

**Draft Gambling Policy**

**1. Introduction**

- 1.1 Wyre Forest District is situated in North West Worcestershire and lies to the south west of the West Midlands conurbation. It covers an area of 75 square miles. In 2001, the population totalled 96,945 (2001 census) with 55,182 living in the principal town of Kidderminster. The three towns of Kidderminster, Bewdley and Stourport-on-Severn form a central triangle within the district and are surrounded by a number of outlying villages and hamlets.
- 1.2 Kidderminster is the main business and commercial centre in the district offering industrial, shopping, offices, and leisure facilities. Kidderminster is famous as a centre for carpet manufacture. The numbers employed in the carpet industry have fallen in recent years and the town is continuing to diversify with successful companies involved with luxury boat building, ceramics, engineering and other hi technology industries. The town centre has recently undergone an extensive £60 million river and canal side redevelopment providing retail and leisure facilities. Kidderminster is also the terminus of the Severn Valley Railway.
- 1.3 Stourport on Severn is a popular tourist town. It was uniquely created as a canal port in 1766, when the Canal Navigation Act for Worcestershire received Royal Assent. It is currently undergoing extensive canalside redevelopment providing retail and leisure services.
- 1.4 Bewdley is a small riverside town built along the banks of the River Severn. It contains many fine Georgian buildings, has an award-winning museum and is a popular tourist destination.
- 1.5 The district has good transport links by road and rail and has a thriving local economy.
- 1.6 Wyre Forest District Council's overall vision is of 'building a better future'. This Statement accords with that vision in seeking to promote the objectives set out in the Act, which are central to the regulatory regime created by the Act. These are:
- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
  - Ensuring that gambling is conducted in a fair and open way, and
  - Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 1.7 The Licensing Authority has produced this Statement as required by Section 349 of the Gambling Act 2005 (referred to in this Statement as 'the Act') and having had regard to the Gambling Commission's formal guidance, issued under Section 25 of the Act and to the views of those that the Licensing Authority has consulted.

- 1.8 The Licensing Authority intends that this document should provide information and guidance on the general approach to licensing. A series of advice sheets with more specific guidance is available from the Council's web site or will be sent on request. Advice tailored to individuals is available by phone or to personal callers.
- 1.9 Nothing in this Policy takes away from the right of any person to make an application under the Act and to have that application considered on its merits; nor does it undermine the right of any person to object to an application or to seek a review of a licence where the law provides that they may do so. Applications will be considered in line with the Licensing Authority's Statement of Principles below.

## **2. Gambling Act 2005**

- 2.1 This Policy reflects the corporate aim to 'build a better future' and is valid for up to three years from 1<sup>st</sup> February 2010, although the Licensing Authority may choose to review or revise it at any time.
- 2.2 The Act provides for Gambling to be authorised in a number of different ways.
- 2.3 The Licensing Authority's main functions are to:
- license premises for gambling activities, including the issue of Provisional Statements.
  - regulate and grant permits for gambling and gaming machines in clubs including commercial clubs.
  - regulate gaming and gaming machines in alcohol licensed premises.
  - grant permits to family entertainment centres for the use of certain lower stake gaming machines,
  - grant permits for prize gaming,
  - receive and endorse notices given for the temporary use notices,
  - receive occasional use notices for betting at tracks,
  - register small societies lotteries,
  - maintain public registers, and
  - provide information to the gambling Commission on the issue of Licences.
- 2.4 The Gambling Commission regulates remote gambling and issues personal and operating licences for premises.

- 2.5 Spread betting is regulated by the Financial Services Authority.
- 2.6 The 'National Lottery' is regulated by the National Lottery Commission.

### **3. The Gambling Commission**

- 3.1 The Gambling Commission regulates gambling in the public interest. It does so by keeping crime out of gambling; by ensuring that gambling is conducted fairly and openly; and by protecting children and vulnerable people.
- 3.2 The Commission provides independent advice to the Government about the manner in which gambling is carried out, the effects of gambling, and the regulation of gambling generally. It also produces guidance under Section 25 of the Act detailing how local authorities should exercise their licensing functions.
- 3.3 In addition, the Commission's role is to issue codes of practice under Section 24 of the Act about the manner in which facilities for gambling are provided, and how those provisions might be advertised.
- 3.4 Information about the Gambling Commission can be found on the Internet at: [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk) or by phone: 020 7306 6218.

### **4. Authorised Activities**

- 'Gambling' is defined in the Act as either gaming, betting, or taking part in a lottery.
- 'Gaming' means playing a game of chance for a prize.
- Betting means making or accepting a bet on the outcome of a race, competition, or any other event; the likelihood of anything occurring or not occurring; or whether anything is true or not, and
- A lottery is an arrangement where persons are required to pay in order to take part in an arrangement whereby one or more prizes are allocated by a process which relies wholly on chance.

### **5. General Statement of Principles**

- 5.1 In carrying out the licensing functions in accordance with the Act, particularly with regard to premises licences, the Licensing Authority will aim to permit the use of premises for gambling as long as it is considered to be:
  - in accordance with any relevant Codes of Practice issued by the Gambling Commission
  - in accordance with any relevant Guidance issued by the Gambling Commission

- in accordance with this Statement of Principles, and
  - reasonably consistent with the licensing objectives.
- 5.2 The Licensing Authority will not seek to use the Act to resolve matters that are better dealt with by other legislation. Licensing is not the primary mechanism for general control of nuisance and the antisocial behaviour of people once they are away from licensed premises.
- 5.3 The Licensing Authority will ensure that in dealing with applications under the Act the Licensing Authority follow the required procedures and only take into account issues that are relevant. Specifically the Licensing Authority will not have regard to “demand” when considering applications for gambling premises; nor will the Licensing Authority consider the suitability of applicants for premises licences (which is a matter for the Gambling Commission). The Licensing Authority will not reject an application on moral grounds. If the Licensing Authority does decide to reject an application, the Licensing Authority will make known the reasons for doing so.
- 5.4 The Council has delegated its licensing function to its Licensing Sub-Committee and Licensing Officers. In the remainder of this Statement of Principles they are referred to collectively as the ‘Licensing Authority’.
- 5.5 Where an application is for a new premises licence, the responsible authorities will usually visit to check that gambling facilities meet all necessary legal requirements.
- 5.6 Where there are no representations (objections), licences and permissions will be granted subject only to any appropriate mandatory conditions (S167 of the Act) and any conditions having at least the effect of appropriate default conditions made under Section 168.
- 5.7 If there are objections that cannot be resolved informally, or the Licensing Authority intend to impose extra conditions, the Licensing Authority will hold a public hearing at which the Licensing Sub-Committee will hear evidence and make a decision in accordance with the Act.
- 5.8 This Statement is not intended to override the right of any person to make an application under the Act, and to have that application considered on its merits. Equally, this Statement of Principles is not intended to undermine the right of any person to make representations about an application or to seek a review of a licence where provision has been made for them to do so.
- 6. Preventing Gambling from being a Source of Crime and Disorder**
- 6.1 The Gambling Commission takes the leading role in preventing gambling from being a source of crime, and maintains rigorous licensing procedures aiming to prevent criminals from providing facilities for gambling. Applicants need an

operating licence from the Commission before the Licensing Authority will issue a licence to use premises for gambling.

- 6.2 The Licensing Authority will not issue premises licence to someone who does not hold an Operator's licence, and would not generally be concerned with the suitability of an applicant. Where concerns about a person's suitability arise the Licensing Authority will bring those concerns to the attention of the Commission.
  
- 6.3 If an application for a licence or permit is received in relation to premises which are in an area noted for particular problems with organised crime, the Licensing Authority will, in consultation with the Police and other relevant authorities, consider whether specific controls need to be applied to prevent those premises from being a source of crime. This could include a requirement for door supervisors registered by the Security Industries Association.
  
- 6.4 Disorder will only be considered under this Act if it amounts to activity which is more serious and disruptive than mere nuisance, and where it can be shown that gambling is the source of that disorder. A disturbance might be serious enough to constitute disorder if police assistance was required to deal with it; the Licensing Authority will then consider how threatening the behaviour was to those who could see or hear it, and whether those people live sufficiently close to be affected or have business interests that might be affected.
  
- 6.5 'Disorder' is generally a matter for the Police; the Licensing Authority will not use this Act to deal with general nuisance issues, for example, parking problems, which can be better dealt with using alternative powers.
  
- 6.6 When making decisions relating to disorder, the Licensing Authority will give due weight to comments made by the police.

## **7. Ensuring Gambling is conducted in a Fair and Open Way**

- 7.1 The Gambling Commission does not expect local authorities to become concerned with ensuring that gambling is conducted in a fair and open way. The Commission, through the operating and personal licensing regime, will regulate the management of the gambling business and the suitability and actions of an individual.
  
- 7.2 As betting track operators do not need an operating licence from the Commission, the Licensing Authority may, in certain circumstances, require conditions of licence relating to the suitability of the environment in which betting takes place.

## **8. Protecting children and vulnerable people from being harmed or exploited by gambling**

- 8.1 The intention of the Act is that children and young persons should not be allowed to gamble, and should be prevented from entering those gambling premises which are 'adult-only' environments.
- 8.2 Codes of Practice – including advice about access by children and young persons - may be published by the Gambling Commission for specific kinds of premises. Applicants are expected to heed this advice where applicable.
- 8.3 The Licensing Authority expect steps to be taken to prevent children from taking part in, or being in close proximity to, gambling. This may include restrictions on advertising to ensure that gambling products are not aimed at children, nor advertised in such a way that makes them particularly attractive to children.
- 8.4 When determining a premises licence or permit the Licensing Authority will consider whether any additional measures are necessary to protect children, such as the supervision of entrances, the segregation of gambling from areas frequented by children and the supervision of gaming machines in non-adult gambling specific premises like pubs, clubs and betting tracks.
- 8.5 In seeking to protect vulnerable people the Licensing Authority will include people who gamble more than they want to, people who gamble beyond their means, and people who may not be able to make informed or balanced decisions about gambling, perhaps due to a mental impairment, alcohol or drugs.
- 8.6 The Licensing Authority will always treat each case on its own individual merits and when considering whether specific measures are required to protect children and other vulnerable people will balance these considerations against the overall principle of aiming to permit the use of premises for gambling.

## **9. Premises Licences**

- 9.1 A premises licence can authorise the provision of facilities at the following:
  - casino premises
  - bingo premises
  - betting premises, including betting tracks
  - adult gaming centres
  - family entertainment centres
- 9.2 Premises can be 'any place' but the Act generally prevents more than one premises licence applying to any one place. A single building could be subject to more than one premises licence provided they are for different parts

of the building and those parts can be reasonably regarded as being separate 'premises'.

- 9.3 This will allow large multiple unit premises such as shopping malls or service stations to obtain separate premises licences, with appropriate safeguards in place. The Licensing Authority will pay particular attention if there are issues about sub divisions of a single building or plot and mandatory conditions relating to access between premises are observed. The Licensing Authority will not consider that areas of a building that are artificially or temporarily separated, for example by ropes or moveable partition, can properly be regarded as different premises. Whether different parts of a building can properly be regarded as being separate premises will depend on the individual circumstances of the case.
- 9.4 A particular requirement might be for entrances and exits from parts of a building covered by one or more licences to be separate and identifiable so that separation of the premises is not compromised and people are not allowed to drift accidentally into a gambling area. It should normally be possible to access the premises without going through another licensed premises or premises with a permit. The Licensing Authority will also expect customers to be able to participate in the activity named on the premises licence.
- 9.5 The Secretary of State has appointed an independent Casino Advisory Panel to advise the Government on the areas in which small and / or large casinos may be located. Wyre Forest District has not been identified as a suitable location for a casino, consequently the Authority will be prevented from granting a licence for casino premises.
- 9.6 The Licensing Authority will not turn down applications for premises licences where relevant objections can be dealt with through the use of licence conditions.
- 9.7 Other than an application for a betting premises licence for a track, the Licensing Authority are not able to issue a premises licence unless the applicant holds the relevant operating licence from the Gambling Commission.
- 9.8 When considering applications for premises licences the Licensing Authority will not take into account either the expected 'demand' for facilities, or the likelihood of planning permission or building regulation approval being granted as well as moral objections to gambling. Equally, the grant of a premises licence will not prejudice or prevent any action which may be appropriate under the law relating to planning or building regulations.
- 9.9 The Licensing Authority will only issue a premises licence once it is satisfied that the premises is ready to be used for gambling in the reasonably near future, consistent with the scale of building or alterations required. If the construction of a premises is not yet complete, or if any alteration, or the applicant does not yet have a right to occupy them, then an application for a provisional statement should be made.

- 9.10 The Licensing Authority will apply a two stage consideration process if there is outstanding construction or alteration works at the premises:
- should the premises be permitted to be used for gambling;
  - can appropriate conditions be imposed to cater for the situation that the premises is not yet in a state in which they should be before gambling takes place.
- 9.11 The Licensing Authority is entitled to decide whether or not it is appropriate to grant a licence subject to conditions.
- 9.12 Applicants for premises licences are encouraged to propose any prohibitions or restrictions of their own in circumstances where it is felt that the presence of children would be undesirable or inappropriate.
- 9.13 The Licensing Authority will maintain a public register of premises licence applications received which may be viewed at the Council offices during normal office hours which are generally Monday to Friday 9am – until 4.30pm.

## **10. Responsible Authorities**

- 10.1 Responsible authorities are identified in the legislation and have to be notified about licence applications so that it can identify any risk. The responsible authorities that the Licensing Authority currently recognise are listed below:
- The Gambling Commission
  - The Chief of Police for the area
  - Fire & Rescue Service
  - Wyre Forest District Council (Development Control Section, Health and Safety Section and Licensing Section)
  - Worcestershire Safeguarding Children Board
  - HM Revenue and Customs
  - Any other bodies identified in Regulation by the Secretary of State
  - For vessels : the Environment Agency, British Waterways, Secretary of State.
- 10.2 Contact addresses and telephone numbers for each of the responsible authorities identified are available on the Council's web site, and will be sent with application packs and on request.
- 10.3 Any concerns expressed by a responsible authority cannot be taken into account unless they are relevant to the application itself and to the licensing objectives. However each representation will be considered on its own individual merits.



**11. Interested Parties**

11.1 An interested party is someone who:

- lives sufficiently close to the premises to be likely to be affected by the authorised activities, or
- has business interests that might be affected by the authorised activities (including existing gambling premises), or
- represents persons in either of the two groups above.

11.2 The Licensing Authority will generally require written evidence that a person/body, represents someone is either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or has business interests that might be affected by the authorised activities. A letter from one of these persons, requesting representations is sufficient. Whilst this may not apply to elected Ward Members, Member of Parliament or Parish Councillors, those persons should be aware of the need to represent the whole of the community that they represent and not just the vocal minority.

11.3 In determining in whether a person lives sufficient close to particular premises as to be affected, the Licensing Authority will take into account amongst other things:

- the size of the premises
- the nature of the premises
- the distance of the premises from the person making the representation
- the nature of the complaint
- the potential impact of the premises

11.4 In determining whether a person has a business interest which could be affected the Council will consider, among other things:

- the size of the premises
- the catchment area of the premises, and
- whether the person making the representation has business interests in the catchment area that might be affected.

11.5 If an existing gambling business makes a representation that it is going to be affected by another gambling business starting up in the area, the Licensing Authority would not consider this, in the absence of other evidence.

- 11.6 The Licensing Authority may consider a representation to be either frivolous or vexatious, and reject it. This will generally be a matter of fact given the circumstances of each individual case but, before coming to a decision the Licensing Authority will normally consider:
- who is making the representation and whether there is a history of making representations that are not relevant,
  - whether it raises an issue relevant to the licensing objectives, or
  - whether it raises issues specifically to do with the premises which are the subject of the application.

## **12. Licence Conditions**

- 12.1 In particular cases the Licensing Authority may find it necessary to impose conditions beyond appropriate mandatory and default conditions. Any such conditions will be relevant to the need to make the building suitable for use as a gambling facility; directly related to the premises and the type of licence applied for; fairly and reasonably related to the scale and type of premises and reasonable in all other respects. The Licensing Authority will not have recourse to a pool of standard conditions.
- 12.2 The Licensing Authority will ensure that where category C machines (maximum monetary prize £35) or above that are on offer in premises to which children are admitted, are located in an area of the premises which is separated by a physical barrier. This should be to prevent access other than through a designated entrance: the designated area must be supervised and observed by staff or the licence holder.
- 12.3 Examples of some conditions which are likely to be attached in certain circumstances include those relating to opening hours, segregation of gambling from non gambling areas frequented by children, Security Industry Authority licensed door supervisors, appropriate signage for adult only areas, age limits, or keeping children and young persons away from gaming machines. The Licensing Authority will also expect the applicants to offer their own suggestions as to the way in which the licensing objectives can be promoted effectively.
- 12.4 The Licensing Authority will not seek to control those matters specified in the Act with conditions:
- which make it impossible to comply with an operating licence condition imposed by the Gambling Commission,
  - relating to gaming machine categories or method of operation,
  - which specify that membership of a club or other body is required, or
  - in relation to stakes, fees, winnings or prizes.

- 12.5 Duplication with other statutory or regulatory regimes will be avoided as far as possible. The need for conditions will be assessed on the specific merits of each application.

### **13. Gaming Machines**

- 13.1 Gaming machines include all types of gambling activity, which can take place on a machine, including betting on 'virtual' events.
- 13.2 The Act itself prescribes the number and category of gaming machines that are permitted in each type of gambling premises.
- 13.3 Subject to the provisions of the Act, gaming machines can be made available in a wide variety of premises, including:
- casinos
  - bingo premises
  - betting premises (including tracks)
  - adult gaming centres
  - family entertainment centres
  - clubs
  - pubs and other alcohol licensed premises
  - travelling fairs
- 13.4 A machine is not a gaming machine if the winning of a prize is determined purely by the player's skill. However, any element of 'chance' imparted by the action of the machine would bring it within the definition of a gaming machine.
- 13.5 The Licensing Authority will encourage permit and premises licence holders to adopt applicable codes of practice which may be introduced by the amusement industry or Gambling Commission, from time to time.

### **14. Temporary Use Notices**

- 14.1 Temporary use notices allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. The Licensing Authority would object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises. Premises that might be suitable for a temporary use notice would include hotels, conference centres and sporting venues. A temporary use

notice may only be granted to a person or company holding a relevant operating licence.

- 14.2 Temporary use notices may only be used to permit the provision of facilities for equal chance gaming, where the gaming is intended to produce a single overall winner. Equal chance gaming is gaming which does not involve playing or staking against a bank and gives equally favourable chance to all participants. Example of equal chance gaming includes games such as Backgammon, mahjong, rummy, kalooki, dominoes, cribbage, bingo and poker.

**15. Occasional Use Notices**

- 15.1 Occasional use notices relate to particular activities at tracks. The Licensing Authority's only role is to ensure that the statutory limit of 8 days in a calendar year is not exceeded. Whilst tracks are normally thought of as permanent racecourses, this can also include land which has a number of uses for example agricultural land upon which a point-to-point meeting takes place. Land used temporarily as a track can qualify, provided races or sporting events take place or will take place there. The track need not be a permanent fixture.

**16. Lotteries**

- 16.1 All lotteries are unlawful unless they are run in accordance with an operating licence issued by the Gambling Commission - unless they are 'exempt' lotteries as defined by the Act. One of those exemptions is for "small society lotteries" which the Licensing Authority will allow, after registration. The Licensing Authority will maintain a register of small society lotteries.
- 16.2 A society will be allowed to register if it is 'non-commercial', in other words, if it is established and conducted:
- for charitable purposes ;
  - for the purpose of enabling participation in, or of supporting, sport, athletic or a cultural activity; or
  - for any other non-commercial purpose other than for private gain.

**17. Exchange of Information**

- 17.1 To ensure the licensing objectives are met, the Licensing Authority will establish a close working relationship with the police, the Gambling Commission and, where appropriate, other responsible authorities.
- 17.2 Subject to the provisions of the Data Protection Act 1998, the Licensing Authority will share any information it receives through the application process with the Gambling Commission, and any relevant responsible authority. In doing so the Licensing Authority will have regard to the Act itself, any guidance issued by the Commission and to any Regulations issued by the Secretary of State.
- 17.3 The Licensing Authority is committed to being open about what it does and how it comes to a decision, in accordance with the spirit of the Freedom of Information Act 2000 (FOIA). An important feature of the FOIA is the requirement for each public authority to produce a publication scheme setting out what information it will publish as a matter of course, how and when it will be published, and whether this information will be free of charge or on payment.

- 17.4 Individual requests should be made in writing to the Information Management and E Government Officer or via the Council's website.  
[www.wyreforestdc.gov.uk](http://www.wyreforestdc.gov.uk)
- 17.5 Unless restricted by the Gambling Act, details about applications, licences and representations will be made available in our public register. Representations that we accept will be copied in their entirety to applicants, to provide an opportunity for mediation and to ensure that the rights of the applicant are not compromised.

## **18. Enforcement Protocols**

- 18.1 The main enforcement and compliance role for the Licensing Authority in terms of the Gambling Act 2005 will be to ensure compliance with the premises licences and other permissions which it authorises. The Gambling Commission will be the enforcement body for the Operator and Personal Licences and will also take the lead role on the investigation and where appropriate, the prosecution of illegal gambling. Any concerns about manufacture, supply or repair of gaming machines will not be dealt with by the Licensing Authority but will be notified to the Gambling Commission.
- 18.2 The Licensing Authority will work with the Commission, the Police and other enforcing authorities, having regard to any specific guidance produced by the Gambling Commission, relevant codes of practice, the licensing objectives and this statement of principles, to provide for the targeting of agreed problem or high-risk premises. A lighter touch will be applied to those premises which are shown to be well managed and maintained.
- 18.3 The overall aim is to permit the use of premises for gambling. With that in mind it is intended that action will generally be taken against 'problem' premises through the licence review process.
- 18.4 The Licensing Authority will also be mindful of future developments as regard the work of the Better Regulation Executive whilst carrying out its regulatory functions.
- 18.5 The Licensing Authority will endeavour to be proportionate; accountable; consistent; transparent and targeted, as well as avoiding duplication with other regulatory regimes so far as possible.

## **19. Reviews**

- 19.1 A review of a premises licence can be made by interested parties or responsible authorities, however, the Licensing Authority will decide if the review is to be carried out on the basis of the following:
- In accordance with any relevant Code of Practice and/or guidance issued by the Gambling Commission

- Consistent with the licensing objectives
  - In accordance with the statement of principles.
- 19.2 The Licensing Authority will also consider whether or not the request for a review is frivolous, vexatious, or repetitious or whether it would wish to alter/revoke or suspend the licence.
- 19.3 The Licensing Authority can also initiate a review of a premises licence on the basis of any reason which it thinks is appropriate, including if a premises licence holder has not provided facilities for gambling at the premises. This is to prevent people from applying for licences in a speculative manner without intending to use them.
- 19.4 Once a valid application for a review has been received by the Licensing Authority, representations can be made by responsible authorities and interested parties during the statutory consultation period. The purpose of the review will be to determine whether it should take any action in relation to the licence. The options available are:
- Add, remove or amend a licence condition;
  - Remove or amend a default condition, such as opening hours;
  - Suspend the premises licence for a period not exceeding 3 months;
  - Revoke the licence.

## Scheme of Delegation

The Licensing Authority is responsible for making licensing decisions but may delegate some of its powers to authorised officers. The table shows how it is proposed decisions will be made.

<b>Matter to be dealt with</b>	<b>Full Council</b>	<b>Licensing Sub-Committee</b>	<b>Officers</b>
Final approval of three year licensing policy	X		
Policy not to permit casinos	X		
Fee setting (where appropriate)			X
Application for premises licences		Where representations have been received and not withdrawn	Where no representations have been received or representations have been withdrawn
Application for a variation to a licence		Where representations have been received and not withdrawn	Where no representations have been received or representations have been withdrawn
Application for a transfer of licence		Where representations have been received from the Commission	Where no representations have been received from the Commission
Application for a provisional statement		Where representations have been received and not withdrawn	Where no representations have been received or representations have been withdrawn
Review of a premises licence		X	
Application for club gaming/club machine permits		Where objections have been made (and not withdrawn)	Where no objections have been made or objections have been withdrawn
Cancellation of club gaming/club machine permits		X	
Applications for other permits			X
Cancellation of licensed premises gaming machine permits			X
Consideration of temporary use notice			X
Decision to give a counter notice to a temporary use notice		X	