

Mission Statement

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

30 October 2009

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, **9 November 2009** 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 5 October 2009

4. Procedure

To outline the procedure to be followed at the meeting

5. Hackney Carriage Vehicle Licence Conditions

To outline the guidance for Hackney Carriage Licence holders.

6. Chair's Address to the Licensing Committee

7. Application for Removal of a Consent street

Report of the Solicitor to the Council

8. Licensing Act 2003 – Minor Variations

Report of the Solicitor to the Council

9. Private Session

That in accordance with Section 100(A)(4) of the Local Government Act 1972 in view of the nature of the business to be transacted, the meeting be not open to the Press and public during discussion of the following items as there will be disclosure of exempt information as defined in Section 100(1) of the Act as described in paragraph 1 of Part 1 of Schedule 12(A) of the Act.

10. Application for a Private Hire Driver's Licence

Report of the Solicitor to the Council

11. Complaint About the Behaviour of a Licensed Private Hire Driver

Report of the Solicitor to the Council

S Martin
Strategic Director
30 October 2009

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
7 December 2009	19 November 2009	27 November 2009
11 January 2009	21 December 2009	31 December 2009

Membership of the Licensing Committee 10 Members

Conservative	Labour	Independent
K Ellis		
J Dyson	D Davies	J McCartney
P Mackay	S Duckett	
K McSherry		
S Ryder		
R Sayner (Chair)		
D White (Vice Chair)		

Enquiries relating to this agenda, please contact Jade Hibberd on:

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Descriptions of Exempt Information

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes –
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
8. Qualifications for Exempt Information:

Information falling within paragraph 3 is not exempt information by virtue of that paragraph if it is required to be registered under -

- (a) the Companies Act 1985;
 - (b) the Friendly Societies Act 1974;
 - (c) the Friendly Societies Act 1992;
 - (d) the Industrial and Provident Societies Acts 1965 to 1978;
 - (e) the Building Societies Act 1986; or
 - (f) the Charities Act 1993.
9. Information falling within any of the 7 categories listed above is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.
 10. Information which;
 - (a) falls within any of paragraphs 1 to 7 above; and
 - (b) is not prevented from being exempt by virtue of paragraph 8 or 9 above,

is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Minutes of the proceedings of a meeting of the Licensing Committee held on 5 October 2009, in Committee Room 2, The Civic Centre, Portholme Road, Selby, commencing at 10.00 am.

309	Minutes
310	Procedure
311	Guidelines relating to the relevance of convictions
312	Chair's Address to the Licensing Committee
313	Proposed introduction of Driving Standards Agency Hackney Carriage and Private Hire driving assessments for new applicants – report of the Licensing Officer.
314	Private Session
315	Application for a Private Hire Driver's Licence
316	Application for a Private Hire Driver's Licence
317	Application for a Private Hire Driver's Licence

Present: Councillor Mrs D White (Vice Chair) in the Chair

Councillors: Mrs E Metcalfe (for R Saynor), Mrs D Davis, Mrs J Dyson, Mr K Ellis, Mr J McCartney, Mrs K McSherry, Mrs S Ryder, and Mrs P Mackay.

Officials: Solicitor, Licensing Enforcement Officer and Committee Administrator

In attendance:

Public: 1

Press: 0

307 **Apologies for Absence and Substitution**

Apologies were received from Councillors R Sayner and Mrs S Duckett.

Substitute Councillor was Mrs E Metcalfe (for R Sayner).

308 **Disclosure of Interest**

None.

309 **Minutes**

Resolved:

That the minutes of the proceedings of the meeting of the

Licensing Committee

5 October 2009

Licensing Committee held on 7 September 2009 be confirmed as a correct record and be signed by the Chair.

310 **Procedure**

The Procedure was noted.

311 **Guidelines relating to the relevance of convictions**

The Guidelines were noted.

312 **Chair's Address to the Licensing Committee**

The Chair informed the Committee that there would be an additional item to the agenda, which was as follows:

'Proposed introduction of Driving Standards Agency Hackney Carriage and Private Hire Driving Assessments for New Applicants'

It was decided that this item would be considered before the meeting entered private session.

313 **Proposed Introduction of Driving Standards Agency Hackney Carriage and Private Hire Driving Assessments for New Applicants**

Andy Mitchell, a representative from the Driving Standards Association (DSA), presented the committee with a proposal for the new assessment. It was highlighted that the main consideration in its development was the safety and comfort of passengers.

Councillors received the report of the Licensing Enforcement Officer with regard to amending the councils existing policy for Hackney Carriage and Private Hire Driver applications by introducing a requirement for all new applicants to obtain a pass certificate from the Driving Standards Agency (DSA) as part of the application process.

Resolved: That

- 1) There is a requirement for all new Hackney Carriage and Private Hire Drivers to attain a pass in the appropriate Driving Standards Agency test and assessment, including where relevant, wheelchair training for those drivers of wheelchair accessible vehicles, before their application is considered by the Council**
- 2) In addition, where deemed necessary to adopt the requirement in disciplinary or complaints matters**

- involving licensed drivers
- 3) The assessment requirement is adopted as of 1st December 2009.

314 **Private Session**

Resolved:

That in accordance with Section 100(A)(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business, as there will be disclosure of exempt information as defined in paragraph 1 of Part 1 of Section 12A of the Act, as amended by the Local Government (Access to Information) (Variation) Order 2006.

315 **Application for a Private Hire Driver's Licence**

Councillors received the report of the Licensing Enforcement Officer in respect of the applicant's desire to be issued with a Private Hire Driver's Licence and his fitness to operate as a consequence of a CRB disclosure.

The Licensing Enforcement Officer outlined details of the case.

The applicant gave councillors a detailed account of his antecedents.

Resolved:

That the applicant be granted a Private Hire Driver's Licence, with the advisory suggestion that the applicant undertake the new DSA driving assessment.

316 **Application for a Private Hire Driver's Licence**

Councillors received the report of the Licensing Enforcement Officer in respect of the applicant's desire to be issued with a Private Hire Driver's Licence and his fitness to operate as a consequence of a CRB disclosure.

The Licensing Enforcement Officer outlined details of the case.

The applicant gave councillors a detailed account of his antecedents.

Resolved:

That having considered all the evidence before them and in particular guidance in relation to unspent convictions, the applicant be refused a Private Hire Driver's Licence.

Application for a Private Hire Driver's Licence

Councillors were informed by the Licensing Officer that the applicant was unable to attend the meeting. The Committee decided that as this was the second time in which the applicant was unable to attend the case would be considered in their absence.

The Licensing Enforcement Officer outlined details of the case.

Resolved:

That the applicant be refused a Private Hire Driver's Licence due to a lack of support to the case in that the applicant was unable to give a detailed account of his antecedents to assist the committee in making a decision.

The meeting closed at 11:43 am.

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 Members 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 District Solicitor will introduce the applicant, any representatives, witnesses and the Council's Officers to the Members of the Committee.
 - iii) The Chair will introduce Members 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, press and public, will then be asked to 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, press and public, will be invited back into the meeting to be informed of the Committee's decision.

Following the Committee meeting the Committee Section will inform in writing to the applicant the decision of the Licensing Committee.

HACKNEY CARRIAGE VEHICLE LICENCE CONDITIONS

1. INTERPRETATION

In these conditions;

- a) "the Council" means Selby District Council.
- b) "Authorised Officer" means any officer authorised in writing by the Council to discharge duties under the above Act.
- c) "the vehicle" means the vehicle that is the subject of the hackney carriage vehicle licence to which the conditions are attached.
- d) "the proprietor" means the person for the time being shown on the hackney carriage vehicle licence as the proprietor of the vehicle.
- e) "the driver" means the driver for the time being of the vehicle.
- f) "mechanical inspection" means the certificate issued by the Council's nominated garage certifying that the vehicle is mechanically sound.
- g) Any reference to any statute or subordinate legislation shall be deemed to include a reference to any amendment or re-enactment.

2. SUITABILITY OF VEHICLE

The vehicle that is the subject of this licence shall meet the vehicle specification for hackney carriage vehicles adopted by the council.

3. MAINTENANCE OF VEHICLE

- a) The licensed vehicle must be adequately maintained and roadworthy at all times.
- b) All seats, carpets, floor coverings, headlining and internal trim shall be complete and free from cuts, tears or serious staining.

5. USE OF FARE METERS

- a) The vehicle shall be fitted with a meter that is approved by British Standard or equivalent EU standard and be correctly calibrated and sealed by the council before it is used. The meter shall be mounted in such a position that the fare displayed can be clearly seen by the hirer.
- b) At all times a tariff card must be clearly be displayed where it can be seen by the hirer.

6. SIGNS

- a) No signs, notices, advertisements, plates, marks, letters, figures, symbols, emblems or devices whatsoever (collectively referred to as "signs"), other than those mentioned below shall be displayed on, in or from the vehicle without the permission of the licensing authority.
- b) Signs permitted are:
 - 1) any registration number.
 - 2) any sign required by statute or subordinate legislation
 - 3) any sign on a taximeter indicating the vehicle has been hired.
 - 4) the licence plate
 - 5) not more than two panels displayed on the exterior of the vehicle which do not exceed 12 inches in width and 8 inches in depth and are displayed on each of the front door panels, and give the name and telephone number of the operator, which may include a company logo or trademark and indicate that the vehicle must be pre-booked.
 - 6) any sign indicating membership of a national motoring association.

- 7) any sign requesting passengers not to smoke in the vehicle.
 - 8) any sign provided by the North Yorkshire County Council to show that the vehicle is used for school contracts shall be displayed in the windscreen in such a manner so as not to obstruct the drivers vision, and may only be displayed when the vehicle is being used for such contract work.
- c) Any sign permitted must be positioned so as not to impede visibility and in any event no sign shall be positioned on the rear window of the vehicle, nor hanging obstruction be placed in any part of the vehicle.
 - d) All badges, plates or signs provided through the Council remain the property of the Council at all times.
 - e) An external roof light shall be fitted that clearly identifies the vehicle as a hackney carriage. The roof light shall be illuminated when the vehicle is plying for hire and extinguished when the vehicle is hired.

7. SAFETY EQUIPMENT

The proprietor of the vehicle shall:

- a) Provide an efficient vaporising liquid or dry powder fire extinguisher, which shall be carried in such position as to be readily available at all times. This should be to the current British Standard or equivalent EU Standard. The fire extinguisher shall be permanently and legibly marked with the registration number of the vehicle.
- b) Ensure that seat belts operate efficiently at all times and comply with the requirements of any prevailing legislation. If a defect in operation is discovered it shall be reported to the authorised officer of the council immediately.

8. INSPECTION OF VEHICLE

- a) The vehicle may not be available for hire or be used as a hackney carriage vehicle unless there is a council mechanical inspection certificate in force in respect of that vehicle.
- b) The vehicle must be inspected and a mechanical inspection certificate issued within one month of application for the vehicle licence or for the re-licensing of a vehicle.

9. ALTERATION OF THE VEHICLE

No alteration in the specification, design or appearance of the vehicle shall be made without approval in writing by an authorised officer of the Council.

10. TOWING OF TRAILERS

No licensed vehicle may tow any trailer unless evidence of valid insurance to cover such use for hire and reward has been produced to the Authorised Officer. The vehicle licence plate issued by the council giving the licence number must be clearly displayed on the rear of any trailer used, this sign being in addition to that on the rear of the vehicle. The contents of such trailer must be secured and covered in a proper manner. Any trailer used must comply with regulations in all respects and be submitted for testing at the nominated garage when required by an authorised officer. Where required, the driver must hold the appropriate towing licence as issued by the DVLA.

11. ITEMS TO BE CARRIED IN THE VEHICLE

The following items must be carried in the vehicle when it is available for hire or used as a hackney carriage vehicle:

- a) A copy of the insurance certificate or current insurance cover note.

- b) The sign issued by the council giving the licence number of the vehicle must be displayed where it can be clearly seen by any passenger carried.
- c) A current vehicle excise disc correctly displayed in the windscreen.

12. INSURANCE

- a) The proprietor shall ensure that a valid policy of insurance shall be in force for the vehicle covering its use as a hackney carriage, it shall be issued on a comprehensive basis and comply with Part IV of the Road Traffic Act 1988 or provide third party cover including public liability.
- b) At or before the time when a cover note or certificate of insurance expires or is cancelled, evidence of the continued validity of the insurance cover for the vehicle shall be produced at the Licensing Office.
- c) At the request of an authorised officer the proprietor shall produce the certificate of insurance for inspection.

13. LICENCE PLATES

- a) The external licence plate issued by the council and identifying the vehicle as a hackney carriage vehicle must be fixed to the rear of the vehicle adjacent to the bumper bar and be clearly displayed. The fixing shall allow the plate to be easily removed by an authorised officer of the council or a police officer.
- b) The smaller interior plate detailing the licence number shall be fixed and displayed within the vehicle in such a position as to be clearly visible to passengers at all times.
- c) No vehicle may be double plated (i.e. be licensed in two districts).
- d) Under no circumstances shall the licence plate be removed from the vehicle except where the written consent of the authorised officer has been obtained.
- e) All external and interior licence plates remain the property of the Council and must be returned to the council immediately upon change of a vehicle.
- f) The Council must be informed immediately if the licence plates showing the number of the hackney carriage vehicle be broken, lost or defaced. On no account must a hackney carriage vehicle be used for hire without plates unless written application has been made for, and an exemption certificate will only be granted if the application meets the requirements of section 75 of the Local Government (Miscellaneous Provisions) Act 1976.
- g) If a temporary plate is supplied it must be securely fixed in the same manner as the plate proper and returned to the Council on issue of the plate proper.

14. MECHANICAL BREAKDOWN

If any vehicle becomes unfit to complete a journey during a hiring:

- a) The driver shall be entitled to demand the fare for the distance already travelled.
- b) The driver shall secure alternative transport without delay to complete the journey if the hirer so wishes. If the original vehicle is repaired and completes the hiring the driver is entitled to the full fare with the exception of any time that the repairs are executed.
- c) Any such incident must be reported to the Authorised Officer within one working day.

15. RETENTION OF DRIVERS LICENCE BY PROPRIETOR

If the proprietor of a licensed hackney carriage vehicle allows or employs any licensed person to drive that vehicle he shall ensure that the drivers licence issued by the council is deposited with him. The proprietor shall retain the licence until such time as the driver ceases to be employed to drive the vehicle.

16. CONVICTIONS

The proprietor shall within 7 days, disclose to the Council in writing the details of any conviction imposed upon him, (or in the case of a company or partnership, on any directors or partners), whether the conviction be motoring or otherwise, during the period of the hackney carriage vehicle licence.

17. CHANGE OF ABODE OR PROPRIETOR DETAILS

The proprietor must inform the Council of any change of address in writing within seven days of the change taking place. The proprietor shall notify the council within 14 days when another proprietor or person becomes concerned with the keeping, employing or letting of the vehicle.

18. SEEING AND HEARING (GUIDE) DOGS

No proprietor of a licensed hackney carriage vehicle may refuse to carry a seeing or hearing (guide) dog that is in the charge of a fare paying passenger, and no charge shall be made for the carriage of such a dog whilst in the company of a disabled person or any person training such a dog. Any driver with a medical reason for not complying with this condition must obtain a medical certificate from a registered medical practitioner to exempt him from this condition. Any payment for such a certificate will be paid by the applicant. Drivers must comply with the Disability Discrimination Act 1995 at all times.

19. COMPLIANCE WITH LICENCE CONDITIONS

- a) The responsibility for complying with these conditions, unless otherwise stated, shall be the proprietor and drivers jointly and severally.
- b) The provisions of the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 relating to hackney carriages shall be regarded as if they are conditions of this licence. Wherever there appears in the Licence Conditions a summary of any statutory provision you are advised that such a summary is not exhaustive.
- c) Any licensed vehicle that does not meet the conditions at the time they come into force will be permitted to operate until the current Licence expires. At renewal of the Licence the vehicle must meet the conditions set out herein.

APPEALS- NOTICE TO LICENCE HOLDERS

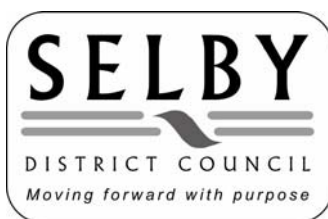
Under Section 47(3) (with reference to section 77) of the Local Government Miscellaneous Provisions Act 1976 **you may appeal to the Magistrate's Court, New Lane, Selby if you are aggrieved by any of the conditions attached to your hackney carriage vehicle Licence. The appeal must be lodged with the Court within 21 days of the Licence being issued.**

It is the council's opinion that if you are not already carrying on a Private Hire Business in Selby District at the time the Licence is issued you are not allowed to operate the vehicle whilst the appeal is proceeding.

You may wish to seek your own legal advice regarding this notice.

ADDITIONAL NOTE – USE OF PREMISES

The grant of this Licence does not in any way override any requirements under the Town and Country Planning Acts, Building Control Acts or any other relevant legislation in force in respect of business use of any premises.



Public Session

Agenda Item No: 7

Title: Application for removal of a consent street

To: Licensing Committee

Date: 09 November 2009

Service Area: Customers and Business Support

Author: Tim Grogan

Presented by: Tim Grogan

1. Purpose of Report

- 1.1 The purpose of this report is to request that councillors re-designate the register of consent streets upon which the Council allows street trading to operate in accordance with Schedule 4 of the Local government (Miscellaneous Provisions) Act 1982 in order to remove Market Place, Selby from the list.

2. Recommendation(s)

- 2.1 **It is recommended that councillors determine whether or not to remove Market Place, Selby from the list of consent streets having consideration of all the relevant facts.**

3. Executive Summary

- 3.1 On the 21st October 1985 Selby District Council resolved to adopt the provisions of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. As a consequence a number of streets within the district were designated as consent streets. This allowed street traders to operate in such streets provided they were authorised so to do by the Council.

- 3.2 These streets included Market Place, Selby and in accordance with the legislation the Licensing Department authorised Anthony Crombie to operate in this area for the purpose of selling hot snacks and drinks from a purpose built catering vehicle.
- 3.3 In February 2009 work began on a renaissance scheme in Selby which included upgrading the precinct area of the town by repaving the Market Place. This resulted in Mr Crombie having to temporarily move locations and although he has occupied a number of sites within the vicinity he has now settled at a location close to the junction of Gowthorpe and Finkle Street alongside the automatic rising bollards.
- 3.4 On the 17th August 2009 the renaissance scheme was completed and Mr Crombie has approached the Licensing Department in an effort to resume his original pitch in Market place. This has so far been resisted as a result of representations from the renaissance working group as a consequence of the visible deterioration in the York stone owing to deposits of grease and debris alleged to have originated from food provided by Mr Crombie.
- 3.5 Accordingly, it seems that the only method by which Mr Crombie or indeed other traders who may impact upon the appearance of the area is to remove the Market Place, Selby as a consent street.

4. The Report

- 4.1 On the 21st October 1985 Selby District Council resolved to adopt the provisions of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. As a consequence a number of streets within the district were designated as consent streets. This allowed street traders to operate in such streets provided they were authorised so to do by the Council.
- 4.2 These streets included Market Place, Selby and since this time and in accordance with the legislation the Licensing Department authorised a number of traders to operate in this area.
- 4.3 The sole trader now operating from Market Place, Selby is Anthony Crombie whose authority is due to expire on 31st October 2009. Essentially he is licensed to trade by selling hot snacks and drinks from a purpose built catering vehicle better known as a burger van.
- 4.4 In February 2009 work began on a renaissance scheme in Selby part of which involved an upgrade of the precinct area of the town. As this concerned repaving Market Place with York stone Mr Crombie was requested to find an alternative site.
- 4.5 Mr Crombie occupied a number of sites in the vicinity of Market Place before settling at a location close to the junction of Gowthorpe and Finkle Street, adjacent to the new automatic rising bollards.

- 4.6 On the 17th August 2009 the renaissance scheme was completed and Mr Crombie contacted the Licensing Department with a view to assuming his pitch in Market Place. However, the renaissance working group made it clear that as £1.3 million pounds had been used to fund the scheme, much of which had been spent on expensive York stone, it would be inappropriate for a burger van to occupy the area where the likelihood was that the stone would become spoiled by deposits of grease and other debris resulting from the sale of snacks.
- 4.7 Essentially the view of the renaissance working group is that Mr Crombie should not be allowed to return to the Market Place for the following reasons:
- (i) Lack of access to the Market Place for emergency vehicles
 - (ii) The grease and debris resulting from the use is spoiling the new granite benches and York stone paving in that area
 - (iii) Public concerns about the impact of the use and the risk that it will soon be ruined
- 4.8 The current situation is that Mr Crombie continues to operate from a position bordering the bollards but insists he be allowed back into Market Place. This places him just beyond the paved area of Market Place but close enough to allow his customers to despoil the York stone. There is some evidence, in the form of CCTV footage and photographic stills, that the stone is being stained by grease and other debris, especially in the area of the seating surrounding the abbey cross. However, what is less clear is whether Mr Crombie or his customers are responsible or whether this involves customers of other nearby retailers.
- 4.9 The legislation suggests that the Council should allow traders to trade from a consent street unless there are reasonable grounds for preventing such. Should the Council decide that an authorisation be refused on the grounds of grease deposits and litter this is already catered for in the site conditions that indicate that the consent holder is responsible for such and should take all reasonable steps both to prevent and properly remove all such deposits.
- 4.10 If permission is denied the applicant is entitled to appeal to the High Court by way of Judicial Review on the grounds that his trade is being restrained. There is no other right of appeal.
- 4.11 It is the view of the Licensing Department that to avoid any future appeals the Council should consider removing Market Place, Selby from the list of consent streets. This would therefore prevent anyone trading from this location and Mr Crombie would need to find an alternative site.
- 4.12 The Committee should be aware that this legislation has no bearing on the Market Place being the site of market stalls on set days as this is dealt with under separate regulations.

- 4.13 In addition, it would not prevent the area being used for special events provided that permission was granted under the terms of the Licensing Act 2003.

5. Financial Implications

- 5.1 The fee for Anthony Crombie's authorisation is £1,157.50 per year which would be lost to the Council should this licence no longer be granted or no alternative pitch be found.

6. Link to Corporate Plan

- 6.1 The additional safeguards proposed in this report will help support the Council's strategic theme of putting customers first.

7 How Does This Report Link to Council's Priorities?

- 7.0 This report will contribute towards acknowledging the priority of safer communities.

8 Impact on Corporate Policies

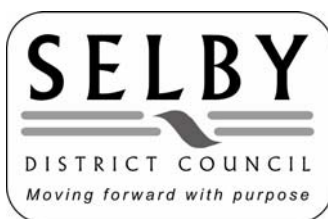
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|-----|---|------------------|
| 8.1 | Service Improvement
The removal of Market Place, Selby from the list of consent streets could contribute to the area remaining free from deposits of grease and other debris. | Impact |
| 8.2 | Equalities | No Impact |
| 8.3 | Community Safety and Crime | No Impact |
| 8.4 | Procurement | No Impact |
| 8.5 | Risk Management
There is a risk that if Market Place remains a consent street an applicant refused permission to trade could appeal to the High Court by way of Judicial Review with the risk that costs could be awarded in the event of the appeal being successful | Impact |
| 8.6 | Sustainability | No Impact |
| 8.7 | Value for Money | No Impact |

9 Background Papers

- 9.1 Copy of Committee report requesting approval of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 showing list of consent

streets.

- 9.2 Copy of Mr Crombie's consent and the street trading consent conditions.
- 9.3 CCTV footage and photographic stills (available on the day)
- 9.4 Mr Crombie's views (available on the day)
- 9.5 The views of the Renaissance working group (available on the day)



Public Session

Agenda Item No: 8

Title: Licensing Act 2003 – Minor Variations
To: Licensing Committee
Date: 09 November 2009
Service Area: Customers and Business Support
Author: Tim Grogan
Presented by: Tim Grogan

1. Purpose of Report

- 1.1 The purpose of this report is to advise councillors of the changes introduced by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 (“The Order”) and to request that delegated authority be granted to the Licensing Enforcement Officer to determine applications for minor variations in respect of Premises Licences and Club Premises certificates.

2. Recommendation(s)

- 2.1 **It is recommended that the report be noted and that the Licensing Enforcement Officer be granted delegated authority to determine applications for minor variations in respect of Premises Licences and Club Premises Licences.**

3. Executive Summary

- 3.1 The purpose of the Order is to introduce an expedited process for dealing with minor changes to the licenses of licensed premises. The envisaged minor changes cover small alterations to the physical layout of premises as well as allowing for some rearrangement of licensed hours. However, they do not

include increases in the hours during which alcohol is supplied or changes to alcohol provision between the hours of 11pm and 7am. The minor variation procedure will only apply **where the licensing authority considers that none of the variations proposed by the holder of the licence or certificate could have an adverse effect on the promotion of any of the licensing objectives.**

- 3.2 It is requested that delegated authority be granted to the Licensing Enforcement Officer in order that applications involving minor variations can be determined expeditiously.

4. The Report

- 4.1 The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 has amended the Licensing Act 2003 to provide a procedure for Premises Licences and Club Premises Certificate holders to apply for minor variations to the licence or Club Certificate holders. The new sections 41A to 41C (Premises Licences) and 86A to 86C (Club Premises Certificates) of the Licensing Act provide a process for the application to be made without going through the full variation procedure.

- 4.2 The new process may only be used for minor matters to vary a Premises Licence or Club Premises Certificate. It may not be used to extend the period during which the licence has effect or authorise the supply of alcohol or extend the hours for the sale of alcohol or in any other way substantially vary the Licence or Certificate. Minor variations will include:-

- (a) Minor changes to the structure or layout of a premise

Many small variations to layout will have no adverse impact on the licensing objectives. Licensing Authorities will need to consider the combined effect of a series of applications for successive small layout changes (for example, as part of a rolling refurbishment of a premise) which in themselves may not be significant, but which cumulatively may impact adversely on the licensing objectives.

- (b) Small adjustments to Licensing Hours

Variations to extend the licensing hours for the sale or supply of alcohol for consumption on or off the premises between the hours of 23.00 and 07.00 or to increase the amount of time on any day during which alcohol may be sold or supplied for consumption on or off the premises are excluded from the minor variation process and must be treated as full variations in all cases. Applications to reduce licensing hours for the sale or supply of alcohol or to move (without increasing) the licensed hours between 07.00 and 23.00 will normally be processed as minor variations.

- (c) The removal of out of date, irrelevant or unenforceable conditions or additions of volunteered conditions.

Applicants may volunteer conditions as part of the minor application process. These conditions may arise from their own risk assessment of the variation, or from informal discussions with responsible authorities or the licensing authority. In these circumstances, the minor variation process may provide a less costly and onerous means of amending the licence than a review, with no risk to the licensing objectives. However, this route should only be used where the agreed variations are minor and the licensee and the responsible authority have come to a genuine agreement. In some cases conditions may no longer apply e.g. there may be no need for door supervision if a bar has been converted into a restaurant and embedded conditions may no longer apply. There may also be cases where it is necessary to revise wording of a condition that is unclear and/or enforceable.

(d) The addition of certain licensable activities.

It is the Government's intention that applications to vary a licence for live music should benefit from the minor variations process unless there is likely to be an adverse impact on the licensing objectives. Similarly, in some circumstances, the addition of other types of regulated entertainment, such as the performance of plays or exhibition of films, to a licence may have no adverse impact on the licensing objectives.

- 4.3 An applicant must complete the authorised application form and submit it to the licensing authority with a fee of £89.00. The applicant is required to advertise the application by posting a white notice at the premises for ten days. Responsible authorities and interested parties have 10 days to make representations. The authority must consider any representations and determine the application within 15 days or the application is considered rejected and the fee must be returned. The overall test is whether the proposed variation could impact adversely on any of the four licensing objectives. The application must be rejected if the authority believes, after consulting with any relevant responsible authority, that it would have an adverse effect on the licensing objectives. There is no requirement for a hearing to be held and Section 8.36 of the Supplementary Guidance issued under Section 182 of the Licensing Act 2003, which comes into force on 29th July 2009 recommends that decisions on minor variations be delegated to licensing officers. If the minor variation is refused, the applicant can either apply for a full variation or a new premises licence as it currently stands within the Act.

5. Financial Implications

- 5.1 There are no financial implications.

6. Link to Corporate Plan

- 6.1 The additional safeguards proposed in this report will help support the Council's strategic theme of putting customers first.

7 How Does This Report Link to Council's Priorities?

- 7.0 This report will contribute towards acknowledging the priority of safer communities.

8 Impact on Corporate Policies

8.1	Service Improvement The granting of delegated authority will enable the Council to implement minor variations expeditiously in line with the new legislation	Impact
8.2	Equalities	No Impact
8.3	Community Safety and Crime	No Impact
8.4	Procurement	No Impact
8.5	Risk Management	No Impact
8.6	Sustainability	No Impact
8.7	Value for Money	No Impact

9 Background Papers

- 9.1 Details of the Legislative and Regulatory Reform Act 2006 is available in the Legal Department if required.
- 9.2 Guidance issue under Section 182 of the Licensing Act 2003 is similarly available.
- 9.3 The Legislative Reform (Minor variations to Premises Licences and Club Certificates) Order 2009 is similarly available.