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Licensing and Registration Committee

12 April 2017

**MINUTES OF THE MEETING OF THE LICENSING AND REGISTRATION
COMMITTEE, HELD ON WEDNESDAY 12 APRIL 2017 AT 7.30 PM
IN THE COUNCIL CHAMBER, COUNCIL OFFICES, THORPE ROAD, WEELEY**

Present:	Councillors Cossens (Chairman), Callender (Vice-Chairman), Amos, B Brown, M Brown, V Guglielmi, Raby, Skeels Jnr, Watson, White, Whitmore and Winfield
In Attendance:	Mark Westall (Head of Customer and Commercial Services), Linda Trembath (Senior Solicitor - Litigation and Governance), Simon Harvey (Licensing Manager) and Katie Sullivan (Committee Services Officer)

23. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were received from Councillors Bucke and J Henderson (with no substitutions).

24. MINUTES OF THE LAST MEETING

The minutes of the last meeting of the Committee held on Wednesday 18 January 2017 were approved as a correct record and signed by the Chairman.

25. DECLARATIONS OF INTEREST

There were none.

26. MINUTES OF THE LICENSING (GENERAL PURPOSES) SUB-COMMITTEE HELD ON 20 MARCH 2017

The Committee received and noted, for information only, the minutes of the meeting of the Licensing (General Purposes) Sub-Committee held on 20 March 2017.

27. REPORT OF THE MANAGEMENT AND MEMBERS' SUPPORT MANAGER - A.1 - CORPORATE ENFORCEMENT STRATEGY

The Committee had before it a report (A.1) which sought its consideration of the Council's draft Corporate Enforcement Strategy. The draft Strategy was attached to the report as Appendix A.

It was reported that:

- At Cabinet on 16 December 2016, the draft Corporate Enforcement Strategy had been agreed for consultation. Within the Council, it had been agreed that the Strategy be considered by the Planning, Licensing and Registration and Community Leadership and Partnerships Committees.
- The purpose of the Corporate Enforcement Strategy was to set out the overarching "umbrella" principles to apply to all service departments and its Officers within the Council which undertook enforcement functions.
- The Council's enforcement responsibilities and powers covered a wide range of legislation with a variety of formal and informal sanctions, which aimed to protect the

interests and rights of people in relation to the environment that they use. The enforcement of regulatory legislation enabled the Council to achieve its priorities contained within the Corporate Plan and fitted with national policy, codes and guidance.

- It was important that those enforcement functions were carried out in an equitable, practical and consistent manner, and that both those subject to regulation and those on whose behalf enforcement was carried out could understand the approach taken. The purpose of the Corporate Enforcement Strategy was to explain clearly and publicly summarise Tendring District Council's intended approach towards enforcement and dealing with non-compliance.
- It was important to note that the Licensing and Registration and Planning Committees retained the legal responsibility and power with regards to enforcement decisions including the proposed adoption of a corporate Harm Risk Assessment Checklist and Template however, it was intended that some general principles could be agreed across the Council to form a corporate approach.
- The draft Strategy included the following sections on how the Council would deal with enforcement:-
 - Openness & Transparency;
 - Helpfulness;
 - Consistency;
 - Proportionality;
 - Targeting resources on higher risk; and
 - Accountability.

The Council's Senior Solicitor (Litigation and Governance), went through the Strategy with the Committee and asked for any comments and suggestions. Members' responses included the following:

- (1) Articles to be put in the press to help educate the public on what to expect when it comes to enforcement;
- (2) A review of the Strategy to take place every 4 years to enable newly elected Councillors to express their comments and suggestions;
- (3) Suggested word changes to the draft strategy; and
- (4) Review of Appendix B to ensure all the relevant Acts were listed.

The Committee was informed that the outcome of the consultation, including the comments made by members of the Committee, would be reported back to Cabinet for consideration in the adoption of the final document.

28. REPORT OF THE CORPORATE DIRECTOR (OPERATIONAL SERVICES) - A.2 - COMMENCEMENT AND IMPLEMENTATION PROCESS FOR SECTIONS 165 AND 167 OF THE EQUALITY ACT 2010

The Committee had before it a report (A.2) which sought its agreement to the commencement and implementation of Sections 165 and 167 of the Equality Act 2010.

The Licensing Manager informed the Committee of the requirements that those Sections would place on the Council in its capacity as the Licensing Authority for Tendring

Hackney Carriage and Private Hire drivers, vehicles and operators and also the legal obligations which it would place on Hackney Carriage and Private Hire drivers and operators of designated wheelchair accessible vehicles.

It was reported that:

- The Government had enacted Sections 165 and 167 of the Equality Act 2010 with effect from 6 April 2017 in respect to Hackney Carriage (Taxi) and Private Hire Drivers, Vehicles and Operators.
- This had required the Council as the Licensing Authority to make a list of Taxi and Private Hire vehicles licensed by Tendring District Council that it considered to be wheelchair accessible (e.g. as a minimum, the vehicle was designed for and was able to carry, a passenger seated in a standard “reference wheelchair” and the Council would also publish a list of those vehicles, (known as designated vehicles, under Section 167 of the EA 2010)).
- It had also required the Council to set a date from when it would be unlawful in the District for drivers of licensed Tendring District Council designated wheelchair accessible Taxi and Private Hire vehicles to refuse to carry passengers in wheelchairs; provide assistance to those passengers and prohibit wheelchair passengers from being charged extra for their journey.
- The date was likely to be six months from the date that the Committee commenced the implementation of the policy.
- It would be a criminal offence if a driver of a designated wheelchair accessible vehicle failed to comply with the duties specified and any driver convicted would be liable to receive a level 3 fine which was currently £1,000.
- Drivers could however apply for a medical exemption to undertake the carriage of a wheelchair accessible passenger and the duties associated with that carriage under Section 165 of the EA 2010. It would be at the discretion of the Council as to who it would accept that medical exemption from, (i.e. the driver’s own General Practitioner, or one that the Local Authority designated such as an occupational health Doctor and any such medical requests or examinations would be undertaken at the driver’s own expense).
- There was no national or central Government set standard for design of wheelchair accessible vehicles in terms of their size and dimensions.
- There was no requirement for Councils to specify that a certain percentage of the Taxi and Private Hire vehicles that they licence must be wheelchair accessible although as at March 2015, 61% of Local Authorities did. In London (since January 2000) and other Metropolitan areas, Taxis must be wheelchair accessible in order to be granted a licence.
- Outside London and other Metropolitan areas the average percentage of wheelchair accessible vehicles was 36% in urban areas and 13% in rural areas (as at March 2015).

- In Tendring, it was estimated that we currently had approximately 14 wheelchair accessible Taxi and Private Hire vehicles that were likely to be designated out of around 285 licensed vehicles.
- The number of wheelchair accessible vehicles in Tendring would only be confirmed once the process of vehicle designation commenced in the District.
- The cost of a wheelchair accessible vehicle was considerably higher than that of an ordinary saloon or MPV type vehicle.

The Licensing Manager informed the Committee that there was an appeal process for vehicle proprietors who disagreed with the Council's decision to designate their vehicle as a wheelchair accessible vehicle and that this must be submitted to the Magistrates Court within 28 days of the designation decision being made.

The Licensing Manager also informed the Committee that the DfT and Government had suggested an implementation period of six months to allow for relevant vehicles to be designated as wheelchair accessible, drivers to be able to apply for medical exemptions and appeal any refusals to exempt at Magistrates Court and also for vehicle proprietors to appeal any designation of their vehicle to Magistrates' Court.

The Licensing Manager confirmed that the Act went live on 6 April 2017 so if the Licensing Authority were able to achieve a six month lead it would mean that Sections 165 and 167 of the Equality Act 2010 would begin to apply in Tendring as from around mid- October 2017.

Members were informed that the Licensing Section had commenced the process of communicating the implementation of Sections 165 and 167 to the Taxi and Private Hire trades and had explained to them what the Council's and their legal responsibilities would be under those sections by way of an article in April's Taxi newsletter.

Members raised questions on various issues which were responded to by Officers.

Following discussion, it was moved by Councillor Callender seconded by Councillor Watson and unanimously **RESOLVED** that the Committee:

- a) Agrees to implement Sections 165 and 167 of the Equality Act 2010 as laid out in the main body of the report and looks to implement within a period of six months from the date of this Committee meeting if it is possible to do so;
- b) Delegates the final setting of this future date to the Head of Customer and Commercial Services and/or the Licensing Manager;
- c) Adopts the suggestion made by the Department for Transport (DfT) and the Government that applications and decisions on medical or physical exemptions for drivers will be fairer and more objective if medical assessments are carried out by an appropriately qualified medical professional who is independent of the driver and that this will be achieved by referring the driver/applicant to the Council's Occupational Health provider/assessor who is independent of the Council and such a request and referral for an exemption will be entirely at the applicant's own expense; and

- d) Designates the criteria for listing and publishing the details of wheelchair accessible vehicles in the Tendring District as per the details outlined in Appendices 1 and 2 of this report and are those vehicles that are able to carry a passenger seated in a “reference wheelchair” or larger.

29. EXCLUSION OF PRESS AND PUBLIC

It was **RESOLVED** that, under Schedule 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of Agenda item 8 on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A, as amended, of the Act.

30. EXEMPT MINUTES OF THE LICENSING (GENERAL PURPOSES) SUB-COMMITTEE HELD ON 20 MARCH 2017

The Committee received and noted, for information only, the exempt minutes of the meeting of the Licensing (General Purposes) Sub-Committee held on 20 March 2017.

The meeting was declared closed at 9.40 p.m.

Chairman

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