



## LICENSING AND REGISTRATION COMMITTEE

<b>DATE:</b>	<b>Wednesday 28 September 2016</b>
<b>TIME:</b>	<b>7.30 pm</b>
<b>VENUE:</b>	<b>Council Chamber, Council Offices, Thorpe Road, Weeley, CO16 9AJ</b>

### MEMBERSHIP:

<b>Councillor Cossens (Chairman)</b>	<b>Councillor Porter</b>
<b>Councillor Callender (Vice-Chairman)</b>	<b>Councillor Raby</b>
<b>Councillor Amos</b>	<b>Councillor Skeels (Jnr)</b>
<b>Councillor B Brown</b>	<b>Councillor Watson</b>
<b>Councillor M Brown</b>	<b>Councillor White</b>
<b>Councillor Bucke</b>	<b>Councillor Whitmore</b>
<b>Councillor V Guglielmi</b>	<b>Councillor Winfield</b>
<b>Councillor J Henderson</b>	

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**For further details and general enquiries about this meeting, contact Katie Sullivan on 01255 686 585**

**DATE OF PUBLICATION: TUESDAY 20 SEPTEMBER 2016**

## AGENDA

### **1 Apologies for Absence and Substitutions**

The Committee is asked to note any apologies for absence and substitutions received from Members.

### **2 Minutes of the Last Meeting (Pages 1 - 4)**

To confirm and sign as a correct record, the minutes of the last meeting of the Committee, held on Thursday 18 February 2016.

### **3 Declarations of Interest**

Councillors are invited to declare any Disclosable Pecuniary Interests, or other interest, and the nature of it, in relation to any item on the agenda.

### **4 Minutes of the Meeting of the Licensing (General Purposes) Sub-Committee held on 20 April 2016, 25 July 2016 and 18 August 2016 (Pages 5 - 12)**

The Committee is to receive and note, for information only, the above minutes.

### **5 Minutes of the Meeting of the Premises and Personal Licences Sub-Committee 'A' held on 17 June 2016 and 6 September 2016 (Pages 13 - 20)**

The Committee is to receive and note, for information only, the above minutes.

### **6 Minutes of the Meeting of the Premises and Personal Licences Sub-Committee 'C' held on 20 June 2016 (Pages 21 - 26)**

The Committee is to receive and note, for information only, the above minutes.

### **7 Report of Corporate Director (Operational Services)**

#### **A.1 - Tendring District Council's current Hackney Carriage and Private Hire Vehicle Seating Capacity Policy for Multi-Purpose Vehicles (MPV's) which carry up to 8 passengers. (Pages 27 - 78)**

The Committee is asked to consider the results of the public consultation held to review the Council's current seating capacity policy for Multi-Purpose Hackney Carriage and Private Hire vehicles which carry up to eight passengers and to determine what the Council's future policy should be in regards to a permitted seating maximum for Multi-Purpose Vehicles (MPV's) licensed as Hackney Carriage and Private Hire vehicles in Tendring.

### **8 Exclusion of Press and Public**

The Committee is asked to consider the following resolution:

“That under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of Agenda Item 9 on the grounds that it involves the likely disclosure of exempt information as defined in the relevant paragraphs of Part 1 of Schedule 12A, as amended, of the Act.”

**9 Exempt Minutes of the Meeting of the Licensing (General Purposes) Sub-Committee held on 20 April 2016, 25 July 2016 and 18 August 2016 (Pages 79 - 106)**

The Committee is to receive and note, for information only, the above exempt minutes.

**Date of the Next Scheduled Meeting**

*The next scheduled meeting of the Licensing and Registration Committee is to be held in the Council Chamber, Council Offices, Thorpe Road, Weeley, CO16 9AJ at 7.30 pm on Wednesday, 5 October 2016.*

## **Information for Visitors**

### **FIRE EVACUATION PROCEDURE**

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**MINUTES OF THE SPECIAL MEETING OF THE LICENSING AND REGISTRATION COMMITTEE HELD ON THURSDAY 18 FEBRUARY 2016 AT 7.30 P.M. IN THE COUNCIL CHAMBER, WEELEY**

**Present:** Councillors Platt (Chairman), Callender (Vice-Chairman), Amos, B E Brown, V E Guglielmi, J Henderson, Newton, Raby, Skeels Jnr, Watson, Whitmore and Winfield

**Also Present:** Councillor McWilliams (Well-being and Partnerships Portfolio Holder)

**In Attendance:** Environmental Services Manager (John Fox), Licensing Manager (Simon Harvey), Solicitor (Linda Trembath), Senior Democratic Services Officer (Ian Ford), Democratic Services Officer (Katie Sullivan)

**25. APOLOGIES FOR ABSENCE AND SUBSTITUTE MEMBERS**

Apologies for absence were submitted on behalf of Councillors Davis and White.

**26. MINUTES OF THE LAST MEETING OF THE COMMITTEE**

The minutes of the last meeting of the Committee held on Wednesday 20 January 2016 were approved as a correct record and signed by the Chairman.

**27. DECLARATIONS OF INTEREST**

There were none.

**28. PROPOSED TAXIWATCH SCHEME IN TENDRING**

The Committee was aware that a representative of Essex Police had been due to attend the meeting to discuss, on an informal basis, the possibility of setting up a TaxiWatch Scheme in Tendring.

The Licensing Manager informed Members that due to ongoing organisational changes at Essex Police this item had had to be deferred until a future meeting of the Committee.

In response to a question from Councillor V E Guglielmi, the Licensing Manager outlined the purpose of a TaxiWatch Scheme to Members.

The Committee noted the forgoing.

**29. CHANGE TO LICENSING ACT 2003 IN REGARDS TO LATE NIGHT REFRESHMENT**

The Committee had before it a report which asked it to determine whether it wished to adopt the optional mechanism made available through the Deregulation Act 2015 in order to exempt premises that provided Late Night Refreshment (which was classified as the sale of hot food and/or hot drink between the hours of 11.00 p.m. and 5.00.a.m.) from the requirement to hold a licence, or permission to do so, under the Licensing Act 2003.

It was reported that in November 2015, the Government had introduced Regulations which gave Councils the ability to exempt premises that currently held a premises licence under the Licensing Act 2003 to provide Late Night Refreshment (LNR) from needing to be licensed. The exemption would also apply to any premises wishing to include LNR as a licensable activity as part of a new premises licence application, or LNR as the sole activity

permitted on a new application. In terms of premises that solely held a premises licence to provide LNR there were 28 of those licensed across the District. A list of those premises was attached as Appendix 1 to the report of the Corporate Director (Life Opportunities).

The Committee was made aware that the Licensing Act 2003 (Late Night Refreshment) Regulations 2015 provided a list of prescribed premises which a Licensing Authority could exempt from the requirement under the Licensing Act 2003 for the provision of late night refreshment. That list includes premises such as:

- Motorway service areas;
- Premises used for the retailing of petrol or derv;
- Licensed Premises authorised to sell by retail alcohol for consumption on the premises between 11:00p.m and 05:00a.m;
- School and Local Authority premises where no more than 500 people are present (non-domestic premises); and
- Community premises and hospitals subject to certain requirements.

The Committee was also informed that Licensing Authority could also decide to exempt premises within a certain geographic area of the District from the requirement to license LNR, and also change the hours during which LNR premises would require a license which would apply across the whole of the District. For example, the Licensing Authority could decide that it would only require premises to hold a LNR license if they remained open between the hours of Midnight and 05:00a.m. Those were matters for the Licensing Authority's discretion and are not prescribed in any Regulations. In deciding whether to apply an exemption for either part of the District or the whole of the District the Licensing Authority would take into consideration matters such as the levels of late night anti-social behavior that occurred in the geographic area proposed for exemption, or the instances of late night anti-social behavior linked to a particular take away or takeaways in a geographic area, or the likely effect on late night anti-social behavior by applying an exemption from licensing to such premises.

Members were advised that, if the Licensing Authority, through the decision of this Committee decided to apply any of the exemptions to LNR that could be applied by implementing the new LNR Regulations it must publicize that exemption and also statutorily re-consult on its Statement of Licensing Policy in accordance with Section 5 of the Licensing Act 2003. As such, this would entail substantial costs to the Council in carrying out such a consultation and to report it back to this Committee. Exempting all premises from being required to hold a premises license to provide LNR could cost the Council £4095 annually through lost revenue to the Licensing Act 2003 budget. There was no provision within the Council's budget to balance that shortfall.

Members were further advised that there were three potential risks to the Council in agreeing to exempt premises from needing to hold a permission, or a licence, to provide Late Night Refreshment. Those were:

- Loss of control of Late Night Refreshment premises through the grant, variation or review of licenses under the Licensing Act 2003. This could have a potentially negative impact on the promotion of the licensing objectives.
- Loss of annual fee and grant of new license revenue.
- Once exempted, Late Night Refreshment premises could not be brought back into the licensing regime if, for example, the premises became the cause or source of crime and disorder and/or public nuisance.

The Committee was therefore requested to consider the potential for exempting premises from the requirement to be licensed to provide Late Night Refreshment in either part of the

District or the whole of the District that the Licensing Act 2003 (Late Night Refreshment) Regulations 2015 allowed and to weigh the possible benefits of de-regulation to businesses against the loss of control and revenue to the Council and its residents that such an exemption was likely to bring. It was considered prudent and transparent that the Committee did so in order that if asked by any of the businesses or license holders concerned to consider implementing the Licensing Act 2003 (Late Night Refreshment) Regulations 2015, it would be clear that the Council had considered the matter and had taken a position on it.

Having considered the responses it was moved by Councillor V E Guglielmi, seconded by Councillor Callender and **RESOLVED** that the Committee:

- (a) notes the content of the report and the Home Office document 'Guidance on the licensing of late night refreshment'; and
- (b) agrees not to implement any of the optional provisions of 'The Licensing Act 2003 (Late Night Refreshment) Regulations 2015'.

The meeting was declared closed at 7.50 p.m.

Chairman

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**MINUTES OF THE MEETING OF THE LICENSING (GENERAL PURPOSES)  
SUB-COMMITTEE HELD ON 20 APRIL 2016 AT 10.00 A.M.  
IN THE COUNCIL CHAMBER, WEELEY**

**Present:** Councillors V E Guglielmi (Chairman), Davis, J Henderson, Massey, Newton, Platt and Watson

**In Attendance:** Environmental Services Manager (John Fox), Commercial Manager (Mark Westall), Licensing Manager (Simon Harvey), Solicitor (Linda Trembath), Licensing Officer (Emma King), Democratic Services Officer (Janey Nice) and Democratic Services Officer (Katie Sullivan)

**1. APPOINTMENT OF A VICE-CHAIRMAN**

The Chairman invited nominations from Members of the Committee for the vacant position of Vice-Chairman. It was moved by Councillor V E Guglielmi, seconded by Councillor Newton and **RESOLVED** that Councillor Platt be elected Vice-Chairman for the remainder of the 2015-16 Municipal Year.

**2. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies for absence were received from Councillor White (with no substitution).

**3. MINUTES OF THE LAST MEETING**

The minutes of the last meeting of the Sub-Committee, held on 19 August 2015, were approved as a correct record and signed by the Chairman.

**4. DECLARATIONS OF INTEREST**

There were none.

**5. HACKNEY CARRIAGE AND PRIVATE HIRE LICENCES**

The Sub-Committee noted the contents of a report (A1) on the number of hackney carriage and private hire drivers, vehicles and operators, licensed by the Council as at 1 April 2016, which was submitted for information only.

**6. EXCLUSION OF PRESS AND PUBLIC**

It was moved by Councillor Platt, seconded by Councillor Massey and **RESOLVED** that, under Schedule 100A(4) of the Local Government Act 1972, the public be excluded from the meeting for the items of business to be considered below on the grounds that they involved the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A, as amended, of the Act:

(a) Exempt Minutes of the Last Meeting of the Sub-Committee held on 19 August 2015;  
and

(b) Reports of the Corporate Director (Life Opportunities)

B.1 - Applications for the Renewal or Grant of Hackney Carriage Drivers' Licences

- B.2 - Appeal against suspension of a Hackney Carriage/Private Hire Driver's Licence
- B.3 - Appeal against refusal of a Hackney Carriage Driver Application
- B.4 - Application for the grant of permission to show an unclassified film

**7. EXEMPT MINUTES OF THE LAST MEETING**

The Exempt Minutes of the last meeting of the Sub-Committee, held on 19 August 2015, were approved as a correct record and signed by the Chairman.

**8. APPEAL AGAINST SUSPENSION OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE**

The Committee considered an individual's appeal against the suspension of his Hackney Carriage/Private Hire Driver's licence and the Committee's resolution is detailed in the exempt minutes of the meeting dated 20 April 2016.

**9. APPLICATIONS FOR THE RENEWAL OR GRANT OF HACKNEY CARRIAGE DRIVERS' LICENCES**

The Committee considered applications for the renewal of two hackney carriage drivers' licences and the Committee's resolution in each case is detailed in the exempt minutes of the meeting dated 20 April 2016.

**10. APPEAL AGAINST REFUSAL OF HACKNEY CARRIAGE DRIVER APPLICATION**

The Committee considered an appeal against the Council's decision to refuse a Hackney Carriage driver application following the failing of the Council's knowledge test on three occasions. The Committee's resolution is detailed in the exempt minutes of the meeting dated 20 April 2016.

**11. APPLICATION FOR THE GRANT OF PERMISSION TO SHOW AN UNCLASSIFIED FILM**

The Committee considered an application for the grant of permission to show a film at the Harwich Electric Palace theatre which had not been classified by the British Board of Film Classification. The Committee's resolution is detailed in the exempt minutes of the meeting dated 20 April 2016.

The meeting was declared closed at 12.25pm.

Chairman

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**MINUTES OF THE MEETING OF THE GENERAL PURPOSES  
SUB-COMMITTEE HELD ON 25 JULY 2016 AT 10.15 A.M.  
IN THE COUNCIL CHAMBER, WEELEY**

**Present:** Councillors Cossens (Vice-Chairman – in the Chair), J Henderson, Raby and Watson

**In Attendance:** Licensing Manager (Simon Harvey), Solicitor (Linda Trembath), Committee Services Officer (Janey Nice) and Licensing Officer (Emma King)

**1. CHAIR**

In the absence of the Chairman of the Sub-Committee (Councillor V E Guglielmi), the Chair was occupied by the Vice-Chairman, Councillor Cossens.

**2. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies for absence were received from Councillor V E Guglielmi (with no substitution). Apologies were also received from Councillor White with Councillor Talbot substituting and Councillor Broderick was also present. However as Councillors Broderick and Talbot had not received up-to-date Licensing training they were unable to participate in the meeting and withdrew before the commencement of the meeting.

**3. MINUTES OF THE LAST MEETING**

The minutes of the last meeting of the Sub-Committee, held on 20 April 2016, were approved as a correct record by Councillors J Henderson and Watson and signed by the Chairman.

**4. DECLARATIONS OF INTEREST**

There were none.

**5. HACKNEY CARRIAGE AND PRIVATE HIRE LICENCES**

The Sub-Committee noted the contents of a report (A.1) on the number of Hackney Carriage and Private Hire drivers, vehicles and operators, licensed by the Council as at 13 July 2016, which was submitted for information only. Councillor Cossens sought clarification from the Licensing Manager as to the difference between the number of private hire drivers and vehicles as opposed to the number of private hire operators. He assumed that this was because some operators had more than one vehicle. The Licensing Manager confirmed that this was the case.

**6. APPLICATION FOR THE RENEWAL OF A SEX ESTABLISHMENT LICENCE – ADULT CENTRE, 28 ORWELL ROAD, CLACTON-ON-SEA**

The Sub-Committee considered an application (A.2) from Miss Amanda Allen for the renewal of the Sex Establishment Licence held in respect of the above premises.

It was reported that the Applicant proposed that trading would take place between 9.00am and 8.00pm on Mondays to Saturdays and the Sub-Committee was advised that the

premises complied with the current conditions imposed, as set out in Appendix 'A' to item A.2 of the Report of the Corporate Director (Operational Services).

It was further reported that consultation papers had been sent to Essex Police and the local Ward Councillors. At the time of the meeting, no comments, objections or observations had been received from either of those sources. Residents in the neighbourhood considered likely to be affected by the application had been consulted and no objections had been received by the date of the meeting.

Members were informed that notice of the application had been displayed on the premises in the prescribed manner and a public notice to that effect had been published in the local newspaper, as required by statute.

The Sub-Committee had before it, as set out in Appendix 'B' to the report, those grounds, which were material to the determination of such an application, as set out in the Local Government (Miscellaneous Provisions) Act 1982.

The Sub-Committee were informed that the Applicant was not present at the meeting. In answer to a question from a member of the Committee as to the absence of the Applicant, the Licensing Manager stated that the applicant had been advised that unless there were objections to the renewal or any other issues that Members may wish to discuss with her then she had been advised that her attendance at the meeting was not necessary. The Licensing Manager also advised that as far as he was aware there had been no problems with the premises, Applicant or any employees that she may have and that the premises was subject to inspection by the Council at any time. The Sub-Committee noted and agreed with that approach.

It was moved by Councillor Watson and seconded by Councillor Raby and **RESOLVED** that the application for the renewal of a Sex Establishment Licence be granted, for one year, subject to the conditions as set out in Appendix 'A' to item A.2 of the Report of the Corporate Director (Operational Services).

## **7. EXCLUSION OF PRESS AND PUBLIC**

It was moved by Councillor Watson seconded by Councillor Raby and **RESOLVED** that the public be excluded from the meeting for the items of business to be considered below on the grounds that they involved the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A, as amended, of the Act:

- (a) Exempt Minutes of the Last Meeting of the Sub-Committee held on 20 April 2016; and
- (b) Reports of the Corporate Director (Operational Services)

B.1 - Application for the renewal of a Hackney Carriage Drivers' Licence

B.2 - Appeals against refusal of Hackney Carriage Driver Applications

## **8. EXEMPT MINUTES OF THE LAST MEETING**

The Exempt Minutes of the last meeting of the Sub-Committee, held on 20 April 2016, were approved as a correct record by Councillors J Henderson and Watson, and signed by the Chairman. Councillor J Henderson asked if a named individual's bail (Minute 12 item (i) referred) had been extended and the Licensing Manager confirmed that that was the case.

9. **APPLICATION FOR THE RENEWAL OF A HACKNEY CARRIAGE DRIVERS' LICENCE**

The Committee considered an application for the renewal of a Hackney Carriage Drivers' Licence and the Committee's resolution for this case is detailed in the exempt minutes of this meeting..

10. **APPEALS AGAINST REFUSAL OF HACKNEY CARRIAGE DRIVER APPLICATIONS**

The Committee considered named individuals' appeals against the Council's decisions to refuse their Hackney Carriage driver applications following the failing of the Council's knowledge test on three occasions. The Committee's resolutions are detailed in the exempt minutes of this meeting.

The meeting was declared closed at 11.22 p.m..

Chairman

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**MINUTES OF THE MEETING OF THE GENERAL PURPOSES  
SUB-COMMITTEE HELD ON 18 AUGUST 2016 AT 10.10 A.M.  
IN THE COUNCIL CHAMBER, WEELEY**

**Present:** Councillors V Guglielmi (Chairman), Cossens (Vice-Chairman), J Henderson, Raby and Watson

**In Attendance:** Licensing Manager (Simon Harvey), Senior Solicitor (Litigation & Governance) (Linda Trembath), Committee Services Officer (Katie Sullivan) and Licensing Assistant (Michael Cook)

**13. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies for absence were received from Councillors Broderick and White (with no substitutions).

**14. MINUTES OF THE LAST MEETING**

The minutes of the last meeting of the Sub-Committee, held on 25 July 2016, were approved as a correct record and signed by the Chairman.

**15. DECLARATIONS OF INTEREST**

There were none.

**16. HACKNEY CARRIAGE AND PRIVATE HIRE LICENCES**

The Sub-Committee noted the contents of a report (A.1) on the number of Hackney Carriage and Private Hire drivers, vehicles and operators, licensed by the Council as at 5 August 2016, which was submitted for information only.

**17. EXCLUSION OF PRESS AND PUBLIC**

It was moved by Councillor Cossens, seconded by Councillor Watson and **RESOLVED** that the public be excluded from the meeting for the items of business to be considered below on the grounds that they involved the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A, as amended, of the Act:

(a) Exempt Minutes of the Last Meeting of the Sub-Committee held on 25 July 2016; and

(b) Reports of the Corporate Director (Operational Services)

B.1 - Appeals against refusal of Hackney Carriage Driver Applications

B.2 - Reviews of Hackney Carriage/Private Hire Drivers' Licenses

B.3 - Appeal and Review against a suspension of a Hackney Carriage/Private Hire Driver's Licence

**18. EXEMPT MINUTES OF THE LAST MEETING**

The Exempt Minutes of the last meeting of the Sub-Committee, held on 25 July 2016, were approved as a correct record and signed by the Chairman.

**19. APPEALS AGAINST REFUSAL OF HACKNEY CARRIAGE DRIVER APPLICATIONS**

The Sub-Committee considered named individuals' appeals against the Council's decisions to refuse their Hackney Carriage driver applications. The Sub-Committee's resolutions are detailed in the exempt minutes of this meeting.

**20. REVIEWS OF HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS' LICENCES**

The Sub-Committee reviewed named individuals' Hackney Carriage/Private Hire Driver's Licences. The Sub-Committee's resolutions are detailed in the exempt minutes of this meeting.

**21. APPEAL AND REVIEW AGAINST A SUSPENSION OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE**

The Sub-Committee considered and reviewed a named individual's appeal against the Council's decision to suspend his Hackney Carriage/Private Hire Driver's Licence. The Sub-Committee's resolutions are detailed in the exempt minutes of this meeting.

The meeting was declared closed at 12.40 p.m.

Chairman



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## **MINUTES OF THE PREMISES/PERSONAL LICENCES SUB-COMMITTEE 'A'**

**HELD ON 17 JUNE 2016 AT 10.00 A.M. IN THE COUNCIL CHAMBER, WEELEY**

**Present:** Councillors V E Guglielmi (Chairman), Whitmore and Winfield

**Stand-by Member:** Councillor Raby

**In Attendance:** Solicitor (Linda Trembath), Head of Environmental Services (John Fox), Licensing Manager (Simon Harvey), Democratic Services Officer (Janey Nice) and Licensing Assistant (Emma King)

**Also in Attendance:** Miss Tania Anthonypillai (Applicant), Mr Jeyaseelan Thambithurai Mr Suresh Kanapathi (Consultant – Arka Licensing) and Inspector Julia Finch (Inspector Essex Police)

### **1. TRIBUTE**

In view of the murder of the previous day of Mrs Jo Cox MP, the Chairman announced that she would hold a minute's silence in tribute to the memory of Mrs Cox.

### **2. WELCOME**

The Chairman welcomed all those present to the meeting and explained the procedure that would be followed.

### **3. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

### **4. MINUTES**

The minutes of the meeting of the Sub-Committee held on 8 April 2015 were approved by Councillor Raby, as a correct record as the only Councillor present who attended the last meeting of the Committee, and signed by the Chairman.

### **3. DECLARATIONS OF INTEREST**

There were none.

### **5. LICENSING ACT 2003 – FOR THE REVIEW OF PREMISES LICENCE – J J SUPERMARKET, 21 – 23 JACKSON ROAD, CLACTON-ON-SEA, ESSEX, CO15 1JA**

The Sub-Committee had before it for its consideration, as set out in item A.1 of the Report of the Corporate Director (Operational Services), an application for the review of the above Premises Licence currently being held by Miss Tania Anthonypillai.

Mr Harvey added that the responsible authorities, Licensing Authority, Trading Standards and Police and co-applicants had been in discussion and had offered a proposal for the Sub-Committee to consider and agree.

The Council's Licensing Manager (Simon Harvey) briefed the Committee on the review of the Premises Licence which was submitted by Essex Police and was received by the Licensing Authority on 27 April 2016 on the grounds that the Licensing Objective in respect of the Prevention of Crime and Disorder and the Protection of Children from Harm had been breached. Copies of the full review application and supporting documentation were attached to the report as Appendices A to E.

Mr Harvey said that as a minimum outcome the police would like Miss Tania Anthonypillai removed as the Designated Premises Supervisor (DPS) for those premises and replaced by an experienced and responsible person who would have a proactive approach to managing the staff and customers of an alcohol off-sale outlet that is in a busy and challenging environment and also which had a history of problems in regards to breaching the Licensing Objectives. The Police and Responsible Authorities parties to the review would require any new DPS to have a regular and significant presence in the store on a daily basis in order to manage and promote the Licensing Objectives positively.

Mr Harvey informed the Sub-Committee that Essex County Council Trading Standards had submitted a representation for the Protection of Children from Harm as this particular Licensing Objective had been breached and full details of this submission was on pages 25 to 27 of the Agenda's supporting papers. He added that the Council's Licensing Authority had also submitted representations on the grounds of Crime and Disorder and the Protection of Children from Harm, full details of this were on pages 32 to 34 of the afore-mentioned supporting documents.

Mr Harvey advised the Committee that on pages 9 and 10 of their agenda and papers, the relevant parts of the Section 182 Guidance which accompanies the Licensing Act 2003 Sections and the Council's Statement of Licensing Policy with regards to reviewing premises licences could be found. The papers also drew attention to the relevant human rights implications.

Mr Harvey also informed the Sub-Committee that subsequent to the review application being submitted and prior to the agenda being printed, Mr Suresh Kanapathi of ARKA Licensing Consultants had notified the Licensing Manager that he was now acting on behalf of Miss Tania Anthonypillai. On instructions from Miss Anthonypillai he had proposed to the Police, as applicants for the review, and the Licensing Authority and Essex County Council Trading Standards both, as Responsible Authorities supporting the review, that the DPS at the premises should be replaced with her husband, Mr Jeyaseelan Thambithurai. Mr Kanapathi informed the Sub-Committee that Mr Thambithurai had held a personal Licence since 2010 and he had extensive experience in dealing with people who appeared to be drunk and also with under age sales. In addition, he said, Mr Thambithurai would work alongside Mr Rasa Raventheran who had originally been proposed as the replacement DPS for Miss Anthonypillai.

The Sub-Committee and all other parties present at the review and who had an interest in it, were handed an exchange of emails between Mr Harvey and Mr Kanapathi which included copies of Mr Thambithurai's Personal Licence ID. The emails contained an agreement that Mr Thambithurai placed a sign outside the shop informing customers that drinking and congregating on the forecourt of shop was prohibited and that the shop's staff would actively discourage customers from doing so. The email exchange confirmed that consultation had taken place with Essex Police and Essex County Trading Standards who were happy to replace the DPS with Miss Anthonypillai's husband Mr Thambithurai.

The Chairman adjourned the meeting to allow the Sub-Committee to peruse the submitted emails.

When the meeting recommenced Mr Harvey said that further information had come to light which might cause the Police concern under the Licensing Objective of Crime and Disorder and the Sub-Committee might wish to consider this along with their deliberations.

The Police Inspector present, Ms Julia Finch, informed the Sub-Committee that a check had shown that Mr Thumbithurai had a conviction in 2011 under the Road Traffic Act 1988, section 6(6) for failing to supply a specimen of breath in connection with being stopped for, or suspected of, driving while over the legal limit for alcohol in the blood stream when asked for by the Police. Mr Harvey said this matter needed to be clarified before any transfer of the DPS on JJ Supermarket premises licence into Mr Thumbithurai's name as this was what is known as a 'relevant offence' under the Licensing Act 2003 which might prevent a person from applying for, or continuing to hold a Personal Licence. If this was the case, Mr Thumbithurai may not be able to be transferred onto the premises licence as the DPS.

Mr Harvey said that under Section 52 of the Licensing Act 2003, the Sub-Committee had to make a decision that was necessary and proportionate, this could be that they decide to take no action or may wish to send an informal warning letter; all options were relevant in this case.

Inspector Finch informed the Sub-Committee that JJ Supermarket had voluntarily signed up to the 'Reduce the Strength' scheme in 2014 to help reduce the impact on street drinking. However she said the Police were contacted in July 2015 by two Officers from the Council who had supplied witness statements that they had visited the shop and noticed a member of staff selling alcohol to a drunken member of the public. She said that under Section 141 of the Licensing Act 2003 they were asked to investigate and PC Southgate accompanied by two of the Council's Officers attended JJ Supermarket. In August 2015, she said, two Council Officers attended the store and they again witnessed a member of staff selling alcohol to a drunken person. She said that PC Southgate had raised considerable concern and as a result Mr Harvey (Licensing Manager) had also attended the Police station to give Miss Anthonypillai advice on upholding the law.

She said that since then under Operation Benison, Essex Police and the Council's Licensing Enforcement Officers had visited various licensed premises and on subsequent visits in November 2015, December 2015 and January 2016 no issues were identified. However in February 2016 Essex Police and Essex County Trading Standards attended JJ Supermarkets and the DPS was observed selling alcohol to an under-age person despite being part of the Challenge 25 Scheme. She said that the DPS received a caution under the Licensing Act 2003, but she added that Essex Police had concerns that the current DPS does not have full control of the staff and shop which was the reason for the application for the review of the licence.

The Chairman asked if the revelation would make a difference to the transfer of the DPS licence and was informed that the conviction was spent and should have no bearing on the application.

Councillor Whitmore asked if the staff member selling alcohol to a drunken person had held a personal licence and the Police officer said they had not at that time and that they had recommended all staff should receive the appropriate training, however that particular member of staff was no longer employed by JJ Supermarket and another member of staff did hold a personal licence.

When Councillor Winfield asked about selling alcohol to youngsters he was informed that the store was part of the Challenge 25 Scheme.

The Chairman raised a concern about the conviction Mr Thumbithurai had received in 2011 and asked the rest of the Sub-Committee, the Police and supporting Responsible Authorities represented at the review hearing if they were happy to hear the application that day and if the premises licence holder, their representative and the proposed new DPS wished an adjournment to have a discussion on how they wished to proceed in light of the new information. All sides confirmed that they were happy for the proceedings to continue. The Chairman asked if the information regarding Mr Thumbithurai's conviction for refusing to provide a specimen of breath would make a difference to the transfer of the DPS licence and was informed by Inspector Finch that, on looking further at the conviction, it was now spent, that it appeared a relatively minor offence for which Mr Thumbithurai was fined, suggesting that no alcohol was involved and therefore should have no negative bearing on the review application.

Mr Harvey confirmed that the applicant should have declared that he was a Personal Licence Holder to the Court who also should have asked him if he was a Personal Licence Holder depending on what he advised the Court his profession was. He also advised that Mr Thumbithurai should have advised the Council who had originally granted his Personal Licence of this conviction. Mr Thumbithurai said that he had not declared it as he did not realise it was relevant as he had only received a fine for refusing to give a specimen when asked by the Police. Mr Harvey informed the Committee that although it had been treated by the Police as a failure to provide a specimen of breath rather than drunk driving it would be treated in the same way, but was happy to accept the information from Inspector Finch that the conviction was spent. Inspector Finch added that if there had been evidence of Mr Thumbithurai consuming alcohol the result would have been more than a fine and the case would have been taken further which meant he could have received a 12 month ban from driving or even imprisonment.

Mr Fox, the Head of Environmental Services said that he had no questions and had nothing to add to his representation and was happy for the application to proceed.

The Chairman asked Mr Thumbithurai why the Sub-Committee should agree to the transfer of the DPS licence to him. Mr Suresh responded on his behalf informing the Sub-Committee that Mr Thumbithurai was a very hard working individual, not only working at JJ Supermarket but also running another store in Great Yarmouth, he and his wife were both committed to running their businesses and had taken to improve matters after being spoken to by the Police. The one member of staff concerned without a personal licence was currently undergoing training for his personal Licence. He also confirmed that the shop now had a sign outside informing customers that alcohol was not allowed to be consumed on the premises or outside and added that there had been no complaints or representations from members of the public.

Mr Thumbithurai, when asked by the Chairman, confirmed that he was reviewing his staff at his other store so that he would be working at JJ Supermarket and would undertake more staff training for the staff at JJ Supermarket and confirmed that he would now be living above the store and that his wife would also be working alongside him in the shop.

Councillors Whitmore and Winfield asked questions about training staff in the Licensing Objectives and Mr Thumbithurai added that the staff were also receiving training in conflict resolution to deal with drunken persons being refused the sale of alcohol. They asked if the store had had any other problems or offences and it was confirmed that there had been no other problems since JJ Supermarket had opened. Miss Anthonypillai confirmed that the Licensing Authority had suggested that all of the staff received personal licence training up to level 2. Mr Thumbithurai also confirmed again when asked, that he would be moving permanently to JJ Supermarket and had a properly qualified Manager to run his other store in Great Yarmouth and there would always be a qualified member at the other store at all times. Mr Harvey suggested to Miss Anthonypillai that if their staff had passed the Level 2 qualification then they should proceed with applying for and being granted a Personal Licence. He could see little point in paying for their Level 2 training but not going ahead to get a Personal Licence. He added that for £37 a person then had a Personal Licence to keep and use indefinitely.

Councillor Whitmore asked if there were any CCTV cameras in the store and Mr Thumbithurai confirmed there were and even pointed them out to drunken customers when they were being difficult. Councillor Whitmore also said that he would like Mr Thumbithurai to be more diligent in his dealings with under-age sales and wanted assurances that this would be the case. Mr Thumbithurai said that until the recent events he had had no problems with JJ Supermarket, he had signs in the store pointing out that they did not sell to underage customers, and that they asked for ID. Councillor Winfield pointed out to him that if he was in any doubt whatsoever about the age of a customer he should refuse to sell alcohol.

Inspector Finch asked who was living above the supermarket and Miss Anthonypillai confirmed that her husband lived above the shop as well as another member of staff. She added that although she worked in the shop she did in fact live in Harrow.

Mr Harvey asked about the other store in Great Yarmouth and Mr Thumbithurai gave the Licensing Manager the address and informed Mr Harvey that it was a smaller shop selling food and alcohol.

The Sub-Committee then **RESOLVED** that the public be excluded from the meeting, pursuant to Section 100A(4) of the Local Government Act 1972, during the period when the Sub-Committee would be deliberating and considering its decision, on the grounds that such deliberations involved the likely disclosure of exempt information, as defined in Paragraph 5 of Part 1 of Schedule 12A, as amended, of the Act.

Members of the Sub-Committee then withdrew from the meeting to deliberate and consider its decision. The Solicitor and Democratic Services Officer were asked to accompany Members to give advice if any legal points were raised and to record the decision.

Following such deliberations, other Officers, Members and members of the public were readmitted to the meeting. The Solicitor reported that she had not provided the Sub-Committee with any legal advice on this occasion.

It was unanimously **RESOLVED** that the decision of the Sub-Committee be as follows:

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"The Sub-Committee has given careful consideration to this application for a review and to the actual representation(s) received from Essex Police on the grounds that the Licensing Objective(s) in respect of The Prevention of Crime and Disorder and the Protection of children from Harm had been breached for the reasons set out in their representation(s). In making their decision, the Sub-Committee had taken into account:-

- (i) relevant matters set out in the Licensing Authority's own Statement of Licensing Policy;
- (ii) the relevant parts of the Guidance issued by the Secretary of State; and the range of powers provided to Licensing Authorities by the Licensing Act 2003 in determining a Review.

The Sub-Committee were also aware that it must act to promote the Licensing Objectives as set out in the Licensing Act 2003 and that any decision it took in determining a Review must be necessary for the promotion of those objectives.

The decision of the Sub-Committee was as follows:-

1. In respect of the application for the Review of a Premises Licence/Club Premises Certificate submitted by Essex Police in respect of the premises known as JJ Supermarket, the Sub-Committee's decision is to uphold the Licensing Authority's previous decision to grant a Licence subject to the modification of the conditions currently attached to that Licence and the imposition of certain additional conditions:-

2. The following additional conditions will accordingly be attached to the Licence:-

That signs are prominently displayed in and outside the shop premises advising customers that alcohol will not be sold either to those who cannot satisfy a challenge in accordance with the requirements of "Challenge 25", which we are told the business has signed up to, or who appears to be under the influence of alcohol and drunk in accordance with the law, and that signs will also be displayed encouraging customers and others not to congregate outside the shop.

In addition, the Sub-Committee having heard from all interested parties has decided:

3. To remove Miss Tanyia Anthony Pillai as the Designated Premises Supervisor, and to approve Mr Jeyaseelan Thambithurai as the new Designated Premises Supervisor subject to a formal application being completed and submitted to the Licensing Authority. The date of removal and approval shall be noted as the date of this Review hearing.
4. And that, in accordance with the proposals made by the current and new Designated Premises Supervisors, all staff working at the premises will be trained, and hold a Personal Licence.

The reasons these conditions are added, and changes have been made, are to promote the Licensing Objectives for the Prevention of Crime and Disorder, and for the Protection of Children from Harm, the issues raised in the application for this review.

Details of the Sub-Committee's decision will be notified to all interested parties in writing.

Finally, I must mention that all parties who are aggrieved at the decision of the Sub-Committee have the right of appeal to the Magistrates' Court."

The meeting was declared closed at 12.43 a.m.

**Chairman**

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**MINUTES OF THE PREMISES/PERSONAL LICENCES SUB-COMMITTEE 'A'****HELD ON 6 SEPTEMBER 2016 AT 10.15 A.M. IN THE CONNAUGHT ROOM,  
TOWN HALL, STATION ROAD, CLACTON-ON-SEA****Present:** Councillors V E Guglielmi (Chairman), Whitmore and Winfield**Stand-by Member:** Councillor M Brown**In Attendance:** Senior Solicitor (Litigation and Governance) (Linda Trembath),  
Licensing Manager (Simon Harvey), Committee Services Officer  
(Janey Nice) and Licensing Officer (Emma King)**Also in Attendance** Stephen Sparrow - County Licensing Team (Essex Police)**6. APOLOGIES FOR ABSENCE**

There were none.

**7. DECLARATIONS OF INTEREST**

There were none.

**8. MINUTES**

The minutes of the meeting of the Sub-Committee held on 17 June 2016 were approved as a correct record and signed by the Chairman.

**9. LICENSING ACT 2003 – APPLICATION FOR THE GRANT OF A PERSONAL LICENCE**

The start of the meeting was delayed as neither the applicant, nor his Solicitor were in attendance. No communication had been received from them, including that morning, to advise that they would not be attending the hearing. The Licensing Manager (Simon Harvey) therefore left the hearing with the permission of the Chairman to try and make contact with either the applicant, or his Solicitor, and ascertain whether they would be attending. The Licensing Officer and Mr Sparrow also left the hearing at the same time.

After making a number of telephone calls, Mr Harvey re-joined the hearing along with the Licensing Officer and Mr Sparrow. Mr Harvey was able to advise the Sub-Committee that the applicant had been taken ill and although he had rung to notify his employers that he would not be at work, no-one had made contact with the Licensing Office to say he would not be attending the meeting. Mr Harvey also informed the Sub-Committee that the applicant's Solicitors had advised him that arrangements had been made for the Area Manager, for the applicant's employers, to attend the meeting with the applicant, and therefore that the Solicitors would not be attending.

The Chairman wished it to be recorded that it was disappointing that neither the applicant, his Area Manager or his Solicitor had made any attempt to contact the Licensing Office to advise of their non-attendance and that the failure to do so had resulted in inconvenience for the Members, the representative from Essex Police and the Officers present.

The Licensing Manager, Licensing Officer and Mr Sparrow took no further part in the hearing and left the room and the Sub-Committee considered the options available to them, namely proceed with the meeting in the absence of the applicant, or defer the meeting to allow the applicant a further chance to attend.

In the circumstances of the applicant's illness, it was decided to defer the meeting to allow him a chance to explain to the Sub-Committee his reasons for applying for a personal licence.

It was moved by Councillor V E Guglielmi, seconded by Councillor Winfield and **RESOLVED** that the meeting of the Premises/Personal Licences Sub-Committee 'A' should be deferred to a date to be agreed.

The meeting was declared closed at 10.45 a.m.

Chairman

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## **MINUTES OF THE PREMISES/PERSONAL LICENCES SUB-COMMITTEE 'C'**

**HELD ON 20 JUNE 2016 AT 2.00 P.M. IN THE COUNCIL CHAMBER, WEELEY**

**Present:** Councillors Cossens (Chairman), Bucke and J Henderson

**Stand-by Member:** Councillor Watson

**In Attendance:** Head of Governance & Legal Services (Lisa Hastings), Head of Customer & Commercial Services (Mark Westall) Licensing Manager (Simon Harvey) Democratic Services Officers (Janey Nice and Katie Sullivan), Environmental Protection Officer (Andy Rutson-Edwards) and Licensing Assistant (Emma King)

### **1. WELCOME**

The Chairman (Councillor Cossens) informed the Committee that the applicant Mr Radek Pompa was not present and had asked if the Committee could change the timing of the meeting in order for him to attend, but as this was not possible, it had been decided that the hearing would go ahead without him.

### **2. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

An apology was submitted from Councillor M J Skeels Jnr (with Councillor Bucke substituting).

### **3. MINUTES OF THE LAST MEETING**

The minutes of the meeting held on 29 September 2015 were signed as a correct record.

### **4. DECLARATIONS OF INTEREST**

There were none.

### **5. LICENSING ACT 2003 – APPLICATION NO: 16/00249/PREMGR – APPLICATION FOR THE GRANT OF A PREMISES LICENCE - GOSSIP COFFEE LOUNGE, 78 STATION ROAD, CLACTON-ON-SEA**

The Chairman welcomed all those persons present to the meeting, introduced the Sub-Committee members and outlined the procedure that would be followed which was included within the agenda pack.

The Licensing Manager (Simon Harvey) advised the Chairman and meeting that the applicant Mr Pompa was not in attendance and that it was his understanding that Mr Pompa had indicated in a phone call to the Democratic Services Officer Janey Nice that he was not intending to be at the hearing. Mrs Nice confirmed that this was the case. Mr Harvey asked the Chairman if he would like to temporarily adjourn the meeting to allow him to contact Mr Pompa to see if he was going to attend the hearing to present his application. The Chairman and Members agreed that they wished to temporarily adjourn so that Mr Pompa could be contacted and advised that it was in his best interest to attend the hearing so that he could present his own application.

Mr Harvey advised that Mr Pompa had been fully informed of the meeting and its date, time and location in accordance with the Licensing Act 2003 hearing regulations, but that he would make contact again to confirm whether or not he would be attending that day. The meeting was adjourned at 2.10 p.m.

The Licensing Officer (Emma King) left the meeting and phoned Mr Pompa. On her return she advised that Mr Pompa had said that he was too busy to attend the hearing and had a café full of customers that he needed to serve. Mrs King advised that she had asked Mr Pompa if he was happy for the application to be considered in his absence. He confirmed that he was but that his preference would be to attend on another day. Mr Pompa confirmed that he was fully aware that the meeting had been arranged for Monday 20 June 2016 at 2.00 p.m. in the Council Chamber at Weeley but again said that he was too busy to attend the meeting.

After a brief discussion on whether to proceed with the hearing the Chairman and Members decided that they would continue and the Chairman reopened the proceedings at 2.30 p.m.

The Licensing Manager informed the Sub-Committee that it had before it for its consideration, as set out in item A.1 of the Report of the Corporate Director Operational Services), an application that had been submitted by Mr Radek Pompa (trading as Radek Contractor Limited) for the grant of a new Premises Licence in respect of the above premises under the Licensing Act 2003, this was to allow for the performance of plays, films, live music, recorded music, performance of dance as regulated entertainment and provision of late night refreshment. Mr Harvey added that there had been no application for the sale of alcohol and the applicant described the premises as a Coffee Shop.

In his original application Mr Pompa had asked for the opening hours of Mondays to Sundays as 0800 to 0100 hours. However after discussions between Essex Police who were a Responsible Authority and Mr Pompa, the applicant agreed to revise his application's opening hours from Mondays to Sundays 0600 to 2300 hours as Essex Police had no objection to the change in opening hours.

Mr Harvey further informed the Committee that as Mr Pompa had agreed to amend his application for opening hours permissions for Late Night Refreshment would no longer be needed now that he was intending to close at 2300 hours. Mr Harvey added that Members would be aware that a premises would only require a licence for Late Night Refreshment if hot food and or hot drink were sold after 2300 hours.

Mr Harvey said that there had been one representation which had been received from the Council's Environmental Services Noise Team who had raised concerns that the application for regulated entertainment was likely to undermine the Prevention of Public Nuisance Licensing Objective as the Coffee shop was located close to residential properties in the immediate vicinity. He said that Environmental Services had asked Mr Pompa what measures he had intended to put into place to prevent the breakout of amplified music at the premises from live and recorded music, however, he added, that the applicant had not provided an answer to that question to the satisfaction of the Environmental Service Noise Team at the time of the meeting.

Mr Harvey said that all of the relevant human rights information, Section 182 Guidance and extracts from the Council's Statement of Licensing Policy were detailed in the report attached to the Agenda.

Councillor Bucke asked for clarification over the revisions to the application that Mr Pompa had submitted after his discussion with Essex Police. Mr Harvey informed the Member that the application for a premises licence was as a brand new application and it was open to the applicant to revise the application to take into account any concerns or representations that had been made, which in this case had come from Essex Police who did not wish to see Late Night Refreshment as part of the application until 0100 hours. As a result of these concerns raised with him by the Police, Mr Pompa had revised his application and now would not be selling hot food and/or hot drink after 2300 hours. Mr Harvey advised that permission to allow Late Night Refreshment as a licensable activity was only needed if hot food and/or hot drink were being sold between the hours of 2300 to 0500 hours. He added that if the café was not carrying out any other form of licensable activity at the premises such as live or recorded music then it would only require the relevant Planning permission and a food hygiene licence in order to operate but as Mr Pompa was wanting to have permission for licensable activities he needed to apply for a premises licence. When Councillor Bucke asked about the forecourt Mr Harvey informed him that the applicant wanted permission for activities both indoors and outdoors and it was clearly apparent that permission for outside activities was also required.

When asked, Mr Harvey confirmed that the applicant was a limited company. The Head of Governance and Legal Services also confirmed this as on Page 11 of the report of the Corporate Director (Operational Services) the relevant box had been ticked by the applicant. Mrs Hastings added that it was probably an error that Mr Pompa had included his name on the application form and it was fair to assume the application had been made by the company and the Licensing Manager agreed this was indeed the case. Councillor Bucke asked whether it was fair to assume that the Directors of the company could change at any time and did not necessarily own the company or actual premises. Mr Harvey said he had no information on that but suspected that Mr Pompa could be a leaseholder given the location of the premises.

Councillor J Henderson asked whether customers could take their own alcohol into the coffee shop and was informed by Mr Harvey that he could not answer this in Mr Pompa's absence but informed the Member that Mr Pompa could not sell alcohol and would be responsible if any alcohol related anti social behaviour took place on the premises. He added that Mr Pompa was aware of that and did not want alcohol on the premises.

Councillor J Henderson also raised concern about the timings for music on the application and Mr Harvey said that whilst specific times had been applied for this did not mean that the applicant would have to actually follow those times each day, it gave the applicant the flexibility to have live music so he did not have to apply for a licence each time he wanted live music.

The Chairman asked the Council's Responsible Authority, the Environmental Protection Officer (Andy Rutson-Edwards) if he had any concerns as he was worried about public nuisance, particularly to the residential properties above the premises and also above other shops and also The Grove. Mr Rutson-Edwards informed the Chairman that he had spoken to Mr Pompa the previous week and had been informed by Mr Pompa that he was planning to have music every Sunday on the forecourt to the Coffee Shop. Mr Rutson-Edwards further informed the Committee that The Environmental Protection Act 1990 and The Noise Act 1996 gave the Council powers to take any action against public nuisance. He said he had asked Mr Pompa what measures he was going to take to control the level of noise from the music at the nearest residential premises from both indoor and outside events.

Mr Pompa said he was just going to let the residents know when he planned to have live events on the forecourt. To date, he said he had had no response from Mr Pompa and he, as the Responsible Authority, objected to live music outside of the Coffee Shop.

The Chairman noted the layout of the building from the map on page 26 of the report attached to the aforesaid agenda and said he was not sure if the 3 metres marked on the map included the forecourt and was informed that it was the forecourt for the whole length of the building.

Councillor Bucke said he was not sure what the decibel levels would be for the property and Mr Rutson-Edwards said that there were no set levels but there were guidelines and codes of conduct for public houses etc. However, he said, 35db would be a recommended level to be attained in all living room areas of the existing dwellings arising from external noise sources (recommended by the World Health Organisation) but that different premises would have different levels of noise and explained to the Committee of how the decibel levels work. Councillor Bucke asked if it could be as high as 65db and was told it would again depend on the type of noise. Councillor Bucke commented that outside music would be a nuisance to neighbours whenever held and the Chairman said the nuisance would be worse if every day of the week and the application seemed to imply live music would be played seven days a week.

Councillor Bucke asked the Licensing Manager if it was unusual for a limited company to apply for a premises licence and was informed that in fact it was not unusual. Councillor Bucke worried in case a company could find a loophole to get around the live music issue.

The Head of Governance and Legal Services informed the Committee that the grant of a premises Licence would be issued in the name of the applicant, i.e. as this application was in the name of a company any concern of noise nuisance would be against the limited company who would be responsible for any individual running or occupying the premises on behalf of the applicant and that person would be held responsible for any noise nuisance..

There were no further questions from members of the Sub-Committee.

The Sub-Committee then **RESOLVED** that the public be excluded from the meeting, pursuant to Section 100A(4) of the Local Government Act 1972, during the period when the Sub-Committee would be deliberating and considering its decision, on the grounds that such deliberations involved the likely disclosure of exempt information, as defined in Paragraph 5 of Part 1 of Schedule 12A, as amended, of the Act.

Members of the Sub-Committee then withdrew from the meeting to deliberate and consider its decision. The Head of Governance and Legal Services and Democratic Services Officers were asked to accompany Members to give advice on any legal points raised and to record the decision.

Following such deliberations, other Officers, Members and members of the public were re-admitted to the meeting. The Head of Governance and Legal Services reported that whilst the Sub-Committee were considering various options available to it, the legal advice provided related to reasonableness of any decision related to the facts.

It was unanimously **RESOLVED** that the decision of the Sub-Committee be as follows:

- “1. The Sub-Committee has given careful consideration to this application. In reaching our decision, we have taken into account the representation received from Tendring District Council Environmental Services along with the Guidance issued by the Secretary of State and others matters as set out in the Licensing Authority’s own Statement of Licensing Policy.
2. The Sub-Committee **DOES NOT AGREE** to grant this application. The reasons are as follows:

On the grounds of the Prevention of Public Nuisance and the objections raised and presented to the Committee by the Responsible Authority, in this case Environmental Services, that the applicant has not indicated any measures they proposed to prevent a noise nuisance from the playing of amplified sounds and the proposed recorded and live music.

Unfortunately, as the Applicant neither attended the hearing nor provided any evidence or other information which the Committee could take into account to alleviate the concerns raised, which could apply to all of the regulated activity. The Committee considered that without any information it would be unreasonable to make any other decision than to refuse the application for any of the regulated activity, whilst the objection remained outstanding with no measures of mitigation being received from the Applicant.

Finally I must mention that all parties who are aggrieved at the decision of the Sub-Committee have the right of appeal to the Magistrates’ Court within a period of 21 days beginning with the date the Applicant is notified of the decision by notice.

This Decision was made on Monday 20 June 2015 and will be confirmed in writing to all parties”

The meeting was declared closed at 3.21 p.m..

**Chairman**

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## Licensing and Registration Committee

28 September 2016

### Report of Corporate Director (Operational Services)

#### A.1 Report on results of public consultation regarding review of Tendring District Council's current Hackney Carriage and Private Hire Vehicle Seating Capacity Policy for Multi-Purpose Vehicles (MPV's) which carry up to 8 passengers.

Report prepared by Simon Harvey

#### PART 1 – KEY INFORMATION

##### PURPOSE OF THE REPORT

The Licensing and Registration Committee is asked to consider the results of the public consultation held to review the Council's current seating capacity policy for Multi-Purpose (MPV) hackney carriage and private hire vehicles which carry up to 8 passengers and to determine what the Council's future policy should be in regards to a permitted seating maximum for MPV's licensed as hackney carriage and private hire vehicles in Tendring.

##### EXECUTIVE SUMMARY

- The Council's seating policy was introduced to sustain and promote passenger safety in licensed taxi and private hire MPV's by the Council's Licensing Sub Committee following consultation with the taxi trade in August 2002 and submission from organisations such as the Royal Society for the Prevention of Accidents (RoSPA).
- The review of the MPV seating policy was recommended to the Licensing and Registration Committee because the policy has been in place since its introduction on the 1 August 2003 and there have been substantive changes since then to vehicle technology and safety which should be reviewed and taken into consideration. The policy was successfully challenged last year by a hackney carriage proprietor although this challenge is not binding on the policy itself and relates solely to the vehicle licence of the individual who made the challenge, such a challenge does add weight however to the prudence of reviewing and re-consulting on the policy.
- At its meeting on the 20 January 2016 the Licensing and Registration Committee agreed to review Tendring District Council's current seating policy in place for Multi - Purpose Vehicles (MPV's) licensed as hackney carriage or private hire vehicles to carry a maximum of 8 passengers and to put that review out to the scrutiny of a 12 week public consultation
- The twelve week consultation period ended on the 2 May 2016 and this report is to advise and apprise Members of the outcome of the consultation and to offer a number of options in respect future policy.

##### RECOMMENDATION(S)

**There is no specific recommendation made to Members as to the outcome of this review and what their final decision should be.**

Instead their attention is drawn to four possible options shown below that are available to them to adopt as a reasonable and proportionate decision in regards to a future MPV seating policy for Tendring District Council that encompasses and promotes passenger safety, comfort and practicality in a reasonable and proportionate way after having duly and fully weighed up the full contents of this report, all responses received to the consultation and review of the Council's current MPV seating policy, all appendices and background papers supplied as part of this report and after considering all aspects and opinions in regards to this review in their own right and on their own merit.

These options are:

- 1) Retain the current MPV seating policy; or
- 2) Withdraw the current MPV seating policy which requires the removal of a seat to allow access and egress to the rearmost seats in MPV's licensed by Tendring District Council and permit the vehicle to be licensed for the number of passenger seats as indicated by the vehicle registration document (VR5); or
- 3) Change the current MPV seating policy to the MPV seating policy adopted by Basildon Borough Council in January 2015 (as described in the table of Essex Authorities MPV seating policies shown above). or
- 4) Re-consult on the issue again for a further period of time to be specified by the Committee in order to see if there is any further interest shown, or comment received from the taxi and private hire trades and other relevant organisations and make a final decision on the future of the current MPV seating policy after this re-consultation.

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

#### Our Prosperity

- Promote sustainable economic growth

There have been concerns in the past raised by the Taxi proprietors and owners of taxi businesses that the that the Council's current seating policy in respect of MPV's is too restrictive in terms of limiting their vehicle choice and that vehicle technology, choice of seating configuration and overall passenger safety has improved significantly for all manufacturers in the twelve years that the policy has been in place. Their concern is that the Council's policy is restricting their business and income by reducing the passenger capacity that some of their vehicles are limited to as a result of the policy.

There is therefore a reasonable and proportionate balance to strike between promoting the safety and comfort of customers using taxi and private hire vehicles and promoting the growth of the taxi industry in our district which directly and indirectly provides significant employment in our area.

### FINANCE, OTHER RESOURCES AND RISK

#### Finance and other resources

- The implementation, administration and compliance of the policy is undertaken from existing budgets although legal and other potential costs may be awarded

against the Council if the policy is successfully challenged in Court.

### **Risk**

- There is a financial and reputational risk to the Council of any successful legal challenge made against its current MPV seating policy.
- A reasonable and proportionate balance needs to be achieved to ensure an acceptable level of safety for fare paying passengers travelling in vehicles licensed by our District while also considering the opinions of those interested parties that responded to the twelve week consultation.

### **LEGAL**

Any decision made by the Licensing and Registration Committee in regards to matters of grant, renewal, suspension or revocations of licences and attachment of policies or conditions to individual hackney carriage and private hire licences can be appealed to the Magistrates' Court and from there to the Crown Court.

In the event of the appeal being allowed by these Courts, the costs of any such hearing could be awarded against the Council.

In terms of challenging policy decisions, appeals can also be made by way of a Judicial Review to the Administrative Court in the High Court and again in the event of an appeal being allowed by this Court, the costs associated with the hearing could be awarded against the Council.

Sections 47 and 48 of the Local Government (Miscellaneous Provisions) Act 1976 allows Council's to consider the design and appearance of vehicles to be licensed for the purposes of undertaking hackney carriage and private hire transport in its district and also provides that conditions can be attached to a hackney carriage and private hire vehicle proprietors licence as the district Council "may consider reasonably necessary".

There is no scope, caveat, restriction or guidance as to what may be considered as "reasonably necessary" within the Act in terms of attaching conditions to a vehicle licence but the standard of "reasonableness" imposed by the Courts is high and what is "unreasonable" has been said by the Courts to be "whether an authority had acted, or reached a decision, in a manner so unreasonable that no reasonable authority could ever have come to it" (Associated Provincial Picture Houses Ltd. v Wednesbury Corporation (1948) and in subsequent cases the Courts have considered whether a decision is "... so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it." (Council of Civil Service Unions v Minister for the Civil Service (1985) )

Section 48 of the Local Government (Miscellaneous Provisions) Act 1976 does include the caveats in relation to private hire vehicles that a district Council shall not grant a licence to use a vehicle as a private hire vehicle unless they are satisfied that the vehicle is:

- In a suitable mechanical condition;
- Safe; and
- Comfortable

The Act is silent in this regard in terms of hackney carriages, but clearly it would not be

'unreasonable' to apply or expect to apply the same criteria, i.e. in a suitable mechanical condition, safe and comfortable.

The Courts have upheld a Council's powers to set local conditions and policy on a number of occasions as stated cases.

The most recent stated cases of interest being R v Hyndburn Borough Council ex p Rauf and Kasim 12 February 1992 QBD and R v City & County of Swansea (Respondent) Ex Parte Julie Amanda Jones (Applicant) 1996 EWHC Admin 290

While these cases have involved the setting of maximum age policies in respect to hackney carriage and private hire vehicles, nonetheless the Courts of appeal have upheld the principle of a Council's right to set reasonable policies that do not fetter the discretion of the Council in relation to the hackney carriage and private hire vehicles that it licences.

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Consultation/Public Engagement.

#### **CRIME AND DISORDER**

Not applicable to this matter.

#### **EQUALITY AND DIVERSITY**

Each hackney carriage or private hire vehicle application is considered in its own right and on its own merits and in respect of MPV's are determined in accord with the Council's seating policy for MPV's which are used to carry up to 8 passengers.

#### **AREAS/AWARDS AFFECTED**

All

#### **CONSULTATION**

A twelve week consultation process was undertaken which included letters to all Tendring licensed taxi and private hire drivers and proprietors sent dated the 5 February 2016, the Tendring District Taxi Association, Essex Fire and Rescue Service, Essex Police, Department for Transport, RoSPA, the Automobile Association and Royal Automobile Club, local and national mobility groups such as Age UK, Disability Essex and Tendring Community Transport inviting their comment and feedback on the review of the current MPV seating policy and whether or not this policy should be amended in any way. A copy of the template for these letters are attached to this report as **APPENDIX 1**.

In total 336 letters were sent out to invite consultation and comment on the review. Copies of all of these letters will be available for Members and any other interested party as background papers at the meeting on the 28 September 2016.

In addition to this, there were also two local press releases issued by the Council in relation to the MPV seating consultation inviting public comment on the current policy

particularly from users of taxi and private hire transport dated the 11 February 2016 and the 14 April 2016 respectively and a taxi newsletter sent by first class post to all Tendring licensed taxi and private hire drivers and proprietors dated the 14 April 2016 which featured the consultation prominently on the front page of the newsletter and which again invited views and comments on the current policy.

The consultation was also advertised on the taxi licensing page of the Council's web site.

This was therefore a wide ranging and well publicised consultation undertaken in regards to a review of the Council's current policy and in terms of the length, scope and content of consultation meets with the underlying principles of the Governments own guidance on consultations and which is available on the GOV.UK web site.

Despite the consultation involving a total of 321 taxi and private hire drivers, as well as the other groups mentioned above, a disappointing total of only 8 responses were received which includes 7 from the licensed Tendring taxi and private hire trades. To put this into context, a total of 336 consultation letters were sent out including to all 321 taxi drivers licensed as at the 5 February 2016. There are 62 MPV's licensed by Tendring District Council with these licences being held by 52 individual proprietors. Only 7 of these proprietors responded to the consultation.

All of the consultation letters, taxi newsletters, press releases and articles and also the relevant extract from the Councils taxi licensing web page will be available as background papers for the scrutiny of Members and any other interested parties should they wish to do so at the Licensing and Registration Committee meeting of the 28 September 2016.

## **PART 3 – SUPPORTING INFORMATION**

### **BACKGROUND**

At its meeting on the 20 January 2016 the Licensing and Registration Committee agreed to review Tendring District Council's current seating policy in place for Multi - Purpose Vehicles (MPV's) licensed as hackney carriage or private hire vehicles to carry a maximum of 8 passengers and to put that review to a period of 12 week consultation. It was agreed that this consultation would include all Tendring District Council licensed taxi and private hire drivers and proprietors, the Essex Fire and Rescue Service, RoSPA, representatives of local mobility groups and also the public through the use of local media and the Councils web site. The minutes of the Licensing and Registration Committee of the 20 January 2016 are attached to this report as **APPENDIX 2**

The Council's seating policy was introduced to sustain and promote passenger safety and comfort in licensed taxi and private hire MPV's by the Council's Licensing Sub Committee following consultation with the taxi trade in August 2002 and submission from organisations such as the Royal Society for the Prevention of Accidents (RoSPA).

The review of the MPV seating policy was recommended to the Licensing and Registration Committee because the policy has been in place since its introduction on the 1 August 2003 and there have been substantive changes since then to vehicle technology and safety which should be reviewed and taken into consideration when

considering whether the policy should be amended in anyway, or should or should not be retained in its current form.

Implementation of the current policy was also successfully challenged last year by a hackney carriage proprietor. Although this challenge is not binding on the policy itself and relates purely to that individual who made the challenge, such a challenge does add weight to the prudence of reviewing and re-consulting on the policy.

The Council's current MPV seating policy is shown in full and attached to this report as **APPENDIX 3**.

### **CURRENT POSITION**

There has been opinion voiced amongst the Tendring taxi and private hire trades that the Council's current seating policy for MPV's licensed to carry up to 8 passengers is restrictive in respect of the make and models that are open for them to purchase and licence in order to maximise passenger seating options. In addition it is said that the policy is unnecessary in terms of present day vehicle safety and technology and also unnecessary given the choice of seating configurations available for passengers in MPV's.

At the time of writing this report, there were 62 MPV's licensed with Tendring District Council (which are vehicles with between 5 and 8 passenger seats). There were 52 proprietors/licence holders for these vehicles which means that some proprietors hold more than one vehicle licence.

In order to review the current MPV seating policy which has been in place for twelve years and as noted above, has been subject to one successful individual challenge at the Magistrates Court last year, all 321 Tendring licensed taxi and private hire drivers as at the 5 February 2016 were written to in relation to the review. They were all invited to give their views and comments on whether the policy should be amended, withdrawn or retained. The Tendring District Taxi Association which is the local trade organisation representing Tendring taxi drivers was also invited to give their views and comments on the policy review.

As part of the consultation, views were also specifically sought on the MPV seating policy introduced by Basildon Borough Council in January 2015 after consultation with its taxi and private hire trades on whether the policy adopted by Basildon would be a viable and acceptable alternative to Tendring's current MPV seating policy. In effect consultees were asked whether the Basildon BC policy was, and would be, a reasonable and proportionate measure that would sit between either entirely withdrawing, or entirely retaining, Tendring's current MPV seating policy.

The Basildon BC policy can be summarised by saying that they changed their seating policy requiring unrestricted access and egress to seating in January 2015 and vehicles must now have at least three doors to passenger accommodation, signage showing how to lift seats properly, yellow/orange coloured operating levers, unobstructed windows, exit window signs and an internal device for the rear hatch doors to be opened from the inside of the vehicle.

Full details of all of the individuals and organisations consulted with are available at the Licensing and Registration Committee meeting of the 28 September 2016 as

background papers for the scrutiny of Members and any other interested parties and many of the organisations written to are included within the 'consultation' information above which forms part of this report.

In all, 321 drivers and vehicle proprietors licensed by Tendring District Council as at the 5 February 2016 were written to along with their Tendring District Taxi Association.

Disappointingly for such a consultation, only 7 responses were received from the taxi and private hire trades out of the 321 consultation letters sent out to them on the 5 February 2016 and 321 taxi newsletters sent out on the 14 April which reminded all drivers and vehicle proprietors about the consultation, what it was for and when the closing date was for responses. All 7 of these responses were received from proprietors of licensed MPV's. As indicated above, at the time of writing this report there were 62 MPV's licensed by Tendring District Council with the licences held by 52 individual proprietors.

To put these numbers into some context in regards to the responses received to the twelve week consultation, only 13% of MPV licence holders/proprietors responded to the consultation.

In addition to these 7 responses there was also a response received from the Royal Society for the Prevention of Accidents (RoSPA).

All of those responding have been sent a letter acknowledging receipt of their submission.

#### **Summarised Responses from Taxi and Private Hire Trades Including Summary of Licensing Managers Reply**

Out of the 7 responses received from the taxi and private hire trades only 1 consultee was in favour of retaining the policy. All of the other 6 consultees wished to see the policy withdrawn and MPV's licensed for the passenger numbers shown on the vehicle registration document (VR5). These responses along with the Licensing Managers reply/comments in reply to the individual responders are shown attached to this report as **APPENDIX 4**.

The responses received from the taxi and private hire trade and the general reply to them can be summarised as follows:

One taxi driver felt that there was no consistency in the way the current MPV policy was applied, but referred to vehicles with different seating numbers and configurations which actually suggests that rather than there being no consistency, the policy is being applied consistently and is taking each case and vehicle in its own right and on its own merits.

Another suggestion was that Colchester Borough Council licence small MPVs to carry 6 passengers. It is unclear in respect of which vehicles that suggestion is made but the policy Colchester BC have is to licence MPVs to carry the number of passengers that the vehicle manufacturer states the vehicle is designed to carry.

The suggestion that all vehicles should be licensed to carry the number of passengers they were designed for was made by two further respondents one of who relates the

number of seats to how an MPV may be used or hired by a family during different times of the day . However the day to day use to which an MPV may be put by a family for example, may greatly differ from the use it is put to commercially as a licensed vehicle, when it may have to carry not only a maximum number of passengers, but also their luggage too and which if they are travelling for a holiday, such as being transported to the airport, may mean a number of suitcases and other luggage also being carried leading to a very different level of comfort, access and egress to the rear seats of the vehicle and also potentially safety for passengers.

A suggestion from two of the respondents was that TDC should be looking at the policies of Colchester BC and Ipswich BC for a comparison of our current MPV seating policy, rather than Basildon BC's policy. However, the purpose of the reference to the Basildon policy was that its policy falls between, for example, the policies of Colchester BC and Ipswich BC and TDC – in effect, a compromise position, but a position that was offered as a suggestion only for an alternative to the current TDC MPV seating policy, not the preferred or definitive policy that the Council was looking to adopt.

There was one suggestion that the removal of one or more seats might cause the vehicle to become unstable or reduce the structural integrity of the vehicle in a collision, but no evidence was provided for such a suggestion.

A respondent said that all MPVs are tested by the Department for Transport (DfT) for safety, and that if the DfT says a vehicle is safe, then the vehicle should be deemed to be safe. However, the DfT do not actually test all MPVs as suggested but all vehicles driven on roads in Great Britain must comply with the appropriate legislation and/or regulations including for example:

- The Road Vehicles (Construction and Use) Regulations 1986
- The Motor Vehicle (Type Approval) Regulations 1980 and
- The Motor Vehicle (Type Approval) (Great Britain) Regulations 1984.

One respondent thought that passengers would not like, for example, yellow handles or signs in the backs of cars and felt that such things would lead to passengers choosing vehicles without such items. No evidence has been put forward to support that proposition. Of course, if such an approach were to be adopted as policy by TDC then all MPVs would be required to comply with such requirements meaning that no one driver or operator could be singled out.

The final suggestion arising from the consultation responses is that if the current policy were changed in any way that all vehicles currently licensed as MPVs should continue to be licenced under the "old" policy until such time as that vehicle reaches the end of its useful life, or it is changed for some other reasons; in effect "grandfather's rights" are being suggested.

If the L&R Committee do decide to change the MPV policy then it will be a matter for that Committee to decide on any transitional arrangements which could include "grandfather's rights" or may take some other form such as determining from a certain time all vehicles must comply with a new policy thereby giving proprietors a number of years notice that they may need to change their current vehicle in order to be compliant with a new policy.

Any other matters referred to in the responses received will be able to be viewed by Members as part of the agenda and who will be able to ask questions on these matters



if they think that it is pertinent to do so within the context of the review of the Council's MPV seating policy.

The responses from the taxi trade are included in full as part of **APPENDIX 4** to this report and are also summarised as part of **APPENDIX 4** in the date order that they were received and are shown in italics for ease of reference and distinction. The spread of response dates reflects the twelve week consultation period and also the fact that some writers responded following the reminder for the MPV seating policy review given in the taxi newsletter sent to all drivers and proprietors on the 14 April 2016.

Not all comments are reproduced entirely verbatim, but have been summarised to reflect the tone and content of the response as accurately as possible.

### **Response from RoSPA**

The Royal Society for the Prevention of Accidents (RoSPA) responded by e-mail dated 27 April 2016. Their full response is shown attached to this report as **APPENDIX 5**.

That response can best be summarised as follows.

In RoSPA's view, passengers should be able to exit a taxi or private hire vehicle without having to climb over, or move a seat. However, it acknowledges that it does not think it is possible to estimate the additional risk to passengers who need to move a seat in order to exit the vehicle because so far as RosPA are aware, the necessary accident and casualty data does not exist.

Without such data it is difficult for RoSPA to estimate the potential effects of changing our policy to remove the requirement that every seat must be accessible without having to fold or tip up another seat.

In addition RoSPA note the alternative seating policy operated by Basildon District Council which, in its view allows the retention of seats that have to be moved in order for passengers to enter or exit the vehicle, provided the vehicle has:

- at least three doors to the passenger compartment
- clear signs on how to lift seats in the second row
- operating levers to lift the seats that are coloured yellow or orange
- windows on the near and offside of the rear row of seats that can be used as exits in an emergency, with window exit signs
- a quick door release device on the rear door for use in an emergency if one of the side passenger doors is inaccessible in an accident

RoSPA's view is that Basildon's policy seems to offer a reasonable way of mitigating the risk of passengers in the rearmost row struggling to exit the vehicle in an emergency because they have to climb over or move another seat but acknowledge that it still leaves some risk that a passenger may struggle to exit the vehicle quickly in an emergency.

However, with the current level of data and knowledge available it is not possible for, RoSPA to be certain whether this option is best.

RoSPA also draw attention to Paragraph 93 of the DfT Guidance "Taxi and Private Hire Vehicle Licensing: Best Practice Guidance", published in 2010 (itself consulted on

in 2005) and available at <https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance> which states:

*The Department encourages local licensing authorities, as a matter of best practice, to play their part in promoting flexible services, so as to increase the availability of transport to the travelling public. This can be done partly by drawing the possibilities to the attention of the taxi and PHV trade. It should also be borne in mind that vehicles with a higher seating capacity than the vehicles typically licensed as taxis (for example those with 6, 7 or 8 passenger seats) may be used.*

While the guidelines state that vehicles, such as people carriers, can be licensed as taxis, they do not specifically address the issue of whether or not a passenger seat should be removed as part of the licensing conditions.

### **Licensing Managers Reply to RoSPA Consultation Response**

Only RoSPA have commented on the Basildon BC policy in any positive way. It is difficult to gauge from the very small number of persons from the taxi trade (7 out of the 321 written to) who responded to the consultation what their views actually might be on the possibility of adopting a policy similar to Basildon's seating policy as a replacement or alternative for TDC's current MPV seating policy. Certainly there is no mandate to adopt a MPV seating policy along the same or similar lines to Basildon's amongst the majority of those that have responded.

RoSPA is a charitable organisation which for almost 100 years has formulated policies, practices and influenced legislation to prevent accidents and promote safety in a variety of industries and circumstances. Its views on the seating arrangements in MPVs (or people carriers) used for taxi or private hire work has not changed since the late 1990s.

The Licensing Managers full response to RoSPA's submission is also included as part of **APPENDIX 5** to this report.

### **Other Relevant Information – Department for Transport**

The Department for Transport also gives in its Taxi and Private Hire Vehicle Licensing Best Practice Guidance further information/opinion on the vehicle types that may be licensed by local licensing authorities. The full DfT Taxi and Private Hire Taxi and Private Hire Vehicle Licensing Best Practice Guidance is available as a background paper to this report. The relevant salient paragraphs of the DfT best practice guidance in relation to vehicle types that may be licensed by local authorities are however reproduced below for the information of the Committee and all other relevant parties to this report.

## **VEHICLES**

### **Specification Of Vehicle Types That May Be Licensed**

26. The legislation gives local authorities a wide range of discretion over the types of vehicle that they can license as taxis or PHVs. Some authorities specify conditions that in practice can only be met by purpose-built vehicles but the majority license a range of vehicles.

27. Normally, the best practice is for local licensing authorities to adopt the principle of specifying as many different types of vehicle as possible. Indeed, local authorities might usefully set down a range of general criteria, leaving it open to the taxi and PHV trades to put forward vehicles of their own choice which can be shown to meet those criteria. In that way there can be flexibility for new vehicle types to be readily taken into account.

28. It is suggested that local licensing authorities should give very careful consideration to a policy which automatically rules out particular types of vehicle or prescribes only one type or a small number of types of vehicle. For example, the Department believes authorities should be particularly cautious about specifying only purpose-built taxis, with the strict constraint on supply that that implies. But of course the purpose-built vehicles are amongst those which a local authority could be expected to license. Similarly, it may be too restrictive to automatically rule out considering Multi-Purpose Vehicles, or to license them for fewer passengers than their seating capacity (provided of course that the capacity of the vehicle is not more than eight passengers).

### **Licensing Managers comments in relation to DfT Best Practice Guidance**

The conclusion that could be drawn from the DfT best practice guidance is that vehicle manufacturers spend significant sums of money developing these Multi-Purpose Vehicles in terms of performance, energy efficiency, technology and driver and passenger safety and that local taxi and private hire licensing authorities should not lightly intervene in determining that these vehicles should be licensed for fewer passengers than the manufacturer recommends or is shown on the vehicle registration document. Although it is accepted this is not expressly outlined in such terms it is in their best practice guidance. This is however advisory best practice guidance only for local licensing authorities and is not mandatory or binding as is sometimes suggested, but there should be a clear and explained reason for deviating from this guidance should Members decide to do so and retain the current MPV seating policy for example.

### **Other Relevant Information – Essex Authorities Seating Policies**

It may be helpful for the Committee and all other parties that have an interest in this report or access to it, to be apprised of the policies that other Essex Licensing Authorities may have in respect of seating requirements/arrangements for MPV's licensed in their area and which carry up to 8 passengers. A table showing the policies of other Essex authorities is attached to this report as **APPENDIX 6**.

The table attached to this report as **APPENDIX 6** therefore advises the current MPV seating policy position of those authorities as at the time that this report was written in September 2016 and where it has been possible to gather those details.

As the Committee will see from this table, Tendring is not alone or unique amongst Essex Authorities in requiring the removal of a seat from an MPV on safety grounds where customer access or egress is restricted.

It should also be mentioned for the information of Members that in terms of other nearby authorities, Ipswich Borough Council do not have any restriction on seating capacity and will licence the number of passengers for the vehicle as per the details

shown on the vehicle registration document.

### **Conclusions**

- TDC's current MPV seating policy has been in place since 1 August 2003
- It has been successfully challenged last year in a Magistrates Court but the decision and outcome of the appeal affected the individual only who made the appeal. It is not binding on the policy as a whole and does not overturn the policy.
- It was however prudent in the circumstances that the policy was reviewed and re-consulted on with the taxi and private hire trades in particular.
- The consultation has run for a full 12 week period which is accepted best practice and was a wide ranging and well publicised consultation, particularly with the taxi and private hire trades. It also took in other groups and organisations like the Essex Fire and Rescue Service, Department for Transport, RoSPA, the Automobile Association and Royal Automobile Club, local and national mobility groups such as Age Uk, Disability Essex and Tendring Community Transport.
- The response to the consultation was extremely disappointing particularly from the taxi and private hire trades where only 7 responses were received from 321 initial letters and 321 taxi newsletters sent out during the twelve week period to further highlight the consultation and to act as a reminder for it.
- There was no appetite or support from those that responded from the taxi trade or private hire trades for the policy that has been adopted by Basildon Council in relation to MPV seating as alternative to requiring the removal of a seat to allow access and egress to rear seating.
- In its response to the consultation, RoSPA maintains its support for Tendring District Council's current MPV seating policy that "passengers should be able to exit a taxi or private hire vehicle without having to climb over or move a seat". They have expressed the same opinion and given the same safety advice as part of this consultation process as they did previously when the policy was first adopted in 2002. RoSPA have also advised that the Basildon's MPV seating policy seems to offer a reasonable way of mitigating risks to passengers in the rearmost row of MPV seating however it still leaves some risk that a passenger may struggle to exit the vehicle quickly in an emergency.
- The DfT best practice guidance for taxi and private hire vehicle licensing issued in 2010 advises that "it may be too restrictive to automatically rule out considering Multi-Purpose Vehicles, or to license them for fewer passengers than their seating capacity (provided of course that the capacity of the vehicle is not more than eight passengers)". This is however advisory best practice guidance only for local licensing authorities and is not mandatory or binding as is sometimes suggested, but there should be a clear and explained reason for deviating from this guidance should Members decide to do so and retain the current MPV seating policy for example.
- The outcome of this review is a difficult matter for Members to decide on as there has been no clear mandate received to change the Council's current MPV seating policy, or any mandate or specific evidence received in order to adopt an alternative to the current MPV seating policy such as the option chosen by Basildon Borough Council and its taxi and private hire trades. It is of course still open to Members to do so, but they must be able to give a clear and explained reason for doing so.

### **Options/Possible Ways Forward**

Given the unfortunate lack of response from the Tendring licensed taxi and private hire trades and also the lack of response from all of the other relevant organisations that were invited to reply to the twelve week consultation apart from the notable exception of RoSPA, it is suggested to Members of the Licensing Sub Committee that there are now four possible options for them to consider in determining an outcome to this review of the Council's MPV seating policy.

These are:

- 1) **Retain the current MPV seating policy; or**
- 2) **Withdraw the current MPV seating policy which requires the removal of a seat to allow access and egress to the rearmost seats in MPV's licensed by Tendring District Council and permit the vehicle to be licensed for the number of passenger seats as indicated by the vehicle registration document (VR5); or**
- 3) **Change the current MPV seating policy to the MPV seating policy adopted by Basildon Borough Council in January 2015 (as described in the table of Essex Authorities MPV seating policies shown above). or**
- 4) **Re-consult on the issue again for a further period of time to be specified by the Committee in order to see if there is any further interest shown, or comment received, from the taxi and private hire trades and other relevant organisations and make a final decision on the future of the current MPV seating policy after this re-consultation. This option would however have a financial and staffing resource impact on the taxi licensing service as it would mean repeating the entire consultation and the staff time and costs that this has involved with no guarantee of any significant or different results being received to the first consultation undertaken. Such a cost would have to be borne from the service and ultimately all of the vehicle licence fee payers concerned.**

### **BACKGROUND PAPERS FOR THE DECISION**

- DfT Best Practice Guidance for Taxi and Private Hire Vehicle Licensing March 2010
- Copies of all consultation letters, taxi newsletters, press releases and articles and also the relevant extract from the Councils taxi licensing web page

### **APPENDICES**

APPENDIX 1 - Template for consultation letter on review of MPV seating policy  
APPENDIX 2 - Minutes of the Licensing and Registration Committee 20 January 2016.  
APPENDIX 3 - Tendring District Council's current MPV seating policy.  
APPENDIX 4 - Responses from Taxi and Private Hire Trade to consultation.  
APPENDIX 5 - Response from RoSPA to consultation.  
APPENDIX 6- Table of other Essex Authorities MPV seating policies

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^ND,CPOCCUP.LICASE;  
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Our Ref: ^ND,PLATEREF.LICASE;

5 February 2016

Dear ^RS,LIXTRA;^CS,FNAME.LIXTRA,E,SALUTE;^ND,FVALUE.LIXTRA;^ES;^ES;

**RE: REVIEW OF COUNCIL'S SEATING POLICY FOR MULTI- PURPOSE VEHICLES (MPV'S) WHICH CARRY UP TO 8 PASSENGERS**

At its meeting of the 20 January 2016 the Council's Licensing and Registration Committee agreed to review and publicly re-consult on the Council's current seating capacity policy for Multi- Purpose Vehicles carrying up to 8 passengers which has been in place since the 1 August 2003 and was introduced following consultation with the taxi trade at that time. The review and public consultation will of course include the taxi and private hire trades and their representatives in the Tendring Drivers Taxi Association.

As you will be aware, primarily Tendring District Council's current seating capacity policy for MPV's is focused around the following two items taken from the policy and which are as follows:

(e) The arrangements of the seats shall be such that no person has to remove, push forward or dismantle any seat or other obstacle; nor should it be necessary to climb over any person being carried in the vehicle or require any person to leave their seat to allow anyone to enter or leave the vehicle.

(f) If the seating arrangement does not allow free access to and from the vehicle as set out in condition (e) above then, in order that the vehicle may be licensed as a Hackney Carriage or Private Hire Vehicle and in the interests of public safety and comfort, the Council will require as many seats as may be deemed necessary to be removed.

**The consultation welcomes your views on whether the current policy should remain in place, be withdrawn, or whether it should be amended in any way and if so how.**

**The Licensing and Registration Committee also determined on the 20 January 2016 that the Council's current seating policy for MPV's will remain in place at least until the consultation on the policy has been completed and the policy has been reviewed and re-considered by the Committee. The current policy can be viewed in full at [www.tendringdc.gov.uk](http://www.tendringdc.gov.uk).**

**The review and consultation also welcomes views on a possible alternative to Tendring's current MPV seating policy which was introduced for Basildon's taxi and private hire vehicles in January 2015 in consultation with the Basildon taxi and private hire trades. Prior to this policy being introduced in January 2015, Basildon had a very similar policy to Tendring in respect to MPV's. Basildon's current policy in respect of MPV's is as follows:**

- 1) In respect of minibus and other MPV style vehicles a minimum of three doors to the passenger accommodation shall be provided.
- 2) Have proper signs on how to lift the second row of seats. The sign should be clearly visible to any persons seated in the rearmost seats providing customers with instructions on the operating mechanisms for the seat that may be required to be tipped/moved forward in order to gain access/egress from the vehicle.
- 3) The operating levers to be coloured yellow/orange so that they are easily identifiable. They can be coloured by using the appropriate colour tape. Tape should remain damage free at all times and replaced when worn.
- 4) Have windows on the near and offside in respect of the rear row of seats and that they be free from obstruction at all times to allow access in the event of an emergency.
- 5) Have well positioned exit window signs (where appropriate).
- 6) Have an internal device for the rear hatch door to be opened from the inside. This can be by way of an emergency 'quick release' button which can be fitted to the rear hatch door which can be operated by passengers in order to allow access/egress in the event of an accident and one of the side passenger doors being inaccessible.

Those criteria did not apply to purpose built wheelchair accessible vehicles however which were still required to ensure that the passenger compartment provides unobstructed entry and exit from the back row of seating of the compartment and which included the requirement that no persons entering or exiting the vehicle should have to remove or dismantle a seat or obstacle to climb over a person. In terms of colouring the operating levers which lift and tip seats yellow/orange, those conformed to national safety health and safety standards.

**The twelve week consultation period will run from the 5 February to the 2 May 2016 and responses can be made either by letter to the address shown on this letterhead or by e-mail to [licensingsection@tendringdc.gov.uk](mailto:licensingsection@tendringdc.gov.uk). All written responses or comments received will be made available to the Licensing and Registration Committee to consider at their next appropriate meeting to be scheduled after the end of the consultation period when the Committee will review the policy in light of the outcome and results of the consultation.**

If you have any questions about the review and consultation that have not been explained by this covering letter then please do not hesitate to contact us accordingly by e-mailing [licensingsection@tendringdc.gov.uk](mailto:licensingsection@tendringdc.gov.uk) or by phoning. **The full details of the report that went to the Licensing and Registration Committee on the 20 January 2016 and their decision can also be publicly viewed or downloaded from the Council's website [www.tendringdc.gov.uk](http://www.tendringdc.gov.uk).**



In the meantime, **I look forward to receiving any written views or comments that you might have on the review and consultation of the Council's current MPV seating policy by the 2 May 2016.** Thank you in advance for your participation in this review.

Yours sincerely

*SHarvey*

**Simon Harvey  
Licensing Manager**

**^ST,IMAGE;**

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**APPENDIX 2****MINUTES OF THE MEETING OF THE LICENSING AND REGISTRATION COMMITTEE****HELD ON WEDNESDAY 20 JANUARY 2016 AT 7.30 P.M.****IN THE COUNCIL CHAMBER, WEELEY**

**Present:** Councillors Platt (Chairman), Callender (Vice-Chairman), Amos, B Brown, M Brown, Davis, V Guglielmi, J Henderson, Newton, Raby, Skeels Jnr, Watson, White, Whitmore and Winfield

**Also Present:** Councillor McWilliams (Well-being and Partnerships Portfolio Holder)

**In Attendance:** Environmental Services Manager (John Fox), Licensing Manager (Simon Harvey), Solicitor (Linda Trembath), Senior Democratic Services Officer (Ian Ford), Democratic Services Officer (Katie Sullivan) and Licensing Assistant (James King)

**18. APOLOGIES FOR ABSENCE AND SUBSTITUTE MEMBERS**

There were no apologies given on this occasion.

The Chairman introduced to the Committee, Katie Sullivan, who had recently joined the Council as a Democratic Services Officer.

**19. MINUTES OF THE LAST MEETING OF THE COMMITTEE**

The minutes of the last meeting of the Committee held on Monday 12 October 2015 were approved as a correct record and signed by the Chairman.

**20. DECLARATIONS OF INTEREST**

There were none.

**21. MINUTES – PREMISES/PERSONAL LICENCES SUB-COMMITTEE ‘C’**

The Committee received and noted, for information only, the minutes of the meeting of the Premises/Personal Licences Sub-Committee ‘C’ held on 29 September 2015.

**22. VACANCY ON PREMISES/PERSONAL LICENCES SUB-COMMITTEE ‘A’**

It was reported that, on 22 October 2015, Councillor Amos, as a result of his work commitments, had notified the Council of his resignation as a member of Premises/Personal Licences Sub-Committee ‘A’ and that, therefore, a vacancy existed on that Sub-Committee.

Members were 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, a Member of a Premises/Personal Licences Sub-Committee must also be a serving Member of the Licensing and Registration 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 Platt and seconded by Councillor Callender that Councillor B Brown 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 Newton and seconded by Councillor Raby that Councillor Winfield be appointed to fill the vacant seat on Premises/Personal Licences Sub-Committee 'A' for the remainder of the municipal year.

On being put to the vote it was **RESOLVED** that Councillor Winfield be appointed to fill the vacant seat on Premises/Personal Licences Sub-Committee 'A' for the remainder of the municipal year.

**23. REVIEW OF TENDRING DISTRICT COUNCIL'S CURRENT HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE SEATING CAPACITY POLICY FOR MULTI-PURPOSE VEHICLES WHICH CARRY UP TO EIGHT PASSENGERS**

The Committee had before it a report which asked it to review the Council's current seating capacity for Multi-Purpose Vehicle (MPV) hackney carriage and private hire vehicles which carried up to eight passengers and to agree that this review be subject to a public consultation.

It was reported that the Council's seating capacity policy had been introduced with effect from 1 August 2003 in order to sustain and promote passenger safety in licensed taxi and private hire MPVs following a decision made by the Council's Licensing Sub-Committee on 29 May 2003 which followed consultation with the taxi trade and submissions from organisations such as the Royal Society for the Prevention of Accidents (RoSPA).

The Committee was now requested to agree to a review for the following reasons:

- (1) there had been substantive changes since then to vehicle technology and safety which should be reviewed and taken into consideration;
- (2) the MPV seating capacity policy had recently been challenged in the Magistrates' Court by a hackney carriage vehicle proprietor and whilst that challenge was not binding on the policy itself and related purely to that individual who had made the challenge, it did add weight to the prudence of reviewing and re-consulting on the policy;
- (3) it appeared that, when formulating the current MPV seating policy, consideration had been given by Members to the view of RoSPA that the seating configuration requirement for a licensed MPV carrying up to eight passengers should be arranged so that that '*no person has to remove, push forward or dismantle any seat or other obstacle; nor should it be necessary to climb over any person being carried in the vehicle or require any person to leave their seat to allow anyone to enter or leave the vehicle*'. In contrast to the position held by RoSPA, the Department of Transport in their best practice guidance for taxi and private hire vehicle licensing dated March 2010, had advised that "*it may be too restrictive to automatically rule out considering Multi-Purpose Vehicles, or to license them for fewer passengers than their seating capacity (provided of course that the capacity of the vehicle is not more than eight passengers)*".

Members were made aware of the current seating capacity policies for MPVs of other Local Authorities in Essex and, in addition, Ipswich Borough Council.

The Licensing Manager drew the Committee's attention to a potential solution to the different emphasis placed on seating capacity and configuration for licenced MPVs between the view held by RoSPA and the guidance given to Local Authorities by the Department for Transport in their taxi and private hire licensing best practice guide dated March 2010 which had been adopted by Basildon Borough Council in January 2015 in consultation with their taxi and private hire trades and which offered an alternative to Tendring's current seating policy, but still sought to protect and promote customer safety for customers accessing and exiting the rear of licensed MPVs. Prior to adopting this new standard, Basildon had also required the permanent removal of a nearside seat from the middle row seats to enable unrestricted access and egress from a vehicle.

The new seating policy standards adopted by Basildon in January 2015 were as follows:

- (1) In respect of minibus and other MPV style vehicles a minimum of three doors to the passenger accommodation shall be provided.
- (2) Have proper signs on how to lift the second row of seats. The sign should be clearly visible to any persons seated in the rearmost seats providing customers with instructions on the operating mechanisms for the seat that may be required to be tipped/moved forward in order to gain access/egress from the vehicle.
- (3) The operating levers to be coloured yellow/orange so that they are easily identifiable. They can be coloured by using the appropriate colour tape. Tape should remain damage free at all times and replaced when worn.
- (4) Have windows on the near and offside in respect of the rear row of seats and that they be free from obstruction at all times to allow access in the event of an emergency.
- (5) Have well positioned exit window signs (where appropriate).
- (6) Have an internal device for the rear hatch door to be opened from the inside. This can be by way of an emergency 'quick release' button which can be fitted to the rear hatch door which can be operated by passengers in order to allow access/egress in the event of an accident and one of the side passenger doors being inaccessible.

Those criteria did not apply to purpose built wheelchair accessible vehicles however which were still required to ensure that the passenger compartment provides unobstructed entry and exit from the back row of seating of the compartment and which included the requirement that no persons entering or exiting the vehicle should have to remove or dismantle a seat or obstacle to climb over a person. In terms of colouring the operating levers which lift and tip seats yellow/orange, those conformed to national safety health and safety standards.

Members were also informed that Basildon would not licence a vehicle for the maximum seating capacity shown on the vehicle registration document where the seat did not meet Schedule 6 of the Construction and Use Regulations 1986 that required seat width to be not less than 400mm (16 inches) wide (not taking into account any armrests, whether they were folded back or otherwise put out of use), or where the seat was not suitable for an adult because of weight or height restrictions placed on the seat by the manufacturer.

It was therefore suggested to the Committee that the above standards form part of the proposed consultation process to review Tendring's current seating policy for MPVs and

that the trade and all other interested parties were also asked to comment on those proposed standards as part of the consultation

Having considered the matter it was moved by Councillor Callender, seconded by Councillor V E Guglielmi and **RESOLVED** that the Committee agrees to:

- (a) review and publicly re-consult on the Council's current seating capacity policy for Multi-Purpose Vehicles (which carry up to eight passengers) in order to determine a wide range of opinions on whether that policy should remain in place, or whether it should be amended in any way;
- (b) retain the current policy until the public consultation has been carried out and the results have been fully evaluated and considered by the Committee at a future meeting; and
- (c) include the solution adopted by Basildon Borough Council in terms of interior vehicle signage on how to lift seats and colouring seat operating levers yellow/orange in order to promote passenger welfare and safety in MPVs as part of the consultation exercise.

**24. REVIEW OF THE COUNCIL'S DRAFT STATEMENT OF LICENSING POLICY FOLLOWING PUBLIC CONSULTATION**

The Committee had before it a report which asked it to consider the responses received from the public consultation that had taken place for the review of the Council's Statement of Licensing Policy and decide whether to amend its draft policy in light of the responses received before agreeing a final policy and recommending its adoption by the full Council. The draft policy had been approved by the Committee at its meeting on 12 October 2015.

The Licensing Manager (Simon Harvey) reported that responses had been received from:

- Essex County Fire and Rescue Service; and
- Ms G Bridle, a resident of Clacton-on-Sea.

Essex County Fire and Rescue Service had asked for a small number of amendments to be made to the Policy at paragraphs 2.7, 4.2(b) and Appendix C. The Licensing Manager had subsequently confirmed to the Fire Service that the amendments requested by it had been incorporated within the final draft of the Policy, subject to the approval of the Committee.

Ms G Bridle, a resident of Clacton-on-Sea, had responded to the consultation asking if noise limiters could be made compulsory under the Prevention of Public Nuisance Licensing Objective for all licensed premises that had music played on their premises. The Licensing Manager had advised Ms Bridle that it would not be possible to do so because the Licensing Authority cannot impose blanket conditions on premises, but had to consider each application in its own right and on its own merit and had given her further advice on dealing with a problem premises using the review mechanism available under the Licensing Act 2003 and/or reporting the noise nuisance as a complaint to the Council's Environmental Services Noise Team.

Having considered the responses it was moved by Councillor Raby, seconded by Councillor V E Guglielmi and **RESOLVED** that:

- (a) The final draft Statement of Licensing Policy, as attached as Appendix 1 to item A.1 of the Report of the Corporate Director (Life Opportunities), be agreed and recommended to Council for adoption at its meeting to be held on 9 February 2016; and

- (b) Council be further recommended to agree that any future amendments to the revised adopted and published Policy that were minor, or administrative only in nature be delegated to the Environmental Services Manager and/or the Licensing Manager, in consultation with the Monitoring Officer and the Chairman, or failing him, the Vice-Chairman, of the Committee without the need to publicly consult again, or re-adoption of the Policy by the Council.

The meeting was declared closed at 7.57 p.m.

Chairman

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## APPENDIX 3

### HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES

#### VEHICLE GUIDELINES TO ASCERTAIN SEATING CAPACITY FOR VEHICLES OTHER THAN SALOON VEHICLES CARRYING UP TO 8 PASSENGERS [MULTI PURPOSE VEHICLES]

1. The following should be observed in relation to all applications for licensing vehicles constructed for the sole use of passengers and their effects in accordance with Construction and Use Regulations, and **NOT** adapted, for the conveyance of up to eight passengers.
2. The maximum number of passenger seats is eight and the following will be taken into account when deciding seating capacity:-
  - (a) The width of each seat should not be less than 400mm per person, this measurement being taken across the front of the seat and, where necessary, between arm rests.
  - (b) Each seat should face forward in the direction of travel unless, in the case of rear facing seats, there is supporting documentation to say that the seats conform to the relevant Ministry of Transport standards.
  - (c) All seats, whether rear or front facing, shall be fitted with a seat belt. Each seat should comply with the seat belt regulations and, if necessary, be able to secure a child seat/booster seat.
  - (d) There shall be sufficient room between the seats to allow adequate room for the movement of passengers. There shall also be adequate head and leg room to allow passengers to be conveyed in comfort and safety and therefore there should be a height of 870mm between the seat and roof of the vehicle and 180mm from the back of the front seat to the front of the rear seat [when the front seat is fully pushed back].
  - (e) The arrangements of the seats shall be such that no person has to remove, push forward or dismantle any seat or other obstacle; nor should it be necessary to climb over any person being carried in the vehicle or require any person to leave their seat to allow anyone to enter or leave the vehicle.
  - (f) If the seating arrangement does not allow free access to and from the vehicle as set out in condition (e) above then, in order that the vehicle may be licensed as a Hackney Carriage or Private Hire Vehicle and in the interests of public safety and comfort, the Council will require as many seats as may be deemed necessary to be removed.
  - (g) When deciding the seating capacity of any vehicle, account will be taken of the weight bearing capacity of the rear axle and any other factors considered necessary in order to ensure the comfort and safety of the public. Applicants will be required to supply this information or take the necessary steps to contact the manufacturer of the vehicle in order that this information is available at the time the inspection takes place.

- (h) Except where the vehicle is fitted with an offside passenger door, it shall be possible for a passenger to walk from the rear nearside passenger door through the vehicle and out of the rear door without having to step over any seats.
  - (i) Taken from the area to the rear of the driver, the floor of the vehicle shall be of one level to the rear of the vehicle.
  - (j) The vehicle will have a front nearside passenger door.
  - (k) Each vehicle should either be fitted with an integral step to assist passengers entering or leaving the vehicle either by the front or rear passenger doors. If this is not the case, then each vehicle should carry a portable step for this purpose.
  - (l) Rear doors of the pillar hinged, single (offside hinged) or two door opening type should be capable of opening to 90°, ideally with a step or similar device to ease access or egress.
  - (m) If the vehicle is fitted with an offside rear passenger door, then the rear door may be of the hinged lift-up type such offside rear passenger door to be of the sliding or front pillar hinged type, capable of opening to 90°, ideally with a step or similar device to ease passengers to enter or leave the vehicle.
  - (n) The vehicle shall be right hand drive, with the driver's door to the offside.
  - (o) The vehicle shall be fitted with either a sliding or front pillar hinged door to the nearside passenger carrying area such additional door, if hinged to be capable of opening 90°, ideally with a step or similar device to assist passengers in entering or leaving the vehicle.
  - (p) All vehicles must be capable of carrying a wheelchair in a reasonable manner. In the interests of passenger safety and comfort, should any vehicle be capable of carrying a person who remains in the wheelchair, or where the seating layout may be varied to accommodate a wheelchair, such vehicle must have adequate provision to enable the wheelchair to be fixed securely to the floor of the vehicle. The remaining seating capacity will then be determined in accordance with the conditions set out above but the total passenger carrying capacity shall not be less than four.
3. An appeal against a decision on capacity may be referred to the Licensing Sub-Committee, provided that documentation in support of the appeal can be produced by the applicant.
  4. Notwithstanding the seating capacity stated on the Vehicle Registration Document, in order to meet the above criteria for the safe conveyance and comfort of passengers it may be necessary for a seat or seats to be removed and any licence and subsequent licence issued by the Council in respect of the vehicle will be subject to such reduced seating capacity.
  5. These conditions may be varied from time to time to accord with changes of Government legislation. It should be noted that the Government is currently considering new legislation which will incorporate the carriage of disabled persons in their wheelchairs.

APPENDIX 4

Emma King

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**From:** Michael Cook on behalf of Licensing Section  
**Sent:** 19 April 2016 09:15  
**To:** Emma King  
**Subject:** FW: Review of Council's seating policy

**From:** [redacted]@egerton.com [mailto:[redacted]@egerton.com]  
**Sent:** 18 April 2016 20:42  
**To:** Licensing Section  
**Subject:** Review of Council's seating policy

Mr Simon Harvey  
Licensing Section, Council Offices  
Thorpe Road  
Weeley  
Essex CO16 9AJ

18 April 2016

Dear Mr Harvey,

**RE: Review of Council's seating policy for multi-purpose vehicles (MPV's) which carry up to 8 passengers**

Thank you for your letter dated 5 February 2016 regarding the above.

I am the joint owner of a tour company called 'Diplomatic Guide Services', a position that I have held for 13 years. Prior to this I was a police officer for Essex police for over 30 years. Our company is based in Brightlingsea, however we operate the majority of our tours in and around the London area and often take our clients, many of whom are visiting the UK from the USA, on excursions to visit the Essex and Suffolk countryside.

Having read your letter, I am pleased to provide you with my comments as part of the consultation process regarding the Council's current seating capacity policy.

I have been licensed by Tendring District Council to carry up to 8 passengers for many years. In my experience, the current policy has been easy to follow and I have been impressed at the work of your licensing department who have, upon close inspection of my vehicle, deemed that it meets all necessary safety requirements and is suitable and fit for purpose.

I have reviewed the information on Basildon's taxi and private hire vehicles policy which was included with your letter. In my opinion, these new requirements would be overly bureaucratic and unnecessary. I am concerned that should such a scheme be implemented in Tendring, it would disadvantage small-to-medium sized business by requiring us to make further changes at

additional cost. The vehicle that I drive is certified by Ford as meeting all necessary EU safety standards and has been approved by your licensing team. I am therefore totally assured that my vehicle is suitable for transporting my clients around safely without the need for any additional signs or labels.

I note your comment that the current seating policy will remain in place until the consultation has been completed and the committee has reconsidered the issues. However, I would strongly urge that the committee agree a process whereby drivers who have had their vehicles licensed under the existing policy are allowed to continue to operate as they are for the remaining life of the vehicle. At the point when the vehicle needs to be replaced (which in my case is approximately every four years), the owner would then need to make sure that they adhere to any new policy. This would be a much fairer approach and would prevent costly changes for those who have only recently purchased vehicles (of which mine is in excess of £30,000) and secured their licence under the existing policy.

As I am sure you can imagine, my company takes booking for clients many months (and sometimes years) in advance based on the expectation that we would continue to have a properly licensed 8-seated vehicle. Clearly if the policy were to change so that this would not be the case, this would be very harmful and disruptive to our business.

I would be very happy to discuss these issues with you further if it would be useful. Could you please send us an acknowledgement of receipt of this letter.

Yours Sincerely,

Gary Egerton

Emma King

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**From:** Michael Cook on behalf of Licensing Section  
**Sent:** 21 April 2016 08:57  
**To:** Emma King  
**Subject:** FW: REVIEW OF SEATING POLICY FOR MPV's

**From:** David Gusterson [mailto:██████████@██████████.com]  
**Sent:** 21 April 2016 00:05  
**To:** [licensingsection@tendringdc.gov](mailto:licensingsection@tendringdc.gov)  
**Subject:** REVIEW OF SEATING POLICY FOR MPV's

Dear Licensing team,

With regard to your invitation for views and comments regarding TDC's policy on MPV seating I would like to take this opportunity to air my views.

Car manufactures have been for many years (with great success I should add) placing a strong emphasis on car and passenger safety and over the years have been responsible for some amazing technical innovations in a bid to make driving as safe as possible.

With this in mind I think we can take it as read that if they design a vehicle that has 5 or upwards passenger seats then it is safe to carry said number of passengers and any further stipulations by the council, especially with regard to reducing passenger numbers is unnecessary.

It is just not logical to assume that passengers in a licensed vehicle, whether it be a taxi or private hire are in greater danger, and therefore in greater need of protection, than passengers in a private vehicle which is what in effect any extra regulation from a licensing authority amounts to.

I am the co-owner of probably the largest fleet of taxis in the Tendring area and obviously it is not in any way in my interests to compromise passenger safety, but I do feel that the car designers are a much better judge of what constitutes safety than any local council.

I am not suggesting that legislation and restrictions enforced by the council are anything other than well meaning and made with good intent, I just think that they are not required and this view would seem to be backed up by the courts in the case of TDC v Hicks.

On a more specific point the "conference seating" requirement for 8 seaters is particularly unwelcome and unpopular from a passenger point of view as many people do not like to sit facing in the opposite direction to the one they are travelling and to my mind should not be a requirement.

Now to take off my taxi proprietor 'hat' for a minute and don my Council Tax Payer's 'hat' I have to object most strongly that, especially in view of the cuts to services that we continue to suffer, the council deem it fit to waste money on court cases such as the aforementioned TDC v Hicks case, so I think it would be wise for the council not to meddle in issues that, quite frankly, they are not qualified to make decisions on and leave it to the experts in order not to repeat mistakes of the past.

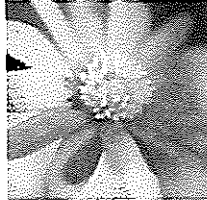
May I thank you for your time and the opportunity to express my views and whether or not you agree with none, some or all of my observations I hope you find them constructive.

Kind regards,

Dave Gusterson



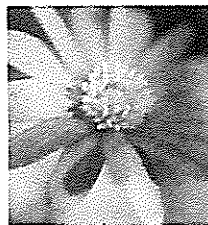
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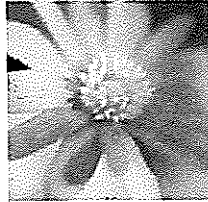
①  
APPENDIX 4

Dear Licensing & Registration Committee.

Thank you for your Review letter for Licensing  
MPV'S I personally have a small interest  
in small MPV'S. GALAXY, ZAFFIRA, CESTRON  
GRAND PICASSO, FORD S.MAX. WHICH ALL HAVE  
DIFFERENT SEATING CAPACITY 6, 5, 4, WHICH  
ARE ALL BASICALLY THE SAME VEHICLE AND NONE  
NONE CONFORM TO RULES E. AND F. in your  
letter.



T. 530

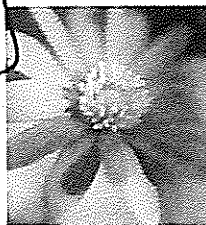


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APPENDIX 4

THE VAUXHALL ZAFIRA IN PARTICULAR HAS  
A SECOND ROW SEATING ARRANGEMENT AS BENGL.  
3 PASSENGERS HAVE TO LOCATE THE VEHICLE  
TO GET 3<sup>RD</sup> ROW TO EXIT. THERE IS NO  
CONSISTENCY IN YOUR SEATING POLICY AS  
IT STANDS AND WHY MENTION BASILDONS  
RULES FOR TAXI + PRIVATE HIRE WHEN OUR  
CLOSEST COUNCIL I.E. COLCHESTER ALLOWS  
SMALL MPVS TO CARRY 6 PASSENGERS.

Yours Sincerely



MR. S. LANGMAN

~~\_\_\_\_\_~~  
KIRBY CROSS  
FRINTON  
ESSEX ~~\_\_\_\_\_~~



**Michael Cook**

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**From:** Michael Mead <info@manningtreetaxis.co.uk>  
**Sent:** 25 February 2016 00:03  
**To:** Licensing Section  
**Subject:** Comment regarding Tendring District Council's current seating capacity policy

Name: Michael Mead  
Badge No. [REDACTED]

Dear Sir / Madam

I write with reference to the letter dated 5th February 2016, which relates to the review of the current seating policy for Multi-purpose vehicles carrying up to 8 passengers.

As a proprietor and driver of a 4 seater car and a 8 seater minibus, both licensed as Hackney Carriage vehicles by Tendring District Council I would like to add my view to the consultation currently being undertaken by the Licensing and Registration Committee.

Firstly, may I thank you for giving me the opportunity to provide my opinion with regard to Tendring District Councils policy on the licensing of multi-purpose vehicle as Hackney Carriage and Private Hire Vehicles. On reviewing the councils current seating capacity policy I would like to make the following three points:

(1) I note from your letter of 5th February 2016 that it mentions the seating policy as introduced by Basildon Council.

If vehicles licensed under Tendring District Council are unable to provide the necessary seating capacity and transportation that the residents of Tendring require, due to restrictive regulation it is not the Basildon area where they will seek an alternative, it will be the transport providers in the areas of Colchester and Ipswich that they will contact, thus it could be said that these are the providers that we as transport suppliers based in Tendring must compete with in order to survive.

Therefore with this in mind, to provide Tendring transport providers with 'a fair playing field' it would be the policies as set down by Colchester and Ipswich councils where I would look to form some kind of comparison / guidance.

(2) I note that condition (e) states that "nor should it be necessary to climb over any person being carried in the vehicle or require any person to leave their seat to allow anyone to enter or leave the vehicle".

If this policy was introduced for the safety of all passengers then this policy would also need to be applied to the middle seat in the rear of every car. A passenger sitting in the middle rear seat of every car licensed by Tendring District Council currently has to climb over any person or require at least one person to leave the car for the middle passenger to leave said vehicle.

This policy is not required for cars which carry four passengers and therefore I do not see the need for it to apply to vehicles that carry more than four passengers.

(3) I note that condition (f) states that "in the interests of public safety and comfort, the council will require as many seats as may be deemed necessary to be removed".

Firstly, all multi-purpose vehicles that drive on British roads have been tested by the Department of Transport to ensure that the occupants are conveyed in both comfort and safety. If this was not the case, the vehicle would not allowed to be registered to travel on the public roads of the United Kingdom. Secondly has anyone thought of the possible instability / reduced structural integrity that the changing / removing of a seat could cause?

By changing the layout of the seats or removing any seats alters the way a vehicle may react whilst being driven or in the event of it being involved in a collision. Such a request by Tendring District Council may actually increase the risk of injury to those being conveyed, leaving Tendring District Council open to possible litigation.

In conclusion, based on the points I have raised above my suggestion for the licensing of vehicles for Hackney Carriage or Private Hire, including the number of passengers that can be conveyed, would be as follows:

\* If a vehicle has been tested by the Department of Transport and has been deemed to be safe, to transport a set number of passengers as registered with the DVLA on the public roads of the United Kingdom. Then said vehicle is deemed to be safe to be used as a Hackney Carriage / Private Hire vehicle for the transportation of said number of passengers on the public roads of the United Kingdom.

I look forward to hearing the outcome of your consultation exercise and I hope the points I have raised above will help in some way to form a new seating policy, for the licensing of Multi-Purpose Vehicles by Tendring District Council.

With kind regards,

*Michael Mead*

Michael Mead  
Proprietor  
Manningtree Taxis Ltd  
Tel: 01206 393333  
Mobile: [REDACTED]  
Email: [info@manningtreetaxis.co.uk](mailto:info@manningtreetaxis.co.uk)

LICENSING SECTION	
RECEIVED	25 FEB 2016
DATE	
PREPARED	
APPROVED	
SIGNED	

**Emma King**

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**From:** James Bates on behalf of Licensing Section  
**Sent:** 15 April 2016 12:43  
**To:** Emma King  
**Subject:** FW: minibus seating

James Bates  
Enforcement Officer  
Licensing Department  
Tendring District Council  
Tel: 01255 686595  
Email: [jbates@tendringdc.gov.uk](mailto:jbates@tendringdc.gov.uk)

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**From:** Diana Pearson [mailto:[dpearson@brightlingsea.co.uk](mailto:dpearson@brightlingsea.co.uk)]  
**Sent:** 15 April 2016 12:36  
**To:** Licensing Section  
**Subject:** minibus seating

Dear Sirs

I think the eight seater policy should be reviewed so we can use vehicles for the number of passengers they were designed for. Having been a owner operator for a number of years in this borough it would bring us in to line with other councils around us hope this is of some help to the consultation

yours sincerely

MR N R PEARSON

  
BRIGHTLINGSEA 

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**Emma King**

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**From:** Emma King  
**Sent:** 18 April 2016 10:49  
**To:** [REDACTED]@[REDACTED].com'  
**Subject:** RE: new changes to taxi seating policy  
**Attachments:** Swain [REDACTED].pdf

Dear Mr Swain

Thank you for your e-mail dated 17 April 2016 regarding the MPV seating capacity reviews

I will ensure that your comments are made available to Members of the Licensing Committee when they meet to consider this matter. At the moment a date has not been scheduled for this meeting, but it will **not be before** the consultation closing date of 2 May 2016.

With regard to your request for a copy of the Basildon Taxi Policy, I can confirm this was included in the original letter sent to you on 5 February 2016 and I have attached a copy of this to the e-mail for your convenience.

Kind regards

Emma King  
 Licensing Officer  
 Tel: 01255 686592  
 E-mail: [eking@tendringdc.gov.uk](mailto:eking@tendringdc.gov.uk)  
 [REDACTED]

**From:** Graham Swain [mailto:[REDACTED]@[REDACTED].com]  
**Sent:** 17 April 2016 22:23  
**To:** Licensing Section  
**Subject:** new changes to taxi seating policy

Dear Sir

I have tried to find the Basildon taxi policy that they have in place I can not can you please send me the link

I do believe that all galaxy's should have 6 carrying seats. If a car has been designed for 7 people and these days with passenger safety in the manufactures forefront of there focus. Then most of the cars that we want as taxi are safe. The average no of people that want a multi taxi differs from the day time trade to that of night time trade in the day a family will want to go down the beach or pier this is now more like to be mum and dad and 4 children or grandma and granddad with the children the 6 passenger carries are ideal for this as they are not to high as the 8 seaters to get in to and this means that we can pick up more fares.

I had a hire car recently and it was a ford galaxy please believe me the old lady's loved it, not to high for them to get in to and they could slide out on to there feet I was able to use this both in the day and in the night what a bonus that would be to me as an 6 seater and not a 5. The cost of one of these new is around £ 30.000 and a good 4 year old one is still around £17.500.

I would like to see a more liberal policy on the age of cars, after all out neighbours at Ipswich Suffolk take a different point of view, we can only register a car up to 5 years old and then use it till it is 10 years old plus 2 years if it is scene to be in good condition. what might be better is to look at the condition of the car taken in to account the interior on the car and the exterior if this meets a satisfactory condition then it is ok to bee a taxi may be a 10 year old car would be in very good condition even a 15 year old car if kept in good condition.

There is the cost of cars to be taken in to account while not all can afford a new car there is still a very high price on cars at 5 years old a movement on this would help taxi owners and we might just see more of the higher class cars being turned in to taxis.

We live in a large area that is tendering and is made up of small towns Brightlingsea, Manningtree, Harwich, Walton and Frinton, Clacton on sea. while there is a living to be made from these areas the cost of cars can be excessive to the population that we cover.

I don't think that yellow handles in the back of cars will help if anything it will deter costumers from the taxi as most will associate it with a disable car while we need these disable taxis the majority of people will walk past you on the rank when you rank up, if you have one. I know I have been in that situation. This may not be pc correct however it is fact.


As Far the signs in the back of cars telling them where the escape exit is, people would not take to kindly to them either, costumers are a fickle bunch of people if something isn't just right they don't use you again and that's fact there is more choice out there and they will go else where.

I would also like to see a policy like Colchester for the mot's this means that an out side contractor takes on the role and does the mot it would make for a better system

on the subject of the two colour cars I don't think its a good thing as Basildon council is looking to be a large part of the council thinking you must realise that the taxi company in Basildon that has two colour cars is in fact a private company and not the brand of the council. this was awarded to them in 1963 in courts because the owner wanted to make sure that his cars stood out and to stop the theft of his cars.

I would be in favour of a sticker on the car maybe doors and rear perhaps an emblem doesn't need to be large just so that people can see that we are a taxi

I hope you find these thoughts helpful  
yours

Graham swain 

APPENDIX 4

[REDACTED]  
Clacton-on-Sea

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01255-[REDACTED]

[REDACTED]  
[mr.chris.thomas@\[REDACTED\].com](mailto:mr.chris.thomas@[REDACTED].com)  
[REDACTED].com

TDC Licensing

22 March 2016

Dear Mr Harvey,

Review of TDC seating policy for MPVs

I am pleased there is an opportunity to change the policy on the above. The current policy has the effect of discriminating against TDC licensed vehicles for ECC school and college contracts *in our own district*.

I am one of only five taxi contractors in Clacton qualified to be on the ECC Passenger Transport Framework (who can bid for contracts) out of 130 across Essex.

There is a disincentive for other local firms to join the Framework because of the high standards that the TDC applies to local taxis and private hire cars: standards that are undercut by vehicles licensed outside our district.

Here is an example, at Frobisher Primary School. A Citroen C4 Grand Picasso licensed by TDC for 4 passengers does an ECC contract for 4 children, while a C4 Grand Picasso licensed for 6 passengers by Uttlesford DC does an ECC contract for 6 children. In effect, local firms were prevented from bidding on this second contract - and were discriminated against in their own district!

The irony is that a contract done in the poorest area of Essex is outsourced to vehicles licensed in the wealthiest part - and that the TDC allows what it considers to be sub-standard vehicles to operate in our district.

Uttlesford vehicles are licensed to poach!

There is no good reason why the TDC, having set their minimum standards, should allow these standards to be undermined by outsiders. If the TDC were to legally discriminate at all, it should be in favour of locally licensed vehicles - not against them!

Your letter about Basildon changing their regulations does not give Basildon's reasoning for doing so, but it is likely that their aim, at least in part, was to help level the playing field against aggressive Uttlesford poaching.

My suggestion therefore, is that unless the TDC implements its minimum standards on ALL vehicles working in the Tendring District - wherever they are licensed - then it should ease its requirements in order to give locally licensed vehicles a chance to compete against these licensed poachers.

And that means following Basildon's lead.

Personally, I don't believe that 6 large adults hiring a cab to an airport should be squashed into a small car. On the other hand, why discriminate only against our local cabs?

Frequently, two adults and three small children walk up to our taxi ranks and are turned down by all the taxis on the rank: all being licensed for 4. The family usually looks very perplexed by this. And non-white people look a bit suspicious. Ultimately, either somebody phones or radios for a larger taxi, and after 15 minutes a monster vehicle arrives, or they have to hire two taxis.

I recommend easing the restrictions for MPVs – to help our own licensed taxis – and to help small families.

Kind regards,

Chris Thomas



### **Licensing Managers Full Reply to Responses from Taxi Trade**

**Mr S Langman received 9 February 2016-** *Has interest in small MPV's such as Ford Galaxy, Vauxhall Zafira, Citroen Grand Picasso which all have different seating capacities 6, 5 and 4 although all are basically the same vehicle and none conform to TDC MPV seating policy items (e) and (f). There is no consistency on TDC seating policy and why mention Basildon's policy when Colchester who are the closest Council to Tendring allows small MPV's to carry 6 passengers.*

**Licensing Managers response** – The fact that Mr Langman describes different seating arrangements for a number of different vehicles licensed by Tendring would seem to suggest that the seating policy is being applied consistently based on the Council's current MPV seating policy and not inconsistently as he suggests. Basildon's policy was simply mentioned in the consultation in order to gauge views on whether the trade locally might consider this as a viable, reasonable and proportionate alternative to either the complete withdrawal or the complete retention of TDC's current MPV seating policy. I accept that Colchester Borough Council licenses their taxi and private hire vehicles for the number of passengers indicated on the vehicle registration document.

**Mr M Mead received 25 February 2016-** *Notes that our letter of the 5 February 2016 mentions the seating policy Basildon have introduced and states that if vehicles licensed under Tendring District Council are unable to provide the necessary seating capacity and transportation that residents of Tendring require due to restrictive regulation it is not Basildon where they will seek an alternative it will be transport providers in Colchester and Ipswich. These are the providers that Tendring taxi trade must compete with to survive. Mr Mead states that it should be the policies as set down by Colchester and Ipswich Councils where he would look to some form of comparison/guidance. States that if the Council's policy says in paragraph 2 "it should not be necessary to climb over any person being carried in the vehicle or require any person to leave their seat to allow anyone to enter or leave the vehicle" then this policy would need to be applied to the middle seat in the rear of every car because every car licensed by TDC the passenger has to climb over any person or require at least one person to leave the car for the middle passenger to leave the vehicle. Mr Mead notes that the Council's policy also states that "in the interests of public safety and comfort, the Council will require as many seats as may be deemed necessary to be removed". He adds that all multi - purpose vehicles have been tested by the Department of Transport to ensure that the occupants are conveyed in both safety and comfort. If it were not the case they would not be registered to travel on public roads of UK. He asks if anyone has thought of the possible instability/reduced structural integrity that changing/removing a seat could cause. By changing the layout of the seats or removing any seats alters the way a vehicle may react whilst being driven or in the event of it being involved in a collision. This may actually increase risk of injury to those conveyed leaving TDC open to possible litigation. He closes by saying that if vehicle is deemed to be safe by DfT then it should be deemed to be safe to carry the full numbers of passengers.*

**Licensing Managers response-** . Basildon's policy was simply mentioned in the consultation in order to gauge views on whether the trade locally might consider this as a viable, reasonable and proportionate alternative to either the complete withdrawal or the complete retention of TDC's current MPV seating policy. I accept that both Colchester and Ipswich Borough Council's license their taxi and private hire vehicles for the number of passengers indicated on the vehicle registration document. In regards to his comments on the TDC MPV seating policy,

Mr Mead has only included in his response the second part of paragraph 2(e) of the TDC MPV seating policy and has omitted the first part of this paragraph. It should be read in its entirety which is as follows:

2(e) 'The arrangements of the seats shall be such that no person has to remove, push forward or dismantle any seat or other obstacle; nor should it be necessary to climb over any person being carried in the vehicle or require any person to leave their seat to allow anyone to enter or leave the vehicle'. The paragraph in its entirety puts Mr Meads comments about needing to apply 2(e) to the middle seat of every car into a little more context, because the policy itself is clearly referring to MPV's and which means access and egress to a car door from the seats situated behind the middle row of seats. Access and egress to a car door from the rearmost seats in an MPV could be a very different proposition for passengers/customers compared to those persons situated in the middle row of seats and who have an immediate access to a door without climbing over any person, folding or moving a seat or requiring a person to leave their seat to allow anyone to enter or leave a vehicle. An MPV in this regard is different to a saloon vehicle which will only have a single front passenger seat with direct access to a car door and three passenger seats behind this with car doors either side of these passengers.

In regards to Mr Meads comments regarding paragraph 2(f) in the MPV seating policy, again this must be read in its entirety and the complete wording of the paragraph is as follows:

'If the seating arrangement does not allow free access to and from the vehicle as set out in condition (e) above then, in order that the vehicle may be licensed as a Hackney Carriage or Private Hire Vehicle and in the interests of public safety and comfort, the Council will require as many seats as may be deemed necessary to be removed'.

It is somewhat contradictory for Mr Mead to suggest that TDC's MPV seating policy requiring removal of a seat or a change to the seating configuration in an MPV could cause instability to the vehicle or reduce its structural integrity, because all MPV's are sold by manufacturers on the basis of the flexibility and versatility of their seating arrangements and the vehicles ability to lose seats and gain luggage space, or add seats and gain passenger numbers. If Mr Mead's concerns were correct then the manufacturers surely would not make or sell vehicles that have seating configurations that could so easily and flexibly be altered.

The DfT do not actually test all MPV's as suggested by Mr Mead in his response. Instead all Motor Vehicles driven on roads in Great Britain must comply with the following regulations in order to qualify to be driven on UK roads:

Road Vehicles (Construction and Use) Regulations 1986  
The requirements of the Motor Vehicle (Type Approval) Regulations 1980;  
Motor Vehicle (Type Approval) (Great Britain) Regulations 1984

In addition there are also European vehicle regulations that all vehicles must comply with and all of these regulations sets standards of roadworthiness that the car industry must build and sell their cars to.

These standards have also been informed since 1997 by the Euro NCAP (European New Car Assessment Programme) which tests and advises on car, driver, passenger and pedestrian safety.

**Mr C Thomas received 22 March 2016** – *Only five contractors in Clacton including Mr Thomas that qualifies for ECC Passenger Transport Framework who can bid for school transport contracts out of 130 in Essex. Because of high standards applied by TDC to local taxi trade they are undercut by vehicles licensed outside the district. Example given of Citroen Grand Picasso licensed by TDC for 4 passengers while Uttlesford DC licensed Grand Picasso does school contract at Frobisher Primary School in Jaywick licensed for 6 passengers. Mr Thomas believes taxi trade in Tendring being discriminated against in their own district and Uttlesford vehicles are licensed to poach. He believes there is no good reason why TDC having set minimum standards should allow these standards to be undermined by outsiders. If TDC were to legally discriminate it should be in favour of locally licensed vehicles. Suggest that unless TDC implements its minimum standards on all vehicles working in the district wherever they are licensed then it should ease its requirements to give locally licensed vehicles a chance to compete against licensed poachers. Personally he doesn't believe that 6 large adults hiring a cab to an airport should be squashed into a small car but on the other hand why discriminate against local cabs. He recommends easing the restrictions for MPV's to help TDC licensed taxis and to help small families.*

**Licensing Managers response-** ECC Transport Framework which administers and allocates school contracts is the responsibility of Essex County Council and Tendring District Council (TDC) has no involvement with this process or jurisdiction over it. TDC also has no powers to impose standards or conditions on drivers, vehicles or operators licensed by other licensing authorities either inside or outside of Essex. Neither has any other licensing authority powers to impose standards or conditions on a Tendring licensed driver, vehicle or operator. I am unsure as to what Mr Thomas means in his consultation response that "Uttlesford vehicles are licensed to poach" as only Hackney Carriage vehicles (taxis) licensed by TDC can rank on taxi ranks, ply for hire or be hailed for hire from the street in the Tendring area. Pre – booked Taxi or Private Hire vehicles licensed in another local authority area can of course carry out 'private hire' bookings in our area as indeed TDC licensed taxi and private hire vehicles can and do carry out private hire bookings to take and drop off customers in other local authority areas both neighbouring authorities and those that are further away. E.g. an airport run to Heathrow for example.

Because of the location of Stanstead airport in Uttlesford District Council's area, there are many much larger taxi and private hire companies who operate from the

Uttlesford area and which may also be a contributing factor in why Uttlesford taxi companies may win ECC school transport contracts. Numbers of vehicles and economies of scale for those larger companies may contribute towards lower bids being made for the contracts.

**Mr N R Pearson received 15 April 2016** – *I think the eight seater policy should be reviewed so we can use vehicles for the number of passengers they were designed for. Having been an owner operator for a number of years in this Borough it would bring us into line with the other Councils around us.*

**Licensing Managers response** – The Council’s MPV seating policy is being reviewed.

**Mr G Swain received 17 April 2016** - *Believes all Ford Galaxy’s should have 6 carrying seats. If a car has been designed for 7 people and these days with passenger safety in the manufacturers focus then most of the cars that we want as a taxi are safe. The average number of people that want multi taxi differs from the day time trade to that of night time trade in the day a family will want to go down the beach or pier this is now more likely to be mum and dad and 4 children or grandma and grandad with the children the 6 passenger carriers are ideal for this as they are not too high as the 8 seaters to get into and this means that we can pick up more fares. He doesn’t think that yellow handles in the back of cars will help if anything it will deter customers from the taxi as most associate it with a disabled car while we need these disabled taxis the majority of people will walk past you on the rank when you rank up if you have one. He has been in that situation. Does not think that people will take kindly to signs in the back of the car telling them where the escape exit is, people will not take kindly to them, consumers are a fickle bunch of people if something isn’t just right they don’t use you again and with more choice will go elsewhere.*

**Licensing Managers response** – I note Mr Swain’s comments, but he appears to place emphasis on MPV’s being used for short family journeys only e.g. “mum and dad and 4 children”. There are many other uses for these vehicles and for example MPV’s will be used and required to carry adults and their luggage from the District to Heathrow or Gatwick airport when not just their safety is an issue, but also the comfort and space available in the MPV for the passengers and their luggage to be carried over much longer distances for a much longer period of time. By virtue of their average height and size, there will of course be more space in the passenger seating area available for children than there is for adults and which may of course impact on the comfort of fare paying passengers, particularly on longer journeys.

I do not understand why taxi passengers/customers would be deterred from travelling in an MPV if it had florescent signage for exits and how to lift the second row of seats and coloured/ florescent marking to identify the operating levers that either tip or move the seating forward. Signage and markings like these are used in London taxis or on many other forms of passenger transport such as PSV’s (minibuses carrying between 9 to 16 passenger seats), buses, trains or aircraft for example. I am unaware of any reluctance from passengers to use these other forms of transport because of this.

**Mr G Egerton received 18 April 2016-** *Has been licensed by TDC to carry up to 8 passengers for many years. In his experience the current policy has been easy to follow. He has reviewed the information on Basildon's taxi and private hire vehicles policy which was included with your letter. In his opinion these requirements would be overly bureaucratic and unnecessary. He is concerned that should such a scheme be implemented in Tendring, it would disadvantage small to medium sized business by requiring us to make further changes at additional cost. Mr Egerton notes comment that the current seating policy will remain in place until the consultation has been completed and the committee has reconsidered the issues. Mr Egerton would strongly urge that the committee agree a process whereby drivers who have had their vehicles licensed under the existing policy are allowed to continue to operate as they are for the remaining life of the vehicle. At the point when the vehicle needs to be replaced the owner would then need to make sure that they adhere to any new policy. This would be a much fairer approach and would prevent costly changes for those who have only recently purchased vehicles (his in excess of £30,000) and secured their licence under the existing policy.*

**Licensing Managers response-** Basildon's policy was simply mentioned in the consultation in order to gauge views on whether the trade locally might consider this as a viable, reasonable and proportionate alternative to either the complete withdrawal or the complete retention of TDC's current MPV seating policy. His comments regarding any possible change to the current seating policy are noted and it will of course be a matter for the Licensing and Registration Committee to determine whether any such change is necessary and if it is, what form that change should take. They should also take into account Mr Egerton's comments regarding the process that any such change might take.

**Mr D Gustererson received 21 April 2016 –** *Car manufacturers have been for many years placing a strong emphasis on car and passenger safety and over the years have been responsible for some amazing technical innovations in a bid to make driving as safe as possible. With this in mind I think we can take it as read that if they design a vehicle that has 5 or upwards passenger seats then it is safe to carry said number of passengers and any further stipulation by the Council, especially with regard to reducing passenger numbers is unnecessary. It is just not logical to assume that passengers in a licensed vehicle, whether it be a taxi or a private hire are in greater danger, and therefore in greater need of protection, than passengers in a private vehicle which is what in effect any regulation from a licensing authority amounts to. I am the co-owner of probably the largest fleet of taxis in the Tendring area and obviously it is not in any way my in my interests to compromise passenger safety, but I do feel that the car designers are a much better judge of what constitutes safety than any local Council. On a more specific point the conference seating requirement for 8 seaters is particularly unwelcome and unpopular from a passenger point of view as many people do not like to sit facing in the opposite direction to the one they are travelling and to his mind should not be a requirement.*

**Licensing Managers response –** I would fully accept that since the Council's MPV seating policy was introduced in August 2003 there has been great improvements in vehicle technology and safety. However it should be borne in mind that there is a fundamental difference between using a vehicle as family car or a car for personal use to a vehicle that is being used as a business to carry fare paying

passengers/customers. It is therefore not just a question of safety, which of course is accepted as paramount, but the provision of passenger comfort and a proportionate amount of luggage space must surely also be able to be reasonably taken into account when considering the number of passengers that an MPV can be safely and comfortably licensed for.

It should also be borne in mind that the Council's current MPV seating policy was introduced with the advice and guidance of the Royal Society for the Prevention of Accidents which has a nationally and internationally renowned reputation for advising on safety technology and safety issues including car safety measures for passengers. The MPV seating policy was therefore not introduced by the Council on a whim, or without good reason to do so in terms of both passenger safety and passenger comfort.



accidents don't have to happen

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Patron: Her Majesty The Queen

Simon Harvey  
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Licensing Section  
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Thorpe Road  
Weeley  
Essex CO16 9AJ

28 April 2016

Dear Mr Harvey,

**Review of Tendring District Council's Seating Policy for Licensed Taxi and Private Hire Multi-Purpose Vehicles (MPV's) which Carry Up to 8 Passengers**

Thank you for your letter of 5 February 2016 seeking RoSPA's views on Tendring District Council's seating capacity policy for multi-purpose vehicles carrying up to 8 passengers.

The Council's current policy stipulates that no person should have to remove, push forward, dismantle or climb over any seat in order to enter or leave the vehicle, and any such seats must be removed for the vehicle to be licensed as a hackney carriage or private hire vehicle.

RoSPA has been asked for its view on this issue a number of times since the late 1990s, when people carriers which have three rows of seats began to be used as private hire vehicles. Our initial view was that passengers in the rearmost seats should be able to exit without the need to climb over, or move, another seat.

In 2005, the Department for Transport issued a consultation paper entitled "Taxis and Private Hire Vehicles – Consultation on Draft Best Practice Guidance" (RoSPA's response to the consultation can be found at [www.rospa.com/roadsafety/info/taxi\\_private\\_hire\\_licensing.pdf](http://www.rospa.com/roadsafety/info/taxi_private_hire_licensing.pdf)) and subsequently published "Taxi and Private Hire Vehicle Licensing: Best Practice Guidance" in 2010. A copy is available at <https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance>.

Paragraph 93 of the DfT's Guidelines states:

*The Department encourages local licensing authorities, as a matter of best practice, to play their part in promoting flexible services, so as to increase the availability of transport to the travelling public. This can be done partly by drawing the possibilities to the attention of taxi and PHV trade. It also should be borne in mind that vehicles with a higher seating capacity than the vehicles typically licensed as taxis (for example those with 6, 7 or 8 passenger seats) may be used.*

While the guidelines state that vehicles, such as people carriers, can be licensed as taxis, they do not specifically address the issue of whether or not a passenger seat should be removed as part of the licensing conditions.

It remains RoSPA's view that passengers should be able to exit a taxi or private hire vehicle without having to climb over or move a seat. Having said that, we do not think it is possible to estimate the additional risk to passengers who need to move a seat in order to exit the vehicle. As far as we are aware, the necessary accident and casualty data does not exist.

Therefore, it is difficult to estimate the potential effects of changing your policy to remove the requirement that every seat must be accessible without having to fold or tip up another seat.

However, we note the alternative seating policy operated by Basildon District Council to which Tendring District Council's consultation refers. In essence, Basildon's policy allows seats that have to be moved in order for passengers to enter or exit the vehicle, provided the vehicle has:

- at least three doors to the passenger compartment
- clear signs on how to lift seats in the second row
- operating levers to lift the seats that are coloured yellow or orange
- windows on the near and offside of the rear row of seats that can be used as exits in an emergency, with window exit signs
- a quick release device on the rear door for use in an emergency if one of the side passenger doors is inaccessible in an accident

This type of policy seems to offer a reasonable way of mitigating the risk of passengers in the rearmost row struggling to exit the vehicle quickly in an emergency because they have to climb over or move another seat. However, it still leaves some risk that a passenger may struggle to exit the vehicle quickly in an emergency, and with the current level of data and knowledge, it does not seem possible to be certain whether this option is best.

Yours sincerely



**Kevin Clinton**  
**Head of Road Safety**



### Licensing Managers Response to RoSPA Consultation

RoSPA's safety advice on this matter has not waivered or altered since they first took a position on the wellbeing of fare paying passengers in the late nineteen nineties when MPV vehicles first started to be licensed by Council's and RoSPA issued their guidance and opinion to Council's that "passengers should be able to exit a taxi or private hire vehicle without having to climb over or move a seat". They have again expressed the same opinion and given that same safety advice as part of this recent consultation process.

RoSPA have said as part of their response to this consultation that the MPV seating Policy adopted by Basildon Borough Council and its taxi and private hire trades in January 2015 seems to offer a reasonable way of mitigating risk of passengers in the rearmost row struggling to exit the vehicle in an emergency because they have to climb over or move another seat. However they have caveated this opinion by also saying that "it still leaves some risk that a passenger may struggle to exit the vehicle quickly in an emergency, and with the current level of data and knowledge, it does not seem possible to be certain whether this option is best".

Only RoSPA have however commented on the Basildon policy in any positive way and it is clear from the very small number of persons from the taxi trade who responded to the consultation that there is little appetite or interest amongst those responders to considering the Basildon seating policy as a replacement or alternative for TDC's current MPV seating policy. It certainly would be difficult to argue that there was a mandate for such a change amongst those few that have responded to the consultation.

RoSPA is a charitable organisation which for almost 100 years has formulated policies, practices and influenced legislation to prevent accidents and promote safety in a variety of industries and circumstances. Its views on the seating arrangements in MPVs (or people carriers) used for taxi or private hire work has not changed since the late 1990s. It is a consistent stance and there has seemingly been no evidence provided to them which has altered or made them reconsider this stance.

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**Essex Licensing Authorities MPV Seating Policies as at September 2016**

Basildon	<p>Changed policy requiring unrestricted access and egress to seating January 2015. Vehicles must now have at least three doors to passenger accommodation, signage showing how to lift seats properly, yellow/orange coloured operating levers, unobstructed windows, exit window signs and an internal device for the rear hatch doors to be opened from the inside of the vehicle.</p>
Braintree	<p>Licence number as per the vehicle registration document but no side facing seats</p>
Brentwood	<p>MPV policy requires direct access to front and middle row seats but does allow the middle row seat to be moved to permit egress and access to the rear.</p> <p><i>Currently reviewing policy to require direct access to all seats for safety reasons</i></p>
Castle Point	<p>In respect of minibuses a minimum of three doors to the passenger accommodation shall be provided. Where seat rows do not have immediate access to doorways, a clear passageway must be provided as a means of access and egress.</p> <p>Have proper signs on how to lift the second rows of seats</p> <p>Have exit windows on the near and offside in respect of the rear row of seats and that they be free from obstruction at all times to allow access in the event of an emergency.</p> <p>Have well positioned exit window signs</p> <p>Have an internal device for the rear hatch door to be opened from the inside</p>
Chelmsford	<p>Seat must be removed if access/egress is restricted.</p> <p><i>Chelmsford have no plans to review their policy</i></p>
Colchester	<p>Licence number as per the vehicle registration document and have no restrictions.</p> <p><i>Colchester have no plans to change their policy</i></p>
Epping	<p>A sufficient number of doors allowing safe access and egress from the vehicle. Where there is only one passenger door that door shall be on the nearside of the vehicle.</p> <p><i>Following review of their MPV policy in April 2016.</i></p>

Harlow	<p>Licence number as per the vehicle registration document and have no restrictions.</p> <p><i>Harlow have no plans to review their policy</i></p>
Rochford	<p>The seating configuration in the passenger area behind the driver shall be such that no person for the purpose of ingress or egress of the vehicle shall have to move or dismantle any seat or other obstruction or manoeuvre over or round any other passenger or article carried in the vehicle.</p> <p><i>May be reviewed at some point in the future</i></p>
Southend	<p>No seat shall need to be moved or tilted before a passenger can enter or exit the vehicle.</p> <p><i>Southend have no plans to review their policy</i></p>
Thurrock	<p>Will require rear seat to be removed if access/egress is restricted. They won't licence a Ford Galaxy because the base of the seat needs to be moved.</p> <ol style="list-style-type: none"> <li>1. Any seat adjacent to the nearside door of the passenger compartment of a licensed vehicle must be removed, where necessary, to permit a clear and unobstructed entry to and exit from the back row seating compartment.</li> <li>2. No person entering or exiting the licensed vehicle should have to remove or dismantle any seat or other obstacle, climb over any person being carried in the vehicle, or have any other person leave their seat to facilitate them entering or exiting the vehicle.</li> </ol> <p><i>Thurrock have no plans to review their policy</i></p>
Uttlesford	<p>Must have a rear internal body width of a least 4 feet and 3 inches measured from 6 inches below the top and 6 inches in front of the rear back rest with both doors closed, minimum of 4 doors, at least 8½ inches leg room for rear passengers measured from the rear door pillar to the nearest point of the rear seat sqab, to have all doors capable of being opened from both inside and outside of the vehicle to an angle of 60 degrees or in the case of sliding doors to be capable of providing an open unrestricted minimum width of 2 feet and 10 inches and must be fitted exclusively with safety glass.</p> <p><i>Adopted 7 April 2016</i></p>

\* Ipswich Borough Council also does not have any restriction on seating capacity and will licence the number of passengers for the vehicle as per the details shown on the vehicle registration document.

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