

Open

Licensing and Environmental Committee

Agenda

10.30am
Monday, 3 October 2022
Council Chamber
Wyre Forest House
Finpoint Way
Kidderminster



Licensing and Environmental Committee

Members of Committee:

Chairman: Councillor L Whitehouse
Vice-Chairman: Councillor A Coleman

Councillor G W Ballinger

Councillor R H Coleman

Councillor I Hardiman

Councillor F M Oborski MBE

Councillor C Rogers

Councillor J F Byng

Councillor B S Dawes

Councillor K Henderson

Councillor M Rayner

Councillor P W M Young

Information for Members of the Public:

Part I of the Agenda includes items for discussion in public. You have the right to request to inspect copies of Minutes and reports on this Agenda as well as the background documents used in the preparation of these reports.

Part II of the Agenda (if applicable) deals with items of "Exempt Information" for which it is anticipated that the public may be excluded from the meeting and neither reports nor background papers are open to public inspection.

Declaration of Interests by Members – interests of members in contracts and other matters

Declarations of Interest are a standard item on every Council and Committee agenda and each Member must provide a full record of their interests in the Public Register.

In addition, alongside the Register of Interest, the Members Code of Conduct ("the Code") requires the Declaration of Interests at meetings. Members have to decide first whether or not they have a disclosable interest in the matter under discussion.

Please see the Members' Code of Conduct as set out in Section 14 of this constitution for full details.

Disclosable Pecuniary Interest (DPI) / Other Disclosable Interest (ODI)

DPI's and ODI's are interests defined in the Code of Conduct that has been adopted by the District.

If you have a DPI (as defined in the Code) in a matter being considered at a meeting of the Council (as defined in the Code), the Council's Standing Orders require you to leave the room where the meeting is held, for the duration of any discussion or voting on that matter.

If you have an ODI (as defined in the Code) you will need to consider whether you need to leave the room during the consideration of the matter.

For further information:

If you have any queries about this Agenda or require any details of background papers, further documents or information you should contact Louisa Bright, Principal Committee and Member Services Officer, Wyre Forest House, Finpoint Way, Kidderminster, DY11 7WF. Telephone: 01562 732763 or email louisa.bright@wyreforestdc.gov.uk

Wyre Forest District Council

Licensing and Environmental Committee

Monday, 3 October 2022

Council Chamber, Wyre Forest House, Finepoint Way, Kidderminster

Part 1

Open to the press and public

Agenda item	Subject	Page Number
1.	Apologies for Absence	
2.	Appointment of Substitute Members To receive the name of any Councillor who is to act as a substitute, together with the name of the Councillor for whom he/she is acting.	
3.	Declarations of Interests by Members In accordance with the Code of Conduct, to invite Members to declare the existence and nature of any Disclosable Pecuniary Interests (DPI's) and / or Other Disclosable Interests (ODI's) in the following agenda items and indicate the action that they will be taking when the item is considered. Please see the Members' Code of Conduct as set out in Section 14 of the Council's Constitution for full details.	
4.	Minutes To confirm as a correct record the Minutes of the meeting held on the 6 June 2022.	5
5.	Licensing Committee and the role of Licensing Sub-committees The report is a report requested by Members to enable them to consider whether the Council should continue the use of Licensing Sub Committees to consider applications.	10
6.	To consider any other business, details of which have been communicated to the Solicitor to the Council before the commencement of the meeting, which the Chairman by reason of special circumstances considers to be of so urgent a nature that it cannot wait until the next meeting.	
7.	Exclusion of the Press and Public To consider passing the following resolution: "That under Section 100A(4) of the Local Government Act 1972 the press and public be excluded from the meeting during the consideration of the following item of business on the grounds that it involves the likely disclosure of "exempt information" as defined in the paragraph 1 of Part 1 of Schedule 12A to the Act".	

Part 2

Not open to the Press and Public

<p>8.</p>	<p>Review of a Hackney Carriage / Private Hire Driver's Licence</p> <p>To receive a report from the Head of Worcestershire Regulatory Services for the Committee to consider and determine whether a licence holder remains a fit and proper person to hold a licence to drive hackney carriage and private hire vehicles.</p>	
<p>9.</p>	<p>To consider any other business, details of which have been communicated to the Solicitor to the Council before the commencement of the meeting, which the Chairman by reason of special circumstances considers to be of so urgent a nature that it cannot wait until the next meeting.</p>	

WYRE FOREST DISTRICT COUNCIL

LICENSING AND ENVIRONMENTAL COMMITTEE

COUNCIL CHAMBER, WYRE FOREST HOUSE, FINEPOINT WAY, KIDDERMINSTER

6 JUNE 2022 (10.30AM)

Present:

Councillors: L Whitehouse (Chairman), A Coleman (Vice-Chairman), G W Ballinger, J F Byng, R H Coleman, B S Dawes, I Hardiman, K Henderson, F M Oborski MBE, M Rayner and C Rogers.

Observers:

There were no members present as observers.

LIC.01 Apologies for Absence

Apologies for absence were received from Councillor P W M Young.

LIC.02 Appointment of Substitutes

No substitutes were appointed.

LIC.03 Declaration of Interests

No declarations of interest were made.

LIC.04 Minutes

Decision: The minutes of the meeting held on 7 February 2022 be confirmed as a correct record and signed by the Chairman.

LIC.05 Draft Hackney Carriage and Private Hire Licensing Policy Review of Consultation Responses

The Committee received a report from the Head of Worcestershire Regulatory Services that requested members to consider all responses received during the recent consultation on the Council's Draft Hackney Carriage and Private Hire Licensing policy, which was produced in response to the publication and recommendations of the Department for Transport guidance entitled "Statutory Taxi & Private Hire Standards".

An updated recommendation for amendments to the scheme of delegation was tabled at the meeting.

The Principal Officer – Licensing, led members through the report and outlined the key issues. He advised that the initial consultation on the draft policy that was presented to the Committee on 6 June 2021, was undertaken over a

12-week period between 22 November 2021 and 14 February 2022. The consultation was then re-opened for a 4-week period from 7 April to 6 May 2022 to provide a further opportunity for stakeholders to respond to the consultation.

The Principal Officer – Licensing, was pleased to report that many of the recommendations set out in the statutory standards were already met within the Council’s existing policies. Any of the new recommendations that were not already being followed had been incorporated into the draft policy.

A discussion ensued. Members felt that it was important that the whole of the district was represented when considering taxi matters and as such, should not be delegated to a Sub committee. The Committee agreed that the system had worked well for many years and consideration of taxi matters should remain with the full committee.

Decision: The Committee:

- 1.1 Having had regard to the responses received during the consultation RESOLVED to approve the draft Hackney Carriage and Private Hire Licensing Policy at “Appendix 1” to take effect on 1st September 2022.**

Approval being subject to any reference to a Sub Committee being replaced with the Licensing Committee.

- 1.2 The Committee recommend that the Council amend the scheme of delegation in section 4 of the Constitution in respect of licensing and registration functions as set out below.**

Amend the opening paragraph of the delegation to read (amendments are shown in bold): “To exercise authority, including approval and refusal, **amendment**, suspension and revocation, **reinstatement**, service of notices and orders or other matters requiring a decision by the Council under the Council’s published policy and practice notes and the following legislation, regulations and guidance (and any re-enactment or replacement or consolidation of the statutes or regulations or guidance, or any modifications or extensions thereof):”

Replace the first two numbered paragraphs of the delegation with these three numbered paragraphs:

“Except in the following cases:

- 1. Where in accordance with the Hackney Carriage and Private Hire Licensing Policy, the application is to be considered by, or a review is to be undertaken by, the Licensing Committee.**
- 2. Where in respect of any licence, other than one covered by the Hackney Carriage and Private Hire Licensing Policy, the**

Officer considers that an application should be considered by, or a review should be undertaken by, the Licensing Committee or Sub Committee.

- 3. The application is for a premises licence or a personal licence under the Licensing Act 2003 and the application is recommended for refusal.**

and the existing paragraph 3 is amended by the deletion of the words in brackets and renumbered as follows:

- 4. Applications by drivers and operators of taxis and private hire vehicles, any application where a statutory or non-statutory consultee, responsible authority or interested person has responded to the application objecting to its approval and the objection has not been deemed vexatious.”**

LIC.06 Any Other Business

A member raised a query regarding the membership of Licensing Sub Committee's. He asked why a Bewdley Ward member would not be invited to sit on a Sub Committee that was considering an application under the Licensing Act 2003 for a premises licence in Bewdley.

The Principal Officer – Licensing explained that all members have the opportunity to make representations on any application within their wards. He added that the Sub Committee was obliged to determine each application on its own merits and with a view to the promotion of the licensing objectives which are: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. It must also have regard to the representations made and the evidence it hears.

The Solicitor spoke about the importance of members attending meetings with an open mind and the risk of legal challenge if anybody felt there was preconceived bias.

A discussion ensued. In light of the comments made the Chairman asked Officers to prepare a briefing note for discussion at the next meeting. The Principal Officer – Licensing agreed to include details of the primary legislation regarding Sub Committees.

Decision: Officers to prepare a briefing note relating to the role of the Sub Committee for discussion at the next Committee meeting.

LIC.07 Exclusion of the Press and Public

Decision: Under Section 100A(4) of the Local Government Act, 1972 the press and public be excluded from the meeting during consideration of the following items of business on the grounds that they involve the likely disclosure of “Exempt Information” as defined in paragraphs 7 of

Part I of Schedule 12A of the Act.

LIC.08 Application for Grant of a Licence to Drive Hackney Carriage and Private Hire Vehicles

The Committee received a report from the Head of Worcestershire Regulatory Services that asked members to consider and determine an application for the grant of a licence to drive hackney carriage and private hire vehicles.

The Chairman welcomed the applicant and his associate to the meeting. The applicant confirmed that he had received and understood the procedure note for the hearing.

A copy of the applicants Disclosure and Barring Service (DBS) enhanced check certificate and the results of the ACRO Subject Access Request made to West Mercia Police for information held on the Police National Computer was circulated to members.

The Technical Officer (Licensing) presented the report and outlined the key issues. He drew members' attention to the relevant convictions listed on the DBS certificate and declared on the application form.

The applicant addressed the Committee and asked members to support his application. Following questions from members the applicant explained the circumstances surrounding the latest conviction and his previous employment history.

The Chairman invited the applicant's associate to address the Committee. She advised members that she had accompanied the applicant to the meeting in a support capacity. She said that the applicant had received a job offer from a local taxi firm and if his application were successful, it would be a positive step forward in getting his life back on track.

The Technical Officer (Licensing), applicant and his associate left the meeting at this point, (12noon), for members to deliberate their decision. The Solicitor and the Principal Committee and Member Services Officer stayed in the meeting whilst the Committee reached their decision.

The Technical Officer (Licensing), applicant and his associate re-entered the meeting at 12.21pm. The Solicitor read out the decision of the Committee.

Decision: Having carefully considered the application to grant a Hackney Carriage/Private Hire Driver's Licence to the applicant, the Committee has decided that:

Notwithstanding the Applicant's 5 previous convictions and the guidance contained in the Council's "Guidelines relating to the Relevance of Convictions", the Committee are satisfied that the applicant is a "fit and proper person" to be granted such a Hackney Carriage/Private Hire Driver's Licence and it is justified in departing from the Council's "Guidelines relating to the Relevance of Convictions" because of the exceptional circumstances presented to the Committee

that:

1. Over 40 years have passed since the conviction for the first two offences. Over 39 years have passed since the conviction for the third offence, and 29 years have passed since the conviction for the fourth offence.
2. Whilst the fifth offence was an offence involving a course of action which amounted to harassment, over 7 years have passed since the conviction for this offence, the applicant has not been convicted of any further offences since then and the circumstances of the offence do not indicate that the applicant presents a danger to taxi/private hire users.
3. The applicant was honest and upfront about his background and showed a sensible and experienced approach to how he would handle challenging situations as a taxi driver.
4. The applicant presented himself well to the Committee, he is working with job coaches, and it appears to the Committee that the fifth offence was an isolated incident that occurred after many decades of good behaviour, and it also appeared to the Committee that he has learned from his mistake and wants to make a new start in life.

There being no further business, the meeting ended at 12.24pm.

WYRE FOREST DISTRICT COUNCIL

LICENSING AND ENVIRONMENTAL COMMITTEE

3rd OCTOBER 2022

LICENSING COMMITTEE AND THE ROLE OF LICENSING SUB -
COMMITTEES

OPEN	
DIRECTOR:	Head of Worcestershire Regulatory Services on behalf of Wyre Forest District Council.
CONTACT OFFICER:	Niall McMenamin – 01905 822799 enquiries@worcsregservices.gov.uk
APPENDICES:	Appendix 1 – Home Office Section 182 guidance - Recommended Scheme of Delegation Appendix 2 - Gambling Commissions guidance to local Authorities - Recommended Scheme of Delegation

1. PURPOSE OF REPORT

- 1.1. That Members are reminded of the Council's Licensing scheme of delegation and the role and functions of the Council's Licensing and Environmental Committee and Licensing Sub Committee.

2. RECOMMENDATION

The Committee is asked to:

- 2.1. **Note the contents of the report and agree to operate under the Council's current Constitution in respect of licensing functions, in relation to the Licensing and Environmental Committee and Licensing Sub-Committees.**

3. BACKGROUND

- 3.1. As provided for in legislation, Local Authorities throughout the UK have in place a Committee and Sub Committee governance structure to meet their statutory duties.
- 3.2. The Licensing Act 2003, which came into force in November 2005 transferred the responsibility for liquor licensing from the Magistrates Court to the Local Authority and with it came the legal requirement for a licensing Committee to be established.
- 3.3. Similarly the Gambling Act 2005, which came into force in September 2007 introduced a new licensing regime to regulate UK gambling, and regulates gambling activity in relation to arcades, betting shops, bingo halls, casinos, gaming machines, society lotteries and with it came the legal requirement for certain matters to be reported to the licensing authority's Licensing Committee.

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- 3.4. In meeting its legal responsibility, the Council has established the Licensing and Environmental Committee, which is currently made up of 12 elected members.
- 3.5. The Committee's main role is to determine all matters relating to the Council's licensing policies and procedures. The Committee also has responsibility for recommending the Council's licensing fees and charges for inclusion in the Council's overall budget strategy.
- 3.6. The Committee established the Licensing Sub Committee to consider general licensing applications such as applications submitted under the Licensing Act 2003 and Gambling Act 2005, where relevant representations to applications have been received by the licensing authority.
- 3.7. The Licensing and Environmental Committee meetings are planned and set by the Council annually, which is then administered by the Council's committee services team. The setting of meeting dates ensures that committee members are fully aware of their committee meeting commitments and can plan for attendance on the scheduled meeting dates which is particularly important for Committee members who have commitments such as jobs, which may require booking of leave to attend, or caring responsibilities and supports the Council in attracting as diverse a council membership as possible
- 3.8. When preparing the calendar of meetings for approval at Annual Council cross checking is undertaken with a number of other organisations where Councillors wear multiple hats, e.g. Worcestershire County Council, Hereford & Worcester Fire Authority, to ensure that clashes are avoided. Due to the unknown dates for sub-committee meetings and the very tight timescales for calling a meeting, this cannot be done in advance and they cannot be prescheduled.
- 3.9. Licensing Sub Committee meetings are arranged as necessary, in response to the need to consider and determine various licensing applications received by the licensing authority under legislation, following an objection having been submitted to the Council. These Sub Committee meetings are required throughout the year and often at short notice, with matters having to be determined by a set date.

4. KEY ISSUES

- 4.1. On 6th June 2022, Members of the Licensing and Environmental Committee considered and approved the Council's revised Hackney Carriage and Private Hire Licensing Policy for adoption. Prior to approval, a committee member noted the recommendation that general taxi application determination should be referred to Licensing Sub Committees and requested that any reference to Sub-Committees be changed to the Licensing and Environmental Committee.
- 4.2. This request was approved by committee and the policy was amended and referred to Council for adoption and publication. During a general discussion which followed, Members further considered the merits of amending the Council's current Constitution, with a view to referring all licensing applications made under

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the Licensing Act 2003 and the Gambling Act 2005 to the full Licensing and Environmental Committee.

- 4.3. Despite serious concerns being raised by the Principal Licensing Officer and the Council's legal Officer during the meeting, highlighting the risks to the Council by altering the current arrangements, the Committee Chairman agreed to consider the matter in full, at a later meeting.
- 4.4. The Council is currently in line with all UK district, city, borough, and metropolitan Councils, having established a Licensing Sub-Committee to consider and determine general licensing applications, submitted to the Council under the Licensing Act 2003 and the Gambling Act 2005. Sub-committees are used in all Worcestershire district councils.

5. FINANCIAL IMPLICATIONS

- 5.1. There are no direct financial implications associated with this report.
- 5.2. There would be an impact on internal resources, in time taken to find dates when a quorum for a full committee could be guaranteed.

6. LEGAL AND POLICY IMPLICATIONS

- 6.1. Under s.6(1), of the Licensing Act 2003 each licensing authority must establish a licensing committee consisting of between 10 and no more than 15 members of the authority to discharge its licensing functions.
- 6.2. Under s.9(1) of the Licensing Act 2003 the licensing committee may then establish one or more sub committees consisting of three members of the committee. This is in order to consider and determine applications for the grant or variation of applications where relevant representations have been received.
- 6.3. The Council's Licensing Act 2003 Statement of Licensing Policy approved by the Licensing and Environmental Committee states the following:

“One of the major principles underlying the Licensing Act 2003 is that the licensing functions contained within the Act should be delegated to an appropriate level so as to ensure speedy, efficient and cost effective service delivery”.

- 6.4. Home office guidance issued under section 182 of the Licensing Act 2003 and the Gambling Commission's Guidance to licensing authorities demonstrates the recommended scheme of delegation for licensing authorities to follow. A copy of the section 182 guidance's recommended scheme of delegation is attached as **“Appendix 1”**. A copy of the Gambling Commission's guidance recommended scheme of delegation is attached as **“Appendix 2”**.
- 6.5. In line with the Licensing Act 2003, Ward Members should not sit on any licensing committee where an application is being determined for a premises located within their particular ward. This is to protect the Council and avoid any allegation from applicants that committee members are biased. This would create additional

issues in terms of securing a quorum for meetings that are required to be called at short notice due to statutory requirements.

7. RISK MANAGEMENT

7.1. Under the Licensing Act 2003 there are statutory time limits in relation to when licensing hearings need to be arranged, in order to determine applications where relevant representation(s) have been received by the licensing authority.

7.2. These statutory time limits and other factors make it impractical for general licensing matters to be referred to and determined by the main Licensing and Environmental Committee. The other factors include the quorum for meetings set out in the Council's constitution, which is six members for a committee of 12. Given the limited time to organise meetings, members' other commitments (including work etc) and the need to exclude ward members if the issue relates to their ward, there is concern that it would not be possible to achieve a quorum if matters presently dealt with by a Sub-Committee were instead dealt with by the main Committee.

7.3. Where relevant representation or objections have been received by the licensing authority to licensing applications, hearings need to be arranged within the following time limits:

- Summary Premises licence review (interim steps) 48 hours
- Cancellation of interim authority notice 5 working days
- Temporary Event Notices 7 working days
- Review of premises licence following closure order 10 working days
- Summary Premises licence review 20 working days
- Premises Licence applications 20 working days
- Premises Licence variations 20 working days
- Premises Licence transfer 20 working days
- Premises Licence review applications 20 working days
- DPS variation 20 working days
- Club Premises Certificate applications 20 working days
- Club Premises Certificate variations 20 working days
- Club Premises Certificate review applications 20 working days
- Personal Licence application 20 working days
- Personal Licence convictions 20 Working days

7.4. Under the terms of the Licensing Act 2003, licensing authorities are required to provide a Notice of Hearing, which also must be provided to all parties to a hearing, a minimum of 10 clear working days prior to any arranged hearing.

7.5. The Council also has to issue its agendas within statutory timescales which is 5 clear working days for the meeting summons.

7.6. Any failure of a Licensing Authority to meet these statutory time limits could result in that local authority failing to meet its legal responsibility under the relevant legislation and Hearing Regulations.

- 7.7. Any decisions taken by a Licensing authority which has failed to meet the above statutory time limits would be open to challenge by way of appeal at either the Magistrates Court, or by way of judicial review at the High Court.
- 7.8. Due to the tight timescales, there is no opportunity to defer matters if a quorum is not available. Experience has shown that when seeking members for a Sub-Committee, it often takes several calls to find members of the Licensing Committee who are available. This gives real concern about whether a quorum of at least 6 could be achieved at every meeting if the main Committee was handling all applications.
- 7.9. In the last few years, the number of licensing applications received by the Council, resulting in the need for a Sub-committee hearing, has been relatively low. There have been 8 licensing sub-committees organised since 2020, 3 of which were subsequently cancelled. Members may wish to note that a neighbouring Worcestershire local authority has recently experienced a spike in demand, which has resulted in a requirement to hold 14 Licensing Sub-committee meetings over a 10 week period. Furthermore, one of the Sub-Committee meetings was conducted over a period of 9 hours.

8. EQUALITY IMPACT ASSESSMENT

- 8.1. The Licensing and Environmental Committee will ensure it has regard to the desirability of exercising its functions with regard to the need to eliminate discrimination and to increase equality of opportunity.
- 8.2. Officers can confirm that there are no Equality implications associated with this report.

9. CONCLUSION

- 9.1. Officers conclude that any proposed amendment to the Council's Constitution, in relation to ceasing to operate Licensing Sub committees and referring general licensing applications to the full Licensing and Environmental Committee for consideration and determination, may lead to the Council being in a position where it will be unable to fulfil its legal responsibilities under the Licensing Act 2003 and the Gambling Act 2005.
- 9.2. The Council's current Licensing Act 2003 Statement of Licensing Policy and Gambling 2005 Act Statement of Principles provide clarity for applicants on the Council's scheme of delegation and how decisions will be made. This together with the tight deadlines prescribed by the legislation and referenced in paragraph 7.3 above and the recommended scheme of delegations in the Guidelines referred to in paragraph 6.5 clearly demonstrates that the legislative framework is more predisposed to a process where applications are referred to the Licensing Sub Committee where appropriate.
- 9.3. Officers' strong professional advice is that members should not recommend altering the Council's current decision making structure in relation to licensing and

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gambling applications and the referral to Licensing Sub-Committees for consideration and determination.

10. CONSULTEES

10.1. Solicitor to the Council, Legal Services.

11. BACKGROUND PAPERS

11.1. Home Office Guidance issued under section 182 of the Licensing Act 2003.

11.2. Gambling Commission Guidance to Licensing Authorities

Table: Recommended Delegation of Functions

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

Summary of licensing authority delegations permitted under the Gambling Act, applicable to England and Wales only

Matter to be dealt with	Full Council	Sub-committee of licensing committee	Officers
Final approval of the Licensing Authority statement of policy	X		
Policy not to permit casinos	X		
Fee setting (when appropriate)		X (if delegated by full council)	
Application for premises licences		X Where representations have been received and not withdrawn	X Where no representations received/representations have been withdrawn
Application for a variation to a licence		X Where representations have been received and not withdrawn	X Where no representations received/representations have been withdrawn
Application for a transfer of a licence		X Where representations have been received from the Commission or responsible authority	X Where no representations have been received from the Commission or responsible authority
Application for a provisional statement		X	X
Review of a premises licence		X	
Application for club gaming/club machine permits		X Where objections have been made and not withdrawn	X Where no objections have been made and not 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	