

Licensing Committee

Tuesday, 14th August, 2012

PRESENT: Councillor S Armitage in the Chair

Councillors N Buckley, R Charlwood,
R Downes, B Gettings, T Hanley,
G Hussain, G Hyde, A Khan and
C Townsley

- 40 Exempt Information - Possible Exclusion of the Press and Public
RESOLVED** – That the public be excluded from the meeting during the consideration of the following parts of the agenda designated as exempt 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 public were present there would be disclosure to them of exempt information so designated in Appendix A to the report referred to in Minute No.49 under the terms of Access to Information Procedure Rule 10.4(3) and on the grounds that several businesses are identified within the Appendix and open discussions on the contents could be prejudicial to their business interests. As a result, withholding the information within appendix A was considered to outweigh the public interest benefit of its release
- 41 Late Items**
No formal late items of business were added to the agenda; however the Committee was in receipt of the following documents which were tabled at the meeting
Agenda item 8 Petition for Equal Rights – a revised table showing cases where the use of powers to immediately suspend have been considered (minute 46 refers)
Agenda item 11 Leeds Festival – a copy of the most up to date schedule of amendments made to the Event Management Plan (minute 49 refers)
- 42 Declaration of Disclosable Pecuniary and other Interests**
There were no declarations of interest
- 43 Apologies for Absence**
Apologies for absence were received from Councillors Bruce, Dunn, P Latty, Selby and Wilkinson
- 44 Minutes**
RESOLVED – That the minutes of the meeting held 24th July 29012 be agreed as a correct record
- 45 Law Commission Consultation Paper "Reforming the law of Taxi and Private Hire Services" - Draft response for approval**
Further to minute 19 of the meeting held on 26th June 2012 when Members had initially discussed the Law Commission consultation paper "Reforming the law of Taxi & Private Hire Services", the Head of Licensing and Registration

submitted a further report setting out the Council's draft response for approval. The document reflected comments made by the Committee at the June meeting and had been sent to all Members of Council for further comments. Officers highlighted further revisions made since receipt of comments from Councillor R Lewis, Executive Member for Development & the Economy and from LCC Transport Policy Section.

The Committee noted that the Councils wish to retain local conditions was now reiterated throughout the document and further discussed the response to Provisional proposal 27 (private hire services would not be subject to standards except those related to safety...). Clarification was provided that if minimum standards were introduced without retaining the facility for additional local conditions, the ability for the Council to require English comprehension testing would be lost. The draft response aimed to reflect the Committee's wish to retain English comprehension testing, in the interests of public safety, to ensure that passengers felt safe, that they were understood and charged appropriately. Members requested that the response to 27 should be amended to reflect the clarification

RESOLVED – That the contents of the discussions be noted and that approval be given to the draft response as set out in appendix A of the report and, subject to the requested amendment being made to the response to 27, officers be authorised to submit the response on behalf of the Council to the Law Commission by the given deadline of 10 September 2012

46 Hackney Carriage and Private Hire Driver's Petition for Equal Rights and alleged unlawful application of Immediate Suspension Powers

Further to minute 32a) of the meeting held 24 July 2012 when the Committee noted receipt of petition submitted by Mr Kabear Hussain of Alpha Hire and Hackney Welfare Society, the City Solicitor and the Chief Officer, Democratic & Central Services, submitted a joint report advising Members of the issues raised in the petition. In brief, the petition requested the Council consider passing an 'Equality Resolution' in respect of certain licensing decisions taken by officers of the Taxi & Private Hire Licensing Section under the terms of the delegated decision making process.

Members noted that the concern expressed in the petition was that the provision was being used incorrectly by Leeds City Council officers. Furthermore, the petition suggested that it should only be used where there had been a conviction, an ongoing police investigation or prosecution against the driver for an indictable only offence. Members also noted the contents of the letter accompanying the petition.

The report presented information to assist Members' consideration of how to respond to the petition, particularly in respect of the provisions within Section 61(2B) of the Local Government (Miscellaneous Provisions) Act 1976 which allows the suspension or revocation of a licence with immediate effect on public safety grounds. This statutory provision was inserted into the legislation by the Road Traffic Act 2006 effective from 17 March 2007. Officers highlighted the general reasons for revocation and suspension as set out in section 61 of the 1976 Act as being:

- that the driver has since the grant of the licence been convicted of an offence involving dishonesty, indecency or violence or
- been convicted of an offence under or failed to comply with the provisions of the Act of 1847 or of the 1976 Act or
- for any other reasonable cause. Case Law has held that any other reasonable cause covers matters short of a conviction.

The new powers provided through the RTA 2006 were clarified as being:

- section 61 (2A) provides that suspension/revocation normally takes effect after 21 days. A driver may make an appeal against the action during that time and continue to operate until that appeal is dealt with. The Notice that must always be given to the driver sets out the reasons for suspension
- section 61 (2B) provides that *'if it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2) (a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.'*

A revised schedule showing the number (23) and nature of driver suspensions between 1 January and 16 August 2012 was tabled at the meeting. Officers addressed the specific wording in the resolution proposed by Mr Hussain, particularly the term "indictable only offence" and the impact the resolution would have, if adopted, on reducing the powers used by the authority to address public safety issues.

Officers clarified that S61(2B) gave wide discretion to a decision maker and did not limit the decision maker to considering charges or criminal convictions alone, but importantly, the clause did ensure that the reason for suspension was directly linked to upholding public safety. Officers provided an example where there had been sufficient cause for concern about a driver, but a legal case was not pursued due to the status of a witness who could corroborate an allegation, in such a case the police had supported LCC in the use of immediate suspension powers because of the seriousness of the concerns – and that decision in this circumstance had been upheld by the Court at a subsequent appeal.

Officers referred to the proposal to draft guidance on the use of the powers for Members approval. It was also suggested that a wider discussion on Members' views of public safety would inform the proposed guidance document with the intention that the guidance would be made publicly available.

The Committee discussed the following matters with officers:
 the decision making process undertaken by officers prior to a suspension and/or revocation being made and the follow up process undertaken after an immediate suspension made under 61(2B)
investigations - the process undertaken by LCC to investigate allegations made against a driver, the evidence required to an allegation, and the course of redress available to a driver through the Magistrates Court. It was noted that the opportunity for a driver to respond to an allegation been built into the investigative process

Appeals - The detail of the 23 suspensions listed in the report could be provided to Councillors if required and the Committee requested further information on the number of appeals lodged by drivers against the immediate suspension of their licence, including the detail of the outcome of those cases reasonable cause - the concerns over the use of the term "for any other reasonable cause." Clarification was provided that this term related to the suspensions given on notice. Officers reassured the Committee that "reasonable cause" was not the evidential test for the issue of an immediate suspension

Monitoring – the Committee noted the suggestion that the use of powers of immediate suspension of drivers should be monitored in the future

Consultation – Members agreed that there was a need to take the view the whole driver community through consultation and noted the comment highlighting the fact that the petition represented 250 of the 6000 drivers in Leeds

Equality screening – One Member referred to the letter accompanying the petition which referred to equality for Muslim drivers and commented that this suggested direct or indirect discrimination of that group of drivers. In response to a query about gathering ethnic monitoring statistics, officers confirmed that such statistics were not gathered as ethnicity/culture did not feature in the application for a drivers licence. The Committee supported that approach. Officers involved in the decision making process stated that, in the cases of immediate suspensions referred to them for review, there had been no evidence of discrimination of a specific ethnic or cultural group.

Members also received information on the equality and diversity screening referred to in the report and noted that officers were required to identify any implications for various minority groups and assess whether any decision which is proposed to be taken by them would have any serious implications for those groups, and if so, officers would have to consider how to mitigate the effect of those implications

Perception – Members discussed the perception of the TPHL service expressed by some groups within the PH and HC trade and it was acknowledged that some sectors were dissatisfied. The Committee were assured that work was being done to address this. Members noted that the development and publication of a guidance document in respect of the use of the powers to immediately suspend a driver would go some way to address the concerns of some of the trade

The Committee, having discussed the request at length, and several other matters arising

RESOLVED –

- a) Not to accept the proposal set out in the petition submitted by Mr K Hussain of the Alpha Hire and Hackney Welfare Society which requests the Council to consider passing a resolution

‘ that in the determination of whether to suspend or revoke the licence of a HACKNEY CARRIAGE driver under its powers in the Local Government (Miscellaneous) Provisions Act 1976, Section 61 (2B), such determination to revoke a licence with immediate effect shall only be undertaken if there has been a conviction, an ongoing police investigation, or prosecution against the driver for an indictable only offence’.

as the proposed resolution does not reflect the legal position and unduly

- restricts the powers of the council
- b) To direct officers to prepare draft guidelines on the use of the powers of immediate suspension for consideration by the Licensing Committee at its October meeting prior to consultation with HC and PH trades on the guidelines
 - c) To request a full review be undertaken of the existing Policy and processes and that a report be presented in due course setting out the findings of the review for discussion, to include wider discussions on the issues of public safety in respect of the PH and HC trade

47 Revisions to the Code of Practice for determining Licensing Matters

The Committee considered the report of the City Solicitor on changes made to the Code of Practice for the Determination of Licensing Matters made by the Standards and Conduct Committee following the introduction of the new standards regime on 1 July 2012. The revised code was attached as Appendix 1 to the report and the Licensing Committee was requested to review the Code of Practice to ensure it remained fit for purpose and to report back to the next available meeting of the Standards and Conduct Committee.

Officers highlighted the main revisions as being the removal of the reference to personal prejudice or interest and the inclusion of reference to disclosable pecuniary interest instead; the inclusion of the new definition of predetermination and revisions to the section relating to the monitoring of the Code. Officers also highlighted that it would be beneficial to maintain the current consistency of approach with the Code of Practice for the determination of Planning Matters and any comments made by the Committee would be fed into discussions on the planning code.

Members, in their review of the Code, considered that the Code should be retained as part of the Council's conduct framework as it had particular value in regulating the Committees' decision making process

RESOLVED –

- a) To note that no further amendments to the Code of Practice were required by the Licensing Committee
- b) To note the contents of the revised Code of Practice for the determination of Licensing Matters which is now in force
- c) To note that officers would now report the Committees' continued support of the Code to the Standards and Conduct Committee meeting scheduled for October 2012

48 Entertainment Licensing Section - Enforcement and Liaison Team Enforcement Activity Update (April to June 2012)

The Head of Licensing and Registration submitted a report providing an overview of the activities undertaken by the Entertainment Licensing Liaison and Enforcement Team during the second quarter of 2012.

The report detailed formal operations undertaken by the Team and Members discussed the following matters with the Principal Liaison & Enforcement Officer:

Metal theft – the work undertaken to deter unlicensed scrap metal dealers. The suggestion that scrap metal business premises and storage facilities should be monitored following the issue of a licence was noted and officers agreed to further consider this in conjunction with LCC Planning Services

Proceeds of Crime – the successful outcome of a joint operation undertaken with West Yorkshire Trading Standards and Kirklees POCA Team to pursue and prosecute an individual trading an unlicensed sex shop and counterfeit dvds from a domestic property and the assets seized under the provisions of the Proceeds of Crime Act amounting to £55,000 and £5,000 costs awarded to Leeds City Council

Grassroots – the value of sharing information at a strategic level at the newly established partner meetings, which now included the Leeds NHS Trust. It was important to note that Accident & Emergency statistics shared with LCC and WYP enabled the agencies and responsible authorities to more accurately identify hotspots for violent incidents in the city centre and target resources effectively

Pubwatch – officers reported the Pubwatch Website was due to be officially launched on 16th August 2012 which would enable licensees and agencies to share and highlight information for the licensed trade

Temporary Event Notices – one Member raised a concern relating to the TEN application process, citing a recent case for reference, and the nature of communications sent to an applicant. Officers agreed that this individual case would be discussed directly with the Councillor and a further report would be brought to Committee in due course as the basis for discussion on the TEN application process.

The Committee welcomed the information contained within the presentation and expressed their thanks and support for the work undertaken by the Enforcement Team.

RESOLVED - That the contents of the report be noted and

- a) To note that a further report on the work of the Liaison & Enforcement Team covering the period 1 July to 31 December 2012 will be presented at an appropriate Committee meeting
- b) To note that the requested report on the Temporary Event Notice process will be presented in due course.

49 Leeds Festival 2012

The Head of Licensing and Registration submitted a report on the progress of the multi agency meetings and the Event Management Plan for the Leeds Festival 2012, scheduled to be held within the grounds of Bramham Park from Friday 24 August to Sunday 26 August 2012.

Officers presented an update on the outcome of the most recent multi agency meeting held on 9 August 2012, particularly in respect of the impact of likely attendance figures on camping; car parking and vehicular access arrangements. A schedule of further revisions made to the Event Management Plan was tabled at the meeting.

RESOLVED –

- a) That authority be delegated to the Head of Licensing and Registration to approve the Event Management Plan prior to the start of the event; and

- b) That authority be delegated to the Head of Licensing and Registration to approve any minor amendments to the Event Management Plan, as necessary, prior to the start of the event.
- c) To note that, should the Event Management Plan be subject to amendment without the relevant agency consent, or be of a nature which officers consider may impact on the licensing objectives, then the Event Management Plan will be brought back before the Licensing Committee prior to the event taking place.

50 Licensing Work Programme

RESOLVED – That the contents of the Licensing Work Programme, with the additions made at this meeting, be noted

51 Date and Time of Next Meeting

RESOLVED – To note the date and time of the next meeting as 11th September 2012