
MINUTES OF THE MEETING OF THE LICENSING COMMITTEE**HELD ON FRIDAY 7 SEPTEMBER 2012 AT 7.30 P.M.****IN THE COUNCIL CHAMBER, WEELEY**

Present: Councillors Platt (Vice-Chairman, in the Chair), Caines, Casey, Colbourne (except items 18 – 21), De-Vaux Balbirnie, V E Guglielmi, A J Mitchell, Powell, Pugh, Shearing, Skeels and White

Also Present: Councillors G V Guglielmi, McWilliams and Turner

In Attendance: Streets and Seafronts Manager (Ian Taylor), Legal Services Manager (Michael Gibson-Davies), Solicitor (Linda Trembath), Licensing Officer (Alan Tolmie) and Senior Democratic Services Officer (Ian Ford)

10. CHAIR

In the absence of the Chairman of the Committee (Councillor Fawcett), the Chair was occupied by the Vice-Chairman (Councillor Platt).

11. APOLOGIES FOR ABSENCE AND SUBSTITUTE MEMBERS

Apologies for absence were submitted on behalf of Councillors Fawcett, G L Mitchell and D Oxley. There were no substitute members.

12. MINUTES OF THE LAST MEETING

The minutes of the meeting of the Committee held on 21 June 2012 were approved as a correct record and signed by the Chairman.

13. MATTERS ARISING FROM THE ABOVE-MENTIONED MINUTES

There were none.

14. QUESTIONS PURSUANT TO COUNCIL PROCEDURE RULE 15.3

There were none.

15. 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 3 July 2012.

16. MINUTES - PREMISES/PERSONAL LICENCES SUB-COMMITTEE 'A'

The Committee received and noted for information only the minutes of the meeting of the Premises/Personal Licences Sub-Committee 'A' held on 20 August 2012.

17. MINUTES - PREMISES/PERSONAL LICENCES 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 17 July 2012.

18. HACKNEY CARRIAGE VEHICLES LIVERY PROPOSALS

Councillor Colbourne declared a disclosable pecuniary interest in the subject matter of this item, insofar as he was a taxi proprietor/driver, and left the meeting.

Further to minute 7 (21.6.12) the Committee gave consideration to a detailed report which provided it with: (a) more information about the consultation exercise; (b) an update on recent developments; (c) legal advice in the light of what had happened; (d) a risk assessment of the different options open to Members and (e) different livery designs for the front side doors of taxis.

Following the meeting of the Committee held on 21 June 2012, a number of taxi drivers had raised strong objections to the livery requirement. Written representations had been made to the Council's Chief Executive, seeking to challenge the research and reasoning in the officer report and those were reported in Appendix A to item A.1 of the Report of the Head of Public Experience.

It was reported that, following a meeting on 16 July 2012 held at the request of representatives of the taxi trade in Tendring, Officers had been requested to put to the Licensing Committee for consideration a single livery colour option, preferably silver. Livery options for front door side panels were set out in Appendix B to the aforementioned report. At the end of the aforementioned meeting, a number of drivers had stated that they intended to challenge the Committee's decision to impose a livery requirement by appealing to the Magistrates' Court.

The National Private Hire Association (NPHA) had also written to the Council on 20 July 2012, asking for clarification of the Council's intentions (also reported in the aforementioned Appendix A).

Members were made aware that an appeal in the North East Essex Magistrates' Court against the Council's livery decision had subsequently been lodged by the NPHA on behalf of a taxi operator in the Tendring District. At the initial hearing held on 24 August 2012, the appeal had been adjourned until 26 October 2012. If the livery requirement was imposed as originally anticipated, it was thought likely that this appeal would proceed and that it could well be followed by many others. As matters stood at present, this would be expensive for the Council, irrespective of outcome, and could delay or defeat Members' intentions for the foreseeable future.

It was felt that as matters stood at present, the Council faced two different types of potential legal challenge.

Legal Proceedings seeking Judicial Review

The first of those was an application for a judicial review of the decision of the Council's Licensing Committee at its meeting on 21 June 2012. A Judicial Review (JR), if granted, was an order of the Court "quashing" (i.e. making of no valid effect) the Committee's decision. If the decision was quashed, the Council could decide not to proceed with the livery requirement, in which case there would be no need to take any further action. However, if it did want to pursue the livery requirement, it was suggested that it would be appropriate for Officers and Members to revisit relevant issues, accompanied by a full consultation and then a comprehensive officer report would be made and presented to the Committee with all the appropriate recommendations.

The Committee was advised that the potential costs of JR proceedings were likely to be in the order of tens of thousands of pounds. The Administrative Court was very busy and, even on the initial application seeking permission to pursue JR, could take up to six months.

After that, it could take up to eighteen months or more, depending on Court availability and other factors which could not be predicted in advance.

If JR proceedings against the Council were successful, then this was conclusive evidence of maladministration, which would be likely to bring the reputation of the Licensing Committee and of the Council itself into potential disrepute. It would also mean that the taxi drivers had defeated Members' intentions, which could lead to problems in future dealings with those concerned.

Appeal against the Licence Condition

An appeal against a licence condition was to the Magistrates' Court in the first instance, with a right of appeal against their decision to the Crown Court (and potentially even higher). There was an apparent confusion in the Minutes in that those of the Committee's meeting on 1 November 2011 stated that the livery condition applied to hackney carriage and private hire vehicles, whereas the Minutes of the meeting on 21 June 2012 purportedly stated that the livery condition applied only to hackney carriages. Assuming the former, there could in theory be successive appeals over a period of time from a large proportion of about 390 drivers.

The Council's own costs of defending an appeal in the Magistrates' Court could easily run to upwards of £1,000 per case. If unsuccessful, the Council would also have to pay the other side's costs which could easily amount to £1,500 or more, as drivers normally instructed specialist lawyers from outside the area. In the Crown Court, the Council would have to instruct a barrister. Costs there could easily amount to £3,000 for the Council alone and significantly more for the other party (taxi driver).

On the other hand, it was suggested that with further consultations, matters could be resolved by agreement. On balance, it was therefore recommended by Officers that that option was the more expedient one and would be a more effective means of ensuring that Members' intentions were implemented.

It was moved by Councillor De-Vaux Balbirnie, seconded by Councillor A J Mitchell and:-

RESOLVED: that (a) the decisions of the Licensing Committee on 1 November 2011 and 21 June 2012 insofar only as they introduced livery requirements for private hire and/or hackney carriage vehicles be rescinded with immediate effect.

(b) the issue of a livery requirement be reviewed in due course after a full consultation exercise has been carried out by Officers in consultation with the Chairman and/or Vice-Chairman of the Licensing Committee.

19. ANY OTHER ITEMS WHICH THE CHAIRMAN DECIDES ARE URGENT

There were none.

20. 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 item of business to be considered below on the grounds that it involves the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Act.

21. 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 3 July 2012.

The meeting was declared closed at 7.49 p.m.

Chairman