

Minutes

Licensing Committee

Venue:	Committee Room
Date:	3 February 2014
Present:	Councillors R Sayner (Chair), Mrs S Duckett, Mrs P Mackay, Mrs C Mackman, B Marshall, Mrs K McSherry, D Peart (for K Ellis), Mrs S Ryder, R Sweeting and J Thurlow
Apologies for Absence:	K Ellis (sub D Peart)
Officers Present:	Caroline Fleming - Senior Solicitor, Kelly Hamblin – Senior Solicitor, Tim Grogan – Senior Enforcement Officer and Palbinder Mann – Democratic Services Officer

39. MINUTES

It was pointed out that in paragraph two under item 38, it should have stated *The Committee then discussed the matter and considered its decision on whether the application should be granted.*

RESOLVED:

To APPROVE the minutes of the Licensing Committee meeting held on 2 December 2013 with the above amendment and to be signed by the Chair.

40. DISCLOSURES OF INTEREST

There were no declarations of interest.

41. PROCEDURE

The procedure was noted.

42. CHAIR'S ADDRESS TO THE LICENSING COMMITTEE

The Chair reported on three decisions of the Committee that had recently been appealed to the Magistrates Court. These decisions were in relation to a licensing act premises review and two in relation to taxi licensing matters.

Premises Review

It was reported that this appeal was compromised on the advice of the legal team. The decision of the Sub Committee had not been accompanied by reasons for the decision. It was explained that the legislation and good decision making practice both required reasons to be given. No findings of fact were recorded in relation to disputed evidence.

The Chair explained that although the Court was entitled to reach its own conclusions on the evidence, it would start by considering the reasons given by the Council. As there were no reasons and no findings of fact it was not possible to show the court how and why the conclusion had been reached. It was explained that there was therefore a high risk that the Court would reach a different conclusion and that it would award costs against the Council as a result.

The Chair explained that the compromise resulted in the original opening hours being reinstated and the requirement for door supervision being dropped.

The council had to pay costs of £4600 to the appellant however these costs would have been significantly higher if the case had been heard in court and the Council had lost the case.

Taxi Licensing

Case 1

The Chair explained that in the first taxi appeal the Committee had imposed a suspension of the licence due to allegations of misconduct however the facts of the case were disputed by the driver. It was noted that on hearing the case the Committee felt that on balance of probabilities the alleged behaviour had taken place.

The Committee were informed that in support of his appeal the driver had provided significant additional information. It was explained that an Appeal was a fresh hearing taking into consideration any new evidence.

On considering the new evidence provided the legal team had felt that Court could conclude that the driver's version could be true on the balance of probabilities and the witness mistaken.

The Chair explained that with her agreement the appeal was conceded and the suspension lifted.

Case 2

The second case related to the decision to refuse a hackney carriage drivers licence due to previous convictions.

The Chair explained that this was the second application by that individual. On his previous application the Committee had refused his application because a conviction was not 'spent'.

It was noted that on his second application the Committee had refused his licence as he had not had a three year period free from incident since his conviction became 'spent' and there was no reason to depart from the policy guidelines in that respect.

The decision not to award a licence was upheld after a Court hearing but no order was made as to costs. It was explained that the Court had declined to award the Council its costs of the hearing because the previous Committee decision should have been clearer in its reasoning and decision. This would have avoided creating an unrealistic expectation by the applicant that he was likely to be granted a licence immediately before his conviction became spent which led to applicant incurring costs.

It was explained that the Court had felt the Committee decisions did not demonstrate transparency and consistent application of Council policies and has asked whether it would be possible to explain its policy and its application to the individual as he was clearly keen to re-apply as soon as possible.

The Chair explained that she had consulted the Solicitor to the Council and suggested that as Chair of the Committee she should write to that person setting out the position.

It had also been suggested that there be some training for the Committee on good decision making practice, reasons and appeals. The Chair stated that she had asked the legal team to organise this and hoped the Committee would support this by ensuring full attendance.

The Chair explained that the Committee had to move into private session if they wished to discuss the address in more detail.

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.

The Committee discussed the verdicts on the cases. The Committee felt that with regard to the first taxi case, extra evidence had been introduced when the case went to Court which the Committee had not seen therefore it was limited to what they could have done in this situation. It was accepted that more details were needed with future decisions and it was agreed that training would be beneficial for the Committee in achieving this.

43. APPLICATION FOR PRIVATE HIRE VEHICLE LICENCES IN RESPECT OF TWO MERCEDES BENZ MOTOR VEHICLES

The Senior Enforcement Officer presented the Report L/13/14 which considered an application for Private Hire Vehicle Licences in respect of two Mercedes Benz motor vehicles. It was explained that the applicant had requested that the licences be discreet in manner. The applicant was in attendance.

Councillors were given the opportunity to question the applicant in connection with the application. The Committee then discussed the matter and considered whether the application should be granted.

RESOLVED:

To APPROVE the application for the discreet Private Hire Vehicle Licences for two Mercedes Benz motor vehicles.

44. 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.

45. ISSUE CONCERNING THE BEHAVIOUR OF A LICENSING HACKNEY CARRIAGE DRIVER

The Senior Enforcement Officer presented the Report L/13/15 which outlined a complaint that had been received and considered whether the respective driver was a fit and proper person to drive a Hackney Carriage. The driver was in attendance.

Councillors were given the opportunity to question the appellant in connection with the incident. The Committee discussed the matter and considered all the relevant issues.

RESOLVED:

- i) To SUSPEND the driver for 14 days due to his inappropriate conduct.**
- ii) The driver be asked to bring the requested medical documentation to the Senior Enforcement Officer as soon as possible.**

The meeting closed at 1.07pm