

EXTRAORDINARY LICENSING COMMITTEE held at 10.30 am at the COUNCIL OFFICES SAFFRON WALDEN on 3 JUNE 2011

Present: Councillor D G Perry – Chairman.
Councillors R M Lemon and A D Walters.

Also present : Councillors J Freeman, V Ranger, J Redfern and J Rose.

Officers in attendance: M Hardy (Licensing Officer), M Perry (Assistant Chief Executive-Legal) and C Roberts (Democratic Services Officer).

LC1 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

An apology for absence was received from Councillor E W Hicks.

LC2 APPLICATION TO VARY A PREMISES LICENCE - THE CROWN HOUSE, GREAT CHESTERFORD

The Chairman welcomed all parties to the meeting and introduced the Members of the Panel and officers to the applicant and objectors, having first established that no-one objected to the presence of additional councillors for the sole purpose of observation.

The Licensing Officer then presented his report. The case had been brought before the Committee following objections received to an application to vary the premises licence for The Crown House, Great Chesterford which had first been issued for the premises under the Licensing Act 2003 following an application to convert the previous Justices Licence on 15 July 2005.

The premises licence had hitherto permitted the following licensable activities

(a) Playing of recorded music (indoors only)

Monday to Saturday	11.00am to 12 midnight
Sunday	12 noon to 11.30pm

(b) The sale by retail of alcohol for consumption both on and off the premises

Monday to Saturday	11.00am to 12 midnight
Sunday	12 noon to 11 30pm

(c) The hours the premises were open to the public

Monday to Saturday	11.00am to 12 .30am
Sunday	12 noon to 12 midnight

The current mandatory conditions were attached to the licence at Annexe 1.

The proprietor of the premises sought a variation to the current licence by increasing the licensable activities in respect of regulated entertainment, adding late night refreshment and extending the times permitted involving the sale of alcohol by retail.

The Licensing Act 2003 required the application to be supported by an operating schedule showing how the licensing objectives would be met and what licensable activities were sought.

The licensable activities being sought were :

(a) Live Music (Indoors and Outdoors)

Monday to Saturday	12 noon to 12 midnight
Sunday	12 noon to 11.30pm

(b) Recorded Music (Indoors Only)

Monday to Saturday	11am to 12 midnight
Sunday	12 noon to 11.30pm

(c) Performance of dance (Indoors and Outdoors)

Monday to Saturday	12 noon to 12 midnight
Sunday	12 noon to 11.30pm

(d) Provision of facilities for dancing (Indoors Only)

Monday to Saturday	12 noon to 12 midnight
Sunday	12 noon to 11.30pm

(e) Late Night Refreshment (Indoors Only)

Monday to Saturday	11pm to 12.30am
Sunday	11pm to 12 midnight

(f) The sale by retail of alcohol for consumption both on and off the premises

Monday to Saturday	11am to 12.30am
Sunday	11am to 12 midnight

(g) The hours the premises are open to the public

Monday to Saturday	11am to 12.30am
Sunday	11am to 12 midnight

The operating schedule indicated the following measures would be taken to promote the licensing objective regarding the prevention of crime and disorder

Keep adequate checks to prevent under age drinking

Liaise with the local Police in order to maintain a good relationship and support if required

Keep the premises secure and minimise cash kept on site.

The operating schedule indicated the following measures would be taken to promote the licensing objective regarding public safety

Ensure that health and hygiene requirements are met.

Ensure that the premises meet the Fire Service requirements, Fire Alarms, Emergency Lighting and Extinguishers are routinely checked as required by law.

Ensure that electrical appliances are PAT Tested according to the assessment risk of The Crown House.

The operating schedule indicated that the following measures would be taken to promote the licensing objective regarding the prevention of public nuisance.

Ensure that guests' behaviour and drinking is acceptable.

The staff must not continue to provide alcohol to any guests where their behaviour is likely to become a nuisance.

Ensure that staff have clear instructions on how to deal with guests who become a public nuisance and if necessary request police assistance.

The operating schedule indicated that the following measures would be taken to promote the licensing objective regarding the protection of children from harm.

Ensure that under age drinking is not permitted on the premises.

Ensure that staff are aware of the restrictions of their age when serving alcohol (Members of staff who are aged 16 to 18 years).

Ensure that children are not exposed to unacceptable behaviour on the premises.

Copies of the application had been served on all of the seven statutory bodies concerned and had attracted representations from the Principal Environmental Health Officer only.

Representations had been received from interested parties based on the licensing objective prevention of public nuisance. It was feared that additional noise and disturbance would be created by permitting live or recorded music to be played at the premises and the application for late night refreshment and the extension of permitted hours for the sale of alcohol would increase that disturbance.

The Principal Environmental Health Officer had suggested to the applicant that there should be conditions relating to noise levels as follows:-

Music from the premises measured as a 5 minute Leq at the nearest point on the boundary with The Close will not exceed the following levels.

Before 9pm 60 dB (A)

Between 9pm and 11pm 53 dB (A)

After 11pm 45 dB (A)

These levels were higher than the default option of 34 decibels being consulted on as a suggested revision to the Council's licensing policy. The applicant had not agreed the proposed levels at the time of the preparation of this report, nor had the applicant produced a noise survey indicating that alternative levels would meet the licensing objective of the prevention of public nuisance.

In carrying out the statutory function, the Licensing Authority must promote the licensing objectives as defined in the Licensing Act 2003 namely:-

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

The Committee could grant the application, modify the application by inserting conditions, remove a licensable activity from the application or reject the application. Due regard should be given to the Council's licensing policy and the Secretary of State's Guidance issued in accordance of the Act.

If the Committee wished to impose conditions, they must be necessary and proportionate to promote the licensing objective in view of the representations received. Equally, the Committee should not impose conditions that duplicate the effect of existing legislation.

There were no questions asked about the Licensing Officer's report.

Mr W Cockerell, the Principal Environmental Health Officer, explained the objections which had been raised in the context of prevention of noise nuisance and of public safety (car parking) and outlined the history of noise complaints about use of a marquee in the garden of the Crown House.

The Principal Environmental Health Officer and his colleague Mrs O'Boyle, on behalf of the Environmental Health Department had suggested to the manager of the Crown House conditions as to the times and decibel levels of music which would meet the concerns of the Department, and the applicant had agreed to accept these. Mrs O'Boyle also confirmed that the applicant was prepared to accept a condition that no music should be played outside the premises after 9 pm.

In answer to a question from Councillor Lemon the Principal Environmental Health Officer explained that the Crown House had its own noise meter. If complaints arose, however, the Environmental Health Department would take noise measurements.

Objectors to the application were then invited to speak.

Mr David Hall, a local resident and immediate neighbour to the Crown House spoke on his own behalf and for neighbours who had sent the Committee written representations. The Chairman assured him that the Panel had read these letters and the Assistant Chief Executive-Legal added that the Panel was able to take representations into account only if written representations had been received.

Mr Hall said he wished to raise the issues of public safety (car parking) and public nuisance, and to point out a possible legal anomaly regarding the garden at the Crown House, which had been taken from a separate estate and hence might not benefit from the same planning permissions as the Crown House. He recounted the history of complaints made by neighbours of the Crown House in the 1990's and more recently. It had been necessary for him and other residents to approach the Crown House to ask them to turn music down. Whilst he understood that a condition would be agreed of no music outside after 9 pm, he thought a band outside in the afternoon was possible. Residents with small children and those who had to work in the morning needed to have sleep. Further, there was no indication of the frequency of events or of how the Crown House would monitor noise.

In view of unhappy experience in the past he felt that stringent controls were necessary. There should be an obligation on the licensee to control noise fully or lose the licence. He suggested that all activities should take place in the main building, not the grounds. There should be a maximum number (about 6) of jazz concerts if these were allowed, that in addition to the noise level conditions stipulated in Mrs O'Boyle's letter of 11 April 2011 the applicant be required at all times to have a working decibel meter and to make regular checks with it to ensure that the stipulated levels were not exceeded. The licence should last only two years before needing to be renewed and it should be liable to immediate rescission on breach of any of these conditions.

Mr Hall went on to describe traffic noise congestion and parking problems in the village which he felt were exacerbated by the cars of patrons of The Crown House, and he referred to a letter from Doctor Jackson voicing concerns about noise and parking.

Doctor Jackson spoke describing the proximity of the Crown House to his house. He was up at 6 am because of his work so needed to have a period of undisturbed sleep. In his experience music was quietened only for a short time following a request. He questioned

whether the noise problem would be effectively policed and he therefore suggested that there should be a limit on the number of events per annum.

In answer to a question from the Chairman the Licensing Officer confirmed that the papers in the case had been served on all seven statutory authorities but only the Environmental Health Officer had made representations.

The Applicant Ms Szajewski then put her case and answered questions, explaining that she had worked at the Crown House for three years, having succeeded Mr Egdon as Manager. The complaints referred to went back twenty years when facilities were licensed which would not be provided at present. The restaurant was for a maximum of 60 people and a marquee would not be used now. The purpose of the variations was to enable dancing to music at weddings and birthday parties and live music mainly at week-ends on a Friday or Saturday.

She added that she had made a note of the noise levels and would take measurements.

She continued that guests stayed overnight at the hotel and their cars were accommodated on the site; there had been no recent complaints. Proof of age was requested if any customer appeared under age. During the week there was a lot of business from business conferences, with some private functions at the weekend over which the hotel had control.

As regards parking she re-iterated that there had been no complaints. When asked, the hotel saw to it that cars were moved, but there were also events organised by the local Church and the area was not restricted for parking purposes. She said there was not much change in contemplation; they did not want mid-week weddings or happy hours.

The Chairman of the Panel asked whether the Hotel had any soundproofing, and Ms Szajewski said no but that the disco had now been moved to a position in the middle of the hotel, there was plug in air conditioning and they tried to keep the doors closed.

In answer to a question from the Chairman of the Panel the Assistant Chief Executive-Legal explained that, on the basis of the application plan, the licence under the 2003 Act covered only the building of Crown House, not adjacent land. .

The Assistant Chief Executive-Legal advised the Panel that a licence should not be refused merely because of lack of a necessary planning permission. He referred to the request of Mr Hall earlier in the meeting for a condition limiting the length of licence to two years. This did not promote any of the licensing objectives, hence was inappropriate to be adopted. Breach of licensing conditions would be met with an application for review which could lead to additional conditions or even revocation in reaching its decision the Committee should have regard to its licensing policy and in particular to paragraphs 1.16, 2.1 – 2.4, 5.1 – 5.3 and 5.5 – 5.7. It should also have regard to the appropriate Government Guidance including paragraphs 2.32 – 2.34, 2.36 10.7, 10.13 and 10.14. He also drew their attention to the suggested conditions in the Government Guidance to abate noise nuisance, and advised that in this case it was open to the Committee to promote the licensing objective of the prevention of public nuisance by use of conditions.

LC90 **EXCLUSION OF PRESS AND PUBLIC**

RESOLVED that under Regulation 14(2) Licensing Act 2003 (Hearings) Regulations 2005, the press and public be excluded from the meeting whilst the Committee considered its decision on the grounds that it was in the public interest so to do to permit a free and frank exchange of views between Members.

The Panel of Members then withdrew from the room and began to consider their decision at 11.40 pm.

LC91 **DETERMINATION OF AN APPLICATION TO VARY A PREMISES LICENCE - THE CROWN HOUSE, GREAT CHESTERFORD**

Members returned to announce their decision at 1.15 pm.

Councillor D G Perry announced the decision as follows:

“The committee have today considered an application for a variation of the premises licence for the Crown House Hotel Great Chesterford. The premises have been licensed for a number of years and the licence was converted from a magistrates licence to one issued by this authority under the Licensing Act 2003 during the transitional period. The current licensable activities are the playing of recorded music and the sale of alcohol by retail. The permitted hours for both licensable activities are 11.00 am to midnight Monday to Saturday and noon to 11.30 pm on Sunday.

The closing time for the premises is stated as being 12.30 am Monday to Saturday and midnight on Sunday.

The variation sought would include live music, the performance of dance, the provision of facilities for dancing and late night refreshment. The proposed hours for those activities would be from noon until midnight Monday to Saturday and noon until 11.30 pm on Sunday with the exception of late night refreshment which would be from 11.00 pm to 12.30 am Monday to Saturday and to midnight on Sunday. The variation also seeks an extension of the permitted time for the sale of alcohol by retail by 30 minutes throughout the week but not an extension of the time at which the premises should close to the public.

The application attracted representations from the Council's Environmental Health Department as a responsible authority and also from some local residents as interested parties. These concerned the licensing objectives of the prevention of public nuisance and in the case of the interested parties' public safety.

Having considered the submissions on the issue of public safety the Committee were not satisfied on the evidence that vehicles driven by patrons of the premises are regularly parked in surrounding roads and note in any event that there are no parking restrictions locally. The Committee did not therefore give substantial weight to these representations and did not consider that the promotion of this licensing objective required the application to be refused or for conditions to be imposed.

The objective of the prevention of public nuisance is however far more relevant in particular with regard to potential noise nuisance from the premises. The Committee note that the premises are in a residential area. The proposed hours for licensable activities extend beyond 11.00 pm and on week days the premises will not close until 12.30 am, midnight on Sundays. Given the nature of the premises there is little sound proofing. Licensable activities (particularly the provision of regulated entertainment) may therefore adversely impact upon the local community. The Committee has to balance the benefits of musical events and the advantages the business brings to the community, reflected by some of the comments made by some interested parties, against the rights of residents to peace and quiet.

Mr Cockerell and Mrs O'Boyle on behalf of the Environmental Health Department proposed certain conditions which would meet their concerns. These were that there should be no music outside

the premises after 9.00 pm and that music from the premises measured as a 5 minute Leq at the nearest point on the boundary with the Close will not exceed the following levels:-

Before 9.00 pm 60 dB (A)

Between 9.00 pm and 11 pm 53 dB (A)

After 11.00 pm 45 dB (A)

The interested parties made representations to the committee as to how such a condition may be monitored and enforced but did not submit that the noise levels proposed were too high.

In reaching its decision the Committee has had regard to its licensing policy and in particular to paragraphs 1.16, 2.1 – 2.4, 5.1 – 5.3 and 5.5 – 5.7. It has also had regard to the government guidance including paragraphs 2.32 – 2.34, 2.36 10.7, 10.13 and 10.14. It has also considered the suggested conditions in the government guidance to abate noise nuisance.

The Committee are of the view that the promotion of the licensing objective of the prevention of public nuisance can be met by conditions. Such conditions should normally flow from a risk assessment carried out by the applicant as is reflected by the Council's policy and government guidance. These documents are there not only as a reference point for the Licensing Committee but also as a guide to applicants to assist them in making applications which are more likely to succeed. In this case it would appear that the applicant either did not carry out a risk assessment or if she did she chose not to submit it with the application. In the circumstances in determining what is necessary to promote the licensing objectives the committee has had to rely upon representations made in writing and received today.

Mr Cockerell and Mrs O'Boyle have stated that the applicant accepts the conditions that they have proposed. The Licensing Committee are therefore prepared to agree to the addition of the provision of live music, the performance of dance and the making of facilities available for dancing to the description of regulated entertainment permitted from the premises subject to those conditions and subject also to the caveat referred to below.

The permitted hours for regulated entertainment shall be as applied for subject to those conditions and the licence will also be subject to the conditions proposed by the applicant in the application for the variation.

There have been no objections to the application to vary the licence to include the provision of late night refreshment and in that respect the application is granted as applied for.

With regard to the application to vary the hours for the sale of alcohol for consumption on and off the premises to 12.30 am Monday to Saturday and to midnight on Sunday, the application is refused. The times proposed coincide with the proposed closing time for the premises. The absence of a drinking up period could in the view of the Committee cause greater disturbance by customers leaving the premises. Interested parties have commented on this disturbance. The Committee may have been prepared to grant the application if the closing time was also amended to allow for an orderly period of drinking up time. However as a variation in the closing time was not part of the application it was not subject to consultation and the Committee decided therefore it would not be appropriate for it to amend the closing time without a fresh application being made.

As applied for, the variation referred to regulated entertainment being indoors only or indoors and outdoors. That is not an appropriate form of application as the nature of the licensable activity remains the same and any restrictions on where the activity is to be carried out is a matter for conditions. However during the course of the hearing it transpired that the premises licence may in any event be limited to the interior of the building. If that is the case then any licensable activities carried on outside would not be covered by the licence and would be illegal. The Committee strongly urge the applicant to investigate this matter and if this proves to be the case to make an application for a new premises licence to rectify the situation. The condition referred to previously regarding the provision of entertainment outside the premises is inserted in case the Committee's understanding as to the effect of the current licence is incorrect and should not be taken as an indication that the licence permits outside regulated entertainment."

The meeting ended at 1.25 pm

EXTRAORDINARY LICENSING COMMITTEE held at 10.30 am at the TOWN HALL SAFFRON WALDEN on 3 MAY 2011

Present: Councillor E W Hicks – Chairman.
Councillors J E Hudson and D J Morson.

Officers in attendance: M Hardy (Licensing Officer), M Perry (Assistant Chief Executive-Legal) and C Roberts (Democratic Services Officer).

LC84 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

An apology for absence was received from Councillor D G Perry.

LC85 EXCLUSION OF THE PUBLIC

RESOLVED that under Section 100 (I) of the Local Government Act 1972 the public be excluded for the following item of business on the grounds that it involved the likely disclosure of Exempt Information as defined in paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972.

LC86 DETERMINATION OF A MATTER RELATING TO A PRIVATE HIRE DRIVER'S LICENCE

The Chairman welcomed all parties to the meeting and introduced the Members of the Panel to the Driver and his representative.

The Licensing Officer received confirmation from the driver that he had received the Licensing Officer's report.

The Licensing Officer then presented his report. The case had been brought before the Committee following the driver's application to renew his licence. The driver's licence had shown a previous minor motoring offence committed during the previous three years. The CRB check however had shown intelligence, the details of which were disclosed to the Panel.

The Licensing Officer answered questions put by the Driver's representative.

The Driver with the assistance of his representative put his case and answered questions from Members.

The Assistant Chief Executive-Legal advised the Panel on matters it could take into account when considering the question of fitness and propriety, and on the standard of proof for fitness and propriety in licensing appeals.

The Driver's representative gave a closing address and the Panel withdrew to consider its decision at 11.12 am.

LC87

DETERMINATION OF A MATTER RELATING TO A PRIVATE HIRE DRIVER'S LICENCE

Members returned to announce their decision at 11.40 pm.

The Chairman explained that the Driver had appeared before the Committee that day for the Committee to consider his application to renew his private hire driver's licence. The reason for his appearance had been intelligence, received as part of his CRB check, that the Driver had been the subject of allegations of sexual assault.

The Chairman continued that, having considered the report of the Licensing Officer, the CRB check and the evidence of the Driver, the Committee did not accept that the allegations had been made out on the balance of probabilities.

The Committee had noted that the allegations to the police were not made direct but were second or even third hand. No complaint had been made regarding the Driver's behaviour direct to him or, apparently, to his operator. The complainant had not co-operated with the police and after the bail conditions had been dropped she had apologised to the driver for the distress caused.

Notwithstanding the allegations the complainant was continuing to allow the Driver to drive her. Her actions were not consistent with the allegations.

The Driver had to all intents and purposes an unblemished record as a driver stretching back to 1993. In the circumstances Members of the Panel were satisfied that the Driver was a fit and proper person to hold an Uttlesford licence and his licence would therefore be renewed.

The meeting ended at 11.50 am.

EXTRAORDINARY LICENSING COMMITTEE held at 10.30 am at the TOWN HALL SAFFRON WALDEN on 19 APRIL 2011

Present: Councillor E W Hicks – Chairman.
Councillors H J Asker, J E Hudson and D J Perry.

Officers in attendance: M Hardy (Licensing Officer), M Perry (Assistant Chief Executive-Legal) and M Cox (Democratic Services Officer).

LC80 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no declarations of interest.

LC81 **DETERMINATION OF A MATTER RELATING TO A PRIVATE HIRE DRIVER'S LICENCE**

The Chairman welcomed all parties to the meeting and introduced the Members of the Panel to the Driver Mr Burgon, his representative Mr Drinkwater (ULODA) and Councillor Norma Simmons Mayor of Bishops Stortford Town Council, his character referee.

The Assistant Chief Executive – Legal outlined the process to be followed in conducting the appeal. In answer to a further question, he explained the legal issues that he would be advising on later in the meeting

The Licensing Officer then presented his report. The case had been brought before the committee because the driver had failed to meet the Licensing Standard that a driver shall not have more than 3 minor motoring offences during the last 3 years.

He outlined the background as follows. The driver had first been issued with a Hackney Carriage/Private Hire Driver's license on 1st February 2008 to drive on behalf of Stansted Airport Cars. He then applied to hold his own Private Hire Operator's Licence trading as Airport Executive Cars on 15th May 2008.

On 25th February 2010 there had been a report in the Herts and Essex Observer of Mr Burgon being fined whilst using a mobile phone. The Licensing Authority had not been informed in writing as required under its licensing conditions. This matter had been dealt

with under delegated powers and his license had been suspended for 5 days. The subsequent convictions had been properly notified.

When Mr Burgon applied to renew his 3 yearly Criminal Records Bureau it was pointed out that his Driving Licence showed 9 penalty points within a 3 year period and that the authorities conditions were that a driver should not have more than 3 minor motoring offences (5 or less penalty points) during the last 3 years, and also that 12 points on his license could result in disqualification from driving.

On 4th April 2011 he informed the Authority that he had 3 more points and the Licensing Officer then interviewed Mr Burgon as to the circumstances of each of the 4 convictions. These were, on 18th July 2009 and 27 October 2009 for using a mobile phone, on 9 June 2010 for travelling at 52mph in a 40mph temporary roadwork section and on 29 March 2011 for travelling at 58mph in a temporary 40mph speed limit.

The last endorsement on his license brought him to 12 penalty points within a 3 year period, attracting possible disqualification. However the Court took the view that disqualification would cause undue financial hardship to Mr Burgon, so no disqualification was imposed.

The Licensing Officer then invited questions about his report. There were no questions from the Panel. Mr Drinkwater asked the Licensing Officer if he would agree that before the recent convictions Mr Burgon had enjoyed a period of 2 years with out any offence; he concurred with this statement.

Mr Burgon asked for clarification on the council's policy on the limit on the number of minor motoring offences allowed. He was advised that the policy was for no more than 3 minor motoring offences (up to 5 points) in 3 years, regardless of the penalty imposed. Mr Drinkwater asked the Licensing officer to comment on the Colchester Magistrate Court's decision but he declined to do so as he had not attended the hearing.

Mr Drinkwater then addressed the committee on behalf of the driver and asked members not to revoke the license. Mr Burgon had demonstrated that he was capable of compliance, having informed the Licensing Authority of each subsequent conviction. With regards to text messaging on both occasions he had been reading a text message concerning his next job. This was obviously ill advised, though he said that members might wish to question the legal position with regard to receiving text messages.

There was no excuse for the excess speed in the temporary roadworks, but by way of explanation he pointed out that Mr Burgon did an annual mileage of 106,000 miles and had no accidents, so in proportion the risk was low. The decision of the Colchester magistrate's court had pointed to significant mitigation in this case. He said that Mr Burgon was genuinely regretful and apologetic about the events. He then asked him to address the committee.

Mr Burgon said the 4 incidents showed a lack of concentration and minor stupidity. This was very regrettable as he had subsequently borne the cost of a court appearance and speeding offences and he apologised to all those present that this hearing had to be called. Mr Drinkwater asked him to read to the committee the statement made at the Colchester magistrates hearing which had resulted in him not being disqualified from driving.

The statement cited the wider consequences of a driving ban, the financial hardship for him, both personally and for the future of his business and for those who worked for him. Mr Burgon then informed the committee of details of his personal income from driving, and the income he received from his other drivers.

The Committee then heard from Councillor Norma Simons, who had met Mr Burgon through her capacity as Mayor of Bishop Stortford Town Council, when she had worked with Mr Burgon to house difficult to place people in his property. She told the committee that if the license was revoked it would have a significant impact on his income and his ability to live in the property. This would mean that the vulnerable tenants would be back on the streets. She said that Mr Burgon had put himself out to help people and it would be unfortunate that as a result of his own admitted stupidity, many people would be affected.

Mr Perry questioned the credibility of the figures given in respect of personal income from driving as they appeared to show an increase of 100% since he had interviewed him in March 2009. Mr Burgon stated that he had obtained more work through the internet and also obtained jobs through leaflet drops and advertising.

Mr Burgon then answered a number of questions put by the Licensing Officer. He confirmed that as he was no longer working for another operator he did not use a mobile phone to be informed about jobs. He also confirmed that he understood why there were speed restrictions through roadworks. He agreed that the magistrate's court had allowed him to keep his license in order that

he could find other work although he felt that the chances of doing so were slim.

Councillor Perry asked why he had been driving at such an excess speed through the temporary speed limit. He replied that these were roads that he knew well and usually had a 60mph limit, he was in the process of slowing down when he had been stopped. He confirmed that he had not been carrying any passengers during any of these incidents and accepted that his driving had fallen below the standards required so far as the letter of the law was concerned.

The Assistant Chief Executive – Legal clarified that there was no question regarding the law on texting. It was an offence to send or receive written messages whilst driving.

Councillor Asker asked questions about Mr Burgon's previous driving experience. He replied that he had an internationally clean driving record and had no accidents or insurance claims in the last 15 years. His high annual mileage was due to the nature of his business, operating airport runs. Mr Drinkwater confirmed that this type of mileage was not unusual. Mr Burgon confirmed that he had received a copy of the Council's professional guidelines and knew what was expected of him as a driver.

The Assistant Chief Executive – Legal then gave legal advice in the presence of the applicant and his representative and in doing so cited legal cases that were relevant in this case. The following points were made.

The previous suspension in 2009 was not relevant to today's proceedings. The hearing was being held because Mr Burgon no longer met the Authority's Licensing standards. Members had to decide whether he was a fit and proper person to be driving a licensed vehicle. If they were not satisfied the only action they could reasonably take would be to revoke the license, as a suspension would not make the driver a fit and proper person.

As the matters before the committee were only related to motoring offences, members should only be concerned with whether the driver's license should be revoked. Mr Burgon's operator's license would not be affected.

The council was entitled to adopt its own Licensing policies and standards, as long as it dealt with each case fairly, listened to the arguments and applied any exceptions if necessary. The burden of proof was on the applicant to justify a departure from this policy.

Under the totting up process, the magistrate's court must apply a ban in the case of 12 penalty points, except in a case of exceptional hardship. In the case of the Mr Burgon his statement had been taken into account. However this should not engage the Licensing Committee as its criteria was entirely different. It had a duty to protect the users of the licensed vehicles and the public and to that end had to ensure that the driver was a suitable, safe driver with a good record. The personal circumstances of the driver were not relevant to this consideration.

Mr Drinkwater was then invited to sum up. He acknowledged that Mr Burgon had transgressed over the last 12 months but pointed out that he was very hard working and had many satisfied clients. He was passionate about the trade, had seen it as an opportunity to build a career and wanted to continue to grow his business. His main concern was that he contributed 50% of his income by his own personal earnings and the loss of this would have a significant impact on the ability of his business to continue. He asked the committee to take account of the following points when deciding whether the license should be revoked. The offences had all been minor, there had been no disqualification by the magistrate's court and he had an offence free record for two years. He had made an unreserved apology and a personal pledge to be compliant and recognised the need for improved driving discipline. The revocation of the license would result in a significant loss of his personal income, a possible loss of his rental property, and reduced business sustainability.

LC82 EXCLUSION OF THE PUBLIC

RESOLVED that under Regulation 14(2) of the Licensing Act 2003 (Hearings Regulations) 2005 the press and public be excluded from the meeting whilst the Committee considered its decision on the grounds that it was in the public's interest so to do to permit a free and frank exchange of views between members.

The Licensing Officer, the Driver and his representatives withdrew and the Panel began to deliberate on their decision at 11.50 am.

LC83 DETERMINATION OF A MATTER RELATING TO A PRIVATE HIRE DRIVER'S LICENCE

Members returned to announce their decision at 1.05 pm.

The Chairman made the following statement:-

Mr Burgon appeared before the committee for consideration of a revocation or suspension of his driver's licence as he no longer meets the council's licensing standards having committed four minor motoring offences within three years. For the purposes of the council's policy a minor motoring offence is defined as one carrying five points or less for a single offence. Since February last year Mr Burgon has accumulated four such convictions, two for using a mobile telephone while driving and two for excess speed.

With regard to the offences of using a mobile phone, Mr Burgon said he was not making calls but admits that he was reading text messages whilst driving. Although he initially pleaded not guilty to the first of these offences, he changed his plea at court to one of guilty. The committee considers that he was wise to do so. Mr Burgon did not seek to go behind the convictions today and the committee understands that as a matter of law he is not entitled to do so.

Having acquired 12 points for 4 offences, Mr Burgon faced the possibility of a disqualification under the totting-up provisions. He attended before the Magistrates and submitted a plea that a disqualification would cause exceptional hardship. The Magistrates accepted that plea and exercised their discretion not to disqualify.

Before the committee today, Mr Burgon again submitted that a revocation of his driver's licence would cause hardship. He submitted that he would lose income personally, that if he were unable to drive there could be an adverse impact upon the viability of his business and that his home could be in jeopardy.

Based upon the advice members have received, the council is clearly entitled to have a policy. This it has in the form of its licensing standards. Mr Burgon no longer meets those standards. The burden of proof is upon Mr Burgon to show that his is an appropriate case for members to depart from their policy. Mr Burgon has put forward no matters which persuaded members to do so. It was submitted on his behalf that prior to February 2010, he had had no convictions. Against that Mr Burgon committed four offences in little more than a year. It was submitted that he does a high mileage – over 106,000 miles per year. However, the committee was informed by Mr Drinkwater that such mileage is commonplace and yet the committee rarely have to consider similar cases. It also appears that Mr Burgon does not learn from his

mistakes. Having been convicted of an offence of using a mobile phone in February 2010 he received a fixed penalty notice for the same offence two months later. Having been convicted of an offence of excess speed in a temporary speed limit in road works in January 2011, he committed the same offence within three months. This latter conviction was despite the fact that on renewal of his licence the licensing officer drew Mr Burgon's attention to the nine points then on his licence and commented that a further endorsement could put his licence at risk.

Whilst the committee heard evidence of potential hardship, based on the Leeds case, no consideration of the personal circumstances of the driver are relevant except in very rare cases to explain or excuse some conduct of the driver. No such grounds have been put forward. Having found that Mr Burgon no longer meets the licensing standards, in the absence of any factors to indicate that a departure from policy is justified members are no longer satisfied that he is a fit and proper person to hold a licence. Although members do have power to suspend the concept of requiring a driver to be fit and proper is to a great extent to ensure the safety of the public. In the circumstances, a suspension would not be realistic or proportionate, nor would it be fair to the wider public who are potentially placed at risk by unsuitable drivers.

In the circumstances, members resolved to revoke Mr Burgon's driver's licence under section 61(1)(b) Local Government (Miscellaneous Provisions) Act 1976 for any other reasonable cause, namely that members are no longer satisfied that Mr Burgon is a fit and proper person to hold such a licence.

EXTRAORDINARY LICENSING COMMITTEE held at 10.30 am at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN on 30 MARCH 2011

Present: Councillor E W Hicks – Chairman.
Councillors J E Hudson, D J Morson, and A D Walters.

Officers in attendance: M Hardy (Licensing Officer), M Perry (Assistant Chief Executive-Legal) and C Roberts (Democratic Services Officer).

LC76 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no declarations of interest.

LC77 DETERMINATION OF A MATTER RELATING TO A PRIVATE HIRE DRIVER'S LICENCE

The Chairman welcomed all parties to the meeting and introduced the Members of the Panel to the Driver Mr Timothy Dodds.

The Licensing Officer obtained confirmation from the Driver that he had received copies of all relevant papers in the case.

He then presented his report which invited the Panel to consider whether or not the licence should be revoked or suspended

The report explained that on 3rd February 2011 a report appeared in the Herts and Essex News regarding a road traffic accident in which a taxi driver failed to stop after being involved in an accident. The newspaper named the driver as Timothy Dodds of Stoneyfield Drive, Stansted. A check of the Council's current records showed a Timothy Dodds 18 Stoneyfield Drive, Stansted as being licensed with this authority working on behalf of Stansted Airport Cars. The licence was due to expire on 30th June 2011.

On 8th March 2011 Mr Dodds was interviewed by the Licensing Officer in the Council Offices, Saffron Walden as a result of a report appearing in the newspaper where he gave an account that led to his conviction. Mr Dodds admitted that the report did relate to him.

The report explained that during the evening of 31st July 2010 he was working on behalf of Stansted Airport Cars and found himself parked up in the overflow car park of the Hilton Hotel, Stansted Airport. He admitted in interview that he was parked up out of the way reading a book waiting for the next job to come in. He did receive a booking via a mobile phone from his operator and then commenced to leave the car park at the hotel.

As he was leaving the car park he was confronted by another vehicle which did not leave him enough room to turn right to get by this vehicle. He said that he made three or four manoeuvres going back and forth even on one occasion winding down his driver's window asking the driver of the other vehicle to move, which request was refused. He did finally manage to get past this vehicle and then drove off leaving the hotel premises. He finished his shift at about 3am the following day and then had three days leave.

On his return to duty a director of Stansted Airport Cars informed him that he was required to attend Stansted Airport Police Station where enquiries were being made about an allegation of a failure to stop road traffic accident at The Hilton Hotel in which he was believed to be a party involved. He duly attended the Police Station and admitted being the other driver involved. He was shown photographs by the Police of the damage sustained to the other vehicle which the repairs amounted to £1500. After interview he was reported for the offence of failing to stop after a road accident and advised that a summons would be sought.

It appeared that a court summons was sent to his home address by post which Mr Dodds stated he never received. Following his non-appearance at Court the Essex Police called at his home address arrested him for failing to appear and gave him what is commonly referred to as doorstep bail to appear before Harlow Magistrates Court.

On 18th January 2011 Mr Dodds had appeared before the court with the intention of pleading not guilty and was told that the case would be adjourned for trial at Epping but the cost of the case could amount to about £600, money which Mr Dodds did not have, so he changed his plea to one of guilty. Whilst at Court he did not seek any legal representation and could not afford to engage a lawyer to act on his behalf.

Following his change of plea the Court imposed a fine of £50 with five penalty points on his DVLA driving licence.

Following the discovery of the newspaper report Mr Dodds did breach the conditions of his licence by failing to notify details of his conviction to this authority in writing within 7 days of the conviction being imposed.

Letters were sent by the Licensing Officer and the Assistant Chief Executive Legal to the home address of Mr Dodds asking him to make contact for interview which went unanswered and contact was finally made through a director of Stansted Airport Cars. Mr Dodds remained resident at his current address but he said that his mail was very problematical in that he did not receive all that was addressed to him.

The Licensing Officer then invited questions about his report but there were none.

The Assistant Chief Executive-Legal referred to Paragraph 7 of the report and advised the Panel about the nature and purpose of the proceedings when a case first comes before the magistrate's court. He made the point that he had never heard of a magistrate's court clerk giving an estimate of costs during a discussion about the plea. Costs applied for by the prosecution were generally very modest. He felt the figure of £650 costs would be more appropriate for a half day's trial.

He also explained the possible legal steps which could be taken if no communication could be made with a driver.

Mr Dodds the driver was invited to ask questions. He gave his account stressing the absence of damage to his car, his belief that there had not been an accident, his ineligibility for benefits and inability to afford the costs consequential on pleading not guilty. He said he apologised wholeheartedly for failing to report the conviction within seven days and had not realised he needed to report it as he was not employed as a mini-cab driver at the time, just taking what work he could get.

In answer to a question from Councillor Walters Mr Hardy said he had asked for photos of the damage or release of the vehicle and the Police had refused. Mr Dodds added that the driver who had obstructed his access to the car park didn't respond in the slightest to Mr Dodds request for him to move his car.

In answer to questions from Councillor Morson he said he did not believe there had been an accident, the first indication being when the employer had said the police had been. Mr Dodds had shown the unmarked car to the employer and had thought the whole thing would blow away. As regards the post it seemed there had been a spate of misdeliveries in Mr Dodds' area.

In answer to a question from Councillor Hudson Mr Dodds confirmed that he had been driving a big silver coloured mini-bus with the cab firm's name written conspicuously on it but that seemingly the other car driver had thought he could wait.

The Assistant Chief Executive-Legal asked Mr Dodds what had been the basis of his mitigation in the magistrates' court and the Chairman asked if the Bench had examined why he wished to plead not guilty. Mr Dodds could not remember being asked this.

In answer to a question from Councillor Walters Mr Dodds confirmed that the taxi company owned the car he had been driving. It was a pool vehicle and had been examined by the police during the period when he had been on leave. He had

not asked the directors of the firm to attend the hearing to confirm the lack of damage, as he knew they were not available then.

The Assistant Chief Executive-Legal gave the Panel advice in the presence of Mr Dodds concerning the case of Nottingham City Council v Farouk which was authority for the rule that the licensing tribunal was not entitled to question the court's conviction, they could consider mitigating circumstances but had to assume the conviction was valid.

LC78 EXCLUSION OF THE PUBLIC

RESOLVED that under Regulation 14(2) of the Licensing Act 2003 (Hearings Regulations) 2005 the press and public be excluded from the meeting whilst the Committee considered its decision on the grounds that it was in the public's interest so to do to permit a free and frank exchange of views between members.

The Licensing Officer and the Driver withdrew and the Panel began to deliberate on their decision at 11.05 am.

At 11.35 am the Driver was re-called briefly by the Panel to inform them about his financial circumstances so that a disproportionate penalty should not be imposed.

LC79 DETERMINATION OF A MATTER RELATING TO A PRIVATE HIRE DRIVER'S LICENCE

Members returned to announce their decision at 12.22 pm.

The Chairman made the following statement:-

"Mr Dodds appears before the committee today for consideration of a revocation or suspension of his licence. The initial reason he was asked to attend before the committee arises from the fact that in January this year Mr Dodds was convicted on his own admission of an offence of failing to stop and report an accident. He was fined £50 and his licence was endorsed with 5 penalty points. Under the conditions attached to his licence he should have notified the council of this conviction in writing within 7 days. This he acknowledges he failed to do.

The licensing committee expect the conditions attached to a licence to be observed. Where there is a breach the driver is invited to meet with the Assistant Chief Executive – Legal for him to consider a short suspension under delegated powers. That would have happened in this case as the points endorsed on the licence were not sufficient to require consideration of a revocation of the licence because of Mr Dodds' driving record. However other circumstances raised issues concerning Mr Dodds' honesty and therefore whether he remained a fit and proper person to hold a licence.

The first issue which gave rise to these concerns was Mr Dodds' attitude with regard to the offence. Mr Dodds denies that any accident occurred. He says that he attended court with the intention of pleading not guilty but was told by the clerk that if he did so the matter would be adjourned for a trial and that the costs of the case would amount to £600. Mr Dodds says he could not afford that sum and therefore changed his plea to guilty.

Members regard this account as being wholly implausible. The clerk could not know what level of costs would be applied for by the Crown Prosecution service in the event of their being a conviction. Whilst the Committee accept that Mr Dodds may not have been in a position to afford legal representation it is always open to defendants to represent themselves and indeed many do so. Further, had Mr Dodds been acquitted no costs could have been awarded against him. Mr Dodds was invited to address the Committee as to the mitigation he put forward to the magistrates as factors which amount to a defence cannot be taken in mitigation but he did not do so.

Members were also concerned that Mr Dodds failed to respond to the summons in the first instance (ultimately appearing at court under a warrant) and failed to respond to 2 letters from the council inviting him to meet the Assistant Chief Executive – Legal who would consider suspending his licence under delegated powers. Mr Dodds' explanation for this was that he said he did not receive the letters concerned. On the balance of probabilities the Committee found that 3 letters correctly addressed to Mr Dodds sent on separate occasions did not go astray in the postal system notwithstanding what Mr Dodds told the committee regarding his alleged difficulties with the post.

In the view of the Committee Mr Dodds has been less than candid in dealing with both the circumstances of his conviction and his failure to deal with official correspondence. This shows a lack of honesty on his behalf which led members to consider whether they are satisfied that Mr Dodds is a fit and proper person to hold a licence. Had members concluded that he was not the licence would have been revoked and very serious consideration was given to taking that course.

However, members took note of the fact that its concerns regarding Mr Dodds' honesty did not arise from his dealings with members of the public but his dealings with the council and in the circumstances decided that a suspension of the licence would be sufficient.

In determining the length of suspension members heard from Mr Dodds that he works 6 days on and 3 days off and that his average income is £30 per shift, although this can be as low as £10- £15 on some days. Mr Dodds also told the Committee that at present driving is his only source of income and that he is in financial difficulties, not having paid any rent for 2 months.

The Committee did however consider Mr Dodds' breach of condition and failure to respond to the council's correspondence to be serious matters showing a disregard for the conditions of his licence and the need for the council to ensure compliance. In the circumstances the Committee determined that a suspension of Mr Dodds' licence for a period of 28 days would be a proportionate and appropriate sanction and the licence will therefore be suspended for that period. Mr Dodds should be aware that should concerns regarding his honesty be found in the future a revocation of his licence would be a real possibility."

Mr Dodds was informed as to the timing of operation of the suspension and advised, by the Assistant Chief Executive – Legal, about his right to appeal to the magistrate's court

The meeting ended at 12.30 pm.

**LICENSING COMMITTEE held at COUNCIL OFFICES LONDON
ROAD SAFFRON WALDEN on 16 MARCH 2011 at 7.30pm**

Present: Councillor E W Hicks – Chairman

Councillors H J Asker, J E Hudson, J I Loughlin, D J
Morson and A D Walters.

Officers in attendance: Michael Perry (Assistant Chief Executive –
Legal), Stephen Joyce (Assistant Chief Executive –
Finance), Murray Hardy (Licensing Officer) and
Catharine Roberts (Democratic Services Officer).

LC67

PUBLIC QUESTION AND ANSWER SESSION

The Chairman welcomed all present and invited members of the public present to speak in accordance with their notice of intention to do so.

Statements were then made by Mr B Drinkwater, Mr R Sinnott and Mr M Ott.

Mr Drinkwater explained that ULODA was now collating replies to a questionnaire about fares review which the Association had sent to the Trade throughout the District. ULODA would develop its proposals regarding fares in the light of these replies.

He thanked the Council, mentioning in particular Councillor Walters, the Assistant Chief Executive-Legal and the Licensing Officer, for the new taxi rank in the High Street. New signage had now been installed but there was nevertheless a problem of cars parking on the taxi rank.

Mr Sinnott reiterated the desire of the Association to continue to contribute to the Committee's budget process in 2011/12, and Mr Drinkwater expressed a concerned interest in the new "executive arrangements"; the Association valued its liaison with the Committee and wished that to continue through whatever changes were imminent.

Mr Ott summarised the progress of the cab4one project. The Council had endorsed this by licensing his Smart car as a private hire vehicle subject to review in a year. The project was not showing a profit in the current year but there was 100% customer satisfaction. A CCTV camera was used by agreement with all concerned when children and vulnerable people were carried, and

wi fi too. The car was 100% reliable though slightly less economical than its makers claimed.

LC68 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Apologies for absence were received from Councillors E L Bellingham-Smith and J A Redfern.

LC69 **MINUTES**

The minutes of the scheduled meeting of the committee held on 19 January 2011 were received confirmed and signed by the Chairman as a correct record, subject to the inclusion of the apologies for absence submitted by Councillor D G Perry.

The Assistant Chief Executive - Legal informed the meeting that no appeal notice had been received regarding the Committee's decision set out in minute LC66 and that the time for such appeals had now elapsed.

Councillor Morson referred to the offer by the Assistant Chief Executive – Finance to discuss some budget figures with the Trade. The Assistant Chief Executive – Legal had no knowledge of discussions so far but confirmed that there would be a small surplus in the current year arising from the fact that fees were reduced during the course of the year. There was a forecasted deficit in the next year and the fees surplus was being reduced to zero over a three year period.

LC70 **PRIVATE HIRE LICENSING – SMART CARS**

The Committee considered the report of the Licensing Officer who informed the meeting about the growing client base, facilities and projected expansion of the business. No difficulties had been reported by the public about the service and the operator was a member and had the support of ULODA.

Councillor Perry was concerned about the integrity of the CCTV and asked whether the review period could be extended. The Assistant Chief Executive – Legal indicated this could not be done by the committee as licensing policy would become an executive function under executive arrangements.

Other Members were impressed by the comments of Mr Ott's clients particularly those of Accuro, and Councillor Perry was invited to disclose his fears. He answered that there was no room for a guide dog for the disabled and that it was important to take into consideration what might be included in the Equalities Act. The Assistant Chief Executive-Legal commented that any change in vehicle standards would apply to all vehicles, not just Smart cars.

RESOLVED that the report be noted.

LC71

LICENSING BY COUNCILS OPERATING EXECUTIVE ARRANGEMENTS

The Committee considered the report of the Assistant Chief Executive - Legal which explained how the Council would be dealing with matters under executive arrangements.

As a point of order Councillor Perry expressed concern about the destination of the non-hearing licensing functions under the new cabinet system of government. He thought that this aspect had not been discussed in any meeting of the Constitutional Working Group. He had been told that the regulatory committees would stay as they were. He therefore considered it unconstitutional and wrong that it now appeared the new regulatory committee would not deal with non-hearing functions.

Councillor Morson added that Members had been given two briefings on Cabinet arrangements when the Chief Executive had said that the two regulatory committees would not be affected by the change. The report now before the Committee had not been put before the Constitutional Working Group. There was only one reference in the new Constitution to the Licensing Committee; it said merely that Committees would be appointed. Councillor Morson continued that the report now before the Committee had not been flagged up in previous debates.

The Assistant Chief Executive – Legal explained details of the executive arrangements had been contained in reports to Full Council on several occasions after discussion by the Constitution Working Group. The regulatory committees would continue with their licensing (hearing) powers. He directed Members' attention to Paragraphs 7 and 8 of the report which explained that performance of different Council functions was allocated to the Council or particular committees or officers. In default of allocation, functions must be performed by the executive. The Leader could perform executive functions or delegate them to the Executive, to individual

members of the executive, to committees of members of the executive and to officers. It had been seen in a recent case that policy matters would be treated as executive powers by default.

Councillor Morson stressed the need for an organisation to liaise with the taxi Trade. The Assistant Chief Executive – Legal said that there was nothing to prevent any member or group of members from making recommendations. The Leader had no power to delegate functions to a Committee containing non-executive Members.

In answer to a question from the Chairman the Assistant Chief Executive – Legal said it would be up to the Leader to decide how the licensing functions should be carried out. If there were a portfolio holder, no doubt the Committee and the portfolio holder would liaise. He answered questions from Members about the effects the constitutional change would have on particular aspects of the current Committee's powers.

Councillor Walters said that he had received the impression that the functions of the Licensing and the Planning Committees would not be carried out by the Executive.

Councillor Morson was concerned that there would be no access for Trade voices if the budget and policies for Licensing were to be Executive functions.

The Leader assured the meeting that the Cabinet system was flexible and could be adapted to whatever the Members wished. Members were nevertheless concerned that they were not completely au fait with the position, and Councillor Walters asked for a complete clarification.

The Chairman of the Committee pointed out that the Council had passed a resolution incorporating these matters and the relevant report had said that the work of the Licensing Committee would not in future require as many meetings.

RESOLVED that the Committee's concern and the possibility of assistance from the Leader be flagged up.

LC72

EXERCISE OF DELEGATED POWERS

The Committee considered the report of the Assistant Chief Executive – Legal (circulated at the meeting) on the exercise of his delegated powers since the last meeting.

Councillor Perry thanked the Assistant Chief Executive – Legal for the regular communication on this matter.

RESOLVED that the report be noted.

LC73

NOISE AUDIBILITY CONDITIONS

The Committee received a report from the Assistant Chief Executive - Legal on implications of the case of R. (on behalf of Developing Retail Ltd) –v- South Hampshire Magistrates Court & Portsmouth City Council (“the Portsmouth case”).

He asked the Committee to determine whether amendments should be considered to the licensing policy to meet doubts cast by this case on the legality of some noise audibility conditions. The deputy high court judge had held in that case that a noise audibility condition was unenforceable due to vagueness because there was no clarity as to the premises or location intended to be protected and the meaning of “inaudible” was not clear. She had indicated that the defect could have been remedied by clear specification of the particular places to be protected and the decibel levels acceptable there.

In the view of the Assistant Chief Executive - Legal the judge in the Portsmouth case was seeking an absolute measure. Under directions issued under the Noise Act 1996 the permitted level of noise was expressed as 34 decibels where the underlying noise level did not exceed 24 decibels or 10 decibels above underlying noise levels in any other case. The Noise Act had been enacted to provide a summary method of dealing with noise in extreme situations. It was not necessarily an appropriate way of determining how premises were managed on a day to day basis. Moreover, the existence of a condition under the Licensing Act 2003 would not prevent officers from using Noise Act powers.

Although helpful comments on non-specific noise audibility conditions had been made by the judge in the English Heritage UDC case (and by government guidance) these were less weighty as they were obiter dicta; the issue was costs, not the validity of the Council’s condition.

Because ambient noise levels varied it was necessary to establish what those levels were so as to fix a decibel limit for the acceptable level of noise. This could only be done using a noise survey.

The Council could set out in its licensing policy circumstances in which the licensing committee would find a noise survey useful and what the likely approach of the committee would be if such a survey were not forthcoming.

The Assistant Chief Executive - Legal suggested the addition of a new paragraph 5.7 to the licensing policy:-

“Applicants for licences which include regulated entertainment will be aware of the potential of such entertainment to cause a public nuisance by reason of noise from the premises. If representations are made or a review is called for the Authority may consider imposing a condition to the effect that the licensee shall take measures to ensure that music will not exceed a prescribed decibel limit at the boundaries of certain properties or within a location described in the condition. What may be an acceptable level of noise may vary from location to location or depending on the time of day as perception of noise from a particular source is affected by background noise levels. Directions given under the Noise Act 1996 provide that the permitted level for the purposes of that Act is 34 decibels where the underlying noise level does not exceed 24 decibels or 10 decibels above underlying noise levels in any other case. In the event that representations are received and the Authority concludes that a noise limiting condition is required the starting point for such a condition would be 34 decibels. If an applicant wishes to contend that a higher limit is appropriate then the Authority would expect the applicant to provide a noise survey to support such a contention.”

With regard to existing premises if non-specific audibility conditions were breached, the Assistant Chief Executive - Legal recommended that the appropriate course of action would be for an application to be made for a review of the licence to enable a Portsmouth compliant condition to be added to the licence rather than to seek a prosecution.

The Chairman commented that since a clear base figure made the condition less easy to overturn, it was important to impose a decibel limit of 34Db.

RESOLVED that a new paragraph 5.7 as set out above be approved as the basis for consultation for a proposed amendment to the Council's Licensing Policy.

LC74 **CRB CHECKS**

The Licensing Officer informed the meeting that the cost of the enhanced CRB check would rise, from 6 April 2011, to £44.

LC75 **NEW COMMITTEE ARRANGEMENTS**

Members of the Committee were concerned to convey their thanks and goodwill to the Chairman and each other on the occasion of the Committee's last scheduled meeting in its current form.

Councillor Lemon, on behalf of Members, thanked Councillor Hicks very much for his exemplary work as Chairman of the Committee which had on occasion required diplomatic resolution of keen controversy.

Councillor Hicks attributed the Committee's success to its Members whom he considered excellent. He thanked them and commented that he had tried to carry on in the same vein as his predecessor Councillor Loughlin.

The meeting ended at 9.20 pm