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LICENSING COMMITTEE21 JUNE 2012

Present:- Councillors Fawcett (Chairman), Platt (Vice-Chairman), Caines, Casey, Colbourne (except items 6 – 9), De-Vaux Balbirnie, V E Guglielmi, A J Mitchell, G L Mitchell, D Oxley, Powell, Pugh, Shearing, Skeels, White.

Also Present:- Councillor McWilliams.

In Attendance:- Streets and Seafronts Manager, Legal Services Manager, Licensing Officer, Senior Democratic Services Officer, Assistant Licensing Officer.

(7.30 p.m. – 9.05 p.m.)  
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1. MINUTES

The minutes of the meeting of the Committee held on 11 April 2012 were approved as a correct record and signed by the Chairman subject to the deletion of Solicitor (WRR) from the list of Officers in attendance.

2. TO RECEIVE THE MINUTES OF THE MEETING OF THE LICENSING (GENERAL PURPOSES) SUB-COMMITTEE HELD ON 28 MAY 2012

The Committee received the minutes of the meeting of the Licensing (General Purposes) Sub-Committee held on 28 May 2012, which had previously been circulated and noted the decisions contained therein.

3. TO RECEIVE THE MINUTES OF THE MEETING OF THE PREMISES/PERSONAL LICENCES SUB-COMMITTEE 'C' HELD ON 8 JUNE 2012

The Committee received the minutes of the meeting of the Premises/Personal Licences Sub-Committee 'C' held on 8 June 2012, which had previously been circulated and noted the decisions contained therein.

4. LICENSING ACT 2003 – APPLICATIONS APPROVED UNDER DELEGATED POWERS

The Committee noted the contents of a report on Premises Licence/Club Premises Certificate and Personal Licence applications which had been approved under Delegated Powers during the period 29 March 2012 to 11 June 2012, which report was submitted for information only.

5. GAMBLING ACT 2005 - REVIEW OF THE STATEMENT OF LICENSING POLICY

Further to minute 30 of the meeting of the Committee held on 11 April 2012 it was reported that no comments had been received in respect of the consultation carried out on the draft Statement of Licensing Policy (Gambling Act 2005).

It was therefore moved by Councillor Platt, seconded by Councillor De-Vaux Balbirnie and:-

RECOMMENDED TO COUNCIL – That the draft Statement of Licensing Policy (Gambling Act 2005), as set out in the Appendix to item A.2 of the Report of the Head of Public Experience, be approved and formally adopted with effect from 31 January 2013.

## 6. HACKNEY CARRIAGE FARES

Councillor Colbourne declared prejudicial interests in the subject matter of this item and in item A.4 and left the meeting.

The Committee gave consideration to two letters requesting an increase in the scale of fares operative within the District, the first from the Tendring Taxi Drivers' Association which had been received on 7 March 2012 and the second from Mr Alan Kirkham, received on 12 March 2012. Both letters were attached as Appendix 'A' to item A.3 of the Report of the Head of Public Experience.

Members were made aware that 36 letters of objection to any increase in the fare tariffs had been received by the Licensing Authority and copies of such letters were attached as Appendix 'D' to the aforementioned report.

Having considered the requests it was moved by Councillor V E Guglielmi, seconded by Councillor G L Mitchell and:-

RESOLVED - (a) That the Committee is minded to grant an increase to the table of fares operative within the District.

It was then moved by Councillor Casey seconded by Councillor White and:-

RESOLVED – (b) That Mr Alan Kirkham's proposal be adopted in full, subject to the fare tariff for every fifth of a mile being increased by 5p.

(c) That, pursuant to Section 65 of the Local Government (Miscellaneous Provisions) Act 1976, public notice be given of the intention of the Council to increase and amend the Hackney Carriage Fare Scale operative within the District in accordance with resolution (b) above.

(d) That any representations received in response to the said public notice be considered at the next meeting of the Committee.

## 7. HACKNEY CARRIAGE/PRIVATE HIRE VEHICLES CONSIDERATION OF ACCEPTANCE CRITERIA

Councillor Colbourne had previously declared a prejudicial interest and had already left the meeting.

The Committee recalled that, at its meeting held on 1 November 2011 (minute 18 referred), it had decided, with effect from 3 January 2012, that new hackney carriage vehicles licensed by this Authority were to be of a standard design and colour of white with the bonnet and boot/rear panel coloured in the Tendring District Council corporate green with the Council crest (but not full logo) to be displayed on the front doors of the vehicle.

However, since making that determination the Licensing Authority had been made aware of an appeal decision made at Newcastle Crown Court on 31 August 2005.

Following appraisal of this Court decision the Council's solicitors had recommended that should any future challenge be made against Tendring District Council in respect of the decision to introduce a liveried taxi fleet that it would be prudent for Members of the Committee to be made aware of this Court decision and have the opportunity to consider the position anew. Officers had then written to all drivers informing them of the intention to allow Members to review their position as a result of the new information and written representations received.

A copy of the Newcastle Crown Court decision was attached as an Appendix to item A.4 of the Report of the Head of Public Experience.

The Committee was made aware of the background to the decision and it coming to the Authority's attention which was as follows:-

As a result of an information letter sent to all drivers informing them of the intended changes, Officers had received information about a legal challenge, heard before Durham Magistrates, brought by a driver against Durham City Council who had stipulated that all new vehicles to be licensed by them would have to be white. The Magistrates had ruled against the Council. Durham City Council had then appealed to Newcastle Crown Court. The appeal had been heard before His Honour Judge Carr who had dismissed the appeal by Durham City Council and had awarded costs against them. Whilst the circumstances were not exactly the same, there had been sufficient similarities for Officers to seek the opinion of the Council's solicitors as to the likely outcome of any challenge. The Legal officers had agreed that there was an expectation that the Authority would lose an appeal of this nature as Members had not been made aware of the Crown Court decision and that, in the light of this new information, Members should have the opportunity to revisit their decision.

It was reported that Officers had now studied the Crown Court decision, delivered on 31 August 2005 in greater detail and were satisfied that there were sufficient clear distinctions between what had been proposed by Durham City Council and what was intended for this District to be able to withstand any challenge in Court.

The main points were:-

- (a) That white in colour is not reasonably necessary as:- "White as a colour deteriorates faster" - A web search for favourite colours named white as one of the top five colours and it has been proven to depreciate at a slower rate.
- (b) Durham City Council wished to adopt white as part of a countywide colour scheme - Tendring District Council would adopt a "stand alone" livery of white with Tendring corporate green flashings.
- (c) Ease of identification - Essex Police were supportive of the change to liveried vehicles and, because of concerns over unlicensed drivers and vehicles operating in the county, had launched Operation "Night Owl" which aimed to educate vulnerable people about personal safety and, among other points, how to best to recognise a properly licensed taxi.
- (d) His Honour, Judge Carr had stated that it was unreasonable to expect a vehicle that had been involved in an accident and which had then taken more than 6 weeks to repair had to be re-sprayed white to conform to the Durham City Council Policy. - In Tendring existing vehicles would have "grandfather rights" until the vehicle reached its age limit and if a vehicle was involved in an accident it would retain the licence plate and any temporary replacement vehicle would be issued with a separate temporary plate for as long as was necessary.
- (e) Judge Carr had questioned the ease of availability of second hand white vehicles - A search of the web revealed no particular difficulty in obtaining a white vehicle. With regards to a new vehicle, the Ford Motor Company had stated that there should be no longer waiting time than for any other colour. It had also been reported that there had been a 60% increase in the number of white vehicles sold in the previous 12 months, therefore increasing availability in the second hand market.

- (f) It had been mooted in the Court case that Hire Purchase Companies would not allow their vehicles to be re-sprayed or liveried - A check with Vantruckhire, Cab Direct and Pineapple, the most prominent companies who advertised in the Trade Press found that they had no objections to the lessee altering the vehicle.

It was further reported that there were many local authorities who had liveried fleets of hackney carriages, several of whom had adopted this policy after the above decision had been announced, the nearest of which was Colchester Borough Council.

Members were made aware that there had been complaints about the additional costs involved in having the vehicle liveried. Officers therefore proposed that, should Members agree to proceed with a liveried fleet, and without compromising safety, the requirement for testing vehicles at the Council depot should be reduced to once per annum, six months after the MOT certification of the vehicle, thus reducing the vehicle licence fee and covering the cost of the livery over the 10 year period that the vehicle would be licensed as a taxi.

Having carefully considered the above it was moved by Councillor Shearing, seconded by Councillor White and:-

RESOLVED - (a) That, having considered the new information, the Committee agrees to proceed with the requirement that all vehicles that are to be licensed as Hackney Carriages are to be white with the bonnet and boot/rear panel to be Tendring District Council corporate green.

(b) That a suitable logo/design is incorporated on the front door side panels of the vehicles.

(c) That a new inception date of 1 October 2012 be set in order to allow time for Members to further consider logo designs for the side panels.

It was further moved by Councillor Platt, seconded by Councillor White and:-

RESOLVED – (d) That consideration of whether to reduce the number of required mechanical tests be deferred until a future meeting of the Committee in order to allow Officers to carry out further research on this issue, including the experience and practices of other local authorities.

## 8. EXCLUSION OF PRESS AND PUBLIC

It was moved by Councillor De-Vaux Balbirnie, seconded by Councillor V E Guglielmi and:-

RESOLVED - That under Section 100A(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Act.

## 9. TO RECEIVE THE SPECIAL MINUTES OF THE MEETING OF THE LICENSING (GENERAL PURPOSES) SUB-COMMITTEE HELD ON 28 MAY 2012

The Committee received the special minutes of the meeting of the Licensing (General Purposes) Sub-Committee held on 28 May 2012, which had previously been circulated and noted the decisions contained therein.

Chairman