
MINUTES OF THE MEETING OF THE LICENSING COMMITTEE**HELD ON TUESDAY 16 DECEMBER 2014 AT 7.30 P.M.****IN THE COUNCIL CHAMBER, WEELEY**

Present: Councillors Sambridge (Chairman), Coley (Vice-Chairman), Caines, R Callender, Casey, Cossens, De-Vaux Balbirnie MBE, S A Honeywood, Mitchell, Powell, Pugh, D C Skeels, Winfield and Wood

Also Present: Councillors P B Honeywood and M J D Skeels

In Attendance: Environmental Services Manager (John Fox), Legal Services Manager (Lisa Hastings), Licensing Manager (Simon Harvey), Senior Democratic Services Officer (Ian Ford) and Solicitor (Linda Trembath)

18. ELECTION OF CHAIRMAN

Following the casual vacancy caused by the resignation of Councillor T Fawcett, due to illness, as a member of the Committee it was moved by Councillor De-Vaux Balbirnie, seconded by Councillor Cossens and **RESOLVED** that Councillor Sambridge be elected Chairman of the Committee for the remainder of the municipal year.

In the light of the fact that there was now a vacancy in the office of Vice-Chairman of the Committee:

It was moved by Councillor De-Vaux Balbirnie and seconded by Councillor Pugh that Councillor Powell be elected the Vice-Chairman of the Committee for the remainder of the municipal year.

It was then moved by Councillor Mitchell and seconded by Councillor Wood that Councillor Coley be elected the Vice-Chairman of the Committee for the remainder of the municipal year

On being put to the vote it was:

RESOLVED that Councillor Coley be elected the Vice-Chairman of the Committee for the remainder of the municipal year.

The Chairman paid tribute to the work of Councillor Fawcett during his term of office as Chairman of the Committee.

19. APOLOGIES FOR ABSENCE AND SUBSTITUTE MEMBERS

An apology for absence was submitted on behalf of Councillor Shearing.

20. MINUTES OF THE LAST MEETING

The minutes of the last meeting of the Committee held on Thursday 29 July 2014 were approved as a correct record and signed by the Chairman.

21. DECLARATIONS OF INTEREST

There were none.

22. MINUTES – LICENSING (GENERAL PURPOSES) SUB-COMMITTEE

The Committee received and noted, for information only, the minutes of the meeting of the Licensing (General Purposes) Sub-Committee held on 12 August 2014.

23. MINUTES - PREMISES/PERSONAL SUB-COMMITTEE 'A'

The Committee received and noted, for information only, the minutes of the meetings of the Premises/Personal Licences Sub-Committee 'A' held on 30 October 2014.

24. MINUTES – PREMISES/PERSONAL SUB-COMMITTEE 'B'

The Committee received and noted, for information only, the minutes of the meeting of the Premises/Personal Licences Sub-Committee 'B' held on 26 November 2014.

25. 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 9 April 2014 to 1 December 2014, which report was submitted for information only.

26. REVIEW OF TENDRING DISTRICT COUNCIL'S HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER ENHANCED KNOWLEDGE TEST

The Committee reviewed the current Hackney Carriage/Private Hire Drivers' Licence enhanced knowledge test and process following its introduction in April 2012. and also the requirements that accompanied that test that all new applicants applying for a grant of a Hackney Carriage/Private Hire Drivers Licence in the Tendring District Council area also passed a Driver, Vehicle Standards Agency (DVSA) Test and obtained a Business Technology Education Council (BTEC), or its equivalent, in passenger handling prior to submitting an application for a Driver's Licence.

Members recalled that the driver knowledge test itself consisted of five modules which included, signage, Highway Code, routes, places of interest/local knowledge and conditions, law and equality. The Tendring District taxi and private hire driver's licence was granted in order to allow the holder to use it anywhere within the Tendring District and the driver knowledge test reflected this.

Members further recalled that the driver knowledge test and the accompanying skillsets taught under the BTEC and DVSA courses had been introduced after full consultation with the local taxi and private hire trades and the Tendring District Taxi Association and their full support.

As the driver knowledge test had been in place for over two years, the Officers had felt it was prudent to undertake a review of its effectiveness and also in the light of some recent criticism of the test received from a small number of new applicants for driver's licences, existing licence holders and Members. The Committee was therefore asked to determine whether it wished to see any amendments made to the current process of the test, or whether Members wished to leave the knowledge test and its process as it was.

The Committee was also asked to review whether it wished to retain the DVSA test and the BTEC, or its equivalent, in passenger handling in light of the costs involved for new applicants in taking and passing those requirements and review whether the cost to new applicants was a reasonable and proportionate requirement in helping to ensure that only "fit and proper persons" were granted a Hackney Carriage/Private Hire Driver's Licence in the Tendring District Council area.

The Committee was made aware in the Officers' written report that it was important to decide whether the above were still reasonable, appropriate and proportionate pre-licensing requirements, which helped to promote and sustain professional and customer-friendly taxi and private hire trades that put passenger safety, protection and service at the forefront of their business and as reasons for holding licences with this Authority, so that the public could have full confidence in licensed Tending drivers, which, in turn, meant that the Council could have respected, professional and prosperous taxi and private hire trades in the District.

The Licensing Manager gave a comprehensive oral presentation to the Committee which set out the background and the current position of this matter. Points made by the Licensing Officer included:

That, on reviewing some of the criticisms raised in regards to the test, it would be fair to say that there were a very small number of the questions, (no more than six out of an overall pool of 194 questions) that would benefit from further clarification in how they were presented in the test. Officers had carried out a thorough and complete audit of the test and its questions to confirm their clarity and accuracy and where it was thought that the questions would benefit from clarification such amendments had been made accordingly.

The Licensing Manager informed the Committee that by way of an external check on the fairness and clarity of the test a number of proprietors of taxi companies/employers of taxi drivers had been invited to sit the test themselves and give their opinion on it. The general consensus was that while they thought that the test had been quite difficult in places, they agreed that the test was clear in its content. From their own perspective the taxi company owners wanted new applicants and new drivers to be professional and have the necessary awareness, training and proficiencies that were taught as part of the DVSA test and Level 2 BTEC or its PATS equivalent in passenger handling and the Tending District driver knowledge test, they did not want those to be too difficult to pass and thereby cause them to have any shortage of drivers as a result.

The Licensing Manager made Members aware that, as part of putting together the review of this Council's knowledge test and new driver licence application requirements, Officers had undertaken research to see what other Essex Councils required in terms of a driver knowledge test, DVSA test and Level 2 BTEC or its PATs equivalent. In addition, Officers had consulted with all current drivers licensed with the Council via a survey questionnaire. While it was disappointing that in the end only 37 of those questionnaires had been returned, nevertheless it the clear majority of those had supported continuing with the requirements of the driver knowledge test, DVSA test and PATs course and had also supported the Officers' recommended changes.

Therefore, the Licensing Manager stated that, taking into consideration the research and consultation undertaken, it was appropriate that the Council retained the DVSA drivers test and PATS course as licensing requirements and standards to be completed by all new applicants for a hackney carriage and private hire drivers licence, but that those must be passed before the grant of a driver's licence which was an amendment from the current policy which prescribed that applicants must pass the DVSA and PATS course prior to even submitting an application for a hackney carriage and/or private hire drivers licence. The Officers' reason for recommending such a change was to prevent circumstances whereby an applicant paid out £80 or more to pass a DVSA drivers test and £80 or more for a PATS course, but then ultimately failed the suitability test or the driver knowledge test and had potentially wasted that outlay. The amendment would still require an applicant to undertake the DVSA test and PATS course, but it would be a requirement that they must do so before the taxi driver's licence was granted to them. In other words the driver's licence would not be granted to the new applicant unless they provided proof of passing the DVSA test and PATS course.

Having discussed the matter and the Officers' advice it was moved by Councillor De-Vaux Balbirnie, seconded by Councillor Powell and unanimously:

RESOLVED that the Committee agreed to:

- (a) Retain the DVSA Taxi Drivers' test and PATS Course as pre-licensing requirements and standards, which must be completed and passed by all new applicants before the grant of a new Hackney Carriage/Private Hire Driver's Licence;
- (b) Only consider the question of 'grandfather rights' for applicants in line with the decision in the stated case of Exeter City Council v Sandle 2011, where only in exceptional circumstances would applications for the renewal of a Hackney Carriage/Private Hire Driver's Licence be considered after a delay of no more than two or three days in applying for such renewal;
- (c) Amend the current policy in relation to suitability and driver knowledge tests in order to permit a thirty day period in between being able to re-sit a second and third attempt at the suitability and driver knowledge tests;
- (d) Allow applicants to re-sit only those modules of the Hackney Carriage/Private Hire Driver's knowledge test that they had previously failed on from the first test onwards;
- (e) Retain the appeal process to the Licensing (General Purposes) Sub-Committee, whereby new applicants for Hackney Carriage and Private Hire Drivers' Licences could appeal to be allowed to take a fourth knowledge test after having failed three tests;
- (f) Permit a maximum timescale of three months from the date of the DBS (CRB) and Medical Certificates to be considered valid at the time of granting a Driver's Licence submitted for all Hackney Carriage and Private Hire Drivers' Licences applications; and
- (g) Not allow new applicants for Hackney Carriage and Private Hire Driver's Licence to re-sit any further knowledge or suitability tests after having failed three, or four, tests for a period of three months from the date of the last failed test.

27. REVISED FEES FOR HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES

The Committee considered whether to remove two fees from the Council's Hackney Carriage and Private Hire Vehicle Licence fee schedule.

The Officers' written report informed Members that, although the fees levied by the Council for Hackney Carriage and Private Hire vehicles were subject to a more detailed review in order to inform the level of fees to be charged in 2015/16, as part of the current budget setting process, it was considered timely to make changes during 2014/15 rather than wait for the outcome from the review.

It was therefore proposed by Officers that, with immediate effect, the Council no longer charged for a change of Hackney Carriage and Private Hire vehicle, or for a change in ownership with the aim of having a more simplified charging structure and in the light of legal challenges faced by other Local Authorities.

The Licensing Manager gave a detailed oral presentation to the Committee which set out the background and the current position of this matter. In particular, the Licensing Manager informed the Committee that Officers had taken into account recent decisions made by other Councils, both locally and nationally, to cease charging separate administrative fees for those administrative processes. The Licensing Manager stated that, where a mechanical test was required for the change of a vehicle, an inspection fee would still be

applied for that test in order to ensure that the new or replacement vehicle was mechanically safe, sound and roadworthy.

The Licensing Manager informed the Committee that the administrative costs incurred by the Council for the change of vehicle and transfer of ownership processes were legitimate costs to be recovered by the Council in accordance with Section 70(1) of the Local Government (Miscellaneous Provisions) Act 1976 and must be recovered, but should not be recovered through the use of separate administrative fees. The recovery of those administrative costs would form part of the overall review of fees and charges.

Having considered the Officers' advice it was moved by Councillor Cossens, seconded by Councillor Casey and unanimously:

RESOLVED that

- (a) the Council discontinues charging a separate fee for a change of Hackney Carriage or Private Hire vehicle;
- (b) the Council discontinues charging a separate fee for a change of owner of a Hackney Carriage or Private Hire vehicle;
- (c) the separate charges be removed from the Council's Schedule of Vehicle Licence Fees;
- (d) no variation to the Council's grant of vehicle licence fee be made until the fees for the next financial year 2015/16 are formulated; and
- (e) the outcome of the review be reported to a future meeting of the Committee.

28. REQUEST FROM THE CABINET REGARDING PROHIBITING THE USE OR RELEASE OF CHINESE SKY LANTERNS FROM LICENSED PREMISES OR EVENTS

The Committee was informed that, at its meeting of 1 August 2014, the Cabinet had considered a report from the Rural Projects Panel about the negative impact that the use and release of Chinese Sky Lanterns was having on rural communities and, in particular, to farmers' crops. As part of a number of measures to try and prevent the use or release of Chinese Sky Lanterns in the District, the Cabinet had made the following resolution:

"(d) that the Licensing Committee be requested to identify and take any opportunities to use the licensing legislation in pursuance of the Licensing Objectives for the Prevention of Public Nuisance and the Promotion of Public Safety to extend the prohibition of the use or release of Chinese Sky Lanterns."

The Officers' written report informed Members that, in respect of the Licensing Act 2003, the use or release of Chinese Sky Lanterns was not a licensable entertainment or activity that fell within the direct control and jurisdiction of that Act in the way that the sale of alcohol or the performance of live music did.

Officers felt that it was therefore very unlikely that applicants for a premises licence, club premises certificate or Temporary Event Notice would inform the Licensing Authority of any planned use of Chinese Sky Lanterns as part of any other licensable activity or entertainment taking place (such as the performance of live music) because they were not specifically required to under the Act. However, if an applicant did include details of the use or release of such lanterns within their operating schedule, for example, as part of an application for a new premises licence, or a variation of licence, or there was knowledge that this was likely to take place, then it would be open to Responsible Authorities such as the Fire and Rescue Service or residents to comment on that use.

The Committee were reminded that an application would only be heard and determined by a Premises/Personal Licences Sub Committee if representations in the form of objections were submitted against it that were relevant representations under the Licensing Act 2003. It was not open to a Licensing Authority to attach conditions to an application to control, restrict, or curtail times or activities if no relevant representation had been submitted to justify the attachment of such conditions. If no representations were made then an application must be granted as applied for, unless it was clear to the Licensing Authority that by granting the application it would undermine the licensing objectives.

Members were also reminded that in respect to Temporary Event Notices it was only the Police and the Environmental Health Authority that could submit a representation against the Notice.

The Officers' written report informed the Committee that on 4 November 2014 Essex County Council had issued a press release stating that they had banned the release of sky lanterns from any buildings or land owned by Essex County Council. The press release had stated that anyone found releasing lanterns would be asked to leave.

Having considered the Cabinet's request, it was moved by Councillor Powell, seconded by Councillor Mitchell and **RESOLVED** that the Cabinet's request be noted and supported by extending the prohibition of the use or release of Chinese (flammable) Sky Lanterns at, or from, licensed premises or events, where it is possible, reasonable and proportionate to do so.

29. VACANCIES ON PREMISES/PERSONAL LICENCES SUB-COMMITTEES 'A' AND 'C'

It was reported that, on 22 October 2014 and in accordance with the wishes of the Leader of the Conservative Group and the authority delegated to the Chief Executive, Councillor Coley had been appointed to serve on this Committee in place of Councillor Fawcett.

It was further reported that, on 15 December 2014 and in accordance with the wishes of the Leader of the Conservative Group and the authority delegated to the Chief Executive, Councillor S A Honeywood had been appointed to serve on this Committee in place of Councillor Colbourne.

The Committee was reminded that the provisions of the Licensing Act 2003 mandated that a member of a Premises/Personal Licences Sub-Committee must also be a member of the Licensing Committee. In the light of the above change to the membership of this Committee, Councillors Colbourne and Fawcett were no longer eligible to continue to be a member of Premises/Personal Licences Sub-Committees 'A' and 'C' respectively and therefore vacancies existed on those Sub-Committees.

Members were also reminded that the Premises/Personal Licences Sub-Committees were not subject to the Widdicombe Rules on political balance of membership of Committees and Sub-Committees. However, as stated above, a Member of a Premises/Personal Licences Sub-Committee must also be a serving Member of the Licensing Committee. That Member must also have received training in relation to matters pertaining to the Licensing Act 2003 and the Gambling Act 2005 under a continuing programme arranged by the Council.

It was moved by Councillor Pugh and seconded by Councillor Cossens that Councillor Pugh be appointed to fill the vacant seat on Premises/Personal Licences Sub-Committee 'A' for the remainder of the municipal year.

It was then moved by Councillor Casey and seconded by Councillor De-Vaux Balbirnie that Councillor Caines be appointed to fill the vacant seat on Premises/Personal Licences Sub-Committee 'C' for the remainder of the municipal year.

It was then moved by Councillor Sambridge and seconded by Councillor Mitchell that Councillor Wood be appointed to fill the vacant seat on Premises/Personal Licences Sub-Committee 'C' for the remainder of the municipal year.

On being put to the vote it was:

RESOLVED that:

- (a) Councillor Pugh be appointed to fill the vacant seat on Premises/Personal Licences Sub-Committee 'A' for the remainder of the municipal year; and
- (b) Councillor Caines be appointed to fill the vacant seat on Premises/Personal Licences Sub-Committee 'C' for the remainder of the municipal year.

30. EXCLUSION OF PRESS AND PUBLIC

It was moved by Councillor Mitchell, seconded by Councillor S A Honeywood and:

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

31. EXEMPT MINUTES - LICENSING (GENERAL PURPOSES) SUB-COMMITTEE

The Committee received and noted, for information only, the exempt minutes of the meeting of the Licensing (General Purposes) Sub-Committee held on 12 August 2014.

The meeting was declared closed at 8.24 p.m.

Chairman