

Agenda

Meeting: **LICENSING COMMITTEE**
Date: **5 SEPTEMBER 2011**
Time: **10.00AM**
Venue: **COMMITTEE ROOM 2**
To: **Councillor Mrs S Duckett, Councillor K Ellis, Councillor Mrs P Mackay, Councillor Mrs C Mackman, Councillor Marshall, Councillor Mrs K McSherry, Councillor Mrs S Ryder, Councillor Sayner, Councillor R Sweeting and Councillor J Thurlow**

1. Apologies for absence

2. Disclosures of Interest

Members of the Executive should disclose personal or prejudicial interest(s) in any item on this agenda.

3. Minutes

To confirm as a correct record the minutes of the proceedings of the meeting of the Licensing Committee held on 4 July 2011 (pages 4 to 6 attached).

4. Procedure

To outline the procedure to be followed at the meeting (Pages 7 to 8 attached)

5. Guidelines for Licensing Committee to consider assessing financial hardship

Guidelines for consideration (pages 9 to 10 attached)

6. Guidelines for relating to the relevance of Convictions

Guidelines for consideration (pages 11 to 14 attached)

7. Chair's Address to the Licensing Committee

8. 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 item as there will be disclosure of exempt information as defined in Section 100(1) of the Act as described in paragraph 7 of Part 1 of Schedule 12(A) of the Act.

9. Application for a Hackney Carriage Licence

To receive the report of the Licensing Enforcement Officer L/11/7 (pages 15 to 37 attached)

10. Issue concerning the behaviour of a Licensed Private Hire Driver

To receive the report of the Licensing Enforcement Officer L/11/8 (pages 38 to 42 attached)

11. Issue concerning the behaviour of a Licensed Private Hire Driver

To receive the report of the Licensing Enforcement Officer L/11/9 (pages 43 to 48 attached)

12. Application for a Hackney Carriage Licence

To receive the report of the Licensing Enforcement Officer L/11/10 (pages 49 to 56 attached)

13. Application for a Private Hire Driver's Licence

To receive the report of the Licensing Enforcement Officer L/11/11 (pages 57 to 61 attached)

14. Application for a Private Hire Driver's Licence

To receive the report of the Licensing Enforcement Officer L/11/12 (pages 62 to 73 attached)

**Martin Connor
Chief Executive**

Dates of next meetings
10 October 2011
7 November 2011
5 December 2011
9 January 2012
6 February 2012
5 March 2012
14 May 2012

Enquiries relating to this agenda, please contact Karen Mann on:
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Minutes

Licensing Committee

Venue:	Committee Room 2
Date:	4 July 2011
Present:	Councillors R Sayner, Mrs S Duckett, Mrs C Mackman, B Marshall, Mrs K McSherry, Mrs S Ryder, R Sweeting and J Thurlow.
Apologies for Absence:	Councillors K Ellis and Mrs P Mackay
Officers Present:	Caroline Fleming - Senior Solicitor, Tim Grogan – Licensing Enforcement Officer, Karen Mann – Democratic Service Officer

1. DECLARATIONS OF INTEREST

Councillor Sayner expressed a Personal Interest with regard to Item 6 as the Councillor is a Director of a company listed in the referee appendices.

2. MINUTES

Resolved:

To receive and approve the minutes of the Licensing Committee, once an amendment to the apologies is made, held on 6 June 2011 and they are signed by the Chair.

3. PROCEDURE

The Procedure was noted.

4. CHAIR'S ADDRESS TO THE LICENSING COMMITTEE

The Chair updated members that there is a new Enforcement Team, lead by Tim Grogan and Simon Scarrott. Tim Grogan introduced the team to members. The team comprises of Rachel Howden, Hazel Walsh, Ann Kirkby and Dawn Benton. The Enforcement Team cover Licensing, Planning, Environmental Health, Housing, Revenues, Pollution and Benefits Fraud.

The applicant for Item 6 had not arrived therefore the committee moved to Private Session to consider Item 9 on the agenda.

5. PRIVATE SESSION

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 3 of Part 1 of Section 12A of the Act, as amended by the Local Government (Access to Information) (Variation) Order 2006.

6. APPLICATION FOR A HACKNEY CARRIAGE LICENCE

Report L11/6 considered whether an application for a Hackney Carriage Licence be granted. The applicant was in attendance to apply for a Hackney Carriage Licence.

The Licensing Officer outlined details of the case.

Councillors were given the opportunity to question the applicant in connection with his application and then the Committee considered their decision.

RESOLVED:

- i) To receive and note Report L11/6**
- ii) To APPROVE the application for a Hackney Carriage Licence**

7. ISSUE CONCERNING THE BEHAVIOUR OF A LICENSED PRIVATE HIRE DRIVER

Report L11/5 informed the Licensing Committee of a complaint received about a Licensed Private Hire Driver.

The Licensing Officer outlined details of the case.

Councillors were given the opportunity to question the applicant about the complaint and then the Committee considered their decision.

RESOLVED:

- i) To receive and note the report L11/5**
- ii) That a written warning be issued to the Private Hire Driver and that warning to be held on his file for a period of 6 months.**

THE COMMITTEE AGREED TO MOVE TO PUBLIC SESSION.

8. APPLICATION FOR A PRIVATE HIRE VEHICLE LICENCE

Report L11/4 considered whether an application for a Private Hire Vehicle Licence be granted and that the licence be discreet in manner. The applicant was in attendance.

The Licensing Officer outlined details of the case.

Councillors were given the opportunity to question the applicant about his application and then the Committee considered their decision.

RESOLVED:

- i) To receive and note the report L11/4**
- ii) To APPROVE the application for a Private Hire Vehicle Licence**

The meeting closed at 10.55am.

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 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.

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

Amended at Licensing Committee on 1st December 2008

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. 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 Licensing 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.

GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

GENERAL POLICY

1. **Each case will be decided on its own merits.**
2. **A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain free of convictions for 3 to 5 years, according to the circumstances, before an application is entertained. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However, the overriding consideration should be the protection of the public.**
3. **The following examples afford a general guide on the action to be taken where convictions are admitted.**

(a) Minor Traffic Offences

Convictions for minor traffic offences, e.g. obstruction, waiting in a restricted street, speeding etc, should not prevent a person from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence then a Hackney Carriage or Private Hire Driver's licence may be granted after its restoration but a warning should be issued as a future conduct.

(b) Major Traffic Offences

An isolated conviction for reckless driving or driving without due care and attention etc should normally merit a warning as to future conduct and advice on the standard expected of Hackney Carriage and Private Hire Vehicle Drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed.

(c) Drunkenness

(i) With Motor Vehicle

A serious view should be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An isolated incident should not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for these offences should raise grave doubts as to the applicant's fitness to hold a licence. At least 3 years should elapse (after the restoration of the driving licence) before an applicant is considered for a licence. If

there is any suggestion that the applicant is an alcoholic, a special medical examination should be arranged before the application is entertained. If the applicant is found to be an alcoholic a period of 5 years should elapse after treatment is complete before a further licence is considered.

(ii) Not in Motor Vehicle

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see (i) above). In some cases, a warning may be sufficient.

(d) Drugs

An applicant with a conviction for a drug related offence should be required to show a period of at least 3 years free of convictions before an application is entertained or 5 years after detoxification treatment if he/she was an addict.

(e) Indecency Offences

As Hackney Carriage and Private Hire Vehicle Drivers often carry unaccompanied passengers, applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused until they can show a substantial period (at least 3 to 5 years) free of such offences. More than one conviction of this kind should preclude consideration for at least 5 years. In either case if a licence is granted a strict warning as to future conduct should be issued.

(f) Violence

As Hackney Carriage and Private Hire Vehicle Drivers maintain close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. At least 3 years free of such convictions should be shown before an application is entertained and even then a strict warning should be administered.

(g) Dishonesty

Hackney Carriage and Private Hire Vehicle Drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and

become “fair game” for an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty.

In general, a period of 3 to 5 years free of conviction should be required before entertaining an application.

- A. The time limits before which convictions become spent are extended in certain circumstances where further convictions take place. Applicants with multiple convictions or any other queries are recommended to read the Home Office publication, ‘A Guide to Rehabilitation of Offenders Act, 1974’ or to seek advice from the Licensing Department or a solicitor before making a formal application.**

	<u>SENTENCE</u> <u>Where suspended sentences are imposed the rehabilitation period is the same as it would be for an equivalent term of immediate imprisonment.</u>	<u>TIME BEFORE CONVICTION BECOMES SPENT</u>
1.	Sentences of imprisonment or youth custody exceeding 30 months are NEVER spent and must be disclosed however long ago they were imposed.	Never Spent
2.	Imprisonment or youth custody for a term exceeding 6 months but not exceeding 30 months.	10 years adult 5 years juvenile
3.	Imprisonment or youth custody for a term not exceeding 6 months.	7 years adult 3½ years juvenile
4.	An order detention in a Detention Centre.	3 years
5.	A Community Service Order	5 years
6.	A Fine	5 years adult 2½ juvenile
7.	Conditional discharge, bound over, Probation.	1 year from the date of conviction or the expiry of the order, whichever is the longer.
8.	Cashiering, discharge with ignominy or dismissal.	10 years adult 5 years juvenile

9.	Dismissal for HM Service	7 years adult 3½ years juvenile.
10.	Hospital Order under Mental Health Act 1983	5 years from the date of conviction or 2 years after the Order expires.
11.	Disqualification, disability or prohibition when not imposed in conjunction with any other sentence.	Period of disqualification, disability or prohibition.
12.	Any other sentence other than those listed above.	5 years