

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

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

Officers present: M Perry (Assistant Chief Executive - Legal) and L Bunting
(Democratic Services Officer).

Also present: Mr B Drinkwater, (Uttlesford Licensed Operators and Drivers
Association) and Mr A Mahoney.

LIC24

PUBLIC SPEAKING

Mr Drinkwater and Mr Mahoney attended the meeting to address members on
several topics.

Licensing Reserve

Mr Drinkwater referred to the Licensing Accounts for 2012/13 which were
made available in late August. He said that they had been taking advice from
the NPHA before making final arrangements to meet. The Guildford Audit
Report had been used all over the country since 2013 as the first definitive
document setting out the parameters for calculating licence fees and this
needed to be taken into account.

Mr Mahoney reported that this had been a good year with an increase of 100
vehicles and an increase in office staff.

Licensing Policy

Mr Drinkwater referred to the agenda item to be discussed later in the meeting
regarding a request from a licensed operator to permit the licensing of
vehicles which are described as classic cars. He reported that ULODA had
consulted with members of the trade who would support a recommendation to
license such vehicles as a class. Minimum standards were set by the annual
test and it was considered that the Licensing Officer should assess each
application on its individual merits to determine if the vehicle satisfied the
Council's criteria.

Licensing Plates

Referring to whether the display of licensing plates should be required for
classic vehicles, Mr Drinkwater said that there was an on-going project within
ULODA to research other districts' licensing practices in respect of what may
be termed as high end luxury vehicles used by chauffeur service companies.
Representations would be made in due course, one of which was possibly to

be that a chauffeur class be created with a licence plate in the shape of a roundel to be displayed in the front and rear windscreens.

ULODA EGM

Mr Drinkwater wanted to place on record the thanks of the ULODA to the Assistant Chief Executive - Legal for attending the EGM held in September, where he had addressed members on the new Licensing Policy, touting, taxi ranks, top lights and plates, activities at Audley End and enforcement.

Mr Drinkwater referred to tension amongst members of the trade about the condition to allow the removal of the taxi top lights in certain circumstances including when a vehicle was being used for social events, for example weddings and pleasure purposes. A consultation with all proprietors and HCV drivers about the removal of this exemption was currently being undertaken and representations would be made at the conclusion of the exercise.

Mr Mahoney referred CRB/DBS system which was being utilised by most other authorities and thought that Uttlesford should consider adopting the scheme. The Assistant Chief Executive – Legal said that this was an agenda item for this meeting.

Mr Drinkwater informed members that he would be standing down from chairmanship of the ULODA at the AGM. At the moment there was no obvious successor and a change in the constitution to allow a non-operator to assist may be proposed.

The Chairman thanked Mr Drinkwater for all his hard work on behalf of ULODA and said that he had enjoyed partnership working. All members of the Committee agreed with these sentiments.

LIC25 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors J Davey and J Freeman.

LIC26 MINUTES

The minutes of the meetings held on 10 July and 26 September 2013 were received and signed as a correct record:

LIC27 MATTERS ARISING

(i) Minute LIC14 (meeting 10 July 2013) – Determination of an Operator's Licence

The Assistant Chief Executive – Legal reported that no appeal had been notified to the council and that the time allowed for an appeal had expired.

(ii) Minutes LIC18, LIC20 and LIC 23 (meeting 26 September 2013)

The Assistant Chief Executive – Legal reported that no appeal had been notified to the Council but that the time allowed for an appeal had not expired.

LIC28

DBS CHECKS

The Assistant Chief Executive – Legal reported that the Criminal Records Bureau (CRB) had been replaced by the Disclosure and Barring Service (DBS). The DBS operated in a slightly different way to the CRB. Under the old system the Council would request a search of criminal records and intelligence in respect of applicants for drivers' licences. The results were then sent to the Council with a copy being sent to the driver.

Under the new system the Council would not be provided with copies of checks from the DBS. The DBS report was sent to the driver and it was for the driver to produce this to the authority.

In some circumstances, drivers were required to have a DBS check for purposes other than the application to the Council for a driver's licence. For example, drivers working on an Essex County Council's schools' contract would require a DBS check for that purpose as well as for the Council.

It was important to ensure that a DBS check was current when a licence was granted. However, as there was no longer any facility for the DBS result to be sent directly to the Council there would appear to be no reason why a current DBS check carried out on behalf of another authority should not be acceptable. Provided that the checks were enhanced DBS disclosures and dated not more than one month before the application for the licence was made and it was not more than two months old the date the licence was issued it was considered unlikely that any matters which might have occurred would have been noted on the DBS check in any event. This would have the advantage for drivers of speeding up the application process and reducing expense.

When a driver made an application for a licence that had not been previously licensed by this authority, the policy had been that a CRB check would be acceptable providing that it was not more than 18 months old and that the applicant made a statutory declaration to the effect that a fresh check would not reveal any additional matters. Making a false declaration was an offence of perjury and the Assistant Chief Executive - Legal had delegated power to revoke a licence if a false declaration was made. The form of statutory declaration used made this quite clear to the drivers. Subject to the proposed amendment above there was no reason why this practice should not continue. Since the policy was introduced no licences had been revoked as a result of a false declaration.

Similarly, if for any reason a fresh check was not available upon a driver already licensed by the Council, the policy had been to renew the licence upon production of a statutory declaration that no new matters would be revealed by a new DBS check. This enables drivers to continue to drive

notwithstanding that a DBS check was not available and again since this policy was introduced no licences had been revoked because of a false declaration.

After a short discussion it was

RESOLVED to approve the replacement of the Criminal Records Bureau (CRB) by the Disclosure and Barring Service (DBS) and the changes as listed below:

- 1 that the Council accept DBS checks obtained by or on behalf of other authorities provided that the same were dated no more than one month before the application was received and no more than two months before the grant of the licence.
- 2 That in other cases the Council continued to accept DBS checks carried out by or on behalf of other authorities which were not more than 18 months old at the date of the application for a licence, provided the same was supported by a statutory declaration to the effect that since the date of such check no matters had occurred which would be disclosed on a fresh check.
- 3 That the practice of renewing licences for existing licence holders when a DBS check was due but not available, provided that the applicant made a statutory declaration to the effect that the DBS check requisitioned would not reveal any matters not disclosed by the previous check, should be continued.

LIC29

REQUEST FOR VARIATION OF THE LICENSING POLICY

The Assistant Chief Executive – Legal informed members that the Council had received a request to change its policy to permit licensing of Rolls Royce and Bentley motor vehicles after they are 12 years old. An operator had recently acquired a Bentley Arnage vehicle which was made in 1999. It was therefore currently 14 years old and did not meet the council's licensing standards

Before 2008, the Council did not impose an overall age limit beyond which it would not licence vehicles as private hire or hackney carriage vehicles. Instead, there was a requirement that vehicles should not be licensed for the first time if they were more than 10 years old. However, once licensed subject to passing six monthly road tests, vehicle licences could be renewed indefinitely. It had been resolved by the Committee on 9 January 2008 that, with certain exceptions, vehicles would not be licensed after they were 12 years old. Members had taken the view that the age limit was important to ensure that vehicles licensed by the council comprised a smart modern fleet which would enhance the character of the district. The exceptions to this policy were for wheelchair accessible vehicles, vehicles used exclusively for school contracts and classic vehicles.

When the council adopted its Licensing Policy in March 2013 these standards were carried forward although the exception that applied for classic vehicles

was deleted as none were licensed by the Council at that time and the exception was considered unnecessary. It should be noted that the age limit of 12 years applied to all vehicles of whatever description. There were a number of operators within the district operating high range luxury vehicles which are subject to the 12 year rule.

The operator in this case had originally obtained the vehicle for the purpose of, or providing wedding services. This was acceptable as no licence was required for vehicles when used in connection with weddings, therefore the operator did not need a licence for much of his proposed business although he had indicated that he wished to offer the service of collecting couples from the airport upon their return from honeymoon. This would be too remote from the wedding to be covered by the exemption. However, in addition to the wedding service the operator also wished to offer his Bentley for proms and for special days out to races, special events, special occasions and corporate pickups, all of which required licensing.

The operator had already applied for a licence for his vehicle which had been dealt with on the 26 September and the application had been refused. However different considerations applied when considering whether to make an exception to policy and whether to change the policy itself.

The Assistant Chief Executive – Legal reported that he had contacted all operators in September seeking their views on the proposal. However, only five of the 90 operators in the District had replied.

The Chairman commented that if the policy were changed it would then be open to all operators with vehicles over 12 years old. The Assistant Chief Executive – Legal said that it was up to members to decide what boundaries to impose.

Councillor Asker considered that any change should be done in a safe and proper fashion and that it was not every day business for people who had prestige vehicles. She proposed that ULODA be invited to comment on the grading of prestige cars and every vehicle that fell into that category.

The Assistant Chief Executive – Legal suggested deferring the proposal until trade had been consulted on grading. If members were minded to license a class of vehicles of more than 12 years old, they should be specific in what vehicles would be so licensed and justify the reason for changing the policy and explain why vehicles within the class designated by members were different from other luxury cars licensed by the council which were subject to the 12 year rule. Therefore a lead from the trade on grading would be helpful in making a final decision.

After further discussion it was proposed and agreed to defer a decision pending representations from ULODA on what grading should be on vehicles over 12 years of age.

CONSULTATION ON THE FUTURE OF PERSONAL ALCOHOL LICENSES

The government had indicated an intention to abolish the requirement for personal licence holders to renew their licences at ten year intervals as part of the review of its alcohol strategy. When the relevant legislation is passed this would mean that personal licences would last for the life of the licence holder or until earlier surrender or revocation. The intention to consult on whether personal licences should be abolished altogether was also announced. The Assistant Chief Executive – Legal requested members to decide what form of response the Council should take.

The first personal licences issued by this Council were not due for renewal until 2015 and the projected income from these had not yet been built into the budget. The Council presently issued approximately 60 personal licences per year at £37 per licence. In addition to this, personal licence holders were required to notify the Council of any change in their name and address and pay a fee of £10.50 in respect of each such notification. Roughly 20 notifications were received per annum. In the event that personal licences were abolished the fees would cease to be payable and the total loss of income to the Council was estimated at £2500.

The consultation document raised a number of questions to which a response was sought and the Assistant Chief Executive – Legal had been asked to provide answers. He then went through the questions as follows:

- (i) Does the Council think the government's proposal would reduce burdens in time and/or money or business including small and medium enterprises?

Yes, although it was difficult to gauge the amount of time. Responsible licensees would wish to ensure their staff was properly trained and it was a matter for proprietors of businesses to determine the resources they wish to put into this. Removal of the need for all personal licence holders to attend approved courses however would result in a financial saving.

- (ii) Does the Council think this proposal would undermine the licensing objectives? The four licensing objectives were: public safety; preventing crime and disorder; preventing public nuisance and protecting children from harm.

The weakness in the current system was the fact that the personal licence holder had not got to be present at all times when alcohol was being sold. Providing properly trained staff were employed on the premises, the abolition of personal licences would not appear to undermine the licensing objectives. The difficulty would be in monitoring that staff had been appropriately trained. Arguably a requirement that the premises must have a personal licence holder present at all times when alcohol was being offered for sale would be more likely to reinforce the licensing objectives than the abolition of personal licence holders.

- (iii) Does the Council think nationally accredited training courses for those authorising alcohol sales are necessary to help licensing authorities promote the licensing objectives?

Before the Licensing Act 2003 came into effect, licensing justices would not grant or transfer a licence unless they were satisfied the applicant was a fit and proper person to hold such a licence. For a number of years prior to the abolition of their jurisdiction magistrates were insisting upon a significant degree of experience in the licensed trade or a recognised licensing qualification. It was therefore important that all staff engaged in the sale of alcohol were properly trained. The advantage of a nationally accredited scheme was that it provided a level playing field for those engaged in the industry. However if the requirement for a qualification were removed the demand for such courses may be so low as to render them uneconomic to provide.

- (iv) Do the Council think a statutory list of relevant offences, such as theft or handling stolen goods, is necessary to help licensing authorities promote the licensing objectives?

The answer to this question was clearly no. Only the police could object to the grant of a personal licence and only if:

- (a) the applicant had an unspent conviction for a relevant offence and
- (b) the Police consider that the grant of a personal licence would undermine the licensing objective of prevention of crime and disorder and in the event of a conviction for a relevant offence only the magistrates could revoke or suspend the personal licence. This was therefore irrelevant to the licensing authority's functions. It did impose restrictions upon the police (in terms of objecting to licences) and on the courts (in considering revocation or suspension). This was maybe of more significance before the law was changed to include additional offences (e.g. conspiracies and attempts). However, there were still gaps in the law. For example, offences under the Social Security (Administration) Act 1992 were not included in the list of specified offences notwithstanding the fact that these were clearly offences of dishonesty. It might better promote the licensing objective of prevention of crime and disorder if the police could object to the grant of a licence because of any conviction which in their view undermined the crime and disorder objective and if the magistrates could consider the forfeiture or suspension of a personal licence for any offence. In such cases it would be for the licensing authority or the court to determine whether the nature of the offence was such that the crime and disorder objective was likely to be undermined.
- (v) What proportion of premises in your area do you think conditions requiring nationally accredited training would be appropriate?

The Council had no experience in this. The consultation gave a range of less than 10, 25%, 50%, 75% or greater than 90%.

- (vi) For what proportion of premises in your area do you think conditions requiring criminal records declarations for future designated premises supervised would be appropriate?

The consultation questionnaire gave a range of less than 10%, 25%, 50%, 75% or greater than 90%. It would appear that a basic DBS check was desirable in all circumstances. Whilst the police clearly had access to information regarding prior convictions, whether police resources would permit an examination of such records in the time allowed for dealing with applications was questionable and the requirement for a criminal records declaration would reduce the administrative burden.

LIC31

UPDATE ON THE LICENSING RESERVE

The Committee received the year-end accounts for 2012/13 which had now been finalised. The balance at year-end stood to the credit of the reserve amounting to £62,000. In round figures this was £5,000 more than was forecasted and £1,000 less than anticipated in the previous report in July.

A breakdown of the figures had been provided to ULODA on 21 August 2013, which was later than anticipated due to accountants being engaged in the first audit by new external auditor. ULODA had been invited at that time to agree to a meeting with the Assistant Chief Executive – Finance, the service accountant and myself to discuss the figures. The Assistant Chief Executive - Legal had been informed that two parties who wished to be involved in that meeting were busy with business matters and he would be contacted when their availability could be established. Nothing had been heard since.

The reserve had now been reduced to a level where an increase in fees would be necessary in 2014/15 to ensure that the Council breaks even going forward. The Assistant Chief Executive – Finance and the Assistant Chief Executive – Legal would engage with the trade during the budget process in determining what the level of fees should be agreed for 2014/15. There would need to be an extra-ordinary meeting of the Committee to determine the fees for which it was responsible and to advise the Cabinet on the suggested level of other fees as there was no other scheduled meeting of the Committee before the budget is set. A meeting would need to take place in November or December 2013.

LIC32

EXERCISE OF DELEGATED POWERS

The Committee received a report outlining the implementation of delegate powers of Assistant Chief Executive – Legal since the last meeting. He had dealt with nine drivers for various matters under delegated powers all relating to failing to notify the council of fixed penalty notices within seven days of the

same being imposed. In five of those cases licences had been suspended for five days. Another case had the licence being suspended for three days. The breach of condition occurred before the change in policy and the Council had been notified of the fixed penalty notice before the change in policy. In two further cases there were strong mitigating factors and two day suspensions had been imposed. In the final case no action was taken.

In another case the Assistant Chief Executive - Legal declined to deal with a breach of condition of failing to notify a fixed penalty notice within seven days under delegated powers due to aggravating features and the matter had been referred to the Committee. The driver's licence in that case was suspended for 14 days and a warning given that any further breaches of condition would be likely to lead to his licence being revoked.

The period involved in the report covered the busiest time of the year for licence renewals. It was to be expected therefore that more breaches of condition would come to light during this period than at quieter times of the year. It was noted that in the corresponding report in October 2012 it was reported that 15 drivers had been dealt with, six more than for the same period this year. However of those cases six had been concerned with minor offences which at that time were dealt with by a suspension. This meant that the number of drivers failing to notify fixed penalty notices as required had remained unchanged for the same period in 2013 as in 2012.

Under the current policy drivers who committed offences were dealt with under the criminal justice system. Usually for a first offence this would involve a caution although if there were aggravating factors a prosecution might be authorised for a first offence. All such matters were reported to Committee as the existence of a caution or pending prosecution took the licence holder out of our licensing standards and members therefore needed to consider in each case whether the driver/operator remained a fit and proper person. Since the date of the last report there had been no formal cautions administered. The Assistant Chief Executive – Legal had authorised three prosecutions, one of an operator for using an unlicensed driver (the Committee had revoked the operator's licence); one of a driver witnessed by an enforcement officer using a mobile telephone whilst driving and a third for making a false statement to obtain a licence. The second case was currently pending. The third was dealt with on 15 October 2013 when the applicant was fined £37 and ordered to pay a victim surcharge of £20 and £100 costs.

The Chairman congratulated the Assistant Chief Executive – Legal on the report and for keeping the Committee up to date with events.

With regard to items on the agenda, Councillor Ranger commented that the item for future agenda items had been omitted from the current publication. It was requested that this item be placed permanently on the agenda in future.

The meeting ended at 8.45 pm.