



LICENSING COMMITTEE

MEETING TO BE HELD IN CIVIC HALL, LEEDS ON
TUESDAY, 13TH MARCH, 2012 AT 10.00 AM

MEMBERSHIP

Councillors

S Armitage - Cross Gates and Whinmoor;
K Bruce - Rothwell;
R Downes - Otley and Yeadon;
J Dunn - Ardsley and Robin Hood;
R D Feldman - Alwoodley;
B Gettings - Morley North;
T Hanley - Bramley and Stanningley;
G Hussain - Roundhay;
G Hyde - Killingbeck and Seacroft;
A Khan - Burmantofts and Richmond Hill;
P Latty - Guiseley and Rawdon;
B Selby - Killingbeck and Seacroft;
C Townsley - Horsforth;
D Wilson - Rothwell;
G Wilkinson - Wetherby;

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A G E N D A

Item No	Ward/Equal Opportunities	Item Not Open		Page No
1			<p>APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS</p> <p>To consider any appeals in accordance with Procedure Rule 25 of the Access to Information Procedure Rules (in the event of an Appeal the press and public will be excluded)</p> <p>(*In accordance with Procedure Rule 25, written notice of an appeal must be received by the Head of Governance Services at least 24 hours before the meeting)</p>	
2			<p>EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC</p> <p>1 To highlight reports or appendices which officers have identified as containing exempt information, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report.</p> <p>2 To consider whether or not to accept the officers recommendation in respect of the above information.</p> <p>3 If so, to formally pass the following resolution:-</p> <p>RESOLVED – That the press and public be excluded from the meeting during consideration of those parts of the agenda designated as containing exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information</p>	

Item No	Ward/Equal Opportunities	Item Not Open		Page No
3			<p>LATE ITEMS</p> <p>To identify items which have been admitted to the agenda by the Chair for consideration</p> <p>(The special circumstances shall be specified in the minutes)</p>	
4			<p>DECLARATIONS OF INTEREST</p> <p>To declare any personal/prejudicial interests for the purpose of Section 81(3) of the Local Government Act 2000 and paragraphs 8 to 12 of the Members Code of Conduct</p>	
5			<p>APOLOGIES FOR ABSENCE</p>	
6			<p>MINUTES</p> <p>To approve the minutes of the last meeting held on 14th February 2012 as a correct record</p> <p>(Copy attached)</p>	3 - 6
7			<p>DECISION MAKING IN TAXI & PRIVATE HIRE LICENSING</p> <p>To consider the joint report of the City Solicitor and the Chief Officer, Democratic and Central Services on the current decision making model in Leeds for the grant, refusal, suspension or revocation of the various licences issued by the Council as the taxi and private hire licensing authority. The report outlines the legal framework governing the decision making process and also considers the implications of any proposal to change the current arrangements</p> <p>(Report attached)</p>	7 - 28

Item No	Ward/Equal Opportunities	Item Not Open		Page No
8	Various;	10.4(5)	<p>APPEALS UNDER THE LICENSING ACT 2003</p> <p>To consider the report of the City Solicitor outlining appeals lodged against decisions of the Licensing Sub Committees under the provisions of the Licensing Act 2003.</p> <p>Please note that Appendix 1 of the report is exempt under Access to Information Procedure Rule 10.4.(5)</p> <p>(Report attached)</p>	29 - 38
9			<p>LICENSING WORK PROGRAMME</p> <p>To consider the Licensing Work Programme for the remainder of the Municipal Year</p> <p>(Schedule attached)</p>	39 - 40
10			<p>DATE AND TIME OF THE NEXT MEETING</p> <p>To note the date and time of the next meeting as Tuesday 10th April 2012 at 10.00 am</p>	

CONFIDENTIAL AND EXEMPT ITEMS

The reason for confidentiality or exemption is stated on the agenda and on each of the reports in terms of Access to Information Procedure Rules 9.2 or 10.4(1) to (7). The number or numbers stated in the agenda and reports correspond to the reasons for exemption / confidentiality below:

9.0 Confidential information – requirement to exclude public access

9.1 The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed. Likewise, public access to reports, background papers, and minutes will also be excluded.

9.2 Confidential information means

- (a) information given to the Council by a Government Department on terms which forbid its public disclosure or
- (b) information the disclosure of which to the public is prohibited by or under another Act or by Court Order. Generally personal information which identifies an individual, must not be disclosed under the data protection and human rights rules.

10.0 Exempt information – discretion to exclude public access

10.1 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed provided:

- (a) the meeting resolves so to exclude the public, and that resolution identifies the proceedings or part of the proceedings to which it applies, and
- (b) that resolution states by reference to the descriptions in Schedule 12A to the Local Government Act 1972 (paragraph 10.4 below) the description of the exempt information giving rise to the exclusion of the public.
- (c) that resolution states, by reference to reasons given in a relevant report or otherwise, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

10.2 In these circumstances, public access to reports, background papers and minutes will also be excluded.

10.3 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

10.4 Exempt information means information falling within the following categories (subject to any condition):

- 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 officer-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

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Agenda Item 6

Licensing Committee

Tuesday, 14th February, 2012

PRESENT: Councillor S Armitage in the Chair

Councillors K Bruce, R Downes, J Dunn,
R D Feldman, G Hussain, G Hyde, A Khan,
P Latty, B Selby, C Townsley, D Wilson
and G Wilkinson

65 Declarations of Interest

There were no declarations of interest

66 Apologies for Absence

Apologies for absence were received from Councillors Gettings and Hanley.

67 Minutes

RESOLVED – That the minutes of the previous meeting held on 17th January 2012 be agreed as a correct record

68 Matters Arising

Minute 61 NVQ Working Group – It was noted that the NVQ Working Group had not yet reconvened

69 Leeds Festival

The Head of Licensing and Registration submitted a report advising Members of the receipt of the Event Management Plan (EMP) for the Leeds Festival 2012 scheduled to be held in the grounds of Bramham Park, Wetherby between 24th and 26th August 2012. The report included a schedule of changes made to the EMP since last years event.

The Committee welcomed Mr Benn, the event promoter to the meeting. Mr Benn outlined the success of the 2011 Festival in terms of the Traffic Management Plan; noise management and the changes within the EMP including:

- Use of LED signage at main thoroughfares to assist patrons moving around the site during the Festival and leaving the event
- Impact of new legislation on water safety standards
- Crowd control and the introduction of a new design to the main stage barrier which reduced the sway of the crowd

The Committee noted that all agencies had been satisfied with the event this year and commended the promoter on the success of the Festival and the ongoing efforts to refine and improve arrangements for the event.

RESOLVED – To note the contents of the report and to extend thanks to Mr Benn for his attendance.

70 **Presentation - Policing and the Night Time Economy - West Yorkshire Police**

Further to minute 33 of the meeting held 13th September 2011, the Committee welcomed officers of West Yorkshire Police (WYP) to the meeting to discuss issues relating to policing and the night time economy in Leeds city centre.

Chief Inspector V Francis; Chief Inspector S Palmer and Sergeant R Fullilove attended the meeting. Members noted that Ch. Ins. Francis had recently retired from his post and extended their best wishes to him. Ch. Ins Palmer was introduced as the new Chief Inspector for the city centre area. Sgt Fullilove led discussions on the following matters:

Cumulative Impact Policy (CIP)

WYP submitted schedules outlining decisions taken by the Licensing Sub Committees since January 2011 relating to applications from premises located within Cumulative Impact Area 1 (city centre) and those premises which featured in WYP Matrix system used to monitor premises which needed support from WYP

DVD presentation – The Committee viewed CCTV footage of the Albion Street/Merrion Street area taken on 21 September 2010 at approximately 02:00 hours showing the volume of patrons from local licensed premises on the street.

- Sgt Fullilove reported on an incident of oversubscription to an event at a premises that evening; highlighting several contributory factors which resulted in a crushing incident
- Members discussed their concerns with regards to the health and safety of both patrons of the premises and the public outside and expressed surprise that WYP had not sought a Review of the premises licence. Members felt that the premises should have been referred to the Committee such was the serious nature of this incident
- Members noted the number of Matrix points amassed by another venue over the previous 6 months and heard that although the premises management had changed; WYP felt the venue worked with them to tackle crime and disorder
- WYP stated they also had regard to the size of a premises and volume of patrons before taking direct action. It was noted that the LCC Entertainment Licensing Enforcement Officers undertook regular compliance visits to licensed premises and visits in conjunction with WYP. A request for detail on any follow up action undertaken by LCC following the incident was noted.

Ch. Ins Francis stated that large, high capacity premises would statistically generate more points on the Matrix system. Some Members however did not fully accept that argument, stating that all premise licence holders had a responsibility to their patrons in terms of crime and disorder and public safety; regardless of the size of their venue.

Members supported a suggestion that representatives of premises causing concern to WYP should be invited to attend a Committee meeting to take part in discussions on the responsibilities of premise licence holders, the Committees' concerns and how to make progress. Members also agreed that

representatives of a premises that had previously been a cause for concern but had made significant improvements should be invited to attend a “best practice” type workshop

The Matrix System

- Ch. Ins Palmer clarified the decision making process which had regard to the type of venue, capacity, nature of entertainment offered, clientele and whether that venue consistently worked with WYP
- Members supported the continued use of the Matrix System, however commented that it could be refined to include a weighting system – having regard to capacity and number of incidents causing concern
- Sgt. Fullilove provided further information on the top ten premises listed within the Matrix System, highlighting those premises with recurring issues which WYP sought to address

Members additionally discussed:

- The prevalence of drug use amongst patrons in city centre premises and the actions undertaken by WYP to identify drug use
- The correlation between alcohol pricing and incidents of crime and disorder
- the importance of strong management to take ultimate responsibility for all aspects of the licensed premises, including management of the door team. Members considered whether a condition to set a minimum number of doorstaff could be introduced at premises causing serious concern

To conclude, Ch. Ins. Francis outlined what had been achieved in Leeds during his tenure, including the introduction of the Matrix System; additional police officers and the street marshal scheme sustained in partnership with the licensees and the reduction of violent crime by 40%.

The Committee thanked the officers of WYP for their presentation and welcomed the discussions it had generated

RESOLVED –

- a) To note the contents of the presentation and discussions
- b) To note the request for further information regarding the incident on 21 September 2010 and that consideration be given to inviting representatives of city centre premises to future meetings of the Committee

(Councillors Downes and G Hussain left the meeting at this point)

71 Licensing Act 2003 - Update

The Head of Licensing and Registration submitted a report providing an update on changes to the Licensing Act 2003 in respect of the Queen’s Diamond Jubilee and the Live Music Bill. Members comments were also sought to inform the Council’s response to the Home Office consultation “Dealing with the problems of late night drinking” which proposed secondary legislation for the introduction of the Late Night Levy and Early Morning Restriction Orders. The Consultation document was attached to the report.

The Committee discussed the following matters with officers

Live Music Bill

- the possible impact of the removal of the effect of conditions specific to provision of live music
- the expectation that more applications to Review premise licences will be received
- the impact of Local Health Authorities being made Responsible Authorities on the review process

(Councillors Bruce and Townsley left the meeting at this point)

Late Night Levy

- impact of the levy on the voluntary provision by larger clubs/licensed premises of measures designed to address the licensing objectives
- the fee structure for the LNL

RESOLVED –

- a) That the contents of the report be noted in respect of the Golden Jubilee and the Live Music Bill
- b) That the contents of the consultation document “Dealing with the problems of late night drinking” be noted and
- c) That the Principal Project Officer be requested to draft a response to the consultation to be despatched to the Committee Members for comment prior to submission to the Home Office

72 Licensing Work Programme

The Committee considered the contents of the Licensing work programme for the remainder of the Municipal Year and noted the following

Appeals Sub Committee – The Chair reported on requests received from the Private Hire and Hackney Carriage trades for the Committee to establish a sub committee to deal with appeals received from drivers who may have been sanctioned or had their licences suspended. The Chair briefly outlined the resource implications for both Members and officers and the intention to present a report on the matter to the next appropriate meeting

Large Casino Licence – Members noted the intention to arrange a site visit in early March to existing casinos with the involvement of current operators

RESOLVED – To note the contents of the Licensing Work Programme

73 Date and Time of Next Meeting

RESOLVED – To note the date and time of the next meeting as Tuesday 13th March 2012 at 10.00 am



Report author: Gill Marshall /
John Kearsley
Tel: (tel: 2478822)

Report of City Solicitor & Chief Democratic Services Officer

Report to Licensing Committee

Date: 13 March 2012

Subject: Decision making in Taxi & Private Hire Licensing

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary of main issues

- 1 This report outlines the current arrangements for decision making in relation to the grant, refusal, suspension or revocation of the various licences issued by the Council as taxi and private hire licensing authority for the city of Leeds.

- 2 The report identifies the legal and constitutional position in relation to Member and officer involvement in licensing decisions and outlines various models in use throughout West Yorkshire and the other core cities.

- 3 It concludes that there are other lawful models available which the Council could adopt but that to do so would have significant resource implications which would need to be met through an increase in the licence fees. That increase would be met equally by all licence holders irrespective of whether they would be personally affected by any change in the process. That indicates that consultation with the trade is required before any change is finalised.

Recommendations

4. That Members consider the information in this report and decide whether to change the current arrangements and if so, what level of Member involvement is preferred. Any proposed change would need to be the subject of consultation with the trade and there should be an equality screening process undertaken. A decision making matrix setting out who, how and when each decision is made and how that may be challenged can then be approved before being implemented.

1 Purpose of this report

- 1.1 This Report looks at the current arrangements within Leeds City Council for decision making in relation to the grant, refusal, suspension and revocation of various Hackney Carriage & Private Hire Licenses. It examines current practice, providing statistical information on the number and nature of such decisions taken by officers and the outcomes of appeals against those decisions to the courts. The report also indicates practice used elsewhere within West Yorkshire and the core cities.
- 1.2 Members are requested to consider the information provided and consider the implications of any proposal to change the current arrangement. Any change would need to be the subject of consultation with the hackney carriage and private hire trade before it could be implemented. Not all sections of the trade consider that the current arrangements require change and there will be financial implications in terms of an increase in the licence fee in order to resource any new arrangement.

2 Background information

- 2.1 The granting of an individual hackney carriage (HC) or private hire (PH) licence whether for a vehicle, driver or operator is a council function under the Local Government Act 2000. The related functions of determining whether and how to enforce any failure to comply with the licence, including suspension or revocation of it, are dealt with in the same way. The licensing functions allocated to the council may be delegated by it to a committee of the council or a sub-committee of the council or an officer under Section 101 of the Local Government Act 1972.
- 2.2 These functions are concurrently delegated in Leeds to the Licensing Committee and to the Director of Resources under the Scheme of Delegation approved annually at full Council. The Director of Resources has sub-delegated that power to the Head of Licensing & Registration, the Section Head of Taxi & Private Hire Licensing and in some circumstances to Principal Managers, Licensing Officers and Licensing Supervisors. An extract from the current sub delegation scheme is attached to this report at **Appendix 1**. By custom and practice at Leeds City Council, the day to day exercise of those functions is undertaken by officers rather than by the Licensing Committee.
- 2.3 The leading academic work on taxi licensing law "Button on Taxi's - Licensing Law & Practice" notes that there are a number of models in use around the country and that hackney carriage and private hire licensing is undertaken by a wide range of different committees and officers in different councils. Button records three common models employed namely
- a committee which undertakes all the functions or
 - a committee which exercises some functions with officers exercising powers in certain specified situations (usually where there are no concerns or grounds for refusal) or

- authorities where the entire function is undertaken by officers. In some councils this model includes a none-statutory review or appeal to a committee or sub-committee in addition to the statutory right of appeal to the courts

As Button points out there is a need to balance the conflicting requirements of Member involvement and the time commitment but, subject to that, it is a matter for each council to determine which model is appropriate to their local needs.. He also notes that it is highly desirable for the decision maker and fact finder to be one and the same. If the findings of an investigating officer are to be reported to a committee or sub committee for a decision to be made it can be difficult to communicate all the detail of the findings and the decision that is then made can be challenged on that basis. It is therefore recommended that a committee or sub committee hearing the case should hear live evidence which is tested by way of cross examination rather than simply receiving a report.

- 2.4 The legal provisions relating to the grant, refusal, suspension and revocation of Licences are set out in summary at **Appendix 2** to this Report. There are statutory Rights of Appeal to the Magistrates Court against almost all the decisions that would take effect whether the decisions are made by the Committee or by Officers. The exceptions to this Right of Appeal are in relation to the refusal to grant a Hackney Carriage Proprietors License where the Appeal lies directly to the Crown Court and in relation to a decision to suspend a Vehicle Licence under Section 68 of the Local Government (Miscellaneous Provisions) Act 1976 relating to the condition of the Hackney Carriage or Private Hire Vehicle where there is no right of appeal. Appeals must be lodged within 21 days of the decision. Notice of the decision being appealed must generally have been given in writing and with reasons.

3 Main issues

- 3.1 Certain sections of the trade and some elected Members have asked for information on the current process used at Leeds City Council. The reasons for this request appear to be:-
- Under the previous legal provisions the lodging of an appeal against suspension or revocation of a licence would allow the individual concerned to continue to drive, use or operate the vehicle pending the outcome of the appeal. Now, where it is in the interest of public safety for the decision to take immediate effect, the appeal must be heard before the individual concerned can continue to drive, use or operate.
 - The fees for lodging an appeal in the Magistrates Court have increased significantly in recent years. The standard fee for lodging an appeal is £700.00. That is broken down as £200.00 for issuing the appeal and £500.00 payable for the actual hearing. If the appeal is successful, the payment for the hearing (£500.00) is returned by the court and the additional fee incurred can be claimed (together with legal costs) from the council. Whether a fee is actually charged does depend upon the appellant's personal circumstances. Appellants in receipt of certain benefits including Income Based Job Seekers

Allowance, Income Support and those in receipt of Working Tax Credit (but not Child Tax Credit) can have the fees remitted. Those defined as being on a low income can also gain a fees remission. This is determined by a calculation the gross annual income of the household relative to it's composition. Thus for example a couple with two children whose gross annual income was less that £23,860.00 would not be eligible to pay the fee for lodging an appeal. A driver unable to drive due to suspension should be able to have the fees for lodging of the appeal waived by the court.

- In recent years the Licensing & Regulatory Panel (as predecessor to the Licensing Committee) agreed a new policy in respect of drivers suspected of plying for hire. Where there is evidence amounting to reasonable grounds to suspect a driver of plying for hire, it is usual for a suspension of the licence to be put in place which takes immediate effect on public safety grounds because that activity generally invalidates the vehicle insurance. These drivers are therefore unable to work pending the outcome of their Appeals to the Magistrates Court.

3.2 Current arrangements

3.2.1 Numbers of decisions

Leeds currently has the following numbers of Licences in place.

1018 Hackney Carriage Drivers
 537 Hackney Carriage Vehicles
 5070 Private Hire Drivers
 4903 Private Hire Vehicles
 107 Private Hire Operators

3.2.2 The figures for 2010 and 2011 for applications, renewals, refusals, suspensions and revocations of Licences are set out in the table below.

	Applications	Refusals	Suspensions	Revocations
2010	629	18	86	69
2011	508	15	129	46

When considering the above information it is important to note that there is no direct correlation between the number of suspensions and revocations in any one year. For example the 69 Licenses revoked in 2010 will include a proportion which were previously suspended in 2009 with a final decision being made on revocation in the

following year. Likewise for 2011 the 46 Licenses revoked may include a number that were suspended in 2010 whilst the 129 suspensions in 2011 will include a number where a decision on revocation has not yet been made.

3.3 Practice elsewhere in West Yorkshire and the Core Cities

- 3.3.1 Officers have contacted the other West Yorkshire councils and core cities elsewhere in the country to ascertain what arrangements they have in place. This information is set out in the table at **Appendix 3**. This gives comparative information as to the size of the licensed fleet in each area as well as information on the decision making arrangements. Members will note the number of licences issued by Leeds is significantly higher than elsewhere in West Yorkshire.
- 3.3.2 It is clear from the information is that there are other arrangements in place in other councils. The Councils differ in their individual arrangements with some having complete delegation to officers as at Leeds with an appeal direct to the Magistrates' Court, whilst others have a degree of Member involvement ranging from consideration of decisions where the officer is minded to grant in contravention of policy through to full decision making by Members at sub-committee levels.
- 3.3.3 All councils have some level of delegation in place for suspensions. This reflects the need for officers to have the power to issue roadside suspensions where the public safety require this. If that suspension is intended to have immediate effect in the interests of public safety (i.e. the suspension continues in force until rescinded or an appeal is lodged and the court overturns the decision) there must be written notification of that decision with reasons at the time of the suspension. Officers cannot hand out a suspension which is later reviewed or confirmed and is given immediate effect at that point.
- 3.3.4 What is also clear is that councils with arrangements which involve Members rather than officers making decisions have significant resources devoted to that system. This is explored further in section 5 below.
- 3.3.5 Whilst it is ultimately a matter for Members to determine, officers would recommend that any change be to a system which is clear and transparent. It must be clear to those affected as to who the decision maker is, when the decision is being made, any rights they have to challenge that within the council and the impact of any internal challenge on the statutory rights of appeal. A model which includes split decision making between officers and Members and reviews and appeals is likely to cause confusion and may result in an individual failing to lodge a statutory appeal within the strict time limits.

3.4 Application of Council Policy / Legislation to decision making

- 3.4.1 It is also important to note that not all the decisions made in Leeds and listed in the table at 3.2.2 above are decisions based solely upon the exercise of discretion by officers. Many decisions result from the application of other legislation and the decisions of other bodies such as the courts or DVLA. Many officer decisions flow directly from the application of an approved council policy. A list of the policies approved by the Council appears in the Background Papers Section of this report.

In such circumstances it is highly likely that Members will reach exactly the same decision as the officers on the same facts.

3.4.2 For example:-

In 2010 18 licences were refused and 69 licences were revoked. In 2011 15 licences were refused and 49 were revoked. The reasons for refusal and revocation are set out in the table below.

Categories	Refusals		Revocations	
	2010	2011	2010	2011
Dishonesty			3	4
Drugs	6	4	3	3
Violence	3	2	6	2
Sexual	3	2	2	1
Fire arms			1	
Murder				
Driving disqualification			20	12
Plying for hire	2	1	25	19
Fail to comply with conditions		2		2
Fail to disclose convictions				
Inappropriate behaviour			2	2
No right to work in UK				
Medicals reason			3	
Extended criminal history	4	2		
Info disclosed at discretion of Chief Constable: Impropriety involving a female child		2	1	
Employment Tribunal				1
Pervert the course of justice			3	
	18	15	69	46

Members will note that the two largest categories of revocation for 2010 and 2011 relate to disqualification and plying for hire which illustrates the point that there are few cases which turn solely on the exercise of discretion. Instead they rely on the application of the findings of others or of approved council policy.

3.4.3 In relation to suspensions there were 89 suspensions in 2010 and 129 in 2011. The reasons for suspensions are set out in the table below.

Reason for suspension	2010	2011
Dishonesty offence	7	7
Drug offence	3	4
Violent offence	12	14
Sexual offence	3	7
Fire arms offence	0	1
Murder	1	0
Driving disqualification	11	17
Plying for Hire	36	63

Fail to comply with conditions	3	1
Fail to disclose convictions	1	6
Inappropriate behaviour	3	6
No right to work in UK	2	0
Medical reason	4	3
	Total 86	Total 129

Again, Members will note that two of the largest categories of suspension for 2010 and 2011 relate to disqualification and plying for hire which again illustrates the point that there are few cases which turn solely on the exercise of discretion. Members will also note the number of suspensions relating to offences of violence and dishonesty which directly relate to the 'fit and proper person' test and touch on the key aspect of the licensing scheme namely the safety of the travelling public.

- 3.4.4 It will also be noted from the information above that whilst the number of licences is relatively high compared to other local authorities and there a high number of decisions are made, the numbers of suspension and revocation decisions is not great. This reflects the fact that such decisions are not taken lightly. The powers are not exercised simply because they are available but are exercised where the circumstances warrant it.

3.5 Outcomes of appeals against current officer decisions

- 3.5.1 In the period February 2010 to November 2011 44 appeals were lodged against the officer decisions. Of those 44 appeals 18 did not proceed because the appellant withdrew their appeal or failed to attend court. Of the 27 cases heard, 19 resulted in the decision being upheld. Of the 7 cases where the court did not uphold the officer decision 2 relate to the same decision. In that case an appeal was lodged at Crown Court by the council against the decision of the Magistrates to allow the appeal but was subsequently withdrawn. Of the remaining 5, 3 were plying for hire cases where the Magistrates considered the appellants criminal case defence and allowed the appeal. In these cases the Council does not present the criminal case evidence to the extent it is later presented at the criminal hearing for legal reasons. Of the remaining 3, one was a win for the Council at the Magistrates Court but the appellant further appealed to the Crown Court and won. The 2 remaining cases involved the Magistrates' simply reaching different decisions on the facts to the Council.

3.6 Appropriate Test and Legal Case Law

- 3.6.1 The different licensing decisions fall to be made under the relevant legislation summarised in Appendix 2. The decision making is characterised as being quasi-judicial rather than administrative. As such it requires a fact finding exercise followed by the application of legal tests. It is best described as evidence based structured decision making. The Council (and the Court on appeal) is entitled to rely on any evidential material which might reasonably and properly influence the making of a responsible judgment in good faith on the question in issue. The burden of proof as to whether a person is or is not a fit and proper person is on the balance of probabilities and not beyond reasonable doubt.

- 3.6.2 In making decisions Members or officers must take into account that the aim of local authority licensing of the HC and PHV trades is to protect the public. For example, it is clearly important that somebody using a HC or PHV to go home alone late at night should be confident that the driver does not have a criminal record for assault and that the vehicle is safe.
- 3.6.3 Decisions which fail to give sufficient weight to public protection or which can be shown to be made on irrelevant grounds are unsound decisions which can be challenged in law and/or criticised by the public, the media and the ombudsman.
- 3.6.4 One issue which has been raised is the impact of some decisions on the livelihood of individual drivers or vehicle owners. The occupation of HC or PH driver comes under the Notifiable Occupations Scheme and so for example a driver can have his licence suspended based upon notification from the police of a conviction or an allegation of an offence in the vehicle towards the passenger. Such suspension decisions can result in the driver or vehicle being off the road sometimes for long periods even though there has been no criminal conviction. It should be noted that the length of time taken to deal with a criminal case is usually outside the control of the council as it may be in the hands of the police and/or influenced by the availability of witnesses, defences advocates and the court.
- 3.6.5 The case of *McCool v Rushcliffe Borough Council* (1998) held that the decision must be approached bearing in mind the objectives of the licensing regime “which is plainly intended among other things, to ensure so far as possible that those licensed to drive private hire vehicles are suitable persons to do so namely that they are safe drivers with good driving records and adequate experience, sober, mentally and physically fit, honest, and not persons who would take advantage of their employment to abuse or assault passengers”.
- 3.6.6 The leading case on the question of the importance of the driver’s personal circumstances is *Leeds City Council v Hussain* (2002) in which the High Court heard an appeal against a decision to remove the suspension of a private hire driver and vehicle licence. The suspension arose out of an incident in June 2001 of disorder involving a number of private hire drivers and vehicles. On 2 August 2001 the Respondent had been charged with the offence of violent disorder which led to the suspension of his licences. The licences were suspended under the grounds of “any other reasonable cause”. The suspension was appealed to the Magistrates’ Court who upheld the suspension. Their decision was then appealed to the Crown Court who overturned the suspension holding that it would have been preferable to await the outcome of the criminal proceedings, that there was not sufficient evidence to show a reasonable chance of conviction and if the appeal was not allowed the Respondent would have been deprived of his livelihood for some time given it would be many months before the criminal allegation reached trial. The decision of the Crown Court was then appealed to the High Court.
- 3.6.7 The High Court held that it was not necessary to have a conviction of the driver to suspend under the heading any ‘other reasonable cause’. The High Court also noted that the fact of or absence of a finding in criminal proceedings is not the only factor so in the case of *R v Maidstone Crown Court ex parte Olson* (1992) a local authority could look at the facts of the offence to determine whether someone was a fit and proper person even though the individual had been acquitted on appeal of a

charge of indecently assaulting a passenger. Similarly in *McCool v Rushcliffe Borough Council* the High Court held it was open to a local authority to examine the facts leading to a charge of indecent assault of a passenger even though the driver had subsequently been acquitted.

- 3.6.8 Importantly on the question of the impact on the licence holder's livelihood. the Court held that the purpose of the power of suspension was to protect the users of licensed vehicles and to prevent licences being given to those who were not suitable people. The Council (whether Members or officers) when considering whether to suspend or revoke a licence, must focus on the impact of the licence holder's vehicle and character on the public and that any consideration of the personal circumstance of the individual are irrelevant except perhaps in very rare cases to explain or excuse some conduct of the driver.
- 3.6.9 This case has recently been reconsidered by the High Court in the case of *Cherwell District Council v Anwar (2011)*. On the facts of that case the licensed driver pleaded guilty to an assault on his wife. He did not notify the conviction as he should have done until his licence came to be renewed. On renewal the Council refused to renew the licence on the basis of their convictions policy, holding he was not a fit and proper person to hold a licence. On appeal the Court noted that this was a case of domestic violence where the assault followed an argument with the wife about the children and there was evidence that the couple had reconciled with no further difficulties. The Court took into account the Council's policy, the driver's previous good character, the fact that there had been no complaint in relation to the standard of driving, that there was no evidence he posed a risk to the general public and the needs of his wife and children. The Magistrates accepted that the Council acted in good faith at all times and were entitled to reach the decision they did however they reached a different decision taking into account the needs of his family and overturned the refusal. The High Court was asked to consider whether the Magistrates had been correct in this decision in the light of the case of *Leeds City Council v Hussain*. The High Court held that the Magistrates have not been entitled to take into account the hardship to the family. The primary issue was that of safety to the public and that Hussain had been correctly decided

3.7 Resourcing any change

- 3.7.1 As the table in 3.2.2 above shows there are in the region of 700 decisions which could be the subject of Member involvement each year. If Members were to take the full range of decisions with no delegations to officers then, based upon the Kirklees example of being able to deal with 12 decisions made by a sub committee in a one day sitting, that equates to just over 58 days per annum. That indicates a need for an additional sub committee sitting one full day per week, every week dealing solely with taxi and private hire business. The potential time commitment is similar to that of Birmingham set out in Appendix 1. Should each sub committee be able to deal with less than 12 cases per sitting the number of days required would increase.
- 3.7.2 Members should also note that the figures quoted on numbers of suspensions and revocations are based upon current enforcement staffing levels. Members will be aware that recruitment of additional enforcement staff has been ongoing for some time. As a result the enforcement activity reported is based upon staffing levels at

approx 50% of those that would be in place if the team were fully staffed. This also suggests that the time commitment is likely to increase.

- 3.7.3 Members should also note that the current levels of decision making on suspensions and revocations do not take into account the forthcoming change which will require drivers to submit CRB checks on a three yearly basis. At present drivers are required to notify the Council of any charges or convictions as and when they arise and again on annual renewal. In addition, the Council sometimes becomes aware of incidents through notification by West Yorkshire Police. The requirement to submit CRB checks on a regular basis might result in the Council becoming aware of offences and convictions which have not been declared or notified and might result in an increase in decisions on suspensions, refusals and revocations.
- 3.7.4 In addition to the time spent in committee members also need to consider attendance at court if their decisions were appealed. Currently officers can spend up to 30 days per year in Court. Witness and statement preparation time would be in addition to that. In these circumstances the Chair of the committee or sub committee would need to represent the council as the officers currently do and explain the facts taken into consideration and the reasons for the decision that had been made. Appeal hearings before the Magistrates Court are hearings 'de novo' in that the case must be reheard with the Magistrates' standing in the shoes of the decision maker. The Magistrates' do need a clear set of reasons for the decision made by the council as they must take that into account and should only reverse the decision if it is plainly wrong.
- 3.7.5 Experience of appeals under the Licensing Act 2003 shows the importance of clear written reasons for decisions being formulated at the committee stage even if that lengthens the time for the hearing. One crucial difference between alcohol licensing cases and taxi and private hire cases however is that our current practice is not to call the sub committee chair to give evidence. This is not needed because the court will have the benefit of hearing from the parties who gave evidence and made representations before the committee. Effectively the council calls independent parties as it's own witnesses in such cases. That model would not work in relation to taxi and private hire appeals where the Court would expect to hear from the decision maker in order to understand fully the decision that was made. If the decision maker is not present the chances of defending the appeal reduce significantly.
- 3.7.6 Members will be aware that the maximum number of Members who can sit on the Licensing Committee is fixed at 15 by law. It is therefore not possible to increase the number of members to address resource any issues.
- 3.7.7 There will also be resource implications for the officer support that will be required in any change to a Member-led decision making process whether that be by full committee or sub-committee. These costs would include time spent servicing the committee, booking rooms, printing and publishing material etc, staff costs in Taxi and Private Hire Licensing including writing and presenting the report and drafting the decision letter and legal support to the committee including the checking of draft reports and decision letters and attendance and advice at the hearing.

- 3.7.8 The exact figure for additional costs incurred if the current system is changed would depend on the model that Members choose to adopt and the required number of hearings. Members could propose to exercise some but not all decision making through a sub committee rather than having officers exercising the powers. Looking at a model of full Member decision making the costs are anticipated to be at least
- TPHL costs of between £26 649 and £ 34 502 as it is anticipated that the Taxi and Private Hire Licensing staffing structure would need to be increased to accommodate the duties of writing and presenting reports. The figure represents salary plus on-costs per annum based on a post at C3/SO2 (exact grade subject to job evaluation)
 - Additional legal charges in supporting the process would be in the order of £44,000 per annum.
 - The additional costs for servicing a committee hearing by the Corporate Governance Team would be in the order of £13 000 per annum

4 Corporate Considerations

4.1 Consultation and Engagement

In October 2006 the Department for Transport issued Best Practice Guidance in relation to taxi and private hire vehicle licensing. The aim of the guidance was to assist local authorities with responsibility for the regulation of the taxi and private hire trade. The guidance was updated and refreshed in 2010.

The guidance states it is a good practice for local authorities to consult about any significant proposed changes in licensing rules and that that consultation should include not only the taxi and private hire trade but groups representing customers including those with a wider interest in transport, those representing disabled people or women's groups and local traders.

The information contained in this report has not been the subject of consultation with the trade. It is important to note that whilst some sections of the trade are in favour of changing the current delegated decision approach to one that is Member led, there are other views within the trade. Any change would need to be resourced and the additional cost would be met from increased licence fees. The views of all the trade must therefore be considered.

4.2 Equality and Diversity / Cohesion and Integration

If Members decide to change the approach an equality screening must be undertaken which might indicate a full equality impact assessment is required. If Members decide to change the system then this screening process and assessment (if required) will be undertaken alongside trade consultation.

4.3 Council policies and City Priorities

This report has no implications for council policies and city priorities however should a change to current arrangements be required then the decision maker will be required to apply a range of taxi and private hire licensing policies. A full list appears in the Background Papers Section of this report.

4.4 Resources and value for money

The increased resource implications of any change are significant and the Best Practice Guidance urges local authorities to be sure that each of the licensing requirements is in proportion to the risk it aims to address and whether the cost of any requirement is at least matched by a benefit to the public, for example to increase safety. Local authorities are advised to look carefully at the costs imposed by each of their taxi and private hire policies and ask whether the costs are commensurate with the benefits a policy is meant to achieve. This Guidance should be borne in mind as any decision to change arrangements has a significant resource implication.

4.5 Legal Implications, Access to Information and Call In

There is no legal barrier to changing the current arrangements to a Member-led approach. No change will be required to the constitution and as such this is an operational decision.

Whether Members deal with some or all of the decisions a matrix will be required that must set out exactly who the decision maker is in each scenario. Clarity as to who made the decision will be important in terms of calculating any appeal time limits as the appeal period will be 21 days from the date the decision is notified. A review or appeal of a decision will not stop the clock from running.

All decisions made by Members may be appealed to the Magistrates or Crown Court.

Adopting a member-led review or appeal process will require short notice hearings or a frequent schedule to ensure the meeting can be convened before the individual has to incur any costs by lodging the appeal at the Magistrates Court.

If Members are to begin making some or all decisions then a full training session will be needed covering the relevant law and the principles of fair processes.

Members must also bear in mind the current rules relating to declarations of interest which will apply to any decisions they make as well as the proposed changes to these which will make failure to declare interests a criminal offence rather than being a matter for the Standards Committee.

In addition there is a legal risk of challenge based upon the potential appearance of bias rather than any actual bias or failure to declare interests. This may occur for example where the member is perceived as being so closely connected to one of the parties that they cannot have an open mind, even if that does not amount to a personal and prejudicial interest.

4.6 Risk Management

The legal risks of a change can be mitigated if there is consultation with the trade and the equality impact of the change is assessed and both factors are taken into account before any final matrix is approved.

The legal risks of any amended hearings process can be mitigated by full Member training.

5 Conclusions

- 5.1 That there is no legal barrier to changing the current arrangements to a Member-led approach but that any change does have significant resource implications. It will be necessary to retain some level of delegation to officers in any event for those cases requiring immediate roadside suspension. There should therefore be a clear matrix for decision making split between officers and Members and the risk mitigation measures highlighted at 4.6 will be required.

6 Recommendations

- 6.1 That members consider what, if any, change should be made to the current arrangements.
- 6.2 That if any change is proposed, that Officers should be instructed to
- 6.2.1 Draft a decision making matrix
 - 6.2.2 Carry out equality screening, and
 - 6.2.3 Consult the trade, and
 - 6.2.4 Refer the matter back to Licensing Committee if the consultation or equality screening raises significant concerns.

7 Background documents

Taxi and Private Hire Vehicle Licensing :Best Practice Guide – Department for Transport
March 2010

Approved Policies

Medical Exemptions
Plying for Hire

Conditions

Private Hire Driver

Hackney Carriage Vehicle inc. Wheelchair Accessible Vehicles, Vehicle Age Criteria & Livery,
Signs and Markings

Private Hire Vehicle inc. Wheelchair Accessible Vehicles, Vehicle Age Criteria & Livery, Signs and
Markings

Private Hire Operator

Application Criteria

Driving Standards Agency (DSA) Test

Group II Medical

English Comprehension

Convictions Criteria

Criminal Records Bureau Vetting

Local Knowledge Test

Private Hire Vehicle proprietors inc rental companies

Executive Private Hire Driver
Executive Private Hire Vehicle
Executive Private Hire Operator
Stretched Limousine Private Hire Driver
Stretched Limousine Private Hire Vehicle
Stretched Limousine Private Hire Operator
Hackney Carriage Proprietor

Appendix 1

Licensing Functions delegated by Licensing Committee

<p>Subject to the exceptions listed below, the Director of Resources is authorised to discharge the licensing functions¹ of the licensing authority.</p> <p><u>Exceptions:</u></p> <ul style="list-style-type: none"> • any licensing function² reserved to full Council³; and • any licensing function where full Council has referred a matter to a committee other than the Licensing Committee⁴; and • any licensing function within the terms of reference of the Licensing Sub-committees⁵; and • to object when the Authority is consultee and not the relevant authority considering an application under the 2003 Act 	<p>Licensing Act 2003 and the Gambling Act 2005.</p>
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Functions related to the Licensing Functions delegated by Licensing Committee

Subject to the exceptions listed below, the Director of Resources is authorised to discharge the functions set out in the following table that are delegated to the Director of Resources by Licensing Committee

(a)	To license hackney carriages and private hire vehicles	(a) As to hackney carriages, the Town Police Clauses Act 1847 as extended by section 171 of the Public Health Act 1875 and section 15 of the Transport Act 1985 and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976 (b) As to private hire vehicles, sections 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
(b)	To license drivers of hackney carriages and private hire vehicles	Section 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
(c)	To license operators of hackney carriages and private hire vehicles	Sections 55 to 58, 62 and 79 of the Local Government (Miscellaneous Provisions) Act 1976

¹ "Licensing functions" means functions under the 2003 Act and the 2005 Act.

² "Licensing functions" means functions under the 2003 Act and the 2005 Act.

³ Part 3, Section 2A of the Constitution sets out licensing functions reserved to full Council, as licensing authority under the 2003 Act.

⁴ Under the provisions of Section 7(5)(a) of the 2003 Act

⁵ Except where a Licensing sub-committee has arranged for the discharge of any of their functions by an Officer

(d)	* To licence sex shops and sex cinemas and sexual entertainment venues.	The Local Government (Miscellaneous Provisions) Act 1982, Section 2, Schedule 3, the Policing and Crime Act 2009, Section 27.
(e)	To license performances of hypnotism.	The Hypnotism Act 1952
(f)	* To license persons to collect for charitable and other causes	Section 5 of the Police, Factories etc (Miscellaneous Provisions) Act 1916 and section 2 of the House to House Collections Act 1939

Exceptions

The Director of Resources is not authorised to discharge those functions marked * above where objections have been received.

Appointments to Sub-Committees

The Director of Resources is authorised to appoint members to vacancies during the period between the local elections and the Annual Council meeting, in consultation with appropriate whips, in order to secure that meetings necessary to be held during that period can proceed with adequate and appropriate membership levels.

Appendix 2

SUMMARY OF LEGAL PROVISIONS

Grant, Refusal, Suspension or Revocation of the Licence

- Hackney carriage drivers
 - To grant a licence the applicant must be a fit and proper person.
 - To suspend or revoke the licence the holder must have
 - (i) Been convicted of an offence involving dishonesty, indecency or violence, or
 - (ii) Been convicted of an offence under or failed to comply with the Town Police Clauses Act 1847 or the Local Government (Miscellaneous Provisions) Act 1976, or
 - (iii) For any other reasonable cause.
- Private hire drivers

The Council shall not grant a licence:

- (a) Unless satisfied that the applicant is a fit and proper person to hold a licence, or
- (b) The individual has been authorised to drive a motor vehicle for the 12 months prior to the date of the application.

A private hire driver's licence can be suspended, revoked or a renewal can be refused on the same basis that a hackney carriage driver's licence can be suspended, revoked or renewal refused.

- Private hire vehicles

Before granting a licence the Council must be satisfied that the vehicle is suitable in type, size and design for use as a private hire vehicle, not of a design or appearance to lead a person to believe it is a hackney carriage, in suitable mechanical condition, safe and comfortable and that the vehicle is insured. The 1976 Act allows the Authority to suspend, revoke or refuse to renew a vehicle licence on the grounds that it is unfit for use as a hackney carriage or private hire vehicle, an offence under or non compliance with the provisions of the Act of 1847 or the 1976 Act by the operator or driver or any other reasonable cause.

- Private hire operators
 - The applicant must be a fit and proper person to be granted a licence.

- The licence can be suspended, revoked or there can be a refusal to renew on the following grounds:
 - Any offence under or non compliance with the provisions of the LG(MP) A 1976,
 - Conduct on the part of the operator which renders him unfit to hold the operator's licence,
 - Material change since the licence was granted of any of the circumstances of the operator affecting the basis on which the licence was granted,
 - Any other reasonable cause.

Appendix 3

Authority	Number of Licences	Current Practice
Wakefield	312 Hackney Carriage Driver 1704 Private Hire Driver 118 Hackney Carriage Vehicles 1155 Private Hire Vehicles 70 Private Hire Operators	The grant, refusal, revocation and suspension of licences are now dealt with by officers with appeal to the Magistrates' Court.
Kirklees	2240 Drivers 220 Hackney Carriage Vehicles 1755 Private Hire Vehicles	<p>Licences are granted by an officer unless the CRB check shows issues of concern. If so it is referred to the Section Head. The Section Head can grant but if minded to refuse the matter is referred to Licensing Committee to decide.</p> <p>Suspensions are carried out by officers and decisions are reviewed by the Section Head. There is a right of appeal to the Licensing Committee against the suspension in addition to the appeal to Magistrates.</p> <p>Revocations can be done by the Section head who can refer the matter on to the Committee if he/she considers it appropriate.</p> <p>PH Operators – there is a right of appeal to members on refusal, suspension or revocation of licences.</p>
Calderdale	211 Hackney Carriage Drivers 936 Private Hire Drivers 59 Hackney Carriage Vehicles 675 Private Hire Vehicles. 60 Private Hire Operators	Decisions are made by officers with a committee setting conditions and policies. Appeals against the decisions are directed to the Magistrates' Court.
Bradford	3000 Drivers	The grant, refusal,

	<p>223 Hackney Carriage Vehicles 2100 Private Hire Vehicles 116 Private Hire Operators</p>	<p>revocation and suspension of licences are dealt with by officers with appeal to the Magistrates' Court. The only Member involvement is where officers are minded to grant but to do so would be in conflict with the policy approved by Members.</p>
Nottingham	<p>2272 Drivers 420 Hackney Carriage Vehicles 1114 Private Hire Vehicles 20 Private Hire Operators</p>	<p>Decisions are made by officers with a committee setting conditions and policies. Appeals against the decisions are directed to the Magistrates' Court.</p>
Sheffield	<p>2600 Drivers 857 Hackney Carriage Vehicles 1352 Private Hire Vehicles 33 Private Hire Operators</p>	<p>Licences are granted by an officer unless the CRB check shows issues of concern.</p> <p>Suspensions carried out by officers.</p> <p>Revocations, refusals and grants of a licence where there are CRB issues are done by a sub-committee.</p>
Birmingham	<p>1433 Hackney Carriage Driver 5849 Private Hire Driver 1392 Hackney Carriage Vehicles 5102 Private Hire Vehicles 94 Private Hire Operators</p>	<p>Grant of licence by officers unless the CRB shows issues of concern.</p> <p>Suspension by sub-committee. There is limited delegation to officers to suspend.</p> <p>Refusal, revocation and grant where there are CRB issues by a sub-committee.</p>

Wakefield

Wakefield's policy changed in January 2011. Prior to that date Applications of concern were always referred to a committee to be heard. The committee sat for a full day every three weeks dealing with the Applications. The change in January 2011 to officers making the decision within the remit of overall policy set by the Council. This has resulted in a full committee sitting once every six weeks dealing with matters of policy.

Birmingham

Birmingham is the biggest Authority in which the majority of decisions are made by members rather than officers. The sub-committee in Birmingham sits for two to four days per month dealing with taxi matters. The Licensing Section employs a full time officer to prepare the reports and the Section Head attends committee to deal with the Applications considered there. Birmingham also report problems caused by non attendance of applicants before the committee resulting in wasted member and officer time.

Kirklees

Kirklees deal with HC and PH matters at Committee using 1 full day per month which can accommodate up to 12 decision reports.

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Report of City Solicitor

Report to Licensing Committee

Date: 13 March 2012

Subject: Appeals under the Licensing Act 2003

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Various Please see Appendix 1	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: 10.4.5 Appendix number: 1	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Summary of main issues

1. This report outlines appeals which have been lodged against decisions of the Licensing Sub-committees under the provisions of the Licensing Act 2003. It outlines the current position in relation to each appeal and the predicted hearing date if known.
2. The report identifies the outcome of one appeal in relation to McDonalds' premises at Colton Retail Park, Leeds.

Recommendations

3. That Members note the contents of this report and request further updates as matters are dealt with.

1 Purpose of this report

- 1.1 This report outlines for Members information the appeals which have been lodged against decisions of the Licensing Sub-committees made under the Licensing Act 2003 and the outcome of a recent appeal in relation to McDonalds at Colton Retail Park.

2 Background information

- 2.1 Decisions of the Licensing Sub-committees can be the subject of an appeal to the Magistrates' Court under Section 181 of the Licensing Act 2003. Schedule 5 to the Act sets out the detail of who may appeal each decision. The applicant can appeal against a partial or full refusal of a grant or variation. The applicant for any review and the respondent licence holder may appeal any review decision. Responsible Authorities or Interested Parties who made relevant representations in relation to grants, variations, or reviews may also appeal. In the cases referred to in this report, each of the appeals has been lodged by the applicant for the grant or variation of the licence.
- 2.2 On appeal, the Magistrates' Court can:
- Dismiss the appeal;
 - Substitute any other decision which could have been made by the Licensing Authority for the decision actually made by the Sub-committee; or
 - Remit the case back to the council to dispose of in accordance with the direction of the Court.
- 2.3 In making the decision, the Magistrates stand in the shoes of the Licensing Authority and must take into account the council's own licensing policy and the section 182 Guidance issued by the Secretary of State.
- 2.4 Recent case law, R (On the application of Hope and Glory Public House Ltd) v City of Westminster Magistrates Court [2011], indicates that the Court can only substitute its own decision or remit the case where it is satisfied that the decision of the sub-committee was wrong. Otherwise it must dismiss the appeal. The appellant bears the burden of persuading the Magistrates' Court that the decision of the Licensing Sub-committee was wrong. The fact that a different decision could legitimately have been made on the same facts does not necessarily mean that the decision was wrong. In making their decision, the Magistrates are entitled to take into account any fresh information arising since the subcommittee dealt with the matter. That might in itself suggest a different outcome to the decision.
- 2.5 In most cases it is unusual for the court to order costs against the Licensing Authority since it is clear that the sub-committee would have acted in good faith when making the decision on the basis of the information before them.

3 Main issues

- 3.1 A number of appeals have been lodged recently against decisions of the Licensing Subcommittee and these are set out in the table at Appendix 1. There is no single reason why the number of appeals has increased. The appeals lodged raise a number of different issues, including the importance of the Cumulative Impact Policy, whether garage premises are excluded premises under section 176 of the Licensing Act, and issues relating to the appropriateness and correct wording of conditions. There has been no single sub-committee which has had more decisions appealed and there has been no change in approach to decisions.
- 3.2 In the appeal relating to McDonalds at Colton Retail Park, a hearing took place before the Leeds Magistrates' Court on Thursday, 23 and Friday, 24 February 2012. The appeal lodged in that case was against the refusal of a variation to licence. The existing licence authorised the provision of late night refreshment to midnight within the restaurant and 01:00hours as a drive-through. The variation sought a licence for late night refreshment for both restaurant and drive-through purposes from 23:00hours to 05:00hours every day of the week. This would effectively render the premises a 24-hour, 7 day a week establishment. Objection was received from the Environmental Protection Team and 13 local residents also objected. The principal objections were of increased nuisance, noise and litter. At the hearing, Councillor Bill Hyde made representation on behalf of local residents and Brian Kenny from the Environmental Protection Team addressed the Sub-committee in relation to their representation on nuisance. The Sub-committee resolved to refuse the application for variation because of its impact on the objective of preventing public nuisance. The Sub-committee found that there would be an increase in traffic movement into the trading estate in close proximity to local residents and that the resultant noise was likely to disturb residents between 01:00hours and 05:00hours which was a particularly noise sensitive period.
- 3.3 Eight grounds of appeal were listed including:
- That the Sub-committee failed to properly consider the evidence presented, showed bias against the appellant (McDonalds) and placed too much weight on the representations.
 - That the Sub-committee confused issues of planning and licensing during their questioning of the appellant.
 - That the Sub-committee expressed personal views that there should not be a 24/7 culture in Britain.
 - That insufficient weight was given to the explanation of activities and use at the site.
 - That the Sub-committee did not balance the evidence presented by the appellant against speculative assertions from the interested parties (effectively that the Sub-committee should have allowed the application and the review process could be used to resolved any subsequent problems).

- That the issue of the proximity of the entrance to residential properties was not raised as an issue at the hearing and therefore the appellant did not have the opportunity to address this.
- That the Sub-committee failed to consider the evidence presented.
- The decision was irrational and solely without cause and unsupported by evidence.

3.4 The Magistrates' Court heard from Councillor Bill Hyde and Brian Kenny, who repeated the information that they had submitted to the Sub-committee as well as representatives from the business concerned. In a detailed judgment the Magistrates decided to dismiss the appeal. In doing so, they decided that they could not be sure that the decision of the Sub-committee was wrong bearing in mind the need to promote the objective of preventing public nuisance and the representations and evidence put forward by the council's witnesses. In making that decision, the Court effectively dismissed all of the grounds of appeal including those alleging that the Sub-committee was biased and failed to apply the correct legal tests. Had the Magistrates detected that that was the situation, then they would have been entitled to conclude that the wrong decision was reached.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 This report does not raise any issues of consultation and engagement.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 This report does not raise any issues relating to Equality and Diversity, Cohesion and Integration.

4.3 Council Policies and City Priorities

4.3.1 In making their determinations, the Sub-committees have regard to the council's Statement of Licensing Policy. The Magistrates hearing the appeal must also have regard to the same policy.

4.4 Resources and Value for Money

4.4.1 Where an appeal is lodged then the council is obliged to respond to that appeal. It is possible for the council to be awarded its costs of defending the appeal. Costs are normally awarded where the appeal is dismissed save in exceptional circumstances.

4.5 Legal Implications, Access to Information and Call In

4.5.1 This report is potentially exempt as a number of the cases listed in Appendix 1 are the subject of ongoing proceedings and therefore discussion of the appendix may raise matters to which a claims to legal professional privilege could be upheld.

4.6 Risk Management

4.6.1 The ability of the council to successfully defend appeals is influenced by the quality of decision making. That, in turn, relies upon Members being given appropriate training, having the correct information provided to them in reports and having access to timely and accurate advice where required.

5 Conclusions

5.1 There has been an increase in appeals under the Licensing Act 2003. This increase does not relate to the activities of any particular sub-committee or any particular type of decision.

6 Recommendations

6.1 Members note the content of this report.

7 Background documents

7.1 None

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LICENSING COMMITTEE WORK PROGRAMME 2011/12- LAST UPDATED 28 Feb 2012 (hg)

ITEM	DESCRIPTION	NOTES	TYPE OF ITEM
Items Currently Unscheduled			
WYTSS	Test purchasing and other measures tackling under age sales		B
Regular Renewal of CRBs for Licence Holders	Review, timetable to be agreed having regard to necessary public consultation	D Broster	
SEVs	Training ongoing from January 2012. SEV applications to be considered w/c 11 June 2012		
Casino	Training ongoing from January 2012 Casino Stage 1 application process w/c 16 July 2012		
City Centre Policing Update	Discussion on city centre premises, licensing and policing (June/July 2012)	WYP	B
TPHL Policy Review – ongoing review of the policies/conditions	Timetable for the reviews was agreed Feb 11, the policies/conditions will return to Committee at the conclusion of the necessary consultation period (to include driver licences nationality & immigration status checks)	D Broster (Sept 2011 – Jan 2012)	DP
Licensing enforcement	Update on licensing enforcement activities	N Raper/S Kennedy	B
Planning & Licensing		S Holden/C Sanderson	B

ITEM	DESCRIPTION	Officer	TYPE OF ITEM
Meeting date: 17 May 2011 - cancelled			
Meeting date: June 2011 – HELD. Casino application pack/Annual Gov arrangements/procedure /appeals			
Meeting date: 26 July 2011 – HELD SEVS policy/HC Trade Forum constitution			
Meeting date: 16 August 2011 – HELD Leeds Festival EMP update			
Meeting date: 13 September 2011 – HELD WYP presentation, City Centre night time economy			
Meeting date: 18 October 2011 – HELD De-regulation of regulated ents, Casino Advisory Panel;			
Meeting date: 15 November 2011 – HELD Leeds Festival de-brief, Police reform Bill, TPHL operation matters, De-Regulation of ents.			

LICENSING COMMITTEE WORK PROGRAMME 2011/12- LAST UPDATED 28 Feb 2012 (hg)

ITEM	DESCRIPTION	Officer	TYPE OF ITEM
Meeting date: 20 December 2011 - CANCELLED			
Meeting date: 17 January 2012 – HELD – Large Casino application pack			
Meeting date: 14 February 2012 – HELD WYP presentation, Leeds Festival update, LA2003 update			
Meeting date: 13 March 2012			
LA2003 Appeals	Report on outcomes of recent appeal decisions	G Marshall	PM
Resources for PH/HC appeals	Report on proposals to establish PH/HC appeals sub committee	J Mulcahy	
SEV Training	Training session on SEVs at the conclusion of the Committee		
Meeting date: 10 April 2012			
Leeds PCT	Final Alcohol Action Plan	Brenda Fullard	B
Transport & the night time economy	Workshop discussion on transport matters, strategy and impact on the night time economy	Andrew Hall	B
Meeting date: 15 May 2012			
NVQ/VRQs for drivers	Review ongoing arising from the Working Group	D Broster	B

Key:

RP – Review of existing policy

DP – Development of new policy

PM – Performance management

B – Briefings

SC – Statutory consultation