

Public Document Pack



**Assistant Director, Governance and
Monitoring**

Julie Muscroft

Governance and Democratic Services

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Please ask for Jenny Bryce-Chan

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Wednesday 16 March 2016

Notice of Meeting

Dear Member

Licensing and Safety Committee

The **Licensing and Safety Committee** will meet in the **Meeting Room 3 - Town Hall, Huddersfield** at **10.30 am** on **Thursday 24 March 2016**.

The items which will be discussed are described in the agenda and there are reports attached which give more details.

A handwritten signature in black ink, appearing to read 'Julie Muscroft', on a light-colored background.

Julie Muscroft

Assistant Director of Legal, Governance and Monitoring

Kirklees Council advocates openness and transparency as part of its democratic processes. Anyone wishing to record (film or audio) the public parts of the meeting should inform the Chair/Clerk of their intentions prior to the meeting.

The Licensing and Safety Committee members are:-

Member

Councillor Ken Smith (Chair)
Councillor Mahmood Akhtar
Councillor Karen Allison
Councillor Bill Armer
Councillor Christine Iredale
Councillor Marielle O'Neill
Councillor Andrew Palfreeman
Councillor Carole Pattison
Councillor Amanda Pinnock
Councillor Hilary Richards
Councillor David Ridgway
Councillor Ken Sims
Councillor Mohan Sokhal
Councillor Michael Watson
Councillor Amanda Stubley

When a Licensing and Safety Committee member cannot be at the meeting another member can attend in their place from the list below:-

Substitutes Panel

Conservative

D Bellamy
N Patrick
J Taylor
G Wilson

Green

A Cooper
R Barraclough

Independent

T Lyons
C Greaves
C Greaves

Labour

E Firth
S Hall
K Rowling
G Turner
S Ullah

Liberal Democrat

C Burke
J Lawson
A Marchington
A Pinnock
P Scott

Agenda

Reports or Explanatory Notes Attached

Pages

1: Membership of the Committee

This is where Councillors who are attending as substitutes will say for whom they are attending.

2: Minutes of Previous Meeting

1 - 2

To approve the minutes of the meeting of the Committee held on 18 January 2016.

3: Interests

3 - 4

The Councillors will be asked to say if there are any items on the Agenda in which they have disclosable pecuniary interests, which would prevent them from participating in any discussion of the items or participating in any vote upon the items, or any other interests.

4: Admission of the Public

Most debates take place in public. This only changes when there is a need to consider certain issues, for instance, commercially sensitive information or details concerning an individual. You will be told at this point whether there are any items on the Agenda which are to be discussed in private.

5: Deputations/Petitions

The Committee will receive any petitions and hear any deputations from members of the public. A deputation is where up to five people can attend the meeting and make a presentation on some particular issue of concern. A member of the public can also hand in a petition at the meeting but that petition should relate to something on which the body has powers and responsibilities.

6: Public Question Time

The Committee will hear any questions from the general public.

7: Regulation of Cosmetic Piercing and Skin Colouring Business

5 - 50

A report seeking approval to adopt the “Model Byelaws” produced by the Department of Health in relation to the regulation of acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis.

8: Assessment Criteria and Convictions Policy for Licensed Drivers

51 - 70

A report to consider the revision of the Policy on the relevance of criminal conduct, unsavoury conduct and complaints against Licence Holders and Applicants for licences.

9: Application to register land off Marsh Lane, Shepley as a Town or Village Green 71 - 106

A report to determine the application to register land off Marsh Lane Shepley as a Town or Village Green.

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Contact Officer: Jenny Bryce-Chan

KIRKLEES COUNCIL

LICENSING AND SAFETY COMMITTEE

Monday 18th January 2016

Present: Councillor Ken Smith (Chair)
Councillor Mahmood Akhtar
Councillor Bill Armer
Councillor Christine Iredale
Councillor Carole Pattison
Councillor Amanda Pinnock
Councillor Hilary Richards
Councillor David Ridgway
Councillor Michael Watson
Councillor Amanda Stubbley

Apologies: Councillor Marielle O'Neill
Councillor Mohan Sokhal

In attendance: Jenny Bryce-Chan, Principal Governance and Democratic
Engagement Officer
Yolande Myers, Governance and Democratic
Engagement Officer
John Chapman, Legal Officer
Cath Walter, Licensing Local Land Charge and Highways
Registry Manager
Paul Kemp, Assistant Director

1 Membership of the Committee

No substitutions were made.

2 Minutes of Previous Meeting

The Minutes of the meeting of the Committee held on 4 November 2015 were approved as a correct record.

3 Interests

No interests were declared.

4 Admission of the Public

The Committee considered the question of the exclusion of the public and determined that all items be taken in public session.

5 Deputations/Petitions

No deputations or petitions were received.

6 Public Question Time

No questions were asked.

7 Constitution - Revised Scheme of Delegation

The Committee considered a report to note proposals to additions and amendments of the Scheme of Delegation in relation to the Town and Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.

The Committee noted the decisions made at the Corporate and Governance Audit Committee held on the 15 January 2016.

RESOLVED - That the Licensing and Safety Committee approve the changes to the Delegation Scheme as outlined and to delegate the authority to the Assistant Director, Legal Governance and Monitoring to make the appropriate amendments and any consequential changes to the Constitution.

8 Constitution - Taxi and Private Hire Vehicles: Delegation of Enforcement Powers

The Committee considered a report and noted the additions and amendments to the Scheme of Delegation in relation to Enforcement Powers under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.

The Licensing and Safety Committee noted the decisions of the Corporate Governance and Audit Committee held on 15 January 2016.

RESOLVED -

That the Committee agree that the Taxi and Private Hire Enforcement Powers as set out at paragraph 3.8 of the report be delegated by Kirklees Council to the other West Yorkshire Authorities and City of York Council, as well as being retained by Kirklees Council as Licensing Authority as detailed in paragraph 3.1.

That the Committee agree to Kirklees Council receiving similar delegated Enforcement Power from other West Yorkshire and City of York Authorities.

That authority be delegated to the Assistant Director (Legal, Governance and Monitoring) to make the appropriate amendments, and any consequential changes to the Constitution.

That the Assistant Director, Legal, Governance and Monitoring be asked to investigate the possibility of also delegating Enforcement Authority in respect of Authorities not listed within paragraph 3.1, in instances where drivers apply for trade in Kirklees and to make the appropriate Constitutional amendments to this delegation.

| KIRKLEES COUNCIL | | | | |
|---|---|---|------------------------------------|--|
| COUNCIL/CABINET/COMMITTEE MEETINGS ETC | | | | |
| DECLARATION OF INTERESTS | | | | |
| Licensing and Safety Committee | | | | |
| Name of Councillor | | | | |
| Item in which you have an interest | Type of interest (eg a disclosable pecuniary interest or an "Other Interest") | Does the nature of the interest require you to withdraw from the meeting while the item in which you have an interest is under consideration? [Y/N] | Brief description of your interest | |
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| | | | | |
| | | | | |

Signed: Dated:

NOTES

Disclosable Pecuniary Interests

If you have any of the following pecuniary interests, they are your disclosable pecuniary interests under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.

Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses.

Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority -

- under which goods or services are to be provided or works are to be executed; and
- which has not been fully discharged.

Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.

Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.

Any tenancy where (to your knowledge) - the landlord is your council or authority; and the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where -

- (a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and
- (b) either -

the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.



Name of meeting: Licensing and Safety Committee

Date: 24th March 2016

Title of report: Regulation of Cosmetic Piercing and Skin Colouring Businesses

| | |
|--|---|
| Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards? | No |
| Is it in the Council's Forward Plan? | N/A |
| Is it eligible for "call in" by Scrutiny? | N/A |
| Date signed off by Director & name | Jacqui Gedman – 14/03/16 |
| Is it signed off by the Director of Resources? | David Smith – 10/03/16 |
| Is it signed off by the Assistant Director – Legal, Governance & Monitoring? | Julie Muscroft – 15/03/16 (John Chapman on behalf of) |
| Cabinet member portfolio | Cllr Steve Hall, Portfolio Holder for Planning, Highways and Open Spaces |

Electoral wards affected: All wards
Ward councillors consulted: Consultation with ward councillors is not applicable to this report.

Public or private: Public

1. PURPOSE OF REPORT

1.1 To seek Members' approval to adopt the "Model Byelaws" produced by the Department of Health in relation to the regulation of acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis.

2. KEY POINTS

2.1 Byelaws are in place to regulate acupuncture, tattooing, ear piercing and electrolysis. These were made under the provisions of sections 14, 15, 16 and 17 of Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 and came into force 25 July 1984.

- 2.2 In recent years there has been a growth in businesses offering body piercings and semi-permanent skin colourings, which are currently registrable under the legislation detailed in 2.1.
- 2.3 On 1 April 2004, section 120 and Schedule 6 of the Local Government Act 2003 came into force amending section 15 of the Local Government (Miscellaneous Provisions) Act 1982 to allow the regulation of cosmetic piercing and semi-permanent skin colouring businesses.
- 2.4 These new provisions give local authorities in England (outside London) and in Wales, specific powers relating to persons carrying on businesses of cosmetic piercing (piercing of the body including the ear) and semi-permanent skin colouring (including micropigmentation, semi-permanent make-up and temporary tattooing).
- 2.5 Section 120 introduces new terminology for simplicity and clarity as follows:
- Ear piercing and cosmetic body piercing are encompassed in single term “cosmetic piercing”
 - Micropigmentation, semi-permanent make-up and temporary tattooing are covered by the umbrella term “semi-permanent skin-colouring”. Semi-permanent skin colouring is defined as “the insertion of semi-permanent colouring into a persons’ skin” – this approach allows for other similar activities to be covered in future.
- 2.6 Local authorities who have already resolved to adopt the 1982 Act in relation to tattooing, ear-piercing and electrolysis are able to introduce byelaws to require businesses that carry out such procedures to:
- Register themselves and their premises; and
 - Observe byelaws relating to the cleanliness and hygiene of premises, practitioners and equipment
- 2.7 The Department of Health have published ‘Model Byelaws’ which will cover all procedures covered both in the Local Government (Miscellaneous Provisions) Act 1982 – Sections 14, 15, 16 and 17 of Part VIII and the Local Government Act 2003 – Section 120.
- 2.8 Environmental Health Services will receive applications for registrations. This prompts the registration process which includes the inspection of potential premises by environmental health specialists. If the applicant meets the requirements of the byelaws they will be issued with a registration, allowing them to practice the listed treatment at the premises. The environmental health specialists will advise applicants on their responsibilities under the Act, the byelaws and the relevant codes of practice which are issued with the registration.

3. IMPLICATIONS FOR THE COUNCIL

3.1 The cost of providing this service is met from fees charged.

4. CONSULTEES AND THEIR OPINIONS

4.1 The byelaws which are being put before members for approval are 'Model Byelaws' written by the Department of Health and have not been modified or altered in anyway, therefore consultation is not deemed necessary. The Council's Legal Services have been consulted about the procedure for adopting the new byelaws.

5. NEXT STEPS

5.1 The adoption of byelaws is carried out using a specific procedure which is prescribed by Section 236 of the Local Government Act 1972.

5.2 Once the adoption of the byelaws has been agreed by Committee, the Council are asked to pass a resolution:

- Authorising the affixing of the common seal to the byelaws and
- Authorising the clerk to carry out the necessary procedure and apply to the Secretary of State for confirmation.
- Repealing any existing byelaws relating to acupuncture, ear piercing, electrolysis and tattooing.

5.3 At least one calendar month before applying to the Secretary of State for confirmation –

- Notice of the Council's intention to apply for confirmation must be given in one or more local newspapers circulating in the area to which the byelaws will apply and a copy of the byelaws will be placed on deposit at the Licensing Office and be open to public inspection without charge during normal opening hours.

5.4 Once the month has elapsed the byelaws will be sent to the Secretary of State for confirmation and should come into operation at least one month afterwards.

6. OFFICER RECOMMENDATIONS AND REASONS

6.1 That the Licensing and Safety Committee consider and recommend to Council for formal adoption the Model Byelaws appended to this report.

7. CABINET PORTFOLIO HOLDER RECOMMENDATION

7.1. The Portfolio Holder, Councillor Steve Hall, supports the Officer's recommendation to formally adopt the Model Byelaws

8. CONTACT OFFICER AND RELEVANT PAPERS

Chi-Nghi Manford, Environmental Health Officer

Tel: 01484 221000

Email: chi-nghi.manford@kirklees.gov.uk

Papers: Department of Health Guidance on section 120 and Schedule 6
Local Government Act containing Model Byelaws.

Copy of the Model Byelaws to be approved.

Copy of Byelaws to be revoked

9. ASSISTANT DIRECTOR RESPONSIBLE

Joanne Bartholomew, Assistant Director – Place

Tel: 01484 221000

Email: joanne.bartholomew@kirklees.gov.uk

BYELAWS

Acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis

Byelaws for the purposes of securing the cleanliness of premises registered under sections 14(2) or 15(2) or both of the Local Government (Miscellaneous Provisions) Act 1982 and fittings in such premises and of persons registered under sections 14(1) and 15(1) or both of the Act and persons assisting them and of securing the cleansing and, so far as appropriate, sterilization of instruments, materials and equipment used in connection with the practice of acupuncture or the business of tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis, or any two or more of such practice and businesses made by Kirklees Council in pursuance of sections 14(7) or 15(7) or both of the Act.

Interpretation

1.-(1) In these byelaws, unless the context otherwise requires-

“The Act” means the Local Government (Miscellaneous Provisions) Act 1982;

“client” means any person undergoing treatment;

“hygienic piercing instrument” means an instrument such that any part of the instrument that touches a client is made for use in respect of a single client, is sterile, disposable and is fitted with piercing jewellery supplied in packaging that indicates the part of the body for which it is intended, and that is designed to pierce either-

- (a) the lobe or upper flat cartilage of the ear, or
- (b) either side of the nose in the mid-crease area above the nostril; and
- (c) piercing to other parts of the body.

“operator” means any person giving treatment, including a proprietor;

“premises” means any premises registered under sections 14(2) or 15(2) of the Act;

“proprietor” means any person registered under sections 14(1) or 15(1) of the Act;

“treatment” means any operation in effecting acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing or electrolysis;

“the treatment area” means any part of premises where treatment is given to clients.

(2) The Interpretation Act 1978 shall apply for the interpretation of these byelaws as it applies for the interpretation of an Act of Parliament.

2.-(1) For the purpose of securing the cleanliness of premises and fittings in such premises a proprietor shall ensure that-

- (a) any internal wall, door, window, partition, floor, floor covering or ceiling is kept clean and in such good repair as to enable it to be cleaned effectively;
 - (b) any waste material, or other litter arising from treatment is handled and disposed of in accordance with relevant legislation and guidance as advised by the local authority;
 - (c) any needle used in treatment is single-use and disposable, as far as is practicable, or otherwise sterilized for each treatment, is suitably stored after treatment and is disposed of in accordance with relevant legislation and guidance as advised by the local authority;
 - (d) any furniture or fitting in premises is kept clean and in such good repair as to enable it to be cleaned effectively;
 - (e) any table, couch or seat used by a client in the treatment area which may become contaminated with blood or other body fluids, and any surface on which a needle, instrument or equipment is placed immediately prior to treatment has a smooth impervious surface which is disinfected-
 - (i) immediately after use; and
 - (ii) at the end of each working day.
 - (f) any table, couch, or other item of furniture used in treatment is covered by a disposable paper sheet which is changed for each client;
 - (g) no eating, drinking, or smoking is permitted in the treatment area and a notice or notices reading "No Smoking", and "No Eating or Drinking" is prominently displayed there.
- (2)(a) Subject to sub-paragraph (b), where premises are registered under section 14(2) (acupuncture) or 15(2) (tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis) of the 1982 Act, a proprietor shall ensure that treatment is given in a treatment area used solely for giving treatment;
- (d) Sub-paragraph (a) shall not apply if the only treatment to be given in such premises is ear piercing or nose piercing using a hygienic piercing instrument.
- (3)(a) Subject to sub-paragraph (b), where premises are registered under section 15(2) (tattooing, semi-permanent skin-colouring and cosmetic piercing) of the 1982 Act, a proprietor shall ensure that the floor of the treatment area is provided with a smooth impervious surface;
- (b) Sub-paragraph (a) shall not apply if the only treatment to be given is ear-piercing or nose-piercing using a hygienic piercing instrument.
- 3.-(1)** For the purpose of securing the cleansing and so far as is appropriate, the sterilization of needles, instruments, jewellery, materials and equipment used in connection with treatment-
- (a) an operator shall ensure that-
 - (i) any gown, wrap or other protective clothing, paper or other covering, towel, cloth or other such article used in treatment-
 - (aa) is clean and in good repair and, so far as is appropriate, is sterile;

(bb) has not previously been used in connection with another client unless it consists of a material which can be and has been adequately cleansed and, so far as is appropriate, sterilized.

- (ii) any needle, metal instrument, or other instrument or equipment used in treatment or for handling such needle, instrument or equipment and any part of a hygienic piercing instrument that touches a client is sterile;
- (iii) any jewellery used for cosmetic piercing by means of a hygienic piercing instrument is sterile;
- (iv) any dye used for tattooing or semi-permanent skin-colouring is sterile and inert;
- (v) any container used to hold dye for tattooing or semi-permanent skin-colouring is either disposed of at the end of each treatment or is cleaned and sterilized before reuse.

(b) a proprietor shall provide-

- (i) adequate facilities and equipment for-
 - (aa) cleansing; and
 - (bb) sterilization, unless only pre-sterilized items are used.
- (ii) sufficient and safe gas points and electrical socket outlets;
- (iii) an adequate and constant supply of clean hot and cold water on the premises;
- (iv) clean and suitable storage which enables contamination of the articles, needles, instruments and equipment mentioned in paragraphs 3(1)(a)(i), (ii), (iii), (iv) and (v) to be avoided as far as possible.

4.-(1) For the purpose of securing the cleanliness of operators, a proprietor-

(a) shall ensure that an operator-

- (i) keeps his hands and nails clean and his nails short;
 - (ii) keeps any open lesion on an exposed part of the body effectively covered by an impermeable dressing;
 - (iii) wears disposable examination gloves that have not previously been used with another client, unless giving acupuncture otherwise than in the circumstances described in paragraph 4(3);
 - (iv) wears a gown, wrap or protective clothing that is clean and washable, or alternatively a disposable covering that has not previously been used in connection with another client;
 - (v) does not smoke or consume food or drink in the treatment area;
- and

(b) shall provide-

- (i) suitable and sufficient washing facilities appropriately located for the sole use of operators, including an adequate and constant supply of clean hot and cold water, soap or detergent; and
- (ii) suitable and sufficient sanitary accommodation for operators.

- (2) Where an operator carries out treatment using only a hygienic piercing instrument and a proprietor provides either a hand hygienic gel or liquid cleaner, the washing facilities that the proprietor provides need not be for the sole use of the operator.
- (3) Where an operator gives acupuncture a proprietor shall ensure that the operator wears disposable examination gloves that have not previously been used with another client if-
- (a) the client is bleeding or has an open lesion on an exposed part of his body; or
 - (b) the client is known to be infected with a blood-borne virus; or
 - (c) the operator has an open lesion on his hand; or
 - (d) the operator is handling items that may be contaminated with blood or other body fluids.

5. A person registered in accordance with sections 14 (acupuncture) or 15 (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) of the Act who visits people at their request to give them treatment should observe the requirements relating to an operator in paragraphs 3(1)(a) and 4(1)(a).

6. The byelaws relating to acupuncture that was made by Kirklees Council on the 1 September 1983 and were confirmed by the Secretary of State for Health on 1 March 1984 are revoked.

7. The byelaws relating to Ear Piercing, Electrolysis and Tattooing that were made by Kirklees Council on the 3 February 1984 and were confirmed by the Secretary of State for Health on 25 July 1984 are revoked.

THE CORPORATE COMMON SEAL of
KIRKLEES COUNCIL

Was affixed (but not delivered
Until the date hereof) in the presence of:-

The foregoing byelaws are hereby confirmed by the Secretary of State for Health on _____ and shall come into operation on _____

Member of the Senior Civil Service

Department of Health

NOTE – THE FOLLOWING DOES NOT FORM PART OF THE BYELAWS

Proprietors shall take all reasonable steps to ensure compliance with these byelaws by persons working on premises. Section 16(9) of the Local Government (Miscellaneous Provisions) Act 1982 provides that a registered person shall cause to be prominently displayed on the premises a copy of these byelaws and a copy of any certificate of registration issued to him under Part VIII of the Act. A person who contravenes section 16(9) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale (see section 16(10)).

Section 16 of the Local Government (Miscellaneous Provisions) Act 1982 also provides that any person who contravenes these byelaws shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. If a person registered under Part VIII of the Act is found guilty of contravening these byelaws the Court may, instead of or in addition to imposing a fine, order the suspension or cancellation of the person's registration. A court which orders the suspension of or cancellation of a person's registration may also order the suspension or cancellation of the registration of the premises in which the offence was committed if such premises are occupied by the person found guilty of the offence. It shall be a defence for the person charged under the relevant sub-sections of section 16 to prove that he took all reasonable precautions and exercised all due diligence to avoid commission for the offence.

Nothing in these byelaws extends to the practice of acupuncture, or the business of tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis by or under the supervision of a person who is registered as a medical practitioner, or to premises in which the practice of acupuncture or business of tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis is carried out by or under the supervision of such a person.

Nothing in these byelaws extends to the practice of acupuncture by or under the supervision of a person who is a registered dentist, or to premises in which the practice of acupuncture is carried out by or under the supervision of such a person.

The legislative provisions relevant to acupuncture are those in section 14. The provisions relevant to treatment other than acupuncture are in section 15.

The key differences in the application of requirements in respect of the various treatments are as follows:

The references in the introductory text to provisions of section 14 (acupuncture) of the Local Government (Miscellaneous Provisions) Act 1982 only apply to acupuncture.

The references in the introductory text to provisions of section 15 (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) of the

Local Government (Miscellaneous Provisions) Act 1982 **do not apply to acupuncture.**

The references in paragraph 1(1) in the definition of “premises” to provisions of section 14 (acupuncture) **only apply to acupuncture.**

The references in paragraph 1(1) in the definition of “premises” to provisions of section 15 (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) **do not apply to acupuncture.**

The requirement of paragraph 2(2) that treatment is given in a treatment area used solely for giving treatment **applies to acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis but not to ear-piercing or nose-piercing using a hygienic piercing instrument.**

The requirement in paragraph 2(3) that the floor of the treatment area provided with a smooth impervious surface **applies to tattooing, semi-permanent skin-colouring and cosmetic piercing but not to acupuncture or electrolysis or ear-piercing or nose-piercing using a hygienic piercing instrument.**

The requirements relating to dye or a container used to hold dye used for treatment in paragraphs 3(1) (a) (iv) and (v) **apply to tattooing and semi-permanent skin-colouring.**

The requirement in paragraph 4(1)(a)(iii) that an operator wears disposable examination gloves that have not previously been used with another client **does not apply to acupuncture otherwise than in the circumstances described in paragraph 4(3).**

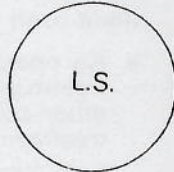
The provisions of paragraph 4(2) in relation to washing facilities **apply to cosmetic piercing using only a hygienic piercing instrument.**

The exception whereby the byelaws do not apply to treatment carried out by or under the supervision of a dentist **applies only to acupuncture (see section 14(8) of the Act).**

- b. A proprietor shall provide:
- i. suitable and sufficient washing facilities for the sole use of operators, such facilities to have hot and cold water, sanitising soap or detergent, and a nail brush;
 - ii. suitable and sufficient sanitary accommodation for operators

THE COUNCIL OF THE BOROUGH OF KIRKLEES

IN TESTIMONY whereof the Corporate Common Seal of the Council of the Borough of Kirklees was hereunto affixed this First day of September One thousand nine hundred and eighty three in the presence of:

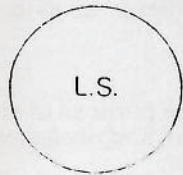


A. Ramsden
Mayor

Michael R.G. Vause
Chief Legal and Administrative Officer

BYELAWS

made under Section 14 of the Local Government
(Miscellaneous Provisions) Act 1982 with
respect to Acupuncture



The Secretary of State this day confirmed the foregoing Byelaws and fixed the date on which they are to come into operation as the 1st day of March 1984.

I. Jewesbury
Assistant Secretary,
Department of Health and Social Security.

18th January 1984,
Hannibal House,
Elephant and Castle,
London.

NOTE - THE FOLLOWING DOES NOT FORM PART OF THE BYELAWS

A. Proprietors shall take all reasonable steps to ensure compliance with these byelaws by persons working on the premises. Section 16(9) of the Act lays down that a registered person shall cause to be prominently displayed on the premises a copy of these byelaws and a copy of any certificate of registration issued to him under Part VIII of the Act.

B. Section 16(1) and (2) of the Local Government (Miscellaneous Provisions) Act 1982 provides that any person who offends against any of these byelaws shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1000. If the convicted person is registered under Part VIII of the Act, the Court may, instead of or in addition to imposing a fine, order the suspension or cancellation of his registration, and of the registration of the premises in which the offence was committed if such premises are occupied by the person so convicted. Section 16(11) of the Act provides that it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

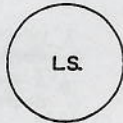
C. Nothing in these byelaws shall extend to the practice of acupuncture by or under the supervision of a person who is registered as a medical practitioner or a dentist or to premises on which the practice of acupuncture is carried on by or under the supervision

M.R.G. VAUSE,
Chief Legal and Administrative Officer,
Kirklees House,
Market Street,
Huddersfield,
HD1 2TG

ACUPUNCTURE

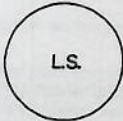
1. Interpretation:
 - a. In these byelaws, unless the context otherwise requires –
 - “The Act” means the Local Government (Miscellaneous Provisions) Act 1982;
 - “Client” means any person undergoing treatment;
 - “Operator” means any person giving treatment;
 - “Premises” means any premises registered under Part VIII of the Act;
 - “Proprietor” means any person registered under Part VIII of the Act;
 - “Treatment” means any operation in the practice of acupuncture;
 - “The treatment area” means any part of premises where treatment is given to clients.
 - b. The Interpretation Act 1978 shall apply for the interpretation of these byelaws as it applies for the interpretation of an Act of Parliament.
2. For the purpose of securing the cleanliness of premises and fittings therein a proprietor shall ensure that –
 - a. All internal walls, doors, windows, partitions, floors and floor coverings, and ceilings are kept clean and in such good repair as to enable them to be cleaned effectively;
 - b. The treatment area is used solely for giving treatment;
 - c. All waste material, and other litter, arising from the treatment, is placed in suitable covered receptacles, which are washable and leakproof, or use a leakproof liner bag. The receptacles shall be emptied, or the bags changed, at least once every working day, or more frequently as necessary, and the material disposed of safely. Where liners are not used, the receptacles shall then be cleaned;
 - d. All needles used in treatment are placed after use in separate covered and leakproof re-usable boxes, or disposable needle boxes designed for the purpose. Where re-usable boxes are used they shall be emptied at least once every working day or more frequently as necessary, and the contents disposed of safely or sterilised for re-use as appropriate. The box shall then be sterilised. Where needle boxes are used they shall be disposed of safely at suitable intervals;
 - e. All furniture and fittings in the premises are kept clean and in such good repair as to enable them to be cleaned effectively;
 - f. All tables, couches and seats used by clients in the treatment area, and any surface on which the items specified in 3b below are placed immediately prior to treatment, have a smooth impervious surface which is wiped down at least daily with a suitable disinfectant;
 - g. Where tables or couches are used, they shall be covered by a disposable paper sheet which shall be changed for each client;
 - h. A notice or notices reading “No Smoking” are prominently displayed within the treatment area.
3. For the purpose of securing the cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment used in connection with the treatment –
 - a. An operator shall ensure that, before use in connection with treatment, any gown, wrap or other protective clothing, paper or other covering, towel, cloth or other such articles used in the treatment –
 - i. is clean and in good repair, and, so far as is appropriate, is sterile;
 - ii. has not previously been used in connection with any other client unless it consists of a material which can be and has been adequately cleaned and, so far as is appropriate, sterilised;
 - b. An operator shall ensure that any needle, metal instrument, or other item of equipment, used in treatment or for handling instruments and needles used in treatment, is in a sterile condition and kept sterile until it is used;
 - c. A proprietor shall provide –
 - i. adequate facilities and equipment for the purpose of sterilisation (unless pre-sterilised items are used) and of cleansing, as required in pursuance of these byelaws;
 - ii. sufficient and safe gas points and/or electrical socket outlets to enable compliance with these byelaws;
 - iii. an adequate constant supply of clean hot and cold water readily available at all times on the premises;
 - iv. adequate storage for all items mentioned in byelaw 3a and b above, so that those items shall be properly stored in a clean and suitable place so as to avoid, as far as possible, the risk of contamination.
4. For the purpose of securing the cleanliness of operators –
 - a. An operator whilst giving treatment shall ensure that –
 - i. his hand and nails are clean and nails kept short;
 - ii. he is wearing clean and washable clothing, or alternatively a disposal covering that has not previously been used in connection with any other client;
 - iii. he keeps any open boil, sore, cut or open wound on an exposed part of his body effectively covered by an impermeable dressing;
 - iv. he does not smoke or consume food or drink;

IN TESTIMONY whereof the Corporate Common Seal of the Council of the Borough of Kirklees was hereunto affixed this Third day of February One thousand nine hundred and eighty four in the presence of:



A. Ramsden
Mayor

Michael R.G. Vause
Chief Legal and Administrative Officer



The Secretary of State this day confirmed the foregoing Byelaws and fixed the date on which they are to come into operation as the day of 25 July 1984

A.B. Barton,
Hannibal House,
Elephant and Castle,
London.
18th June, 1984.

NOTE - THE FOLLOWING DOES NOT FORM PART OF THE BYELAWS

A. A proprietor shall take all reasonable steps to ensure compliance with these byelaws by persons working on the premises. Section 16(9) of the Act lays down that a registered person shall cause to be prominently displayed on the premises a copy of these byelaws and a copy of any certificate of registration issued to him under Part VIII of the Act.

B. Section 16(1) and (2) of the Local Government (Miscellaneous Provisions) Act 1982 provides that any person who offends against any of these byelaws shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400. If the convicted person is registered under Part VIII of the Act, the Court may, instead of or in addition to imposing a fine, order the suspension or cancellation of his registration, and of the registration of the premises in which the offence was committed if such premises are occupied by the person so convicted. Section 16(11) of the Act provides that it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

C. Nothing in these byelaws shall extend to the carrying on of the business of ear piercing or of electrolysis as the case may be by or under the supervision of a person who is registered as a medical practitioner or to premises on which any such business is carried on by or under the supervision of such a person.

THE COUNCIL OF THE BOROUGH OF KIRKLEES

BYELAWS

made under Section 15 of the Local Government
(Miscellaneous Provisions) Act 1982 with
respect to Ear Piercing and Electrolysis

M.R.G. VAUSE
Chief Legal and Administrative Officer,
Kirklees House,
Market Street,
Huddersfield,
HD1 2TG

EAR PIERCING AND ELECTROLYSIS

1. Interpretation:

a. In these byelaws, unless the context otherwise requires -

"The Act" means the Local Government (Miscellaneous Provisions) Act 1982;

"Client" means any person undergoing treatment;

"Operator" means any person giving treatment;

"Premises" means any premises registered under Part VIII of the Act;

"Proprietor" means any person registered under Part VIII of the Act;

"Treatment" means any operation in effecting ear-piercing or electrolysis;

"The Treatment area" means any part of premises where treatment is given to clients.

b. The Interpretation Act 1978 shall apply for the interpretation of these byelaws as it applies for the interpretation of an Act of Parliament.

2. For the purpose of securing the cleanliness of premises and fittings therein a proprietor shall ensure that -

a. All internal walls, doors, windows, partitions, floors and floor coverings, and ceilings in any part of the premises used by clients and operators are kept clean and in such good repair as to enable them to be cleaned effectively;

b. All waste material, and other litter, arising from the treatment, is placed in suitable covered receptacles, which are washable and leakproof, or use a leakproof liner bag. The receptacles shall be emptied, or the bags changed, at least once every working day, or more frequently as necessary, and the material disposed of safely. Where liners are not used, the receptacles shall then be cleaned;

c. All needles used in treatment are placed after use in separate covered and leakproof re-usable boxes, or disposable needle boxes designed for the purpose. When re-usable boxes are used they shall be emptied at least once every working day or more frequently as necessary, and the contents disposed of safely or sterilised for re-use, as appropriate. The box shall then be sterilised. Where needle boxes are used they shall be disposed of safely at suitable intervals;

d. All furniture and fittings in the treatment area are kept clean and in such good repair as to enable them to be cleaned effectively;

e. All tables, couches and seats used by clients in the treatment area, and any surface on which the items specified in 3b below are placed immediately prior to treatment, have a smooth impervious surface which is wiped down regularly with a suitable disinfectant;

f. Where tables or couches are used, they shall be covered by a disposable paper sheet which shall be changed for each client;

g. A notice or notices reading "No Smoking" are prominently displayed within the treatment area.

3. For the purpose of securing the cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment used in connection with the treatment -

a. An operator shall ensure that, before use in connection with treatment, any gown, wrap or other protective clothing, paper or other covering, towel, cloth or other such articles used in the treatment -

i. is clean and in good repair, and, so far as is appropriate, is sterile;

ii. has not previously been used in connection with any other client unless it consists of a material which can be and has been adequately cleaned and, so far as is appropriate, sterilised;

b. An operator shall ensure that any needle, metal instrument, or other item of equipment used in treatment or for handling instruments and needles used in treatment, is in a sterile condition and kept sterile until it is used;

c. A proprietor shall provide -

i. adequate facilities and equipment for the purpose of sterilisation (unless pre-sterilised items are used) and of cleansing, as required in pursuance of these byelaws;

ii. sufficient and safe gas points and/or electrical socket outlets to enable compliance with these byelaws;

iii. an adequate constant supply of clean hot and cold water readily available at all times on the premises;

iv. adequate storage for all items mentioned in byelaw 3 a and b above, so that those items shall be properly stored in a clean and suitable place so as to avoid, as far as possible, the risk of contamination.

4. For the purpose of securing the cleanliness of operators -

a. An operator whilst giving treatment shall ensure that -

i. his hands are clean;

ii. he is wearing clean clothing;

iii. he keeps any open boil, sore, cut or open wound on an exposed part of his body effectively covered by an impermeable dressing;

iv. he does not smoke or consume food or drink;

b. A proprietor shall provide -

i. suitable and sufficient washing facilities for the use of operators, such facilities to have hot and cold water, sanitising soap or detergent, and a nail brush;

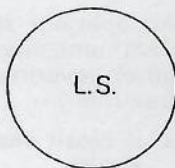
ii. suitable and sufficient sanitary accommodation for operators.

- operator whilst giving treatment shall ensure that -
- i. his hands and nails are clean, and nails kept short;
 - ii. he is wearing clean and washable clothing, or alternatively a disposable covering that has not previously been used in connection with any other client;
 - iii. he keeps any open boil, sore, cut or open wound on an exposed part of his body effectively covered by an impermeable dressing;
 - iv. he does not smoke or consume food or drink;
- b. A proprietor shall provide -
- i. suitable and sufficient washing facilities for the sole use of operators such facilities to have hot and cold water, sanitising soap or detergent, and a nail brush;
 - ii. suitable and sufficient sanitary accommodation for operators.

IN TESTIMONY whereof the Corporate Common Seal of the Council of the Borough of Kirklees was hereunto affixed this Third day of February One thousand nine hundred and eighty four in the presence of:

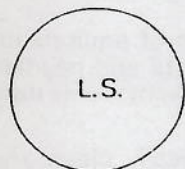
B. Murphy
Deputy Mayor

Michael R.G. Vause
Chief Legal and Administrative Officer



BYELAWS

made under Section 15 of the Local Government
(Miscellaneous Provisions) Act 1982 with
respect to Tattooing



The Secretary of State this day confirmed the foregoing Byelaws and fixed the date on which they are to come into operation as the 25th day of July 1984

A.B. Barton,
Hannibal House,
Elephant and Castle,
London,
18th June, 1984.

NOTE - THE FOLLOWING DOES NOT FORM PART OF THE BYELAWS

A. A proprietor shall take all reasonable steps to ensure compliance with these byelaws by persons working on the premises. Section 16(9) of the Act lays down that a registered person shall cause to be prominently displayed on the premises a copy of these byelaws and a copy of any certificate of registration issued to him under Part VIII of the Act

B. Section 16(1) and (2) of the Local Government (Miscellaneous Provisions) Act 1982 provides that any person who offends against any of these byelaws shall be guilty of an offence and liable on summary conviction to a fine not exceeding £ 1000. If the convicted person is registered under Part VIII of the Act, the Court may, instead of or in addition to imposing a fine, order the suspension or cancellation of his registration, and of the registration of the premises in which the offence was committed if such premises are occupied by the person so convicted. Section 16(11) of the Act provides that it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence

Nothing in these byelaws shall extend to the carrying on of the business of tattooing by or under the supervision of a person who is registered as a medical practitioner or to premises on which any such business is carried on by or under the supervision of such a person

M.R.G. VAUSE,
Chief Legal and Administrative Officer,
Kirklees House,
Market Street,
Huddersfield.
HD1 2TG

TATTOOING

1. Interpretation:

a. In these byelaws, unless the context otherwise requires –

“The Act” means the Local Government (Miscellaneous Provisions) Act 1982;

“Client” means any person undergoing treatment;

“Operator” means any person giving treatment;

“Premises” means any premises registered under Part VIII of the Act;

“Proprietor” means any person registered under Part VIII of the Act;

“Treatment” means any operation in effecting tattooing;

“The Treatment area” means any part of premises where treatment is given to clients.

b. The Interpretation Act 1978 shall apply for the interpretation of these byelaws as it applies for the interpretation of an Act of Parliament.

2. For the purpose of securing the cleanliness of premises and fittings therein a proprietor shall ensure that –

a. All internal walls, doors, windows, partitions, floors and floor coverings, and ceilings are kept clean and in such good repair as to enable them to be cleaned effectively;

b. The treatment area is used solely for giving treatment;

c. The floor of the treatment area is provided with a smooth impervious surface;

d. All waste material, and other litter, arising from the treatment, is placed in suitable covered receptacles, which are washable and leakproof, or use a leakproof liner bag. The receptacles shall be emptied, or the bags changed, at least once every working day, or more frequently as necessary, and the material disposed of safely. Where liners are not used, the receptacles shall then be cleaned;

e. All needles used in treatment are placed after use in separate covered and leakproof re-usable boxes, or disposable needle boxes designed for the purpose. Where re-usable boxes are used they shall be emptied at least once every working day or more frequently as necessary, and the contents disposed of safely or sterilised for re-use, as appropriate. The box shall then be sterilised. Where needle boxes are used they shall be disposed of safely at suitable intervals;

f. All furniture and fittings in the premises are kept clean and in such good repair as to enable them to be cleaned effectively;

g. All tables, couches and seats used by clients in the treatment area, and any surface on which the items specified in 3b below are placed immediately prior to treatment, have a smooth impervious surface which is wiped down with a suitable disinfectant between the treatment of different clients, and thoroughly cleaned at the end of each working day;

h. Where tables or couches are used, they shall be covered by a disposable paper sheet which shall be changed for each client;

i. A notice or notices reading “No Smoking” are prominently displayed within the treatment area.

3. For the purpose of securing the cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment used in connection with the treatment –

a. An operator shall ensure that, before use in connection with treatment, any gown, wrap or other protective clothing, paper or other covering, towel, cloth or other such articles used in the treatment –

i. is clean and in good repair, and, so far as is appropriate, is sterile;

ii. has not previously been used in connection with any other client unless it consists of a material which can be and has been adequately cleaned and, so far as is appropriate, sterilised;

b. An operator shall ensure that –

i. any needle, metal instrument, or other item of equipment, used in treatment or for handling instruments and needles used in treatment, is in a sterile condition and kept sterile until it is used;

ii. all dyes used for tattooing are bacteriologically clean and inert;

iii. the containers used to hold the dyes for each customer are either disposed of at the end of each session of treatments, or are sterilised before re-use;

c. A proprietor shall provide –

i. adequate facilities and equipment for the purpose of sterilisation (unless pre-sterilised items are used) and of cleansing, as required in pursuance of these byelaws;

ii. sufficient and safe gas points and/or electrical socket outlets to enable compliance with these byelaws;

iii. an adequate constant supply of clean hot and cold water readily available at all times on the premises;

iv. adequate storage for all items mentioned in byelaw 3 a and b above, so that those items shall be properly stored in a clean and suitable place so as to avoid, as far as possible, the risk of contamination.

Local Government Act 2003

*Regulation of Cosmetic
Piercing and Skin-Colouring
Businesses*

Guidance on Section 120 and Schedule 6

Local Government Act 2003

***Regulation of Cosmetic
Piercing and Skin-Colouring
Businesses***

Guidance on Section 120 and Schedule 6

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Introduction

1. This guidance explains the provisions in section 120 and Schedule 6 of the Local Government Act 2003 on the regulation of cosmetic piercing and skin-colouring businesses, which amend section 15 of the Local Government (Miscellaneous Provisions) Act 1982. The measures will come into force on 1 April 2004, at which time local authorities will be able to decide whether to implement them locally.
2. These new provisions give local authorities in England (outside London) and in Wales, specific powers relating to persons carrying on businesses of cosmetic piercing (piercing of the body including the ear) and semi-permanent skin-colouring (including micropigmentation, semi-permanent make-up and temporary tattooing).¹ Local authorities will be able to require such businesses:
 - to register themselves and their premises; and
 - to observe byelaws relating to the cleanliness and hygiene of premises, practitioners and equipment.
3. London local authorities already have such powers under private legislation (London Local Authorities Act 1991 and the Greater London Council (General Powers) Act 1981).
4. These measures are intended to increase health protection and reduce the risk of transmission of blood-borne virus (BBV) infections such as HIV, hepatitis B and hepatitis C and other infections. The Department of Health has produced model byelaws that local authorities may wish to adopt in their area to facilitate consistency of enforcement. These are included in **Annex 2** of this document.
5. This document also provides guidance on the procedure for the confirmation of byelaws by the Secretary of State for Health (**Annex 2**), sources of further information (**paragraph 25**) and an example of a leaflet that local authorities may wish to use in informing businesses of the change in the law (**Annex 3**).
6. Local authorities that have already resolved to adopt the 1982 Act in relation to tattooing, ear-piercing and electrolysis (section 15) can move straight to the introduction of byelaws. Local authorities who have not adopted section 15 in its entirety will need to go through the process of resolving that the new provisions should apply in their area as required by section 13 of the 1982 Act. Transitional provisions are explained in **paragraph 14**.

Guidance from the Health and Safety Executive on the enforcement of skin piercing activities

7. Local authorities may find it helpful to read the Health and Safety Executive/Local Authorities Enforcement Liaison Committee (HELA) Local Authority Circular 76/2: *Enforcement of skin piercing activities* (October 2001). This contains comprehensive guidance on issues such as infection control, waste disposal and aftercare advice – <http://www.hse.gov.uk/lau/lacs/76-2.htm>

¹ Micropigmentation, semi-permanent make-up and temporary tattooing are techniques similar to tattooing, which involve injecting vegetable/chemical dyes into the skin, for example, as eye liner or lip liner, for areola reconstruction or to apply tattoo motifs. The pigmentation lasts for several years and is reputed to be non-permanent unlike traditional tattooing.

Background

The reason for the change in the law

8. Cosmetic piercing and semi-permanent skin-colouring carry a potential risk of BBV transmission if infection control procedures are not observed (e.g. the use of sterile equipment for each client). Until the change in the law in the Local Government Act 2003, local authorities in England (outside London) and in Wales did not have powers to require businesses offering these services to register and observe byelaws relating to the cleanliness and hygiene of premises. Local authorities' powers were limited to regulating ear piercing, tattooing, electrolysis and acupuncture. A joint Department of Health and Welsh Office consultation exercise in 1996 elicited widespread support for changing the law to extend local authorities' powers.
9. Local authorities in London, which are covered by separate private legislation, already have powers to licence and inspect cosmetic body piercing and semi-permanent skin colouring businesses (London Local Authorities Act 1991 and the Greater London (General Powers) Act 1981). The new legislation provides a consistent level of health protection across England and Wales.

The legal framework

The Local Government Act 2003 and the Local Government (Miscellaneous) Provisions Act 1982

10. Before the new provisions were introduced by the Local Government Act 2003, local authorities had powers under the Local Government (Miscellaneous) Provisions Act 1982 to regulate ear piercing, tattooing, acupuncture and electrolysis by requiring registration and observance of byelaws.
11. The Local Government Act 2003 amends the 1982 Act to include cosmetic piercing and semi-permanent skin-colouring businesses in the list of those which local authorities have powers to regulate. The new provisions are explained in more detail below, including the new terminology that the legislation uses i.e. *cosmetic piercing* and *semi-permanent skin-colouring*.

The new provisions

Section 120 of the 2003 Act

12. The provisions in section 120 of the Local Government Act 2003 essentially add cosmetic piercing and semi-permanent skin-colouring businesses to section 15 of the 1982 Act so that local authorities may compel persons carrying on such businesses to register themselves and their premises and may make byelaws in respect of matters related to the cleanliness of such businesses. Local authorities in London already have similar powers under private legislation (the London Local Authorities Act 1991 and the Greater London Council (General Powers) Act 1981). Section 120 is reproduced at **Annex 1**.

13. Section 120 introduces new terminology for simplicity and clarity as follows:
- *ear piercing and cosmetic body piercing* are encompassed in the single term “**cosmetic piercing**”, (which is also the term used in the London legislation); and
 - *micropigmentation, semi-permanent make-up and temporary tattooing* are covered by the umbrella term “**semi-permanent skin-colouring**”. Semi-permanent skin colouring is defined as “**the insertion of semi-permanent colouring into a person’s skin**” (section 120(5)). This approach allows for other similar activities to be covered in future.

Transitional provisions: Schedule 6 of the 2003 Act

14. The Schedule is intended to provide for transition from the current legislation to the amended legislation and to avoid disruption to local authorities and businesses by providing that:
- persons and premises already registered for activities covered by section 15 of the current legislation (i.e. tattooing, ear piercing and electrolysis) are unaffected;
 - pending local authority resolutions to apply section 15 of the 1982 Act in their area are unaffected;
 - where a local authority has already resolved that section 15 of the 1982 Act should be brought into force in their area for tattooing, ear piercing and electrolysis, then the local authority will be automatically enabled to apply the registration and byelaws regime to cosmetic piercing and semi-permanent skin colouring;
 - a person and premises already registered for ear piercing shall be counted as registered for cosmetic piercing until that person subsequently provides another form of cosmetic piercing, or those premises are subsequently used to provide another form of cosmetic piercing (i.e. cosmetic piercing of a part or parts of the body other than the ear), when a new registration would be required.

Section 16 of the 1982 Act

15. Section 16 of the 1982 Act also applies to cosmetic piercing and semi-permanent skin-colouring businesses. It provides for offences and for non-custodial penalties (summary conviction and fine) for trading without local authority registration or breaching local authority byelaws. The court may also order suspension, or cancellation, of registration (whether of a person or premises) on conviction. When cancellation of registration happens, the court may order a fine, increased on a daily basis for late surrender of the cancelled registration certificate. There is also an offence of not displaying a certificate of registration or byelaws (for which a person is liable on summary conviction to a fine).

Registration fees

16. Section 15(6) of the Local Government (Miscellaneous Provisions) Act 1982 enables local authorities to charge reasonable registration fees for registration of persons carrying on businesses of cosmetic piercing or semi-permanent skin-colouring. The fee might cover initial inspection(s) associated with registration, advising the business about registration and associated administration.

Byelaws

17. Section 15(7) of the Local Government (Miscellaneous Provisions) Act 1982 provides for local authorities to make byelaws for cosmetic piercing and semi-permanent skin-colouring for the purpose of securing:
 - the cleanliness of premises and fittings;
 - the cleanliness of the operators;
 - the cleansing and, if appropriate, sterilization of instruments, materials and equipment.
18. Model byelaws for cosmetic piercing and semi-permanent skin-colouring businesses are attached at **Annex 2** with a guidance note on the procedure for seeking the Secretary of State's confirmation of such byelaws under section 236 of the Local Government Act 1972.

Resources

19. Costs to local authorities of implementing these new provisions are estimated to be relatively small and will be offset by several factors. As mentioned above, local authorities will be able to charge reasonable registration fees. They will already be inspecting many of these businesses, as the premises may be registered for other skin piercing activities, such as ear piercing, tattooing or electrolysis. In addition, local authorities already inspect these businesses under health and safety at work legislation. Therefore additional resources will not be made available by central Government.

Age of consent for cosmetic piercing

20. There is no statutory age of consent for cosmetic piercing (cosmetic body piercing and ear piercing). Cosmetic piercing of a minor is lawful provided a valid consent is given. Furthermore, the courts have held that a parent's right to decide on behalf of his or her child yields to the child's competence to make a decision (i.e. if he or she is capable of understanding the nature of the act to be done). Body piercing for sexual gratification is unlawful. Children under the age of 16 are not able to consent lawfully to a piercing that would be regarded as indecent assault. Genital or nipple piercing performed on someone under the age of 16 might be regarded as indecent assault under sexual offences legislation depending on the facts of the case. A statutory minimum age of consent for tattooing (18 years of age) is specified in the Tattooing of Minors Act 1969.
21. Detailed guidance on issues relating to the age of consent for cosmetic piercing is contained in the Health and Safety Executive's Local Authority Circular (LAC) 76/2: *Enforcement of skin piercing activities*, available on their website at: <http://www.hse.gov.uk/lau/lacs/76-2.htm> There are no current plans to introduce legislation to make the cosmetic piercing of minors a criminal offence. Introducing a minimum age of consent might result in children piercing themselves or each other in an unsafe and unhygienic way or going to disreputable businesses. The Government prefers that businesses carrying out cosmetic body piercing should be subject to local authority control so that these activities can be carried out in a safe and hygienic manner. This position is kept under review in collaboration with the Home Office, which takes the lead policy responsibility for this issue.

Cosmetic piercing and relevant medical conditions

22. The above-mentioned circular from the Health and Safety Executive (<http://www.hse.gov.uk/lau/lacs/76-2.htm>) recommends that skin piercing businesses ask clients to make a declaration of relevant medical conditions which may indicate that the client should seek medical advice before going ahead with the procedure. A list of relevant medical conditions is included.
23. Recent advice from the British Society from Antimicrobial Chemotherapy states that anyone who has had previous heart surgery, or been diagnosed with a heart condition, should consult their doctor before having a piercing involving a mucous membrane (nose, lip, tongue or genitals), as there may be a risk of potentially serious infection. It is recommended that local authorities inform businesses of this advice so that they ask relevant clients to consult their GPs. The Department of Health is alerting GPs to this advice via its *GP Bulletin*.

Commission for Healthcare Audit and Inspection

24. Establishments carrying out skin piercing may, in some instances, also provide services that will be subject to regulation by the Commission for Healthcare Audit and Inspection (CHAI) e.g. treatment with Class 3 or 4 lasers. In such cases, local authorities may wish to consult with CHAI to discuss co-operative arrangements to avoid unnecessary duplication of work. CHAI will take over this role from the National Care Standards Commission (NCSC) from 1 April 2004.

Further sources of information

25. Further sources of useful information are:
 - Enforcement of skin piercing activities. Health and Safety Executive/Local Authorities Enforcement Liaison Committee (HELA) Local Authority Circular 76/2, October 2001. <http://www.hse.gov.uk/lau/lacs/76-2.htm>
 - Cosmetic treatment (Micro-pigmentation/semi-permanent tattooing/ semi-permanent make-up). Health and Safety Executive/Local Authorities Enforcement Liaison Committee (HELA) Local Authority Circular 14/1, October 2003. <http://www.hse.gov.uk/lau/lacs/14-1.htm>
 - Blood-borne viruses in the workplace: guidance for employers and employees. Health and Safety Executive <http://www.hse.gov.uk/pubns/indg342.pdf>
 - Body art, cosmetic therapies and other special treatments. Chartered Institute of Environmental Health. Barbour Index 2001;
 - Hairdressing And Beauty Industry Authority (HABIA) – the standards setting body for hair, beauty and body art. Fraser House, Nether Hall Road, Doncaster, DN1 2PH; Tel 01302 380000, Fax 01302 380028, Email enquiries@habia.org; Web: <http://www.habia.org> (Approved National Occupational Standards (NOS) are currently available from HABIA for ear piercing and semi-permanent make-up, and will be available for cosmetic body piercing within 12 months).

Annex 1

Local Government Act 2003 – Regulation of Cosmetic Piercing and Skin-Colouring Businesses (Section 120 and Schedule 6)

120 Regulation of cosmetic piercing and skin-colouring businesses

- (1) Section 15 of the Local Government (Miscellaneous Provisions) Act 1982 (c. 30) (regulation of tattooing, ear-piercing and electrolysis businesses) is amended as follows.
- (2) In subsection (1) (requirement for person carrying on business to be registered), for paragraph (b) (ear-piercing) there is substituted—
 - “(aa) of semi-permanent skin-colouring;
 - (b) of cosmetic piercing; or”(and in the side-note for “ear-piercing” there is substituted “semi-permanent skin-colouring, cosmetic piercing”).
- (3) In subsection (2) (requirement to register premises where business carried on)—
 - (a) for “ear-piercing” there is substituted “semi-permanent skin-colouring, cosmetic piercing”, and
 - (b) for “pierce their ears” there is substituted “carry out semi-permanent skin-colouring on them, pierce their bodies”.
- (4) In subsection (5) (local authority may not require particulars about individuals whose ears have been pierced etc.), for “or whose ears he has pierced” there is substituted “, whose bodies he has pierced or on whom he has carried out semi-permanent skin-colouring”.
- (5) After subsection (8) there is inserted—
 - “(9) In this section “semi-permanent skin-colouring” means the insertion of semi-permanent colouring into a person’s skin.”
- (6) Schedule 6 (which makes provision about transition) has effect.

SCHEDULE 6

SECTION 120: TRANSITION

Commencement not to affect existing application of section 15 of the 1982 Act

- 1 The coming into force of section 120 shall not affect the descriptions of person in relation to whom section 15 of the Local Government (Miscellaneous Provisions) Act 1982 (c. 30) applies in an area in which that section is already in force.

Commencement not to affect pending resolutions about the application of section 15 of the 1982 Act

- 2 (1) This paragraph applies where immediately before the coming into force of section 120—
- (a) there is in force a resolution under section 13(2) of the Local Government (Miscellaneous Provisions) Act 1982 (c. 30) that section 15 of that Act is to apply to an authority's area, and
 - (b) the resolution specifies as the day for the coming into force of that section the day on which section 120 comes into force, or any later day.
- (2) The coming into force of section 120 shall not affect—
- (a) the validity of the resolution, or
 - (b) the descriptions of person in relation to whom section 15 of that Act applies in pursuance of the resolution.

Additional powers of commencement in relation to section 15 of the 1982 Act as amended

- 3 (1) This paragraph applies where an authority has before the coming into force of section 120 passed a resolution that provides, or resolutions that between them provide, for section 15 of the Local Government (Miscellaneous Provisions) Act 1982 (c. 30) to apply to the authority's area in relation to all of the existing descriptions of person.
- (2) Section 13 of that Act shall have effect for the purpose of enabling the authority to bring section 15 of that Act into force in its area—
- (a) in relation to persons carrying on the business of cosmetic piercing, and
 - (b) in relation to persons carrying on the business of semi-permanent skin-colouring.
- (3) In sub-paragraph (1), the reference to the existing descriptions of person is to the descriptions of person specified in section 15(1) of that Act immediately before the coming into force of section 120.

Effect of existing ear-piercing registrations following extension of control to cosmetic piercing

- 4 (1) This paragraph applies where, immediately before section 15 of the Local Government (Miscellaneous Provisions) Act 1982 (c. 30) comes into force in an authority's area in relation to persons carrying on the business of cosmetic piercing—
- (a) that section is in force in the area in relation to persons carrying on the business of ear-piercing, and
 - (b) a person is registered under that section by the authority to carry on a business of ear-piercing at premises in the area which are registered under that section for the carrying-on of that business.
- (2) From the coming into force of that section in that area in relation to persons carrying on the business of cosmetic piercing, the registrations of the person and the premises in respect of ear-piercing shall have effect as registrations in respect of cosmetic piercing, subject to sub-paragraph (3).
- (3) Sub-paragraph (2) ceases to apply when the business of cosmetic piercing carried on by the person at the premises subsequently first involves cosmetic piercing other than ear-piercing.

Interpretation

- 5 In this Schedule, except paragraph 2(1)(a) and 3(1), any reference to section 15 of the Local Government (Miscellaneous Provisions) Act 1982 (c. 30) includes a reference to section 16 of that Act so far as it has effect for the purposes of that section.

Annex 2

Guidance on applications to the Secretary of State for Health for confirmation of byelaws under section 236 of the Local Government Act 1972, and model byelaws

1. The Council shall pass a resolution:-
 - a. authorising the affixing of the common seal to the byelaws and
 - b. authorising the clerk to carry out the necessary procedure and apply to the Secretary of State for confirmation.
2. The seal should be affixed and duly attested, and the date of sealing inserted in the attestation. The date of sealing, and not the date of the resolution, is the date on which the byelaws are made, and until they are made the Council has no power to carry out the rest of the statutory procedure.
3. At least one clear calendar month before applying to the Secretary of State for confirmation:
 - a. Notice of the Council's intention to apply for confirmation must be given in one or more local newspapers circulating in the area to which the byelaws will apply. **(A suggested form of notice is at Appendix A)** A series of byelaws should be described by giving the heading they bear on the draft informally approved by the Secretary of State. If the byelaws are to apply to part only of the Council's district, the notice should explain which part will be affected.
 - b. A copy of the byelaws having been subject to the procedures at 2 above, must be deposited at the Council's offices and be open to public inspection without charge at all reasonable times during that month.
4. The byelaws may be submitted for confirmation any time after the month has elapsed. They should be printed to conform to the approved draft. The Secretary of State's seal and confirmation should be printed below the Council's seal and a space of at least 10 centimetres should be left. It would be helpful if the following could be typed on the left-hand side of the page as indicated:

The foregoing byelaws are hereby confirmed by the Secretary of State for Health

on _____ and shall come into operation on _____

Member of the Senior Civil Service
Department of Health

The Notes which do not form part of the byelaws should be printed after both the Council's and Secretary of State's seals.

5. It would be helpful for the application to be accompanied by: -
 - (a). copy of the full Council's resolution (**a model notice of Council resolution is at Appendix B**);
 - (b). the sealed byelaws (2 sets) and a photocopy;
 - (c). the newspaper(s) containing the notice;
 - (d). the clerk's certificate as to the date and duration of deposit of a copy of the byelaws;
 - (e). a statement as to whether or not any objections were received by the Council;
 - (f). confirmation, where applicable, that the byelaws are identical to the model byelaws;
 - (g). confirmation of the Council's adoption of Section 14-17 and compliance with the provisions of Section 13 of the Local Government Act (Miscellaneous Provisions) Act 1982 particularly regarding the publishing of notice in a local newspaper.
6. The Secretary of State emphasises that he has power to confirm only if the procedure laid down in section 236 of the 1972 Act is properly carried out. He has no power to excuse deviation from this procedure.
7. The Secretary of State has power to fix the date on which the byelaws come into operation. He considers that the first day of a month will normally be most convenient; and as section 236(7) provides that, if he does not fix a date, byelaws shall come into operation one month after confirmation, he will normally bring byelaws into operation on the first day of the month next following the expiry of this period.

Appendix A

DISTRICT/PARISH OF

CONFIRMATION OF BYELAWS

Notice is hereby given that the Council of intend, after the expiry of the period mentioned below, to apply to the Secretary of State for Health for confirmation of byelaws made by the Council **(insert description of byelaws and state that they have been made under section 15 of the Local Government (Miscellaneous Provisions) Act 1982.**

Copies of these byelaws will be kept at the offices of the Council at, and will be open to public inspection without payment on any week day, not being a Bank Holiday, during the usual office hours, for one month from the date of the publication of this notice.

Copies of the byelaws or any part thereof will be supplied at a fee of 10p for each hundred words.

Any objection to the confirmation of the byelaws should be made by letter addressed to
Mr G M Robb,
Department of Health,
Room 631B, Skipton House,
80 London Road, London SE1 6LH.

(signed)

Town Clerk/Chief Executive
(Insert date of signature)

Appendix B

Model notice of council resolution

1. The Council resolved on [date] that the following provisions of the Local Government (Miscellaneous Provisions) Act 1982 shall apply to the area of this council:

Section 15 – Tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis

Section 16 – Provisions supplementary to sections 14 and 15

Section 17 – Power to enter premises (acupuncture etc.)
2. The date [s]* on which these provisions will come into force will be: (see note 3 below).
3. The general effect of this resolution is, subject to the exceptions detailed below, that a person who carries on the business of [tattooing]; [semi-permanent skin-colouring]; [cosmetic piercing]; or [electrolysis] must be registered with this Council, and they can only carry on their business in premises which have also been registered. The certificate of registration must be prominently displayed at the place where the business is carried on. The council is empowered to charge fees for registration. Applications for registration must be accompanied by the following information [to be specified by the local authority – see section 15(4) of the 1982 Act], in particular, details of the premises concerned and particulars of any conviction of the applicant under section 16 of the 1982 Act. A person who contravenes section 15 will be guilty of an offence, and liable, on conviction, to a fine not exceeding £1000, or suspension or cancellation of registration or both. An authorised officer of the Council may apply to a Justice of the Peace for a warrant to enter premises on suspicion that an offence under Section 16 is being committed there.
4. The Council [may apply in due course/will be applying in the near future]* for confirmation of byelaws under this Act with regard to the cleanliness of premises, fittings, persons, instruments, materials and equipment connected with the businesses of [tattooing], [semi-permanent skin colouring], [cosmetic piercing], [electrolysis]* in the area of the Council.
5. Exceptions:
 - i These provisions of the Act do not extend to the carrying on of the business of [tattooing], [semi-permanent skin-colouring], [cosmetic piercing] or [electrolysis]* by or under the supervision of a registered medical practitioner (i.e. means a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise under that Act).
 - ii A person who is registered under the provision of the Act specified in paragraph 1 above will not be committing an offence by engaging in the activity otherwise than at registered premises merely because he sometimes visits people at their request to provide his services.

NOTES – not to form part of the model notice

1. Passages marked []* to be modified by the Council according to the scope of Council's resolution.
2. The local authority should publish this notice in two consecutive weeks in a local newspaper circulating in their area.
3. The Council should specify the date or dates in paragraph 2. These can be the same for all sections listed in paragraph 1, or different, but
 - a. One month must pass between the day the resolution was passed and the first date of coming into force; and
 - b. First publication of the notice must not be later than 28 days before the coming into force of the provisions.

Draft model byelaws

Cosmetic piercing

Byelaws for the purposes of securing the cleanliness of premises registered under section 15 of the Local Government (Miscellaneous Provisions) Act 1982 and fittings in those premises and of registered persons and persons assisting them and the cleansing and, so far as appropriate, sterilization of instruments, materials and equipment used in connection with the business of cosmetic piercing made by in pursuance of Section 15(7) of the Act.

1. Interpretation:

a. In these byelaws, unless the context otherwise requires –

“The Act” means the Local Government (Miscellaneous Provisions) Act 1982;

“Client” means any person undergoing treatment;

“Operator” means any person giving treatment;

“Premises” means any premises registered under Part VIII of the Act;

“Proprietor” means any person registered under Part VIII of the Act;

“Treatment” means any operation in effecting cosmetic piercing;

“The treatment area” means any part of the premises where treatment is given to clients.

b. The Interpretation Act 1978 shall apply for the interpretation of these byelaws as it applies for the interpretation of an Act of Parliament.

2. For the purpose of securing the cleanliness of premises and fittings in such premises a proprietor shall ensure that –

a. All internal walls, doors, windows, partitions, floors and floor coverings, and ceilings are kept clean and in such good repair as to enable them to be cleaned effectively;

b. All waste materials, and other litters, arising from the treatment should be handled and disposed of as clinical waste in accordance with relevant legislation and guidance as advised by the local authority;

c. All needles used in treatment are single-use and disposable, as far as is practicable; and are stored and disposed of as clinical waste in accordance with the relevant legislation and guidance as advised by the local authority;

d. All furniture and fittings in the premises are kept clean and in such good repair as to enable them to be cleaned effectively;

e. All tables, couches and seats used by clients in the treatment area, and any surface on which the items specified in 3b below are placed immediately prior to treatment, have a smooth impervious surface which is disinfected immediately after use and at the end of each working day;

f. Where tables and couches are used, they are covered by a disposable paper sheet which is changed for each client;

g. No eating, drinking or smoking is permitted in the treatment area and a notice or notices reading “No Smoking”, “No Eating or Drinking” is prominently displayed there.

3. For the purpose of securing the cleansing and so far as is appropriate, the sterilization of instruments, materials and equipment used in connection with the treatment –
 - a. An operator shall ensure that, before use in connection with treatment, any gown, wrap or other protective clothing, paper or other covering, towel, cloth or other such article used in the treatment –
 - i. is clean and in good repair, and, so far as is appropriate, sterile;
 - ii. has not previously been used in connection with any other client unless it consists of a material which can be and has been adequately cleaned and, so far as is appropriate, sterilized.
 - b. An operator shall ensure that any needle, metal instrument, or other item of equipment, used in treatment or for handling instruments and needles used in the treatment is in a sterile condition and kept sterile until it is used;
 - c. A proprietor shall provide –
 - i. adequate facilities and equipment for the purpose of sterilization (unless pre-sterilized items are used) and of cleansing, as required in pursuance of these byelaws;
 - ii. sufficient and safe gas points and/or electrical socket outlets to enable compliance with these byelaws;
 - iii. an adequate constant supply of clean hot and cold water readily available at all times on the premises;
 - iv. adequate storage for all items mentioned in byelaw 3 a and b above, so that those items are properly stored in a clean and suitable place so as to avoid, as far as possible, the risk of contamination.

4. For the purpose of securing the cleanliness of operators –
 - a. A proprietor shall ensure that –
 - i. any operator keeps his hands and nails clean and his nails short;
 - ii. any operator wears disposable surgical gloves that have not previously been used with any other client;
 - iii. any operator of the premises wears a gown, wrap or protective clothing that is clean and washable, or alternatively a disposable covering that has not previously been used in connection with any other client;
 - iv. any operator keeps any open boil, sore, cut or open wound on an exposed part of his body effectively covered by an impermeable dressing;
 - v. any operator does not smoke or consume food or drink in the treatment area.
 - b. A proprietor shall provide;
 - i. suitable and sufficient washing facilities for the sole use of operators, including hot and cold water and sanitising soap or detergent;
 - ii. suitable and sufficient sanitary accommodation for operators.

COUNCIL'S SIGNATURE

COUNCIL'S SEAL

The foregoing byelaws are hereby confirmed by the Secretary of State for Health

on _____ and shall come into operation on _____

Member of the Senior Civil Service
Department of Health

NOTE – THE FOLLOWING DOES NOT FORM PART OF THE BYELAWS

- A. Proprietors must take all reasonable steps to ensure compliance with these byelaws by persons working on the premises. Section 16(9) of the Act provides that a registered person shall cause to be prominently displayed on the premises a copy of these byelaws and a copy of any certificate of registration issued to him under Part VIII of the Act.
- B. Section 16(2) of the Local Government (Miscellaneous Provisions) Act 1982 provides that any person who contravenes any of these byelaws shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. If a person registered under Part VIII of the Act is found guilty of contravening these byelaws the Court may instead of or in addition to imposing a fine, order the suspension or cancellation of his registration and of the registration of the premises in which the offence was committed if such premises are occupied by the person found guilty of the offence. It shall be a defence for the person charged under sub-sections (1), (2), (8) or (10) of Section 16 to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.
- C. Nothing in these byelaws extends to the practice of cosmetic piercing by or under the supervision of a person who is registered as a medical practitioner or to premises on which the practice of cosmetic piercing is carried on by or under the supervision of such a person.

Draft model byelaws

Semi-permanent skin-colouring

Byelaws for the purposes of securing the cleanliness of premises registered under section 15 of the Local Government (Miscellaneous Provisions) Act 1982 and fittings in such premises and registered persons and persons assisting them and the cleansing and, so far as appropriate, sterilization of instruments, materials and equipment used in connection with the business of semi-permanent skin-colouring, made by in pursuance of section 15(7) of the Act.

1. Interpretation:

a. In these byelaws, unless the context otherwise requires –

“The Act” means the Local Government (Miscellaneous Provisions) Act 1982;

“Client” means any person undergoing treatment;

“Operator” means any person giving treatment;

“Premises” means any premises registered under Part VIII of the Act;

“Proprietor” means any person registered under Part VIII of the Act;

“Treatment” means any operation in effecting semi-permanent skin-colouring;

“The treatment area” means any part of the premises where treatment is given to clients.

b. The Interpretation Act 1978 shall apply for the interpretation of these byelaws as it applies for the interpretation of an Act of Parliament.

2. For the purpose of securing the cleanliness of premises and fittings in such premises a proprietor shall ensure that –

a. All internal walls, doors, windows, partitions, floors and floor coverings, and ceilings are kept clean and in such good repair as to enable them to be cleaned effectively;

b. The treatment area is used solely for giving treatment;

c. The floor of the treatment area is provided with a smooth impervious surface;

d. All waste materials, and other litters, arising from the treatment should be handled and disposed of as clinical waste in accordance with relevant legislation and guidance as advised by the local authority;

e. All needles used in treatment are single-use and disposable, as far as is practicable; and are stored and disposed of as clinical waste in accordance with the relevant legislation and guidance as advised by the local authority;

f. All furniture and fittings in the premises are kept clean and in such good repair as to enable them to be cleaned effectively;

g. All tables, couches and seats used by clients in the treatment area, and any surface on which the items specified in 3b below are placed immediately prior to treatment, have a smooth impervious surface which is disinfected immediately after use and at the end of each working day;

h. Where tables and couches are used, they are covered by a disposable paper sheet which is changed for each client;

- v. any operator does not smoke or consume food or drink in the treatment area.
- b. A proprietor shall provide -
 - i. suitable and sufficient washing facilities for the sole use of operators, including hot and cold water, sanitising soap or detergent;
 - ii. suitable and sufficient sanitary accommodation for operators.

COUNCIL'S SIGNATURE

COUNCIL'S SEAL

The foregoing byelaws are hereby confirmed by the Secretary of State for Health

on _____ and shall come into operation on _____

Member of the Senior Civil Service
Department of Health

NOTE – THE FOLLOWING DOES NOT FORM PART OF THE BYELAWS

- A. Proprietors shall take all reasonable steps to ensure compliance with these byelaws by persons working on the premises. Section 16(9) of the Act provides that a registered person shall cause to be prominently displayed on the premises a copy of these byelaws and a copy of any certificate of registration issued to him under Part VIII of the Act.
- B. Section 16 of the Local Government (Miscellaneous Provisions) Act 1982 provides that any person who contravenes any of these byelaws shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. If a person registered under part viii of the Act is found guilty of contravening these byelaws the Court may instead of or in addition to imposing the fine, order the suspension or cancellation of his registration and of the registration of the premises in which the offence was committed if such premises are occupied by the person found guilty of the offence. It shall be a defence for the person charged under sub-sections (1), (2), (8) or (10) of Section 16 to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- C. Nothing in these byelaws extends to the practice of semi-permanent skin-colouring by or under the supervision of a person who is registered as a medical practitioner or to premises on which the practice of semi-permanent skin-colouring is carried on by or under the supervision of such a person.

Annex 3

Example of leaflet for local authorities to use in informing businesses when the Local Government Act 2003 is brought into force in their area

New requirements for [cosmetic body piercing] [micropigmentation, semi-permanent make-up and temporary tattooing] businesses

The Local Government Act 2003 has introduced new requirements for [cosmetic piercing (piercing of parts of the body, including the ear)] [semi-permanent skin-colouring (micropigmentation, semi-permanent make-up and temporary tattooing)] businesses.

From [insert date on which requirement to register and observe byelaws comes into force in the local authority area], [cosmetic piercing] [semi-permanent skin colouring] businesses will have to:

- register with their local authorities; and
- follow byelaws on the cleanliness and hygiene of practitioners, premises and equipment to protect customers against the risk of infection.

It will be an offence to carry on such a business without being registered, to carry on such a business in premises that are not registered for that purpose or to breach byelaws.

The new legislation uses the terminology “cosmetic piercing” to include piercing of any part of the body, including the ear and “semi-permanent skin-colouring” as an umbrella term to include activities such as micropigmentation, semi-permanent make-up and temporary tattooing.

Please contact [insert name of local authority officer] at [insert name of local authority] for advice about registration and byelaws [or see] [insert local authority internet website address].

The Department of Health’s (DH) guidance to local authorities on the new requirements is available on the DH website at <http://www.dh.gov.uk/publications>

[] = delete as appropriate



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Name of meeting: Licensing & Safety Committee

Date: 24th March 2016

Title of report: Assessment Criteria and Convictions Policy for Licensed Drivers

| | |
|--|--|
| Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards? | No |
| Is it in the Council's Forward Plan? | N/A |
| Is it eligible for "call in" by Scrutiny? | N/A |
| Date signed off by Director & name | Jacqui Gedman – 14/03/16 |
| Is it signed off by the Director of Resources? | David Smith – 10/03/16 |
| Is it signed off by the Assistant Director – Legal, Governance & Monitoring? | Julie Muscroft – 14/03/16 |
| Cabinet member portfolio | Cllr Steve Hall - Portfolio Holder for Planning, Highways and Open Spaces |

Electoral wards affected: All

Ward councillors consulted: All

Public or private: Public

1 PURPOSE OF REPORT

1.1 To consider the revision of the Policy on the relevance of criminal conduct, unsavoury conduct and complaints against Licence Holders and Applicants for licences.

2 KEY POINTS

2.1 Hackney carriages and private hire vehicles have a specific role to play in an integrated transport system. They are able to provide services in situations where other public transport is either not available (for example in rural areas, or outside "normal" hours of operation such as in the evenings or on Sundays), or for those with mobility difficulties.

2.2 It is vitally important that the provision of a professional and respected hackney carriage and private hire trade is maintained, by continued

partnership working with the trade and also by monitoring and implementing improvements of the required standards of service.

2.3 Kirklees Council adopted the policy at the last Licensing & Safety Committee on October 15th 2014. Revisions were made in February 2015 and November 2015

2.4 By virtue of section 59 (1) (a) (in relation to hackney carriage drivers licences) and section 51 (1) (a) (in relation to private hire drivers licences) of the Local Government (Miscellaneous Provisions) Act 1976 a Council shall not grant a licence 'unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence'.

2.5 What constitutes fit and proper is not defined in the Town Police Clauses Act 1847 or the Local Government (Miscellaneous Provisions) Act 1976. It is for the Licensing Authority to determine whether an applicant or driver is fit and proper based on the information presented and having regard to the following:

- The rules of natural justice
- The Human Rights Act 1998
- Section 17 of the Crime and Disorder Act 1998
- The Council's own Conditions, By-laws and Policies

2.6 Members must consider each application on its own merit in light of the Council's policies. However, the Licensing Authority must not apply its policies in such a way as to fetter its discretion.

2.7 The overriding concern for any decision-maker must be the protection and the safety of the public. The Policy brings clarity for the benefit of applicants and decision-makers, and explains that the Licensing Authority will deal with cautions and other sanctions in a similar way to convictions

2.8 The Department for Transport's best practice guide to Hackney Carriage and Private Hire licensing issued in March 2010 states the following in respect of criminal records checks:

'A criminal record check is an important safety measure particularly for those working closely with children and the vulnerable... An Enhanced Disclosure may also include any other information held in police records that is considered relevant by the police, for example, details of minor offences, non-conviction information on the Police National Computer such as Fixed Penalty Notices and, in some cases, allegations...

In considering an individual's criminal record, local licensing authorities will want to consider each case on its merits, but they should take a particularly cautious view of any offences involving violence, and especially sexual attack. In order to achieve consistency, and thus avoid the risk of successful legal challenge, local authorities will

doubtless want to have a clear policy for the consideration of criminal records, for example the number of years they will require to have elapsed since the commission of particular kinds of offences...'

2.9 It can be seen that the Policy has been written following the advice in the Best Practise Guide.

3 IMPLICATIONS FOR THE COUNCIL

- 3.1 The Licensing regime exists to ensure that the safety of the public is protected. As a result it is necessary for the Council to have a robust assessment criteria and convictions policy that adequately deals with any issue that might undermine the safety of the public.
- 3.2 Members may recall that the policy is a live working document and will be kept under constant review. The current proposed revisions have been brought at the request of Cllr Ken Smith the Chair of the Licensing & Safety Committee
- 3.3 A copy of the revised Policy (changes tracked for ease of reference) is attached at Appendix 1.
- 3.4 Members may be pleased to know that the policy was the subject of judicial approval last year in the case of Kirklees Council –v- Singh 2015. HHJ Brown sitting with lay justices described the policy as “sensible and balanced”.

4 CONSULTEES AND THEIR OPINIONS

- 4.1 The proposed revisions to the Policy have been shared with representatives of the hackney carriage and private hire trade and no objections have been tabled at the time of preparing this report.

5. NEXT STEPS

- 5.1 The Licensing Committee is requested to consider the revised policy and authorise the Licensing Manager to implement its use by officers effective immediately.

6. OFFICER RECOMMENDATIONS AND REASONS

- 6.1 Officers recommend approval of the revisions to the Policy

7. CABINET PORTFOLIO HOLDER RECOMMENDATION

- 7.1 The Portfolio Holder, Cllr Steve Hall, welcomes further strengthening and clarification of the Policy.

8. CONTACT OFFICER AND RELEVANT PAPERS

Catherine Walter

Licensing, Local Land Charges & Highways Registry Manager

Tel: 01484 221000

Email: catherine.walter@kirklees.gov.uk

Papers: Appendix 1 – Revised Assessment Criteria & Convictions Policy

9. ASSISTANT DIRECTOR RESPONSIBLE

Joanne Bartholomew, Assistant Director – Place

Tel: 01484 221000

Email: joanne.bartholomew@kirklees.gov.uk

HACKNEY CARRIAGE AND PRIVATE HIRE LICENCES

**A Policy on the Relevance of Criminal Conduct, Improper
Behaviour and Complaints against Licence Holders and Applicants
for Licences.**



Taxi and PHV Licensing Criminal Convictions' Policy

1. Introduction

The public are entitled to have the utmost confidence in drivers of taxis and private hire vehicles: therefore, the Council must ensure that only fit and proper persons obtain drivers' and operator licences.

The purpose of this policy is to provide guidance on the criteria taken into account by the Licensing Authority when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire driver or operator licence.

The overriding aim of the Licensing Authority is to protect the safety of the public.

The Licensing Authority is concerned to ensure:

- That a person is a fit and proper person
- That the person does not pose a threat to the public
- That the public are safeguarded from dishonest persons
- The safeguarding of children, young people and vulnerable adults.

In this scheme "safeguarding" means the protection of children or vulnerable adults from harm to their health, safety, well-being or development and "safeguarding concern" means grounds to believe that the individual applicant or driver may not be a fit and proper person because grant, retention or renewal of a licence may risk such harm occurring. Vulnerable adult has the meaning as in section 59 of the Safeguarding Vulnerable Groups Act 2006

This policy provides guidance to any person with an interest in taxi and private hire licensing. In particular, but not exclusively:

- Applicants for drivers' licences
- Existing licensed drivers whose licences are being reviewed
- Councillors
- Licensing officers
- Legal officers
- Magistrates hearing appeals against local authority decisions

For renewal applications and current licence holders the policy will not be applied retrospectively. However, the Policy will be applied to renewal and current licence holders if any additional convictions, cautions or complaints are incurred or brought to the attention of the Council that along with the historical information would call into question a person's suitability to hold a licence.

Where licensing officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant a licence. Whilst officers will have regard to the guidelines contained in the policy, **each case will be considered on its individual merits** and where the circumstances demand, the officer may pass the matter to the Councils Regulatory Committee.

All licences are issued with a set of Conditions which the licence holder must comply with. By-laws are also in place in relation to Hackney Carriage Drivers. Copies are attached to every licence and are available on request. A repeated breach of licensed driver and or licensed vehicle conditions and or by-laws may also lead to a person having his hackney carriage/private hire driver licence suspended or revoked.

2. General policy

There may be occasions where it is appropriate to depart from the guidelines, for example where the offence is a one-off occasion or there are exceptional mitigating circumstances or alternatively where there are many or continuous offences or complaints which may show a pattern of offending and unfitness.

A person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to:

- Remain free of conviction for an appropriate period; AND show adequate evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence). Simply remaining free of conviction may not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.

Where an applicant has been convicted of a criminal offence, the Licensing Authority cannot review the merits of the conviction [Nottingham City Council v. Mohammed Farooq (1998)].

It is the responsibility of the applicant/licence holder to satisfy the Licensing Authority that they are a 'fit and proper person' to hold a licence. The applicant/licence holder must ensure that all convictions, cautions, warnings, reprimands, fixed penalties, arrests and summonses are disclosed to the Council.

3. Appeals

Any applicant refused a driver's licence on the grounds that the Licensing Authority is not satisfied he is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal.

4. Powers

Section 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 allow the Licensing Authority to suspend, revoke or refuse to renew a licence if the application/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.

The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the Licensing Authority to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Therefore the Licensing Authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.

In this policy the term "disqualification" refers to the period served, in order to take account of the fact that a court may reduce the period of disqualification from driving. An applicant must provide evidence in advance to prove that the court agreed a reduction in the period of disqualification.

5. Consideration of disclosed criminal history

Under the provisions of Sections 51, 55, and 59, Local Government (Miscellaneous Provisions) Act 1976, the Licensing Authority is required to ensure that an applicant for the grant or renewal of a hackney carriage and/or a private hire vehicle drivers' licence and/or private hire vehicle operator's licence is a **'fit and proper'** person to hold such a licence. However, if an applicant has any convictions, warnings, cautions or charges awaiting trial, the Licensing Authority will look into:

- How relevant the offence(s) are to the licence being applied for

- How serious the offence(s) were
- When the offence(s) were committed
- The date of conviction
- Circumstances of the individual concerned
- Sentence imposed by the court
- The applicant's age at the time of conviction
- Whether they form part of a pattern of offending
- Any other character check considered reasonable (e.g. personal references)
- Any other factors that might be relevant

Existing holders of drivers' licenses are required to notify the Licensing Authority in writing **within seven days** of receiving a driving licence endorsement, fixed penalty notice or criminal conviction (including cautions).

Applicants can discuss further what effect a caution/conviction may have on any application by contacting a licensing officer in confidence for advice.

The Licensing Authority conducts enhanced disclosures from the Disclosure & Barring Service (DBS) formerly the Criminal Records Bureau (CRB) of any applicant for a driver licence. The Licensing Authority follows the DBS's Code of Practice on the fair use of disclosure information. A copy is available on request.

Applicants applying for the grant or a renewal of a drivers' licence will be required to obtain an enhanced disclosure at their expense. The Licensing Authority abides by the DBS's Policy on the secure storage, handling, use, retention and disposal of disclosure information, which is available on request.

More information about the DBS can be found on their website at

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

The Licensing Authority is also entitled to use other records and information including any complaints history that may be available to it in determining applications or an entitlement to continue holding a licence. This may include information held by the Licensing Authority or other Licensing Authorities, and information disclosed by the police under the Home Office scheme for reporting offences committed by notifiable occupations.

DBS disclosures will not include details of any foreign convictions or cautions unless they have been recorded on the UK National Computer. Any applicant who has resided outside the UK for any period longer than 3 months within the preceding 3 years will be required to produce a "Certificate of Good Conduct" from the relevant countries which details any cautions or convictions arising against the applicant while resident in that country. It shall be the applicant's responsibility to obtain this documentary evidence and to bear the costs of such. The requirement is in addition to the DBS disclosure.

Where an applicant is unable to obtain the above, a discussion will take place with the licensing manager to ascertain what alternative evidence should be provided. This may include character references from appropriate individuals or other bodies as to the applicants conduct whilst resident in the other country.

If character references are supplied the referee must have known the person applying for at least 5 years if they are a friend, neighbour or colleague. If the referee is a professional, i.e. teacher, solicitor etc. then they must have known the person for at least 2 years.

The referee cannot be closely related to the applicant, in a relationship or live at the same address as the person applying.

Non-conviction information

If an applicant has, on one or more occasions, been arrested or charged, but not convicted, for a serious offence which suggests he could be a danger to the public, consideration should be given to refusing the application. Such offences would include but is not limited to serious violent offences, offences involving child sexual exploitation and sex offences.

The Licensing Authority considers cases to the civil burden of proof i.e. a “balance of probabilities” and is able to make a decision on the alleged offences regardless of whether a criminal conviction followed the offence.

In assessing the action to take, the safety of the travelling public must be the paramount concern.

It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material particular in giving information required by the application for a licence. Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.

The following lists are **not exhaustive** and any offences not covered by this Policy will not prevent the Licensing Authority from taking into account those offences. The seriousness of the offence and sentence imposed will be considered in making a determination of the application.

6. Sex and indecency offences

As licensed drivers often carry unaccompanied and vulnerable passengers, applicants with convictions for sexual offences must be closely scrutinised. Those with convictions for the more serious sexual offences will normally be refused. For other offences, applicants will be expected to show a substantial period (normally at least 5 years) free of conviction for such offences before a licence will be granted.

No period is thought appropriate to have elapsed and an application will normally be refused **unless there are truly exceptional circumstances** where the applicant has a conviction for an offence such as:

- Rape
- Assault by penetration
- Sexual offences involving children, young persons or vulnerable adults
- Sexual Assault
- Indecent assault
- Abuse of position of trust
- Familial child sex offences
- Female circumcision
- Female genital mutilation
- Possession of indecent photographs of children
- Abuse of children and young persons through prostitution or pornography
- Trafficking for sexual exploitation

- **Secondary ,preparatory or inchoate offences** (attempt, conspiracy, incitement to commit ; or aiding , abetting , counselling or procuring , any of the above offenses).
- Any sexual offence committed in the course of taxi or private hire work
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

Before an application is allowed, an applicant should be free of conviction for at least 10 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he/she has a conviction for an offence such as:

- Exploitation of prostitution
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

Before a licence is granted, an applicant should be free of conviction for at least 5 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he/she has a conviction for an offence such as:

- Indecent exposure
- Soliciting (kerb crawling)
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

In addition to the above the Licensing Authority will not grant a licence to any applicant who is currently on the Sex Offenders Register.

A licence will not normally be granted if an applicant has more than one conviction for a sex or indecency offence.

7. Offences against Children

No period is thought appropriate to have elapsed and an application will normally be refused **unless there are truly exceptional circumstances** where the applicant has a conviction for an offence such as:

- Sexual activity with a child
- Causing or inciting a child to engage in sexual activity
- Causing a child to watch a sexual act
- Sexual activity in the presence of a child
- Arranging or facilitating child prostitution or pornography
- Arranging or facilitating commission of a child sexual offence
- Meeting a child following sexual grooming etc.
- Possession of indecent photographs of children
- Grooming of children for sexual exploitation
- Trafficking of children for sexual exploitation
- Supplying or offering to supply Class A drugs to a child
- Voyeurism

A licence will not normally be granted ~~unless there are truly exceptional circumstances~~ where the applicant has a conviction for an offence of similar offence(s) which replace the offences below. ~~and the conviction is less than 10 years prior to the date of application:~~

- Neglect of a child.
- Child cruelty
- Abandonment of a child
- Drunk in charge of a child
- Under the influence of drugs in charge of a child
- Exposing a child to risk

8. Serious offences involving violence

Licensed drivers have close regular contact with the public. A firm line is to be taken with those who have convictions for offences involving violence. An application will normally be refused if the applicant has a conviction for an offence that involved the loss of life.

In other cases anyone of a violent disposition will normally be refused. ~~to be licensed until at least 3 years free of such conviction.~~ However, given the range of the offences that involve violence, consideration must be given to the nature of the conviction.

Unless there are truly exceptional circumstances a licence will not normally be granted where the applicant has a conviction for an offence such as:

- Murder
- Manslaughter
- Infanticide
- Child destruction
- Manslaughter or culpable homicide while driving
- Terrorism offences
- Kidnapping or abduction
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A licence will not normally be granted where the applicant has a conviction for an offence of similar offence(s) which replace the offences below and the conviction is less than 10 years prior to the date of application:

- Arson
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm which is racially aggravated
- Grievous bodily harm with intent (s18 Offences Against the Person Act 1861)
- Grievous bodily harm (s20 Offences Against the Person Act 1861)
- Robbery (armed or otherwise)
- Possession or distribution of prohibited weapon or firearm
- Riot
- Common assault with racially aggravated features
- Violent disorder
- Threats to kill
- Any HATE motivated crime
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A licence will not normally be granted where the applicant has a conviction for one of the offences listed below or for an offence which replaces or is broadly equivalent to the offences listed below and the conviction is less than 5 years prior to the date of application:

- Racially-aggravated criminal damage
- Racially-aggravated offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A licence will not normally be granted where the applicant has a conviction for one of the offences listed below or for an offence which replaces or is broadly equivalent to the offences listed below and the conviction is less than 3 years prior to the date of application:

- Common assault
- ~~Assault occasioning actual bodily harm~~
- ~~Assaulting a Police Officer~~
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Harassment
- Obstruction (for example of a police or other authority investigation, making a false statement etc.)
- Criminal damage
- ~~Resisting arrest~~
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A licence will not normally be granted where the applicant has a conviction for one of the offences listed below or for an offence which replaces or is broadly equivalent to the offences listed below and the conviction is less than 5 years prior to the date of application:

- Assault occasioning actual bodily harm
- Assaulting a Police Officer
- Resisting arrest
- Battery

A licence will not normally be granted if an applicant has more than one conviction in the last 10 years for an offence of a violent nature.

In the event of a licence being granted, a strict warning both verbally and in writing should be administered.

9. Driving offences involving the loss of life

A very serious view is to be taken of any applicant who has been convicted of a driving offence that resulted in the loss of life.

A licence will not normally be granted where the applicant has a conviction for:

- Causing death by dangerous driving
- Causing death by careless driving whilst under the influence of drink or drugs
- Causing death by driving while unlicensed, disqualified or uninsured
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

Before a licence is granted, an applicant should be free of conviction for 10 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he has a conviction for:

- Causing death by careless driving

10. Possession of a weapon

If an applicant has been convicted of possession of a weapon or possession of a firearm or any other weapon related offence, this will give serious concern as to whether the person is fit to carry the public.

Depending on the circumstances of the offence, an applicant should be free of conviction for 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), before a licence is granted.

11. Dishonesty

A licensed PHV or taxi driver is expected to be a trustworthy person. They deal with cash transactions and valuable property may be left in their vehicles. All drivers are required to deposit such property with either the Licensing Authority or the police within 24 hours. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal or agreed fare, etc.

Overseas visitors can be confused by our currency and may be vulnerable to an unscrupulous driver. For all these reasons, a serious view is taken of any conviction involving dishonesty.

In general, a minimum period of 3 years free of conviction or at least 3 years from completion of sentence (whichever is longer) should be required before granting a licence. The more serious the offence the longer the period free of conviction should be. Offences involving dishonesty include:

- theft
- burglary
- fraud
- benefit fraud
- handling or receiving stolen goods
- forgery
- conspiracy to defraud
- obtaining money or property by deception
- deception designed to obtain a pecuniary advantage
- other deception
- taking a vehicle without consent

- or any similar offences (including attempted or conspiracy to commit) offences which replace the above.
- perverting the course of justice

12. Drugs

A serious view is taken of any drug related offence. The nature and quantity of the drugs, whether for personal use or supply are issues which should be considered.

A licence will not normally be granted where the applicant has a conviction for an offence related to the supply of or cultivation of drugs and has not been free of conviction for 10 years.

A licence will not normally be granted where the applicant has more than one conviction for offences related to the possession of drugs and has not been free of conviction for 5 years.

An application from an applicant who has an isolated conviction for an offence related to the possession of drugs within the last 3-5 years may be granted a licence, but consideration should be given to the nature and quantity of the drugs.

If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) may be required before the licence is granted. If the applicant was an addict then they would normally be required to show evidence of 5 years free from drug taking after detoxification treatment.

13. Drink driving/driving under the influence of drugs

As licensees are professional vocational drivers, a serious view is taken of convictions for driving, or being in charge of a vehicle while under the influence of drink or drugs. Provided that a period of 2 years has elapsed since conviction an isolated incident would not necessarily debar an applicant from proceeding with an application but he should be warned as to the significant risk to his licence status in the event of re-offending.

More than one conviction for these offences raises significant doubts as to the applicant's fitness to drive the public. At least 7 years, after the restoration of the driving licence following a second conviction for driving or being in charge of a vehicle whilst under the influence of drink or drugs should elapse before an application will be considered. If there is any suggestion that the applicant is alcohol or drug dependent, a satisfactory special medical report must be provided before the application can be allowed to proceed.

14. Outstanding charges or summonses

If the individual is the subject of an outstanding charge or summons their application may in some circumstances continue to be processed, but the application will need to be reviewed at the conclusion of proceedings.

Where information is received through the Notifiable Occupations Scheme on existing licence holders, consideration will be given to the information in accordance with this policy.

If the outstanding charge or summons involves a serious offence and the individual's conviction history indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety the application may be put on hold until proceedings are concluded or the licence may be refused. Existing drivers may have their licence suspended or revoked.

A suspension or revocation of the licence of a driver normally takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver. If it appears that the

interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.

This section includes applicants or licensees who may be subject to police bail having been arrested for an offence and who is currently under investigation.

15. Cautions

Admission of guilt is required before a caution can be issued. [A caution is therefore treated in the same way as a conviction for the purposes of this policy.](#) Every case will be considered on its own merits including the details and nature of the offence.

16. Licensing offences

Certain offences under taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons or assistance dogs would normally prevent a licence being granted or renewed until a period of 3 years has passed since conviction.

17. Complaints

We can take action up to and including suspension and revocation of a drivers licence if a complaint is made which suggests a driver's fitness & propriety is undermined This may be for a number of reasons including but not limited to the following:

- misconduct
- any behaviour, action or negligence impacting on customer safety
- driving standards
- physical or mental ill-health
- lack of the necessary knowledge of English language to be able to perform the role of a licensed driver safely.
- Mischarging
- Inappropriate or aggressive behaviour

The number and type of complaint(s) will be given consideration to and a driver's history will be examined to ascertain whether there have been previous complaints. Except in the most serious of cases, a driver will be given an opportunity to respond to the complaint before any action is taken.

18. Insurance offences

A serious view will be taken of convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily stop a licence being granted provided he/she has been free of conviction for 3 years; however strict warning should be given as to future behaviour. More than one conviction for these offences would normally prevent a licence being granted or renewed.

At least three years should elapse (after the restoration of the DVLA driving licence), before a licence would normally be granted for a hackney carriage or private hire drivers licence. An operator found guilty of aiding and abetting the driving of passengers for hire and reward whilst without insurance will have his operators' licence revoked immediately and prevented from holding a licence for three years.

19. Licences issued by other Licensing Authorities

Applicants who hold a licence with one Licensing Authority should not automatically assume that their application will be granted by another. Each case will be decided on its own merits.

20. Suspensions / Revocations

A licence will be suspended by an Officer of the Council, with immediate effect, in the interest of public safety, in the following circumstances:

- a person is charged with a serious offence
- a person is under investigation for serious offences
- a person is deemed by a qualified general practitioner that the individual is unfit to drive to Group 2 Medical Standards
- a person after experiencing a change in medical condition fails to provide proof of his/her fitness to drive to Group 2 Medical Standards
- a person fails to provide a valid photo card DVLA driving licence, on request

A licence will be revoked by an Officer of the Council with immediate effect in the interest of public safety in the following circumstances:

- a person's ordinary Road Traffic Act Driving licence is revoked or suspended
- a person is disqualified from driving for any period of time

21. Summary

To summarise, a criminal history in itself may not automatically result in refusal and a current conviction for a serious crime need not bar an applicant permanently from becoming licensed. As the preceding paragraphs indicate, in most cases, an applicant would be expected to remain free from conviction for 3 to 10 years, according to circumstances, before an application can be considered. However, there may be occasions when an application can be allowed before ~~the relevant period 3 years free from conviction have~~ ^{has} elapsed.

Any person who has committed an offence and has to wait before an application is positively considered is more likely to value their licence and act accordingly.

While it is possible that an applicant may have a number of convictions that, individually, do not meet the above guidelines, the overall offending history must be considered when assessing an applicant's suitability to be licensed. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Obviously some discretion can be afforded if an offence disclosed is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public.

Before a decision is made to refuse or revoke a licence a meeting will be held in order to afford an applicant or existing driver an opportunity to put their case.

In the Council's view this statement and the guidelines that follow are compatible with the rights and freedoms under the European Convention on Human Rights.

This policy will be continuously monitored and, if necessary, a review will be undertaken.

22. Motoring offences and penalty points

The following is a guide to the number of penalty points a court may impose, it does not reflect the fact that some offences may incur a disqualification. These codes are recorded from information supplied by the courts (accurate at the time of this document).

Existing drivers who have accumulated 9 or more points on their DVLA driving licence will have their private hire/hackney carriage driver licence suspended, until the driver has successfully undertaken a private hire or hackney carriage DSA driving test, at their own expense.

New applicants are required, as part of the application process, to undertake a DSA driving test and therefore will be able to satisfy the Council of their driving ability.

Code Offence Penalty Points

Accident Offences

- AC10 Failing to stop after an accident 5-10
- AC20 Failing to give particulars or to report an accident within 24 hours 5-10
- AC30 Undefined accident offences 4-9

Disqualified Driver

- BA10 Driving whilst disqualified by order of court 6
- BA30 Attempting to driver while disqualified by order of court 6

Careless Driving

- CD10 Driving without due care and attention 3-9
- CD20 Driving without reasonable consideration for other road users 3-9
- CD30 Driving without due care and attention or without reasonable consideration for other road users 3-9
- CD40 Causing death through careless driving when unfit through drink 3-11
- CD50 Causing death by careless driving when unfit through drugs 3-11
- CD60 Causing death by careless driving with alcohol level above the limit 3-11
- CD70 Causing death by careless driving then failing to supply a specimen for analysis 3-11
- CD71 Causing death by careless driving then failing to supply A specimen for drug analysis 3-11
- CD80 Causing death by careless, or inconsiderate, driving 3-11
- CD90 Causing death by driving: unlicensed, disqualified or Uninsured drivers 3-11

Construction & Use of Offences

- CU10 Using a vehicle with defective brakes 3
- CU20 Causing or likely to cause danger by reason of use of unsuitable vehicles or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition 3
- CU30 Using a vehicle with defective tyre(s) 3
- CU40 Using a vehicle with defective steering 3
- CU50 Causing or likely to cause danger by reason of load or passengers 3
- CU80 Using a mobile phone while driving a vehicle 3

Dangerous Driving

- DD40 Dangerous Driving 3-11
- DD60 Manslaughter or culpable homicide while driving a vehicle 3-11

- DD90 Furious Driving 3-9

Drink or Drugs

- DR10 Driving or attempting to drive with alcohol level above limit 3-11
- DR20 Driving or attempting to drive while unfit through drink 3-11
- DR30 Driving or attempting to drive then failing to supply a specimen for analysis 3-11
- DR40 In charge of a vehicle while alcohol level above limit 10
- DR50 In charge of vehicle while unfit through drink 10
- DR60 Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive 10
- DR61 Failure to supply a specimen for drug analysis in circumstances other than driving or attempting to drive 10
- DR70 Failing to provide specimen for breath test 4
- DR80 Driving or attempting to drive when unfit through drugs 3-11
- DR90 In charge of a vehicle when unfit through drugs 3-11

Insurance Offences

- IN10 Using a vehicle uninsured against third party risks 6-8

Licence Offences

- LC20 Driving otherwise than in accordance with the licence 3-6
- LC30 Driving after making a false declaration about fitness when applying for a licence 3-6
- LC40 Driving a vehicle having failed to notify a disability 3-6
- LC50 Driving after a licence has been revoked or refused on medical ground 3-6

Miscellaneous Offences

- MS10 Leaving a vehicle in a dangerous position 3
- MS20 Unlawful pillion riding 3
- MS30 Play street offences 2
- MS50 Motor racing on the highway 3-11
- MS60 Offences not covered by other codes As Appropriate
- MS70 Driving with uncorrected defective eyesight 3
- MS80 Refusing to submit to an eyesight test 3
- MS90 Failure to give information as to identity of driver etc. 3

Motorway Offences

- MW10 Contravention of Special Roads Regulations (excluding speed limits) 3

Pedestrian Crossings

- PC10 Undefined Contravention of Pedestrian Crossing Regulation 3
- PC20 Contravention of Pedestrian Crossing Regulations with moving vehicle 3
- PC30 Contravention of Pedestrian Crossing Regulations with stationary vehicle 3

Speed Limits

- SP10 Exceeding goods vehicle speed limits 3-6
- SP20 Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles) 3-6
- SP30 Exceeding statutory speed limit on a public road 3-6
- SP40 Exceeding passenger vehicle speed limit 3-6
- SP50 Exceeding speed limit on a motorway 3-6

Traffic Directions and Signs

- TS10 Failing to comply with traffic light signals 3

- TS20 Failing to comply with double white lines 3
- TS30 Failing to comply with 'Stop' sign 3
- TS40 Failing to comply with direction of a constable/warden 3
- TS50 Failing to comply with a traffic sign (excluding stop signs, traffic signs or double white lines) 3
- TS60 Failing to comply with a school crossing patrol sign 3
- TS70 Undefined failure to comply with a traffic direction sign 3

Special Code

- TT99 To signify a disqualification under totting-up procedure.

If the total of penalty points reaches 12 or more within 3 years, the driver is liable to be disqualified

Theft or Unauthorised Taking

- UT50 Aggravated taking of a vehicle 3-11

Aiding, abetting, counselling or procuring

Offences as coded, but with 0 changed to 2 e.g. LC10 becomes LC12.

Causing or permitting

Offences as coded, but with 0 changed to 4 e.g. LC10 becomes LC14.

Inciting

Offences as coded, but with the end 0 changed to 6 e.g. DD40 becomes DD46.

Non-endorsable offences

Some offences are non-endorsable. A non-endorsable offence is an offence which courts do not endorse onto paper counterpart. No penalty points are attributed to these offences but they carry a period of disqualification.

At the end of the disqualification (over 56 days) the driver will have to apply for a renewal licence together with the appropriate fee. Any queries about offences and endorsements should be directed to the convicting court.

Period of time

Periods of time are signified as follows: D=Days, M=Months, Y=Years

Endorsements remain on a counterpart licence for the following periods of time:

Endorsements must remain on a licence for 11 years from date of conviction if the offence is:

- Drinking/drugs and driving (shown on the licence as DR10, DR20, DR20 and DR80).
- Causing death by careless driving whilst under the influence of drink/drugs (shown on the licence as CD40, CD50 and CD 60).
- Causing death buy careless driving, then failing to provide a specimen for analysis (shown on the licence as CD70).

Or 4 years from the date of conviction if the offence is as listed below:

- Reckless/dangerous driving (shown on the licence as DD40, DD60 and DD80).
- Offences resulting in disqualification.
- Disqualified from holding a full licence until a driving test has been passed.

Or 4 years from the date of offence in all other cases.

Source www.direct.gov.uk

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Name of meeting: Licensing and Safety Committee
Date: 24th March 2016

Title of report: Application to register land off Marsh Lane, Shepley as a Town or Village Green

| | |
|---|--|
| Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards? | No |
| Is it in the Council's Forward Plan? | Not applicable |
| Is it eligible for "call in" by Scrutiny? | No |
| Date signed off by Director & name | Jacqui Gedman – 14/03/16 |
| Is it signed off by the Director of Resources? | David Smith – 10/03/2016 |
| Is it signed off by Assistant Director – Legal, Governance & Monitoring? | Julie Muscroft – 10/03/2016 |
| Cabinet member portfolio | Cllr Steve Hall, Portfolio Holder for Planning, Highways and Open Spaces |

Electoral wards affected: Shepley
Ward councillors consulted: Not applicable
Public or private: Public

1. Purpose of report:

To determine the application to register land off Marsh Lane Shepley (shown on the map **at page 1 of** Appendix 1 to this report and known henceforth in this report as "the Application Land") as a town or village green.

2. Key points

The Council has received an application under S15 Commons Act 2006 ("the Act") to register the Application Land as a town or village green on 22 September 2015 ("the Application"). The Council is the Registration Authority for the purposes of the Act

Since the Council is unable to locate any owner of the Application Land after reasonable enquiry, and there have been no objections of substance to the Application, officers for Legal Services of the Council have prepared a report assessing both the method of determination, and the merits of the application itself.

Legal Services' recommendation is annexed to this report at Appendix 2
Under the Terms of Reference of the Delegation Scheme of the Council's Constitution the Licensing and Safety Committee has power to register common land or town or village greens

The officer's report has recommended that the application is accepted with the overall conclusion thus:

Overall conclusions are as follows on the balance of probabilities:

- (a) there has been sufficient use of the Application Land in amount and manner to justify its registration;
- (b) the Application Land has been used by a significant number of the inhabitants of the neighbourhood.

The Committee is now asked to formally determine this application acting as Registration Authority

3. Introduction/ Background Information

3.1 Background documents (available for public inspection):

The documents disclose important facts on which the report is based, which include witness evidence, and have been relied upon in preparing this officers report. This is a large bundle of papers and copies will be available at the hearing. The can also be viewed at http://www.kirklees.gov.uk/business/land_charges/townVillageGreenApplication.shtml

A map, OS plan and photos are attached at Appendix 1

3.2 The Application Land

The Application Land is described fully in the officer's report at Appendix 2 attached hereto and a plan of the Application Land is shown at Appendix 1 attached hereto.

3.3 The Role of Kirklees Council

The Council is appointed by law as the authority responsible for the registration of town or village greens. The Constitution of the Council delegates this responsibility to the Licensing and Safety Committee. The Council must determine whether the Application Land is, in fact, a town or village green. The law on this is explained fully in the officer's report at Appendix 2 and briefly below at paragraph 1.3 of this report. If the Application Land is found to be a town or village green, then the Council must register it.

3.4 The Law of Village Greens

The current definition of a town or village green is set out by the Commons Act 2006 ("the Act") at section 15 thus: "**land ...where**

- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports or pastimes on the land for a period of at least 20 years; and**
- (b) they continue to do so at the time of the application. "**

Any land can be a town or village green: it does not have to be "green", nor does it have to be in a village. Members should note that the Act gives the Registration Authority no discretion. If all of the conditions set out in section 15 are met, then the land is a town or village green and must be registered. If any one or more of the conditions is not met, the land is not a town or village green and the application must be refused.

3.5 The Application

The Application submitted by Shepley Village Association asserts that all of the conditions for the establishment of a town or village green have been met. The Application includes a bundle of signed witness statements and photographs from members of the public, relating to their use of the land.

3.6 The Objection

The Council has received one objection. This objection challenges the facts asserted in the Application. However, the objection was couched in ambiguous terms and appeared to stem from a misunderstanding of the consequences of the Application and ownership of the Application Land. The Objector sought the opportunity to acquire land. Clarification was sought as to the real meaning of the communication. The Objector has indicated that she intends to take possession of a 2m strip of the Application Land adjacent to her property. The intended purpose is to alleviate her concerns regarding damage to her property, although no evidence has been submitted to substantiate this assertion or fear. The Council as Registration Authority is treating the correspondence as a formal objection and assesses it and gives it due weight as set out in the officer's report.

The Applicant has had sight and commented upon the objection and makes comment as set out in the officers report. The Applicant asserts that the use of the Application Land is as described by the witness statements and points to the fact that the objection has no supporting evidence.

It appears that the Registration Authority is not faced with a serious dispute over the alleged use which makes a non-statutory public inquiry appropriate. The correspondence is couched in terms of an objection "I do not wish to object to the whole application. I am objecting to a strip of land parallel to my property," but which in fact is an intention to take adverse possession of a strip of land.

3.7 "As of Right"

The term "as of right" is a technical legal one. It does not mean "by right." It means that the person using the land has neither right nor permission to do so, but he acts openly as if he did have such a right, and the landowner does

nothing to prevent him. The result, over time, is that the landowner, by his inaction, consents to the creation of a new right.

3.8 Application Land Owner

In this case, unlike previous village green applications, the land owner is unknown. In the report at Appendix 2, evidence is presented to show the enquiries which have been made by the Council to ascertain ownership, and advice received on the likelihood of an owner being found. It concludes that a land owner is unlikely to be found.

3.9 The Determination Process

Given the lack of objection, and to all intents and purposes no landowner discovered upon reasonable inquiry, Legal Services considers it reasonable and proper to determine the Application on paper. Detail relating to that conclusion is set out fully in the officer's report at Appendix 2.

4. Implications for the Council

A If the recommendation of the officer's report is NOT followed then: the Council disagrees with the findings, on the balance of probabilities, that the Application Land has been used sufficiently to meet the definition of the Act and does not register it as a TVG. In this eventuality the Application is rejected and the Application Land will retain its current status. Disappointed applicants may seek to bring a claim of judicial review of the decision by the Council or simply reapply. There is no appeal process, merely the opportunity to reapply with more/other evidence;

B If the recommendation IS followed then: the Application Land is registered, and the Application Land will be effectively sterilised from future development. The Council may face a claim of judicial review (by anyone affected e.g. a user of the Application Land or by an individual Member) of the decision on the basis that the officer's report is not robust and an independent process has not been adopted in the consideration of the application. In other words, a paper determination is not good enough in the face of an objection, and that the correct approach should have been by way of an inquiry. Similarly, in the future the land owner may appear to claim that the process was unfair and seek judicial review. Given the research this likelihood is seen as minimal.

C The Application cannot be **deferred** unless the view is taken that all enquiries to discover the land owner have not been exhausted. However the application must be determined efficiently and effectively and there cannot be an open ended deferral. At a point in time there must be either acceptance or rejection of the Application as presented.

4.1 Legal Issues

In addition to the matters of law discussed above, namely that all elements of the definition of a town or village green set out in the Commons Act must be met; there is a risk that a decision of the Council may be subject to judicial review. The decision must therefore be taken strictly in accordance with the law. As indicated, the officer's report is impartial and in accordance with best practice and therefore any decision by this Committee which is not in accordance with the officer's recommendation must be justified in very robust terms, failing which the Council is at risk of a judicial review claim.

4.2 Conclusion

The Assistant Director - Legal & Governance has been consulted and advises that the officer's recommendation should be followed and should, for the reasons set out above, accept the Application.

5. Consultees and their opinions

The Assistant Director - Legal & Governance advises that the recommendation of the officer's report is followed and the Application Land is registered as a town or village green

Reason: best practice has been adopted in conducting enquiries into the search for a landowner. All reasonable enquiries have been made. Second, a robust and independent assessment has been made in respect of the merits of the Application. There has been a proper assessment to evaluate the evidence impartially and rigorously by a legal officer sufficiently familiar and practiced with the law in relation to town and village greens. Consequently it is a safe and satisfactory course of action.

6. Next steps

If the recommendation is followed the Application Land will be registered as a town or village green and the register held by the Registration Authority will be amended.

7. Officer recommendations and reasons

That the Committee determines the application in accordance with the Officers report recommendation as set out in Appendix 2 for the reasons set out in that report

8. Cabinet portfolio holder recommendation

Councillor Steve Hall, Portfolio Holder for Planning, Highways and Open Spaces, recommends registering the land as village green and also notes the high quality of the application.

9. Contact officer and relevant background papers/information

Catherine Walter
Licensing, Local Land Charges and Highways Registry Manager
Tel: 01484 221000
Email: catherine.walter@kirklees.gov.uk

Papers: Appendix 1: Background Papers and Map showing the Claimed Land.

Appendix 2: Officers report and recommendation

10. Assistant Director responsible

Joanne Bartholomew, Assistant Director – Place
Tel: 01484 221000
Email: joanne.bartholomew@kirklees.gov.uk

SHEPLEY VILLAGE GREEN
APPLICATION TO REGISTER AS A VILLAGE GREEN



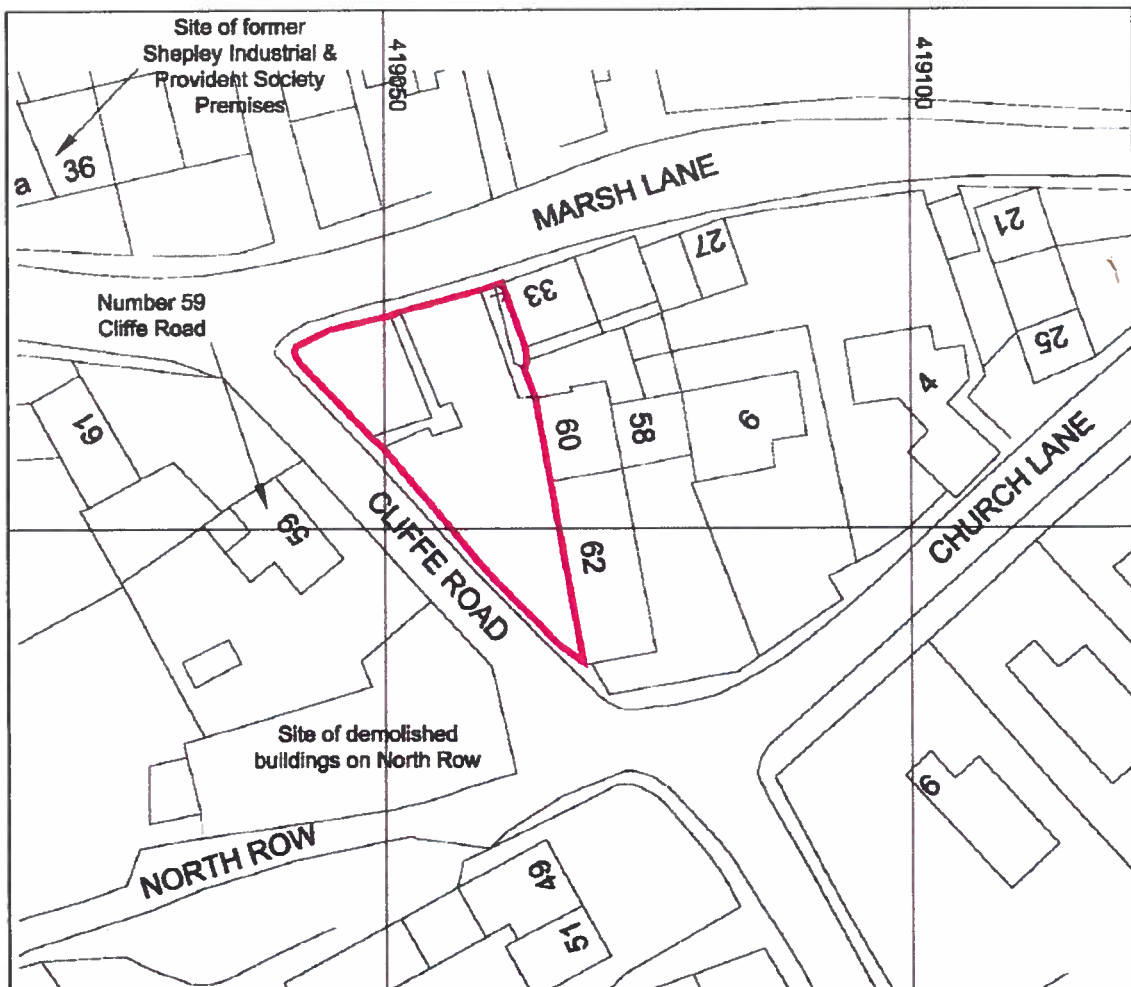
MAY 2015

SHEPLEY VILLAGE GREEN REGISTRATION

JUSTIFICATION

- 1 Shepley Village Green has been used as of right for lawful sports and pastimes for a period in excess of 20 years before the date of this application and this use continues at the date of application [Section 15(2)]. During this period a significant number of the inhabitants of the Village have used the land without interruption or cessation.
- 2 Figure 1 following is a plan of the Village Green and its vicinity, showing the locations referred to in this statement. The triangular shaped Green can be seen in its setting with Marsh Lane on its north side and Cliffe Road to the west. Its eastern boundary is formed by the walls of 33 Marsh Lane and 60 and 62 Cliffe Road. It covers an area of 430m² and in its present form can be seen in Figures 5 and 6.
- 3 The Green has a tarmac pavement on its boundary with Marsh Lane and a concrete mesh border against Cliffe Road. The surface is grassed with some paths laid to gates/doors in house walls.

FIGURE 1 : Plan of Village Green and surrounding area



SHEPLEY VILLAGE GREEN REGISTRATION

- 4 Nineteen individuals have completed questionnaires giving evidence of the use as of right going back to 1940, with one individual providing evidence stretching back to 1931. Many more of the Village inhabitants have engaged in lawful sports and pastimes than these 19 individuals. For instance, large numbers have taken part in the annual carol service and in Village celebrations and religious services. 18 of the individuals have provided letters confirming that the uses of the Green have persisted until 26 April 2015.
- 5 Efforts have been made by individuals and by Kirklees Council to discover the ownership of the Green, but to no avail. Certainly, no challenge has ever been made as to the use of the land by any individual. Kirklees Council regularly cuts the grass and Kirkburton Parish Council has sited a large lit Christmas Tree on the land for many years.
- 6 The nineteen questionnaires show that the main activities have been play, Church Services/Celebrations, walking and the annual carol service. More than twelve of the questionnaires give evidence for these activities, with all witnessing the annual carol service. Other sports and pastimes for which evidence is given include organised and informal sports such as cricket, football and rounders, picnicking, bonfires (from 1940 to 1948) and cycling. Eight individuals refer to painting and drawing having taken place.
- 7 Villagers have planted spring flowering bulbs on the green as shown by the photograph taken in 2009 and attached to Angela Tolson's questionnaire. Photographic evidence of the spring bulbs is also given by and attached to his questionnaire by David Barrans. Mr Barrans also attaches photographs of scarecrows from 2008 and 2012. The 2012 photograph shows a scarecrow wedding pair constructed by Shepley First School.
- 8 The Village celebrations and religious services include maypole dancing as shown in two undated photographs attached to Mr Barran's questionnaire. He also attaches a photograph of the lit Christmas Tree from 2011.
- 9 Colin Secker provides the longest evidence of use as he is able to testify to continual use back to 1931. He has lived in Shepley for all of the time since then. From 1931 to 1956, he lived very close to the Village Green. He gives evidence of an air raid shelter able to accommodate 80 people between 1940 and 1947, and on the presence of a seat; the seat being used by local people to meet and chat on pleasant afternoons. He can also attest the annual carol service being held for the last 36 years and the use of the Green for allotment holders shows and for allotments during the Second World War.

SHEPLEY VILLAGE GREEN REGISTRATION

- 10 John Selwyn Smith can also testify to the continual use of the land for lawful sports and pastimes as he too has lived in the village all of his life, during which time he has not known of any owners. Mr Smith's sister is Catherine Pilkington who has also lived in the Village from birth, except between 1960 and 1967. She has lived very close to the Green and has observed the bonfires, and the Christmas carols with Shepley Band, for many years. Mrs Pilkington has also noted the existence of an air raid shelter on the Green and noted that as a child she played in it for many years until it was dismantled.
- 11 Patricia Lucas has also lived in the Village all of her life and states that she has used the Green "a lot of times during 1946 - 2013". She testifies to having seen the bulb planting and New Year services on the land.
- 12 Frank Appleyard has lived in the Village since 1970 and attests to the Christmas Eve carol singing and the joint church open air services. He has provided copy sheets from an old Ordnance Survey map which although undated, clearly predates many houses built around the Green in the 1960s and 1970s. The Green is shown as undeveloped, as it is today.
- 13 David Billington has been an Editor of the Shepley Village Magazine since before the early 1980s. He has lived in the Village continuously since 1966 and gives evidence of a wide range of uses including carnivals, sword dancing and the millenium celebrations. He states that carol singing and performance by the Shepley Brass Band have taken place annually since around 1977. Mr Billington has written several books on the history of the Village and has not been able to find any record of the landowner. He does have evidence of the land being used by the local band, choirs and children for the Trinity feast as long ago as the late 1800s.
- 14 Mr Billington's book "Shepley: A Glimpse Across Time" is attached to this application. On page 66 it has a photograph of Villagers welcoming in the millennium in 2000, with a significant number of villagers in the photo. The photograph is taken from in front of 59 Cliffe Road and includes the Christmas Tree which is placed on the Green by Kirkburton Parish Council every year.
- 15 Mr Billington has also written a book entitled "Shepley Believe itor Not!" The book has several photographs taken on and around the Green, showing village activities taking place.
- 16 Page 217 carries a photograph (Fig 3) showing a large crowd gathered in front of 59 Cliffe Road. A present day photograph (Fig 2) of this house is shown to aid identification.

SHEPLEY VILLAGE GREEN REGISTRATION

- 17 The bottom right photograph (Fig 3) is likely to have been taken on the occasion of either a carnival in 1909 or the Coronation in 1911. The Shepley Band, some of whose members can be seen wearing sashes in the photograph, apparently on wore these on special occasions.



FIGURE 2

59 Cliffe Road as it is today.

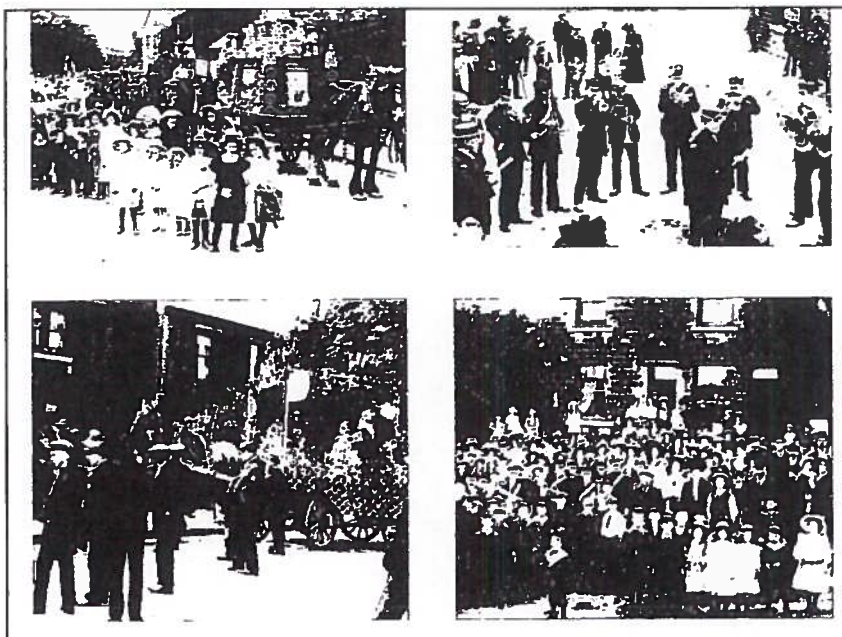


FIGURE 3

Excerpt from page 217 of "Shepley Believe it...or Not"

Bottom right photograph shows large crowd gathered in front of 59 Cliffe Road. A late 1800s/early 1900s village gathering.

- 18 A similar gathering on the Green is shown in a photograph at the bottom of page 119 (Fig 4) . This photograph was taken with now demolished buildings on North Row in the background.
- 19 Two further photographs show the Village Green as it is today (Figures 5 and 6).

SHEPLEY VILLAGE GREEN REGISTRATION

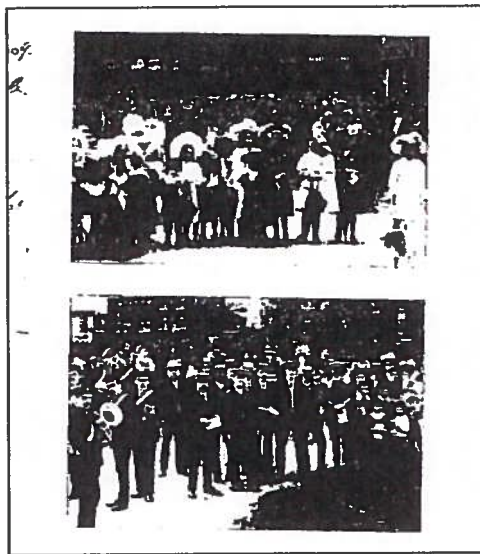


FIGURE 4

Excerpt from page 119 of "Shepley Believe it...or Not". Bottom photograph shows a large gathering on the bottom end of the Green near North Row.



FIGURE 5

The Green as it appears today with Cliffe Road to the right and Marsh Lane to the left.



FIGURE 6

The former Shepley Provident and Industrial Society Ltd building can be seen top right.

The Village Green is in the bottom left with the junction between Marsh Lane and Cliffe Road

SHEPLEY VILLAGE GREEN REGISTRATION

- 20 Shepley Industrial and Provident Society Ltd, the forerunner of Shepley Co-op, had its shop and office at what is now two residential houses, numbers 36 and 36A Marsh Lane. These properties can be seen on the left hand side of the photograph and overlook the Green to their left. The front page from the 1951 Half-yearly Report and Statement of Accounts (Fig 7), reproduced below, shows the Society's address as The Green, Shepley. Another indication of the status of the Village Green.

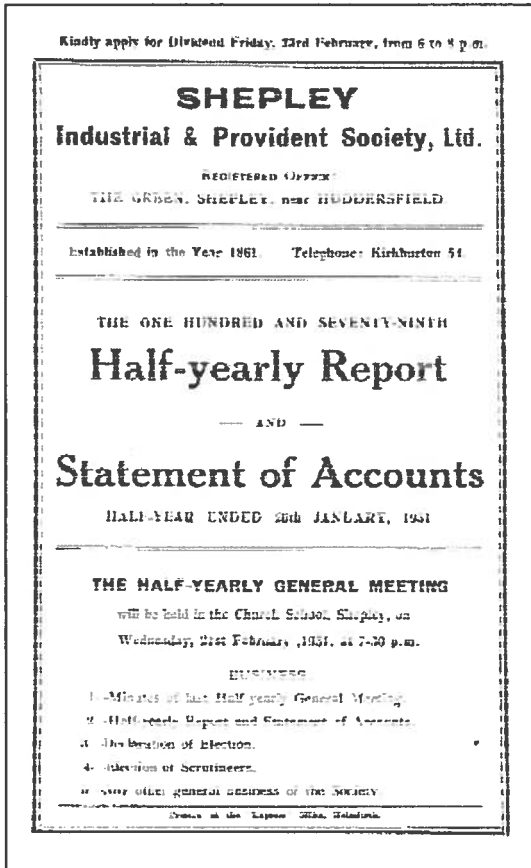


FIGURE 7

Excerpt from Shepley Industrial & Provident Society Ltd Half-yearly Report showing Society address as The Green, Shepley.

- 21 Village legend also has it that cock, bull and bear baiting also took place on the Green from the mid 1600s into the 1800s; the last activity to cease was cock fighting. The Green was well placed between what was then Upper and Lower Shepley.
- 22 Figure 8 shows an extract from the 1893 Ordnance Survey map of Shepley. It can be clearly seen that the Village Green was then in existence and had not been built on. The map is probably slightly later than the map extract attached to Mr Appleyard's Questionnaire.
- 23 Ann Lee adds to Mr Barrans evidence on the use of the Green; her daughter and her friends held sales in aid of charity during the school holidays; and also refers to the Shepley Whitsuntide Parades taking place on the Green.

SHEPLEY VILLAGE GREEN REGISTRATION

use is provided with photographic evidence of use from the 1920s and perhaps earlier.
There has never been a break in the use of the land by the people of Shepley.

APPENDIX

2

APPLICATION TO REGISTER LAND KNOWN AS SHEPLEY VILLAGE GREEN
SHEPLEY HUDDERSFIELD AS A TOWN OR VILLAGE GREEN
APPLICATION KC/VG9

REPORT

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Recommendation: the Application should be accepted.

Introduction

1. I am asked in this case to advise Kirklees Council in its capacity as registration authority for town or village green (RA) in connection with an application to register land known as Shepley Village Green, Shepley as a town or village green.
2. The application was dated 22 September 2015 (“the Application”) and was made by Mr Chris Ballam on behalf of the Shepley Village Association on the basis that section 15(2) of the Commons Act 2006 (“the 2006 Act”) applied. By response from the Planning Inspectorate dated 15th September 2015 it was confirmed that no terminating or trigger event had occurred on the Application Land as required by an amendment to the Commons Act 2006 by the Growth and Infrastructure Act 2013, thus allowing the RA to accept the Application.
3. The Application was supported by 19 completed evidence forms. The evidence forms were those designed by the Open Spaces Society.
4. The Application attracted one objection. Despite all reasonable efforts to bring the Application to the attention of the land owner, no owner has been found.
5. I am asked to provide advice not just in respect of the manner in which the Application should be determined, but also in relation to the merits of the Application. The normal procedure of a non-statutory public inquiry would appear to be unnecessary and wasteful of costs in the absence of any objection of substance. It is appropriate though to produce a report containing a recommendation which would then be placed before the Licensing and Safety Committee as required by the Council’s constitution.

6. In relation to the merits of the Application I am asked to provide a recommendation for the substantive determination of the Application in the event that the Application can be determined on paper. The normal procedure is by way of a non-statutory public inquiry where objections are received.

Appropriate procedure for determination by the Registration Authority

7. Kirklees Council acts in its capacity as registration authority for town or village greens (“the Registration Authority”) and must determine the application (hereafter “the Application”) to register land known as Shepley Village Green Shepley (“the Application Land”) as a town or village green.
8. A useful starting point for approaching the question of the appropriate procedure for the determination of this application is the decision of the Court of Appeal in the case of *Whitmey v The Commons Commissioners*.¹ **In that case Arden LJ said “[i]n cases where it is clear to the registration authority that the application or any objection to it has no substance, the course it should take will be plain.** *If, however, that is not the case, the authority may well properly decide, pursuant to its powers under section 111 of the 1972 Act, to hold an inquiry. We are told that it is the practice for local authorities so to do, either by appointing an independent inspector or by holding a hearing in front of a committee. If the dispute is serious in nature, I agree with Waller LJ that if the registration authority has itself to make a decision on the application ... it should proceed only after receiving the report of an independent expert (by which I mean a legal expert) who has at the registration authority's request held a non-statutory public inquiry.*²
9. Waller LJ said that **“in any case where there is a serious dispute, a registration authority will almost invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts.”**³

¹ [2004] EWCA Civ 951.

² At paragraph 29.

³ At paragraph 66; see also paragraph 62.

10. I have reviewed the papers in detail and this is clearly not a case where it could be said that the Application has no substance to it. On the contrary, there is a bundle of persuasive evidence from nineteen individuals. Equally, though, it is a case where an objection has been received, by way of an letter undated but received on 25th November 2015. The objection and subsequent correspondence is set out in the background papers to this report but in summary the objector says in the first letter :

- “we do not want to fully contest the application”.
- Makes observations over a period of 3 months since moving to their current address adjacent to the Application Land;
- Makes comment/expresses opinion on the ability of the land in question to sustain future activity/use as described in the Application because such matters which include: Proximity to houses; land incline; proximity to busy road; proximity to bus route; poor drainage; hazards on the land such as buried air raid shelter/pipes.

11. As a matter of information the objector was informed that the Council is not the landowner and therefore cannot transfer any of the land to the objector

12. The objector replied on 21st December 2015 indicating that she would seek legal advice. Further communication from the Objector on 21 January 2016 indicated that the Objector does not wish “to object to the whole application” but instead only to a strip of land flush to her property being 2 m wide and the length of the property. The Council wrote to the Objector on 28 January 2016 indicating that (i) her proposed course of action to enclose part of the Application Site, if TVG status is granted, would render her liable to prosecution in the Magistrates Court; and (ii) that the fact that the objection relating to the majority of the Application Land was retracted, undermined the cogency of her objection and perhaps the veracity of her evidence and the rectitude of her objection. A deadline of 5th February 2016 was set to clarify her intention. No such reply has been forthcoming. The Council is treating the letter as an objection and giving it appropriate weight in the assessment.

- As regulation 6 of the Commons (Registration of Town or Village Greens)(Interim Arrangements)(England) Regulations 2007 requires the Applicant be given the opportunity to comment on any objection, a summary of the objection was made available on 9 February 2016. The Applicant's comments are set out in the background papers, but in summary his comment is:
 - agrees with the Council's analysis of the purpose of the objection ;
 - confirms no relevant evidence has been submitted to support the objection;
13. Pertinently, there is no objection from an owner, or indeed any identified landowner. Adverts were placed in the Huddersfield ~~Gazette on~~Examiner on 21 October 2015 and the London Gazette 24th November 2015 (copies of the confirmation are in the background papers). No one came forward. Consequently there is no objection from the land owner to consider.
14. Turning to the assessment of the representations from the adjacent landowner/objector, this has been treated as a formal objection. However, I consider the weight to be given to that objection is considerably lowered for the following reasons: the period of observation and knowledge of the land is extremely limited in time (3 months) and season; the comments seem to be motivated by self-interest rather than genuine objection to the Application and alleged use; it is from one individual only, although I remind myself that the number of objections is not determinative, and that qualitative assessment is important too ; clarification was sought from the objector. She indicated that she would be taking legal advice. Further communication from the objector showed that she intends to object only to a strip of land 2 metres wide adjacent to her house; that she intends to take adverse possession of that strip by erecting a boundary and maintaining it; and the purpose of the objection was to alleviate concerns regarding potential damage to her property; no supporting material to substantiate her opinion or observations has been supplied as evidence; retraction of the original objection in relation the majority of the Application Land is undermined considerably by her later statement and the weight to be given to the limited

amount of her sole witness evidence (3 months referred to above) is further reduced. In these circumstances and for these factors, the substance of the objection is reduced. I therefore give the objection little weight.

It seems to me that the registration authority is not faced with a serious dispute over the alleged use which makes a non-statutory public inquiry appropriate. The ability of the registration authority to rely on written evidence which has not been tested by cross examination is restricted,⁴ but in the absence of dispute the test is the civil standard of the balance of probabilities. *Whitney* demonstrates that the registration authority is under an obligation to put itself in a position where it can properly determine the disputed matters before it.⁵ I consider that in this case the discharge of that obligation does not require a non-statutory public inquiry. I appreciate that this will have costs consequences, beneficial to the authority in this case, but if the council were to be in the opposite position, consequences should not be allowed to deflect the registration authority from the course it should take. The question of fairness to an unknown landowner objector/the possibility that a future owner may come forward, is one factor which must be taken into account in the determination of this application. This risk is detailed below.

15. In my view, the searches which have been undertaken by the Registration Authority and which are set out in the background papers are sufficient to give this risk very little weight in the determination. An alternative search method to ascertain or try to ascertain is set out in the background papers and which is informed by a land law officer of the Council experienced in such research. In summary, such a search appears to be long winded, time consuming, expensive, of very little value to the Council (as registration authority) and ultimately with the little chance of finding an owner .

⁴ See *Alfred McAlpine Homes v Staffordshire County Council* [2002] EWHC 76 (Admin) at paragraph 75 (Sullivan J).

⁵ Cf also the observation of Sullivan J in *Cheltenham Builders Ltd v South Gloucestershire District Council* [2003] EWHC 2803 (Admin) at paragraph 36 that, in accordance with the principle established in *Secretary of State v Tameside Borough Council* [1977] AC 1014, 1065, the registration authority is under an obligation “to take reasonable steps to acquaint [itself] with the relevant information” to enable it to correctly answer the question before it.

16. I do not consider that there are any alternative courses of action open to the registration authority. The registration authority has no alternative but to determine the application. It cannot decide not to determine it. The registration authority has the choice between a paper determination of the matter and determination by way of a non-statutory public inquiry. I have already advised as to how I consider that choice should be exercised. Hearings before committees (a variant of the non-statutory public inquiry procedure) have fallen into disuse. The question of voluntary registration of as a town or village green under section 15(8) of the 2006 Act is not a possibility as there is no known landowner.
17. Given the circumstances set out above, I consider it to be reasonable in the circumstances to continue with a paper determination of the application.

Merits of the case

The Application

18. The Application seeks registration of the Application Land under section 15(1) of the Commons Act 2006 (“the 2006 Act”) on the basis that section 15(2) applied.
19. Section 15(2) of the 2006 Act applies where –
“(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
(b) they continue to do so at the time of the application.”
20. The Application was supported by 19 completed evidence questionnaires and other material. It was objected to by way of a letter without supporting material undated but received 25th November 2015. The objection was not followed up nor supported with any material evidence. For the reasons set

out above the matter is proceeding by way to paper determination which forms the subject of this report

21. The relevant 20 year period by which the Application falls to be assessed in this case runs from 1985 to 2015.

The Application Land

22. The Application Land is a small green open space of about 428.4 square metres in area. It is unclassified in the Council's Unitary Development Plan.
23. To the north the Application Land is bounded Marsh Lane; to the west by Cliff Road and to the east it is bounded by the rear gardens of properties 33 Marsh Lane, 62 and 60 Church Lane.
24. There are no recorded public footpaths (recorded on the definitive map). The access points onto the Application site are from Marsh Lane and Cliffe Road. It is unfenced.
25. The Application Land is open grassland. It has been maintained (cut with mower) by the Council for over 19 years.
26. The condition of the Application Land over the relevant period is not one at issue. There are a no trees on the Application Land.

Neighbourhood and Locality

27. In referring to the issue of neighbourhood and locality I use the conventional terminology of "limb (i)" and "limb (ii)" cases. A limb (i) case is one which is put on the basis that use has been by a significant number of the inhabitants of a locality. A limb (ii) case is one which is put on the basis that use has been a significant number of the inhabitants of a neighbourhood within a locality.

28. The answer to question 6 on the application form (form 44) which asks for the locality or neighbourhood within a locality in respect of which the application is made stated that the locality was Shepley parish ward. The area so identified as the locality was shown edged red on Map B accompanying the Application. This was clarified in the application procedure under Regulation 5 (4) of the Commons (Registration of Town of Village Greens) (Interim Arrangements) (England) Regulations 2007 SI 2007 No. 457 (“the Regulations”) which requires the RA not to reject an application without giving an opportunity to correct and make it acceptable. The Application was thus made on the basis of a “limb (i)” case (i.e., on the basis of use by a significant number of the inhabitants of a locality as opposed to use by a significant number of the inhabitants of a neighbourhood within a locality) with the locality being the Shepley Parish ward. In limb (i) cases a locality has to be an area with legally significant boundaries, as recently confirmed by the Court of Appeal in *Adamson v Paddico (267) Limited*.⁶ It appears to me that the ward of Shepley parish has legally significant boundaries.

The Evidence

29. In this section of the report I summarise the respective pieces of evidence. Full copies of the evidence are in the background papers.

(a) The evidence from the Council

On behalf of the Council officers have confirmed:

there are no recorded footpaths across the land; there has been maintenance of the Application Land in the form annual seasonal mowing; that it is reasonable to assume that there is no known owner

⁶ [2012] EWCA Civ 262.

(b) The evidence in support of the Application

In the succeeding paragraphs under this section, I set out a summary of the main features of the evidence given by the witnesses for the Applicant in support of the Application in their evidence forms.

| NAME | PERIOD OF USE | ACTIVITIES |
|----------------------|----------------------|---|
| Judith Parkes | 1980 – 04.8.2013 | Playing, dog walking, church services and celebrations, picnicking, people walking, carols singing |
| Frank Appleyard | 1970 – 12.8.2013 | Drawing and painting, dog walking, church services and celebrations, bird watching, people walking, carol singing |
| Patricia Lucas | 1946 – 17.8.2013 | Carol singing, bulb planting, new year service |
| Catherine Pilkington | 1940 – 11.8.2013 | Playing, drawing & painting, dog walking, church services and celebrations, people walking, bonfire parties, bicycle riding, carol singing, old 2 nd world war shelter was built and used to play in it as a child after the war before it was dismantled. |
| Colin Secker | 1931 – 10.6.2013 | Playing, rounders, dog walking, team games, fetes, cricket, picnicking, people walking, bonfire parties, carol singing. |
| David Billington | 1966 – 7.4.2013 | Playing, church services and celebrations, fetes, carol singing, band playing, dancing, exhibitions. |
| Ann Lee | 1964 – 1999 | Playing, carol singing, parades. |
| Dorothy Watkins | 1968 – 1990 | Playing, people walking, carol singing. |
| Malcolm Hogg | 1983 - 2013 | Playing, drawing and painting, church services and celebrations, football, picnicking, people walking, carol singing. |
| David Iredale | 1975 – 22.7.2013 | Carol singing |

| | | |
|----------------|---------------------|--|
| | | |
| Carol Warham | 1984 – 19.5.2013 | Playing, drawing and painting, dog walking, team games, church services and celebrations, kite flying, people walking, carol singing. |
| Ian Halliwell | 7/2013 – 24.5.2013 | Playing, drawing and painting, church services and celebrations, football, people walking, carol singing, snow activities. |
| John Smith | 1942 – 10.8.2013 | Playing, rounders, dog walking, church services and celebrations, people walking, bonfire parties, bicycle riding, carol singing. |
| Susan Barr | 1981 – 23.5.2013 | Playing, dog walking, church services and celebrations, carol singing. |
| John Warham | 1984 – 17.8.2013 | Drawing and painting, dog walking, church services and celebrations, people walking, carol singing. |
| Jackie Chatten | 4.1988 – 16.11.2013 | Playing, dog walking, church services and celebrations, people walking, carol singing. |
| Peter Roberts | 2005 – 2.5.13 | Dog walking, people walking, carol singing. |
| D Barrans | 1975 – 9.6.2013 | Playing, rounders, drawing and painting, dog walking, church services and celebrations, football, cricket, carol singing. |
| Angela Tolson | 1962 – 14.7.2013 | Playing, drawing and painting, dog walking, church services and celebrations, bird watching, people walking, bicycle riding, carol singing, millennium church service (1 st Jan 2000 (am)). |

All of the witnesses' addresses are set out in full in their witness statements and have been updated to the date of the Application.

(c) The Objector

The objector provides no material evidence save for an assertion of her observations and opinion on the Application Land's suitability for future use of the types alleged.

30. **Findings and analysis**

The Objection

31. This has been treated as a formal objection. However the weight to be given to that objection is considerably lowered for the following reasons: the period of observation and knowledge of the land is extremely limited in time (3 months) and season; the comments seem to be motivated from self-interest rather than genuine objection to the application and alleged use; it is one individual although numbers of objections is not determinative; clarification was sought from the objector but after indicating that she would be taking legal advice there has been no further communication; no supporting material was supplied as evidence. In these circumstances and for these factors, the substance of the objection is reduced. I therefore give the objection little weight. See also paragraph 14 above.

Use as of Right

32. No inference can be made from the Council's maintenance of the Application Land (mowing) as to the acquisition of rights or interest, or ownership. There is no question in this case of the Application Land having been provided to the public for the purposes of recreation under any statutory power (eg the Open Spaces Act 1906, the Public Health Act 1875 or in any other statutory provision) so as to confer a right on the public to use the Application Land for recreation. Therefore in the circumstances there is no question of use of the Application Land having been "*by right*". The Applicant's evidence submitted that use of the Application Land had been "as of right". There had been no force or secrecy and no permission had been sought or given. There had been no attempt by anyone to restrict access. No notices had been posted; no fences or enclosures surrounded the Application Land.

Locality

33. The locality has been identified as the civil parish of Shepley. In my view that is plainly an appropriate locality for the purposes of the Application. The locality of Shepley parish ward has significant legal boundaries.

Sufficiency of Use

34. In assessing the written evidence in support of the Application in relation to the question of use I remind myself that, as it was put by Sullivan J in *Alfred McAlpine Homes*, it is necessary to treat that evidence with caution because it is not subject to cross-examination. In approaching this assessment I first remind myself of a number of substantive principles which need to be borne in mind as established in case law. First, the requisite use which is required to be shown is, as Lord Hope indicated in *Lewis v Redcar and Cleveland Borough Council*,⁷ “use for at least 20 years of such amount and in such manner as would reasonably be regarded as being the assertion of a public right.”⁸ Use which is “trivial and sporadic”, to use Lord Hoffman’s words in *Sunningwell*, may not carry the outward appearance of use as of right.
35. Secondly, as Sullivan J stated in *Cheltenham Builders*, applicants for registration have to “demonstrate that the whole, and not merely a part or parts, of the site had probably been used for lawful sports and pastimes for not less than 20 years. A common sense approach is required when considering whether the whole of a site was so used. A registration authority would not expect to see evidence of use of every square foot of a site, but it would have to be persuaded that for all practical purposes it could sensibly be said that the whole of the site had been so used for 20 years.”⁹
36. Thirdly, in accordance with the observations and guidance of Sullivan J in *Laing Homes Limited v Buckinghamshire County Council*¹⁰ and of Lightman

⁷ [2010] UKSC 11.

⁸ At paragraph 67. See also paragraph 75.

⁹ At paragraph 29.

¹⁰ [2003] EWHC 1578 Admin at paragraphs 98-110.

J in *Oxfordshire County Council v Oxford City Council*¹¹ at first instance, it is necessary to consider the use of paths on the Application Land, the extent to which there has been use of the Application Land not confined to paths and the question of whether use of paths would appear to the reasonable landowner to be referable to their use as such or to be used for more general recreational purposes which would sustain a claim to a new green.

37. In issue for the RA is whether there is significant use of the Application Land. In assessing this argument it is important to consider the legal test. “A significant number” does not mean considerable or substantial. What matters is that the number of people using the Application Land has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation rather than occasional use by individuals as trespassers (See R Mc Alpine) Staffordshire CC 2002 EWHC 76 at 71 Admin, and whether that has been proved on the balance of probability ie it is more likely than not.
38. I quote in full: *Alfred McAlpine Homes Sullivan J* said that “significant number” did not mean a considerable or substantial number and that what mattered was that *“the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.”*¹²
39. A further question related to the issue of significant number and which is raised in other cases and which by implication needs to be considered here, is whether there is any requirement for a spread of users across the qualifying area and, if so, how such requirement is to be understood.
40. I consider that there is a requirement for a spread of users across the qualifying area as a matter of principle for two reasons.

¹¹ [2004] EWHC 12 (Ch) at paragraphs 96-105.

¹² At paragraph 71.

41. First, I think that it is necessary that users come from all over the relevant locality because, if it were sufficient that users came from just one part of the locality, the locality requirement would be rendered meaningless and, in substance, it would be sufficient to draw an arbitrary red line on a plan around the area from which users came, which would seem to contradict the requirement for there to be some pre-existing area either known to the law (as a locality) or established as a cohesive unit (in the case of a neighbourhood). Secondly, were the law otherwise, it would create a mismatch between the persons whose use led to the acquisition of rights and the persons who enjoyed the benefit of them, which would be contrary to general prescriptive principles, would impose a greater burden on the land than the landowner had acquiesced in and would thereby infringe the principle of equivalence referred to by Lord Hope in *Lewis*.¹³
42. Third, the conclusion that there is a requirement for a spread of users over the qualifying area is consistent with the way in which Sullivan J dealt with the issue of “significant number” in *Alfred McAlpine Homes*. If evidence is needed of “general” use by the local community and the local community is taken to be the locality or neighbourhood in question, then it does not seem to me that “general” use by the local community is established if that use comes from only part of that locality or neighbourhood. On the facts of *Alfred McAlpine Homes* it is notable that the inspector had found that users had come from all parts of the relevant locality.¹⁴
43. Fourth, some support for the notion of a spread of user is to be gained from a passage in the judgment of HHJ Behrens in *Leeds Group plc* where, in rejecting a submission that, in a limb (ii) case, the locality within which the relevant neighbourhood lay had to be small enough to accommodate a proper spread of qualifying users, the judge appears to have implicitly accepted that there was such a requirement in respect of the neighbourhood itself.¹⁵

¹³ At paragraph 71.

¹⁴ See paragraph 38 of the judgment. The locality in question was the town of Leek.

¹⁵ See paragraph 90.

44. In expressing the view that there is a requirement for a spread of users over the qualifying area, I have not lost sight of what Vos J said in *Paddico* at first instance. Vos J said that he “*was not impressed with Mr Laurence’s suggestion that the distribution of residents was inadequately spread over either Edgerton or Birkby. Not surprisingly, the majority of the users making declarations lived closest to Clayton Fields with a scattering of users further away. That is precisely what one would expect and would not, in my judgment, be an appropriate reason for rejecting registration. None of the authorities drives to me such an illogical and unfair conclusion.*”¹⁶
45. These observations were made in the context of consideration of the unamended definition of a town or village green in section 22(1) of the Commons Registration Act 1965. Vos J returned to the matter in the context of considering the amended definition in section 22(1A) of the 1965 Act where he said again that he did “*not accept Mr Laurence’s spread or distribution point.*”¹⁷ It is not wholly clear whether Vos J was rejecting the principle that some kind of spread was required or whether he was simply rejecting the submission made to him on the facts that the particular spread was inadequate but the more natural reading of what he was saying would appear to suggest the latter rather than the former and I consider that the need for some kind of spread of users is necessary for the reasons which I have already set out above.
46. I do not consider that the conclusion that a spread of users is required is placing an unwarranted gloss on the statutory definition of a town or village green or that it places an obstacle in the way of registration which cannot have been Parliament’s intention. On the contrary, the requirement is in my view a principled consequence of the statutory definition in section 15 of the 2006 Act.

¹⁶ At paragraph 106i).

¹⁷ At paragraph 111.

47. However, the next question is how the requirement for a spread of users is to be interpreted. It is here that the remarks of Vos J are, to my mind, particularly helpful. I consider that the requirement should be interpreted in the light of the pattern of residence of the users one would expect to see. That might well be that one would expect to see most users of the claimed green coming from those houses closest to it and I consider that it would be wrong to suggest that there should be an equal spread or distribution of users from all over the qualifying area. And, as Vos J's remarks suggest, "*a scattering of users further away*" may be sufficient.
48. In this case there appears to be a suitable spread as shown on the submitted plan accompanying in the Application. It is pertinent to note that such a plan was submitted indicating that the Applicant has particularly considered the need to demonstrate a spread of users thus recognising its importance.
49. The pattern of user addresses revealed by the plan could be described as showing a scattering of users in the locality. Further on the sufficiency of use point, the witnesses provide a cross section of time and activities from the earliest in 1940's to more recent arrivals in July 2013. I am prepared to infer for the purposes of assessing this element that there has been sufficiency of use. There is no reason to think that these witnesses have not participated or seen others participate in these activities. Since there are no recorded footpaths on the Application Land then any use of it would be not as a highway use but as activities associated with recreation as asserted by witnesses. All the evidence is suggestive of a well-established use in this regard. It also seems unlikely to me anyone would have desisted from using the land fearing that it was a trespass. This suggests that public passage across the Application Land from either of the surrounding roads would have been unlikely as highway given that the pavement surrounding it would be not much further. The evidence points to the fact that the use of the land was uncontroversial for walking and dog walking, thus falling into recreational activity rather than highway activity in my view. Although there are some paths laid in the grass to gates and doors in house walls which

appear to have been used for the exclusive use of the occupiers and visitors to that particular dwelling, I do not consider that this use is fatal to the Application. In my opinion it does not prevent the whole of the Application Land being used as described and does not form or create any physical obstruction or barrier to the activities described.

50. Again on the question of the sufficiency of use point, in addition to walking/dog walking, there is also a body of use described as play, mainly recreational activity, such as children's play (games) but also adults engaged in play type recreational activities (rounders, cricket, football, bird watching). Many witnesses have described this type of activity.
51. The example of Catherine Joan Pilkington whose description of her own personal use of the Application Land for playing, walking, carol singing etc. was typical and was very much in the nature of a use of the Application Land. Other witnesses gave little different evidence and the overall tenor of the evidence did paint a picture of use largely similar. Given the size, location and condition of the Application Land this is not surprising. All witnesses in support of the Application gave their evidence on the standard form and appears to be without conscious exaggeration to any significant degree.
52. For the avoidance of doubt, I have discounted activities which I consider do not fall into the definition of lawful sports and past times for the purposes of this Application. Specifically, church services and carol singing which I consider fall into the category of "faith/worship"; fetes, snow activities and bonfires I also discount as being too sporadic, seasonal and weather dependent to fall into the definition of general use as refined by case law.
53. The use is varied in type but consistent in the reporting of it by witnesses. I am very mindful of the fact that the evidence questionnaires asked about use of the land and all answers given to that question described similar use. It is not possible to test the understanding of those who completed forms by cross examination (given the lack of objection of substance) and I consider

there is little point in asking individuals to confirm their witness statements in person to the Committee, and thereby test the accuracy of the answers given. Therefore that limits the weight which can be placed on this aspect of the evidence but the answers on the forms provide a sufficient degree of support for the conclusion that the use was as described and in the absence of any contrary evidence, on the balance of probability, I am prepared to infer for the purposes of assessing this element that there has been sufficiency of use.

54. In support of this inference I find that the photographs are useful in objectively evaluating the condition of the Application Land. The condition of the Application Land as revealed by the photographs is generally consistent and supports the written evidence. The overall appearance of the Application Land in the photographs in the 1940's does not appear significantly different from its overall appearance in 2015. I do not regard these photographs as providing any sure basis for judgment but they do appear supportive of the contention that the land has been used as described.

Conclusion

55. I consider that there is a body of evidence that supports, on the balance of probabilities, thus:
56. On the totality of the user evidence, there was significant use of the Application Land for informal recreation described by local residents during the requisite period. In arriving at that finding I have not been persuaded simply by the lack of substantive evidence to the contrary, but instead by the likelihood of such use due to the time span, variety of age ranges of the witnesses, by the size and location of the Application Land, the evidence generally about the level of the grass and other vegetation on the Application Land due to Council mowing; that the activities remained unchanged over the relevant period and some were more appropriate than others according to the season and the weather; there had been constant use for recreation for well over the required 20 year period and all bar three witnesses had used the Application Land for the full period; there was a continuity in the pattern of use reflected in the life cycle of local residents who had used the Application Land as children and then used it with their

own children; equivalent recreational opportunities elsewhere were lacking (see plan and photographs in the background papers from tehthe Council landscape officer)

57. **Recommendation**

For the relevant 20 year period, use of the Application Land has been sufficient in amount and manner to enable the Application to succeed. Accordingly I recommend that the Application should be accepted.

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