

Mission Statement

To Improve the Quality of Life
For Those Who Live and Work in The District

21 November 2008

Dear Councillor

You are hereby invited to a meeting of the **Licensing Committee** to be held in **Committee Room 2**, Civic Centre, Portholme Road, Selby on **Monday 1 December 2008** commencing at **10:00 am**.

The agenda is set out below.

1. Apologies for Absence and Notice of Substitution

To receive apologies for absence and notification of substitution.

2. Disclosure of Interest

To receive any disclosures of interest in matters to be considered at the meeting in accordance with the provisions of Section 117 of the Local Government Act 1972, and Sections 50, 52 and 81 of the Local Government Act 2000 and the Members' Code of Conduct adopted by the Council.

3. Minutes

To confirm as a correct record the minutes of the proceedings of the meeting of the Licensing Committee held on 27 October 2008 (pages 4 to 5).

4. Procedure

To outline the procedure to be followed at the meeting (pages 6 to 7 attached).

5. Chair's Address to the Licensing Committee

6. Guidelines for Assessing Financial Hardship

Report of the Head of Service – Legal and Democratic Services
(pages 8 to 12 attached).

M Connor
Chief Executive
21 November 2008

Disclosure of Interest – Guidance Notes:

- (a) Councillors are reminded of the need to consider whether they have any personal or prejudicial interests to declare on any item on this agenda, and, if so, of the need to explain the reason(s) why they have any personal or prejudicial interests when making a declaration.
- (b) The Democratic Services Officer or relevant Committee Administrator will be pleased to advise you on interest issues. Ideally their views should be sought as soon as possible and preferably prior to the day of the meeting, so that time is available to explore adequately any issues that might arise.

[Please note that the papers relating to the applications have been circulated to councillors of the Licensing Committee only, who should return the agenda to Democratic Services at the conclusion of the meeting to enable the papers to be destroyed confidentially].

Dates of Future Meetings of the Licensing Committee

Date of Meeting	Deadline Date	Distribution Date
15 December 2008	27 November 2008	5 December 2008
12 January 2009	18 December 2008	23 December 2008
9 February 2009	22 January 2009	30 January 2009

**Membership of the Licensing Committee
10 Members**

Conservative	Labour	Independent
J Dyson	D Davies	J McCartney
K McSherry	S Duckett	
C Pearson (Vice-Chair)		
S Ryder		
R Sayner (Chair)		
A Spetch		
D White		

Enquiries relating to this agenda, please contact Tracey Peam on:

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SELBY DISTRICT COUNCIL

Minutes of the proceedings of a meeting of the Licensing Committee held on 27 October 2008, in Committee Room 2, The Civic Centre, Portholme Road, Selby, commencing at 10.00 am.

395	Minutes
396	Chair's Address to the Licensing Committee
397	Introduction of DVLA Checks

Present: Councillor R Sayner in the Chair

Councillors: Mrs D Davies, J Deans (*for Mrs K McSherry*), Mrs J Dyson, Mrs S Duckett, C Pearson, Mrs S Ryder, Mrs A Spetch and Mrs D White.

Officials: Senior Solicitor, Licensing Enforcement Officer and Committee Administrator

Public: 0

Press: 0

In Attendance: Mr M Routlege – Minute No: 397

393 **Apologies for Absence and Substitution**

Apologies were received from Councillors J McCartney and Mrs K McSherry.

Substitute Councillor was Councillor J Deans (*for Mrs K McSherry*).

394 **Disclosure of Interest**

None.

395 **Minutes**

Resolved:

That the minutes of the proceedings of the meeting of the Licensing Committee held on 29 September 2008 be confirmed as a correct record and be signed by the Chair.

396

Chair's Address to the Licensing Committee

The Chair gave no address to this meeting.

397

Introduction of DVLA Checks

Councillors received the report of the Licensing Enforcement Officer and were also provided with a power point presentation by Intelligent Data Systems (UK) Limited (IDS) which gave councillors the latest and most complete driving licence history in relation to those applying for the grant or renewal of a Hackney Carriage and Private Hire driver's licences.

All applicants for Hackney Carriage and Private Hire Driver's licences are required to undergo a Criminal Record Bureau (CRB) check, which provides a disclosure of any criminal history. However, CRB checks do not include either penalty points or traffic related convictions and the only means available to the Council to confirm these details is through a check with the Driver and Vehicle Licensing Agency (DVLA).

The safety of the travelling public is paramount when considering such applications and therefore the Licensing Section consider that it is important to check applicants prior to the issue of a particular licence.

The system before Committee today would enable the Council to check not only new applicants but those individuals renewing their licences to prevent any passengers being put at risk.

The administration of all DVLA checks would be outsourced to IDS at a cost of £8.25, which would be passed on to the drivers and embedded within the yearly licence fee.

After raising various questions and concerns councillors gave full consideration to the facts presented and were unanimously agreed the that implementation of DVLA checks be approved.

Resolved: That

- (i) the introduction of a check of all driver's licences, with effect from 27 October 2008 be approved;**
- (ii) the cost of the check be added to the yearly licence fee;**
- (iii) the Licensing policy be amended to require all new and existing hackney carriage and private hire drivers to consent to DVLA checks in order to operate on behalf of Selby District Council.**

The meeting closed at 11:05 am.

Licensing Committee
27 October 2008

LICENSING COMMITTEE

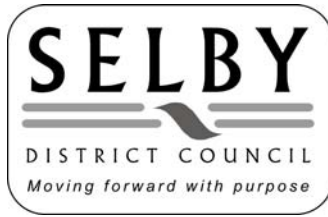
PROCEDURES TO BE FOLLOWED

The Licensing Committee acts in a quasi judicial capacity to give a fair hearing to an applicant where a hearing is required by law or equity. When considering the case the only evidence the Councillors of the Committee can take into account is evidence previously submitted to form the agenda and any verbal evidence given at the actual meeting by Officers representing the Council and by the applicant or his/her representative, and their witnesses. The following procedures must be followed.

1. Procedures to be followed when submitting an application to the Licensing Committee for consideration;
 - i) The Council's Officers will liaise with the Committee Section to arrange a suitable date for the meeting. The applicant and Members of the Committee will be informed of this date in writing and a copy of the procedure note will be included for the applicant.
 - ii) The applicant and Council's Officers will submit any written evidence to the Committee Section for inclusion in the agenda by a given date. If the evidence is to be verbal, this should be stated.
 - iii) If witnesses are to be called the Committee Section must be notified prior to the hearing.
 - iv) Any application for adjournment because of late submission of papers, will in principle be considered sympathetically by the Committee.
2. The procedure to be followed by the Licensing Committee:
 - i) For each individual case the applicant and any representatives will be shown into the Committee Room at the same time as the appropriate Council's Officers. Witnesses will enter the room at the same time unless there are any objections.
 - ii) The Head of Service – Legal and Democratic Service will introduce the applicant, any representatives, witnesses and the Council's Officers to the Members of the Committee.
 - iii) The Chair will introduce Councillors of the Committee.
 - iv) The Chair will then go through the procedure as follows:

- a) Officers representing the Council will present the case for the Council. They may present such witnesses as they believe are appropriate.
- b) Officers representing the Council, and any witnesses, will then answer questions from the applicant or his/her representative, and from Members of the Committee.
- c) The applicant or his/her representative will then present the applicant's case. They may present such witnesses as they believe are appropriate.
- d) The applicant or his/her representative, and any witnesses, will then answer questions from the Committee and the Council's Officers.
- e) The Council's Officers will then sum up on behalf of the Council.
- f) The applicant or his/her representative will then sum up.
- g) The applicant and his/her representative will then be asked whether they consider they have had a fair hearing and the Committee will take into account any comments, which are then made. The Chair of the Committee will then ask the Council's Officers presenting the case the same question and will again take account of any comments made.
- h) The Council's Officers, the applicant and his/her representative, all witnesses, will then withdraw from the meeting whilst the Committee makes their decision on the evidence presented.
- i) The applicant and his/her representative, the Council's Officers, all witnesses, will be invited back into the meeting to be informed of the Committee's decision.

Following the Committee meeting the Head of Service – Legal and Democratic Services will write to the applicant informing them of the decision of the Licensing Committee.



Agenda Item No: 6

Title: Guidelines for Assessing Financial Hardship

To: Licensing Committee

Date: 1 December 2008

Service Area: Legal and Democratic Services

Author: Peter Burns – Head of Service, Legal and Democratic Services

Presented by: Tim Grogan – Licensing Enforcement Officer

1 Purpose of Report

To consider a minor amendment to a policy.

2 Recommendation(s)

To approve the amendment to the policy.

3 Executive Summary

Members are asked to consider advice given by counsel.

4 The Report

- 4.1 Members will be well aware from time to time applicants apply for licenses for Hackney Carriage Vehicles and ask for a dispensation to not comply with the requirements of the vehicle to be accessible for disabled passengers on the grounds of financial hardship.
- 4.2 The Licensing Committee at its meeting on the 5 December 2005 adopted criteria to consider what constituted 'financial hardship'.
- 4.3 Attached to this paper as Appendix A is a copy of the guidelines which were approved by the Licensing Committee and were then approved by Council on the 13 December 2005.
- 4.4 We have had a recent case in the York Crown Court where an applicant appealed against this Committees decision to refuse to allow a vehicle not to be accessible to the disabled but as part and parcel of that appeal, Counsel for the District Council considered the District Council's guidelines and has advised that two sentences should be added within the policy being point (1).
- 4.5 Point 1 should now be read as follows
- 4.6 "The starting point is the full financial position of the applicant. This includes assets held by the applicant and any he may have access to which may be held by another. Documentary evidence of the full financial position is advisable and the burden of proving hardship is on the applicant. The committee expect income and expenditure for at least the last two years preferably produced by the individuals accountant. In looking at an applicants liabilities, expenses and debts those associated with the business will be given priority to other personal debts. Although personal debts might be relevant they should be given much less weight than commitments associated with the business".
- 4.7 Members will see two additional sentences have been included in the said Point 1 of the financial hardship policy. These are underlined in the report for ease of reference.

5 Financial Implications

There are no financial implications

6 Conclusions

Members are asked to consider the recommendation.

7 Link to Corporate Plan

Please see the reference to priorities.

8 How Does This Report Link to the Council’s Priorities?

The policy assists in ensuring Community Safety.

9 Impact on Corporate Policies

9.1	Service Improvement	Impact
9.2	Equalities	No Impact
9.3	Community Safety and Crime	Impact
9.4	Procurement	No Impact
9.5	Risk Management	No Impact
9.6	Sustainability	No Impact
9.7	Value for Money	No Impact

10 Background Papers

These can be inspected in the Legal Department.

GUIDELINES FOR LICENSING COMMITTEE TO CONSIDER ASSESSING FINANCIAL HARDSHIP

Agreed at Licensing Committee on 5th December, 2005
Agreed at Full Council on 13th December, 2005

The District Council's existing policy on granting Licences for hackney carriage vehicles enables an applicant to seek to not comply with the requirement for the vehicle to be accessible for disabled passengers on the ground of financial hardship.

On the 24th October, 2005, the Committee discussed as to what would constitute "financial hardship".

The Policy relating to this particular aspect has evolved over a period of time and Officers of the District Council namely, Peter Burns, Head of Legal Services and Tim Grogan, Licensing Manager, believe that the Policy in its present form is sound and should not be changed. In deed, the Policy has been subject to consideration by a Judge in the Crown Court on two occasions recently, both of whom have indicated that they believe that the Policy is sound.

However, it was agreed at the Committee that some consideration should be given to what does constitute "financial hardship". The following is a suggestion for consideration.

- (i) The starting point is the full financial position of the applicant. The Committee expect details of income and expenses for at least the last two years, preferably produced by the individual's accountant. In looking at an applicant's liabilities, expenses and debts, those associated with the business would be given priority over personal debts. Although personal debts might be relevant, they should be given much less weight than commitments associated with the business.
- (ii) The age and condition of the vehicle subject to the present application must, of course, be considered together with the cost of such a vehicle and the applicant will also need to explain whether he has made enquiries with regard to the purchase of a vehicle which does have access facilities for the disabled. The Committee have become mindful of the fact that second hand vehicles can be obtained at relatively reasonable cost although in cases in the past the starting point appears to have been that applicants have assumed that new vehicles are to be purchased at a cost well in excess of £20,000. Applicants will be asked to explain fully that they have looked into the full range of vehicles offering wheelchair accessible facilities.
- (iii) The age of the applicant can be considered particularly if the individual is near to retiring age and a large financial commitment would not be reasonable in the circumstances because of the limited number of years which the individual is intending to continue to work.

- (iv) Where an individual applies for hardship in relation to an application, he should be informed that in the event of his application being successful, then the Committee feel that he takes the necessary steps to ensure that provision is made within his business for a replacement vehicle in the future, which complies with this policy and that in the event of any claim for hardship on any second or subsequent occasion, it will be a material consideration that he had a previous application approved and was given this appropriate advice and that any further hardship claim might be more difficult to prove.
- (v) If the applicant is an existing Hackney Carriage Operator consideration should be given to the type of vehicle currently being used as well as the number of years that individual has been licensed by the Council. Particular weight should be attached if for instance the operator was licensed prior to the policy change in June 1999.
- (vi) This list of guidelines is not exhaustive and in appropriate circumstances additional questions can be asked.