesaler for onward sale to the general public (known as a 'trade buyer') does not need to register unless they sell alcohol to other businesses.
- 17.11 Examples of trade buyers would be pubs, clubs, restaurants, cafes, retailers and hotels. However, they will need to check that the wholesaler they purchase alcohol from is registered with HMRC.

17.12 The applicant will be expected to detail in their operating schedule how they will prevent crime and disorder on and close to the premises. Such detail should reflect the licensable activities on offer, location and character of the area, the nature of the premises use and the range of customers likely to use the premises.

These may include, but are not limited to, the following:

- prevention of disorderly conduct and anti-social behaviour
- prevention of underage drinking
- prevention of sales of alcohol to intoxicated customers
- prevention of drunkenness both on and in the vicinity of the premises
- prevention of drug use and drug dealing
- restriction to responsible drinks promotions
- use of safety glass
- inclusion of a wind-down time following alcohol sales period
- adequate seating to discourage “vertical drinking”
- the offer of food and snacks or other entertainment or occupation to discourage persistent drinking

17.13 In busier premises the Licensing Authority would usually expect to see a short (e.g.30 mins) ‘wind down’ or ‘drinking up’ period allowed for after the cessation time of entertainment and alcohol sales as this is effective in assisting in a reduction in noise and exuberance of customers before leaving the premises.

17.14 Applicants will be expected to seek advice from the Police and the Licensing Authority will give appropriate weight to requests by the Police for premises to be protected by SIA registered door staff subject to the provision of relevant evidence. Where the Licensing Authority determines after consultation with the Police that a premises is one that warrants additional security and monitoring it would expect applicants to include the provision of SIA approved door staff at the premises at appropriate times. Relevant premises are usually those used mainly for drinking alcohol and have later opening hours.

17.15 Where appropriate, applicants for licences in the town centre areas providing mainly alcohol, music and dancing would be expected to consider inclusion of a provision of safety glasses to prevent a risk of injury on the rare occasion that a glass may be used as a weapon.

17.16 The use of CCTV should be considered where appropriate or on the advice and recommendations of the Police and to a quality and standard approved by the Police for evidential purposes. Licensees will be expected to fully comply with the requirements of the Information Commissioners Office and the Data Protection Act 1998 in respect of any surveillance equipment installed at a premises.

17.17 In any application resulting in hearing the sub-committee will consider each application on its individual merits and determine the imposition of conditions that are appropriate to the promotion of the licensing objectives.

Conditions to promote Public Safety

17.18 The applicant will be expected to show how the physical safety of persons attending the premises will be protected and to offer any appropriate steps in the operating schedule to promote this.

- 17.19 Such steps will not replace the statutory obligation on the applicant to comply with all relevant legislation under the Health and Safety at Work etc. Act 1973 or under the Regulatory Reform (Fire Safety) Order 2004.
- 17.20 Applicants will be expected to have carried out the necessary risk assessments to ensure safe occupancy levels for the premises. Where a representation from the Fire Authority suggests that for the promotion of the Public Safety objective a maximum occupancy should be applied, the Licensing Authority will consider adding such a limit as a licence condition.
- 17.21 Where appropriate an operating schedule should specify occupancy limits for the following types of licensed premises:
- a) High Volume Vertical Drinking e.g. premises that provide mainly stand up drinking facilities with limited seating/table space and the primary activity is the sale of alcohol
 - b) Nightclubs
 - c) Cinemas
 - d) Theatres
 - e) Other premises where regulated entertainment is likely to attract a large number of people.
 - f) Where conditions of occupancy have arisen due to representations received.

Conditions to promote the Prevention of Public Nuisance

- 17.22 The applicant will be expected to detail any appropriate and proportionate steps to prevent nuisance and disturbance arising from the licensable activities at the premises and from the customers using the premises.
- 17.23 The applicant will be expected to demonstrate that they have considered the following and included steps to prevent public nuisance:
- a) Proximity of local residents to the premises
 - b) Licensable activities proposed and customer base
 - c) Hours and nature of operation
 - d) Risk and Prevention of noise leakage from the premises from equipment, customers and machinery
 - e) Prevention of noise from customers leaving the premises and customer pick up points outside premises and from the Car Park.
 - f) Availability of public transport to and from the premises
 - g) Delivery and collection times and locations.
 - h) Impact of external security or general lighting on residents.
 - i) History of management of and complaints about the premises.
 - j) Applicant's previous success in preventing Public Nuisance.
 - k) Outcomes of discussions with the relevant Responsible Authorities.
 - l) Impact of location, noise and contamination from outside smoking areas on neighbours and other customers
 - m) Collection of litter arising from the premises
- 17.24 Steps to prevent public nuisance may include a range of options including noise limiting devices, sound insulation, wind down periods, acoustic lobbies, management of smoking areas etc.

- 17.25 Steps will differ depending on the individual premises and activities and it is for the applicant to ensure that reasonable, effective and appropriate steps are included within the operating schedule.

Conditions to promote The Protection of Children from Harm

- 17.26 Applicants will be expected to detail any appropriate and proportionate steps to protect children at the premises from any harm. The Licensing Authority recognises the right of licensees (serving alcohol) to allow accompanied children into their premises. The Licensing Authority would not seek to restrict access by children (above that specified in the Act) unless it is necessary for the prevention of physical, moral or psychological harm.
- 17.27 Steps to protect children from harm must be carefully considered for inclusion where:
- a) There is entertainment or services of an adult nature provided.
 - b) There have been previous convictions for under age sales of alcohol.
 - c) There has been a known association with drug taking or dealing.
 - d) There is a significant element of gambling on the premises.
 - e) There is a presumption that children under 18 should not be permitted entry
 - f) such as to nightclubs (apart from when specific events are held for under 18's).
 - g) Outcomes of discussions with relevant Responsible Authorities suggest such steps are applicable.
- 17.28 Nothing in the Licensing Act prevents licensees from excluding children from a licensed premises and no condition can be added to require the admission of children.
- 17.29 Where there are no matters that give rise to concern in respect of children at premises the Licensing Authority would expect to see the relevant box on an application form completed to specify NONE.

18 PERSONAL LICENCES

- 18.1 Any person who wishes to act as a DPS at licensed premises must be in possession of a personal licence issued under the Licensing Act 2003. Any other person may also apply for a personal licence subject to meeting the necessary criteria. The Licensing Authority acknowledges the default grant position for applicants who meet the statutory criteria under the Licensing Act 2003.
- 18.2 The Police will only be consulted where the applicant declares a previous conviction for a relevant offence. A relevant conviction is one that is listed in Schedule 4 of the Licensing Act 2003.
- 18.3 Where a representation is received from the Police the Licensing Authority must hold a hearing unless the Police and the authority agree that it is unnecessary. The application must be rejected if it is considered appropriate for the promotion of the crime prevention objective and granted in any other case.
- 18.4 The Police must give a notice of objection to the Licensing Authority within the statutory 14-day consultation period. The Licensing Authority accepts that there is no discretion to accept a late notification from the Police even if the objection provided evidence that to grant the licence would undermine the crime prevention objective.

- 18.5 The Licensing Authority requires all personal licence holders to advise if there is a change of their name or address in accordance with the Act. All licence holders are advised of this requirement when a licence is granted. Any changes will be updated and an amended licence will be issued within 20 working days of a notification of change.
- 18.6 The Licensing Authority anticipates that the Magistrates and Crown Courts will take appropriate action in relation to a personal licence where licence holders are convicted of relevant offences in those courts after the grant of a personal licence and notify the Licensing Authority of any action taken in respect of a personal licence.
- 18.7 The Licensing Authority requires personal licence holders to undertake their duty to disclose any convictions for a relevant offence after a personal licence has been granted. The Licensing Authority and/or the Police will take appropriate formal action against the licence holder where subsequent relevant convictions are not declared under that duty.

19 TEMPORARY EVENT NOTICES

- 19.1 The Licensing Act 2003 makes provision for the authorisation of a person (known as a premises user) to provide licensable activities on a temporary basis at unlicensed premises, or to add activities and/or extend the hours of existing activities at a licensed premises. The activities are authorised by the serving of a Temporary Event Notice (TEN) on the Licensing Authority, subject to the notice meeting the proper criteria as detailed under the Act.
- 19.2 Comprehensive planning of events is essential and where there are likely to be impacts on neighbouring residents or businesses as a result of the activities to be authorised by a TEN, the Licensing Authority expects the premises user to have considered any potential impacts and how they may be mitigated.
- 19.3 The Licensing Authority welcomes requests for advice from applicants who wish to provide temporary events to ensure they understand the law relating to such events and to reduce the likelihood of objections being made.
- 19.4 There are two types of TEN, Standard or Late. Both are subject to a numerical limit on the number of each type of TEN that can be served by personal licence holders and non-personal licence holders in a calendar year. There is also a numerical limitation on the number of TENs that may be served in respect of individual premises or place.
- 19.5 Standard TEN. A standard TEN must be served at least 10 working days (Monday to Friday excluding Bank Holidays) before the event commences. The 10 working days excludes the day of service and the day on which the event starts. Copies of the TEN must be served on the Licensing Authority, The Environmental Health (EH) Department, and the Police. The fee is payable only to the Licensing Authority. Applicants are encouraged to serve TENs at least 28 days before the proposed events to allow greater time for an event to be planned.
- 19.6 Where numerical limits are exceeded the Licensing Authority will serve a counter notice and the proposed licensable activities will not be authorised.
- 19.7 Where objections are received from the Police and/or EH and not withdrawn, the notice will be referred for a hearing before the Licensing Sub-Committee. The Sub-Committee may approve the TEN as applied for, add appropriate conditions (if the

TEN takes place on a premises with an existing premises licence) or reject a TEN by serving a counter notice.

- 19.8 Late TEN. A late TEN may be served between 9 and 5 working days before a proposed event commences. The same limitations apply to the day the notice was served and the day of the event. Where numerical limits are exceeded a counter notice will be served and the proposed licensable activities will not be authorised.
- 19.9 If the late TEN is served with fewer than 5 working days' notice it is deemed invalid and would be rejected. The proposed activities would not be authorised. The Licensing Authority has no discretion to accept TENs outside the permitted statutory deadlines.
- 19.10 Where valid representations are received from the Police or Environmental Health in respect of a late TEN, the TEN will be rejected and proposed activities will be unauthorised. A refund of the fee will not be made.
- 19.11 The Licensing Authority will take the appropriate action where there is evidence that licensable activities have been provided without the authorisation of a TEN.
- 19.12 It should be noted that if a TEN has been processed and is no longer required the fee will not be refunded as the Licensing Authority has already carried out its obligations.

20 OTHER RELEVANT MATTERS

Adult entertainment

- 20.1 The Licensing Authority has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and premises offering regular entertainment of a sexual nature must be licensed as a sex establishment under those provisions.
- 20.2 The Licensing Authority acknowledges that exemptions under the above legislation do allow sexual entertainment to be provided at premises licensed under the Licensing Act 2003, as long as it is provided on no more than 11 occasions within 12 months and with at least 1 month between each occasion. Those infrequent events will be regulated by the licence granted under the Licensing Act 2003 where that licence authorises performances of dance and where the original application specified that such adult entertainment was proposed to be provided.

Gaming machines in licensed premises - Automatic entitlement

- 20.3 There is provision in the Gambling Act 2005 (GA2005) for premises licensed to sell alcohol for consumption on the premises to automatically have two gaming machines of category C and/or D. The premises licence holder merely needs to notify this Licensing Authority and pay the prescribed fee.
- 20.4 This authority can remove the automatic authorisation in respect of any premises if:
- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives (under the GA2005);
 - gaming has taken place on the premises that breaches a condition of section 282 of the GA2005 (for example, the gaming machines have been made available in a way that does not comply with requirements on the location and operation of gaming machines);

- the premises are mainly used for gaming; or
- an offence under the GA2005 has been committed on the premises.

Gaming Machine Permit

- 20.5 If a premises wishes to have more than two machines of categories C and/or D, then it needs to apply for a permit and this authority will consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission under section 25 of the Act, and such matters as officers consider relevant.
- 20.6 In determining such matters, consideration will be given to all the objectives but particularly the need to protect children from harm and to the need to protect vulnerable persons from harm or being exploited by gambling. The applicant will be required to satisfy the authority that there will be sufficient measures to ensure that minors do not have access to the adult only gaming machines.
- 20.7 Measures to satisfy the authority relate to restricting access to age restricted machines and adult machines being in sight of the bar, or in sight of staff who will monitor that the machines are not being used by minors. Notices and signage should also be displayed to this effect. Applicants may consider the provision of information leaflets and helpline numbers for organisations such as GamCare to demonstrate their responsibility in the protection of vulnerable persons and compliance with Codes of Practice issued by the Gambling Commission.

Gambling in alcohol 'On' licensed premises

- 20.8 Exempt gaming is equal chance gaming that is generally permissible in any club or alcohol licensed premises. Equal chance gaming includes games such as backgammon, mah-jong, rummy, kalooki, dominoes, cribbage, bingo and poker. Such gaming should be ancillary to the purposes of the premises.
- 20.9 This exemption is automatically available to all clubs or alcohol licensed premises but is subject to statutory stakes and prize limits determined by the Secretary of State. Licensees are encouraged to seek advice from the Gambling Commission at www.gamblingcommission.gov.uk or this Licensing Authority before providing any forms of gambling at alcohol licensed premises. Such arrangements should also be compliant with current smoke-free legislation.

Smoking outside premises

- 20.10 Licensees should consider appropriate arrangements for customers who wish to smoke outside the premises in an effort to ensure that any unlicensed pavement area are not also used as an allocated smoking area. This is to prevent nuisance and potential health harms to any non-smokers who may use the area.

21 INFORMATION

- 21.1 In order to ensure that applicants and persons who make representations have the necessary information to be able to do so, information is available on the Swale Borough Council website www.swale.gov.uk or by contacting the licensing team by email: licensing@swale.gov.uk or by telephone on 01795 417286

APPENDIX A

Swale is a local government district with borough status in Kent, England and is bounded by Medway to the west, Canterbury to the east, Ashford to the south and Maidstone to the south west.

Swale is the bridging point between north and east Kent, named after the narrow channel of tidal water between mainland Kent and the Isle of Sheppey. It is a Borough of some 140,800 people who primarily live in its three main towns, Sittingbourne, Faversham and Sheerness

Swale has strong communication links. It is close both to London and mainland Europe and well connected to the national motorway network. The M2 runs east-west across the Borough, providing access to destinations between the Channel Ports and London. Via the A249 there is alternative access along the M20. London is accessible in a little over an hour by high speed rail services. As a coastal Borough, the Port of Sheerness gives access, via its deep water berths, to the largest ships in the world; its imports distributed to all corners of the UK. Swale is also within easy reach of other major Kent centres - Canterbury, Ashford, Maidstone and the Medway Towns.

Sittingbourne (population 49,300) is the main town, acting as a population, employment and service centre for the Borough. These functions and the town's present day character have their roots in past travellers and pilgrims and the industries that settled there. It is a product of its location on the London-Dover road and at the head of an inlet of the Swale, Milton Creek.

A unique feature within Kent is the Isle of Sheppey, separated from the mainland by the Swale. Its main town is Sheerness (population 12,500). It owes much of its distinctiveness to its role as a traditional seaside town and the past and present industries that established there, particularly the former naval dockyard and the current Port facility. The town centre functions as the main shopping and service centre for the Island's residents and visitors.

Faversham (population 19,600) is an attractive and historic small market town at the centre of a rich farming hinterland. Faversham and Oare are located at the head of two creeks and surrounded by attractive countryside. The town is best known for its continued links with brewing and food. This and the town's industrial and maritime heritage produce its present day character - an outstanding range of historic buildings, streets and waterways and a town centre with a strong independent retail and service sector.

Outside the towns, from Hartlip in the west to Dunkirk in the east, Sheldwich in the south to Shellness in the north, are the Borough's extensive rural areas. There is a great diversity of settlements and landscapes, many of great charm and character. Larger villages along the main transport routes like Newington, Teynham and Boughton have a range of local facilities and services. Away from the main routes are smaller, more isolated settlements and hamlets like Conyer, Warden and Throwley Forstal.

Over the last 20 years most of the villages and towns in Swale have experienced growth, with growth in the towns the most rapid. Over the last 60 years population growth has been amongst the most rapid in Kent. Now, Swale has the third largest district population in Kent and built development has similarly physically grown - in the last 10 years more employment floorspace has been built than anywhere else in the county and Swale has the fourth highest level of dwelling completions over the 10 years to 2014.

Appendix B

Contact details of Local Authority Licensing Department as at March 2021

Licensing Department,
Swale Borough Council
East Street
Sittingbourne
Kent
ME10 3HT

Phone: 01795 417286

Email: licensing@swale.gov.uk

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Appendix C

A copy of the application and plan will need to be submitted to each of the following Authorities	
<p>Licensing Department, Swale Borough Council, Swale House, East Street, Sittingbourne, Kent, ME10 3HT licensing@swale.gov.uk</p>	<p>Planning Department, Swale Borough Council, Swale House, East Street, Sittingbourne, Kent, ME10 3HT areateam-fav@swale.gov.uk or areateam-sitt@swale.gov.uk</p>
<p>Environmental Pollution, Swale Borough Council, Swale House, East Street, Sittingbourne, Kent, ME10 3HT pollution@swale.gov.uk</p>	<p>Licensing Co-ordinator, North Division, Medway Police Station, Purser Way, Gillingham, Kent ME7 1NE licensing.north.division@kent.pnn.police.uk</p>
<p>Maidstone Group Fire Safety Office, Maidstone Fire Station, Loose Road, Maidstone, ME15 9QB BuildingSafety.Canterbury@kent.fire-uk.org</p>	<p>Child Protection Agency, Brenchley House, County Hall, Maidstone, Kent, ME14 1RF</p>
<p>Kent County Council, Trading Standards, 1st Floor, Invicta House, County Hall, Maidstone, ME14 1XX trading.standardseast@kent.gov.uk</p>	<p>Public Health, Kent County Council, Room 3.45, Sessions House, County Road, Maidstone Kent ME14 1XQ Gillian.Powell@kent.gov.uk</p>

Appendix D

References to guides of best practice

Revised guidance issued under section 182 of Licensing Act 2003

www.gov.uk/government/publications/explanatory-memorandum-revised-guidanceissued-under-s-182-of-licensing-act-2003

Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics

www.ioa.org.uk

Good Practice Guide: Licensing published jointly by the Justices' Clerks' Society and the Magistrates' Association (April 1999)

www.magistrates-association.org.uk

Code Of Practice And Guidance Notes On Noise Control For Concerts And Outdoor Events

www.cieh.org/policy/noise_council_environmental_noise.html

Swale Borough Council Event Planning

www.swale.gov.uk/guide-for-event-organisers/

The National Alcohol Harm Reduction Strategy Toolkit

www.alcoholconcern.org.uk

The Point of Sale Promotions published by BBPA

www.beerandpub.com

Public Places Charter

www.ash.org.uk

National Pubwatch

www.nationalpubwatch.org.uk

Appendix E

Contact details and useful addresses (e.g. Chamber of Trade, BBPA, BII, SIA etc.)

SIA PO Box 49768 London. WC1 V6WY Website: www.the-sia.org.uk Tel: 0844 892 1025 Fax: 0844 892 0975	Disclosure and Barring Service (DBS) Customer services PO Box 165 Liverpool L69 3JD Information line: 0870 90 90 811 Website: https://www.gov.uk/disclosurebarring-Service
British Beer & Pub Association Ground Floor Brewers' Hall Aldermanbury Square London EC2V 7HR Tel: 020 7627 9191 Fax: 020 7627 9123 contact@beerandpub.com Press Office: 020 7627 9199	British Institute of Inn keeping (BII) Wessex House 80 Park Street Camberley Surrey. GU15 3PT Tel: 01276 684 449 Fax: 01276 23045 www.bii.org Email: reception@bii.org

Appendix F - Recommended delegation of functions as per S182 of the guidance

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for personal licence		If a police objection	If no objection made
Application for a personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary designated premises supervisor		If a police objection	If no objection made
Request to be removed as a designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	If no objection made
Application for interim authorities		If a police objection	If no objection made
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious etc.			All cases
Decision to object when Local Authority is a consultee and not the relevant authority considering the application		All cases	
Determination of an objection to a temporary event notice		All cases	
Determination of application to vary premises licence at community premises to include alternative licence condition		If a police objection	All other cases
Decision whether to consult other responsible authorities on minor variation application			All cases
Determination of a minor variation			All cases

Council: 31 March 2021

Recommendations for Approval

Council is asked to note the following recommendations which are the subject of separate reports elsewhere on the Agenda:

General Licensing Committee – 21 January 2021

Minute No. 442

Recommended:

- (1) That the draft Street Trading Policy be approved.*
- (2) That the level of fees to be set for Street Trading Consents be Option B in the report.*
- (3) That the Policy be approved and published.*

Appointments Sub-Committee – 17 March 2021

Minute No. 552

Recommended:

- (1) That the proposed structure be endorsed and recommended to Full Council.*
- (2) That Councillors Ben J Martin, Mike Baldock and one other from the Conservative group sit on recruitment panel 1, and Councillors Angela Harrison, Roger Truelove and one other from the Conservative group sit on recruitment panel 2.*
- (3) That delegated authority be given to the Chair of the Appointment Sub-Committee to replace a member of the panel in case of absence.*

General Purposes Committee meeting – 17 March 2021

Minute Nos. 556 – 557

Recommended:

- (1) That the changes to the Members' allowances scheme as set out in paragraph 3.3 in the report be endorsed and recommended to Full Council for adoption.*

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By virtue of paragraph(s) 1 of Part 1 of Schedule 12A of the Local Government Act 1972.

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