

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 7.30pm on 27  
MARCH 2013**

Present: Councillor D Perry - Chairman.  
Councillors H Asker, J Davey, J Freeman, E Hicks, J Loughlin, M  
Lemon, D Morson, V Ranger and A Walters.

Officers present: M Perry (Assistant Chief Executive-Legal), R Dobson  
(Democratic Services Officer), M Hardy (Licensing Officer) and G  
Smith (Head of Environmental Health).

Also present: Mr B Drinkwater, Mr R Ellis, Mr R Sinnott (Uttlesford Licensed  
Operators and Drivers Association); Mr A Mahoney and Mr  
Hodgson.

LIC47 **PUBLIC SPEAKING**

Mr Drinkwater and Mr Mahoney made statements, summaries of which are  
attached to these Minutes.

LIC48 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor Salmon.

LIC49 **MINUTES**

The minutes of the following meetings were received and signed as a correct  
record:

**MINUTES OF THE MEETING HELD ON 24 OCTOBER 2012**

**MINUTES OF THE EXTRAORDINARY MEETING HELD ON 29  
OCTOBER 2012**

**MATTERS ARISING**

**(i) Minute LIC20 – Determination of a private hire driver’s licence**

The Assistant Chief Executive-Legal said Mr Burgon had appealed the  
decision of the Committee to refuse the application for a private hire  
driver’s licence. The appeal at the Magistrates’ Court had been  
unsuccessful, and Mr Burgin had appealed to the Crown Court. This  
hearing was to take place on 17 May.

**MINUTES OF THE EXTRAORDINARY MEETING HELD ON 26  
NOVEMBER 2012**

**(ii) Minute LIC21 – Determination of a private hire drivers’ licence**

The Assistant Chief Executive-Legal said Mr Kalam had not appealed the refusal of the renewal of his licence.

**MINUTES OF THE EXTRAORDINARY MEETING HELD ON 18  
DECEMBER 2012**

**MINUTES OF THE EXTRAORDINARY MEETING HELD ON 23  
JANUARY 2013**

**MINUTES OF THE EXTRAORDINARY MEETING HELD ON 30  
JANUARY 2013**

**MINUTES OF THE EXTRAORDINARY MEETING HELD ON 7  
FEBRUARY 2013**

**(iii) Minute LIC31 – consideration of a film classification request**

Councillor Loughlin said she had been present at the meeting but was not recorded as having attended. The Committee agreed that the Minutes should be amended accordingly.

**MINUTES OF THE EXTRAORDINARY MEETING HELD ON 18  
FEBRUARY 2013**

**MINUTES OF THE EXTRAORDINARY MEETING HELD ON 25  
FEBRUARY 2013**

**(iv) Minute LIC40 – determination of a driver's licence**

The Assistant Chief Executive-Legal said there had been no appeal, nor had the driver replied to an invitation to make a fresh application.

**(v) Minute LIC42 – determination of a driver's licence**

There had been no appeal in this matter.

LIC50

**DETERMINATION OF DRIVERS' LICENCES**

The Chairman said there were three matters before the Committee this evening, and bearing in mind the Committee's intention to take a proportionate and fair view of matters for determination, he would suggest that they be dealt with without debate.

The Assistant Chief Executive-Legal said all three items which were Part 1 matters, relating to Mr Rodriguez, Mr Hodgson and Mr McClure, related to minor speeding offences to be dealt with by the Magistrates' Court. All these individuals were likely to meet the Council's licensing standards. In the

unlikely event that any were to receive 6 points on their licence, he would bring that matter back before the Committee. There was a part 2 matter for determination on the agenda, on which officers would provide an update at the end of the meeting.

Members agreed that it was unnecessary for such cases to come before the Committee in future and that the scheme of delegation should be amended to allow the Assistant Chief Executive – Legal to grant licences in these circumstances

#### RESOLVED

- (i) That the licences for Messers Rodriguez, Hodgson and McClure be granted
- (ii) The Assistant Chief Executive-Legal have delegated authority to grant licences in cases where a driver has a pending prosecution for a motoring offence which is in the opinion of the Assistant Chief Executive – Legal unlikely to attract 6 points or more on the driver's licence.

LIC51

#### **TACIT CONSENT**

The Committee considered a report which informed members of the requirement to have arrangements for tacit consent in respect of certain grants of licences and to seek Members' approval of a tacit consent regime and exceptions thereto.

The Assistant Chief Executive-Legal said it was officers' recommendation to have in place a tacit consent policy which was more stringent than in some local authorities. For example, for applications for the grant or variation of premises licences under the Licensing Act 2003 the licensing authority had a statutory duty to hold a hearing in the event that there were representations. It would be difficult in his view to see how tacit consent could apply without a hearing. He said the policy would be published on the website, subject to Members' approval.

The Head of Environmental Health said the timescales in the report related to the number of working days deemed to be needed to consider applications and carry out necessary inspections.

Councillor Loughlin asked about the difference between registration and consent. The Assistant Chief Executive-Legal explained that registration required notification to the authority whereas consent required the exercise of discretion.

Councillor Asker asked about the types of activity for which permission was required under the Highways Act 1980.

The Assistant Chief Executive-Legal said these provisions covered the placing of chairs and tables outside restaurants. There was a dual regime

because permits could be issued by this Council or by the Highways Authority, and the time period suggested in the report for consultation was to enable either to consult the other.

RESOLVED to approve the draft tacit consent scheme.

LIC52

## REVIEW OF LICENSING POLICY

The Chairman thanked Members of the Licensing Task Group for the work they had undertaken in producing the report now before the Committee. The report sought Members' approval to revisions of the Council's standards and conditions, recommended that there should be a general amnesty of one month for drivers to notify various matters to the Council in accordance with the obligations of their licence, and requested the Committee to adopt the Licensing Policy for the Hackney Carriage and Private Hire trades.

Mr Mahoney suggested the policy should be amended to enable the sanction of a caution to be applied if a driver was facing a speeding offence.

Councillor Morson said he agreed with the principle that the Assistant Chief Executive-Legal should be able to give a caution under his delegated powers and he proposed this suggestion. The motion was seconded by Councillor Davey, and was passed with one abstention.

RESOLVED that paragraph 6.8 of the draft licensing policy be amended to include the following highlighted words:

“Without detracting from the delegated powers and discretion of the Assistant Chief Executive-Legal it is the policy of the Council that where the matter complained of constitutes an offence under the legislation the offender should usually be the subject of **a formal caution or a prosecution**”

Councillor Morson congratulated the Licensing Task Group for the work they had done on this matter.

Councillor Loughlin asked the trade representatives present whether they were satisfied with the new policy. Mr Drinkwater, Mr Ellis, Mr Mahoney and Mr Sinnott all confirmed that the amended policy had resolved their concerns and thanked Members for the adjustments which had been made.

The Assistant Chief Executive-Legal said only two of the 16 changes had been controversial.

RESOLVED

- 1 to adopt the licensing policy (as amended) and its appendices as the Council's policy for the Hackney Carriage and Private Hire Trades
- 2 to allow for an amnesty of one month for drivers to notify the Council of any matters relevant to their licence which if not reported would otherwise bring them into breach of the conditions of their licence provided that they do not fall outside of the Council's licensing standards as a result of such matters.

#### LIC53 **GAMBLING POLICY**

The Committee considered the Council's Gambling Policy which had been updated in accordance with statutory requirements.

RESOLVED to approve a continuation of the current statement of principles under the Gambling Act 2005 in the form of the document annexed to the report before the Committee as a basis for consultation.

#### LIC54 **LICENSING RESERVE**

The Committee considered a report on the licensing reserve requested by members at the meeting on 24 October 2012.

The Chairman explained that there would be a full report at the July meeting.

The Assistant Chief Executive-Legal said the Council continued to be on target for achieving the eradication of the historic surplus of income over expenditure for licensing by the end of the financial year 2013/14. A meeting between the trade and finance officers would take place as soon as possible after the year end. In reply to a question from Councillor Lemon he said that all figures would be made available to the trade as a matter of course.

The report was noted.

#### LIC55 **EXERCISE OF DELEGATED POWERS**

The Committee considered the report of the Assistant Chief Executive-Legal on the exercise of his delegated powers since the last meeting of the Committee. The Assistant Chief Executive-Legal referred to three matters which had required consideration by the Committee because the driver was due to receive points on their licence but was otherwise a fit and proper person to hold a licence. He referred to the decision by Members at Minute LIC50 above to amend the scheme of delegation to allow the Assistant Chief Executive-Legal to grant licences in these circumstances. The Assistant

Chief Executive-Legal would bring back to the Committee any matter where the driver subsequently became not fit and proper.

LIC56            **EXCLUSION OF THE PUBLIC**

RESOLVED that, under section 100I of the Local Government Act 1972, the public be excluded from the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 3 of part 1 of Schedule 12A of the Act.

LIC57            **DETERMINATION OF A DRIVER'S LICENCE**

The Assistant Chief Executive-Legal said he had delegated powers but was not minded to exercise them in this case as the driver's licence was due to expire on 31 March, so there was no sufficient time to call another meeting. The driver had accepted a caution regarding harassment against his former partner. The Assistant Chief Executive – Legal said that further information was required and suggested that power to determine the application be delegated to him in consultation with the Chairman.

**RESOLVED**

The Assistant Chief Executive to have delegated authority to deal with the application in consultation with the Chairman.

LIC58            **DETERMINATION OF A DRIVER'S LICENCE**

The Chairman agreed to take this item as urgent business, as the driver's licence was due to expire on 31 March.

The Licensing Officer informed Members of an application regarding an owner operator who had submitted to the Council information from the police regarding an allegation of assault said to have taken place on 24 January 2010.

The Licensing Officer said an enhanced DBS check was awaited. He gave details of the incident as contained in a letter the driver had produced from Essex Police. The allegation had been made by a passenger when the driver had had a contract with a care home. The complainant, who was a vulnerable individual, had alleged that the driver had assaulted him whilst he was a passenger in his vehicle, after two other passengers had been dropped off at their destinations, resulting in bruising to his leg. Following the complaint, the contract had been terminated but after investigation the police had concluded that no further action would be taken. Four months after the incident a CRB check had been carried out, the result of which had been clear.

The Licensing Officer had also now made further enquiries with the police to establish the status of the complaint.

The Assistant Chief Executive-Legal said he had delegated power as the driver met the Council's licensing standards but he had brought the matter before the Committee because of the nature of the intelligence. If the Committee were minded to grant the licence in any event then he would do so under his delegated powers. The licence was due to expire on 31 March. In view of the timings of the Easter bank holidays unless the licence was renewed the driver/operator would not be able to operate his business until such time as the Committee could meet to determine the licence.

Members considered whether they should meet as a committee or whether they were happy for the Assistant Chief Executive-Legal to grant the licence under his delegated powers.

Councillors Perry and Lemon considered the matter should be dealt with by Committee in view of the vulnerability of the complainant which in their view ought to require the greater transparency of a further committee meeting to determine the licence.

Councillors Asker, Davey and Walters were of the view that the matter could be determined under delegated powers due to the fact that the police had not taken the investigation further at the time of the allegation and there was no medical evidence of physical injury submitted; three years had elapsed; there had been no other complaints; and the fact that the only evidence was supplied by the driver himself and not the complainant. The driver should be given credit for taking the pre-emptive step of reporting this potential issue regarding his licence.

### **DECISION**

It was resolved by a vote of 3:2 that the licence should be granted under delegated powers.

The meeting ended at 8.45pm.

### **STATEMENT OF MR DRINKWATER**

I have this evening circulated to Members a report of the exercise of delegated powers during the years 2011/12 and 2012/13, to date. You will see that there were 58 drivers interviewed, and in these 47 cases where action was taken. This amounts to only 0.2% of the driver total, indicating compliance by 99.8% of all drivers. The trade feels discomfited by what has been going on in the last few months, and my operator colleagues wish to address you regarding their concerns. One case related to a driver failing to wear his badge, which subsequently was dealt with by the Magistrates' Court, which found in the driver's favour. Almost 70% of cases were failure to notify

the authority of fixed penalty notices or accidents. ULODA's view is that this is an issue of education not punishment.

#### STATEMENT OF MR MAHONEY

I refer to the written summary circulated this evening by ULODA. Regarding the review of the licensing policy, I commissioned a lawyer to advise on amendments. My main concern was that of prosecution. An owner driver using his own vehicle for social, domestic and pleasure use being required to wear his badge is draconian. I would suggest substituting this requirement with the following mechanism: when a driver commits a minor offence that he is dealt with by way of caution by the Assistant Chief Executive-Legal. This would enable the committee to see the driver within a short time, with no threat of appearing before the Magistrates'. This solution would satisfy both the Council and the driver. Also please would the Committee give the Assistant Chief Executive-Legal additional delegated power to grant a driver's licence to a driver who has a prosecution pending for motoring offences. The driver present here tonight who is one of my drivers, has an unblemished record except for 3 points on his licence 7 years ago. He now faces appearing before the Magistrates and the imposition of further points. Such circumstances are stressful for a driver who may face losing his livelihood, and the mechanism I suggest would avoid that stress.

Regarding the licensing reserve issue, please could we agree a meeting with the trade and the accounts department as soon as possible to discuss the trade's concerns.